AN ENDURING LEGACY: THE ROLE OF FINANCIAL INSTITUTIONS IN THE HORRORS OF SLAVERY AND THE NEED FOR ATONEMENT

HYBRID HEARING

BEFORE THE

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OF THE

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AN ENDURING LEGACY: THE ROLE OF FINANCIAL INSTITUTIONS IN THE HORRORS OF SLAVERY AND THE NEED FOR ATONEMENT

Tuesday, April 5, 2022

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2128, Rayburn House Office Building, Hon. Al Green [chairman of the subcommittee] presiding.

Members present: Representatives Green, Adams, Tlaib, Garcia of Illinois, Garcia of Texas, Williams of Georgia; and Timmons.

Ex officio present: Representative Waters.

Chairman GREEN. The Oversight and Investigations Subcommittee will come to order.

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee are authorized to participate in today's hearing.

Before we begin, I would like to announce that it is my intention to proceed with opening statements and testimony from our witnesses before recessing the subcommittee for the series of votes on the House Floor, after which we will reconvene and continue with the hearing.

Today's hearing is entitled, "An Enduring Legacy: The Role of Financial Institutions in the Horrors of Slavery and the Need for Atonement."

I now recognize myself for 3 minutes, possibly 4, to give an opening statement.

Hello, friends. As Chair of the Financial Services Subcommittee on Oversight and Investigations, under the leadership of the Honorable Maxine Waters, it is my singular honor to convene this historic hearing to examine the role of financial institutions in the horrors of slavery. The enslavement of Africans was an epitome of evil, and its stain on human history cannot be sanitized with the passage of time. It was a horrific crime against humanity that demands redress, a crime which cannot be whitewashed with a solution of ignoble ignorance. This is in part why—a large part, I might add—I introduced H.J.Res. 64, calling for an annual day of to prevent the sanitization and whitewashing of our seminal sin: slavery.

We have a day, friends, to remember 9/11 and commemorate the thousands of lives lost to terrorism. We have a Pearl Harbor Remembrance Day, to ensure that December 7, 1941, will forever be a day that lives in infamy. We have a Holocaust Remembrance Day, to prevent the horrors of the Holocaust from ever being repeated. So, dear friends, we need a Slavery Remembrance Day, not only to remind us of the horrors of slavery, but also of the need for atonement. And although the practice of slavery may have been legal at one time, it was, without question, a profoundly immoral practice necessitating atonement. Consequently, it becomes important for banks, insurance companies, and other financial institutions with historic ties to slavery to atone.

Recognizing that atonement is part and parcel to our need for reconciliation, and we have not reconciled in our country, I have introduced H.J. Res. 919, calling for a Cabinet-level Department of Reconciliation with a budget indexed to the Department of Defense, and a Secretary of Reconciliation, who reports directly to the President, very similar to having the Department of Labor, with a Labor Secretary and Undersecretaries, and the Department of Commerce, and all of the various departments. We need a Department of Reconciliation such that we can reconcile. Reconciliation won't take place over a short period of time. This Department would be as enduring as the Department of Labor.

And friends, although atonement for our seminal sin, the dehumanization and enslavement of human beings, has been too long delayed, I do not believe that the zeitgeist of our time will allow atonement for the suffering to be denied forever. I look forward to hearing from our witnesses on how contemporary financial institutions could address their history with slavery and provide measures of atonement in the present day. Thank you.

And with this, I conclude my remarks, and I now recognize the acting ranking member, Mr. Timmons, for 5 minutes for an opening statement.

Mr. TIMMONS. Mr. Chairman, I want to thank you for holding this hearing today. And to our witnesses, thank you all for taking the time to appear before the subcommittee to share your research and experience.

This afternoon, we are prepared to listen and learn, and I look forward to hearing everyone's perspective. Being from South Carolina, I am keenly aware of my State's, and our country's as a whole, history with race. While slavery ended with the Civil War, there are still visual reminders in my State of this dark past. You can still see the scars on our State House from General Sherman's March to the Sea in our capital City of Columbia. And in Charleston, the marketplace where human beings were bought and sold still stands as a stark reminder of our country's original sin.

But I have also seen the new South that we have built together in the years since these tragedies occurred, and it is a much different place. Does work still remain to right wrongs? Absolutely, but there is no denying the monumental progress we have made. The legacy of slavery and the persistent racial economic disparities in the United States are linked, and we will discuss that history today. A number of the banks and insurance companies that we are going to discuss today have acknowledged their history and their connections to the practice of slavery. This is an important step, and I look forward to hearing from our witnesses about where those companies should go next.

But we also need to be mindful of the fact that rising prices are making matters worse for households of color. The current inflation rate is 7.9 percent, the highest in my lifetime, which means that for working-class families, as well as seniors on fixed incomes, in my district and across the country, it is getting harder and harder to make ends meet.

This plainly shows that inflation is exacerbating racial disparities. Data from the Federal Reserve and the Bureau of Labor Statistics show that Black, Hispanic, and Latino households own their homes at a lower rate than White households. In an inflationary environment, rents tend to rise. Meanwhile, paying the mortgage becomes relatively cheaper, and relatively easier. The net effect is an expansion of racial disparities.

The same factors are at play when it comes to buying groceries and paying for gas in the last year or so. An analysis of CPI data by economists at Penn Wharton found that higher-income households had smaller percentage increases in their total expenditures because they spend more on services, which experienced the smallest price increases in 2021. On the other hand, lower-income households spend relatively more on energy and groceries, whose prices had large increases. So again, inflation is causing racial economic disparities to expand.

As we listen to the history of banks and insurance companies who financed slavery in the United States, I hope our witnesses will provide some important context and help us connect that history to contemporary disparities in homeownership and wealth. The data related to racial disparities make it clear that households of color are at a huge disadvantage when it comes to navigating inflation. I think we have a responsibility to legislate with that in mind when we consider bills that may further affect the rate of inflation one way or the other.

Again, Mr. Chairman, I want to thank you for holding this hearing today, and I look forward to the testimony of our witnesses. I yield back.

Chairman GREEN. The gentleman yields back.

The Chair now recognizes the Chair of the full Financial Services Committee, the gentlewoman from California, Chairwoman Waters, for 1 minute.

Chairwoman WATERS. Thank you very much, Chairman Green. Financial services institutions played a powerful role in financing channeled slavery. Insurance companies provided the financial protection necessary to transport stolen people from Africa to the United States, and to protect slave owners from loss when a slave died. Banks provided loans to finance the purchase of slaves and accepted human beings as collateral, and some of these institutions are still in operation today, including JPMorgan Chase.

Today, this committee continues its work to address systemic racism. I look forward to discussing the actions of our financial industry, and what they can do to remedy and deal with the lasting effects of their having profited from the enslavement of human beings.

I yield back the balance of my time.

Chairman GREEN. Thank you, Madam Chairwoman. Friends, at this time, we would like to welcome the witnesses. It is my preeminent privilege to welcome our witnesses and to indicate that we are looking forward to your testimony, and we greatly appreciate those of you who are here, for traversing some distance to be here. And for those of you who could not make it in, we look forward to hearing from you by way of technology, and we are grateful that you are there as well.

Our witnesses are: Dr. Daina Ramey Berry, the Oliver H. Radkey Regents Professor and Chair of the Department of History at the University of Texas at Austin; Dr. William A. Darity, Jr., the Samuel DuBois Cook Professor of Public Policy, African and African American Studies, Economics, and Business at Duke University; Dr. Sven Beckert, the Laird Bell Professor of History at Harvard University; Ms. Nikitra Bailey, the senior vice president of public policy at the National Fair Housing Alliance; and Dr. Sarah Federman, an assistant professor at the School of Public and International Affairs at the University of Baltimore.

Witnesses are reminded that their oral testimony will be limited to 5 minutes. You should be able to see a timer that will indicate how much time you have left. And without objection, your written statements will be made a part of the record.

Dr. Berry, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF DAINA RAMEY BERRY, OLIVER H. RADKEY REGENTS PROFESSOR AND CHAIR OF THE DEPARTMENT OF HISTORY, UNIVERSITY OF TEXAS AT AUSTIN

Ms. BERRY. Good afternoon, Chairman Green, Chairwoman Waters, and members of the subcommittee. It is an honor to come before this body and share my testimony on the legacies of slavery in connection to financial institutions. I have been studying this history for 30 years, and I appreciate the invitation.

Enslaved people were valuable financial investments, so valuable that financial institutions, municipalities, universities, private citizens, and medical schools bought, sold, gifted, deeded, traded, mortgaged, leased, and transported enslaved people as a form of legal tender. Human chattel were foundational to the Western economies from the 15th to the 19th Centuries. They were one of the most unique forms of commodity and assets because they were human beings, defined as chattel, and a movable form of property.

We have records confirming their value at every stage of their lives, from pre-conception to post-mortem. We also have documents that clearly outline the connections between enslaved people and specific financial institutions, such as insurance companies and banks. Those records can be traced from slavery to the present. Such legacies reverberate throughout our society today and are reflected in all kinds of disparities. The wealth gap is so wide that most of us will not see it narrow in any appreciable way in our lifetimes.

Turning to insurance companies, the Southern Mutual Life Insurance Company, founded in 1848 under the name of Georgia Southern Mutual, shows evidence of profits generated from insuring the bodies and lives of the enslaved. During the second year of offering policies to enslavers, the company saw growth from 28 to 239 policies, and reported that most of those who purchased policies were modest enslavers who had, "a small number of slaves whom they were dependent upon." Thus, they secured their income by taking policies on the lives of human property. Looking at policies from 1856 to 1863, we learned that the company insured enslaved people from age 1 to age 60. Some policies were for 1 month or 2 months. Other policies were for as long as 5 years. Regardless of the length, each enslaved person underwent a medical examination to determine their value, and the company set premiums and rates based on their value.

Although this company originated in Georgia, Southern Mutual Life Insurance Company had agents throughout the South, and is still present today. In addition to individual policies, some States, including Maryland, passed legislation that encouraged people to purchase policies on the enslaved. Here, the State-supported policies helped enslavers search for self-liberated runaway enslaved people in order to recover the cost of those who absconded and had been away for, "a reasonable period of time." The enslavers could make money off of those who escaped. The fact that enslavers could make money off of those who escaped is remarkable.

They also made money off of what we call elderly at that time. Forty-year-old Ellick was valued at $2,000 for 1 year, with a premium of $80 and a percentage rate of 4 percent on his policy. What did these numbers reflect in terms of contemporary times? Fifty-one-year-old Charlotte was valued at $800 in 1860, which was equivalent to nearly $23,500 in 2014, and, I would argue, much higher today. Insurance policies alone help explain why some enslavers kept elderly enslaved people. Many would not command the insured value in the market. However, they could be replaced with someone younger at death.

The banking industry literally facilitated transactions related to enslaved people by extending loans, and securing debts, gifts, and deeds of trust. And banks, including Citizens Bank and Union Bank, kept track of collateral payments, and issued notes that involved the enslaved, whose names can be found throughout the records.

I would like to close my remarks with the voices of the enslaved.

After freedom, Henry Banner shared, "I was sold for $2,300, more than I am worth now."

Tempe Herndon and other enslaved women understood that their monetary value was linked to their fertility. "I was worth a heap because I had so many children," she explained. The more children a slave had, the more they were worth.

Hardy Miller remembered that enslavers paid $100 for every year he was old, claiming, "I was 10-years-old, so they sold me for $1,000."

Martha King remembered her sale at 5-years-old. She went on the auction block with her grandmother, mother, aunts, and uncles. "I can remember it well," she told interviewers in the 1930s. "A White man carried me off just like I was an animal, or varmint, or something." She also remembered her monetary value. "Old Man Davis give them $300 for me."

Today, I share these testimonies as part of mine so that the enslaved voice is heard in the halls of Congress 150 years after the Thirteenth Amendment, because the wealth generated from their labor still serves as the foundation of the American economy. Thank you very much.

[The prepared statement of Dr. Berry can be found on page 61 of the appendix.]

Chairman GREEN. The gentlelady's time has expired. Thank you very much, Dr. Berry.

Dr. Darity, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF WILLIAM A. DARITY, JR., SAMUEL DUBOIS COOK PROFESSOR OF PUBLIC POLICY, AFRICAN AND AFRICAN AMERICAN STUDIES, ECONOMICS, AND BUSINESS, DUKE UNIVERSITY

Mr. DARITY. Thank you, Mr. Chairman. In our book, "From Here to Equality: Reparations for Black Americans in the Twenty-First Century," Kirsten Mullen and I argued that the fundamental attribute of a reparations plan for Black American descendants of U.S. slavery must be elimination of the racial wealth gap. The Black-White wealth gap serves as the premier economic indicator of the cumulative intergenerational effects of American racism on the conditions confronting living Black Americans whose ancestors were enslaved in the United States.

As economist William Spriggs puts it, "The racial wealth gap is the central measure of opportunity stolen from Black Americans." The minimum sum needed to close the Black-White chasm in wealth is $14 trillion. Only the Federal Government has the capacity to fund such an amount. If private individuals and institutions paid $1 billion a month into a, "reparations" fund, it would take a millennium for the fund to reach $14 trillion. The combined budgets of all State and local governments in the United States are less than $3.5 trillion. It would take 4 consecutive years of devoting all of their spending to a reparations fund, thereby foregoing all of their usual obligations to their constituents, to approach $14 trillion.

A true reparations plan must necessarily be a Federal project aimed at making direct payments to eligible recipients in an amount sufficient to build average Black assets to a level comparable with average White assets. However, this conclusion is not a recipe for paralysis on the part of private individuals and institutions, nor other levels of government, for that matter. There are steps that can be taken to enhance racial equity by these institutions, even if they cannot execute a project for true reparations.

For example, a central financial weakness of Historically Black Colleges and Universities (HBCUs) is the underfunding of their endowments relative to Predominantly White Institutions (PWIs.) Private institutions do have the resources to facilitate elimination of the HBCU endowment gap. I turn to Louisiana to illustrate the possibilities, a State where its four Historically Black Colleges and Universities have significantly lower endowments per student than peer Predominantly White Institutions—I matched comparable institutions.

The gap per student between the States to Catholic institutions at Xavier and Loyola University is $7,650 per student. The gap between Tulane University and Dillard, two nondenominational schools, is $13,000 per student. The gap between two of the public universities in the State of Louisiana, Grambling State and the University of Louisiana, is $12,230. And the gap between the two land grant institutions, Southern University and Louisiana State University, is $14,575 per student.

