

California State Assembly
HOUSING AND COMMUNITY DEVELOPMENT
AND BANKING AND FINANCE COMMITTEES



ASSEMBLY MEMBERS CHIU AND GRAYSON
CHAIRS

Joint Informational Hearing

Thursday, March 25, 2021
Upon adjournment of Session
State Capitol, Assembly Chamber

Addressing Racial Disparities in Housing

BACKGROUND PAPER

California's housing crisis disproportionately affects communities of color. Despite legal and regulatory mechanisms that have made outright housing discrimination illegal in California,¹ there remain large disparities along racial and ethnic lines that prevent Californians of color from acquiring, keeping, and affording housing. These disparities are especially acute for Black, Latinx, Native American/Alaska Native, and Hawaiian/Pacific Islander Californians.

This hearing will examine the different mechanisms through which racial and ethnic discrimination and bias manifests throughout the process of obtaining housing, living in a dwelling, and transitioning between housing arrangements. Additionally, this hearing will examine policy proposals to remedy these disparities and to better deter discrimination and disparate outcomes in housing. This hearing, however, is not intended to provide a comprehensive overview of all the sources of ethno-racial disparities in housing. Many of these sources – labor market discrimination, inequitable educational opportunities, disparities in criminal justice outcomes – derive from broader manifestations of structural racism that have deep-seated historical roots in California and nationally.

HISTORY AND CONTEXT

Formal, institutionalized discrimination based on race has a long history in American housing policy. Until the mid-nineteenth century, federal, state, and local governments allowed for, and often times mandated practices that encouraged residential segregation by race.² Government-

¹ See: *U.S. Civil Rights Act of 1968* (Pub.L. 90–284, 82 Stat. 73), *California Fair Employment and Housing Act* (Government Code, Title 2, Division 3, Part 2.8), *Unruh Civil Rights Act*, California Civil Code § 51.

² Seitles, M. (1998) *The Perpetuation of Residential Racial Segregation in America: Historical Discrimination, Modern Forms of Exclusion, and Inclusionary Remedies*, 14 FLA. S. U. J. LAND USE & ENVTL. L. 89

sanctioned practices included redlining, the use of racially restrictive covenants, and permitting actors in the real estate market to engage in overt discrimination.³

California is no exception to this history. In 1890, San Francisco passed the Bingham Ordinance, which forbade Chinese San Franciscans from living in large areas of the city under the threat of imprisonment.^{4,5} In 1916, Berkeley was among the first cities nationally to establish single family residential zoning, which the city recently acknowledged “has its roots in racist exclusionary zoning policy and leads to racial and economic segregation.”⁶ In 1943, the ubiquity of racially restrictive housing covenants that targeted Mexican-Americans in Orange County led to *Doss v. Bernal*, one of the earliest successful legal challenges to racially restrictive housing covenants in the U.S.⁷

Today, while housing discrimination based on race/ethnicity is prohibited by law, many factors continue to contribute to ethno-racial disparities in housing. These include, but are not limited to exclusionary zoning, bias in mortgage lending and tenant selection processes, inequities in housing appraisals, the prevalence of local housing ordinances with disparate racial/ethnic impacts, and community development patterns that reinforce segregation.

HOMEOWNERSHIP

Homeownership Trends by Race/Ethnicity

California, like the nation as a whole, has lower homeownership rates among communities of color. According to Census data, 65 percent of white Californians are homeowners while Asian/Asian-Americans have a homeownership rate that is six percentage points lower at 59 percent. About one in two Californians of Native/Indigenous descent are homeowners (49 percent), while the rate of homeownership amongst the Latinx population is 44 percent. Black Californians have the lowest rate of homeownership across racial/ethnic groups California with only about 1 in 3 owning their home (35 percent).⁸

Drivers of Disparities

Devaluation of Black Housing Assets: For Black Californians who do own homes, racial disparities also exist in the valuation of their assets. Black-owned homes in majority-Black areas of both the San Francisco-Oakland-Hayward Metropolitan Statistical Area (MSA) and the Los Angeles-Long Beach-Anaheim MSA are worth substantially less than equivalent homes with the same structural characteristics and neighborhood amenities in non-majority-Black areas.⁹ In the

³ Massey D. S. (2015). The Legacy of the 1968 Fair Housing Act. *Sociological forum* (Randolph, N.J.), 30(Suppl 1), 571–588. <https://doi.org/10.1111/socf.12178>

⁴ Chou, C. (2014). Land Use and the Chinatown Problem. *Asian Pacific American Law Journal*, 19. Retrieved from <https://escholarship.org/uc/item/8g7550h8>

⁵ The ordinance was struck down by a federal court prior to taking effect.

