CRL
Center for Responsible Lending

REPAIRING A TWO-TIERED SYSTEM

The Crucial but Complex Role of FHA

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Executive Summary

Since 1934, the Federal Housing Administration (FHA) has played a vital role in the housing finance system. It serves as the entry point to the mortgage market for many first-time homebuyers and helped create a strong economic recovery following the Great Depression. However, in its early development, the FHA perpetuated racial discrimination in its facilitation of broad mortgage credit liquidity by favoring white borrowers and excluding African-Americans and other people of color. This discrimination is a key contributor to the differing rates of homeownership between whites and people of color today, as well as a contributor to the persistent racial wealth gap. The federal government never accounted for its role in fostering housing discrimination and must do so. Still, FHA remains crucial to the mortgage market for the countercyclical role it offers in sustaining the system, and it continues to ensure access for underserved borrowers. FHA is a significant tool to increase affordable homeownership, but policymakers must address and guard against policies that perpetuate a two-tiered mortgage financing system.

By examining 2004–2016 mortgage origination data and market participation among banks and non-depositories, this report examines FHA lending before and after the financial crisis to better understand how the FHA program currently supports homeownership—particularly homeownership among borrowers of color. This report also evaluates FHA pricing and recent enforcement actions related to the False Claims Act (FCA) that have limited the effectiveness of the program in meeting its homeownership goals.

Findings include:

- FHA supported the conventional purchase market during the most recent economic recession when private actors retreated, but post-recession the program continues to hold a substantial market share. In 2004, over 400,000 FHA loans were originated, making up 8.8% of the mortgage market. By 2009 this percentage had increased to 42% of the market, and in years since it has remained high, at just over a quarter of the market.

- FHA purchase market share among lower-income borrowers increases, but not as fast as among higher-income borrowers. After the recession, high-income borrowers experienced a more than 400% increase in FHA market share. In comparison, low-, moderate-, and middle-income borrowers grew 116%, 132%, and 200%, respectively, between 2004 and 2016.

- FHA purchase lending among borrowers of color remains persistently high, including for higher-income African-Americans, as compared to conventional lending. FHA market share for Black and Latino borrowers now approaches half of all purchase mortgage lending to these borrowers. Additionally, FHA market share jumped 180% from 2004 levels for low-income Black borrowers and 267% and 642% from 2004 levels for Black middle-income and high-income borrowers, respectively.

- Borrowers of color, low- to moderate-income families, and lower-wealth families lack access to conventional mortgages. Excessive risk-based pricing prevents many borrowers from accessing the conventional market, as the cost of credit is prohibitive. The combination of loan-level price adjustments (LLPAs) and mortgage insurance (MI) premiums adds over 300 basis points to the cost of a mortgage for a borrower with a credit score of 620 and a loan-to-value ratio (LTV) of 97%.

- Because of tight and expensive credit in the conventional market, many borrowers of color, low- to moderate-income families, and lower-wealth families are left with FHA as their only option. Pricing barriers in the FHA market include mortgage insurance premiums—particularly the life of loan premium—and lender overlays on FHA loans.
- Since 2004, many large banks making FHA loans have reduced their FHA purchase lending footprint, while nonbanks have helped fill the gap. Of the top 10 FHA home purchase lenders in 2004, five were depositories and five were non-depositories; by 2016, eight of the top 10 FHA lenders were non-depositories. Newer market entrants make up a substantial part of the top 10 lenders, with at least four of the top 10 2016 FHA home purchase lenders beginning operation since 2007.
- FCA enforcement and legal uncertainty have been a principal driver of large banks exiting the FHA market and imposing stringent credit overlays on FHA loans.

The report concludes with recommendations to ensure the long-term health of the FHA program, including:

- The FHA program should not be restricted by income or first-time homebuyer status. The FHA program is critical to the overall mortgage market and economy and should be maintained for a broad group of borrowers. Restrictions on whom FHA may serve would more formally institutionalize a two-tiered system, as borrowers at a certain income level would automatically be relegated to FHA, and those above a certain income level would be required to seek conventional financing. Furthermore, a policy of failing to consider borrower assets or equity would perpetuate the impact of generations of discrimination and the racial wealth gap.
- The Federal Housing Finance Agency (FHFA) should eliminate the LLPAs and recalibrate Private Mortgage Insurer Eligibility Requirements (PMIERs). The combination of LLPAs and PMIERs has priced out many creditworthy borrowers from the conventional market.
- Congress should provide FHA with increased resources for staffing, technology, and operations. This increased funding is also key to implementing FCA reforms, including bolstering quality control mechanisms and tying in the defect taxonomy—FHA's loan quality assessment methodology—to FCA liability.
- FHA should reduce its premiums and eliminate the life of loan premium. As many lower-wealth borrowers and borrowers of color are unable to access the conventional credit market today, high FHA premiums may be keeping many borrowers out of the market entirely, not just shifting from one credit channel to another.
- FHA should establish clarifying reforms to enable the government to fight fraud in the FHA program as well as urge lenders to return to the program. FHA should fully integrate the defect taxonomy into assessing lender liability under the FCA.

History of FHA and the Impact of Government Mortgage Discrimination on the Racial Wealth Gap

A. Homeownership is the primary way that most Americans build wealth, but people of color are often left out

The wealth of middle-class Americans is most concentrated in their homes—their most valuable asset.

The wealth of middle-class Americans is most concentrated in their homes—their most valuable asset. According to the Federal Reserve, the average net worth of a homeowner is $195,500 (of which $80,000 is home equity), compared to $5,400 for a renter.[1] Homeownership is a key path to wealth building, and homeowners, including homeowners of color, have consistently higher net worth than renters. In addition to helping generate wealth and ensure financial security, research shows that homeownership leads to substantial social benefits.[2] Research provides considerable evidence that positive homeownership experiences result in greater participation in social and political activities, improved psychological health, positive assessments of one's neighborhood, and high school and post-secondary school completion.[3] The homeownership rate for non-Hispanic white householders reporting a single race is highest at 72.7%.[4] The rate for Asian, Native Hawaiian, and Pacific Islander householders is second at 58.2%, and the rate for Black householders is lowest at 42.1%.[5] The homeownership rate for Hispanic householders (who can be of any race) is 46.6%.[6]

The homeownership rate gap between whites and people of color is in large part due to historic federal housing policy choices that created decades-long impacts. These policy choices deliberately excluded people of color from being able to build wealth through homeownership.

These homeownership rate disparities did not occur by chance. The homeownership rate gap between whites and people of color is in large part due to historic federal housing policy choices that created decades-long impacts. These policy choices deliberately excluded people of color from being able to build wealth through homeownership. Indeed, today's homeownership disparities can be traced back to New Deal housing programs that amounted to a "state-sponsored system of segregation."[7] The history of the FHA is one of the most significant examples of this system—one that has created generational wealth gap implications.

B. FHA has contributed to the variance in homeownership rates and poor homeownership outcomes for people of color

FHA's role in institutionalizing and perpetuating segregation in the housing market is well-established but unfortunately not broadly understood by the public and many policymakers.[8] From its inception in 1934, FHA explicitly practiced a policy of redlining by refusing to insure mortgages in or near African-American neighborhoods.[9] FHA relied upon color-coded metropolitan maps to indicate where it was considered "safe" to insure mortgages. These maps denoted "risky" areas in red—areas that included African-Americans or where African-Americans lived nearby.[10] In FHA's 1936 Underwriting Manual, a multitude of provisions indicated that "inharmonious" racial groups should not live in the same communities.[11] The manual also recommended that "natural and artificially-established barriers will prove effective in protecting

a neighborhood and the locations within it from adverse influences."[12] In other words, barriers such as highways were deemed a beneficial way to separate African-American and white neighborhoods. Moreover, FHA subsidized the mass-production of subdivisions—where the builders included a requirement that no homes be sold to African-Americans.[13] Thus, the suburbanization of America was to the financial benefit of white Americans and the intentional exclusion of African-Americans and other people of color. FHA's redlining policy prevented people of color from purchasing homes, while whites were provided the government-sponsored opportunity to become homeowners.

If current trends continue, it could take as long as 228 years for the average Black family to reach the level of wealth white families own today. For the average Latino family, matching the wealth of white families could take 84 years.

FHA's discriminatory policies are a major contributor to the racial wealth gap.[14] Whites were able to gain early access to housing in quickly developing suburbs at an affordable price.[15] Today those same communities are often no longer affordable. For example, homes in the Levittown, New York suburban housing development sold for about twice the national median income in the late 1940s and 1950s. These homes were affordable to working-class families of color with an FHA mortgage, but families of color were barred from purchasing the homes. Today the same homes have appreciated greatly in value, selling for six or eight times the national median income, and are unaffordable to most families.[16] Thus, white homeowners were able to gain home equity appreciation, but for decades African-American families were not provided the same opportunity.

In part because of these inequities, in 2016 white family wealth was seven times greater than Black family wealth and five times greater than Latino family wealth.[17] If current trends continue, it could take as long as 228 years for the average Black family to reach the level of wealth white families own today.[18] For the average Latino family, matching the wealth of white families could take 84 years.[19] Moreover, by 2024, median Black and Latino households are projected to own 60 to 80% less wealth than they did in 1983.[20] Additionally, by 2043, the year in which projections show that people of color will make up a majority of the U.S. population, it is projected that the wealth divide between white families and Latino and Black families could double, on average, from approximately $500,000 in 2013 to over $1 million.[21]

Today the story of FHA and who it serves is, of course, markedly different—yet many concerning issues persist. Borrowers of color are vastly overrepresented in the FHA market, and the conventional market has done a poor job of serving these borrowers. In effect, our housing system continues to perpetuate a two-tiered financing system, even though discrimination is illegal.[22]

Methodology

This report uses data provided by the Home Mortgage Disclosure Act (HMDA) to analyze first-lien originations of home mortgage purchase loans on single-family owner-occupied properties between 2004 and 2016. The study focuses on purchase loans—rather than a combination of purchase and refinance loans—to better understand the role FHA plays in the extension of mortgage credit to new homebuyers. FHA, however, has a larger role in the purchase market, and as a result, its market share is higher than other analyses that consider all FHA, conventional, and other lending. For example, FHA loans account for 25% of purchase loans made in 2016 but just over 12% of refinance loans made in 2016.

These data were used to track lending in the conventional and FHA market over time and track lender participation in the conventional and FHA market. This report also looks at lending activity before and after the financial crisis and Great Recession, using the Bureau of Labor Statistics definition for the Recession, as running from December 2007 to June 2009.[23]

In addition to analyzing the overall market size and composition, this report also reviews mortgage lender market participation between 2004 and 2016 using the HMDA Lender Panel, which reports details associated with mortgage lending institutions. To compare the institutions that exemplify the 2004 market to those that do so in the 2016 market, this analysis identifies the top 10 FHA lenders in both 2004 and 2016 and tracks their FHA lending in the years between 2004 and 2016. During this timeframe, many lenders closed their doors or were acquired, and many new lenders started lending or increased their market share. To maintain as consistent a comparison as possible, the top 10 2004 and 2016 lenders are identified by their unique lender identifier, composed of the HMDA Institutional ID and the HMDA Regulatory Agency Code. In this way, the portfolios of lenders whose names or ownership changed could be compared appropriately over time. In several circumstances, institutional mergers and acquisitions occurred in connection to the chosen 20 institutions during the timeframe of this analysis; FHA loans made by associated institutions are included in the market calculations, and specific institutional associations are indicated in an Appendix. Borrower income categories are drawn from HMDA data and calculated as percentages of area median income (AMI): low-income below 50% of AMI; moderate-income from 50% to below 80% AMI; middle-income from 80% to below 120%; and high-income at or above 120%.

The report further contains a legal and policy analysis of pricing in the conventional market, FHA mortgage insurance premiums, credit overlays, the role of nonbanks in FHA lending, and FCA enforcement. A discussion of Center for Responsible Lending (CRL) analysis of Fannie Mae's guidelines and LLPA matrix is included, as well as pricing information from mortgage insurance companies. Finally, the report provides an analysis of FCA consent orders released by the U.S. Department of Justice (DOJ).

