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In Connection with the December 1, 2022 Hearing
"Fairness in Financial Services: Racism and Discrimination in Banking"

I. Introduction

Good morning. My name is Janai Nelson, and I am the President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (LDF). Thank you for the opportunity to testify about racial discrimination in the financial services industry.

Access to financial services is essential to creating economic mobility and opportunity. Yet Black communities and other communities of color have long been deprived of the full and equal opportunity to save for the future, invest in a business, buy a home, and build inter-generational wealth to sustain the futures of their children and grandchildren.[1] Today, financial institutions still fail to adequately serve communities of color, and continue to offer people of color worse service on worse terms, or deny them service altogether.[2] As a result of these unfair discriminatory practices, the Black-white homeownership rate gap is wider now than it was in 1968, when Congress passed the Fair Housing Act (FHA),[3] and the racial wealth gap continues to grow.[4] Currently, Black households have approximately seven cents on the dollar in net worth relative to white households.[5]

Financial institutions are governed by a patchwork of existing civil rights laws, such as the FHA and the Equal Credit Opportunity Act (ECOA), that unfortunately leave significant gaps in protecting communities of color from discrimination. These laws do not treat financial institutions as public accommodations for the purposes of racial discrimination; limit recovery for discrimination in non-credit transactions; and fail to adequately incentivize financial institutions to serve communities of color.[6] Federal courts have further narrowed the protections of these laws, allowing racial profiling and other forms of racial discrimination to evade sanction and imposing the costs of discrimination on society as a whole.[7]

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[1] *See, e.g.*, TOM SHAPIRO ET AL., LDF THURGOOD MARSHALL INST. & INST. ON ASSETS AND SOC. POL'Y AT BRANDEIS UNIV. THE BLACK-WHITE RACIAL WEALTH GAP 5 (2019), https://tminstituteldf.org/wp-content/uploads/2019/11/FINAL-RWG-Brief-v1.pdf; Aria Florant, et al., *The case for accelerating financial inclusion in black communities*, MCKINSEY INST. FOR BLACK ECON. MOBILITY Ex. 3 (Feb. 25, 2020), https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-case-for-accelerating-financial-inclusion-in-black-communities.

[2] *See infra* Part III.

[3] BRAD BLOWER ET AL., NAT'L CMTY. REINVESTMENT COAL., ADDING ROBUST CONSIDERATION OF RACE TO COMMUNITY REINVESTMENT ACT REGULATIONS: AN ESSENTIAL AND CONSTITUTIONAL PROPOSAL (2021), https://ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/#ftnref7.

[4] *See* SHAPIRO ET AL., *supra* note 1, at 5.

[5] *Id.*

[6] *See infra* Part IV; *see also* Suja A. Thomas, *The Customer Caste: Lawful Discrimination by Public Businesses*, 109 CAL. L. REV. 141 (2021), *available at* https://www.californialawreview.org/print/the-customer-caste-lawful-discrimination-by-public-businesses/#:~:text=Jim%20Crow%20laws%20ceased%20to,hotels%2C%20banks%2C%20and%20airplanes.

[7] *Id.*

We must do more to ensure that people of color have full and equal access to financial services, and that financial institutions serve the needs of people of color. The Fair Access to Financial Services Act of 2022 would take the important step of closing the loophole that prevents people from holding financial institutions accountable for racial discrimination in the same way as restaurants, hotels, stadiums, and other public accommodations.[8] Congress and federal regulators should also take additional steps to ensure that financial institutions are serving communities of color, and should address the risks posed by the increased use of algorithms and resulting algorithmic bias.

Founded in 1940 by Thurgood Marshall, LDF is the nation's oldest civil rights law organization.[9] LDF was launched at a time when America's aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality. For more than 80 years, LDF has relied on the Constitution and federal and state civil rights laws to pursue equality and justice for Black Americans and other people of color. LDF's mission has always been transformative: to achieve racial justice, equality, and an inclusive society.

Since its inception, LDF has worked to increase fairness and equal opportunity for Black Americans in all aspects of the economy. Some of LDF's early victories in the Supreme Court were in seminal cases, such as *Shelley v. Kramer*, 334 U.S. 1 (1948), and *McGhee v. Sipes*, 334 U.S. 1 (1948), which held that state enforcement of racially restrictive covenants violated the Equal Protection Clause. LDF was also counsel of record in *Newman v. Piggie Park Enters.*, 390 U.S. 400 (1968), a landmark case solidifying the power of public accommodations laws to eradicate discrimination. In the decades since those victories, LDF has continued to challenge public and private policies and practices that deny Black Americans economic mobility and opportunity.

II. **Financial Institutions Have Discriminated Against Black People and Other People of Color for Decades.**

Black Americans have long struggled for financial inclusion. While Black banks and businesses briefly bloomed in the years following Reconstruction,[10] these gains were quickly lost as the Supreme Court rolled back civil rights protections and institutionalized discrimination metastasized.[11] Institutionalized discrimination such as redlining continued through the 1970s,[12] ultimately leading to the passage of a suite of civil rights bills banning discrimination in housing

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[8] 42 U.S.C. § 2000a.
[9] LDF has been fully separate from the National Association for the Advancement of Colored People (NAACP) since 1957.
[10] KRISTEN BROADY, ET AL., BROOKING INST., AN ANALYSIS OF FINANCIAL INSTITUTIONS IN BLACK-MAJORITY COMMUNITIES: BLACK BORROWERS AND DEPOSITORS FACE CONSIDERABLE CHALLENGES IN ACCESSING BANK SERVICES (2021), https://www.brookings.edu/research/an-analysis-of-financial-institutions-in-black-majority-communities-black-borrowers-and-depositors-face-considerable-challenges-in-accessing-banking-services/.
[11] Florant, et al., *supra* note 1, at Ex. 3.
[12] *See* 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.

and lending, and incentivizing banks to serve the entire community, including communities of color.