⁶ Berkeley City Council (2021) <https://www.berkeleyside.com/wp-content/uploads/2021/02/Item-29-Supp-Droste-1.pdf>

⁷ Romero, R. C., & Fernandez, L. F. (2012). *Doss v. Bernal: Ending Mexican Apartheid in Orange County*. CSRC Research Note, (14), 157-180. <https://www.chicano.ucla.edu/files/RR14.pdf>

⁸ U.S. Census Bureau, 2015-2019 American Community Survey 5-Year Estimates, Tables B25003A-I

⁹ Perry, A., Rothwell, J., & Harshbarger, D. (2018). The devaluation of assets in black neighborhoods. <https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/>

Bay Area, the average devaluation of homes in majority-Black neighborhoods is 22.3 percent, and in the Los Angeles area it is 17.1 percent.¹⁰

Credit Scores: Differences in credit scores also contribute to racial disparities in homeownership.¹¹ About 54 percent of Black Americans report having no credit or a credit score of below 640. About 41 percent of Latinx Americans report falling into this category as well. In contrast, 37 percent of white Americans and 18 percent of Asian Americans report similar credit circumstances.¹²

Loan Denial Rates: Home Mortgage Disclosure Act (HMDA) data show that Black applicants are denied loans at twice the rate of white applicants, controlling for income and gender. Even when approved for home loans, HMDA data also show that Black and Latinx borrowers are more likely to be offered higher-cost mortgages.¹³

Key Terms

- Consumer Financial Protection Bureau (CFPB) “Know Before You Owe” Rule: Also known as the “three-day rule,” the federal CFPB rule requires mortgage lenders to provide borrowers with three business days to review final closing disclosure documents and review the costs and terms of the loan they will receive.¹⁴
- High-Cost Loans: The CFPB defines a high-cost loan based on the following three criteria: 1) An Annual Percentage Rate (APR) that is more than 6.5 percentage points higher than the average prime offer rate; 2) Total fees >5 percent of the loan; and 3) The loan has a prepayment penalty beyond 36 months from closing or the prepayment penalty exceeds 2 percent of the amount prepaid.¹⁵ As of March 18, 2021 the average prime offer rate for a 30-year fixed rate mortgage in the U.S. is 3.09 percent¹⁶, thus a loan would be considered high-cost if it had an interest rate of 9.59 percent or higher.
- Subprime Lending: Mortgage loans are typically classified as either prime or subprime, depending on credit risk. Interest rates are higher on subprime mortgages, reflecting perceived higher credit risk.
- FinTech Lending: Financial technology (FinTech) lenders oftentimes underwrite loan applications fully autonomously via software and algorithms. Without having to meet

¹⁰ Perry, A. (2021, February 17). The devaluation of assets in Black neighborhoods.

<https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods>

¹¹ Choi, J. H., McCargo, A., Neal, M., Goodman, L., & Young, C. (2019). Explaining the Black-White Homeownership Gap. https://www.urban.org/sites/default/files/publication/101160/explaining_the_black-white_homeownership_gap_2.pdf

¹² Leonhardt, M. (2021, January 28). Black and Hispanic Americans often have lower credit scores—here’s why they’re hit harder. CNBC. <https://www.cnbc.com/2021/01/28/black-and-hispanic-americans-often-have-lower-credit-scores.html>

¹³ Quillian, L., Lee, J. J., & Honoré, B. (2020). Racial discrimination in the US housing and mortgage lending markets: a quantitative review of trends, 1976–2016. *Race and Social Problems*, 12(1), 13-28.