Borrowers of Color, Low- to Moderate-Income Families, and Lower-Wealth Families Lack Access to Conventional Mortgages

As the housing bubble burst between 2008 and 2012, FHA stepped in to maintain access to mortgage credit for many underserved homebuyers, as well as ensure toxic subprime loans could be refinanced into more sustainable FHA loans.[24] FHA's loan volume grew quickly following the financial crisis, and this growth helped prevent more foreclosures and even steeper declines in home prices.[25] According to estimates from Moody's Analytics, home prices would have fallen another 25% nationally if FHA had not stepped in.[26] While FHA played a crucial countercyclical role following the crisis and preserved access to credit for underserved borrowers, the conventional market has tightened credit standards and shut out over 6 million creditworthy borrowers between 2009 and 2015.[27] This section analyzes the growth and decline in FHA and conventional loans before, during, and after the crisis. It also analyzes which borrowers are and are not being served by the conventional and FHA markets.

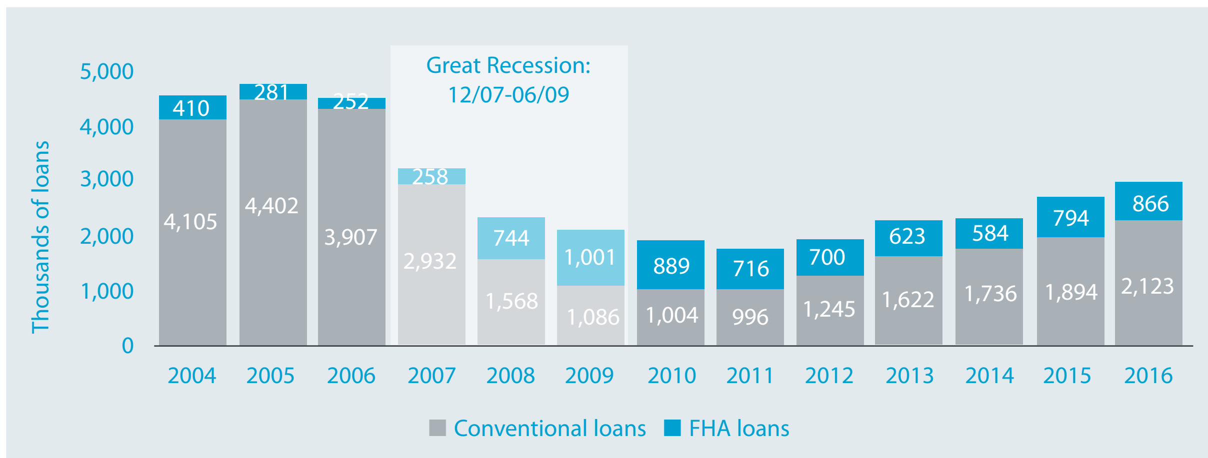
While FHA played a crucial countercyclical role following the crisis and preserved access to credit for underserved borrowers, the conventional market has tightened credit standards and shut out over 6 million creditworthy borrowers between 2009 and 2015.

A. FHA supports the conventional market during economic recession but continues to hold a substantial market share

An examination of lending data before, during, and after the economic recession illustrates the FHA's countercyclical role in supporting the mortgage market (Figure 1). In 2004, over 400,000 FHA loans were originated, making up 8.8% of the mortgage market. By 2009 this percentage had increased to 42% of the market, and in years since, has remained high at just over a quarter of the market. This market share represents a substantial growth in the volume of FHA lending, as the size of the entire mortgage market has grown more than 70% from its post-recession low in 2011.

It is also important to note that although FHA had for more than a decade captured approximately 10 to 15% of the home purchase market, FHA's market share was far less in the housing boom years immediately preceding 2007.[28] FHA's extremely low pre-crisis home purchase share highlights the fact that predatory and subprime mortgage lenders offering deceptively low-cost products attracted many homebuyers who otherwise would have chosen FHA financing. Subprime lenders further targeted people of color with loans that contained risky features and fueled the foreclosure crisis.[29] This dynamic was to the detriment of the entire housing system, as toxic products that eschewed the borrower's ability-to-repay flooded the market.[30] After the housing market crashed, FHA stepped in to fulfill its countercyclical role. Thus, its market share rebounded enormously during a time that predatory subprime lenders were forced out of the market and the conventional market rationed credit.

Figure 1: Conventional and FHA purchase loans by year, 2004–2016



Source: CRL calculations of 2004–2016 HMDA purchase loan data (see figure A1 in Appendix).

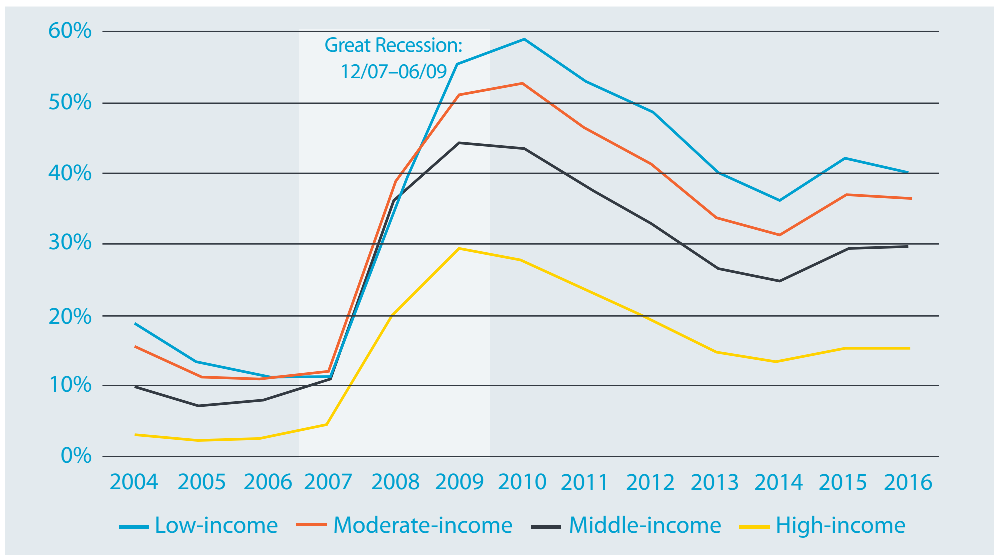
B. FHA purchase market share among lower-income borrowers increases, but not as fast as among higher-income borrowers

During the recession, as credit standards tightened in the conventional market, the FHA took on a much broader role than it had previously. This was a necessary countercyclical influence in the fallout from the era of subprime mortgages, but it marked changes within both markets. While FHA has historically provided access to credit to lower-income borrowers and first-time homebuyers, it has emerged and remained the mortgage credit source for over 40% of the low-income home purchase market.

No longer just an option for low- and moderate-income borrowers, FHA became the majority provider of loans to these groups during the recovery years of 2009 and 2010. Looking at the entire FHA market, while borrowers of all income levels became more reliant upon FHA lending after the recession, high-income borrowers experienced the greatest gains, at a more than 400% increase. In comparison, low-, moderate-, and middle-income borrowers grew 116%, 132%, and 200% respectively between 2004 and 2016. This disparity is due in part to the larger share of loans to low- and moderate-income borrowers made by the FHA in 2004 compared with high-income borrowers—8.6% and 15.7% compared to just over 3% respectively. Thus, while this period was one of great gains for FHA lending to low- and moderate-income borrowers, the change in growth rates also reflects a change in the composition of FHA lending, with a larger share of loans being made to high-income borrowers than previously (Figure 2).

While borrowers of all income levels became more reliant upon FHA lending after the recession, high-income borrowers experienced the greatest gains, at a more than 400% increase.

Figure 2: FHA share of all purchase loans made by income category, by year, 2004–2016

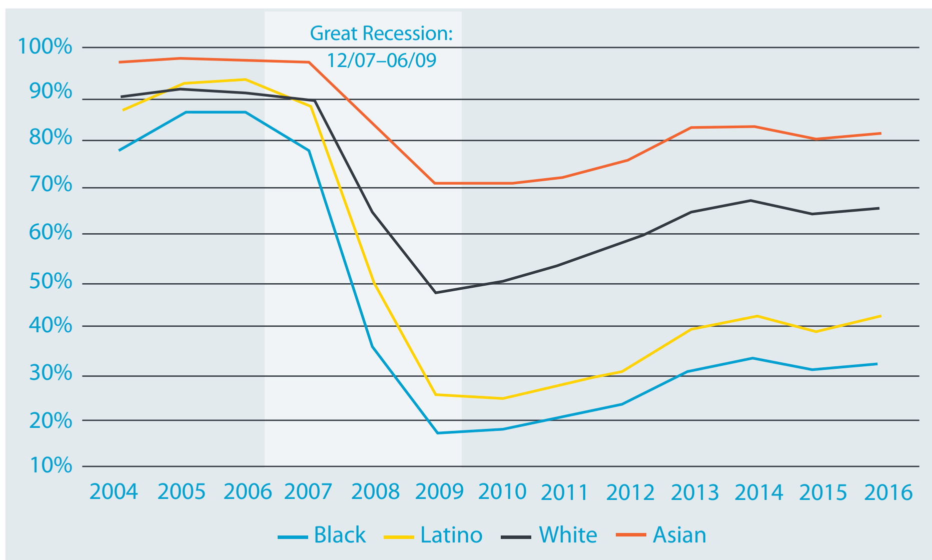


Source: CRL calculations of 2004–2016 HMDA purchase loan data (see figure A2 in Appendix).

C. FHA lending among borrowers of color remains persistently high

As historically FHA-reliant low- and moderate-income borrowers continue to rely on FHA lending for access to purchase mortgage credit, there are similar FHA lending patterns among borrowers of color. In 2006, Black, Asian, Latino, and white borrowers each received more than 85% of their purchase loans from the conventional market. By 2009, conventional lending market share among Black borrowers had declined dramatically, with Black borrowers receiving just 18.2% of their loans from the conventional market—less than half the rate of conventional lending to white borrowers. While the 2006 conventional market included some of the most problematic subprime loans,[31] this cannot explain the post-recession difference in conventional lending between white borrowers and borrowers of color (Figure 3).

Figure 3: Conventional share of all purchase loans by race/ethnicity category, by year, 2004–2016



Source: CRL calculations of 2004–2016 HMDA purchase loan data (see figure A3 in Appendix).

As conventional lending to borrowers of color steeply declined between 2006 and 2009, the FHA share of lending to borrowers of color increased and remains high. While the share of FHA purchase lending made to Black and Latino borrowers has exceeded the share of FHA purchase lending to white borrowers since 2004, the FHA share to borrowers of color also grew at a faster rate during the recession and has remained persistently high.[32] In 2016, Black and Latino borrowers received nearly half their purchase mortgage loans from FHA, while white borrowers received less than a quarter of theirs and Asian borrowers received under 14% (Figure 4).