Congress' early attempts to address discrimination in financial services and other industries were met with significant resistance. The Civil Rights Act of 1866, as codified in Sections 1981 and 1982,[13] intended to place Black Americans on equal footing with white Americans and to remove the vestiges of slavery by outlawing racial discrimination in banking and other sectors. Unfortunately, due to lack of support for enforcement, the 1866 Act had limited impact at the time.[14] Moreover, although Congress passed legislation prohibiting discrimination in public accommodations and transportation, the Supreme Court struck it down as unconstitutional.[15] The decision emboldened many southern states to pass laws mandating racial segregation, and private business followed suit with similar policies.[16]

During this period, financial institutions enabled residential segregation and economic exclusion by refusing to lend to Black borrowers and in Black communities.[17] For example, in its report following the 1919 race riot, the Chicago Commission on Race Relations reported that Black borrowers faced significant barriers in securing mortgages, with some lenders completely avoiding Black communities.[18] Similarly, as early as 1932, the Mortgage Conference of New York shared block-level maps of neighborhoods and encouraged member banks to avoid Black communities.[19]

Through its policies and practices the federal government for many years encouraged financial institutions to discriminate against communities of color. While the New Deal dramatically expanded access to financial services, particularly through the rapid dissemination of low-cost credit to homeowners,[20] these same policies deliberately excluded people of color and exacerbated racial segregation.[21] In order to help evaluate mortgage risk, the Federal Home Owners' Loan Corporation (HOLC) deployed examiners around the country to consult with local bank loan officers, appraisers, realtors, and city officials in order to create "Residential Security" maps of cities.[22] These color-coded maps represented the perceived risk of lending in particular neighborhoods, with ''hazardous'' (the highest risk) areas coded in red.[23] The presence of Black

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[13] Civil Rights Act of 1866, 14 Stat. 27–30 (codified at 42 U.S.C. § 1981 *et seq.*).
[14] Thomas, *supra* note 6, at 149.
[15] *Civil Rights Cases*, 109 U.S. 3, 26 (1883).
[16] Thomas, *supra* note 6, at 150.
[17] Amy E. Hillier, *Redlining and the Homeowners' Loan Corporation*, J. URBAN HISTORY, vol. 29 (May 2003), at 394, 398, https://repository.upenn.edu/cgi/viewcontent.cgi?article=1002&context=cplan_papers.
[18] *Id.*
[19] *Id.*
[20] Mehrsa Baradaran, *Jim Crow Credit*, 9 UC IRVINE L. REV. 887, 888-89 (2019), *available at* https://scholarship.law.uci.edu/ucilr/vol9/iss4/4.
[21] *Id.*; *see also* RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2017).
[22] BRUCE MITCHEL & JUAN FRANCO, NAT'L CMTY. REINVESTMENT COAL., HOLC "REDLINING" MAPS: THE PERSISTENT STRUCTURE OF SEGREGATION AND ECONOMIC INEQUALITY (2018), https://ncrc.org/holc/.
[23] *Id.*; *see also see also* Testimony of Richard Rothstein, Distinguished Fellow of the Economic Policy Institute and Senior Fellow, Emeritus, NAACP Legal Defense and Educational Fund, Inc. on behalf of himself and Sherrilyn Ifill President and Director-Counsel NAACP Legal Defense and Educational Fund, Inc. Before the U.S. Senate

people routinely led to a "hazardous" rating, discouraging lending in those areas, a practice which became known as "redlining."[24] In effect, these maps documented, codified, and endorsed existing patterns of discrimination in lending.[25] The Federal Housing Administration, which covered the insurance of over one-third of the U.S. mortgage market by the middle of the century,[26] later developed similar maps.[27]

In tandem, the Federal Housing Administration and HOLC helped lock in existing patterns of racial discrimination in the U.S. housing[28] and financial services[29] markets. Financial institutions relied on these risk calculations to decide where and to whom to make loans and where to locate their branches.[30]

The Federal Housing Administration also took additional steps to discourage lending to borrowers and communities of color. For example, the agency's 1939 Underwriting Manual explicitly prohibited lending in neighborhoods that were changing in racial composition.[31] Its 1941 manual similarly warned that "the rapidly rising Negro population ha[d] produced a problem in the maintenance of real estate values."[32] Finally, the Federal Housing Administration refused to guarantee mortgages for developers who were building subdivisions unless the deeds included racially-restrictive covenants, effectively stopping development of integrated suburban communities.[33]

Because these discriminatory practices by financial institutions and the fact that the federal government often barred access to traditional loans or bank branches, many borrowers of color could only access credit in the form of a high-cost loan or contract sale.[34] For example, as Ralph Nader testified during the Senate hearings on the Community Reinvestment Act (CRA), borrowers in Washington, D.C., which at that time had a predominantly Black population, seeking home purchase loans from banks often had to put down twenty-five percent down payments, which was

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Committee on Banking, Housing & Urb. Affairs, *Separate and Unequal: The Legacy of Racial Discrimination in Housing* 6 (Apr. 13, 2021), https://www.naacpldf.org/wp-content/uploads/LDF-Testimony-Senate-Banking-Racial-Discrimination-in-Housing_FINAL.pdf.

[24] ROTHSTEIN, *supra* note 21; *see also* Testimony of Richard Rothstein, *supra* note 23, at 6-10; Desmond Brown, Assistant Dir., Consumer Fin. Prot. Bureau, Dr. Charles Nier, Senior Couns., Consumer Fin. Protection Bureau & Varda Hussain, Special Litig. Couns. for Fair Lending, U.S. Dep't of Just., Presentation at the Consumer Fin. Prot. Bureau Fin. Educ. Exch. Webinar: Unpacking the Black Wealth Gap (Feb. 22, 2022), https://files.consumerfinance.gov/f/documents/cfpb_unpacking-black-wealth-gap-part-2_webinar-slides_2022-02.pdf.

[25] Mitchell & Franco, *supra* note 22.

[26] BROADY, ET AL., *supra* note 10.

[27] *Id.*

[28] *Id.*

[29] *See* Baradaran, *supra* note 20, at 891.

[30] *Id.*

[31] *See* DALTON CONLEY, BEING BLACK, LIVING IN THE RED: RACE, WEALTH, AND SOCIAL POLICY IN AMERICA 37 (2010); *see also* DOUGLAS MASSEY & NANCY DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 54 (1993).

[32] Conley, *supra* note 31, at 37.

[33] HEATHER MCGEE, THE SUM OF US 80 (2022).

