July 6, 2021

Office of Management and Budget
725 17th St., NW
Washington, DC 20503

Re: Office of Management and Budget, Executive Office of the President, Request for Information (RFI), Methods and Leading Practices for Advancing Equity and Support for Underserved Communities through Government, Docket OMB-2021-0005-0001

Dear Acting Director Young:

The National Community Reinvestment Coalition (NCRC) and the California Reinvestment Coalition (CRC), appreciate the opportunity to provide information to the Office of Management and Budget (OMB) regarding inequities in government access.

NCRC is an association of 600 community-based organizations that promote access to basic banking services, affordable housing, entrepreneurship, job creation and vibrant communities for America's working families. Its members include community reinvestment organizations like CRC, community development corporations, local and state government agencies, faith-based institutions, community organizing and civil rights groups, minority-and-women-owned business associations, and social service providers from across the nation.

CRC seeks to build an inclusive and fair economy that meets the needs of communities of color and low-income communities by ensuring that banks and other corporations invest and conduct business in our communities in a just and equitable manner. It envisions a future in which people of color and low-income people live and participate fully and equally in financially healthy and stable communities without fear of displacement and have the tools necessary to build household and community wealth.

NCRC and CRC write to provide information on three areas – equity assessments and strategies (RFI, Area 1), procurement and contracting (RFI, Area 3), and financial assistance (RFI, Area 4) – as they relate to advancing racial and ethnic equity in credit access and affordable home ownership.

AREA 1 - EQUITY ASSESSMENTS AND STRATEGIES

Federal agencies must address systemic challenges in current policies and programs relating to equity in credit access and affordable home ownership. NCRC and CRC recommend that the Administration begin by expanding the scope and strength of the Community Reinvestment Act; safeguarding Fannie Mae/Freddie Mac's commitment to affordable housing; expanding fair housing enforcement; and strengthening housing counseling agencies.

Robust data is necessary to identify and address racial and ethnic equity issues. The following actions would be a good starting point: Federal agencies should gather and use data to help reach a black homeownership target of 60%; the Consumer Financial Protection Bureau (CFPB) should also restore the Home Mortgage Disclosure Act to better collect racial and ethnic sub-group information on mortgage applications and implement the Small Business

Transparency Rule under Section 1071 of Dodd Frank to gather small business loan data and address disparities; the Federal agencies should increase transparency relating to Opportunity Zones; and OMB should refrain from redefining metropolitan and micropolitan statistical areas in ways that could harm undeserved and under-invested communities.

NCRC and CRC also urge Federal agencies to assess the actual impacts of these and other major policies and programs by conducting racial impact audits.

Addressing Systemic Challenges in Current Policies and Programs

Expand the Scope and Strength of the Community Reinvestment Act

To continue being effective, the Community Reinvestment Act (CRA), 12 U.S.C. § 2901 *et seq*., needs an update. Although the CRA and other fair lending laws have increased lending and investment in traditionally underserved communities, disparities by race/ethnicity and income remain. Federal agencies have, to date, resisted affirmatively examining financial institutions for how they are lending, investing, and providing financial services to borrowers of color and in communities of color (focusing instead on income-based parameters). This is the case even though the CRA itself and the constitutional parameters set out by court cases around race-conscious policies allow Federal agencies substantial latitude to examine race and ethnicity as part of CRA analyses.[1]

In addition to focusing on income-based parameters, the CRA's coverage of the financial industry should, in the context of CRA evaluations and bank merger and branch applications, explicitly evaluate racial and ethnic equity and how banks serve Black, Indigenous, People of Color (BIPOC) individuals and communities by:

- Including racial/ethnic demographics and credit needs in the performance context;
- Affirmatively considering race/ethnicity in the delineation of assessment areas;
- Considering racial/ethnic demographics in the retail lending distribution benchmark metrics;
- Considering lending to BIPOC borrowers and communities as part of CRA rating ranges;
- Considering racial/ethnic demographics in the benchmarks for bank branch distribution and bank account access;
- Considering racial/ethnic demographics in establishing benchmarks and metrics for community development (CD) financing;
- Considering BIPOC individuals and census tracts in CD-qualifying activities and geographies;
- Considering BIPOC community feedback in strategic plan reviews;
- Considering activities in Black communities as an enhancement to state and multistate metropolitan statistical area (MSA) and institution ratings;

[1] *See, e.g.,* NCRC, *Civil Rights, Fair Lending and Consumer Rights Organizations Urge a More Race-Conscious CRA* (Feb. 16, 2021), https://ncrc.org/civil-rights-fair-lending-and-consumer-rights-organizations-urge-a-more-race-conscious-cra/ (detailing ways CRA evaluations can incorporate a race-conscious approach while avoiding constitutional barriers).

- Considering the harm imposed by banks on BIPOC residents and communities – such as discrimination, displacement, or onerous rates, fees, terms or collection practices – in determining whether CRA ratings should be downgraded; and
- Requiring that evidence of discrimination by a bank result in a "Needs to Improve," "Substantial Noncompliance," or other "failing" rating that regulators may devise.

Greater consideration of race and ethnicity is permitted by the CRA, and Federal agencies have a compelling interest in using a race-conscious approach, which can be narrowly tailored to avoid or overcome any constitutional barriers.[2]

Safeguard Fannie Mae/Freddie Mac's Commitment to Affordable Housing

The scale of the nation's affordable housing and racial equity challenge require a change in policy direction at Fannie Mae and Freddie Mac ("the Enterprises") to meet it. More than a decade after the financial crisis, the Enterprises remain in conservatorship, under the strict oversight of the Federal Finance Housing Agency (FHFA) and the U.S Treasury. The conservatorship has imposed extraordinary limits on the Enterprises' affordable housing activities, including their development of affordable loan products and pilot programs, guarantee fee pricing, investments and outreach and partnerships in communities of color. Borrowers of color have been "boxed out" of the mortgage market by extraordinary credit standards and the extent of risk-based pricing at the Enterprises.[3]

Federal agencies must immediately revisit a number of conservatorship policies that constrain the ability of the Enterprises to meet the affordable housing mission in their Congressional charters and that are having a disproportionate impact on availability and affordability of conventional mortgage credit for borrowers and communities of color, including: the arbitrary and inflexible limits on the Enterprises' loan products and programs imposed by the January 2021 amendments to their Preferred Stock Purchase Agreements (PSPA);[4] bank-like capital standards imposed by FHFA's December 2020 capital rule; and excessive risk-based pricing policies by both the Enterprises and private mortgage insurers. FHFA should also set far more robust affordable housing goals and set more rigorous standards for the Enterprises' underserved market plans under their Duty to Serve obligations to ensure they a leading and not lagging the mortgage market in marking credit available to borrowers and communities of color.[5]

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[2] *See id.*

[3] *See e.g. Squeaky-clean loans lead to near-zero defaults-and that is not a good thing,* Urban Inst., (Aug. 31, 2016), https://www.urban.org/urban-wire/squeaky-clean-loans-lead-near-zero-borrower-defaults-and-not-good-thing; Michael Calhoun & Sarah Wolff, *Who Will Receive Home Loans and How Much Will They Pay?* Urban Inst. (June 2, 2016), https://www.urban.org/policy-centers/housing-finance-policy-center/projects/housing-finance-reform-incubator/mike-calhoun-and-sarah-wolff-who-will-receive-home-loans-and-how-much-will-they-pay.

