

February 20, 2024

The Honorable Janet L. Yellen
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Request for Information on Financial Inclusion
TREAS-DO-2023-0014

Dear Secretary Yellen,

The National Fair Housing Alliance® (NFHA™)¹ appreciates the opportunity to respond to the U.S. Department of Treasury's (Treasury) Request for Information (RFI) on Financial Inclusion.² Through this RFI, Treasury is taking a step toward implementing the Financial Services and General Government Appropriations Act of 2022, which requires Treasury to develop a national strategy that should "establish national objectives for financial inclusion, set benchmarks for measuring progress, and offer recommendations for how public policy, government programs, financial products and services, technology, and other tools and infrastructure can advance financial inclusion."³ For the reasons described below, we urge Treasury to:

- 1. Implement the Fair Housing Act's obligation to promote inclusive communities and embed fair housing in Treasury's housing programs,**
- 2. Ensure fair housing principles are integrated into the Homeowner Assistance Fund, and**
- 3. Promote Responsible AI to support financial inclusion.**

We commend Treasury for seeking input on this important topic and we hope that our comments will help inform Treasury's views.

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¹ The National Fair Housing Alliance® (NFHA™) is the country's only national civil rights organization dedicated solely to eliminating all forms of housing and lending discrimination and ensuring equal opportunities for all people. As the trade association for over 170 fair housing and justice-centered organizations and individuals throughout the U.S. and its territories, NFHA works to dismantle longstanding barriers to equity and build diverse, inclusive, well-resourced communities.

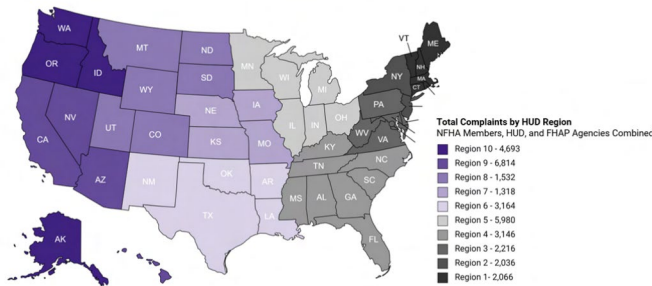
² U.S. Department of Treasury, *Request for Information on Financial Inclusion*, 88 Fed. Reg. 88702 (Dec. 22, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-12-22/pdf/2023-28263.pdf>.

³ U.S. Congress, *Joint Explanatory Statement for Financial Services and General Government Appropriations Bill*, 117th Congress (2023), <https://www.congress.gov/117/cprt/HPRT50347/CPRT117HPRT50347.pdf>.

BACKGROUND

A robust housing market cannot exist in the absence of financial inclusion and access to mortgage credit on fair and equal terms for all creditworthy borrowers. America’s history of unfair housing laws and policies has produced a dual market—a separate and unequal housing system that has benefitted White households while simultaneously debilitating Black, Latino, Asian American/Pacific Islander (“AAPI”), and Native American households. Because future housing demand will be driven by people of color, the safety and soundness of the future housing market depends on ensuring all consumers can access fair, safe, and responsible credit. Acting now to increase financial inclusion and housing opportunities among underserved communities is a cost-effective solution to strengthen the middle class and grow the economy. Increasing financial inclusion helps strengthen family wealth, spurs economic growth, improves health and educational opportunities for children, and promotes racial justice. Before turning to recommendations to increase financial inclusion, below is a discussion of the current landscape, which highlights the dire need for proactive initiatives and interventions.

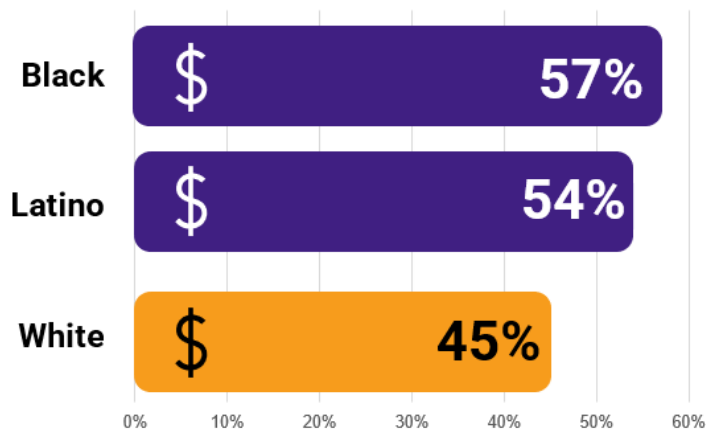
1. Housing Discrimination Complaints Are at an All-Time High



- Every year, there are over **4 million** incidents of housing discrimination. In 2022, we saw the largest number of complaints ever, up **5.74%** higher than 2021.⁴
- **Domestic violence** and **source of income** complaints increased significantly. Complaints on the basis of **sex** were the highest since recording the data.