[34] Baradaran, *supra* note 20, at 893.

prohibitive for most Black borrowers.[35] While contract sales were more accessible, these alternative products were worse for borrowers. In a contract sale, speculators purchased properties for a few thousand dollars and then "sold" the home to a black buyer through "rent-to-own" contracts for three to four times the price of the home.[36] By the 1950s, 85 percent of the homes sold to Black people in Chicago were sold through contract sales with exploitative terms.[37]

This institutionalized discrimination persisted in the financial services industry for decades. In its 1961 report, the U.S. Commission on Civil Rights documented numerous discriminatory housing and lending practices, from requiring Black borrowers to make higher down payments and adopt faster repayment schedules, to refusing to loan money on the basis of race.[38]

Ultimately, the civil rights movement that propelled legislation and litigation to dismantle segregation in education[39] and public accommodations[40] also sought to address discrimination in financial services. In the 1960s, Congress passed the FHA and ECOA.[41] These landmark civil rights laws prohibit creditors from discriminating against an applicant in any aspect of a housing or credit transaction on the basis of race and other protected characteristics. The 1975 Home Mortgage Disclosure Act provides needed transparency by requiring financial institutions to publish the number and size of mortgages in each zip code or census tract. And to address the ongoing problem of redlining, in 1977, Congress passed the CRA, which requires regulators to assess a financial institution's record of "meeting the credit needs of the entire community, including low- and moderate-income [LMI] neighborhoods."[42] Taken together, these laws provide much needed protections for vulnerable communities of color, but they do not go far enough.

III. <u>Discrimination by Financial institutions Remains a Persistent Problem Today.</u>

Despite the passage of these vital civil rights laws, financial institutions continue to discriminate against people and communities of color. Communities of color are less likely to have access to traditional financial services; pay more to open and maintain their accounts; and are more likely to be denied mortgages and small business loans and to be offered loans on worse terms, whether through face-to-face lending or via financial technology (fintech) platforms. People of

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[35] Josh Silver, *The Purpose and Design of the Community Reinvestment Act (CRA): An Examination of the 1977 Hearings and Passage of the CRA*, NAT'L CMTY. REINVESTMENT COAL. (Jun. 14, 2019), https://ncrc.org/the-purpose-and-design-of-the-community-reinvestment-act-cra-an-examination-of-the-1977-hearings-and-passage-of-the-cra/.
[36] *See* BERYL SATTER, FAMILY PROPERTIES: RACE, REAL ESTATE AND THE EXPLOITATION OF BLACK URBAN AMERICA 38 (2009).
[37] *Id.* at 4.
[38] U.S. COMM'N ON CIVIL RTS., BOOK 4: HOUSING (1961), https://www2.law.umaryland.edu/marshall/usccr/documents/cr11961bk4.pdf.
[39] *E.g. Brown v. Board of Education of Topeka,* 347 U.S. 483 (1954).
[40] 42 U.S.C. § 2000a.
[41] Fair Housing Act, Pub. L. No. 90-285, 82 Stat. 81 (1968) (codified at 42 U.S.C. 3601 *et seq.*); Equal Credit Opportunity Act, Pub. L. No. 90–321, 88 Stat. 1521 (1974) (codified as amended at 15 U.S.C. §1691 *et seq.*).
[42] 12 U.S.C. § 2903(a)(1).

color have also been racially-profiled and barred from cashing checks, making withdrawals, and opening accounts—even at their own financial institutions. This ongoing discrimination imposes significant costs on people and communities of color, and on society as a whole.

A. *Lack of access to traditional financial services.*

Financial institutions still fail to adequately serve communities of color. According to the Brookings Institution, "majority Black and Latino or Hispanic neighborhoods have fewer options when it comes to financial services than majority white neighborhoods."[43] Similarly, in 2021, majority Black census tracts were much less likely to have a bank branch than other census tracts.[44] In many Black and Latino communities, check cashing entities and payday lenders, which often charge exorbitant fees, are more common than bank branches and offer more accessible hours.[45]

As a result, people of color are more likely to experience gaps in accessing financial services.[46] According to a report by the Federal Reserve, in 2021 an estimated 40 percent of Black Americans and 29 percent of Latino Americans were either unbanked or underbanked.[47] Because communities of color have limited or no access to traditional financial services, they rely on more common—but more costly—alternative financial services for everyday transactions.[48] As a result, Ex-JP Morgan Managing Director and founder of Mobility Capital Finance, Wole Coaxum estimates that "Black and Hispanic people spend 50 to 100 percent more per month for basic banking services, which, over a lifetime, can cost as much as $40,000 in fees."[49]

B. *Higher opening deposits, fees, and service costs.*

Financial institutions often offer services to customers of color on worse terms than they offer those same services to other customers. According to a 2020 report by Citi, "traditional banks in predominately Black neighborhoods tend to require higher initial opening deposits [and] higher minimum balances. This translates into Black accountholders needing to deposit a higher percentage of their paychecks into accounts to avoid fees or closure."[50]

[43] BROADY, ET AL, *supra* note 10.
[44] *Id.*
[45] KENDRA NEWSOME REEVES, ET AL., RACIAL EQUITY IN BANKING STARTS WITH BUSTING THE MYTHS (2021), https://www.bcg.com/publications/2021/unbanked-and-underbanked-households-breaking-down-the-myths-towards-racial-equity-in-banking.
[46] Florant, et al., *supra* note 1.
[47] FED. RESERVE BD. OF GOV., ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2021 TBL. 11 (2022), https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf.
[48] Florant, et al., *supra* note 1.
[49] Ellen Rosen, *Trying to Correct Banking's Racial Imbalance*, N.Y. TIMES (Jun. 30, 2020), https://www.nytimes.com/2020/06/30/business/banking-race-black-inequality.html; *see also* MATT FELLOWES & MIA MABANTA, BROOKINGS INST., BANKING ON WEALTH: AMERICA'S NEW RETAIL BANKING INFRASTRUCTURE AND ITS WEALTH-BUILDING POTENTIAL (2008), https://www.brookings.edu/wp-content/uploads/2016/06/01_banking_fellowes.pdf.
[50] DANA M. PETERSON & CATHERINE L. MANN, CITI GPS, CLOSING THE RACIAL INEQUALITY GAPS: THE ECONOMIC COST OF BLACK INEQUALITY IN THE U.S. 54 (2020).

