THE FUTURE OF HOUSING IN AMERICA: GOVERNMENT REGULATIONS AND THE HIGH COST OF HOUSING

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THE FUTURE OF HOUSING IN AMERICA: GOVERNMENT REGULATIONS AND THE HIGH COST OF HOUSING

Tuesday, March 22, 2016

U.S. House of Representatives,
Subcommittee on Housing
and Insurance,
Committee on Financial Services,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:02 p.m., in room 2128, Rayburn House Office Building, Hon. Blaine Luetkemeyer [chairman of the subcommittee] presiding.

Members present: Representatives Luetkemeyer, Westmoreland, Garrett, Pearce, Rothfus, Williams; Cleaver, Velazquez, and Clay.

Chairman Luetkemeyer. The Subcommittee on Housing and Insurance will come to order. Without objection, the Chair is authorized to declare a recess of the subcommittee at any time.

Today's hearing is entitled, "The Future of Housing in America: Government Regulations and the High Cost of Housing."

Before we begin, I would like to thank the witnesses for appearing before the subcommittee today. We look forward to your testimony. I now recognize myself for 5 minutes to give an opening statement.

Last year, I joined several of my colleagues in New Orleans to examine the state of housing 10 years after Hurricane Katrina. While in New Orleans, we visited public housing sites and met with residents. My colleagues will remember meeting a woman who had lived in public housing her entire life.

Like so many people across the Nation, she told us her goal was to escape public housing and have her own home. This resident told the story of her son, who had achieved that dream and purchased his own home. He broke the cycle his mother aimed to shatter as well.

He was able to do that because he had opportunity. He had options. He found a house to call a home. So today we ask ourselves, where do people go when they reach self-sufficiency?

Is the stock of affordable market rate housing plentiful enough to support the people seeking it? The unfortunate answer is no. According to a recent study by NYU and Capital One, the renter population is growing while affordable housing options, those that consume less than 30 percent of household income, are shrinking.

The study also found that in cities across America, the average renter can afford fewer than 25 percent of rental units. Imagine that daunting landscape through the eyes of a single mother looking to graduate from public housing.

Today, we will examine some of the root causes behind rising housing costs in the Nation, with specific focus on the government's contribution to the price tag. Federal, State, and local rules and regulations, including Davis-Bacon wage rates and zoning laws, are proving to be barriers to the development of affordable housing.

According to the New York City Independent Budget Office, the requirement to pay prevailing wages translates to a per-unit cost increase of nearly $45,000. That is an additional $2.8 billion in labor cost to meet the mayor's affordable housing goal.

Manufactured housing rules and regulations from the Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), and the Consumer Financial Protection Bureau (CFPB) have stifled the availability of an affordable alternative to site-built homes.

This subcommittee will continue to dedicate its time and energy to examining different methods to lift people from poverty and ensure that people don't have just a place to live, but a place to have a life.

This is an important conversation. In the words of one of our witnesses, Professor Mechele Dickerson, "For the first time since possibly the Great Depression, the lack of affordable housing is being viewed as a crisis that affects Americans of all ages, races, and income groups."

Government has inserted itself into the business of housing by mandating affordable housing and community reinvestment while simultaneously shifting creation of affordable housing and community reinvestment. It is time to promote the development and availability of housing for low- and middle-income Americans, not restrict it.

I want to thank our witnesses for appearing today. We look forward to your testimony.

The Chair now recognizes the ranking member of the subcommittee, the gentleman from Missouri, Mr. Cleaver, for 5 minutes for an opening statement.

Mr. CLEAVER. Chairman Luetkemeyer, members of the subcommittee, good afternoon. Thank you again for giving us your time to help us focus on this important issue.

When you consider the fact that there are approximately 12 million Americans who spend more than 50 percent of their income on housing, I don't think that it is a far-fetched notion to say that we are in the throes of a crisis in the future of housing in America, government regulations, and the high cost of housing.

It has been about 8 years since the economic meltdown of 2008. And as we all know, not only did the Great Recession devastate individual household wealth, but it also eviscerated our housing market.

Recovery has been slow, and in the time our housing trends have shifted with more Americans renting than purchasing new homes. Today's hearing gives us an opportunity to learn from your ideas in which we can put in place to turn this unfortunate turn of events around.

According to the Joint Center for Housing Studies at Harvard University, the number of U.S. households that rent their housing rose to a 20-year high of 35.5 percent in 2014. And at the same time, the national rental vacancy fill as rents soar.

Wages have also stagnated leaving more Americans rent-burdened. Simply put, many of our constituents are facing a housing crisis where need outweighs availability. And because of this, it is crucial that we provide robust funding for our Federal housing programs.

For example, recently I joined with Ranking Member Waters and 69 other Members to request that our appropriations, or the appropriators, provide strong funding for Section 8 rental assistance as well as for housing programs that provide dedicated funding for the elderly and the disabled.

I also urge our appropriators to fully fund the HOME Investment Partnership Program and the Community Development Block Grant program. Both programs effectively leverage private capital through Federal investment to encourage the development of housing, though both have been cut in recent years.

We thank you for your participation. I look forward to hearing from you in your testimony.

Chairman LUETKEMEYER. The gentleman yields back.

Today, we welcome the testimony of Mr. Clyde Holland, chairman and chief executive officer, Holland Partner Group, on behalf of the National Multifamily Housing Council and the National Apartment Association; Mr. F.R. Jayar Daily, chief operations officer, American Homestar Corporation, on behalf of the Manufactured Housing Institute; Ms. Vicki Been, commissioner, New York City Department of Housing Preservation and Development; Mr. Granger MacDonald, president, MacDonald Companies, on behalf of the National Association of Home Builders; and Professor Mechele Dickerson, professor at the University of Texas at Austin School of Law.

Each of you will be recognized for 5 minutes to give an oral presentation of your testimony. And without objection, your written statements will be made a part of the record.

Before we proceed, I want to seek unanimous consent to yield time to the gentleman from Texas, Mr. Williams, for the purpose of introducing not one but two of today's witnesses. So without objection, the gentleman is recognized.

Mr. WILLIAMS. Thank you, Mr. Chairman. It is a great honor to introduce two great Texans. Of course, everybody in Texas is great, but we are proud of our State.

First of all, is it is an honor and a privilege to introduce this morning Granger MacDonald, who is not only a fellow Texan but has been a dear friend of mine for many years. Granger is a second generation builder and developer from Kerrville, Texas, one of the most beautiful cities in America, with more than 40 years of experience in the home-building industry.

He sits on the board of the National Association of Home Builders as first vice president and as chairman and CEO of the MacDonald Companies, as we have heard. As you will hear from him this afternoon, housing is one of the most regulated industries in the Nation.

Mr. MacDonald is uniquely qualified to speak about the regulatory barriers to affordable housing, and we look forward to hearing his testimony today. And Granger, welcome. It is good to see you.

Next, it is another great honor to introduce Mechele Dickerson. I am happy to introduce her this afternoon, another fellow Texan and a professor of law, who teaches at one of the finest universities in the country, one that I just happen to represent in the United States Congress.

Ms. Dickerson is a nationally recognized bankruptcy law scholar in addition to being a professor at the University of Texas Law School. In addition to her teaching responsibilities, Professor Dickerson has published numerous books and articles that should be relevant to our hearing today.

So I look forward to her testimony and that of Granger's.

And Mr. Chairman, I yield back.

Chairman LUETKEMEYER. I thank the gentleman. Just a couple of quick notes—excuse me. I have a little allergy problem today, so forgive my voice here. You have a lighting systems in front of you: green means go; yellow means you have 1 minute left; and then when it hits red, you need to wrap it up.

Also, we do have votes here shortly, and as I talked to all of you a while ago, we are going to try and get as far down the road as we can with testimony before we stop. We will take the time out then at that point, do our duty of going to vote on the different issues that are before us today, and then come back and complete the hearing. So let us see how far we can get.

Mr. Holland, we now recognize you for the first 5 minutes.

STATEMENT OF CLYDE HOLLAND, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, HOLLAND PARTNER GROUP, ON BEHALF OF THE NATIONAL MULTIFAMILY HOUSING COUNCIL (NMHC) AND THE NATIONAL APARTMENT ASSOCIATION (NAA)

Mr. HOLLAND. Thank you, Chairman Luetkemeyer, Ranking Member Cleaver, and members of the subcommittee. It is my privilege to appear before you today on behalf of the National Multifamily Housing Council and the National Apartment Association to discuss the challenges of meeting the increasing demands for multifamily homes for millions of working Americans.

I am the chairman and chief executive officer of the Holland Partner Group based in Vancouver, Washington. We are a fully integrated real estate investment firm in the western United States with experience developing approximately $7.5 billion in assets representing 30,000 apartment homes.

The lack of affordable workforce housing is placing increased financial pressure on middle-income Americans. According to a 2013 report by Harvard's Joint Center for Housing Studies, more than one in four renter households, or approximately 11.2 million individuals, paid more than half of their income for rental housing.

Without your leadership and effective policy enactment, meeting the affordability challenge will become increasingly difficult. Changing demographics and housing preferences drive more people toward renting.

Almost 75 million young adults are entering the housing market as renters. At the same time, Baby Boomers and empty nesters are trading single family houses for rental apartments. This combination of factors is forecast to lead to 4 million new renter households over the next decade.

There are several reasons why Americans are facing high rents and finding too few affordable options. First, while the cost to develop and operate rental housing increases annually, the median renter household income is virtually unchanged since 1981. In many markets, even if developers agree to take no profit, the cost to build still exceeds what people can afford to pay.

Second, there is an enormous mismatch between the supply and demand for apartments. As my first slide illustrates the NMHC and the NAA estimate that between 300,000 and 400,000 apartments must be constructed annually to simply keep pace with demand. Yet on average, just 208,000 were delivered annually in the 4-year period from 2011 to 2015.

While completions of 310,000 units in 2015 was an improvement, the stock of available entitled land is diminishing. Future development will be constrained, making it more difficult to fulfill the housing needs.

Lastly, development of new apartment homes is exceptionally difficult. In many markets, it is simply impossible. We have been developing and rehabilitating apartments for over 30 years, and the current environment is by far the most challenging.

There are many hurdles and regulations that can impede the process. Community resistance to renters or "NIMBYism"—not in my backyard—is frequent, but rarely based on legitimate concerns. Before a project can break ground, the entitlement process can take 2 to 10 years and require an up-front investment of $1 million or more.

Even in communities that want and desperately need new multifamily developments, the numerous hurdles that must be overcome include entitlement expenditures, zoning rules, environmental site assessments, impact fees, mandates like inclusionary zoning or rent control, and labor expenses and building code requirements.

One thing I will point out on the slide that is before you is in 2007 when the financial meltdown happened, there were many individuals and firms involved with land entitlement. They lost everything, and today the funding for new entitlements is nearly nonexistent.

And so the raw material necessary, particularly in high-barrier entry markets, of zoned land that can be utilized is falling at a rapid clip.

All of the costs add up. Point Loma Nazarene University studied the San Diego housing market and found that regulations increased the cost of housing by a staggering 40 percent.

The White House Council of Economic Advisers Chairman Jason Furman recently noted that multifamily housing units are the form of housing supply that is most often a target of regulation. We could not agree more.

The bottom line is that workforce housing development requires a partnership between the government and the private sector. Local governments can do this by bringing down barriers to development and incentivizing for-profit entities to build apartments at a price that is affordable for the community.

When both the public and private sectors bring all their tools and assets to play, there is a greater likelihood of finding solutions to our housing challenges. Specific proposals to accomplish these objectives are included in our written testimony.

Americans work hard and deserve quality housing at a price they can afford. As a Nation, we are falling far short of our goal. What is needed is a bold, fresh vision that sets aside historic approaches. We recommend a task force challenged with developing effective solutions to today's housing challenges. Thank you.

[The prepared statement of Mr. Holland can be found on page 68 of the appendix.]

Chairman LUETKEMEYER. I thank the gentleman for his testimony.

Next, Mr. Daily is recognized for 5 minutes. You may begin.

STATEMENT OF F.R. JAYAR DAILY, CHIEF OPERATIONS OFFICER, AMERICAN HOMESTAR CORPORATION, ON BEHALF OF THE MANUFACTURED HOUSING INSTITUTE (MHI)

Mr. DAILY. Good afternoon, Chairman Luetkemeyer, Ranking Member Cleaver, and members of the subcommittee. My name is Jayar Daily. I am the chief operating officer of American Homestar Corporation, which designs and produces manufactured housing.

Thank you for the invitation to serve as a witness at this important hearing about regulatory barriers to affordable housing. I am pleased to testify on behalf of the Manufactured Housing Institute, of which I serve on the board of directors, and I am the immediate past Chair of the Manufacturer's Division and the chairman of the National Modular Housing Council Division.

Twenty-two million Americans call manufactured housing their home. It is simply the most affordable home ownership option for families who live in non-metropolitan and rural areas.

Median income per manufactured homeowners is just over $26,000 each year. Last year, the industry produced over 70,000 homes, roughly 9 percent of the new single family home starts.

I am pleased to testify on the regulatory barriers facing manufactured housing, a critical source of available housing which in so many parts is in short supply.

While much progress has been made in achieving economics of scale in delivering high-quality affordable homes under a robust Federal housing code, there are three strong headwinds that keep the industry from fully meeting the critical need for affordable housing in this country.

First, we have a housing financing system that does not adequately meet the needs of borrowers looking to finance and purchase manufactured housing.

CFPB regulations pertaining to the definition of loan originators as well as HOEPA provisions governing small balance loans have prompted a decline in smaller loans, shutting out many customers. We applaud this committee and the House for passing H.R. 650, the Preserving Access to Manufactured Housing Act, this past year.

In addition, FHA's Title I program for title lending simply does not work as evidenced by the fact that there are only 80 certified appraisers in the entire country, and the fact there was only $24 million of endorsements in 2014.

Finally, despite the 2008 Housing and Economic Recovery Act's duty-to-serve requirements for manufactured housing, Freddie Mac and Fannie Mae have largely stayed away from participating in the chattel home-only market, which represents 70 percent of the total homes that are sold. With the recently proposed Duty-to-Serve rule, we see the opportunity for development of a secondary mark for chattel loans.

The second headwind is that manufactured housing production is regulated by the HUD code, a comprehensive set of guidelines that touches virtually everything in the assembly and site process.

While the industry works well with HUD, there are several areas where improvements are needed: greater attention to economic impact concerns as HUD finances its regulations; exercising its preemption authority with States and localities as we are pre-empted out of zoning by some communities; and ensuring greater coordination among Federal agencies that impact housing, such as the Department of Energy's energy efficient standards.

We support H.R. 3135, which would ensure that HUD remains as the prime regulator in the partnership with the DOE.

Finally, the third strong headwind is the 1974 legislation that brought the industry into the modern era, the Manufactured Housing and Construction Safety Standards Act. It is antiquated.

For example, the Act puts the industry under Federal lemon laws, even though we are not an automobile business, and if otherwise robust quality assurance and dispute resolution tools under the HUD code. And the Act requires that homes be built on a steel chassis, which stifles design innovation.

We believe, in conclusion, through partnership with this committee and our work with HUD and other agencies, we will make progress in these critical areas and will continue to expand the supply of affordable housing. Thank you for the opportunity to testify.

[The prepared statement of Mr. Daily can be found on page 42 of the appendix.]

Chairman LUETKEMEYER. Thank you, Mr. Daily. You came in a minute under the bell there. Well done.

Ms. Been, you may proceed. You are recognized for 5 minutes.

STATEMENT OF VICKI BEEN, COMMISSIONER, NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Ms. BEEN. Thank you. Chairman Luetkemeyer, Ranking Member Cleaver, and members of the subcommittee, thank you for the opportunity to testify today. I am Vicki Been, the commissioner of the New York City Department of Housing Preservation and Development (HPD).

HPD is responsible for carrying out Mayor Bill de Blasio's initiative to build 80,000 new affordable homes and preserve the quality and affordability of another 120,000 homes over the next 10 years.

Let me highlight a couple of key initiatives we have undertaken in the City to help address the critical need for affordable housing. And I will then explain why that need, despite the City's Herculean efforts, requires both greeter Federal commitment to fund the construction and preservation of affordable housing and more flexibility in Federal programs.

First, the City has doubled the capital funding that the City is providing to create and preserve affordable housing to $8.2 billion over 10 years. Funding from the Federal Government is absolutely crucial to address the affordable housing crisis. But while we are asking Washington for support, we are committing a huge amount of our own resources to build new and preserve existing affordable housing.

Second, our City Council is voting as we speak on two very significant changes to our local regulations to provide new tools to achieve affordable housing for a broad range of families and to remove inefficient regulations that raise the cost of housing.

The first change will implement mandatory inclusionary housing. Our program will broaden the income levels that we serve so that we can provide homes to families who are at poverty level, far below the 50 percent to 60 percent AMI of tax credit properties, as well as all the way up to moderate-income workers earning 80 percent of AMI, for example, who increasingly are being priced out of the city.

We have also made major updates to our 1961 zoning text to encourage more senior affordable housing and remove unnecessary parking requirements and other regulatory barriers to the production of affordable housing.

Much has been made of the burdens that regulation imposes on construction, and our update to the zoning text removed many inefficient regulations.

But many of the regulations that folks claim are unnecessary or unduly burdensome are critical to making our neighborhoods safe and to ensuring that growth doesn't outpace the supply of essential infrastructure and services.

Sadly, we saw this illustrated in the East Village last year where construction and gas connections that were not in compliance with the building code leveled multiple buildings, killed two people, and displaced dozens from their homes.

Let me turn to a few areas where I believe Congress could be enormously helpful in addressing the housing needs of people all across the country.

First, the low-income housing tax credit could be even more successful if the program were amended to allow-income averaging. The developer could offer units affordable to tenants earning between 40 percent and 80 percent of AMI.

The higher-income units could then cross-subsidize the lower-income units and communities would be able to serve lower-income households without any additional cost to taxpayers or to the developer, and would be able to meet the needs of a far broader group of families.

Next, day in and day out we hear from local elected officials and community organizations about the dire need for senior housing. Historically, the HUD Section 202 program spurred the production of affordable senior housing. But it has been completely defunded since 2011.

We desperately need Congress to restore funding for the Section 202 program. In New York City, alone we have 200,000 seniors on wait lists for affordable housing in the City. Without Section 202 funding, we are unable to meet those needs.

Finally, there are many critical HUD programs that we use locally, including HOME, public housing capital and operating funds, RAD, but I must stress the paramount importance of the Section 8 voucher program. I know that Congress is very concerned about the growth of this program as a percentage of the overall HUD budget, but I can't emphasize enough how critical it is.

We use those vouchers to allow us to rehab dilapidated housing, where residents could not afford the increased rent that would otherwise be necessary to support the rehab. We use vouchers to help prevent and to end homelessness. We project-base Section 8 vouchers to develop new affordable housing, especially for seniors.

I am hopeful that our sustained local commitment to preserve our existing affordable housing and build much-needed new affordable housing will stabilize our neighborhoods. But we can't do it alone. Our local efforts must be paired with a renewed Federal commitment to fund affordable housing and support local government's efforts to provide better homes and stronger neighborhoods for our low-income families.

I am grateful for the subcommittee's attention to affordable housing and for calling today's hearing. And I am happy to answer any of your questions.

[The prepared statement of Commissioner Been can be found on page 34 of the appendix.]

Chairman LUETKEMEYER. Thank you, Ms. Been.

Mr. MacDonald, you are recognized for 5 minutes.

STATEMENT OF GRANGER MACDONALD, PRESIDENT, MACDONALD COMPANIES, ON BEHALF OF THE NATIONAL ASSOCIATION OF HOME BUILDERS (NAHB)

Mr. MACDONALD. Chairman Luetkemeyer, Ranking Member Cleaver, and members of the subcommittee, thank you for the opportunity to testify today. My name is Granger MacDonald. I am the chief executive officer of the MacDonald Companies and a home builder and multifamily developer from Kerrville, Texas. I also serve as NAHB's first vice chairman.

Mr. Chairman, we appreciate the opportunity to testify as the home-building business is the most regulated industry in America. Regulatory burdens impose costs on the development of land and construction of single family and multifamily homes. These added costs are passed along to homeowners and renters through higher prices and rents.

On average, 25 percent of the price of a single family home is attributed to regulation. Regulation is pushing up the price of housing beyond the means of many middle-class working families.

On a national basis, a 1,000 increase in home prices leads to pricing out slightly more than 206,000 individuals from home purchase. Over 110,000 renter households will become burdened by rising rates if he cost of producing rental housing units increases by .1000.

The construction trade is constantly the focus of regulations from OSHA, EPA, DOE, FEMA, and other agencies. Specifically, regulations on energy codes, EPA's Waters of the United States, OSHA's crystalline silica, the Department of Labor's persuader rule and joint employer standards, and the ADA compliance are only a few of the myriad of regulatory issues that my industry faces on a daily basis.

All of these regulations factor in the cost of housing as cost increases and access to capital remains tight. Home buyers and renters will have fewer safe, decent, affordable housing options.

While regulatory reform will help us lower the development costs to reach lower-income households, it is financially infeasible to construct new, unsubsidized, affordable housing units without Federal assistance. It is important to remember that the regulatory reforms are not a substitute for programs like the low-income housing tax credit and housing choice vouchers.

Let me expand on a number of barriers that directly affect housing affordability. NAHB has serious concerns regarding the decreased housing affordability that will result along the Nation's rivers and coast once HUD begins to implement the Administration's flood Executive Order.

This order expands the floodplain management requirements far beyond the long-established 100-year floodplain. HUD has indicated it will apply the order to all Federal projects such as HOME, CDBG, and federally-insured multifamily projects, such as FHA-backed loans.

The major concern is that HUD has not mapped the geographical limits of the expanded floodplain or analyzed the costs and benefits of implementing new standards.

Additionally, the home-building industry is experiencing a major labor shortage, with 41 percent of the builders identifying this as their top concern. I have seen how labor shortages have delayed construction projects and made them more costly. Projects that should have taken 14 months and $100,000 per unit to construct, now take 18 months and $115,000 per unit to construct.

It is impossible to build rental units without reluctantly passing on the increased cost to the consumer. To address this labor shortage in our industry, we should work to encourage careers in construction. And the trades in the residential building and modeling are good, family-supporting jobs. Carpenters, for example, earn an average of $45,000 per year, while electricians and plumbers earn an average of $54,000 a year.

The Davis-Bacon Act can substantially increase the cost of constructing affordable housing. Smaller builders and subcontractors are ill-equipped to deal with the compliance burdens and the reporting mandates that are required on a weekly basis.

These burdens are disproportionately affecting small businesses who cannot afford to hire the compliance staff or consultants. This negatively impacts the goals of the government's housing program by unnecessarily creating additional layers of bureaucracy and cost.

Lastly, the ability of the home-building industry to address affordable housing needs that can contribute significantly to the Nation's economic growth is dependent upon the housing finance system that provides adequate, reliable credit. At present, home buyers and builders continue to confront challenging credit conditions, weighed down with overzealous regulatory response to the Great Recession.

Lingering doubts and uncertainty of the market participants has resulted in undue restrictions on availability of mortgage credit to many creditworthy homeowners. It is essential that all levels of government work together to remove the unnecessary red tape that delays and prevents development.

I would like to thank the subcommittee for the opportunity to testify today. We look forward to working with you to achieve the necessary reforms and expand the availability of affordable housing.

[The prepared statement of Mr. MacDonald can be found on page 85 of the appendix.]

Chairman LUETKEMEYER. Thank you, Mr. MacDonald, for your testimony.

And Professor Dickerson, you are recognized for 5 minutes.

STATEMENT OF A. MECHELE DICKERSON, PROFESSOR, THE UNIVERSITY OF TEXAS AT AUSTIN SCHOOL OF LAW

Ms. DICKERSON. Good afternoon, Chairman Luetkemeyer, Ranking Member Cleaver, and members of the subcommittee. My name is Mechele Dickerson and I teach both law students and freshmen at the University of Texas at Austin.

Thank you for giving me the opportunity to participate in this hearing on the housing unaffordability crisis and how it is affecting middle-class, middle-income families throughout our country. You have asked me to specifically address how overall housing trends and recent changes in the U.S. housing market should inform housing policies.

Middle-class and working-class Americans who work hard, play by the rules, and are not leading extravagant lifestyles are struggling to find affordable housing to buy or to rent. And this has now become a national crisis.

There are two things I will stress about the current housing unaffordability crisis. The first is that the crisis involves more than just sluggish home sales.

It is certainly true that soaring single family home prices have now made it harder for middle-income Americans to become homeowners. The 2015 overall homeownership rate of 63.4 percent was the lowest rate in this country in almost 50 years.

But the crisis is having a devastating effect on people who are and likely will always be renters. Since the recession, the number of renters in the United States increased by double digits and renter households are now the majority in 9 of the 11 largest U.S. metropolitan areas.

Unfortunately, affordable rental units are not being built at a rate that is keeping pace with the heightened demand for these units. The housing affordability crisis is not limited to the home buying market, so solutions to the crisis should not be narrowly focused on ways to make it easier for people to buy single family homes.

We saw during the recent housing crash and recession that it is not enough to just relax regulations in lending standards to qualify borrowers for a mortgage loan. Homeowners won't remain in their homes if they don't have the financial means to do so.

The second point I will make is that the housing unaffordability crisis involves more than just poor people, although certainly housing unaffordability is a problem for the poor. Even full-time workers are now struggling to find affordable housing.

The harm to the middle-class is striking. Approximately 75 percent of renters who earn between $30,000 and $45,000 each year, and almost 50 percent of rental households who earn between $45,000 and $75,000 each year, pay more than 30 percent of their income on housing. That is the core of our middle-class and they are paying a disproportionate amount of their annual income on housing.

Young adults in particular are struggling. Our Millennials, between the ages of 25 and 34, the ones who should be first renting and then buying homes, are unable to do so. Their homeownership rates are the lowest they have been in more than 20 years.

Young workers who have good-paying jobs are finding it hard to buy homes or even to pay rent. Many have returned home to live with their parents because they can't afford to both repay their student loans and also to pay rent or to save enough to buy a home.

Housing policies should continue to support developers who want to build and Americans who have the means to purchase large single family homes. However, if we as a Nation are serious about solving the housing unaffordability problem, everything needs to be on the table and up for re-examination.

All current land use laws and policies should be re-examined to ensure that the policies reflect the new economic realities middle-class families are facing. Cities and states need to rethink their zoning laws and policies and consider whether things like inclusionary zoning can help ease the affordable housing crisis.

As a Nation, we must reject the antiquated view that large single family homes are preferable to all other forms of housing. And finally, we need to consider whether one of the largest tax expenditures, the mortgage interest deduction, which disproportionately favors high-income taxpayers, needs to be reviewed or revised because there are so many middle-income households that are struggling to even find an affordable place to rent.

Mr. Chairman, I commend you for convening this hearing, and I thank you. And I will be happy to answer any questions you might have.

[The prepared statement of Professor Dickerson can be found on page 55 of the appendix.]

Chairman LUETKEMEYER. We thank the panel for their testimony. And I now recognize myself for 5 minutes to begin the questioning. Hopefully, we can get through a couple of groups before we have to go vote.

Mr. Holland, you had some interesting testimony and you represent the multifamily housing group. What do you see as the biggest barrier or the most burdensome rule, the most burdensome regulation to being able to build affordable housing, multifamily housing?

Mr. HOLLAND. Mr. Chairman, thank you very much. That is a very good question. What I can say is the biggest concern for providing housing really differs. In the middle of America, you have a very different environment, if you will, than you have at the coasts.

In your high-population areas, the biggest impact to providing affordable housing is the lack of zoned land or land that is entitled for high-density housing.

The nature of the housing demand has shifted. You have Millennials that are about 75 million. They want to live downtown. They want to walk to work. They don't want to be involved in commuting. So the competition for urban infill housing is extreme in your rising Gen Y workforce markets.

With respect to the open areas and areas essentially in the middle of America, you have a different set of elements. Mr. Granger and Mr. MacDonald talked about the regulation and aspects of that. And one of our studies showed that 40 percent of the cost of a rental apartment has to do with regulation.

And so within the confines, if you will, of where we are at, that lack of entitled zoning and land and the increasing burdens of costs associated with that are really the center of that.

Chairman LUETKEMEYER. Okay. You said 40 percent of the cost of producing a rental unit is due to the rules and regulations?

Mr. HOLLAND. Yes, sir.

Chairman LUETKEMEYER. Holy smokes. Okay.

Professor Dickerson, quick question for you. You made a comment a minute ago about the percentage of income people are able to pay. Would you give me a figure of what you think would be adequate for somebody to be able to pay a certain percentage of your income for rent and/or house payment?

Ms. DICKERSON. Historically, 20 to 25 percent was the number. The problem is that 30 percent is now seen as the floor and it goes as high as 50 percent.

Chairman LUETKEMEYER. Okay. And I assume that sometimes people can afford 30 percent more than they can afford 50 percent because they have a higher income. So 30 percent of a high income is a lot less than 50 percent of a small income. So it depends on how much income you make I would assume, depending on what percentage you can pay. Is that right?

Ms. DICKERSON. I'm sorry. I misunderstood your question. I thought you were referring just to the middle-class.

Chairman LUETKEMEYER. Okay. Well, that is a good place to start. So I appreciate that. Very good.

Mr. MacDonald, you had some interesting comments with regards to the different problems that you see with regards to building homes and providing adequate housing for folks. And you talked about floodplain problems. Can you explain that just a little bit?

Mr. MACDONALD. Yes, sir. The new rule, the Executive Order that is coming down that HUD is looking at, changes the 100-year floodplain to a new undefined amount of floodplain. And the problem that we have with it, and we are not saying that we are opposed to the Executive Order at this point until it—but we are opposed until it is better defined.

And HUD itself has done none of the modeling to determine what that floodplain would be. So we don't know for every foot you go up, how many feet you go out laterally, and so until there is modeling done to prove what that is, we can't even determine the cost or the real effect of it.

And we would appreciate HUD suspending any action on the Executive Order until they actually know the full extent of it, and the unintended consequences.

Chairman LUETKEMEYER. Ms. Been, on the 80,000 new affordable housing units that the mayor is proposing, are those for seniors, disabled, other folks, mixed?

Ms. BEEN. They are available—

Chairman LUETKEMEYER. Or is it mixed-use of everybody or is it just subsidized housing or can you explain what is in the 80,000?

Ms. BEEN. So the 80,000 is subsidized housing and it is available for a wide variety of people at a wide variety of incomes. We do provide housing that is only for seniors. So for example, in the last 2 years we have provided about 3,000 new units just for seniors, but seniors can enter the lottery for any of our new units as well.

Chairman LUETKEMEYER. Okay. These are all subsidized units.

Ms. BEEN. Yes.

Chairman LUETKEMEYER. That is not a mixed-use structure where you have individual private pay and/or a commercial use within a building and then subsidizes rent. This is only for subsidized folks?

Ms. BEEN. This is only for the subsidized units. Often, they are in mixed-income building and serve a range of incomes.

Chairman LUETKEMEYER. Okay. I thank you. My time has expired.

With that, I will go to the gentleman from Missouri, the ranking member of the subcommittee, Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you, Mr. Chairman. I want to focus on low-income housing tax credits. And since this is the largest driver of private sector investment, what can we do? Only about 10 percent of those tax credits are used. What can we do to attract a greater number of corporations, individuals who are interested in some kind of a housing development?

Ms. Been?

Ms. BEEN. I am happy to jump in there. I am happy to say that we use every low-income housing tax credit available to us in the City. And the way that we do that is by using those tax credits to leverage other resources, both private resources and other subsidies from the City.

We also work very hard to provide greater flexibility. As you know, one of the critical issues with the tax credit program is that because it targets 50 percent and 60 percent AMI then you are not serving many of the poorest families and you are not serving a lot of the working and middle-class that Professor Dickerson mentioned.

By allowing averaging you provide a lot more flexibility and also, you give the developers a flexibility that makes the risk of the property less intense. If they have a family who earns income that is now at 65 percent that can be averaged out so that they don't have to evict that family in order to stay compliant with the low-income housing tax credit rules. So greater flexibility is the key.

Mr. CLEAVER. Is the dollar for dollar sufficient as a magnet?

Ms. BEEN. Is it sufficient? Well, it is necessary. There are probably other things that are required as well. A great deal of flexibility about both the zoning entitlements, all kinds of flexibility is required in order to attract people to those developments.

Mr. CLEAVER. Mr. MacDonald?

Mr. MACDONALD. In the State of Texas, we are about five to one oversubscribed for the credits. In the allocation process there are five projects for every one that gets funded. So we could use more credits. Right now it is based on 2 per capita for every citizen in the State.

Mr. CLEAVER. You all would expect that from Texas.

Mr. MACDONALD. Yes.

[laughter]

And it is hard in Texas right now to get a deal obviously because there are so many people fighting for them. And part of the scoring process and the qualified allocation process is deeper skewing and you get more points for deeper skewing.

For example in Texas, if you are going to be successful in getting a tax credit for your project now, you have to go to 30 percent or 40 percent median income for a percentage of your tenants or you are not going to score high enough to win the deal.

Mr. CLEAVER. So do either of you, Ms. Been or Mr. MacDonald, believe that we are already operating at optimum level in order to attract private investment?

Mr. MACDONALD. I would love to see more funds put into tax credits. I'm sure that would be a hard fight. It is hard every time we try to get anything in the tax credit program done for increasing the amount of credits.

But they are one of the finest investments for private sector governmental sector partnership that has ever been designed because you have a government hand in helping facilitate getting something done that is run in the private sector. So it is the best of both worlds.

Mr. CLEAVER. Ms. Been?

Ms. BEEN. I would agree with that. Not only are our tax credits vastly oversubscribed, but we allocate our tax credit properties through a lottery. We are now getting 1,000 applications for every single unit of affordable housing that we are putting on that lottery.

So the need is vast and we need even more tax credit money. It leverages a huge amount of private investment. So it is well worth the expenditure.

Mr. CLEAVER. Mr. Holland?

Mr. HOLLAND. Yes, sir. One of the things that is overlooked many times is the 4 percent tax credits with 80/20 bonds. If you look at the success of the 80/20 bond program, it creates the single largest number of units both market rate and affordable housing that has been available.

However, since the meltdown, and with Fannie and Freddie being put into conservatorship, the cost of credit enhancement of those bonds for many of the last 5 or 6 years, has not been available. And the cost of rollover credits is now up 300 percent.

And so with effective credit enhancement for the 80/20 bond program it will unlock the use of 4 percent tax credits, which have largely been wasted. And they are not being utilized. And so with the oversubscription of the 9 percent credits, if we had effective credit enhancement for the low floater bond program we would be there.

We also support income averaging because it is a much more effective outcome.

Mr. CLEAVER. Right. Thank you.

Chairman LUETKEMEYER. The gentleman's time has expired.

Votes have been called, so I think we are going to try and get one more Member in, and then we will move to recess.

And with that, we go to the the vice chairman of the subcommittee, the gentleman from Georgia, Mr. Westmoreland, for 5 minutes.

Mr. WESTMORELAND. Thank you. I am a recovering builder, so I have some interest in this.

Mr. MacDonald, on the flood insurance, this committee is very concerned about flood insurance and the cost of it. Is it true that you still, even though just a corner of your property would be in a flood plain and the elevation of your house could be 6 feet above that, could you still have to have flood insurance with an FHA loan?

Mr. MACDONALD. That is correct, sir.

Mr. WESTMORELAND. We are going to hopefully try to get that to where there is some type of elevation that you would no longer have to have it, but I am assuming that the reason they are requiring them to have flood insurance is knowing they would never flood and help offset somebody else's.

The other question I have for you is on OSHA. Since OSHA, if I understand it correctly, has gone to a policy much like the IRS where if somebody turns in a safety violation they get a certain amount of that fine, have you seen an increase in the OSHA violations in the last couple of years?

Mr. MACDONALD. We have. We have seen a large increase in OSHA inspections in all forms of the construction industry. And I wouldn't want to speculate as to what caused it, but I certainly wouldn't tell you you were wrong.

Mr. WESTMORELAND. I think that is probably a big cause of it.

Mr. Holland, did you do a project in Griffin, Georgia?

Mr. HOLLAND. No, sir.

Mr. WESTMORELAND. Okay. The preowned homes—the sales were down about 8 percent.

Mr. HOLLAND. Yes, sir.

Mr. WESTMORELAND. Have you seen a rise in the rental? I know you talked about how many units were going to be short. Have you seen an increase in your rental occupancy that would kind of counterbalance what the preowned homes have been?

Mr. HOLLAND. Yes. What we have seen, particularly in our urban environments, is that the demand for housing is far outstripping our ability to build supply. And that the cost, it is really there are three parts of the triangle.

One part of the triangle is the cost of the actual housing. The second part which families have to deal with is the cost of transportation of where the housing is built compared to where their job is. And the third part of that deal is really how you handle the infrastructure costs and who gets essentially tagged with those infrastructure costs.

And so yes, we have seen a significant increase in the demand for rental housing, which is pushing prices up very significantly.

Mr. WESTMORELAND. Is the impact cost basically sewer, water, police protection, or do they just kind of make up some stuff?

Mr. HOLLAND. Well, how did you say it? I wouldn't want to dissuade that aspect of things, but it has been noted that many cities which are suffering financial burdens because of the meltdown have looked to new development and significantly increased their impact fees to try and make up for lack of funding in other areas, which has pushed up the cost of the new housing.

And because of the Basel III regulations and the banking regulations an appraisal has to justify those rents. So the entire market has to bear that increase before you can qualify for your financing to move forward.

Mr. WESTMORELAND. Thank you.

Ms. Been, you mentioned 80,000 new affordable homes. Are those single family homes or—

Ms. BEEN. Some are single family. Most are multifamily. New York is a multifamily—

Mr. WESTMORELAND. And then another 120,000? You talk about how HPD is leading the mayor's charge in partnership with your sister agencies, developers, tenants, community organizers, elected officials, and financial institutions.

You don't have time to go through and tell me what each one of those do, but being from a rural area of the south, we don't see much of this. What part would the elected officials have in this? Would it be zoning, waiving the fees, or what would it be?

Ms. BEEN. The elected officials in New York, if there is a rezoning required, actually New York is mostly an as of right town. We don't do rezonings for every development. But if there is a rezoning required, the elected officials will weigh in as to what that rezoning should look like.

They will weigh in with specific concerns. You need a school to offset the people who are coming into this building, those kinds of things. So they will express the concerns about, is the infrastructure there to support the development?

Mr. WESTMORELAND. So does this organization have to pay the impact fees as well?

Ms. BEEN. We don't have impact fees in New York City.

Mr. WESTMORELAND. Wow. Well, I am sorry I am out of time, but thank you all.

Chairman LUETKEMEYER. The gentleman's time has expired. We are going to try and squeeze in one more Member quickly so we can—not too many people have voted yet, so I think we have enough time.

The gentlelady from New York, Ms. Velazquez, is recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Ms. Been, welcome to the committee. In your experience with housing development, especially with high-cost cities like New York, is it possible to build affordable housing without Federal rental subsidies like project-based rental assistance or fair construction subsidies like the low-income housing tax credit? Would the mayor be able to fulfill his promise of building all these units of housing without a Federal involvement?

Ms. BEEN. No. The Federal contribution is absolutely critical. It is critical in two ways. One is that to reach the very lowest-income families, the families who are at poverty level making 30 percent of AMI, we need a form of rental assistance.

The rent that those families can pay won't even keep the lights on, truthfully. So we have to have a form of rental assistance and that is critical from the Federal Government.

We do sometimes get cross-subsidies from the very high value neighborhoods, but the other place that Federal dollars are so critical is in the poorest neighborhoods where housing is not only providing affordable housing, but it is revitalizing the neighborhood. It is stabilizing it. It is providing jobs. And in those poorest neighborhoods, Federal dollars are absolutely essential.

Ms. VELAZQUEZ. Thank you.

Mr. Holland, in your testimony you stated that, "Congress should play a key role in addressing housing affordability." I agree with you. Can you discuss the importance of Congress increasing funding for affordable housing programs like the Section 8 program?

Mr. HOLLAND. Yes, absolutely. From the National Multi-Housing Council and the National Apartment Association's standpoint, we support full funding for these programs.

And looking at, again, you have a 9 percent tax credit program which has been very successful, but on the tax-exempt bond side the 4 percent tax credits have largely gone unused because of the lack of credit enhancement given Fannie and Freddie's situation.

And so effective separation of the rules, if you will, that are being put in place were being put in place because of issues in the single family mortgage lending areas.

The multi-family did not contribute to the financial meltdown. In fact, the losses at Fannie and Freddie from the apartment credit enhancements or the apartment lending were less than 1 percent of their portfolio.

So almost nothing. But yet the costs to credit enhance the 80/20 bond program under the current conservatorship are up 300 percent, which has limited our ability to use that tax credit program effectively.

Ms. VELAZQUEZ. Sure. Thank you.

Mr. MacDonald, almost 2 million households did not form during the recession. As the economy improves and hiring returns to normal, how will this pent-up demand affect affordability?

Mr. MACDONALD. The problem is the pent-up demand hasn't been met because of many reasons. A lot of folks have wanted to either move up to a nicer home, buy their own home, or even have their own apartment, and they just haven't been able to for many reasons.

The new mortgage requirements that are being required now are so stringent that it is the credit scores have to be so high to qualify for a mortgage that it is very hard for the first-time homebuyer and the move-up homebuyer. They can't get to the next level.

So consequently they are not moving up, and then that has created a backlog, so that when people can't get the move up homebuyer then they don't go to the next level or the next level. And you end up with people who are fairly stagnant in place, whether they want to be or not.

And then we all have people in the renter market. There are a lot of us who still have our children, grown children living in the basement because they can't figure out how to get their own place. And that is not something they want or we want, but—

Ms. VELAZQUEZ. Thank you. I yield back.

Chairman LUETKEMEYER. The gentlelady yields back. With that, we are going to recess. They tell me it will be somewhere around 30, 35 minutes, so we appreciate everybody's patience.

[recess]

Chairman LUETKEMEYER. Okay. We will gavel ourselves back into session here. I know we have a number of Members who are either here or on the way, so we will begin our questioning again.

And I thank the panel for their indulgence.

With that, we will recognize the gentleman from Texas, Mr. Williams, who was also an introducer a while ago. Mr. Williams is recognized for 5 minutes.

Mr. WILLIAMS. Thank you, Mr. Chairman.

And Mr. MacDonald, thanks again for being here. I appreciate it. In your testimony you say that 25 percent of the cost of a new single family home is attributable to government regulation. Why is that so important or noteworthy?

Mr. MACDONALD. That cost has to be passed on to the consumer. As a result it directly affects the affordability of the housing. And nationally, as I said earlier, 1,000 increases the price of 206,000 households; 1,000 increases the burden to 110,000 renters.

And in Texas, with the most significant price out effect, more than 18,000 households are pushed out of the market with a 1,000 increase.

Mr. WILLIAMS. I have a couple of questions here, and we will just go through them quickly. Do you believe that certain building constructions regulations at the local level are required?

Mr. MACDONALD. Yes, sir.

Mr. WILLIAMS. On page seven of your written testimony, you state that the collective force of the actions taken by these agencies, i.e., CFPB, HFA, regulators implementing the Dodd-Frank Act, has also resulted in undue restrictions on the availability of mortgage credit to many creditworthy borrowers. That is true, isn't it?

Mr. MACDONALD. Yes, sir.

Mr. WILLIAMS. Based on your written testimony, does the National Association of Home Builders believe that the Dodd-Frank Act was a mistake?

Mr. MACDONALD. Yes, sir. There are parts of it that the problem is we don't even have all the parts of it—

Mr. WILLIAMS. Right.

Mr. MACDONALD. —written yet.

Mr. WILLIAMS. But it would be good if we could let competition work. That would be the best thing, wouldn't it? Let the consumers decide?

Mr. MACDONALD. Fair market.

Mr. WILLIAMS. Mr. Daily, another great Texan I might add, right?

Mr. DAILY. Thank you for the recognition.

Mr. WILLIAMS. There you go. What makes manufactured housing an attractive option for affordable home ownership for consumers?

Mr. DAILY. The basic availability of manufactured housing is that on a cost per foot, it is about half the cost of site-built housing. It is built in a controlled environment. And it is primarily delivered to rural markets where production builders do not operate because they don't have scale.

Mr. WILLIAMS. It is a good option for consumers. Describe today's manufactured housing. How does it compare to site-built housing or traditional apartments in terms of quality and value?

Mr. DAILY. The traditional manufactured housing is built to the HUD code. And that is a pre-emptive code in the country that has been in place since 1974. And it is primarily a performance code that works across the country. Modular houses are built basically to the same code of the site-built homes.

Mr. WILLIAMS. You said that the CFPB regulations are harmful to consumers, as a lot of us believe. What evidence do you have of this harm?

Mr. DAILY. I think the primary piece of evidence that we have is that when we look at the home data, sales of homes less than $75,000 2014 to 2013 are down double-digits while other portions of the market are doing very well. So what it basically says is those people who are the first tranche of buyers really struggle to meet all the regulations.

Mr. WILLIAMS. In other words, another case of those people wanting to help people, but they end up hurting those people.

The House last year passed a bill that I believe will not only help the manufactured housing industry, but also consumers. How will the change in H.R. 650 help consumers?

Mr. DAILY. I think that if the bill ultimately passes, there are two components that will be very helpful. The first is the trigger rate being raised will allow more lenders to participate in the market because right now there are very few HOEPA loans that are being written simply because the lenders didn't don't want to touch them.

And then the second is the loan origination, where a lot of our buyers are new buyers or older people who have not purchased homes in a very long period of time.

Mr. WILLIAMS. I'm sorry?

Mr. DAILY. And by allowing our salespeople, who can operate under the Dodd-Frank regulations, be more helpful to these people I think it can help them to learn more about buying homes and the home-buying process.

Mr. WILLIAMS. And finally, if H.R. 650 becomes law, will consumers lose protections and will they be vulnerable to predatory lending, do you think?

Mr. DAILY. No. I don't believe any of those things will happen. Basically what we are asking for is some slight modifications to the current law that we believe will open the market, especially to that first tranche of buyers.

Mr. WILLIAMS. Thank you. And I might add too, Mr. Holland is also a Texan. You went to school in Texas, didn't you?

Mr. HOLLAND. No. I was born just outside of San Antonio.

Mr. WILLIAMS. There you go.

Mr. Chairman, I yield my time back.

Chairman LUETKEMEYER. The gentleman yields back.

We now go to the gentleman from Pennsylvania, Mr. Rothfus, for 5 minutes.

Mr. ROTHFUS. Thank you, Mr. Chairman. And again, I thank the panel for bearing with us during our break for the votes. I want to touch base, Mr. Holland, go back to what you were talking about earlier in response to some of the questions about the regulation.

And I think you said that 40 percent of the cost of multifamily is attributable to rules and regulations? Do you recall that?

Mr. HOLLAND. Yes, sir.

Mr. ROTHFUS. We are here looking at things from a Federal perspective. I am wondering if you can identify perhaps a Federal regulation that is responsible for driving up cost or alternatively what would be the single greatest Federal barrier to development?

Mr. HOLLAND. The greatest?

Mr. ROTHFUS. Either a Federal regulation—again, I am trying to look at things that we can be addressing from a Federal perspective. A lot of it—you mentioned zoning as an issue for, I think, the coastal cities. That is pretty much a local.

Mr. HOLLAND. If you look at effective housing, there are three parts of the triangle. One part is actually the cost of the building of the housing unit. The second aspect is how far that housing unit is from someone's job and their activities, so that is transit. The third portion of that is infrastructure.

And so we have to solve all three aspects in order to build because the local jurisdictions add the infrastructure costs in forms of impacts to our requirements. So we have to get active zoning. Then we have to pay for the infrastructure. And then we have to look at what the cost of transportation is for our consumer.

And so one of the things we would love to have an opportunity to do is to have a task force to look at all three because the cost of building, for instance, another freeway to the next subdivision on the edge of town is dramatically more than the cost to increase the density, if you will, to build a high rise in an urban environment where people can walk to work, or around the light rail or transit node where they can use public transportation.

And so we are looking for an effective voice, if you will, so that we can look at the whole part of the housing criteria.

In the Federal question, one of the things that I cited earlier was the lack of credit enhancement for the tax exempt bond program and the tripling of that cost with Freddie and Fannie in conservatorship.

The number of apartments that were built after the 80/20 bond program was launched in the early 1980s, which was a very difficult time, took starts from 200,000 units to 600,000 units over 3 years.

That is the kind of solution-based outcome that we feel like a task force that looked at all three of these components could help with and could make a very significant difference in.

