

Discrimination and Segregation in Housing

Concluding Observation 13

Access to housing remains deeply shaped by racial discrimination throughout the United States. U.S. constitutional protections fall short of meeting CERD’s definition of discrimination because they do not explicitly address practices with discriminatory effects that are not proven to be intentional. However, the Fair Housing Act, which applies to government and private actors, encompasses a discriminatory effects standard to allow remedies in cases where an intent to discriminate has not been established, and further requires that the government take affirmative measures to remediate discrimination and segregation in housing programs. Other U.S. civil rights laws, including the Equal Credit Opportunity Act, the Community Reinvestment Act of 1977, and Title VI of the Civil Rights Act of 1964, also provide protections from racial discrimination in housing, but additional action remains necessary to ensure the full enforcement and implementation of these laws.

Many communities remain marked by a high degree of racial segregation and concentrated poverty, creating inequality in access to education, employment, and health care. Other communities have experienced widespread displacement as a result of urban gentrification. These inequities were worsened by the impact of predatory lending practices and widespread residential foreclosures on minority communities, and by the inadequate response by federal and state policymakers. Notably, the gap between Black and White homeownership, further worsened by the COVID-19 pandemic, is as wide as it was 50 years ago when redlining and other racially discriminatory practices in housing were legal.

The COVID-19 pandemic and the resulting economic hardships in communities of color have only worsened racial homeownership and wealth disparities, as people of color have disproportionately experienced further setbacks in their income, savings levels, and other credit underwriting factors and have been unable to secure a mortgage or refinance their loans.

Housing discrimination remains a major barrier to home rental and ownership opportunities for people of color in the United States. In 2020, 7,268 complaints of housing discrimination based on race, color, or national origin combined were filed with the U.S. Department of Housing and Urban Development (HUD) and affiliated fair housing organizations.

In addition, the rulemaking, implementation, and enforcement relating to the Fair Housing Act has been in a tremendous amount of flux since the 2014 report. In 2019, HUD proposed a rule, later rescinded under the current administration in 2021, that placed an extremely high burden of proof on plaintiffs demonstrating disparate impact under the Fair Housing Act. In addition, a 2015 HUD rule implementing the “affirmatively furthering fair housing” requirements of the Fair Housing Act was suspended in 2018 by the Trump administration. HUD then proposed a new version that would have severely undercut the goals of the law. In 2021, HUD began a new rulemaking process based substantially on the 2015 version of the rule.

In addition, the government-sponsored enterprises Fannie Mae and Freddie Mac have not lived up to their obligations to support a housing finance market for borrowers of color: While Black and Latino people represent 13.4 percent and 18.5 percent of the U.S. population, respectively, less than 4 percent of Fannie Mae and Freddie Mac loan purchases for 2018 and 2019 were from Black borrowers and less than 10 percent were from Latino borrowers.

In the past year, we have seen a key increase in the diversity of policymakers overseeing federal housing policy. For the first time in its history, the Federal Reserve has two Black members serving on the board of governors, and Black women simultaneously serve as the secretary of HUD, director of the Federal Housing Finance Agency, president of the Government National Mortgage Association (“Ginnie Mae”), and director of the Office of Management and Budget.

Recommendations

- Congress should enact legislation and provide funding to create more affordable, accessible, and safe housing, including relief in light of the COVID-19 pandemic.
- Congress should enact legislation to ensure that the Fair Housing Act, Equal Credit Opportunity Act, Home Mortgage Disclosure Act, and other key civil rights and consumer protection laws are fully and fairly enforced.
- The Federal Housing Finance Agency should ensure full enforcement of the duty to serve rule and affordable housing goals, ensure full funding of the Housing Trust Fund and Capital Magnet Fund, and implement the use of alternative credit scoring models to responsibly increase access to mortgage credit.
- The Consumer Financial Protection Bureau should reverse the prior administration's rulemaking on the Home Mortgage Disclosure Act and restore rigorous oversight and enforcement of the Equal Credit Opportunity Act.
- The administration should create cooperative agreements among federal agencies to ensure the use of artificial intelligence in housing and credit markets does not create discriminatory barriers to opportunity.
- Congress should enact legislation that promotes inclusive and sustainable financial products, including consumer protections against abusive small-dollar lending, credit scoring, forced arbitration, overdraft, and debt collection practices.
- Congress should appropriate enough funding to fully staff HUD's Office of Fair Housing and Equal Opportunity.
- Congress and the administration should provide thorough oversight of Fair Housing Act enforcement and rulemakings.

Read the full report, “Holding the Line: Combating Racial Discrimination in a Divided America,” here: civilrights.org/CERD2022.