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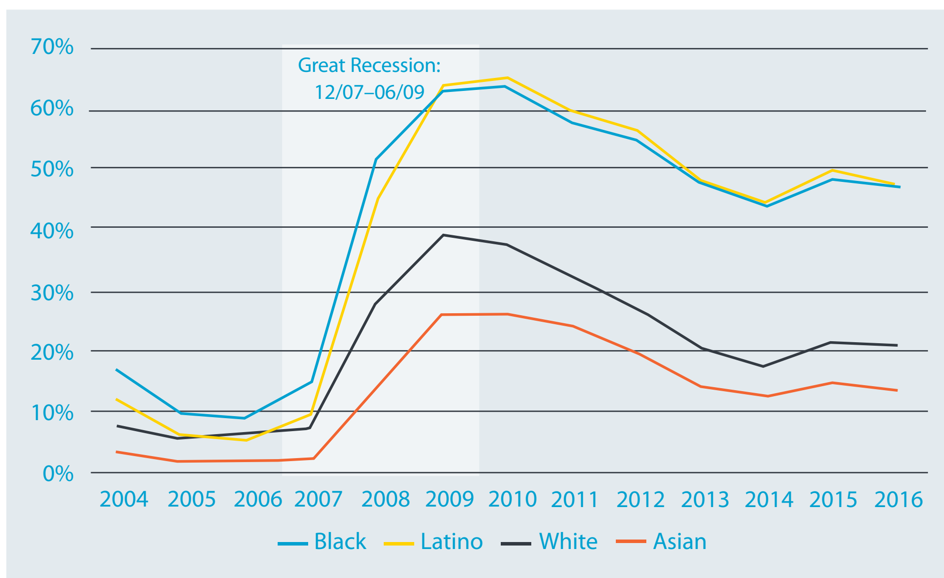
Figure 4: FHA share of all purchase loans by race/ethnicity category, by year, 2004–2016

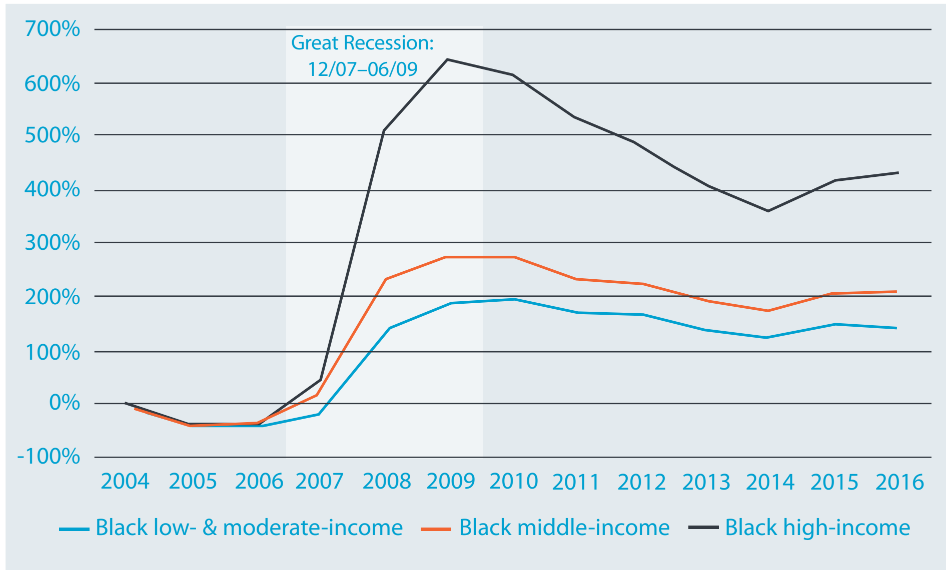


Source: CRL calculations of 2004–2016 HMDA purchase loan data (see figure A4 in Appendix).

Among Black borrowers, the change in market share since 2004 has increased regardless of income level, but the FHA purchase market share among high-income Black borrowers has increased the most. This contrasts with pre-recession patterns. Leading up to the recession, FHA purchase market share decreased among Black borrowers of all incomes. By 2009, however, FHA market share jumped 180% from 2004 levels for low-income Black borrowers and 267% and 642% from 2004 levels for Black middle-income and high-income borrowers respectively (Figure 5).

Among Black borrowers, the change in market share since 2004 has increased regardless of income level, but the FHA purchase market share among high-income Black borrowers has increased the most.

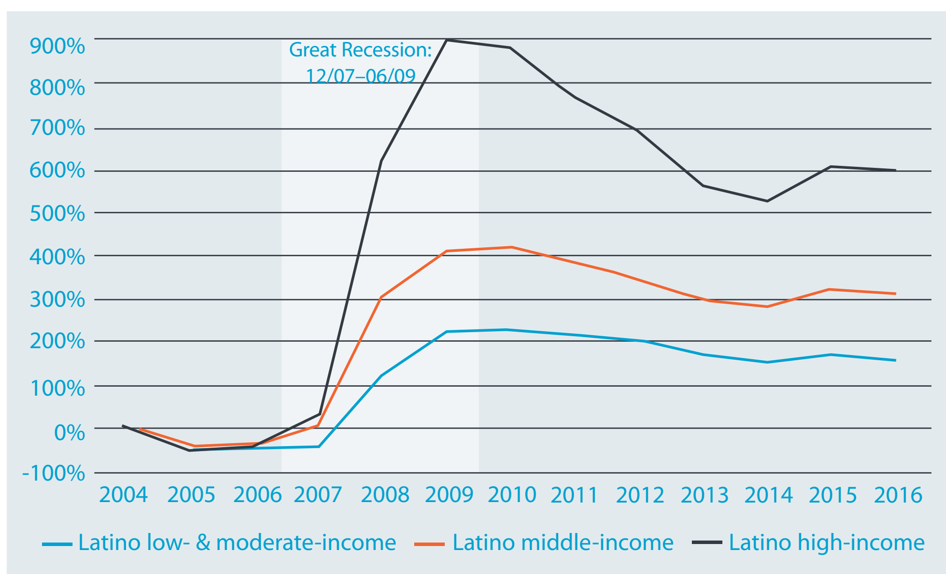
Figure 5: Percent change from 2004 of FHA purchase lending to Black borrowers by income category, by year, 2004–2016



Source: CRL calculations of 2004–2016 HMDA purchase loan data (see figure A5 in Appendix).

Likewise, among Latino borrowers, the change in market share since 2004 has increased regardless of income level, and the FHA market share among high-income Latino borrowers has increased the most. Leading up to the recession, FHA purchase market share decreased among Latino borrowers of all incomes. By 2009, however, FHA purchase market share jumped to 219% of 2004 levels for low-income Latino borrowers and 415% and 904% from 2004 levels for Latino middle-income and high-income borrowers respectively (Figure 6).

Figure 6: Percent change from 2004 of FHA purchase Lending to Latino borrowers by income category, by year, 2004–2016



Source: CRL calculations of 2004–2016 HMDA purchase loan data (see figure A6 in Appendix).

Thus, while the overall purchase market share for FHA loans continues to decline as the market improves, the conventional market has not stepped in to adequately serve borrowers of color—even borrowers of color with higher incomes. Instead, the rate at which people of color rely on FHA lending has increased. In summary of the findings above, the conventional mortgage market has, since the Great Recession, ceased to sufficiently serve all borrowers despite mandates that require them to do so. Although the FHA has long provided an important backstop for borrowers of modest means, its role has changed, too: As conventional mortgage credit has tightened, even wealthier Black and Latino borrowers were relegated to the FHA program.

As conventional mortgage credit has tightened, even wealthier Black and Latino borrowers were relegated to the FHA program.

Mortgage Pricing in the Conventional and FHA Markets Creates Barriers to Homeownership

Pricing is a key barrier that prevents lower-wealth and families of color from accessing the conventional mortgage market, instead pushing these families towards FHA as their only option. As a result, FHA serves a larger share of lower-wealth borrowers who might have the income to sustain monthly payments but lack the down payment or savings for a lower LTV loan due to historic discrimination in the mortgage market.

A. Excessive risk-based pricing prevents lower-wealth borrowers from accessing the conventional market

Underwriting structures determine if borrowers are creditworthy, but market pricing structures have a significant impact on whether a creditworthy borrower can afford a mortgage.[33] Differential pricing creates an additional barrier to mortgage credit by increasing the price, at times significantly, for some borrowers relative to others. Price acts as a barrier, especially in today's mortgage market. For example, although Fannie Mae's guidelines allow the Enterprise to purchase loans with credit scores down to 620 and LTV ratios of up to 97%, very few loans purchased by the Enterprise have these characteristics. For example, just 4.1% of Fannie Mae's 2016 single-family loan purchases had credit scores below 660 and just 1.1% had a combination of a credit score under 660 and an LTV over 80%. One reason is that excessive risk-based pricing by both the Enterprises and private mortgage insurers add significantly to the cost of loans for borrowers with lower scores and less wealth for a down payment. For example, the combination of LLPAs and MI premiums adds over 300 basis points to the cost of a mortgage for a borrower with a credit score of 620 and an LTV of 97%.[34]

B. FHA MI premiums act as a barrier

In the FHA market, price is also a barrier, namely via MI premiums. As many lower-wealth borrowers and borrowers of color are unable to access the conventional credit market today, high FHA premiums may be keeping many borrowers out of the market entirely, not just shifting them from one credit channel to another. Compared to conventional loans, FHA loans can be costlier over the life of the loan, principally due to FHA MI premiums. According to an analysis from the National Association of Realtors, nearly 400,000 creditworthy borrowers were priced out of the housing market in 2013 due to high FHA premiums.[35]

FHA-insured mortgages require two types of mortgage insurance: upfront mortgage insurance and annual mortgage insurance. The upfront MI premium is currently 175 basis points, or 1.75% of the base loan amount, and it may be rolled into the loan.[36] The annual MI premium is included in a borrower's monthly mortgage payment and varies depending on the loan amount and down payment.[37] Effective July 3, 2013, a borrower who puts down less than 10% can no longer cancel the premium after the loan-to-value reaches 78% or less.[38] Borrowers with a 10% down payment must pay a MI premium for 11 years, while all other borrowers must pay a MI premium for the entire mortgage term.

The increases in the annual insurance premium have had the most significant impact on loan affordability. Between 2011–2014, annual insurance premiums increased by nearly 150%, while its upfront fees rose by 75%.[39] In January 2015, via executive action, the Obama administration directed FHA to reduce its annual MI premiums by 50 basis points, from 1.35% to 0.85%.[40] Despite this move, the Mutual Mortgage Insurance Fund (MMIF) reached its congressionally mandated 2% threshold in 2015, ahead of schedule.[41] At the beginning of January 2017, FHA reduced the annual MI premium from 0.85% to 0.60%. However, in the Trump administration's first act, moments after the inauguration, this premium cut was reversed.[42]

C. Lender credit overlays lock creditworthy borrowers out of FHA loans

Following the financial crisis, banks implemented aggressive credit overlays. A credit overlay is an expanded guideline that lenders place on loans—guidelines that go beyond what Fannie, Freddie, or FHA would require. For instance, although FHA will accept credit scores as low as 500 so long as the borrower makes a 10% down payment, a lender might impose a credit score overlay and require a minimum FICO score of 640. Additionally, although the government-sponsored enterprises (GSEs) may be willing to purchase mortgages with a 620 FICO score, the lender may require a 660 FICO score or even higher.[43] These restrictions, imposed by bank underwriters rather than the GSEs or FHA program itself, often result in banks only making loans to borrowers with pristine credit profiles. This creates tight credit conditions for borrowers, despite many of the banks being bailed out by all taxpayers following the housing crash in 2008.

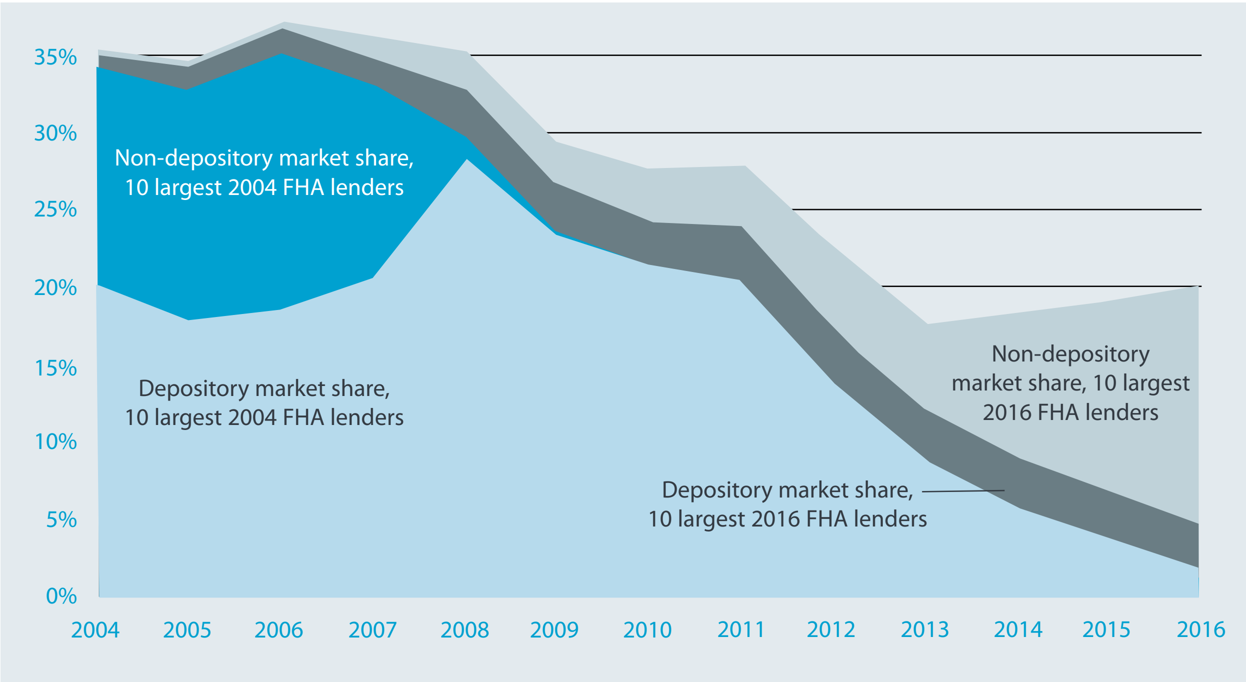
Many lenders impose overlays arguing that they cannot price for uncertainties related to the mortgage, including litigation risk and the risk of servicing delinquent loans.[44] They state that the costs of producing and servicing mortgages that are less pristine will be higher than what they will earn on the mortgages.[45] According to the Mortgage Bankers Association, the annual cost of servicing performing loans in 2016 was $163 and the annual cost of servicing nonperforming loans was $2,113.[46] However, even with the cost of servicing delinquent loans, servicing overall remains profitable and servicing rights sell as a substantial asset.

