

**EXAMINING COMPETITION AND CONSUMER
RIGHTS IN HOUSING MARKETS**

HEARING

BEFORE THE

SUBCOMMITTEE ON COMPETITION POLICY,
ANTITRUST, AND CONSUMER RIGHTS

OF THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

ONE HUNDRED EIGHTEENTH CONGRESS

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EXAMINING COMPETITION AND CONSUMER RIGHTS IN HOUSING MARKETS

TUESDAY, OCTOBER 24, 2023

UNITED STATES SENATE,
SUBCOMMITTEE ON COMPETITION POLICY, ANTITRUST,
AND CONSUMER RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:37 p.m., in Room 226, Dirksen Senate Office Building, Hon. Amy Klobuchar, Chair of the Subcommittee, presiding.

Present: Klobuchar [presiding], Blumenthal, Hirono, Lee, Hawley, and Blackburn.

OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Chair KLOBUCHAR. I don't know why we'd be discussing the House right now. I don't know, when we have this excitement right in our Chamber.

But I want to welcome everyone—

[Gavel is tapped.]

Chair KLOBUCHAR [continuing]. To this very important hearing and I'm actually really excited to hear from our witnesses. I would like to thank Ranking Member Lee and his staff for working with us to plan this hearing.

So everyone looks back fondly maybe at the first place they ever lived.

For me, in 1960, my parents wallpapered the last room in their house on a dirt road on 1315 Oakview Lane in Plymouth, Minnesota. I still remember that my whole time growing up, we lived in the same house and it had exposed wood ceilings. I had no dishwasher to the end. But it had exposed wood ceilings.

And my grandma who grew up on the iron range of Minnesota would come down to the cities to see the house. And she would every single time, my grandma, Mary Klobuchar, say to my mom and dad, "When are you going to finish the ceiling?"

[Laughter.]

Chair KLOBUCHAR. And the brightly colored appliances—butter yellow-colored oven that was all part of our lives. And my dad paid for that house with a GI loan.

And today, I think we all know that houses are not available to many young families in the same way that my parents could afford them on a teacher's salary and a starting newspaper reporter's salary.

In 1960, the median home value was \$11,900. That is about \$123,000, in today's dollars. And this was, of course, in the midst of the post-war housing boom.

Today, the median single-family home costs more than \$400,000, if you look at it across America. This is an increase of more than 500 percent since 1980, and more than 40 percent since 2020.

I think we know why this is. Affordable options are too few. Freddie Mac estimates that we need to build 3.8 million new homes to make up for the housing deficit.

And according to the National Low Income Housing Coalition, the affordable housing gap for those with low incomes is more than 7.3 million rental units.

We know rents have always gone up, jumping more than 12 percent since August of 2022 alone. And in some 20 million households, they spend more than half of their income on housing.

So what do we do? The affordable housing crisis is a result of complex, long-standing issues—many of which are the focus of our colleagues over in the Banking, Housing, and Urban Affairs Committee, chaired by Senator Sherrod Brown, and Tina Smith, my colleague, chairs the Subcommittee.

We know there's issues of workforce to build housing. There's issues of the cost of building housing and the component parts. But today we're going to focus on the role that competition policy changes, to help address these market failures.

So some of the issues I'll put on the table that are relevant to our Committee.

First, renters face real challenges to compare and contrast prices. More and more of the cost of renting are hidden from view through the proliferation of junk fees. As a result, renters struggle to take advantage of price competition because the true costs of housing are not transparent.

Second, housing is an area in which we have seen the widespread use of algorithmic pricing tools designed to raise prices even at the expense of higher vacancy rates. A growing number of companies, like RealPage and Yardi offer services that collect competitively sensitive pricing information from competing property management committees, feed that data through sophisticated algorithms, and recommend unit by unit prices so landlords can charge a certain rent.

Landlords have figured out that it is better for them and their bottom lines to use these products to price units high, so that some of them actually sit empty, but it is easier to have them priced high for them in the long term.

And so I believe landlords should be competing on price. And I don't think you see that happening when you have this algorithm-based games going on.

Third, families are being boxed out of the market for single family homes by institutional investors. There've been wide range news reports about this, where institutional investors will just buy up homes in a neighborhood making it out of reach, especially for first-time home buyers.

The institutional buyers are often backed by large private equity funds seeking reliable revenues through rental income instead of allowing families to achieve the dream of home ownership.

The presence of these institutional actors drives up home prices because they can make all-cash offers and waive inspections to out-bid everyday people.

And unlike mom and pop landlords, these absentee owners are more likely to charge junk fees, evict families, and increase instability in our communities.

Finally, this is all made worse by the fact that we are not building enough affordable housing. The number of starter homes being built has plummeted since the 2008 financial crisis, which put hundreds of thousands of small builders out of business. This has left us reliant on fewer and fewer large company home builders that dominate home building in major metropolitan areas.

The builders tend to focus on high-end homes rather than starter homes. The consolidation in the home building market has been shown to reduce the number of new homes built by more than 100,000 houses every single year.

So while we recognize a competition policy is no silver bullet—and I will emphasize that as we talk about I'm sure some of the other issues at hand—while it is no silver bullet for solving our affordable housing crisis, we shouldn't dismiss its importance. We should at least explore it and look at what possible solutions we can agree on.

The antitrust laws were actually used in the 1960s to make sure that there was fairness in sales of homes. And we now need to examine whether antitrust and consumer protection laws need to be updated to eliminate predatory junk fees for rental markets, root out anticompetitive tools that facilitate price fixing instead of competition, and ensure the market is more responsive to the increased demand for housing.

I look forward to exploring these issues with my colleagues and our esteemed witnesses today. I now turn it over to Senator Lee.

**OPENING STATEMENT OF HON. MICHAEL S. LEE,
A U.S. SENATOR FROM THE STATE OF UTAH**

Senator LEE. Thank you, Madam Chair. Thanks to all of you for coming. This is an important issue and I'm glad we're holding the hearing.

Millions of Americans all across the country, including so many in my own home State of Utah, are paying significantly higher prices to own, rent, or otherwise live in a home in 2023.

Home ownership is even further out of reach for Americans than it has been at any other time in modern history. And this has created problems, problems that we hope to address and discuss today.

Just since July of 2021, just over 2 years ago, the affordability of a home has declined significantly even in that narrow timeframe.

According to the Home Ownership Affordability Monitor, housing accounted for about 28 percent of Americans' median income in January of 2021. It's a lot of money that's up then from what it had been just a few years earlier and when it used to be much lower than that.

But, you know, it's a sizable chunk. People were spending over a quarter—between a quarter and a third of their income on housing.

But let's look at what happened since then. It's jumped to a whopping 44 percent by September of 2023. These rates are worse than those seen during the financial crisis of 2008. Homes are less affordable today than at any other time since we started keeping track of this particular set of records back in 2006. We've never seen anything this bad since we began keeping those records.

The monthly mortgage payment on a median price home has more than doubled, in just 2 years. In 2021, it was \$979.

Well, today that payment is \$2,059. It costs a family almost \$13,000 more per year to live in the same house than it did just over 2 years ago, 2½ years ago, the moment our current President took office. And with rents at record highs, many Americans have limited housing options available to them.

If Americans are spending 44 percent of their income—close to half of what they make—on housing, and \$13,000 more per year than they did just 2 years ago, it leaves families with less income, fewer resources, and less savings left over to pay for basic essentials, such as groceries, gasoline, cars—all of which have become dramatically more expensive at the exact same time that housing has become unaffordable.

So with less ability to pay for these basic needs, there isn't money left over from anything else. Anything else, whether that's an emergency, you know, unforeseen expense related to a car repair or a health condition, a family member who needs help or a desire to go on a family vacation, or buy something that the family needs. There isn't room for it, because everything else has been taken up.

And ultimately, the increased share of a family's income spent on housing may cause them to take on even more debt to make ends meet. And this, in turn, over time, it's going to lead to more bankruptcies.

Many failures may contribute to the sudden abrupt and severe rise in housing costs. We've got a number of things that we could look at.

The first one I want to mention involves State and local regulations, which account for a significant constraint on housing supply. Anytime we look at the price of a particular thing, whether it's a good or a service or something as basic as a home, you have to look at supply and demand, and how those two are interacting.

And these things, these regulations impose significant constraints on housing supply at the same time when demand is hardly going away. And in many States, like Utah, it's increasing rather abruptly and dramatically.

In cities across America, residents are burdened with zoning and overburdensome land use regulations at the Federal, State, and local levels. And these regulations decrease the housing supply and in many cases directly prohibit housing development, increase costs, create uncertainty, and they produce significant delays.

For example, the Affirmatively Furthering Fair Housing Rule originally adopted by the Obama administration, increased compli-

ance costs and the cost of housing by an additional—by adding additional Federal zoning restrictions.

Those restrictions aren't always things that show up as obviously the product of Federal action, because they translate into these local units of Government adopting new regulations, new restrictions in response to the AFFH rule—because they have to comply with those rules in order to continue receiving Federal funds, for example, under the Community Development Block grant program.

And it appears that the same will be true of the Biden administration's version of the same rule, which has not yet taken effect, but will soon.

Second, Americans are suffering through an extended period of high inflation generally, which has been particularly acute in the housing market.

Throughout 2021, the inflation rate jumped to as high as 9 percent, more than four times the Federal Reserve's target inflation rate of 2 percent, in large part due to profligate Federal spending and irresponsible monetary policy.

Home prices rapidly increased over the last five decades, eclipsing the inflation rate by 150 percent since 1970. In fact, if home prices grew at the same rate as inflation, since 1970 the median home price today would be just \$177,788—rather than \$408,100.

Finally, the Federal Government's land ownership is also a critical factor, especially in parts of the United States like Utah, a home to vast swaths of Federal land in holdings. In 2021, the States with the highest increases in home prices year over year, were—not coincidentally—Arizona at 28.8 percent, Idaho at 28.7 percent, and Utah at 24.5 percent.

This comes to as no surprise to us in the West. The Federal Government owns a really obscenely large percentage of our land.

In Utah, the Federal Government owns about 67 percent of all the land in Utah. That's two thirds.

While a small portion of this land consist of scenic National Parks, most Federal land in the West is managed by the Bureau of Land Management or the U.S. Forest Service—and most of it doesn't look like the postcard-worthy, picturesque viewscapes that you see associated with National Parks.

It's just land. Land that the Federal Government owns, holds, refuses to sell, refuses to allow development on, and very often is used to lock people out of access to all kinds of things in the State, including, on occasion, their own property.

Now the United States now has a record shortage of over 5 million homes. In 2021, the States with the highest increases in home prices were located in the West.

Unfortunately, finding available land to increase housing supply is a real struggle. I mean it's very, very difficult, simply because it's not there. Because we don't have very much of this rare commodity known as private land, and you have to have private land in order to build housing.

So I've introduced a bill called the Houses Act, which would create a process by which local communities could nominate small tracts of run of the mill BLM-managed land to be used to quickly address housing shortages and availability. And these are in hold-

ings that are in or immediately outside of a city or town boundary, a place where people live.

The Houses Act would help solve Utah's land and housing scarcity by allowing parcels of Federal land to be purchased by a State or a unit of local government at a reduced price, giving them much needed flexibility to address housing constraints.

The Act would require that land be subject to a density requirement, and would protect against the development of expensive second homes purchased from the Federal Government on the parcels at issue.

Now in Utah, there are almost 23 million acres of Federal land that happen to be managed by the Bureau of Land Management in the State, accounting for 43.24 percent of the total land in the State.

Typical home prices in Utah have increased by 89 percent just over the last 5 years—89 percent in 5 years.

If just 1 percent of the acreage in Utah managed by the Bureau of Land Management in my State were made available for housing under the Houses Act, at least 774,000 additional homes could be built. We have large families in Utah, and we reproduce rapidly, so we're going to need those homes.

This hearing is intended to examine some of the factors contributing to the increased costs of homes, specifically some of the factors that Members of the Subcommittee might be able to help mitigate or potentially eliminate, and I look forward to this conversation. Thank you.

Chair KLOBUCHAR. Very, very good.

I note we've been joined by Senator Blumenthal, who got in at 3 a.m. from a trip to the Mideast. So it's a total devotion to our Subcommittee, as well as Senator Hirono, I look forward to hearing from, given the loss of homes in the Maui fires. And I know she'll be focused on that. Thank you.

We have with us our witnesses.

Diane Yentel is the president and CEO of the National Low Income Housing Coalition. She's worked in affordable housing for over 25 years.

Vanessa Brown Calder is the director of Opportunity and Family Policy Studies at the Cato Institute. She previously served as executive director and staff director at the Joint Economic Committee under Senator Lee. Cool.

Luis Quintero is with us. He is an assistant professor at Johns Hopkins Carey Business School with a Ph.D. in economics from Carnegie Mellon University. His research focuses on real estate, economics, and housing affordability.

E.J. Antoni is a research fellow at the Heritage Foundation's Grover M. Hermann Center for the Federal Budget.

And Maurice Stucke is the Douglas A. Blaze Distinguished Professor of Law at the University of Tennessee College of Law, where his teaching and research focuses on competition and antitrust law and policy. And he recently served as a senior advisor to the FTC and has spent years litigating antitrust matters with the Department of Justice.

So with that, I'm going to swear in the witnesses. Here we go. If you guys could rise.

[Witnesses are sworn in.]

Chair KLOBUCHAR. Thank you. You can be seated. Now we will begin. So you can get started, Ms. Yentel. Thank you.

STATEMENT OF DIANE YENTEL, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL LOW INCOME HOUSING COALITION, WASHINGTON, DC

Ms. YENTEL. Thank you. Chair Klobuchar, Ranking Member Lee, and Senator Hirono, thank you for the opportunity to testify today.

Across the nation, the lowest income renters face a severe shortage of affordable and available homes, and a significant gap between incomes and housing costs. There is a national shortage of 7.3 million homes that are affordable and available to the lowest income renters.

This shortage is a long-standing structural feature of the country's housing system, consistently impacting every State and nearly every community. For example, in both Chair Klobuchar's State of Minnesota and Ranking Member Lee's State of Utah, there are fewer than four affordable homes available for every 10 of the lowest income renter households.

Without affordable housing options, more than 10 million of the lowest income renters, who are disproportionately people of color, pay at least half their limited income on rent, leaving them without the resources they need to put food on the table, purchase needed medications, or otherwise make ends meet, putting them one financial shock away from facing eviction, and in worse cases, homelessness.

While wages have risen in recent years, these gains have not closed the persistent and significant gap between renters' incomes and the rising cost of rent.

During the pandemic, policymakers responded to the growing threat of housing insecurity by providing unprecedented support to keep renters housed. These protections and resources cut evictions in half, lowered eviction filing rates to the lowest on record, and kept millions of people, who otherwise would've lost their homes during the pandemic, stably housed.

But just as these emergency resources were depleted and pandemic-era renter protections expired, renters reentered a housing market with skyrocketing rents and high costs elsewhere.

The GAO has found that every \$100 increase in median monthly rent, is associated with a 9 percent increase in homelessness in that same community.

Over 2021 and the first half of 2022, rents increased by about \$200 a month. And as a result, eviction filing rates have now reached or surpassed pre-pandemic averages in many communities, resulting in increased homelessness.

Even with the stabilization of rental prices this year, the rapid inflation we saw during 2021 and 2022, has done significant damage to affordability, especially for the lowest income renters.

Median rent of new leases just last month were 24 percent higher than at the beginning of 2021. Rent increases are driven by several factors, including a growing demand for rental housing and limited supply.

Rent increases can also be attributed to a mostly unregulated rental market with few tenant protections that, especially in markets where demand far outstrips supply, permits landlords to raise rents as high as the market will allow without regard to the impact on tenants with the lowest incomes.

And in addition to high rent, landlords are increasingly imposing costly fees, further increasing costs for low-income renters. Renters particularly those with the lowest incomes, have severely limited options in the housing market. The lack of national renter protections leaves tenants vulnerable to unjust treatment, housing instability, and evictions.

Landlords can engage in abusive and predatory behavior with few consequences. Renters facing exorbitant rent increases or excessive fees, have little to no ability to move to a new home. Instead, they can face retaliation for reporting unsafe housing conditions or illegal actions by landlords. And because so few renters have access to legal representation, many are unable to assert their legal rights.

Strengthening and enforcing Federal renter protections is a critically needed solution to America's housing crisis, along with eliminating restrictive local zoning laws to increase supply, increasing investments to make homes affordable to people with the lowest incomes through expansions of housing choice vouchers and the National Housing Trust Fund, and preventing evictions and homelessness with a National Housing Stabilization Fund.

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

[The prepared statement of Ms. Yentel appears as a submission for the record.]

Chair KLOBUCHAR. Thank you. Ms. Calder.

STATEMENT OF VANESSA BROWN CALDER, DIRECTOR OF OPPORTUNITY AND FAMILY POLICY STUDIES, CATO INSTITUTE, WASHINGTON, DC

Ms. CALDER. Chair Klobuchar, Ranking Member Lee, and Members of the Subcommittee, thank you for the opportunity to testify today.

My name is Vanessa Brown Calder, and I am the director of Opportunity and Family Policy Studies at Cato Institute. The views I express today are my own. They do not represent the official position of my employer.

Accessible low-cost housing is vital to the health and prosperity of America's families and communities. When housing is abundant, it is more affordable. Abundant housing provides educational and economic opportunities. It allows families to be part of the communities that they desire. Policies that support abundant affordable housing are associated with reduced homelessness, and better homeless policy outcomes.

Although junk fees, institutional investors, and similar matters have received some recent attention, inaccessible, high-cost housing is largely a result of existing Federal, State, and local policy. Government policies that constrain housing development are particularly detrimental in this regard.

State and local regulations constitute some of the most significant policies constraining housing supply. Zoning and land use regulations are nearly ubiquitous across American cities.

These regulations directly prohibit housing development, increase costs, create uncertainty, and produce delays. Zoning regulations have a meaningful impact on family budgets.

A well-known paper finds that zoning pushes up the cost of apartments by around 50 percent in Manhattan, San Francisco, and San José.

A recent paper reviewing 24 metropolitan areas finds a massive zoning tax up to \$500,000 per quarter acre in cities with restrictive land use regimes.

In addition to State and local policy, Federal policy also plays a role in limiting housing supply. In Western States, the Federal Government owns a substantial portion of the land which cannot be developed. In Nevada, Utah, and Idaho the Federal Government owns between 60 and 80 percent of the land. In other Western States, the Federal Government owns more than a third to a half.

Contrary to public perception, the vast majority of Federal lands are not National Parks, Monuments, or Bureau of Indian Affairs land.

Instead, most Federal western land is managed by the Bureau of Land Management or U.S. Forest Service. This land is often close to urban areas with a significant portion of land within city or county boundaries.

Presented with a similar set of facts in the 1990s, former Senate Majority Leader Harry Reid led a group of legislators in passing the Southern Nevada Public Land Management Act. This legislation allowed local governments in the landlocked Las Vegas area to nominate Federal land for competitive market auction.

The sale of Federal land in Clark County, subsequently resulted in hundreds of millions of dollars allocated to Nevada public schools and environmental initiatives, creating a win-win for Nevada's developers, conservationists, and residents.

Ranking Member Lee and Co-Sponsors of the Houses Act propose extending a similar solution to other Western States.

The Houses Act would allow local governments to nominate and purchase Federal land and develop the land for housing projects that meet certain density minimums and other criteria.

Like the Southern Nevada Public Land Management Act, proceeds from the Houses Act would be made available for environmental initiatives. Research suggests that the Houses Act could have a meaningful impact on housing affordability.

A recent U.S. Congress Joint Economic Committee study finds that Houses reforms could lead to the construction of almost 3 million homes, and this increase in housing development would be possible with a conversion of just 0.1 percent of existing Federal land holdings.

In addition to policies that directly constrain development, additional Federal, State, and local policies are also relevant to housing affordability.

When supply-limiting policies are addressed, the participation of investors in the housing market will be largely inconsequential. Furthermore, the gains that result from reforming supply-limiting

policies, exceed potential gains from regulating junk fees or market participants.

When considering reforms to improve housing, policymakers and analysts should keep in mind that the Government is the dominant regulator and player in the housing market.

As a result, ample reform opportunities exist. Reforms that expand housing supply will unleash the housing market and ensure that American families have the choice, opportunity, and upward mobility that they desire.

Thank you, and I look forward to your questions.

[The prepared statement of Ms. Calder appears as a submission for the record.]

Chair KLOBUCHAR. Thank you. Professor.

**STATEMENT OF LUIS E. QUINTERO, ASSISTANT PROFESSOR,
JOHNS HOPKINS CAREY BUSINESS SCHOOL, WASHINGTON, DC**

Professor QUINTERO. Chair Klobuchar, Ranking Member Lee, and Members of the Committee, thank you for inviting me to participate in today's hearing and for your attention to the topic of competition and consumer rights in housing markets, an issue of critical national importance.

My name is Luis Quintero. I'm an economist, and have spent 8 years at Johns Hopkins, where I do research on housing markets and policy.

In my work, I have documented the increasing consolidation of housing markets in the United States, and its detrimental effects on housing affordability. And I am pleased that this Congress is taking a proactive step to incorporate competition in the legislative discussion. Concentration in housing markets has been growing since the Great Recession.

This trend follows the long-term decline in competition documented in so many other sectors of the U.S. economy. Although market consolidation is not the only factor driving the housing affordability problem, it is a critical one.

During the Great Recession, many local and regional home builders stopped operations leaving large national builders dominant in many local markets. Furthermore, many of these large home builders have since merged.

My work identifies at least 12 mergers that significantly increased the market share for the resulting firms. One of those cases formed the largest home building company in the country. Although national home prices have recovered since 2011, the number of building firms has not.

While prices are up by about 30 percent with respect to their peak of 2008, the number of for-sale builders is down 80 percent. The competitive market forces that incentivize entry when prices increase are not being realized in American housing markets.

I estimated that 56 percent of markets exhibit concentrations that would fall into the category of highly concentrated as defined by the FTC. Most of the gains in market shares in recent years come from the increase in the activity of 2 home builders.

Large mergers in this sector have most likely not been challenged because regulating authorities may not be defining relevant housing markets narrowly enough.

The whole country is not a single housing market. For example, home building in Pittsburgh or Cleveland is not a threat to the ability of a hypothetical monopolist to impose a significant and non-transitory increase in price in Philadelphia.

Accordingly, housing markets must be correctly spatially defined to ensure estimated market shares are useful in assessing concentration.

We should care about market consolidation because it affects housing supply and affordability. My estimates predict that if we had kept the 2006 levels of competition, the U.S. would've built 112 billion more last year—equivalent to approximately 160,000 additional units. This roughly equals to 10 percent of the private residential fixed investment predicted for 2023.

We should encourage agencies to enforce competitive policy in housing markets more effectively, and ask housing policies to incorporate market structure considerations.

I would like to offer six recommendations for this Committee's consideration.

First, encourage regulatory agencies to carefully define local housing markets spatially when revising mergers.

Two, consider legislation that shifts the burden of proof to home building companies in large scale mergers, asking them to show they cannot exert monopoly power in any local relevant market where they have building activity.

Three, encourage enforcement agencies to request mandatory divestitures in markets where a merger will cause high concentration.

Four, encourage the Federal Government to make increasing competition a pillar of housing policies. For example, by requiring a minimum number of home builders participating in areas that get low income housing tax credits.

Five, encourage the same for statewide policies. Recent initiatives to relax restrictive zoning may be ineffective if local developers can just withhold production by exercising monopoly power.

And six, when considering the Philadelphia National Bank presumption, make sure market shares are defined using relevant spatial definitions of local housing markets.

Thank you, and I would be pleased to answer any questions you may have.

[The prepared statement of Professor Quintero appears as a submission for the record.]

Chair KLOBUCHAR. Well, thank you very, very much. Mr. Antoni.

**STATEMENT OF E.J. ANTONI, RESEARCH FELLOW, THE
HERITAGE FOUNDATION, WASHINGTON, DC**

Mr. ANTONI. Chair Klobuchar, Ranking Member Lee, Members of the Subcommittee, thank you for the invitation to discuss with you today the current state of competition in the housing market, and the impact public policy has had on the American consumer.

I'm a public finance economist at the Heritage Foundation where I research fiscal and monetary policy. I'm also a senior fellow at the Committee to Unleash Prosperity.

Americans today are facing historic challenges to achieving the American dream of home ownership, a dream which might now be better described as a nightmare.

Home ownership affordability is arguably at a record low today, with 43.8 percent of the median household before tax income needed to purchase the median price home.

In several major metropolitan areas of the country, over 100 percent of the median household after tax income is needed to purchase the median price home. A recent report showed that a median price home is unaffordable for the average income earner in 99 percent of the 572 counties examined.

Another report indicates that a potential home buyer needs an annual income over 50 percent higher than the median household income to afford a median price home, which is a record high.

While recent data shows that home ownership is 70 percent more expensive today than renting—the largest spread in 23 years—rent prices are also at record highs according to a variety of data, including figures from the Bureau of Labor Statistics.

The unaffordability of housing today has largely been caused by public policy. By manipulating interest rates to facilitate spending and borrowing by the Treasury Department, the Federal Reserve created disruptions in the economy.

The unprecedented size of fiscal and monetary interventions in the last 3 years made the magnitude of these disruptions historic. The creation of trillions of dollars predictably spawned 40-year high inflation, which caused prices everywhere to rise.

Low interest rates also made increasingly larger mortgages affordable, which drove home prices to new highs. Because interest rates were held so much lower than their natural equilibrium, investments, which would not ordinarily be profitable, suddenly became so.

