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STATEMENT OF THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS AND AMERICANS FOR FINANCIAL REFORM

**U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMITTEE ON HOUSING, COMMUNITY DEVELOPMENT, AND INSURANCE**

HEARING ON "A REVIEW OF THE STATE OF AND BARRIERS TO MINORITY HOMEOWNERSHIP"

MAY 8, 2019

Chairman Clay, Ranking Member Duffy, and members of the Subcommittee: thank you for holding this very important hearing today on the state of minority homeownership and for examining policies aimed at addressing our nation's troubling racial gap in homeownership. The Leadership Conference on Civil and Human Rights and Americans for Financial Reform are pleased to submit this statement for the record of today's hearing.

The Leadership Conference on Civil and Human Rights is a coalition of more than 200 national civil and human rights organizations dedicated to building an America as good as its ideals. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, The Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education.

Americans for Financial Reform is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 financial crisis, Americans for Financial Reform is working to lay the foundation for a strong, stable, and ethical financial system – one that serves the economy and the nation as a whole.

We are grateful not just for today's hearing, but for what can only be described as a flurry of hearings in the past several weeks that have examined policies and practices affecting the financial health of communities of color. In the past month, the Committee on Financial Services has also looked at issues surrounding the Fair Housing Act, the Community Reinvestment Act, the role of big banks in our economy, public housing, payday and small-dollar lending, diversity and inclusion in the financial services industry, and racial and ethnic disparities in auto finance and insurance – all of which have important ramifications for the communities we represent. The pace has undoubtedly been challenging, but we commend the members of this committee and its tireless staff for their hard work and their willingness to engage in serious discussions about how our nation should regulate the financial services industry moving forward. This is precisely what oversight should look like.

Lost Ground: The Current State of Minority Homeownership and How We Got There

Upon signing the Fair Housing Act of 1968, President Lyndon Baines Johnson observed that the bill "proclaims that fair housing for all – all human beings who live in this country – is now a part of the American way of life." Along with several other major civil rights laws enacted in the following years – most notably the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, and the Community

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Reinvestment Act – the enactment of the Fair Housing Act represented a significant turning point in our nation's history, and a promise to do better in fighting discrimination and its effects than we had done in the past. These laws have undoubtedly been helpful in fighting the most overt and intentional forms of discrimination in housing and home lending that had plagued our nation for decades before their enactment, from government-sanctioned "redlining" maps to individual-level refusals to sell or rent housing to people of color.

Yet fifty-one years after the enactment of the Fair Housing Act, the racial gap in homeownership – and the racial wealth gap, in part due to the role that homeownership can play in building and maintaining wealth – remains staggering. As the FSC Majority Staff Memorandum for today's hearing correctly points out, the homeownership rate for African Americans now stands at approximately the same low level that existed before the passage of the Fair Housing Act. While homeownership rates for non-white Hispanic households have recovered slightly in recent years, they continue to lag far behind white households, and people of color have lost significantly more wealth in the wake of the financial crisis than their white counterparts.

Many of the causes of this ongoing racial gap in homeownership and in wealth – including lasting disparities in employment, education, environmental regulation, health care, transportation, the justice system, restrictionist immigration policies, and others – lie outside of this committee's reach. But it is clear that widespread abusive practices, along with the gross negligence of Congress and financial regulators in the years before the 2008 financial crisis, and the often-inadequate policy responses over the following decade, have played a significant role in leading communities of color to the situation in which they find themselves today.