Mr. ROTHFUS. If I could go to Mr. Daily, you had talked a little bit about the HUD code that was enacted in 1974, last amended 15 years ago. It would seem that addressing these rules which apply to all manufactured homes nationwide would go a long way towards improving the affordability of manufactured homes.

Which specific aspects of the HUD code are most harmful to your business as well as consumers?

Mr. DAILY. I think the first aspect is that we really need to get HUD to cooperatively work with our consensus committee before they issue governance because every time they issue governance and we really haven't had full discussion or conversation with them, it usually adversely impacts the cost of our homes. And in our business, every 100 makes a significant difference.

I think that the next opportunity is to really work on the HUD code and modernize it and that in itself will allow us to change the way the elevations of our homes appear if we can take them off the chassis ultimately and will also help the perception of the homes.

Mr. ROTHFUS. Mr. MacDonald, you list in your testimony some Federal agencies that have besieged the home-building industry, namely the Occupational Safety and Health Administration, the EPA, FEMA, and the Department of Labor.

You also specifically mentioned the Waters of the U.S. rule as an especially damning regulation that could increase housing cost. Could you explain your concerns about the impact of the Waters of the U.S. on home builders and your customers?

Mr. MACDONALD. Surely. The way the Waters of the U.S. is described is it takes every mud puddle, creek, the soil out in front of your driveway, and makes it a tributary of the waters of the United States, which would require you every time you develop a lot or a single family house you will have to get a LOMR–CLOMR review, engineering review by the Corps of Engineers to build on every single individual lot. It would be simply devastating in both time and money.

Mr. ROTHFUS. I yield back, Mr. Chairman.

Chairman LUETKEMEYER. Mr. Holland, would you like to answer that?

Mr. HOLLAND. I can speak to that. We had one project that was a great example of that in Hillsboro, Oregon, where we had water flowing out of a culvert and into a culvert across a two-acre parcel. And the Corps took the position that it was a navigable waterway. And that entire 2½ acre parcel became unbuildable because of that.

We would have put 250 apartments on that parcel had that regulation, coming out of a culvert and into a culvert. If they hadn't taken the position that those were waters of the USA and that was a navigable waterway. And it only had water in it during the 3 or 4 wettest months of the winter.

Chairman LUETKEMEYER. Could you not enclose that area?

Mr. HOLLAND. Excuse me, sir?

Chairman LUETKEMEYER. Could you have enclosed the area? Go from culvert to culvert and put a pipe in there that covered that entire area?

Mr. HOLLAND. Then we would have been locked up.

Chairman LUETKEMEYER. Okay.

Mr. HOLLAND. Because we would have been building in a—or we would have unauthorized deal of wetlands and devastating work in the Waters of the USA. I would be wearing stripes. I don't look good in stripes.

Chairman LUETKEMEYER. Okay. I thought maybe you could work with the EPA, but evidently you couldn't, no?

Mr. HOLLAND. The application process takes a year-and-a-half.

Chairman LUETKEMEYER. Okay. Thank you.

The gentleman from Kentucky, Mr. Barr, is recognized for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Holland, I will start with you. I appreciated your testimony about Section 8 reform, and I am particularly interested in how we can effectively deliver Section 8 vouchers in a more cost-effective way based on the existing allocations that we have.

And you talked about three-way leases and repetitive unit inspections, resident eligibility certification and other regulatory paperwork.

Can you amplify with specificity on the reforms that you would suggest to us on how to stretch those Section 8 dollars so that we don't have the waiting list that we have?

Mr. HOLLAND. Yes, absolutely. One is clearly streamlining the process, but another key aspect is confidence in the process. From a private sector standpoint, if you are going to count on a revenue stream, you need to know it is funded.

And notwithstanding the financial challenges that happened in 2008 to 2012 but sequestration and whether they were going to be extended or not extended, all of that uncertainty for owners who have to rely on making their payment on the first is really challenging.

And so one is confidence that the program you are going to sign up for is going to be there so that you can allow those units to be rented. Because if you don't have that confidence and that revenue stream gets interrupted, you will lose your property.

Mr. BARR. Yes, and I think that goes without saying, but I am particularly interested in the regulatory issues. So what are the—because we all know that the reliability and certainty is—

Mr. HOLLAND. Yes, sir.

Mr. BARR. —an impediment, but what about the, for example, the streamlining of the inspection process, the paperwork, the three-way lease?

Mr. HOLLAND. We support all of that, but for instance one is if you had a HUD inspection over the last 24 months, we think that you should allow somebody to move in right away without having to wait and re-inspect every unit every time, et cetera.

And so, a very thoughtful business-like approach to if it has been inspected, if there is a record of compliance, et cetera, allowing those to move forward without having very significant delays in those processes, which just reduces the income for everybody in the process.

Mr. BARR. Again, we do have limited resources so that makes sense.

And let me move now to Mr. Daily. I am a proud co-sponsor and supporter of H.R. 650, and I think it makes a lot of sense, particularly for my constituents in rural Kentucky and access to credit for an excellent affordable housing option for them, manufactured housing.

Can you describe for those colleagues of mine who couldn't bring themselves to support this effort, explain to them and on the record why it is inappropriate to classify manufactured housing small loans as high cost under HOEPA?

Mr. DAILY. The fact of the matter is that a lot of the people who want to buy a manufactured house, number one, they live in a rural area. Number two, their incomes are modest.

Their incomes can fluctuate based on what they do for a living. They work in agriculture. They work in a plant. So it is very difficult for them to check all the boxes to get a loan.

Mr. BARR. So when the Bureau says that your industry is predatory, what is your response?

Mr. DAILY. I would say we are not predatory at all. Basically, what we are trying to do is match people up with houses that make sense for them that they can afford.

Mr. BARR. Yes. And one of the things I have said is that they are going to protect people right out of their homes. This is an affordable housing option, and as you noted that the decline in manufactured home loan origination—

Mr. DAILY. Right.

Mr. BARR. —is evident as a result of these one-size-fits-all regulations. So I think that the mission of consumer protection is being turned around on its head here.

Mr. DAILY. I think there is an opportunity to be more flexible and for us to follow the rules with some more flexibility. And I think that the consumer will ultimately benefit if we can do that.

Mr. BARR. And if manufactured housing sellers are deemed loan originators, even though they are not receiving any compensation for the sale, other than just for selling the home and not for financing the loan, explain the appropriateness of that?

Mr. DAILY. The concern that we have with regards to origination is that the industry is committed to follow the law, number one. And by being committed to follow the law it is most appropriate that we really understand what our customers need in terms of size of house and what they can afford.

And the way that the law reads today, we basically can show them the home and then what we have to do is give them a list of possible lenders. And they are not experienced homebuyers so what happens is we lose customers that become disenfranchised. The process is just too difficult for them.

We believe that we can follow the law that will not be steering and it is up to the government to regulate to make sure that people aren't steering.

Mr. BARR. And these are fixed-rate, fully amortized, no balloons? These are pretty standard—

Mr. DAILY. Yes, these are typically chattel loans, right.

Mr. BARR. Right. Exactly. Well, I encourage you to stick with it and hopefully our friends in the Senate are listening to your testimony.

Mr. DAILY. Thank you.

Mr. BARR. I yield back.

Chairman LUETKEMEYER. The gentleman's time has expired. With that, we will go to round two.

And the ranking member, Mr. Cleaver, has some additional questions, so he is recognized for 5 minutes.

Mr. CLEAVER. Thank you. Mr. Barr, the Senate does not listen to anybody.

[laughter]

I move that we close the Senate and give—

[laughter]

Professor Dickerson, one of the concerns—this is somewhat personal—with children, young adults aged 24 to 35 are not buying homes at the same level they did when I was in that same age bracket. Actually, I owned a home when I was 26.

And I know there are a lot of factors in probably the student loan payments and so forth. I am interested in any other factors that you believe are inhibiting the purchase of homes by the Millennials. And the second part of it, maybe for everyone, is what can we do to remedy this?

Ms. DICKERSON. Another thing that inhibits it are stagnant wages. I don't know that there is necessarily any regulation that you all have in place or could pass that would deal with the issue of stagnant wages, but this is a problem that has been going on for 30 years where the income for the, whether you want to say top 1 percent or top 5 percent has been going up and income for pretty much everybody else has remained stagnant or has declined.

The other thing that has happened with Millennials is they are not forming households at the same rate that Boomers did. They are delaying marriage. They are delaying having children.

And the primary trigger for a young couple to decide they want to become a homeowner is, well, first they move out of the parents' basement. They marry. They have children and then they want to buy a home. And in many instances it is because of the school, the schooling issue.

Mr. CLEAVER. How do you get them out of the basement?

[laughter]

I'm sorry. I won't go there. But that is troublesome. There probably isn't one legislative thing we could probably do and drop the interest rates. I think it is almost a sin that we are making money, the Federal Government is making money off of our college students after graduation.

The rental housing that is being created, or much of it, is luxury units. And I am assuming that there is some kind of trickle-down theory that would take care of the luxury apartments and eventually will take care of the low to moderate-income.

Mr. Daily, do you have any—

Mr. DAILY. Specifically on rental?

Mr. CLEAVER. Yes.

Mr. DAILY. There is some rental activity that takes place in manufactured housing communities today. And it is just perking along. There have been some increases that I think seniors feel some pressure on, but generally speaking, I think it is operating quite well.

Mr. CLEAVER. Is it easier to do low- to moderate-income or luxury?

Mr. DAILY. As an industry, we typically do not build rental properties, luxury rental properties. We are primarily single family homes.

Mr. CLEAVER. Mr. MacDonald?

Mr. MACDONALD. My company typically builds workforce housing in smaller communities. We utilize the low-income housing tax credit program for a good amount of that. And then we also build conventional apartments, but we just do a very good job of trying to keep our costs in line so that we can function in those markets.

But I will tell you it is increasingly hard to do. And many of the problems that we encounter are the problems with Fannie and Freddie being basically out of the business, being slow to be able to react.

So we end up having to go to getting HUD-insured mortgages in the Section 221(b)(4) program and try to work through that. Then we encounter other issues with HUD that layer on more expenses on top of that.

So it is kind of a Catch-22 that we keep running into. We think we get one place fixed and then another one pops up. It is like whack-a-mole. It is just you can't quite get your arms around all of it at the same time.

But I think there is probably a trend to do more workforce-type housing than luxury housing. I am seeing that in the marketplaces now. It is not happening in the big cities. I am talking about in the smaller communities, mid-sized cities and the smaller cities.

Mr. CLEAVER. Ms. Been?

Ms. BEEN. Can I weigh in on that? We see actually a lot of the opposite. We see the trickle up that homes are built for really workforce, middle-income folks and then because the demand for housing, especially in urban areas is so great, we see that housing actually being rented by wealthier renters rather than the renters that it was intended for.

So and the trickle-down theory, at least in New York City, really hasn't panned out because the homes that are built for—on the luxury market have all kinds of restrictions in terms of how much income you have to have in order even to rent that apartment that it becomes very difficult for it to sift down in any way except over decades.

Mr. CLEAVER. Yes, my time has expired. My assumption was just that if we are leaving low-income tax credits—if we are leaving money on the table, if builders are leaving money on the table instead of going through low-income tax credits, the assumption is that they would automatically try to—they are moving towards luxury.

I yield back, Mr. Chairman.

Chairman LUETKEMEYER. The gentleman yields back.

Mr. Barr from Kentucky is recognized for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

And back to Mr. Holland really quickly. You spent a good bit of time in your testimony talking about "not in my backyard" the "NIMBY" issue and local zoning and land use laws. And Mr. Rothfus was touching on this a little bit, but if you could expand on what Federal role there is, if any, to encourage reforms to local zoning laws that would help facilitate the construction or rehab of affordable housing?

Mr. HOLLAND. Let me just touch on the NIMBY question, which is if you imprint—in the West Coast cities, for instance, I am going to—let me just take a step back.

We have 10 gateway cities in the United States where particularly in the areas—Austin, Texas, would be one, Portland, Oregon, Southlake Union in Seattle where you have very significant increases in technology-related jobs.

And what is happening is the kickback to it building more density is that people are using the zoning land use deal to tie up sites from 5 to 10 years. We are building one site in downtown Los Angeles where it took 5 years to get the zoning. They were sued because it was too dense. That took 2 years to resolve.

Then they were sued because it wasn't dense enough. That took another 2 years to resolve. And the gentleman who was a 30-year land developer said, "I am done." And we are finished. We just got that project finished. So from a Federal standpoint this is I-73, and the question is, will 23 be enough?

Now, if you took a small fraction of those transportation dollars and you said we are going to build a light rail or we are going to build transit hubs or we are going to provide access to the urban core, but it came with a requirement that said if you are going to take these transportation dollars you need to be able to have as of right zoning so you can put residential density around the transportation nodes and in the urban core.

That triangle between infrastructure, transportation, and housing has to be all three. And many cities want to do the right thing, but the local politicians are concerned about getting kickback from their constituents.

But in order to get transportation dollars, if you had to have as of right zoning around 5 percent of the land, the urban core and around the transit corridor, we could build significant amounts of housing that would then provide an adequate supply so you are not creating economic dislocation.

Because in those job centers in those gateway cities, those new jobs pay a hundred grand or thereabouts, very top, and they economically dislocate everybody else within that sphere. And that ripple down happens because we are not building the density of housing and a quantity of housing in those key submarkets.

Mr. BARR. Thank you.

And Mr. MacDonald, I didn't get a chance to talk to you, but I always enjoy talking to Bob Weiss in Kentucky and the Home Builders—

Mr. MACDONALD. Good man.

Mr. BARR. —Association in Kentucky and in Lexington, the largest City in my district, Todd Johnson. They do a great job representing our home builders. They talk about that labor shortage a lot.

In fact, the Home Builders Association of Lexington had to start their own privately funded building institute for workforce development. And so we know that is a big issue. So if you want to amplify that testimony a little bit, and tell us if there is anything that Congress can do to help there?

And secondly, talk a little bit more about Davis-Bacon and also Waters of the United States and any other regulations and the added cost to the home purchaser as a result of those regulations?

Mr. MACDONALD. Yes. So we have a huge problem with labor right now. In Texas, for example, the average age of an electrician is 61 years old. The average age of a plumber is 59 years old. A framing carpenter is 57 years old. So what we are doing is we are aging out of all the trades.

We have made a mistake in the country in that we have somehow told everybody that you are a failure if you don't go to college. And you are a failure if you don't end up with large student debt.

Mr. BARR. And these can be really good jobs. These can be—

Mr. MACDONALD. And—

Mr. BARR. —well-paying jobs.

Mr. MACDONALD. And what ends up—

Mr. BARR. And the demand is there.

Mr. MACDONALD. And we are talking about $50, $60 an hour jobs. We are not talking about jobs that—and that is not what happened. And that is not accounting for the guy who may start his own company and even do better than that. We are talking about someone who just works the trades.

And that is an extreme issue in the country that we need to figure out how to overcome. The Home Builders Institute, we are the largest trainer of people in trades. We work in prisons, everywhere else trying to get people to understand better about the trades issue.

Back over to Davis-Bacon for just a second. The problems of Davis-Bacon there, for example, are like the new electronic reporting program that Davis-Bacon uses. It is new and it is very difficult.

I have a subcontractor who has been working with me. He is a stone mason, Jose Guerrero. He is from Lytle, Texas. He has been with me for 12 years. He did the masonry work on my personal residence, and does all of our projects all over the State of Texas.

He travels great lengths sometimes to get to these projects. It is him, his brothers, and some of their sons. They do beautiful work. They are craftsmen in the first order.

I am building a project 30 miles away from his home in Seguin, Texas, and I can't use him because we are doing a (d)(4) Davis-Bacon property there.

And Jose is a wonderful guy, but he doesn't understand computers well enough to get online and follow the Davis-Bacon reporting systems required by HUD. And so he has been pushed out of the market. It is a gigantic unintended consequence for a minority contractor to lose business.

Mr. BARR. And my time has expired, but lead paint is also something that I hear about from my remodelers.

Mr. MACDONALD. Yes, sir.

Mr. BARR. I yield back. Thanks for your indulgence, Mr. Chairman.

Chairman LUETKEMEYER. Great questions. The gentleman yields back.

Let me just wrap up with a couple of questions for everybody. One of the questions I started out with a while ago was what is the most burdensome rule or regulation? Our hearing today is on future housing, government regulations and the high cost of housing.

Can each one of you give me the one rule or regulation that is most burdensome to you that you think could help alleviate or help improve or streamline or whatever it might be, housing general?

Professor Dickerson, do you want to—we were busy on the other end over here. That may not be your area of expertise, but I am sure you have a lot of background on that as well.

Ms. DICKERSON. Well, I guess I would. And it is not a Federal rule—

Chairman LUETKEMEYER. Yes, Federal. Yes.

Ms. DICKERSON. —or regulation but it does relate to the zoning issue. And I will respond to your question by mentioning that in 1926 the Supreme Court said that it is okay to segregate single family housing and apartments and keep them completely apart.

In that opinion, and I think that opinion now controls a lot of both State and local zoning theories, apartments and renters were referred to as "parasites."

And I think that as a country we have to get to the point that we recognize that if we are going to resolve the affordable housing crisis it is going to be a mixture of high end, mid-end, housing for the poor, and that we have to be willing to accept that in some instances people aren't going to be happy that certain types of affordable housing may be in their areas.

Chairman LUETKEMEYER. I think it is important, and I asked the question I think of Ms. Been a while ago when I was talking also, but I viewed the Hurricane Katrina rebuild, and a lot of their rebuilding is done in mixed-use.

You have a lot of folks who are renting who are able to pay it. You have commercial users in the building. You have subsidized renters. So by using that sort of a model it enables builders to do a better job of building and you can actually build communities around that versus just apartment after apartment after apartment.

And it seems like it works better. I don't know what your thought process is. You see in a little bit different spectrum perhaps what is going on.

Ms. DICKERSON. It not only works better but it is sort of consistent with the point I have been making that we have to think outside the box.

So simply because it is not a form of affordable housing that we have always used, simply because it may require us to think differently about what the Millennials want for housing? What do we need for working families? What do we need for people who live in a rural community?

One example that I will use is the City of Memphis, and I am only familiar with it because first, I am from Memphis, and second, I was there last week for a conference on urban blight. Most of the affordable housing units that have been created in the City of Memphis have been mixed-use and mixed-income.

And so I think that is a great way for a lot of cities to sort of deal with the issue of affordable housing and also to respond to some of the needs of Millennials who want to have everything around them. They don't want to have to get in the car to drive to get everything.

Chairman LUETKEMEYER. Very good.

Mr. MacDonald, would you like to answer the question that I originally posed here? We kind of got off—

Mr. MACDONALD. Certainly.

Chairman LUETKEMEYER. —but I appreciate that, Professor Dickerson.

What is the one rule that—whatever the spectrum that could help you be able to better provide housing for especially low- and middle-income folks?

Mr. MACDONALD. The problem is it is a bundle of sticks. It is the straw that broke the camel's back.

Chairman LUETKEMEYER. Okay.

Mr. MACDONALD. And it is just one on top of another on top of another on top of another. And yes, we could go and we could pull off one. We could say we could fix the Waters of the U.S. issue. We could fix the 100-year floodplain issue with HUD. I could go through the crystal silicon sand issue with the EPA.

All of those are wonderful things for us to be able to unload, but if you take one and all the rest of them stay, you haven't fixed the problem, sir. We have to address all of them.

I would love to be able to give you a silver bullet and say get that one, and I can't do it because it is the whole bundle of sticks.

Chairman LUETKEMEYER. What we are looking at doing is trying to find that bundle of sticks. We did H.R. 3700, which was a good step.

And I think it addressed—somebody had a question a while ago, I think Mr. Holland. You made a comment. We actually fixed your problem with regards to—

Mr. HOLLAND. Fix the dwelling re-inspections.

Chairman LUETKEMEYER. Dwelling inspections, yes, that is what it was. And then we actually fixed that problem with H.R. 3700. So we are listening and that is why we are having the hearings here today.

Ms. Been?

Ms. BEEN. I really appreciate what you did in H.R. 3700, which is a huge step forward for those of us in cities. But I would say that, again, one of the major barriers that we have to provide affordable housing is the rigidity of the tax credit rules. Having income averaging, which would allow us—it would reduce costs because we go through a lot of tenants to find the ones in the haystack who exactly fit to the income level.

We limit the ability of the City to use the tax credit program for preservation because you have existing tenants. And if one of them is at 65 percent of AMI, then you have problems in using the tax credit for preservation.

So that alone could make a huge difference in the way in which we could leverage the tax credit program to really provide exactly the mixed-income housing that we want.

We don't want everything at 50 to 60. We want that range because it is better for the neighborhood. It is better for the families. So having that flexibility would make a huge difference.

Chairman LUETKEMEYER. Great suggestion. Thank you very much.

Mr. Daily?

Mr. DAILY. I mentioned to Representative Barr about Dodd-Frank, HOEPA and the origination. Those are two of the primary obstacles we have today. But I think the bigger obstacle is secondary funding so that more people can enter the market, because we are the form of housing that is not subsidized.

And so we are truly trying to serve working Americans who need a new home. And if we had availability of more funds, I think we could do a much better job.

And the other fact is that we primarily serve rural markets. And when you go through rural America today, you see the state of housing, and it has deteriorated significantly. And I happen to go across the country on a regular basis on rural roads and so it is real. And those people deserve better.

Chairman LUETKEMEYER. When I left home and went off to college, my first housing rental was a mobile home. Then after I got out of school, my first home was a mobile home. And once I got married, my first home was a mobile home.

And my wife decided we needed to go someplace else, to do something else. So we moved again. But I have had interesting experiences with it, so thank you.

Mr. Holland?

Mr. HOLLAND. Yes, sir. Thank you.

Chairman LUETKEMEYER. How would you address that question?

Mr. HOLLAND. Yes, sir. Thank you very much. I would address that much like Mr. MacDonald did. We look at Davis-Bacon wages. In wood frame construction, they add about 25 percent of the cost of the buildable cost from that standpoint.

You look at some of the new energy regulations and the energy regulations don't have a payback for 30 years. It is hard to say that you shouldn't have an energy-efficient house.

But if it is a 30-year payback, and it raises the effective cost to the consumer, is it really something that is going to add to from that standpoint?

The question of Waters of the USA, et cetera, all of those, the regulations under Dodd-Frank for apartments, we weren't part of the problem. And so you didn't have the losses that Freddie and Fannie in the apartment sector, but because of the regulations of Dodd-Frank and the requirements in the risk-based capital, it is significantly increasing the cost of our construction loans. And also Freddie and Fannie spreads are increasing because of Dodd-Frank and Basel III from that standpoint.

The one thing I would throw out to you is in the western United States, particularly in California, the discrimination of many cities against apartments is one of the things that is significantly increasing the cost.

Cities want office buildings because they have the jobs and they get the property taxes they want; retail because they collect the sales tax. But they play a game of beggar thy neighbor where we don't want those people living in our town.

And it is really a problem because you have to add the transportation and getting approvals in those cities to be able to build apartments and to be able to allow the workforce who is working in that town to be able to live in that town at all. Just getting permission to build would be a dramatic improvement.

And so one of the things we would love to see is some type of guidelines where cities needed to have as of right zoning or zoning availability for their workforce so this game of pushing the apartments in some other place wouldn't be able to do that.

Chairman LUETKEMEYER. So are you advocating, say, would a mixed-use—

Mr. HOLLAND. Absolutely.

Chairman LUETKEMEYER. —structure work there? You are looking to try and appease the city fathers so you come in and say, we will build a mixed-use building where we can have some apartments as well as commercial use stuff in there?

Mr. HOLLAND. If we were to have a regime where we could build mixed-use around transit, because then families with limited means wouldn't need a second car. That would save them on average $9,000 a year to be able to use public transportation.

We would produce the housing. We would allow them to use effective use of the infrastructure or the transit. And the only reason most people need a second car is so that the second spouse can get to work.

So if you can have the density around the transit or in the urban core, it is going to significantly improve the choices and the cost from a development standpoint.

Chairman LUETKEMEYER. Very good. Well, I think we have exhausted all of the questions that we have for you. And I certainly appreciate everything that you have presented to us today. You have been fantastic witnesses. We certainly appreciate your patience with us.

Mr. CLEAVER. Mr. Chairman?

Chairman LUETKEMEYER. Do you have another one?

Mr. CLEAVER. No. I would like to enter into the record this document entitled, "Enterprise Community Partners Statement for the Future of Housing in America."

Chairman LUETKEMEYER. Without objection, it is so ordered. Anything else?

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

And with that, this hearing is adjourned.

[Whereupon, at 4:27 p.m., the hearing was adjourned.]

A P P E N D I X

March 22, 2016

Testimony of Vicki Been
Commissioner of the New York City Department of
Housing Preservation and Development
House Financial Services Subcommittee on Housing and Insurance
March 22, 2016

Chairman Luetkemeyer, Ranking Member Cleaver, and members of the Subcommittee, thank you for the opportunity to testify today. I am Vicki Been, the Commissioner of the New York City Department of Housing Preservation and Development (HPD).

HPD is the largest municipal housing preservation and development agency in the nation. We use a variety of loan and tax exemption authorities to create new affordable housing and preserve the affordability of the existing housing stock. HPD is responsible for carrying out *Housing New York: A Five-Borough Ten-Year Plan,* which is Mayor Bill de Blasio's initiative to build 80,000 new affordable homes and preserve the quality and affordability of another 120,000 homes. HPD is leading the Mayor's charge, in partnership with our sister agencies, developers, tenants, community organizations, elected officials, and financial institutions.

Like many communities across the country, New York City is facing a housing crisis. Many factors drive the crisis, but the core of the problem is that wages have been stagnant, while the cost of renting steadily has gone up. Fifty-six percent of renters in New York City are rent-burdened: they pay more than one third of their income on rent and utilities. In addition, about three in ten renter households in the City are severely rent-burdened – paying fifty percent or more of their household income for rent. The problem of extreme rent burden troubles communities in every state in the country, and is the most severe among the lowest income and most vulnerable families.

High rents are largely driven by the fact that demand far exceeds supply, but they're also driven by the cost of developing and operating affordable housing. Drivers of cost, particularly in cities, include: high land values that make acquisition difficult; the price of capital – especially when the financing structure is complicated; the cost of addressing community concerns about traffic, over-burdened infrastructure, environmental degradation, or the need for community facilities; high labor costs; and high local property taxes, especially if they favor homeownership over rental housing.

In New York City and around the country, the Federal government has historically played a critical role in affordable housing. Many of our most successful efforts to provide affordable housing and stabilize and revitalize communities depended upon direct federal subsidies, tax credits, or HUD mortgage products. Federal programs have not only housed low, moderate and middle-income families, but have helped to create jobs, jumpstart neighborhood regeneration, and spur economic development. Even in New York City, where city and state commitments to affordable housing historically have been the largest in the country, the vital role of the Federal government is seen in all five of our boroughs.

While I invite all members of the subcommittee to review our *Housing New York* Plan, I would like to highlight a couple of key initiatives we've undertaken to help address the need for affordable housing. I will then explain why that need, despite all our efforts, requires greater federal commitment to fund the construction and preservation of affordable housing.

First we've doubled the amount of capital funding that the City is providing to create and preserve affordable housing. Funding from the State and the Federal governments is absolutely crucial to address the affordable housing crisis, but it's important to note that as we asking Washington for more support, we are committing a huge amount of our own resources to building new, and preserving existing, affordable housing.

Second, it is important for the Subcommittee to understand that the vast majority of the affordable housing we are constructing in New York City is mixed-income housing, which affirmatively furthers fair housing by providing an opportunity for people with low incomes to live in the same buildings and same neighborhoods as people with higher incomes. Members may be familiar with the 80/20 program, in which we've used tax incentives to ensure that 20 percent – and now, under various reforms we've put in place, 25 to 30 percent -- of the units in most new rental buildings are affordable. Throughout the City, our affordable housing is critical to preserving vibrant and diverse neighborhoods and ensuring that low income families have access to neighborhoods with good schools and good job opportunities. To build on the success of this model, we made changes to our subsidy programs to broaden the income levels that we serve so that our buildings are offering more apartments to those families who are the poorest, as well as making more homes available to those moderate and middle-income workers – our teachers and sanitation workers, our nurses and retail clerks – who are being priced-out of the City.

Next, we're in the midst of finalizing two very significant changes to our zoning resolution. The first change will implement mandatory inclusionary housing, which requires, any time a lot or a neighborhood is rezoned, that the developer must include between 20-30% of the units as affordable, for families with incomes as low as $31,000 – or 40% of Area Median Income – for a family of three, all the way up to moderate income families. We've also made major updates to our 1961 zoning text to encourage more senior affordable housing, allow a range of facilities to serve our seniors, remove unnecessary parking requirements and other regulatory barriers to the production of affordable housing, and improve the ground floor community facility spaces and retail shops in affordable housing developments.

Much has been made of the regulatory burden placed on construction. There are instances where regulations can delay and hamper development, but much of the time compliance is ensuring the structural safety of buildings that protects not only the occupants – but the surrounding areas as well. In a dense area like New York City, the building code contemplates both the actual structure and structures appurtenant and nearby. Without this, the lack of integrity of the structure or systems can have devastating effects. Sadly, we saw this illustrated in the East Village last year, where non compliant construction and gas connections leveled multiple buildings – killing 2 and displacing dozens from their homes. Regulations – like freeboard requirements and energy efficiency also help keep housing affordable. By managing energy costs, low-to-middle income families can keep the cost of maintaining a property down. The same is true of the freeboard requirements which help lower flood insurance premiums and avoid catastrophic loss. Energy efficiency also benefits the overall health of residents and the City – mitigating health island effects and lowering emissions associated with heating and cooling. The "incidental" health benefits of keeping costs down for families is the type of smart regulation and policy making that we should be engaging in.

There are many other steps we're taking to implement the Mayor's housing plan and build and preserve 200,000 units over the next ten years. I'd be happy to speak further with members of the Committee about our work.

Let me turn to a few areas where I believe Congress could be enormously helpful in addressing the housing needs of people all across the country.

The Low Income Housing Tax Credit is the largest driver of investment in affordable housing, and as members know, provides the private sector with an incentive to invest in affordable rental housing, which is in critically short supply around the country. While the Credit is a wonderful resource, it could be even more successful if the stagnant statutory cap on incomes for affordable units were modified. When a Tax Credit building is built, the developer must make a percentage available to families that earn either 50-percent or 60-percent of Area Median Income. This creates two problems: first, the affordable units funded by the LIHTC are only available to families earning a narrow band of income; second, developments funded with LIHTC cannot serve extremely low-income or homeless families unless they secure another subsidy such as Section 8. If the program were amended to allow income-averaging, the developer could offer units affordable to tenants earning between 40-percent and 80-percent of Area Median Income. The higher-income units would then cross-subsidize the lower-income units, and communities would be able to serve lower-income households without any additional cost to taxpayers or the developer. Income averaging also would allow greater flexibility to accommodate those families who often are quite frustrated that they make just a few hundred dollars a year too much or too little to meet the narrow income bands the program currently targets.

Next, rarely does a day go by that we don't hear from local elected officials or community organizations about the dire need for senior housing. When the Bipartisan Policy Center released its "Housing America's Future" report in 2013, a central theme was the need for a more comprehensive focus on the housing needs of our seniors. Historically the HUD Section 202 program spurred the production of affordable senior housing in New York City, but it has been many years since funding for new Section 202 projects has been made. We desperately need Congressional help to develop affordable senior housing. The best way to help local governments meet the needs of our fast-growing senior population would be to provide sufficient funding for the 202 program to meet those needs.

There are many other HUD programs including HOME, the Public Housing Capital and Operating Funds, and McKinney-Vento Homeless Assistance Grants that are extremely valuable resources for local governments, but I must stress the paramount importance of the Section 8 voucher program. I know that Congress is very concerned about the growth of this program as a percentage of the overall HUD budget, but as a local practitioner I cannot emphasize enough how critical it is. We use these vouchers to allow us to rehabilitate dilapidated housing where residents cannot afford the increased rent that would otherwise be necessary to support the rehab. We use vouchers to help prevent, and to end, homelessness. We project-base Section 8 vouchers to develop new affordable housing, especially for seniors. I want to thank the Committee for passing H.R. 3700, which makes important and timely reforms that will help us use our voucher allotment more efficiently. But I can't stress enough how important it is for Committee members to support additional Section 8 funding. Recently Mayor de Blasio and a dozen mayors from across the country sent a letter to appropriators calling for a robust increase in both Section 8 and Public Housing Capital and Operating funds – this is a clear priority for cities large and small across the nation.

In its letter to witnesses the Committee asked us to comment on what the housing market will look like for the next generation. In New York City we are working desperately hard to make sure that families can afford to remain in our neighborhoods as they raise their children, that those children can then afford to stay in, or return to, the City as they start out on their own paths, and that our seniors can afford to age in place in the neighborhoods they helped to build. Unfortunately this means that we have to fight market forces that have driven rents sky-high and left very few pockets of naturally affordable housing. I am hopeful that our sustained local commitment to use creative local tools such as mandatory inclusionary housing and regulatory reform will ensure that we preserve our existing affordable housing and build much-needed new affordable housing, and thereby both stabilize our communities and reduce the income inequality that threatens to undermine the social fabric of our country. But we cannot do it alone - our local efforts must be paired with a renewed federal commitment to affordable housing.

I am grateful for the Subcommittee's attention to affordable housing and for calling today's hearing. I am happy to answer your questions.

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Attachments

- *Housing New York* By the Numbers
- Main Features of New York City's Mandatory Inclusionary Housing Policy
- Affordable Housing Mayors Sign on Letter – Fiscal Year 2017 Transportation, Housing and Urban Development, and Related Agencies

Housing New York By the Numbers
January 1, 2014 – December 31, 2015

Construction Type	HNY Starts to Date	HNY Starts To Date %
New Construction	13,929	35%
Preservation	26,275	65%
Total Plan To Date	**40,204**	

Occupancy Type	HNY Starts to Date	HNY Starts To Date %
Homeowner	3,644	9%
Rental	36,560	91%
Total Plan To Date	**40,204**	

Special Needs	HNY Starts to Date
Homeless Housing	2,462
Senior Housing	2,722

Affordability	AMI %	Income Range – 3 Person Household	HNY Starts since Jan '14
Extremely Low	0 – 30%	≤ $23,300	2,000
Very Low	31 – 50%	$23,301 - $38,850	4,223
Low	51 – 80%	$38,851 - $62,150	24,537
Moderate	81 – 120%	$62,151 - $93,250	2,396
Middle	121 – 165%	$93,251 - $128,200	6,830
Other	Super	N/A	218
Total			**40,204**

Main Features of New York City's Mandatory Inclusionary Housing Policy

Affordable housing will be *mandatory*, not voluntary, as a condition of residential development whenever developers build in an area rezoned to create opportunities for substantial new growth, whether the rezoning occurs as part of a City neighborhood plan or results from a private rezoning application.

The affordable homes required through Mandatory Inclusionary Housing will be *permanent*.

Levels of Affordability
Mandatory Inclusionary Housing will result in more affordable housing for a wider range of New Yorkers. It will be responsive to neighborhood needs, because the City Planning Commission and Council can choose which option, from a set of options, should apply within each particular rezoned area.

First, the City Planning Commission and the City Council must apply one or both of the following requirements to each Mandatory Inclusionary Housing area:

- 25% of residential floor area must be for affordable homes for residents with incomes averaging 60% AMI ($46,620 per year for a family of three), or
- 30% of residential floor area must be for affordable homes for residents with incomes averaging 80% AMI ($62,150 per year for a family of three).

In addition, the City Council and the City Planning Commission may decide to apply one or both of the following:

- An additional, limited workforce option for markets where moderate- or middle-income development is marginally financially feasible without subsidy:
    - 30% of the total residential floor area must be for housing units for residents with incomes averaging 115% AMI ($89,355 per year for a family of three), with 5% of the units targeted to families earning 70% AMI ($54,390 for a family of three), and 5% to families earning 90% AMI ($69,930 for a family of three).
        - No direct subsidies can be used for these affordable housing units.
        - This option cannot be applied to Manhattan Community Districts 1-8.
- An additional, very low income option:
    - 20% of residential floor area must be for affordable homes for residents with incomes averaging 40% AMI ($31,000 per year for a family of three).
        - No direct subsidies, tax exempt bonds, or low income housing tax credits can be used for these affordable housing units, unless HPD determines that those subsidies will achieve more or deeper affordability.

Mandatory Inclusionary Housing represents the floor, not the ceiling, of affordability that would ultimately be achieved in new development. In City-initiated neighborhood rezonings, each area would be evaluated to determine the role that HPD programs could play in broadening and deepening affordability, in addition to new City capital investments in services, facilities and infrastructure to support smart growth.

The Honorable Thad Cochran
Chairman, Committee on Appropriations
United States Senate
Washington, DC 20510

The Honorable Hal Rogers
Chairman, Committee on Appropriations
United States House of Representatives
Washington, DC 20515

The Honorable Barbara Mikulski
Vice Chairwoman, Committee on Appropriations
United States Senate
Washington, DC 20510

The Honorable Nita Lowey
Ranking Member, Committee on Appropriations
United States House of Representatives
Washington, DC 20515

March 17, 2016

Dear Chair Cochran, Vice-Chair Mikulski, Chair Rogers, and Ranking Member Lowey:

The undersigned Mayors urge that you end the crisis level of disinvestment in our affordable housing by providing the Transportation, Housing and Urban Development, and Related Agencies (THUD) appropriations subcommittee with adequate funding in fiscal year (FY) 2017. Our nation's cities face a serious risk of losing our public housing unless the federal government restores its investment in this valuable resource. We urge you to use the sequestration relief funding identified by Congress to increase the THUD 302(b) allocation to a level that is at least proportional to other subcommittees; this will allow Congress to provide much-needed affordable housing resources and bring public housing preservation funding back up to pre-sequestration levels.

Recently, 2,042 organizations wrote to you supporting an increase on the THUD 302(b) subcommittee allocation illustrating the impacts of underfunding HUD's programs. Mayors are not able to reduce homelessness, ensure that low-income households have access to safe and stable housing with rental assistance, and address critical issues of distressed housing, blight, and crumbling infrastructure without sufficient HUD funding. In FY2016, HUD received a disproportionately low subcommittee allocation, despite Congress's laudable agreement to lift the sequestration caps. This low allocation resulted in level funding for the majority of HUD programs and continued underfunding our cities housing needs.

We urge the Committee to increase the allocation and to work with the subcommittee leadership to direct a portion of that increase to improving public health, safety, and long-term affordability for the nation's 1.2 million public housing households and 2.2 million households already in Section 8 housing. Specifically, we support increasing Public Housing Capital Fund to $2.5 billion; increasing the Public Housing Operating Fund to $4.8 billion; $21.2 billion for Section 8 Housing Choice Vouchers to fully fund voucher renewal, and increase Tenant Protection Voucher and administration fees; and provide inaugural funding of $50 million for the Rental Assistance Demonstration (RAD) while simultaneously increasing the RAD cap – the essential resources needed to preserve public housing.

Increasing the THUD allocation is the only way that local governments will be able to meet our cities' comprehensive affordable housing goals and preserve the public housing serving the lowest income households across the United States. We respectfully request that you ensure proportional and substantial funding for the THUD allocation in FY2017 to preserve public housing.

Sincerely,

Bill de Blasio, Mayor of New York, NY

Tom Butt, Mayor of Richmond, CA

Joseph Ganim, Mayor of Bridgeport, CT

Eric Garcetti, Mayor of Los Angeles, CA

Betsy Hodges, Mayor of Minneapolis, MN

Chris Koos, Mayor of Normal, IL

Ed Lee, Mayor of San Francisco, CA

Edward Murray, Mayor of Seattle, WA

Stephanie Rawlings-Blake, Mayor of Baltimore, MD

Mike Rawlings, Mayor of Dallas, TX

Jonathan Rothschild, Mayor of Tucson, AZ

Francis Slay, Mayor of St. Louis, MO

Martin Walsh, Mayor of Boston, MA

Manufactured Housing Institute

Written Testimony

By

F.R. Jayar Daily

Chief Operations Officer, American Homestar Corporation
Director, Board of Directors of the Manufactured Housing Institute
Chairman, National Modular Housing Council
Immediate Past Chairman, the Manufactured Housing Division of the Manufactured Housing Institute

Before the
Subcommittee on Housing and Insurance
House Financial Services Committee
U.S. House of Representatives

Hearing On
FUTURE OF HOUSING IN AMERICA: GOVERNMENT REGULATIONS AND THE HIGH COST OF HOUSING

March 22, 2016
Washington, DC

1655 Fort Myer Dr., Suite 104, Arlington, VA 22209 Tel: 703.558.0400 Fax: 703.558.0401
http://www.manufacturedhousing.org info@mfghome.org

Thank you, Chairman Luetkemeyer, Ranking Member Cleaver and members of the Subcommittee for the opportunity to testify this afternoon about the future of housing in America and the impact of government regulations on the high cost of housing. My name is Jayar (Francis) Daily and I am the Chief Operations Officer of American Homestar Corporation, a producer of manufactured and modular housing. I am appearing before you today on behalf of the Manufactured Housing Institute (MHI), where I serve on the Board of Directors, serve as Chairman of the National Modular Housing Council, and am the immediate past chairman of the Manufactured Housing Division.

American Homestar Corporation is headquartered in Houston, Texas, and was founded 45 years ago. Our company designs and produces factory built housing and is the nation's fourth largest vertically integrated company in the industry. Our homes are marketed under the brand names of Oak Creek and Platinum Homes. We also build modular housing and various types of commercial structures. American Homestar Corporation also offers financing and insurance for our customers. Our manufacturing facilities are located in Texas and Alabama and we employ 750 people.

MHI is the only national trade organization representing all segments of the factory-built housing industry. MHI members include home builders, lenders, home retailers, community owners and managers, suppliers and others affiliated with the industry. MHI's membership includes 50 affiliated state organizations. In 2015, the industry produced over 70,000 homes, approximately 9% of new single family home starts.

A robust manufactured housing market is critical to increasing the availability of affordable housing, which is, in so many parts of the country, in short supply. Manufactured home owners generally have low and moderate incomes, and commonly live in rural areas. My testimony is focused on three critical barriers to the development of manufactured housing: 1) a housing finance system that does not adequately meet the market's needs; 2) a regulatory structure that, while solicitous of industry feedback, ultimately passes along costly and burdensome regulations; and 3) an authorizing statute that after over 40 years is in need of critical revisions.

Manufactured Housing is a Critical Source of Affordable Housing for Millions of Americans

Manufactured housing provides quality, affordable housing for more than 22 million very low-, low- and moderate-income Americans. The median annual income of manufactured homeowners is slightly more than $26,000 per year, nearly 50 percent less than that of all homeowners.[1] Manufactured housing represents 7.3% of all occupied housing units, and 10.3% of all occupied single-family detached housing[2].

Manufactured homes serve many housing needs in a wide range of communities—from rural areas where housing alternatives (rental or purchase) are few and construction labor is scarce and/or costly, to higher-cost metropolitan areas as in-fill applications. Manufactured housing is more prevalent in rural areas. About two-thirds of all occupied manufactured homes in the U.S. are located outside of metropolitan statistical areas (MSAs), and 14 percent of homes in non-MSA counties are manufactured homes.[3]

One of the many salient features of manufactured housing is the quality of the homes and the value to consumers achieved through technological advancements and cost savings associated with the factory-built process. Based on U.S. Census data, the cost of manufactured homes are 10 to 35 percent less than the cost of comparable site-built homes. The affordability of manufactured homes has long made these homes the preferred housing choice for many families, including first-time homebuyers, retirees and families in rural areas.

Unlike site-built homes, manufactured homes are built almost entirely in a controlled manufacturing environment in accordance with federal building codes administered by the Department of Housing and Urban Development (commonly referred to as the "HUD Code"). Homes are transported to the home-sites where they are installed in compliance with federal and state laws.

The HUD Code is the only federal residential building code. It regulates home design and construction, installation, durability, resistance to natural hazards, fire safety, electrical systems, energy efficiency, and other aspects of the home. Homes are inspected by a HUD-approved third party during the construction process and the industry adheres to HUD's robust quality assurance program, which offers greater controls than other forms of housing in the home building industry. Federal, state or local authorities inspect each home installation.

The quality, reliability and durability of manufactured homes has improved substantially since the enactment of the Manufactured Housing Improvement Act of 2000, which considerably strengthened HUD's oversight of construction and safety standards, set a national standard for installation, and required a Dispute Resolution program in every state to address disputes between consumers and manufacturers and installers. As a result, the quality of manufactured homes is much higher than it was 20 or 30 years ago.

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[1] *See* CFPB, "Manufactured-housing consumer finance in the United States," at 17 (Sept. 2014) [hereinafter "CFPB White Paper"], *available at http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.*

[2] 2014 American Community Survey

[3] U.S. Census Bureau American Community Survey (ACS), 2008-2012, available at http://www.census.gov/acs/www/data_documentation/data_main/.

The industry faces three strong headwinds that keeps it from achieving its full potential in addressing the affordable housing needs of the nation. The first is a housing finance regulatory system that does not adequately account for the unique way manufactured housing is financed. Because current Home Ownership and Equity Protection Act (HOEPA) regulations do not have sufficient flexibility on rates, points, and fees for small loan sizes, the pace of lending for manufactured homes has declined. With respect to the Federal Housing Administration (FHA), because of outdated rules, FHA's Title I mortgage insurance program for chattel loans is of minimal utility. In addition, because there is not a secondary market for chattel lending, financing costs are higher for chattel loans than for mortgages on site-built homes. As a result, borrowers seeking to finance an affordable manufactured home have fewer options than borrowers who seek to finance site-built real estate.

The second challenge facing manufactured housing is a regulatory structure that lacks clarity, has the potential to overlap, and does not adequately incorporate industry feedback into regulations and guidelines. Regulatory uncertainty and barriers present compliance risks and costs that are ultimately passed on to the consumers. For example, often HUD does not properly take into account the economic impacts of new requirements when finalizing regulations about the construction of manufactured housing. HUD also does not take a comprehensive view on all the regulations impacting manufactured housing so that the myriad patchwork of regulations do not have unintended cost consequences. Further, because HUD does not use its preemption authority for construction standards the way it should, states and localities are able to set guidelines in contrast to HUD Code, and in some cases localities are able to "zone" out manufactured housing communities.

Third, the legislation that established the manufactured housing construction safety standards (HUD Code), was enacted in 1974 and has become antiquated. Enacted at a time when manufactured housing was in its infancy, and transitioning from a "travel trailer" industry to one that provides permanent single family residential housing, this legislation needs to be updated so that the industry can continue to drive innovations in manufacturing.

The Challenge of Financing Manufactured Housing

MHI is eager to work with the Subcommittee to reduce the regulatory burdens harming consumers seeking to achieve the American Dream of homeownership by purchasing a manufactured home. The manufactured housing industry is fully committed to protecting consumers throughout the home buying process. MHI recognizes the importance of responsible lending and improving the consumer experience. Unfortunately, current regulations and the housing finance system harms consumers of manufactured housing by inadvertently limiting financing for this affordable homeownership option.

Reducing Regulatory Burdens to Financing for Manufactured Homes

Recent federal regulations have jeopardized access to manufactured housing financing. The rules have penalized home buyers that cannot access traditional mortgage financing needed for single-family home ownership or live in rural areas where affordable rental or site-built housing is scarce or non-existent. Additionally, many at-risk families have seen the equity they have diligently built up in their manufactured homes wiped out because lenders are not providing the financing needed for resale due to these regulations.

There are two slight revisions to Consumer Financial Protection Bureau (CFPB) regulations that can spur lending without harming the consumer protections contained in the Dodd-Frank Act.

1.) High-Cost Mortgage Definition. The HOEPA provisions of the Dodd-Frank Act that established parameters for which mortgage loans are classified as "high cost" included more flexible annual percentage rate (APR) and points and fees provisions for small loans. This was in recognition of the simple mathematical fact that fixed costs on smaller loans translate into higher percentages of the total loan amount. Unfortunately, in practice, this flexibility has not been sufficient to address market realities. The 2014 Home Mortgage Disclosure Act (HMDA) data offers empirical evidence of the negative real world impact from the current HOEPA small loan thresholds, confirming conclusively that manufactured home lenders are not making loans with the "high-cost" HOEPA designation. The HMDA data shows that lenders made such loans before the rules went into effect, and they did not make them after. Manufactured home loans of all size categories went down by double digits, and the lower the dollar amount size the more pronounced the year-over-year decline. In comparison, overall mortgage loan data (for all homes) shows a 2013 to 2014 year-over-year increase in the number of mortgage loans. A simple adjustment to these thresholds is necessary to enable lenders to fully meet the demand for affordable financing for manufactured homes.