Institutional investors were able to buy swaths of housing for the purpose of renting. When the Federal Reserve belatedly raised interest rates to reduce the inflation it had helped cause, financing costs rose dramatically, especially for mortgages.

Fixed interest rates on 30-year mortgages have more than tripled from their lows only a few years ago, and the monthly mortgage payment on a median price home has more than doubled since January, 2021. While higher interest rates put downward pressure on home prices, that is being countered today by at least two factors.

First, most existing homeowners cannot afford to sell their home because doing so would mean losing a mortgage with a rate of 2 to 3 percent in exchange for a new loan at 7 to 8 percent. That would drastically reduce the size of the loan, sometimes by half, that the borrower could afford on the new home.

Thus, the supply of existing homes has been severely hamstrung—so much so that the price premium on new homes has been reduced almost to zero.

Second, the price indexes faced by home builders are at or near record highs. Home builders therefore cannot afford to lower their prices. A new home at an affordable price for the median household, would be priced below the home builder's profitability threshold, so those homes simply aren't being built. Thus, the supply of

new homes has also been curtailed, putting additional upward pressure on prices, even as interest rates continue rising.

The unaffordability of home ownership has forced many Americans to rent, and that shift in demand coupled with inflation, has increased the price of renting.

While algorithmic pricing aids have come under scrutiny recently amid accusations of their role in higher rent prices, there is no empirical evidence that such tools have increased prices absent collusion among landlords. An act which is illegal, whether algorithmic pricing aids are used or not.

There is even reason to believe that algorithmic pricing aids reduce rents for the marginal renter.

Additionally, while the purchase of homes by institutional investors have reduced the supply of homes for sale and increased home prices, it has also increased the supply of homes for rent and decreased rent prices.

Unfortunately, public policy mistakes have created a situation where an entire generation of Americans may never be able to afford their own home, persistent inflation has made it almost impossible for many Americans to ever afford a down payment large enough for the monthly payments on a mortgage to be affordable.

The solution is a drastic reduction in the amount of money that the Federal Reserve creates and that the Congress spends.

If there is an antitrust problem regarding housing, it is the monopoly control of the Nation's money supply.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Antoni appears as a submission for the record.]

Chair KLOBUCHAR. Very good. Thank you very much, Dr. Antoni. Next up, Professor Stucke.

STATEMENT OF MAURICE E. STUCKE, DOUGLAS A. BLAZE DISTINGUISHED PROFESSOR OF LAW, UNIVERSITY OF TENNESSEE COLLEGE OF LAW, KNOXVILLE, TENNESSEE

Professor STUCKE. Thank you so much for inviting me to testify today.

So what does antitrust have to do with the concerns in the housing market?

Now, you already heard about mergers increasing concentration in the home building market, and another concern that my colleague here mentioned is algorithmic collusion.

Many of the Nation's larger property managers rely on pricing algorithms provided by RealPage and Yardi. Property managers using RealPage's algorithm, for example, saw their revenues increase on average 3 to 4 percent, while their occupancy rates declined from 97 to 95 percent.

One economic study found the same thing in geographic markets where property managers increasingly relied on algorithms for their rent, namely higher rents, on average 3 percent higher, and lower occupancy rate than markets where pricing algorithms were in prevalent after controlling for observable market characteristics and local market conditions.

So after Heather Vogell's ProPublica article, there have been now over 20 antitrust lawsuits brought against RealPage and some of the Nation's largest property developers.

They're all in the Middle District of Tennessee, and all of the lawsuits alleged that RealPage colluded with property developers to raise rents and reduce output.

So one issue for you is, can the antitrust laws effectively punish and deter this alleged anticompetitive behavior?

And the short answer is, yes, if humans agreed among themselves to fix price, and RealPage's pricing algorithm was then used to facilitate their collusion.

But the antitrust law as currently applied by the courts, cannot punish and deter this anticompetitive behavior in three scenarios.

First, is tacit algorithmic collusion. This is where the algorithms learn to tacitly collude without any agreement.

Second is what—is a hub and spoke algorithmic collusion scheme where rivals gradually drift to one algorithm without any agreement among the rim.

And then third, is what we call secondary tacit collusion, where rivals rely on several different hubs for their pricing, but those hubs then learn to tacitly collude.

Now, the harm from these three scenarios is the same as if the executives were agreeing among themselves in a smoke-filled hotel room, namely higher prices and reduced output.

But this is not just a U.S. problem. I mean, many jurisdictions recognize that it's hard to challenge this type of collusion under their current antitrust law, and it's not just simply an issue in housing markets.

Two recent studies have found evidence of tacit algorithmic collusion in Germany's retail gas station market, as well as on bol.com, the largest online shopping marketplace in the Netherlands and Belgium.

So as more companies adopt pricing algorithms, this can be at times pro-competitive, but it also can be anticompetitive and beyond the reach of the antitrust law.

So if I can impress upon you one thing today, it's this: AI will only compound the legislative deficit to date. These problems will not go away. And you need then to then look at this holistically from three different approaches.

First, Congress should endorse the FTC's use of its authority under Section 5 of the FTC Act to tackle algorithmic collusion. And in addition, consider displacing the unwieldy rule of reason standard with clearer legal presumptions concerning certain vertical restraints.

Second, the primary weapon to deal with algorithmic collusion is merger review. And the good news is this: that Congress has already proposed some of the tools necessary, such as restoring the incipency standard in the merger review.

And to note, it would be the Competition and Antitrust Law Enforcement Reform Act, and then the Prohibiting Anticompetitive Mergers Act of 2022.

Finally, any comprehensive policy response must address not only algorithmic collusion, but also the other myriad risks involving AI. And this includes concerns over behavioral discrimination.

So we need privacy legislation, where individuals without penalty can opt out of the collection of their data for behavioral advertising.

They can opt out of having their data collected about them in order to profile them.

They can opt out of personalized services.

And then they can also decide the right to limit at the onset what personal data is collected about them and—for what non-advertising purpose.

And this is just necessary. I mean, we see that in Europe, they already have the DMA. They're taking these additional steps. We need to do something as well to address the risks of AI.

Look forward to your questions. Thank you.

[The prepared statement of Professor Stucke appears as a submission for the record.]

Chair KLOBUCHAR. Thank you. Music to my ears, Professor Stucke. And thank you for, kind of, looking at this in that larger context of some of the need for reform of our antitrust laws.

So thank you, all of you. I'm going to give my first slotted time to Senator Hirono, who's been patiently waiting, and then we'll turn to Senator Lee.

Senator HIRONO. Thank you, Madam Chair, and Ranking Member for having this hearing.

There's no question that the cost of housing is an issue throughout our country, and I am very well aware of how critical that is in Hawaii.

In July, Hawaii Governor Josh Green issued an emergency proclamation on Hawaii's housing crisis. Not a simple thing, by the way.

The average single-family house in Oahu now costs over \$1 million and less than one third of households can afford to buy a home. Another third cannot afford rent, in part, because of these figures. Hawaii loses another resident every 36 minutes. Let that sink in.

As of 2022, there were more native Hawaiians living on the mainland than in Hawaii. All of that predates the fire that devastated Lahaina and destroyed 3,000 homes and apartments, many of which house working class families.

Why do I bring up these facts? Well, junk fees, invest your own homes, and supply chain shortages aren't entirely responsible for this crisis. But in such a tight market, they have an outsized effect.

For Professor Stucke, this is the Antitrust Subcommittee. So I'm—I'm interested to know what can we do with our antitrust laws?

I believe you mentioned some changes we could make to the FTC's ability to go after algorithmic collusion, but perhaps some Sherman Act changes could also be helpful. Can you just talk a little bit more about some of the kinds of antitrust changes that you mentioned?

Professor STUCKE. Sure. Certainly. I outlined them at the end, and one thing is, is that, you know, the concern about junk fees, you have to ask yourself, "Why isn't competition addressing this?"

In fact, why are firms increasingly competing to find better ways to manipulate consumers?

Senator HIRONO. Uh-huh.

Professor STUCKE. And this might happen in markets that aren't monopolistic or aren't having just a few competitors.

So one area for competition authorities, is to understand when competition isn't working, what are the assumptions underlying competition, and what is happening that is preventing competition from being a race to the top rather than a race to the bottom.

So this happens not only with junk fees, it's also with drip pricing and the like. And the FTC can go after that as an unfair method of competition. They can provide the necessary guardrails.

The other area is with respect to pricing algorithms. I mean, your principle weapon is going to be mergers to prevent markets from becoming highly concentrated that this algorithm can occur.

But the problem is, is that courts have drifted away—

Senator HIRONO. Mm-hmm.

Professor STUCKE [continuing]. And view themselves basically as fortune tellers that have to predict what will happen after the merger and expect the agencies to prove higher prices post-merger. And as an enforcer of yourself for antitrust laws, you know how difficult that could be.

Senator HIRONO. So basically, I mean, while we can, I think, possibly clarify and strengthen some of the antitrust provisions, it seems to me the bottom line in our housing situation is demand.

There is so much more demand than there is availability of affordable for purchase and rentals.

And this is something that Ms. Yentel—you and I co-wrote an op-ed back in 2019 about the affordable housing crisis and my Pathway bill.

How would combating—getting back to junk fees and other predatory fees—be part of a comprehensive solution to our country's housing crisis?

Ms. YENTEL. Well, as you and I have talked about in the past and raised awareness around, when you're looking at the lowest income people who have maybe a combined household earnings of \$25,000, or a senior, or a person with a disability who's on an extremely limited fixed income of \$15,000, they're already living doubled—

Senator HIRONO. Mm-hmm.

Ms. YENTEL [continuing]. Or tripled up. They're already paying 50, 60, 70 percent of their very limited income just to keep a roof over their heads—

Senator HIRONO. So what can we do?

Ms. YENTEL [continuing]. Any additional expense—

Senator HIRONO [continuing]. We're running out of time. We know what the—there are so many challenges, but what can we do from the congressional level to—one thing, we could fund some of the housing support—

Ms. YENTEL. Absolutely. We have to—

Senator HIRONO [continuing]. Programs.

Ms. YENTEL [continuing]. We have to build more housing that's affordable to the lowest income people.

We have to make existing housing affordable to the people living in it with rental assistance.

We need robust and enforced tenant protections.

And when it comes to extra fees that landlords are paying, we need full transparency. And they need to be minimized, the number of fees that landlords can charge tenants, because every dollar adds up, and that's another bill—

Senator HIRONO. Yes.

Ms. YENTEL [continuing]. That a tenant must pay.

Senator HIRONO. I think there's a bill that puts the price at \$25 more in these kinds of fees. There's a lot we can do. Thank you very much for all of your testimony.

Ms. YENTEL. Thank you.

Senator HIRONO. Thank you, Madam Chair.

Chair KLOBUCHAR. Thank you, Senator Hirono. Senator Lee.

Senator LEE. Thanks so much, Madam Chair.

Ms. Calder, I'd like to start with you, if that's all right. In your experience, where have you seen the most acute impact of significant Federal land ownership in housing prices? Where in the United States does that show up?

Ms. CALDER. Well, your staff at the Joint Economic Committee actually put together a great report on this and went, sort of, State by State.

And I think a couple of the States that stood out to me: California actually has a huge housing shortage, there are certainly Utah, Nevada—of course, Nevada is mostly Federal land. And there are some others that are listed there, as well. And you, sort of, go State by State on those.

I think, you know, broadly speaking, the Federal lands issue is something that affects all Western States. So it's not a single State that is impacted to a much greater degree than the others. But all of them would benefit substantially from Federal lands reform.

Senator LEE. Right, right. And it's an interesting thing to study because if—in any State there—first of all, there is no comparable landowner to the United States in America—nowhere.

Nobody could afford to own that much land. But even if there were, they couldn't exempt themselves from all economic forces including property taxation. And it certainly wouldn't exceed a few percentage points.

But from a competition policy standpoint, there would be concern if any one individual, a corporation, nonprofit, NGO, whatever, owned more than, I don't know, 5 or 10 percent of the land in a State, it'd be pretty concerning.

And so it's not surprising that in a State like Utah, where 67 percent of the land—two thirds of it is owned by one owner—that owner exempts itself from property taxation and all economic forces, it's going to have a significant constraint on the availability of housing supply.

Especially in a rugged State where a lot of our land is mountainous, and you've got a limited number of places where people could live to begin with. But it's drastically more limited when most of the land that could be inhabited by humans, is owned by the Federal Government.

What do you think can be done to alleviate some of the problems created by this significant land ownership? It doesn't have to necessarily result in a housing shortage. Does it?

Ms. CALDER. Well, I think certainly, you know, zoning reform is part of the answer. Right? So you can get more units by reforming zoning at the local level.

You can build—you can build two directions: You can build up and you can build out. And so I think both pieces are part of the equation when it comes to making improvements to housing affordability.

And I certainly think that the Houses reforms, or something likened to it, is part of the equation when it comes to improving housing supply in Western States.

Senator LEE. Right. You mentioned in your testimony that it would require just 0.1 percent of Federal land holdings in order to substantially increase the availability of housing in Western States, even eliminating altogether what are known as the housing availability shortages in some States.

Is it your impression that this 0.1 percent change in Federal land holdings would—what would that do to the overall experience of Federal lands?

I mean, does that cause a meaningful change for these land management agencies and those who enjoy accessing those lands to affect 0.1 percent of the Federal land holdings in those States?

Ms. CALDER. Yes, I think we need to think about what type of land, again, this is. And as I mentioned in my testimony, it's—with the Houses Act anyways, it would be BLM land that's really impacted by this, that would be, you know, that would be nominated, and then purchased, and then developed into housing.

So BLM land, for those that aren't familiar, historically, it was land that homesteaders had passed over. It was land that other agencies, other Federal agencies didn't want to manage.

Oftentimes when we're thinking of sort of the desert or Intermountain West, what this ends up looking like is sagebrush and desert land. And so it's not the scenic vistas, it's not National Parks, it's not Bureau of Indian Affairs Land.

So from that perspective, I don't think the public would probably notice very much. What I think the public would notice is the funding that is being transferred into improvements to National Parks and other types of infrastructure that they're going to benefit directly from. And that's something that the Houses Act allows for.

Senator LEE. And significant benefits that go along with cost of living improvements along with that.

Mr. Antoni, what role has Government spending and irresponsible monetary policy at the Federal level played in the more than doubling of the cost of home ownership just in the last 2 years?

Mr. ANTONI. Thank you, Senator for the question. It has been the main driver. And without that cause, we would not have had the effect that we currently have today, where home ownership is just grossly unaffordable for the vast majority of Americans.

When the Federal Reserve set out to create the trillions of dollars that the Treasury Department needed to spend over the last several years, it created inflation which caused the price of everything to rise, especially homes.

But its low interest rate policy, essentially a zero percent interest rate, compounded that because it made the monthly payment on a mortgage incredibly low.

And so you could afford a much larger mortgage for the exact same payment relative to let's say a normal interest rate, or the interest rates that we had at the end of 2019, or even the first 2 months of 2020.

And so if you take away that, that root cause, you essentially remove the first link in the chain that we have had—that we are—have been dealing with and are still dealing with today, in terms of the unaffordability of home ownership, which has also compounded the problems in renting.

Because the shift of demand—as people move away from trying to buy a home to rent a home, because home ownership is simply too unaffordable—they are now increasing the demand for rents, which is driving up the price of rental units.

And so it is not simply a problem contained to home ownership, but it is housing in general.

Senator LEE. And the distribution of the victims that are harmed by this is not exactly even across the economic spectrum. I mean, it is disproportionately affecting the middle class and low-income earners. Right?

Mr. ANTONI. Certainly, Senator. And this is true for inflation generally, but specifically for housing those who have the least are hurt the most by it, an extension of the Matthew Principle, I suppose you could say.

And so what we are seeing today is essentially an entire generation of Americans who, for the first time in recent history, may never be able to own their own home. Because as they continue saving, the savings that they have are losing value every day in the bank from inflation while the price of homes go up.

And so they need an ever-growing down payment in order to buy a home. And the down payment needs to be especially large, so that they can afford the monthly payment at such high interest rates.

And the problem is, that, that in that rat race, essentially, they will never actually get to the point where they have enough money for that down payment.

Because as you were saying earlier, they are constantly seeing their earnings decrease in terms of what they can buy. And so there is less left over at the end of every month after they have paid for all of their necessities, including their ever-increasing rents to be able to save for that down payment.

Senator LEE. Rich people made out pretty well in this. Rich people who wanted to buy up a lot of stuff, they made out really well—and just did so at the expense of the poor and middle class.

And all of this, if I'm understanding you correctly, has to do with the manipulation of the interest rates by the Fed and, in part, in, to a significant degree anyway, to help facilitate the financing of reckless Federal spending by Congress.

In other words, Congress doesn't want to exercise the discipline to spend no more than it takes in or anything close to it. It wants the praise of spending more money without having to do the hard work.

And in order to finance all of that there's pressure on the Federal Reserve to keep rates low. That makes it easier for Congress to avoid doing the difficult work, and it perversely helps rich people

while hurting poor middle-class Americans. Is that a fair assessment?

Mr. ANTONI. I think so, Senator. Especially when you consider that those who were already homeowners or those who in the initial stages of the pandemic, for example, were able to take advantage of these historically low mortgage rates, they were able to acquire that capital at relatively low prices before the inflation set in, in the months and years that followed.

And so they were able, again, to acquire capital at a relatively low cost, and then to see the price of that capital appreciate noticeably in the months and years that followed.

Senator LEE. Thank you.

Chair KLOBUCHAR. Thank you, very much, Senator Lee.

I'll start with you, Ms. Yentel. Can you talk about the type of junk fees that renters are faced with? I don't think people are always—who don't rent anymore, maybe rented at some point—are not familiar with what's going on.

Ms. YENTEL. There can be a whole—thank you, Senator Klobuchar. There can be a whole host of fees added on to a renter's rent payment each month, ranging from first rental application fees to get into the apartment in the first place, and then, fees related to late payments, notices of late payments can have an extra fee. There's pet fees. There's fees for using a garage or fees for an internet usage that's mandatory and somebody can't opt out of.

There's been stories of these fees adding up to as much as \$400 a month in addition to the rental payment. And sometimes they can be very egregious.

We have a partner in Idaho who worked with a tenant whose son brought home from school one day a praying mantis in a jar, and that month they were charged a pet fee from the landlord.

The good news was that that spurred a successful campaign for the State of Idaho, now, to have a law that requires full transparency up front about any fees that might be paid and requires that they be made reasonable. But they really can be egregious, and they certainly add up.

Chair KLOBUCHAR. Wow. Just remembering back, my mom was a second grade teacher and sometimes these types of animals would get lost when they went home.

[Laughter.]

Ms. YENTEL. Yes.

Chair KLOBUCHAR. They were usually found, like the rabbits and things. But anyway, that's incredible. But I do think it gives us a sense of that, and those of us who rent when we're here actually know some of this, as well.

Professor Stucke, just to go through this again, because I think it's a hard thing to get a grasp on. There have been numerous reports and lawsuits highlighting these price-setting tools that collect the pricing data—and as you widely point out, there's no Federal privacy law in place, which is a problem—to coordinate price increases among competing landlords. So they're able to get this data.

And could you explain how these pricing tools could facilitate these higher prices? So they get the data, and then it's shared, and how can that lead to these higher prices where you could see it as

a not a traditional way of fixing prices, maybe, but a way of doing it in the modern digital age?

Professor STUCKE. Okay. So, I mean, there are several scenarios. One scenario is where every firm has their own pricing algorithm. So when you go to like Martha's Vineyard, one thing you're surprised by is the high price of gas.

But what one study found is that when gasoline stations start having these pricing algorithms, the speed in the response can prevent any company from getting an advantage by discounting.

So what happens then, in these markets, is that prices start then elevating up. So algorithms can help facilitate collusion in markets already susceptible to it, but it can also increase it.

Another scenario, and this happened in Las Vegas, is where allegedly 90 percent of the hotels are all using one hub. And so no competitor is going to give commercially sensitive information to the hub if the hub can then use it to help the rivals.

So there must be some understanding that they're going to share, on a real-time basis, commercially sensitive information with the hub so that it's going to benefit all of them.

Chair KLOBUCHAR. Okay. So you rightfully noted these—some of the bills, some of them are my bills, that you could do generically to fix the antitrust laws—tweaks, things you could do.

Because it's very hard to bring any cases, including in tech and other things right now, where we've had no specific laws really passed except for Senator Lee's, which I'm the proud Co-Sponsor bill on not changing venues, and then our bill to change the merger fees that Grassley and I had to, to get more money to the agencies.

Could you talk specifically what you could do about this specifically to update our competition laws so that these tools as they are called, or price-setting tools as they can be used for, cannot be used to raise rent above what would occur in a competitive marketplace?

Professor STUCKE. Right. I mean, I think there are several things that can be done.

Number one is to restore the incipency standard and antitrust that courts are adrift. They used to interpret the antitrust laws with the aim that Congress had intended. Right? Celler-Kefauver in 1950 enacted these amendments to the antitrust laws and the Supreme Court construed the law as Congress intended.

That's no longer the case. So one way would be to restore the incipency standard, which your bill does.

The second thing, then, would be a different standard than the rule of reason for information exchanges, just because the rule of reason is just amorphous and unwieldy.

And then the third thing—and I think this is what like John Stuart Mill said about one of the good things that the Government can do—is collect a lot of information and then disseminate it.

So one nice thing about your bill is improving the knowledge that we have about what antitrust policies work and not work. I mean, when I was at the DOJ, it was always surprising that we would allow these mergers to happen and then we never followed up to see—

Chair KLOBUCHAR. Years later.

Professor STUCKE. Yes. To see if it was right. And so—

Chair KLOBUCHAR. Ticketmaster, Live Nation. Anyway—and I'm sorry. My mind just went to something else.

[Laughter.]

Chair KLOBUCHAR. Keep going.

Professor STUCKE. But I would think that's one of the most important aspects that we can have. And then we could learn more about what markets are susceptible to tacit collusion.

Is there a specific threshold? Like one study found, once it went beyond 8 sellers, the use of pricing algorithms became quite vigorous.

And so we just need to have a better understanding and the United States can play an important role in that.

Chair KLOBUCHAR. One of the most pressing issues is not enough affordable homes. We just talked about that, single-family starter homes.

So like, Dr. Quintero, could you explain how having fewer home builders in a market reduces the supply of new homes?

Professor QUINTERO. Thanks for the question, Chair Klobuchar. The underlying concern about competition, in general, is how fewer suppliers of any good or service are just going to supply less of it.

And as a consequence, with a fixed demand, or in this case for housing with a growing demand, prices would go up. This is what has been happening in housing. We have fewer and fewer developers building and it's in their own interest to charge higher prices.

And that is not a new story. That's an old story. That's a story of housing markets. The problem is that as prices have gone up since 2011, we have not seen an entry of new developers that compete with those that are incumbent.

And so what we find is that those that have an interest in supplying less to charge higher prices, are not being threatened by competitors in many—

Chair KLOBUCHAR. Uh-huh.

Professor QUINTERO [continuing]. Of the local markets.

Chair KLOBUCHAR. And so do you think that's something anti-trust enforcers should look at in the future when mergers are presented to them?

Professor QUINTERO. Yes. There's been at least 12 mergers that, if you look at the housing markets well-defined spatially, should have been challenged by any regulatory agency. They would've been challenged in other sectors.

My belief and my understanding is that what they're doing is, they're defining, in some cases, whole regions of the United States—in one case that I could find, the whole U.S. as a single housing market. I think that is wrong. We as potential—

Chair KLOBUCHAR. They should like talk to the people in Jackson County, Minnesota.

Professor QUINTERO. Right. As potential homeowners, we're not substituting between the possibility of living in DC and living in LA. Right? So—

Chair KLOBUCHAR. Yes—

Professor QUINTERO [continuing]. So, yes.

Chair KLOBUCHAR. So, that was that last comment. Then I'll turn it over to Senator Hirono—or Senator Lee for additional questions, then Senator Hirono for a second round.

But one of the things that have been troubling to me is in some of our rural areas, where we have very steady employers, we really do.

And whether it's the ag economy or whether it's a manufacturing—we have a lot of major companies—there's still issues with this housing and there's just not enough builders and the land is not as expensive.

We don't have the land issue that Senator Lee was referring to in our State. And I just—I can't help but think that in the old days, there were just more smaller people that were coming in in the home building industry. Because we just can't get—I've called, built, I've done everything. And we've looked at what incentives can we have to bid them. These are usually maybe—they're a mix of housing. Right?

They're starter homes. Some of them are traditionally affordable. Some of that next step up. And it's really hard, and it's hurting our rural employers because it's like chicken and egg. They want to expand, these are like manufacturing, but they can't really expand because they don't have the housing.

And some of it is getting seniors to move into town, but then you need the condos. If they build them, they'll come. And then that frees up the single family. So, thank you. Senator Lee.

Senator LEE. Thank you. My next question is going to be both for Ms. Calder and Mr. Antoni. In your testimony, you both mentioned one way or another that the impact of government regulation, whether it be State, Federal, or local on housing prices. What—what government regulations do you think specifically cause the greatest increase in home prices? We'll start with you, Ms. Calder.

Ms. CALDER. Well, I think there's a broad body of research on, again, State, and local zoning regulations. Really that's coming from a local level. And among those regulations, I think they all sort of add on, augment each other in ways where you can't—it's not totally easy to pull any one out and say, if you just fix this one thing, then you would fix housing affordability and housing supply.

Because if you fix the one regulation, then the other regulations are all manipulatable, and they can also be made more restrictive in ways that won't allow for housing to be developed.