⁴ NFHA, [2023 Fair Housing Trends Report: Advancing a Blueprint for Equity](#) (2023).

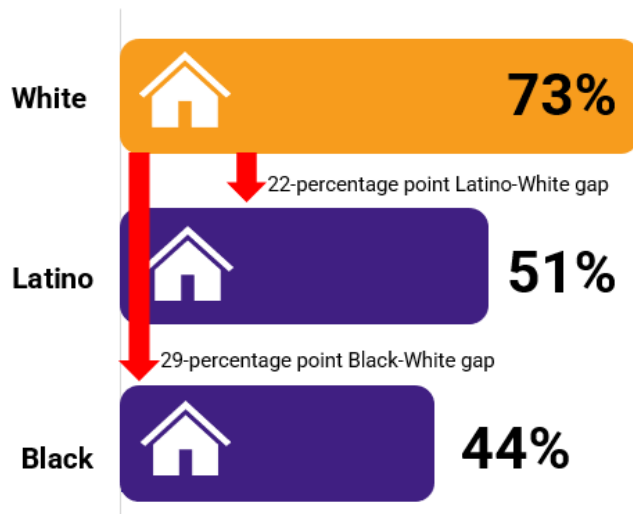
2. Rent Is Unaffordable for Over Half of Black and Latino Renters



- In 2022, a **record-high 22.4 million renter households** were “**cost-burdened**,” meaning they spent more than 30% of their income on rent and utilities. This is an increase of 2 million households over three years.⁵
- Black and Latino renters were more likely than White renters to be cost-burdened. More than half of **Black renters (57%)** and **Latino renters (54%)** were cost-burdened, while about 45% of White renters were cost-burdened.
- These disparities make it more difficult for Black and Latino renters to **build wealth** and save for **down payments** for homeownership.

⁵ Joint Center for Housing Studies of Harvard University, [America's Rental Housing 2024](#) (Jan. 2024).

3. The Racial Homeownership Gap Is Wide and Persistent



- In **1960**, when housing discrimination was legal, there was a **27-percentage point gap** between Black homeownership (38%) and White homeownership (65%).⁶
- In **2021**, the racial homeownership gap was even **wider at 29 percentage points**, representing another barrier to wealth-building for households of color. The homeownership rate is 73% for White households, 51% for Latino households, and 44% for Black households.

⁶ National Association of REALTORS® Research Group, [2023 Snapshot of Race and Homebuying in America](#) (2023); Urban Institute, [Reducing the Racial Homeownership Gap](#).

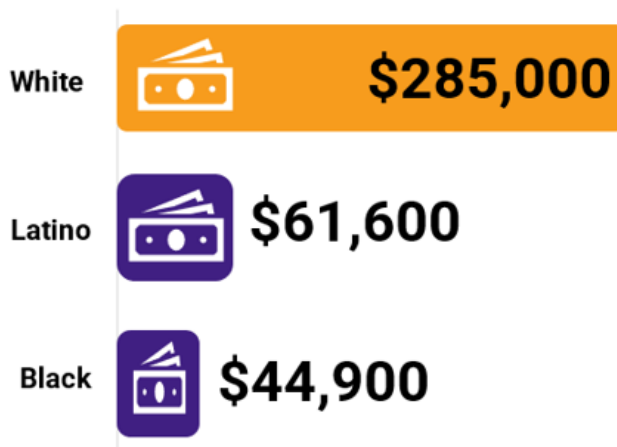
4. Homes in White Neighborhoods are Appraised at Values that are Significantly Higher than Similar Homes in Similar Black and Latino Neighborhoods



- In 2021, homes in White neighborhoods were appraised at values nearly **250%** higher than similar homes in Black neighborhoods and at values nearly **278%** higher than similar homes in Latino neighborhoods within the same metropolitan areas, depriving households of color of opportunities to build wealth.⁷

⁷ Junia Howell and Elizabeth Korver-Glenn, [Appraised: The Persistent Evaluation of White Neighborhood as More Valuable Than Communities of Color](#), Eruka (2022).