A study by researchers at New America similarly found that commercial banks offered worse terms to Black customers.[51] Customers in majority Black communities had to pay substantially more in order to open a basic, entry-level checking account: the minimum opening deposit in communities with majority Black populations was $80.60, compared to $68.50 for majority white communities.[52] Customers in communities where the majority of the population was people of color also had to maintain a higher minimum balance ($625.50 in a majority white tract, compared to $748.80 in majority Latino tracts and $870.50 in majority Black tracts),[53] and spent more in maintenance fees.[54] As a result, people of color spent hundreds of dollars more in checking account costs and fees.[55]

C. *Higher denial rates for mortgage and small business loans, and higher interest rates.*

People of color are also denied mortgages at higher rates and when they do receive loans are offered worse terms than other borrowers, causing them to pay more for the same services.

- In 2017, J.P. Morgan settled a case brought by the U.S. Attorney for the Southern District of New York alleging that the bank charged higher interest rates to Black and Latino borrowers from 2006-2009.[56] These higher interest rates resulted in, on average, an additional $968 in charges for Latino borrowers and an additional $1,126 in charges for Black borrowers during the first five years of the loan.

- A 2019 investigation of 61 metro areas across the country found that people of color were more likely to be denied a conventional mortgage than their white counterparts, even when they made the same amount of money, tried to borrow the same amount of money, and wanted to buy in the same neighborhood.[57]

- An analysis of mortgage refinance loans during the 2020 boom found that there was a stark racial disparity in the approval rate for those loans. Only 70 percent of Black and 78 percent

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https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D.

[51] JACOB FABER & TERRI FRIEDLINE, NEW AMERICA, THE RACIALIZED COSTS OF BANKING (2018), https://d1y8sb8igg2f8e.cloudfront.net/documents/The_Racialized_Costs_of_Banking_2018-06-20_205129.pdf.

[52] *Id.* at 11.

[53] *Id.* at 12.

[54] *Id.* at 13.

[55] *Id.* at 15.

[56] Gillian B. White, *J.P. Morgan Chase's $55 Million Discrimination Settlement,* ATLANTIC (Jan. 18, 2017), https://www.theatlantic.com/business/archive/2017/01/jpmorgan-lawsuit-discrimination/513494/.

[57] *The Community Reinvestment Act: Assessing the Law's Impact on Discrimination and Redlining: Hearing Before the Subcomm. on Consumer Prot. and Fin. Insts. of the H. Comm. on Fin. Servs.*, 116th Cong. 14-15 (2019) (statement of Aaron Glantz, Senior Reporter, Reveal From the Center for Investigative Reporting), *available at* https://www.congress.gov/116/meeting/house/109303/witnesses/HHRG-116-BA15-Wstate-GlantzA-20190409.pdf.

of Latino applicants were approved for mortgage refinances in 2020, compared to about 87 percent of non-Latino white applicants.[58]

- A 2022 FDIC study likewise found that Black borrowers are more likely to be denied home loans and pay higher interest rates than white borrowers, even when controlling for other factors.[59]

- A report released yesterday by the National Association of Real Estate Brokers found that Black borrowers are more than twice as likely to be denied a mortgage, and were nearly three times more likely to rely on high-cost loans, compared to white borrowers.[60]

Black small business owners encounter similar obstacles.[61] According to the Federal Reserve, creditworthy Black-owned firms were 7 percent less likely to get approved for business loans overall, and 20 percent and 17 percent less likely to obtain credit at large and small banks, respectively, than other firms, even when controlling for firm characteristics and performance.[62] Furthermore, when Black- owned businesses are approved for financing it is often at substantially lower levels than white businesses. For example, Black-owned businesses received loans through the Paycheck Protection Program that were approximately 50 percent lower than White-owned businesses with similar characteristics.[63] Similarly, the Federal Reserve found that only approximately 14 percent of Black small business owners and 19 percent of Latino small business owners received all the financing they sought from banks in 2021, compared to 34 percent of white small business owners.[64] As a result, Black entrepreneurs were less likely to rely on bank loans to launch their business than white entrepreneurs, and were more dependent on capital from friends, family, and their own resources.[65] These sources tend to yield less capital and, Black entrepreneurs also rely on personal and business credit cards, which can result in higher rates and fees.[66]

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[58] Shawn Donnan, et al., *Wells Fargo Rejected Half Its Black Applicants in Mortgage Refinancing Boom*, BLOOMBERG BUSINESSWEEK + EQUALITY (Mar. 11, 2022), https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/.

[59] Stephen Popick, *Did Minority Applicants Experience Worse Lending Outcomes in the Mortgage Market? A Study Using 2020 Expanded HMDA Data*, FED. DEPOSIT INS. CO. (June 2022), https://www.fdic.gov/analysis/cfr/working-papers/2022/cfr-wp2022-05.pdf?source=govdelivery&utm_medium=email&utm_source=govdelivery.

[60] Debra Kamin, *Discrimination Seeps Into Every Aspect of Home Buying for Black Americans*, N.Y. TIMES (Nov. 29, 2022), https://www.nytimes.com/2022/11/29/realestate/black-homeowner-mortgage-racism.html?smid=tw-nytimes&smtyp=cur.

[61] BROADY, ET AL., *supra* note 10; Mels de Zeeuw & Brett Barkley, *Mind the Gap: Minority-Owned Small Businesses' Financing Experiences in 2018*, CONSUMER & CMTY. CONTEXT, A FED. RESERVE SYST. PUB., Vol. 1, No. 2, p. 16 (Nov. 2019), https://www.federalreserve.gov/publications/2019-november-consumer-community-context.htm.

[62] PETERSON & MANN, *supra* note 50, at 61.

[63] Rachel Atkins, et al., *Discrimination in lending? Evidence from the Paycheck Protection Program*, 58 SMALL BUS. ECON. 843 (2022).

[64] ANN MARIE WIERSCH, ET AL., U.S. FED. RESERVE SYS., THE SMALL BUSINESS CREDIT SURVEY 2022 REPORT ON EMPLOYER FIRMS 18 (2022).

[65] PETERSON & MANN, *supra* note 50, at 59-60.

[66] *Id.* at 59.