¹⁴ *Know Before You Owe*. (2021). California Department of Financial Protection and Innovation. <https://dfpi.ca.gov/know-before-you-owe/>

¹⁵ National Credit Union Administration. (2020, December 1). *New Homeownership Counseling and Consumer Protection Requirements from CFPB*. <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/new-homeownership-counseling-and-consumer-protection-requirements-cfpb>

¹⁶ Freddie Mac. *Mortgage Rates Continue to Inch Up (March 18, 2021)*. <http://www.freddiemac.com/pmms/index.html>

face-to-face, FinTech lending allows potential borrowers to provide their financial information, receive mortgage pre-approval, and customize the terms of their home loan digitally. Concerns have been raised recently about the potential for algorithmic bias which may further contribute to pre-existing racial disparities in lending.¹⁷

RENTAL HOUSING

Cost Burden Impacts by Race/Ethnicity

According to a recent report from the California Budget and Policy Center, in 2019, roughly 60 percent of Black Californians and over 53 percent of Latinx Californians lived in renter households, compared to roughly 35 percent of whites and Asian/Asian-Americans.¹⁸ Not only are Black and Latinx populations more likely to be renters, but Black and Latinx Californians experience are cost-burdened at a higher level than white and Asian Californians. In 2019, 53.3 percent of California's renter households were cost-burdened, which is defined as having paid more than 30 percent of their monthly household income on rent and utilities. In 2018, 58 percent of Black renters and 52 percent of Latinx renters were cost-burdened, compared to 44 percent of white renters and 42 percent of Asian renters.¹⁹

Drivers of Disparities

Lack of Supply of Affordable Rentals: Nationally, Black, Latinx, and Indigenous Americans are more likely to be extremely low-income renters (ELI) — those with incomes at or below the poverty line or 30 percent of the area median income (AMI). In California, per 100 ELI renter households there are, on average, only 23 affordable and available rental units. Only Nevada has a lower level of affordable and available rental units per every 100 ELI renter household.

Elevated Rates of Eviction: Eviction suits – also known as unlawful detainer cases – are lawsuits brought to a civil court by property owners in order to remove tenants. Black and Latinx renters are subject to a disproportionate share of eviction filings and subsequent eviction judgments nationally.²⁰ While detailed data on evictions by race in California is not currently tracked by the courts or another government entity, a recent UCLA analysis found that in the summer of 2020, 23 percent of Black enters and 20 percent of Latinx tenants self-reported rent-related hardships amid the COVID-19 pandemic. This figure was 9 percent for both white and Asian/Asian-American Californians.²¹ These rent-related hardships may contribute to higher levels of eviction among vulnerable groups going forward.²²

¹⁷ Hauptert, T. (2020). The Racial Landscape of Fintech Mortgage Lending. *Housing Policy Debate*, 1-32.

<https://doi.org/10.1080/10511482.2020.1825010>

¹⁸ Davalos, M. (2021, January 20). *California's 17 Million Renters Face Housing Instability and Inequity Before and After COVID-19*. California Budget & Policy Center. <https://calbudgetcenter.org/resources/californias-renters-face-housing-instability-inequity-covid-19/>

¹⁹ US Census Bureau, 2018 American Community Survey 1-Year Estimates, Tabulation by Apartment List

²⁰ Hepburn, P., Louis, R., & Desmond, M. (2020). Racial and Gender Disparities among Evicted Americans. *Sociological Science*, 7, 649-662.

²¹ Ong, P.M. Systemic Racial Inequality and the COVID-19 Renter Crisis. UCLA Luskin Institute on Inequality and Democracy; 2020. <https://challengeinequality.luskin.ucla.edu/2020/08/07/systemic-racial-inequality-covid-19-renter-crisis/>

²² Tan, D. (2020, September 18). How COVID-19 Could Deepen California's Housing Crisis. Public Policy Institute of California. https://www.ppic.org/blog/how-covid-19-could-deepen-californias-housing-crisis/?utm_source=rss&utm_medium=rss&utm_campaign=how-covid-19-could-deepen-californias-housing-crisis