[4] *See e.g. Joint letter on the product and program limits imposed on Fannie Mae and Freddie* Mac, NCRC, https://ncrc.org/joint-letter-on-the-product-and-program-limits-imposed-on-fannie-mae-and-freddie-mac/; *The Preferred Stock Purchase Agreements Will Hamper Access to Credit*, Urban Inst. (Feb. 2021). While publicly available Home Mortgage Disclosure Act (HMDA) data is limited in the PSPA limit on high risk mortgages, the Urban Institute analysis finds "that for [Government-Sponsored Enterprises (GSE)] purchase mortgages made in 2019, more than twice the share of Black and Hispanic borrowers versus white borrowers (8.75 percent versus 4.07 percent) would be considered high risk, as determined by FICO scores and LTV ratios only" making it more difficult to expand the credit box to incorporate more Black and Hispanic borrowers and further reducing the already low share of Black and Hispanic borrowers who use GSE mortgages.

Fannie Mae and Freddie Mac are central players in the nation's housing finance system. The Enterprises own or guarantee approximately $6.0 trillion in mortgages, which includes about 8.6 million households, and more than half of single-family mortgages.[6] Together, they provide approximately 40% of loans targeted towards low- and very low-income borrowers. In the 1990s, the Enterprises helped expand sustainable homeownership broadly, and particularly for families of color, measurably helping to increase homeownership for Black and Hispanic families to nearly 50% before the subprime crisis.[7] This progress was due in part to the Enterprises' charters but also to their affordable housing goals.

In recent years and during their time in conservatorship, just a small fraction of their mortgage guarantees have backed loans for Black and Hispanic home buyers – less than 4% to Black families in 2020.[8] For several years, average credit scores on the Enterprises' loan purchases have remained historically high. More than 70% of Fannie and Freddie acquisitions are at or above the 720 credit score threshold – more than half above 750.[9] This is particularly worrying considering that more than 40% of all credit scores nationally fall below 700 and only 21% of Black households have a FICO score above 700.[10]

NCRC and CRC urge the Federal Government to protect, defend, and strengthen the Enterprises' affordable housing missions and their numeric affordable housing goals.[11] It is time for FHFA and the U.S. Treasury to end the conservatorships without conditions that would undermine the Enterprises' affordable housing role or obligations. NCRC has joined small lenders in outlining a set of principles for ending the conservatorship responsibly.[12]

Moreover, the expiration in October 2021 of the 10-basis point increase used to finance the 2010 payroll tax cut and the government's stock interests in the Enterprises should be exchanged for a comparable commitment by the Enterprises for additional affordable housing measures. Those measures should be focused on facilitating more affordable single-family and multi-family housing supplies and on the millions of Black and Hispanic mortgage-ready

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[5] In setting the numeric housing goals, FHFA is also to consider "The ability of the enterprise to lead the industry in making mortgage credit available." 12 U.S.C. §4562(e)(2)(B)(iv). The Duty to Serve obligation also requires the Enterprises "to provide leadership to the market." 12 U.S.C. § 4565(a)(1).

[6] FHFA, *Statement of Dr. Mark A. Calabria, FHFA Director, Before the U.S. House of Representatives Committee on Financial Services* (Sept. 16, 2020), https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-Dr-Calabria-FHFA-Director-Before-the-US-House-Committee-on-Financial-Services-9162020.aspx.

[7] *See* Harold Bunce, *An Analysis of GSE Purchases of Mortgages for African-American Borrowers and Their Neighborhoods*, HUD Off. of Pol'y Dev. and Res., Working Paper HF-011 (Dec. 2000), https://www.huduser.gov/publications/pdf/workpapr11.pdf.

[8] Vanessa Gail Perry et al., *2020 State of Housing in Black America: Challenges Facing Black Homeowners & Homebuyers During the COVID-19 Pandemic and An Agenda for Public Policy*, Nat'l Ass'n of Real Est. Brokers (2020), https://www.nareb.com/site-files/uploads/2020/10/2020-SHIBA-REPORT-OFFICIAL-COPY.pdf.

[9] Jason Thomas & Robert Van Order, *A Closer Look at Fannie Mae and Freddie Mac: What We Know, What We Think We Know and What We Don't Know*, Geo. Wash. Univ. (Draft, March 2011), https://cpb-us-e1.wpmucdn.com/blogs.gwu.edu/dist/a/326/files/2016/12/12th-1vjk5ub.pdf.

[10] *See* Antonio Weiss & Karen Dynan, U.S. Treasury Dep't, *Housing Finance Reform: Access and Affordability in Focus*, Medium (Oct. 26, 2016), https://medium.com/@USTreasury/housing-finance-reform-access-and-affordability-in-focus-d559541a4cdc; Jung Hyun Choi, *Breaking Down the Black-White Homeownership Gap*, Urban Inst. (Feb. 21, 2020), https://www.urban.org/urban-wire/breaking-down-black-white-homeownership-gap.

[11] NCRC and CRC joined civil rights and affordable housing advocates in outlining a series of principles for reform of the Enterprises. *See* NCRC, *Letter to the White House on Affordable Housing* (July 31, 2019), https://ncrc.org/letter-to-the-white-house-on-affordable-housing/.

[12] Main Street GSE Reform Coal., *Common GSE Reform Principles*, NCRC (Nov. 2019), https://ncrc.org/wp-content/uploads/2019/11/Main-Street-GSE-Reform-Coalition-Principles-2019.pdf.

millennials that have been identified in key markets around the country but are facing barriers to accessing affordable homeownership or households over the age of 40 with credible credit scores and an annual household income of $40,000 - $100,000.[13]

Expand Fair Housing Enforcement

Federal agencies must expand fair housing enforcement. This includes restoring the Department of Housing and Urban Developments' (HUD) 2015 Affirmatively Furthering Fair Housing (AFFH) Rule[14] and 2013 Discriminatory Effects Rule. These rules interpret key provisions of the 1968 Fair Housing Act aimed at ending housing discrimination. Both rules were weakened under the Trump Administration, and the Biden Administration should take immediate steps to restore them. HUD should also adequately fund and strengthen fair housing councils.

The 2015 AFFH Rule implemented two of the primary goals of the Fair Housing Act: (1) to end housing discrimination and promote diverse, inclusive communities; and (2) to affirmatively further fair housing by actively dismantling segregation and fostering integration in its place.[15] The second goal of the Fair Housing Act had been largely neglected and unenforced for decades. The 2015 AFFH Rule was a helpful attempt to spell out compliance parameters.

In July 2020, the Trump-appointed leadership of HUD issued a final rule setting a much lower bar for compliance, essentially relying on local governments to self-certify that they are "furthering fair housing."[16] Shortly after his inauguration, President Biden issued a memorandum mandating that HUD examine the impact of this rollback and the effect that it will have on its ability to affirmatively further fair housing.[17] In June 2021, HUD published an interim final rule restoring the definitions and certifications of the 2015 AFFH Rule, and announced that a rulemaking process would begin later this year to restore the remaining components of the 2015 rule.[18]

NCRC and CRC agree that HUD should conduct a thorough review of the Trump Administration's actions to weaken the 2015 AFFH Rule and fully reinstate a strong AFFH Rule using the 2015 rule as a starting point.

HUD should also restore the Discriminatory Effects Rule. In 2013, HUD finalized the rule – a uniform standard for analyzing evidence of disparate impact in cases brought under the Fair Housing Act.[19] The disparate impact doctrine bars policies that have a discriminatory effect

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[13] *See infra, Use Data to Help Reach a Black Homeownership Target of 60%.*

[14] Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42271 (July 16, 2015), https://www.federalregister.gov/documents/2015/07/16/2015-17032/affirmatively-furthering-fair-housing.