Lenders have also targeted Black communities and other communities of color with predatory loans and steered Black borrowers to subprime mortgage loans that carried high interest rates and fees, even when the borrowers qualified for lower-cost and more favorable prime loans based on their objective credit characteristics.[67] Many of these borrowers lost their homes during the Great Recession.[68]

D. *Algorithmic bias in fintech.*

While financial technology, or fintech, has the potential to lead to more fair decision-making[69] by eliminating human bias and expanding access to credit through the use of alternative data such as rental and utility payments,[70] it can also result in the exacerbation and further entrenchment of racial bias or discrimination. A recent study by researchers at the University of California—Berkeley examined the practices of six fintech lenders, which they defined as lenders with a strong online presence where nearly all of their mortgage application process took place online and applications were evaluated using an algorithm with no human involvement from the lenders.[71] The study found that, while the algorithmic lending platforms it tested discriminated 40 percent less than face-to-face lenders, "Latin[o] and African-American [borrowers] pay 5.3 basis points more in interest for purchase mortgages and 2.0 basis points for refinance mortgages originated on FinTech platforms."[72]

Another example of how fintech algorithms can discriminate against people of color was revealed in 2020, when the Student Borrower Protection Center (SBPC) tested a lending algorithm developed by a company called Upstart. Upstart's algorithm incorporated educational data, including where the borrower attended college and the average SAT and ACT scores for different colleges and universities.[73] The algorithm divided schools into tiers based on standardized test

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[67] *See* Compl., United States v. Wells Fargo Bank, No. 1:12-cv-01150 (D.D.C. July 12, 2012) [hereinafter Wells Fargo Compl.]; Compl., United States v. Countrywide Financial Corp., No. 11-cv-10540-PSGAJW (C.D. Cal. Dec. 21, 2011).

[68] *See, e.g.*, Wells Fargo Compl., *supra* note 67, at 1-2, 4-5.

[69] Katie Jensen, *Fintech Mortgage Proven To Reduce Racial Bias In Lending*, NAT'L MORTG. PROF. (Nov. 19, 2021), https://nationalmortgageprofessional.com/news/fintech-mortgage-proven-reduce-racial-bias-lending.

[70] For example, both Freddie Mac and Fannie Mae now give borrowers and lenders the option of submitting rental payment history for consideration as part of the entities' automated mortgage underwriting system. *Freddie Mac Takes Further Action to Help Renters Achieve Homeownership*, FREDDIE MAC (June 29, 2022 10:00 ET), https://www.globenewswire.com/news-release/2022/06/29/2471417/0/en/Freddie-Mac-Takes-Further-Action-to-Help-Renters-Achieve-Homeownership.html; *FHFA Announces Inclusion of Rental Payment History in Fannie Mae's Underwriting Process*, FED. HOUSING FINANCE AGENCY (Aug. 11, 2021), https://www.fhfa.gov/mobile/Pages/public-affairs-detail.aspx?PageName=FHFA-Announces-Inclusion-of-Rental-Payment-History-in-Fannie-Maes-Underwriting-Process.aspx.

[71] Robert Bartlett, et al., *Consumer-Lending Discrimination in the FinTech Era*, UC BERKELEY PUB. LAW RES. PAPER 5 (Nov. 2019), https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf.

[72] *Id.* at 6.

[73] STUDENT BORROWER PROTECTION CTR., EDUCATIONAL REDLINING 16 (2019), https://protectborrowers.org/wp-content/uploads/2020/02/Education-Redlining-Report.pdf; Letter from LDF & Student Borrower Protection Center to Dave Girouard, CEO of Upstart Network, Inc. (Jul. 30, 2020), https://www.naacpldf.org/wp-content/uploads/2020-07-30-FINAL-Demand-Letter.pdf (hereinafter "Upstart Demand Letter").

scores.[74] The higher the incoming class's average standardized test scores, the higher the school's tier, and the more favorable the terms offered.[75] Because students of color tend to perform worse on these standardized tests (which in fact have been found to be racially biased),[76] schools with higher percentages of students of color were assigned to lower tranches.[77] For example, "only nine percent of Black students, eight percent of Indigenous American students, and twelve percent of Latino students attend America's most elite public universities."[78] Ninety-five percent of Historically Black Colleges and Universities (HBCU) were in the bottom rankings; just two were in the top tier.[79] In practice, this translated into substantially different loan terms for borrowers: A hypothetical graduate of the well-known HBCU Howard University who applied for a loan through Upstart's lending platform was charged nearly $3,499 more over the life of a five-year loan than a similarly-situated graduate of New York University, a predominantly white institution.[80] LDF and SBPC sent a demand letter to Upstart outlining how its algorithm likely violated ECOA and the FHA.[81] In response, Upstart agreed to a fair lending monitorship.[82] LDF's work to ensure compliance with the monitorship is ongoing.

E. *Racial profiling in bank transactions.*

Finally, financial institutions have also racially-profiled their own current and potential Black customers, denying them service, accusing them of fraud, and threatening them with arrest:

- In 2018, Clarice Middleton walked into a Wells Fargo branch in Atlanta, Georgia and attempted to cash a $200 refund check for a security deposit from a real estate company that had an account with the bank. Although she showed three bank employees the check and her identification, the employees accused her of fraud and called 911.[83]

- In 2019, Jabari Bennett sold his house in Atlanta, Georgia and moved to Wilmington, Delaware to live with his mother. That March, Mr. Bennett, a Wells Fargo account holder for four years, went into a local branch in Wilmington to withdraw money from his account to buy a used car. The bank teller refused to accept that he was the account holder. The

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[74] Upstart Demand Letter, *supra* note 73.
[75] *Id.*
[76] *See, e.g.*, Ember Smith & Richard Reeves, *SAT math scores mirror and maintain inequity,* Brookings Inst. (Dec. 1, 2020), https://www.brookings.edu/blog/up-front/2020/12/01/sat-math-scores-mirror-and-maintain-racial-inequity/ ; Gregory M. Walton & Steven J. Spencer, *Latent Ability*, 20 PSYCH. SCI. 1132, 1137 (2009). *See also* John Rosales & Tim Walker, *The Racist Beginnings of Standardized Testing,* NAT'L EDUC. ASSOC. TODAY (Mar. 20, 2021), https://www.nea.org/advocating-for-change/new-from-nea/racist-beginnings-standardized-testing.
[77] Upstart Demand Letter, *supra* note 73.
[78] *See* EDUCATIONAL REDLINING, *supra* note 73, at 9.
[79] Upstart Demand Letter, *supra* note 73.
[80] *See* EDUCATIONAL REDLINING, *supra* note 73, at 18.
[81] Upstart Demand Letter, *supra* note 73.
[82] Press Release, LDF & Student Borrower Protection Center, NAACP Legal Defense and Educational Fund and Student Borrower Protection Center Announce Fair Lending Testing Agreement with Upstart Network (Dec. 1, 2020), https://protectborrowers.org/naacpldf-sbpc-upstart-agreement/.
[83] Emily Flitter, '*Banking While Black': How Cashing a Check Can Be a Minefield*, N.Y. TIMES (Jun. 18, 2020), https://www.nytimes.com/2020/06/18/business/banks-black-customers-racism.html.