2.) Loan Originator Definition. The definition of loan originator established by the Dodd-Frank Act is based on traditional mortgage market roles that do not reflect the distinct features of the manufactured housing market. While they are only in the business of selling homes and do not originate loans, manufactured home retailers and sellers currently run the risk of being considered mortgage loan originators. Manufactured housing retailers and sellers should be excluded from the definition of a loan originator, so long as they are only receiving compensation for the sale of the home and not engaged in financing the loans. This simple change will not result in individuals receiving kickbacks for referrals, because they are barred from receiving compensation related to the loan.

These are modest modifications, but they are much needed to alleviate the challenges facing working families seeking quality affordable housing and families currently living in manufactured housing. The proposed statutory changes would more accurately take into account the price pressures unique to manufactured home lending while still maintaining significant consumer protection from predatory lending practices. The terms typically associated with manufactured home loans—namely fixed interest rates, full amortization, and the absence of alternative features (such as balloon payments, negative amortization, etc.)—allow lenders to satisfy the requirements of what the Dodd-Frank Act would consider conservative and prudent underwriting standards. In addition, existing regulatory requirements and statutory guidelines outlined in the Dodd-Frank Act provide significant consumer protections and disclosures while prohibiting many predatory loan features. These proposed revisions ensure that substantial protections are available to consumers while ensuring financing remains available for manufactured housing.

MHI commends the House Financial Services Committee for recognizing that consumers are being harmed by current regulations that limit the availability of financing for manufactured homes. In particular, MHI appreciates the Committee's leadership in swiftly and successfully moving H.R. 650, the Preserving Access to Manufactured Housing Act, through the legislative process in the House of Representatives with bipartisan support. MHI hopes the Committee will continue to work toward its enactment in the 114th Congress.

Improving FHA's Programs for Manufactured Housing Finance

1.) *FHA Title I Program.* The FHA Title I program provides an affordable financing option for personal property manufactured homes. However, due to a number of outdated program rules, FHA only endorsed $24 million in Fiscal Year 2014. This is woefully inadequate given that manufactured homes comprise seven percent of total occupied housing units in the United States. In many areas of the country, particularly rural areas, manufactured housing is the only form of quality affordable housing available. Improvements to the FHA Title I program would help ensure families in these communities have access to financing for manufactured homes through the Title I program.

    The following are administrative changes HUD should implement to make the Title I program more effective:

    - *Origination Fees.* The low dollar principal amounts of new personal property manufactured home loans means that the existing cap of two percent of the loan amount on the fees a lender can charge is not high enough to cover the cost of underwriting these loans, particularly with increased compliance costs related to new requirements under the Dodd-Frank Act. We believe this helps to explain the lack of utilization of the Title I program. Other laws, including Qualified Mortgage (QM) and HOEPA, have provisions that take into account the impact of lower balance personal property loans. FHA already permits a minimum underwriting fee of $2,500, for example, for a reverse mortgage (HECM) loan. The FHA Title I manufactured home loan program should also adopt a reasonable minimum permissible origination fee. MHI recommends that HUD amend its current underwriting loan fee cap of two percent of the loan amount to also allow a flat dollar amount of $2,000 for all loans.

    - *Appraisals.* There are a limited number of eligible appraisers (80-85 in the entire country) who are qualified to perform Title I manufactured home appraisals. In many rural areas, where the majority of manufactured homes are located, there are literally no Title I qualified manufactured home appraisers who are available to perform an appraisal. Current appraisal requirements in the Title I program have resulted in fewer qualified appraisers and limited competition in the marketplace. HUD should amend the current requirement that requires all appraisers to be certified by a single private company (NADA) to also allow inspectors trained by qualified firms to do the on-site inspection, provided the work is ultimately reviewed and approved by NADA certified individuals. This would inject more competition into the provision of these appraisal services, while maintaining overall quality standards through the NADA certification process.

- *Underwriting Standards.* The detailed loan underwriting standards in the Title I program need to be updated to better align with the FHA Title II loans program. In particular, Title I underwriting standards regarding DTI ratios, treatment of Chapter 7 bankruptcy and other derogatory credit items, treatment of medical collections, and treatment of total unpaid collections should be changed to match those requirements in the Title II program.

2.) *FHA Title II Program.* The FHA Title II program is commonly used for "real estate" manufactured home loans, where the mortgage covers the land and the home. MHI recommends HUD update its installation requirements to conform to the HUD Minimum Installation Standards that were established in 2009, rather than utilizing the requirements in the outdated 1994 handbook. This would align installation requirements with more recently adopted standards that were implemented under the comprehensive 2000 regulatory legislation.

Establishing a Secondary Market for Chattel Loans

The 2008 Housing and Economic Recovery Act ("HERA")[4] singled out manufactured housing as one of only three Underserved Markets. This reflected frustration with the declining volume of Enterprise manufactured housing loan purchases at the time and with the virtual exclusion of chattel loans from the types of loans they would purchase. FHFA is in the process of reviewing comments it received as part of the proposed Duty to Serve rule. Since chattel loans constitute almost 70 percent of the manufactured housing market and are the most underserved segment of that market, MHI believes the final Duty to Serve rule cannot fulfill its statutory responsibilities without a significant requirement to purchase chattel loans.

Over the past eight years, the Enterprises have done little to support manufactured housing. Outside of some pre-financial crisis efforts to create a secondary market for chattel loans, the Enterprises have made no effort to purchase chattel loans despite significant improvements in the housing market and chattel lending underwriting guidelines and sound industry risk management practices. Additionally, even when measured against conventional mortgages, the Enterprises have purchased little in the way of conventional manufactured home loans. In fact, according to a 2014 GAO report, only 7 percent of conventional manufactured home mortgages were sold to the Enterprises

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[4] The Housing and Economic Recovery Act of 2008, Pub.L. 110-289, Div. A, Title I, §§ 1128(c)(1), 1129(a), July 30, 2008, 122 Stat. 2701, 2703, added 12 U.S.C.A. § 4565 (Duty to serve underserved markets and other

To put a finer point on why a secondary market is necessary to support manufactured housing, the Consumer Financial Protection Bureau, in its September 2014 paper on manufactured housing, stated that chattel loans are approximately 50 to 500 basis points more expensive than real property loans[5]. In large part this disparity is due to the additional risks the lender takes on: a lack of a significant secondary market for chattel loans which may account for 100 to 150 basis points, concomitant interest rate risk, which combined may account for an additional 150 to 200 basis points, higher servicing costs and very limited risk sharing with lenders by either the private or government sectors, which may account for an additional 150 basis points.

A strong secondary market for chattel loans has the potential to not only ease financing costs for consumers but also expand consumer choice as more lenders enter the market. A strong secondary market will also provide refinancing opportunities to manufactured homeowners as market conditions warrant.

The Challenge of a Complex Regulatory Structure

As the only federally-regulated national building code, the HUD Code regulates manufactured home design and construction, installation requirements for strength and durability, resistance to natural hazards, fire safety, electrical systems, energy efficiency, and all other aspects of the home. Homes are inspected every step of the way and our industry adheres to a robust quality assurance program which offers far greater controls than anyone else in the home building industry. As a result, the industry has achieved economies of scale that have brought high quality affordable homes to millions of working American families and retirees.

While the HUD Code has brought standardization to the industry, in order for manufactured housing to achieve its full potential in addressing the affordable housing needs of the nation, the administration of the HUD Code should be improved to better account for cost impacts and industry practices. We believe improvements in this area fall into three categories: 1.) improving the way HUD develops and implements regulatory changes to the HUD Code, including properly taking into account the economic impacts of new requirements when finalizing regulations about the construction of manufactured housing; 2.) enforcing its federal preemption authority for construction standards and aggressively weighing-in on local construction standards used to "zone" out manufactured housing; and 3.) taking a comprehensive view on all the regulations impacting manufactured housing so that the myriad patchwork of regulations do not have unintended cost consequences.

1.) MHI recommends improving the way HUD develops and implements regulatory changes to the HUD Code, including properly taking into account the economic impacts of new requirements when finalizing regulations about the construction of manufactured housing.

[5] CFPB, "Manufactured Housing Consumer Finance in the United States September 2014, p.6

The ability to utilize new technologies and materials, and to maintain the integrity of the uniform single building code is dependent on a construction code that is current. Recognizing this, in 2000 Congress passed the Manufactured Housing and Improvement Act (MHIA), which expanded HUD's mission with regard to manufactured housing and improved the process for establishing, revising, enforcing, and updating the HUD Code. The law created the Manufactured Housing Consensus Committee (MHCC), an advisory committee comprised of industry, consumer and other stakeholders to recommend revisions and interpretations of the HUD Code.

While HUD has recently made strides in reducing backlog of MHCC recommendations, updates to the code continue to be hindered by the cumbersome rulemaking constraints of the Administrative Procedures Act, lengthy internal reviews, and low staffing levels/prioritization of the manufactured housing program at HUD. MHI recommends that HUD utilize the interim final rule process to more expeditiously implement MHCC recommendations. The process would allow HUD to publish the MHCC recommendations as interim final rules that could take effect immediately upon publication in the Federal Register. The public would still have an opportunity to comment, but in the meantime, an updated standard could be utilized.

MHI is increasingly concerned about HUD's use of "Guidance Memorandum" to enforce and interpret the HUD Code, without seeking input from stakeholders. While there might be legitimate circumstances that necessitate the use of "Guidance Memorandum," this is being used more and more frequently. HUD should follow its statutory mandate and seek approval from the MHCC prior to issuing guidance changing manufactured housing regulations. In the rare cases a guidance must be utilized, necessary input must be solicited from stakeholders to ensure housing affordability is maintained.

While an updated and current code is essential, MHI does not believe this should diminish efforts to ensure the benefits to consumers outweigh the additional costs resulting from new regulations. To maintain housing affordability, it is absolutely imperative that HUD conduct adequate cost-benefit analyses of all potential new regulations. As it stands, HUD does not undertake the appropriate cost analysis, testing and research required to update the HUD Code. This results in changes to the code that push up costs without a clear justification that the new regulations will lead to improvements to the code that are in the best interest of consumers.

A recent example of the negative impact of not conducting a cost-benefit analysis is with respect to the "On-site Completion" Rule. This final rule, which was published on September 8, 2015, establishes extensive new requirements for the on-site completion of construction of manufactured homes. In its final rule, HUD failed to assess the costs associated with the expanded requirements for homes that are substantially complete when they leave the factory. Because of this significant oversight, the Rule was "determined to not be a significant regulatory action under Section 3(f) of Executive Order 12866, Regulatory Planning and Review," and therefore was not reviewed by the Office of Management and Budget.

MHI strongly believes the "On-site Completion" Rule adds significant planning, review, reporting, and paperwork burdens. According to a survey of manufacturers, retailers, and third parties, MHI estimates that the new Rule could impact as many as ten to fifteen percent of all new homes. The cost impact could be as much as \$7 to \$10.5 million. This cost does not include one-time design reviews for each site-construction labeled home, nor does it include increased costs to track inspections and keep records.

2.) MHI Recommends HUD Enforce its Federal Preemption Authority for Construction Standards and Aggressively Weigh-in on Local Construction Standards Used to "Zone" Out Manufactured Housing.

MHI has been working to address zoning and land use issues impacting the placement of manufactured homes in communities across America. These policies take affordable homeownership out of reach for those consumers who would choose a manufactured home. HUD has proactively pursued individual cases where local jurisdictions have sought to legislate construction and safety standards that are not identical to the HUD standards, or which exclude HUD- compliant manufactured homes on that basis. However, we believe that HUD can play a greater role in this effort, and in fact, has a Congressional mandate to do so.

The Manufactured Housing Improvement Act of 2000 (MHIA) significantly strengthened the preemptive language originally contained in the National Manufactured Housing Construction and Safety Standards Act of 1974 (MHCSS). MHI believes HUD has jurisdictional authority to move beyond a case-by-case analysis and affirmatively state a policy opposing local regulatory schemes that are in conflict with HUD's mission and with its requirements under MHCSS Act and MHIA.

3.) MHI Recommends HUD Take a Comprehensive View of All the Regulations Impacting Manufactured Housing

While manufactured housing is insulated from disparate local requirements for building construction, it is still subject to zoning, land use, environmental, and permitting regulations as well as regulations of federal agencies, including the Department of Energy, Occupational Safety and Health Administration, Department of Transportation and the Environmental Protection Agency. Although these state, local and federal regulations serve legitimate purposes, they can present excessive burdens when they are applied—particularly when considering their cumulative effect— slowing down construction and driving up cost. We recommend that HUD, when establishing its own regulations for manufactured housing, take a close look at these cross-cutting federal requirements to determine whether they might be simplified and made more flexible while still meeting the policy objectives Congress and the Federal Agencies initially sought by instituting them. HUD, in its role as the administrator of the Manufactured Housing Programs, has a statutory responsibility to protect the affordability of manufactured homes, as well as the safety, durability and quality.

In particular, MHI believes that HUD needs to maintain full authority for the enforcement of energy efficiency standards for manufactured housing. In 2007, Congress enacted legislation, the Energy Independence and Security Act (EISA), which contained a provision requiring the

Department of Energy (DOE) to implement energy efficiency standards for manufactured housing. This had the result of creating dual administrative enforcement and regulatory authority over manufactured homes.

Last year, DOE's Appliance Standard Rulemaking Advisory Committee (ASRAC) conducted negotiated rulemaking and developed a consensus recommendation for affordable, updated energy efficiency standards. DOE plans to publish a proposed rule based on the ASRAC recommendations in the very near future. While DOE has the expertise to develop energy efficiency standards, HUD should administer the standards through its existing regulatory framework. This will ensure that manufactured homes have updated energy efficiency standards, preserve affordability and minimize duplicative compliance and enforcement regulations. This is one of the key reasons why MHI supports H.R. 3135, which would preserve HUD's exclusive jurisdiction over all manufactured housing construction standards.

The Challenge of Outdated Manufactured Housing Construction and Safety Standards

The Manufactured Housing Construction and Safety Standards Act of 1974 (MHCSS Act) provides the statutory basis for federal construction and safety standards, which apply to all manufactured homes nationwide. The law, last amended in 2000, needs a number of updates to ensure it is effectively preserving this affordable home ownership option. For example, the manufactured housing industry operates under an outdated law that in some instances treats homes like automobiles - by requiring, for example, a steel chassis and subjecting the industry to federal lemon laws. Adhering to these outdated standards incurs costs on both the construction side and the risk management side.

Thus, changes to the 1974 Act would enhance affordability by allowing more design options under the HUD Code and moving the regulations away from non-applicable automotive laws. Changes would eliminate the need for the industry to build on a steel chassis, which would give manufacturers and homebuyers more affordable housing options, while not impacting the safety and soundness warranties that are administered at the state level.

Amend the Definition of "Manufactured Home" (42. U.S.C. 5406).

The current definition of a manufactured home is outdated, as it was developed when the manufactured housing industry was in its infancy, and was transitioning from a "travel trailer" industry to an industry that provides permanent single family residential housing. The definition contains size, length and width requirements that are more appropriate for vehicles traveling down a highway. More importantly, the definition specifies that a manufactured home be built on a permanent chassis.

This outdated definition has constrained the ability for homes to be designed and permanently sited utilizing traditional methods of foundation design and construction comparable to site-built and modular housing. It adds unnecessary costs to homebuyers and can make it difficult, if not impossible, for manufactured homes to be aesthetically compatible with other forms of single family housing. It is also a barrier to more favorable zoning.

Updating the definition of a manufactured home would eliminate confusion between all types of recreational vehicles which are designed for recreational, temporary use, and are not designed for permanent residential use.

Eliminate Current Requirements for Notification and Correction of Defects (42 U.S.C 5414).

The MHCSS Act sets forth a complex system of notification and repair of manufactured homes for non-compliances, defects, and serious defects or imminent safety standards for the entire life of the home. The system is based on federal and state laws that address warranty issues more common to automobiles and other consumer products. Residential housing is not covered by the Magnusson-Moss Warranty Act, which is the federal "lemon law."

Manufactured homebuilding is very competitive, and manufacturers take consumer satisfaction very seriously. The HUD Code provides for a robust quality control system and stringent compliance and enforcement requirements that are sufficient to protect consumers from serious safety hazards.

Replace the Notification and Correction of Defects Provisions with an Extended Warranty Requirement (42 U.S.C. 5414).

Under current law and regulation, a one-year warranty for all defects is required. In lieu of the burdensome, lifetime requirements of "Subpart I –Notification and Correction," Congress should consider requiring an extended warranty for major structural, plumbing, electrical and mechanical systems in the home. The Subpart I regulations authorized under 42 U.S.C. 5414 were never intended to resolve complaints concerning defects and workmanship. Nor is it practical or cost effective to divert the attention of the code enforcement system to workmanship issues. Home defects and consumer complaints are more appropriately handled through a long-term warranty program that complements market realities of total quality assurance and consumer satisfaction.

Other Proposed Changes to the MHCSS Act

Other changes to the MHCSS Act that should be considered include: establish a formula for setting label fees based on production levels; authorize HUD to circumvent requirements under the Administrative Procedures Act (APA) for non-controversial updates and changes to the HUD Code that have been recommended by the MHCC; direct HUD to update its 1997 directives on zoning and preemption to reflect changes made to the MHCCS Act in 2000, in order to prevent local communities from discriminating against the siting of manufactured homes through the establishment of construction and safety standards and requirements which exceed those in the HUD Code.

Conclusion

Manufactured homes are the most affordable homeownership option in the market today and MHI appreciates the opportunity to offer our ideas to the Subcommittee about how to improve access to credit for families buying these homes, to streamline regulations and remove regulatory barriers to affordability, and to update outdated construction standards that impact cost and innovation.

MHI believes that manufactured housing can help address America's affordable and workforce housing challenges into the future. MHI stands ready to work with the Subcommittee to develop appropriate legislative language and identify specific regulatory changes, to implement these recommendations to alleviate the challenges facing working families, seniors, and young professionals seeking quality affordable homeownership opportunities.

Testimony before the Subcommittee on Housing and Insurance of the House Committee on Financial Services

Hearing on "The Future of Housing in America: Government Regulations and the High Cost of Housing"

March 22, 2016

Statement of A. Mechele Dickerson

Professor, the University of Texas at Austin School of Law

Good afternoon, Chairman Luetkemeyer, Ranking Member Cleaver, members of the subcommittee. My name is A. Mechele Dickerson and I am a Professor at the University of Texas at Austin. And, I live in the 25th Congressional District in the State of Texas.

I would like to thank you for giving me the opportunity to participate in this hearing and to submit written testimony on the housing unaffordability crisis and how it is affecting lower- and middle-income families throughout our country.

I am a law professor at UT-Austin but I also taught an undergraduate freshmen seminar for the last 3 years called "Good Debt, Bad Debt, Ugly Debt." I recently published a book on homeownership and my current research focuses on the economic problems middle-class families are facing.

You have asked me to discuss ways that federal, state and local regulations and policies have made it harder to create affordable housing, and to specifically address how overall housing trends and recent changes in the U.S. housing market should inform housing policies.

The housing unaffordability crisis involves more than just sluggish home sales

One thing that is crucial to remember when developing responses to the housing unaffordability crisis is that the crisis is broader than just Americans' inability to find affordable homes to purchase. While soaring single-family home prices make it harder for middle-income Americans to become homeowners, the crisis is having a devastating effect on people who are – and likely will always be – renters.

Americans from all income groups are struggling to find affordable rental housing, though the groups that are struggling the most are lower- and middle-income households. Because the housing affordability crisis is not limited to the home buying market, the solution should not be narrowly focused on finding ways to make it easier for people to buy single-family homes.

The devastating losses owners suffered during the recent housing crash and the 2007-2009 recession painfully demonstrate that owning a home is not always better than renting. As we saw just before the housing market crashed, even relaxed housing and lending policies that make it easy to get a buyer into a home will not keep the homeowner in that home if the owner does not have the financial means to repay the mortgage loan.

The housing unaffordability crisis involves more than just poor people

Perhaps the most important point to consider when developing policies to respond to the housing unaffordability crisis is that the crisis is no longer confined to the poor. The affordable housing crisis is devastating the middle-class. Even middle- and lower-income households who are employed full-time still cannot find affordable housing. In fact, in many of the largest cities in the country, even upper-income young professionals are struggling to find affordable housing.

The numbers are striking. Approximately 75% of renters who earn between $30,000 and $45,000 annually and almost 50% of renters who earn between $45,000 and $75,000 annually pay more than 30 percent of their income on housing. For the first time in recent history, upper-income households – especially households that consist of single young adults – are also struggling. Higher-income households accounted for almost 20 percent of new renters between 2004 and 2014.[1]

Post-Recession Housing Markets: More Renters

Housing prices have soared in many areas of the country, which is good for existing owners. But, soaring home prices make it hard for middle-income families and young professionals to buy homes. Because young adults and middle- and working-class families cannot afford to buy homes, most major U.S. housing markets still have not recovered from the 2007-2009 recession. In fact, the 2015 overall homeownership rate of 63.4% was the lowest rate in the country in almost 50 years.[2]

While overall homeownership rates have dropped, rental rates have been rising. Since the recession, the number of renters in the U.S. increased by double digits. In fact, recent survey results show that renters are now the majority in nine of the eleven largest U.S. metropolitan areas.[3] While there is a robust market for high-end, luxury apartments, affordable rental units are not being built at a rate that is keeping pace with the heightened demand for those units. It is especially difficult for middle-income families to find affordable rental units in large U.S. cities.[4]

The scarcity of affordable housing units – whether rented or owned – is now forcing an increasing number of Americans to make tradeoffs and sacrifices to pay for housing.[5] One-fifth of all employed Americans now find that they need income from a second job or that they must find other ways to supplement their income to make ends meet. Another seventeen percent of workers report that they can no longer save for retirement, and fourteen percent have increased their credit card debt in order to pay for their monthly living expenses.[6] More than 25 percent of households now pay more than 50 percent of their income on housing.[7]

[1] JOINT CTR. FOR HOUS. STUDIES, HARVARD UNIV., THE STATE OF THE NATION'S HOUSING 2015 (2015).
[2] United States Census Bureau, *Residential Vacancies and Homeownership in the Second Quarter of 2015*, http://www.census.gov/housing/hvs/files/qtr215/currenthvspress.pdf. Tbl 14; United States Census Bureau, *Housing Vacancies and Homeownership*, http://www.census.gov/housing/hvs/data/histtabs.html.
[3] Sean Capperis, Ingrid Gould Ellen and Brian Karfunkel, *Renting In America's Largest Cities* (2015), http://furmancenter.org/files/CapOneNYUFurmanCenter__NationalRentalLandscape_MAY2015.pdf.
[4] Jonathan McCarthy and Richard Peach, *Differences in Rent Inflation by Cost of Housing* (2015), http://libertystreeteconomics.newyorkfed.org/2015/11/differences-in-rent-inflation-by-cost-of-housing.html#.VumThfkrLie.
[5] MacArthur Foundation, HOW HOUSING MATTERS 3 (2015), https://www.macfound.org/media/files/E-11540_How_Housing_Matters_2015_FULL_REPORT.pdf; Board of Governors of the Federal Reserve System, REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2014 (2015).
[6] HOW HOUSING MATTERS, *id.*
[7] THE STATE OF THE NATION'S HOUSING 2015, *supra* note 1.

Housing Trends

Millennials and Homeownership

The future of homeownership in this country is in the hands of the millennials, *i.e.*, people born between 1980 and the mid-2000s.[8] Unfortunately, the future right now does not look promising because fewer young adults are buying homes.

Homeownership rates for adults between the ages of 25 and 34 dropped by more than 9 percent in the last ten years and homeownership rates for young adults are the lowest they have been in more than twenty years.[9] Young families traditionally comprise the bulk of first time home-buyers, and for the last 30 years approximately 40% of single-family home sales were to first-time buyers.[10] However, the share of total home sales to first-time buyers dropped to 33 percent in 2014[11] and dropped again (to 32 percent) in 2015. The number of first-time buyers of homes is now at the lowest level since 1987.[12]

Recent survey results indicate that most millennials value homeownership and view owning a home as a high priority.[13] While young Americans continue to embrace the concept of homeownership, they are struggling to find affordable homes to buy. Young workers are struggling even though they ostensibly should have more income to save to make a down payment on a home because they are more likely to have college degrees than prior generations.[14] Similarly, young adults who prefer to rent rather than buy should, theoretically, have fewer difficulties finding affordable rental housing than young adults did in earlier generations.

Despite higher college attainment rates, however, many millennials cannot afford to buy or rent homes. Higher student loan burdens combined with unstable employment prospects have even made it harder for young professionals to find affordable housing, whether for rent or for sale. Thus, while young adults are more likely to attend and graduate from college, they are also more likely than Baby Boomers to graduate from college with burdensome student loan debts.

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[8] The Council of Economic Advisers, 15 ECONOMIC FACTS ABOUT MILLENNIALS 16 (OCT. 2014), https://www.whitehouse.gov/sites/default/files/docs/millennials_report.pdf.

[9] STATE OF THE NATION'S HOUSING 2015, *supra* note 1, Ch. 4, at 21.

[10] 2015 NATIONAL ASSOCIATION OF REALTORS® PROFILE OF HOME BUYERS AND SELLERS, http://www.realtor.org/reports/highlights-from-the-2015-profile-of-home-buyers-and-sellers.

[11] STATE OF THE NATION'S HOUSING 2015, *supra* note 1, *at* CH. 4, 16; *NAR Annual Survey Reveals Notable Decline in First-time Buyers*, http://www.realtor.org/news-releases/2014/11/nar-annual-survey-reveals-notable-decline-in-first-time-buyers.

[12] John Gittelsohn and Prashant Gopal, *Boomers Seen Boosting New-Home Sales as Millennials Wait*, Bloomberg News, (Dec. 17, 2014) http://www.bloomberg.com/news/articles/2014-12-17/boomers-seen-boosting-new-home-sales-as-millennials-wait.

[13] HOW HOUSING MATTERS, *supra* note 5; NATIONAL ASSOCIATION OF HISPANIC REAL ESTATE PROFESSIONALS, STATE OF HISPANIC HOMEOWNERSHIP 9 (2014).

[14] HOW HOUSING MATTERS, *supra* note 5.

College costs have been increasing for the last 30 years, but student financial aid has not kept pace.[15] The total volume of student loans and the percentage of undergraduate students who took out student loans has dramatically increased since 1980.[16] Middle-class students in particular are relying on student loans to pay for college and young college-educated adults cannot afford to buy homes or pay rent because they are spending a disproportionate of the income repaying student loan debt.[17] In a recent survey, 56 percent of millennials reported that student loan expenses caused them to delay saving for a down payment or saving for a home purchase.[18]

In addition to higher student debt levels, many middle-income millennials are avoiding homeownership and also are struggling to find affordable rental housing because they can no longer assume they will have stable lifetime employment or that they will earn enough to save for a down-payment or to repay a 15 or 30-year mortgage loan. Wages for lower- and middle-income workers in this country have been stagnant for almost 30 years, and all Americans workers should now expect to have multiple jobs over their lifetimes, to hold more than one job at a time, and to have multiple periods of unemployment.[19] Unstable and relatively lower wages combined with relatively higher student loan debt make it harder for young workers to save enough to buy a home[20] or, increasingly, to even find affordable rental housing.[21]

Millennials and Household Formation

In addition to the income and job instability that young adults are facing, millennials are not forming households as early or in the same way that Baby Boomers did. Many employed young professionals are postponing marriage and this has caused then to delay forming their own households and, instead, to return home to live with their parents.[22] Because young married couples are the group most likely to be homeowners, homeownership rates will not increase until young adults leave their parents' home, marry, and then form their own households.

[15] The cost to attend college has been increasing for the last 30 years for many reasons, including decreased state support for public colleges and also because both private and public colleges are awarding disproportionately fewer need-based financial aid and more merit-based scholarships and aid. Gov't Accountability Office, *Higher Education State Funding Trends and Policies on Affordability* 7-13 (2014), at http://www.gao.gov/assets/670/667557.pdf.
[16] The number of federal student loans dramatically increased (from 2.3 million to 10.9 million loans) between 1980 and 2009. Christopher Avery and Sarah E. Turner, *Student Loans: Do College Students Borrow Too Much Or -- Not Enough?* 26 J. OF ECON. PERSPECTIVES 165, 167 (2012).
[17] *See* Andrew Delbanco, COLLEGE: WHAT IT WAS, IS, AND SHOULD BE 115 (2012) ("while funding of grants for low-income students has failed to keep up with the rising cost of college, there has been robust growth in the amount of unsubsidized federal loans that go mainly to students from middle-income families.")
[18] 2014 NATIONAL ASSOCIATION OF REALTORS® HOME BUYER AND SELLER GENERATIONAL TRENDS, EX. 5-4 (2014), http://www.realtor.org/sites/default/files/reports/2014/2014-home-buyer-and-seller-generational-trends-report-full.pdf.
[19] Jaison R. Abel, Richard Deitz, and Yaqin Su, *Are Recent College Graduates Finding Good Jobs?* CURRENT ISSUES IN ECONOMICS AND FINANCE (2014), http://www.ny.frb.org/research/current_issues/ci20-1.pdf.
[20] 15 ECONOMIC FACTS ABOUT MILLENNIALS, *supra* note 8, at 16; HOME BUYER AND SELLER GENERATIONAL TRENDS, *supra* note 18.
[21] Richard Fry, *More Millennials Living with Family despite Improved Job Market*, Pew Research Center, http://www.pewsocialtrends.org/files/2015/07/2015-07-29_young-adult-living_FINAL.pdf.
[22] 15 ECONOMIC FACTS ABOUT MILLENNIALS, *supra* note 8, at 37.

Relative to baby boomers, millennials are not getting married. The average age for marriage has increased over the last 50 years.[23] In the 1950s, the average age for marriage was 22.8 years for men and 20.3 for women. In 1960, 77 percent of young adults were married.[24] The average age of marriage for both genders increased by more than 6 years by 2013, and only 30 percent of 20 to 34 year-olds were married that year.[25] Only 28 percent of millennials were married in 2014, while 48 percent of boomers were married at that same age.[26]

The profile for the typical first-time home buyer are married couples in their 30s who have young children. Historically, young married couples bought single-family detached homes in neighborhoods that were zoned for single-family housing.[27] Now, young adults are postponing marriage and childrearing.[28] Because of the fundamental changes in how young adults are now forming households, homeownership rates likely will remain low until millennials choose to and can afford to buy their own homes.

Mismatch between Millennials' Housing Needs and Available Housing

Even well-paid young professional workers who are interested in buying homes find it harder to find suitable housing because of the mismatch between their housing needs and the size of existing housing. One reason it is harder for single young professionals to find moderately-sized and priced homes is because of the average size of newly constructed homes.

The average size of a newly constructed single-family home in 1973 was 1660 sq. ft. and was 1740 sq. ft. in 1980. By 1990, the average home size increased to 2080 sq. ft., then increased to 2,366 sq. ft. by 2000 and increased even more (to 2521 sq. ft.) by the time the recession started in 2007. Though homeownership rates have been dropping since the recession, home sizes have continued to grow. In fact, the average size of new homes built in 2014 (2,657 sq. ft.) was even larger than the homes that were built during the housing boom during the early 2000s.[29]

While home sizes are getting bigger, households are getting smaller. Census data show that the average U.S. household size started shrinking in the 1960s.[30] In the 1960s, the average

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[23] UNITED STATES CENSUS BUREAU, FAMILIES AND LIVING ARRANGEMENTS: HISTORICAL TIME SERIES (2015), https://www.census.gov/hhes/families/data/marital.html.

[24] 15 ECONOMIC FACTS ABOUT MILLENNIALS, *supra* note 8, at 34.

[25] *Id.*

[26] Pew Research Center, COMPARING MILLENNIALS TO OTHER GENERATIONS, http://www.pewsocialtrends.org/2015/03/19/comparing-millennials-to-other-generations/#!1.

[27] HOME BUYER AND SELLER GENERATIONAL TRENDS, *supra* note 18.

[28] *Today's First-Time Homebuyers Older, More Often Single*, http://zillow.mediaroom.com/2015-08-17-Todays-First-Time-Homebuyers-Older-More-Often-Single. Millennials are delaying marriage for a number of reasons, including higher college attendance rates that delay household formation and because stagnant wages and relatively higher un- and under-employment rates make them less inclined to want to marry. 15 ECONOMIC FACTS ABOUT MILLENNIALS, *supra* note 8, at 37.

[29] United States Census Bureau, SQUARE FEET OF FLOOR AREA IN NEW SINGLE-FAMILY HOUSES COMPLETED, https://www.census.gov/construction/chars/pdf/squarefeet.pdf.

[30] United States Census Bureau, CHANGES IN HOUSEHOLD SIZE, https://www.census.gov/hhes/families/files/graphics/HH-6.pdf.

household size was approximately 3.29.[31] By 2000, average household size dropped to 2.59 and that number has continued to decrease.[32] Household size is dropping because marriage rates overall have stalled over the last 30 years, and there are simply fewer married households with children. For example, in the 1960s, more than 70 percent of U.S. households consisted of married couples. Now, less than 50 percent of all households consist of married couples.[33]

Average household size is also decreasing because the number of households consisting of only one person is increasing. In the 1960s, less than 10 percent of all households consisted of one person. By 2014, though, more than 25 percent of all U.S. households consisted of single adults, in part because millennials are delaying both marriage and child rearing.[34]

The Homeownership Focus of Municipal Zoning and Land Use Laws

Zoning and land use laws in this country have consistently favored and encouraged homeownership. Almost a century ago, the United States Supreme Court ruled that cities and municipalities can constitutionally place limits on private property rights by enacting comprehensive zoning laws. In 1926, the Court in *Euclid v. Ambler Realty*[35] gave cities the authority to use zoning laws to keep multi-family housing out of neighborhoods that primarily consist of owner-occupied, single-family homes.

Renters have never been viewed as favorably as homeowners, and the Court in *Euclid* referred to apartment houses as "parasites." The Court agreed that cities could deem apartment buildings to be public nuisances and exclude multi-family housing from residential districts because these large multi-family units would monopolize "the rays of the sun which otherwise would fall upon the smaller homes."[36] Similarly, the Court concluded that cities could segregate single-family homes from multi-unit housing to ensure that homeowners were not deprived of the "free circulation of air" and to make sure their children could continue to have "quiet and open spaces for play."[37]

Cities no longer characterize apartments or renters as parasites. Nonetheless, housing laws and policies continue to be based on the antiquated notion that homeownership is always preferable to renting, and that homeowners are more valuable to society than renters. Moreover, state and local land use laws generally fail to reflect the crucial role that rental housing will play in providing affordable housing for middle-income Americans.

Middle-income families will continue to struggle to find affordable housing as long as cities continue to keep affordable housing out of neighborhoods that have single-family houses. Planning commissions or zoning boards have adopted and continue to embrace and enforce rules

[31] United States Census Bureau, HOUSEHOLDS AND FAMILIES: 2010 5 (2012), https://www.census.gov/prod/cen2010/briefs/c2010br-14.pdf.
[32] *Id.*
[33] U.S. Census Bureau, TRENDS IN THE PREVALENCE OF HOUSEHOLDS, www.census.gov/hhes/families/files/graphics/HH-1.pdf.
[34] *Id.*
[35] 272 U.S. 365 (1926).
[36] *Id.* at 394
[37] *Id.*

and regulations that exclude affordable, multi-family housing from single-family neighborhoods and voters, especially wealthy ones, favor zoning laws that exclude affordable housing from single-family neighborhoods.[38] Similarly, land use laws in most affluent suburban neighborhoods limit the number of people who can live in a home. Finally, many zoning laws require developers to build homes that have a minimum lot size and these large lots make it virtually impossible to build affordable homes.[39]

There are good reasons to have zoning laws, as they are designed to help preserve the character of neighborhoods. In addition, existing neighbors understandably are concerned about the effect that having more rental units or smaller affordable houses in their neighborhoods will have on traffic and neighborhood school enrollments. Whether or not by design, exclusionary zoning laws make it virtually impossible for renters to live in most higher-income neighborhoods. Moreover, because these laws decrease the amount of developable land, developers cannot easily or efficiently build smaller or affordable housing in neighborhoods that are zoned for larger and single-family housing.[40]

Rethinking and Re-envisioning U.S. Housing Policies

Housing policies should continue to support developers who want to build, and Americans who have the means to purchase, large, single-family homes. However, we as a nation are serious about solving the housing unaffordability problem, all current land use laws and policies should be re-examined to ensure that these policies reflect the new economic realities middle-income households now face.

Rethinking Zoning Laws: Inclusionary Zoning

It will be impossible to solve the housing unaffordability crisis unless cities and states enact zoning laws that encourage and potentially subsidize the building of affordable housing. If cities and states are truly committed to making housing affordable, they must review and possibly revise their land use laws to give developers an incentive to build more affordable housing units. Inclusionary zoning is one way to create more affordable housing and to signal that cities are committed to enacting land use policies that address the housing needs of middle- and lower-income Americans.[41]

In general, inclusionary zoning ordinances require developers to set-aside a minimum percentage (typically 10 to 25 percent) of units in their new residential housing projects for low

[38] Eran Ben-Joseph, *Facing Subdivision Regulations*, in REGULATING PLACE: STANDARDS AND THE SHAPING OF URBAN AMERICA 219-220 (Eran Ben-Joseph and Terry S. Szold, eds.)(2005). Wealthy voters tend to vote in favor of zoning laws whereas black, Latinos and low- and moderate-income voters typically vote against zoning laws.
[39] See also Alana Semuels, *How to Decimate a City*, ATLANTIC MAGAZINE 12 (2015) (discussing how a two-acre minimum lot size prevents low-income residents in Syracuse from leaving decaying urban neighborhoods and moving to suburban neighborhoods).
[40] MECHELE DICKERSON, HOMEOWNERSHIP AND AMERICA'S FINANCIAL UNDERCLASS: FLAWED PREMISES, BROKEN PROMISES, NEW PRESCRIPTIONS 185-186 (2014); Eran Ben-Joseph, *supra* note 38, at 175-76.
[41] At a bare minimum, if politicians are committed to providing affordable housing for their constituents, they should avoid enacting laws (as the Texas legislature did in 2005) that ban inclusionary zoning.

and moderate income residents.[42] Other ordinances give builders financial incentives (including tax abatements, fee waivers or waivers of zoning requirements involving density, area, height, open space, or use) to provide affordable housing.[43]

Inclusionary zoning laws already exist in a number of areas in this country, including Montgomery County, Maryland, the District of Columbia, Cambridge, Massachusetts, Highland Park, Illinois, Boulder, Colorado,[44] Seattle[45] and other cities in Washington state.[46] Inclusionary zoning is an especially useful way to help alleviate housing affordability in fast-growing urban housing markets (like Austin, Denver, Houston and Miami) since builders already have a financial incentive to create new housing in these markets and workers – especially young professionals –are already attracted to those desirable areas.

Embracing Non-Traditional Housing that Responds to Millennials' Housing Needs

The affordable housing crisis will continue to exist as long as land use and housing laws and policies are guided by the view that large single-family homes are preferable to all other forms of housing. Federal, state and local policies and laws must embrace non-traditional forms of housing and not reflexively reject attempts to create more affordable housing simply because the owners of expensive, single-family homes object to the affordable housing units. Cities and states also should review their land use laws and policies to ensure that they reflect the needs and desires of young adults to have smaller and more affordable housing, whether rented or owned.

One non-traditional type of housing that should help make housing affordable for young single professionals and also for older, retired Americans is micro homes (also referred to as mini, minim, or tiny houses) or micro apartments. Micro-housing is typically smaller than 500 square feet and generally are built in urban areas with good mass transit systems.

Zoning ordinances and building codes that mandate minimum lot or dwelling size and that impose parking requirements often prevent developers from placing micro units in residential neighborhoods.[47] While micro-housing units are smaller than the homes that are

[42] Robert W. Burchell and Catherine C. Galley, *Inclusionary Zoning: Pros and Cons* in INCLUSIONARY ZONING: A VIABLE SOLUTION TO THE AFFORDABLE HOUSING CRISIS? 5 October (2000), http://www2.nhc.org/media/documents/InclusionaryZoning.pdf. The California Supreme Court recently upheld an inclusionary zoning ordinance that requires developers to set aside housing for moderate-income households, pay a fee in lieu of providing the housing, or provide equivalent substitute housing. *See* Calif. Bldg. Indus. Ass'n, 61 Cal. 4th 435 (Cal. 2015), *cert. denied*, 84 U.S.L.W. 3133 (No. 15-330) (Feb. 29, 2016).

[43] Burchell and Galley, *supra* note 42, at 3.

[44] *See http://montgomerycountymd.gov/DHCA/housing/singlefamily/mpdu/program_summary.html; https://www.cambridgema.gov/CDD/housing/fordevelopersandpropmanagers/inclusionarydevelopers; http://www.cmap.illinois.gov/about/2040/supporting-materials/process-archive/strategy-papers/inclusionary-zoning/policies;* https://bouldercolorado.gov/housing/inclusionary-housing; *http://dhcd.dc.gov/service/inclusionary-zoning-affordable-housing-program.*

[45] Seattle passed a law in November 2015 that is designed to add 6,000 housing units for low-income residents over the next decade. Jason Redmond, *Seattle law requires developers to pay for affordable housing*, Nov. 17, 2015. http://www.reuters.com/article/2015/11/18/us-seattle-housing-idUSKCN0T70782015111 8#PDBRB6OM1kAGdJXC.97.

[46] *See* http://www.psrc.org/growth/housing/hip/alltools/inclus-zoning.

[47] Dawn Withers, *Looking for a Home: How Micro-Housing Can Help California*, 6 GOLDEN GATE UNIVERSITY ENVIRONMENTAL LAW JOURNAL 125, 150 (2012).

allowed by most municipal land use laws, local zoning boards or commissions laws must be willing to permit developers to build non-traditional housing like micro-homes or rental units because of the potential these housing units have to expand the amount of affordable housing *especially* for young, single adults.[48]

Micro housing alone will not single-handedly solve the housing affordability crisis. But, if young adults pay less rent for smaller rental units, they will be able to save money for a down payment to buy a home. As such, micro-homes can solve their immediate problem of scarce affordable rental housing and can also help increase millennials' homeownership rates.[49] In addition, smaller homes may provide a better housing fit for young single professionals who might be able to buy a home, but not a large square foot homes.

Smaller homes also should be more appealing to young professionals who do not want to have roommates, who want to become homeowners, but who have no desire to buy a large home because they are single and have no children.[50] Likewise, because most micro-housing units are built in urban areas, this non-traditional type of housing can respond to the preferences of young professionals to live close to their jobs and to entertainment and leisure activities.[51]

Finally, micro-housing can also respond to the housing needs of retired parents/grandparents who want to live in their own (smaller) housing unit, but on the same real property with their adult children.[52]

Embracing the Joint Ownership of Homes

Generally speaking, when people think of "homeownership" they envision that one person or family will be the sole owner of a detached home. This antiquated view needs to change given the housing affordability crisis young adults and working families are facing, and also the financial challenges older baby boomers who are live in gentrifying neighborhoods are facing. While neither governments (whether local, state, or federal) nor homeowners have ever fully embraced shared equity housing, housing and tax laws and policies need to abandon the narrow view that individually-owned homes should be the ideal form of housing.

Community Development Corporations ("CDCs") and Community Land Trusts ("CLTs") may be one way to make housing more affordable for middle- and lower-income Americans *especially* if they live in neighborhoods that are gentrifying. Generally speaking, CDCs enter into long-term residential property leases with residents in neighborhoods that are at risk of

[48] Tim Iglesias, *The Promises and Pitfalls of Micro-housing*, 37 ZONING AND PLANNING LAW REPORT (Nov. 2014)

[49] Leasing recent began for a nine-story, micro-unit development in New York. The modular building consists of 55 studios ranging from 260 to 360 square feet and includes 14 units that have been designated as affordable. Ronda Kaysen, *Leasing Begins for New York's FirstMicro-Apartments*, N.Y. TIMES (Nov. 20, 2015), http://mobile.nytimes.com/2015/11/22/realestate/leasing-begins-for-new-yorks-first-micro-apartments.html?referer&_r=0.

[50] Kaysen, *id.*

[51] Iglesias, *supra* note 48; HOME BUYER AND SELLER GENERATIONAL TRENDS, *supra* note 18, at Ex. 2-7.

[52] Withers, *supra* note 47, *at* 138.

gentrifying and pricing out existing residents.[53] CLTs create permanently affordable homes by allowing low- to moderate-income households to purchase homes in neighborhoods that they otherwise could not afford. While homeowners generally remain in homes held in a CLT indefinitely and they can build equity in those homes, they cannot rent out the homes. Moreover, if they decide to sell their homes, they can only sell the home to another lower-income household at an affordable price. By limiting the owner's property rights, CLTs ensure that the home remains affordable to lower-income families.[54]

CLTs and CDCs can increase the number of affordable houses for young adults, but they cannot provide affordable housing on a larger scale unless they receive outside financial support. Both groups have high operating costs, in part because they must purchase and potentially upgrade or refurbish homes before selling or leasing them to owners. While some CLTs are already receiving financial support from financial institutions (like Wells Fargo),[55] these entities cannot solve the housing crisis without financial support from lenders or tax subsidies from federal, state, or local governments.

Respecting and Embracing the Voices and Needs of Renters

Federal tax laws provide few incentives for developers to create (or for owners to prefer) non-traditional forms of owning homes because the mortgage interest deduction (MID) provides such an enormous incentive for taxpayers to buy single-family homes. The MID, one of the most expensive housing subsidies the United States, allows taxpayers who own and occupy their homes to claim a deduction on their federal income tax returns for the interest they pay on mortgage loans for their primary or second home up to a maximum of $1 million of mortgage debt.

The MID is one of the most politically popular and fiercely protected tax expenditures, and is also one of the most expensive tax expenditures as it costs upwards of $70 billion annually. Data show that higher-income taxpayers disproportionately benefit from the MID because most middle-income taxpayers do not itemize deductions.[56] Despite the popularity of this housing subsidy, it is simply unrealistic to think that the federal government will ever be able to provide substantial tax subsidies to help make housing *especially rental housing* more affordable for middle-income households and also continue to provide this enormously expensive tax benefit.

Finally, housing policies and laws cannot continue to allow the owners of single-family homes to dictate where affordable housing can be built. Homeowners, especially those who live in single-family detached homes, have been able to prevent developers from placing multi-family units and micro housing units in their neighborhoods. While homeowners have legitimate concerns about the effect that micro-units, apartments or other multi-family housing will have on

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[53] For an example of a CDC, see http://texashousers.net/2015/11/30/cdc-spotlight-fending-off-gentrification-one-block-at-a-time-in-blackland/.

[54] James J. Kelly, Jr., *Sustaining Neighborhoods of Choice: From Land Bank(ing) to Land Trust(ing)*, 54 WASHBURN L.J. 613 (2015).

[55] *See* http://www.laketahoenews.net/2015/07/letter-wells-fargo-helps-with-affordable-housing/?utm_source=dlvr.it&utm_medium=twitter.

[56] Joint Comm. on Taxation, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2012-2017 (2013).

density, traffic, parking or congestion in their neighborhoods, the housing affordability crisis that middle-income renters are facing will never be solved as long as existing homeowners can essentially veto where (and whether) multi-family and non-traditional housing units can be developed.[57]

[57] Withers, *supra* note 47, *at* 136, 146; Iglesias, *supra* note 48. *See also* Then *There's This: Split Views on ADUs*, http://www.austinchronicle.com/news/2014-06-20/then-theres-this-split-views-on-adus/.

Conclusion

Mr. Chairman, I commend you for convening this hearing to look at how the lack of affordable housing is harming the middle-class. Middle-class and working-class Americans who work hard, play by the rules, and are not leading extravagant lifestyles are now struggling to find affordable housing to buy or to rent, and this is a national crisis.

Federal, state, and local policies must do more to encourage affordable housing (both rental and for sale) for lower- and middle-income families in this country. And we all must be willing to rethink our views of homeownership, renting, and non-traditional housing if we hope to help American working families.

Thank you. I will be happy to answer any questions you have.