The factors that led to the 2008 financial crisis and the millions of foreclosures that occurred in its wake have been the subject of a great deal of analysis, subsequent policymaking, and, sadly, a significant amount of misunderstanding and outright misrepresentation. The Leadership Conference and many of its member organizations, however, speak with a great deal of direct experience on the matter. For years before the mortgage system collapsed, we spoke out against a range of home lending practices that could only be characterized as "reverse redlining." Using the limited Home Mortgage Disclosure Act data that we had available at the time, we showed that borrowers of color were being steered into predatory, unsustainable loans at much higher rates than white borrowers. The terms of these loans were unconscionable: prepayment penalties that stripped borrowers of wealth if they tried to refinance; yield-spread premiums that incentivized mortgage brokers to "steer" borrowers into more expensive mortgages than their credit records qualified them for; 2/28 and 3/27 subprime loans that appeared affordable at first but that led to unsustainable monthly payments after several years; and reckless underwriting practices that deliberately ignored borrowers' incomes or their ability to repay. And we predicted that millions of foreclosures were foreseeable and that the results would be catastrophic. Some Members of Congress such as former Chairman Barney Frank (D-MA) and former Reps. Brad Miller (D-NC) and Mel Watt (D-NC) worked with us on legislation to curtail abusive practices and impose a common-sense "ability to repay" requirement on home loans. But our efforts were rebuffed at nearly every step.

While we and our member organizations were successful – as part of a coalition of organizations that came to be known as Americans for Financial Reform – in pushing Congress to enact stronger regulations two years after the financial crisis, we were less successful in securing policies to reduce the impact of the millions of mortgage defaults that followed. We called for – and the House passed – legislation that would have allowed homeowners who were "underwater" to avoid foreclosure by using the bankruptcy process to force reductions in their mortgage principal and their monthly payments. But that legislation

was fiercely opposed by the same industry that had just been bailed out itself, and it died in the Senate. Likewise, former FDIC Chairman Sheila Bair tried to get banks to implement strong mortgage modifications, but she was also rebuffed. Meanwhile, mortgage servicers insisted they could contain the crisis and keep borrowers in their homes, yet shoddy servicing practices failed to keep up with the tide – and foreclosed homes in many communities went neglected in communities of color, spreading the contagion by depressing neighboring home values, while foreclosed homes in wealthier communities received better care. And as foreclosures continued, pools of defaulted mortgages were often sold off to investors who emphasized rental housing returns over neighborhood stabilization. While the CFPB issued rules to improve loan servicing, they were too little, too late to help most struggling homeowners.

To add insult to injury, the causes of the foreclosure crisis have long been the subject of false and dangerous narratives that still threaten to undermine additional reforms. The Community Reinvestment Act was scapegoated, even though most abusive subprime lending was being done by lending companies that were not subject to the law. And the GSE affordable housing goals were also blamed, even though losses at Freddie Mac and Fannie Mae were caused more by "no-income, no-asset" loans to wealthier borrowers that couldn't have qualified for the goals, as they deliberately ignored whether borrowers met the low-income requirements set by the goals.[1] Because laws such as the Community Reinvestment Act and policies such as affordable housing goals are instrumental to rebuilding homeownership in communities of color, it is important that the Committee keep working to dispel the myths around their role in the financial crisis.

There have been many shameful consequences of the financial crisis. It is shameful that in the wake of the rampant fraud that caused a financial crisis that nearly brought our economy to its knees, virtually nobody was prosecuted. It is also shameful that many participants in the financial services industry were bailed out – with bonuses intact – only to turn around and resist stronger foreclosure prevention efforts because it would have raised issues of "moral hazard." But given the promise of the Fair Housing Act and other key fair housing and lending laws, and the history they were meant to address, the erosion of homeownership among minority communities stands out as perhaps the most shameful consequence of all. We must do better.

Regaining Lost Ground: Policies Aimed at Rebuilding Minority Homeownership

The lessons learned from the housing crisis – or in some cases, the lessons that should have been learned – must be kept in mind if we are to succeed in efforts to promote sustainable levels of homeownership among communities of color. With that, we would like to offer up some views on a number of policies – by no means comprehensive – that we believe are relevant to the discussion moving forward.

<u>Incremental but Important Improvements</u>

The Committee has flagged four bills in particular for consideration in today's hearing. We welcome the introduction of these bills. While we strongly favor more comprehensive efforts aimed at rebuilding minority homeownership, we also recognize the value of thoughtful, targeted measures that can make a difference even as broader efforts are under development.