branch manager told Mr. Bennett to leave, then threatened to call the police after he left and returned to try to complete the transaction.[84]

- In June 2019, Robyn Murphy took her 18-year-old son, Jason, to a Bank of America branch in Owings Mills, Maryland to open a joint savings account. Although Ms. Murphy had been a customer of the bank for 20 years, an employee refused to open the account after a computer program flagged her son's Social Security number as fraudulent—even though Jason already had his own checking account at the bank.[85]

- In December 2021, Peter Wogbah went into a U.S. Bank in Bloomington, Minnesota and requested a cashier's check from his business account. The tellers refused to issue the check and told him the money was unavailable, even after he called U.S. Bank's 1-800 number to confirm the funds were wired to his account. The tellers told Mr. Wogbah to go to a different branch to get the check and called the police.[86]

- Earlier this year, Ryan Coogler, director of the top box office earning movie, *Black Panther*, attempted to withdraw money from his account at Bank of America. After the transaction was flagged, the teller assumed that Mr. Coogler was trying to rob the bank. She called the police, who handcuffed and detained him.[87]

Although many people who are profiled in this way are eventually able to complete their transaction, Ms. Middleton, Mr. Bennett, and others like them are harmed from the moment bank employees assume that, because of the color of their skin, they could not be legitimate customers and deny them service. When merchants exclude individuals from commercial transactions based on their identity, the excluded individuals suffer stigma and psychological harm that endures even if they can eventually complete those transactions. This psychological harm can, in turn, negatively impact victims' health: as described by researchers in the *American Behavioral Scientist*, "experiences of racial discrimination are an important type of psychosocial stressor that can lead to adverse changes in health status and altered behavioral patterns that increase health risks."[88] This harmful phenomenon is also vastly under-reported.

F. *Costs of discrimination.*

Discrimination by financial institutions imposes real costs on communities of color. As LDF's Thurgood Marshall Institute (TMI) outlined in its report, *The Black-White Racial Wealth*

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[84] *Id.*
[85] *Id.*
[86] Eric Rasmussen, *Banking While Black: More complaints of discrimination as U.S. Bank CEO promises change*, KTSP (Mar. 24, 2022 11:26 PM), https://kstp.com/5-investigates/banking-while-black-more-complaints-of-discrimination-as-u-s-bank-ceo-promises-change/.
[87] Johnny Diaz & Michael Levenson, *'Black Panther' Director Ryan Coogler Mistaken for Bank Robber in Atlanta*, N.Y. TIMES (Mar. 9, 2022), https://www.nytimes.com/2022/03/09/arts/ryan-coogler-bank-america.html.
[88] David R. Williams & Selina Mohammed, *Racism and Health I: Pathways and Scientific Evidence*, AM. BEHAVIORAL SCI., vol. 57 (May 2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3863357/.

Gap, discrimination by financial institutions and exclusion from financial services have contributed to a significant and growing racial wealth gap.[89] The additional costs Black people incur because they rely on alternative financial services and pay higher bank fees prevent them from turning their income into savings and building wealth.[90] Moreover, as noted above, without adequate access to capital and credit, the Black-white homeownership rate gap has grown,[91] and Black business owners are more likely to cease operations than other business owners.[92] As a result of these and other policies, Black households have about seven cents on the dollar in net worth relative to white households.[93]

While racial discrimination hurts communities of color most, it also hurts financial institutions and society as a whole. For example, a 2020 study by Citi estimates that the United States' aggregate economic output would have been $16 trillion higher since 2000 if we had closed racial gaps in wages, access to higher education, lending, and mortgage access.[94] Researchers at McKinsey estimated that the racial wealth gap alone will cost the U.S. economy between $1 trillion and $1.5 trillion between 2019 and 2028—4 to 6 percent of the projected GDP in 2028.[95] By contrast, financial institutions could earn approximately $2 billion annually in additional revenue if Black Americans had the same access to financial products as white Americans, and up to $60 billion annually in additional revenue if Black Americans reached full wealth parity.[96]

IV. **The Patchwork of Existing Federal Civil Rights Laws Prevents Some Racially Discriminatory Conduct by Financial institutions, But Also Leaves Gaps.**

As noted above, a patchwork of civil rights laws prohibits financial institutions from taking certain discriminatory actions on the basis of race. Unfortunately, federal courts have made it harder for harmed individuals to use these statutes to address racial discrimination by financial institutions, particularly in non-credit transactions.[97]

First, courts have barred harmed individuals from bringing racial discrimination claims against financial institutions as public accommodations. Title II of the federal Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, or national origin in restaurants, hotels, gas stations, and places of entertainment.[98] The law was designed to "vindicate the deprivation of personal dignity that surely accompanies denials of equal access to public

[89] SHAPIRO ET AL., *supra* note 1.
[90] Florant, et al., *supra* note 1.
[91] BLOWER ET AL., *supra* note 2.
[92] PETERSON & MANN, *supra* note 50, at 59.
[93] SHAPIRO ET AL., *supra* note 1, at 5.
[94] PETERSON & MANN, *supra* note 50, at 7.
[95] Nick Noel, et al., *The economic impact of closing the racial wealth gap*, MCKINSEY INST. FOR BLACK ECON. MOBILITY (Aug. 13, 2019), https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap.
[96] Florant, et al., *supra* note 1.
[97] Thomas, *supra* note 6, at 143-44.
[98] *See* 42 U.S.C. § 2000a.

establishments."[99] Banks are enumerated as "public accommodations" for the purposes of discrimination on the basis of disability under similar provisions in the Americans with Disabilities Act.[100] However, courts have held that banks are not "public accommodations" under Title II.[101] In practice, if a bank teller refuses to cash a check because someone is disabled, that victim could bring a claim under the Americans with Disabilities Act;[102] if a bank teller refuses to cash a check because someone is Black, that victim has no recourse under Title II.