NMHC NATIONAL MULTIFAMILY HOUSING COUNCIL NAA NATIONAL APARTMENT ASSOCIATION

TESTIMONY BY
CLYDE HOLLAND
CHAIRMAN AND CHIEF EXECUTIVE OFFICER
HOLLAND PARTNER GROUP

ON BEHALF OF THE
NATIONAL MULTIFAMILY HOUSING COUNCIL
AND THE
NATIONAL APARTMENT ASSOCIATION

BEFORE THE
HOUSE COMMITTEE ON FINANCIAL SERVICES
HOUSING AND INSURANCE SUBCOMMITTEE

FOR A HEARING ENTITLED
THE FUTURE OF HOUSING IN AMERICA: GOVERNMENT REGULATIONS AND THE HIGH COST OF HOUSING

MARCH 22, 2016

Chairman Luetkemeyer, Ranking Member Cleaver, esteemed members of the Subcommittee, it is my distinct privilege to appear before you today to provide testimony on the important issues surrounding multifamily housing. My name is Clyde Holland, I am the Chairman and CEO of Holland Partner Group, based in Vancouver, Washington. We are a fully integrated real estate investment firm in the Western United States with current assets under management and development representing approximately $7.5 billion in 30,000 apartment homes. I appear before the committee today on behalf of the National Multifamily Housing Council and the National Apartment Association.

For more than 20 years, NMHC and NAA have partnered in a joint legislative program to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of nearly 170 state and local affiliates, NAA encompasses over 69,000 members representing more than 8.1 million apartment homes throughout the United States and Canada.

Rental Housing – The Supply-Demand Imbalance

Housing affordability is a significant challenge facing many Americans today who are seeking to rent an apartment. The number of families renting their homes stands at an all-time high placing significant pressure on the apartment industry to meet the demand. This is making it challenging for millions of families nationwide to find quality rental housing that is affordable at their income level. For many families, the shortage of rental housing that is affordable creates significant hurdles that make it even more difficult to pay for basic necessities like food and transportation. Ultimately, this also impacts their future financial success.

This issue is not unique to households receiving federal subsidies and, in fact, is encroaching on the financial wellbeing of households earning up to 120 percent of area median income. Consider that the median asking rent for an apartment constructed in 2014 was $1,372. For a renter to afford one of those units at the 30 percent of income standard, they would need to earn at least $54,880 annually. As a basis of comparison, the median household income in 2014 was $53,657. Accordingly, this is an issue impacting those supporting the very fabric of communities nationwide, including teachers, firefighters, nurses and police officers.

According to a report by Harvard's Joint Center for Housing Studies, in 2013 more than one in four renter households – approximately 11.2 million – paid more than half of their income for rental housing. Setting aside that real (inflation adjusted) incomes in the U.S. have not risen in over three decades – clearly the key factor driving the affordability crisis – housing industry leaders agree that promoting construction, preservation and rehabilitation are three of the vital ways to meet the surging demand for apartment homes.

Changing Housing Dynamics

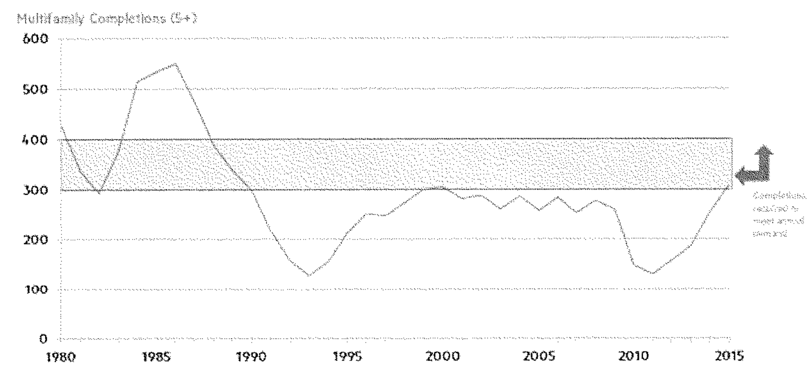
The U.S. is in the midst of a fundamental shift in our housing dynamics as changing demographics and housing preferences drive more people toward renting as their housing of choice. Rising demand is not just a consequence of the bursting of the housing bubble. In the five years ending

2015, the number of renter households was up by 7 million while the number of homeowner households was up by less than 400,000. Going back 10 years, we have added 11 million new renter households and approximately 605,000 new owner households.

Almost 75 million young adults, aged 18 – 34 are entering the housing market, primarily as renters. Almost one-third of adults in this age group still live at home with their parents, meaning there is a lot of potential pent-up demand remaining for rentals. The trends are dramatic given that the Harvard Joint Center for Housing Studies estimates that younger Americans will create 24 million new households between 2015 and 2025.

Renting is not just for the younger generations. Baby Boomers and other empty nesters are trading single-family houses for rental apartments. Over half (57 percent) of the net increase in renter households from 2005 to 2015 came from householders 45 years or older.

Today, there are over 43 million renter households. The dynamics previously cited could increase demand by as much as four million additional renter households over the next decade according to Harvard's Joint Center for Housing Studies. NMHC/NAA estimate that we currently need between 300,000 and 400,000 newly constructed apartments each year to keep up with demand; yet, an annual average of just 208,000 apartments were delivered from 2011-2015. The completion of 310,700 units in 2015 suggests that new construction is finally approaching the level needed to meet the continuing increase in demand. However, the headwinds described in this document could put a damper on sustaining this trend.



Source: Census Bureau.

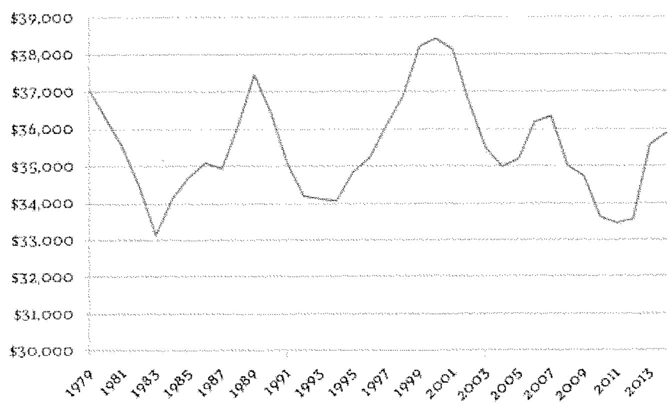
Building more apartment homes will help improve the supply-demand imbalance that drives these affordability challenges, but developers and localities must work together to remove obstacles to development. Even if local officials and planning boards agree that new, affordable apartments must be built, land costs, entitlement expenditures, labor expenses and property taxes all contribute to making their construction extremely costly.

Why are Rents So High?

As the Multifamily Completions chart above demonstrates, the nation faces a significant shortage of rental housing. Addressing this challenge will require new development and the preservation and rehabilitation of the existing housing stock. Barriers to these activities, described below, only serve to slow down the market response to our housing supply challenges. Before discussing these barriers, however, it is worthwhile to assess the reasons why Americans are facing high rents and why there is too little available rental housing that is affordable.

First and foremost, America's affordable housing shortage is more than just a housing problem. It is not only that rental housing has gotten more expensive to produce and operate, but also that other economic factors have suppressed household income growth. On an inflation-adjusted basis, median renter household income today is virtually the same as it was in 1981.

Median Income of Renter Households (inflation adjusted)



Source: Census Bureau; NMHC.

Because income stagnation is such a big part of the equation, simply building more housing cannot be the sole solution to this affordable housing shortage. In fact, in many markets where demand is strongest, even if, hypothetically, developers agreed to take no profit, the cost to build still exceeds what people can afford to pay.

Second, today's strong rent growth is a temporary situation in what is a highly cyclical market driven by factors largely outside of the industry's control. For example, the collapse of the U.S. financial markets in 2008 virtually shut down new apartment construction for a number of years, severely constricting supply right at a time when rental demand surged to levels not seen for decades. Development is only now beginning, seven years later, to meet the annual increase in apartment demand.

Finally, as mentioned above, apartment construction has increased. As new units are delivered, rent growth will moderate. That said, even with more apartments in the pipeline, construction activity remains at best, at the low end of the level needed to make up for supply deficits in previous years. Many non-financial obstacles to new development continue to stifle new construction and raise the costs of those properties that do get built, contributing to higher rents for our residents. Many of these are imposed by localities and have to be addressed by those jurisdictions.

Barriers to Multifamily Development

Developing real estate, whether it is multifamily, single-family or commercial, is difficult. Production of any kind has its natural barriers. Those are for the most part objective barriers that can, and often do, fluctuate, but are predictable enough to still meet a pro forma. Multifamily however, brings with it a level of entitlement subjectivity layered on top of these common barriers and is much more difficult to predict.

Plainly stated, many municipalities have a development preference that works against multifamily housing production. Multifamily development often faces stiff community resistance, competes with other forms of real estate that produce sales tax revenue desired by municipalities, and is subject to increasing regulatory barriers.

Community resistance to proposed multifamily developments typically takes the form of organized community resistance efforts commonly known as "Not In My Back Yard" or NIMBY. The narrative of NIMBY typically focuses on a handful of themes outside of the normal zoning approval process, including:

- Traffic impact;
- Homeowner property values;
- School overcrowding; and
- Community character.

There is also a revenue subjectivity often found at the municipal level when it comes to multifamily versus other forms of real estate. Local governments faced with the annual task of balancing budgets feel obligated to derive as much tax revenue as possible from scarce developable land. This places multifamily in stiff competition with commercial real estate developments that produce sales tax revenue.

All these factors contribute to the uncertainty of any multifamily development. In a speech before the Urban Institute in November 2015, Jason Furman, chairman of The White House Council of Economic Advisers said that the U.S. could build a lot more apartments, but noted "multifamily housing units are the form of housing supply that is most often the target of regulation." As an industry, we agree with this assessment.

Below is a brief summary of the most notable barriers to development within several broad categories: location, time, bureaucracy, cost and environmental assessment. Also included is a brief review of affordability mandates, which can actually depress development of new multifamily homes in addition to complicating projects that proceed.

Location

- **Land Cost:** In an attractive market—take any major metropolitan area as an example—land can account for a significant portion of total development costs. Land in those markets is not only fundamentally more expensive to purchase than land in secondary or tertiary markets, but it also typically attracts multiple bidders, each seeking to deploy the land for diverse purposes, which further drives up costs. This cost increase can stretch or stress other financial assumptions and, in some extreme cases, even make the property impossible right out of the gate.

- **Zoning Laws**: Zoning laws impact what is permitted to be built at a site. In some places, zoning requirements can make it extremely difficult to build new multifamily housing. Changing zoning can be onerous and expensive if it is even possible.

Time

- **Entitlements:** The entitlement process, which covers approvals, zoning and nearly everything in between, is an amalgam of outright costs, additional fees, land-use regulation (some of which can date back to the first half of last century) and code compliance. During the navigation of this often lengthy process, an apartment developer bears both direct and indirect costs with no assurance of a successful outcome. In some high-barrier-to-entry markets, entitlements can take four, five, six years or more before construction actually begins. Some municipalities have tried to fast track this process, but they have been met with only varying degrees of success.

  The long lead time and significant upfront investment required to obtain entitlement on land is leading some investors to rethink continued interest in multifamily development. Reduced investor demand for multifamily development may lead to fewer units delivered in the future and increased cost per unit delivered as remaining investor capital becomes scarce.

Bureaucracy

- **Regulations:** As a highly regulated sector, the apartment industry is governed by a flood of regulations stemming from diverse federal agencies such as the Department of Housing and Urban Development (HUD), the Environmental Protection Agency (EPA), Department of Labor (DOL), Occupational Safety and Health Administration (OSHA), and the Department of Energy (DOE), as well as state and local jurisdictions. Excessive regulation and compliance uncertainty results in costly mandates that divert resources from the production and operation of multifamily housing.

  Regulations must have demonstrable benefits that justify the cost of compliance and federal agencies should be aware that broad-stroke regulations often have disproportionate effects on various industries. Therefore, those rules and regulations affecting housing should reflect the industry's diverse business and operational structure and must rely on the latest scientific and/or economic evidence.

For example, NMHC/NAA have an extensive history of service in the development of national model building codes and standards. However, research shows that over-reaching codes negatively impact apartment affordability and can quell new apartment construction and building renovation.

Similarly, policymakers continue to seek ways to improve energy efficiency through legislative and regulatory efforts to establish a building rating system that would grade buildings on their energy performance and publicly disclose that information. These labels raise valuation concerns and transactional uncertainty, especially since the accuracy of these labels is not proven in the apartment sector. NMHC/NAA oppose the development of mandatory building performance labeling programs and continue to work with federal partners to expand well-known and voluntary energy management tools, such as the federal Energy Star program, in apartment properties.

Cost

- **Construction Costs**: The cost of construction in terms of labor and materials are a critical component to the cost of building apartments. Depending upon market and materials used, these have a significant impact on the viability of a given project.

- **Cost of Capital:** New regulatory regimes, such as Dodd-Frank and Basel III, are making access to capital more difficult and costlier. Increased capital requirements and conflicting new regulations are driving up the cost of borrowing from banks, as well as constricting lending in certain markets.

- **Labor Costs:** Federal building programs, as well as some state level programs, require the use of prevailing Davis-Bacon wages that have proven to be difficult to manage, complex to accurately incorporate in preliminary planning and often do not reflect the going market. Additionally, as a result of the economic downturn skilled labor migrated away from the construction industry, producing an environment today where wages have increased well in excess of inflation, which directly impacts the cost of development.

- **Impact Fees:** Impact fees are payments required of new development by local governments for the purpose of providing new or expanded public capital facilities required to serve that development. These fees typically require cash payments in advance of the completion of development, are based on a methodology and calculation derived from the cost of the facility and the nature and size of the development, and are used to finance improvements offsite from, but to the benefit of, the development.

- **Linkage Fees:** A linkage fee is assessed on a development to pay for the cost of providing a public service. These fees are attributed to select developments to pay for a benefit deemed outside of what is recovered from property taxes.

- **Business License Taxes:** These are additional municipal taxes assessed on property owners that is not assessed on other forms of housing. These are used to justify the cost of impacts not covered by property tax assessments.

- **Assessment and Inspection Fees:** These are additional municipal fees assessed on property owners to inspect rental housing for habitability. While these fees are often assessed annually, the rental housing communities often do not realize additional benefits reflecting the cost.

- **Parking Space Requirements:** The requirement to build or offer parking spaces, especially in urban settings, can significantly impact site use and cost.

Environmental Assessment

- **Environmental Site Assessment:** An environmental site assessment is a report that identifies potential or existing environmental contamination liabilities. The analysis typically addresses both the underlying land and physical improvements to the property. In many local jurisdictions, each development site requires an environmental site assessment, the results of which could require costly remediation and/or project reconfiguration. Additionally, these assessments have been used by development opponents to frustrate planning and can serve to severely hamper or defeat the entitlement process.

Affordability Mandates

- **Rent Control:** There are various forms of rent control outside of the traditional version that most are accustomed to seeing: a rent control board that sets maximum rent for a unit or the maximum amount that rent can be raised annually. Rent control, in this context, is any mechanism that obligates a property owner to set rental rates for all or a portion of the units on a property. In any form, this policy works as a disincentive to investing and developing the diversity of housing units that a community requires. There are alternatives to rent control that take slightly different approaches but have the same effect. The most common form of these is inclusionary zoning.

- **Inclusionary Zoning:** Inclusionary zoning refers to municipal and county planning ordinances that require a given share of new construction to be affordable to people with low to moderate incomes without an investment from the municipality. It is normally a condition of approval of the development. Depending on the requirements, the overall feasibility of a project could be threatened.

Bottom Line for Policymakers

The bottom line is that policymakers at all levels of government must recognize that addressing local workforce housing needs requires a partnership between government and the private sector. Municipalities have the difficult task of trying to most efficiently manage their resources to the greatest benefit of their constituents, often challenged with balancing shrinking budgets and growing needs. However, local governments also have a tool box of approaches they can take to support affordable housing production. They can do this by incentivizing for-profit entities to produce the necessary multifamily units at a price point that households can afford.

Municipalities can defer taxes and other fees for a set period of time to help the developer reduce the price point. They also own tangible assets – buildings, raw land and entitled parcels – some of which can be leveraged to bring down the cost of construction or redevelopment. Finally, they can help streamline the development and approval processes with fast-tracking programs.

As is outlined in the following section, however, the Federal Government also has a key role to play. When both the public and private sides bring all their tools and assets into play, then there will be a greater likelihood of finding viable solutions to meet our rental housing challenges.

Key Solutions to the Nation's Housing Challenges

The nation's challenge is to reduce the barriers and obstacles that inhibit the expansion of the housing stock. While the preceding section made it clear that new construction is often impeded at the local level, there are federal solutions that may be beneficial as well. At NMHC/NAA, we believe the solution at the federal level requires a **three-pronged** answer of new development, preservation and rehabilitation:

1. **New development is absolutely critical to address the scarcity of units available for the population of Americans whose household incomes are below the average for their areas – and the one receiving the majority of attention and criticism.** There are too many instances where communities acknowledge that they have an affordability problem, but then hide behind "Not in My Back Yard" rhetoric to prevent the development of much-needed apartment homes. States and local communities can work together with the private sector to identify and quantify the costs associated with building affordable rental housing. Then, local officials and developers can help reduce the barriers and encourage new construction.

2. **Preservation means ensuring that the financing and subsidy programs that currently keep units available at below market rents continue to be there in the future, providing some degree of certainty in the affordable housing market.** This means not only stemming budget cuts for local, state and federal housing programs, but also continuing to support programs like the Low-Income Housing Tax Credit (LIHTC).

3. **Rehabilitation is vital because it can keep existing apartment stock from dwindling further.** Every year, the industry loses between 100,000 and 150,000 units to obsolescence and other factors. Most lost units are likely at the lower end of the market, disproportionately hurting the affordable supply that exists. Consider also that the nation's apartment stock is aging; in fact, more than half (51.9 percent) of all apartments were built before 1980. Without resources dedicated to support rehabilitation efforts, more stock will continue to leave the available pool.

Federal Initiatives and Programs Vital to Addressing Affordability

Congress and key agencies should play an integral role in addressing housing affordability. NMHC/NAA support the initiatives and programs outlined below designed to address the shortage of affordable housing:

GSE Reform

The first and foremost priority is getting multifamily right in housing finance reform and recognizing its unique characteristics; it is the single most important factor to ensuring that the apartment industry can meet the nation's growing rental housing demand.

The bursting of the housing bubble exposed serious flaws in our nation's housing finance system. The very successful multifamily programs of the Government-Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac, were not part of the meltdown and have actually generated over $30 billion in net profits since the two firms were placed into conservatorship. Preservation of the mortgage liquidity currently provided by the GSEs in all markets during all economic cycles is critical. NMHC/NAA urge lawmakers to recognize the unique needs of the multifamily industry.

We believe the goals of a reformed housing finance system should be to:

- **Maintain an explicit federal guarantee** for multifamily-backed mortgage securities available in all markets at all times;
- **Ensure that the multifamily sector** is treated in a way that recognizes the inherent differences of the multifamily business; and
- **Retain the successful components** of the existing multifamily programs in whatever succeeds them.

These principles can be achieved through a reformed structure that preserves the high quality and value of the current multifamily secondary mortgage market's activities.

Multifamily Federal Housing Administration (FHA) Programs

FHA Multifamily is best known for offering an alternative source of construction debt to developers that supplements bank and other private construction capital sources. It also serves borrowers with long-term investment goals as the only capital provider to offer 35-40-year loan terms. FHA lending is essential to borrowers in secondary markets, borrowers with smaller balance sheets, new development entities, affordable housing developers and non-profit firms, all of which are often overlooked or underserved by private capital providers.

In normal capital markets, FHA plays a limited, but important, role in the rental housing sector. During the most recent economic crisis, however, FHA became virtually the only source of apartment construction capital. Applications increased from $2 billion annually to $10 billion, and HUD anticipates that demand for FHA multifamily mortgage insurance will remain high for the next several years.

FHA's Multifamily Programs have continually generated a net profit, and have met all losses associated with the financial crisis with reserves generated by premiums paid through the loan insurance program structure. Because premiums have consistently reflected the risk associated with the underlying loans, and because underwriting requirements have remained strong within the program, FHA's Multifamily Programs are able to operate as self-funded, fully covered lines of business at HUD. A few programs struggled during the real estate downturn; however, any losses have been covered by the capital cushion the multifamily programs collectively generate.

It is important to the apartment industry that FHA continues to be a credible and reliable source of construction and mortgage debt. FHA not only insures mortgages, but it also builds capacity in the market, providing developers with an effective source of construction and long-term mortgage capital. The FHA Multifamily Programs provide a material and important source of capital for underserved segments of the rental market, and do so while maintaining consistently high loan performance standards. NMHC/NAA encourage Congress to continue funding FHA's Multifamily Programs, including:

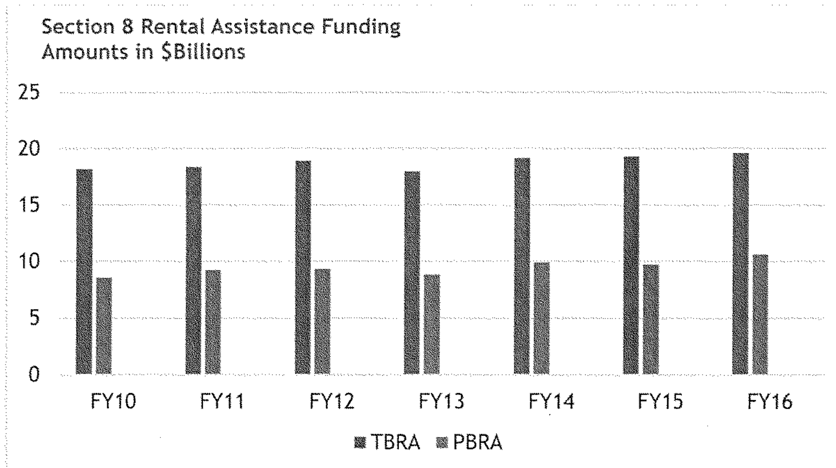
- HUD 221 (d)(4) Multifamily Loans – New Construction and Substantial Rehabilitation of Multifamily Properties
- HUD FHA 223 (f) Multifamily Loans for the Refinance or Acquisition of Multifamily Properties
- HUD FHA 241(a) Supplemental Loans
- HUD FHA 223(a)(7) Refinance of an Existing FHA Insured Multifamily Mortgages and Healthcare Mortgages

Finally, we believe a special note is warranted regarding the 221(d)(4) program. Providing flexible loan terms, including leverage from 80 percent to 90 percent and 40-year fixed rate non-recourse debt, for the construction or rehabilitation of multifamily properties is beneficial in supporting the development of workforce housing. However, we note that the program includes a bevy of restrictions, including loan size, allowable prevailing Davis-Bacon wage requirements, and other associated fees and disbursement restrictions. We ask to have a dialogue with this Committee regarding feasible ways to make modest modifications to this program to make it even more effective in encouraging the production of workforce housing.

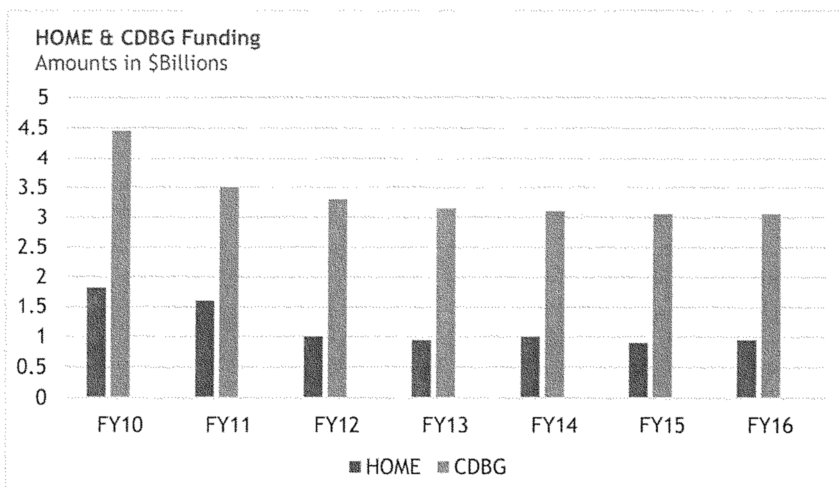
Funding for Affordable Housing Programs

Housing costs continue to grow, demand for rental housing continues to escalate, but incomes for many low income families remain stagnant. Given these realities, demand for subsidized affordable housing has increased dramatically through the economic crisis and into the recovery years since. However, federal funding for the primary programs serving low income households has been virtually flat or declining.

Programs like Tenant Based Section 8 and Project Based Rental Assistance allow low income families to rent market rate housing, taking advantage of the broad offering of privately owned and operated properties in a given market.



Programs like HOME and CDBG allow developers to address financing shortfalls often associated with affordable housing properties, and stimulate meaningful development and preservation activity as a result. In order to address housing affordability challenges for all Americans, across the income spectrum, adequate funding for these programs is essential.



Multifamily Transformation Initiative

NMHC/NAA encourage HUD to complete the Multifamily Transformation Initiative. HUD's Office of Multifamily Programs provides mortgage insurance to HUD-approved lenders to facilitate the construction, substantial rehabilitation, purchase and refinancing of multifamily housing projects. Completing the Transformation Initiative will restructure the organization and improve transactional and operational efficiency, enhance risk management tools and implement procedures that will result in significant savings across the organization.

Section 8 Housing Choice Voucher Program

This public-private partnership has the potential to be one of the most effective means of addressing our nation's affordable housing needs and supporting mixed-income communities. However, the program's potential success is limited by too many inefficient and duplicative requirements, which discourage private providers from accepting vouchers. These include a required three-way lease between the provider, resident and the public housing authority; repetitive unit inspections; resident eligibility certification; and other regulatory paperwork. Collectively, these make it more expensive for a private owner to rent to a Section 8 voucher holder.

The program has also been plagued with a flawed and volatile funding system that has undermined private-sector confidence in the program. With Congress focused on austerity measures, insufficient funding is expected to be worse in the near-term budget cycles. Common-sense reforms that could help control costs, improve the program for both renters and property owners, and increase private housing participation include:

- **Establishing** a reliable funding formula;
- **Streamlining** the property inspection process;
- **Simplifying** rent and income calculations;
- **Reducing** costly Limited English Proficiency (LEP) translation requirements; and
- **Extending** the contract term for project-based vouchers from 15 to 20 years.

NMHC/NAA support the common-sense provisions included in H.R. 3700, the "Housing Opportunity through Modernization Act of 2015." We thank Chairman Luetkemeyer and Ranking Member Cleaver for their leadership in ensuring this critical bill passed the House in February, and we strongly urge the Senate to approve it without delay so that President Obama may sign it into law.

As NMHC/NAA work with industry participants to identify new and creative ways to improve these programs Congress should consider the additional measures identified that will reduce inefficiencies and burdensome regulatory requirements.

It is also imperative for lawmakers to reinforce the voluntary nature of the program. Congress specifically made participation voluntary because of the regulatory burdens inherent in the program. However, state and local governments are enacting laws that make it illegal for a private owner to refuse to rent to a Section 8 voucher holder. Recent examples include "source of income discrimination" provisions passed by a number of cities. While often well intentioned, such mandates are self-defeating because they greatly diminish private-market investment and reduce the supply of affordable housing.

Rental Assistance Demonstration (RAD) Program

NMHC/NAA support RAD, which was established in 2011 as an affordable housing preservation strategy for public housing authorities (PHAs). The program allows PHAs to convert public housing properties at risk of obsolescence or underfunding into project-based vouchers or rental assistance contracts under the Section 8 program. Once the units are re-designated from public housing (Section 9 of the 1937 Housing Act) to Section 8 housing, housing authorities are able to leverage private capital to address capital needs. This allows housing authorities to work with private sector developers and managers to preserve their affordable housing stock. RAD is designed to reverse the trend of lost affordable units by accessing private capital to make up for related funding shortfalls.

Government-Supported Preferred Equity

Investor equity for development transactions is the most expensive type of capital. Reducing the required return for this portion of capital, however, would reduce the cost of developing multifamily units and could help spur the construction of additional workforce housing. NMHC/NAA would like to work with this Committee on a plan that would enable a federal entity to provide developers with preferred equity to help offset the cost of workforce housing production. NMHC/NAA believe that such a program could be integrated into the very successful multifamily programs run by Fannie Mae and Freddie Mac and implemented at minimal cost.

Modifying the Community Reinvestment Act

The CRA could be modified to include greater incentives for banks to provide loans for multifamily apartments that include workforce housing. CRA guidelines currently allow banks to obtain Community Development (CD) credit for multifamily units serving occupants with incomes of up to 80 percent of area median income. While this level captures a significant portion of workforce households, the rules themselves make it difficult to obtain the CD credit due to a requirement to report incomes, information that is not captured.

The three main banking regulators – Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Federal Reserve – control the regulations around CRA. We urge this Committee to work with the multifamily industry to encourage these regulators to make common-sense, modest changes that would remove impediments to obtaining CRA credit for workforce multifamily housing. For example, rather than relying on income to determine CRA eligibility, the determination of affordability could be based on rent levels. Notably, the Federal Housing Finance Agency (FHFA) and HUD use this type of measure for programs they administer.

Davis-Bacon Wage Determination

Under current law, developers must adhere to Davis-Bacon wage rates for construction financed by federal dollars. Unfortunately, the Department of Labor's methodology of determining these so-called prevailing wages suffers from structural defects related to the availability of data. For example, the methodology frequently produces wage rates that exceed prevailing market-based wages, which only exacerbates the cost of developing multifamily housing. NMHC/NAA request that the Committee urge the Department of Labor to reexamine and modify its methodology.

Pro-Development Tax Policy

Given that apartment firms pay tax when they build, operate, sell or transfer communities to their heirs, the nation's tax system plays a considerable role when multifamily developers and operators evaluate the viability of a given property. Tax policy that extracts too high a burden or leads to a misallocation of capital has the potential to disrupt the very construction and development that is so critical to housing America's workforce.

Leverage the Low-Income Housing Tax Credit (LIHTC) to Support Workforce Housing

While the multifamily industry supports tax reform that promotes economic growth and investment in rental housing without unfairly burdening apartment owners and renters relative to other asset classes, this debate is likely to take some time to resolve. In the shorter term, we encourage Congress to take incremental, but nonetheless significant steps, to leverage the current-law LIHTC to promote workforce housing.

Under the current LIHTC program, which has financed nearly 2.8 million apartments and served 13.3 million residents since its inception in 1986, state housing agencies issue credit allocations to developers who then sell the credits to investors. Investors receive a dollar-for-dollar reduction in their federal tax liability over a 10-year period, and developers invest the equity raised to build or acquire apartments. This equity allows apartment firms to operate the properties at below-market rents for qualifying families. LIHTC-financed properties must be kept affordable for at least 30 years.

The LIHTC has two components:

- **A 9 percent tax credit** that subsidizes 70 percent of new construction and cannot be combined with any additional federal subsidies.
- **A 4 percent tax credit** that subsidizes 30 percent of the unit costs in an acquisition of a project and can be paired with additional federal subsidies.

Program rules require owners to either rent 40 percent of their units to households earning no more than 60 percent of area median income (AMI) or 20 percent to those earning no more than 50 percent of AMI.

The following proposals could help further leverage the LIHTC and promote workforce housing:

1. **Income Averaging:** NMHC/NAA believe that the LIHTC program could be bolstered to serve a wider array of households and increase the financial viability of certain projects if Congress enacted so-called income averaging. Under this proposal, which President Obama has also included in his Fiscal Year 2017 Budget, program rules would be revised to allow owners to reserve 40 percent of the units for people whose *average* income is below 60 percent of AMI with the proviso that no LIHTC unit could be occupied by individuals earning over 80 percent AMI. Thus, if this proposal were enacted, the LIHTC program could serve a wider array of households, including those who are traditionally defined as comprising America's workforce. Additionally, the ability to use the program to house slightly higher-income families could help cross subsidize families further down the income scale.

2. **Leveraging the LIHTC Model for Preservation:** Every year, the multifamily industry loses between 100,000 and 150,000 units to obsolescence and other factors. Most lost units are likely at the lower end of the market, disproportionately hurting the affordable portion of the market. Furthermore, the nation's apartment stock is aging; in fact, as noted above, just over half of all apartments were built before 1980. Without resources dedicated to support rehabilitation efforts, more stock will evaporate from the available pool.

Although new construction will be critical to ensuring a sufficient supply of workforce housing, preservation of units is far less costly than new construction. Accordingly, NMHC/NAA believe Congress should look to using resources to maximize the preservation of existing units. We believe that the LIHTC program could be expanded to enable the acquisition of units that could be renovated and maintained as workforce housing. Furthermore, given that workforce housing supports higher rents than traditional LIHTC units, the subsidy rates could be adjusted downward and, therefore, limit the cost to taxpayers.

Tax Reform Must Not Disrupt the Industry's Ability to Construct and Operate Workforce Housing

Congress is rightly continuing to develop proposals to reform the nation's overly complex tax code to foster economic competitiveness and economic growth. That said, much is potentially at stake for the apartment industry and its ability to meet the nation's workforce housing needs given that apartment firms pay tax when they build, operate, sell or transfer communities to their heirs. We believe that any tax reform legislation should not disrupt the industry's ability to construct and operate affordable and workforce housing and, therefore, must:

- **Protect Flow-Through Entities.** The multifamily industry is dominated by "flow-through" entities (e.g., LLCs, partnerships, S Corporations, etc.) instead of publicly held corporations. This means that the company's earnings are passed through to the partners who pay taxes on their share of the earnings on their individual tax returns. Accordingly, Congress must not reduce corporate tax rates financed by forcing flow-through entities to pay higher taxes through subjecting them to a corporate-level tax or by denying credits and deductions.

- **Maintain Like-Kind Exchanges.** Largely unchanged since 1928, like-kind exchange rules enable property owners to defer capital gains tax if, instead of selling their property, they exchange it for another comparable property. These rules encourage property owners to remain invested in the real estate market while providing them with the flexibility to shift resources to more productive properties, different geographic locations or to diversify or consolidate holdings. Any proposal to revise or restrict like-kind exchanges may have a significantly harmful effect on the value and trading of property. As a result, Congress should not change present law.

- **Ensure Depreciation Rules Avoid Harming Real Estate.** Some have sought to raise revenue by significantly extending the 27.5-year depreciation period of multifamily buildings and increasing the 25 percent depreciation recapture tax rate applicable to sales. By creating a discriminatory cost recovery system that is detached from the life of multifamily buildings, these proposals would reduce development and investment, result in lower real estate values and stifle the industry's ability to create new jobs.

- **Retain the Deduction for Business Interest.** Efforts to prevent companies from overleveraging are leading to calls to scale back the current deduction for business interest expenses. Unfortunately, reducing this deductibility would greatly increase the cost of debt financing necessary for large-scale projects, curbing development activity when the nation is suffering from a shortage of apartment homes.

Conclusion

In closing, NMHC/NAA look forward to working with the Financial Services Committee and the entire Congress to address the nation's affordable workforce housing challenges. On behalf of the apartment industry and our 38 million residents, we stand ready to work with Congress to ensure that every American has a safe and decent place to call home at a price that enables individuals to afford life's necessities.

Testimony of Granger MacDonald

President, MacDonald Companies

On Behalf of the

National Association of Home Builders

Before the

House Financial Services Committee

Subcommittee on Housing and Insurance

Hearing on

"The Future of Housing in America: Government Regulations and the High Cost of Housing"

March 22, 2016

Introduction

Chairman Luetkemeyer, Ranking Member Cleaver and members of the Subcommittee, I am pleased to appear before you today on behalf of the National Association of Home Builders (NAHB) to share our views regarding regulatory burdens on affordable housing. My name is Granger MacDonald and I am a home builder from Kerrville, Texas and NAHB's 2016 First Vice Chairman of the Board.

NAHB represents over 140,000 members who are involved in building single-family and multifamily housing, remodeling, and other aspects of residential and light commercial construction. NAHB's members construct approximately 80 percent of all new housing in America.

All families deserve a decent, safe and affordable place to call home. NAHB strongly supports sensible policies to facilitate homeownership, increase the supply of quality rental housing and provide rental assistance to low-income households. Today, I would like to discuss how regulations and other barriers impact the affordability and supply of single-family and rental housing.

Cost of Regulation

Regulatory burdens impose costs on the development of land and the construction/remodeling of single-family and multifamily homes. These added costs are passed along to homeowners and renters through higher prices and rents.

Housing is an important source of economic growth and job creation, and regulations are limiting home builders' ability to grow and contribute positively to the economy. NAHB survey data of builders has demonstrated that, on average, regulation imposed during development accounts for 16.4 percent of the price of a home built for sale; regulation imposed during construction accounts for 8.6 percent of the price. Thus, in total, 25 percent of the price of an average single-family home built for sale is attributable to regulation imposed by all units of government at various points along the development/construction process. The regulatory burden includes costs associated with permitting, land development, construction codes, and other financial burdens imposed on the construction process.

As a small business owner operating in a heavily regulated industry, I understand how difficult (and often costly) it can be to comply with the myriad of government regulations that apply to my day-to-day work. This is particularly noteworthy in an industry where margins are so thin and consumers' sensitivity to price fluctuation is so acute.

Oftentimes, these regulations end up pushing the prices of housing beyond the means of many middle-class working American families. For example, according to estimates from NAHB, on a national basis, a $1,000 increase in home prices leads to pricing out just slightly more than 206,000 individuals from a home purchase.[1] Additionally, 110,460 renter households will become burdened by the rising rents if the cost of producing or operating a rental housing unit increases by $1,000. The size of this impact varies widely across states and metro areas, depending on population, income distributions and new home prices. This highlights the real effect that building regulations have on housing affordability.

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[1] http://www.nahb.org/generic.aspx?genericContentID=161065&channelID=311

Unintended Consequences of Regulations and Housing Affordability

By reducing unnecessary regulatory burdens on the nation's small businesses, we can promote job creation and reduce costs for consumers. For example, a study by the U.S. Small Business Administration found that firms with 20 or fewer employees pay 40 percent more in compliance costs per employee than firms with more than 500 workers. Smaller firms are typically forced to pay huge added costs to hire outside professional consultants to help them demonstrate compliance with technical and permitting requirements.

Home builders and their subcontractors are among the small businesses that are disproportionately burdened by complicated regulations and expensive compliance costs. Most homebuilding companies are small businesses that employ less than 10 workers and build less than 10 homes annually. These are the types of businesses most urgently in need of regulatory relief.

The overregulation of the housing industry is felt at every phase of the building process. It results from local, state and federal mandates. It includes the cost of applying for zoning and subdivision approval; environmental mitigation; and permit, hook-up, impact or other government fees paid by the builder.

Even now, the homebuilding industry is besieged with regulation that will have negative effects on affordability. NAHB is actively opposing regulations proposed by the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), the Federal Emergency Management Agency and other agencies on new regulations which could drive up the cost of housing further. Specifically, regulations on energy codes, EPA's Waters of the U.S. regulation, OSHA's Crystalline Silica regulation, the U.S. Department of Labor's (DOL) Persuader rule and new joint employer standard, and the Americans with Disabilities Act compliance are only a few of the myriad of regulatory issues home builders must face on a daily basis.

All of these devastating regulations must be factored into the cost of housing. As the cost of housing increases and the access to credit remains tight, home buyers and renters will have fewer safe, decent and affordable housing options.

Homeownership Is Still the American Dream, but Quality Rental Options Are Also In Demand

Younger Americans still look to homeownership as an important part of the American Dream. According to a recent survey from the Demand Institute, of the 1,000 Millennials surveyed, 75 percent believe homeownership is an important long-term goal and 73 percent believe homeownership is an excellent investment. However, 44 percent think it will be difficult to qualify for a mortgage.[2] In 2014, Fannie Mae conducted a survey that found "90 percent of young renters were likely to buy a home at some point in the future. Only 7 percent of younger renters reported that they were likely to always rent a home." This is due to the ongoing preference for homeownership and the "belief that owning a home [is] the sensible long-run financial choice, protecting against rent increases as well as yielding financial benefits."[3] And while a majority of renters in a recent Freddie Mac survey indicated they planned to continue to rent over the short-

[2] http://eyeonhousing.org/2014/09/millennials-and-the-american-dream/

[3] http://www.fanniemae.com/resources/file/research/housingsurvey/pdf/nhsmay2014presentation.pdf

run (the next three years), this share has fallen to 55 percent compared to 61 percent from an August 2014 survey. Moreover, the Freddie Mac survey also revealed that saving for homeownership was an important goal of renters, with 60 percent of respondents placing a high or medium priority on the goal of saving for a down payment.[4]

NAHB believes it is important to focus not only on the affordability of renting, but also look towards the future home owners and ensure that they have the tools they need to move into homeownership.

While most families still aspire to buy a home of their own, this dream is more difficult to achieve today than in the past. Most newly formed households are just beginning their careers and do not have large down payments or high credit scores. Restrictive underwriting standards have placed mortgages even further out of reach for such families. Student debt responsibilities and lower starting salaries and wages compound the challenges facing younger individuals making it even more difficult for them to transition to homeownership without access to affordable opportunities.

In addition to normal underlying housing demand, NAHB estimates that two million households did not form during the recession, and they represent additional pent up demand that will come to the housing market as the economy improves and hiring returns to more normal levels. Many of these individuals either did not form an independent household or they returned to live with their parents, relatives or friends after losing their job or experiencing a significant reduction in income. NAHB expects these individuals to be in the market to rent an apartment or buy a home as the economy expands.[5]

In the multifamily housing business, affordability is a serious problem for families hoping to rent a quality apartment. NAHB's research shows that rents are rising faster than the rate of inflation and wage growth. Similarly, the Harvard Joint Center for Housing Studies estimates that 26.5 percent of rental households in 2013 were classified as rent burdened, paying more than 30 percent of their household income in rent. Additional supply is the solution to rising demand for rental housing.

Economic Impact of Single Family and Multifamily Construction

Homebuilding is American manufacturing. The jobs it creates cannot be shipped overseas. Reigniting and supporting homebuilding directly correlates to additional American manufacturing jobs at all levels.

In the third quarter of 2015, housing's share of gross domestic product (GDP) was 15.3 percent, with homebuilding yielding 3.3 percentage points of that total. Historically, residential investment has averaged roughly 5 percent of GDP while housing services have averaged between 12 percent and 13 percent, for a combined 17 percent to 18 percent of GDP. While these shares tend to vary over the business cycle, clearly housing is an important factor in a healthy economy.[6]

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[4] http://www.freddiemac.com/multifamily/pdf/Consumer_Omnibus_Results_Jan_Feb_2016.pdf
[5] http://eyeonhousing.org/2016/02/young-adult-households-that-did-not-form/
[6] http://eyeonhousing.org/2015/12/housing-share-of-gdp-third-quarter-2015/

The homebuilding industry creates a significant number of jobs and added tax revenue. NAHB's national estimates for 2014[7] include the following:

- Building an average single-family home: 2.97 jobs, $110,957 in taxes
- Building an average rental apartment: 1.13 jobs, $42,383 in taxes
- $100,000 spent on remodeling: 0.89 jobs, $29,779 in taxes

The impacts on employment are broad based, creating jobs in many important U.S. industries, such as manufacturing, wholesale and retail trade and professional services, in addition to construction.

Home construction has experienced a slow but consistent recovery since the end of the Great Recession. In 2009, during industry lows, total housing starts came in at 554,000. Of that total, 445,000 were single-family, while 109,000 were multifamily. Since then, the multifamily sector has had the more accelerated recovery. For 2015, total multifamily starts came in at 397,000, a 362 percent gain over the cycle low. NAHB expects multifamily production to be essentially level with a total of 396,000 multifamily starts for 2016. However, rising rents and lackluster income growth have increased rental housing burdens.

Impact of Executive Order 13690 on Housing Affordability

NAHB has serious concerns regarding decreased housing affordability that will result along the nation's rivers and coasts once the Department of Housing and Urban Development (HUD) begins to implement Executive Order 13690 and the new Federal Flood Risk Management Standard (FFRMS).

The FFRMS expands floodplain management requirements, including floodplain avoidance, mitigation, and increased elevation and resilience standards, far beyond the long-established 100-year floodplain limits for all federally-funded projects. While protecting federal investments and taxpayer dollars makes sense, HUD has indicated it will also apply the new flood risk management standard to multifamily projects using FHA-backed loans for new construction and substantial rehabilitation, including its market-rate Section 221(d)(4) program.

Regrettably, HUD has not mapped the geographic limits of the expanded floodplains or analyzed the costs and benefits of implementing the new standard. Without maps of the regulatory floodplain, builders and developers using this financing will face unnecessary uncertainty as they plan multifamily projects. If a project triggers the expanded flood risk management requirements, project delays and costs will undoubtedly increase. In fact, preliminary estimates suggest compliance with the new FFRMS will increase construction costs for new HUD-financed or assisted properties by approximately 5 percent. This estimate is based on the cost of elevating the properties 2 feet above the base flood elevation (BFE). Considering NAHB estimates that the average profit margin on multifamily properties is only about 2 percent,[8] it is clear that delays and increased construction costs pose a serious threat to housing affordability in communities anywhere near the water.

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[7] http://eyeonhousing.org/2014/05/jobs-created-in-the-u-s-when-a-home-is-built/ and "Impact of Home Building And Remodeling On The U.S. Economy" by Paul Emrath, Ph.D., May 1, 2014 http://www.nahbclassic.org/generic.aspx?sectionID=734&genericContentID=227858&channelID=311&_ga=1.164712319.1923655094.1427310833.

[8] "Homebuilder and Remodeler Cost Breakdown" by Natalia Siniavskaia, NAHB Eye on Housing Blog; January 7, 2016. See http://eyeonhousing.org/2016/01/homebuilding-costs/?_ga=1.7542962.1073388023.145814165 4.

Freeboard Value Approach

While E.O. 13690 provides multiple compliance options, HUD indicated (Fall 2015 Unified Agenda[9]) that it will use the freeboard value approach, stating "new construction or substantial improvement in a floodplain [must] be elevated or flood proofed two feet above the base flood elevation for non-critical actions and three feet above the base flood elevation for critical action."

NAHB is gravely concerned that this approach would significantly expand the floodplain area beyond the existing 100-year floodplain. This is because the freeboard value approach is not simply a vertical expansion of the floodplain; it will expand the floodplain horizontally as the elevation rises. **Figure 1** illustrates the floodplain expansion associated with the freeboard value approach. Areas in the gray region are within the 100-year floodplain and are currently subject to the various floodplain requirements. The increased flood elevation is represented by the vertical increase beyond the 100-year BFE, and the horizontal increase (tan region), which expands depending on the topography. These new areas would be subject to the floodplain management requirements.

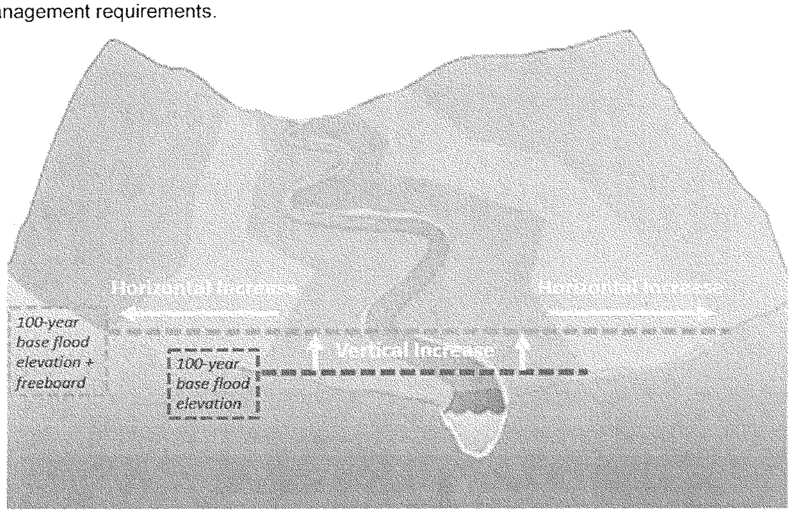

Figure 1. Illustration of the vertical flood elevation increase and corresponding horizontal floodplain expansion under the freeboard value approach. Shaded gray = 100-year floodplain. Shaded tan = freeboard value floodplain.

Unlike the 100-year floodplain, which is mapped by FEMA, there are no national maps to show the floodplain according to the freeboard value approach. Such maps are needed to determine

[9] The Unified Agenda of Federal Regulatory and Deregulatory Actions, more commonly known as the Unified Agenda, is a semiannual publication of all the regulatory actions federal agencies are considering. Executive Order 12866, Regulatory Planning and Review, requires agencies prepare such an agenda in order to improve coordination among divisions of the federal government and to notify the public of upcoming actions.

the extent of the floodplain expansion as well as to help determine a project's feasibility in the newly defined floodplain before builders invest years of their time and potentially millions of dollars securing the necessary financing, land, permits and construction materials. Until such maps are developed, builders may have to rely on surveyors to determine the floodplain boundaries, and it is not guaranteed that HUD officials will agree with these analyses. Due to the uncertainty, additional regulatory burden and increased costs that builders will have to bear under this approach, NAHB has strongly urged HUD not to implement E.O. 13690 via rulemaking until maps defining the new floodplains are produced by the appropriate federal agency.