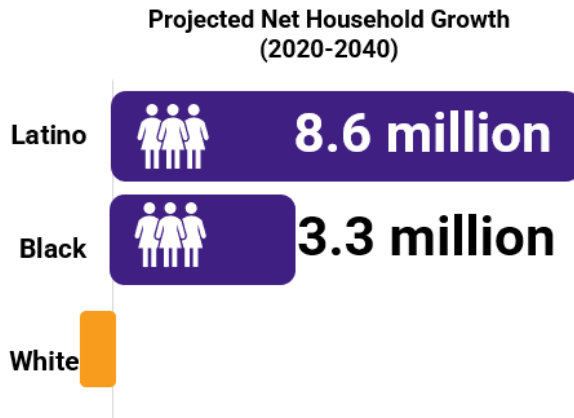
5. The Racial Wealth Gap is Wide and Persistent



- Since the Great Recession, the typical Black and Latino household has had between about **\$10 to \$15 of wealth** for every \$100 held by the typical White household.⁸
- In **2022**, the median wealth was **\$285,000** for White households, **\$61,600** for Latino households (20% of the typical White household), and **\$44,900** for Black households (15% of the typical White household).
- Both the White-Black and the White-Latino median wealth gaps **increased** by around \$50,000 between 2019 and 2022, with each gap reaching over **\$220,000** in 2022.

⁸ Aditya Aladangady, Andrew C. Chang, Jacob Krimmel, [Greater Wealth, Greater Uncertainty: Changes in Racial Inequality in the Survey of Consumer Finances](#), Federal Reserve Board FEDS Notes (2023)

6. Sustainable Growth in the Housing Market will Depend on Fair Access to Credit for Consumers of Color



- All future net household growth will be from **households of color**.⁹
- Between 2020 and 2040, 16.1 million net new households will form, including **8.6 million more Latino households** and **3.3 million more Black households**, but fewer White households.
- A sustainable, healthy housing market and housing-related businesses will depend on the ability to serve **consumers of color**.

7. Closing the Racial Gaps Would Contribute Billions to the Economy and Trillions to GDP



⁹ Laurie Goodman, Jun Zhu, [The Future of Headship and Homeownership](#), Urban Institute (2021).

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COMMENTS



1. Treasury Should Implement the Fair Housing Act's Obligation to Promote Inclusive Communities and Embed Fair Housing in Treasury's Housing Programs

When the Fair Housing Act was passed in 1968, it included provisions designed to remove long-standing inequities caused by discrimination and segregation, which were created by and embedded in federal government decisions about urban development and access to housing.¹⁰ This obligation applies to all federal programs and activities that relate to housing and urban development – both those administered by the U.S. Department of Housing and Urban Development (HUD) and those administered by other executive agencies - and requires that those programs be operated in a way that affirmatively furthers fair housing. This is known informally as the obligation to “AFFH” and promote inclusive communities. To that end, Treasury should:

- Champion the reconstitution and expansion of the President's Fair Housing Council. This council was outlined in 1994 in Presidential Executive Order 12892.¹¹ The President's Fair Housing Council was tasked with reviewing the design and delivery of Federal programs and activities to ensure that they support a coordinated strategy to affirmatively further fair housing. The order stated that the Council would propose revisions to existing programs or activities, develop pilot programs and activities, and propose new programs and activities to achieve its goals.
- Re-establish and broaden agreements to coordinate government-wide efforts to affirmatively further fair housing and advance fair housing principles. For example, in 2000, Treasury, HUD, and the DOJ entered into a Memorandum of Understanding to

¹⁰ See 42 U.S.C. § 3608(d).