[15] *Id.*

[16] Preserving Community and Neighborhood Choice, 85 Fed. Reg. 47899 (Aug. 7, 2020), https://www.federalregister.gov/documents/2020/08/07/2020-16320/preserving-community-and-neighborhood-choice; *see* NCRC, *NCRC Comments Regarding Notice of Proposed Rulemaking (Docket ID OCC–2018-0008 and RIN 3064-AF22)* (Apr. 8, 2020), https://ncrc.org/ncrc-comments-regarding-notice-of-proposed-rulemaking-docket-id-occ-2018-0008-and-rin-3064-af22/.

[17] *Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies*, The White House (Jan. 26, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/.

[18] HUD, *Restoring Affirmatively Furthering Fair Housing Definitions and Certification,* 86 FR 30779 (June 10, 2021), https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications.

even when there is no evidence of an intent to discriminate. This tool is crucial to fair housing and fair lending advocates combating modern-day redlining where an intention to discriminate can be nearly impossible to prove.[20]

In October 2019, the Trump Administration proposed a rule[21] to amend HUD's interpretation of the disparate impact standard. This proposal was roundly criticized – thousands of national advocacy groups, think tanks, public and private entities, and members of Congress submitted comments in opposition to the proposal.[22] NCRC also commented on this proposed rule, encouraging HUD to continue its current implementation of the disparate impact standard or risk effectively eliminating disparate impact theory in fair housing cases.[23]

The Trump Administration finalized its revisions to the rule in September 2020,[24] making it more difficult for victims of discrimination to make a claim under the Fair Housing Act and to seek redress. It also created defenses that serve no purpose except to protect housing providers that use algorithms that discriminate against their customers, such as requiring victims to show that a company could still profit without perpetuating the discrimination and providing broad defenses for algorithmic bias.

Upon taking office, President Biden mandated that HUD review the impact of this revision and take the necessary steps to prevent practices with an unjustified discriminatory effect.[25] In June 2021, HUD announced a proposed rule reinstating the 2013 Discriminatory Effects Rule and reversing the 2020 changes.[26] NCRC and CRC urge that this rule be finalized. They also urge the CFPB to update its guidance on the disparate impact doctrine to reinforce the Equal Credit Opportunity Act (ECOA) and address the use of artificial intelligence and predictive modeling in credit decisions.[27]

Finally, HUD should adequately fund organizations across the country working to address violations of the Fair Housing Act. HUD typically awards grants to these organizations through its Fair Housing Initiatives Program and the Fair Housing Assistance Program. These

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[19] Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11459 (Feb. 15, 2013), https://www.federalregister.gov/documents/2013/02/15/2013-03375/implementation-of-the-fair-housing-acts-discriminatory-effects-standard.

[20] In 2015, the U.S. Supreme Court upheld the doctrine under the Fair Housing Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015).

[21] HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, 84 Fed. Reg. 42854 (Aug. 19, 2019), https://www.federalregister.gov/documents/2019/08/19/2019-17542/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard.

[22] *See* Nat'l Fair Hous. All., *Businesses, Policymakers, Advocates, Experts Submit Thousands of Comments Opposing HUD's Attack on Core Civil Rights Tool* (Oct. 23, 2019), https://nationalfairhousing.org/2019/10/23/businesses-policymakers-advocates-experts-submit-thousands-of-comments-opposing-huds-attack-on-core-civil-rights-tool/.

[23] NCRC, *NCRC's Disparate Impact Letter to HUD* (Oct. 21, 2019), https://ncrc.org/ncrcs-disparate-impact-letter-to-hud/.

[24] HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, 85 Fed. Reg. 60288 (Sept. 24, 2020), https://www.federalregister.gov/documents/2020/09/24/2020-19887/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard.

[25] *Memorandum on Redressing*, *supra* n. 17.

[26] HUD, *Reinstatement of HUD's Discriminatory Effects Standard*, 86 FR 33590 (June 25, 2021), https://www.federalregister.gov/documents/2021/06/25/2021-13240/reinstatement-of-huds-discriminatory-effects-standard.

[27] *See* NCRC, *NCRC, Fintechs Call on CFPB to Clarify Applying Fair Lending Rules to Artificial Intelligence* (June 29, 2021), https://ncrc.org/ncrc-fintechs-call-on-cfpb-to-clarify-applying-fair-lending-rules-to-artificial-intelligence/.

grants support a wide range of fair housing enforcement, as well as education and outreach activities. For instance, they enable fair housing organizations to provide fair housing enforcement through testing in rental and sales markets, file fair housing complaints with HUD, and conduct investigations. The education and outreach activities these organizations conduct helps to educate the public, housing providers, and local governments about their rights and responsibilities under the Fair Housing Act. This person-to-person work is important from an equity perspective because many BIPOC and low-income communities are inadequately equipped to defend against housing discrimination. These communities also place greater trust in fair housing organizations that are present and visible, and with whom they have cultivated relationships. Without adequate resources, though, the capacities of these fair housing organizations would be extremely limited.

Strengthen Housing Counseling Agencies

Housing counselors continue to play an active and effective role in helping renters and homeowners avoid eviction and foreclosure during the COVID-19 crisis. In response to the pandemic, Congress included an additional $100 million to support housing counseling as part of the American Rescue Plan Act, but continued support is needed to ensure that counseling services are widely available to prevent housing instability for those most impacted by the crisis.

Using Data for Equity Issue and Solution Alignment

Use Data to Help Reach a Black Homeownership Target of 60%

Housing is a wealth generator for many Americans, yet a sustained homeownership divide exists between White and Black Americans.[28] NCRC and CRC urge the administration to adopt a national Black homeownership goal of 60% over the next 10-20 years to help narrow the gap.[29] Reaching this homeownership rate will require addressing significant barriers to housing access and will result in wealth creation for the Black community. This goal can only be achieved with the proper collection and use of housing and demographic data.

The Urban Institute recently explained one path to adding 3 million new Black homeowners by 2030.[30] Using 2019 American Community Survey estimates, the Black population was approximately 41.98 million; 6.46 million were homeowners, equaling a 42% homeownership rate. If the following remain constant – 1) the population increase, 2) the

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[28] *See* CRC, *Report Finds FHA & VA Lending Disproportionately Prevalent In Neighborhoods Of Color* (July 19, 2012), https://calreinvest.org/press-release/report-finds-fha-va-lending-disproportionately-prevalent-in-neighborhoods-of-color/.

[29] *See* Dedrick Asante-Muhammad, Jamie Buell & Joshua Devine, *60% Black Homeownership: A Radical Goal For Black Wealth Development*, NCRC (Mar. 2, 2021), https://ncrc.org/60-black-homeownership-a-radical-goal-for-black-wealth-development/; Michela Zonta, *Racial Disparities in Home Appreciation,* Ctr. for Am. Progress (July 15, 2019), https://www.americanprogress.org/issues/economy/reports/2019/07/15/469838/racial-disparities-home-appreciation/; Jung Hyun Choi et al., *Explaining the Black-White Homeownership Gap: A Closer Look at Disparities across Local Markets*, Urban Inst. (Oct. 2019), https://www.urban.org/sites/default/files/publication/101160/explaining_the_black-white_homeownership_gap_a_closer_look_at_disparities_across_local_markets.pdf.

[30] Janneke Ratcliffe & Jung Hyun-Choi, *Adding 3 Million Net New Black Homeowners in the Next Decade Can Narrow the Widening Homeownership Gap*, Urban Inst. (May 24, 2021), https://www.urban.org/urban-wire/adding-3-million-net-new-black-homeowners-next-decade-can-narrow-widening-homeownership-gap.

average rate of Black homeownership increase, 3) the household formation rate, and 4) Black homeownership loss rate – then adding 3 million new Black homeowners by 2030, would result in a 57.5% Black homeownership rate. Getting to a 60% homeownership rate by 2030 would mean adding 3.3 million new Black homeowners. This radical increase requires bold new policies and practices by Federal agencies driven by robust data.