In the last five years, HUD has financed over 800 projects nationwide using the FHA 221(d)(4) multifamily mortgage insurance program. NAHB is concerned that the cost of the expanded floodplain management standard will be significant and impair the ability to provide affordable housing using numerous federal programs.

Access to Credit

The ability of the homebuilding industry to address affordable housing needs and contribute significantly to the nation's economic growth is dependent on an efficiently operating housing finance system that provides adequate and reliable credit to home buyers and home builders at reasonable interest rates through all business conditions. At present, home buyers and builders continue to confront challenging credit conditions weighed down by an overzealous regulatory response to the Great Recession. In addition, the ongoing uncertainty over the future structure of the housing finance system has intensified these challenges.

The housing finance system is governed by statutes and regulation overseen by a myriad of federal agencies. In response to the recent financial crisis, the Dodd-Frank *Wall Street Reform and Consumer Protection Act of 2010* (Dodd-Frank) mandated significant mortgage finance reforms and created the Consumer Financial Protection Bureau (CFPB) to supervise and monitor many of the new requirements. Additionally, the Federal Housing Finance Agency (FHFA), the Federal Housing Administration (FHA) and the federal banking regulators all have taken steps to ensure the U.S. economy will never again be as vulnerable to risky mortgage lending. The collective force of the actions taken by these agencies, along with the lingering doubts and uncertainty of market participants, has resulted in an undue restriction on the availability of mortgage credit to many creditworthy borrowers.

While there have been some actions taken by the individual agencies to mitigate the overly tight lending conditions, the housing sector is still struggling to return to normal. NAHB believes there are additional steps that can be taken to eliminate some of the barriers to credit availability and support a stronger, more robust recovery of the housing and mortgage markets while still employing balanced reforms to protect the housing market from another crisis.

Affirmatively Furthering Fair Housing

The Affirmatively Furthering Fair Housing (AFFH) regulation, which HUD is currently implementing, could pose further challenges to producing and preserving affordable housing. NAHB supports the rule's goals of reducing concentrations of poverty and housing segregation as well as providing greater economic opportunity to all residents in a community. However, NAHB is concerned that this initiative could result in unintended consequences with the federal government dictating prescriptions for land use and program design that would be more effective if developed and vetted at the local level. Also, because HUD has authority to withhold housing funds from areas that do not submit accepted fair housing plans, the AFFH rule may also pressure local jurisdictions to undertake misguided and shortsighted quick fixes in order to ensure that federal grants and subsidies are not disrupted, rather than pursuing solutions that are sustainable over the longer run.

Labor Shortages

The homebuilding industry is experiencing a major labor shortage. In 2015, the labor shortage was the number one problem facing NAHB members. As of mid-2015, 41 percent of builders were reporting a shortage of labor in 9 key trades, up sharply from 20 percent in 2012 and 28 percent in 2013. Moreover, in January, we saw an all-time high in unfilled positions since 2007, with 185,000 job openings nationwide in the construction field.[10]

Builders are also concerned about the availability of subcontractors. Over half of our builders subcontract out at least 75 percent of the construction work. Partly as a result, costs of subcontractors are rising faster for builders than costs of directly-employed workers.

Roughly three out of five builders said that labor scarcity has made it difficult to complete projects on time. Labor shortages have caused builders to pay higher wages/subcontractor bids, and raise home prices.

However, the construction industry has an aging population. Data from the 2013 American Community Survey (ACS) reveals that the median age of a worker in the overall construction sector is 42, with some subcontractor median ages ranging in the 50s.[11] There's tremendous financial opportunity in the construction trades, and for those not inclined to the college track, we should be working to encourage careers in construction.

I have experienced the problems that labor shortages have on our industry. Multifamily construction projects that normally take 14 months now take 18 months. Previously, the average cost of multifamily construction in my town was $100,000 per unit, but due to labor shortages it is now $115,000 a unit. With that increase, my business is unable to cover the cost, and it must be passed on to the consumer in the form of higher rent.

It is a common misconception while talking about Davis-Bacon to cite the construction industry as a low paying sector. Trades in residential building and remodeling are good, family-supporting jobs. Carpenters, for example, earn an average of $45,590 per year,[12] while electricians average $54,520[13] and plumbers average $54,620.[14]

Davis-Bacon

The Davis-Bacon Act, created in 1931, is derived from the Depression-era practice of employing workers from lower-paid areas to bypass local workers that required a higher wage. Congress has extended the use of Davis-Bacon beyond directly funded federal projects, such as provisions within the Housing and Community Development Act of 1974.

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[10] http://eyeonhousing.org/2016/03/elevated-count-of-unfilled-construction-jobs-in-january/
[11] http://eyeonhousing.org/2015/12/age-of-the-construction-labor-force/?_ga=1.174098274.1923655094.1427310833
[12] http://www.bls.gov/oes/current/oes472031.htm
[13] http://www.bls.gov/oes/current/oes472111.htm
[14] http://www.bls.gov/oes/current/oes472152.htm

The law's original intent, however, has been frustrated by burdensome regulations and prevents taxpayers from benefitting from competitive bidding. For NAHB members, the requirement to use Davis-Bacon wage rates can substantially increase the cost of constructing affordable housing. As this law is currently enforced, it is artificially driving up construction costs on apartment communities that include HUD financing. Further, the compliance burdens are creating barriers to entry for small mom-and-pop subcontractors to work on these projects.

The current wage survey process utilized by the DOL often sets the highest industry wages or organized labor wages in an area as the prevailing wage for federal projects. As an industry that is typically non-unionized, many of our home builders and remodelers have little or no experience dealing with the requirements of Davis-Bacon, and the inclusion of its provisions have the tendency to simply discourage NAHB members from participating in federal programs.

Over the years my business has lost many subcontractors due to constraints over Davis-Bacon, including subcontractors we have worked with for over a decade. These smaller subcontractors, like our builder members, are ill-equipped to deal with the compliance burdens and reporting mandates. For example, Davis-Bacon requires the subcontractors, as well as the general contractors, to manage payrolls, make payments and report wage information on a *weekly* basis.

As HUD moves away from paper to electronic reporting of wage and payroll certifications, the new reporting requirements for subcontractors have made it impossible for them to participate in projects that require Davis-Bacon, and as a result, crippled their businesses. The larger companies are able to withstand the requirements, but in my experience, these compliance burdens are disproportionately affecting minorities and mom-and-pop subcontractors. Smaller subcontractors who cannot afford to hire Davis-Bacon compliance staff or consultants do not understand the reporting requirements, do not have the staff or business infrastructure to comply with the mandates, or simply choose to take other jobs to avoid the additional compliance burdens.

The onerous Davis-Bacon requirements are reducing the supply of subcontractors. NAHB estimates that subcontractors account for 65 percent of multifamily construction costs, but it is not only the paperwork burdens that are scaring some builders and subcontractors away from HUD projects where Davis-Bacon applies. Fines and liability associated with Davis-Bacon are a deterrent. NAHB has heard from builders who are held liable for violations of their subcontractors even though the subcontractor submitted certified payroll documentation. In fact, the DOL has held builders accountable for their subcontractor's fraud, such as falsifying certified payroll documents.

NAHB believes that including Davis-Bacon mandates on federal construction projects -- particularly affordable housing construction -- negatively impacts the goals of government programs by unnecessarily creating additional layers of bureaucracy and costs. NAHB strongly opposes the mandatory use of Davis-Bacon prevailing wage rates and requirements.

Inclusionary Zoning

NAHB is concerned that there is too much focus on Inclusionary Zoning (IZ) as the single preferred method of achieving fair housing goals. IZ requires that a portion of new construction is designated as affordable housing for those of low to moderate income.

The reality is that different market segments may require different tools for improving affordability, from direct or indirect subsidies at the low end of the income bracket to better planning for housing and regulatory barrier removal strategies at the upper end of the income range. An economic study conducted for NAHB that focused on price and production effects concluded that in places like California, there was not an overall increase of housing production from IZ and that IZ acts like a tax on housing.[15]

The middle class gets squeezed out under IZ. Due to an increase in the cost to cover subsidized IZ units, the middle class is no longer able to afford the market-priced units and they are ineligible for the subsidized rates. IZ simply shifts the problem without solving it.

IZ may be feasible if the right incentives are available. There are other approaches such as planning and zoning changes to assess development capacity and encourage affordable housing. Expedited permitting processes and advocacy efforts to reduce NIMBYism can also have broad effects on housing affordability.

NAHB urges government to encourage and coordinate with, and not prescribe to, local communities to adopt long-term comprehensive plans that will meet the demand for new housing and economic development. Eliminating exclusionary planning and zoning practices will encourage the production of the full range of housing options for all members of the community.

Coordination and Streamlining of Local Regulations

NAHB also believes that streamlining local regulations and removing unnecessary red tape that delays or prevents development is sorely needed. We wholeheartedly support the Administration's encouragement to local policymakers that they reduce local barriers to housing development. One White House Fact Sheet[16] said:

> "In many productive regions – where companies are flocking to do business – it's harder for them to find workers because it's so hard for those workers to find housing. In some cases, this difficulty is not for lack of developers who are willing to invest, or construction workers wanting to get back to work – it's because localities have not gotten around to reforming outdated, decades-old rules on housing development. Overly burdensome barriers to developing new housing reduce the ability of housing supply to respond to demand, and cause higher housing costs for working families. In the most heavily regulated communities, delays for development approval average ten and a half months, compared to just over three months in less regulated communities..."

Conclusion

Regulatory reforms will help improve affordability, but it is not a substitute for a direct subsidy. A 2011 Harvard study noted that "[t]he rising costs of construction make it difficult to build new housing for lower-income households without a subsidy."[17] In 2009, the median asking rent for

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[15] https://www.nahb.org/~/media/Sites/NAHB/SupportingFiles/4/FIN/FinalResourceManualPublicVersion_20110614041425.ashx?la=en

[16] https://www.whitehouse.gov/the-press-office/2013/08/05/fact-sheet-better-bargain-middle-class-housing

[17] "America's Rental Housing: Meeting Challenges, Building on Opportunities" Joint Center for Housing Studies of Harvard University, 2011. Page 23.

new unfurnished apartments was $1,067; for minimum-wage workers, an affordable monthly rent using the 30-percent-of-income standard is just $377.[18] The study calculated that to develop new apartments with rents affordable to households with incomes equivalent to the full-time minimum wage, the construction costs would have to be 28 percent of the current average.[19] While regulatory reform will help us lower development costs, to reach lower-income households, it is financially infeasible to construct new, unsubsidized affordable rental units without federal assistance.

As we urge Congress to pursue regulatory reform, we also request your continued support for successful housing programs such as the Low Income Housing Tax Credit (LIHTC), and full funding for vital rental housing programs such as the Housing Choice Voucher Program, Project-Based Section 8, and HOME.

Additionally, streamlining the regulatory process encourages the promotion of new development. NAHB applauds the Committee for their work on H.R. 3700, the *Housing Opportunity Through Modernization Act of 2016,* which reduced the inefficient and duplicative requirements that have made many of the HUD and Rural Housing programs unnecessarily burdensome.

NAHB thanks the Subcommittee for the opportunity to testify. Whether they rent or own, Americans want to choose where they live and the type of home that best meets their needs. NAHB thanks the Chairman and this Subcommittee for their leadership on this important issue, and stands ready to work with you to achieve necessary reforms and expand the availability of affordable housing.

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http://www.jchs.harvard.edu/publications/rental/rh11_americas_rental_housing/AmericasRentalHousing-2011.pdf

[18] Page 23 and 21

[19] Page 24

MORTGAGE BANKERS ASSOCIATION

MBA Statement for the Record
House Committee on Financial Services
Subcommittee on Housing and Insurance
"The Future of Housing in America:
Government Regulations and the High Cost of Housing"
March 22, 2016

The Mortgage Bankers Association[1] recognizes that private sector lenders produce the majority of multifamily loans for workforce housing properties (of 5 rental units or more) that are available to households that rent their homes. It is critical that multifamily finance is efficient for market rate and assisted multifamily housing as the industry remains primarily a business-to-business environment. Also, as development and preservation of multifamily rental housing is a long-term process, stable and reasonable regulatory requirements are important. The Federal Housing Administration's multifamily housing finance programs should always provide for approved private sector lenders to work in partnership with FHA and should have requirements that are consistent with the multifamily rental housing finance market. FHA has made recent positive enhancements to its standard programs to encourage additional financing of affordable and energy efficient multifamily rental housing. The administration of FHA's multifamily environmental requirements may warrant further attention and potential modification and MBA will continue to provide recommendations to FHA from MBA member FHA lenders.

With regard to the national importance of multifamily rental housing that is naturally occurring and developed and sustained without government subsidy, MBA has released a recent white paper — *Affordable Rental Housing and Public Policy: Toward Greater Housing Security and Stability* — in which MBA emphasizes that:

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

- Our nation's housing policy should support new construction, preservation of existing housing stock, and demand-side assistance — all of which play a vital role in ensuring access to quality, affordable rental housing.

- Private capital should be used and attracted wherever and whenever possible to increase the supply of housing, while recognizing that a government role is necessary for targeted affordable rental housing and to ensure liquidity.

- Existing, proven programs should be enhanced where they have been effective, and enhancements to programs must take a holistic approach that addresses:

    - the development of new and the rehabilitation of existing affordable rental housing, including attracting equity investments to rental housing;

    - the debt financing available for affordable rental housing where various capital sources can play greater roles; and

    - the demand for rental housing on the part of households of modest means, but especially for low- and very low-income families who would rely substantially on housing programs.

We are grateful for the subcommittee's focus on rental housing and are pleased to submit MBA's white paper for the hearing record.

ONE VOICE. ONE VISION. ONE RESOURCE.

Affordable Rental Housing and Public Policy

TOWARD GREATER HOUSING SECURITY AND STABILITY

MBA Affordable Rental Housing Task Force
December 2015

MBA.ORG

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MORTGAGE BANKERS ASSOCIATION

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Executive Summary

"I see one-third of a nation ill-housed, ill-clad, ill-nourished... The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little..."

— President Franklin Delano Roosevelt, Second Inaugural Address, January 20, 1937

"These policies are thoroughly consistent with American ideals and traditions. They recognize and preserve local responsibility, and the primary role of private enterprise, in meeting the Nation's housing needs. But they also recognize clearly the necessity for appropriate Federal aid to supplement the resources of communities and private enterprise."

— President Harry Truman on the Signing of the Housing Act of 1949, July 15, 1949

The number of American households who rent their homes stands at an all-time high. Most individuals have rented their home at various stages of life, and many seniors do or plan to rent during their retirement years. Our Nation's rental housing policies will continue to grow in importance due to the increase in rental demand, the need to safely and affordably house an aging population, and the fundamental desire to provide greater economic opportunity to a broader cross-section of American households.

Multifamily rental housing, by its very nature, tends to be affordable to low- and moderate-income families. Most multifamily rental properties, including market rate housing, are affordable to households of modest incomes. Rental housing that benefits from public subsidies — a component of the broader multifamily housing market — meets the needs of millions of low- to moderate-income families. Until recently, however, the pace of new construction since the financial crisis has lagged relative to demand and incomes have largely remained stagnant, especially among low- and moderate-income households. And much of our rental housing stock, particularly units that are affordable to households with modest incomes, is aging.

Significant numbers of American households are cost burdened — and for renters, the numbers are at a historic high, with 21.3 million renter households — almost half of all renter households — paying more than 30 percent of their incomes in rent.[1] More than a quarter of renter households spend more than half of their income on rent. Given the growing body of research supporting the importance of affordable and quality housing as a conveyor belt for better educational, health and economic outcomes, our public policies must keep pace with demographic and societal shifts — leading to holistic housing policy that addresses the critical importance of rental housing and a housing system that supports greater affordability and quality.

It is vital that policymakers and stakeholders understand the nature and scope of the affordable rental housing market and explore ways to effectively address the supply-demand gap. The **Mortgage Bankers Association,** as the leading association of the real estate finance industry, convened a Task Force to review the range of issues that surround the growing concern around the availability of affordable rental housing. The members of the **MBA Task Force** bring perspectives and expertise as practitioners in multifamily lending, working with a range of capital sources to finance diverse rental property types in virtually all geographic markets.

The Task Force sought to: (1) highlight the extent and impact of the current shortage of affordable rental housing, drawing on data and research; (2) be a catalyst for a holistic public discussion on affordable rental housing; (3) recognize the

1 Joint Center for Housing Studies of Harvard University, *America's Rental Housing — Expanding Options for Diverse and Growing Demand* (2015).

nature of the challenges and complexities associated with finding solutions to address affordable housing concerns; and (4) recommend principles that should shape how we think about affordable rental housing and improvements to existing programs that have supported the availability of affordable rental housing.

Toward these ends, the Task Force examined the importance of rental housing, the history and efficacy of existing federal programs designed to support it, and developed a framework for both general and specific policy recommendations. In summary, those *recommendations* are as follows:

- **Affordable rental housing must be an essential policy goal,** recognized as vital to our nation's well-being and future.
- **Housing policy should support new construction, preservation of existing housing stock, and demand-side assistance** — all of which play a vital role in ensuring access to quality, affordable housing.
- **Private capital should be used and attracted wherever and whenever possible** to increase the supply of housing, while recognizing that subsidies are necessary in more "targeted" affordable rental housing.
- **A broad and long-term approach is necessary** to address multifamily rental housing needs.
- **Existing proven programs should be enhanced where they have been effective,** rather than having a preference for inventing new ones. In this regard, enhancements to programs must take a holistic approach that addresses:
  - **Development of new and the rehabilitation of existing affordable rental housing,** primarily through attracting equity investments to rental housing development, including through the low-income housing tax credit program,
  - **Debt financing** available for affordable rental housing where GSE, FHA and other capital sources can play greater roles, and
  - **Demand** for rental housing on the part of households of modest means, but especially for low- and very low-income families who rely or would substantially benefit from housing choice and project-based voucher programs.

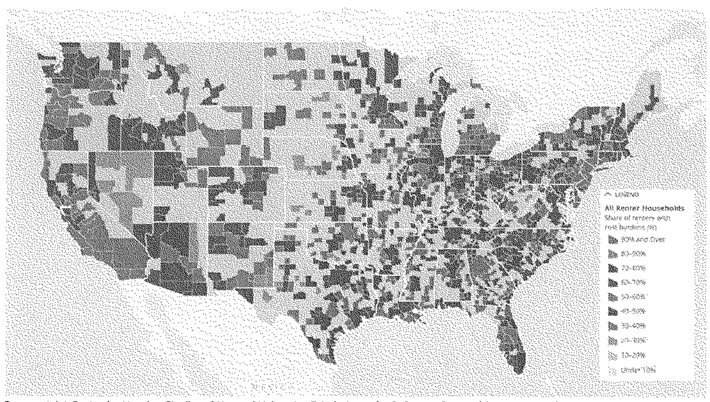
The paper is organized as follows:

- First, we discuss the current rental affordability landscape.
- Second, we describe the importance of affordable rental housing — the sense of housing security and stability that it provides to households and the impact that safe, decent and affordable housing can offer.
- Third, we survey the gap that exists between the supply and demand of affordable rental housing.
- Fourth, we discuss the challenges and complexities of addressing the affordable rental housing crisis — that do not lend themselves to simple solutions — and emphasize that policymakers must recognize the realities of these obstacles and maintain a multi-pronged approach to addressing them.
- Lastly, we provide recommendations — both principles for policy change and enhancements to programs — to generate a holistic policy dialogue, enhance affordability for renting households, and promote long-term housing security.

Where We Are Today

As the home ownership rate has dropped and more households have become renters since the financial crisis, the need for affordable rental housing has grown dramatically. Incomes fell significantly during the recession, and with limited growth in the supply of rental housing stock, rents have increased at several times the rate of inflation. Today, about half of the 43 million American households who rent their homes spend at least 30 percent of their income on housing. And almost a quarter of all renters — more than 11 million renter households — spend at least 50 percent of their income on housing, the highest total recorded. These are levels which we believe have not been seen since the Great Depression when the core of our nation's housing policies was originally developed.

SHARE OF RENTER HOUSEHOLDS SPENDING MORE THAN 30 PERCENT OF THEIR INCOMES FOR RENT



Source: Joint Center for Housing Studies of Harvard University, Tabulations of U.S. Census Bureau 2014 American Community Survey Data.

As real household incomes and net worth for many households declined to the levels of *20 years ago*, the cost of constructing rental properties and real rents have increased. The combination of stagnant incomes and rising rents has resulted in an almost 40 percent increase in the number of renter households that spend more than 30, 40 or even 50 percent of their incomes on housing. Not surprisingly, this impact is falling on those low-income and working households earning less than median income who can least afford it and are forced to make difficult trade-offs with other necessities. The average rent for rental units constructed since 2010 is more than $12,000 per year which accounts for over 35 percent of income for a renter earning the *median* renter income of $34,000 (compared to the median income of a homeowner of approximately $67,000).

Existing housing programs and capital sources, as discussed below, have been vital in serving the housing needs of many renters, but they often have not had the resources to fill the gap for those renters with median or lower incomes. Much of the stock that is affordable to most rental households today was constructed in the 1970s or earlier; with a median age of 38 years, the rental housing stock is likely older on average than it has ever been. While apartment starts have increased significantly in the last couple of years, much of this supply is not currently affordable to very low-income families.

The development and construction of new rental units, market rate and otherwise, will over time increase the supply of housing units affordable to those groups. This process, however, is gradual, especially in higher cost urban markets where, given increasing land and construction costs, rents on newly constructed dwellings may not be affordable to low- or moderate-income renters. Filling this gap for working or very low-income families will be ever more challenging unless our policies promote development and preservation of stock affordable to these groups.

Given that most renters earn less than the national median income, the concern over affordable and available rental housing will persist for years to come. On the supply side, although 300,000 to 400,000 new multifamily rental units per year are being constructed at this time (among the highest levels since the 1970s), a subset of these units will be affordable to lower-income households. And an estimated 100,000 units per year are lost to obsolescence.

Units delivered each year under the Low-Income Housing Tax Credit program offset a significant portion of units that go offline, but a potential gap of hundreds of thousands of affordable units per year remains — a gap that must be filled by additional multifamily or single family rental supply. And MBA research on the increase in renter households over the coming decade ranges from a low of 3.1 million to a high of 5.6 million new renter households.[2] Recent research also suggests that a significant percentage of these new renter households will be rent burdened and in many cases severely at current and projected rent levels based upon a modest level of income growth.[3] The need for supporting the development and maintenance of the affordable housing stock with both supply and demand side policies has rarely been greater.

POLICY AND POLITICAL CONTEXT

Affordable housing concerns have gained increasing attention in public policy discussions, particularly surrounding housing finance reform and the future of Fannie Mae and Freddie Mac, as well as the role of the Federal Housing Administration. While there is increasing acknowledgement among policymakers of the importance of rental housing and the need for continuous liquidity in all market cycles, we anticipate that the debate with regard to the role of the federal government in housing finance will continue without definitive resolution in the near term.

At the same time, housing advocates have proposed initiatives that would lead to greater development and credit support for affordable housing. A number of current regulatory initiatives, including those proposed by regulators at the Federal Housing Finance Agency and the Federal Housing Administration, are aimed at increasing the capital availability in the targeted affordable housing sector. Such initiatives have been and will continue to be debated and met with a range of reactions from both sides of the aisle.

What is often lost in the public policy discussion is that there has been a persistent subsidy bias towards home ownership rather than home rental. The typical renter household earns about 70 to 80 percent of median household income, which is in turn below that of the median owner household. If an objective of federal housing policy is to direct resources toward housing affordability and stability for households of modest means, then a more holistic evaluation of these policies and their purposes may be in order.

2 Fisher and Woodwell, MBA Research Report, *Housing Demand: Demographics and the Numbers Behind the Coming Multi-Million Increase in Households* (July 2015).

3 Enterprise Community Partners and Joint Center for Housing Studies, *Projecting Trends in Severely Cost-Burdened Renters: 2015-2025* (September 2015).

Why Housing Matters: The Importance of Affordable Rental Housing

The scarcity of affordable housing has negative ripple effects. There is a large and growing body of research indicating that housing cost burden and instability have significant health, educational and economic consequences to households and the communities in which they live. Housing instability can lead to poor health and nutrition, lower educational attainment, and stagnant economic mobility. These public concerns are complex and associated with multifaceted causal factors, but the correlation of these negative outcomes to the lack of safe, decent and affordable housing is clearly evident. Conversely, stable, secure and affordable housing has been shown to be a platform or conveyor belt for positive societal and economic outcomes for both renters and the communities in which they live.

HOUSING SECURITY

Affordable, stable housing contributes to a sense of housing security that benefits households and their communities. As observed by Enterprise Community Partners, "Nearly 19 million U.S. households pay over half their income on housing, and hundreds of thousands more have no home at all. Access to decent, affordable housing would provide critical stability for these families, and lower the risk that vulnerable families become homeless."[4]

Whether and to what extent housing is affordable has far reaching impacts, both direct and indirect, on households and communities. Where there is scarcity of affordable housing, families experience cost pressures on necessary expenses, such as food and education. Housing affordability has multifaceted impacts on renter households and the communities in which they live — from household stability to economic security to education, health, neighborhood and energy efficiency benefits.[5]

As a case study, Princeton Sociologist Douglas Massey studied the impact that stable, affordable rental housing had on low-income tenants of the 140-unit multifamily complex in Laurel, NJ, an affluent suburb outside of Philadelphia. Compared to prospective tenants who were on the property's waiting list, the study found that residents of the development experienced significantly lower exposure to neighborhood disorder and violence, far fewer negative life events, improved mental health, higher rates of employment, wages, family incomes, and lower levels of public dependency.[6]

Broader studies published by sources as diverse as the Journal of Cognitive Neuroscience and the Journal of Housing Economics show that children of families receiving income assistance in various forms, including housing vouchers, score higher on cognitive tests, perform better

4 Enterprise Community Partners, Inc., *Impact of Affordable Housing on Families and Communities: A Review of the Evidence Base* (2014), p. 2.

5 Id.

6 Douglas S. Massey, et al., *Climbing Mount Laurel: The Struggle for Affordable Housing and Social Mobility in an American Suburb* (2013). Children were also more likely to report having a quiet place to study and spent an average 6 more hours per week on homework in comparison to those children on the waiting list.

in school and likely earn more as adults as compared to children in rent-burdened housing.[7]

The MacArthur Foundation has observed that "Affordable housing may be an essential 'platform' that promotes a wide array of positive human outcomes in education, employment, and physical and mental health, among other areas."[8] Households who have to spend a higher percentage of their budget towards rent have less resources to spend on other necessary and discretionary expenses such as food, medication, health insurance, and savings for retirement or children's education. Lack of affordable housing also has long lasting indirect costs to society. Housing that is affordable may reduce the frequency of disruptive moves that can have detrimental impacts on school-age children.[9]

Similarly, the impact of frequent moves — often correlated with the lack of affordable housing — can have a negative impact on household stability and, in particular, children's social and educational development.[10] Studies have assessed the outcome of participants in HUD's Moving to Opportunity program who were provided rental subsidy and housing counseling to locate in more affluent communities compared to other similar low-income households who either received or did not receive rental assistance and were not geographically restricted. These participants and their children had statistically significant better health than the non-participants.[11]

In sum, there is clear evidence that housing affordability, along with education, is a highly effective mechanism for improving economic outcomes for lower-income families and their children.

7 See, e.g., Jack P. Shonkoff, et al., *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, Pediatrics, volume 129, number 1, pp. e232-e246, 2012; Mark M. Kishiyama et al., *Socioeconomic Disparities Affect Prefrontal Function in Children*, Journal of Cognitive Neuroscience, 21(6), pp. 1106-15, 2009; Greg J. Duncan and Katherine Magnuson, *The Long Reach of Early Childhood Poverty*, Pathways, Winter 2011; Joint Center for Housing Studies, *America's Rental Housing: Evolving Markets and Needs*, December 2013, p. 32; Sandra Newman and Scott Holupka, *Housing Affordability and Child Well-Being*, Center on Housing, Neighborhoods, and Communities working paper, August 2013; Sandra J. Newman and C. Scott Holupka, *Housing Affordability and Investments in Children*, Journal of Housing Economics, December 2013; Elizabeth March et al., *Behind Closed Doors: The Hidden Health Impacts of Being Behind on Rent*, Children's HealthWatch, January 2011.

8 MacArthur Foundation, *How Housing Matters to Families and Communities Research Initiative* (ongoing).

9 Center for Housing Policy, Insights, *The Impacts of Affordable Housing on Education: A Research* (Nov. 2014) Summary, p. 22.

10 Jeffrey R. Kling, at al., *Experimental Analysis of Neighborhood Effects* (June 2006); and Tama Leventhal, PhD and Jeanne Brooks-Gunn, PhD, *Moving to Opportunity. An Experimental Study of Neighborhood Effects on Mental Health* (2003)

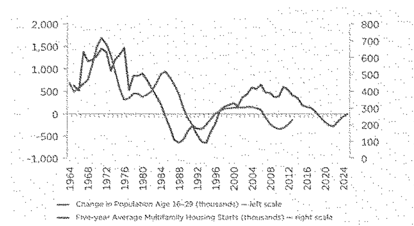
11 See also MacArthur Foundation, *Linking Affordable Housing to Greater Spending on Child Enrichment and Stronger Cognitive Development*.

HOUSEHOLD FORMATION AND RENTER DEMOGRAPHIC TRENDS

The renting population is expected to continue to grow over the next decade. As noted above, MBA estimates an increase in renter households over the coming decade ranging from a low of 3.1 million to a high of 5.6 million new households.[12]

The aging of America's population and ethnic diversity in household growth will be primary drivers for change in rental demand. The aging of the baby boom generation will lift the number of renters over age 65 by 2.2 million in the next ten years. Minorities will contribute to the net increase in renters over the decade as well. Assuming today's renting rates, minority groups will add between 1.8 million to 2.2 million renter households.[13] The demand for affordable rental housing is clearly expected to remain strong, and a significant portion of the growing renter population is anticipated to have low and moderate incomes, underscoring the affordability concern. Based on demographic forecasts, it is estimated that the country will see an increase of over 5 million Hispanic and over 2 million African American households in the next decade. While many of these households will be homeowners, many will also be renters.[14] Adding to this demographic trend is a continued movement towards urbanization, which almost by definition means higher housing development costs due to land values and construction costs.

CHANGE IN POPULATION AGE 16–29 AND MULTIFAMILY HOUSING STARTS (THOUSANDS)



Source: MBA and Census

12 Fisher and Woodwell, MBA Research Report, *Housing Demand: Demographics and the Numbers Behind the Coming Multi-Million Increase in Households* (July 2015).

13 Joint Center for Housing Studies, *The State of Nation's Housing* (2014).

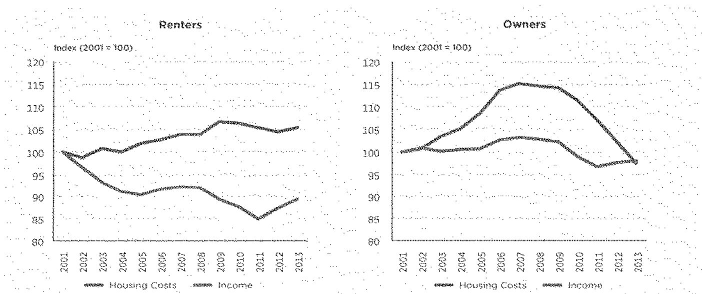
14 Id.

Gap Between Affordable Rental Housing Supply and Demand

As previously noted, about half of all U.S. renters are cost burdened and about a quarter of renter households are severely cost burdened, paying more than half of their income on rent.[15] As the Joint Center for Housing Studies observed, "the number of cost-burdened renters... set a new high in 2014 of 21.3 million. The number of households paying more than half of their income in housing jumped to 11.4 million."[16] Minorities and single-parent households have been particularly hit hard in this regard.[17]

Affordable rental housing can be viewed as both a supply-demand issue and the outcome of a mismatch between incomes and the cost to build and maintain such housing. Gaps will differ across property types and market segments, as well as across household profiles. While new construction activity for multifamily housing has been improving over the past several years, the demand is expected to remain strong, particularly in light of demographic changes and pressures on income growth.

INCOME LEVELS, WHILE RECENTLY IMPROVING, WERE TREMENDOUSLY IMPACTED BY THE GREAT RECESSION



Notes: Median costs and incomes are real values adjusted using the CPI-U for All Items. Owner housing costs are first and second mortgage payments, property taxes, insurance, homeowner association fees, and utilities. Renter housing costs are cash rent and utilities.

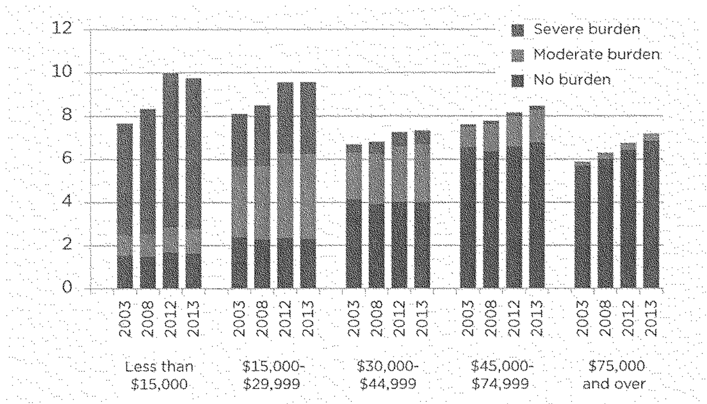
Source: JCHS tabulations of US Census Bureau, American Community Surveys.

15 Joint Center for Housing Studies, *The State of Nation's Housing* (2015), p. 30.

16 Joint Center for Housing Studies. *America's Rental Housing: Expanding Options for Diverse and Growing Demand* (2015).

17 Joint Center for Housing Studies, *The State of Nation's Housing* (2015), p. 30.

NUMBER OF RENTER HOUSEHOLDS, BY INCOME AND LEVEL OF HOUSING COST BURDEN (MILLIONS)



Source: MBA and Harvard's Joint Center for Housing Studies.

The needs of very low-income multifamily renters are particularly acute. One study found that between 2007 and 2011, the number of very low-income multifamily renters increased from 7.6 million to 8.7 million (a 14 percent increase). The number of very low-income multifamily renters spending more than 50% of their income on housing increased from 2.5 million to 3.4 million (a 36 percent increase). The study also found that the number of adequate and available multifamily rental units affordable to very low-income households increased from 4.5 million to 4.6 million (a 4 percent increase).

Because of the faster growth in demand than supply, the supply gap increased from 3.2 million units to 4.0 million units (a 28 percent increase) over the period.[18]

The targeted affordable rental housing stock — housing that has historically benefited from government subsidies — is at increasing risk due to expiring restrictions. Privately-owned rental housing units that are government-subsidized were built specifically to provide affordable rental housing. Under government subsidy programs such as the Low-Income Housing Tax Credit program, "owners agree to maintain affordable rents for a set period, usually 15 to 30 years, in exchange for federal subsidies. When those agreements expire, owners can either re-enroll in the affordability programs or convert their properties to market-rate units."[19] The Joint Center for Housing Studies observed that "nearly 2.2 million assisted units are at risk of removal over the coming decade."[20] Public housing, for example, serves extremely low-income households but this inventory faces a mounting capital needs backlog that jeopardizes its long-term sustainability. Without the preservation of many of these units (much of which require substantial rehabilitation and capital improvements), the availability of the current affordable housing stock will contract further — potentially at a precipitous pace.

18 Freddie Mac, *Multifamily Affordability: Market Conditions and Policy Perspectives* (2013).

19 HUD, *Preserving Affordable Rental Housing: A Snapshot of Growing Need, Current Threats, and Innovative Solutions* (Summer 2013).

20 Joint Center for Housing Studies, *The State of Nation's Housing* (2015), pp. 33-34.

Complexities and Challenges in Expanding the Availability of Affordable Rental Housing

Although the extent and depth of the cost burden on renter households are evident, formulating public policy to increase the supply of affordable rental housing presents significant challenges and complexities. These realities must be acknowledged in efforts toward expanding the availability of affordable rental housing.

Affordability Mismatch. Affordability concerns with regard to rental housing fundamentally result from a gap between the cost of renting and the incomes of households seeking available units. The well-documented limits in income growth among moderate to low-income households has exacerbated the degree to which households are rent burdened. Housing finance policy does not impact household income levels. While a long-standing idea dating back to the 1930s, direct income subsidies in the form of rental vouchers have since the 1970s been the principal mechanism for addressing 'lack of income.'

Capital Source Characteristics. The federal government largely exited the business of building housing in the 1970s and relied instead on private capital to create supply. Private capital, by its nature, looks for a return on investment and flows to where that return may be higher. Private capital does not naturally flow into the targeted affordable segment of the housing market, given the lower returns anticipated. Some form of subsidy — federal, state, local, public-private partnership-based, or through the tax code — has been and will continue to be necessary to ensure an adequate supply of housing for low- and very low-income households. This reality must be acknowledged to the extent that affordable, safe rental housing is viewed as a policy priority. At the same time, the budget-constrained environment in which the federal government and most state and local governments operate limits the critically important resources that are necessary to support the broad availability of affordable rental housing.

Trade-off between Affordability and Quality. The cost drivers of developing affordable rental housing align in many ways with other multifamily projects, but also present unique challenges. Land price and construction costs are largely dictated by local market conditions and regulatory requirements. Because affordable rental housing needs often emerge in more densely populated areas, land prices and development costs may be higher. A 2014 study by Enterprise and ULI's Terwilliger Center for Housing describes, among other things, the added costs associated with affordable housing developments because of multiple funding streams, varying requirements and compliance costs, and the costs of providing a variety of amenities for the residents served.[21]

Rental housing that is affordable also may not necessarily mean it is safe and habitable. Properties that are very affordable could lack quality and present hazards to residents. As the Joint Center for Housing Studies observed, "Paying large shares of income for housing does not guarantee the units will be adequate or safe. Housing deficiencies related to plumbing, electrical, and heating systems or to structural integrity affect a much larger share of renters (9 percent) than owners (3 percent)."[22] Safety and quality should not be shortchanged for affordability, but these are trade-offs that some households are forced to make and represent an ongoing challenge to policy makers as development and operating costs continue to rise faster than incomes.

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21 ULI, Terwilliger Center for Housing, Enterprise. *Bending the Cost Curve* (2014), pp. 8-9.

22 Joint Center for Housing Studies, *The State of Nation's Housing* (2015).

State and Local Regulatory Considerations. State and local rules and regulations can have a significant impact on the development of affordable rental housing. Permit fees, land use regulations and building codes are examples of locally-imposed frameworks that can significantly impact the cost and availability of rental housing. ULI and Enterprise observed, "As a result of these higher baseline costs, the ability of market-rate housing to reach lower income levels is limited and affordable housing subsidies result in fewer units."[23] While beyond the scope of this paper, we see significant opportunity for reform in the state and local regulatory sphere.

Multi-faceted Capital Needs. The development of affordable rental housing typically involves multiple sources of capital — a combination of equity, debt, grants and other subsidies. Policies that encourage or mandate debt financing alone cannot, by themselves, increase the production of affordable housing, and in fact, can lead to market distortions that are harmful in the long run. Where mortgage debt is provided by taxpayer-backed sources, credit quality and prudent risk management are particularly important considerations. While public policy objectives could lead to more flexible credit and underwriting standards, they must be balanced with the need for diversification of risk and safeguarding of taxpayer interests.

Single-Family Rental Housing. While not the focus of this paper, we believe that single-family rental housing can play a greater role in providing affordable housing to American households. The single-family rental stock is large and diverse and in fact represents fully half of all rental stock. This is a rapidly evolving market with maturing business and financing plans. The tools and regulatory framework for this sector could be enhanced further to expand housing options for these renting households. A range of capital sources could have a role to play in providing liquidity to this market.

23 ULI, Terwilliger Center for Housing, Enterprise, *Bending the Cost Curve* (2014), pp. 18-19.

Recommendations

RECOMMENDED PRINCIPLES

The breadth of challenges confronting the state of affordable rental housing does not lend itself to simple, clear cut solutions. We believe that a broad array of approaches is necessary to address the concern. The following principles, in our view, should guide policy efforts to support the availability and affordability of rental housing.

Affordable rental housing is an essential policy goal that is vital to our nation's well-being and future

There may be a tendency to view affordable housing — and affordable rental housing in particular — as a niche concern with a limited constituency. This is belied by the simple fact that a third of all American households rent their homes, and 18 million families live in multifamily rental housing. Most individuals have rented their home at various stages of life, and many seniors do or plan to rent during their retirement years. And as MBA's recent study on household formation shows, the dynamism and dependencies between owning and renting one's home are inextricably intertwined. Over the coming decade, affordable housing policy will grow in importance due to the increase in rental demand, the need to safely and affordably house an aging population, and the fundamental desire to provide via reduced cost-burdens greater economic opportunity to a broader cross-section of American households.

New construction, preservation of existing stock and demand-side assistance all play a vital role in ensuring access to quality, affordable housing

The availability of affordable rental housing, at its core, is driven by supply and demand in geographic markets. As a general matter, both construction and rehabilitation/preservation of affordable housing should be encouraged. Increasing the supply of new or rehabilitated housing stock is the best long term economic mechanism for promoting affordability. Indeed, much of the affordable rental housing today was the newly-constructed rental housing in the 1970s and 80s. Regulatory capital rules on construction lending at depository institutions, for example, should refrain from imposing rigid requirements that stifle the development of multifamily rental housing and other commercial real estate that supports the sustainability of communities. Federal finance programs should be oriented towards financing both construction and rehabilitation of multifamily housing. Preservation of aging affordable housing stock and those with expiring regulatory subsidies and restrictions should be a focus for policymakers, as "nearly 2.2 million assisted units are at risk of removal over the coming decade."[24] Without continued policy emphasis on both new construction and rehabilitation, the problem could get worse not better.

Use and attract private capital wherever and whenever possible to increase the supply of housing, but recognize that subsidies are necessary in more targeted affordable rental housing

The role of subsidies, whether formal or implicit, tax-driven or not, or at the level of the capital provider, investor or tenant, is simply necessary for housing that is targeted toward low- and very low-income families. As the Joint Center for Housing Studies states, "Since the private sector cannot profitably supply very low-cost units, the government must play a critical role in ensuring that the nation's most disadvantaged families and individuals have good-quality, affordable housing."[25] While being mindful of the budgetary impact of various programs, policymakers must be willing to invest in the availability and affordability of rental housing to both support the current and foreseeable need and to affect positive outcomes for low- to moderate-income households. Ongoing studies measuring the benefits of housing affordability will be key to better calibrating housing policy over time. Sources and the relative economic efficiency of equity, debt, and other components of the capital stack should be considered to ensure a holistic view of the liquidity needs of affordable rental housing.

A broad and long-term approach is necessary to address multifamily rental housing needs

Multifamily rental housing is, by its very nature, affordable to low- and moderate-income families. Most multifamily rental properties, including non-subsidized market rate housing, are nonetheless affordable to households of modest incomes. Apartments with affordable regulatory restrictions (e.g., inclusionary zoning requirements) are a subset of the broader multifamily housing market that meets the needs of millions of low- to moderate-income families. And as the industry has witnessed from the existing affordable rental housing stock — much of which was built 30 or more years ago — properties that may not necessarily be viewed as affordable today will likely be

24 Joint Center for Housing Studies, *The State of Nation's Housing* (2015), p. 33.

25 Joint Center for Housing Studies, *The State of Nation's Housing* (2015), p. 32.

the naturally occurring affordable rental housing in the future. Policymakers should continue to ensure liquidity in all market cycles to the broad multifamily finance market, while examining ways to expand the targeted affordable market. And finally, it is important to acknowledge that income subsidies in the form of vouchers are necessary to provide the means needed for the lowest-income families to live in higher quality housing and in mixed-income neighborhoods where it is increasingly evident that the children of these families are more likely to find a path out of poverty.

MEDIAN MONTHLY GROSS RENT AND NUMBER OF RENTAL UNITS, BY YEAR STRUCTURE BUILT, 2013

	MEDIAN RENT	UNITS
Total:	$905	42,447,172
Built 2010 or later	$1,023	701,327
Built 2000 to 2009	$1,075	5,353,377
Built 1990 to 1999	$930	5,331,233
Built 1980 to 1989	$880	6,000,590
Built 1970 to 1979	$842	7,389,484
Built 1960 to 1969	$872	4,886,292
Built 1950 to 1959	$900	4,232,520
Built 1940 to 1949	$870	2,387,125
Built 1930 to 1939	$894	6,156,224

Source: 2013 American Community Survey, 1 Year Estimates.

Enhance and expand existing proven programs rather than invent new ones

There are numerous federal, state and local programs along with those of the nonprofit and for-profit sectors that support affordable rental housing. MBA's January 2015 *Research Datanote*[26] provides a high-level survey of programs that have sought to address affordable rental housing. Programs that have proven to be effective should be leveraged, replicated where possible, and/or built upon to develop public policy reforms. In doing so, lending and underwriting standards should be reasonable in order to support a sustainable real estate finance system.

Specific recommendations regarding a number of such programs are discussed in the following pages.

PROGRAMMATIC RECOMMENDATIONS

Building upon the foregoing principles, we believe that policymakers should adopt a holistic approach that addresses the three vital facets of expanding and preserving affordable rental housing:

- ***Development and rehabilitation*** of affordable rental housing, including attracting equity investments to rental housing development, including through the low-income housing tax credit program,
- ***Debt*** financing available for affordable rental housing where GSE, FHA and other programs can play greater roles, and
- ***Demand*** for rental housing on the part of households of modest means, but especially for low- and very low-income families who rely on or would substantially benefit from housing choice and project-based voucher programs.

These recommendations are discussed below.

Support and expand the Low Income Housing Tax Credit (LIHTC)

BACKGROUND. The LIHTC program is often described as the most successful affordable rental housing production program in American history. As a public-private partnership, LIHTC is a source of equity financing for the development of affordable housing that serves households earning 60 percent or less of AMI with rents restricted to keep the units affordable. Since it was established in the mid-1980s, the program has supported more than 2.5 million affordable rental units representing almost 15 percent of total apartment stock in the nation and between 1995 and 2012, LIHTC has placed nearly 2 million units in service.[27] A 2012 HUD study found that approximately 60 percent of households nationwide in LIHTC units earned less than $20,000 annually.[28] In addition to the direct impact of providing affordable housing, the LIHTC program provides a multiplier effect in the form of construction and then ongoing consumption effects. The LIHTC program provides approximately $6 to $7 billion of tax credits to equity investors in affordable housing, which is a relatively modest cost in the overall context of federal housing subsidies.

As the Joint Center for Housing Studies writes, "the competing demand — for new construction as well as for preservation — have put the tax credit program under extreme pressure and raised the question of whether it ought to be expanded."[29] We believe that it should.

RECOMMENDATIONS. Continuation and prudent expansion of the LIHTC program are critically important to affordable rental housing. Given both its proven success and reliance on private capital placed at risk, we strongly support expansion of LIHTC and oppose efforts to cut

26 MBA Research Datanote, *Mind the Gap: A High-level Review of the Need for — and Supply of — Affordable Multifamily Rental Housing* (2015).

27 MBA Research Datanote, *Mind the Gap: A High-level Review of the Need for -- and Supply of -- Affordable Multifamily Rental Housing* (2015), p. 6.

28 U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Understanding Whom the LIHTC Program Serves: Tenants in LIHTC Units as of Dec. 31, 2012.*

29 Joint Center for Housing Studies. *The State of Nation's Housing* (2015), p. 34.

back its scope, funding or productivity. In particular, we recognize the following programmatic components of the LIHTC program that have contributed to its success and urge their continuation. These elements include: the 10 year credit period; the 4 percent credit and use of private activity tax exempt bonds to generate the 4 percent credit; the allocation of credits rather than allocating basis; the basis "boost" for projects located in high cost and difficult to develop areas; the national pool for unused credits; and the occupancy preferences that state allocating agencies can use to tailor to local needs.

We support enhancements and expansion of this vital program. Several of the following specific proposals have been proposed by the Obama Administration, as well as industry and advocacy groups.

- **Modify the 9 percent and 4 percent credits to truly yield a minimum 9 percent and 4 percent credit.** Under current law, these rates float according to the federal government's cost of borrowing. With today's historically low borrowing rates, the 9 percent and 4 percent yield significantly lower credits to investors. Their floating rate nature also adds uncertainty to the development process and has created financing gaps that have rendered projects financially infeasible.

  We support legislation proposed in both the House and the Senate to fix the rate at a minimum of 9 percent and 4 percent. Alternatively, the Administration has proposed to alter the rates used in determining the credits by using the average of the federal government's mid-term and long-term borrowing rate plus 2 percent. While this would yield less than the fixed 9 percent and 4 percent rate suggested above in the current interest rate environment, this proposal could provide a higher credit rate under different market conditions.