¹¹ <https://www.govinfo.gov/content/pkg/FR-1994-01-20/html/94-1532.htm>.

promote enhanced compliance with the Fair Housing Act for the benefit of residents of low-income housing tax credit properties.¹²

- Prohibit access to federal programs for civil rights violations. Treasury should prohibit lenders, housing providers, and other entities that operate in the housing space from accessing federal programs, subsidies, tax breaks, or other government assistance if within the last five years they have resolved allegations of violations of the Fair Housing Act or Equal Credit Opportunity Act through a consent order, settlement agreement, conciliation agreement, or other legal agreement.
- Require meaningful fair housing impact analyses. Treasury should require a meaningful fair housing impact analysis in every effort to fill the nation's affordable housing shortage. Reporting requirements are a critical step, but are not sufficient to change the location, types, and cost of housing units available to households in the United States. Treasury should also resolve concerns with the lack of inclusion of fair housing principles in the guidance on the State and Local Fiscal Recovery Funds.
- Promote the production of affordable housing in well-resourced communities. Treasury should significantly increase the percentage of Low Income Housing Tax Credit units built in well-resourced communities near well-resourced schools, health facilities, grocery stores, employment opportunities, and other critical amenities to ensure housing choice.
- Protect consumers from source of income discrimination. Treasury should enforce the Low Income Housing Tax Credit provisions that prohibit housing voucher discrimination in tax credit properties.
- Support efforts to combat appraisal bias. Treasury and the OCC should combat appraisal and home valuation bias by releasing examination procedures for supervising financial institutions for compliance with the Fair Housing Act and Equal Credit Opportunity Act with respect to appraisal discrimination, eliminating unnecessary barriers to entry to the appraisal profession through strong Appraisal Subcommittee oversight, and promulgating robust standards for Automated Valuation Models.
- Promote necessary improvements to the Community Development Financial Institution (CDFI) Fund.¹³ To ensure that CDFI's provide much-needed access to credit in underserved communities, Treasury should:
 - Apply the Biden Administration's Racial Equity Framework to the CDFI Fund and Treasury's Housing Programs;
 - Ensure that Treasury's fair housing and fair lending oversight is more consistent with the oversight structure of the other federal financial regulators;

¹² <https://www.justice.gov/crt/memorandum-understanding-among-department-treasury-department-housing-and-urban-development-an-0>.

¹³ <https://nationalfairhousing.org/wp-content/uploads/2023/01/NFHA-CDFI-Fund-Certification-Application-Comment.pdf>

- Provide CDFIs with guidance on the use of less discriminatory alternatives to traditional credit scoring;
- Require fair housing and fair lending training for CDFI boards, executive staff, and staff;
- Audit CDFI Community Reinvestment Act (CRA) activities for compliance with the CDFI Fund principles and fair housing and fair lending obligations;
- Allow First-Generation Downpayment Assistance and Special Purpose Credit Programs (SPCPs) to count as eligible financial products and services, including SPCPs that are designed to remove the over-reliance on discriminatory credit scoring systems or designed to consider positive rental housing payments;
- Encourage CDFIs to implement first-generation down payment assistance programs;
- Encourage CDFI investments in investors of color;
- Require CDFI Venture Funds seeking certification to provide data transparency and data collection to ensure compliance with our nation's fair housing and fair lending laws;
- Require each CDFI certified by the CDFI Fund to collect and publish board and executive staff demographic information; and
- For CDFIs with assets greater than \$1 billion:
 - Require them to enter into Community Benefits Agreements in their Target Markets to make sure their missions remain a focus of their work and loans are not just flowing to high-wealth developers;
 - Permit CDFI product innovation that better transmits the benefits of their subsidies directly to consumers;
 - Require CDFIs to provide automatic interest rate reductions every 24-36 months for mortgage borrowers who perform well; and
 - Require more direct mortgage lending, including to Black and female consumers through first-generation down payment assistance, Special Purpose Credit Programs, and small dollar pilot initiatives.

Finally, the CDFI Fund must ensure equitable funding for CDFIs led by leaders of color with a strong history of well serving Black, Latino, Asian American and Pacific Islander, and Native American communities. 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. 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.