As explained above, Freddie Mac and Fannie Mae will play an important role in reaching this homeownership goal consistent with their missions of providing affordable housing. Freddie Mac, for example, has identified 1.7 million Black mortgage-ready millennials in 31 cities.[31] They have also identified key barriers to this new generation of home buyers accessing affordable homeownership.[32] Better access to homeownership could help bridge the sizeable differences in wealth by race and ethnicity even among young Black and young White families.[33]

Data shows that, to further increase Black homeownership, the Enterprises and Federal agencies should focus on metropolitan areas with low Black homeownership rates but large Black populations, in economically stable regions, and where median housing prices are comparable to median rent prices. These metrics offer a great opportunity to increase the national state of Black homeownership. Data also suggests that a focus on Black households over the age of 40 with credit scores between 600 and 700 and a median annual household income of $40,000 to $100,000 is vital to strengthening Black homeownership rates. Homeownership efforts should focus on southern and midwestern states with a largely middle-income Black population. These areas – such as Minnesota, Georgia and Michigan – have a large potential to increase Black homeownership rates nationwide.[34]

The Fair Housing Administration (FHA) also plays an important role in reaching this homeownership goal because Black borrowers make up a significant portion of less advantageous FHA loans. Federal agencies should not steer conventional loan qualified borrowers into higher cost FHA loans. And the FHA should develop a strict no steering policy so that there are consequences for this steering. Also, as the nation emerges for the pandemic and FHA's Mutual Mortgage Insurance Fund continues to operate well above its 2% minimum capital ratio, the FHA should evaluate how its continuance of its life-of-loan premium policies is impacting the ability of families of color to build housing equity.

Restore the Home Mortgage Disclosure Act

The CFPB should immediately act to restore the integrity of the Home Mortgage Disclosure Act (HMDA) and its ability to combat redlining and other fair lending and fair housing violations. It should do so by reversing its 2020 HMDA final rule and reestablish reporting thresholds based on the 2015 HMDA rule.

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[31] *See* Alanna McCargo, *America's Persistent Racial Homeownership Gaps*, Presentation at the Nat'l Ass'n of Realtors Pol'y Conf. (Nov. 2020), https://www.nar.realtor/sites/default/files/documents/policy-forum-2020-presentation-racial-homeownership-gaps-02-06-2020.pdf.

[32] *See* NCRC, *Joint Letter: Request for Meeting to Discuss Preserving Access and Affordability in Government Sponsored Enterprise Reform* (Dec. 18, 2017), https://ncrc.org/re-request-meeting-discuss-preserving-access-affordability-government-sponsored-enterprise-reform/.

[33] Bhutta, Neil, et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FEDS Notes. Wash.: Board of Govs. of Fed. Res. Sys. (Sept. 28, 2020), https://doi.org/10.17016/2380-7172.2797.

[34] *See* Asante-Muhammad, *supra* n. 29.

The HMDA requires certain institutions to collect, report, and disclose information about their mortgage lending activity. Among other information, HMDA asks lenders to collect racial sub-group information on mortgage applications.[35] This data is then made available to the public so that individuals and groups, like NCRC, can analyze lending trends. For instance, NCRC analyzed 2019 HDMA data to better understand the experiences of Hispanic borrowers in the mortgage market.[36] It found that 58% of Hispanic applicants were seeking financing to purchase a home (instead of refinancing or seeking a home improvement/equity loan); patterns of home lending to Hispanics varied by geography and among Hispanics who identified as Cuban, Puerto Rican, and Mexican; and, despite gains, Hispanics continued to face barriers and disparate treatment in the mortgage market.[37]

In the 2015 HMDA rule, the CFPB established institutional and transactional coverage thresholds that determine whether financial institutions are required to collect, record, and report any HMDA data on closed-end mortgage loans or open-end lines of credit. The 2015 HMDA rule set the threshold at 25 mortgage loans in each of the two preceding calendar years. But in April 2020, the CFPB issued a final rule adjusting the thresholds to 100 mortgage loans in each of the two preceding calendar years.[38] By raising the reporting threshold from 25 to 100 loans, the agency's final rule exempted 1,700 banks and non-banks from having to report basic information about their mortgage lending, including their loan applications and loan denials.

The CFPB should rescind its 2020 HMDA rule and the resulting higher reporting threshold. It should publicly report more information about borrower creditworthiness and multi-family lending, consistent with the fair lending purpose of HMDA. The CFPB should also halt any further efforts to eliminate the collection of disaggregated race data and other additional data required by the 2015 changes to Regulation C implementing HMDA.

Increase Transparency Relating to Opportunity Zones

Since its inception, the IRS' Opportunity Zones approach to investing in distressed areas has not embodied any of the requisite discipline or the comprehensive approach of many successful place-based economic development initiatives. For example, it remains unclear how well qualified opportunity zone fund (QOF) managers and investments are integrating into existing community planning efforts and existing incentives, whether data collection and reporting requirements will lead to an effective evaluation of the program's outcomes and impact for communities of color, whether there is enough knowledge-sharing around best practices, and whether community participation is sufficiently robust at the local level.

The U.S. Impact Investing Alliance and the Beeck Center at Georgetown University have collaborated to identify ways that QOF managers can thoughtfully deploy capital raised from investors, including collecting basic market and impact data that enable independent evaluators and researchers to analyze the outcomes of the overall policy, such as: guiding principles for opportunity zones stakeholders; and an opportunity zones reporting framework.[39] NCRC has

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[35] *See Uniform Residential Loan Application (Form 1003) - Demographic Information Addendum*, Fannie Mae, https://singlefamily.fanniemae.com/media/16176/display.

[36] Agatha So & Jason Richardson, *Hispanic Mortgage Lending: 2019 HDMA Analysis*, NCRC (2020), https://ncrc.org/hispanic-mortgage-lending-2019-analysis/.

[37] *Id.*

[38] *Home Mortgage Disclosure (Regulation C)*, 85 Fed. Reg. 28364 (Apr. 12, 2020), https://www.federalregister.gov/documents/2020/05/12/2020-08409/home-mortgage-disclosure-regulation-c/.

joined others in outlining a set geographic, demographic, economic, and census tract level information that should be collected and reported, including factors that would measure the level of neighborhood change and whether dislocation and displacement are occurring.[40]

Implement Small Business Transparency Rule under Section 1071 of Dodd-Frank

The CFPB should fast-track its efforts to conduct rulemaking and implement the provision of the Dodd-Frank Act, Section 1071, that requires lenders to collect and disclose small business loan data. There is very little public information about how many women-owned, minority-owned, and small businesses (WBEs, MBEs, and SBEs) apply for loans at financial institutions each year, for example, or how many are denied.[41] Section 1071 amends the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq*., to require financial institutions to collect, maintain, and submit data regarding credit applications by WBEs, MBEs, and SBEs to the CFPB. Delays in the full implementation of Section 1071 will continue to impair both the Federal Government and the public's ability to gather data and monitor fair access to credit.[42]

In September 2020, the Bureau released its outline of policy proposals regarding Section 1071. If adopted, these proposals would bring much needed, uniform transparency to the small business credit market by collecting data on applications and lending to WBEs, MBEs, and SBEs. The proposals include disclosure requirements from most types of lenders active in the small business market, including banks, credit unions, and online lenders. The proposals also include collecting data on loan pricing, number of employees, and years in business to ensure fair access for the smallest businesses and start-ups. These provisions should be included in a final rule.