Credit overlays tend to exclude borrowers who may have the income to sustain a mortgage but have a lower credit score and smaller funds available for a down payment. These borrowers may appear to be at higher risk of default based on indicators like credit score and down payment amount, but they are able to perform well if in responsible loans.[47] Furthermore, as discussed above, many high-income borrowers of color rely on FHA. This is due in large part to borrowers of color having lower credit scores and less wealth to make a down payment, which is the result of broad discrimination and exclusion from mortgage lending opportunity at the creation of the FHA. Much evidence demonstrates that credit scores "bake in" past mortgage discrimination.[48] Indeed, existing wealth disparities rooted in historic federal housing policy advantaging white borrowers and disadvantaging communities of color contribute to differences in credit scoring along racial and ethnic lines.[49] Additionally, previous abusive practices in the subprime mortgage market targeted neighborhoods of color with higher-priced loans when many qualified for loans on better terms, resulting in spillover effects that damaged the credit of many homeowners of color.[50] These dynamics widen the racial wealth gap discussed under heading B found on page 3.

Many Large Depositories Have Withdrawn from FHA Lending, while Nonbanks Have Helped Fill the Gap

Regardless of lenders' internal underwriting requirements, in recent years several large banks once active in the FHA market have exited the market entirely.[51] As banks have exited the FHA market or reduced their FHA lending, the market share of the 10 largest lenders has declined, and nonbank lenders have become the dominant market segment.[52] In 2004, the top 10 FHA lenders held a 34% share of the total FHA home purchase market, and by 2016 the market share of the largest lenders declined to just over 18%. Of the 10 largest FHA home purchase lenders in 2004, no lender remained in the top 10 by 2016. The market share of depository institutions among the 2004 top 10 FHA home purchase lenders within total yearly FHA home purchase lending fell off during the recession from about 33% to 21%, and again in the wake of FCA settlements from about 14% to 9%. Of the top 10 FHA lenders in 2004, five were depositories and five were non-depositories, and by 2016 eight of the top 10 FHA lenders were non-depositories. New market entrants make up a substantial part of the top 10 lenders with at least four of the top 10 2016 FHA lenders beginning operation since 2007. Nonbank origination share for Ginnie Mae-backed loans jumped from 36% in 2013 to 76% in 2017.[53]

Figure 7. FHA purchase lending of top 10 largest FHA purchase lenders in 2004 and 2016, before and after financial crisis



Source: CRL calculations of 2004–2016 HMDA purchase loan data (see figures A7, A8, and complete description of lender status in Appendix).

On the one hand, nonbanks have played an important post-crisis role in expanding access to credit for borrowers with lower credit scores and smaller down payments. For instance, the average FICO score for nonbank customers is lower than the average score among banks.[54] Nonbanks similarly exhibit higher loan-to-value and debt-to-income ratios among borrowers.[55] Nonbanks also originate a higher share of

mortgages to communities of color. In 2016, nonbanks originated 53% of all mortgages but constituted 64% of mortgages originated to Black and Latino borrowers, as well as 58% of mortgages to borrowers living in low- or moderate-income census tracts.[56]

The rise in nonbank lending, however, poses certain challenges. As nonbanks do not hold deposits, they typically rely on short-term financing to originate new loans.[57] Times of stress may dry up this financing. Another significant disadvantage of nonbanks is that they tend to be thinly capitalized, particularly smaller nonbank lenders that play a large role in the FHA market.[58] Thin capitalization increases concerns that non-banks are more open to taking risk because they have less skin in the game. A recent paper found that the sharp increase in nonbank mortgage lending has exposed the market to liquidity risk.[59] The paper states that the same liquidity issues unfolded during the financial crisis, leading to the failure of many nonbanks and harm to consumers.

Furthermore, Ginnie Mae, a government corporation which securitizes federally insured mortgages (mainly FHA loans), has experienced an enormous rise in originations from nonbank lenders.[60] In 2011, nonbanks only constituted 11% of Ginnie Mae's originations.[61] This rose to 36% in 2013 and 76% in 2017.[62] This rise has come with unaccounted-for risks, as noted in a 2017 report from the U.S. Department of Housing and Urban Development (HUD) Office of the Inspector General (IG). The HUD IG report found that Ginnie Mae was not prepared for the rise in nonbank mortgage lending and "did not adequately respond" to the changes in its lender base.[63] The HUD IG report also states that Ginnie Mae "did not implement policies and procedures in a timely manner for its account executives to follow in managing issuers, did not develop a written default strategy, and did not assess and address the risks posed by nonbanks in a timely manner."[64] These concerns underscore the importance of ensuring that appropriate compliance management systems are in place and that these systems are specifically geared toward nonbank lenders.

The increased market share of nonbank lenders further emphasizes the importance of making sure all lenders abide by the same rules to protect consumers. Lest we forget, the lion's share of subprime mortgages that contributed to the financial crisis were underwritten by unregulated nonbank lenders. Leading up to the crisis, nonbank lenders sold most of their mortgages to Wall Street, not to the GSEs. In addition, the nonbank lenders did not hold deposits and thus were unregulated by the Federal Deposit Insurance Corporation or the Office of Thrift Supervision. In 2006, the height of the subprime boom, of the top 25 subprime lenders, 15 were nonbanks, accounting for 42.5% of total subprime loans while accounting for just 30% of overall mortgage originations.[65] Furthermore, loans made by banking institutions subject to the Community Reinvestment Act were only half as likely to default compared with similar loans made in the same neighborhoods by nonbank mortgage originators not subject to the law.[66] Indeed, 400 nonbanks went bankrupt across the nation during the subprime mortgage meltdown.[67]

The Dodd-Frank Act changed the regulatory landscape and provided the Consumer Financial Protection Bureau (CFPB) with the authority to supervise nonbank mortgage companies (originators, brokers, servicers, and providers of loan modification or foreclosure relief services), regardless of size.[68] The Bureau's supervision authority over nonbank mortgage companies, however, is limited to compliance with consumer laws and regulations related to financial services and does not include general safety and soundness oversight. Additionally, although state regulators, the CFPB, Ginnie Mae, and the GSEs have established standards that apply to nonbank servicers, the Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators have noted that nonbank servicers are not subject to consistently comprehensive safety and soundness standards.[69]

False Claims Act Enforcement and Legal Uncertainty Impact Lender Participation in the FHA Market

The FHA market has also been impacted by increasing enforcement under the FCA.[70] The FCA is a federal law which establishes liability for false or fraudulent conduct against federal programs. Both the DOJ and private citizen whistleblowers may initiate a claim in a *qui tam* action, filed under seal. The FCA has been utilized in the FHA context to bring cases against FHA lenders who falsely certify that they are in compliance with FHA program requirements.[71]

FCA liability is established when a person "knowingly presents or causes to be presented a false claim for payment or approval" or "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim."[72] In order to violate the FCA, the false claim or statement must be "knowing" and "material." The statute, however, does not require specific intent to defraud.[73] Knowledge of false information is defined as: (1) actual knowledge; (2) deliberate ignorance of the truth or falsity of the information; or (3) reckless disregard of the truth or falsity of the information.[74] Furthermore, the FCA requires more than mere negligence or a simple mistake to hold a person liable. It requires that the false claim be "material" to the government's payment. The term "material" is defined in the statute as "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property." [75] This definition mirrors language used in other federal fraud statutes.[76] Additionally, the FCA includes penalties that are three times the actual damages.[77]

Lenders are reducing their participation in the FHA market for several reasons.[78] However, lender uncertainty regarding FCA liability and high penalties is a key reason lenders cite for departing the market. Several banks have withdrawn from the FHA program in recent years and largely attribute this exit to aggressive DOJ and HUD enforcement of the FCA.[79] They claim that the government has assessed treble damages for immaterial or clerical errors. Indeed, if one considers the timing of FCA settlements and when lenders left the market, there appears to be overlap.

FHA requires that all loans submitted for insurance comply with FHA requirements, including the Single Family Housing Policy Handbook (FHA Handbook). In the context of mortgage origination and underwriting, the FHA Handbook states that a finding is material if disclosure of the finding would have altered the lender's decision to approve the mortgage or to endorse or seek endorsement from FHA for insurance of the mortgage.[80] Thus, a lender should not be liable under the FCA for a clerical or immaterial error. Yet, the loan-level certification language FHA requires lenders and underwriters to submit has not always been clear on this point, and it is these loan-level certifications that form the basis upon which a FCA claim is initiated.

The loan-level certification language has been amended over the years. Prior to 2015, the language required lenders to certify loans to a near level of perfection that is impractical in mortgage underwriting. To further clarify its intent, FHA amended its loan-level certification in 2016, to make lenders aware that "they will be held accountable for those mistakes that would have altered the decision to approve the loan and assure them that minor mistakes will not cause them to lose their FHA insurance."[81] Most notably, the revised HUD/VA Addendum to Uniform Residential Loan Application establishes more of an insurability standard, requiring the lender to certify that "to the best of its knowledge," it "has exercised due diligence in processing this mortgage and in reviewing the file documents listed at HUD Handbook 4000.1, II.A.7.b. and the documents contain no defect that should have changed the processing or documentation and the mortgage should not have been approved in accordance with FHA requirements."[82]

Still, lenders desire further clarification. For instance, the Mortgage Bankers Association (MBA) "continues to believe that an official clarification of HUD's original intent is vital to the future use and interpretation of this legal certification."[83] MBA also calls for page three of the form to reflect the same level of knowledge qualifiers as on pages one and four, which require certification "to the best of" a signer's knowledge.[84] A high level of consistency and clarity is needed to encourage lenders to return to the FHA program.

While additional clarity is needed regarding the type of defects triggering liability, the FCA remains a critical tool to root out fraud and bad lender behavior in the FHA program.

Despite lender concerns that HUD and DOJ grossly penalize lenders committing clerical errors, a review of settlements indicates that many lenders engaged in egregious conduct, in clear violation of the law. For instance, Wells Fargo settled a FCA action in April 2016 in which the consent order states that the bank "engaged in a regular practice of reckless origination and underwriting of its FHA retail loans."[85] The bank failed to provide proper training to temporary staff while management applied pressure to underwriters to approve more and more FHA loans and imposed short turnaround times for deciding whether to approve the loans. The bank employed lax underwriting standards and controls and paid bonuses to underwriters and other staff based on the number of loans approved. Although Wells Fargo's senior management was repeatedly advised by its own quality assurance reviews of serious problems with the quality of its originations, management disregarded the findings and failed to implement proper and effective corrective measures. In contravention of FHA requirements, Wells Fargo also failed to self-report bad loans it was originating—while internally identifying thousands of defective loans with material findings. Numerous FCA consent orders include similar factual allegations. Thus, while additional clarity is needed regarding the type of defects triggering liability, the FCA remains a critical tool to root out fraud and bad lender behavior in the FHA program.

Recommendations

The FHA program undeniably plays an integral role in the mortgage market, particularly for first-time, low- to moderate-income and lower-wealth borrowers, as well as borrowers of color. At the same time, the program has faced and continues to face many challenges. However, these challenges may be mitigated and perhaps overcome with certain policy prescriptions.