2. Treasury Should Ensure Fair Housing Principles Are Integrated into the Homeowner Assistance Fund

- Treasury should issue further guidance to states warning them of the potential fair housing concerns associated with excluding heirs and other successors from consideration for the Homeowner Assistance Fund (HAF) unless the applicants have a deed in their name. Treasury should require state HAF Administrators to report to Treasury their program eligibility requirements for successors in interest and the denial rates for successors. Treasury should publish this information with guidance on how best to implement future disaster relief programs.
- Treasury should issue guidance to states alerting them to the potential problems posed by inaccessible application procedures. Treasury should also provide best practices states can adopt to ensure that their programs comply with the relevant civil rights statutes and do not pose unwarranted barriers for people with disabilities and older applicants, among others. Treasury's monitoring of states' administration of their HAF programs should include an assessment of whether such barriers exist, and where Treasury finds that they do, it should require states to take any steps that may be required to eliminate such barriers and provide equitable access to HAF funds for individuals with disabilities and older homeowners, among others. Treasury should require states to provide their application procedures, language access policies and resources, and application pull through rates for HAF funds. Treasury should publish this information with guidance on how best to implement future disaster relief programs.
- Government programs that provide benefits based partially or wholly on race often invite litigation and, as such, Treasury should provide states with guidance and assistance on how to design programs in a manner that provides the states with the greatest

possibility of satisfying any eventual judicial review. Treasury should report on states' performance (correlated with needs assessments contained within HAF plans) on targeting socially disadvantaged communities and the best practices employed by states to achieve this goal.

- Treasury should work with the Consumer Financial Protection Bureau to monitor the implementation of the HAF for equity in the administration of the program to socially disadvantaged individuals and to determine HAF complaints received and any inequities in mortgage servicers processing or acceptance of HAF funds.



3. Treasury Should Promote Responsible AI to Support Financial Inclusion

Consistent with the Biden Administration’s Executive Orders on Artificial Intelligence (AI) and Racial Equity,¹⁴ Treasury should promote Responsible AI to support financial inclusion. Technology is the new civil and human rights frontier. Treasury should proactively identify and address the risks and opportunities as technology and AI become increasingly integral to decisions regarding housing and credit. To that end, Treasury should:¹⁵

- Ensure the agency’s policies reflect strong civil and human rights protections. Treasury should develop technology and AI policies that reflect civil and human rights principles that are foundational to America’s ideals of freedom and equality. These policies also must create equity.
- Ensure the agency prioritizes compliance with existing civil rights and consumer protection laws. Treasury (including the Office of the Comptroller of the Currency (OCC)) should issue robust policies that remind institutions of their legal obligations under existing laws (including the Fair Housing Act and the Equal Credit Opportunity Act) to test AI models for potential disparate treatment or disparate impact discrimination.

¹⁴ Biden Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (Oct. 30, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>; Biden Executive Order on Further Advancing Racial Equity (February 16, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/executive-order-on-further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>; Blueprint for an AI Bill of Rights (Oct. 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf>; Biden Executive Order on Advancing Racial Equity (Jan. 1, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

¹⁵ For more details on what federal agencies and Congress can do to advance financial inclusion in AI, see Testimony of Lisa Rice, NFHA President and CEO, *Hearing on Artificial Intelligence and Housing: Exploring Promise and Peril, before the U.S. Senate Banking Subcommittee on Housing Transportation and Community Development* (Jan. 31, 2024), <https://www.banking.senate.gov/hearings/artificial-intelligence-and-housing-exploring-promise-and-peril>.

- Integrate the review of racial equity in an algorithm's lifecycle. Treasury should ensure that its own policies and the policies of its vendors consider and mitigate the risk of bias at every phase, from data selection to development to deployment to monitoring.
- Ensure equitable digital access, public data access, transparency, and explainability. Whenever possible, Treasury should ensure public availability of key data, as the lack of such data hampers efforts to develop responsible automated systems in housing and financial services. This data usage must rightly balance privacy rights with the need to protect civil and human rights. Treasury's policies should also ensure that AI and automated systems are transparent and explainable, meaning that there are explanations for automated decisions and transparency regarding the design behind automated systems.
- Promoting effective training for the agency workforce. Appropriate policy development and enforcement may be hindered if the federal workforce lacks sufficient knowledge about how data-driven systems can perpetuate bias and discrimination. Consistent with the Biden Administration's Executive Orders on AI and Racial Equity, Treasury should accelerate the rapid hiring of AI professionals and provide AI training, including training on fair housing and lending for employees and contractors in relevant fields.

Thank you for considering our views.

Sincerely,

National Fair Housing Alliance
Long Island Housing Services, Inc.
National Association for Latino Community Asset Builders (NALCAB)
National Coalition for Asian Pacific American Community Development (National CAPACD)
National Community Stabilization Trust
National Housing Law Project
Poverty and Race Research Action Council