Some Section 1071 proposals should not be considered further by the CFPB because they would make the small business credit market less transparent and would make it difficult to prevent well-documented discrimination. For instance, the Bureau should not exempt lenders from the new disclosure requirements based solely on the assets held by the institution. An asset threshold would exclude some small banks and credit unions, which are important small business lenders. Non-depositories, such as online lenders, would also be excluded under an assets-only approach. Likewise, the CFPB should not exempt non-traditional lenders, such as merchant cash advance providers and others. NCRC filed comprehensive comments to the CFPB laying out how to collect these data in December 2020.[43]

NCRC urges the CFPB to move forward with a strong proposed small business transparency rule under Section 1071 of Dodd-Frank in mid-2021 and issue a final rule in late

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[39] The Beek Center, *Impact Investing in Opportunity Zones,* Georgetown Univ., https://ozframework.org/about-index; *see also* NCRC, *Comment on HUD's Opportunity Zone Policy*, 2019, https://ncrc.org/comment-on-huds-opportunity-zone-policy/.

[40] *See e.g.,* Coalition Comment on Opportunity Zone Data, https://www.regulations.gov/document/TREAS-DO-2019-0004-0031.

[41] *See* Kevin Stein & Gina Charusombat, *Displacement, Discrimination and Determination: Small Business Owners Struggle to Access Affordable Credit, Results from a State-Wide Survey in California*, CRC (Sept. 2017), https://calreinvest.org/wp-content/uploads/2018/08/CRC20Small20Business20Report.pdf.

[42] *See* Anneliese Lederer & Sara Oros, *Lending Discrimination within the Paycheck Protection Program*, NCRC, https://pennstatelaw.psu.edu/sites/default/files/documents/NCRC_PPP_Lending_Discrimination.pdf.

[43] *See* NCRC, *NCRC Comment Letter on the CFPB's Outline of Proposals Under Consideration to Implement Small Business Lending Data Collection Requirements* (Dec. 14, 2020), https://ncrc.org/ncrc-comment-letter-on-the-cfpbs-outline-of-proposals-under-consideration-to-implement-small-business-lending-data-collection-requirements/.

2021.[44] Additionally, to further CFPB's Section 1071 rulemaking, as well as its ECOA enforcement authority, CFPB should conduct education and outreach, work with intermediaries, and enhance its website, to encourage small business owners to file online complaints on its consumer complaint database.

Refrain from Redefining Metropolitan and Micropolitan Statistical Areas in Ways that Could Harm Underserved and Under-Invested Communities

NCRC and CRC, again,[45] urge OMB to halt efforts to redefine metropolitan and micropolitan areas in ways that could harm underserved and under-invested communities.[46]

Under OMB's January 2021 proposal, a metropolitan statistical area would be re-designated as a micropolitan area if it has a population of between 50,000 to 100,000 people. OMB should consider that the CRA, the HMDA, HUD programs such as Section 8 vouchers,[47] and other government programs use income levels in metropolitan statistical areas to apply fair lending regulations and provide public subsidies to traditionally underserved communities in MSAs. The definitional change would impact 144 MSAs, and areas including more than two million people. This is a wide-ranging change that would affect the revitalization prospects of neighborhoods and impact the quality of life and economic prospects of a significant number of people. OMB's proposal could result in a substantial loss for underserved and under-invested communities that benefit from programs and laws established to rectify past discrimination and continued under-investment.

This change could be detrimental in any circumstance but is particularly counterproductive as the nation recovers from the pandemic. Accordingly, OMB should refrain from making this change and coordinate any contemplated changes of this nature with the federal bank agencies that are undertaking CRA reform efforts and with the CFPB, which has jurisdiction over the regulations implementing the HMDA.

OMB should also estimate the economic impacts of its proposed changes in the designation of smaller MSAs as micropolitan areas. These changes would likely reduce CRA-related financing of banks in these areas by significant amounts. Compounding these adverse impacts is the deletion of HMDA reporting responsibilities of almost 100 banks, meaning that they would likely decrease their lending by ceasing to be publicly accountable as HMDA reporters. Their lending data would no longer be publicly available for scrutiny by stakeholders to determine if these lenders are meeting their reinvestment and fair lending responsibilities under the law. Also, vital public subsidies offered by federal transportation and community development programs and data collection efforts would no longer be available to the smaller MSAs, hindering their ability to bolster the CRA efforts of their banks. The total impact risks

[44] *Id.*

[45] *See* NCRC, *NCRC Comment on OMB Standards For Delineating The Metropolitan And Micropolitan Statistical Area, OMB-2021-0001* (Mar. 19, 2021), https://ncrc.org/ncrc-comment-on-omb-standards-for-delineating-the-metropolitan-and-micropolitan-statistical-area-omb-2021-0001/.

[46] *See Recommendations from the Metropolitan and Micropolitan Statistical Area Standards Review Committee to the Office of Management and Budget: Changes to the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas*, 86 Fed. Reg. 5263 (Jan. 19, 2021), https://www.federalregister.gov/documents/2021/01/19/2021-00988/recommendations-from-the-metropolitan-and-micropolitan-statistical-area-standards-review-committee.

[47] For more on how HUD determines income limits, *see* HUD, *FY 2020 HUD Income Limits* (Apr. 14, 2020), https://www.huduser.gov/portal/elist/2020-April-14.html.

weakening economic rebuilding efforts, just as our country is attempting to address racial inequities exacerbated by the pandemic.

Committing to Advancing Racial Equity

Finally, NCRC and CRC believe that Federal agencies need to do more than internally assessing equity and systemic issues – they need to assess results.[48] One way to do that would be through a racial equity impact audit on major public policies. An audit would help provide valuable data to assess whether a policy reduced the racial wealth gap or made it more pronounced. This would be particularly useful for recent stimulus programs that injected a historic amount of aid into the United States economy. It is still not known, for example, how the Paycheck Protection Program, stimulus checks, and other emergency aid impacted the racial wealth divide.

The Racial Wealth Audit developed by the Institute on Assets and Social Policy (IASP) at Brandeis University, in partnership with Demos, offers a useful framework.[49] The Audit compares median Black and White families and median Hispanic and White families and predicts the degree to which the racial wealth gap would decrease if a particular aspect of wealth-building were equalized. The Audit has been applied to analyses of homeownership programs, student debt relief, and other policy initiatives. It can show that some approaches may not be the most effective way to address the divide and that resources would be more effective in other, perhaps less intuitive, areas. Tools like the Racial Wealth Audit help to focus policy conversations and efforts on actions that prove most effective.

Another resource is the Racial Equity Toolkit, developed by Julie Nelson, of Race Forward, and her colleagues at the Government Alliance on Racial Equity (GARE). This tool has already been widely implemented in cities, like Seattle, Washington, to understand the impact and potential unintended consequences of legislation on the racial wealth gap.[50] There is no reason that a similar framework could not be utilized to gauge the impact and measure the progress of major federal public policies on advancing racial wealth.

AREA 3 – PROCUREMENT AND CONTRACTING

Agencies need to find opportunities to direct more procurement and contracting dollars to underserved individuals and communities. The Biden Administration has set a goal of increasing its contracts to small, disadvantaged businesses by 50%, or $100 billion, over five years, to help address racial economic inequality.[51] Currently, the Federal Government compiles and shares

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[48] *See* Dedrick Asante-Muhammad, Chuck Collins & Omar Ocampo, *White Supremacy is the Pre-Existing Condition: Eight Solutions to Ensure Economic Recovery Reduces the Racial Wealth Divide*, NCRC & Inst. for Pol'y Studies (2020), https://ips-dc.org/wp-content/uploads/2020/06/RWD2020-June19-Final.pdf (discussion of racial equity impact audit).