A. The FHA program should not be restricted by income or first-time homebuyer status

Housing finance proposals that would impose strict boundaries on the FHA program are misguided, particularly when FHA is playing an important role for so many borrowers in this period and rescuing the system following the housing crisis. Some have argued that FHA should be limited to specific populations (e.g., first- time homebuyers, borrowers below a certain income threshold).[86] While FHA has been central to providing homeownership opportunities for first-time homebuyers and lower-income families, measures that specifically target certain populations are ill-advised. FHA plays an important countercyclical role in mortgage lending and the economy and is crucial for the stability of the entire market.

Currently, FHA pools risk and does not engage in risk-based pricing by credit score.[87] If FHA restricts its borrower pool, it runs the risk of impeding cross-subsidization, which is essential for ensuring broad access to FHA mortgages. In turn, FHA would be forced to increase pricing for the borrowers remaining in the pool. Furthermore, such change would more formally institutionalize a two-tiered system, as borrowers at a certain income level would automatically be relegated to FHA and those above a certain income level would be required to seek conventional financing. Consumers should have choices in the mortgage market and should not be forced into a particular financing channel.

Consumers should have choices in the mortgage market and should not be forced into a particular financing channel.

Additionally, it is problematic to determine eligibility for FHA loans only by income (or first-time homebuyer status) and to fail to consider assets or equity. Many borrowers of color have less family and personal wealth due to the past lack of equal access to programs like FHA lending, as well as from the broad impacts of discrimination.[88] This affects both the LTV of the loan and a borrower's credit score, leading to higher pricing. Consequently, as discussed under heading A found on page 12, many borrowers are unable to obtain an affordable conventional mortgage despite being creditworthy. Yet, some housing finance proposals would create a catch-22 situation and exclude these very households from being able to obtain a FHA loan unless they meet income limits.

FHA works best in a competitive market where it is one of many options available to a wide range of borrower segments. Not only is this critical to keeping FHA actuarially sound, it keeps lenders engaged in the low down payment and underserved markets. In the absence of competition for their business on safe and sustainable terms, communities face two troubling scenarios: being overrun with FHA loans and denied access to conventional credit or being cut off from credit entirely if lenders decline to offer the FHA product. Both scenarios leave certain borrowers and neighborhoods vulnerable to a resurgence of predatory or substandard credit and enable a two-tiered financing system.

To avoid overcommitting too much of the market to FHA, federal housing finance proposals must support responsible yet flexible underwriting within loans that receive federal backing or support on the secondary market. This should include the development of low down payment products. Doing so will help keep credit markets available to creditworthy underserved homebuyers.

B. FHFA should eliminate the LLPAs and recalibrate PMIERs

As discussed above, price acts as an obstacle in the conventional market, keeping out many lower-wealth borrowers and borrowers of color. CRL has previously urged FHFA and the Enterprises to revisit their pricing policies and consider how the current structure is a barrier to the Enterprises' ability to promote access to mortgage credit. We have encouraged FHFA to eliminate the LLPAs and set guarantee fees in such a way as to pool risk and encourage wide access to responsible homeownership.[89] Furthermore, FHFA should consider the ways in which the PMIERs capital requirements have contributed to greater risk-based pricing and differential pricing for private mortgage insurance.[90] These capital requirements were designed to ensure that mortgage insurers can fully pay claims, as some failed this obligation during the most recent housing crisis. However, the new requirements coupled with LLPAs harm hardworking families by placing the burden of risk of a future crisis on their shoulders—despite substantial evidence that the foreclosure crisis was the result of systemic risk. Such action devastates the chances that the very families who were taxpayers and rescued the failing system can participate in the system today and in the future.

C. FHA needs increased resources to fulfill its role

While FHA has in recent years experienced increased loan volume and its book of business is performing well, this business success cannot be tapped to support basic operations. Under FHA's authorizing statute, all of its revenue must be routed to the MMIF. Thus, ironically, FHA's business success has left it stretched to have sufficient resources to manage its loans. FHA sorely needs increased resources for staffing, technology, and operations.[91] This increased funding is also key to implementing FCA reforms, including bolstering quality control mechanisms and tying in the defect taxonomy to FCA liability.[92]

One idea that has been proposed is a FHA lender fee that would be collected to improve information technology and underwriting systems. A few years ago, FHA proposed legislation authorizing it to assess a four basis points ongoing fee on existing and prospective FHA loans, but this proposal met resistance. The fee on existing loans would have come out of servicer revenue and was strongly opposed. However, a fee that applies to prospective loans only would invite less opposition and could raise substantial and much-needed funds each year.

Additionally, the Housing and Economic Recovery Act (HERA) of 2008 provides for a method to raise funds. HERA authorized $25 million a year for five years out of a "negative credit subsidy"—proceeds from the MMIF—to be used for targeted system upgrades and quality control.[93] This provision, however, was conditioned on FHA's statutory capital ratio being met, and FHA was below this standard for several years. Thus, the provision was not implemented. This approach is now warranted, as FHA has exceeded its required capital standards today.

FHA needs increased resources to enable the FHA program to operate soundly and implement needed reforms. Targeted expenditures would produce net savings for the MMIF—protecting taxpayers, advancing the housing market, and furthering opportunities for homeowners.

FHA needs increased resources to enable the FHA program to operate soundly and implement needed reforms.

D. FHA should reduce its premiums and eliminate the life of loan premium

Pricing is also an issue in the FHA market due to high MI premiums. FHA should repeal the requirement that FHA borrowers pay MI premiums for the life of the loan. Rather, FHA should reinstate the pre-July 3, 2013 policy to require the borrower to pay premiums until the outstanding principal balance reaches 78% of original home value. Last year, Representative Maxine Waters, Ranking Member of the Housing Financial Services Committee, introduced H.R. 4159, a bill that would repeal the life of loan requirement and reinstate the previous policy.[94]

E. FHA should fully integrate the defect taxonomy into assessing lender liability under the FCA

FHA should establish clarifying reforms to enable the government to fight fraud in the FHA program as well as urge lenders to return to the program. Further clarity will help ensure consistency in enforcement and minimize litigation risk, thereby encouraging lenders to return to the FHA program.

The principal concern is whether lenders have a clear idea of what type of loan defect violates the law. One reform that has been considered is changes to the loan and lender certification language. Thus far, however, this approach has not borne fruit. We have previously recommended that FHA adopt a certification process that focuses on identifying and preventing the most serious defects, identifies and singles out those lenders whose underwriting and quality control systems are deficient, and requires responsible lenders to commit to curing good faith, inadvertent errors that occur notwithstanding a robust lender quality control program. These errors could be cured by remediation or by indemnifying FHA from future insurance claims.

Additionally, FHA's loan quality assessment methodology, known as the defect taxonomy, may be an effective and transparent way to evaluate FCA liability. Currently, the methodology's intended use is to improve FHA's own quality assurance efforts. The defect taxonomy addresses FHA's plan to identify and capture information about defects through individual loan level reviews.[95] In 2017, FHA rolled out its Loan Review System (LRS), an electronic platform for FHA single family quality control processes.[96] FHA states that the LRS implements the defect taxonomy. Lenders use the LRS to interact with FHA on most quality control processes, including various post-endorsement loan reviews, lender monitoring reviews, and lender self-reporting of fraud and other material findings. The findings are communicated using FHA's defect taxonomy.

The defect taxonomy, however, does not establish standards for administrative or civil enforcement action. It also does not address FHA's response to patterns of loan level defects, regardless of severity, or FHA's plan to address any fraud in connection with a FHA loan. We recommend that the LRS's use be expanded to address how FHA responds to loan level defect trends. If the defect taxonomy were used to help determine FCA liability, it would provide more clarity and predictability for lenders. Additionally, the loan and lender certification language could cross-reference this methodology.

The time is ripe for reform. The current administration has promised a review of enforcement under the FCA.[97] However, DOJ and HUD should exercise caution not to take enforcement too far in the opposite direction. Mortgage fraud is a real concern, and the FCA is a powerful tool to fight it.

Conclusion

As the data reflect, FHA plays an integral role in the mortgage market and the broader economy. The program fulfills an essential role in creating affordable homeownership opportunities for low- to moderate-income and lower-wealth borrowers, and it more robustly includes borrowers of color today. This task is all the more essential as, particularly post-crisis, the conventional market has retracted from serving lower-wealth borrowers and borrowers of color. Yet, we must guard against enshrining a two-tiered mortgage financing system. The conventional market must do a much better job serving an inclusive swath of creditworthy borrowers.

Furthermore, the FHA program faces numerous complex dynamics and obstacles, including the withdrawal of banks from FHA lending, the dominant entrance of nonbanks into the market, expensive life of loan MI premiums, and insufficient funding to bolster technology, staffing, and operations. Moving forward, Congress should support FHA's important work by funding it properly and sustainably. Congress must also guard against housing finance proposals that would weaken FHA or shrink the pool of borrowers eligible to obtain a FHA loan. Moreover, if provided appropriate funding, FHA has the ability to institute powerful reforms, such as fully implementing the defect taxonomy to alleviate FCA liability concerns and eliminating the life of loan premium.

Appendix

Appendix charts are numbered in correspondence with their graph in the report body. For example, Figure A1 is a chart of the same data shown in Figure 1.

Figure A1: Conventional and FHA purchase loans by year, 2004–2016

Year	All Loans	Conventional Loans	%	FHA Loans	%	Other Loans	%
2004	4,654,243	4,104,576	88.2%	409,856	8.8%	139,811	3.0%
2005	4,830,594	4,420,231	91.5%	281,362	5.8%	129,001	2.7%
2006	4,290,023	3,907,443	91.1%	252,483	5.9%	130,097	3.0%
2007	3,325,082	2,932,226	88.2%	258,261	7.8%	134,595	4.0%
2008	2,511,827	1,567,880	62.4%	743,965	29.6%	199,982	8.0%
2009	2,384,423	1,086,010	45.5%	1,000,551	42.0%	297,862	12.5%
2010	2,152,119	1,004,092	46.7%	888,519	41.3%	259,508	12.1%
2011	2,006,177	996,128	49.7%	715,986	35.7%	294,063	14.7%
2012	2,273,625	1,245,152	54.8%	699,816	30.8%	328,657	14.5%
2013	2,615,430	1,622,487	62.0%	622,826	23.8%	370,117	14.2%
2014	2,736,506	1,735,766	63.4%	583,539	21.3%	417,201	15.2%
2015	3,123,710	1,894,090	60.6%	793,828	25.4%	435,792	14.0%
2016	3,463,017	2,123,365	61.3%	865,897	25.0%	473,755	13.7%

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Figure A2: FHA share of all purchase loans made by income category, by year, 2004–2016

Year	Low-income	Moderate-income	Middle-income	High-income
2004	18.6%	15.7%	9.9%	3.1%
2005	13.3%	11.6%	7.1%	2.1%
2006	11.2%	11.2%	7.9%	2.6%
2007	11.4%	11.8%	10.8%	4.4%
2008	35.2%	38.4%	35.7%	20.7%
2009	54.9%	51.3%	44.2%	29.3%
2010	58.9%	52.3%	43.3%	27.6%
2011	52.8%	45.7%	37.7%	23.7%
2012	48.5%	40.8%	32.8%	19.3%
2013	39.9%	34.0%	26.8%	14.8%
2014	36.1%	31.4%	24.7%	13.1%
2015	42.0%	36.8%	29.4%	15.4%
2016	40.1%	36.4%	29.7%	15.6%

Figure A3: Conventional share of all purchase loans by race/ethnicity category, by year, 2004–2016

Year	Black	Asian	White	Latino
2004	78.1%	95.8%	88.9%	85.9%
2005	85.6%	97.4%	91.0%	92.3%
2006	86.3%	97.1%	90.4%	92.8%
2007	78.2%	96.3%	88.5%	87.2%
2008	35.8%	83.0%	64.5%	48.6%
2009	18.2%	70.3%	47.8%	25.5%
2010	17.4%	70.2%	49.7%	24.2%
2011	20.2%	71.2%	52.7%	27.2%
2012	23.2%	75.3%	57.7%	30.8%
2013	29.9%	81.5%	64.6%	38.9%
2014	32.5%	82.4%	66.5%	41.9%
2015	30.3%	80.4%	63.9%	38.8%
2016	31.9%	81.4%	64.7%	41.5%