That said, I think density regulations are really problematic. So where you sort of zone the whole city as single-family homes, that's going to be an issue because, of course, it limits housing.

And I think, aside from that, you know, minimum lot sizes that are very large, those are going to be issues, as well, and, you know, just permitting processes that are very lengthy, and very uncertain, and very open-ended.

That doesn't give developers a lot of confidence as they're going through these processes and trying to make plans.

Senator LEE. So it's the amalgamation of all of them, the combined effect of all of them, particularly some of those that you mentioned, like minimum lot sizes and things like that, end up creating an environment in which relatively few people can navigate this byzantine labyrinth of regulations to be able to get it done.

That, in turn, probably leads to more consolidation, which might help explain at least some of the answers what Senator Klobuchar

was talking about, by the fact that there aren't as many sort of smaller builders in many communities as there once were—because there's such an advantage that goes to a larger producer who has the experience and the extra resources to be able to devote to complying with those things.

Mr. Antoni, do you have anything you want to add to that one?

Mr. ANTONI. Senator, I think another key thing that's important not to overlook here are regulations dealing with the financial sector. And the reason that is—that has such an impact in the context of housing is because almost everyone who buys a house does so through financing.

And so when we have regulations that force lenders to look at things essentially other than risk, what you are doing is you are divorcing the individual, the borrower, from their ability to repay a loan.

And so from the lender's perspective, that builds losses into their business model. And as a consequence of that, they need to spread out those losses among all borrowers.

In other words, it increases the cost of capital, it increases the cost of lending. And that trickles down into more expensive mortgages for everyone.

One other thing that I think might be getting missed here, because so much of what we're focusing on, and rightly so, is the price of the home.

But also, what about what is in the home? Things like appliances. We have all kinds of regulations, for example, that are aimed at increasing the efficiency of what—it could be your refrigerator, it could be your dishwasher, your clothes washer, dryer, etc.

And so many of these regulations that do increase appliance efficiency are actually a net loss for the consumer because of the increased cost.

And when we're talking about these regulation-imposed cost increases, they tend to be completely missed because of hedonic adjustments in things, like the CPI. So they're typically not included in inflation metrics.

And, actually, a colleague of mine, Casey Mulligan, who's a professor at the University of Chicago, he has pointed out that the cost of regulations today are, on the average American family, are literally thousands of dollars more per year than they were just 4 years ago.

Senator LEE. Yes. That sort of thing adds up. Plus, a lot of the appliances just don't do as good of a job. But that's a—that's a conversation for a—for a different day. But you're exactly right. Those add up.

And unlike our tax bill, where we can see at the end of the year how much we're paying, you can't see the regulatory compliance costs. There's no comprehensive bill for it.

We have in our minds this idea that those are all paid for by corporations. And in a sense they are, but not really, because they get passed down to hardworking Americans who pay higher prices for goods and services, everything they buy.

And they also pay for it in meaningful ways through diminished wages, unemployment, and underemployment.

What have you observed in your market analysis throughout the country? Are there factors that apply uniquely to metropolitan areas, more heavily populated areas? What do you see there in terms of home affordability, specifically in major metropolitan urban environments?

Mr. ANTONI. Well, what we find, Senator, typically, is in those major metropolitan areas, a higher level of regulation. And we also find higher taxes, you know, on average. And so we have higher costs of home ownership in those areas.

On page 4 of my testimony, for example, you look at the most expensive areas in the country, almost all of them are in California, in terms of owning a home.

In fact, in several of those areas, the median—the median income, it actually requires more than a hundred percent of the median after-tax income to buy the median-priced home in those areas.

In other words, it's literally impossible for the typical American family to buy a home in those places.

Conversely, as you start getting into typically more suburban or rural areas, and you typically see taxes and regulation go down, home ownership, affordability, on average, does tend to rise.

Senator LEE. And that, in turn, ends up creating even more disparities as you look across the economic spectrum. Because if you're in one of those areas, you're unfortunate enough to live in there, some of the—setting aside the graduated income tax system that we have—some of the benefits associated with home ownership, like the mortgage interest deduction either phases out or ends at, I think, around \$500,000, or something like that.

So if you happen to be in one of those areas, even if you've got the cheapest home in your community, you might be priced out of it in multiple ways—and making it even harder for people who are just below the economic threshold of people who could otherwise purchase in that area, you may never get there. Thank you, Madam Chair.

Chair KLOBUCHAR. Okay. Thank you. Senator Hirono.

Senator HIRONO. Thank you. I just have a few follow-up questions and one new question.

Professor Quintero, while there's a severe shortage of affordable housing in our cities, and it—the new work from home dynamic means that there is often a glut of office space available. So some cities and developers are working together to convert underutilized office space to residential.

For example, in Honolulu, you can now live in the office building that houses the Federal bankruptcy court. Could relaxing or altering building codes and incentives to encourage office to residential conversions to be part of the solution to our affordable housing crisis?

Professor QUINTERO. Anything that increases the effective supply of homes, whether it be new homes or existing, would help toward a solution.

The case I'm, I'm most familiar with is Baltimore, where there's been a significant move toward conversions from—

Senator HIRONO. Mm-hmm.

Professor QUINTERO [continuing]. Commercial to residential.

There's a significant barrier in terms, one structural, the other one in legal terms and zoning regulations that prevent these conversions from being done cheaply and quickly. And so I think there's a long way to go for conversions to actually solve the problem, but they would be a step in the right direction.

Senator HIRONO. Well, to the extent that all these States and counties also have the zoning regulations, there may be a way for us to approach the—supporting these kinds of conversions with health and safety in mind, of course, on a national level. So if you have some ideas along those lines, please pass them on.

For Professor Stucke, in the multi-district litigation that has been filed against RealPage, one of the allegations was from someone who has utilized RealPage, he said that, "Although we"—meaning him—"we are," they're, "all technically competitors, RealPage helps us to work together to make us all more successful in our pricing."

And so, short of an agreement, that is definitely price fixing.

And so, based on the Supreme Court's current posture on price fixing, tacit collusion, or conscious parallelism, these are not price fixing. So is this—now that we have these new tools or new entities, such as a RealPage with algorithms, this is not Bob giving you information.

This is a whole system. Don't you think that we need to have some changes, as I mentioned, to our antitrust laws, to—to address the new tools that are being utilized that basically results in fixed prices?

Professor STUCKE. Absolutely. So antitrust needs to be modernized for the digital economy. The last time you've had meaningful antitrust regulation was—update to legislation was over like, you know, what is it, 50 years ago?

Senator HIRONO. Mm-hmm.

Professor STUCKE. And so you—but tacit collusion is very tricky to get at by itself, because it can just be the response of market participants.

Like you can have tacit collusion in markets where like I—one way to explain to my students tacit collusion is, I say, "Break up into groups of two or three. Here's the monopoly price, here's the competitive price. Just show each other the price that you're going to charge for that day."

And then after 10, 15 rounds, they report their results. Invariably it's close to the monopoly rate.

And so how as an enforcer, can you get at that? Right? You can't tell a competitor not to look at its rival's rates. So getting at this collusion directly head on is very difficult.

So the best way to do it is to get at it indirectly. That would be through merger review, and then any sort of facilitating practices that can help achieve that algorithmic collusion. For example, sharing of confidential information with the hub.

Senator HIRONO. I think we need to do something because there's just a lot of these new kind of tools, AI, all of these new tools that did not exist 50 years ago when the basic antitrust laws were first being articulated. And I do think that we need to, as you say, modernize and if you have some language that you can propose to the Committee, I would certainly be interested.

But the fact that you have all these investor purchases now of housing stock, a huge percentage—it could be a huge percentage in certain areas like Atlanta, they seem to go to certain areas. I think that just increases the chances of these kinds of collusive—what I would call collusive parallel pricing.

I think we need to do—I'm asking you for some ideas on how we can go forward. Thank you, Madam Chair.

Chair KLOBUCHAR. Thank you very much, Senator Hirono, for those good questions. And next up we have Senator Blackburn, then I have a very brief question, and then I think we're going to end things, as there's a conflict with an AI meeting.

But we are very focused on this issue right now. Senator Blackburn.

Senator BLACKBURN. Thank you so much. And yes, you're right. It's a busy day. There is a lot happening.

Professor Stucke, welcome. We are delighted that you are here from UT, and appreciate that you would make the trip. So thank you for that.

Ms. Calder, let me come to you. You know, in Tennessee, we have a lot of people that are moving there and they're wanting to leave other areas. We even have some Minnesotans that have come to Tennessee to relocate.

Chair KLOBUCHAR. Especially in the winter.

Senator BLACKBURN. That's exactly right. They like our weather a whole lot better. But we know that there's a need to focus on some commonsense solutions. And some of us have really done that.

What we have found is, over 10 million families spend more than half of their income on housing. And, of course, this makes it very difficult for the rest of their budget.

So some of us at Finance Committee have brought forward a bill the Affordable Housing Credit Improvement Act, which would expand and strengthen the low income housing tax credit, and that bill would increase the number of credits available to States by 50 percent.

And it would improve that program so that it's better serving veterans, individuals in rural areas like we have in Tennessee, and victims of domestic violence.

So I'd like for you to talk a minute about why it is so important to modernize that low income tax credit.

Ms. CALDER. Well, thank you for the question. I appreciate it. I certainly have—I have written critically of the low income housing tax credit in the past. And so I'm not familiar with all the details of this particular bill.

But I do think that the low income housing tax credit certainly needs modernizing, changing. Some of the—some of the issues that I see with the low income housing tax credit, in general, right now, are that for one thing, it is more expensive than various demand side vouchers or demand side assistance.

Most of the benefits, also at the present time, they flow to developers, is what research suggests, rather than flowing to low-income tenants—which is something that worries me because, of course, you know, we have limited resources and we need to allocate those

resources accordingly to low-income tenants wherever possible and extremely low-income tenants first and foremost.

And I've also seen that, because it's a production side subsidy, research finds the program contributes to greater concentrations of poverty and racial minorities. And that's kind of something that's similar among production side housing subsidies. So again, not familiar with all the details, but certainly like the idea of improving the low income housing tax credit.

Senator BLACKBURN. Okay. Thanks.

Ms. YENTEL. Senator Blackburn, can I add on to that?

Senator BLACKBURN. Yes, you may.

Ms. YENTEL. We support your legislation and appreciate your leadership in pushing it forward. The affordable—the low income housing tax credit program is an important tool to develop affordable housing across the country, and can be further improved as your legislation would do.

And we especially appreciate the provisions in the legislation that would allow for developers to ensure that these low income housing tax credit properties are more affordable to the people who need it the most—

Senator BLACKBURN. Got it.

Ms. YENTEL [continuing]. The lowest income people—

Senator BLACKBURN. Let me—

Ms. YENTEL [continuing]. People in rural and Tribal communities—

Senator BLACKBURN. Yes.

Ms. YENTEL [continuing]. And we appreciate the additional transparency around LIHTC data.

Senator BLACKBURN. Let me stay with you. We hear a lot about Bidenomics and the inflation rate that is out there. And the fact that the home price—the average home price, median home price is up over 27 percent, mortgage rates have increased twofold since 2020, and home ownership is a part of the American dream. So many people want to own their own home.

And this administration seems to have some misguided policies that are making that more difficult. So as you all are doing your work, Ms. Yentel, do you see Bidenomics, the inflation rate, all of that having a negative impact?

Ms. YENTEL. No, I'd say the opposite actually. The low-income renters certainly are struggling to afford their rent now, in some cases, more than ever. And housing affordability for the lowest income renters has worsened recently. But it has been a long-standing systemic—

Senator BLACKBURN. Yes.

Ms. YENTEL [continuing]. Issue in our housing markets.

Senator BLACKBURN. Well, my time's running out, but I would say Gallup disagrees with you. They found 21 percent of Americans believe it's a good time to purchase a home, and that number is way down from what it has been. That's the lowest that has ever been recorded, and inflation is having a negative impact.

I've got two more questions for Ms. Yentel, but I know time has run out and I will yield my time.

Chair KLOBUCHAR. Okay. And you could put those on the record. Is that all right? Okay, thank you.

One last question. Ms. Yentel, another factor many discussed today that disrupts healthy competition in the housing market, is the prevalence of private equity-backed institutional investors buying up large swaths of single-family homes—in some neighborhoods these types of investors own an incredibly high percentage of homes.

I've seen this, like there's been major, major news reports on this, well documented. Can you talk about how institutional investors came to own a significant share of single-family homes in certain markets and how it affects housing affordability?

Ms. YENTEL. Well, especially on the second point, I would focus on the data that shows that institutional investors tend to be among the worst landlords. So there's clear evidence that institutional investors are more likely to be serial eviction filers, to evict—to file evictions more often, to add predatory fees, to use serial evictions and predatory fees as a profit-generating scheme.

So as those institutional investors especially are targeting communities that are disproportionately people of color or have disproportionately high rates of poverty, then we're seeing the harm of these practices fall even greater on people with the lowest incomes and the most marginalized households.

Chair KLOBUCHAR. Mm-hmm. All right. Well, thank you very much.

Senator LEE. Can I ask one very brief follow-up?

Chair KLOBUCHAR. Yes.

Senator LEE. I just want to give E.J. a chance to respond to Senator Blackburn's question about Bidenomics and what impact it's had on housing affordability.

Mr. ANTONI. Certainly, Senator. Just very briefly, if you look at the performance of wages versus price indexes, such as the consumer price index, you find that it—for a record 26 consecutive months of the Biden administration, the consumer price index had larger annual gains than weekly earnings did.

And so, as a result of that, the typical American family has lost thousands of dollars in income, not in terms of the size of the paycheck, but what that paycheck can actually buy.

And then you couple, as you pointed out, this connection between spending and inflation and the creation of money, when you also include the fact that interest rates have gone up so dramatically, that has increased the borrowing costs for families by thousands of dollars a year.

And these effects combined make the typical American family about \$7,300 poorer today as compared to January of 2021.

In other words, take what the typical American family was earning at the time of the start of this administration and compare that to today, and it is as if you took \$7,300 off of their annual earnings.

Chair KLOBUCHAR. Anyone want to add anything more here? Are we good? Okay. Ms. Yentel.

Ms. YENTEL. Well, just to finish what I was saying with Senator Blackburn is that to their credit despite housing affordability worsening for the lowest income renters, to their credit, the Biden administration and this Congress provided historic resources during the pandemic that staved off what could have been an eviction tsunami.

And instead those resources kept eviction filing rates at their lowest on record. And those are the kind of investments and programs that should be continued and made permanent.

Chair KLOBUCHAR. Okay. Very good. I want to thank all of you. It's been a very informative hearing. There are so many issues that are clearly related. When you have housing prices go up in part because some of the factors we discussed here today, and then people go over and rent, they can't own their own home, and then those rents go up. You can kind of see what's been going on here.

And I do think looking at this in a way that doesn't argue that the only thing at issue, by any means, is competition policy and algorithms, but it is part of it.

And especially when you look at some of the recent changes and you think about, let's look at all the factors going on here with consolidation, with algorithms, I think it's actually fodder for future work.

So I want to thank all of you for being here today. I know that the record will remain open for the next week for Senators to submit any additional questions.

And with that, I want to thank you, all, for coming and the hearing is adjourned.

[Whereupon, at 4:09 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

Submitted by Chair Klobuchar:

National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA), letter	80
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Committee on the Judiciary, U.S. Senate
Subcommittee on Competition Policy, Antitrust, and Consumer Rights
Hearing on "Examining Competition and Consumer Rights in Housing Markets"

Testimony of E.J. Antoni
Public Finance Economist, The Heritage Foundation

Room 226 Dirksen Senate Office Building
October 24, 2023

Chair Klobuchar, Ranking Member Lee, members of the subcommittee: thank you for the invitation to discuss with you today the impact of public policy, private actors, and advanced technological changes on both the American consumer and competition within various aspects of our economy, particularly the housing market. I am a public finance economist at the Heritage Foundation, where I research fiscal and monetary policy with a particular focus on the Federal Reserve. I am also a senior fellow at the Committee to Unleash Prosperity.

The typical American consumer today faces historic difficulties in becoming a homeowner. This is due to a confluence of effects, some of which originated decades ago. A circuitous but clear chain of events has created record low homeownership affordability and perhaps even a perpetual renting class in this country. Simultaneously, the same factors which created such disfunction in the housing market are now preventing that same market from adjusting to the economic forces of supply and demand. The exogenous imposition of manipulated interest rates, excessive borrowing by the Department of the Treasury, and a failure to return inflation to pre-pandemic rates continue to impose considerable burdens upon both potential buyers and potential sellers within the housing market.

Unaffordability of Housing and Homeownership in Particular

In 2006, the Federal Reserve Bank of Atlanta began publishing a Home Ownership Affordability Monitor (HOAM) Index.¹ A reading of 100.0 indicates average homeownership affordability with the median household income being sufficient to pay for a median price home. When the index is at 100.0 or higher, 30 percent or less of the median household income will pay for the median monthly housing payment including principal and interest charges of the mortgage, taxes, insurance, and private mortgage insurance until the homeowner has sufficient equity. The HOAM Index utilizes the prevailing interest rate in its calculations.

In January 2006, the index registered 73.3, indicating general unaffordability in the housing market. At that time, 40.9 percent of the median household income was needed to buy the median price home. By early 2011, incomes had risen while both home prices and interest rates had fallen. The index breached 100.0 and remained above that level until mid-2013, after which point it fluctuated around the affordability threshold until 2019, at which point homeownership became markedly more affordable, even during the pandemic. After January 2021, however, the index dropped quickly and set a new record for rate of decline.

At the time of this testimony, the latest reading of the HOAM Index is July 2023 which registered a new series low of 68.4, indicating that it takes a record 43.8 percent of the median household income to afford a median price home. From January 2021 to July 2023, the index has fallen more than 36 percent. The six lowest readings in the index's history have all occurred since June 2022.

It should be noted that the situation today, October 24, 2023, is even worse than the index indicates for several reasons. Since July, home prices are roughly flat while interest rates have risen from 6.8 percent in the HOAM Index calculation to 7.63 percent², the highest mortgage rate since December 2000. Meanwhile, earnings³ rose slower than prices⁴ in August and September, leaving households with larger paychecks but less available to allocate towards housing. Additionally, the HOAM Index assumes a 10

¹ [Home Ownership Affordability Monitor - Federal Reserve Bank of Atlanta \(atlantafed.org\)](https://atlantafed.org/home-ownership-affordability-monitor)

² [30-Year Fixed Rate Mortgage Average in the United States \(MORTGAGE30US\) | FRED | St. Louis Fed \(stlouisfed.org\)](https://fred.stlouisfed.org/series/MORTGAGE30US)

³ [Average Weekly Earnings of All Employees, Total Private \(CES0500000011\) | FRED | St. Louis Fed \(stlouisfed.org\)](https://fred.stlouisfed.org/series/CES0500000011)

⁴ [Consumer Price Index for All Urban Consumers: All Items in U.S. City Average \(CPIAUCSL\) | FRED | St. Louis Fed \(stlouisfed.org\)](https://fred.stlouisfed.org/series/CPIAUCSL)

percent down payment before calculating the monthly principal and interest, but most households today can only afford a 3 percent⁵ down payment because savings have fallen so much since January 2021. If the median prospective home buyer were to use all his available savings, not just what was saved for the down payment, it would still only be 8 percent of the median home price, not the 10 percent assumed by the HOAM Index calculations. Having a down payment 70 percent smaller means a noticeable increase in the monthly payment on a median price home today. Furthermore, the HOAM Index uses gross, or before-tax, income. Net, or after-tax, income is lower and thus the true percentage of a household’s take-home pay needed to be devoted to housing is higher.

Comparing mortgage costs over time is informative in this context. Since January 2021, the principal and interest costs on a median price home have more than doubled, as seen in Figure 1, going from approximately \$973 to \$2,096. These higher monthly mortgage payments cost a household an additional \$13,483 per year for the same house. Across a 30-year mortgage, that is a difference of over \$404,000, which is more than five times the median household income.

Figure 1, Monthly Mortgage Payment Over Time



Sources: Freddie Mac, Redfin, Dr. EJ Antoni

In addition to a nationwide reading, the HOAM Index also provides metrics for major metropolitan areas, with many of the nation’s most populous regions having much worse affordability than average. The cost of a median-price home is 50 percent of median household income in Boston, 55 percent in Miami, 63 percent in New York, 84 percent in San Francisco, and 85 percent in Los Angeles. Like the nationwide figures, these percentages reference before-tax incomes. Consequently, allocating 100 percent of the

⁵ [Home Prices: From American Dream to American Nightmare | National Review](#)

median household income is still not sufficient to pay for the median price home in places like San Francisco or Los Angeles. Only six metropolitan areas in the entire country meet the HOAM Index's affordability requirements (Figure 2). It should be noted that these calculations do not simply use the national median household income, but the local median household income. Thus, unaffordability in areas with higher-than-average income cannot be dismissed as a product of a local higher cost of living that does not consider the corresponding higher local income.

Figure 2, Selected Metropolitan Affordability Readings; Green Shading Indicates Affordability

Metropolitan Area	Annual Total Housing Payment, Share of Median Income
Los Angeles-Long Beach-Anaheim, CA	85.4%
San Francisco-Oakland-Hayward, CA	83.9%
San Jose-Sunnyvale-Santa Clara, CA	77.1%
San Diego-Carlsbad, CA	70.5%
Oxnard-Thousand Oaks-Ventura, CA	65.9%
New York-Newark-Jersey City, NY-NJ-PA	63.0%
Riverside-San Bernadino-Ontario, CA	55.7%
Miami-Fort Lauderdale-West Palm Beach, FL	55.4%
Sacramento-Roseville-Arden-Arcade, CA	52.2%
Urban Honolulu, HI	51.6%
Bridgeport-Stamford-Norwalk, CT	49.7%
Boston-Cambridge-Newton, MA-NH	49.7%
Salt Lake City, UT	47.6%
Minneapolis-St. Paul-Bloomington, MN-WI	33.7%
St. Louis, MO-IL	29.4%
Scranton-Wilkes Barre-Hazleton, PA	29.3%
Harrisburg-Carlisle, PA	29.3%
Youngstown-Warren-Boardman, OH-PA	29.2%
Des Moines-West Des Moines, IA	28.9%
Akron, OH	28.9%

In addition to the HOAM Index, other metrics point to record low levels of housing affordability. A report from ATTOM, an analytics company and provider of property and real estate data, indicates that the median price home is unaffordable for the average income earner in 99 percent of the 572 counties examined.⁶ Similarly, a report from Redfin, a brokerage and mortgage origination company which publishes a variety of housing market data, indicates that a potential homebuyer needs an annual income of about \$115,000 to afford a median price home, which is over 50 percent more than the median

⁶ [Real Estate Data - Analytics & Property Data Provider | ATTOM \(attomdata.com\)](https://attomdata.com/)

household income, and a record high.⁷ The report also calculates that the monthly mortgage payment for a typical homebuyer is now \$2,866, nearly half of the median household income. In several major metropolitan areas, the income needed to afford a median price home has risen by 30 percent or more in just the last 12 months.

The rental market has seen similar price increases to the housing market with rents today also at record highs, as indicated by the Bureau of Labor Statistics' consumer price index.⁸ Data from Redfin indicate the median rent is over \$2,000 and near the record high.⁹ Median rent in all four areas of the country (Midwest, Northeast, South, and West) is at or near its respective record high. While today's rental prices relative to incomes are indicative of unaffordability even in the rental market, rental prices relative to mortgage payments highlight the much greater unaffordability of owning a home. Data from Cadre, a real-estate technology platform, indicate that it is 70 percent more expensive to own than rent a home as of August 2023.¹⁰ That is the largest spread between owning and renting in 23 years. These low rent prices (relative to mortgage payments, not incomes) are also indicative that there is no widespread collusion among landlords, since collusion yields higher prices relative to alternative goods and services, not relatively lower prices.

Factors Creating Record Unaffordability

Many public policies have contributed reduced housing affordability for decades. Some policies, like zoning laws and open space laws, and rent control policies, have restricted the supply of housing only in their respective areas of the country. Conversely, lending requirements and other regulations on mortgage originators and securities sales have prevented the housing market from delivering the optimal level and quality of housing to the market while also introducing additional risk. This has reduced the aggregate consumer and producer surplus in the housing market.

The more proximate causes of today's dysfunction within the housing market, and those arguably with the greatest impact, began in 2001, when the Federal Reserve artificially reduced interest rates as the "dot-com bubble" burst and economic growth more broadly slowed. By 2003, interest rates had fallen to the lowest levels in over 40 years. The predictable result was not only a devaluation of the dollar and inflation, but also a significant increase in borrowing by consumers, especially on durable goods. Economic sectors which disproportionately rely on consumer borrowing to finance purchases saw relatively large increases in sales despite also having relatively large increases in prices. What later became known as the "housing bubble" began inflating during this period.