To close the endowment gap would require, at minimum, an additional contribution of $26 million to the endowment for Xavier University, an additional $28.75 million to Dillard University, $61.4 million to Grambling State, and $102 million to Southern University. The total would amount to approximately $218 million. There is compelling evidence that larger endowments per student are associated with higher graduation rates, but increased endowments are unlikely to be sufficient to bring about full improvement in graduation rates. The target for all of the institutions should be at least to match Tulane's graduation rate of 85 percent, but closing the endowment gap holds tremendous promise for improving the quality and performance of the HBCUs. It will give them an opportunity to fully excel and to go beyond the accomplishments that they have achieved on the basis of meager resources.

Whom among potential private contributors could take on this task effectively? Certainly, the banking sector has the wherewithal, since the top 10 banks in the United States have combined assets of approximately $13 trillion, albeit assets that are held with varying degrees of risk. The total needed in Louisiana amounts to a blip on the financial horizon. They could take these beneficial steps towards greater racial equity without doing major harm to their balance sheets.

Thank you.

[The prepared statement of Dr. Darity can be found on page 64 of the appendix.]

Chairman GREEN. Thank you, Dr. Darity.

Dr. Beckert, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF SVEN BECKERT, LAIRD BELL PROFESSOR OF HISTORY, HARVARD UNIVERSITY

Mr. BECKERT. My name is Sven Beckert, and I am the Laird Bell Professor of History at Harvard University. I am honored to have the opportunity to meet with this committee, and I have submitted written testimony summarizing my views. As a scholar of the 19th Century United States who has worked extensively on the question of the role of slavery in U.S. economic development, I want to give you some background on the issues in front of this committee, and I would be delighted to answer any questions that you may have.

First and foremost, I want to emphasize that slavery was exceedingly important to U.S. economic development. Initial findings of an ongoing research project have shown that during the 1840s and 1850s, between 10 and 14 percent of the U.S. gross national product (GNP) was derived directly from the labor of enslaved people. In large parts of the South, almost half of the regional GNP was produced by enslaved people. We also know that the capital stored in these enslaved people exceeded the combined value of all of the nation's railroads and factories at the time.

The most important industry using enslaved workers in the 19th Century, cotton production, produced about 5 percent of the nation's GNP in 1850. And cotton constituted more than half of the United States' exports in most years from the 1820s to the 1850s. These numbers are significant. Even if we take the lowest estimate and assume that just 10 percent of the nation's GNP derived from the labor of enslaved people, that unpaid labor mattered greatly to the American economy. We can see this clearly if we compare it with contemporary industries. In 2021, all manufacturing activities in the United States combined contributed 11 percent to the nation's economic output, which is roughly the same share that the labor of enslaved people contributed during the Antebellum years.

These numbers are also still incomplete. The economic impact of slavery went beyond the actual production in agriculture and industry. Many other industries directly served or benefited from slavery as well, including northern manufacturers supplying the Southern plantation economy, the slave trade itself, mercantile houses, and industries dependent on slavery-produced inputs, as well as banks and insurance companies. Therefore, if we do not yet know the exact figures, we do know that the total importance of slavery and slavery-related industries in the United States in the 19th Century was definitely greater than just the value produced by the labor of enslaved people alone.

It is a mistake to think only about the Southern States when thinking about slavery. Slavery's economic impact was national in scope. Also, Northern States began abolishing slavery in the wake of the American Revolution. Northerners were deeply implicated in enslavement. Northerners shipped, insured, and financed plantation crops. They provided plantations with manufactured wares, and they used plantation crops in industrial production.

To comment on the subject at the core of your deliberations, financial institutions played a crucial role in enabling enslavement, making slave labor profitable and facilitating slavery's territorial expansion. The United States was the world's most important supplier of the industrial world's most important commodity: cotton. As cotton fueled an industrial revolution, European and U.S. financial institutions rushed into the cotton business. Slavery rested on the capital, institutional know-how, and varied services of the finance sector, and it was the finance sector that connected plantations to factories, and London money markets to New Orleans credit markets.

Advances on crops enabled planters to acquire land and enslaved workers. Planters offered the enslaved workers as collateral to access capital markets. While most credit relationships in the Antebellum South were mediated by so-called factors, these factors, in turn, drew on banks and merchant bankers to finance the growing of the crop and the extension of agriculture into new areas. And this applies both to private banks as well as to public institutions, such as the First and Second Banks of the United States.

Insurance companies, as we have heard, were also involved in slavery. Since much of the Atlantic trade consisted of the products of enslaved labor, marine insurance received a boost from an expanding slave economy. Life insurance also expanded under slavery, and scholars have estimated that at the beginning of the 1830s, several thousand life insurance policies were written on the lives of enslaved people. The historical evidence is therefore clear: Slavery was an exceedingly important part of the U.S. economy before the American Civil War.

It also had devastating effects on millions of enslaved women, men, and children, and it left a deep legacy of patterns of inequality in the United States. While millions of African Americans labored for generations without pay and under inhumane conditions, the wealth they produced accumulated elsewhere. In 1860, for example, White Southern men made up 59 percent of the wealthiest 1 percent of adult males in the United States. Many Northern merchants, manufacturers, banks, and nonprofit institutions gained from the uncompensated labor of African Americans. Meanwhile, African Americans received no compensation for their labor and could not secure family networks or accumulate property. They could not access educational resources and suffered from extreme forms of exploitation and maltreatment.

After slavery, African Americans continued to suffer more than a century of further economic, social, political, and educational discriminations. The legacy of patterns of inequality and opportunity, or the lack thereof, that came from slavery is with us in the United States to this very day.

Thank you.

[The prepared statement of Dr. Beckert can be found on page 52 of the appendix.]

Chairman GREEN. Thank you, Dr. Beckert.

Ms. Bailey, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF NIKITRA BAILEY, SENIOR VICE PRESIDENT, PUBLIC POLICY, NATIONAL FAIR HOUSING ALLIANCE

Ms. BAILEY. Thank you, Chairman Green, Ranking Member Emmer, and members of the subcommittee. Thank you for the opportunity to testify at today's hearing. I am Nikitra Bailey, senior vice president of public policy at the National Fair Housing Alliance, the country's only national nonprofit civil rights organization dedicated to eliminating housing discrimination and creating equitable opportunities. As I represent an office of more than 170 local fair housing enforcement agencies today, my testimony honors the sacrifices of my ancestors.

Despite founding principles of justice and liberty for all, the atrocious institution of slavery helped to establish the United States as one of the world's largest and most competitive economies. The free labor of enslaved Blacks undergirded the financial health of America and its institutions. Every American institution stands on this foundation, including banks, where the institution of slavery revolutionized credit markets, creating complex new forms of financial instruments and trade networks through which slaves could be mortgaged, exchanged, and used as leverage to purchase more slaves, according to Professor Baradaran.

The legacy of slavery endures. It is woven into every aspect of our economy and continues to manifest. Let me name a few. The

Freedmen's Bank, created to provide Black soldiers and their newly-freed citizens a secure place for their savings, ended up being looted by its White trustees. Despite its promise of economic freedom and self-determination, in the end, more than 60,000 of its depositors lost $3 million, which was nearly half the wealth of Black citizens. I ask you to imagine for a moment the toil it took on these Black Americans to amass $3 million, as most worked on the very same plantations where they were enslaved, as sharecroppers in a system that locked them into perpetual debt.

The unfounded association between race and risk in financial institutions was established by New Deal housing policies. The Federal Housing Administration (FHA) systematized lending discrimination as its policies both reflected and reinforced the practices of banks and insurance companies. FHA provided affordable housing for Whites, leaving communities of color relegated to riskier, costlier, wealth-stripping financial services.

Other examples: the $1 trillion from Blacks and Latinos lost during the subprime mortgage boom after being steered into risky products that led to foreclosure, despite many qualifying for loans with safer and more affordable terms; the failure of lenders to maintain homes in communities of color that they took back through foreclosure, or to market those homes in a manner that would maintain neighborhood stability; and during this current crisis, failing to provide lower interest rates and the cost savings to consumers of color, placing them at greater risk of foreclosure during this COVID-infused housing boom. White homeowners have been able to save $3.8 billion through refinancing annually, in comparison to $198 million for Black homeowners. The Federal Reserve's ongoing monthly support of mortgage-backed securities is fueling these disparities, while simultaneously allowing investors to buy up all of the affordable houses.

The stain of slavery spreads well beyond our banking system. But it is appropriate for this committee to focus on the role of banks, because they are different from other kinds of businesses, and they have a special relationship to the Federal Government. As the United States Supreme Court stated, national banks are instrumentalities of the Federal Government created for a public purpose. They are critical to the effective functioning of our economy, facilitating financial transactions, providing liquidity, and serving as a vehicle for monetary policy. Because of the public interest in these functions, the government gives banks special treatment that no other business gets, such as deposit insurance, access to the Federal Reserve's lender of last resort, and a system of regulation that curbs risk and boosts public confidence.

Now is the time to redress the legacy of their involvement in slavery and ongoing discrimination, not only to stop discrimination, but to take affirmative steps to heal the harms done over centuries. Following the people-led protests in the wake of the murders of Mr. George Floyd and Ms. Breonna Taylor, financial institutions made pledges to extend billions of dollars in the pursuit of racial equity. Fulfilling those pledges will not cure the stain of slavery from their foundations, but it will go a long way in advancing opportunity for the descendants of the enslaved.

This committee has also taken action to address these issues, particularly the housing provisions in the Build Back Better Act, especially the First-Generation Down Payment Assistance from Chairwoman Waters' bill that ended up in the bill for $10 billion. We need the Senate to act without delay to pass this legislation so that all of us as a nation can start to take actions for atonement.

I look forward to discussing my other recommendations with the committee. Thank you again for the opportunity.

[The prepared statement of Ms. Bailey can be found on page 28 of the appendix.]

Chairman GREEN. Thank you, Ms. Bailey.

Dr. Federman, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF SARAH FEDERMAN, ASSISTANT PROFESSOR, SCHOOL OF PUBLIC AND INTERNATIONAL AFFAIRS, UNIVERSITY OF BALTIMORE

Ms. FEDERMAN. Thank you for inviting me today. My research considers how corporations can atone for participation in mass atrocities such as genocide and slavery. My comments are based on two projects, one involving the French National Railways, known as the SNCF, for its efforts to atone for participation in the Holocaust.

My second project came at the urging of my Baltimore students, who rightly encouraged me to study corporate atonement for slavery. Through this, I discovered Alexander Brown & Sons, founded in Baltimore, first in cotton, then shipping, and then fundamentally developing investment banking to fund plantation agriculture. Legacy companies exist today, as do those of Barings Bank.

It is easy to look at a City like Baltimore and think that its golden days have passed. Those who followed the wealthy bankers and industrialists just didn't care for the City the way they did, one might think, but a deeper look suggests that the poverty, addiction, and violent crime we see today is not unrelated to how those industrialists acquired their wealth. Where to start? Well, for those seeking atonement, it is tempting to treat today's executives as the slaveholders themselves. Although their institutions benefited from slavery, today's individuals inherited these histories, they did not write them, so we want to separate the people from the problem. And there is a problem, that institutional wealth has compounded for over 200 years without addressing the souls who suffered for it or the harm they inflicted upon descendants.

I offer a corporate historical integrity model in my recent Harvard Business Review piece. In it, I advise corporations to commission an independent study of their history, to update their company's origin story based on these findings, to make a public statement about the history, often an apology, and especially, to engage with affected communities to develop a meaningful response, commemoration, compensation, and other programs.

JAG Holdings commissioned an independent study of its Holocaust connections and will make that public. They have also donated to Holocaust education. Georgetown University now works with the descendants of the slaves it sold back in the 1800s to determine the best use of the funds it will raise. The French National

Railways (SNCF) opened its archives, put up plaques, funds Holocaust commemorative activities, and engages in survivor communities.

But perhaps most relevant today is Lloyd's of London, an insurance company. They have researched their historical ties to slavery. They have made those findings available. They have opened their archives. They have offered an unequivocal apology on the website. They also outlined their commitment to develop Black and minority talent, increase Black and minority hires, and prevent participation in slavery in their supply chain. Their statement on their website reflects the correct spirit, I believe: "We approach this work with profound humility, a spirit of openness, and real enthusiasm for change. We will continue to listen to and be guided by our Black and minority ethnic colleagues."

But what about U.S. financial institutions? America's 50 biggest public companies and their foundations collectively committed roughly $50 billion since George Floyd's murder to address the issue of racial equity. That sounds great. However, The Washington Post found that more than 90 percent of that amount is allocated as loans or investments they could stand to profit from. Many people don't need more loans. They need help paying them.

A Brookings Institution study showed the Black-White disparity in student loan debt after graduation. Therefore, if we engage with communities, we will see the need for student loan forgiveness; they need to offer free higher-education to 3 generations of descendants. We will also see the need for housing assistance grants, as we have heard, better public transit, grocery stores, healthcare access, childcare, elder care, after-school programs, and music, and sports. Engaging with the communities also addresses the enormous dignity violation that slavery and segregation inflicted. To make any of these programs without people's input reinforces a paternalistic approach to the participation in society. Furthermore, corporate efforts towards racial equity will fall flat unless the companies take seriously their own institutional histories.

I am grateful for this collective opportunity to respond to a too-long and unatoned-for aspect of our history. And addressing it together, we can help heal our country and be who we say we are. Thank you.

[The prepared statement of Dr. Federman can be found on page 68 of the appendix.]

Chairman GREEN. Thank you, Dr. Federman.

Friends, votes are being called shortly, and we will have to move to the House Floor to cast our votes. The committee will stand in recess, and reconvene immediately following the conclusion of this series of votes. I do want you to know that you have my apologies. I would not have this happen to you. If I had my way, and I rarely get my way, but if I had, I assure you, you would not have to wait while we cast these votes, but do know that we will be back immediately after votes have been cast.

And the committee will stand in recess.

And witnesses, I would just like to come down and thank each of you individually, if I may.

The committee stands in recess.

[recess]

Chairman GREEN. Thank you, everyone, for being patient with us.