Figure A4: FHA share of all purchase loans by race/ethnicity category, by year, 2004–2016

Year	Black	Asian	White	Latino
2004	16.7%	3.3%	7.9%	12.2%
2005	10.0%	1.9%	6.0%	6.2%
2006	9.1%	1.9%	6.2%	5.5%
2007	15.0%	2.5%	7.3%	9.6%
2008	51.1%	14.6%	27.4%	44.6%
2009	62.7%	26.1%	39.1%	63.6%
2010	63.5%	26.2%	37.9%	65.0%
2011	57.6%	24.1%	32.0%	59.9%
2012	54.7%	20.0%	27.2%	56.1%
2013	47.5%	14.0%	20.7%	47.9%
2014	43.8%	12.6%	17.7%	44.6%
2015	48.3%	14.6%	21.6%	49.8%
2016	47.3%	13.7%	21.1%	47.5%

Figure A5: Percent change from 2004 of FHA purchase lending to Black borrowers by income category, by year, 2004–2016

Year	Black/Low & mod income	Black/Middle income	Black/High income
2004	0.0%	0.0%	0.0%
2005	-35.3%	-37.7%	-41.9%
2006	-42.5%	-35.2%	-40.3%
2007	-24.2%	13.8%	38.7%
2008	135.7%	233.3%	511.3%
2009	186.9%	267.3%	641.9%
2010	195.2%	269.2%	611.3%
2011	174.2%	234.6%	538.7%
2012	163.9%	223.9%	482.3%
2013	138.1%	192.5%	406.5%
2014	125.8%	174.2%	356.5%
2015	143.3%	206.9%	411.3%
2016	135.3%	210.1%	427.4%

Figure A6: Percent change from 2004 of FHA purchase lending to Latino borrowers by income category, by year, 2004–2016

Year	Latino/Low & mod income	Latino/Middle income	Latino/High income
2004	0.0%	0.0%	0.0%
2005	-37.7%	-39.5%	-54.0%
2006	-46.6%	-39.5%	-46.0%
2007	-42.2%	6.5%	30.0%
2008	122.0%	305.6%	622.0%
2009	218.8%	414.5%	904.0%
2010	232.3%	417.7%	884.0%
2011	213.9%	383.9%	774.0%
2012	199.6%	349.2%	690.0%
2013	167.3%	295.2%	568.0%
2014	152.0%	279.0%	528.0%
2015	174.4%	322.6%	610.0%
2016	159.6%	315.3%	596.0%

Figure A7: FHA loans and market shares of 2004 top 10 FHA purchase lenders, 2004–2016

Top 10 of 2004	FHA LOANS												
Bank Name	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
WELLS FARGO BK NA	34,296	23,902	24,880	26,719	79,699	107,715	103,115	95,221	65,612	33,556	21,186	21,790	10,350
NATIONAL CITY BK IN	24,279	10,173	7,951	7,338	16,237	0	0	0	0	0	0	0	0
COUNTRYWIDE HOME LOANS	23,297	20,633	21,162	25,700	52,241	94,382	66,495	32,406	11,672	7,683	6,760	5,878	3,402
CTX MORTGAGE COMPANY, LLC	11,519	5,878	6,364	6,562	10,043	3,810	0	0	0	0	0	0	0
CHASE MANHATTAN MORTGAGE CORP.	10,396	5,143	3,762	4,277	18,293	12,395	9,517	10,557	13,828	11,711	4,482	813	295
FIRST HORIZON HOME LOAN CORP.	8,101	5,379	4,132	5,786	17,725	526	383	0	0	0	0	0	0
SUNTRUST MTG	7,326	5,318	4,794	4,201	17,664	18,890	11,148	6,506	4,046	1,795	997	1,178	1,250
AMERICAN HOME MORTGAGE	7,128	6,824	8,625	0	0	0	0	0	0	0	0	0	0
GMAC MORTGAGE CORPORATION	7,053	5,997	5,501	4,868	8,797	138	24	1,517	1,185	126	0	0	0
IRWIN MTG CORP	6,807	3,650	1,898	0	0	0	0	0	0	0	0	0	205
Rest of FHA Market	269,654	188,465	163,414	172,810	523,266	762,695	697,837	569,779	603,473	567,955	550,114	764,169	850,395
Total FHA Market	409,856	281,362	252,483	258,261	743,965	1,000,551	888,519	715,986	699,816	622,826	583,539	793,828	865,897
Market Share of 2004 Top 10	34.2%	33.0%	35.3%	33.1%	29.7%	23.8%	21.5%	20.4%	13.8%	8.8%	5.7%	3.7%	1.8%
Depository Market Share of 2004 Top 10	20.3%	18.0%	18.6%	20.6%	28.3%	23.4%	21.5%	20.4%	13.8%	8.8%	5.7%	3.7%	1.8%
Non-Depository Market Share of 2004 Top 10	13.9%	15.1%	16.7%	12.5%	1.3%	0.4%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Depository institutions indicated with blue shading.

Institutional Associations

Wells Fargo Bank NA made FHA loans via seven separate institutional identification codes between 2004 and 2016, through Wells Fargo Home Mortgage of Hawaii and Wells Fargo Funding, Inc., and through Century Bank, which Wells Fargo acquired in 2010. National City Bank IN made FHA loans via five separate institutional identification codes between 2004 and 2008, through National City Bank, National City Bank MI/IL, and National City Mortgage Service. Countrywide Home Loans also made FHA loans via four separate institutional identification codes from 2005 to 2009, through Countrywide Mortgage Ventures, LLC, Countrywide Bank NA, and Countrywide Bank FSB. In 2009, all of Countrywide's holdings were acquired by Bank of America NA. After this acquisition, Bank of America's FHA loans are included here, and Countrywide is thus classified as a depository institution for those years. Chase Manhattan Mortgage Corp. also made FHA loans through JP Morgan Chase Bank, NA from 2005 to 2016. First Horizon Home Loan Corp. was acquired by First Tennessee Bank in 2007. First Tennessee Bank's 2007–2016 FHA loans are included here, and First Horizon is thus classified as a depository institution for those years. Suntrust Mortgage made FHA loans via two separate institutional identification codes between 2004 and 2016 and is affiliated with Suntrust Banks—and thus classified as a depository institution for each year. GMAC Mortgage Corporation made FHA loans via five separate institutional identification codes between 2004 and 2016, and is affiliated with GMAC Bank, later Ally Financial—and thus classified as a depository institution for each year. Irwin Mortgage Corp was acquired by First Financial Bank after closing in 2013. First Financial Bank's 2016 FHA loans are included here, and Irwin is thus classified as a depository institution for that year.

Figure A8: FHA loans and market shares of 2016 top 10 FHA purchase lenders, 2004–2016

Top 10 of 2016	FHA LOANS												
Bank Name	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
QUICKEN LOANS, INC.	48	2	0	98	3,681	5,004	4,547	5,617	6,530	10,038	15,941	25,556	31,645
CALIBER HOME LOANS, INC.	0	0	0	0	0	0	317	715	3,338	3,536	7,674	15,119	22,541
FAIRWAY INDP MORTGAGE CORP	0	0	0	0	2,170	4,003	4,189	4,699	5,776	5,246	5,845	12,262	16,569
MOVEMENT MORTGAGE, LLC	0	0	0	0	40	236	770	1,546	2,590	4,354	5,310	10,610	15,088
GUILD MORTGAGE COMPANY	224	89	60	260	2,918	5,986	6,443	6,489	7,753	8,033	9,268	13,609	14,285
FLAGSTAR BK FSB	3,245	3,053	1,931	3,930	17,950	21,248	14,571	13,179	11,563	10,535	10,891	11,607	13,017
PRIMELENDING A PLAINSCAPITAL C	569	815	1,724	1,062	5,254	9,689	12,228	12,482	13,150	10,329	8,565	11,610	11,847
FINANCE OF AMERICA MORTGAGE	0	0	0	0	0	0	0	0	0	0	0	2,710	11,767
FREEDOM MORTGAGE CORPORATION	335	255	569	2,213	8,183	6,813	2,768	1,624	2,109	3,227	3,027	6,355	11,560
ACADEMY MORTGAGE CORPORATION	907	556	458	530	1,373	4,837	8,624	7,640	8,648	0	8,475	12,515	10,905
Rest of FHA Market	404,528	276,592	247,741	250,168	702,396	942,735	834,062	661,995	638,359	567,528	508,543	671,875	706,673
Total FHA Market	409,856	281,362	252,483	258,261	743,965	1,000,551	888,519	715,986	699,816	622,826	583,539	793,828	865,897
Market Share of 2016 Top 10	1.3%	1.7%	1.9%	3.1%	5.6%	5.8%	6.1%	7.5%	8.8%	8.9%	12.9%	15.4%	18.4%
Depository Market Share of 2016 Top 10	0.9%	1.4%	1.4%	1.9%	3.1%	3.1%	3.0%	3.6%	3.5%	3.3%	3.3%	2.9%	2.9%
Non-Depository Market Share of 2016 Top 10	0.4%	0.3%	0.4%	1.2%	2.5%	2.7%	3.1%	4.0%	5.3%	5.5%	9.5%	12.4%	15.5%

Depository institutions indicated with blue shading.

Institutional Associations

Caliber Home Loans, Inc. also made FHA loans through Caliber Funding from 2010 to 2013. Flagstar Bank FSB made FHA loans via two separate institutional identification codes from 2004 to 2010, and in 2015. Primelending made FHA loans via two separate institutional identification codes between 2004 and 2016 and is affiliated with PlainsCapital Bank—and thus classified as a depository institution for each year. Freedom Mortgage Company made FHA loans via five separate institutional identification codes between 2004 and 2010.

Endnotes

1 Federal Reserve, 2013 Survey of Consumer Finances, *available at* https://www.federalreserve.gov/econres/scf_2013.htm; Laurie Goodman, *Quantifying the Tightness of Mortgage Credit and Assessing Policy Action,* Urban Institute (March 2017), at 25, *available at* https://www.urban.org/sites/default/files/publication/88826/quantifying_tightness_of_credit.pdf.

2 Lawrence Yun, *Social Benefits of Homeownership and Stable Housing,* National Association of Realtors (Dec. 2016), *available at* https://realtoru.edu/wp-content/uploads/2014/06/Homeownership-Stable-Housing.pdf.

3 William Rohe and Mark Lindblad, *Reexamining the Social Benefits of Homeownership After the Housing Crisis,* Joint Center for Housing Studies at Harvard University (Aug. 2014), at 45, *available at* http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/hbtl-04.pdf.

4 U.S. Census Bureau, Quarterly Residential Vacancies and Homeownership, Fourth Quarter 2017, *available at* https://www.census.gov/housing/hvs/files/currenthvspress.pdf.

5 *Id.*

6 *Id.*

7 Terry Gross, *A 'Forgotten History' of How the U.S. Government Segregated America,* NPR Fresh Air, May 3, 2017, https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america.

8 *See* Sustainable Housing Finance: Private Sector Perspectives on Housing Finance Reform, Hearings before the Committee on Financial Services, 115th Cong. 3 4 (Oct. 25, 2017) (Testimony of Nikitra Bailey), *available at* https://financialservices.house.gov/uploadedfiles/hhrg-115-ba04-wstate-nbailey-20171025.pdf.

9 Emily Badger, *How Redlining's Racist Effects Lasted for Decades,* N.Y. Times, Aug. 24, 2017, https://www.nytimes.com/2017/08/24/upshot/how-redlinings-racist-effects-lasted-for-decades.html.

10 Three out of four neighborhoods marked "hazardous" by FHA 80 years ago are still struggling financially. *See* Bruce Mitchell and Juan Franco, *HOLC "Redlining" Maps: The Persistent Structure of Segregation and Economic Inequality,* National Community Reinvestment Coalition (March 2018), *available at* https://ncrc.org/how-1930s-discrimination-shaped-inequality-in-todays-cities/.