As home prices steadily rose, borrowers and lenders alike took on additional risk by leveraging home loans beyond the current price of the home and beyond the homebuyer's maximum affordable monthly payment. Buyers took out loans exceeding the price of their home with no down payment, unwisely assuming that home prices would necessarily rise forever and that their new home could be sold in the future for a profit but leaving the buyer with negative equity at the start of the loan term. To increase leverage further, buyers increasingly chose variable rate mortgages whose payment would increase when interest rates rose but which started the loan term at a slightly lower interest rate. In a final fatuity, some borrowers chose reverse amortization loans whose monthly payments were less than the initial interest charged in the first month of the loan term. The principal balance would increase over time and the borrower would build negative equity unless home price growth exceeded the interest rate on the

⁷ [Redfin Reports That Homebuyers Must Earn \\$115,000 to Afford the Typical U.S. Home—About \\$40,000 More Than the Typical American Household Earns :: Redfin Corporation \(RDFN\)](#)

⁸ [CPI Home : U.S. Bureau of Labor Statistics \(bls.gov\)](#)

⁹ [Asking Rents Flatten in September Amid Growing Apartment Supply \(redfin.com\)](#)

¹⁰ [Price gap between renting and buying at widest point since 2000, data show - MarketWatch](#)

mortgage. As the Federal Reserve increased interest rates to simultaneously reduce inflation and tamp down what was considered a speculative “boom” in housing and equities, home prices stopped rising and the basic mechanics of the housing bubble ceased operating. The detritus was widespread and long lasting. Many borrowers and lenders who engaged in either side of speculative loans lost homes and their life savings, respectively. Loan nonperformance caused some Mortgage-Backed Securities (MBS) to fail. This set off a chain reaction of derivatives failures which caused millions of Americans to suffer losses on their savings and bankrupted several major Wall Street firms.

To put upward pressure on falling home prices in the wake of the housing bubble bursting, the Federal Reserve added MBS to its balance sheet and has maintained a portfolio of these assets since. It also reduced the federal funds rate to its lower nominal bound of zero and maintained this zero-interest rate policy (ZIRP) for years. These policies effectively reinflated the housing bubble, but at a more muted pace, artificially pushing up home prices. By the end of 2015, interest rates were raised by 0.25 percentage points. In December 2016, rates were raised again but this began a steady increasing of interest rates and the end of ZIRP. The Federal Reserve also began reducing its balance sheet as it shifted to tighter monetary policy. The end of ZIRP quickly began exposing the myriad of problems which the policy created over the better part of a decade. As was the case during the housing bubble, lenders and borrowers alike began assuming low interest rates would last indefinitely, or at least until their all their loans were repaid. Consumers and investors alike adapted to ZIRP, just as they had adapted to the lower interest rates in the early 2000s. When interest rates rose, many individuals suffered losses, or were at risk of doing so. By the summer of 2019, the Federal Reserve reversed course and began reducing interest rates while maintaining its pace of balance sheet reduction, seemingly counterproductive actions which together were an attempt to redirect capital flows.

September 2019 was illustrative of the impossibility of ending ZIRP without disruptions to financial markets. Among other consequences, the actions of the Federal Reserve eliminated arbitrage opportunities which threatened to cause another chain reaction of collapses among financial firms, as was seen during the Global Financial Crisis. The Federal Reserve’s intervention to provide \$500 billion of liquidity was a continuation of the first such intervention which occurred during the collapse of Long-Term Capital Management, following another abrupt end of arbitrage opportunities when interest rates rose to counter the inflation which artificially low interest rates caused. The Federal Reserve’s injection of liquidity in Autumn 2019 meant an end to its balance sheet reduction, and interest rates remained steady until March 2020.

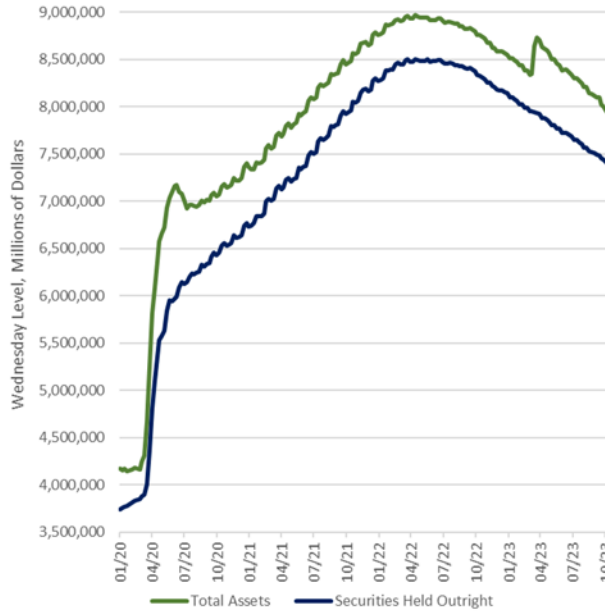
The period of artificially low interest preceding the housing bubble as well as the years of ZIRP following it are informative for explaining the unaffordability of housing following the pandemic. By depressing interest rates, the Federal Reserve reduced the value of savings and encouraged borrowing. Home prices that would correspond with prohibitively expensive monthly payments became affordable because financing charges were relatively low. Since less savings were required to purchase a home at a given price, demand increased in the housing market and prices rose, as intended. The new equilibrium that resulted saw monthly mortgage payments similar to where they were before interest rates were artificially reduced.

In 2020, these effects were amplified to a greater extent than before as the federal government engaged in unprecedented fiscal and monetary action by spending, borrowing, and creating trillions of dollars. From the end of February 2020 to mid-April 2022, the assets of the Federal Reserve grew by \$4.8 trillion, or 116 percent (Figure 3).¹¹ While the Federal Reserve succeeded in reducing the borrowing costs to the Treasury Department in the short term, it also set off the highest inflation in decades, created systemic

¹¹ [Federal Reserve Balance Sheet: Factors Affecting Reserve Balances - H.4.1](#)

interest rate risk, encouraged consumers and businesses alike to take on excessive debt loads, and set the stage for substantial interest rate increases in the near future. As in the previous two episodes of artificially low interest rates, households were encouraged to take on significantly larger mortgages, but the size of the monetary stimulus in the approximately two years from early 2020 into 2022 meant that even institutional investors were encouraged to finance real estate purchases through borrowing.

Figure 3



Source: Board of Governors of the Federal Reserve System

The inflation that is the devaluation of the dollar caused home prices to rise, but the sizeable shift in consumer preferences from saving to borrowing also increased home prices. Likewise, the Federal Reserve made borrowing so inexpensive that institutional investors were able to purchase swaths of housing for the purpose of renting which would have been prohibitively expensive at normal interest rates. This increased demand is indicative of the volume of liquidity which the Federal Reserve made available to financial markets. Similarly, very well capitalized corporations with already highly liquid balance sheets borrowed during this period to finance stock buybacks because the interest rate on this debt was a lower yield than the dividends on the shares of stock.

As happened previously, however, this increased demand for housing was only possible because of the lower interest rates that caused it. When interest rates rose, the ability of potential homebuyers to afford homes evaporated. Ordinarily, this would put downward pressure on prices and mortgage payments would remain relatively constant. Instead, prices have continued rising even as interest rates have risen at the fastest pace in four decades.

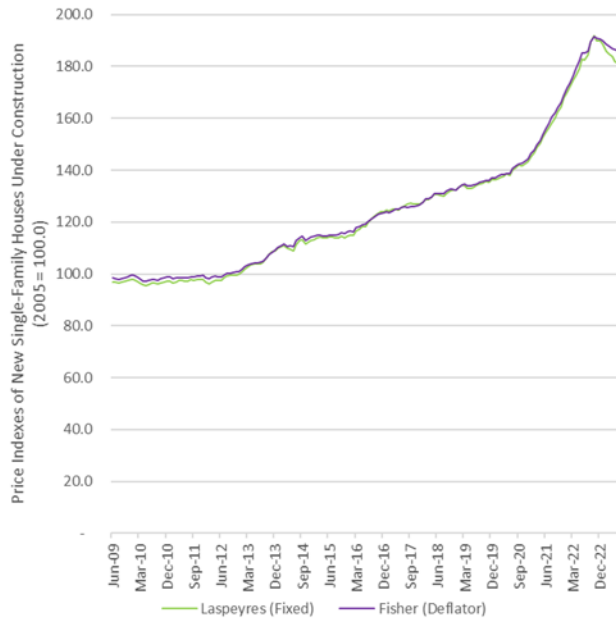
During 2021, the Federal Reserve forecasted that interest rates would remain at zero for years to come and inflation was “transitory.” Both claims were incorrect and had implications for the housing market. Borrowers who had taken on excessive debt loads were faced with an inability to sell their home, because doing so would necessitate losing their low-interest rate mortgage. A new loan would carry a rate two to four times as high, meaning the borrower could afford a much smaller loan, sometimes half the size or less than their current loan. Referred to as “golden handcuffs,” this situation made it prohibitively expensive for millions of Americans to sell their homes except at prices far higher (sometimes higher by 50 percent or more) than that for which they purchased them. Meanwhile, lenders now had a portfolio of low-interest-rate assets coupled with liabilities whose interest rates were increasing. This mismatch of interest rates first came to a head in March 2023 as several banks collapsed and the Federal Reserve created a new lending facility to temporarily provide liquidity for financial institutions on the wrong side of the interest rate trade. To counter the existing low-interest-rate assets on their balance sheets, distressed lenders must make loans at today’s higher interest rates. Even for lenders who are in otherwise healthy financial positions, private borrowers must compete against the Federal Reserve’s interest on reserve policy and reverse repurchase operations, both of which offer lenders a risk-free rate of return and currently occupy about \$5 trillion of the market.¹² The result has been a drastic reduction in the supply of existing homes which has buoyed prices even as interest rates have risen from zero to the highest level in decades. The effect on existing homes prices has become so large that the price premium on new homes is virtually zero.

The disruptive change from inflationary low interest rates to higher interest rates and elevated prices has had a similar effect on homebuilders. The cost to build a new home remains near the record high set last year (Figure 4) and homebuilders are unable to profitably produce a greater quantity of homes at a lower price. Due to wholesale inflation, which has outpaced consumer price increases since January 2021¹³, construction prices for new single-family homes remain over 20 percent above their pre-January 2021 trend. This has reduced the supply of new homes that producers can sell at a given price, irrespective of interest rates. Thus, the supply of new homes has also been reduced and prices remain elevated.

¹² [Federal Reserve Balance Sheet: Factors Affecting Reserve Balances - H.4.1](#)

¹³ [Producer Price Index Home : U.S. Bureau of Labor Statistics \(bls.gov\)](#)

Figure 4



Source: Census Bureau

With downward pressure on the supplies of new and existing homes, prices for both remain elevated and the alternative for consumers is renting. The resultant and dramatic shift in demand towards renting has elevated rent prices as well. The same increase of construction prices for single-family homes has been observed for multi-family units too, and these higher costs are passed on in the form of higher rents. Thus, while higher rent prices would ordinarily be a signal to developers to bring additional supply to the market, the significant increase in prices from wholesale inflation means higher rents are necessary just to cover higher costs, let alone create economic profits. However, two factors have prevented the cost of renting from rising as quickly as the cost of owning a home. First, institutional investors who purchased many homes around the country are renting out those dwellings, which reduced the supply of homes for sale but increased the supply of homes for rent. In the second case, the reader must return to the aforementioned example of a homeowner with golden handcuffs, whose mortgage originated at an interest rate between 2 and 3 percent. Given current inflation and interest rates, if this homeowner needs to move, the optimal choice is often not to sell but to rent the current house while purchasing another elsewhere at the new destination. Once again, the result is to remove a unit from the supply of existing homes while adding a unit to the supply of rental homes.

Outside of public policy, algorithmic rent setting has come under scrutiny for allegedly contributing to increasing rent prices.¹⁴ It is worth distinguishing between the use of large data sets with algorithm-driven

¹⁴ [RealPage rent price software draws scrutiny from U.S. senators \(realtrends.com\)](https://www.realtrends.com/news/realpage-rent-price-software-draws-scrutiny-from-u-s-senators)

optimization strategies and collusion, which can occur with or without the latest pricing aids. In the former case, landlords utilize software to set their asking rents so as to achieve an optimal occupancy rate and maximize profit. Landlords are unlikely to use such a pricing aid if they are already implementing an optimum pricing strategy. Landlords are more likely to use such pricing aids if their occupancy is below an optimal level. Algorithmic rent setting in these instances can recommend where to reduce prices based on competing landlords' asking rents, and for which applicants, to achieve a more optimal allocation. Note that the only way to increase the number of renters is to reduce rent prices. Increasing rent prices, whether on the recommendation of software or on a whim, will reduce occupancy. Conversely, if landlords are colluding to set rents, that violates existing laws irrespective of whether algorithmic rent setting is utilized. As in other cartel arrangements, collusion to set prices above a market clearing equilibrium reduces the supply, either in quantity, quality, or both, while prices rise, reducing consumer surplus in a market. There is no empirical evidence as of the time of this testimony's composition that algorithmic rent setting in a competitive market has contributed to higher rent prices. Instead, dynamic pricing models which consider rent prices being asked by competitor landlords actually enhance competition and would tend to lower rent prices for the marginal renter by efficiently incorporating on a massive scale the data from transparent rent prices already available online to renters and landlords alike.

Policy Recommendation to Increase Home Ownership Affordability

The instability of interest rates and prices has created a volatile environment in which most Americans today may never be able to own their own home. The business cycle in the housing market has convulsed for over 20 years because of the Federal Reserve's attempts to finance federal deficits, rescue failed investments, and inflate falling home values. The solution is not to treat the symptoms of these mistakes, but to prevent the failed policies themselves. The Federal Reserve should be tasked exclusively with price stability. It should set a primary credit interest rate at a penalty above the market rate, but it should not target an interest rate on federal funds. Instead, the Federal Reserve should conduct open market operations to maintain stable prices. The Federal Reserve should also cease attempts to manipulate individual markets, like housing. To that end, the central bank should allow its portfolio of MBS to roll off and not be replenished. The rest of the balance sheet should also be reduced until reverse repurchase operations return to near zero. The reserve ratio requirement, eliminated in March 2020, should also be reinstated and the interest on reserve policy ended. All these measures will, over time, allow market participants to set prices and respond appropriately to those signals, resulting in a more optimal quantity of housing in the market and more stable prices. Capital would also be returned from the public market to the private, again resulting in a more efficient allocation of resources. In the long run, the Federal Reserve's monopoly rights should be reexamined, including by this subcommittee. The central bank's anti-competitive control of the currency is possible only through government sanction and the institution's track record clearly does not warrant such concentration of power.

Simultaneously, the political incentive for the Federal Reserve to manipulate interest rates and inflate prices would be greatly reduced by lowering the federal deficit, and thus borrowing by the Treasury. Without the need to finance government spending, the Federal Reserve is more likely to focus exclusively on price stability.

Lastly, the competitive use of algorithmic rent setting should be permitted to continue since it benefits both landlords and renters by reducing pricing asymmetry and transaction costs. As noted in the previous section, however, these benefits are observed in the context of a competitive free market.

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Written Testimony

of

Vanessa Brown Calder

Director of Opportunity and Family Policy Studies

Cato Institute

before the

U.S. Senate Judiciary Subcommittee on

Competition Policy, Antitrust, & Consumer Rights

October 24, 2023

RE: Examining Competition and Consumer Rights in Housing Markets

Chair Klobuchar, Ranking Member Lee, and members of the subcommittee, thank you for the opportunity to testify today. My name is Vanessa Brown Calder, and I am the director of opportunity and family policy studies at Cato Institute. The views I express in this testimony are my own and do not represent any official position of my employer.

Accessible, low-cost housing is vital to the health and prosperity of America's families and communities. When housing is abundant, it is more affordable. Abundant housing provides educational and economic opportunities for children and adults.¹ It allows families to be part of the communities that they desire. Policies that support abundant, affordable housing are associated with reduced homelessness and improved homeless policy outcomes.²

Although junk fees, institutional investors, and similar matters have received recent political and media attention, inaccessible, high-cost housing is largely a result of existing federal, state, and local policy. Government policies that constrain housing development are particularly detrimental in this regard.

State and local regulations constitute some of the most significant policies constraining housing supply. Zoning and land-use regulations are nearly ubiquitous across American cities. These regulations directly prohibit housing development, increase costs, create uncertainty, and produce delays.³

Zoning regulations have a meaningful impact on family budgets. A well-known paper finds that zoning regulations push up the cost of apartments by around 50 percent in Manhattan, San Francisco, and San Jose.⁴ A recent paper reviewing 24 metropolitan areas finds a massive "zoning tax" (up to \$500,000 per quarter-acre) in cities with restrictive land-use regimes.⁵

In addition to state and local policy, federal policy also plays a role in limiting housing supply. In Western States, the federal government owns a substantial portion of the land, which therefore cannot be developed.

In Nevada, Utah, and Idaho, the federal government owns between 60 and 80 percent of the land.⁶ In other states like Arizona, Colorado, Wyoming, California, and Montana, the federal government owns more than one-third to one-half of land.

Contrary to public perception, the vast majority of federal lands are not national parks, monuments, or Bureau of Indian Affairs land. Instead, most federal western land is managed by the Bureau of Land Management (BLM) or U.S. Forest Service (USFS).

This land is often close to urban areas, with a significant portion of land within city or county boundaries. Previous estimates indicate that there are 217,000 acres of BLM and USFS land within Utah city boundaries and 650,000 acres of the same within one mile of Utah city borders.⁷

Presented with a similar set of facts in the 1990s, former Senate Majority Leader Harry Reid led a group of legislators in passing the Southern Nevada Public Land Management Act (SNPLMA). This legislation allowed local governments in the land-locked Las Vegas, Nevada area to nominate federal land for competitive market auction.

The sale of federal land in the Clark County area subsequently resulted in hundreds of millions of dollars allocated to Nevada public schools and more than a billion dollars allocated to Nevada's trails, parks, and natural areas, creating a win-win for Nevada developers, conservationists, and residents.⁸

Ranking Member Lee and cosponsors of the HOUSES Act propose extending a similar solution to other Western States. The HOUSES Act would allow local governments to nominate and purchase federal land and develop the land for housing projects that meet certain density minimums and other criteria.⁹

Like the Southern Nevada Public Land Management Act, proceeds from the HOUSES Act would be made available for environmental initiatives, including improvements to existing National Parks, wildfire prevention programs, public water infrastructure projects, and restoration initiatives.

Research suggests that the HOUSES Act could have a meaningful effect on housing affordability. A recent U.S. Congress Joint Economic Committee study finds that HOUSES reforms could lead to the construction of approximately 2.7 million homes, and this increase in housing development would be possible with the conversion of just 0.1 percent of existing federal land holdings.¹⁰ As a result of this new development, six Western States could nearly or completely eliminate their housing shortages, and six other states could substantially reduce them.¹¹

In addition to policies that directly constrain development, additional federal, state, and local policies are relevant.¹² When supply-limiting policies are addressed, the participation of institutional investors in the housing market is largely inconsequential. Furthermore, the gains that result from reforming supply-limiting policies far exceed potential gains from regulating junk fees or market participants. When considering reforms to improve housing, policymakers and analysts should keep in mind that the government is the dominant player and regulator in the housing market.

As a result, ample reform opportunities exist for policymakers interested in improving housing access and affordability. Reforms that expand housing supply will unleash the housing market and ensure that American families have the choice, opportunity, and upward mobility that they desire.

Thank you, and I look forward to your questions.

¹ Vanessa Brown Calder, "Zoned Out: How School and Residential Zoning Limit Educational Opportunity," Joint Economic Committee Republicans, November 12, 2019.

Daniel Shoag and Peter Ganong, "Why Has Regional Income Convergence in the U.S. Declined?," working paper, Harvard Kennedy School, Harvard University, January 2015.

² Vanessa Brown Calder and Jordan Gygi, "Housing Markets First: Housing Supply and Affordability Are Key to Reducing Homelessness," Cato Institute Briefing Paper No. 153, May 8, 2023.

³ Vanessa Brown Calder, "Zoning, Land-Use Planning, and Housing Affordability," Cato Institute Policy Analysis no. 823, October 18, 2017.

⁴ Edward L. Glaeser, Joseph Gyourko, and Raven Saks, "Why Is Manhattan So Expensive? Regulation and the Rise in House Prices," National Bureau of Economic Research Working Paper no. 10124, November 2003.

⁵ Joseph Gyourko and Jacob Krimmel, "The Impact of Local Residential Land Use Restrictions on Land Values Across and Within Single Family Housing Markets," National Bureau of Economic Research Working Paper no. 28993, July 2021.

⁶ Carol Hardy Vincent and Laura A. Hanson, "Federal Land Ownership: Overview and Data," Congressional Research Service, February 21, 2020.

⁷ Ryan Freeman, "Federal Land Valuation Model Agreement RFP No. COF 2018-03," report prepared for the use of the Utah State Legislature of the Commission on Federalism, May 18, 2020.

⁸ U.S. Department of the Interior, Bureau of Land Management, "Southern Nevada Public Land Management Act (SNPLMA) Statistics," November 30, 2021.

⁹ Purchase is subject to approval. Details regarding how local governments will disburse said lands to private actors, or otherwise initiate housing development, are not prescribed by the Act.

U.S. Congress, Senate, "Helping Open Underutilized Space to Ensure Shelter (HOUSES Act) Act of 2022," S.4062, 117th Cong., 1st sess., introduced in Senate April 7, 2022.

¹⁰ They estimate buildable federal land by limiting land to BLM-managed land and removing all remaining land parcels containing water, marshland, or a slope greater than 15 degrees that would make development challenging. Then, using various assumptions based on the HOUSES Act, the report models how many homes could be built on eligible buildable parcels before 1) the available buildable land runs out or 2) the so-called housing "shortage" is eliminated.

This estimate includes 430,000 homes in San Diego County, California; 350,000 homes in Maricopa County, Arizona; 109,000 homes in Clark County, Nevada; and 55,000 new homes in Utah County, Utah alone.

Kevin Corinth and Hugo Dante, "The HOUSES Act: Addressing the National Housing Shortage by Building on Federal Land," Joint Economic Committee Republicans, August 4, 2022.

¹¹ The authors acknowledge that "shortage" is an economically imprecise term, though practically useful.

¹² Vanessa Brown Calder, "Housing Affordability," in *Empowering the New American Worker: Market-Based Solutions for Today's Workforce*, ed. Scott Lincome (Washington: Cato Institute, 2023), p. 204-217.

**Testimony for the Record
Submitted to the
Judiciary Committee
Subcommittee on Competition Policy, Antitrust, and Consumer Rights
for the Hearing
“Examining Competition and Consumer Rights in Housing Markets.”**

October 23, 2023

Luis E. Quintero
Assistant Professor Carey Business School

Chair Klobuchar, Ranking Member Lee and members of the Committee, thank you for inviting me to participate in today’s hearing, and thank you for your attention to the topic of competition and consumer rights in housing markets, an issue of critical national importance.

My name is Luis Quintero. I am an economist and have spent eight years at Johns Hopkins, where I research housing markets and policy. Beyond my academic research, I have undertaken advisory roles, analyzing urban policies in over 20 countries spanning Eastern Europe, Central Asia, and Latin America for esteemed institutions like the World Bank and the Interamerican Development Group. I would like to state for the record that the opinions expressed herein are my own and do not necessarily reflect the views of The Johns Hopkins University.

In my work, I have documented the increasing consolidation of housing markets in the United States and its detrimental effects on housing affordability, and I am pleased that this Congress is taking a proactive step to incorporate competition in the legislative discussion.

Concentration has been growing since the Great Recession in local housing markets.

Since the housing crisis of 2008, local housing markets have experienced concentration that has left most of the housing production in the hands of few homebuilders. This trend follows the broader long-term trend of declining competition documented in so many sectors of the US economy.

Although market consolidation is not the only factor driving the housing affordability problem, it is a critical one that should be considered in any evaluation of how to address it.

Three macro-level events helped trigger the current concentration we observe. First, the hard times of the Great Recession drove many firms to exit the market or reduce their activity for many years. Those who suffered the most were local or regional homebuilders who had more difficulties diversifying the risk by building in many locations. Second, large homebuilders received a massive liquidity boost from stimulus packages in the early 2010s, in the order of \$2.4 billion for the largest thirteen homebuilders. These came mainly from the Worker Homeownership and Business Assistance Act of 2009, which allowed large homebuilders to use losses incurred in 2008 or 2009 to recoup taxes paid in the prior five years. Large builders with losses in markets affected by the recession could use these resources to establish a stronger presence in growing markets. Third, many of the homebuilders with activity at a national scale have merged. My work identifies at least twelve mergers that significantly increased the market share for the merging firms. In one of those cases, the merger of Lennar and CalAtlantic, which formed the largest homebuilding company in the country, came to dominate the housing market post-merger in areas where both firms were active pre-merger.

The exit of firms during market busts is common, but the number of firms has not rebounded as markets recovered.

National home price indices declined after 2008 but started recovering in 2011. They have, since 2015, surpassed the peak price levels of 2008. However, this recovery has not been accompanied by an upturn in the number of for-sale building establishments. For-sale builders are down 80% with respect to their peak in 2008, while national prices for homes are up by about 30% with respect to the same period. The competitive market forces that increase supply when prices increase by incentivizing the entry of new suppliers are not being realized in American housing markets.

Estimated concentration numbers are large. Concentration estimates should use relevant market definitions that consider the effective willingness of households to substitute between locations when they buy a home. The whole country is not a single housing market.

Concentration has grown to the point that in the median market, the share of new units produced by the top three firms has reached 80%, increasing 17% since 2007. In the top 25% of most concentrated markets, 88% of new units are produced locally by three homebuilders. Across all

markets, I estimate that 56% show concentrations that would fall into the category of highly concentrated (HHI of 2500) as defined by the FTC, from 40% during the Great Recession. The 100 largest home builders in the US accounted in 2022 for about half of all new single-family home sales, up from just over a third two decades ago, with most of these gains coming from increases in the shares of two homebuilders, D.R. Horton, and Lennar. These two firms build more than the rest of the firms in the top ten of homebuilders.

Larger mergers in this sector have most likely not been stopped because regulating authorities may not be defining relevant housing markets narrowly enough.