We will now proceed with questions. And at this time, I now recognize the gentlewoman from California, the Chair of the Full Committee, Chairwoman Waters, for 5 minutes of questions.

Chairwoman WATERS. Thank you very much for holding this hearing and affording the opportunity to start to get into some serious questions about slavery, the wealth gap, who is responsible, how it was created, and the role that insurance companies and banks have played, and, absolutely, some have disclosed that they had policies. In some cases, I have heard that there were those with bank accounts that just got wiped out, et cetera, et cetera.

I guess my question is, I know that there is a lot of discussion going on about reparations, and we have a study going on here, and in some States, they have created commissions, et cetera. But if they don't get around to getting reparations for a long period of time, shouldn't those banks and insurance companies that have disclosed—for example, New York Life Insurance Company reported under its previous name, Nautilus Mutual Life Insurance Company, that they wrote 508 insurance policies on enslaved persons. And knowing that, and they haven't admitted that, shouldn't we not wait for reparations? We should say that you owe the descendants of these policies who paid these premiums for maybe 20, 30, 40 years, some way by which to compensate the descendants of the people whose policies you had. Shouldn't there be a way that the banks and insurance companies should move forward, now that some have disclosed, and those that we are going to encourage to disclose, to do its own reparations?

I will start with you, Ms. Berry.

Ms. BERRY. Thank you for the question. I agree, absolutely. We have records. We have the names of individuals. We can trace the descendants not only of the enslaved, but also of the people who took out policies from the banks. We have these records that have been readily available. The policies that I quoted from Southern Mutual, I have 4,000 individual policies and a chart with all the names and when they were purchased, who they were purchased by, what the premiums were, and the name of the enslavers, as well as those who were enslaved. So, we absolutely can do this. It is a matter of those companies coming forward and being held accountable.

Chairwoman WATERS. Thank you very much. Can I get each of you to weigh in on that? What do you think?

Ms. BAILEY. Absolutely.

Mr. BECKERT. I agree.

Chairwoman WATERS. Thank you. Again, as I complimented Mr. Green for holding this hearing, this hearing should not be for naught. This hearing, given the information that you shared with us, the disclosure that has been done, it seems to me that the Federal Government ought to move to do whatever it takes to encourage, to legislate, to get the compensation for the descendants based on the information being available. Do you think that is fair? Ms. Berry?

Ms. BERRY. Yes, I do.

Chairwoman WATERS. Mr. Beckert, do you think it is fair?

Mr. BECKERT. Yes, it is. And it is obviously a very large issue that affects many parts of American society and many businesses, not just insurance companies, and so I think this is fair. But I think it should be embedded within a broader conversation about the impact of slavery on American society and the institutions that have benefited from slavery in the past.

Chairwoman WATERS. I appreciate that, but I think it is time to stop talking about it. We are way beyond the discussion part, and I am thinking that perhaps this is a time that we should move very aggressively, if we can. Would anybody else like to weigh in?

Mr. DARITY. Yes, I have a slightly different take on this. I certainly think that organizations that have been complicit with slavery, and not just slavery, but there are a host of atrocities that took place after slavery ended. Certainly, they should take steps to improve conditions of racial equity in the United States, but I think we do have to be careful not to refer to whatever steps they take as being reparations.

Chairwoman WATERS. Yes.

Mr. DARITY. Because they simply do not have the capacity to meet the bill that is appropriate for reparations. And the other point that I would like to make is, while all of the actions that they took are wholly immoral, they were actually legal under the conditions of law that existed in the United States of America, so the ultimate degree of culpability has to be assigned to the Federal Government. And it is the Federal Government that must ultimately pay the bill for reparations. We don't have to wait for anything to happen with respect to Federal action, but we do have to be very careful and circumspect about what we think are the magnitude of the actions that can be taken by private institutions and organizations.

Chairwoman WATERS. Thank you so very much, and maybe we should take that into consideration, all of us, who have policies that we hold now from AIG and New York. I yield back.

Chairman GREEN. The gentlelady yields back.

The Chair recognizes the gentleman from California, Mr. Timmons, for 5 minutes.

Mr. TIMMONS. Thank you, Mr. Chairman. Dr. Federman, I know you have done a lot of work with the French rail company, SNCF, in regards to their involvement with the Holocaust. What lessons from that work can we learn from to inform this discussion?

[No response.]

Mr. TIMMONS. I believe you are still on mute. Thank you.

[No response.]

Mr. TIMMONS. You are still not coming through. You are not muted, though. I can come back to you in a second, if that is okay.

Dr. Darity, inflation is disproportionately more difficult to bear for lower-income households. You don't necessarily have to be an economist to understand that rising prices at the pump and the grocery store hurt more when you have less money to spare. We also know, and we have had a number of hearings on this issue, that there is a persistent racial disparity in terms of household wealth.

To offer a few examples, the Food Index has risen 7.9 percent over the last year, with dairy products rising 1.9 percent just in the month of February alone. The Energy Index has gone up 25.6 percent over the last 12 months, absolutely crushing every American's finances. And the index for used cars and trucks has risen by 41.2 percent over the last year. So, Dr. Darity, keeping all of this in mind, can you share your perspective on how inflation exacerbates these racial disparities?

Mr. DARITY. I think that inflation exacerbates these disparities in quite the ways in which you described because of the nature of the goods and services that are experiencing the most rapid price increases. These are items that hit families with the lowest incomes hardest in the present moment. But by the same token, I think that we always have to be cognizant of the potential inflationary effects of any new expenditure program. And there are ways in which new expenditures can be managed to mitigate the inflationary effects, so we should not view inflation as a barrier to new social initiatives. We just have to be very, very careful about the way in which we design them. And in our book, "From Here to Equality: Reparations for Black Americans in the Twenty-First Century," Kirsten Mullen and I talk about ways in which a reparations program could be structured and financed to minimize the inflation risk.

Mr. TIMMONS. Thank you, Dr. Darity.

Dr. Federman, again, my question was in regards to SNCF, their involvement with the Holocaust and what lessons from that work can we learn from to inform this discussion.

Ms. FEDERMAN. Yes, great. One, it is very important to have the discussion before they are being sued by descendants, because that creates a very difficult dialogue once you are in the middle of a lawsuit. So, I think it is great we are doing this ahead of time. The other is, the SNCF did a lot around transparency, public dialogue, engagement with survivor communities and descendants, and committed to changing their ethos. There are many Holocaust-complicit companies that are still in trouble today for all kinds of different modern slavery and complicity and all kinds of other crimes. So, you want to make sure the ethos of the organization has changed as well, so that slavery or genocide just doesn't become another bill or invoice for doing business, right? You are not just paying for having done that.

I think having conversations with the executives is very important. I think also the employees of the company want to belong and making it part of the diversity, equity, and inclusion (DEI) efforts that they are already doing within these organizations. It is very difficult to do DEI work if you are not willing to look at your institutional history.

Mr. TIMMONS. Sure. And along those same lines, you mentioned that leaders of modern financial institutions inherited the histories of their companies, but didn't write that history themselves. Can you help us understand the significance of that distinction? And why is that distinction important in this discussion?

Ms. FEDERMAN. Thank you for asking about that, because during the French National Railways debates, there was so much anger being expressed. It was as if the individuals running the SNCF today were, in fact, living Nazis and they weren't. In many cases, they were Jewish themselves. So, it is important to set a tone of, we are working together on this problem and there is a problem. There is a problem of that inherited, compounded wealth, but just in the tone of these conversations, that it can be restored if it is a larger restorative cultural conversation that we are having. And of course, it is very difficult because somebody is going to have to pay the bill, and they will do part of it. But I think many of them—Lloyd's of London and some of the other ones are starting to step up. But I do find that when it is more of our attributive model, people close up, and we want to have a more restorative conversation.

Mr. TIMMONS. Thank you. I will close with this. We are seeing the Russian invasion of Ukraine, the atrocities, the genocide that is being committed there. The international community, the business community is actually imposing sanctions. They are literally taking huge financial hits. Whether it is McDonald's, Visa—there are just dozens and dozens of multinational corporations that are foregoing profits to try to hold the Russian war crimes accountable. So, it is very promising, the direction that we are going right now. And I am hopeful that we can hold the Russians accountable and address past wrongs in other areas too.

Thank you, Mr. Chairman. I yield back.

Chairman GREEN. The gentleman's time has expired.

The Chair now recognizes the gentlewoman from North Carolina, Ms. Adams, for 5 minutes.

Ms. ADAMS. Thank you very much, Chairman Green, and Ranking Members McHenry and Emmer. And to Chairwoman Waters, thank you for hosting today's hearing, and to our witnesses, thank you for being here.

As a college professor for over 40 years, it is always a pleasure to be surrounded by academicians. I was blessed that I have been able to teach at Bennett College in Greensboro, an HBCU, for 4 decades, and it is because of another HBCU in Greensboro, North Carolina A&T, that sits right across the street from Bennett, that this poor Black girl from the ghetto of New Jersey is now able to walk the halls of Congress today. I remember the boys saying of all of the civil rights for which the world is struggling for 400 to 500 years, the right to learn is undoubtedly the most fundamental. So, it is clear that education is part of the solution to helping Black America overcome the centuries of discrimination that we have discussed so far today.

Dr. Darity, thank you for being here, and in your testimony, you discussed ways to enhance racial equity in our country. One of those ways was to invest in HBCU endowments. So, can you tell us why HBCUs have endowments that are smaller than those of other comparable schools?

Mr. DARITY. Yes. It is not because HBCU administrators are flawed at trying to manage their endowments. It is not because their alumni are not interested in making donations and contributions to their institutions. The central reason is, first, that there is a long discriminatory history of the provision of resources to these institutions.

And second, their alumni, while being very willing to make contributions to their institutions, do not have the types of resources that the alums of Predominantly White Institutions have. And this is because of the magnitude of the racial wealth gap, which amounts to approximately $840,000 on average between a Black and a White household.

Ms. ADAMS. Wow. Can you speak about why the institutions that we discussed today should help close the endowment gap, and how they could do so?

Mr. DARITY. I think the reason that they should be motivated to do so is linked to the importance of enhancing and strengthening Historically Black Colleges and Universities (HBCUs). Historically Black Colleges and Universities are a disproportionate source of Black students who enter graduate and professional school. Xavier University in New Orleans, for example, with only about 3,000 students, leads the nation in Black graduates who finish medical school. And so, if these organizations are interested in making a true commitment to diversity and inclusion, they would want to have the most outstanding candidates possible coming out of these institutions. And the better these institutions can do in terms of supporting their students, the better we can all be in terms of how American society functions.

I would also like to add that Historically Black Colleges and Universities seem to be a safer haven for students who are Black. They seem to be stereotype-safe environments for the students, and also, they provide insulation from predatory for-profit colleges and universities. Students seeking higher education will not feel as much pressure to go to the for-profit sector if there are a wider range of opportunities to go to HBCUs.

Ms. ADAMS. Do you have any examples of what it would take to close this endowment gap at HBCUs in North Carolina, for example?

Mr. DARITY. Yes, actually, I do. I did some back-of-the-envelope calculations after doing the work on Louisiana, and North Carolina is going to be much more expensive than Louisiana. I compared North Carolina State University with North Carolina A&T, and to eliminate the per-student endowment gap would require $705 million. I compared Duke University and Shaw University, two of the older private institutions in the State. And to close the per-student endowment gap between those schools would require $1.5 billion, and it would also require $1.5 billion to close the endowment gap between the University of North Carolina at Chapel Hill, and North Carolina Central University.

Ms. ADAMS. Wow. Thank you, sir. Listen, you get an, “A,” in my class. Thank you so much, Mr. Chairman. I am going to yield back.

Chairman GREEN. The gentlelady yields back.

The gentlewoman from Georgia, Ms. Williams, who is also the Vice Chair of our Subcommittee on Oversight and Investigations, is now recognized for 5 minutes.

Ms. WILLIAMS OF GEORGIA. Thank you, Mr. Chairman. I need you all to hang in with me for a little story here. I want you to think of the biggest, oldest tree. Its deep roots may be buried, but the state of those roots forever shapes what you see above ground. Today, we are going to take a shovel and explore the deep roots of our financial institutions.

No big financial institution was built overnight. Many have grown over generations. Some absorbed financial institutions of the past, and this includes institutions that profited from lending moneyc, which purchased enslaved people. This includes institutions that accepted enslaved people as collateral for loans. And this isn't what you see today, but this is part of the roots that grew that tree. I have never seen any tree's roots dissolve with time, and time alone won't heal the sense of oppression. For any tree to bear the fruits of justice and equality for all, we must reckon with these roots. Achieving the promise of America means fully atoning for slavery, and this hearing is helping to do just that.

Dr. Berry, enslaved individuals were denied the opportunity to build wealth for themselves and their families. Facing slavery, segregation, and invidious discrimination across generations, the average Black household today has only accumulated one-eighth of the wealth of the average White household. This is critically important to me, since Atlanta, my home City, leads the nation in the racial wealth gap. What connections can we make between the wealth that was historically captured from the forced labor of enslaved individuals and the persistent racial wealth gap today?

Ms. BERRY. Thank you for your question. One way we can look at this is to look at the ways in which families pass down funding or wealth from their families to the relatives. And you see the White families passed down enslaved bodies, enslaved people in wealth, and that wealth was listed and named, but the slave families and their communities did not receive any funds. That is one direct example in probate records that we can find, and those are registered in county records. But everywhere we turn, when we look at the records of banks, insurance companies, and not just public and private companies, but also the records of various policies, we find this data, and we can make that connection today by bringing the genealogy forward.

Ms. WILLIAMS OF GEORGIA. Thank you. We must have remedies for things like the persistent racial wealth gap. Along with nearly 200 of my colleagues, I am a co-sponsor of H.R. 40, the Commission to Study and Develop Reparation Proposals for African Americans Act. This bill has advanced through a committee markup, and I look forward to its passage.

Dr. Berry, when the commission under this bill is established, what approaches or methods could it employ to review and quantify the historical involvement of the financial sector in the institution of slavery? How could the commission guide private-sector actors, like financial institutions, to achieve appropriate atonement for slavery?

Ms. BERRY. One way is to open up the records, make the records available, and allow people to review them. If they need help from historians, I know there will be plenty who will be available, and I will volunteer myself. But I also know they have access to records that may not be available in public archives, and I think sharing those records is a starting place.