[49] *See* Thomas Shapiro, Tatjana Meschede & Laura Sullivan, *The Racial Wealth Audit: Measuring How Policies Shape the Racial Wealth Gap*, IASP at Brandeis Univ. (updated Oct. 2016), https://heller.brandeis.edu/iere/pdfs/racial-wealth-equity/racial-wealth-gap/racial-wealth-audit.pdf.

[50] Julie Nelson & Lisa Brooks, *Racial Equity Toolkit: An Opportunity to Operationalize Equity*, GARE, a project of the Haas Inst. & the Ctr. for Soc. Inclusion (Dec. 2016), https://www.racialequityalliance.org/wp-content/uploads/2015/10/GARE-Racial_Equity_Toolkit.pdf.

data on contracts given to a host of small businesses across four categories: small disadvantaged businesses, service-disabled veteran-owned businesses, women-owned businesses, and historically underutilized business zone (HUBZone) businesses.[52] A better understanding of contracts given to these businesses across race and ethnicity would be beneficial to achieving equity in procurement and contracting.

Racial and Ethnic Data on Small Business Procurement Contracting

The Federal Government should increase its contracting and procurement goal with small businesses by 50%. NCRC encourages the Office of Federal Procurement Policy to achieve this goal by:

- Providing disaggregated, racialized data on federal spending year-to-year to (1) highlight the percentage of federal contracts going to various business groups by race and ethnicity and improve upon them, and (2) establish specific year-to-year targets for Black, Hispanic, Asian American, and Native American-owned businesses. Currently, procurement contracts that are awarded to small businesses are reported using the four Small Business Administration (SBA) set-aside categories listed above.[53] Though helpful, disaggregated, racialized data is necessary.
- Substantively increasing the share of federal procurement dollars to small businesses as a whole. NCRC and CRC advocate for a 26% goal of small business procurement dollars for socially disadvantaged businesses, an increase from the 10% average each year. This includes specific goals for different communities and a concerted effort to increase contracts going to 8(a) companies. We recommend a goal of over 10% going toward African Americans and Latinos, respectively; a 5% goal for Asian Americans; and a 1% goal for businesses owned by Native Americans and Indigenous peoples.
- Targeting underperformance by committing subcontracts to veteran-owned and HUBZone businesses, across all federal agency departments, and small, disadvantaged businesses within the Departments of Defense and State. A recent small business procurement scorecard reveals underperformance of these targeted contracting goals.[54] Federal agencies should commit 3% of subcontracts to veteran-owned and HUBZone businesses, across all agencies; and 5% of subcontracts to small, disadvantaged businesses within the Departments of Defense[55] and State.[56]

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[51] *FACT SHEET: Biden-Harris Administration Announces New Actions to Build Black Wealth and Narrow the Racial Wealth Gap*, The White House (June 1, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/01/fact-sheet-biden-harris-administration-announces-new-actions-to-build-black-wealth-and-narrow-the-racial-wealth-gap/.

[52] *See* GSA, *Set Asides and Special Interest Groups*, https://www.gsa.gov/small-business/-become-a-gsa-vendor/explore-business-models/-setasides-and-special-interest-groups.

[53] SBA, *Contracting Assistance Programs*, https://www.sba.gov/federal-contracting/contracting-assistance-programs.

[54] SBA., *Government-Wide Performance: FY2019 Small Business Performance Scorecard* (2020), https://www.sba.gov/sites/default/files/2020-09/G-W.pdf.

[55] SBA, *Department of Defense: FY2019 Small Business Performance Scorecard* (2020), https://www.sba.gov/sites/default/files/2020-08/DOD.pdf.

[56] SBA, *Department of State: FY2019 Small Business Performance Scorecard* (2020), https://www.sba.gov/sites/default/files/2020-08/State.pdf.

- Directing Federal agencies to address present disenfranchisement faced by minority-and-women-owned businesses in public sector contracting activity, thereby ensuring utilization of minority-and-women-owned businesses at percentages equivalent to industry representation. A recent hearing held by the House Committee on Transportation and Infrastructure to discuss improvements to the Department of Transportation's Disadvantaged Enterprise Business Program is an example of how agencies can address the uneven playing field for small, minority businesses vying for public contracts.[57]
- Allocating resources to assist small businesses to successfully bid and compete on such procurement projects (see below).

Addressing Disparities in Procurement Contracting

NCRC and CRC encourage additional investments in small business resource groups – such as community development corporations, chambers of commerce, and community development financial institutions – to strengthen and support the growth of minority-and-women-owned businesses.

- *Direct Technical Assistance* – Many federal programs aimed at providing critical technical assistance for small businesses have arbitrary and unnecessarily limiting constraints. For example, the Procurement and Technical Assistance Program (PTAP),[58] led by the Department of Defense, is limited in its ability to provide government contracting assistance to small businesses. PTAP can be more helpful if it partners closely with small business development centers or entities, like the Department of Commerce's Minority Business Development Agency, which have a history of supporting minority-owned small businesses and can be leveraged more efficiently to support small business development.[59]
- *Engagement and Access to Networks* – Federal agencies should leverage regional and national organizational assets to strengthen connections with minority-and-women-owned businesses by:
  - Using Government systems set up for smaller business tracking to identify and engage with larger minority and women-owned businesses.
  - Digitize resources relating to federal government procurement for greater access.
  - Host technical assistance opportunities in communities with significant potential minority vendors, mitigating the barriers that some businesses face in accessing business centers in close proximity to their location (e.g. rural areas).

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[57] *See* Christian Pineiro, *House Committee Asked to Propose New Improvements to USDOT Disadvantaged Business Enterprise Program*, ENO Ctr. for Transp. (Sept. 24, 2020), https://www.enotrans.org/article/house-committee-asked-to-propose-new-improvements-to-usdot-disadvantaged-business-enterprise-program/.

[58] Gov't Accountability Off., GAO-21-287, *Procurement Technical Assistance Program: Opportunities Exist for DOD to Enhance Training and Collaboration* (Mar. 31, 2021), https://www.gao.gov/products/gao-21-287.

[59] *See* Connor Maxwell et al., *A Blueprint for Revamping the Minority Business Development Agency*, Ctr. for Am. Progress (July 31, 2020), https://www.americanprogress.org/issues/race/reports/2020/07/31/488423/blueprint-revamping-minority-business-development-agency/.

- *Minority Subcontracting Requirements* – Federal agencies require prime, Tier 1 contractors to include minority-and-women-owned businesses as subcontractors in their bids.[60] But waivers are freely given if diverse suppliers are not included on the basis of "good faith effort" with little to no accountability and/or review of compliance.[61] This raises the barrier of entry for Tier 2, smaller diverse suppliers and should be remedied.

CFPB and Office of Minority and Women Inclusion

The CFPB's Office of Minority and Women Inclusion (OMWI) also plays an important role in addressing the racial wealth divide. OMWI was created by Section 342 of Dodd-Frank to ensure accountability for diversity and inclusion in financial services. OMWI works with the Procurement Office to enhance outreach opportunities and engage with minority-and-women-owned businesses.