- **Convert unused private activity volume cap to an equivalent 9 percent credit.** Many states have not used their allocation of private activity tax exempt bond volume cap. And the 9 percent tax credit program is perennially over-subscribed. The Administration has proposed allowing States to convert up to 18 percent of their volume cap which could effectively increase their 9 percent credits by 50 percent or more. We support this proposal.

- **Use income averaging within properties.** Currently, developers must agree to reserve a minimum of 40 percent of the units for occupancy by tenants whose incomes are at or below 60 percent of the area median or 20 percent of the units for occupancy by tenants whose incomes are at or below 50 percent of the area median. The Administration's proposal would allow projects to average 60 percent of the area median income within the overall project so long as none of the units are occupied by households whose incomes are greater than 80 percent of area median. Given that a mix of incomes is demonstrated to provide social benefits to the residents this increased flexibility would not only facilitate development but represent a positive policy enhancement.

  The goal of this proposal is to help lower-income tenants without additional subsidies and to provide more flexibility in using the tax credit program to acquire and rehabilitate existing properties where there likely is a mix of incomes. We strongly support this proposal.

- **Remove the Qualified Census Tract population cap.** Under current law, HUD can designate up to 20 percent of a metropolitan area as meeting the definition of a Qualified Census Track based on poverty and median income. Some communities, however, have significantly more than 20 percent of their census tracks meeting this definition. Projects located in QCT's can qualify for a boost in its project basis and generate additional tax credit equity for that project.

Leverage the Capabilities of the Government-Sponsored Enterprises

BACKGROUND. Fannie Mae and Freddie Mac serve an important role in the financing of affordable rental housing. While less well known than their single-family credit guarantee businesses, these two GSEs, working with their lender partners, have been a significant source of debt capital in the multifamily housing finance market providing on average approximately a third of the overall term financing for multifamily housing. Both prior to and during their conservatorships, the GSEs are governed by statutory charters, affordable housing goals, and other mission-related mandates that direct them toward workforce and other affordable housing activities. In the multifamily market, the GSEs primarily support the acquisition and refinancing of housing that is affordable to households at or below the median income, often termed the workforce housing segment, but have long had active targeted affordable programs, which their regulator has encouraged them to expand. In almost all agency financing models, there is private sector capital at risk before or pari passu with federally-backed dollars.

RECOMMENDATIONS. The role of the GSEs in providing ongoing liquidity to the workforce rental housing market through different market cycles has been critical. The vast majority of the rental units financed by the GSEs were affordable to families at area median income or below, which make them distinct from other sources of debt capital. Whether in conservatorship or in the future state of housing finance, we believe the GSEs (or successor entities) should continue to support workforce and affordable rental housing.

In the context of broader housing finance reform, we believe that the GSEs that benefit from a government guarantee should be subject to mission-oriented guidelines that direct them to provide liquidity to the workforce rental housing market. We believe that new or successor issuing entities should have a focus on the workforce multifamily housing market that includes the targeted affordable segment of the market.

Support for the targeted affordable housing market is essential. Targeted affordable rental housing, which typically benefits from government subsidies and/or regulatory restrictions, is intended for families with low- to very low-incomes, as well as housing in underserved areas. The economics of developing this housing does not produce the returns that private capital typically seeks; a mix of public and private capital and government subsidies is often necessary to initiate and complete projects. We believe that the GSEs are in a position to enhance their activities in this market. We encourage the GSEs and FHFA as their regulator to leverage their scale and intellectual capital to innovate and support this market.

A key means to effectuate this objective is through FHFA's recently re-proposed "duty to serve underserved markets" rulemaking. Rather than impose rigid, numerical objectives, the duty to serve rules required by the Housing and Economic Recovery Act of 2008 are intended to encourage secondary market innovation to support housing for very low-, low- and moderate-income housing. Structured properly, we see strong potential with the statutorily-mandated Affordable Housing Preservation prong of this regime. We urge that this particular duty be interpreted in a flexible manner that is not constrained to specific programs. Moreover, we recommend that the GSEs be incentivized to innovate in the preservation and rehabilitation of affordable rental housing and take some additional market risk in the rehabilitation stage. Finally, given that almost half of the rental product in the nation is single-family rental, where appropriate, we recommend that the potential role of the GSEs in financing such product be reviewed, subject to the consistency of that product with the GSEs' overall housing mission.

Explore Opportunities to Increase Affordable Housing Stock through Housing Trust Fund Allocations

Congress established the Housing Trust Fund and the Capital Magnet Fund as part of the Housing and Economic Recovery Act of 2008. Each GSE is to set aside 4.2 basis points of each dollar of unpaid principal balance of new business purchases toward these funds. These allocations were suspended in November 2008, but were recently allowed by FHFA. Contributions will be made under specific conditions set by FHFA.

While not without controversy, if the Funds are provided allocations, we believe that they could be deployed to increase affordable rental housing stock. By statute and due to the fact that the Funds are to focus on extremely low (30 percent of area median income) and very low-income (50 percent of area median income) households, the majority of resources should be devoted to the production and preservation of affordable rental housing.

Should the Funds receive allocations, we strongly recommend that HUD and Treasury Department regulations build in coordination among the Housing Trust Fund, Capital Magnet Fund, and existing programs that target very low-income housing and services to their residents. As a general principle, we believe these dollars should not compete with but rather facilitate the deployment of private capital while providing the taxpayers with a fair return for risk. We look forward to offering further thoughts as the parameters of the Trust Funds are developed.

Strengthen FHA Multifamily and Residential Healthcare Finance Programs

BACKGROUND. HUD, through FHA, has been a stable, counter-cyclical and prudent source of financing for multifamily and residential healthcare properties. FHA has a wide range of loan guarantee programs that promote the development and financing of multifamily rental properties and healthcare facilities, such as nursing homes, assisted living and hospitals. FHA insured loans provide long term (35-40 years), self-amortizing, fixed rate construction and permanent financing for such projects. The borrower's private capital in the form of equity in cash or value is the first loss position junior to the federally-insured financing.

FHA insured loans can be securitized through the Government National Mortgage Association (GNMA) and sold in the secondary market to institutional investors. With the government guarantee, investors are assured of the timely payment of principal and interest. Investors are further assured that should the loan go into default and be assigned back to HUD, the insurance claim will pay 100% of the outstanding balance. HUD/FHA works with lenders who propose projects that meet the various loan programs' criteria to process the loans and monitor the asset following loan closings. Borrowers pay a mortgage insurance premium with their monthly mortgage payments. There are over 14,000 multifamily and healthcare projects financed with FHA-insured loans.

HUD-insured loans for multifamily facilities have performed exceedingly well with a delinquency rate of 0.15 percent as of August 2015. Even during the Great Recession and the sluggish economy following it, claims on the insurance fund have been less than one percent. In fact, the multifamily and healthcare insured loan programs have consistently generated net revenue to the U.S. Treasury and serve as an accordion for mortgage capital. The program expands when capital markets are constrained and decreases when capital markets are more robust. Recently HUD has begun a process of consolidating its multifamily program offices (known as its Transformation Initiative) to better align its staffing with budgetary resources and an aging workforce.

RECOMMENDATIONS. ***Continue support for federally-insured mortgages.*** Policy discussions and draft legislation regarding the future of housing finance have proposed curtailing the federal guarantee and other programmatic changes that would reduce the effectiveness and viability of the insured loan program. Given its performance, even in the most dire of economic circumstances, this program has proven it is well run and provides market liquidity when other sources are unavailable.

Support HUD's Business Process Transformation Initiative. In order for this initiative to be successful over the long term, HUD must work with its industry partners and stakeholders to refine its implementation and consider further streamlining program policies and procedures that inhibit the program's effectiveness, especially when used in combination with other affordable housing programs. Lenders with proven capabilities should be offered the ability to assume more responsibilities where appropriate such as approving construction change orders, releasing reserve escrows, and approving changes in ownership interests — activities that most lenders are able to perform already. Furthermore, HUD will need sufficient budgetary resources to train staff, invest in technology, and to maintain robust oversight.

Preservation of Affordable Housing Stock. Equally important to developing new affordable housing units is preserving the current stock of affordable housing, including public housing that can be maintained. Public housing has documented needs acknowledged by HUD and Congress of $25 billion in deferred maintenance and required capital improvements which averages $25,000 in rehabilitation needs per unit. HUD's Rental Assistance Demonstration (RAD) program helps to recapitalize public housing properties and streamlines the provision of rental assistance needed for residents. Many RAD transactions include FHA-insured financing and HUD has recently incorporated some streamlined procedures that will help support more production. Through the RAD transactions, improvements to units have averaged $25,000 per unit. Congress has authorized HUD to continue with the program up to 185,000 units, and the program has seen success already.

While the number of improved units is sizeable, scalability in the program is necessary. With appropriate safeguards, we recommend that the cap on the number of units be lifted from the RAD program.

Reduce Regulatory Barriers. We believe that certain regulatory barriers should be reduced to enhance HUD's role in financing affordable properties. For example, revised project condition reserve requirements (e.g., "PCNA") that are being considered are excessive. While prudent risk management is a key priority, requirements that govern FHA's multifamily insurance program should be reasonable and refrain from imposing onerous requirements that could make FHA (and the U.S. taxpayer) a guarantor of last resort. This, in turn, would damage, rather than strengthen, the credit profile of the FHA multifamily and healthcare insurance programs, while inhibiting the financing of affordable rental housing.

Fund and Support Housing Choice and Project-Based Programs

BACKGROUND. The previously described programs all rely on private sector capital as equity level risk or as a layer of insurance to protect the taxpayer. The housing choice and project-based voucher programs are direct *demand side* subsidies that have been in place since the 1970s as an alternative to direct federal construction of public housing. Programs under section 8 directly subsidize the low-income renter and is the major federal program for assisting very low-income families, the elderly, and the disabled to provide affordable safe and decent private housing. The Housing Choice program provided housing to more than 5.3 million people in 2.1 million units in 2013, 91 percent of them earning less than 50 percent of the area median income.[30] A large portion of voucher recipients are disabled, elderly and working families with children.

In addition, HUD oversees project-based programs where a subsidy is provided for assisted units of a specific property for a contractually-determined period. The rents of such units are subsidized by HUD under the Section 8 New Construction, Substantial Rehabilitation and/or Loan Management Set-Aside programs.

As rents have increased in most metropolitan markets coupled with budget sequestration, the Section 8 program is under immense budgetary pressure. In the federal FY2015 budget, Section 8 was funded at $17.5 billion for vouchers and $9.73 billion for project based rental assistance. In FY2016, project based rental assistance will be funded on a calendar year basis rather than a Federal fiscal year cycle and require $1.2 billion for the added three months. Overall, when comparing federal housing expenditures, the portion devoted to renter households relative to homeowners is significantly smaller. Estimates by the Bipartisan Policy Center show that federal tax expenditures and federal appropriations for owner-occupied housing are about twice that of renter-occupied housing.[31]

RECOMMENDATIONS. Housing choice vouchers and the project-based program are critically important federal programs that have demonstrated efficacy, and are significantly oversubscribed and underfunded. Having been halved during the 1980s and under threat ever since, they should be fully funded as Congress originally intended. As the Joint Center for Housing Studies observed, "as of 2013, the average annual income of a HUD-assisted household was about $12,900, while that of a USDA-assisted household was $12,000."[32] While acknowledging the fiscal constraints under which the federal government is currently operating, we echo the views of the Bipartisan Policy Center's Housing Commission in this regard: "We do not believe our nation's most impoverished families should be subject to a lottery system or spend years on a waiting list to obtain access to federal rental assistance."[33]

Expansion of these programs would be warranted subject to the outcome of necessary research in the areas of increasing employment among voucher holders and a continuing measurement of the differential economic and education outcomes for families using vouchers in mixed-income neighborhoods versus areas of concentrated poverty. Expansion of the voucher program should be considered in concert with policy recommendations on the Low-Income Housing Tax Credit program and the GSE and FHA financing programs in order to ensure that vouchers provide benefits and reduced risk for the federally insured or subsidized financing programs. Analysis of whether project-based or individual vouchers are more effective in terms of promoting and maintaining the supply of affordable housing should be considered as part of program design going forward. The voucher programs should also incorporate scoring of the total economic benefit to communities and society as well as provide recommendations on equitable sources of funding for such vouchers from within the existing housing ecosystem.

30 HUD Data: MBA Research Datanote, *Mind the Gap: A High-level Review of the Need for — and Supply of — Affordable Multifamily Rental Housing* (2015).

31 For the 2012 fiscal year, federal tax expenditures and appropriations associated with owner-occupied housing was estimated at $120 billion and that for renters was about $62 billion. Bipartisan Policy Center Housing Commission, *Housing America's Future: New Directions for National Policy* (February 2013), p. 107.

32 Joint Center for Housing Studies, *The State of Nation's Housing* (2015), p. 32.

33 Bipartisan Policy Center Housing Commission, *Housing America's Future: New Directions for National Policy* (February 2013).

Conclusion

Since the financial crisis, the homeownership rate dropped and the population of renters increased accordingly. Given both the perennial and newer constraints to creating new affordable rental housing supply, rents have risen dramatically faster than incomes — thereby increasing the number of cost-burdened households to the highest levels seen in twenty years. And the number of cost-burdened renter households is expected to rise in the coming decade.

The financial crisis and the aftermath have increased the gap between low-moderate households and high-income households, and in particular, has highlighted the shortage of affordable rental housing. During this time, the subsidies available that directly impact the creation or preservation of new affordable supply (such as LIHTC) or directly subsidize rent payments (such as section 8) for lower-income households have remained essentially unchanged, even though the need has increased dramatically.

Support for workforce rental housing that is so vital to moderate-income families must be strengthened by the continued availability of a liquid finance market that encourages private capital and government-backed sources to build or rehabilitate new housing that can meet the growing demand for rental housing. Given the future demographic paths of more senior, minority and urban-oriented millennial households, this is a challenge that faces us for decades to come.

There is no single, effective policy solution. Meeting the nation's shortage of affordable rental housing, however, must be elevated as a policy priority that leads to actionable paths. Initial steps can be taken by expanding and improving programs that are known to work and, which in the majority of instances, places private capital at risk before taxpayer resources. It is our hope that legislators and regulators at all levels of government will be able to place our nation's housing policy on a holistic, coherent and sustainable path to meet the fundamental human need of a safe and secure home.

For additional information, please contact
Thomas Kim, MBA Senior Vice President, at tkim@mba.org.

NATIONAL COMMUNITY CORE RENAISSANCE

Written Testimony for the Record

By

Steve PonTell
President & Chief Executive Officer
National Community Renaissance (National CORE)

Before the
Subcommittee on Housing and Insurance
Financial Services Committee
U.S. House of Representatives

Hearing on
THE FUTURE OF HOUSING IN AMERICA:
GOVERNMENT REGULATIONS AND THE HIGH COST OF HOUSING

March 22, 2016
Washington, DC

9421 Haven Avenue, Rancho Cucamonga, CA 91730
909.483.2444 Fax: 909.483.2448 nationalcore.org

NATIONAL COMMUNITY RENAISSANCE

Steve PonTell, President and Chief Executive Officer
National Community Renaissance
Testimony for the Record
March 22, 2016

THE FUTURE OF HOUSING IN AMERICA: GOVERNMENT REGULATIONS AND THE HIGH COST OF HOUSING

Thank you, Chairman Leutkemeyer, Ranking Member Cleaver, and Members of the Subcommittee for the opportunity to submit this written statement for this important hearing about housing affordability.

National Community Renaissance (National CORE) is one of the nation's largest and most effective non-profit affordable housing developers, with a 25-year track record in community revitalization. Headquartered in Southern California and with a strong presence in Florida, Texas, and Arkansas, National CORE produces quality affordable housing, and does this while accomplishing the broader objectives of revitalizing the communities in which the housing is located and providing a wide range of supportive services to the families we serve.

Nationwide, National CORE has 85 developments, with 8,554 units of affordable housing, serving approximately 28,000 residents. Projects include mixed income and mixed-use models.

Because affordable housing is provided in a site-based setting, critically needed services can be provided serving special needs populations, including senior citizens. National CORE serves 2,000 older and disabled adults with senior social services that include care management and information and referral.

National CORE serves 4,242 youth annually, with K-12 academic and enrichment programs and with family involvement activities. National CORE also provides Head Start and other pre-school services to 136 pre-schoolers. And, National CORE provides a range of family self-sufficiency services, including financial literacy, asset-building tools, and pathways to homeownership for its residents.

National CORE has a strong corporate and senior management commitment to the local communities in which we operate, and commonly works with, or partners with, local governments. For example, we currently have a partnership with the Housing Authority of the County of San Bernardino to rehabilitate Waterman Gardens, an important local housing and community development project.

The Challenge of Affordable Housing with Tight Federal Budgets

For decades, the federal government has followed a top down approach to affordable housing. The cornerstone has been local public housing agencies operating longstanding HUD housing programs, principally public housing and Section 8, using tens of billions of dollars of annual subsidies to support project- and tenant-based low-income housing projects. But the shortfalls and challenges of this approach are becoming increasingly obvious. A tight federal budget environment has squeezed funding for these programs, public housing agencies have very limited resources to develop new units, and the stock of existing units continues to shrink as a result of decades old buildings not being adequately rehabilitated and maintained. Fairly rigid federal program rules tend to stifle flexibility, innovation, and market-based approaches. This is not a criticism of public housing agencies, which generally do a good job with limited resources, but a reflection of these realities.

Moreover, new units affordable to low-income families over an extended period are exceedingly difficult to pencil out without some level of subsidies, and federal policy makers are wary of turning over federal funds for the public goal of affordable housing over to private developers whose only mission is making a profit.

In this environment, National CORE believes that our professional non-profit affordable housing model and mission is one that should increasingly be pursued and encouraged by federal housing policies and funding. Non-profits like National CORE have as their mission the provision of housing affordable to low-income families, senior citizens, and the disabled. At the same time, experienced non-profits like National CORE are reliable in terms of completing and managing affordable housing projects responsibly. National CORE does utilize state and federal funds to help develop and manage these projects, but it significantly leverages these funds through other sources of private financing. In the process, this imposes market discipline that is often lacking with projects that completely rely on federal subsidies – and creates more sustainable projects.

The model National CORE uses is also one that leverages state and local service programs, so that the developments do not just provide affordable housing, but also provide critically needed services to residents.

Affordable Housing Models National CORE Has Pursued

We would like to take this opportunity to highlight different types of projects National CORE has carried out, which demonstrate the possibilities and effectiveness of our affordable housing model:

1. Partnerships with Local Cities and Counties. National CORE has developed, redeveloped, or rehabilitated a number of affordable housing projects in partnership with a number of localities – including the Housing Authority of the County of San Bernardino (HACSB), and the Cities of Yorba Linda, Corona, Victorville, Oceanside, Rancho Cucamonga, Bell Gardens, Montclair, Yorba Linda, San Marcos, and Fontana, CA. These partnerships allow localities to tap into our rental housing development, management and supportive services expertise, while at the same time carrying out the affordable housing and community revitalization objectives of the localities. Notably, our current partnership with HACSB on Waterman Gardens is a multi-phase redevelopment of older public housing units, which updates the units and increases housing options for residents in a mixed income setting.

2. New Construction. National CORE has carried out a number of new affordable housing development projects, which use a range of approaches and financing and affordable housing assistance sources to create sustainable projects. One notable project is Downey View, a six-story, state-of-the-art apartment complex in Los Angeles County, CA. Downey View is a central element of the Downtown Downey Specific Plan, which was designed to create a lively urban community of affordable and market-rate housing, office space, retail establishments and restaurants. Downey View replaced an outdated telephone service building with an urban-infill, transit-oriented development complete with rooftop garden.

3. Redevelopment and Rehabilitation. National CORE has rehabilitated or redeveloped a number of older existing affordable housing development projects that were distressed or in need of substantial repair or rehabilitation. Notably, the Corona del Rey Apartments in Riverside County, CA have transformed what was once a dying neighborhood crippled by drugs and crime into a stable community of charming apartment homes with a family-friendly environment that includes three playgrounds, a community center and onsite preschool. Corona del Rey earned national recognition for best turnaround of a troubled property.

4. Site Based Delivery of Services. The development of site-based affordable housing facilitates the provision, through governmental, non-profit and other sources, of supportive services to improve the lives of our residents. These include services that promote self-sufficiency, help senior citizens, and provide pre-school, child development, and youth services.

Our Waterman Gardens partnership with the Housing Authority of the County of San Bernardino provides an excellent example of how our model of providing site-based supportive services can improve the lives of residents in need and help revitalize the surrounding community. The Appendix provides details on this broad range of services, and how they further the well being of the residents and the community.

Recommendations to Address the High Cost of Housing

We believe that Congress can do more to encourage the affordable housing and supportive services model that that National CORE exemplifies. Obviously, additional funding for HUD programs such as HOME, CDBG, and the Choice Neighborhood Initiative would be helpful in this regard. However, there are some targeted steps that do not rely on increasing federal discretionary spending that could be taken that could have a dramatic impact in encouraging this model.

1. Capacity Building – Open Up Program to More Qualified Entities. For over 20 years, the HUD Section 4 Capacity Building program has provided grants to national non-profit groups to help them develop and expand their capacity to undertake affordable housing and community development projects. This is a valuable and important program.

Unfortunately, for many years, instead of running the program as a competitive grant program, allocating funds under a competition to all qualified applicants, the program has, under statutory language previously adopted, effectively run this program as an earmark, limiting funding to only a few stated entities. The Administration's Fiscal Year 2017 budget essentially zeroed out funding for this program. Instead of eliminating the program, we believe it should be reformed, to open funding up to all qualified non-profits, under a fair and open competition.

2. Lift the RAD Cap. With the growing backlog of unmet public housing rehabilitation needs and a federal budget with limited discretionary funding available to address this backlog, Congress and HUD have turned in recent years to a market-oriented approach to financing the rehabilitation and modernization of these public housing units. This is called the Rental Assistance Demonstration, also known as RAD. RAD converts the top-down public housing ownership model with a more flexible project-based Section 8 assistance delivery model. This allows public housing agencies to enter into partnerships with entities such as National CORE, and to access new non-appropriated funding sources, such as private sector loans and housing tax credits. This approach also imposes more market discipline. Tens of thousands of public housing units are already undergoing rehabilitation as a result of RAD, and some 170,000 units have been approved for RAD conversion. Unfortunately, Congress has limited the number of units that can convert under RAD. Since the actual RAD conversion comes with no added federal cost, and by accessing outside funding sources helps relieve the pressure on appropriations for public housing, Congress should move to immediately lift the RAD volume cap.

3. Expand Low Income Housing Tax Credits. The Low Income Housing Tax Credit (LIHTC) has for over 25 years provided equity capital for development and preservation of rental housing affordable to low-income families and seniors, through a market-oriented approach that taps into investors, allocates funds at the state level, and creates financial incentives for strong management of the properties. Congress should expand the dollar amount of these tax credits.

4. Encourage and Support Regional Approaches to Affordable Housing Needs. National CORE recently convened a conference in Southern California on new approaches to affordable housing. Participants included local Mayors, public safety officers, and the California League of Cities President – as well as the Federal Reserve Bank of San Francisco, and local apartment and building associations.

Southern California and the Inland Empire face a serious housing shortage, which is driving housing costs beyond the reach of working families. The conference identified a number of barriers to affordable housing, including increasingly restrictive zoning practices, unneeded regulations, and the need for stronger planning. The conference concluded that a bold new approach to the challenges, combined with strong local leadership by governmental and private sector and non-profit participants, was needed.

Housing is inherently a local issue. HUD and other federal programs should recognize this fact, and continue to strive to create policies and adapt programs to create the necessary flexibility and local involvement to enable local participants to solve these problems.

In conclusion, we appreciate this opportunity to express National CORE's view on affordable housing, and would be happy to work with Members of the Subcommittee with ideas for better coordination between federal programs and policies and the needs and challenges of localities and non-profit affordable housing developers.

Appendix
Waterman Gardens – A Model Project for Providing Supportive Services

Waterman Gardens is a revitalization project in San Bernardino, CA to replace the aging, inefficient 70-year-old 252 public housing units with a planned development of 400+ units featuring modern amenities, neighborhood facilities, and a mix of family incomes levels including a community center, and other community resources. The intersection of Baseline and Waterman Avenues, adjacent to the Waterman Gardens project, was declared one of the unhealthiest intersections in the nation due to the over-concentration of liquor stores, fast food outlets, marijuana dispensaries, in addition to the number of traffic accidents and homicides.

Through its partnership with National Community Renaissance (National CORE), the Hope Through Housing Foundation (Hope) provides an infusion of services within the Waterman Gardens neighborhood. Programs such as low-cost preschools, after-school programming, financial counseling and homebuyer education, and its Connections to Care model for persons with disabilities and seniors seek to improve individual lives and create community stability at the neighborhood level.

In partnership with National CORE and the Housing Authority of San Bernardino (Housing Authority), Hope is creating social change based on a value system that believes everyone deserves equal economic, political and social rights and opportunities. Hope's program model is based on this philosophy that will guide the transformation of the Waterman Gardens community and the lives of its residents.

While future development includes a 5,800 square foot Family Opportunity Center designed to anchor the neighborhood, over the last several months our residents have had access to a myriad of services and specialists via the Community Room and the established offices of the Waterman Gardens Social Services Coordinator.

The primary goal of the on-site Services Coordinator has been to maximize the partnerships with local non-profits and schools, and to enrich the relationships with residents. Using a "bundled services" approach, Hope is building a platform of services that addresses the myriad of challenges faced by this community. These coordinated services support preschool, after-school, middle and high school, and adult economic development opportunities.

The following services continue to be on-site at Waterman Gardens, all of which are free of charge to residents and community members:

Financial Coaching and Education:

- *Financial Fitness*: A six-week workshop series including "Basics of Banking", "Being a better money manager", "Credit", "Surviving a job loss", "How am I going to pay the bills", and "Savings and Retirement".
- *Budgeting*: One-on-one coaching guiding participants through the process of setting up a budget based on their monthly income and expenditures. Coaches then meet with participants monthly to review expenses and help them set realistic goals.
- *Pathway to Home Ownership*: The program aims to stimulate asset accumulation by way of homeownership. In partnership with Neighborhood Housing Services of Inland Empire (NHSIE), the program will include financial coaching focused on helping residents qualify for down-payment assistance grants and assessing their ability to sustain a mortgage based on their income.

Workforce Development:

- Hope is participating in a community coalition working to promote a pre-apprenticeship program targeted at young adults in the city of San Bernardino. This group is working to create opportunities for young adults interested in learning more about construction trades and connecting them to local unions.
- The Way Outreach is connecting participants to onsite hiring through partner companies.
- On-site computer lab provides internet access and users may receive one-on-one assistance with building resumes, completing job applications, and practicing interviewing skills.

Health and Wellness:

- The Farm-Share and Striders Club is empowering participants to develop healthy habits around nutrition, and physical and mental health.
- El Sol is providing Diabetes Education classes in Spanish and in English.
- Lunch program provides nutritious snacks and a full mid-day meal for the children and young adults.
- World Outreach Church provides groceries weekly.

Children and Youth Services:

- An on-site Head Start preschool serves 60 children with expanded family engagement activities to help parents learn to prepare their children for success in kindergarten.
- Excel art and science program through a partnership with Loma Linda University offers children exposure to science through art activities.
- Boys and Girls Club of Redlands offers daily programming to include tutoring, recreation, art activities, field trips, and parent engagement activities.
- Via Judson Baptist, children access a Kids Activity Bus and participate in character building workshops.

- This summer, in partnership with the San Bernardino City Unified School District and Building Educated Leaders for Life (BELL), an Educational Services Program for 100 students in grades 1through 5 was held for six hours per day, five days per week, for five weeks. The program included academics (English Language arts and mathematics lesson plans linked to state and national standards), enrichment classes, and field trips in addition to guest speakers, cultural celebrations and community service projects.

Community Resident Meetings:

- Meetings are held monthly and provide a forum for residents to get to know each other and share resources, and to learn about volunteer and civic opportunities and upcoming events.

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March 17, 2016

U.S. House of Representatives Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

Enterprise Community Partners Statement for the Record on
The Future of Housing in America: Government Regulations and the High Cost of Housing

Enterprise Community Partners (Enterprise) appreciates the opportunity to provide a statement for the record to the Housing and Insurance Subcommittee on the topic of government regulations and the high cost of housing. Enterprise is a leading provider of the development capital and expertise it takes to create decent, affordable homes and rebuild communities. Since 1982, Enterprise has raised and invested more than $18.6 billion in equity, grants and loans to help build or preserve nearly 340,000 affordable homes in strong neighborhoods.

Enterprise is committed to ending our nation's affordable housing crisis. When last measured in 2014, more than one in four families who rented their homes – 11.4 million renter households in total – were "housing insecure," meaning they paid more than half of their monthly income on housing. Many housing insecure families have to make difficult tradeoffs simply to keep a roof over their heads, and many are just one unforeseen event – an illness, a job loss, even a drop in hours at work – from seeing an eviction notice on their front door. The number of housing insecure renters in the U.S. has increased by 30 percent over the past decade. Absent meaningful changes to public policy, we expect that number to steadily increase in the years to come. According to projections from Enterprise and the Harvard Joint Center for Housing Studies (JCHS), even if rent growth only matches income growth instead of outpacing it significantly as over the past decade, the number of housing insecure renters is expected to increase by about 1.3 million households over the next decade – an increase of over 10 percent.

Below we have identified several barriers that have contributed to our nation's affordable housing crisis, along with our proposed solutions.

Factors Contributing to the Affordable Housing Crisis

Our Rental Housing Market is Unable to Meet Growing Demand

As more households delay or forego homeownership, demand for rental housing has grown significantly. The U.S. homeownership rate currently stands at 63.7 percent – near a 30-year low

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– and researchers at the Urban Institute expect the rate to keep falling as the number of new renters outpaces the number of new homeowners. According to Harvard's Joint Center for Housing Studies, an average of 770,000 new renter households were created each year since 2004, making it the strongest 10-year period for renter growth since the late 1980s. Developers of rental housing have ramped up construction in recent years to meet the growing demand, but the current level of production – about 360,000 multifamily units per year – is still falling well short of the need. Moreover, as the Wall Street Journal has documented, 82 percent of new rental properties built between 2012 and 2014 were luxury buildings, with developers who previously built new buildings for the heart of the workforce forgoing serving that segment of the market. Meanwhile, we continue to lose affordable housing from our nation's stock. Nearly 13 percent of the nation's supply of low-income housing has been permanently lost over the past 15 years.

Wages Have Not Kept Pace with Rising Costs of Living

While the American labor market continues to improve, the wages earned by most American workers have not kept pace with the rising cost of living. After adjusting for inflation, the typical renter's income has fallen by more than 10 percent since 2001, while the median rent has increased by 5 percent. As a result, families are spending an increasing share of their take-home pay on rent, forcing them to make deep cuts elsewhere in their household budget and making it virtually impossible for many low-income families to save for a rainy day or a down payment on a home.

The private sector is simply unable to supply new units at rents low enough to be affordable to low-wage households. According to Harvard's Joint Center for Housing Studies, to develop new apartments affordable to renter households working full-time and earning the minimum wage without a subsidy, construction costs would have to be reduced by 72 percent of the current construction cost average. Indeed, as of 2013, the median rent of a newly constructed unit of $1,290 was equal to about half the median renter's monthly household income, underscoring the urgent need for policymakers to consider enhanced levels of support for rental housing particularly for lowest-income households, but also across a range of income levels.

Affordable Housing Resources have Stagnated or Even Decreased

While need has skyrocketed, public resources for affordable housing have remained flat or even decreased. For example, developers requested over three times the available authority of Low-Income Housing Tax Credits (Housing Credits) from state allocating agencies in 2013, according to the National Council of State Housing Agencies. As a result, each year many viable projects that would serve low-income families in need are turned down because of scarcity of tax credits, not because of the applicant's qualifications or the community's needs.

Recent budget cuts at the federal, state and local levels have hit housing and community development programs particularly hard. According to the Center on Budget and Policy

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Priorities, recent cuts due to sequestration resulted in 100,000 fewer low-income families with rental assistance vouchers, even as the number of families eligible for vouchers has increased significantly. The HOME Investment Partnership program, a crucial source of gap financing for affordable housing developments, has also been cut by more than 50 percent since 2010, while the Community Development Block Grant (CDBG) program has been cut by 25 percent over the same period.

Local Regulations and Opposition Impede Affordable Housing Development

Many local regulations – including land use restrictions, building codes, parking minimums and permitting and approval processes – unnecessarily delay or restrict the development of new rental housing or increase costs throughout the development process. According to a 2003 study from the National Bureau of Economic Research, these and other land-use regulations imposed regulatory taxes of at least 10 percent in some of the country's most expensive cities, including New York, San Francisco, Los Angeles, Boston and Washington, DC. Another study in 2008 found that, for areas that have seen an increase in job opportunities, cities with high levels of local regulation tend to see a smaller increase in the housing stock, greater house price appreciation and lower employment growth compared to low-regulation cities.

Community opposition can also inhibit development. In many jurisdictions, community stakeholders have one or several opportunities to provide feedback on proposed development projects before they are allowed to proceed. This process can be invaluable for obtaining insights into the neighborhood and to gaining stakeholder buy-in for affordable rental developments, but can also lead to increased costs due to time delays or negotiated additions that may or may not enhance the development or may render it uneconomic. When poorly managed, the community engagement process can also be unnecessarily confrontational and strong opposition can lead to the cancellation of entire developments.

Proposals to Increase the Supply of Affordable Housing

Expand the Low-Income Housing Tax Credit

The Housing Credit is our nation's most successful tool for encouraging private investment in the production and preservation of affordable rental housing production. It has financed nearly 3 million affordable apartments since 1986, providing homes to roughly 6.5 million low-income households.

The Housing Credit is an increasingly critical complement to several other housing programs. Housing Credits and Housing Choice Vouchers are often used together to address complementary issues: the Housing Credit to bring down the cost of units on a long-term basis, and the voucher to enable that already low-cost unit to be more affordable to the lowest income tenants. In addition, the Housing Credit is a central component of the Rental Assistance

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Demonstration (RAD), a public housing revitalization initiative that has recently been expanded threefold from its original authorization. The Housing Credit is expected to provide roughly one-third of the equity financing to recapitalize over 180,000 units of public housing through RAD, underscoring the importance of the Housing Credit in preserving federally assisted properties for the long term in the absence of additional capital outlays.

The Housing Credit also often works alongside other capital funding programs, in particular the HOME program, which provides critical gap financing in some Housing Credit properties. HOME and the Housing Credit often supplement one another to achieve deeper targeting goals by reducing the conventional debt on the properties.

Despite increasing pressures on the Housing Credit and our nation's growing affordable housing needs, Congress has not increased Housing Credit authority in 16 years. To make a meaningful dent in the affordable housing supply gap, we urge Congress to increase the cap on Housing Credit authority by at least 50 percent. Such an expansion would support the preservation and construction of 350,000 to 400,000 additional affordable apartments over a ten-year period. There is ample developer and investor appetite for Housing Credits to support such an increase.

Invest in the Preservation of Existing Affordable Housing

Preserving at-risk public housing must be a key component of federal housing policy. But we need to think beyond the current funding model, which has allowed hundreds of thousands of units to wither in a state of disrepair. RAD allows public housing authorities to convert dilapidated projects into privately financed, government-subsidized properties, using the Section 8 program to preserve long-term affordability. By altering the source of the rental subsidy, participating authorities can attract outside sources of financing like the Housing Tax Credit. We support expanding RAD so that all at-risk public housing properties are able to move onto more stable financial footing.

In addition to the public housing stock, there are 1.3 million units of privately owned affordable rental housing supported with Section 8 project-based rental assistance (PBRA). Under the PBRA program, a property is partially funded by the federal government through a long-term contract with the owner, through which HUD covers a portion of the monthly rent over a certain period. According to the Urban Institute, about one-third of existing PBRA units are at risk of losing their affordability status due to contracts that are set to expire in the coming years. Preservation of all existing PBRA units, specifically by renewing rental assistance contracts when they expire, must be a key priority for federal housing policy.

Another 450,000 affordable rental units are supported through the Department of Agriculture's Section 515 Rural Rental Housing program. The Section 515 program provides long-term, low-interest and highly leveraged loans — covering between 95 percent and 105 percent of a project's development costs — to support the construction of affordable rental housing in rural communities, along with ongoing rental assistance to keep the units affordable to very low- and

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extremely low-income households. Most of the country's Section 515 stock was built in the 1970s and 1980s, and three-quarters of outstanding loans are expected to mature in the next 10 years. Many of the units in properties with maturing loans are at serious risk of being lost due to either obsolescence (in weaker markets) or conversion to market-rate housing (in stronger markets). We encourage the USDA to develop new tools to support the cost-effective rehabilitation and preservation of all at-risk Section 515 units.

Take Steps to Preserve America's Naturally Affordable Housing Stock

Rental housing is often associated with large multifamily buildings in dense urban areas. In reality, more than 80 percent of the nation's rental housing is located in smaller buildings with fewer than 20 units, and more than half of America's renters live in single-family homes with fewer than five units. The stock of single-family rental has increased dramatically in recent years, as millions of foreclosed homes have been converted to rental properties.

Smaller apartment buildings tend to be older and command lower rents compared to larger multifamily buildings, making them a critical source of unsubsidized affordable housing. However, these buildings are often owned by individuals or small-scale mom and pop investors, who often have trouble accessing capital to refinance, recapitalize or rehabilitate their properties. In addition, the relatively small mortgages on these properties – usually below $3 million – make it very difficult for lenders to originate them profitably after accounting for personnel, legal and other transaction costs. Due to the slim margins, the loans tend to be originated by smaller local banks with limited access to the secondary mortgage market, which makes it difficult to provide long-term, fixed rate loans.

Enterprise strongly supports public policies that seek to preserve this crucial stock of naturally affordable rental housing, especially in high-opportunity neighborhoods and gentrifying areas. For example, the Federal Housing Finance Agency, which regulates Fannie Mae and Freddie Mac (collectively, the GSEs), recently set annual goals for GSE-backed lending to affordable small multifamily properties. In addition, the Federal Housing Administration recently launched a new risk-sharing insurance product to help owners recapitalize or rehabilitate their small multifamily buildings, so long as they keep rents affordable to low-income families.

Encourage Inclusionary Zoning and Other State and Local Solutions

State and local governments and other entities have a critical role to play in eliminating barriers to the development of affordable housing. Over the past 40 years, more than 500 localities have enacted some form of inclusionary zoning to encourage or require market-rate developers to help expand the local supply of affordable housing. Under a typical inclusionary zoning rule, in order for a developer to receive the necessary approvals and permits to begin construction, they must agree to set aside a certain percentage of the units in a new or rehabilitated development for low- and moderate-income renters.

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Research shows that well-designed inclusionary zoning initiatives can significantly improve access to low-poverty neighborhoods for low-income families – often with little to no additional subsidy. In a recent study of 11 jurisdictions with inclusionary zoning policies in place, more than two-thirds of the affordable units created through the policy were located in high-opportunity neighborhoods. We encourage more jurisdictions to establish similar inclusionary zoning rules that fit the development patterns and affordable housing needs of the local community.

In January 2014, Enterprise and the Urban Land Institute's Terwilliger Center for Housing released a report entitled *Bending the Cost Curve: Solutions to Expand the Supply of Affordable Rentals*, which offers concrete policy recommendations to support the cost-effective development of affordable rental housing while maintaining appropriate standards for quality, durability and livability. The report offers a set of several other recommendations for state and local policymakers, including:

- *Review local density, building and unit size, amenity and other requirements.* Many jurisdictions introduce both direct and indirect supply constraints by limiting the amount of land, the number of units or the size of buildings that can be developed.

- *Streamline development timelines.* Local zoning codes and land use regulations set restrictions on the type and size of developments that can be built on a plot of land. These regulations sometimes require certain developments to obtain numerous additional levels of approvals in order to proceed, which can cause delays, increase costs or even prohibit certain developments.

- *Improve the public engagement process.* Jurisdictions should revisit their public engagement processes and requirements to ensure that developments are not unnecessarily delayed or blocked by "not-in-my-backyard" opposition, while maintaining opportunities for crucial community input. Successful engagement efforts typically involve clarity in both the procedures and the timeframe expected for the developers and the community.

- *Allow for a diverse range of building types.* Alternative building types, such as microunits, group homes and accessory dwelling units – which are self-contained, smaller units on the lot of a single-family home – are particularly important sources of affordable rental housing, especially for young adults and lower-income seniors who hope to age in place or near family members. But these units often meet local opposition and zoning challenges. Local zoning and building codes should provide flexibility to property owners while maintaining reasonable standards of quality and livability.

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- *Support innovative building techniques.* Jurisdictions should also examine whether their existing regulatory and zoning requirements discourage innovative building techniques, such as prefabricated modular, panelized or manufactured housing. These products can offer opportunities for cost savings and architectural innovation.

- *Implement parking requirements that match resident needs.* Developments often need to incorporate some off-street or structured parking to attract tenants, particularly in neighborhoods with poor walkability or a lack of transit access. However, many jurisdictions require parking levels that exceed what is necessary to accommodate resident needs. These requirements can substantially increase construction costs: developers have reported costs of up to $70,000 per space for structured parking.

- *Effectively use public resources that increase the supply of affordable homes.* While many of the above policy recommendations focus on removing barriers, state and local governments can also work to actively support the production and preservation of affordable homes. For example, some jurisdictions subsidize the cost of land and infrastructure improvements, either through local funds or through regulatory incentives, in exchange for the creation of affordable rental housing on site. Others offer "first-look" programs to give affordable housing developers right of first refusal for local public land. Others offer property tax abatements for affordable housing during the development phase. In addition, many local governments charge mandatory "impact fees" to fund infrastructure and service improvement across the jurisdiction. Fee waivers and "smart" impact fees – which lower the fees charged to properties with smaller units – can dramatically reduce predevelopment costs.

If you have any questions regarding these comments, please contact Emily Cadik at ecadik@enterprisecommunity.org or 202.403.8015.

Sincerely,

Laurel Blatchford
Senior Vice President, Solutions
Enterprise Community Partners

JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

January 12, 2016

The Honorable Richard Cordray
Director, Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

The Honorable Loretta Lynch
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Director Cordray and Attorney General Lynch:

We write to raise our concerns regarding recent allegations concerning potentially discriminatory lending and collection practices associated with manufactured housing giant Clayton Homes, Inc. and its subsidiaries Vanderbilt Mortgage and 21st Mortgage. A recent investigative series from the *Seattle Times* and Buzzfeed News provided extensive detail into allegations of highly problematic lending and collections practices, which if true, are clear violations of federal fair lending and consumer protection statutes.[1] Similar concerns were identified in early 2015 when these same Berkshire Hathaway companies, with Warren Buffet's endorsement, successfully pressed Congress to pass legislation rolling back consumer protections for manufactured housing borrowers.[2][3] We request an update on your Agencies' supervision and enforcement efforts regarding the allegations set forth in the investigative series.

The practices detailed in the *Seattle Times* and Buzzfeed News investigation present a disturbing business model that targets low- and moderate-income minority borrowers and that steers them into high-cost loans that often fail to properly account for a borrowers' ability to repay, thereby leaving already vulnerable borrowers uniquely susceptible to default. These issues are further compounded by allegations of highly

[1] "Minorities Exploited by Warren Buffet's mobile-home empire," *The Seattle Times*, Dec. 26, 2015.
[2] "The Mobile Home Trap: How a Warren Buffet Empire Preys on the Poor," *The Seattle Times*, April 2, 2015.
[3] "Warren Buffet Defends Clayton Homes," *The Wall Street Journal*, May 2, 2015.

problematic collections practices and a failure to provide meaningful options for distressed borrowers. As the Bureau noted in its September 2014 study of the manufactured housing industry, the borrowers that tend to seek financing for manufactured housing tend to be older, lower-income and disproportionately members of minority groups and have limited options for home ownership. Therefore, the Bureau concluded that manufactured housing borrowers "stand to benefit from strong consumer protections" afforded under federal fair lending and consumer protection laws.[4] In light of the Agencies' broad investigative and enforcement authority under the Equal Credit Opportunity Act and the Fair Housing Act, and the Bureau's broad authority under Section 1031 of the Dodd-Frank to regulate unfair, deceptive, or abusive business practices, the allegations raised in the news report are squarely within the Agencies' authority to investigate and pursue appropriate corrective action.

As the investigation makes clear, Clayton is the nation's largest manufactured housing company and has a "near monopolistic" grip on lending to minority borrowers seeking financing for manufactured housing reaching nearly 72% of African-American borrowers, 56% of Latino borrowers, and 53% of Native American borrowers.[5] Given Clayton's uniquely broad control of the manufacture, sale, and financing of manufactured homes, it is imperative that their business practices comply with federal law in order to ensure affordable housing for low-and-moderate income buyers. Surely, if news outlets can launch an investigation into potential violations of federal fair lending and consumer protection laws, agencies charged with protecting the nation's consumers should be able to investigate these allegations, and, to pursue appropriate enforcement actions.

We will closely monitor the Department and the Bureau's progress in investigating the concerns raised in the *Seattle Times* and Buzzfeed News investigation, and we look forward to hearing from each of you. Thank you for your attention to this important matter.

[4] Consumer Financial Protection Bureau, "Manufactured-housing consumer finance in the United States," Sept. 2014 at 7.
[5] "Minorities Exploited by Warren Buffet's mobile-home empire," *The Seattle Times*, Dec. 26, 2015.

The Honorable Richard Cordray
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Respectfully,

MAXINE WATERS

KEITH ELLISON

EMANUEL CLEAVER

MICHAEL E. CAPUANO

Consumer Financial Protection Bureau

1700 G Street, N.W., Washington, DC 20552

February 9, 2016

The Honorable Keith Ellison
U.S. House of Representatives
2263 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Ellison:

Thank you for your letter about allegations of potentially discriminatory lending and collection practices by some in the manufactured housing industry. Recent media reports detail troubling practices that may have harmed many innocent manufactured housing homeowners. The Consumer Financial Protection Bureau is aware of these reports and is evaluating actions we might take in response. Manufactured housing can serve vital housing needs in communities throughout the United States, and the Bureau is committed to ensuring that this market operates fairly and transparently.

While the Bureau cannot comment on or confirm any Bureau supervisory activity or investigations, the Bureau takes allegations of discriminatory or predatory lending practices very seriously. The Bureau's Office of Fair Lending and Equal Opportunity was specifically mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, and it collaborates with divisions and offices across the Bureau to enhance fair, equitable, and nondiscriminatory access to credit for all consumers. The Office of Fair Lending provides oversight and enforcement of Federal fair lending laws; coordinates the Bureau's fair lending efforts with Federal agencies and State regulators; and works with private industry, fair lending, civil rights, consumer and community advocates to promote fair lending compliance and education.

As you note in your letter, the Bureau released a report in September 2014 which found that manufactured-home owners typically pay higher interest rates for their loans than borrowers whose homes were built onsite. The report also found that manufactured-home owners are more likely to be older, live in a rural area, or have lower net worth.[1] The Bureau also obtains important insights from complaints submitted by consumers, including complaints related to manufactured home financing. The Bureau continues to consider new data that may help to develop a more complete and current picture of the manufactured housing markets.

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[1] *See http://www.consumerfinance.gov/newsroom/cfpb-finds-majority-of-manufactured-housing-borrowers-have-expensive-loans/*

One of the Bureau's stated goals in issuing its 2014 report was to encourage others to build greater knowledge of the manufactured housing market, the consumers in that market, and the differences between the site-built and manufactured housing markets. Investigations and media reports that highlight the manufactured housing market contribute to the public conversation about it and facilitate the Bureau's information-gathering.

For example, investigations that utilize Home Mortgage Disclosure Act data have historically been vital to highlighting issues of public concern in the mortgage market. The Bureau recently issued a final rule to improve information about the residential mortgage market by updating the HMDA regulation.[2] The final rule includes expanded information reporting requirements for manufactured housing loans that should help the Bureau and other stakeholders monitor developments in this market. The Bureau has also made the HMDA data more accessible and easier to use through its online tools.[3]

Our mortgage rules are designed to restrict certain practices and foster a thriving, more sustainable marketplace for all homeowners, including manufactured housing homeowners. The Ability-to-Repay rule protects consumers from irresponsible mortgage lending by requiring that lenders generally make a reasonable, good-faith determination that prospective borrowers have the ability to repay their loans. For manufactured home loans secured by real property, the mortgage servicing rules establish strong protections for homeowners facing foreclosure. The mortgage servicing rules also bring greater transparency to the market by providing clear and timely information to all homeowners, whether or not their loan is secured by real property, through monthly mortgage statements and early warnings before interest rate resets and adjustments.