Ms. WILLIAMS OF GEORGIA. Thank you so much, Mr. Chairman, and thank you, Dr. Berry. I yield back the balance of my time.

Chairman GREEN. The gentlelady yields back.

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

Ms. TLAIB. Thank you so much, Chairman Green. This is powerful. I think it is pretty historic to be able to have a hearing specifically about the role of slavery in our country and the financial institutions, and I just cannot thank you enough, Chairman Green, for your courage in taking this on. And, of course, thank you to our witnesses for your expansive and exhaustive research. I am proud that I grew up in the most beautiful, Blackest city in the country, but I have witnessed many of my Black neighbors, again, being impacted by the historical role of slavery, and the impact it has had on homeownership and access to being able to have a good quality of life, economic wealth, and so much more. So, I can't thank you all enough.

We all know the role of slavery in the financial services industry is not abstractc, because of all of your research and work, that its legacy is still being urgently felt in many communities across the country, including the one I represent. As you all know, several States, including Illinois, Iowa, Maryland, and North Carolina, and Cities, including Chicago, Los Angeles, Philadelphia, and San Francisco, have active legislation requiring financial institutions to disclose their involvement in the institution of slavery. That is major. This should be something that is set across our nation.

Dr. Beckert, or Dr. Berry, as historians who have conducted this kind of research yourself, do you consider it feasible for companies to conduct such an audit to determine their past involvement in slavery? And have these local and State laws been effective at identifying past involvement in slavery?

Mr. BECKERT. That is a very good question, and the answer is, yes, it is certainly feasible. And I think we can see that if we look at the one sector of American society that has, in the past 10 years, actively engaged its historical involvement with slavery, and that is the American universities, and they have gone into their archives. They have consulted historical records. And in the past 10 years, they have written a pretty comprehensive history of how they have been historically involved with the institution of slavery, and they are grappling with the issue of how they should engage with this history in the present.

So, this would certainly be possible for businesses in the United States as well. And I think it would be a very good idea because I think that would allow us to have these kinds of conversations that are both political and economic, but also enable us to have a conversation as a society about how we want to deal with this history of enslavement and what consequences we want to draw from that history.

Ms. BERRY. I would just add that to the second part of the question about how effective has it been with the legislation that was passed in 2000, 2003, 2006, I think it was. Some of those records were put online, buried on websites. Some of those records that were supposedly made available are no longer available when you look for them. And I know this because I have taught classes and we had students doing projects, and they went to those very websites and couldn't find the insurance records. So if we are going to make stuff available, it needs to stay available. And I do think a commission that is going to generate the research to do this work is absolutely necessary, because you need to understand how to have the research skills in order to conduct the research that is involved in making this available to the public.

Ms. TLAIB. Thank you so much. That was so insightful. Dr. Berry, in your opinion, is there enough connection from a 19th Century, what I would call the predecessor bank, to a 21st Century successor bank to truly warrant the inquiry discussed here today? And if so, can you quantify in today's dollars the wealth that was generated from slavery?

Ms. BERRY. I cannot quantify the wealth in today's dollars. Maybe my colleague, Dr. Darity, can. When we look at company records, we understand who their predecessors are. We know when there were name changes and when banks were taken over by other banks. The same way we trace genealogy or lineage, we could do the same thing with corporate companies and organizations, and start to see the connectionsz, and then look at the records.

Ms. TLAIB. Thank you. Ms. Bailey, in your testimony, you drew historical connections between the legacy of slavery and racial inequality for the systemic barriers that people of color face, particularly with obtaining financial services. I don't know if you know, but Michigan lost more Black homeownership than any other State in the country, and we used to be the envy of the nation, at 70 percent homeownership in many communities.

Ms. Bailey, can you briefly explain how the historical legacy of slavery and exclusionary policies like redlining still present obstacles for my Black neighbors today?

Ms. BAILEY. Absolutely. According to data from the Federal Reserve, we have actually seen the Black-White wealth gap grow by $20 trillion since the onset of COVID-19. The COVID policies to mitigate the impact of the pandemic have exacerbated wealth inequalities for those who have assets and those who don't. Since the start of the pandemic, the Federal Reserve has been purchasing $40 billion in monthly mortgage-backed securities, hoping to fuel the housing boom that we are experiencing. So because of those ongoing purchases, what we see are the very communities that are hardest hit by COVID-19 locked out.

So communities like Detroit, they struggle not only with the historical legacy, but the current legacy of not being able to have access to small-dollar mortgages because banks are not making loans in those communities. And just some specific data on what banks have done in terms of lending to African Americans based on 2020 data: Banks originated 3.9 billion home mortgage loans in 2020, and only 3.9 percent of those went to Black consumers.

Chairman GREEN. The gentlelady's time has expired.

The Chair will now recognize himself for 5 minutes. And the Chair, while I enjoy hearing you compliment me for the hearing, the truth is that we have a Chair of the Full Committee, Chairwoman Waters, who was more than ready to take on this challenge. I have to say a word about the Chair of the Full Committee, because she is known for what she has done for housing across the length and breadth of the country. She is known for what she has done to help persons who are homeless, but she doesn't limit her reach. She is not afraid to take on new challenges. And this is one of the great challenges of our time, to deal with our singular sin: slavery. On August 20, 1619, there were 20 slaves aboard the White Lion when it docked here in the Americas. And from that moment forward, we have not done the thing that we should have done to deal with this issue of slavery.

I am honored to see that my colleague, the gentlelady from Texas, Ms. Garcia, has arrived. And I am going to suspend my commentary, because I would like to recognize her. So, Ms. Garcia, the Chair is going to recognize you for 5 minutes.

Ms. GARCIA OF TEXAS. Thank you, Mr. Chairman. I apologize that we are having a markup in the Judiciary Committee, so I am a bouncing ball today, but I did not want to miss an opportunity to join you in this very important hearing.

I am simply devastated about the ways that the horrific legacy of slavery is built into the very structure of the U.S. banking system today. Racism is baked in. It is literally baked in, interwoven to the fabric of society and the laws that govern us all. It is our job as lawmakers to study the origins of these problems so that we can identify them and root them out. I am grateful to all of the witnesses for taking the time to speak with us today about how that can be done. I wanted to discuss just the actions that we can take. While we cannot undo centuries of oppression in one Congress, we certainly can do what we can and take some action.

One major way to close the racial wealth gap is by ensuring that all people have access to credit for pursuing homeownership, entrepreneurship, and financial solvency. The Community Reinvestment Act (CRA) was passed so that banks would have to reinvest deposits received from minority communities back into these communities, but the CRA has not been updated in years. And we all know that the current financial services landscape is increasingly digital and not accessible. Measuring lending and investment into communities is a bit more complicated in a world where so much of the consumer banking is done online.

Ms. Bailey, can you discuss some things that the regulators should take into account when they work on a modernized CRA?

Ms. BAILEY. Yes, thank you for the question. We actually need to have a more race-conscious CRA. When you look at the legislative history about the Community Reinvestment Act, it was clear that it was designed to focus on minority neighborhoods that were locked out of access to credit. We know that because of the legacy of slavery, that banks have over time disproportionately not located in communities of color, nor adequately applied and extended access to credit in communities of color in a fair manner. So, we need a more race-conscious focus in CRA so that we can look beyond simple income solutions because those income-based solutions are not solving the problems. Race-conscious policies created today's disparities, and only race-conscious policies can solve them.

Ms. GARCIA OF TEXAS. Can you give us an example of some of the policies you think we should implement?

Ms. BAILEY. Absolutely. Again, thank you for the question. The Equal Credit Opportunity Act (ECOA) already allows banks to use special purpose credit programs. So, banks can look at the lending that they are doing today and figure out the communities of people who are underserved, and they can design targeted programs, like the First-Generation Down Payment Assistance, which this committee passed in the Build Back Better Act, to really help extend credit for first-generation home buyers who are underserved. And when we say, "first generation," we mean people whose families were excluded by Federal housing policies because those redlining practices extend directly from the legacy of slavery. So, targeting down payment assistance by first generation, actually is a way for us to ignite economic growth and to close the existing disparities.

If we invested $100 billion, we would see 5 million new homeowners: 1.7 million of them would be Black; 1.32 million would be Latino; and 1.4 million would be White. So, these policies have raised consciousness while they help solve racial disparities. They also provide overall economic growth.

Ms. GARCIA OF TEXAS. So, you believe that redlining still exists?

Ms. BAILEY. Absolutely.

Ms. GARCIA OF TEXAS. Every day in America?

Ms. BAILEY. Absolutely. Just based on the data that I just shared with you about banks and their originations, when you look at the more than 1,500 banks originating more than $1.1 trillion in home mortgages in 2000, based on the HMDA data, only $35 billion, or 3.6 percent, were to Black consumers.

Ms. GARCIA OF TEXAS. Can you tell us, because I am curious more than anything, geographically, would you say it is more in the South, in the North, the East, the West, or all of the above, everywhere?

Ms. BAILEY. I think because COVID ballooned the housing challenges that we are experiencing, what we actually see is that investors are being able to purchase homes in the communities that were hardest hit by the subprime mortgage crisis. One out of 7 homes today are actually being purchased by investors, and most of those are happening in Black communities and also in Midwest communities all over the country. So, we see this exclusion on a national basis.

Ms. GARCIA OF TEXAS. Do you think that is what is raising the cost of homes, even in minority communities, that it is investors and not individuals?

Ms. BAILEY. I think the investors are purchasing all of the affordable housing stock, causing a rise in rental homes, but also locking out homebuyers who would perform well if they had access to homeownership with things like First-Generation Down Payment Assistance, which this committee passed in the Build Back Better Act, and this is especially why the Senate should pass the housing provisions. There are $150 billion in the Build Back Better Act that will help alleviate some of the challenges that we have seen for homelessness and the lack of access to homeownership.

Ms. GARCIA OF TEXAS. Thank you, and I yield back. Thank you, Mr. Chairman.

Chairman GREEN. The gentlelady's time has expired.

Reclaiming my time, let me move expeditiously. This will be what we will call a voir dire portion of the hearing. Depending on where you are from, it is a French term, and it means, "to speak the truth." Let me ask you candidly, do you believe that it would be a great benefit to have a Department of Reconciliation? I support reparations. I support H.R. 40, from Congresswoman Jackson Lee. I support Congresswoman Barbara Lee's Truth, Racial Healing and Transformation Commission. It has nothing to do with those, would in no way prevent those things from coming to fruition, but it would give us a person who would be called a Secretary of Reconciliation, who would be there to every day find ways to deal with the invidious discrimination across the country. It is not just about one group of folks; it really is about our failure to reconcile when we had the opportunity to do so in 1868.

So, I would like for you now to give me one quick answer, each of you, and I will start with Dr. Berry. Do you believe that a Department of Reconciliation would be appropriate?

Ms. BERRY. Yes, I do think it would be appropriate, partly because we have not healed or had the kind of conversations we are having today. Our textbooks don't contain all of this material, and a lot of people will say that they didn't learn some of what we have talked about today. We can have this reconciliation through education, and having that commission and having a commissioner in charge of that would be the first step in helping educate our nation.

Chairman GREEN. Thank you. Now, just to give clarity, and make it perspicuously clear, it wouldn't be a commission. This would be a Department with a Secretary who reports directly to the President. There is a little bit of a difference. There could be a commission associated with the work that is done in the Department of Reconciliation. This would give us one agency within the government that oversees all of the various subsets and can bring all of this together for us.

Dr. Darity, a Department of Reconciliation, yes or no?

Mr. DARITY. Yes, certainly. I think that we would need a Cabinet-level position for a secretary who would have the responsibility for monitoring the conditions of racial equity in the United States.

Chairman GREEN. And I would contend that if what you say is correct, and I have great respect for you, about the Federal Government being the only entity capable of satisfying the necessary redress, a department of this magnitude would be of great benefit if we had that type of redress available to us.

Mr. DARITY. Yes.

Chairman GREEN. Moving quickly now to Professor Beckert, your thoughts on a Department of Reconciliation?

Mr. BECKERT. Look, as a scholar, I can tell you that in some ways, the effects of slavery are still with us today. We still live in a world that is partly structured by the effects of slavery. I can also tell you as a scholar, that this nation has tried to engage with slavery for 150 years and has not done so very successfully. As a citizen, I think we must, as a society, confront this history, and we must confront it in new ways, and we must draw lessons from this history for the present. When we do so, I think we should look at other countries in our own history, how this has been done in the past. And the way that you suggest would be one way forward, and sounds to me like a plausible way forward, because I think, as a country, our future depends on being able to engage with this history and to learn from this history.

Chairman GREEN. Thank you very much. Thank you, folks, so very kindly. Ms. Bailey, your thoughts on a Department of Reconciliation?

Ms. BAILEY. I think it would be really appropriate, sir. But even beyond just the moralness, I think resolving racial inequity in our country provides an opportunity for economic growth. Research over the past 20 years shows us that discrimination is a drag on our economy and that we have lost $16 trillion. And if we actually address discrimination, we have a chance to grow our economy by a trillion dollars every year over the next 5 years.

Chairman GREEN. Thank you. I am going to have to go quickly to Ms. Federman.

Ms. FEDERMAN. Yes.

Chairman GREEN. I thank you for your testimony today. A Department of Reconciliation reporting directly to the President?

Ms. FEDERMAN. My experience as a conflict professor in studying reconciliation around the world is that, yes, I am in support. And it might be worth considering adding the word, "truth," because there are times in which reconciliation efforts push people towards reconciliation before they have been able to expose and say what needs to be said. So, that is one way to kind of deter some of the negative consequences of pushing for reconciliation before that work has been done. Thank you.

Chairman GREEN. Thank you very much. Two very quick points. Dr. Darity made the point of the moral imperative associated with atonement juxtaposed to reparations and has made it clear that we can have atonement, but let us not assume that would be a substitution for reparations. I appreciate you making that comment, Dr. Darity. Did I sum that up appropriately?

Mr. DARITY. Yes, you did. Thank you.

Chairman GREEN. Thank you. And finally, this Slavery Remembrance Day. We do have a 9/11 Remembrance Day, we have a Pearl Harbor Remembrance Day, but we don't have a Slavery Remembrance Day. We have a Holocaust Remembrance Day. These days are important because they help us to assure ourselves that we won't forget the transgressions of the past and allow them to creep into the future.