The Bureau has progressed in advancing the mandates of Section 342 and ensuring diversity and inclusion are integral parts of its culture and business activities. The most recent report from OMWI showed that, in FY 2020, the Bureau spent $42.9 million or 31.2% of its total contractor spend with minority-and-women-owned businesses.[62] This increase from the CFPB's spend of 28.9% with minority-and-women-owned businesses in FY 2019 shows a continuing positive trend since FY 2017, when the CFPB spend with minority-and-women-owned businesses was 9.2%. Between 2019 and 2020, the CFPB increased their spend to Asian firms by 1.5%, and Native, Black and Hispanic firms at an average of 0.5%.[63] According to their 2016 - 2020 Strategic Plan, the CFPB intentionally conducted outreach to minority-and women-owned businesses to provide information about contracting opportunities through market research meetings in partnership with the National Minority Development Council, the 8(a) Conference and Annual Government Procurement conference; virtual technical assistant trainings; and vendor capability matching.[64] It has also worked directly with an Office of Procurement's business inclusion specialist to ensure alignment and success of its diverse supplier goals. The CFPB should focus on continuing this upward trend in the short and long terms and share any best practice programming research for other federal agencies to follow.

AREA 4 – FINANCIAL ASSISTANCE

Federal agencies can better channel financial assistance to underserved communities by investing in community development financial institutions (CDFIs) and Community Development Block Grants. They can encourage the use of Special Purpose Credit Programs with better regulatory guidance. They can also provide financial relief to borrowers by modifying

[60] SBA, *Prime and Subcontracting*, https://www.sba.gov/federal-contracting/contracting-guide/prime-subcontracting.

[61] *See* Damien Specht, J. Alex Ward & Alissandra Young, *Roadblocks Inherent To The Public Procurement Process For Minority-Owned Businesses*, Morrison Foerster LLP (Feb. 1, 2021), https://govcon.mofo.com/small-business/roadblocks-inherent-to-the-public-procurement-process-for-minority-owned-businesses-guide-1-of-4/.

[62] CFPB, *Office of Minority and Women Inclusion Annual Report to Congress* 8 (Mar. 2021), https://files.consumerfinance.gov/f/documents/cfpb_2020-omwi-annual-report_2021-03.pdf.

[63] *Ibid.*

[64] CFPB, *Diversity and Inclusion Strategic Plan 2016-2020* (Nov. 2016), https://files.consumerfinance.gov/f/documents/201611_cfpb_diversity-and-inclusion-strategic-plan-2016-2020.pdf.

FHA and the Department of Veterans Affairs (VA) mortgage terms to efficiently address the harms caused by the COVID-19 crisis.

Lending to Financially Underserved Communities

Federal agencies can advance equity and inclusion in the economy through investments in community development financial institutions. CDFIs are loan funds, credit unions, banks and other organizations that commit to extending financing and related services to people in economically distressed and financially underserved communities.[65] In 1994, Congress established the CDFI Fund as a Treasury Department component and charged it with strengthening this important part of the nation's financial sector.[66] Since then, the fund has certified more than 1,100 CDFIs.[67]

In December 2020, Congress made significant funding available for CDFIs and emphasized support for minority-serving CDFIs. But analyses have raised concerns that disparate access to, and inadequate accountability about, CDFI funding has widened wealth and opportunity gaps in high poverty areas and in communities of color. For example, an analysis of 2019 HMDA data found that among the 27 CDFI banks in Mississippi engaged in mortgage lending, 71 percent of mortgage loans went to White borrowers, while only 13 percent went to Black borrowers – remarkably below the state's nearly 40 percent Black population.[68]

Action is required to ensure that CDFI funding achieves the desired results. The Treasury Department is in the process of taking applications for one of the largest pots of CDFI funding in history through the Emergency Capital Investment Program.[69] This capital is projected to generate up to $90 billion in lending by CDFIs, and leverage substantially more in indirect investment. However, even at this historic level, demand will far exceed the amount of funding made available. Treasury must not default to patterns and practices that have led to disparate outcomes of the past.

NCRC and CRC recommend that:

- Awards be based on a CDFI's demonstrated record of providing financial services to "Other Targeted Populations," defined by the Treasury Department as low-income people and people of color. The mortgage lending disparities, described above, were made possible because many Mississippi banks qualified as CDFIs due to their

[65] *See* Opportunity Fin. Network, *What is a CDFI?*, https://ofn.org/what-cdfi.

[66] *See* Pauline H. Smale, Cong. Res. Serv., *Community Development Financial Institutions (CDFI) Fund* (Dec. 10, 2001), https://www.everycrsreport.com/files/20011210_RS20972_c72f40f3575a57428403855f3da101a3aca39ea8.pdf.

[67] *See* CDFI Fund, U.S. Dep't of the Treasury, *Certified CDFIs as of October 14, 2020* (2020), https://www.cdfifund.gov/sites/cdfi/files/2020-11/cdfi-cert-list-10-14-2020-final.xlsx.

[68] William J. (Bill) Bynum, Testimony Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, *An Economy that Works for Everyone: Investing in Rural Communities* 7 (Apr. 20, 2021), http://hopepolicy.org/manage/wp-content/uploads/Senate-Banking-Committee-Bynum-Written-Testimony-042021.pdf.

[69] *See* U.S. Dep't of the Treasury, *Emergency Capital Investment Program*, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-small-businesses/emergency-capital-investment-program.

proximity to economically distressed places – not because of their documented service to low-income, Black, and other historically underserved people.

- Award decisions be based not solely on a CDFI's pre-existing asset size. Minority-led and owned CDFIs are significantly undercapitalized compared to their White counterparts – even though these financial institutions are located in and lend in communities of color at much higher rates than White-owned institutions.
- CDFI Fund support should not go to any CDFIs that charge excessive rates or fees, which can significantly harm BIPOC-owned small businesses.
- The CDFI Fund should set aside funds for BIPOC-led CDFIs.

Another important program is HUD's Community Development Block Grant (CDGB) program, through which the Federal Government directs annual funds to 1,200 states, cities, and counties to develop viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons. Program grantees use CDBG funding to invest in low- and moderate-income people and neighborhoods through a variety of activities that focus on four major areas: affordable housing, infrastructure, services, and economic development. While the program allows communities to design and implement strategies tailored to meet local needs and priorities, reforms are needed to make the program more flexible.

In June 2020, the National Community Development Association, which represents nearly 500 local governments that administer the CDBG program, formed a working group of Hispanic and Black community development administrators to examine the program and make recommendations for improving it to better serve communities of color. The working group developed five recommendations for improving the program:[70]

- Substantially increase the authorized funding level for the program.
- Eliminate, or let CDBG grantees determine, the public services cap.
- Provide more flexibility for grantees to use their CDBG funds for new construction of housing.
- Provide more flexibility for grantees to use their CDBG funds for fair housing activities.
- Support local nonprofit partners through technical assistance and capacity building.

NCRC and CRC support these recommendations for improving HUD's CDBG program.

Private lenders can also play a major role in increasing lending opportunities for members of Black, Hispanic, and other traditionally underserved communities through special purpose credit programs, but further guidance from federal regulators is needed. The guidance is needed because these efforts must be undertaken in compliance with the prohibition in the Equal Credit Opportunity Act (ECOA)[71] and its implementing regulation (Regulation B)[72] against considering a prohibited basis, such as race or ethnicity, in any aspect of a credit transaction. Notwithstanding this prohibition, ECOA and Regulation B permit creditors to create "special

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[70] *See* George Mensah, Written Testimony Before the House Financial Services Committee, Subcommittee on Housing, Community Development, and Insurance (June 16, 2021), https://financialservices.house.gov/uploadedfiles/hhrg-117-ba04-wstate-mensahg-20210616.pdf.

[71] *See* 15 U.S.C. § 1691(a).