Second, ECOA and the FHA only apply to financial institutions in credit transactions. As noted above, ECOA prohibits lenders from discriminating on the basis of race and other protected characteristics,[103] and both ECOA and the FHA prohibit discrimination in any residential real estate-related transaction.[104] Yet neither ECOA nor FHA cover financial institution's practices with respect to deposit accounts and other non-credit products.

Third, while Sections 1981 and 1982 of the Civil Rights Act of 1866 allow some racial discrimination claims in non-credit transactions, courts have significantly narrowed their scope, preventing recovery in many cases. Section 1981 confers on "[a]ll persons within the jurisdiction of the United States . . . the same right ... to make and enforce contracts ... and to the full and equal benefit of all laws and proceedings."[105] Under this statute, financial institutions may not prevent customers of color from completing a transaction or force them to complete the transaction on different terms from other customers. Section 1982 has a similar scope, and prohibits racial discrimination in real and personal property transactions.[106] The Supreme Court has "construed §§ 1981 and 1982 similarly."[107] Yet courts have narrowly interpreted these statutes to exclude many kinds of discriminatory conduct. Courts have found, for example, that Section 1981 does not prohibit financial institutions or other entities from delaying a transaction because of someone's race, so long as the customer eventually completes the transaction.[108] In *York v. JPMorgan Chase*

[99] *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 250 (1964) (internal quotation marks omitted).
[100] 42 U.S.C. §§ 12181(7)(F), 12182.
[101] *See, e.g., Lowe v. ViewPoint Bank*, 972 F. Supp. 2d 947, 959 (N.D. Tex. 2013) (granting summary judgment on plaintiff's Title II claim against defendant bank on the basis that "a bank is not a place of public accommodation" under 42 U.S.C. § 2000a(b)); *Akyar v. TD Bank US Holding Co*., 18-CV-379, 2018 WL 4356734, at *5 (S.D.N.Y. Sept. 12, 2018); *Ajuluchuku v. Wachovia Corp.*, No. 3:05CV532-C, 2006 WL 406602 (W.D.N.C. Feb. 17, 2006) (granting motion to dismiss plaintiff's Title II claim because defendant bank is not a "public accommodation"); *Wilson v. Harding*, No. CIV. A. 98–2092–KHV, 1999 WL 203458, at *2 (D. Kan. Apr. 5, 1999) ("Defendants, a bank and two of its employees, clearly are not covered by this statutory provision.") (citing 42 U.S.C. § 2000a(b))). *See also e.g., Cuevas v. Sdrales*, 344 F.2d 1019, 1021 (10th Cir. 1965) (noting "[m]any business establishments were not included within the scope of [42 U.S.C. § 2000a]"), *cert. denied*, 382 U.S. 1014 (1966).
[102] 42 U.S.C. § 12181(7)(F); 42 U.S.C. § 12182(a).
[103] These characteristics include race, color, religion, national origin, sex (including sexual orientation and gender identity), marital status, age, receipt of public assistance, or the good faith exercise of any right under the Consumer Credit Protection Act.
[104] Fair Housing Act, Pub. L. No. 90-285, 82 Stat. 81 (1968) (codified at 42 U.S.C. 3601 *et seq.*); Equal Credit Opportunity Act, Pub. L. No. 90–321, 88 Stat. 1521 (1974) (codified as amended at 15 U.S.C. §1691 *et seq.*).
[105] 42 U.S.C. § 1981(a).
[106] 42 U.S.C. § 1982.
[107] *E.g.*, *CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 447 (2008).
[108] *See, e.g., Nevin v. Citibank, N.A.*, 107 F. Supp. 2d 333, 349 (S.D.N.Y. 2000) (granting summary judgment on Section 1981 claim when "[p]laintiff purchased everything she desired"); *Harrison v. Wells Fargo Bank,* 2020 WL

Bank, National Association, for instance, a bank teller refused to allow Alison York, a Black woman, to withdraw money from her account even after the acting bank manager verified that the signature the bank had on file matched Ms. York's driver's license.[109] The bank teller claimed that "she did not feel comfortable" giving Ms. York money and that she "had the right to refuse service."[110] However, because Ms. York was eventually able to complete the transaction, the district court dismissed Ms. York's Section 1981 claim.[111] Similarly, several courts have found that neither Section 1981 nor Section 1982 prohibits discriminatory surveillance or detention.[112]

Moreover, following the Supreme Court's 2020 decision in *Comcast v. National Association of African American-Owned Media*, harmed individuals must show evidence that discrimination was the "but for" cause of the harm in order to make out a preliminary cause of action.[113] This ruling is inconsistent with the letter and spirit of Section 1981 and places an extremely high burden on the harmed individual, making it more difficult to hold entities engaged in discrimination accountable for their actions.

Fourth, the CRA requires regulators to assess a financial institution's record of "meeting the credit needs of the entire community, including low- and moderate-income [LMI] neighborhoods."[114] Yet currently the CRA does not require regulators to examine whether financial institutions adequately serve Black and other communities of color, and current CRA exams have failed to ensure that those communities have equal access to financial services. According to a 2022 study by the Urban Institute, neighborhoods which are predominantly people of color receive less than their proportionate share of overall lending and bank loans. While LMI neighborhoods predominantly inhabited by people of color constitute 36.7% of the households in all LMI neighborhoods, they receive only 25.2% of owner-occupied purchase loans made in LMI neighborhoods.[115] Black borrowers in particular are underserved: 17.9% of existing homeowners in LMI neighborhoods are Black, but Black borrowers receive only 13.1% of owner-occupied purchase loans in these neighborhoods.[116] By contrast, Latino homeowners compose 19% of existing homeowners in LMI neighborhoods, but receive 23.1% of owner-occupied purchase

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1322921, at *3 (N.D. Cal. Mar. 20, 2020) (granting summary judgment on plaintiff's Section 1981 claim where plaintiff was able to complete her transaction despite being subjected to discriminatory language); *Jackson v. Cititrends Utica, New York*, No. 20-CV-14, 2020 WL 3035577, at *1 (N.D.N.Y. Jun. 5, 2020) (dismissing Section 1981 claim when plaintiffs were able to complete their transaction with another cashier and thus not prevented from purchasing anything at the store).

[109] *See York v. JPMorgan Chase Bank, Nat'l Ass'n,* No. CV-18-04039-PHX-SPL, 2019 WL 3802535, at *1 (D. Ariz. Aug. 13, 2019).