But there is something even more important. They remind us that we have not atoned. I have a resolution calling for a Slavery Remembrance Day. It is not a paid holiday; it is a day that we remember the horrors of slavery and we remember that there is still this need for redress. Is there anyone who would oppose a Slavery Remembrance Day similar to the Holocaust Remembrance Day, the 9/11 Remembrance Day, or the Pearl Harbor Remembrance Day? By the way, we also have an Ice Cream Remembrance Month. But be that as it may, is there anyone who would oppose it? If so, it's time to extend a hand into the air or raise your voice. Anyone?

[No response.]

Chairman GREEN. Let the record reflect that all of the witnesses are in concurrence that we should have a Slavery Remembrance Day.

Friends, regrettably, this will have to bring our hearing to closure. I am greatly appreciative for all of the persons who have given their testimony. This has been a most informative hearing for me, and I am sure it has been equally as informative for all of my colleagues. As you can see, the attendance was very good, and with the kind of attendance we had, it begs the question of, should we stop now? As you know, the chairwoman made a very salient point when she said we need to make sure that we do something, not just have a hearing and move on. So, with that said, I would like to thank our witnesses for their testimony today.

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

This hearing is adjourned.

[Whereupon, at 5:14 p.m., the hearing was adjourned.]

A P P E N D I X

April 5, 2022

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

Testimony of Nikitra Bailey

Senior Vice President of Public Policy

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

Subcommittee on Oversight and Investigation

April 5, 2022

I. Introduction

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

My testimony today:

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

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

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

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

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

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

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

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

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

III. Reconstruction and Its Failed Promises

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

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

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

[5] *Ibid.*

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

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

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

[9] *Ibid.*

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

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

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

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

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

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

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

[12] *Ibid.*

[13] *Ibid.*

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

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

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

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

[18] *Ibid.*

[19] *Ibid.*

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

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

A. Competitive Advantage of Depository Insurance (FDIC)

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

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

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

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[20] *Ibid*.

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

[22] *Ibid*.

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

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

V. Financial Institutions and their Role in Perpetuating Appraisal Bias

Financial institutions have a long history of perpetuating an unfounded association between race and risk by relying on biased appraisals. For example, the 1938 Federal Housing Administration Underwriting Manual stated that "Areas surrounding a location are investigated to determine whether incompatible racial and social groups are present, for the purpose of making a prediction regarding the probability of the locations being invaded by such groups.... A change in social or racial occupancy generally contributes to instability and a decline in values."[24] From the start, financial institutions relied on an appraisal system that placed the highest value on White, homogeneous neighborhoods, while devaluing communities of color.

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

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

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

[25] 42 U.S.C. §§ 1981-1982.

[26] 42 U.S.C. § 3601, *et seq.*

[27] 15 U.S.C. § 1619(a).

[28] 12 U.S.C. § 4545.

[29] 24 C.F.R. § 100.135(d)(1).

[30] Fair Housing Center of Central Indiana (FHCCI), *FHCCI Announces HUD Complaints Alleging Discrimination in Home Appraisals*, Press Release (May 4, 2021), https://www.fhcci.org/wp-content/uploads/2021/05/5-4-21-HUD-Appraisal-Filings-Revised.pdf.

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

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

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

- The Federal Housing Finance Agency recently analyzed appraisal reports and found that thousands of the reports contained descriptions based on race, ethnicity, and religion, even though it is illegal to base a valuation on those protected classes.[33]
- In a groundbreaking study, researchers at Freddie Mac analyzed more than 12 million appraisals submitted for purchase transactions and found unexplained racial disparities in the percentage of properties that received an appraisal value lower than the contract price (the "appraisal gap").[34] The study showed the *majority* of appraisers in the study demonstrated this appraisal gap for communities of color.
- In another comprehensive study, researchers at Fannie Mae analyzed 1.8 million appraisals submitted for refinancing transactions and found appraisers were more likely to overvalue White-owned homes in majority-Black neighborhoods.[35]
- Finally, a 2018 Brookings Institution study of American Community Survey homeowner estimates and Zillow data found homes in majority Black neighborhoods had values that were 23 percent less than properties in mostly White neighborhoods, even after controlling for home features and neighborhood amenities.[36] The study estimated homes in majority-Black neighborhoods were undervalued by $48,000 per home on average, leading to a $156 billion cumulative loss in value nationwide.

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https://www.fairhousingnorcal.org/uploads/1/7/0/5/17051262/press_release_-_austin_case.final.pdf; Julian Glover, *Black California Couple Lowballed by $500K in Home Appraisal, Believe Race Was a Factor*, ABC7News (Feb. 12, 2021), https://abc7news.com/black-homeowner-problems-sf-bay-area-housing-discrimination-minority-homeownership-anti-black-policy/10331076/.

[32] *See* Debra Kamin, Black Homeowners Face Discrimination in Appraisals, The New York Times (Aug. 25, 2020), https://www.nytimes.com/2020/08/25/realestate/blacks-minorities-appraisals-discrimination.html.

[33] FHFA, *Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary*, FHFA Insights Blog (Dec. 14, 2021), https://www.fhfa.gov/Media/Blog/Pages/Reducing-Valuation-Bias-by-Addressing-Appraiser-and-Property-Valuation-Commentary.aspx.

[34] Melissa Narragon, et al., *Racial and Ethnic Valuation Gaps in Home Purchase Appraisals*, Freddie Mac Economic and Housing Research Note (Sept. 2021), http://www.freddiemac.com/fmac-resources/research/pdf/202109-Note-Appraisal-Gap.pdf.

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

[36] Andre M. Perry, Jonathan Rothwell, and David Harshbarger, *The Devaluation of Assets in Black Neighborhoods*, The Brookings Institution Metropolitan Policy Program (Nov. 2018), https://www.brookings.edu/wp-content/uploads/2018/11/2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf. See also Junia Howell and Elizabeth Korver-Glen, *Neighborhoods, Race, and the Twenty-first Century Housing Appraisal Industry*, 4 Sociology of Race and Ethnicity 473 (2018), https://journals.sagepub.com/doi/abs/10.1177/2332649218755178?journalCode=srea (finding substantial differences in home values in communities of color even after controlling for home features, neighborhood amenities, socioeconomic status and consumer demand).

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

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

VI. CRA and the False Promise of Financial Inclusion

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

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

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

A. Regulation and Insurance in Exchange for Serving Underserved Communities

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

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

B. The Need for Inserting Race Consciousness into CRA

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

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

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

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[40] 42 U.S.C. §§ 3601-19.

[41] 15 U.S.C. §§ 1691 *et seq.*

[42] 12 U.S.C. §§ 2801 *et seq.*

[43] 12 U.S.C. §§ 2901 *et seq.*

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

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

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

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

VII. Redlining and the Legalization of Alternative Financial Services

A. America's Dual Financial System

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

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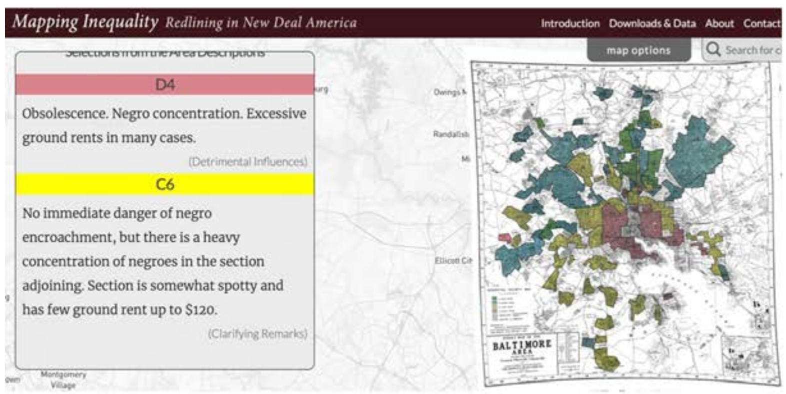
[44] Bostic, Raphael, *A Moral and Economic Imperative to End Racism*, Federal Reserve Bank of Atlanta, June 12. 2020, https://www.frbatlanta.org/about/feature/2020/06/12/bostic-a-moral-and-economic-imperative-to-end-racism

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

In particular, the New Deal's federal Home Owners Loan Corporation ("HOLC") developed one of the most harmful policy decisions in the housing and financial services markets by perpetuating a system that included race as a fundamental factor in determining the desirability and value of neighborhoods.[46] As shown in the graphic below, the HOLC created appraisal maps that were color-coded to evaluate, grade, and indicate the value of neighborhoods. Communities of color – and even neighborhoods with small numbers of Black residents – were coded as "hazardous" as signified by red shading on the map and were assigned the lowest value despite the reality that families who could afford mortgage loans resided within those communities.[47] Moreover, areas adjacent to communities with Black residents could be downgraded simply based on their proximity to a community of color. Notably, the data used to create the maps were not just collected randomly, but were based on the opinions of the leading real estate professionals at the time. Later, the Federal Housing Administration adopted these maps and race-based policies as the basis for its mortgage insurance underwriting decisions. Thus, these policies and procedures helped systematize redlining as well as the unfounded association between race and risk in the U.S. housing and financial services markets.



Source: Mapping Inequality

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

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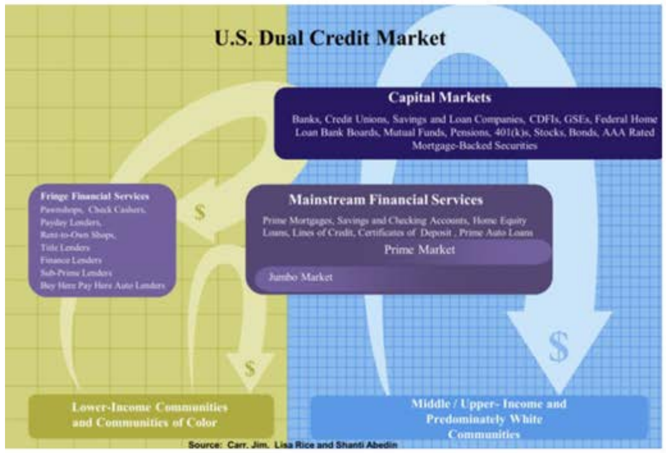
2017) (providing a detailed explanation of how federal race-based housing and credit policies promoted inequality).

[46] The Home Owners' Loan Act of 1933 established the HOLC as an emergency agency under the Federal Home Loan Bank Board. 12 U.S.C. § 1461 *et seq.*

[47] *See* University of Richmond, Virginia Tech, University of Maryland, and Johns Hopkins University, *Mapping Inequality* (documenting the maps and area descriptions created by the HOLC between 1935 and 1940), https://dsl.richmond.edu/panorama/redlining/#loc=3/41.245/-105.469&text=intro.

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



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

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

[48] Cheryl Young and Felipe Chacon, *50 Years after the Fair Housing Act – Inequality Lingers*, Trulia Special Report (April 19, 2018) https://www.trulia.com/research/50-years-fair-housing/.
[49] Zach Fox, Zain Tariq, Liz Thomas, and Ciaralou Palicpic, *Bank Branch Closures Take Greatest Toll on Majority-Black Areas*, S&P Global Market Intelligence (July 25, 2019), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/bank-branch-closures-take-greatest-toll-on-majority-black-areas-52872925.

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

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

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

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

B. *Greater Transparency is needed in HMDA*

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

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

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

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

[53] *Ibid.*

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

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

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

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

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[54] Alanna McCargo and Jung Hyun Choi, *Closing the Gaps: Building Black Wealth Through Homeownership*, Urban Institute (November 2020), https://www.urban.org/sites/default/files/publication/103267/closing-the-gaps-building-black-wealth-through-homeownership_0.pdf. *See also* Laurie Goodman, Jun Zhu, and Rolf Pendall, *Are Gains in Black Homeownership History?*, Urban Institute (Feb. 14, 2017), https://www.urban.org/urbanwire/are-gains-black-homeownership-history.

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

[56] Neil Bhutta, Jesse Bricker, Andrew Chang, et al., *Changes in U.S. family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances,* 106(5) Fed. Res. Bulletin (Sept. 2020), https://www.federalreserve.gov/publications/files/scf20.pdf.

[57] *Id.*

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

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

[60] Neil Bhutta, et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances,* FEDS Notes, Board of Governors of the Federal Reserve System (Sept. 2020), https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm.

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

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

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

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

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

[62] See, Baradaran 107-111.

[63] Ibid at 111.

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

[65] *Ibid*.

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

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

Compounding the effects of the discriminatory polices described above, Black and Latino consumers were then devastated by the subprime lending boom in the early 2000s, in which lenders sold millions of families abusive loans that were not sustainable despite many subprime borrowers qualifying on credit that was safer and more affordable.[67] Because of these lending practices, Black and Latino families lost over $1 trillion dollars in wealth during the crisis.[68] Further, Black homeownership has been the slowest to recover from the Great Recession. In fact, there would be 770,000 more Black homeowners if the homeownership rate recovered to its pre-crisis level in 2000.[69]

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

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

Data from the Home Mortgage Disclosure Act and the GSEs themselves continue to demonstrate low levels of conventional mortgage loans to Black and Latino families. For example, in 2020, only 4 percent of Fannie Mae and 3.4 percent of Freddie Mac home purchase loans were from Black borrowers, and only 2.6 percent and 2.5 percent of refinance loans.[70] Similarly, only 10.9 percent of Fannie Mae and 8.4 percent of Freddie Mac home purchase loans were from Latino borrowers, and only 8 percent and 7 percent of refinance loans.[71]

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

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

[68] Debbie Gruenstein Bocian, Peter Smith, and Wei Li, *Collateral Damage: The Spillover Costs of Foreclosures*, Center for Responsible Lending, at 2 (Oct. 24, 2012), https://www.responsiblelending.org/mortgagelending/research-analysis/collateral-damage.pdf.

[69] Alanna McCargo, Jung Hyun Choi, and Edward Golding, *Building Black Homeownership Bridges: A Five Point Framework for Reducing the Racial Homeownership Gap*, Urban Institute, at 1 (May 2019), https://www.urban.org/sites/default/files/publication/100204/building_black_ownership_bridges_1.pdf.

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

[71] *Ibid*.