11 Federal Housing Administration, Underwriting Manual (1936), Excerpts, *available at* https://epress.trincoll.edu/ontheline2015/wp-content/uploads/sites/16/2015/03/1936FHA-Underwriting.pdf.

12 *Id.*

13 Katie Nodjimbadem, *The Racial Segregation of American Cities Was Anything But Accidental,* Smithsonian.com, May 30, 2017, https://www.smithsonianmag.com/history/how-federal-government-intentionally-racially-segregated-american-cities-180963494/. *See also* Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017).

14 Terry Gross, *A 'Forgotten History' of How the U.S. Government Segregated America,* NPR Fresh Air, May 3, 2017, https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america.

15 *Id.*

16 *Id.*

17 Nine Charts About Wealth Inequality in America, Urban Institute (Oct. 5, 2017), *available at* http://apps.urban.org/features/wealth-inequality-charts/.

18 Dedrick Asante-Muhammed, Chuck Collins, Josh Hoxie, and Emmanuel Nieves, *The Ever-Growing Gap: Without Change, African American and Latino Families Won't Match White Wealth for Centuries,* Institute for Policy Studies and Corporation for Enterprise Development (Aug. 2016), *available at* http://www.ips-dc.org/report-ever-growing-gap/.

19 *Id.*

20 Dedrick Asante-Muhammed, Chuck Collins, Josh Hoxie, and Emmanuel Nieves, *The Road to Zero Wealth: How the Racial Wealth Divide is Hollowing Out America's Middle Class,* Institute for Policy Studies and Corporation for Enterprise Development (Sept. 2017), *available at* https://prosperitynow.org/files/PDFs/road_to_zero_wealth.pdf.

21 Dedrick Asante-Muhammed, Chuck Collins, Josh Hoxie, and Emmanuel Nieves, *The Ever-Growing Gap: Without Change, African American and Latino Families Won't Match White Wealth for Centuries,* Institute for Policy Studies and Corporation for Enterprise Development (Aug. 2016), *available at* http://www.ips-dc.org/report-ever-growing-gap/.

22 All gains in black homeownership since the Fair Housing Act have been erased since 2000. *See* Laurie Goodman, Jun Zhu, and Rolf Pendall, *Are Gains in Black Homeownership History?,* Urban Institute (Feb. 15, 2017), *available at* https://www.urban.org/urban-wire/are-gains-black-homeownership-history; Laurie Goodman, Alanna McCargo, and Jun Zhu, *A Closer Look at the Fifteen-Year Drop in Black Homeownership,* Urban Institute (Feb. 13, 2018), *available at* https://www.urban.org/urban-wire/closer-look-fifteen-year-drop-black-homeownership. Additionally, Harvard's Joint Center for Housing Studies found that non-whites accounted for 60% of household growth from 1995–2015 and predicted that half of millennial households by 2035 will be non-white. Joint Center for Housing Studies at Harvard University, *State of the Nation's Housing 2017, available at* http://www.jchs.harvard.edu/research/state_nations_housing.

23 U.S. Bureau of Labor Statistics, BLS Spotlight on Statistics: The Recession of 2007–2009 (Feb. 2012), *available at* https://www.bls.gov/spotlight/2012/recession/pdf/recession_bls_spotlight.pdfhttps://www.bls.gov/spotlight/2012/recession/pdf/recession_bls_spotlight.pdf.

24 Jared Bernstein, *The FHA's Countercyclical Contribution,* N.Y. Times, Dec. 16, 2013, https://economix.blogs.nytimes.com/2013/12/16/the-f-h-a-s-countercyclical-contribution/.

25 John Griffith, *The Federal Housing Administration Saved the Housing Market,* Center for American Progress (Oct. 11, 2012), *available at* https://www.americanprogress.org/issues/economy/reports/2012/10/11/40824/the-federal-housing-administration-saved-the-housing-market/.

26 Mark Zandi and Cris deRitis, *What If There Were No FHA,* Moody's Analytics (Oct. 2010), *available at* https://www.economy.com/mark-zandi/documents/2010-10-01-What-If-There-Were-No-FHA.pdf.

27 Laurie Goodman, Jun Zhu, and Bing Bai, *Overly Tight Credit Killed 1.1 Million Mortgages in 2015,* Urban Institute (Nov. 21, 2016), *available at* https://www.urban.org/urban-wire/overly-tight-credit-killed-11-million-mortgages-2015 (stating that lenders would have issued 6.3 million additional mortgages between 2009 and 2015 if lending standards had been more reasonable).

28 Edward Szymanoski, William Reeder, Padmasini Raman, and John Comeau, *The FHA Single-Family Insurance Program: Performing a Needed Role in the Housing Finance Market,* HUD Office of Policy Development and Research, Housing Finance Working Paper Series (Dec. 2012), *available at* https://www.huduser.gov/portal/publications/fha_singlefamily-ins_2012.pdf.

29 *See* Jacob S. Rugh and Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis,* American Sociological Review, Vol. 75, Issue 5 (Oct. 8, 2010), *available at* http://journals.sagepub.com/doi/abs/10.1177/0003122410380868.

30 The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 abolished these abusive practices and established the Consumer Financial Protection Bureau. Pub. L. No. 111-203, 124 Stat. 1376 (2010).

31 Marshall Lux and Robert Greene, *What's Behind the Non-Bank Mortgage Boom?,* Harvard Kennedy School Mossavar-Rahmani Center for Business and Government (June 2015), at 2, *available at* https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/working.papers/42_Nonbank_Boom_Lux_Greene.pdf.

32 The only exception was the 2005–06 FHA, which made a higher percentage of white borrowers' loans than those of Latino borrowers.

33 *See* Mike Calhoun and Sarah Wolff, *Who Will Receive Home Loans, and How Much Will They Pay?,* Urban Institute (June 2, 2016), *available at* https://www.urban.org/policy-centers/housing-finance-policy-center/projects/housing-finance-reform-incubator/mike-calhoun-and-sarah-wolff-who-will-receive-home-loans-and-how-much-will-they-pay.

34 350/4+225=312.5 basis points. Fannie's Mae's LLPA for this combination of credit score and LTV is a one-time fee of 350 basis points. *See* Fannie Mae Loan-Level Price Adjustment (LLPA) Matrix, at 2, https://www.fanniemae.com/content/pricing/llpa-matrix.pdf. We assumed a LLPA multiple of 4 to convert this upfront fee to an ongoing cost comparable to the MI premium. Borrower paid mortgage insurance from Genworth for this combination of credit score and LTV is a continuing fee of 225 basis points. See Genworth Monthly Premium MI (BPMI) – Fixed (July 25, 2016), *available at* https://mortgageinsurance.genworth.com/pdfs/Rates/11370775.Monthly_Natl.FIXED.0616.pdf.

35 National Association of Realtors, *Audit Shows FHA Fund is Healthy, Time to Lower Mortgage Insurance Premiums, Say Realtors* (Nov. 17, 2014), *available at* https://www.nar.realtor/newsroom/audit-shows-fha-fund-is-healthy-time-to-lower-mortgage-insurance-premiums-say-realtors. *See also* Bing Bai, Jun Zhu, and Laurie Goodman, *FHA: Time to Stop Overcharging Today's Borrowers for Yesterday's Mistakes,* Urban Institute (Jan. 6, 2015), *available at* https://www.urban.org/urban-wire/fha-time-stop-overcharging-todays-borrowers-yesterdays-mistakes.

36 *See* Chart, HUD Mortgagee Letter 2017-07, Suspension of Mortgagee Letter 2017-01 Reduction of FHA Annual Mortgage Insurance Premium Rates (Jan. 20, 2017), at 3-4, *available at* https://www.hud.gov/sites/documents/17-07ML.PDF.

37 *Id.*

38 HUD Mortgagee Letter 2013-04, Revision of FHA Policies Concerning Cancellation of the Annual Mortgage Insurance Premium and Increase to the Annual MIP (Jan. 31, 2013), *available at* https://www.hud.gov/sites/documents/13-04ML.PDF.

39 John Griffith, *As the FHA's Finances Continue to Improve, It's Time to Focus on Access,* Enterprise Community Partners, Inc. (Nov. 18, 2014), *available at* https://www.enterprisecommunity.org/blog/2014/11/fhas-finances-continue-improve-its-time-focus-access; Coalition letter to HUD Secretary Castro (Jan. 7, 2015), *available at* http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_fha_premium_coalition_letter_jan2015.pdf.

40 Trey Garrison, *It's Official: Obama to Direct FHA to Cut Mortgage Insurance Premiums,* HousingWire, Jan. 7, 2015, https://www.housingwire.com/articles/32533-its-official-obama-to-direct-fha-to-cut-mortgage-insurance-premiums.

41 The MMIF capital ratio was 0.41% in 2014 and reached 2.07% in 2015. Ben Lane, F*HA Business Explodes: Reaches Capital Mandate for First Time Since 2008,* HousingWire, Nov. 16, 2015, https://www.housingwire.com/articles/35614-fha-business-explodes-reaches-capital-mandate-for-first-time-since-2008.

42 HUD Mortgagee Letter 2017-07, Suspension of Mortgagee Letter 2017-01 Reduction of FHA Annual Mortgage Insurance Premium Rates (Jan. 20, 2017), *available at* https://www.hud.gov/sites/documents/17-07ML.PDF. *See also* Lorraine Woellert, *Trump Blocks Federal Housing Administration Plan to Cut Mortgage Fees,* Politico, Jan. 20, 2017, https://www.politico.com/blogs/donald-trump-administration/2017/01/trump-blocks-federal-housing-administration-plan-to-cut-mortgage-fees-233911.

43 Mortgage insurance companies may also impose overlays on mortgages they will insure. For instance, the GSEs will accept loans with debt-to-income ratios of up to 50%. However, mortgage insurers are pushing up credit score requirements in response. *See* Kelsey Ramirez, *Mortgage Insurance Companies Push Back Against 50% DTI,* HousingWire, March 2, 2018, https://www.housingwire.com/articles/42664-mortgage-insurance-companies-push-back-against-50-dti.

44 Laurie Goodman, *Quantifying the Tightness of Mortgage Credit and Assessing Policy Action,* Urban Institute (March 2017), *available at* https://www.urban.org/sites/default/files/publication/88826/quantifying_tightness_of_credit.pdf.

45 *Id.* at 9.

46 *MBA Research & Economics, MBA Chart of the Week: Servicing Costs Per Loan (Single-Family)—Performing v. Non-Performing* (July 25, 2017), *available at* https://www.mba.org/servicing-newslink/2017/july/servicing-newslink-tues-day-7-25-17/news-and-trends/mba-chart-of-the-week-servicing-costs-per-loan-(single-family)-performing-v-non-performing.

47 UNC Center for Community Capital, *Community Advantage Panel Study: Sustainable Approaches to Affordable Homeownership* (March 2014), *available at* http://ccc.unc.edu/contentitems/community-advantage-panel-study-sustainable-approaches-to-affordable-homeownership/.

48 National Consumer Law Center Racial Justice & Economic Opportunity Project, *Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination* (May 2016), *available at* https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.

49 *Id.*

50 *See* Rick Brooks and Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy,* Wall Street Journal, Dec. 3, 2007, https://www.wsj.com/articles/SB119662974358911035; Debbie Gruenstein Bocian, Peter Smith, and Wei Li, *Collateral Damage: The Spillover Costs of Foreclosures,* Center for Responsible Lending (Oct. 24, 2012), *available at* http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/collateral-damage.pdf.

51 Christopher Walen, *No Good Reason for Banks to Offer More Government-Backed Mortgages,* BankThink: American Banker, Jan. 22, 2018, https://www.americanbanker.com/opinion/no-good-reason-for-banks-to-offer-more-government-backed-mortgages; AnnaMaria Andriotis, *The Mortgage Market's $1 Trillion Pocket of Worry,* Wall Street Journal, Jan. 19, 2017, https://www.wsj.com/articles/the-mortgage-markets-1-trillion-pocket-of-worry-1484827201.

52 Michele Lerner, *The Mortgage Market is Now Dominated by Non-Bank Lenders,* Washington Post, Feb. 23, 2017, https://www.washingtonpost.com/realestate/the-mortgage-market-is-now-dominated-by-nonbank-lenders/2017/02/22/9c6bf5fc-d1f5-11e6-a783-cd3fa950f2fd_story.html?utm_term=.577814ac35f5.