[110] *Id.*

[111] *Id.* at *2.

[112] *See, e.g., Morris v. Office Max, Inc.,* 89 F.3d 411, 411-12 (7th Cir. 1996); *Garrett v. Tandy Corp.,* 142 F. Supp. 2d 117, 119 (D. Me. 2001), *aff'd,* 295 F.3d 94, 101 (1st Cir. 2002); *Chambers v. Simon Prop. Grp.,* No. 12-1179-EFM, 2013 WL 1947422, at *1 (D. Kan. May 10, 2013).

[113] *Comcast Corp. v. Nat'l Ass'n of African American-Owned Media,* 140 S.Ct. 1009, 1016-17 (2020).

[114] 12 U.S.C. § 2903(a)(1).

[115] LINNA ZHU, ET AL., SHOULD THE COMMUNITY REINVESTMENT ACT CONSIDER RACE? 10 (2022), https://www.urban.org/sites/default/files/2022-04/should-the-community-reinvestment-act-consider-race_1.pdf. *Id.* at 10.

[116] *Id.* at 12.

loans.[117] These statistics show that assessing services to LMI neighborhoods alone is insufficient to ensure that banks are serving the entire community, as intended by the CRA.

Finally, while existing anti-discrimination laws prohibit discrimination caused by algorithms, using these statutes to address algorithmic bias presents unique challenges. For example, there is no requirement that designers or developers of fintech publish their algorithms or share information about what data they used to develop and train the algorithm, how it was validated, whether it has been audited for bias, or the outcome of and response to that audit. In fact, the algorithms are usually considered proprietary.[118] Without access to the algorithm or information about the algorithm, it can be difficult for harmed individuals to establish that the algorithm caused a discriminatory and adverse outcome.[119] While advocacy organizations and researchers can try to test a model for bias—for example, by creating different borrower profiles, as in the Upstart case[120]—this process can be resource intensive. It also may not be possible to easily identify algorithmic bias through testing if the bias is the result of the interaction of multiple variables,[121] or if the company does not offer a public platform to use for testing, as was true with Upstart. Moreover, there are currently no mandates requiring companies to preserve the algorithm as it existed at the time of an adverse decision, potentially preventing harmed individuals from being able to test the model to show algorithmic bias.

V. Congress and Federal Regulators Must Act to Ensure that Financial Institutions Offer Full and Equal Access to People and Communities of Color.

Congress and federal regulators should take a number of steps to address the persistent and pernicious racial bias in financial services.

First, we applaud Senator Sherrod Brown and his colleagues for introducing the Fair Access to Financial Services Act and encourage the Senate to pass this critical legislation.[122] This bill would make it illegal for banks and other financial institutions to deny services based on race, color, religion, national origin, sexual orientation, and gender identity. It would make clear that financial institutions are the same as other businesses that offer services to the public, and that they have the same obligation not to discriminate against their customers whether that discrimination is on the basis of disability or race and other protected characteristics. We are also encouraged to

[117] *Id.*
[118] Lorena Rodriguez, *All Data Is Not Credit Data: Closing The Gap Between The Fair Housing Act And Algorithmic Decisionmaking In The Lending Industry*, 120 COLUM. L. REV. 1843, 1858 (2020),
[119] Mikella Hurley & Julius Adebayo, *Credit Scoring in the Era of Big Data*, 8 YALE J.L. & TECH. 148, 194 (2016), hurley_18yjolt136_jz_proofedits_final_7aug16_clean_0.pdf
[120] *See* EDUCATIONAL REDLINING, *supra* note 73.
[121] Hurley & Adebayo, *supra* note 119, at 194.
[122] Fair Access to Financial Services Act of 2022, S.4619 (117th Cong.), *available at* https://www.banking.senate.gov/imo/media/doc/The%20Fair%20Access%20to%20Financial%20Services%20Act_%20Final%20Bill%20Text.pdf.

see legislation proposed that would eliminate the contra-textual barriers the Supreme Court created to Section 1981 claims in *Comcast* and other cases.[123]

Second, federal regulators should update the CRA to ensure that banks actually serve the entire community—including communities of color. The Office of the Comptroller of the Currency, the Federal Reserve Bank, and the Federal Deposit Insurance Corporation issued a Notice of Proposed Rulemaking proposing updates to the CRA earlier this summer. As they finalize the rule, federal regulators should take several steps to ensure that the CRA benefits communities of color and fulfills its legislative purpose. Regulators should use disaggregated data to calculate a financial institution's overall grade on all CRA exams. Regulators should also consider activities to serve people and communities of color—and activities in underserved census tracts, which will likely include many communities of color—in the same way they consider financial institution's activities that benefit low- and moderate-income people and communities when calculating grades. Finally, regulators should conduct fair lending reviews in CRA exams that explicitly examine whether financial institutions lend to people of color and explain in detail the statistical methodology that was employed to test for discrimination in lending.

Third, federal regulators should also use their existing power—supplemented by additional legislation if necessary—to address algorithmic bias in the financial sector. The White House Office of Science and Technology Policy recently took the positive step of issuing a Blueprint for an AI Bill of Rights that adopts as one of its principles that people should "not face discrimination by algorithms and systems should be used and designed in an equitable way."[124] This principle should be put into practice by requiring companies that develop, design, and use fintech to: 1) use data that fully and accurately represents the community the algorithm will assess when building and testing their algorithms; 2) proactively identify variables that may lead to biased assessments and outcomes; 3) use independent auditors to evaluate their algorithms throughout their lifecycle (i.e., during the design stage, pre-implementation, and continuously after release) in order to identify and mitigate discriminatory impacts; and 4) increase transparency about the use, risks, and effects of algorithms.

VI. Conclusion

Financial institutions have long failed to provide full and equal access to financial services to people and communities of color, denying them economic mobility and opportunity. Society as a whole benefits when people of color can grow their savings, invest in a home or a business, and pass wealth on to their children. We look forward to working with the Committee to ensure full financial inclusion.

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[123] Economic Inclusion Civil Rights Act of 2021, S. 2298 (117th Cong.) *available at* https://www.congress.gov/117/bills/s2298/BILLS-117s2298is.pdf.

[124] WHITE HOUSE OFFICE OF SCI. & TECH. POL'Y, BLUEPRINT FOR AN AI BILL OF RIGHTS (2022), https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf (AI Bill of Rights).