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

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

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

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

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

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

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

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

[75] Kristopher Gerardi, Lauren Lambie-Hanson, and Paul Willen, *Racial Differences in Mortgage Refinancing, Distress, and Housing Wealth Accumulation during COVID-19*, Federal Reserve Banks of Atlanta, Philadelphia, and Boston (June 2021), *available at* https://www.bostonfed.org/publications/current-policy-perspectives/2021/racial-differences-in-mortgage-refinancing-distress-and-housing-wealth-accumulation-during-covid-19.aspx.

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

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

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

Lack of access to credit can be harmful in the normal course of business, but in the midst of a pandemic, lack of access can have disastrous consequences for microbusinesses, their owners, and the employees who depend on them for their livelihoods. Further, despite the more than $800 billion funneled to "small businesses" through the Paycheck Protection Program (PPP), small businesses owned by people of color failed during the pandemic-induced recession. While the PPP will likely go down as one of the nation's greatest taxpayers funded transfers of wealth, the program's administration raises significant fair lending concerns. Many Black, Latino, AAPI, and Native-owned small businesses could not fairly access the program during the first round where banks lent more than $350 billion to businesses across the nation. Between the start of the pandemic and April 2020, 41 percent of Black-owned businesses and 32 percent of Latino-owned businesses became inactive, while only 17 percent of White-owned businesses ceased to operate.[78] The design of the program, which relied on banks to originate the loans, unfairly placed Black, Latino, AAPI, and Native American business owners at a distinct disadvantage in attempting to access PPP funds when so many were already on precarious financial footing. Banks prioritized customers with whom they had an existing banking relationship. Banks also tended to prioritize larger PPP loans to maximize fees, leaving out the smallest of small businesses from accessing relief.

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

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

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

[77] *Ibid.*

[78] Cameron Costa , Minority entrepreneurs at a tipping point as Black-owned banks dwindle in the U.S., CNBC (Aug. 25, 2020), https://www.cnbc.com/2020/08/25/minority-entrepreneurs-at-tipping-point-as-black-owned-banksdwindle.html.

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

E. CDFIs Miss the Mark on Racial Equity and Inclusion

Despite a unique history rooted in the work of racial justice and community development advocates, research shows that the majority of Community Development Financial Institutions' (CDFIs) investments have gone to real estate developments in low-income communities, which are not necessarily communities of color as explained in the section discussing CRA.[82] These outcomes are driven by the Treasury's desire to support projects that promise higher profits and maintain less risk.[83] According to the Hope Policy Institute analysis of CDFI Fund recipients, White-led CDFIs held approximately $13 billion, or 72%, of the total assets reported in FY2014 despite having a lower asset size than minority controlled CDFIs.[84] The average asset size for White-led CDFIs increased from $58.1 million to $169.7 million from FY2014-FY2017, while the average asset size of minority-led CDFIs was relatively stagnant, remaining at near $71 million. Moreover, as of 2017, only two to six percent of CDFI funds have been used to support the activities of minority depository institutions despite Section 308(b) of FIRREA directing the FDIC to act to preserve minority ownership of minority financial institutions.[85]

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

In today's COVID-19 mortgage market, investors are pricing out first-time homebuyers, especially in Black neighborhoods. In 2021, 1 in 7 homes sold in 40 major metropolitan areas were bought by

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

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

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

[82] *See*, Baradaran at 232.

[83] *Ibid*.

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

[85] *Ibid* at 224-232.

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

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

IX. The Case for Atonement: Restorative Justice Solutions

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

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

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

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

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

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

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

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

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

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

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

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

Racist policies and practices created today's disparities, and only race-conscious solutions can dismantle structural barriers that create and perpetuate bias and replace them with fair and equitable systems. U.S. systems are deeply inequitable and both private market players and government must be aligned in deconstructing unfair systems and bringing on board unbiased structures that provide access to a full range of housing and financial services that have been too long denied to people. Innovative race-conscious policies, such as Special Purpose Credit Programs (SPCPs) and Targeted First Generation Downpayment Assistance (DPA), can help begin to address existing racial homeownership and wealth gaps.

Fair lending laws[93] allow lenders to design SPCPs in a tailored way to meet special social needs and benefit economically disadvantaged groups, including groups that share a common characteristic, such as race, national origin, or gender.[94] Properly designed, SPCPs can play a critical role in promoting equity

[93] 15 U.S.C. § 1691-1691f; Office of General Counsel Guidance on the Fair Housing Act's Treatment of Certain Special Purpose Credit Programs That Are Designed and Implemented in Compliance with the Equal Credit Opportunity Act and Regulation B. U.S. Department of Housing and Urban Development (Dec. 6, 2021). https://www.hud.gov/sites/dfiles/GC/documents/Special_Purpose_Credit_Program_OGC_guidance_12-6-2021.pdf.

[94] The Equal Credit Opportunity Act (ECOA) allows both non-profit and for-profit organizations to utilize SPCPs to meet borrowers' unique credit needs that meet qualifications to include:

- The program is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program; and
- The program is established and administered to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

and inclusion, building wealth, and removing persistent barriers that have contributed to financial inequities, housing instability, and residential segregation. Current credit scoring models embed and reflect the nation's history of discrimination in financial services. Race-conscious SPCPs can be used to create alternative credit scoring systems to allow underserved groups to qualify for a mortgage loan more fairly.

Moreover, NFHA and the Center for Responsible Lending (CRL) designed a targeted, first-generation down payment assistance program to help the Biden administration and Congress close the wealth and homeownership gaps.[95] With a $100 billion investment in down payment assistance (DPA) for first-generation homebuyers, Congress can create millions of new homeowners of color. This type of commitment would deliver on President Biden's promise to Build Back Better. Moreover, every $30 billion dedicated to DPA funding for first generation homebuyers adds more than 500,000 new Black and Latino homeowners, increasing the homeownership rates for both groups respectively by one percentage point. There are more than eight million mortgage-ready Black and Latino potential homebuyers in the U.S.; this program would help them get over the biggest hurdle they face in buying a home.[96] At this level, DPA would help 288,208 Black families; 223,649 Latino families; 88,000 Native American families, Asian American and Pacific Islander families; and 249,398 White families achieve homeownership.

Lack of down payment is a major barrier to homeownership for families. Many Black and Brown consumers have sufficient income to pay a monthly mortgage obligation; however, they lack intergenerational wealth because exclusionary federal housing policies prevented their families from being able to access homeownership. These families have been unable to give a down payment to successive generations. Consumers who are the first generation of would-be homeowners face significant challenges because their families lack the wealth homeownership can provide, but they often cannot rely on guidance, networks, and assistance from family to access homeownership opportunities. By investing $100 billion in DPA programs that assist first-generation homebuyers, we can take a significant initial step toward closing the racial wealth and homeownership gaps. A $100 billion DPA investment that assists first-generation homebuyers will provide housing stability and wealth building opportunities for five million families and their local economies. The National Association of Realtors

[95] *See*, Nikitra Bailey, Tucker Bartlett, Mike Calhoun, et.al., *First Generation: Criteria for a Targeted Down Payment Assistance Program*, National Fair Housing Alliance (May 21, 2021), https://nationalfairhousing.org/wpcontent/uploads/2021/06/crl-nfha-first-generation-jun21.pdf; Jung Hyun Choi and Janneke Ratcliffe, *Down Payment Assistance Focused on First-Generation Buyers Could Help Millions Access the Benefits of Homeownership*, Urban Institute (April 7, 2021), https://www.urban.org/urbanwire/down-paymentassistance-focused-first-generation-buyers-could-help-millions-access-benefitshomeownership.

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

(NAR) estimates the economic impact of a typical home sale in 2020 was $93,800.[97] A $100 billion investment in DPA funding for first-generation homebuyers will leverage roughly $500 billion in additional economic impact. A $30 billion investment in DPA for first-generation homebuyers will leverage roughly $141 billion in additional economic impact.

The Urban Institute projects that, over the next 20 years, all net new household growth will be from families of color, but that the homeownership rate, left unaddressed, will continue to fall for every age group.[98] Even more starkly, the same study projects the Black homeownership rate will fall even further by 2040, with the decline particularly pronounced for households aged 45 to 74. This is an economic disaster for the Black families who will be unable to achieve homeownership, but it is also a moral and economic problem for the country. The safety and soundness of the future mortgage market depends on there being consumers who can access safe and responsible loans. Acting now to increase homeownership among underserved communities is a cost-effective solution to strengthen the middle class and grow the economy.[99] Increasing homeownership opportunities helps strengthen family wealth, spurs economic growth, improves health and educational opportunities for children, and promotes racial justice.

NFHA applauds Representative Waters' leadership as Chairwoman of the House Financial Services Committee in introducing the Downpayment Toward Equity Act (DTE). This historic legislation could provide an initial first step to remedying past federal discriminatory housing policies and create racial equity. Companion legislation was introduced in the Senate by Sen. Raphael Warnock. A significant investment in DPA must pass as part of the Build Back Better Act.

C. Reallocating VA Home Loan Benefits to Descendants of Veterans

Discriminatory housing policies were not limited to the Federal Housing Administration, the U.S. Department of Veterans Affairs (VA) also instituted the use of discrimination in the administration of the GI Bill loan programs enacted by Congress in 1944. In the state of Mississippi alone, just two out of 3,229 VA-insured mortgages went to Black servicemembers seeking to finance a home, business, or farm in

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[97] *The Economic Impact of a Typical Home Sale in the United States,* National Association of Realtors (March 31, 2021), https://www.nar.realtor/sites/default/files/documents/2020-state-by-state-economic-impactof-real-estateactivity-united-states-of-america-3-31-2021.pdf.

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

[99] Nick Noel, Duwain Pinder, Shelley Stewart, and Jason Wright, *The Economic Impact of Closing The Racial Wealth Gap*, McKinsey & Company (Aug. 13, 2020), https://www.mckinsey.com/industries/public-and-social-sector/ourinsights/the-economic-impact-of-closing-the-racial-wealth-gap; Dana M. Peterson and Catherin L. Mann, *Closing The Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.*, Citi Global Perspectives & Solutions (September 20, 2020), https://ir.citi.com/NvIUklHPilz14Hwd3oxqZBLMn1_XPqo5FrxsZD0x6hhil84ZxaxEuJUWmak51UHvYk75VKeHCMI%3D; Jeff Cox, *Morgan Stanley Says Housing Discrimination Has Taken A Huge Toll On The Economy*, CNBC (Nov. 13, 2020), https://www.cnbc.com/2020/11/13/morgan-stanley-says-housing-discrimination-has-taken-a-huge-toll-onthe economy.html#:~:text=Morgan%20Stanley%20says%20racial%20inequality,five%20million%20from%20owning%20homes.

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

X. Conclusion

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

The inability to stop discrimination and overhaul unfair systems is crippling this nation. Creating a fair, just and equitable society is critical for the millions of people who lack access to viable financial services and opportunities to lead successful lives. But it is also imperative for our collective progress as a nation. Groundbreaking research has revealed that if we eliminated racial inequality, the U.S. GDP would increase by $5 trillion over a 5-year period. Banks must be held accountable for their role in creating disparities and should be partners in advancing racial equity helping expand people's access to safe and affordable financial services. Doing so would strengthen our neighborhoods, communities, and the broader society and position us better to compete on a global level. Our diversity, it turns out, is our strength. Access to opportunity is not a zero-sum game. Rather, broadening opportunities provides exponential benefits to everyone.

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[100] Dedrick Asante-Muhammad, et al., *The Road to Zero Wealth: How the Racial Wealth Divide Is Hollowing Out America's Middle Class*, p. 15 (September 2017), https://prosperitynow.org/files/PDFs/road_to_zero_wealth.pdf.
[101] Mitria Wilson-Spotser, *Honoring America's Promise: How Passing Unused VA Loan Benefits Down to Veteran's Descendants Could Narrow the African-American Homeownership Gap*, Consumer Federation of America, March 2022, https://consumerfed.org/wp-content/uploads/2022/03/Housing-African-American-VA-Home-Loan-Benefits-Report.pdf.
[102] *Ibid.*
[103] *Ibid.*

Written Testimony of Sven Beckert
Laird Bell Professor of History
Harvard University

Submitted to the Subcommittee on Oversight and Investigations,
Committee of Financial Services,
United States House of Representatives
April 5, 2022

I am submitting this testimony to the Subcommittee on Oversight and Investigations of the House Committee on Financial Oversight for its deliberations on "An Enduring Legacy: The Role of Financial Institutions in the Horrors of Slavery and the Need for Atonement."

I am providing this testimony as a historian of the United States and an expert on its economic history. In the course of my work, I have published widely on slavery's importance to U.S. economic development. In addition to many academic articles, the topic is central to my *Empire of Cotton: A Global History*, which investigates the history of the nineteenth century's most important manufacturing industry and analyzes slavery's role within it.[1] I am also the co-editor (with Seth Rockman) of *Slavery's Capitalism: A New Economic History of the United States*, which explores the question of how slavery impacted U.S. economic development from a variety of perspectives.[2] I have also written a book on the economic history of New York City that investigated among other things the economic links between business elites in that city and the southern slave economy.[3] For the past 15 years, I have also directed research focused on understanding Harvard University's involvement with slavery.

I am not an economist; I am not a specialist in the history of US financial institutions; nor can I speak to the legal implications of this history, if any. But I want to submit to the Committee some broad insights from my research that might guide its thinking about these issues.

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1 Sven Beckert, *Empire of Cotton* (New York; Knopf, 2014), Pulitzer Prize finalist, Bancroft Award in American History, Harvard Business School, Alfred D. Chandler Award for best book in business history, *Foreign Affairs*, Best Books of the Year, *The Economist*, Best Books of the Year, *New York Times*, Ten Best Books of the Year.

2 Sven Beckert and Seth Rockman, *Slavery's Capitalism: A New History of American Economic Development* (Philadelphia: University of Pennsylvania Press, 2016).