For example, homebuilding in Oregon is not a threat to the ability of a hypothetical monopolist to impose significant and non-transitory increases in price in Maryland. This is also true when comparing cities in the same state, like Pittsburgh and Philadelphia. As such, housing markets need to be correctly spatially defined to ensure associated statistics, like market shares, are useful to determine how a merger will affect concentration. Work exploring search behavior in online platforms has demonstrated that most households consider only a tight cluster of zip codes with a median distance of 3.2 miles when analyzing a prospective home purchase. Others have examined the nearby places with high price correlation to determine the relevant market size. All these different methodologies point to relevant markets smaller than metropolitan areas or commuting zones. Concentration levels depend on the market definition, of course. However, different definitions show a growth in consolidation over time.

Furthermore, less competition has not pushed homebuilders to innovate. Recent studies have highlighted that the construction industry has seen a decades-long decline in productivity.

We should care about market consolidation because it affects housing supply and affordability.

My estimates point to a causal negative impact of concentration on the total volume of housing produced. This effect indicates that if we had today the levels of competition in local housing markets that we had in 2006, we would have produced \$112 billion more in housing, which is equivalent to approximately 160,000 additional housing units being built in a year. This roughly

equals 10% of the private residential fixed investment predicted for 2023. Furthermore, housing price volatility would have declined by over 50%.

We should encourage agencies to enforce competitive policy in housing markets more effectively and ask housing policies to incorporate market structure considerations.

I would like to offer six recommendations for this committee's consideration:

1. Encourage regulatory agencies to be careful in spatially defining local housing markets when revising any actions, such as mergers, that may reduce competition. This may require increasing the resources of antitrust or competition policy agencies.
2. Consider passing legislation that shifts the burden of proof to companies in large-scale mergers, in such a way that they must also show that they cannot exert monopoly power in any of the local spatial markets where they have building activity.
3. Encourage enforcement agencies to request mandatory divestitures when large national homebuilders merge and that results in high concentration in local markets.
4. Encourage the federal government to make increasing competition one of the objectives of its housing policies, such as the Biden-Harris Administration Housing Supply Action Plan. Transfers aimed at increasing housing supply, such as the Low-Income Housing Tax Credits (LIHTCs) should incorporate requirements of a minimum number of homebuilder participants.
5. This encouragement should extend to state-wide policies. Changes in restrictive zoning like those passed in California, Washington, Oregon, and Minneapolis may not result in effective growth in supply if local developers can withhold production by exercising monopoly power.
6. Consider bringing back the Philadelphia National Bank presumption, wherein the Courts established a presumption that a merger that would give one entity a 30 percent market share in the relevant market is presumed anti-competitive. This presumption should be used using relevant spatial definitions of local housing markets.

Thank you and I would be pleased to answer any questions you may have.



Written Testimony of Maurice E. Stucke
United States Senate
Committee on the Judiciary
Subcommittee on Competition Policy, Antitrust, and Consumer Rights
Hearing on “Examining Competition and Consumer Rights in Housing Markets”
Tuesday, October 24, 2023, 2:30 P.M.

Chair Klobuchar, Ranking Member Lee, and distinguished members of the Subcommittee:

Thank you for the opportunity to testify before you today.

Ariel Ezrachi and I raised the risks of algorithmic collusion and discrimination in our articles¹ and 2016 book.² Thereafter, enforcers and policymakers began taking notice.³

A 2022 ProPublica article examined how RealPage has sold rent pricing software to property managers, thereby boosting the landlords’ profits.⁴ Thereafter, over twenty private antitrust lawsuits have been brought against RealPage and some of the nation’s larger property managers for colluding under Section 1 of the Sherman Act.⁵ RealPage’s software, AI Revenue Management (formerly known as YieldStar), “is currently responsible for the pricing of 8% of all rentals units nationwide.”⁶ Property managers using YieldStar saw their occupancy rate decline (from 97% to

¹ *How Pricing Bots Could Form Cartels and Make Things More Expensive*, HARVARD BUSINESS REVIEW, Oct. 2016; *Artificial Intelligence & Collusion: When Computers Inhibit Competition*, 2017 UNIVERSITY OF ILLINOIS LAW REVIEW 1775 (2017); *Tacit Collusion on Steroids – The Tale of Online Price Transparency, Advanced Monitoring and Collusion*, 3 COMPETITION LAW & POLICY DEBATE 24 (2017); *Algorithmic Collusion: Problems and Counter-Measures* (23 June 2017), Report commissioned by the Organisation for Economic Co-operation and Development for its Competition Committee’s Roundtable on Algorithms and Collusion (21-23 June 2017); *Antitrust, Algorithmic Pricing, and Tacit Collusion*, in RESEARCH HANDBOOK ON THE LAW OF ARTIFICIAL INTELLIGENCE (Woodrow Barfield & Ugo Pagallo eds., Edward Elgar Publishing 2018); *Sustainable and Unchallenged Algorithmic Tacit Collusion*, 17 NORTHWESTERN JOURNAL OF TECHNOLOGY & INTELLECTUAL PROPERTY 217 (2020).

² VIRTUAL COMPETITION: THE PROMISE AND PERILS OF THE ALGORITHM-DRIVEN ECONOMY (Cambridge, MA: Harvard University Press 2016).

³ See, e.g., OECD, *Algorithms and Collusion* (2017); OECD (2023), *Algorithmic Competition*, OECD Competition Policy Roundtable Background Note, www.oecd.org/daf/competition/algorithmic-competition-2023.pdf.

⁴ Heather Vogell, *Rent Going Up? One Company’s Algorithm Could Be Why*, PROPUBLICA (Oct. 15, 2022), <https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent>.

⁵ In re RealPage, Inc., Rental Software Antitrust Litig., No. MDL 3071, 2023 WL 2875737, at *1 (U.S. Jud. Pan. Mult. Lit. Apr. 10, 2023) (cases allege that “the lessor defendants all employed revenue management software provided by RealPage called AI Revenue Management (formerly known as YieldStar), which gathered real-time pricing and vacancy data from the lessors and made unit-specific pricing and vacancy recommendations—which the lessors allegedly agreed to adhere to, on the understanding that competing lessors would do the same—with the intent and effect of raising lease prices above competitive levels”). All of these plaintiffs alleged in their complaints that this conduct violated federal antitrust law, as well as various state antitrust and consumer protection statutes. All of these cases were transferred in 2023 to the Middle District of Tennessee for coordinated or consolidated pretrial proceedings.

⁶ Gabriele Bortolotti, *Algorithmic Collusion in the Housing Market*, ProMarket (May 30, 2023), <https://www.promarket.org/2023/05/30/algorithmic-collusion-in-the-housing-market/>.

95%) while their revenues increased 3-4%.⁷ But RealPage is not the only pricing algorithm used in the housing markets today. Instead, according to another recently filed antitrust complaint, RealPage's primary competitor, Yardi, sets prices for at least twice the number of multi-family units than RealPage.⁸ Moreover, concerns over algorithmic collusion extend beyond housing markets. Another ongoing antitrust case involves algorithmic collusion among the leading hotels on the Las Vegas Strip, which all use the same third-party algorithm.⁹ The alleged consumer harm in all these cases is similar: by outsourcing their pricing to a third-party algorithm, competitors charge higher prices (despite lower occupancy levels). But even if the antitrust plaintiffs prove that the competitors use the same pricing algorithm and this leads to higher, supra-competitive pricing, they might still lose.

While enforcers and policymakers have acknowledged the risks of algorithmic collusion, their understanding varies, leading to further gaps in policy responses. Here I'll examine three policy approaches to tackle these risks. As we'll see, the overarching concern lies not only in higher prices but also in the fear of an AI-dominated bureaucracy that hinders human autonomy and well-being.

I. THE NARROW APPROACH

Here policymakers and antitrust agencies evaluate whether the conduct facilitated by pricing algorithms violates existing antitrust laws. If the conduct is potentially illegal, the next issue is whether enforcers can readily detect a violation, prove it in court, and effectively remedy the challenged behavior.

The easy case is when humans agree to fix prices and use pricing algorithms to monitor compliance and punish any discounting. Here the Sherman Act is up to task. For example, the United States prosecuted a price-fixing case involving posters sold through Amazon Marketplace. To implement their price-fixing agreement, the competitors agreed to adopt specific pricing algorithms to coordinate their pricing.¹⁰

Another simple scenario is the classic hub-and-spoke cartel,¹¹ where rivals use a hub's pricing algorithm to facilitate their collusion. Here too the antitrust agencies can challenge this behavior under the existing law, as two European cases reflect. In one case, an online travel booking system agreed with certain travel agents to reduce discounts to 3%. If any travel agent offered a greater discount, the hub's booking algorithm automatically reduced the discount to 3%. As a result, many

⁷ *Id.*

⁸ Compl. ¶ 55, filed in *McKenna Duffy v. Yardi Systems, Inc.*, Civ. Act. No. 2:23-cv-01391 (W.D. Wash. filed Sept. 8, 2023).

⁹ Compl., filed in *Gibson v. MGM Resorts Int'l*, Civ. Act. No. 2:23-cv-00140 (D. Nev. filed Jan. 25, 2023).

¹⁰ Plea Agreement, filed in *United States v. Topkins*, No. CR 15-00201 (N.D. Cal. 2015), <https://www.justice.gov/d9/atr/case-documents/attachments/2015/04/30/313686.pdf>; see also *Trod Ltd. and GB eye Ltd.*, U.K. Competition & Mkts. Auth., CMA Issues Final Decision in Online Cartel Case, GOV.UK (Aug. 12, 2016), <https://www.gov.uk/cma-cases/online-sales-of-discretionary-consumer-products#infringement-decision>.

¹¹ *Interstate Circuit, Inc. v. United States*, 306 U.S. 208 (1939).

participating travel agencies decreased their discounts to 3% or less.¹² In the second case, a multiple listing service (MLS) in Spain helped realtors inflate their brokerage commissions. The realtors agreed to a minimum commission of 4% on sales and one month's rent on leases. The software company, in creating the MLS, designed the software so that a real estate broker could only list a property if the broker shared the information on their commission and the actual commission was at or above the established minimum of 4%. Here both the software designer and participating real estate brokers were fined.¹³

Thus, when humans conspire, the illegality inheres in the agreement. The use of pricing algorithms to assist their collusion might make it harder, in some cases, to detect the collusion. But the issue is the sufficiency of proof, not the law itself.

On the other hand, prosecutors will have a harder time challenging under the current antitrust law (a) tacit algorithmic collusion, (b) certain “hub-and-spoke” arrangements, and (c) secondary tacit collusion (STC).

A. TACIT ALGORITHMIC COLLUSION

Tacit collusion or conscious parallelism alone does not violate Section 1 of the Sherman Act. There must be proof of an agreement. As the Supreme Court said,

*Tacit collusion, sometimes called oligopolistic price coordination or conscious parallelism, describes the process, not in itself unlawful, by which firms in a concentrated market might in effect share monopoly power, setting their prices at a profit-maximizing, supracompetitive level by recognizing their shared economic interests and their interdependence with respect to price and output decisions.*¹⁴

Tacit collusion, of course, can happen without algorithms under certain market conditions (e.g., highly concentrated markets with homogenous products, where the transparency of the key market terms enables rivals to monitor and respond quickly to their competitors' pricing and other key

¹² In *Eturas* (C-74/14, 2016), the European court interpreted Article 101 “as meaning that, where the administrator of an information system, intended to enable travel agencies to sell travel packages on their websites using a uniform booking method, sends to those economic operators, via a personal electronic mailbox, a message informing them that the discounts on products sold through that system will henceforth be capped and, following the dissemination of that message, the system in question undergoes the technical modifications necessary to implement that measure, those economic operators may — if they were aware of that message — be presumed to have participated in a concerted practice within the meaning of that provision, unless they publicly distanced themselves from that practice, reported it to the administrative authorities or adduce other evidence to rebut that presumption, such as evidence of a systematic application of a discount exceeding the cap in question.”

¹³ Press Release: The CNMC fines several companies EUR 1.25 million for imposing minimum commissions in the real estate brokerage market (Dec. 9, 2021), https://www.cnmc.es/sites/default/files/editor_contenidos/Notas%20de%20prensa/2021/20211209_NP_Sancionador_Proptech_eng.pdf.

¹⁴ *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 227 (1993).

terms of sale). One case, for example, involved tacit collusion leading to higher gas prices on Martha's Vineyard.¹⁵

But the industry-wide use of pricing algorithms can do more than facilitate conscious parallelism in markets already susceptible to it. Instead, as Ariel Ezrachi and I discuss, pricing algorithms can expand the market conditions in which tacit collusion may be possible. The speed at which pricing algorithms can detect and respond to competitors' online pricing, can inhibit rivals from gaining sales through discounts, and thereby expand tacit collusion to markets with as many as eight rivals,¹⁶ if not more.) The result is the same as if the companies verbally agreed to fix prices, but the agencies and private plaintiffs, without proof of an agreement, cannot challenge the behavior under the Sherman Act.

Interestingly, the FTC's current monopolization case against Amazon includes allegations of tacit algorithmic collusion. The complaint's allegations involving Amazon's pricing algorithm, internally codenamed Project Nessie, were heavily redacted. But as the *Wall Street Journal* reported, the algorithm "helped Amazon improve its profit on items across shopping categories, and because of the power the company has in e-commerce, led competitors to raise their prices and charge customers more, according to people familiar with the allegations in the complaint. In instances where competitors didn't raise their prices to Amazon's level, the algorithm—which is no longer in use—automatically returned the item to its normal price point."¹⁷ Amazon reportedly made more than \$1 billion in revenue from this tacit algorithmic collusion.¹⁸

Since tacit algorithmic collusion does not violate Section 1 of the Sherman Act, the FTC instead is challenging Amazon's "Project Nessie" pricing system as an unfair method of competition under

¹⁵ *White v. R.M. Packer Co.*, 635 F.3d 571 (1st Cir. 2011).

¹⁶ Wieting, Marcel and Sapi, Geza, Algorithms in the Marketplace: An Empirical Analysis of Automated Pricing in E-Commerce (September 30, 2021). NET Institute Working Paper No. 21-06, Available at SSRN: <https://ssrn.com/abstract=3945137> or <http://dx.doi.org/10.2139/ssrn.3945137>. For experiments with pricing algorithms, see Bingyan Han, Understanding algorithmic collusion with experience replay, Working Paper, (March 21, 2021), [arXiv:2102.09139](https://arxiv.org/abs/2102.09139) (finding in an infinitely repeated pricing game, pricing algorithms based on artificial intelligence (Q-learning) may consistently learn to charge supra-competitive prices even without communication); Xu, Xingchen and Lee, Stephanie and Tan, Yong, Algorithmic Collusion or Competition: the Role of Platforms' Recommender Systems (September 22, 2023). Available at SSRN: <https://ssrn.com/abstract=4579458> or <http://dx.doi.org/10.2139/ssrn.4579458>; Emilio Calvano, Giacomo Calzolari, Vincenzo Denicolò & Sergio Pastorello, *Artificial Intelligence, Algorithmic Pricing, and Collusion*, 110 AMERICAN ECONOMIC REVIEW 3267 (2020).

¹⁷ Dana Mattioli, *Amazon Used Secret 'Project Nessie' Algorithm to Raise Prices*, WALL ST. J., Oct. 3, 2023, <https://www.wsj.com/business/retail/amazon-used-secret-project-nessie-algorithm-to-raise-prices-6c593706>.

¹⁸ *Id.*

Section 5 of the FTC Act.¹⁹ Whether the court will agree (without evidence of anticompetitive intent or lack of procompetitive business justification) is another matter.²⁰

B. “HUB-AND-SPOKE” ALGORITHMIC COLLUSION

Instead of using their own algorithms, rivals, over time, might outsource their pricing to a third-party vendor. Consider the pending class action lawsuit against the leading hotel operators on the Las Vegas Strip, including the Bellagio, Wynn, Caesar’s Palace, MGM Grand, and Mandalay Bay. The complaint alleges that the Las Vegas Strip hotels “colluded” by outsourcing their pricing for their hotel rooms to the same company, the Rainmaker Group.²¹

The legal challenge for the antitrust enforcers and courts is in determining whether these agreements are purely vertical (between the hub and hotel) or also horizontal (among the rival hotels acting through the hub). This distinction is critical in jurisdictions, like the United States, as it determines the legal standard under which the agreement is evaluated. In the United States, purely vertical agreements are reviewed under the rule of reason standard, which as the Supreme Court recognized, entails an “elaborate inquiry” that “produces notoriously high litigation costs and unpredictable results.”²² Likewise, several justices called the rule of reason “amorphous”²³ and “unruly.”²⁴ In contrast, a horizontal hub-and-spoke conspiracy would be per se illegal.

A hub-and-spoke antitrust conspiracy, as the courts have held, “involves a hub, generally the dominant purchaser or supplier in the relevant market, and the spokes, made up of the distributors involved in the conspiracy. The rim of the wheel is the connecting agreements among the

¹⁹ Compl. ¶¶ 457-63, filed in *FTC v. Amazon.com*, Civ. Act. No. 2:23-cv-01495 (W.D. Wash. filed Sept. 26, 2023); see also Fed. Trade Comm’n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act (November 10, 2022), <https://www.ftc.gov/legal-library/browse/policy-statement-regarding-scope-unfair-methods-competition-under-section-5-federal-trade-commission>.

²⁰ *E.I. du Pont de Nemours v. Fed. Trade Comm’n (Ethyl)*, 729 F.2d 128, 139 (2d Cir. 1984) (holding that “before business conduct in an oligopolistic industry may be labelled ‘unfair’ within the meaning of § 5 a minimum standard demands that, absent a tacit agreement, at least some indicia of oppressiveness must exist such as (1) evidence of anticompetitive intent or purpose on the part of the producer charged, or (2) the absence of an independent legitimate business reason for its conduct”).

²¹ Compl. filed in *Gibson v. MGM Resorts Int’l*, Civ. Act. No. 2:23-cv-00140 (D. Nev. filed Jan. 25, 2023).

²² *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 459 (2015) (quoting in part *Arizona v. Maricopa County Medical Soc.*, 457 U.S. 332, 343 (1982)). For criticisms of this standard, see Maurice E. Stucke, *The Good, the Bad, and the Ugly of US Antitrust*, 11 JOURNAL OF ANTITRUST ENFORCEMENT 283 (2023); *Does the Rule of Reason Violate the Rule of Law?*, 42 U.C. DAVIS LAW REVIEW 1375 (2009).

²³ *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 398 (2015) (Scalia, J. dissenting, with Roberts, C.J. joining).

²⁴ *FTC v. Actavis, Inc.*, 570 U.S. 136, 173 (2013) (Roberts, C.J., dissenting, with Justices Scalia and Thomas joining). As they commented, “[g]ood luck to the district courts that must, when faced with a patent settlement, weigh the ‘likely anticompetitive effects, redeeming virtues, market power, and potentially offsetting legal considerations present in the circumstances.’” *Id.* (quoting the majority at 570 U.S. at 149).

horizontal competitors (distributors) that form the spokes.”²⁵ So, a critical legal issue for a per se violation of the Sherman Act “is how the spokes are connected to each other.”²⁶

On the one hand, to be liable, the Las Vegas hotels need not agree with each other to fix prices or outsource their pricing to Rainmaker all at the same time.²⁷ In the leading antitrust hub-and-spoke case, the Supreme Court held that the movie distributors (the spokes) could be liable when

*[e]ach distributor was advised that the others were asked to participate; each knew that cooperation was essential to successful operation of the plan. They knew that the plan, if carried out, would result in a restraint of commerce, which, . . . was unreasonable within the meaning of the Sherman Act, and knowing it, all participated in the plan. The evidence is persuasive that each distributor early became aware that the others had joined. With that knowledge they renewed the arrangement and carried it into effect for the two successive years.*²⁸

On the other hand, if each Las Vegas hotel chain independently decided to use Rainmaker’s algorithm after independently calculating that it would be more profitable to do so, then it is unlikely that a court would find any horizontal conspiracy. Instead, there are a series of vertical agreements, which would be evaluated under antitrust’s problematic rule of reason standard.

To illustrate the difficulty in challenging this behavior, suppose the first Las Vegas hotel used Rainmaker’s dynamic pricing algorithm to increase its profits. Also, suppose that it was never told (nor did it anticipate) that its rivals would use Rainmaker’s algorithm. Suppose the second and third Las Vegas hotels later opt to use Rainmaker’s pricing algorithm for its efficiency gains rather than any anticompetitive purpose. As more Las Vegas hotels use Rainmaker’s pricing algorithm, the company acquires even more data for its price optimization algorithm, which, as a result, can better assess market conditions (and pricing strategies of subscribers). As more Las Vegas hotels rely on Rainmaker for pricing their rooms, the hub’s pricing algorithm incrementally affects more of the Strip’s hotel market. As Rainmaker’s pricing accounts for a larger share of the Strip, the Rainmaker’s pricing can increasingly behave independently of the remaining hotels on the Strip (who are not using its pricing algorithm). Rainmaker’s success and data reach can now attract the remaining Las Vegas hotels, making it harder for another AI pricing optimization company to enter and compete. As Rainmaker’s clients’ profits increase, it might become harder for the remaining

²⁵ In re Elec. Books Antitrust Litig., 859 F. Supp. 2d 671, 690 (S.D.N.Y. 2012) (quoting *Howard Hess Dental Laboratories Inc. v. Dentsply Int’l, Inc.*, 602 F.3d 237, 255 (3d Cir. 2010)).

²⁶ In re Ins. Brokerage Antitrust Litig., 618 F.3d 300, 327 (3d Cir. 2010) (quoting *Total Benefits Planning Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 436 (6th Cir. 2008)).

²⁷ *Interstate Cir. v. United States*, 306 U.S. 208, 227 (1939) (noting that it “is elementary that an unlawful conspiracy may be and often is formed without simultaneous action or agreement on the part of the conspirators”).

²⁸ *Id.* at 226-27.

hotels to forego these profits. So, they too switch to Rainmaker, and eventually 90+% of rivals coalesce around one AI revenue management provider. Rainmaker's pricing strategy becomes the de facto market price. The evidence in the case may prove otherwise. The point here is that pricing algorithms can create substantial efficiency gains and reduce transaction costs.²⁹

The legal challenge is when does a series of vertical agreements become an illegal horizontal hub-and-spoke? Certainly, the first hotel operator could not be liable for collusion when it initially outsourced its pricing to Rainmaker's algorithm, as none of its rivals were using Rainmaker at the time. It might not even be when the second or third hotel operator join, if the prices were not supra-competitive (given the competition from the remaining hotel operators). One can imagine the difficulty in assessing when the arrangement started resembling a hub-and-spoke and when does liability accrue. And who is liable? The early adopters? Late adopters? Or everyone? The early adopters would likely argue that when they joined, they did not anticipate the other rivals to join. Nor was there any understanding to that effect. So it would be unfair to hold them liable for the later actions of their rivals, which they neither wished nor anticipated.

If the hub's algorithm uses purely public information, it will be difficult to challenge these vertical agreements as a hub-and-spoke. Instead, the plaintiff would have to challenge each vertical agreement under the Supreme Court's "amorphous," "unruly" rule of reason standard – a costly endeavor yielding unpredictable results. So, as with tacit algorithmic collusion, the harm to consumers may be the same as if the rivals actually conspired, but challenging it will be difficult under current antitrust laws.

There may be another avenue for liability, namely, if the competitors continuously share competitively sensitive, non-public data with the hub. That is what the plaintiffs in the Las Vegas class action alleged.³⁰ A company ordinarily would not share competitively sensitive and nonpublic data with the hub, if it knew that the hub's algorithm could use that data to help rivals undercut the company. Thus, the rivals will continuously share this non-public information with the knowledge that the hub will use it to their mutual advantage.³¹ Consequently this information sharing could be used as a plus factor to establish a conspiracy or challenged by itself (albeit under the Court's rule of reason standard³²).

²⁹ 2023 OECD Report at 10-11.

³⁰ Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Joint Motion to Dismiss the Complaint with Prejudice, filed in *Gibson v. MGM Resorts International*, 2023 WL 4264109 (D. Nev. filed May 11, 2023) (alleging that "Rainmaker's algorithms are fueled by real-time access to [the defendants'] competitively sensitive and nonpublic data regarding occupancy, rates, and guests, and output pricing recommendations that can then be uploaded directly into clients' property management systems").

³¹ *Id.* (alleging that each defendant hotel operators knows that its "competitors participate in and contribute data to Rainmaker's pricing and forecasting algorithm and were thus assured that their supracompetitive pricing would not be undercut").

³² *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 441 n. 16 (1978).

C. SECONDARY TACIT COLLUSION

Now consider a market in which many different sellers outsource their pricing to different competing pricing hubs. In theory, this should not raise any antitrust concerns, with so many sellers in the primary market and multiple pricing hubs in the secondary market. After all, one hub would not recommend to its clients higher prices for their products, when doing so risks their clients' losing significant sales to rival sellers, using pricing algorithms by rival hubs. As a result, the hubs' price optimization algorithms, in theory, should compete against each other, and both the primary and secondary markets should remain competitive.

But as Ariel Ezrachi and I discuss in a recent paper, when the secondary market satisfies the conditions for tacit algorithmic collusion (such as transparency of the prices that the rival algorithms recommend to its clients and the speed to respond to any discounts that the rival sellers' offer, based on the rival hub's suggestion), we may witness the emergence of conscious parallelism.³³ Basically, under these conditions, the hubs' pricing algorithms learn to collude, by suggesting higher prices to their clients, in the recognition that suggesting lower prices will erode the clients' profits and willingness to use the hub's services.