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[1] *See, e.g.*, Susan Wharton Gates, *Days of Slaughter: Inside the Fall of Freddie Mac and Why it Could Happen Again*, Johns Hopkins University Press (April 2, 2017).

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First, Rep. Rashida Tlaib (D-MI) has circulated draft legislation providing important federal protections for purchasers of land installment contracts, also known as rent-to-own housing contracts. Such arrangements have a troubled history of being sold on abusive terms and of being peddled to people of color in the decades prior to the enactment of the Fair Housing Act, and there is evidence that they are on the rise again. Rep. Tlaib's bill would help ensure that purchasers of these contracts are not saddled with dilapidated housing and stuck with repair costs, and it would require judicial proceedings to protect a purchaser in the event of default. We applaud Rep. Tlaib for bringing attention to this important issue, and we look forward to working with her to ensure adequate protections.

Second, Rep. Dean Phillips (D-MN) has circulated the "Making FHA More Affordable Act," draft legislation to eliminate the FHA life-of-loan insurance premium, putting FHA in line with private mortgage insurers and with prior FHA policy. FHA's current policy since 2013 has driven up costs for FHA borrowers, disproportionately affecting minority homeowners in the process. We and a number of our member organizations have called for repealing the life-of-loan premium, and we would support legislation to that end if FHA will not take such a step itself.

Third is the Housing Financial Literacy Act (H.R. 2162), introduced by Reps. Joyce Beatty (D-OH) and Steve Stivers (R-OH). It would call for a 25 basis point discount in FHA mortgage insurance premiums for first-time homebuyers who complete a HUD-approved financial literacy counseling program. With the caveat that financial literacy counseling is no substitute for vigorous consumer and antidiscrimination protections, including a careful assessment of a borrower's ability to repay a loan, such counseling certainly has value in promoting sustainable homeownership and it makes sense to provide clear incentives for borrowers to engage in it. We are pleased that this measure has been introduced on a bipartisan basis, and we look forward to further discussion of it.

And finally, Rep. Juan Vargas (D-CA) has circulated draft legislation to clarify that recipients of Deferred Action for Childhood Arrivals (DACA) status are eligible for mortgages backed by FHA, USDA, Fannie Mae, and Freddie Mac. The Leadership Conference strongly supports H.R. 6, the American Dream and Promise Act, to provide permanent legal status and a path to citizenship for Dreamers as well as TPS/DED recipients. The bill currently has 228 cosponsors (including Rep. Vargas), more than enough to secure passage in the House. We believe it must and eventually will be enacted. That said, it is unclear whether the Senate leadership will allow a vote on H.R. 6 in this Congress and whether President Trump would sign it, in the absence of other far more controversial immigration law changes. But in the meantime, Dreamers should be given as much stability in their lives as possible, including in this case the chance to become homeowners. While legislation to make that clear should be unnecessary – Fannie Mae, to its credit, has stated it supports lending to DACA recipients – we would support it.

Housing Finance Reform

The question of what to do with mortgage giants Fannie Mae and Freddie Mac has often been referred to as the last "unfinished business" of the financial crisis. Since 2008, Fannie and Freddie have remained under conservatorship, where they are subject to heightened regulation, and under an arrangement in which virtually all of their profits are paid to the Treasury. Some members of Congress and housing policy trade groups have even argued that they should remain in this arrangement until Congress enacts GSE reform.

The Leadership Conference has long taken the view that any company engaged in mortgage finance that benefits from special protections or guarantees provided by the federal government – whether implicit or

explicit – has a heightened duty to ensure that all communities are being adequately and responsibly served by that company. Under the current system, this duty manifests itself in several ways. First, Fannie and Freddie are required to meet affordable housing goals, in which certain percentages of the loans they purchase must be to low-income borrowers and communities. Second, as a result of a major reform enacted in 2008, Fannie and Freddie have a "duty to serve" underserved markets, specifically, rural housing, manufactured housing, and affordable housing preservation. Third, the same 2008 law requires Fannie and Freddie to contribute a small portion of their proceeds to a "Housing Trust Fund" and a "Capital Magnet Fund," which provide funds for very low-income housing and community development financial institutions, respectively.