The loan originator rule addresses certain practices that incentivized steering borrowers into risky or high-cost loans. Under the rule, employees of manufactured housing retailers can provide general information to consumers about financing without being subject to the loan originator rule. If employees of manufactured housing retailers, however, recommend a particular creditor or influence the consumer's decision they are considered loan originators and become subject to requirements of the rule, including certain character and fitness screening requirements and other qualification requirements.

The Bureau also finalized rules that strengthened consumer protections for high-cost mortgages, which manufactured housing loans disproportionately are. Among these protections is a requirement that escrow accounts be established for a minimum of five years for certain higher-priced mortgage loans, including escrowing applicable property taxes and premiums for mortgage-

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[2] *See* http://www.consumerfinance.gov/newsroom/cfpb-finalizes-rule-to-improve-information-about-access-to-credit-in-the-mortgage-market/

[3] *See* http://www.consumerfinance.gov/hmda

related insurance for manufactured housing personal property loans so consumers' payments more fully reflect all costs associated with those loans.

Thank you for your continued interest in the Bureau's work. Please do not hesitate to contact me should you have any additional questions, or have your staff contact Catherine Galicia or Tim Sheehan in the Bureau's Office of Legislative Affairs. Mrs. Galicia can be reached at 202-435-9711 and Mr. Sheehan can be reached at 202-435-7004. I look forward to working with you on this and other consumer financial protection matters of importance to you and your constituents.

Sincerely,

Please continue to share with us items you see as interesting and important so we can consider them — Rich

Richard

Richard Cordray
Director

September 2014

Manufactured-housing consumer finance in the United States

Consumer Financial Protection Bureau

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1. Introduction

This white paper provides background on manufactured housing, including the market and regulatory environment, as well as on consumers who purchase or rent manufactured housing. The Consumer Financial Protection Bureau (Bureau) initiated research into manufactured housing to provide the Bureau and others with a more comprehensive understanding of manufactured housing and its financing.

Manufactured housing accounts for six percent of all occupied housing and a much smaller fraction of home loan originations in the U.S. These fractions notwithstanding, manufactured housing is of interest to the Bureau for at least two reasons. First, it is an important source of affordable housing, in particular for rural and low-income consumers. Second, manufactured housing may raise particular consumer protection concerns due to the nature of the retail and financing markets for manufactured housing. This is particularly true to the extent that buyers of manufactured homes are more likely to belong to groups, such as older or lower-income families, that might be considered financially vulnerable.

Compared with site-built housing and mortgage finance generally, data and information on manufactured housing are relatively sparse. Yet, manufactured housing differs from site-built housing in several ways, including housing costs and the market for home financing. A key goal of the white paper is to bring together information and data from a number of data sources, each of which contributes to a more-complete picture of manufactured housing. The Bureau primarily analyzed data such as the American Community Survey (ACS), the American Housing Survey (AHS), data reported under the Home Mortgage Disclosure Act (HMDA), Manufactured Homes Survey (MH Census), and the Survey of Consumer Finances (SCF). The Bureau also analyzed proprietary data voluntarily provided to the CFPB.[1] To complement its analysis of these data sources, the Bureau engaged in outreach to industry groups, consumer groups, government agencies, and a variety of market participants and observers.

Key findings of this white paper include:

- **Manufactured housing is disproportionately located in non-metropolitan areas.** Nationwide, manufactured housing accounts for six percent of occupied housing, compared with fourteen percent of housing located outside of metropolitan areas. At the county level, the share of manufactured housing can reach even greater levels: in 112 U.S. counties—predominately in Southern and Western states—over one-third of homes are manufactured housing.

- **Compared with residents of site-built homes, manufactured-housing residents are somewhat more likely to be older and tend to have lower incomes or net worth.** A greater proportion of households that live in manufactured housing are headed by a retiree (32 percent) than site-built households (24 percent).[2] The median income for households that live in manufactured homes is roughly half the median income among families in other types of homes. The median net worth among households that live in manufactured housing is about one-quarter of the median net worth among other households.

- **Manufactured homes typically cost less than site-built homes.** On a square-foot basis, manufactured homes cost less than half as much as the estimated $94 per square foot for new site-built housing construction in 2013.[3] The average sales price of a new single-section manufactured home was about $43,000 in the first six months of 2014. The average price of a new multi-section manufactured home was about $78,000, though expenses of transport, siting, and construction add-ons can add to the cost. The

[1] To preserve the confidentiality of the data providers, the white paper includes only limited discussion of the analyses based on these data and does not identify the institutions that provided the data. Conclusions from the analyses of the proprietary data generally align with the conclusions in this report based on publicly available data sources. The proprietary data contain no direct consumer identifiers.

[2] CFPB analysis of Survey of Consumer Finances (SCF), 2004–2010.

[3] U.S. Census Bureau, *Cost & Size Comparisons: New Manufactured Homes and Single-Family Site-Built Homes (2007 – 2013), available at* https://www.census.gov/construction/mhs/pdf/sitebuiltvsmh.pdf , *data available at* https://www.census.gov/construction/mhs/mhsindex.html. (This survey was sponsored by the U.S. Dep't of Hous. & Urban Dev. (HUD))

most basic single-section homes can sell for less than $20,000, and a larger home with custom designs or optional finishes and features may cost $100,000 or more.

- **About three-fifths of manufactured-housing residents who own their home also own the land it is sited on.** These consumers generally have the option either to title their home as real property and to obtain financing through a real estate mortgage loan or to title the property as personal property and to obtain chattel financing.

- **An estimated 65 percent of borrowers who own their land and who took out a loan to buy a manufactured home between 2001 and 2010 financed the purchase with a chattel loan.** There are tradeoffs between real-property financing and chattel financing. Chattel loans often have lower origination costs and may close more quickly than mortgages (loans secured by real property). Interest rates on chattel loans, however, may be between 50 and 500 basis points more expensive than real property loans, and chattel loans generally have lesser consumer protections than mortgages. The extent to which consumers are aware of these tradeoffs and how consumers weigh them remains an open question.

- **Manufactured-home owners typically pay higher interest rates for their loans than site-built borrowers.** For example, about 68 percent of all manufactured-housing purchase loans (chattel as well as real property loans) reported under the Home Mortgage Disclosure Act in 2012 met the definition of a "higher-priced mortgage loan" (HPML), a definition developed to identify a set of loans that might be considered subprime. By comparison, only three percent of loans for site-built homes were HPMLs. Even within the set of HPMLs, manufactured-home loans tend to have higher rates.

- **The current state of manufactured housing production, retail, and financing reflects in part a rapid growth during the 1990s and subsequent sharp contraction**. In the 1990s credit standards and underwriting practices for manufactured-housing loans became more lax, and the market boomed. The market collapsed, however, in the early 2000s as consumers began experiencing repayment difficulties, and the market significantly contracted. Poor manufactured-home loan quality drove high defaults. For example, in the year 2000 alone, more than 75,000 consumers had their manufactured homes repossessed, about 3.5 times the typical number during the 1990s. Between the beginning of 1999 and the end of 2002, repossessed inventory grew more than fourfold to $1.3 billion. Today, more than a decade after this collapse, production and sales remain at depressed levels, and the secondary market is extremely limited.

These findings underscore the importance of the manufactured housing sector as a source of affordable housing for some consumers, including those outside of metropolitan areas, older households, and lower-income households. At the same time, these same groups include consumers that may be considered more financially vulnerable and, thus, may particularly stand to benefit from strong consumer protections.

The Bureau has recognized that certain provisions of the Dodd-Frank Act that the Bureau implemented through rules that took effect in January, 2014, may affect the market for smaller-size mortgages and, more specifically, the manufactured housing segment of the market, in ways that differ from the rules' effect on other market segments.[4] Because the rules have been effective for only a few months, and because there are lags in the availability of data, it would be premature to reach conclusions on the market-wide effects of the rules.

The Bureau will continue to monitor the effect of its rules on the manufactured housing industry and on consumers who purchase or seek to purchase manufactured homes. As part of this ongoing monitoring, the Bureau will continue to engage with stakeholders and will encourage others to build greater knowledge of the manufactured housing market, the consumers in that market, and the differences between the site-built and manufactured housing markets.

[4] *See infra* Appendix for a description of some of these rules.

2. Manufactured housing and its residents

2.1 What is a manufactured home?

Manufactured homes account for a small but important share of single-family housing in the U.S. Manufactured homes are commonly referred to as "mobile homes" or "trailers" but in fact are a specific type of factory-built housing, constructed in accordance with the U.S. Department of Housing and Urban Development's (HUD's) Manufactured Home Construction and Safety Standards code. A factory-built home constructed after June 15, 1976 is eligible for designation as a manufactured home if, among other things, the structure is at least 320 square feet and constructed on a permanent chassis.[5] Homes that meet these criteria are affixed with a HUD label that indicates the homes' compliance with the relevant HUD codes.

Manufactured housing should be distinguished from trailers, RVs, and park-model homes. These vehicles and homes (which are built to different standards than manufactured homes) are generally treated as motor vehicles for legal and financing purposes (though in some cases they may be permanently sited). On the other hand, modular homes—which are often built in the same facilities as manufactured homes—are constructed on site using modular components and are generally treated as real property.

Manufactured homes are available with numerous size and floor-plan options. The homes are built in a factory and then transported by means of the permanent chassis directly to a placement site after purchase or to retail centers. Single-section homes may be transported in a

[5] 42 U.S.C. §5402.

single piece, whereas multi-section homes are transported in multiple pieces that are joined on site. In 2013, single-section homes accounted for 46 percent of manufactured home placements, and this share has fluctuated between one-quarter and over one-half since the early 1990s. Manufactured homes are required to be professionally installed in accordance with HUD's installation standards.[6]

Manufactured homes may be placed on individual land plots that are owned by the manufactured-home owner, or the homes may be placed on rented land, including on leased lots within manufactured home communities. Manufactured housing communities generally require a homeowner or renter to pay ground rent and additional fees for shared amenities, services, and utilities. Some communities are age-restricted and function as retirement or seasonal homes for residents aged 55 or older. Historically, around 25–30 percent of manufactured homes have been placed within manufactured housing communities, though the share of new homes placed in communities has grown in recent years.[7]

The bulk of a manufactured home's appreciation potential comes from the land on which it sits, not the structure itself, so the most important factor determining the appreciation (or depreciation) of manufactured housing is generally land ownership.[8] However, manufactured-home owners that own the land under the home may still not enjoy appreciation in the property's value if the structure depreciates more quickly than the land increases in value. Thus, whether a manufactured-home owner realizes appreciation can depend on a number of factors beyond land ownership including the home's size, location, and investment in maintenance and upkeep.[9]

Once placed, manufactured homes are typically not moved from their original site. Site installation includes settlement upon a permanent or semi-permanent foundation support. Foundation types range from insulated basements to concrete slabs to block, anchor, and strap

[6] *See* 24 CFR part 3285.
[7] *See supra* note3.
[8] Kevin Jewell, Consumers Union, *Manufactured Housing Appreciation: Stereotypes and Data* (Apr. 2003) *available at* http://consumersunion.org/pdf/mh/Appreciation.pdf.
[9] Note that the appraisal process for manufactured homes often differs from the process for site-built homes. In particular, manufactured homes titled as chattel are often appraised using "blue book" type of valuation: a published guide that provides a value for the house based on the model, the year manufactured, and the condition of the house. If a more traditional appraisal is done (generally only for a manufactured home affixed to land), then sometimes only other manufactured homes may be used as comparables. Availability of comparables, therefore, may also affect valuation of manufactured homes, especially in low-density areas.

fixtures. Even manufactured homes secured by semi-permanent foundations, however, are infrequently moved. As of 2011, the vast majority of owner-occupied manufactured homes in the U.S. were on the same site upon which they were first placed.[10] About two-thirds of owner-occupied manufactured homes that are moved from their original site have been re-sold, and about one-third remain in the possession of their original residents.[11]

An important difference between manufactured homes and site-built homes is their potentially differing legal treatment. Titling a manufactured home as real property is a choice in most states if the owner permanently affixes the manufactured home to land they own (or rented land with a sufficiently lengthy lease). However, even where the manufactured home is permanently affixed to land, the owner has the option to title the home as personal property (chattel). About three-quarters of states have statutorily-defined processes for converting a manufactured home's title from personal property to real property.[12] Generally, manufactured homes are treated as personal property by default, and documentation that the home has become a fixture is required to be considered real property. As discussed in Section 2.5, the decision whether to title a manufactured home as real or personal property affects property taxation, applicability of consumer protection laws, and financing options.

2.2 Geographic distribution of manufactured housing

Manufactured homes account for about six percent of all occupied U.S. housing. As shown in Figure 1, manufactured housing is more common in Southern and Western states, where manufactured homes account for as much as 17 percent of total housing stock (in South

[10] According to US Census Bureau American Housing Survey (AHS), 2011, more than 80 percent of owner-occupied manufactured homes in the US remain on the site where they were first placed. This estimate excludes the roughly eight percent of responses that were "don't know" or "not reported." Including these responses reduces the estimated fraction of homes that remain on the same site to about 75 percent. U.S. Census Bureau, *American Housing Survey for the United States (AHS): 2011*, Table C-01-AH, pg., 4, *available at* http://www.census.gov/content/dam/Census/programs-surveys/ahs/data/2011/h150-11.pdf (CFPB analysis of US Census Bureau American Housing Survey (AHS) microdata, 2011).

[11] *Id.*

[12] *See* Corporation for Enterprise Development (CFED) & National Consumer Law Center (NCLC), *Titling Homes as Real Property* (2009), *available at* http://cfed.org/assets/pdfs/mh_realproperty.pdf.

Carolina). Manufactured housing is less common in several Northeastern states. At the county level, the share of manufactured housing can reach even greater levels: in 112 U.S. counties—predominately in southeastern and southwestern states—over one-third of homes are manufactured housing (Figure 2).

Manufactured housing is more prevalent in rural areas. About two-thirds of all occupied manufactured homes in the U.S. are located outside of metropolitan statistical areas (MSAs), and 14 percent of homes in non-MSA counties are manufactured homes.[13]

Manufactured housing industry participants indicate that the greater share of manufactured housing in rural areas may be due to a number of factors including low population density, which may limit scale efficiencies for residential construction, and in some cases higher transportation costs for materials to construct site-built homes. Industry participants also frequently point to zoning restrictions as an important reason for the lower prevalence of manufactured housing in metropolitan areas. Local zoning laws, particularly in and around large cities, commonly preclude placement of manufactured homes as dwellings. For example, a city might require that a home be at least 20 feet wide, thereby precluding siting a single-section manufactured home, and foundation requirements may discourage placement of manufactured housing.[14] In some areas, manufactured homes are allowed only in specifically designated areas, such as specifically zoned communities or subdivisions. Restrictive zoning and prohibitive land development costs are among the reasons there has not been significant development of new manufactured home communities in the past decade, though recent trends indicate that investment in existing communities is increasing.[15]

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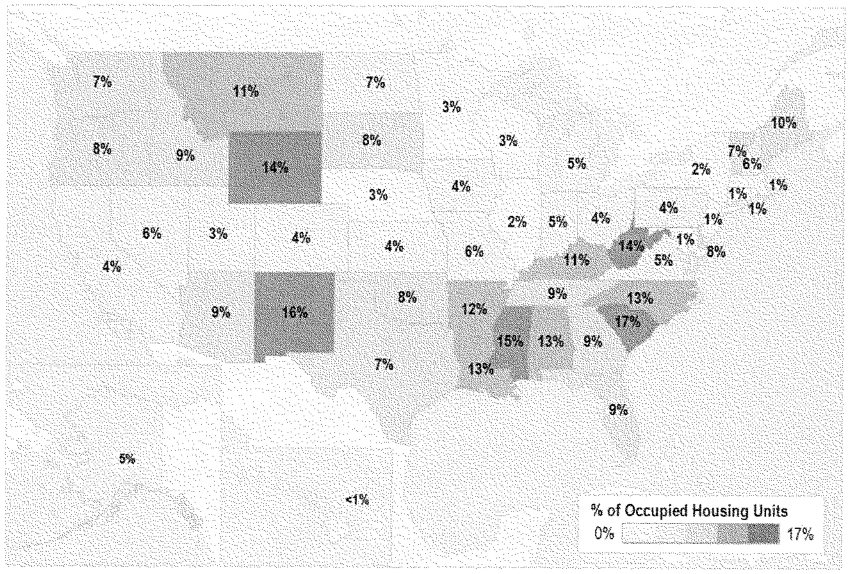
[13] US Census Bureau American Community Survey (ACS), 2008-2012, *available at* http://www.census.gov/acs/www/data_documentation/data_main/.

[14] Ronald A. Wirtz, Fed. Res. Bank of Minneapolis, *Hello, have we met? Manufactured Housing Suffers an Image Problem* (fedgazette July 1, 2005), *available at* http://www.minneapolisfed.org/research/pub_display.cfm?id=1484.

[15] Multifamily manufactured housing community securities' share of CMBS issuance has grown to about four percent in the past decade. Additionally, in April 2014, Freddie Mac announced a program for manufactured housing community loan securitization. *See* Al Yoon, *Freddie Mac Moves Into the Trailer Park*, Wall Street Journal, April 30, 2014 *available at* http://online.wsj.com/news/articles/SB10001424052702303948104579534120298682710. *See also* Gary Rivlin, *The Cold, Hard Lessons of Mobile Home U*, New York Times Magazine, March 13 2014, *available at* http://www.nytimes.com/2014/03/16/magazine/the-cold-hard-lessons-of-mobile-home-u.html; and L.A. "Tony" Kovach, *Sensationalistic 'Cold Hard Lessons of Mobil Home U" New York Times Article by Gary Rivlin Draws Manufactured Home Industry Ire, Desire, and Fire*, Manufactured Home Living News (2014), *available at* http://manufacturedhomelivingnews.com/sensationalistic-cold-hard-lessons-of-mobile-home-u-new-york-times-

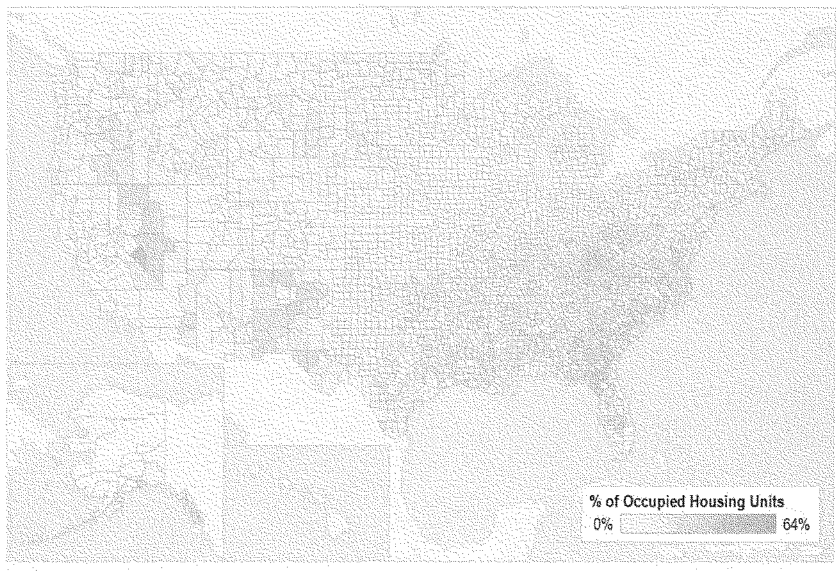
FIGURE 1: MANUFACTURED HOUSING SHARE OF OCCUPIED HOUSING UNITS, BY STATE.[16]



article-by-gary-rivlin-draws-manufactured home-industry-ire-desire-and-fire/ (discussion of growing investments in existing manufactured housing communities).

[16] US Census Bureau ACS, *supra* note 13. Similar results hold for manufactured housing as a proportion of all housing stock.

FIGURE 2: MANUFACTURED HOUSING SHARE OF OCCUPIED HOUSING STOCK, BY COUNTY.[17]



2.3 Residents of manufactured housing

Certain consumer segments are disproportionately represented among owners and renters of manufactured homes, in particular older consumers, consumers that have completed only high school, households with relatively low income, and households with relatively low net worth. As shown in the top panel of Figure 3, among owner-occupant households, the heads of households that lived in manufactured housing are a bit more likely to be younger than 30 or older than 70 than are site-built owner-occupant household heads. The median age of a head-of-household owner of a manufactured home is 53 years, identical to the median owner-occupant head-of-household for all home types.[18] The bottom panel of Figure 3 shows that for renters with a head

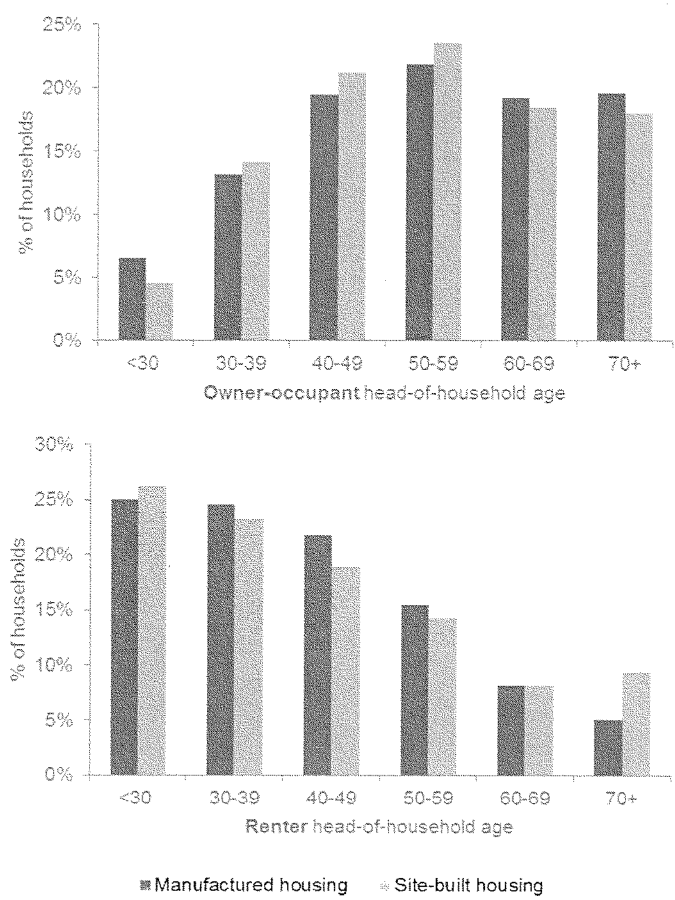
[17] US Census Bureau ACS, *supra* note 13.
[18] *Id.*

between the ages of 30 and 59, a greater share rented a manufactured home than a site-built home.

Nearly one-fifth of households that live in manufactured homes have an older (55 or older) single head of household with no children in the home, compared with less than 15 percent of households that live in site-built homes.[19] A greater proportion of households that live in manufactured housing are headed by a retiree (32 percent) than site-built households (24 percent).[20]

[19] CFPB analysis of Survey of Consumer Finances (SCF), *supra* note 2.
[20] *Id.*

FIGURE 3: HEAD-OF-HOUSEHOLD AGE DISTRIBUTION[21]



[21] US Census Bureau ACS, *supra* note 13.

As shown in Table 1, manufactured-home buyers tend to be older at the time of purchase than site-built buyers, with a difference in the median age of five years (42 years compared with 37 years). This age difference is narrower among first-time homebuyers and is wider for repeat homebuyers.

TABLE 1: MEDIAN AGE OF HOUSEHOLD HEAD AT PURCHASE[22]

	All buyers	First-time homebuyers	Repeat buyers
Site-built housing	37	31	41
Manufactured housing	42	33	49

There is significant mobility from site-built housing into manufactured homes—most recent purchasers of manufactured homes moved from site-built houses or apartments (where they may have previously rented or owned). However, manufactured-home owners are much more likely than site-built owners to have moved from another manufactured home. About 20 percent of households who recently purchased a manufactured home moved in from a previous manufactured home residence.

Adult residents of owner-occupied manufactured housing tend to have lower levels of educational attainment, on average, than adult residents in site-built housing (see Table 2). Differences in the distributions of income for home buyers by the type of structure (manufactured or site-built) may in part reflect these differences in educational attainment. HMDA data for borrowers with purchase-money mortgages taken out in 2012 show that households that financed the purchase of manufactured housing had lower incomes on average than those who financed the purchase of site-built housing (see Figure 4).[23] The percentage of purchasers with incomes below $35,000 is higher for manufactured housing than for site-built housing.

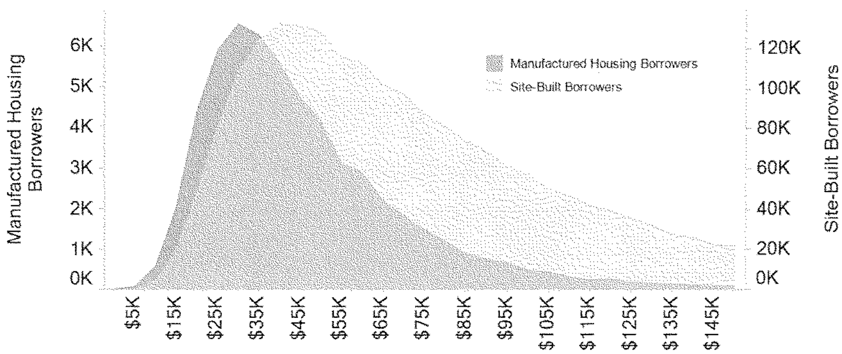
[22] U.S. Census Bureau AHS, *supra* note10.

[23] Bureau of Consumer Fin. Prot, *Home Mortgage Disclosure Act (HMDA) Data 2012*, available at http://www.consumerfinance.gov/hmda/. The analysis is restricted to only loans secured by an owner-occupied, 1–4 family property and excludes loans taken out by a business.

TABLE 2: HIGHEST LEVEL OF EDUCATIONAL ATTAINMENT BY RESIDENTS AGES 25 OR OLDER IN OWNER-OCCUPIED HOUSEHOLDS[24]

	High school or less	Some college	College degree or above
Site-built residents	37%	21%	42%
Manufactured-housing residents	67%	20%	13%

FIGURE 4: BORROWER INCOME[25]



Manufactured-home residents have lower net worth, assets, and debt than other families. The 2004–2010 Surveys of Consumer Finances indicate that the median net worth among households that lived in manufactured housing of $26,000 (in 2010 dollars) was just about one-quarter the median net worth of families in site-built homes (Table 3).[26] The difference in income by type of home for purchase-money borrowers shown in Figure 4 holds more generally for all families: median income for families that live in manufactured homes is a bit more than $26,000 per year, or roughly half the median income for other families. Families in

[24] US Census Bureau ACS, *supra* note13. Note that tables include all residents of owner-occupied housing units.
[25] HMDA 2012, *supra* note23.
[26] CFPB analysis of Survey of Consumer Finances (SCF), *supra* note 2.

manufactured homes likewise have lower median assets (about $45,000 compared with $213,000 for families in site-built homes) and median debts ($5,000 compared with $30,000 for families in site-built homes). The median ratio of debts to assets, or leverage ratio, is lower for manufactured-home residents (15 percent) than for other families (22 percent).

TABLE 3: SELECTED FAMILY FINANCIAL CHARACTERISTICS BY TYPE OF HOUSING[27]

	Site-built home	Manufactured home
Median net worth (thous. of 2010 dollars)	112.5	26.0
Median annual income (thous. of 2010 dollars)	50.6	26.4
Median assets (thous. of 2010 dollars)	213.2	44.7
Median debt (thous. of 2010 dollars)	30.3	5.0
Median debt-to-asset ratio (percent)	22.1	15.4

Finally, the racial and ethnic profile of manufactured housing residents differs somewhat from the profile for those who live in site-built homes. The share of non-Hispanic whites, for example, is about seven percentage points greater among those who live in manufactured homes than among families in site-built homes (Table 4). Individuals of Hispanic or Latino ethnicity and those with American Indian or Native Alaskan racial backgrounds make up a greater share of manufactured-home residents than site-built home residents. On the other hand, African Americans and Asians account for a smaller fraction of manufactured-home residents than of site-built residents.

[27] CFPB analysis of Survey of Consumer Finances (SCF), *supra* note 2. Figures are in 2010 dollars.

TABLE 4: RACE AND ETHNICITY DISTRIBUTION FOR US RESIDENTS OF SITE-BUILT HOUSING AND MANUFACTURED HOUSING[28]

Ethnicity/Race	Site-built housing residents	Manufactured-housing residents
Hispanic or Latino	16.4%	18.2%
Not Hispanic or Latino	83.6%	81.8%
Non-Hispanic White	63.5%	69.1%
One Race		
White	74.0%	81.3%
Black or African American	12.5%	8.7%
American Indian and Alaska Native	0.8%	1.8%
Asian	5.1%	0.8%
Native Hawaiian and Other Pacific Islander	0.2%	0.1%
Some Other Race	4.8%	5.2%
Two or More Races	2.7%	2.2%

2.4 Housing costs

Manufactured homes typically cost less than site-built homes, both on a square-foot basis and in total. Manufactured homes cost less than half as much as the estimated $94 per square foot for new site-built housing construction in 2013.[29] The average consumer sales price for a new single-section manufactured home was about $43,000 in the first six months of 2014, and the average price of a new multi-section manufactured home was about $78,000.[30] Custom designs or optional finishes and features can raise a home's price tag to $100,000 or more. At the lower-end of the price spectrum, the most basic single-section homes can sell for less than $20,000.

[28] US Census Bureau ACS, *supra* note13.
[29] MH Census, *supra* note 3.
[30] MH Census, *supra* note 3.

Transport, siting, and construction represent additional upfront costs to the buyer of a new manufactured home. Initial set-up costs depend on the physical conditions of the site. Installation add-ons such as steps, air conditioning, or patios may increase the price of the home by as much as 25 percent. Moreover, electing to site the home on a permanent foundation can cost an additional $2,000–$10,000.[31] The median combined value of manufactured homes and associated land (among households that own the home and the land) is about 42 percent of the median value of existing site-built homes in the U.S.[32]

Consumers may face different costs depending on whether they own or rent the land. About 48 percent of households that live in manufactured homes own both the home and the land it is placed on, about 30 percent rent the land but own the home, and about 18 percent rent both the site and land.[33] Nationwide, ground rents in non-age-restricted manufactured home communities averaged $393 per month as of late 2013.[34] Even taking into account the additional cost for ground rent particular to some owners of manufactured housing, the ownership costs of manufactured housing are lower than an average site-built home in metro and non-metro areas (see Table 5). Typical all-in housing costs for manufactured-home owners in non-metropolitan areas were over a third less than the costs for households that owned a site-built home in a non-metro area ($608 compared with $948), and the gap is even wider for those residing within metro areas. The monthly cost differences between manufactured and site-built housing were narrower among renters in general, and in particular in non-metropolitan areas, where monthly rents for manufactured homes were about $100 less than rents for site-built properties ($654 compared with $551).[35]

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[31]Costs may vary based on geographic requirements. Cost estimates provided by various industry participants through CFPB outreach.

[32] US Census Bureau AHS, *supra* note 10.

[33] *Id.*

[34] Press release, John M. Turzer, JLT & Associates, *National Manufactured Home Community Rent Survey Summaries*, (July 2013), *available at* http://jlt-associates.com/uploads/2013_12_National_Survey_Summary_Press_Release_July_2013.pdf.

[35] US Census Bureau AHS, *supra* note 10. For this calculation, site-built units include single-family detached, single-family attached units (e.g., duplexes and townhomes), and multi-family properties such as condominiums and co-operatives. Rental units are defined as both single-family homes and multi-family units, such as apartments, for lease.

TABLE 5: AVERAGE MONTHLY ALL-IN HOUSING COSTS [36]

	Metro Site-built	Manufactured	Non-metro Site-built	Manufactured
Owner-occupants	$1,505	$686	$948	$608
Renters	$992	$676	$654	$551

Some households may prefer manufactured housing over site-built housing because of its cost, construction speed, architecture and layout, or other factors. In many areas of the country, the decision to live in manufactured housing may also be influenced by the breadth of housing options available in the area, especially in less densely-populated regions. However, data from the American Housing Survey and American Community Survey do not offer clear support for the conjecture that manufactured housing is particularly prevalent in areas with limited affordable site-built or rental housing. More specifically, a comparison of the prevalence of occupied manufactured homes in U.S. counties and various available measures of local affordable housing availability shows no clear correlation between housing availability and the proportion of households that live in manufactured homes.[37]

There is evidence that some households who move into manufactured housing are less satisfied with their homes than those who choose to move into site-built housing. These results suggest that for at least some households, the choice to live in a manufactured home may be more cost-driven than quality-driven. In a nationally representative survey of recent movers, those who moved into manufactured housing were significantly more likely to rate their new house as

[36] US Census Bureau AHS, *supra* note 10. Housing tenure refers to the housing unit, so manufactured home owners who rent their site are classified as owner-occupants.

[37] For instance, based on CFPB analysis of ACS data (2008-2012), the share of vacant homes (both manufactured homes and site-built) is 14 percent in counties where occupied manufactured housing is least prevalent and 22 percent in counties where occupied manufactured housing is most prevalent. However, the vacant-for-sale and vacant-for-rent rates are about the same across such counties where manufactured housing is more or less prevalent. In addition, site-built homes are not significantly more expensive in counties where manufactured housing is more prevalent. In counties where manufactured housing is highly prevalent, home values and rents overall tend to be lower. A similar result holds when analysis is restricted to non-MSA counties.

"worse [than their previous residence]" than similarly situated households who moved into site-built housing.[38] This finding is true of lower-income (below 150 percent of the area poverty line) manufactured-housing owners in metro areas and for lower-income manufactured-housing owners who previously rented. However, for owner-occupant households in rural areas and those who had previously owned a home, those moving into manufactured homes were not significantly more likely to report their new residences as "worse."

2.5 The legal treatment of manufactured housing

As noted above, manufactured homes may be titled as either personal or real property. In most cases, re-titling of the home as real estate requires that the home must be affixed to a permanent foundation on land that is owned by the home's owner. The process generally involves surrendering the original title and providing additional documentation to a county land recorder that the home has become a real estate fixture. Since 2004, about one-quarter of new manufactured homes were titled as real estate, though in recent years this proportion has decreased; in 2013 only 14 percent of new manufactured homes were titled as real property.[39] In Texas, which received more than 20 percent of all new manufactured homes shipped in 2013, about 10 percent of all new manufactured homes and only seven percent of used manufactured homes purchased in 2013 from retailers were titled as real property.[40]

The way in which a manufactured home is titled affects property taxation, applicability of consumer protection laws, and financing options.[41] To qualify for mortgage financing, a consumer must title the manufactured home as real property and encumber both the land and

[38] US Census Bureau AHS, *supra* note 10.
[39] MH Census, *supra* note 3.
[40] Manufactured Housing Institute, *Manufactured Home Shipments by State (1990 - 2013)*, *available at* https://www.manufacturedhousing.org/admin/template/subbrochures/390temp.pdf (Data source: Institute for Building Technology and Safety (IBTS)); Texas Manufactured Housing Association, Stats: Payment Types for Retail Sales, *available* at http://www.texasmha.com/industry-resources/stats/payment-types-for-retail-sales.
[41] For a discussion of state and federal laws' applicability to manufactured homes titled as real or personal property, *see CFED & NCLC, supra* note 12. *See also* Government Accountability Office (GAO), GAO-07-879, *Federal Housing Administration, Agency Should Assess the Effects of Proposed Changes to the Manufactured Home Loan Program* (Aug. 2007), *available at* http://www.gao.gov/new.items/d07879.pdf.

home; otherwise, the consumer can obtain only a chattel loan with the lender taking a security interest in the manufactured home.[42] For this reason, manufactured homes in land-lease communities —about 30 percent of all manufactured housing placements in recent years—are generally only eligible for chattel financing.[43]

There are material differences between mortgage financing for manufactured homes and chattel financing. To begin with, chattel loans may be priced between 50 and 500 basis points higher, all else equal, than a comparable mortgage loan for a manufactured home.[44] Additionally, chattel loans are also generally for shorter loan terms which affect the monthly costs. On the other hand, mortgages for manufactured homes generally have higher costs at origination relative to chattel loans (including the cost of recording the mortgage) and generally take longer to close than chattel loans. In addition, mortgage loans encumber the land as well as the manufactured home whereas the chattel loan gives the lender a security interest only in the home. Furthermore, there are specific consumer protection laws that apply only to mortgage financing, including parts of the Real Estate Settlement Procedures Act (RESPA) and various state foreclosure and repossession laws. Thus, manufactured-home owners who can choose either chattel or mortgage financing (generally, those who own the land to which the manufactured home is being permanently affixed) may face a tradeoff between lower costs at origination and a quicker closing with less collateral, on the one hand, and lower total costs over the life of the loan along with greater consumer protections on the other.

As previously noted, the vast majority of manufactured housing stock is titled as chattel and thus eligible only for chattel financing. The Bureau estimates that approximately three-quarters of all manufactured-home owners with purchase financing take out a chattel loan. According to 2011 AHS data, about 60 percent of manufactured-home owners who own their home also own the land. Among consumers who purchased their home between 2001 and 2010, about 51 percent owned the land. We estimate based on AHS data that 65 percent or more of land-

[42] In discussing loans for manufactured housing, the term "mortgage" is often used as shorthand for real property loans (as opposed to chattel loans).
[43] MH Census, *supra* note 3. Anecdotal evidence and American Housing Survey (AHS) data suggest that an even greater share, potentially almost half, of the stock of manufactured homes purchased in recent years are located in communities.
[44] *See* Wirtz, *supra* note 14; industry outreach.

owning consumers who took out a home-purchase loan between 2001 and 2010 had a chattel loan.[45]

The extent to which consumers are aware of theses tradeoffs and how consumers weigh them remains an open question. It is not clear to what degree upfront costs and convenience, lack of availability for mortgage financing, or lack of relevant information about financing options drive consumers to chattel financing. Some consumers may not wish to encumber their land in a mortgage transaction for reasons other than upfront cost or time, especially if the land is owned free and clear or would require partition.

[45] US Census Bureau AHS, *supra* note 10.

3. Production, sales, and financing

3.1 Historical manufactured housing finance market dynamics

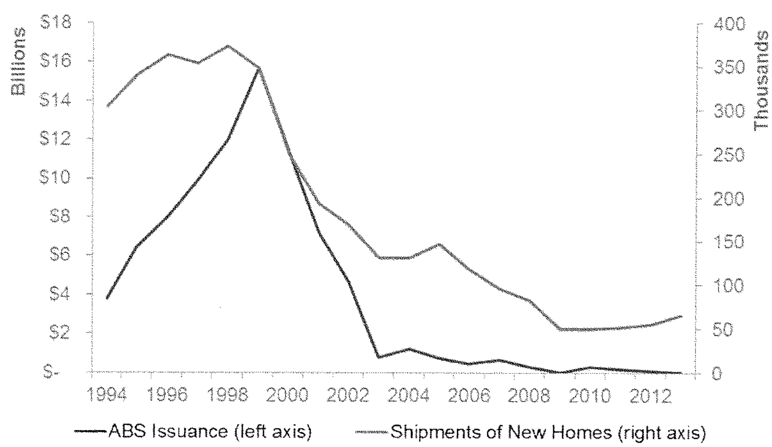
Production of manufactured homes increased steadily in the mid-1990s but dropped sharply in the late 1990s into the early 2000s. In only four years, annual new manufactured home factory shipments dropped to less than half the peak of nearly 375,000 in 1998, to about 170,000 in 2002. In the late 1990s, a market rapidly grew to finance loans for these homes and securitize the underlying manufactured-home loan assets (see Figure 5). The sharp and sustained decline in manufactured home purchases after 1998 was driven to a large extent by the collapse of the secondary market for manufactured-housing loans after market participants suffered sharp losses on securities backed by manufactured-housing loans.[46]

The manufactured housing crisis was precipitated by behavior similar to that which led to the larger subprime and "Alt-A" housing market collapse and financial crisis less than a decade later. Manufactured home lending standards, for example, relaxed through the late 1990s as lenders provided financing to less creditworthy borrowers. In order to generate origination volume, creditors lowered borrower credit standards and documentation requirements. To make monthly payments more affordable and qualify more buyers, lenders lengthened loan

[46] The declining number of shipments and placements might in part reflect slackened demand for manufactured homes to the extent that financing for site-built homes became more available during the early 2000s and, consequently, buyers that otherwise might have purchased an manufactured home instead purchased a site-built home.

terms. Borrowers from Green Tree Financial, once the largest manufactured-housing lender, experienced an increase in average loan terms to 25 years in 1997 from just 13 years in 1987.[47] As a result, consumers with longer-term loans built less equity in their homes as principal payments were spread over a longer period. Moreover, retailer fraud in the form of artificially inflated home appraisals and invoice prices or falsified credit applications was a recognized issue as home sales surged.[48]

FIGURE 5: MANUFACTURED-HOUSING LOAN-BACKED ABS ISSUANCE AND NEW MANUFACTURED HOME SHIPMENTS[49]



The poor quality of many loans for manufactured housing led to high rates of defaults and repossessions in the early 2000s. Many consumers who had financed the purchase of a manufactured home throughout the late 1990s and early 2000s had difficulty making payments. The FHA Title I portfolio saw default rates between 30 and 54 percent on loan vintages

[47] Alex Berenson, *A Boom Built Upon Sand, Gone Bust*, N.Y. Times, November 25, 2001, *available at* http://www.nytimes.com/2001/11/25/business/a-boom-built-upon-sand-gone-bust.html?pagewanted=2&pagewanted=all.

[48] Standard & Poor's, *Manufactured Housing Criteria* (Jan., 2000) *available at* http://www.securitization.net/pdf/mh99web.pdf.

[49] Asset-Backed Alert, ABAlert.com, 2014; MH Census, *supra* note 3.

originated between 1995 and 2002 (as of 2007), and the highest rate of payment defaults came within the first three to five years of a loan's repayment. [50] In the year 2000 alone, over 75,000 consumers had their homes repossessed, whereas a rate of 20,000 repossessions annually was the norm throughout boom years.[51] By the end of 2002, repossessed inventory had grown more than fourfold since the beginning of 1999 to $1.3 billion.[52]

As the manufactured housing boom fell from its peak between late 1998 and early 2002, at least eight sizable market lenders exited the market. Conseco, Inc., filed for bankruptcy in 2002, four years after merging with Green Tree Financial. As the largest manufactured-housing lender with 54 percent of originations in 2000, Conseco's bankruptcy reflected the industry-wide trend of deteriorating loan quality and drove losses in the secondary market.

As issuers and purchasers of manufactured housing asset backed securities, including chattel, the GSEs sustained large losses within their manufactured housing portfolios. As of 1999, Fannie Mae had captured about 24 percent of the overall manufactured housing market and subsequently aimed to increase manufactured housing purchases, as one way to meet affordable-housing goals.[53] Loan vintages from 1999 and later proved to be the worst performing as delinquencies and defaults rose well into the next decade.[54] Moreover, troubled assets represented a significant portion of the GSEs' manufactured housing portfolio—as of October, 2002 Conseco securities represented 70 percent of Fannie Mae's manufactured housing balances.[55]

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[50] GAO, *supra* note 41.

[51] Berenson, *supra* note 47; Daniel Guido, *Manufactured Mess*, *Builder*, (Oct., 2001), *available at* http://www.builderonline.com/mortgages-and-banking/manufactured-mess.aspx?dfpzone=magazines.archive.

[52] Wirtz, *supra* note 14.

[53] Fannie Mae internal memorandum, "HUD Housing Goals Options," June 15, 1999. *available at* http://fcic-static.law.stanford.edu/cdn_media/fcic-docs/1999-06-15%20Fannie%20Memo%20re%20HUD%20Housing%20Goals%20Options.pdf (Memorandum is available in the Financial Crisis Inquiry Commission Archives).

[54] JPMorgan Global Structured Finance Research, "ABS Performance Statistics," September 25, 2002. *Available at* http://www.securitization.net/pdf/jp_stats_090102.pdf;
Wachovia Securities, "Manufactured Housing Loss Severities Remain Stubbornly High," February 12, 2002. *Available at* http://www.securitization.net/pdf/wachovia_loss_021202.pdf.

[55] Fannie Mae internal presentation, "Conseco Manufactured Housing Business Data Gaps Lessons Learned," March 24, 2003, *available at* http://fcic-static.law.stanford.edu/cdn_media/fcic-docs/2003-03-24%20Fannie%20Mae%20Conseco%20Manufactured%20Housing%20Business-%20Data%20Gaps%20Lessons%20Learned.pdf

Many securities backed by manufactured-housing loans were considered to be high credit quality by the ratings agencies when the securities were issued and, in turn, by the GSEs that relied upon the rating agencies' assessments.[56] This proved problematic as issuances were downgraded through the manufactured housing crisis. Freddie Mac halted purchases of manufactured housing securities after 2002. In 2002, all of Freddie Mac's portfolio of manufactured housing securities were rated BBB or above; by 2004 over half were rated below BBB- .[57] Similarly, 99 percent of Fannie Mae's guaranteed and portfolio manufactured-housing-backed securities were considered investment grade in mid-2003, and this figure dropped to three-quarters by mid-2004.[58] In mid-2003 Fannie Mae owned or guaranteed $9.1 billion in manufactured-housing securities, and by the end of 2004, after substantial impairments, the portfolio was valued at just $5.4 billion.[59] Issuance of securities backed by manufactured-housing loans rapidly declined since its peak and has not returned to any great extent since the precipitous crash.

3.2 Size and composition of the financing market for manufactured housing

HMDA data from 2012 indicate that loans for manufactured housing represented 2.5 percent of all first-lien home-purchase transactions to owner-occupants.[60] This figure is likely an underestimate of the proportion of manufactured housing finance transactions, given the

[56] *See, e.g.*, Fannie Mae, *Conseco Manufactured Housing Business Data Gaps Lessons Learned* (Mar. 24 2003), available at http://fcic-static.law.stanford.edu/cdn_media/fcic-docs/2003-03-24%20Fannie%20Mae%20Conseco%20Manufactured%20Housing%20Business-%20Data%20Gaps%20Lessons%20Learned.pdf (presentation related that Fannie Mae "relied completely on one reference point, the rating agencies" with respect to manufactured housing risk) (available in Financial Crisis Inquiry Commission Archives).

[57] Freddie Mac Annual Reports, 2003-2004. *Available at* http://www.freddiemac.com/investors/ar/pdf/2004annualrpt.pdf ; http://www.freddiemac.com/investors/ar/pdf/2003annualrpt.pdf

[58] Fannie Mae, *Form 10-Q, Quarter ending June 31, 2003*; Fannie Mae, *Form 10-Q, Quarter ending June 30, 2004, available at* http://www.fanniemae.com/portal/about-us/investor-relations/sec-filings.html.

[59] Fannie Mae, *Form 10-Q: Quarter ending June 31, 2003, available at* http://www.fanniemae.com/resources/file/ir/pdf/quarterly-annual-results/2004/2004_form10K.pdf

[60] HMDA 2012, *supra* 23. The analysis is restricted to only loans secured by an owner-occupied, 1–4 family property and excludes loans taken out by a business.

current reporting requirements for the data.[61] More than 2,000 institutions reported originating one or more manufactured housing purchase loans in 2012. HMDA requires data collection for dwelling-secured loans made by certain creditors. Loans reported in HMDA include both chattel and mortgage loans, but it is not possible to definitively distinguish between these types of collateral in the HMDA data.

Because manufactured housing lending may be considered by some lenders to be a specialty niche, many mortgage lenders do not originate chattel loans. Based on conversations with industry participants, it appears that the national lending market for chattel loans is concentrated among five lenders: 21st Mortgage, Vanderbilt Mortgage, Triad Financial Services, U.S. Bank, and San Antonio Federal Credit Union.[62] These national chattel lenders accounted for over 52 percent of the manufactured-home purchase-money mortgages reported in the 2012 HMDA data. This likely understates these institutions' share of the chattel market, as HMDA captures both mortgages and chattel loans. For smaller manufactured-housing loans ($50,000 or less), these lenders represent over three-fifths of HMDA purchase-loan transactions. Other chattel lenders include smaller regional or community-based institutions, so the number of lenders serving local markets varies.