Key Terms

- **Tenant Screening**: The process by which a landlord or property management company decides whether to rent to a prospective tenant. Several third-party companies offer tenant screening services based on a renter’s credit score, justice system involvement (i.e., background checks), and any records of debt collection and eviction lawsuits. Additionally, in recent years there have been a number of new platforms offering automated tenant screening using artificial intelligence/machine learning algorithms for tenant screening.
- **Nuisance Ordinances**: Regulations that penalize landlords and tenants for certain “nuisance” activity that occurs at a given property. Such activity can include noise violations, or when police are called too often (e.g., a certain number of times in 3 months).²³
- **Crime Free Housing**: Local laws and policies that require landlords to screen potential tenants for past criminal activity and penalize landlords for tenants that commit “criminal activity” at the property.²⁴

HOMELESSNESS

Unhoused Population by Race/Ethnicity

Of the roughly 151,000 Californians experiencing homelessness in 2019,²⁵ roughly 29 percent were Black, 31 percent were Latinx, 1.7 percent were Asian American, 4.5 percent were Native American/Alaska Native, and 1.4 percent were Hawaiian/Pacific Islander. In these trends, California roughly mirrors the nation in terms of the overrepresentation of certain racial/ethnic groups relative to their share of the population. These figures are detailed in the table below:

California’s Unhoused Population by Race

	Black or African American	Latinx	Asian	American Indian or Alaska Native	Native Hawaiian or Other Pacific Islander
CA’s 2019 Homeless Population (Absolute #s)	44,086	47,519	2,606	6,797	2,177
Percent of CA’s Homeless Population	29.1%	31.4%	1.7%	4.5%	1.4%
Percent of CA’s Total Population	6.5%	39.4%	15.5%	1.6%	0.5%

Source: HUD 2019 Annual Homeless Assessment Report Point-In-Time (PIT) Counts, U.S. Census Bureau QuickFacts

²³ *Nuisance and Crime-Free Ordinances and their Impact on Housing Access for Survivors*. (2019). [Slides]. National Housing Law Project. <https://www.nhlp.org/wp-content/uploads/EVAWI-Presentation-1.pdf>

²⁴ *Id.*

²⁵ NB: HUD’s Point-In-Time (PIT) Counts are susceptible to mismeasurement due to difficulties in data collection.

Key Terms

- **Housing First**: An approach to homelessness that prioritizes moving people quickly into permanent, affordable housing without pre-condition and then offering supportive services in order to help people avoid returning to homelessness.
- **Permanent Supportive Housing**: A model by which housing and support services (healthcare, employment services, substance use disorder treatment) are co-located to aid individuals and families that are unhoused or are at risk of becoming unhoused.
- **Coordinated Entry System**: A HUD requirement for Continuums of Care (CoCs) that aims to create more efficient assistance services for the unhoused by expediting the speed through which people go through the entry system, reducing new entries to homelessness by offering prevention and diversion resources, and improving data collection and quality.²⁶

FEDERAL AND STATE FAIR HOUSING LAWS

State Laws on Housing Discrimination

Fair Employment and Housing Act (FEHA) (CA Government Code Section 12900 *et seq.*): The Fair Employment and Housing Act (FEHA), which includes the California Fair Housing Law (often called the “Rumford Fair Housing Act”), is the primary state law banning discrimination in housing accommodations because of race, color, religion, sex, marital status, national origin, ancestry, disability, and familial status.

Unruh Civil Rights Act (CA Civil Code Section 51 *et seq.*): Prohibits discrimination in housing and public accommodations based on sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status.

Federal Laws on Housing and Lending Discrimination

Fair Housing Act of 1968: Officially known as Title VIII of the Civil Rights Act of 1968, the Fair Housing Act prohibits discrimination in the sale, rental, or financing of housing units based on race, color, religion, sex, or national origin.

Equal Credit Opportunity Act (ECOA): Enacted in 1974, ECOA prohibits creditors and lenders from considering race, color, national origin, sex/gender, religion, and marital status in any aspect of lending—from approving the application to setting terms of the loan, such as interest rate or fees.

²⁶ *Coordinated Entry System*. (2019). Orange County. <https://www.211oc.org/coc/coordinated-entry.html>

Home Mortgage Disclosure Act (HMDA): Requires many financial institutions to maintain, report, and publicly disclose loan-level information about mortgages, including information about race/ethnicity.

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