These access and affordability policies have long been subjected to false attacks. This is particularly true of the affordable housing goals, which, as discussed above, have been scapegoated for causing the 2008 mortgage crisis. And in several efforts in recent years to enact GSE reform legislation, some parties have been all too willing to trade them away in an effort to secure a bipartisan consensus.

All too often, lost in the discussions over GSE reform is the fact that significant reforms have already taken place, as a result of the Homeownership and Economic Recovery Act of 2008 as well as the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Congress should be mindful of these reforms and how they have changed the GSE system. That is, Congress should aim any reforms at the system we have today, not the system we had before 2008. While The Leadership Conference remains open to exploring further GSE reform legislation, it is essential that no harm be done to existing access and affordability policies. Instead, these policies should be strengthened. In addition, any new system must ensure strong and transparent oversight of fair lending and antidiscrimination laws. And it must ensure equal access to community banks, credit unions, and other smaller lending institutions that are instrumental in reaching underserved communities.

Improved Credit Scoring

Another issue partly related to the GSEs and housing finance, because the Federal Housing Finance Agency (FHFA) is currently reviewing comments to a proposed rulemaking on the subject, is the need for improvements in credit score models. In theory, credit scoring systems are meant to determine the level of risk in a loan based on an individual's past management and repayment of debt. Yet the prevalent model is badly outdated, and includes factors that are not an accurate gauge of creditworthiness while excluding others. Extensive research has shown that the current credit scoring system has disproportionately shut out people of color from mainstream finance and pushed them into alternative, more expensive and risky forms of credit. This is true in the area of housing finance, as well as many other areas – as the committee explored last week in the use of credit scoring for automotive insurance.

While Fannie Mae and Freddie Mac rely heavily on their own proprietary systems for determining credit risk, systems that are as opaque as credit scores, outdated FICO scores are used as a minimum qualification for loans entering into their underwriting systems and they are used in applying risk-based pricing. In order to give communities of color a better chance of obtaining mortgage loans on fair terms, we need improved systems that score larger numbers of consumers and that are as accurate and inclusive as possible. We intend to continue calling upon FHFA to modernize the scoring system used by the GSEs, and we would urge the Committee to do the same.

We also support Chairwoman Waters' "Comprehensive Consumer Credit Reporting Reform Act," which would enhance consumers' credit reporting rights, create more transparency over the credit reporting and scoring process, and increase the accountability of those who develop credit scoring models.

The American Housing and Economic Mobility Act

As stated earlier, we believe that comprehensive reform of our housing and mortgage lending system is ultimately necessary to address the troubling racial and ethnic disparities in homeownership. Rep. Cedric Richmond (D-LA) and Sen. Elizabeth Warren (D-MA) have introduced legislation that we believe represents a very helpful contribution to this effort. The American Housing and Economic Mobility Act proposes to take on a number of factors that have contributed to the situation in which we find ourselves today, including low affordable housing supply, restrictive local land use regulations, little savings among communities of color affected by past and continuing discrimination, underwater mortgages, the pipeline of sales of foreclosed or distressed homes to private equity firms, outdated provisions of the Community Reinvestment Act, and forms of housing discrimination not explicitly covered by existing antidiscrimination law.

We support this bill because we hope it will help elevate the importance of affordable housing supply, past and present patterns of housing discrimination, mortgage servicing factors, and other issues at a national level and spark continuing discussion and action on the best solutions. At the same time, we are open to additional ideas and refinements – for example, the downpayment assistance program could be expanded to assist not only families affected by redlining but by "reverse redlining" as well – and we would be pleased to engage in further discussions around it and other comprehensive approaches.