53 Laurie Goodman, et al., *Housing Finance at a Glance: A Monthly Chartbook,* Urban Institute (Aug. 2017), *available at* https://www.urban.org/sites/default/files/publication/92941/aug_chartbook_final_ss_0.pdf.

54 Laurie Goodman, et al., *Housing Finance at a Glance: A Monthly Chartbook,* Urban Institute (March 2018), at 13, *available at* https://www.urban.org/sites/default/files/publication/97491/housing_finance_at_a_glance_a_monthly_chartbook_march_2018.pdf.

55 *Id.* at 14.

56 You Suk Kim, Steven M. Laufer, Karen Pence, Richard Stanton, and Nancy Wallace, *Liquidity Crises in the Mortgage Market,* Brookings Papers on Economic Activity, Conference Drafts, March 8-9, 2018, at 3-4, *available at* https://www.brookings.edu/bpea-articles/liquidity-crises-in-the-mortgage-market/.

57 *Id.* at 10.

58 *See* Kate Berry, *Banks Cede FHA Market Share to (Gulp) Thinly Capitalized Nonbanks,* American Banker, Apr. 6, 2015, https://www.americanbanker.com/news/banks-cede-fha-market-share-to-gulp-thinly-capitalized-nonbanks.

59 *Id.* at 3–4.

60 Ben Lane, *Watchdog: Ginnie Mae Wasn't Ready for Nonbank Mortgage Lending Boom,* HousingWire, Sept. 25, 2017, https://www.housingwire.com/articles/41383-watchdog-ginnie-mae-wasnt-ready-for-nonbank-mortgage-lending-boom.

61 *Id.*

62 Laurie Goodman, et al., *Housing Finance at a Glance: A Monthly Chartbook,* Urban Institute (Aug. 2017), *available at* https://www.urban.org/sites/default/files/publication/92941/aug_chartbook_final_ss_0.pdf.

63 Office of Inspector General, U.S. Department of Housing and Urban Development, *Ginnie Mae Did Not Adequately Respond to Changes in its Issuer Base,* Audit Report 2017-KC-0008 (Sept. 21, 2017), at 5, *available at* https://www.hudoig.gov/reports-publications/audit-reports/ginnie-mae-did-not-adequately-respond-changes-its-issuer-base.

64 *Id.*

65 Marshall Lux and Robert Greene, *What's Behind the Non-Bank Mortgage Boom?,* Harvard Kennedy School Mossavar-Rahmani Center for Business and Government (June 2015), at 2, *available at* https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/working.papers/42_Nonbank_Boom_Lux_Greene.pdf.

66 The Community Reinvestment Act (CRA), 12 U.S.C. § 2901, is intended to encourage depository institutions to meet the credit needs of the communities in which they operate. Although some claim that the CRA was a cause of the housing crisis, this is demonstrably false. The Financial Crisis Inquiry Commission concluded that CRA was not a significant factor in subprime lending or the crisis. *See* Financial Crisis Inquiry Commission, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, at xxvii (2011), *available at* https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf. *See also* Colin McArthur and Sarah Edelman, *The 2008 Housing Crisis: Don't Blame Federal Housing Programs for Wall Street's Recklessness,* Center for American Progress (Apr. 13, 2017), *available at* https://www.americanprogress.org/issues/economy/reports/2017/04/13/430424/2008-housing-crisis/; Robert B. Avery and Kenneth P. Brevoort, *The Subprime Crisis: Is Government Housing Policy to Blame?,* Federal Reserve Board, Finance and Economics Discussion Paper (2011), *available at* https://www.federalreserve.gov/pubs/feds/2011/201136/201136pap.pdf; Barry Ritholtz, *Lending to Poor People Didn't Cause the Financial Crisis,* Bloomberg, June 22, 2016, *available at* https://www.bloomberg.com/view/articles/2016-06-22/lending-to-poor-people-didn-t-cause-the-financial-crisis.

67 *Id.*

68 12 U.S.C. § 5514(a)(1)(A).

69 See U.S. Government Accountability Office, *Nonbank Mortgage Services: Existing Regulatory Oversight Could be Strengthened* (March 2016), at 35, *available at* https://www.gao.gov/products/GAO-16-278.

70 31 U.S.C. §§ 3729-3733.

71 FHA's direct endorsement program allows qualified lenders the authority to deem mortgages eligible for FHA insurance. Lenders must certify annually that their quality control complies with HUD rules as well as that each loan complies with HUD rules. If it is later found that the lender violated a HUD rule in connection with the claim for FHA insurance, the DOJ has determined that such violations rise to the level of a false claim and may be subject to treble damages. *See* Laurie Goodman, *Wielding a Heavy Enforcement Hammer Has Unintended Consequences for the FHA Mortgage Market,* Urban Institute (May 2015), *available at* https://www.urban.org/sites/default/files/publication/52171/2000220-Wielding-a-Heavy-Enforcement-Hammer-Has-Unintended-Consequences-for-the-FHA-Mortgage-Market.pdf.

72 31 U.S.C. § 3729(a)(1).

73 *Id.* at § 3729(b)(1)(B).

74 *Id.* at § 3729(b)(1).

75 *Id.* at § 3729(b)(4).

76 *Universal Health Services, Inc. v. United States ex. rel. Escobar,* 136 S.Ct. 1989, 2004 (2016).

77 For example, if a lender is determined to have violated the FCA on a loan for which the government paid a claim of $250,000, the lender is subject to a penalty of $750,000. HUD and DOJ engage in loan sampling to extrapolate how many loans may have violated the FCA. If the government determines that 1,000 loans include similar loss amounts, the lender could be subject to a penalty of $750 million. Lenders claim that the loan sampling process is fraught with errors and lacks transparency.

78 While the False Claims Act receives the bulk of the attention, lender participation in the FHA market is also influenced by other concerns, including the high cost of servicing delinquent loans. Several factors drive the higher cost, including foreclosure timelines in conflict with CFPB servicing requirements, large penalties if timelines are not met, vague standards for conveyance, and insufficient allowances for property preservation. *See* Laurie Goodman, *Servicing Costs and the Rise of the Squeaky-Clean Loan,* Urban Institute (Feb. 2016), *available at* https://www.urban.org/sites/default/files/publication/77626/2000607-Servicing-Costs-and-the-Rise-of-the-Squeaky-Clean-Loan.pdf.

79 *See* Brian Collins, *Do Justice and HUD See Eye to Eye on False Claims Act Enforcement?,* National Mortgage News, Nov. 10, 2017, https://www.nationalmortgagenews.com/news/do-justice-and-hud-see-eye-to-eye-on-false-claims-act-enforcement; David Stevens, *The False Claims Act Has No Place in Housing,* HousingWire, July 17, 2017, *available at* https://www.housingwire.com/blogs/1-rewired/post/40701-the-false-claims-act-has-no-place-in-housing.

80 *See* FHA Single Family Housing Policy Handbook, at 924, *available at* https://www.hud.gov/sites documents/40001HSGH.PDF.

81 FHA Office of Lender Activities and Program Compliance, Lender Insight, Issue No. 13 (Sept. 2016), *available at* https://www.hud.gov/sites/documents/SFH_INSIGHT_2016_09.PDF.

82 HUD/VA Addendum to Uniform Residential Loan Application, *available at* https://www.hud.gov/sites/documents/92900-A.PDF.

83 Mortgage Bankers Association, FHA's Loan-Level Certification, *available at* https://www.mba.org/issues/residential-issues/fhas-loan-level-certification.

84 *Id.*

85 Stipulation and Order of Settlement and Dismissal with Prejudice, *United States v. Wells Fargo Bank, N.A. and Kurt Lofrano,* 1:12-cv-07527-JMF (S.D.N.Y. Apr. 8, 2016), *available at* https://www.justice.gov/opa/file/839796/download.

86 *See, e.g.,* Protecting American Taxpayers and Homeowners Act of 2013, H.R. 2767, 113th Cong. (2013); FHA Solvency Act of 2013, S. 1376, 113th Cong. (2013).

87 FHA does engage in credit default risk-based pricing by charging a higher mortgage insurance premium for higher LTV loans.

88 Sustainable Housing Finance: Private Sector Perspectives on Housing Finance Reform, Hearings before the Committee on Financial Services, 115th Cong. 3–4 (Oct. 25, 2017) (Testimony of Nikitra Bailey), *available at* https://financialservices.house.gov/uploadedfiles/hhrg-115-ba04-wstate-nbailey-20171025.pdf; National Consumer Law Center Racial Justice & Economic Opportunity Project, *Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination* (May 2016), *available at* https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.

89 *See* Sustainable Housing Finance: Private Sector Perspectives on Housing Finance Reform, Hearings before the Committee on Financial Services, 115th Cong. (Oct. 25, 2017) (Testimony of Nikitra Bailey), *available at* https://financialservices.house.gov/uploadedfiles/hhrg-115-ba04-wstate-nbailey-20171025.pdf.

90 *See* CRL Comment Letter to FHFA, Request for Input on Private Mortgage Insurer Eligibility Requirements (Sept. 8, 2014), *available at* http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/CRL-PMIERS-Request-for-Input-Submitted-9-8-14.pdf. *See also* Mike Calhoun and Sarah Wolff, *Who Will Receive Home Loans, and How Much Will They Pay?,* Urban Institute (June 2, 2016), *available at* https://www.urban.org/policy-centers/housing-finance-policy-center/projects/housing-finance-reform-incubator/mike-calhoun-and-sarah-wolff-who-will-receive-home-loans-

and-how-much-will-they-pay; Michela Zonta, *Do the GSEs Meet the Credit Needs of Underserved Communities of Color?,* Cityscape: A Journal of Policy Development and Research, Vol. 17, No. 3 (2015), *available at* https://www.huduser.gov/portal/periodicals/cityscpe/vol17num3/ch11.pdf.

91 Brian Collins, *Tech Fixes Will Bring More Business to FHA, Top HUD Official Says,* National Mortgage News, Jan. 11, 2018, https://www.nationalmortgagenews.com/news/tech-fixes-will-bring-more-business-to-fha-top-hud-official-says.

92 Mike Calhoun, *The Federal Housing Administration Can Do More With More,* Brookings Center on Regulation and Markets (April 5, 2017), *available at* https://www.brookings.edu/research/the-federal-housing-administration-can-do-more-with-more/.

93 Housing and Economic Recovery Act of 2008, Pub. L. No. 110-280, 122 Stat. 2840, § 2126 (July 20, 2008).

94 Making FHA More Affordable Act of 2017, H.R. 4159, 115th Cong. (2017).

95 FHA Single Family Housing Loan Quality Assessment Methodology (Defect Taxonomy), June 18, 2015, *available at* https://www.hud.gov/sites/documents/SFH_LQA_METHODOLOGY.PDF.

96 HUD Mortgagee Letter 2017-03, Federal Housing Administration Loan Review System—Implementation and Process Changes (Jan. 11, 2017), *available at* https://www.hud.gov/sites/documents/17-03ML.PDF; FHA Office of Single Family Housing, Loan Review System Quick Reference Sheet, *available at* https://www.hud.gov/sites/documents/SFH_LRS_QUICKREF.PDF; FHA Office of Single Family Housing, Loan Review System Fact Sheet (May 15, 2017), *available at* https://www.hud.gov/sites/documents/SFHLRSFS.PDF.

97 Ben Lane, C*arson: Government Considering Ending Use of False Claims Act Against FHA Lenders,* HousingWire, Oct. 12, 2017, https://www.housingwire.com/articles/41551-carson-government-considering-ending-use-of-false-claims-act-against-fha-lenders.

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The Center for Responsible Lending (CRL) is working to ensure a fair, inclusive financial marketplace that creates opportunities for all responsible borrowers, regardless of their income, because too many hard-working people are deceived by dishonest and harmful lending practices.

While the housing crash was devastating to families at all income levels, it was disproportionately destructive to entire communities of low- and moderate-income families and borrowers of color. In fact, it wiped out generations of family wealth in these communities. Many of these families had successful 30-year loans, but they were lured by the promises of deceptive marketing and then financially devastated when they were placed in egregious loan products.

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