[72] *See* 12 C.F.R. § 1002.6(b)(9).

purpose credit programs" to extend credit to applicants who meet certain eligibility requirements. Pursuant to such a program, lenders may offer special underwriting or pricing for traditionally disadvantaged groups by favorably considering prohibited factors such as race or ethnicity.

While special purpose credit programs have explicitly been permitted for more than 40 years, lenders have tended to use the programs sparingly. Among their concerns are that federal regulators have provided limited guidance regarding the parameters of an acceptable special purpose credit program and have indicated that they will not provide prior approval of a program.[73] As such, continuing guidance and support from regulators like the CFPB are needed to make more efficient use of these programs. All banks should be required to establish one or more special purpose credit programs, perhaps through their CRA responsibilities, to address historic and systemic redlining practices.

<u>*Housing and Equitable COVID Recovery Relief*</u>

Millions of homeowners are still having difficulty affording their monthly mortgage payments because of the COVID-19 pandemic.[74] In March 2020, Congress included mortgage forbearance in the CARES Act, allowing homeowners with a federally-backed mortgage who were facing financial difficulty due to COVID-19 to pause their monthly payments.[75]

But forbearance only provides temporary relief – many homeowners will require a mortgage modification that changes the terms of their mortgage to reduce their monthly payment to an affordable level. Servicers under all programs (e.g., Fannie, Freddie, FHA, VA, USDA), need to do more to keep borrowers in their homes. To that end, the FHA and VA have established mortgage modification options to assist homeowners who cannot afford their original monthly payments due to ongoing financial distress. While these modification programs will be helpful, there are several improvements that the FHA and VA should consider that would both increase the availability of modifications to homeowners in need of financial assistance and provide them with greater payment reductions. Specifically, by increasing the amount of available maturity extension and principal forbearance and loosening the requirements to qualify for a modification, the FHA and VA will be able to provide more homeowners in need with substantial payment reduction in a cost-effective manner.

Mortgage modifications that reduce the homeowner's monthly payment have proven to be the most cost-effective foreclosure reduction mechanism.[76] In general, mortgage modifications

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[73] *See* 12 C.F.R. § 1002, Supplement I, ¶ 8(a), comment 1.

[74] As of April 2021, about 1.8 million were seriously delinquent (at least three payments past due). *See* Black Knight, Inc., *Black Knight's First Look at April 2021 Mortgage Data* (May 20, 2021), https://www.blackknightinc.com/black-knights-first-look-at-april-2021-mortgage-data/.

[75] *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116–136, 134 Stat. 281, § 4022 (Mar. 27, 2020), https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf. Since then, the federal housing agencies have extended the forbearance enrollment window until the end of June 2021 and increased the allowance to 18 months. *See* HUD, *HUD Announces Extensions and Expansions of COVID-19 Homeowner Relief and Home Retention Measures* (Feb. 16, 2021), https://www.hud.gov/press/press_releases_media_advisories/hud_no_21_023#:~:text=To%20address%20the%20ongoing%20need,servicer%20through%20June%2030%2C%202021; Veterans of Foreign Wars, *VA Extends Relief for Borrowers Affected by COVID-19* (Feb. 16, 2021), https://www.vfw.org/media-and-events/latest-releases/archives/2021/2/va-extends-relief-for-borrowers-affected-by-covid-19.

[76] *See* Kanav Bhagat, *Avoiding COVID-19 Related Foreclosures by Implementing Cost-Effective Mortgage Modifications for Federally-Backed Loans* (May 26, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3849054.

calculate a targeted monthly payment or minimum amount of payment reduction. Then, the steps of a "waterfall" are traversed in order and the terms of the mortgage are adjusted until the target monthly payment or target payment reduction is reached. But adjusting the terms of a mortgage to reduce the borrower's monthly payment can be costly to the lender. To incentivize lenders to offer modifications to those who can no longer afford their monthly payment, modifications should be designed to offer substantial payment reduction while simultaneously minimizing the costs imposed upon the lender. To do so, modification waterfalls should be ordered as follows: maturity extension, followed by principal forbearance, then interest rate reduction, and finally principal forgiveness. This is what Kanav Bhagat, Director of Financial Markets Research for the JPMorgan Chase Institute, calls an "optimized waterfall."[77]

The FHA should consider three adjustments to their COVID-19 Home Retention Options. First, it should offer maturity extensions to 40 years (up from 30 years). Maturity extension is the most cost-effective method of reducing a homeowner's monthly payments. When facing financial distress, the first-time homebuyers, minorities, and low-to-moderate income households served by the FHA should have access to the same affordability tools made available to borrowers guaranteed by Fannie Mae and Freddie Mac. Second, the FHA can reduce the cost of their modifications by reordering their waterfalls to match the optimized waterfall. And third, the FHA should increase the availability of the FHA-Home Affordable Modification Program (FHA-HAMP)[78] to lower-income homeowners and homeowners who have experienced deeper income losses. Many borrowers at the lower end of the income spectrum or who sustained deep income losses will fail to qualify for a modification because FHA-HAMP requires their post-modification payment to effective income ratio (PTI) be less than or equal to 40 percent. But the 40 percent PTI threshold will prevent the borrowers closest to financial ruin from receiving an FHA-HAMP modification. Instead, they will likely lose their homes. By raising the PTI threshold to 55 percent, FHA could expand the availability of FHA-HAMP to those homeowners most in need.

The VA should consider four adjustments. First, as with the FHA, the VA could increase the payment reduction offered to borrowers by offering maturity extensions to 40 years. Second, the VA can also reduce the cost of borrowers' modifications by optimizing their waterfall. Third, mortgage servicers should be reimbursed for forborne principal amounts. As it stands today, the restriction on forbearance reimbursement limits both the amount of payment reduction delivered and the number of veterans that can be assisted by VA modifications, and puts veteran borrowers facing hardship at a distinct disadvantage relative to FHA borrowers. And fourth, VA borrowers with a total monthly payment close to 31 percent of their income currently receive a payment reduction from a VA modification that is relatively modest. VA can improve this by adjusting their target to be a total monthly payment that is 31 percent of monthly gross income or 80 percent of the pre-modification total monthly payment, whichever is smaller.

About 965,000 FHA and VA borrowers will need a mortgage modification,[79] so the aggregate cost savings to lenders from the proposed optimization of the FHA and VA modification waterfalls could be nearly $14.5 billion.[80] These savings could be used to increase

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[77] *Id.*

[78] In July 2009, FHA launched the FHA-HAMP to allow borrowers to modify their mortgages to obtain more affordable payments. *See* HUD, *FHA-Home Affordable Modification Program (FHA-HAMP)*, https://www.hud.gov/hudprograms/fhahamp.

[79] *See* Bhagat, *supra* n. 76.

[80] *Id.*

the payment reduction and broaden the availability of mortgage modifications for homeowners with an FHA- or VA-backed mortgage, allowing more homeowners facing COVID-19-related financial difficulty to remain in their homes.

The FHFA has also recently announced important and needed changes to loan modification terms for COVID-19 impacted borrowers with mortgages backed by Fannie Mae or Freddie Mac needing payment reduction to retain homeownership. The Enterprises should continue to review and optimize their loss mitigation waterfalls to prioritize home retention. FHFA should also support calls for the Enterprises to create a more streamlined refinance program to make rate and term refinancing more available to lower-wealth borrowers and borrowers of color.

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NCRC and CRC commend OMB for taking swift action to gather information aimed at advancing equity and support for underserved communities through Government. If you have any questions or would like to discuss the information in this comment, please contact Michael Ceja Martinez, counsel for NCRC and CRC, at 202-701-1788 or mmartinez@democracyforward.org. Thank you for your consideration.

Respectfully submitted,

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