That may be the case in the RealPage and Yardi antitrust cases – numerous property managers relied on either Yardi's or RealPage's price optimization software. So, even if the plaintiffs prove that millions of tenants were harmed by having to pay higher rents, they might still lose if the court finds that the hubs' algorithms were tacitly colluding.

What makes secondary tacit collusion distinctive is that it may be achievable irrespective of the conditions on the primary market, and likely due to the conditions on the secondary market. To put it differently, it can deliver outcomes that cannot be attained on the primary market, even if all sellers were using the same algorithms, or utilizing different learning algorithms that could assimilate.

Indeed two recent economic studies have found evidence of higher prices as a result of pricing algorithms, and both cases appear to fall within the category of secondary tacit collusion. The first economic study was of German gas station markets. In dividing their sample between monopoly and non-monopoly markets, the study's authors found that when gas stations operating in Germany adopted algorithmic-pricing software, the margins in *non-monopoly* markets

³³ Ezrachi, Ariel and Stucke, Maurice E., *The Role of Secondary Algorithmic Tacit Collusion in Achieving Market Alignment*, VANDERBILT JOURNAL OF ENTERTAINMENT AND TECHNOLOGY LAW (forthcoming 2024); working paper (August 21, 2023), University of Oxford Centre for Competition Law and Policy, Working paper CCLP(L)54, University of Tennessee Legal Studies Research Paper, Available at SSRN <https://ssrn.com/abstract=4546889> or <http://dx.doi.org/10.2139/ssrn.4546889>.

increased by 11% on average over pre-adoption levels.³⁴ In comparison, in monopoly markets, these gas stations experienced only a small, non-statistically significant change in their margins. Likewise, average prices rose in *non-monopoly* markets, but not in monopoly markets.³⁵ This is consistent with tacit collusion rather than efficiencies. The economic study next examined duopoly markets. When one gas station adopted the pricing algorithm, and the other did not, margins and prices, on average did not change. But when both gas stations adopted the algorithms, the algorithms learned to tacitly collude, margins gradually increased on average by nearly 38%, and “the distribution of margins and prices generally shifts right.”³⁶

The study did not focus on which gas stations relied on which particular pricing hubs. But the gas stations did not rely on a single hub. Instead, there were multiple hubs, including a2i and Kalibrate that had contracts with German brands Orlen and Tamoil/HEM.³⁷ Other rivals included PDI³⁸ and PriceAdvantage.³⁹

The second economic paper studied algorithmic pricing on Bol.com, the largest online marketplace in the Netherlands and Belgium.⁴⁰ Based on more than two months of pricing data for around 2,800 popular products, the study found evidence of algorithmic collusion by sellers that rely on at least six different pricing algorithm providers. For products with 3 to 5 sellers, for example, the study found that the Buy Box price was only very mildly affected if only one seller was using a pricing algorithm service; but prices increased 4% if two algorithmic sellers were present. This finding was compatible with secondary tacit collusion. The study found on average higher prices for products with as many as 8 sellers (some of whom were using pricing algorithms), and algorithmic sellers won the buy box more often than traditional sellers. The higher prices, the study found, was “in line with the statements made by re-pricer software vendors, who explicitly advertise their ability to raise prices and avoid competition, even using economic textbook language of collusion.”

³⁴ Assad, Stephanie; Clark, Robert; Ershov, Daniel; Xu, Lei (2021): Algorithmic Pricing and Competition: Empirical Evidence from the German Retail Gasoline Market, CESifo Working Paper, No. 8521, Center for Economic Studies and Ifo Institute (CESifo), Munich.

³⁵ *Id.* at 29.

³⁶ *Id.* at 38-39.

³⁷ Moreover, fuel retailers in over 40 countries use Kalibrate’s Fuel Pricing to “maximize fuel profits.” - <https://kalibrate.com/products/software/kalibrate-pricing/>

³⁸ <https://pditechnologies.com/convenience-retail/increase-profits/#>

³⁹ <https://www.priceadvantage.com/fuel-pricing-software/why-priceadvantage/>

⁴⁰ Wieting, Marcel and Sapi, Geza, Algorithms in the Marketplace: An Empirical Analysis of Automated Pricing in E-Commerce (September 30, 2021). NET Institute Working Paper No. 21-06, Available at SSRN: <https://ssrn.com/abstract=3945137> or <http://dx.doi.org/10.2139/ssrn.3945137>. When the number of sellers increased to six and 8 competitors, prices increased (but not as much with 3 to 5 sellers). For products with 9 or more sellers (with at least two using algorithms) prices significantly reduced: “To sum up, consistently with tacit collusion, with medium number of competitors two algorithmic agents in the market lead to increased Buy Box prices. With a high number of rivals, algorithmic sellers compete fiercely, reducing the Buy Box prices.”

Thus, under all three scenarios, consumers pay higher prices, and enforcers cannot easily challenge this anticompetitive behavior under traditional antitrust law.

II. SLIGHTLY BROADER APPROACH

This approach acknowledges the challenges in detecting and prosecuting algorithmic collusion. To prevent these risks, enforcers and policymakers should consider other available tools, such as the merger review process. One bit of good news from the online shopping study was that tacit collusion dropped off for products with more than eight sellers.⁴¹ More empirical work is needed to understand the threshold where algorithmic collusion drops off (especially in the context of secondary tacit collusion where there may be dozens of sellers but the hubs learn to tacitly collude).

One important tool is market investigations. The DOJ Antitrust Division, however, lacks subpoena power to conduct these market investigations. But the FTC has the authority. With more data scientists and technologists,⁴² the FTC can identify markets susceptible to algorithmic collusion and evaluate whether proposed mergers would facilitate such behavior. Based on these findings, the FTC and DOJ may lower their threshold for reviewing and challenging mergers in other markets susceptible to tacit algorithmic collusion, hub-and-spoke algorithmic collusion, and STC.

Thus, to combat tacit algorithmic collusion, the agency might start looking at more markets and more 7-to-6, 6-to-5, and 5-to-4 mergers, and reconsider their approach to conglomerate mergers when tacit algorithmic collusion can be facilitated by multimarket contacts.⁴³

Similarly, to prevent hub-and-spoke algorithmic collusion, agencies would consider, among other things, whether:

- many competitors in that market outsource their pricing to a single third-party vendor;
- the leading pricing algorithm will likely improve post-merger, as the algorithm will have more data and more opportunities to experiment with higher prices and refine its pricing strategies for each client; and
- the leading algorithm, programmed to increase the profits of the vendor's clients, will likely tamper with market prices.

In assessing the risk of secondary tacit collusion post-merger, agencies would consider, among other things, mergers involving:

- leading vendors of price optimization algorithms (here the concern is not solely the potential increase in prices to the companies using the vendors' services, but the softening of competition in downstream markets);

⁴¹ *Id.*

⁴² See 2023 OECD Paper at 32-33 for other jurisdictions' hiring in this area.

⁴³ The FTC and DOJ are updating their merger guidelines to address algorithmic tacit collusion. See DOJ & FTC 2023 Draft Merger Guidelines at 10.

- acquisitions of mavericks that do not use any hubs' price optimization algorithms; or
- markets where secondary tacit collusion is already occurring.

By leveraging merger law, agencies can prevent potential harm. However, the agencies' success depends on judicial interpretation of the legal standard. Congress intended Section 7 of the Clayton Act to reach "incipient" harms.⁴⁴ What this means, as the Supreme Court "ha[s] observed many times," is that the merger law is "a prophylactic measure, intended primarily to arrest apprehended consequences of intercorporate relationships before those relationships could work their evil."⁴⁵ Given the Clayton Act's incipency standard, the Supreme Court stated that the merger law "can deal only with probabilities, not with certainties" and that a more onerous legal burden would contradict "the congressional policy of thwarting [anticompetitive mergers] in their incipency."⁴⁶ Consequently, the agency needs to show only "an appreciable danger" of algorithmic collusion post-merger; not that prices *will* increase post-merger.⁴⁷

But courts must recognize that the purpose of merger law is to address potential harms, rather than certainties, and agencies must present evidence within this framework. The problem is when courts disagree. Over the past couple of decades, some courts view themselves as "fortune tellers" charged with predicting what *will* happen post-merger.⁴⁸ This soothsaying invites the "battalions of the most skilled and highest-paid attorneys in the nation" to "enlist the services of other professionals -- engineers, economists, business executives, academics" to "render expert opinions regarding the potential procompetitive or anticompetitive effects of the transaction."⁴⁹ Judges are not innately gifted fortune tellers. Nor are they charged with this function under the Clayton Act.

But one thing is predictable: the agencies will likely lose these merger challenges, if the court requires them to prove, contrary to congressional intent, that prices *will* increase post-merger. And we will continue to pay the price.

⁴⁴ *Brown Shoe Co., Inc. v. United States*, 370 U.S. 294, 317-23 (1962); *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 362 (1963); *FTC v. Procter & Gamble Co.*, 386 U.S. 568, 577 (1967).

⁴⁵ *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 485 (1977).

⁴⁶ *FTC v. Procter & Gamble Co.*, 386 U.S. 568, 577 (1967).

⁴⁷ See DOJ & FTC Draft Merger Guidelines (2023).

⁴⁸ *New York v. Deutsche Telekom AG*, 439 F. Supp. 3d 179, 186 (S.D.N.Y. 2020) ("Adjudication of antitrust disputes virtually turns the judge into a fortuneteller."); *United States v. Am. Airlines Grp. Inc.*, No. CV 21-11558-LTS, 2023 WL 3560430, at *2 n.1 (D. Mass. May 19, 2023) (noting how merger review has become an unwieldy process); *Fed. Trade Comm'n v. Microsoft Corp.*, No. 23-CV-02880-JSC, 2023 WL 4443412 (N.D. Cal. July 10, 2023) (imposing on the government the burden to prove that the merger "will" substantially lessen competition).

⁴⁹ *Deutsche Telekom*, 439 F. Supp. 3d at 186 (noting how in most cases, "the litigation consumes years at costs running into millions of dollars").

III. A BROADER ECOSYSTEM APPROACH

The concerns underlying algorithmic collusion go beyond economic implications. Policymakers must recognize the broader risks associated with AI and algorithmic decision-making. These risks extend to the potential dehumanization and loss of human autonomy as AI assumes critical functions in society.

Consider, for example, the Center for AI Safety’s statement signed by numerous academics and AI executives: “Mitigating the risk of extinction from AI should be a global priority alongside other societal-scale risks such as pandemics and nuclear war.”⁵⁰

Why the concern?

The Biden administration’s *Blueprint for an AI Bill of Rights* identifies many risks involving AI, including examples where it has already harmed individuals.⁵¹ Many of the *Blueprint*’s examples reflect the heightened risks of an AI-dominated bureaucracy. It can be hard to deal with a bureaucracy today, whether seeking a satisfying explanation or remedy. This applies to corporate bureaucracies (such as understanding why the dominant platform delisted an app or product) or government bureaucracies (such as why the agency terminated or never approved a benefit). But the hope is that someone deep in that organization can explain the action and remedy any error.

AI-dominated bureaucracies pose greater challenges when the decision-making becomes more opaque and less accountable. As AI assumes more critical functions, and as the factors considered in reaching that decision increase in complexity, it will be harder to decipher why the algorithm did what it did and obtain relief within the bureaucracy. As the AI-dominated bureaucracy becomes harder to avoid, it becomes more dehumanizing.

Consider one example from the *Blueprint*: an insurer collects data from a person’s social media presence in deciding what life insurance rates to apply. Now consider the sensitive personal data that AI can also consider in many domains where individuals cannot effectively opt out, such as “health, employment, education, criminal justice, and personal finance.” Suppose the insurer’s algorithm considers and weighs hundreds, if not thousands, of factors. Suppose the company cannot explain exactly how its algorithm arrived at the quoted rate, but it is less concerned given that the AI-generated rates are increasing profits. Now imagine that other insurers, to increase margins, also use AI. What option does the consumer have? Except in the more egregious cases,

⁵⁰ Center for AI Safety, Statement on AI Risk: AI experts and public figures express their concern about AI risk, <https://www.safe.ai/statement-on-ai-risk>.

⁵¹ White House Office of Science and Technology Policy, *The Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People* (Oct. 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf>.

consumers cannot decipher exactly how the algorithm arrived at the price, identify any spurious correlations, or show how the algorithm improperly used their sensitive personal data.

The implications of AI are, of course, broader. We might not even know if an algorithm was responsible for passing over our resume, denying our client bail, or cutting off a disabled person from Medicaid-funded home healthcare assistance.

Thus, AI, for our purposes, raises at least three overarching concerns.

First is that few people are actually considering the potential broad-scale risks of AI. As one 2023 report observed, “Despite nearly USD 100 billion of private investment in AI in 2022 alone, it is estimated that only about 100 full-time researchers worldwide are specifically working to ensure AI is safe and properly aligned with human values and intentions.”⁵²

Second is the legal void over the design, use, and deployment of AI to prevent harm. The Biden administration’s *Blueprint*, for example, offers five principles to effectively guide this process (promoting safe and effective systems; algorithmic discrimination protections; protecting data privacy; notice and explanation – so that we know when an automated system is being used and understand how and why it contributes to outcomes that impact us; and human alternatives, consideration, and fallback – so that we can opt out, where appropriate, and have access to a person who can quickly consider and remedy problems that we may encounter). But the *Blueprint*’s principles, while a good start, are non-binding and do not constitute U.S. governmental policy. So, policymakers must agree upon the principles to address potential harms from AI (including antitrust, privacy, and consumer protection concerns), and how to implement these principles into law.

A *third* concern involves the broader ecosystem underlying AI. A few data-opolies currently dominate many key sectors of the digital economy.⁵³ As a result they can control the path of innovation within their vast ecosystems.⁵⁴ Given the volume and variety of data and tremendous computational power to teach AI, the fear is that “training the most powerful AI systems will likely remain prohibitively expensive to all but the best-resourced players.”⁵⁵ So, while there may be many applications that use ChatGBT or PaLM, only a few powerful companies will control the infrastructure underlying these generative AI models. Here, policymakers must consider the broader societal harms from such concentration, including the impact on innovation paths, and the

⁵² Future of Life Institute, *Policymaking in the Pause, What can policymakers do now to combat risks from advanced AI systems?* (April 19, 2023).

⁵³ For the implications on our privacy, well-being and autonomy, see MAURICE E. STUCKE, *BREAKING AWAY: HOW TO REGAIN CONTROL OVER OUR DATA, PRIVACY, AND AUTONOMY* (Oxford, U.K.: Oxford University Press 2022).

⁵⁴ ARIEL EZRACHI & MAURICE E. STUCKE, *HOW BIG-TECH BARONS SMASH INNOVATION — AND HOW TO STRIKE BACK* (New York, NY: HarperCollins 2022).

⁵⁵ Future of Life Institute at 7.

tools they will need – including updated antitrust, consumer protection, and privacy tools – to mitigate these harms.

CONCLUSION

AI will only compound the legislative deficit to date, such as failing to update the antitrust laws and providing individuals with greater control over their personal data through privacy legislation.

Consequently, addressing algorithmic collusion requires a multi-faceted approach.

The narrow approach informs policymakers of the strengths and weaknesses of their current antitrust tools. Congress might consider endorsing the FTC’s use of its authority under Section 5 of the FTC Act to tackle algorithmic collusion. In addition, Congress might consider displacing the unwieldy rule of reason standard with clearer legal presumptions regarding certain vertical restraints.

The slightly broader approach can point to updating other tools, such as merger review, to minimize these risks. The good news is that Congress, through bi-partisan efforts, has proposed some of the tools necessary, such as restoring the incipency standard in merger review.⁵⁶

Finally, any comprehensive policy response must address not only the algorithmic collusion concerns but also the other myriad risks associated with AI. This would include privacy legislation where individuals, without penalty,

- would have to opt into the collection and use of personal data for behavioral advertising,
- could opt out of firms’ combining data about them from either third parties or across their ecosystem’s services to profile them (except as otherwise allowed with adequate safeguards, such as credit reports under the Fair Credit Reporting Act),
- could opt out of personalized services, and
- could decide the right to limit at the onset what personal data is collected about them and for what non-advertising purpose.

Thus under the broader ecosystem approach, Congress can promote not only competition but human autonomy and well-being in an increasingly algorithm-driven digital age.

I look forward to answering your questions. Thank you.

⁵⁶ See, e.g., The Competition and Antitrust Law Enforcement Reform Act, S.225; Prohibiting Anticompetitive Mergers Act of 2022, S.3847.



Testimony of Diane Yentel

President and CEO of the National Low Income Housing Coalition
 Before the U.S. Senate Committee on the Judiciary
 Subcommittee on Competition Policy, Antitrust, and Consumer Rights
 "Examining Competition and Consumer Rights in Housing Markets"
 October 24, 2023

Chair Klobuchar, Ranking Member Lee, and members of the Subcommittee, thank you for the opportunity to testify before this committee on how renters and communities are impacted by today's uncompetitive housing market.

The National Low Income Housing Coalition (NLIHC) is dedicated to achieving racially and socially equitable public policy that ensures people with the lowest incomes have quality homes that are accessible and affordable in communities of their choice. NLIHC's members include residents of public and assisted housing, people experiencing homelessness and other low-income people in need of affordable homes, housing providers, homeless services providers, fair housing organizations, state and local housing coalitions, public housing agencies, faith-based organizations, concerned citizens, and others. While our members include a spectrum of housing interests, we do not represent any one segment of the housing field. Rather, NLIHC works on behalf of and with low-income people who receive or need federal housing assistance, especially people with extremely low incomes and people who are homeless.

Across the nation, America's lowest-income renters face a severe shortage of affordable and available homes and a significant gap between incomes and housing costs. There is a national shortage of 7.3 million homes that are affordable and available to America's lowest-income renters – those earning less than either the federal poverty rate or 30% of their area median income (AMI). The severe shortage of affordable and available homes for extremely low-income renters is a structural feature of the country's housing system, consistently impacting every state and nearly every community.¹

Housing costs are out of reach for too many of the lowest-income renters.² Rents are far higher than what the lowest-income and most marginalized renters, including seniors, people with disabilities, and working families, can spend on housing. Despite the clear and urgent need, Congress only provides housing assistance to one in four eligible households.³

Without affordable housing options, more than 10 million extremely low-income and very low-income renter households, disproportionately people of color, pay at least half their income on rent, leaving them without the resources they need to put food on the table, purchase needed medications, or otherwise make ends meet.⁴ Paying so much of their limited income on rent leaves the lowest-income families always one financial shock – an emergency or unexpected expense – from facing eviction and, in the worst cases, homelessness. On any given night, more than half a million people experience homelessness, and millions more are at risk.⁵

During the COVID-19 pandemic, federal, state, and local lawmakers responded to the growing threat of housing insecurity by providing unprecedented resources and protections to keep renters housed, including \$46.6 billion in emergency rental assistance (ERA) and a national moratorium on evictions for nonpayment of rent. These protections and resources cut evictions in half,⁶ lowered eviction filing rates to the lowest on record,⁷ and kept millions of people who otherwise would have lost their homes during the pandemic stably housed.⁸

Just as these emergency resources were depleted and pandemic-era renter protections expired, however, renters reentered a brutal housing market, with skyrocketing rents and high inflation. Eviction filing rates have now reached or surpassed pre-pandemic averages in many communities, resulting in increased homelessness.⁹

Even with the recent stabilization of rental prices, the rapid inflation we saw during 2021 and the first half of 2022 has done significant damage to affordability, especially for the lowest-income renters. Median rent of new leases in September 2023 was 24% higher than at the beginning of 2021.¹⁰ Historically, rent inflation is typically even higher for lower-priced units.¹¹

Rent increases are driven by several factors, including a growing demand for rental housing and limited supply. Rent increases can also be attributed to a mostly unregulated rental market that – especially in markets where demand far outstrips supply – permits landlords to raise rents as high as the market will allow, without regard to the impact on tenants with low incomes. Collusion may also increase rent prices. RealPage, a private equity-owned real estate tech company, is currently under investigation by the Department of Justice for possible collusion with landlords to inflate rent prices, in violation of federal antitrust laws.¹² Further, real estate investors have been purchasing low-cost homes at a high rate, leading to further increases in rental prices and putting low-income renters at greater risk of eviction.¹³ In addition to rent, landlords are increasingly imposing junk fees and other predatory fees, further increasing costs for low-income renters.¹⁴

Renters – particularly those with the lowest incomes – have severely limited options in the housing market. The lack of national renter protections leaves tenants vulnerable to unjust treatment, housing instability, and evictions. Landlords can engage in abusive and predatory behavior with few consequences. Renters facing exorbitant rent increases or excessive fees have little to no ability to move to a new home. Instead, renters can face retaliation for reporting unsafe housing conditions or illegal actions by landlords, and because so few renters have access to legal representation, many are unable to assert their legal rights.

Strengthening and enforcing federal renter protections is a critically needed solution to America's housing crisis, along with eliminating restrictive local zoning laws to increase supply, increasing investments in solutions to address the underlying shortage of affordable, accessible homes for people with the lowest-incomes, and preventing evictions and homelessness.

As Congress works towards these long-term solutions, the Biden administration must continue to take action to strengthen and enforce tenant protections and incentivize or require communities to reduce restrictive local zoning practices that inhibit the supply of rental housing.

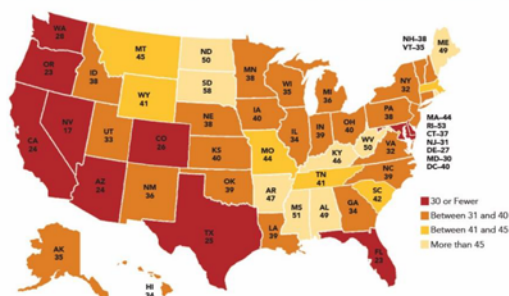
Underlying Causes of the Housing Crisis

Shortage of Affordable Housing for the Lowest-Income Renters

An underlying cause of America's housing crisis is the severe shortage of rental homes affordable and available to people with the lowest incomes. Nationwide, there is a shortage of 7.3 million homes affordable and available to extremely low-income renters, whose household incomes are at or below either the poverty guideline or 30% of their area median income (whichever is greater). For every 10 of the lowest-income renter households, there are fewer than four homes affordable and available to them.¹⁵

GAP

RENTAL HOMES AFFORDABLE AND AVAILABLE PER 100 EXTREMELY LOW INCOME RENTER HOUSEHOLDS BY STATE



The shortage of affordable and available homes for the lowest-income renters ranges from most severe to least severe, but there is no state or congressional district with enough affordable homes for its lowest-income renters. For example, in both Chair Klobuchar's state of Minnesota and Ranking Member Lee's state of Utah, there are fewer than four affordable homes available for every 10 of the lowest-income renter households. Not one of the states represented by Senators on this Subcommittee has an adequate supply of homes affordable to its lowest-income residents; the shortage ranges from fewer than three homes for every 10 extremely low-income households in Delaware to fewer than five homes for every 10 extremely low-income households in Arkansas.¹⁶

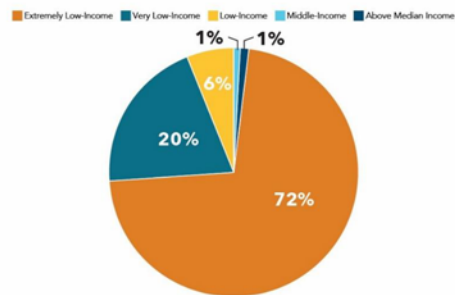
Systemic racism, past and present, has led to significant racial disparities in both renter demographics and adverse outcomes experienced by renters, such as cost burdens, evictions, and homelessness. The unaffordability of the rental market disproportionately harms Black and Latino households because they are more likely at all income levels to be renters: 27% of white households are renters, compared with 57% of Black households and 52% of Latino households.¹⁷

Moreover, renters of color are much more likely than white households to be extremely low-income renters. Nineteen percent of Black households, 17% of American Indian or Alaska Native (AIAN) households, 14% of Latino households, and 9% of Asian households are

extremely low-income renters, compared to 6% of white non-Latino households. Renters of color are also more likely to experience housing cost burdens than white, non-Latino renters. Forty-four percent of white renters are cost-burdened, while 52% of Latino renters and 55% of Black, non-Latino renters are cost-burdened. Nearly one-third of Black, non-Latino renters and 28% of Latino renters are severely cost-burdened, compared to 23% of white, non-Latino renters.¹⁸

Nationwide, more than 10 million extremely low-income and very low-income renters pay at least half their income on rent, leaving them without the resources they need to make ends meet. Housing cost burdens are concentrated among the lowest-income renters. Of the 11.3 million severely cost burdened renter households, 8.1 million (72%) have extremely low incomes and 2.3 million (20%) have very low incomes.¹⁹ Research indicates that the lowest-income households spend significantly less on other necessities – such as food, clothing, transportation, and healthcare – when they are forced to spend more than half their income on rent and utilities.²⁰

EXTREMELY LOW-INCOME RENTERS MAKE UP MAJORITY OF SEVERELY COST-BURDENED RENTERS
SEVERELY COST-BURDENED RENTER HOUSEHOLDS BY INCOME GROUP, 2021



Source: NLIHC tabulations of 2021 ACS PUMS data.