Enforcement of the Fair Housing Act

Because the subcommittee held a hearing in April on this subject, in which the National Fair Housing Alliance – one of the co-chairs of The Leadership Conference's housing and lending task force – delivered extensive testimony, we will not go into great detail here. But we would say – as The Leadership Conference said in Congressional testimony in 2007, well before the mortgage crisis exploded into the front pages of newspapers – that the failure of regulatory agencies to ensure that the institutions under their watch fully met their obligations under the Fair Housing Act and Community Reinvestment Act is a key reason why we are here today. If federally regulated institutions were meeting their fair lending and CRA requirements and making affordable, sustainable, prime loans to deserving borrowers, we would not have seen such an explosive growth in abusive subprime lending. The hard truth is that African-Americans, Latinos and female householders disproportionately received unsustainable high cost subprime loans. Federally regulated lenders, who routinely have denial rates for African-American and Latino loan applicants that are at least double the rate for Caucasian loan applicants, were not lending as they should have to African-American, Latino and female borrowers. This gap in fair lending opened the door for the unregulated lending market to come in and take advantage of these borrowers.

While the last administration took a number of steps to improve policies under the Fair Housing Act, we share NFHA's alarm that the current administration is undertaking efforts to roll back that progress. In particular, we are greatly troubled that HUD has suspended the "affirmatively furthering fair housing" rule, and has been working on language to drastically undermine its "disparate impact" rule – a change that would not only decimate Fair Housing Act enforcement but set a dangerous precedent for the enforcement of other civil rights protections as well. If HUD proceeds with these changes, we intend to mobilize the full weight of our coalition in response.

Community Reinvestment Act

The Subcommittee on Consumer Protection and Financial Institutions held a hearing last month on this important – and often misunderstood – civil rights law that was instrumental in addressing redlining practices. We share the views and concerns voiced by Jesse Van Tol of the National Community Reinvestment Coalition,[2] also a Leadership Conference member organization, including with respect to the troubling changes proposed by the Office of the Comptroller of the Currency.

Home Mortgage Disclosure Act

One of the major contributors to the financial crisis was the lack of comprehensive, actionable data on what kinds of loans were being made, on what kinds of terms, and to whom. Dodd-Frank called for significant improvements under the Home Mortgage Disclosure Act. But between the enactment of the Economic Growth, Regulatory Relief and Consumer Protection Act (S.2155) last year and the recent announcement by the CFPB that it will revisit HMDA rules, we are deeply concerned about a retreat from the important reforms that have been made to this area.

Opportunity Zones

While the creation of the Opportunity Zones program, under the Tax Cuts and Jobs Act of 2017, raises many issues that go well beyond this committee's jurisdiction, it also raises interesting opportunities and troubling risks with respect to affordable housing. In December, under the umbrella of the Asset Building Policy Network, we voiced some preliminary concerns about the potential for Opportunity Zones – depending on how regulations are developed moving forward – to place additional displacement risks on low-income renters and homeowners. We urged the IRS to ensure that investments under the law do no harm to existing residents, that "abuse" is clearly defined in a way that prevents the loss of affordable housing, and that there are clear metrics for measuring affordable housing units that are created or preserved. Because there are no requirements that local residents benefit from the Opportunity Zone investments and an overly broad definition of low-income community, we are concerned that Opportunity Zones program could divert investment from truly disadvantaged communities and increase displacement. At a minimum, the Opportunity Zones program will require strong oversight from this and other committees to prevent this program from doing more harm than good. We would be pleased to work with you further in monitoring developments and progress.

Thank you for the opportunity to add some additional views of The Leadership Conference on Civil and Human Rights and Americans for Financial Reform to the record of today's hearing.

[2] The Community Reinvestment Act: Assessing the Law's Impact on Discrimination and Redlining: Hearing before the Consumer Protection and Financial Institutions Subcommittee, House, 116th Cong. (2019) (testimony of Jesse Van Tol).