3 Sven Beckert, *The Monied Metropolis* (New York: Cambridge University Press, 2001).

1. Slavery was important to US economic development. From 1839 to 1859, initial findings of an ongoing research project have shown, between 10.1 and 14 percent of U.S. GNP derived directly from the labor of enslaved workers.[4] In large parts of the South, almost half of the regional GNP was produced by enslaved people; in other parts of the country the percentage was much lower.[5] The capital stored in slaves exceeded the combined value of all the nation's railroads and factories.[6] The most important industry using enslaved workers in the nineteenth century was cotton agriculture. Cotton production made up about five percent of the nation's GNP in the 1850s, and cotton constituted more than half of the United States' merchandise exports in most years from the 1820s to the 1850s.[7] Cotton was important not only because of the size of the industry, but also for its contribution to the world-altering Industrial Revolution in both Europe and the United States.[8]

2. These numbers are significant. Even if we take the lowest estimate and assume that just 10 percent of the nation's GNP derived from the labor of enslaved people, that unpaid labor mattered greatly to the US economy. We can see this best if we compare it with contemporary industries: In 2021, all manufacturing

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4 Mark Stelzner and Sven Beckert, "The Contribution of Enslaved Workers to Output and Growth in Antebellum United States," Working paper, 2022.

5 For detailed statistics, see Stelzner and Beckert, "The Contribution of Enslaved Workers."

6 Beckert and Rockman, *Slavery's Capitalism*, p. 1.

7 See Series Ee571 Ee366, Ca10, Ca9 and Ca13 in Susan B. Carter, *Historical Statistics of the United States. Historical Statistics of the United States: Earliest Times to the Present*. Millennial edition (New York: Cambridge University Press, 2006).

8 Beckert, *Empire of Cotton*, chapters 3, 4, 5.

activities in the United States combined contributed 11.3 percent to the nation's economic output, which is roughly the same share the labor of enslaved people contributed during the antebellum years. Today's finance and insurance industry contributes 8.3 percent to the national economy, which is less than the contribution of enslaved workers in the 1840s and 1850s. As a percentage of the national economy the size of the antebellum cotton sector alone approximately equals the size of the entire Information industry today.[9]

3. The economic impact of slavery in 1860 involved not just the actual production in agriculture and industry by the approximately four million enslaved workers, <u>but also industries that directly served or benefited from the slavery complex</u>. These included northern manufacturers supplying the southern plantation economy, the slave trade itself, mercantile houses, industries dependent on slavery-produced inputs such as the nation's first major industry (cotton textiles), as well as banks and insurance companies. The total importance of slavery and slavery-related industries in the United States in the nineteenth century was definitely greater than the value produced by the labor of enslaved people only, even if we do not yet know the exact figures.

4. <u>Slavery's economic impact was national in scope</u>. Although Northern states began abolishing slavery in the wake of the American Revolution, and although the

[9] For the contemporary numbers, see U.S. Bureau of Economic Analysis, Value Added by Industry: Manufacturing as a percentage of GDP [VAPGDPMA], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/VAPGDPMA, accessed April 2, 2022

exploitation of slave labor in these states was always only of limited economic importance, Northerners were deeply implicated in enslavement. Northerners shipped, insured and financed plantation crops; they provided plantations with manufactured wares; and used plantation crops in industrial production. Northern institutions, including universities, were deeply entangled with the slave economy of the US South.

5. Contemporaries were cognizant of slavery's economic importance and national reach. Advocates of national economic development took for granted the reciprocal relationship of the slaveholding and non-slaveholding states, as well as the shared interests of the slaveholder, manufacturer, and merchant. "On the White mountains of New Hampshire we find the sugar of Louisiana, and in the plains beyond the Mississippi the cotton cloths of Rhode Island are domesticated," explained famed editor Hezekiah Niles in 1827. Abolitionists like William Lloyd Garrison recognized the North as a "partner in iniquity" and credited the Panic of 1837 with delivering a deserved ruin to New York City mercantile firms engaged in commerce with the South. In turn, Southern nationalists lambasted Northern sanctimoniousness. "Many of the abolitionists of the present day affect to have such tender consciences, and to feel such abhorrence of slavery, that they declare they will not wear the cotton of the South, because it has been cultivated by slaves," observed Baltimore minister Alexander McCaine, "…yet, these extremely sensitive, and pre-eminently holy characters, feel no qualms of conscience, to sell Southern planters their boots and shoes, their

negro cloth, and all the *et cetera* that make up a cargo of *Yankee notions*, and put the money, arising from the labour of slaves, in their pockets." Indeed, an 1845 manufacturing census found that nearly half the woolens manufacturers in Rhode Island produced textiles for plantation markets. A South Carolina industrialist like William Gregg could justly lament that thriving Northern cities like Bridgeport, Connecticut had "been built by the capital of Charleston," while a compatriot writing in the widely circulated Southern agriculture journal *Debow's Review* could declare slavery the "nursing mother of the prosperity of the North."[10]

6. Financial institutions played a crucial role in enabling enslavement, making slave labor profitable, and facilitating its territorial expansion. The United States was the world's most important supplier of the industrial world's most important raw material—cotton. As cotton fueled an Industrial Revolution, European and US financial institutions rushed into the cotton business. Slavery rested on the capital, institutional know-how, and varied services of the finance sector, and it was the finance sector that connected plantations to factories and London money markets to New Orleans credit markets. Advances on crops enabled planters to acquire land and enslaved workers. Planters offered their enslaved workers as security to access capital markets. While most credit relationships in the antebellum South

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[10] This paragraph is cited from Beckert and Rockman, *Slavery's Capitalism*, p. 2 based on *General Convention, of Agriculturalists and Manufacturers, and Others Friendly to the Encouragement and Support of the Domestic Industry of the United States* (Baltimore: n.p., 1827), 15; *Proceedings of the Fourth New-England Anti-Slavery Convention, Held in Boston, May 30, 31, and June 1 and 2, 1837* (Boston: Isaac Knapp, 1837), 45; Alexander McCaine, *Slavery Defended from Scripture, Against the Attacks of the Abolitionists, in a Speech Delivered Before the General Conference of the Methodist Protestant Church, in Baltimore, 1842* (Baltimore: William Woody, 1842), 8-9; *Statistics of the Woollen Manufactories in the United States* (New York: W.H. Graham, 1845), 33-39; William Gregg, *Essays on Domestic Industry: or, An Enquiry into the Expediency of Establishing Cotton Manufactures in South Carolina* (Charleston: Burges and James, 1845), 50; John Forsyth, "The North and the South," *Debow's Review* 17 (October 1854): 365.

were mediated by so-called factors, these factors in turn drew on banks and merchant bankers to finance the growing of the crop and the extension of agriculture into new areas. Sophisticated networks channeled European and northern capital into the South and routed cotton into global markets.

7. Private banks played a key role in providing these financial services to the plantation sector and connecting it to the world economy. Large European banks, from the Rothschilds to the Barings, infused significant funds into the US cotton sector. U.S. merchant bankers advanced capital as well, financed cotton production and moved the crop from the plantation to the port and then to European textile factories. Southern banks, many funded by infusions of cash from Northern and European financial institutions and merchants, advanced capital to factors who in turn advanced it to planters to lubricate the cotton economy.[11] In the course of these activities, banks and merchant bankers frequently became even more directly involved with the slavery economy. Since they at times accepted enslaved workers as collateral for loans, they also took ownership of women, men and children when creditors failed on their debts. It is highly likely that all banks doing business in the slave areas of the United States came into ownership of slaves, and we know that some of the predecessor banks of a number of current U.S. financial institutions—including Wells Fargo, JP

[11] Beckert, *Empire of Cotton*, pp. 217-20.

Morgan, Bank of America and Brown Brothers Harriman—owned slaves in the course of their regular business dealings.[12]

8. Public banks, that is the First and Second Banks of the United States (extant between 1791-1811 and 1816-1836, respectively), also invested in the slave economy and came to hold large numbers of enslaved workers as collateral for loans. When debtors defaulted, the banks came to control enslaved workers and entered the business of selling human beings. The Second Bank of the United States, moreover, played a crucial role in the creation of various planter banks during the 1820s and 1830s, banks dominated by southern planters that focused on financing the expansion of slave agriculture. Slave traders also drew on the Second Bank of the United States to facilitate their business.[13]

9. Insurance companies were involved in slavery. Since much of Atlantic trade consisted of the products of enslaved labor, marine insurance received a boost from the expanding slave economy. Life insurance also expanded under slavery. Scholars have estimated that beginning in the 1830s several thousand life insurance policies were written on the lives of enslaved people. Important

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12 "Summary of Findings: JP Morgan Chase and Bank One," January 20, 2005 (http://bankone.com (through The Wayback Machine)); Wachovia Completes Research of Predecessor Companies" June 1 2005 (www.wachovia.com through The Wayback Machine); John R. Killick, "The Cotton Operations of Alexander brown and Sons in the Deep South" *The Journal of Southern History* 43, no. 2 (May 1977): 169-194, 187; Heritage Research Center, "Report on Bank of America Predecessor Institutions Research Regarding Slavery and the Slave Trade" August 4, 2005.

13 Sharon Ann Murphy, "The Financialization of Slavery by the First and Second Banks of the United States," in *Journal of Southern History* 87 (August 2021), pp. 392, 420, 426.

companies selling these policies include still extant New York Life, AIG and Aetna, as well as their predecessor organizations.[14]

10. The history of enslavement has left a deep legacy on patterns of inequality in the United States. While millions of African Americans labored for generations without pay, the wealth they produced accumulated elsewhere. In 1860, white Southern men made up 59 percent of the wealthiest one percent of adult males in the United States.[15] Many Northern merchants, manufacturers, banks and non-profit institutions gained from the uncompensated labor of African Americans. Meanwhile, African Americans received no compensation for their labor and could not secure family networks or accumulate property. They could not access educational resources and suffered from extreme forms of exploitation and maltreatment. After slavery, African Americans continued to suffer more than a century of further economic, social, political and educational discrimination. The legacy of slavery structures patterns of inequality and opportunity (or the lack thereof) in the United States to this day.

14 See, for example, Michael Ralph, and William Rankin, "Decoder: The Slave Insurance Market," in *Foreign Policy*, no. 222 (2017), pp. 22–23. These scholars have located about 1,300 antebellum-era policies in the archives of insurance companies, including Aetna, AIG, and New York Life. They suggest that these archives are incomplete, and that at least 85 percent of policies have been lost. See also Sharon Ann Murphy ,"Securing Human Property: Slavery, Life Insurance, and Industrialization in the Upper South." *Journal of the Early Republic* 25 (4), 2005, pp. 615-652.

15 Lee Soltow, *Men and Wealth in the United States, 1850-1870* (New Haven: Yale University Press, 1975), p. 65.

United States House of Representatives
Committee on Financial Services
Oversight and Investigations Subcommittee

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

April 5, 2022

Testimony by
Dr. Daina Ramey Berry

Good afternoon, Chairman Green, Chairwoman Waters, Vice Chair Williams and members of the Committee. It is an honor to come before this body to share my testimony on the legacies of slavery and connections to financial institutions. I have been studying this history for thirty years and I appreciate the invitation.

Enslaved people were valuable financial investments. So valuable that financial institutions, municipalities, universities and private citizens bought, sold, gifted, deeded, traded, mortgaged, leased and transferred enslaved people as a form legal tender. Human chattel were foundational to western economies from the 15th-19th centuries. They were one of the most unique commodities and assets *because* they were human beings. Defined as chattel, a movable form of property, we have records confirming their value at every stage of their lives from preconception to postmortem.[1] We also have documents that clearly outline the connections between enslaved people and specific financial institutions such as insurance companies and banks. Those records can be traced from slavery to the present.[2] Such legacies reverberate throughout our society today and are reflected in all kinds of disparities. The wealth gap is so wide that most of us will not see it narrow in any appreciable way in our lifetimes.

Turning to insurance agencies, the Southern Mutual Life Insurance Company, founded in 1848 under the name Georgia/Southern Mutual, shows evidence of profits generated from insuring the bodies and lives of enslaved people. During its second year offering policies to enslavers, the company saw growth from 28 to 239 policies. It reported that most of those who purchased policies were modest enslavers who had " a small number of slaves, on who they are

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[1] Daina Ramey Berry, *The Price for Their Pound of Flesh: the Value of the Enslaved, from Womb to Grave, in the Building of a Nation* (Boston: Beacon, 2017).
[2] Daina Ramey Berry, "The Ubiquitous Nature of Slave Capital," in *After Piketty: The Agenda for Economics and Inequality,* edited by Heather Boushey, J. Bradford DeLong, and Marshall Steinbaum (Cambridge: Harvard University Press, 2017); Calvin Schermerhorn, *The Business of Slavery and the Rise of American Capitalism, 1815-1860* (New Haven: Yale University Press, 2015); and Sven Beckert and Seth Rockman, eds., *Slavery's Capitalism: A New History of American Economic Development* (Philadelphia: University of Pennsylvania Press, 2016).

dependent" thus they secured their income "by taking policies on the lives" of human property.[3] Looking at policies from 1856 to 1863, we learn that the company insured enslaved people from age one to sixty. Some policies were for a month or two, others for as long as five years. Regardless of the length, each enslaved person underwent a medical examination to determine their value and the company set premiums and rates based on their value. Although this company originated in Georgia, Southern Mutual Life Insurance Company had agents throughout the South.

In addition to individual policies, some states, including Maryland, passed legislation that encouraged people to purchase policies on the enslaved. Here the state supported policies that helped enslavers search for self-liberated individuals (runaways) in order to recover the cost of those who absconded and had been away for "a reasonable time." That enslavers could make money off of those who escaped is remarkable. They also made money off of "elderly" enslaved people like forty-two-year-old Ellick who was valued at $2,000 for a one-year premium at $80, with a 4 percent rate on the policy. What do these numbers reflect in contemporary times? Fifty-one-year-old Charlotte, valued at $800 in 1860, was equivalent to nearly $23,500 in 2014.[4] Insurance policies alone help explain why some enslavers keep elderly enslaved people –many would not command the insured value in the market. However, they could be replaced with someone younger at death.

The banking industry literally facilitated transactions related to enslaved people by extending loans, securing deeds, gifts, and trusts. Banks including Citizens Bank and Union Bank kept track of collateral payments and issued notes that involved the enslaved whose names can be found through the records.

According to an article that appeared on Bloomberg *Quint* in 2021, we know that "The racial wealth gap begins with slavery" and "was a huge wealth generator for White Americans." The author estimated that the "economic value of the 4 million slaves in 1860 was, on average, $1,000 per person, or about $4 billion total." To put that in perspective, "That was more than all the banks, railroads and factories in the U.S. were worth at the time. In today's dollars, that would come out to as much as $42 trillion, accounting for inflation."[5] This is indeed an underestimated value and we need to take the time to do more calculations based on the primary records of these institutions to confirm the values of enslaved people.