<https://nlihc.org/gap>



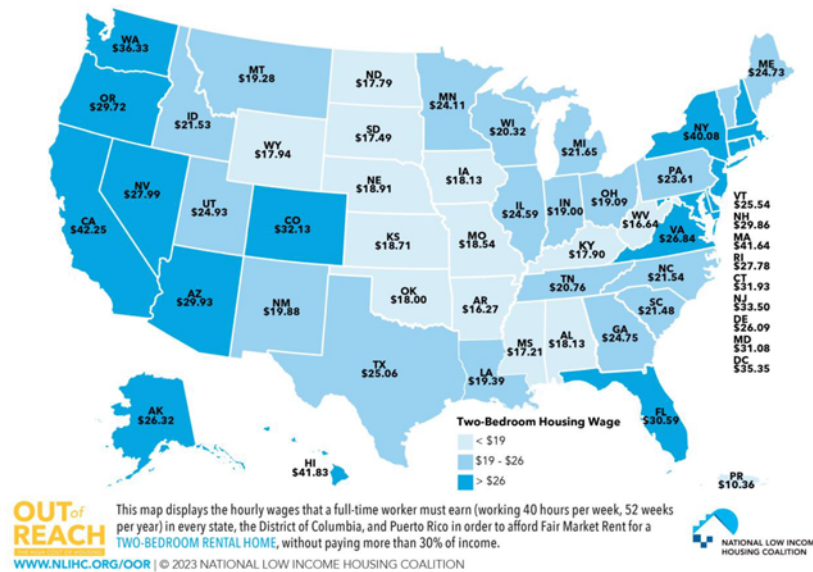
Making matters worse, the existing affordable housing stock is often in poor condition, due to decades of underfunding by the federal government, or with affordability requirements set to expire soon.²¹ Based on past trends, more than 176,000 federally assisted rental homes with expiring affordability restrictions over the next five years could be lost from the affordable housing stock if preservation efforts are not expanded. The failure to preserve federally subsidized housing can lead to unaffordable rents, a loss of habitability, or evictions for current tenants. Given the current shortage of affordable homes and chronic underfunding for federal programs, preventing the loss of the already limited supply is essential.

The Gap between Incomes and Housing Costs

A major cause of housing instability is the fundamental mismatch between growing housing costs and stagnant incomes for people with the lowest incomes. NLIHC's *Out of Reach: The High Cost of Housing* annual report estimates each locality's "Housing Wage" – the hourly wage a full-time worker must earn to afford a modest apartment without spending more than 30% of

their income on housing.²² In 2023, the national Housing Wage is \$28.58 per hour for a modest two-bedroom rental home and \$23.67 per hour for a modest one-bedroom rental home.

2023 TWO-BEDROOM RENTAL HOUSING WAGES



Thirteen of the nation's 20 most common occupations pay a lower median hourly wage than the wage a full-time worker needs to earn to afford a modest two-bedroom apartment at the national average fair market rent. Ten of these occupations, which account for more than 49 million workers, pay median wages less than the wage a full-time worker needs to earn to afford a modest one-bedroom apartment. Over 25 million people work in the five lowest-paying occupations – retail sales, food and beverage services, food preparation, home health and personal care services, and building cleaning. Workers in these occupations earn median wages that fall more than \$7.80 short of what a full-time worker needs for a one-bedroom apartment.²³

Lack of Federal Resources

The shortage of rental homes affordable to the lowest-income people is caused by market failure and the chronic underfunding of solutions. Government intervention, in the form of subsidies, is necessary to fill the gap between what the lowest-income people can afford to pay and the costs of developing and operating rental homes. Congress has consistently underfunded housing subsidies such that only one in four households eligible for housing assistance receives any.²⁴ Millions of families are placed on waitlists for housing assistance, many of them facing homelessness or overcrowding while they wait.²⁵

Congress has also divested from public housing for decades, resulting in over \$70 billion in unmet capital backlog needs.²⁶ As a result, our nation loses 10,000 to 15,000 units of public housing every year to obsolescence or decay, while other units fall into deep disrepair. This leaves public housing residents routinely exposed to hazardous and unhealthy living conditions, including lead, carbon monoxide, mold, asbestos, radon, and pests.²⁷

Current State of the Housing Market

COVID-19 Pandemic Housing Resources

In response to the urgent housing needs of renters impacted by the pandemic, the Trump administration implemented (and Congress and the Biden administration extended) a national eviction moratorium, and Congress allocated \$46.6 billion in Emergency Rental Assistance (ERA) to states and localities to keep renters stably housed. Research conducted on the efficacy of local, state, and federal eviction moratoriums provides evidence that such moratoriums were effective at reducing COVID-19 transmission and fatalities as well as eviction filings.^{28,29} Similarly, ERA helped keep millions of renter households stably housed over the course of the pandemic. State and local grantees have so far disbursed over \$39 billion for rental assistance and other housing services to renters facing housing instability.³⁰ The ERA program has made nearly 12 million payments, mostly to very low- and extremely low-income renters.³¹

While ERA has been impactful for millions of households, the program was designed to provide short-term financial assistance during the pandemic and cannot address the long-standing gaps in our housing safety net, including the lack of federal renter protections. State and local ERA programs have run out of funding, and the last eviction protections have expired, just as rents and other costs have increased across the country, worsening housing affordability for people with the lowest incomes. Evictions have increased, with eviction filing rates in some cities reaching or surpassing their pre-pandemic levels.³² As a result, homelessness has increased in many communities across the country.

High Rents and Increased Housing Instability and Homelessness

Rising rental prices are associated with an increase in homelessness. A study by the Government Accountability Office (GAO) found that changes in median rental prices and homelessness rate estimates were statistically significantly related. A \$100 increase in median monthly rental price was associated with an approximately 9% increase in the estimated homelessness rate in that community, even after accounting for other relevant factors.³³ In 2021 and 2022, renters experienced a nearly \$200 median monthly increase.

ANNUAL CHANGE IN FIRST QUARTER MEDIAN RENTAL PRICES



Recent rent increases were driven by several factors, including a growing demand for rental housing and limited supply. Between 2020 and 2022, 1.9 million renters entered the rental market. Many households entering the market were higher-income renters who may have been priced out of the increasingly competitive home-buying market. The rent increases can also be attributed to a largely unregulated rental market that permits landlords to raise rents as high as the market will allow, without regard to the impact on tenants with low incomes.

Investor Purchases

Rising rental prices are also impacted by purchases of single-family and multi-family properties by real estate investors. Despite a significant drop in investor purchases since the middle of 2022, they continue to represent a sizable share of sales. In the first half of 2023, investors purchased more than 90,000 homes.³⁴ Increased institutional investor ownership in the rental market can have negative impacts on renters and has been associated with decreased affordability, increased fees, lack of upkeep, higher rates of eviction, and worsening displacement, particularly in Black neighborhoods.³⁵ Limited affordable options for renters with low incomes, coupled with a lack of federal tenant protections, allows some corporate landlords to engage in abusive practices in pursuit of profit.

Ownership of multifamily buildings is becoming more consolidated in the hands of corporate landlords, with the number of apartment units owned by the largest 50 companies increasing from under 2 million in 2017 to 2.5 million in 2022.³⁶ These 2.5 million units represent approximately one-tenth of the country's multi-family apartment stock.³⁷ This is likely an underestimate because two of the largest firms – Blackstone and Lone Star Funds – do not participate in the survey that collects this data. Investor purchases have historically been made in low-cost Black and brown neighborhoods, and this trend continued during the pandemic.³⁸

Investors' accumulation of subsidized properties could further threaten housing affordability in the future. Two large investors – Blackstone and Starwood Capital – now own over 138,000 federally subsidized units, including many units backed by the Low-Income Housing Tax Credit

(LIHTC).³⁹ Given the time-limited affordability period of LIHTC properties and the stated strategy of investors to purchase below market rental properties and later increase their prices, it is unlikely that these apartments will remain affordable.

The accumulation of rental properties in the hands of larger investors could threaten affordability in other ways as well. Many larger investors rely on rent-setting software to determine rents, for example. Yet the nation's top provider of rent-setting software, RealPage, is under investigation by the Department of Justice for alleged collusion with landlords to inflate rents. Legal experts have raised concerns that RealPage uses private rental data to encourage landlords to increase profits by raising rent prices even if it results in a lower occupancy rate, thereby reducing the supply of affordable housing. If the allegations are true, the impact on rent prices and housing instability could be significant, given that many of our nation's largest housing providers use RealPage to set prices.

In addition to raising rents, corporate landlords have been shown to use additional fees to generate profit. Data collected by the House Financial Services Committee (HFSC) found that surveyed institutional investors increased lease fees 40% over the survey period, from an average of \$147 per lease per year in 2018 to an average of \$205 in 2021.⁴⁰ Some investors may use this strategy more than others. While lease fees for several of the companies surveyed remained steady over the four-year period, average annual lease fees for Invitation Homes' properties increased from \$201 in 2018 to \$449 in 2021.⁴¹ Investors have acknowledged that fee collection is part of their revenue generation strategy. Tricon, whose profits increased from \$113 million to \$517 million between 2020 and 2021, noted that this significant increase in profits was due in part to fees and other costs and upkeep responsibilities that were transferred to tenants.⁴²

Research suggests that corporate landlords are more likely to file for eviction than small landlords. A study of single-family rentals in Atlanta found that corporate owners were 8% more likely than small landlords to file for eviction, even after controlling for neighborhood characteristics.⁴³ The study also found that some investors are far more likely to pursue evictions than others. One institutional investor filed evictions against one-third of its tenants, while two other institutional investors filed evictions against one-quarter of their tenants.

Large landlords are also more likely to be serial eviction filers, filing for evictions repeatedly when households fall behind on their rents.⁴⁴ Serial eviction filings can significantly increase housing costs for renters beyond their monthly rent payments since filings often result in late fees and court fines.⁴⁵ One estimate finds that each eviction filing results in a 20% monthly increase in housing costs.⁴⁶ Moreover, eviction filings can make it more difficult for renters to find other landlords willing to rent to them, pushing households deeper into poverty.

Institutional investors' practices have a disproportionate impact on Black communities. Data collected by the HFSC indicate single-family rental investors purchase properties in ZIP codes whose populations are on average 40% Black, which is over three times the Black population in the U.S.⁴⁷ Research on investor purchases in southeastern cities during the COVID-19 pandemic also found that purchases were concentrated in Black and Latino neighborhoods.⁴⁸ The higher rates of investor purchases in Black neighborhoods have resulted in displacement of residents. Statistical models estimate that on average, neighborhoods in Atlanta with an investor-purchased property had 166 fewer Black residents and 109 additional white residents as a result, compared to nearby neighborhoods without an investor-purchased property.⁴⁹

Institutional investors wield significant political power and have used this power to advocate against renter protections. Five prominent rental home investment companies – American Homes 4 Rent, FirstKey Homes, Invitation Homes, Progress Residential, and Tricon Residential – have formed the National Rental Home Council, a trade association that advocates against state rent regulation policies. In 2018, Invitation Homes and Blackstone spent \$1 million and \$6 million, respectively, opposing a ballot initiative that would have allowed rent regulation in California cities.^{50,51} Institutional investors also lobbied to reverse the federal eviction moratorium during the COVID-19 pandemic, with some of these owners continuing to evict tenants unscrupulously and unlawfully during the protected period.^{52,53}

Lack of Federal Tenant Protections

The lack of competition in the housing market contributes to a power imbalance between renters and landlords that puts renters at greater risk of housing instability, harassment, and homelessness, while also fueling racial inequity. Broad and robust tenant protections – including laws ensuring legal representation in eviction court and prohibiting source-of-income discrimination, as well as “just cause” eviction laws – are needed to rebalance the power that currently tilts heavily in favor of landlords at the expense of low-income and marginalized tenants.

In many states, there are no federal protections against arbitrary, retaliatory, or discriminatory evictions, or other abusive practices by landlords. Many low-income tenants who use housing subsidies like housing vouchers, emergency rental assistance, and other forms of public assistance struggle to find or maintain safe, quality, affordable housing due to source-of-income discrimination – the practice of denying an individual full and equal access to housing based on their lawful source of income. Discrimination by landlords against renters can prevent households from effectively using federal, state, or local rental assistance and is often a pretext for illegal discrimination against renters of color, women, and people with disabilities.⁵⁴

In most states and localities across the country, landlords are not required to provide a reason for evicting a tenant at the end of the lease term or for evicting a tenant without a lease. Landlords who are unable to evict a tenant during their lease term may choose not to renew the tenant’s lease and use the lease holdover as grounds for eviction. A tenant at the end of their lease is also at risk of unreasonable rental increases.⁵⁵ When a tenant receives an eviction notice, faces rent hikes, or fears displacement, they may choose to leave their unit – or “self-evict” – rather than go to court. Those who pursue legal action often find that no laws exist to protect them from eviction at the end of a lease term and that having an eviction judgment on their record creates further barriers to obtaining and maintaining future housing.⁵⁶

Despite the broad and lasting consequences of evictions, only 10% of renters in eviction court receive legal representation, compared to 90% of landlords.⁵⁷ When tenants have legal representation during the eviction process, they are more likely to avoid eviction and remain in their homes.⁵⁸

Immediate Actions Needed

FY 2024 Housing Investments

To invest in affordable housing at the scale needed, Congress must reject any proposal to impose arbitrary and austere caps on domestic spending, such as those currently proposed by

House Republicans, or those that were established under similar circumstances in the “Budget Control Act of 2011” (BCA). The BCA, enacted as a “compromise” to lift the debt ceiling, created arbitrarily low spending caps that led to disinvestment in key affordable housing and homelessness programs for a decade, preventing our nation from making the investments needed to address America’s housing and homelessness crisis.

Administrative Action

In the absence of quick Congressional action, the Biden-Harris administration must continue to take critical steps to protect America’s lowest-income and most marginalized renters from the harmful impacts of inflation and rents outpacing wages, high rates of eviction filings, and increasing homelessness.

Federal Housing Finance Agency (FHFA)

This summer, FHFA released a Request for Information about how the agency can create and enforce renter protections for households living in rental properties with federally backed mortgages. Given the significant need for bold action, FHFA should establish, implement, and enforce the renter protections [recommended by NLIHC](#) and endorsed by more than [350 local, state, and national organizations](#), as well as those submitted by NLIHC’s 2022-2023 [Tenant Leader Cohort](#) of people with lived experience. At minimum, FHFA should establish racial and social equity as an explicit goal of new renter protections, create mandatory and enforceable habitability requirements for all rental properties with federally backed mortgages, and pair any new renter protections with strong enforcement mechanisms.

FHFA should also tie all federally backed mortgages to meaningful new tenant protections, including:

- Source-of-income protections to prohibit landlords of properties with federally backed mortgages from discriminating against households utilizing rental assistance, such as Housing Choice Vouchers (HCVs), Supplemental Security Income (SSI), or local rental assistance, to pay the rent.
- “Just cause” eviction standards to provide housing stability for tenants by limiting the causes for which a landlord can evict a tenant or refuse to renew a tenant’s lease when the tenant is not at fault or in violation of any law.
- Prohibitions on rent gouging to prevent landlords from dramatically and unreasonably raising rents.
- Requirements to ensure housing is safe, decent, accessible, and healthy for renters and their families.

Long-Term Solutions to the Housing Crisis

A stronger housing safety net is needed to prevent evictions and homelessness and to reduce housing instability among the lowest-income renters. Addressing the root causes of the housing affordability problem requires a sustained commitment to establishing and enforcing strong renter protections.

Congress must also bridge the gap between incomes and rent through universal rental assistance, invest in new affordable housing and preserving affordable rental homes that

already exist for America's lowest-income and most marginalized renters, and provide emergency assistance to stabilize renters when they experience financial shocks.

Strengthen and Enforce Renter Protections

During the pandemic, state and local jurisdictions across the country recognized the crucial role tenant protections play in preventing evictions and ensuring housing stability for the most marginalized households. Since 2021 alone, states and localities have passed or implemented over 200 new laws or policies to protect tenants from eviction and keep them stably housed.⁵⁹ Jurisdictions passed short-term protections to support renters during the pandemic, including eviction moratoriums, pauses on evictions while ERA applications were under review, and efforts to coordinate the eviction process with ERA. State and local governments also enacted long-term protections, such as right-to-counsel legislation, source-of-income discrimination laws, legal defense appropriations, and eviction record sealing legislation.⁶⁰

To ensure the safety and just treatment of renter households across all jurisdictions, Congress should enact similar legislation to establish vital national protections for renters. Such protections should include source-of-income laws to prevent landlords from discriminating against voucher holders, "just cause" eviction standards, guaranteed access to legal counsel to put renters on more equal footing with landlords, eviction record sealing and expungement requirements, and limits on excessive rent increases.

Bridge the Gap between Incomes and Housing Costs

Congress should expand rental assistance to make it universally available to all eligible households in need. Making rental assistance available to all eligible households is central to any successful strategy for solving the housing crisis. Rental assistance is a critical tool for helping the lowest-income people afford decent, stable, accessible housing, and the program has a proven record of reducing homelessness and housing poverty.⁶¹ A growing body of research finds that rental assistance can improve health and educational outcomes, increase children's chances of long-term success, and advance racial equity.⁶²

Expand and Preserve the Supply of Affordable Rental Homes

Addressing the shortage of affordable and available housing for the lowest-income households requires both preserving existing affordable housing stock and increasing the supply of affordable housing.

Congress must provide robust resources to preserve the roughly 900,000 public housing units that are currently home to over 2 million residents, the majority of whom are people of color. Public housing is critical to ensuring people with the greatest needs have an affordable and accessible place to call home, and the preservation of this community asset is key to any strategy to address America's housing crisis.

To increase the supply of deeply affordable and accessible housing, Congress should expand funding for the national Housing Trust Fund (HTF) to at least \$40 billion annually. The HTF is the only federal housing program exclusively focused on serving households with the lowest incomes and most acute housing needs.

In addition, the federal government should incentivize or require state and local governments that receive federal transportation and infrastructure funding to eliminate restrictive zoning rules

that increase the cost of development, limit housing supply for all renters, and reinforce segregation and structural racism in housing and other systems.

Provide Emergency Rental Assistance to Stabilize Families and Prevent Evictions

Permanent solutions are needed to combat the evictions and homelessness that can occur when low-income renters experience income loss or unexpected financial shocks. Congress should build on the lessons learned and successes of Treasury's ERA program by enacting a permanent program to help stabilize families before they face eviction, displacement, and, in the worst cases, homelessness. Providing temporary assistance for households would help prevent the many negative consequences associated with evictions and homelessness, including physical and mental health challenges, loss of possessions, instability for children, and increased difficulty finding a new home.⁶³

Conclusion

Significant and sustained federal investments, coupled with strengthened and enforced renter protections, are needed to ensure that people with the lowest incomes and those who are most marginalized have stable, accessible, and affordable homes. NLIHC looks forward to a continued partnership with members of Congress and the administration in advancing the large-scale investments and anti-racist reforms needed to repair the gaping holes in our country's social safety net and ensure that every renter has an affordable place to call home.

¹ National Low Income Housing Coalition. (2023). *The Gap: A Shortage of Affordable Homes*. Washington, DC. Retrieved from: <https://nlihc.org/gap>

² National Low Income Housing Coalition. (2023). *Out of Reach: The High Cost of Housing*. Retrieved from: <https://nlihc.org/oor>

³ Fischer, W. & Sard, B. (2017). Federal housing spending is poorly matched to need. Center on Budget and Policy Priorities. Retrieved from: <https://www.cbpp.org/research/housing/federal-housing-spending-is-poorly-matched-to-need>

⁴ National Low Income Housing Coalition. (2023). *The Gap: A Shortage of Affordable Homes*. Washington, DC. Retrieved from: <https://nlihc.org/gap>

⁵ National Alliance to End Homelessness. (2021). *State of homelessness: 2021 edition*. Retrieved from: <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-2021/>

⁶ Eviction Lab. (2023). *COVID-Era Policies Cut Eviction Filings By More Than Half*. Retrieved from: <https://evictionlab.org/covid-era-policies-cut-eviction-filings-by-more-than-half/>

⁷ Desmond, M. (2023). *Poverty, By America*. (First edition). Crown.

⁸ U.S. Department of the Treasury. (2023). *Treasury Announces \$690 Million to be Reallocated to Prevent Eviction*. Retrieved from: <https://home.treasury.gov/news/press-releases/jy1213>

⁹ Eviction Lab. (2018). National Eviction Map [map]. Retrieved from: <https://evictionlab.org/map>

¹⁰ ApartmentList (2023). Historic Rent Estimates, downloaded on October 17, 2023. Retrieved from: www.apartmentlist.com/research/category/data-rent-estimates

¹¹ McCarthy, J., Peach, R., & Ploenke, M. (2015). The measurement of rent inflation. New York, NY: Federal Reserve Bank of New York. https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr425.pdf

¹² Facundo, J. (2023). *Scandal-Plagued Rent-Setting Software Execs Presented as Neutral Experts*. The American Prospect. Retrieved from: <https://prospect.org/infrastructure/housing/2023-08-18-scandal-plagued-rent-setting-software-realpage/>

¹³ Vogell, H. (2022). *When Private Equity Becomes Your Landlord*. ProPublica. Retrieved from: <https://www.propublica.org/article/when-private-equity-becomes-your-landlord>

- ¹⁴ Ivanova, I. (2023). *Rents Are Too Damn High – And A Scourge of "Junk" Fees Is Making It Worse, Studies Say*. CBS News. Retrieved from: <https://www.cbsnews.com/news/rent-inflation-junk-fees/>
- ¹⁵ National Low Income Housing Coalition. (2023). *The Gap: A Shortage of Affordable Homes*. Washington, DC. Retrieved from: <https://nlihc.org/gap>
- ¹⁶ National Low Income Housing Coalition. (2023). Congressional district housing profiles: Minnesota, Utah, Delaware, Arkansas, Washington, DC. Retrieved from: <https://nlihc.org/gap>
- ¹⁷ U.S. Census Bureau. (2022). *2020 American Community Survey 5-year Subject Tables* [Data set]. Retrieved from: <https://data.census.gov/cedsci/table?q=United%20States>
- ¹⁸ National Low Income Housing Coalition. (2023). *The Gap*. Retrieved from <https://nlihc.org/gap>
- ¹⁹ Ibid.
- ²⁰ Joint Center for Housing Studies of Harvard University. (2022). *America's rental housing 2022*. Cambridge, MA. Retrieved from: https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf
- ²¹ Public and Affordable Housing and Research Corporation & the National Low Income Housing Coalition. (2021). *2021 Picture of Preservation*. Retrieved from: https://preservationdatabase.org/wp-content/uploads/2021/10/NHPD_2021Report.pdf
- ²² National Low Income Housing Coalition. (2023). *Out of Reach: The High Cost of Housing*. Retrieved from: <https://nlihc.org/oor>
- ²³ Ibid.
- ²⁴ Fischer, W. & Sard, B. (2017). Federal housing spending is poorly matched to need. Center on Budget and Policy Priorities. Retrieved from: <https://www.cbpp.org/research/housing/federal-housing-spending-is-poorly-matched-to-need>
- ²⁵ Acosta, S. & Guerrero, B. (2021). Long waitlists for housing vouchers show pressing unmet need for assistance. Center on Budget and Policy Priorities. Retrieved from: <https://www.cbpp.org/research/housing/long-waitlists-for-housing-vouchers-show-pressing-unmet-need-for-assistance>
- ²⁶ National Low Income Housing Coalition. (2022). Public housing. *Advocates' Guide 2022*. Retrieved from: https://nlihc.org/sites/default/files/2022-03/2022AG_4-08_Public-Housing.pdf
- ²⁷ Fischer, W., Acosta, S., & Bailey, A. (2021). An agenda for the future of public housing. Center on Budget and Policy Priorities. Retrieved from: <https://www.cbpp.org/research/housing/an-agenda-for-the-future-of-public-housing>
- ²⁸ Leifheit, K., Linton, S., Raifman, J., Schwartz, G., and Benfer, E., Zimmerman, F., & Pollack, C. (2020). Expiring eviction moratoriums and COVID-19 incidence and mortality. Retrieved from: <http://dx.doi.org/10.2139/ssrn.3739576>
- ²⁹ Marcal, K., Fowler, P., & Hovmand, P.S. (2022). Feedback dynamics of the low-income rental housing market: Exploring policy responses to COVID-19. Retrieved from: <https://arxiv.org/abs/2206.12647?context=cs>
- ³⁰ National Low Income Housing Coalition. (2023). Treasury Emergency Rental Assistance (ERA) Dashboard. Retrieved on October 17, 2023, from: <https://nlihc.org/era-dashboard>
- ³¹ U.S. Department of the Treasury. (2023). ERA1 & ERA2 Quarterly Demographic Data: Q1 2021-Q4, 2022 [xls]. Retrieved on March 22, 2023, from: <https://home.treasury.gov/system/files/136/Q1-2021-Q4-2022-ERA-Demographic-Data.xlsx>; and U.S. Department of the Treasury. (2023). ERA2 Cumulative Program Data: Q2 2021-Q2 2023 [xls]. Retrieved on October 16, 2023, from: <https://home.treasury.gov/system/files/136/Q2-2021-Q2-2023-ERA2-Reporting-Data.xlsx>.
- ³² Eviction Lab. (2022). *Eviction tracking system*. Retrieved on July 26, 2022, from: <https://evictionlab.org/eviction-tracking/>
- ³³ U.S. Government Accountability Office. (2020). *Better HUD oversight of data collection could improve estimates of homeless population*. GAO-20-433. Retrieved from: <https://www.gao.gov/products/gao-20-433>
- ³⁴ Anderson, D. (2023). *Real estate investors pull back, buying 45% fewer homes than a year ago*. Redfin News. Retrieved from: <https://www.redfin.com/news/investor-home-purchases-drop-q2-2023/>
- ³⁵ Vogell, H. (2022). When private equity becomes your landlord. *ProPublica*. Retrieved from: <https://www.propublica.org/article/when-private-equity-becomes-your-landlord>
- ³⁶ National Multifamily Housing Council. (2022). NMHC 50 largest apartment owners. Retrieved from: <https://www.nmhc.org/research-insight/the-nmhc-50-top-50-lists/2022-top-owners-list/>