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[3] Second Annual Report of the Southern Mutual Life Insurance Company for the year 1856 (Columbia, SC: Edward H. Britton, 1857), quoted material on pp 12.

[4] Berry, *The Price for Their Pound of Flesh*, footnote 36, p. 239. This value is the real price with CPI percentage increase from 1860-2014 based on the Eh-Net Measuring Worth website. As noted, Charlotte's labor value would be approximately $147,000.

[5] See Catarina Saraiva, "Four Numbers that Show the Cost of Slavery on Black Wealth Today," *Bloomberg Quint*, https://www.bloombergquint.com/business/pay-check-podcast-episode-2-how-much-did-slavery-in-u-s-cost-black-wealth and Mehrsa Baradaran *The Color of Money: Black Banks and the Racial Wealth Gap* (Cambridge: Harvard University Press, 2017).

I would like to close my remarks with the voices of the enslaved because most of my research focuses on enslaved people and how they responded to being treated as commodities and what they knew about the value of their bodies. One witness shared the following story of a young child and his father being auctioned: "I saw a beautiful boy of twelve years of age, put on the auction-block, and on one side of him stood an old gray-headed negro—it was plain he was his father—and he kept his eyes on the boy, and the boy kept his eyes upon the old gray-headed man, and the tears rolled in silence down the cheeks of each."[6]

After freedom, Henry Banner shared noted: "I was sold for $2,300 – more than I'm worth now." [7]

Tempe Herndon and other enslaved women understood that their monetary value was linked to their fertility. "I was worth a heap . . . kaze I had so many chillun," she explained. "De more chillun a slave had de more dey was worth."[8]

Hardy Miller remembered that enslavers paid "one hundred dollars for every year you was old," claiming, "I was 10 years old so they sold me for one thousand dollars." While Martha King remembered her sale at five years old. She went to the auction block with her grandmother, mother, aunts, and uncles. "I can remember it well," she told interviewers in the 1930s. "A white man 'cried' me off just like I was an animal or varmint or something." She also remembered her monetary value: "Old man Davis give him $300.00 for me." [9]

Today, I share these testimonies as part of mine so the enslaved voice is heard in the halls of Congress 157 years after the 13th amendment because the wealth generated from their labor still serves as the foundation of the American economy.

Thank you.

[6] Berry, *The Price for their Pound of Flesh*, 63.
[7] Berry, *The Price for Their Pound of Flesh*, xii.
[8] Berry, *The Price for Their Pound of Flesh*, 45.
[9] Berry, *The Price for Their Pound of Flesh*, 46.

Testimony before the House Financial Services Committee Oversight and Investigations Subcommittee

April 5, 2022

William Darity Jr., Samuel DuBois Cook Professor of Public Policy, African and African American Studies, Economics, and Business, Duke University

Private individuals, private institutions, and state and local governments do not have the capacity, individually or collectively, to meet the requirements for reparative justice for black American descendants of U.S. slavery. True reparations must prioritize elimination of the racial wealth gap *in its entirety*. The black-white wealth gap serves as the premier economic indicator of the cumulative intergenerational effects of American racism on the conditions confronting living black Americans, whose have ancestors enslaved in the United States (Darity and Mullen, 2020). As economist William Spriggs puts it, the racial wealth gap is the central measure of opportunity stolen from black Americans.

The minimum sum needed to close the black-white chasm in wealth is $14 trillion (EconoFact Chats 2022). Only the federal government has the capacity to fund such an amount. If private individuals and institutions paid $1 billion a month into a "reparations" fund, it would take a millennium for the fund to reach $14 trillion. The combined budgets of all states and municipalities in the United States are less than $3.5 trillion. It would take them four consecutive years of devoting all of their spending to a reparations fund—thereby forgoing all of their usual obligations to their constituents—to approach $14 trillion.

Contrary to widely held beliefs, the black-white gap in net worth is *not* due exclusively, or even primarily, to the racial difference in homeownership rates nor black over-indebtedness nor differences in black and white levels of educational attainment.

In previous testimony before this committee, I reported the following (Darity 2021):

> Not only is there a racial gap in rates of homeownership (73 percent for whites versus 45 percent for blacks), there is a racial gap in the equity values associated with white and black owned homes. Zillow listing prices indicate that a home in a neighborhood with no black residents has a median value of $341,000. In contrast, homes in neighborhoods with a majority of black residents have a median value of $184,000 (Perry, Rothwell, and Harshberger 2018). The average level of equity whites hold in their homes is $216,000; for blacks the average level is $94,000 (Ross 2020).
>
> Moreover, there are wide differences in the possession of other types of assets by race. Sixty percent of white households have retirement accounts but only 34 percent of black households. Fifteen percent of white households have family owned business equity but a mere seven percent of black households. Sixty percent of white households have publicly traded stocks but only 31 percent of black households (Ross 2020).
>
> There is a tendency to overemphasize homeownership as the primary route toward asset-building. Plainly, equity in a home is the core asset for households in the middle of the wealth distribution. However, for persons in the upper quarter of the wealth distribution, homeownership is markedly less important in comparison with retirement accounts, non-residential land ownership, business ownership, and stocks and other financial assets. On

> average, overall primary residences amount to 24 percent of household net worth. The combination of business interests, financial assets, and retirement accounts amount to 62 percent of household net worth (Swanson 2018).

Nor is the racial wealth gap attributable primarily to excessive indebtedness on the part of black Americans. Again, in my earlier testimony (Darity 2021), I pointed out the following:

> A Prosperity Now (Nieves) study in 2019 reported that median black household liabilities were $30,800, while median white household liabilities were more than twice as large at $73,800. However, white households had a median level of assets valued in excess of $260,000 in contrast with the median black households' assets valued at $55,900. The median black household had forty percent of the debt of the median white household, but only 20 percent of the assets. Correspondingly, the ratio of assets to debts for black households was 1.6 versus 2.8 for white households, both measured at the median.

Finally, the racial wealth gap will not close by enhancing black educational attainment. In 2019, blacks with a college degree had two-thirds of the median net worth of whites who never completed high school, $49,700 versus $71,800 (Hicks, Addo, Price, and Darity 2021, 12-13).

True reparations necessarily must be a federal project aimed at making direct payments to eligible recipients in an amount sufficient to build average black assets to a level comparable with average white assets.

However, this conclusion is not a recipe for paralysis on the part of private individuals and institutions nor other levels of government. There are steps they can take to enhance racial equity, even if they cannot execute a project for true reparations.

For example, a central financial weakness of Historically Black Colleges and Universities (HBCUs) is the underfunding of their endowments relative to Predominantly White Institutions (PWIs). Private donors do have the resources that can facilitate elimination of the HBCU endowment gap.

I turn to Louisiana to illustrate the possibilities, a state where its four HBCUs have significantly lower endowments per student than peer PWIs.

Comparing two private Catholic institutions in Louisiana, Xavier University of New Orleans, the only Catholic HBCU in the United States, has an endowment of $178 million (about $52,350 per student) in contrast with Loyola University of New Orleans with an endowment of $234 million (about $60,000 per student). Dillard University has an endowment of $100 million (about $80,000 per student, given its small student body of only about 1250 students) versus Tulane University's endowment of $1.4 billion (about $103,000 per student). Grambling State University has an endowment of only $8.5 million (about $1420 per student) in contrast with the University of Louisiana with an endowment of $232 million (about $13,650 per student). Comparing Louisiana's two land grant institutions, Southern University and A&M has an endowment of $10 million (about $1325 per student) while Louisiana State University has an endowment of $546 million (about$15,900 per student).

The endowment differentials are not explained by financial mismanagement. Drezner and Gupta (2012) have demonstrated, unambiguously, at least among public institutions, there is no difference in the quality of fiscal administration of their endowments between black and white colleges and universities.

Nor are the differentials explained adequately by the sheer respective ages of each pair of institutions. Loyola of New Orleans is now 109 years old while Xavier is 96 years old. Tulane came into operation in 1834, during slavery, while Dillard began only four years after the end of the Civil War. The University of Louisiana, formerly the University of Louisiana at Lafayette, began operation in 1898 while Grambling began operation only three years later. Louisiana State also opened during slavery in 1853, while Southern started in 1880, less than two decades after the close of the Civil War.

Differential treatment by their funders/sponsors is the critical source of the endowment gap. The Louisiana legislature brought Grambling and Southern into existence to maintain a system of segregated higher education, and, ultimately the state never put the "equal" into the "separate but equal" dimension of the Supreme Court's 1896 Plessy v. Ferguson with respect to university finances. Alumni giving also has been limited for HBCUs generally, despite, in a number of cases, these institutions having high participation rates (Gasman 2021). The enormous racial gulf in wealth is the decisive factor in determining the magnitude of the difference between HBCU and PWI endowments in Louisiana (Hamilton et al. 2015).

To close the endowment gap would require, at minimum, an additional contribution of $26 million to the endowment for Xavier University, $28.75 to Dillard, $61.4 million to Grambling, and $102 million to Southern University. The total will amount to approximately $218 million.

This is a minimum contribution since it does not consider the following factors: 1. Endowment equalization approach does not take into account the many years of adversity experienced by HBCUs because of the disparities in endowments. 2. The per student size of the current endowments of several of the HBCUs may be inflated artificially because of the relatively smaller size of their student bodies, which, in turn, is a likely function of historic underfunding. This seems to be the case for Dillard, in particular. 3. Estimates of the required contributions to bring Louisiana's HBCUs on a par with their PWI peers do not take into account the disproportionately lower funding for their annual operating budgets, particularly for state schools. 4. A sustained problem for HBCUs, public or private, are their high attrition rates. Graduation rates for all four of Louisiana's HBCUs, including Xavier, widely touted for its success in sending its black graduates to medical school (Clark 2018), are less than 45 percent. The rate falls as low as 30 percent at Southern. The lowest graduate rate among the four PWIs is 45 percent at the University of Louisiana, but the rate exceeds 60 percent at the remaining three institutions.

There is compelling evidence that larger endowments per student are associated with higher graduation rates (Coupet and Barnum 2012), but increased endowments are unlikely to be sufficient to bring about full improvement in graduation rates. The target for all the institutions should be, at least, to match Tulane's graduation rate of 85 percent.

Who, among potential private contributors, could take on this task effectively? Certainly, the banking sector has the wherewithal, since the top ten banks in the United States have combined assets of approximately $13 trillion, albeit with varying degrees of risk. The total needed in Louisiana amounts to a blip on their financial horizon; they could take these beneficial steps toward greater racial equity without doing major harm to their balance sheets.

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Testimony for Subcommittee on Oversight and Investigations session:
"An Enduring Legacy: The Role of Financial Institutions in the Horrors of Slavery and the Need for Atonement"

Dr. Sarah Federman

Hello, thank you for inviting me today.

My name is Sarah Federman, I am a former advertising executive turned conflict resolution professor at University of Baltimore.

My research considers how corporations can atone for participation in mass atrocity, such as genocide and slavery.

My comments are based on two projects:

One involving the French National Railways (aka the SNCF) and its efforts to atone for its participation in the Holocaust. This is detailed in my book *Last Train to Auschwitz*.

My second project came at the urging of my Baltimore students who rightly encouraged me to study corporate atonement for slavery.

I discovered that Alexander Brown and Sons, based in Baltimore, developed investment banking to fund plantation agriculture.

It is easy to look at a city like Baltimore and think its golden days have passed.

Those who followed the wealthy bankers and industrialists just didn't care for the city the way they did, one might think.

But a deeper look suggests that the poverty, addiction, and violent crime we see today is *not* unrelated to how those industrialists acquired their wealth.

Where to start?

For those seeking atonement, it is tempting to treat today's executives as the slaveholders themselves.

Though their institutions benefited from participation in slavery, today's individuals inherited these histories, they did not write them.

So, as we move forward, we need to separate the people from the problem.

And there *is* a problem.

That institutional wealth has compounded for over 200 years without addressing the souls that suffered for it or the harm inflicted upon descendants.

How do we address this irreparable harm?

I offer a corporate historical integrity model in my recent Harvard Business Review piece:

In it I advise corporations to:

1. Commission an independent study of their history
2. Update the company's origin story based on the findings
3. Make a public statement about the history
4. Engage with affected communities to develop a meaningful response.
    a. commemoration, compensation, or other programs.

Some examples of companies doing this work:

- JAG holdings commissioned an independent study of its Holocaust connections and will make that public. They have also donated to Holocaust education.

- Georgetown University now works with the descendants of the slaves it sold back in the 1800s to determine the best use of the funds it will raise.

- The SNCF: opened its archives, put up plaques, funds Holocaust commemoration activities, and engages with survivor communities.

- Lloyds of London (insurance): perhaps most relevant to our conversation today, has

    - researched is historical ties to slavery

    - made those findings available (opened archives)

    - offered an unequivocal apology on website and

    - outlines its commitment to develop Black and Minority Ethnic talent, increase Black and minority hires and, prevent participation in slavery in supply chain.

Statement that reflects the right spirit:

"We approach this work with profound humility, a spirit of openness and real enthusiasm for change. We will continue to listen to and be guided by our Black and Minority Ethnic colleagues..."

What about US Financial Institutions?

America's 50 biggest public companies and their foundations collectively committed roughly $50 billion since Floyd's murder to address issues of racial equity.

That sounds great, however...

"More than 90 percent of that amount is allocated as loans or investments they could stand to profit from" (Jan, McGregor, Hoyer, 2021)

People don't need more loans **they need help paying them**!

Brookings Institute studies "Black-white disparity in student loan debt more than triples after graduation" (Scott-Clayton and Lee, 2016)

Therefore, if we engage with communities, we will see the need for student loan forgiveness and the need to offer free higher education to three generations of descendants.

Working with the affected communities, we will also discover the need for:

1. Housing assistance **grants** (not loans)
2. Better public transit
3. Grocery stores
4. Healthcare access
5. Childcare
6. Eldercare
7. Afterschool programs in music and sport

Engaging with the communities also addresses the enormous dignity violations of slavery and segregation inflicted.

To make programs without people's input reinforces a paternalistic approach to their participation in society.

Furthermore, corporate efforts towards racial equity will fall flat unless companies take seriously their own institutional histories.

I'm grateful for this collective opportunity to respond to a too-long unatoned aspect of our history.

In addressing it together, we can help to heal our country and be who we say we are.

Thank you.

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