- ³⁷ Vogell, H. (2022). When private equity becomes your landlord. *ProPublica*. Retrieved from: <https://www.propublica.org/article/when-private-equity-becomes-your-landlord>
- ³⁸ Raymond, E., Zha, Y., Knight-Scott, E., & Cabrera, L. (2022). Large corporate buyers of residential rental housing during the COVID-19 pandemic in three southeastern metropolitan areas. Georgia Tech Planning and Property Lab. Retrieved from: <https://sites.gatech.edu/planningproperty/recent-publications/report-2022-1/>
- ³⁹ Private Equity Stakeholder Institute. (2022). Private equity firms now rank among the largest owners of US subsidized affordable housing properties. Retrieved from: <https://pestakeholder.org/news/private-equity-firms-now-rank-among-the-largest-owners-of-us-subsidized-affordable-housing-properties>
- ⁴⁰ House Financial Services Committee, "Memorandum," June 23, 2022, <https://financialservices.house.gov/uploadedfiles/hhrq-117-ba09-20220628-sd002.pdf>
- ⁴¹ House Financial Services Committee, "Memorandum Appendices."
- ⁴² Lopez, Kattan, & Ash, "The National Rental Home Council."
- ⁴³ Raymond, Zha, Knight-Scott, & Cabrera, "Large corporate buyers of residential rental housing during the COVID-19 pandemic in three southeastern metropolitan areas."
- ⁴⁴ Immergluck, D., Ernsthausen, J., Earl, S., & Powell, A. (2020). Evictions, large owners, and serial filings: Findings from Atlanta. *Housing Studies*, 35(5), 903-924. Retrieved from: <https://www.tandfonline.com/doi/full/10.1080/02673037.2019.1639635>
- ⁴⁵ Leung, L., Hepburn, P., & Desmond, M. (2021). Serial eviction filing: Civil courts, property management, and the threat of displacement. *Social Forces*, 100(1), 316-344. Retrieved from: <https://academic.oup.com/sf/article/100/1/316/5903878>
- ⁴⁶ Leung, Hepburn, & Desmond, "Serial Eviction Filing."
- ⁴⁷ House Financial Services Committee, "Memorandum."
- ⁴⁸ Raymond, Zha, Knight-Scott, & Cabrera, "Large corporate buyers of residential rental housing during the COVID-19 pandemic in three southeastern metropolitan areas."
- ⁴⁹ Raymond, E. L., Miller, B., McKinney, M., & Braun, J. (2021). Gentrifying Atlanta: Investor purchases of rental housing, evictions, and the displacement of Black residents. *Housing Policy Debate*, 31: 818-834. doi: 10.1080/10511482.2021.1887318. Retrieved from: <https://www.nlihc.org/sites/default/files/Gentrifying-Atlanta-Investor-Purchases-of-Rental-Housing-Evictions-and-the-Displacement-of-Black-Residents.pdf>
- ⁵⁰ Lopez, Kattan, & Ash, "The National Rental Home Council."
- ⁵¹ Vogell, "When Private Equity Becomes Your Landlord."
- ⁵² Lopez, Kattan, & Ash, "The National Rental Home Council."
- ⁵³ House Select Subcommittee on the Coronavirus Crisis. (2022). Examining pandemic evictions: A report on abuses by four corporate landlords during the coronavirus crisis. Retrieved from: <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022.07.28%20SSCC%20Staff%20Report%20Examining%20Pandemic%20Evictions.pdf>
- ⁵⁴ Fasanelli, A. K. & Tegeler, P. (2019). Your money's no good here: Combatting source of income discrimination in housing. American Bar Association. Retrieved from: https://www.americanbar.org/groups/crsi/publications/human_rights_magazine_home/economic-justice/your-money-s-no-good-here--combatting-source-of-income-discrimin/
- ⁵⁵ Vasquez, J., Calabro, A., Johnson, K., & Gallagher, S. (2022). Tenant protections and emergency rental assistance during and beyond the COVID-19 pandemic. National Low Income Housing Coalition. Retrieved from: <https://nlihc.org/sites/default/files/Promoting-Housing-Stability-Through-Just-Cause-Eviction-Legislation.pdf>
- ⁵⁶ National Law Center on Homelessness & Poverty. (2018). Protect tenants, prevent homelessness. Retrieved from: <https://homelesslaw.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>
- ⁵⁷ Desmond, M. (2015). Unaffordable America: Poverty, housing, and eviction. Institute for Research on Poverty. Retrieved from: <https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf>
- ⁵⁸ Park, S. & Pollock, J. (2021). Tenants' right to counsel is critical to fight mass evictions and advance race equity during the pandemic and beyond. American Civil Liberties Union. Retrieved from: <https://www.aclu.org/news/racial-justice/tenants-right-to-counsel-is-critical-to-fight-mass-evictions-and-advance-race-equity-during-the-pandemic-and-beyond>
- ⁵⁹ National Low Income Housing Coalition. (2022). ERASE Project: Tenant Protections Resources. Retrieved from: <https://nlihc.org/tenant-protections>

⁶⁰ Vasquez, J., Calabro, A., Johnson, K., & Gallagher, S. (2022). Tenant protections and emergency rental assistance during and beyond the COVID-19 pandemic. National Low Income Housing Coalition. Retrieved from: https://nlihc.org/sites/default/files/Tenant-Protections_Emergency-Rental-Assistance-during_beyond_COVID-19_Pandemic.pdf

⁶¹ Center on Budget and Policy Priorities. (2017). Housing Choice Voucher fact sheets. Retrieved from: <https://www.cbpp.org/housing-choice-voucher-fact-sheets>

⁶² Opportunity Starts at Home Campaign. (2023). Housing influences outcomes across many sectors and the research shows it. Retrieved from: <https://www.opportunityhome.org/related-sectors/>

⁶³ Himmelstein, G. & Desmond, M. (2021). Eviction and health: A vicious cycle exacerbated by a pandemic. *Health Affairs*. Retrieved from: <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/>



October 24, 2023

Chairwoman Amy Klobuchar
Senate Judiciary Subcommittee on
Competition Policy, Antitrust, and
Consumer Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510

Ranking Member Mike Lee
Senate Judiciary Subcommittee on
Competition Policy, Antitrust, and
Consumer Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairwoman Klobuchar and Ranking Member Lee,

On behalf of the nearly 100,000 combined members of the National Multifamily Housing Council (NMHC)¹ and the National Apartment Association (NAA),² we are writing regarding the hearing titled, "Examining Competition and Consumer Rights in Housing Markets" to share the insights of the multifamily housing industry. NMHC and NAA are committed to working together with policymakers and the Administration to support consumers by addressing ongoing challenges in the housing market, in particular the housing affordability crisis in the United States.

NMHC and NAA members are focused on creating positive outcomes for renters and have demonstrated their commitment to working with a variety of communities to make housing options better. The relationship between a housing provider and a resident is already largely and appropriately regulated at the state and local levels, which consider the unique needs of local communities and their housing markets.

Residents are the customers of the rental housing industry; thus, the professionally managed apartment industry is, by definition, resident centered. The relationships between housing providers and residents, the community and the broader housing market are governed by layers of statutes, case law, regulations, and private contractual agreements, all of which provide specific protections and responsibilities. This includes renter protections in the application process, in building codes, contracts, landlord and tenant, fair housing, eviction, consumer reporting and debt collection laws, as well as enforcement provisions. Lease agreements outline the rights and responsibilities between residents and housing providers and are enforced by state and local courts.

Housing Affordability and the Market Dynamics of Supply and Demand

While these protocols are well established, there simply are not enough rental units to meet the growing consumer demand. According to [research conducted by Hoyt Advisory Services and Eigen10 Advisors, LLC](#), and commissioned by NMHC and NAA, residents across

¹ Based in Washington, D.C., NMHC is a national nonprofit association that represents the leadership of the apartment industry. Our members engage in all aspects of the apartment industry, including ownership, development, management and finance, who help create thriving communities by providing apartment homes for nearly 40 million Americans, contributing \$3.4 trillion annually to the economy. NMHC advocates on behalf of rental housing, conducts apartment-related research, encourages the exchange of strategic business information and promotes the desirability of apartment living.

² NAA serves as the leading voice and preeminent resource through advocacy, education, and collaboration on behalf of the rental housing industry. As a federation of 141 state and local affiliates, NAA encompasses over 92,000 members representing more than 11 million apartment homes globally. NAA believes that rental housing is a valuable partner in every community that emphasizes integrity, accountability, collaboration, community responsibility, inclusivity, and innovation.

the United States are counting on the construction of 4.3 million new apartment homes by 2035. Other key findings from the study include:

- **Shortage of 600,000 Apartment Homes.** The 4.3 million apartment homes needed includes an existing 600,000 apartment home deficit because of underbuilding after the 2008 financial crisis.
- **Loss of Affordable Units.** The number of affordable units (those with rents less than \$1,000 per month) declined by 4.7 million from 2015 to 2020.
- **Homeownership.** Apartment demand also factors in a projected 3.8 percent increase in the homeownership rate.
- **Immigration.** Immigration is a significant driver of apartment demand, and levels tapered before the pandemic and have remained low. A reversal of this trend would significantly increase apartment demand.

For more information on this research, please visit www.weareapartments.com

It is important to note that NMHC and NAA members are reporting that current economic and regulatory challenges are causing them to cut back significantly on development activities, in some cases, by as much as 50 percent. This trend will have long-term negative impacts on the supply of affordable housing if it continues. NMHC's October 2023 Quarterly Survey of Apartment Market Conditions also indicates the following troubling statistics, all of which worsened from the July 2023 Quarterly Survey:

- Over half of respondents (57 percent) reported lower sales volume from three months prior.
- 64 percent of respondents reported equity financing to be less available than three months ago, marking the seventh straight quarter of less availability; and
- 83 percent said it was a worse time for mortgage borrowing compared to three months earlier, the ninth consecutive quarter in which debt financing became less available.

Additional Federal Housing Regulations Increase the Cost of Housing and Exacerbate the Housing Shortage

In January 2023, the Administration released the [White House Blueprint for a Renters Bill of Rights](#). This effort called on multiple agencies, including Consumer Financial Protection Bureau (CFPB), Department of Justice, Housing and Urban Development (HUD), Department of Defense, and Federal Housing Finance Agency (FHFA), to “development policies and practices that promote fairness for Americans living in rental Housing.” Our members strive to create thriving communities and successful resident experiences. As such, we appreciate the importance of federal, state, and local laws and regulations that are already in place that create rights and responsibilities for residents and housing providers alike.

Implementing an additional layer of federal regulation on top of what is already an overly complicated set of federal, state and local compliance responsibilities for housing providers specific to a given market is ill advised and will ultimately hurt renters. Doing so would serve to increase market uncertainty, and disincentivize investment in housing, especially federally-backed or federally-assisted affordable housing, where there is often greater risk and smaller margins. Instead, we should focus on solutions that encourage new housing supply and remove the true barriers to housing construction, preservation and rehabilitation.

As part of the Administration's call to action, several federal agencies requested public input as they consider federalizing landlord and tenant requirements and expanding federal regulation of the housing market. NAA and NMHC provided industry perspective in comments for all of these requests, including the FHFA's request for input on expanded landlord and tenant requirements for enterprise-backed properties³, HUD's advance notice of proposed rulemaking on Section 504 regulations⁴, and CFPB and Federal Trade Commission's (FTC) request for information on resident screening and consumer reporting in rental housing⁵. Additionally, our organizations work closely with our coalition partners to provide broader real estate perspective as the Administration considers changes to federal policy, including [coalition letter signed by 18 real estate organizations](#) responding to the FHFA Request.

The central theme in these comments is that existing federal, state and local laws already heavily regulate the relationship between a rental housing provider and their residents and provide protections to both parties in housing. Additional federal layers of regulation will only increase complexity and cost while creating disincentives for new development of much-needed rental housing. Rental housing is a low-margin business. On average, for every rent dollar collected in the U.S., \$0.93 is allocated towards the essential expenses necessary to operate rental communities. These expenses include property maintenance, employee salaries, property taxes, insurance, and capital improvements. This financial structure underscores the industry's commitment to providing quality housing while also reinforcing its vulnerability to operating cost increases. With such a slim margin, any substantial rise in operating costs can profoundly impact the sustainability of rental housing providers, potentially affecting housing stability for millions of Americans.⁶

Sustainable Solutions to Housing Affordability Challenges

1. Deploy the Housing Supply Action Plan

NMHC and NAA urge Congress to work with the Biden Administration to implement provisions in the Housing Supply Action Plan issued in May 2022 that aim to address the myriad challenges to develop new housing and would dramatically increase much-needed supply, such as:

- Reward jurisdictions that have reformed zoning and land-use policies with higher scores in certain federal grant processes, for the first time at scale;
- Deploy new financing mechanisms to build and preserve more housing where financing gaps currently exist;
- Expand and improve existing forms of federal financing, including for affordable multifamily development and preservation; and
- Work with the private sector to address supply chain challenges and improve building techniques.

2. Reduce Barriers to Development

³ See NAA and NMHC's joint comment letter at <https://www.naa.org/sites/default/files/2023-08/NMHC%20Enterprise%20Tenant%20Protections%20Comment%20Letter%20Final.pdf>.

⁴ See NAA, NMHC, National Leased Housing Association, and Council for Affordable and Rural Housing's comments at <https://www.regulations.gov/comment/HUD-2023-0029-0325>.

⁵ See NAA and NMHC's joint comment letter at <https://www.nmhc.org/globalassets/advocacy/comment-letters/2023/2023-05-30-nmhc-naa-comments-to-ftc-cfpb-on-resident-screening-rfi.pdf>.

⁶ <https://www.naa.org/breaking-down-one-dollar-rent-2023>

Rental housing providers stand ready to help meet current and future demand but cannot do so alone. Federal, state, and local policymakers also must play a role. Regulatory, administrative, and political obstacles at all levels of government prevent us from delivering the housing our country so desperately needs.

Even in communities that want and desperately need rental housing development, we face hurdles like zoning restrictions, rent control and other onerous local requirements (e.g., building code provisions that have nothing to do with health or safety, land or infrastructure donation requirements and ill-fitting transportation and parking mandates). All of which account for an average of 40.6 percent of multifamily costs further impacting affordability – [according to research released by NMHC and the National Association of Home Builders \(NAHB\)](#).

Although smart regulations can play an important role in ensuring the health and wellbeing of the American public, the NMHC-NAHB research found that many regulations can go far beyond those important goals and impose costly mandates on developers that drive housing costs higher. Easing regulations could go a long way to addressing the housing affordability challenges faced by communities across the nation while making critical investments in infrastructure of all types. Looking forward, at a macro level, we urge Congress to redouble its efforts to incentivize states and localities to:

- Reduce barriers to housing production and rehabilitation;
- Streamline and fast track the entitlement and approval process;
- Provide density bonuses and other incentives for developers to include workforce units in their properties;
- Enable “by-right” zoning and create more fully entitled parcels;
- Defer taxes and other fees for a set period of time;
- Lower construction costs by contributing underutilized buildings and embrace new technology driven construction advancements; and
- Encourage higher density development near jobs and transportation.

3. Reject Price Controls

Decades of research and real-world case studies show that rent regulation devastates rental housing and harms affordability. Rent regulation will not add a single new unit of housing. In fact, it has the opposite effect. Rent controls distort the housing market by deterring or discouraging the development of rental housing and investment in maintenance and rehabilitation.

With little to no ability to earn a profit, developers and investors will shift their investments to other non-rent regulated jurisdictions—the [NMHC/NAHB cost of regulations report](#) indicated 88 percent of respondents would avoid working in jurisdictions with rent control. A study conducted by ndp | analytics on behalf of NAA from December 2022 to February 2023 reveals significant adverse effects of rent control on housing providers and developers in markets with rent control policies. Interviews with entities ranging from large firms to small mom-and-pop businesses indicate that over 70% have been compelled to alter their investment strategies, including decreased investments, relocation of development plans, or complete withdrawal, due to these policies. This underscores the substantial influence of rent control on real estate investment and development activities.

In practice, rent control policies have the effect of increasing the cost of all housing by forcing a growing community to compete for fewer housing units and reducing the quality of rental housing. This is why NMHC, NAA and other national real estate trade organizations recently [sent](#)

[a letter](#) to Director Sandra Thompson urging FHFA to reject imposing rent regulation as a condition of Enterprise-backed financing.

NMHC and NAA encourage lawmakers to promote proven alternatives to rent control that address the critical affordable housing shortage, making rents more affordable to lower-income residents and encouraging development of new housing at a variety of rental levels.

4. Resist Efforts to Broadly Classify Fees as “Junk”

NMHC and NAA members work tirelessly to provide consumers with housing that is affordable and have championed many efforts to expand the housing market to provide more options. As part of this work, NMHC and NAA members believe that transparency in the cost of rental housing is positive for renters and housing providers alike.

It is disappointing, however, that fees associated with the industry continue to be mischaracterized. Federal policymakers have [recently suggested](#) that rental housing residents are pervasively being taken advantage of by housing providers. This rhetoric comes on the heels of dozens of new proposals from federal agencies in the past two years, which would make it more costly to provide housing and to adequately address the needs in our communities and of our residents. Two weeks ago, the FTC issued a proposed rule related to “junk fees” that may add even more complexity to providing housing by creating opaque new requirements under the broad umbrella of its Unfair Deceptive and Abusive Practices (UDAP) authority.

In reality, fees that are assessed are not “junk fees,” nor hidden or misleading as suggested in the proposed rule. They reflect actual costs of doing business to manage and operate rental communities. Such fees include remunerations for services, amenities, offerings, and other activities associated with renting and are communicated and fully disclosed to residents during the leasing process. The Secretary of HUD also sent a [letter](#) targeting certain fees, such as application fees, without considering the legitimate business purpose they serve. Additionally, resident screening serves as a critical part of property management and operations and is often required by the Federal government at HUD and other government supported housing communities.

It allows housing providers to evaluate whether a potential resident is capable of and likely to fully comply with the terms of their lease. These foundational measures include evaluation of an individual’s ability to make timely and consistent rental payments, whether an applicant poses a foreseeable safety risk, and whether an applicant may infringe upon other residents’ rights or interfere with property operations. Moreover, screening helps identify and counter fraud – including the growing occurrence this practice resident screening ultimately benefits all residents, but there are costs associated with screening that must be covered in some way.

A narrow focus on certain fees in certain industries is a misguided approach to consumer protection that overlooks the larger picture of ensuring a vibrant marketplace that creates housing opportunities and options for consumers. We encourage policymakers to study the utility of fees in the housing market in a meaningful way, rather than labeling actions that cover valid operational and management expenses as “junk fees.”⁷

⁷ For more information, see the NMHC- NAA joint statement on rental fees for a recent Senate Banking and Urban Affairs Committee hearing entitled, “Taking Account of Fees and Tactics Impacting Americans’ Wallets.”

5. Avoid Policies That Limit Innovation and Technology

Housing providers rely on a variety of processes and tools to ensure our properties are properly managed and residents have a successful experience. Resident application, lease renewal, rental pricing and other property management needs can be time-consuming, costly and inconsistent, despite the best efforts of property owners and managers. Some housing providers use, or are considering using, technology to address these issues. In other cases, housing providers are turning to new AI tools to combat rising operational threats that are difficult to address – such as applicant fraud – using traditional methods. These technologies can greatly assist with management and other housing-related obligations and ensure residents receive the best living experience possible.

As debate continues on the need for and structure of possible AI regulation moving forward, policymakers should recognize that AI may create efficiencies in process, cost effectiveness and accuracy within the housing landscape and it is important that federal policy not unduly limit innovation or undermine the benefits of new technology tools in the housing sector.

6. Reform the Section 8 Housing Choice Voucher Program

NMHC and NAA strongly support the Section 8 Housing Choice Voucher (HCV) Program, which has long served as America's primary method for aiding 2.1 million low-income households with rental assistance. This program helps millions of Americans find homes in communities near good schools, jobs, and transportation services, but reforms are needed to expand private industry participation.

Despite previous Congressional and Administrative attempts at reforming the program, it remains hamstrung and federal policymakers must again renew efforts to adopt common-sense reforms that could help control costs, improve the program for both renters and property owners, and increase private housing participation.

It is important that the program remain voluntary and reformed to ensure it can be used more widely and cost effectively by private rental housing providers. NMHC and NAA support the bipartisan and bicameral Choice in Affordable Housing Act (H.R. 4606; S. 32), which aims to enact many positive reforms to the Section 8 programs, and we would encourage the Administration and members of Congress to support the legislation.

7. Enact and Enhance Tax Policy That Promotes Housing Supply

While it will take a variety of tax and non-tax approaches to increase supply, the rental housing industry believes tax policy can play a critical role in this regard. We strongly urge Congress to:

- Expand and enhance the Low-Income Housing Tax Credit;
- Enact the Middle-Income Housing Tax Credit to support workforce housing;
- Enhance Opportunity Zones to incentivize the rehabilitation and preservation of multifamily buildings;
- Encourage the adaptive reuse of underutilized commercial properties into multifamily housing; and
- Promote the rehabilitation of multifamily housing located near transit.

Many of these proposals have bipartisan or bicameral support. While they fall outside the jurisdiction of this subcommittee, tax reforms are an important part of the solutions to improving the availability and affordability of housing.

8. Act to Stabilize Soaring Insurance Costs

The apartment industry has faced a volatile insurance market for the better part of a decade, while the risk landscape for multifamily has only grown. As insurance costs are largely not controlled by developers, owners, and operators, but must be paid, the increases are just one of many things driving increases in rent. These dynamics are impacting valuations, disrupting transactions, and putting substantial pressure on the operating budgets of multifamily properties, often resulting in significant cost-cutting in other areas of operation or growing areas of uninsured risk.

The lack of affordability of insurance options for property owners, of all types, increasingly puts needed insurance coverage out of reach or limits the ability of property owners to make needed investments in their properties. In fact, a [2021 survey and report](#) sponsored by NMHC, NAA and other affordable housing-focused organizations found that these conditions have led to negative impacts on both housing providers and renters, with most housing providers indicating that they would take action to mitigate cost increases due to higher insurance premiums by increasing insurance deductibles, decreasing operating expenses, and being forced to increase rent. These steps are being taken as a last resort and at a time when the affordable housing crisis has never been more acute.

NMHC recently expanded on the 2021 research and took a broader look at costs impacting the industry in 2023—issuing the [State of Multifamily Risk Survey & Report](#) demonstrating that the impact of these soaring costs has only worsened and continue to strain property operations and negatively impact housing affordability. On average, the NMHC survey showed property insurance premiums soaring 26 percent year-over-year, but it is not uncommon to hear of triple-digit property premium increases in certain parts of the country. Other lines of coverage are also troublesome and impacting property operations.

The burden of escalating insurance costs is profoundly more challenging for providers of affordable housing, as revealed by a comprehensive survey examining the shifts in these providers' insurance premiums during the policy renewals of 2020, 2021, and 2022. This crucial study, commissioned by the National Leased Housing Association (NLHA) and conducted by ndp |analytics in August and September 2023, unveils that affordable housing providers are grappling with substantial hikes in premiums across various insurance categories. In the 2022-2023 policy renewal period, a significant 29 percent of these providers were subjected to premium surges of 25 percent or more, a stark increase from the 17 percent who faced similar hikes during the previous year's renewal phase. This data underscores the deepening financial challenge confronting those at the forefront of offering affordable housing solutions.⁸

Congress must take action to stabilize the insurance market and prevent growing exposure to taxpayers in the wake of unrelenting natural disasters. This will require partnership between policymakers and private sector stakeholders from real estate and insurance to advance solutions that improve climate resilience and sustainability and allow for properly functioning insurance and reinsurance markets to protect our nation's rental housing stock and the broader economy.

⁸ <https://ndpanalytics.com/wp-content/uploads/NDP-NLHA-Housing-Provider-Insurance-Costs-Report-Oct-2023-ExecSummary.pdf>

The Path Forward

Given the multitude of factors that contribute to the state of the housing market, we are advocating for a multi-faceted approach to support the health and stability of the rental housing sector. An adequate supply of quality housing is critical to continued economic prosperity and household stability for Americans nationwide, and Congress should ensure that any new policies do not further exacerbate existing challenges and inadvertently harm consumers in the process.

NMHC and NAA are co-leaders of the Housing Affordability Coalition, a group of over two dozen national real estate associations representing a broad coalition of housing providers that are committed to working together with policymakers and the Administration to address American's housing affordability crisis. In May, the coalition sent a letter to the Hill urging Congress to work with the Biden Administration, housing providers and other stakeholders to pursue bipartisan solutions to increase the supply of housing in all markets and at all price points which will go a long way to helping make rents more affordable. The letter included bipartisan recommendations, some referenced here above, that policymakers should immediately take action on that we believe would have a positive impact on the housing affordability crisis and help increase the nation's housing supply.

On behalf of the multifamily industry and the nearly 40 million Americans we serve, we look forward to continuing to work with policymakers on balanced, sustainable and innovative policies to support the housing market. Thank you for your attention to these concerns.

Sincerely,



Sharon Wilson Géo
President
National Multifamily Housing Council



Robert Pinnegar
President & CEO
National Apartment Association