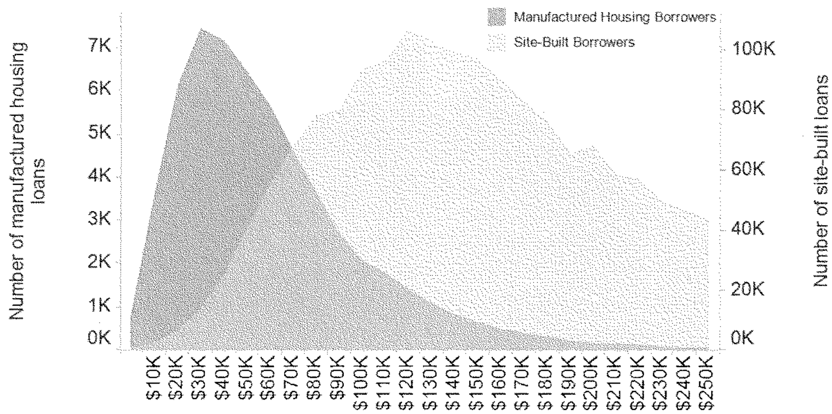
Manufactured-housing loans are typically smaller than loans for site-built housing. As shown in Figure 6, most manufactured-housing purchasers finance between $10,000 and $80,000. The median loan amount for site-built home purchase was $176,000, more than three times the manufactured home purchase loan median of $55,000. Some of the variability of loan balances for manufactured homes comes from the fact that many of the manufactured-housing loans are home only, and the loans for site-built properties are for both home and site. Unfortunately the HMDA data do not identify loans secured only by the home or by the home and land. Based on survey data of consumers, the average manufactured-home buyer who financed a purchase

[61] HMDA likely underreports portions of the manufactured housing lending market since manufactured housing is especially prevalent in rural America. Small depository institutions (DIs) and those exclusively in non-metropolitan areas are not required to report data for HMDA. Similarly, non-DIs with fewer than 100 purchase-money or refinance loans or less than five applications, originations, or purchased loans from metropolitan areas are not required to report.

[62] 21st Mortgage and Vanderbilt Mortgage are wholly owned subsidiaries of Clayton Homes, a Berkshire Hathaway corporation and the nation's largest manufactured housing producer. Triad Financial Services did not report HMDA data for the years analyzed in this publication. Another originator with a large share of manufactured-housing loans, Wells Fargo, engages primarily in real estate-secured lending for manufactured homes.

between 2006 and 2010 obtained a purchase loan for $31,000 if they bought the home and not the land, and $65,000 if they also owned the land.[63]

FIGURE 6: LOAN AMOUNT DISTRIBUTION, HOME PURCHASE LOANS FOR MANUFACTURED AND SITE-BUILT HOMES[64]



[63] US Census Bureau AHS, *supra* note 10. Available data does not allow analysis of landowning consumers who financed their home only versus land and home together.

[64] HMDA 2012, *supra* note 23.

3.3 Home purchase loan pricing

Manufactured-home borrowers typically pay higher interest rates for their loans than site-built borrowers. One illustration of this difference is the greater share of manufactured-housing loans that are classified as higher-priced mortgage loans (HPMLs) compared with site-built mortgage loans. HPMLs are dwelling-secured loans with annual percentage rates (APRs) at least 150 basis points (or 350 basis points for subordinate liens) over the applicable average prime offer rate (APOR).[65] The HPML definition was developed as a potential way to identify a set of loans that might be considered subprime. The HPML designation may trigger additional consumer protections, including rules regarding appraisals, escrows, and loans that qualify for the Bureau's safe harbor Qualified Mortgage (QM) designation.[66]

Of the first-lien loans reported under HMDA, about 68 percent of manufactured home purchase loans in 2012 were higher-priced, compared with three percent of purchase loans for site-built homes (Figure 7, top panel). The median rate spread over APOR for all purchase loans for manufactured homes (i.e., both HPML and non-HPML loans) in the 2012 HMDA data was 375 basis points.[67] Given that the average APOR for a fixed rate, 20-year loan in 2012 was 3.04 percent, a typical manufactured-housing loan in that year might have had an interest rate of 6.79 percent.

Even among the set of HPMLs, manufactured-home loans tend to have higher rates: APRs on higher-priced manufactured housing purchase loans averaged 570 basis points greater than APOR, whereas APRs on higher-priced site-built purchase loans averaged only 230 basis points greater than APOR.

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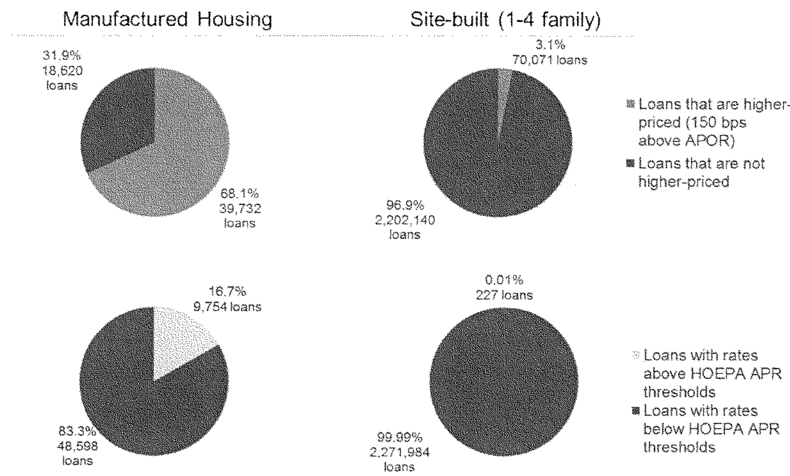
[65] APOR is computed weekly using data from the Freddie Mac Primary Mortgage Market Survey. Fed. Fin. Inst. Examination Council (FFIEC), Rate Spread Calculator, *available at* https://www.ffiec.gov/ratespread/newcalc.aspx As described by the FFIEC, APOR is an estimate of APRs offered on prime mortgage loans with a given set of characteristics (for example, lock-in date and fixed or adjustable rate).

[66] *See infra* Appendix A for more details regarding these and selected other Bureau's consumer protection rules that affect dwelling-secured loans in the Appendix.

[67] Note that currently creditors report spread over APOR only for HPMLs. Since the vast majority of site-built loans are not HPMLs, it is impossible to compute the median APR over APOR spread for site-built loans using HMDA data. Similarly, it is impossible to compute the average APR over APOR spread for both site-built and manufactured housing loans. In 2014, the Bureau proposed changes to HMDA that would, among other things, allow researchers to analyze the mortgage market, and the manufactured housing segment of that market, more thoroughly. These changes include requiring creditors to report the APR over APOR spread on all loans, a field that would indicate whether a loan is chattel or real property, and points and fees.

FIGURE 7: HIGHER-PRICED AND HOEPA HIGH-COST LOANS, SHARE OF PURCHASE LOANS ORIGINATED BY HOUSING TYPE[68]



Loans for manufactured homes are also more likely to be classified as "high-cost" loans, as defined by the Homeownership and Equity Protection Act (HOEPA). High-cost loans (or "HOEPA loans") are those with an APR or points and fees that exceed certain thresholds. HOEPA provides certain protections to consumers that take out high-cost loans, including additional disclosures, home ownership counseling, and restrictions on certain loan contract terms. The first threshold is based on the loan's APR and is set at 650 basis points above APOR for all first-liens and 850 basis points for junior liens as well as for first-lien personal-property loans for less than $50,000. The second threshold is based on points and fees and, in general, is five percent of the loan amount, with different thresholds for loans under $50,000.

The Bureau analyzed 2012 HMDA data to compare first-lien manufactured-home and site-built loans that may be considered HOEPA loans. The current HOEPA thresholds described above did not take effect until 2013, so this analysis classified loans originated in 2012 as high-cost

[68] HMDA 2012, *supra* note 23.

mortgages as if the new Dodd-Frank APR thresholds had been in place in 2012.[69] In addition, because the HMDA data do not include points and fees, the analysis is restricted to loans with an interest rate that exceed HOEPA's APR threshold.[70]

Most loans with rates that exceed the HOEPA APR threshold in HMDA are for manufactured homes and, in particular, for home-purchase loans for manufactured housing. Of the roughly 10,600 first-lien home-purchase, refinance, or home improvement loans reported under HMDA with rates that exceed the HOEPA APR threshold, about 10,000 are for manufactured homes. Of these, nearly 9,800 are home-purchase loans for manufactured homes.[71]

In addition, the share of first-lien home-purchase loans for manufactured housing with interest rates that exceed the HOEPA APR threshold is considerably greater among those for amounts less than $50,000 even though the threshold for loans amount under $50,000 is 200 basis points higher than for larger loans. More specifically, considering only first-lien loans for the purchase of a manufactured home, about 21 percent of these loans for less than $50,000 have interest rates that exceeded the HOEPA APR threshold, compared with about 13 percent for larger loans, (amounts of at least $50,000).

As shown in the lower panel of Figure 7, HOEPA's additional consumer protections will likely apply to a much larger fraction of first-lien home-purchase loans for manufactured housing than for site-built housing. In particular, by these estimates, 0.2 percent of all home-purchase loans in the U.S. have an interest rate that exceeds the HOEPA APR threshold. This fraction is only

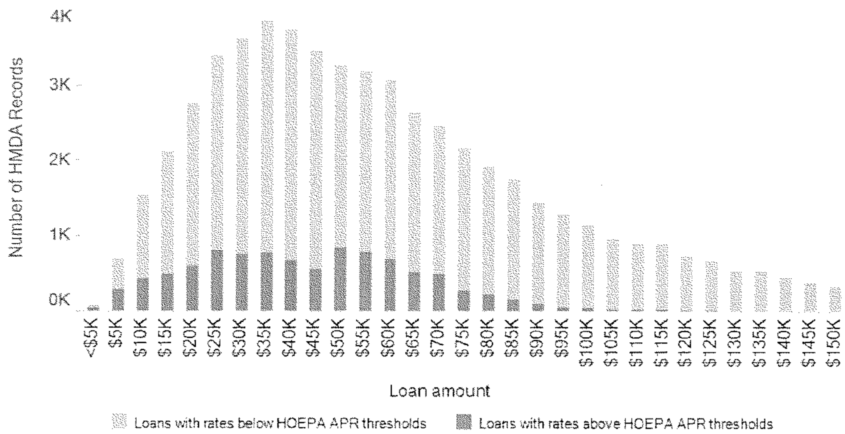
[69] *See infra* Appendix A for background information on the HOEPA rule and recent changes.

[70] In this analysis, we use "rate that exceeds the HOEPA APR threshold" as a shorthand to denote loans that have APRs in HMDA such that when the loans were made the spread between the APR and APOR is greater than 650 bps for loans over $50,000 and is greater than 850 bps for loans that are under $50,000. The analysis is further restricted to only loans secured by an owner-occupied, 1–4 family property and excludes loans taken out by a business.

[71] The HOEPA APR threshold for chattel loans under $50,000 is 850 bps over APOR. For the purposes of this analysis, we assume that all first-lien manufactured-housing loans in HMDA with loan amount of under $50,000 and APR over APOR spread of between 650 and 850 bps are chattel loans. Anecdotal and survey evidence supports this assumption. For example, based on evidence from various surveys, the Bureau previously assumed that 75 percent of manufactured-housing loans in HMDA under $50,000 are chattel loans; however, that proportion is likely to be higher for loans that have APR over APOR spread of over 650 bps. Assuming that none of the manufactured-housing loans in HMDA with loan amount of under $50,000 and with a spread between 650 and 850 bps are chattel loans leads to a higher number of manufactured-housing loans that have the spread over the threshold: approximately 15,500 instead of 10,000, but does not significantly change other findings in this subsection.

0.01 percent for site-built homes but nearly 17 percent for manufactured homes.[72] It is not possible from data currently reported through HMDA to assess the extent to which the greater share of manufactured housing loans that exceed the HOEPA APR thresholds compared with loans for site-built homes is generally attributable to differences in the credit profile of manufactured-home borrowers such as credit scores, debt-to-income ratios, loan-to-value or other such factors.

FIGURE 8: MANUFACTURED HOME PURCHASE LOANS ABOVE HOEPA HIGH-COST APR THRESHOLD, BY LOAN AMOUNT, BASED ON 2012 HMDA DATA[73]



Based on HMDA data, the majority of these loans with APRs that exceed the HOEPA APR threshold for manufactured homes were originated by two creditors—the only creditors that originated more than 250 manufactured-home loans for home-purchase in 2012 that have rates that exceed the HOEPA APR threshold. These two creditors originated approximately 5,500 and

[72] The estimated share for manufactured-housing loans falls to about ten percent for all loans (i.e., home-purchase, refinance, and home improvement loans).

[73] HMDA 2012, *supra* note 23. Note that analysis is for first-lien home-purchase loans secured by a 1–4 family property, excludes loans to businesses, and considers only the APR threshold; not the points and fees threshold because points and fees are not reported in HMDA. The estimate also assumes all loans with APR spreads between 650 and 850 bps over APR are secured by personal property. Finally, it assumes no lender response to the enactment of the HOEPA final rule.

3,300 home-purchase loans for manufactured homes, respectively, with rates that exceed the HOEPA APR thresholds. Together, these originations account for roughly 91 percent of all home-purchase loans for manufactured homes in 2012 that have rates that exceed the HOEPA APR threshold. In contrast, these two creditors originated 38 percent of the home-purchase loans for manufactured homes in HMDA overall. There could be several reasons why the loans that these creditors made in 2012 were more likely to exceed the new HOEPA APR thresholds. For example, these creditors make a particularly large number of chattel loans. It is also possible that these creditors make manufactured-housing loans with differences in, for instance, credit scores, collateral, or other borrower characteristics that are not measured in HMDA.

On top of pricing differences between loans for manufactured housing compared with site-built homes, loan rates also differ between chattel and mortgage loans for manufactured homes. Borrowers with chattel financing typically pay higher prices than those with mortgage financing for a manufactured home. Proprietary data voluntarily provided to the Bureau by some manufactured home lenders do not show economically substantial differences in income, debt-to-income ratios, credit scores, and loan-to-value ratios between borrowers with chattel loans compared to those with mortgage loans. Thus pricing differences may stem, for example, from differences in collateral type or differences in other borrower characteristics that are not captured in these data. For the lenders in the sample utilized, loan amounts and points and fees tend to be about 40 to 50 percent lower for chattel loans, and APRs on chattel loans are about 150 basis points higher on average than for mortgages on manufactured homes.

The following example illustrates the relative prices of an HPML and a HOEPA loan for a manufactured home. Assume that a consumer purchases an average new multi-section manufactured home for $80,000, pays 20 percent down and takes out a 20-year fixed-rate loan for $64,000. The APOR on a 20-year fixed-rate loan is 3.36 percent as of August 11th 2014. The principal and interest payments for a $64,000 loan with this term, interest rate of 3.36 percent, and no points and fees would be $367 per month. In contrast, a second consumer's payments, for a 20-year, no points-and-fees loan with an interest rate of 4.87 percent – just over the HPML threshold of APOR plus 150 basis points – would be $418 per month. A third consumer's payments for a 20-year, no points-and-fees loan with an interest rate of 9.87 percent—just over the HOEPA APR threshold of APOR plus 650 basis points—would be $612 per month. See Table 6 below for an illustration of the preceding example.

TABLE 6: EXAMPLE LOAN CHARACTERISTICS AND MONTLY PAYMENTS. POINTS AND FEES ARE NOT INCLUDED IN THE TABLE OR THE ANALYSIS.

	Consumer 1: Loan at APOR	Consumer 2: Loan at HPML APR	Consumer 3: Loan at the HOEPA high-cost APR
Manufactured home price	$80,000	$80,000	$80,000
20-year fixed-rate loan at 80% loan-to-value	$64,000	$64,000	$64,000
Rate	3.36%	4.87%	9.87%
Percentage points above APOR	0%	1.50%	6.50%
Monthly payment	**$367**	**$418**	**$618**

3.4 Secondary market for manufactured-housing loans in 2014

Due to the limited secondary market for both manufactured-home chattel and mortgage loans, over 70 percent of manufactured-home loans in HMDA are held in portfolio, compared with about 16 percent of mortgages for site-built homes.[74] The secondary market for manufactured-housing loans differs markedly from that for site-built. For example, the GSEs purchase a substantial share of site-built loans originated in any given year but only a tiny fraction of manufactured-housing loans, at least in part because their involvement is limited to loans secured by real property.

[74] HMDA 2012, *supra* note 23. The analysis is restricted to only loans secured by an owner-occupied, 1–4 family property and excludes loans taken out by a business.

The vast majority of HMDA-reported manufactured-housing loans held in portfolio were higher-priced (82 percent), and their average loan amount was about half that of loans sold on the secondary market ($52,600 and $104,500, respectively). It is likely that most of the loans held in portfolio are chattel loans, for which secondary market demand has been depressed over the last decade.

Though the GSEs play a much smaller role in the secondary market for manufactured-housing loans than in the market for site-built loans, government programs exist to facilitate manufactured housing lending. 17 percent of manufactured-housing loans for home purchase in 2012 were guaranteed by Ginnie Mae for sale in the secondary market, eligible by virtue of origination under Federal Housing Administration (FHA), Department of Veterans Affairs (VA) or the U.S. Department of Agriculture's Rural Development (RD) lending programs.[75]

Recognizing the "prolonged downturn" in the manufactured home industry, Congress passed the FHA Manufactured housing loan Modernization Act in 2006.[76] The law mandated changes to FHA's Title I program, which covers home-only (chattel) purchase loans for manufactured housing, to remove impediments to Ginnie Mae securitization of such loans. FHA-guaranteed loans constituted about a fifth of manufactured-housing loans for home purchase in 2012, whereas VA and RD loans together amounted to less than five percent. The FHA has two programs for manufactured home purchase lending, one each for real and personal property-secured lending. The credit requirements for FHA chattel borrowers are less stringent than for mortgages, though lenders are required to retain more credit risk under the Title I chattel program, as shown in Table 7 below. Accordingly, Ginnie Mae now operates a home-only (FHA Title I) chattel loan guarantee program. Only one issuer was active in the space as of early 2014, largely due to a lack of investor demand. In 2012 Ginnie Mae was the most active secondary market participant for all manufactured-housing loans, although almost exclusively through their single-family mortgage-backed securities program.

[75] HMDA 2012, *supra* note 23.

[76] Comm. on Fin. Servs., Report on H.R. 2139, FHA Manufactured Housing Loan Modernization Act,, H.R. Rep. No. 110-206, (2007).

TABLE 7: MANUFACTURED HOME ELIGIBILITY REQUIREMENTS FOR FHA TITLE I AND II PROGRAMS[77]

FHA Title I	FHA Title II
Personal property	Real estate, permanent foundation
Land only, land/home, or home only; site can be leased	Unit and land only; site must be owned and titled as real estate
Loan limits: MH only: $69,678 Lot only: $23,226 Combination: $92,904	FHA site-built limits apply: $271,050-$625,500 by area
5% down if credit score is 500+ 10% down if credit score is <500	Like FHA site-built requirements: 3.5% down Or 10% if credit score is <580
FHA insures maximum 90% of loan	Insures all of loan loss

3.5 Production of manufactured housing

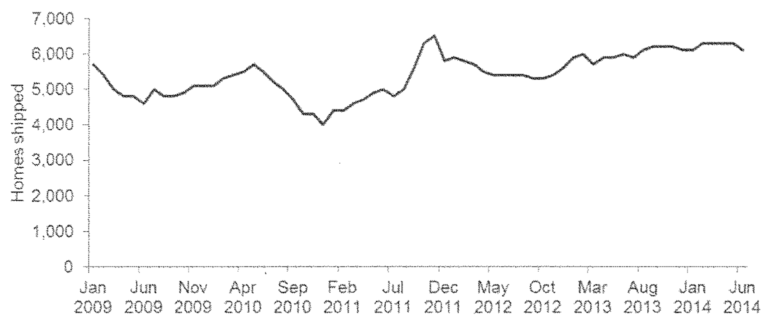
As discussed above, the manufactured housing secondary market experienced a crisis in the early 2000s. The last decade has not seen a recovery in manufactured home production and retail industries. Instead, manufacturers have gone out of business or consolidated: compared to approximately 88 manufactured housing producers in the U.S. in 2002, around half that many are active in the space today. Some of this consolidation is due to large national manufacturers' purchases of failing manufacturers but a fragmented market with dozens of smaller regional manufacturers remains today. Production remains 15 percent lower than the overall peak in 1998 when production exceeded 373,000 units before it declined through the 2000s.[78] Since 2009, however, shipments have showed slight but steady gains. Early data from 2014 indicate year-over-year growth continues–in the first six months of 2014, shipments were up 5.6 percent over the same period in 2013.

[77] Federal Housing Administration.

[78] MH Census, *supra* note 3.

The largest three manufacturers held almost 70 percent market share of new manufactured housing production as of the end of 2013. Clayton Homes, a subsidiary of Berkshire Hathaway, has been the largest manufacturer by market share for over a decade, with home production share of 45 percent as of the end of 2013.[79] Other large national and regional manufacturers include Cavco Industries, Champion Home Builders, Legacy Housing, and Skyline Corporation. Currently the producers of manufactured homes in the U.S. operate 125 production line sites located across the country.[80] Outside of the top three manufacturers, none of the remaining corporations hold market share greater than five percent, and they average just over one production line each.[81]

FIGURE 9: SHIPMENTS OF NEW MANUFACTURED HOMES, MONTHLY, SEASONALLY ADJUSTED, JANUARY 2009-JUNE 2014[82]



3.6 Retail

The manufactured housing retail industry consists of dealerships which sell new and used manufactured homes to consumers through retail storefronts. The retailer segment is highly fragmented and new entrants are rare. Manufactured-housing retailers are typically small,

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[79] MHI and Institute for Building Technology and Safety (IBTS), Inc., *supra* note 40.
[80] *Id.*
[81] *Id.*
[82] MH Census, *supra* note 3.

independent businesses with one or several locations, though few have more than ten sales centers. In addition to selling through a network of independent retailers, the largest few manufacturers maintain company-owned networks of stores, ranging from a few regional outlets to a nationwide presence of hundreds. Even among retailers within a manufacturer's owned or affiliated network, it is far more common for a retailer to carry homes from multiple lines than to exclusively sell one manufacturer's models. In general, retailers utilize a floor plan line of credit to purchase inventory. The wholesale lender is paid back with the proceeds from the sale, either paid in cash by the buyer or financed and paid by the creditor, and the retailer generates profit on the home sale's margin. Retailers are typically obligated to oversee the transport and proper installation of the home on site after it is built and transported.

A consumer's visit to a manufactured housing retailer may resemble a car-buying experience more than a typical site-built home-buying experience in that the consumer may make a purchase decision in a sales lot displaying model new homes alongside pre-owned homes for sale. Moreover, as with auto financing, a consumer choosing to finance the purchase of a manufactured home often submits home loan applications while shopping at the retailer.

Manufactured-housing buyers seeking financing at a retailer may be constrained by particular relationships between retailers and home lenders. Most large national chattel lenders require independent retailers to enter into non-exclusive contractual agreements in order for the retailers' customers to be able to access the lender's financing; these lenders will not offer loans to consumers shopping outside of their network of partner retailers. In order for a consumer to purchase a home from a particular retailer with financing from a particular lender, the retailer and lender must first agree to conduct business together. If a particular lender and retailer do not have an agreement, a consumer must try to obtain financing from a different local or national lender willing to finance purchases from that retailer or purchase a home from a retailer approved by the lender. Smaller regional or local lenders which engage in chattel lending for manufactured homes on a more limited basis may not require specific agreements.

The prevalence of retailer-lender contractual agreements arose out of the particular incentive structure involved with manufactured housing sales and financing. The funding model allows a retailer to be paid for the home sale before the installation is completed. Agreements with retailers give lenders leverage during this period, decreasing the risk that quality issues in the completion of the installation cause a consumer to walk away from a home. Additionally, at least one national lender's retailer agreement obliges retailers to periodically sell homes owned by the lender on consignment. According to a Government Accountability Office report, having a good network of retailers to resell manufactured homes contributes to higher lender recovery rates on foreclosed homes; a strong recovery program could net a 50 percent recovery rate.[83] In general, a retailer's goal of selling homes provides incentives for the retailer to partner with lenders to offer financing options to potential home buyers. However, a retailer may choose not to partner with a certain lender if the retailer believes its market does not fit the lender's risk profile, or if terms of the contract are deemed disagreeable.

3.7 Manufactured home communities

There are about 60,000 land-lease manufactured home communities in the US.[84] Manufactured-home communities lease plots of land to owners or renters of manufactured housing. Residents of manufactured-home communities most often have equity in their home but pay monthly ground rent for the home's site and fees for common services. The community business model is built around revenue generation from ground rents, though community operators may also sell or rent new or pre-owned homes directly to consumers.

The industry of manufactured-home community owners is highly fragmented and populated with many single-site operators. The largest land-lease community owners include publicly- and privately-held Real Estate Investment Trusts (REITs) and property investment firms as well as specialty institutional investors. The largest publicly-held portfolio of manufactured-home communities is owned by Equity LifeStyle Properties, a Chicago-based REIT, and consists of 201 community properties with over 70,000 manufactured-home and park model home sites.[85]

The industry has been marked in recent years by consolidation, as growth has been focused on existing communities; investors have pursued acquisitions of both single-site operators and larger portfolios of manufactured-home community assets. One large community operator with over 50,000 sites in 161 communities noted in 2014 that the average length of time that a home resides in their communities is 40 years, while the average resident tenure is 13 years, indicating

[83] GAO, *supra* note 41.
[84] Housing Assistance Council, *Preserving Affordable Manufactured Home Communities in Rural America: A Case Study*, March 2011, *available at* http://www.ruralhome.org/storage/documents/rcbi_manufactured.pdf.
[85] *See* Equity LifeStyles Properties, *2014Q2 Investor Presentation*, *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=105322&p=irol-presentations.

that multiple owners cycle through the same home within such communities.[86] Some communities support community occupancy by offering in-house lending to prospective manufactured-home buyers, either through the community's line of credit or a partner lending institution. In other cases, a consumer may purchase a home and select a community separately. Lot size availability in part determines home choice when a manufactured-home owner wishes to place a new home or move a pre-owned home to a community site.

In various manufactured-home communities around the country, residents have collectively purchased land from former operators in order to establish resident-owned communities (ROCs). This model was pioneered by groups with non-profit organization support in New Hampshire, where a fifth of communities are now resident-owned.[87] ROCs operate within a co-op shared equity model. In this model, a co-op member pays a monthly fee for the cost of shared services, utilities, or amenities plus their share of the cost of debt servicing for the initial land purchase. Generally, if and when individual co-op members decide to sell their property, they receive back their equity in the land with no appreciation.

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[86] *See* Sun Communities, Inc., *June 2014 Investor Presentation*, *available at* http://www.suncommunities.com/Investors.aspx.

[87] *See* ROC USA, *Background*, *available at* http://www.rocusa.org/about-us/background/default.aspx.

4. Conclusion

This white paper provides background on manufactured housing and families that live in manufactured homes and highlights differences between manufactured housing and site-built homes along these dimensions. Among the most important of these differences is their legal treatment. Site-built homes are nearly always titled as real estate property, whereas many manufactured homes may be titled as either real estate property or personal property (chattel), even if the manufactured-home owner owns the land the home is sited on. Chattel loans may close more quickly than or have lower upfront costs than loans secured by real property, but chattel loans tend to have higher interest rates and provide borrowers with lesser consumer protections than mortgages secured by real property.

The findings also indicate the potential importance of manufactured housing as a source of affordable housing for some consumers. Families that live in manufactured-homes, for example, tend to have lower income and net worth than families in site-built homes, and manufactured homes are generally less expensive than site-built homes. Families in rural areas are also relatively more likely to live in manufactured homes, and in some counties as much as one-third or more of homes are manufactured homes.

This white paper brings together data and information on manufactured housing from a variety of sources to develop a more-complete and current picture of manufactured housing. The Bureau will continue to analyze facets of manufactured housing markets and to consider new data that may help to further fill in this picture. The relative scarcity of data on manufactured housing compared with data available on site-built housing and mortgage finance in general remains a challenge for research related to manufactured housing. This gap in data availability may begin to narrow, however, in the coming years. The Bureau is considering, for example, adding a field to the HMDA data that would indicate whether a manufactured-housing loan is secured by real or personal property. Further, additional sets of five-year estimates from the ACS will provide larger sample sizes that may support in-depth analyses. The Bureau hopes that this white paper and analysis of additional data will encourage others to build greater knowledge of the manufactured housing market, the consumers in that market, and the differences between the site-built and manufactured housing markets as well.

APPENDIX A:

Recent changes to consumer financial protection laws and their potential impact on manufactured housing

Transactions involving manufactured housing have long been covered by several laws designed to protect consumers in financial transactions. However, title XIV of the Dodd-Frank Act recently amended existing laws to expand consumer protections in mortgage (both land and home and chattel) transactions. These expanded protections were implemented by the CFPB in a series of rules which took effect in January 2014. This appendix looks at some of the major provisions of the CFPB's rules and their potential impact on manufactured-housing loans.

Homeownership and Equity Protection Act (HOEPA)

In 1994 the Home Ownership and Equity Protection Act (HOEPA) was enacted as part of the Truth in Lending Act (TILA) to provide certain protections to consumers in high-cost transactions involving their homes, including manufactured homes.[88] Regulation Z implements HOEPA and TILA. A mortgage is subject to HOEPA if it is a high-cost mortgage (commonly called a "HOEPA loan") because of a comparatively high interest rate or points and fees. Among

[88] TILA's Regulation Z's coverage generally extends to loans secured by manufactured homes regardless of whether the homes are titled as personal or real property. See, e.g., 15 USC 164x (w), "dwelling means a residential structure or a mobile home..."; see also 12 CFR part 1026, Supp. I, paragraph 2(a)(17),

other requirements for a HOEPA loan, the creditor must provide additional disclosures to the consumer, and certain loan terms such as negative amortization, and rate increases following default are restricted.

Prior to the enactment of the Dodd-Frank Act, HOEPA did not apply to loans for home purchase.[89] In Dodd-Frank, Congress extended HOEPA to home purchase loans and amended HOEPA's APR triggers so as generally to cover first liens with an APR greater than APOR plus 650 basis points and junior liens with an APR greater than APOR plus 850 basis points.[90] Dodd-Frank also lowered the points and fees triggers to five percent for most mortgages, with some adjustment for smaller loan amounts as discussed below.[91] Together, the Dodd-Frank changes likely increased the share of manufactured-home loans that are classified as HOEPA loans substantially.[92] Congress also added new protections for consumers taking out HOEPA loans, including a requirement for pre-loan housing counseling.

Recognizing that loans for smaller amounts are more costly to originate (in percentage terms), Congress made certain adjustments to HOEPA's triggers. Dodd-Frank adjusted the HOEPA points and fees threshold for loans less than $20,000. As amended, HOEPA establishes a points and fees threshold of the lesser of eight percent of the total transaction amount or $1,000. Congress also recognized that smaller chattel loans require a higher rate-spread threshold. For personal property loans under $50,000, HOEPA applies if the loans have an APR greater than APOR plus 850 basis points (instead of APOR plus 650 basis points). The vast majority of these personal property loans are for manufactured homes.

In their comments during the HOEPA rulemaking process, some industry commenters stated that these adjusted HOEPA thresholds were still too low. They stated that they would not make HOEPA loans and therefore consumers would experience reduced access to credit for manufactured-home loans. Some large manufactured-housing creditors urged the Bureau to establish an APR threshold of APOR plus 1,000 or 1,200 basis points. Such a threshold would

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[89] HOEPA also did not apply to open-end home-secured transactions before the Dodd-Frank Act expansion.

[90] Prior to Dodd-Frank, a first lien loan was covered if its APR exceeded the yield on comparable Treasury securities by more than 800 basis points (or by more than 1000 basis points for subordinate lien loans).

[91] Prior to Dodd-Frank, the points and fees threshold was the greater of eight percent of the total loan amount, or a dollar figure adjusted annually for inflation. In 2013, the dollar figure was $625.

[92] Dodd-Frank also added a pre-payment penalty trigger. Under the Dodd-Frank amendments a loan is covered by HOEPA if the loan contains a penalty for prepaying the loan in whole or in part, even if the loan's APR or points and fees do not exceed the thresholds discussed above.

mean that a 20-year fixed-rate loan is covered by HOEPA if its APR is about 13.4 to 15.4 percent, based on APOR as of August 11, 2014. The industry also suggested that the points and fees threshold should be restored to its pre-Dodd-Frank level at eight percent of the total loan amount. A few large manufactured-housing creditors argued that without such adjustments, roughly one-third to one-half of their manufactured housing would be classified as HOEPA loans based on the APR threshold, and about one-quarter to nearly one-half of these lenders' loans would be classified as HOEPA loans based on the points-and-fees test.

Notwithstanding these arguments, the Bureau decided to implement the statute as Congress had written it, rather than use its authority to make adjustments beyond those that Congress deemed appropriate. In part this was because of uncertainty as to whether, in fact, a substantial number of creditors would cease making manufactured-housing loans if those loans triggered HOEPA protections. Moreover, the Bureau reasoned that the manufactured housing borrowers being charged interest rates or upfront fees above the HOEPA thresholds are the very populations that HOEPA is designed to protect.

High-cost mortgages—those that exceed HOEPA's APR or points-and-fees thresholds—have historically represented a small share of loans for manufactured homes and for site-built homes. On average in the 2004–2011 HMDA data, about 0.2 percent of home-secured refinance and home-improvement loans (the types of mortgages covered by HOEPA prior to 2014) were classified as high-cost mortgages. This fraction had generally declined since 2004 and was 0.06 percent in the 2011 HMDA data. The extension of HOEPA to home-purchase loans increased the share of all loans (i.e., home-purchase, refinance or home improvement loans) that are classified as HOEPA loans, but the resulting increase in the share of high-cost mortgages was much larger for manufactured-housing loans than for loans on site-built homes.

The Bureau's estimate of the share of loans with rates that exceed the HOEPA APR threshold is intended to be illustrative. Focusing on only loans that would be high-cost mortgages based on APR alone understates the fraction of loans that might be classified as high-cost mortgages, as some loans may have rates that do not exceed the HOEPA APR threshold but points and fees that exceed the HOEPA points and fees threshold. At the same time, the retrospective analysis included in section 3.3, "Home purchase loan pricing," above may be overly inclusive because it does not take into account a creditor's ability to structure a loan's interest rate and upfront costs in a way that does not reduce the loan's profitability but ensures that the loan is not classified as a high-cost mortgage. Similarly, the estimate does not account for the cases in which creditors may choose to reduce a loan's profitability simply to avoid making a high-cost mortgage loan. Specifically, a creditor that would have originated only a handful of HOEPA loans might prefer to restructure those loans, even at a reduced profit, to avoid HOEPA coverage altogether. Indeed, some large creditors report performing such a trade-off, effectively lowering some consumers' APRs so as not to exceed the threshold.

Finally, the Bureau is aware that a large manufactured-housing creditor, 21st Mortgage, recently indicated that it will stop originating loans for less than $20,000. According to the HMDA data, 21st Mortgage originated less than 1,500 of such loans in 2012, and there were only a handful of counties where more than 20 manufactured-housing loans for less than $20,000 were originated in 2012 and 21st Mortgage originated the majority of manufactured-housing loans under $20,000.

Qualified Mortgage (QM) and Ability-to-Repay (ATR)

In 2010, the Dodd-Frank Act amended TILA to require that, before making a residential mortgage, a creditor must make a "reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan." [93] The Act establishes a private cause of action if a creditor violates this ability-to-repay requirement. The ability-to-repay requirement sets forth certain requirements for loans secured by dwellings, including that the creditor verify the consumer's ability to repay the loan. For a loan that meets the criteria for a qualified mortgage ("QM"), the creditor is presumed to have complied with the ATR requirement. The QM criteria include, among other things, a three percent limit on points and fees, with higher points and fees limits for loans of $100,000 or less. Under the CFPB's implementing regulations, QMs with APRs that do not exceed APOR by 150 basis points or more provide a conclusive presumption of compliance with the ability-to-repay rules, and the creditor enjoys a safe harbor from potential

[93] In 2008, the Federal Reserve Board issued amendments to Regulation Z which required a creditor to make an ability to repay determination, but this requirement only applied to loans deemed to be "higher-priced" mortgages—i.e., loans with APRs that exceeded APOR by 150 basis points (or 350 basis points for subordinate liens). Under the Federal Reserve Board's rules, creditors could obtain a rebuttable presumption of compliance with the ability to repay requirement if they met the rule's criteria for the presumption. These rules applied to manufactured-housing loans that met the "higher-priced" APR trigger. In 2010, Dodd-Frank essentially extended the ability to repay requirement to all mortgage loans, not just higher-priced mortgage loans, effective in January 2014 when the CFPB's implementing regulations took effect.

ATR liability. For QMs with rate-spreads that exceed APOR by 150 basis points or more, the presumption is subject to rebuttal under narrowly-defined criteria (rebuttable presumption QM).[94]

Note that small creditors are eligible to originate QMs with more flexible criteria. For instance, the rate spread threshold for a safe harbor small creditor QM is 350 basis points. Small creditors are defined as creditors that originated 500 or fewer first lien mortgages in the previous year and have an asset size of less than two billion dollars.

The previous section noted that some manufactured-home loans are likely to be covered by HOEPA's new APR threshold of more than 650 basis points over the applicable APOR. Note that a loan with a rate spread that exceeds HOEPA's threshold may still be a QM provided that all of the QM criteria are met. However, such a loan will also exceed the threshold for the QM safe harbor (whether 150 or 350 basis points, depending on whether the creditor is small) and thus will be a rebuttable presumption QM. For manufactured-housing loans that trigger HOEPA due to points and fees exceeding the HOEPA thresholds, such loans would exceed the three percent points and fees limit for QMs and thus would be non-QM loans.

To the extent manufactured-housing loans are subject to HOEPA, then, they also necessarily are either rebuttable presumption QMs or non-QMs, depending on whether they come under HOEPA coverage via the APR test or the points-and-fees test. However, creditors have some degree of flexibility to trade off as between points and fees and interest rates (and thus APRs). Accordingly, they may be able to control for which of these two results they encounter; presumably, assuming creditors prefer rebuttable presumption QMs to non-QMs, manufactured-housing creditors may shift their overall loan pricing out of points and fees and into interest rates to the extent feasible.

[94] For subordinate lien loans, the rate spread for a safe harbor QM is 350 basis points. Note that for loans that are not qualified mortgages, there is no presumption of compliance with the ability-to-repay requirement. If a consumer can prove that a creditor failed to comply with the ability-to-repay requirement, the consumer may be able to recover damages provided for in TILA.

Loan-Originator Compensation

In recent years, regulators and lawmakers have imposed a number of new requirements concerning loan originators' licensing and registration, training, screening, and compensation practices. In 2010, the Dodd-Frank Act adopted new requirements that built on some of these earlier initiatives. In defining loan originators who would be subject to the requirements, Congress provided that an employee of a manufactured home retailer is not a loan originator if the employee does not take applications and does not advise about, offer, or negotiate loan terms. The Bureau issued regulations to implement the new Dodd-Frank Act requirements in January 2013 and issued further amendments in September 2013 (the Bureau's Loan Originator Rule). The regulations expand upon and refine earlier regulations adopted by the Federal Reserve Board (that became effective in April 2011 and were restated by the Bureau in December 2011) to restrict certain compensation practices. The regulations also implement Dodd-Frank Act requirements concerning loan originator qualifications that build upon existing requirements under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act).

The Loan Originator Rule limits creditors' ability to pay loan originators (LOs) compensation that is based on the terms of the loan. The Bureau implemented Congress's definition of loan originator, including the provision specifically relating to employees of manufactured home retailers noted above. The Bureau has clarified the instances when a manufactured-housing retailer's employees would not be considered individual loan originators. A manufactured-housing retailer's employees are not considered loan originators if they do not take a consumer credit application, offer or negotiate credit terms, or advise a consumer on credit terms. They are considered loan originators if they engage in loan originator activities such as referring consumers to a particular creditor, filling out a consumer's loan application, or inputting a consumer's information into an online loan application.

Advising consumers about a loan application and referring consumers to a creditor are LO activities, and many manufactured-housing retailers do not want to incur the cost of becoming a licensed LO. Thus, retailers report that, instead of referring a consumer to a particular creditor or two, they currently do not advise consumers about which creditors are most likely to accept their applications. As a result, industry participants have stated that consumers are applying to more creditors than before. While this is not per se contrary to the purposes of the rule – in fact, increased consumer shopping generally is a positive development – this dynamic also results in consumers in the current credit environment applying to creditors who are almost certain to reject their applications. For example, a consumer with a credit score of 550 may apply to a creditor that originates loans only to consumers with credit scores over 680. In turn, this results in more volume of applications for creditors, all of which need to be processed in a timely manner and at least some of which necessarily will be rejected. It follows that two of the effects of the Bureau's Loan Originator rule is a small cost increase to creditors that would have to spend more employee time screening applications and an increase in the rejection rates of consumers' applications due to consumers submitting more applications.

The classification of some manufactured-housing retailer activities as loan originator activities provides consumer protection for homebuyers in what may be a high-pressure sales environment. As a result of the Loan Originator Rule and state SAFE Act provisions, consumers who purchase their dwellings through manufactured-housing retailers no longer face pressure (from compliant retailers) to finance their purchase through a particular creditor; rather, consumers are more likely to shop and compare credit offers. The Loan Originator Rule enables consumers to know that the retailer from whom they purchase a manufactured home does not steer them to a particular creditor or mishandle their application. Consumers can trust that a retailer who advises them on specific credit terms is qualified and licensed to do so.

Higher-Priced Appraisals

The Dodd-Frank Act made amendments to TILA to impose special appraisal requirements for certain higher-priced mortgages that do not meet the Bureau's definition of QM. Dodd-Frank requires an in-person appraisal for properties securing higher-priced mortgage loans. The Bureau and five other Agencies authorized to implement this requirement recently finalized a supplemental proposal that addressed issues related to manufactured housing.[95] The underlying concern was that many of the traditional appraisal methods would not be applicable or are not currently practiced in the manufactured housing market, especially for chattel transactions. The Bureau and the other Agencies adopted a tailored approach to the appraisal requirement for manufactured homes, with requirements that depend on the type of transaction (specifically, new real estate, used real estate, new chattel, and used chattel transactions), ensuring a

[95] 78 Fed. Reg. 78520 (Dec. 26, 2013).

smoother transition to the new regime. For most of these transactions, the rule is not going to become effective until 2015. There is also a smaller-dollar loan exemption in this rule.

This rule is designed to give borrowers vital information about their mortgage: the value of the home (including the land, where applicable). The rule exempts transactions secured by a new manufactured home and land from the requirement that the appraisal include a physical inspection of the interior of the property. Transactions secured solely by a manufactured home and not land will be exempt from the appraisal requirement if the creditor gives the consumer one of three types of information about the home's value. Given these exemptions, the smaller-dollar exemption, and the exemption for QM loans (both safe harbor and rebuttable presumption), this rule is unlikely to be burdensome to comply with.

Higher-Priced Escrows

In 2008, the Federal Reserve Board issued amendments to Regulation Z which required a creditor to establish an escrow account for any higher-priced loan secured by a first lien on a principal dwelling.[96] The Dodd-Frank Act made two major amendments to TILA with regards to escrow requirements for higher-priced loans. First, the Dodd-Frank Act required that the escrow account to be established for five years instead of one. Second, the Dodd-Frank Act authorized the Bureau to provide an exemption for small rural creditors.[97] The Bureau defined small creditors as for the purposes of QM designation (see above), while rural was defined as a creditor that makes more than half of its loans in rural or underserved areas.[98]

An escrow account provides borrowers protection from sudden shocks from tax and home insurance payments. The Bureau's rule extends that protection from one year to five while reducing access to credit concerns created by this requirement in rural or underserved areas.[99] Since most of manufactured housing loans are HPMLs, the Federal Reserve Board's rule likely

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[96] 73 Fed. Reg. 44522 (July 30, 2008).

[97] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1461 – 1462, 124 Stat. 1376 (2010).

[98] *See* Paul Mondor, Bureau of Consumer Fin. Prot., *Final list of rural and underserved counties for use in 2014*, CFPB Blog, *available at* http://www.consumerfinance.gov/blog/final-list-of-rural-and-underserved-counties-for-use-in-2014/ for the list of counties that were defined as rural or underserved for 2014.

[99] 78 Fed. Reg. 4726 (Jan. 22 2013).

imposed its requirements on most manufactured housing creditors. However, the Bureau's rule provided some relief for small manufactured housing creditors predominantly operating in rural or underserved areas. The Bureau believes that extending the escrow account protection from one year to five was not burdensome for the remaining creditors.

Statement for the Record
Rep. Keith Ellison
Preserving Access to Manufactured Housing Act, (H.R. 650)

I oppose The Preserving Access to Manufactured Housing Act (H.R. 650) because it weakens protections put in place by the Consumer Financial Protection Bureau (CFPB) to protect buyers of manufactured homes from steering and high fees and interest rates.

There is a long, painful history of some manufactured homeowners facing a broken and predatory financing system. Instead of building wealth, manufactured homeowners see their wealth stripped away through poor quality loans with high fees and interest rates. In addition, it is well known that higher interest rates increase the total cost of loans, leading to decreased ability to repay.

People living in manufactured housing have lower incomes, lower net worth, and higher debt than those who live in site-built homes. Their average income is about $26,000 per year, roughly half of the median income for other families. They also tend to have lower educational attainment. These folks deserve the best possible financing and strong consumer protections. Thanks to the Dodd Frank Wall Street Reform and Consumer Protection Act, 17 million people who live in manufactured housing now have enhanced consumer protections.

These are exactly the people who need to be protected from steering by high-pressure sales people into an expensive loan. We must keep the conflicts of interest and steering that used to plague this industry out of our current manufactured housing financial system.

One element in this bill I oppose changes the definition of loan originator/mortgage originator because it could result in steering practices that harm buyers. Prior to changes made to the definition of "mortgage originator in Regulation Z, manufactured home buyers were frequently steered by retail sales employees towards lenders who tended to overcharge them. Retail employees could be incented to steer consumers toward lenders that might provide financial benefits to the sales people. In some cases, expensive financing would include appliances and upsell design changes like tile and curtains.

To improve the options for homebuyers, retail sales employees of manufactured or modular housing dealerships must now comply with the licensing requirements under the definition of loan originator (LO) or mortgage originator.

I want to see manufactured home buyers – and all mortgage shoppers – engage in comparison shopping. I favor speed in transactions but not at the cost of higher-rate transactions and larger loan amounts. Manufactured housing retail employees must continue to comply with the loan/mortgage originator standard to assist consumers in applying to obtain mortgage loans, advise consumers on loan terms, and take loan applications.

Secondly, H.R. 650 harms home buyers by exempting the compensation paid to retail staff from the points and fees cap under the Qualified Mortgage/Ability to Repay and the Home Ownership and Equity Protection Act. This exemption makes it easier to overcharge borrowers by not including those costs. In addition, the compensation language is less than clear. More clarity is required about the language "in excess of any compensation or gain received in a comparable cash transaction." How would it be interpreted? What does it mean for a retail sales clerk? Where would the comparables come from?

In addition, raising the interest rate cap from 8.5% above APOR to 10% above APOR to qualify as a high-cost loan makes it easier to charge borrowers more. If I can get a mortgage at 4 or 5%, why should a manufactured home buyer be asked to pay 14 or 15%? Interest rates should be appropriate to risk. There is no evidence that the default and delinquency rate for a manufactured home buyer is three times higher than a site-built homeowner.

If a manufactured home buyer is asked to pay a higher interest rate, they should be told that they might be able to get a lower rate somewhere else. The Home Ownership and Equity Protection Act (HOEPA) provides this protection. If an interest rate qualifies a borrower for a high cost loan, the borrower should be told and receive counseling to consider other options.

The CFPB recognized that manufactured home loans could be more expensive to provide. That's why it allowed a broader approach to high cost loans. The CFPB currently allows a higher trigger of 8.5% above the average prime rate or about 13%. The CFPB allows more flexibility here because smaller loans can cost more to originate.

This bill would raise it higher, to 10% above APOR for loans between $50,000 and $75,000. This would enable someone to be charged a 15% interest rate without any counseling. Based on 2013 HMDA data, this new interest rate threshold would exempt 58% of manufactured housing loans from HOEPA protections – which is a bad deal.

Finally, this bill also allows manufactured home buyers to pay more for points and fees at closing. Instead of being charged $1,000 for a loan of less than $20,000, a borrower would pay $3,000. For points and fees, transactions of less than $75,000 would have a trigger of either 5% of the total transaction amount, or $3,000 (adjusted annually to reflect the change to the Consumer Price Index), whichever is greater.

I want to see an improved finance market for manufactured home buyers. I think there are other ways we can do this instead of making it easier to charge borrowers more. If there are problems with the market, it is incumbent on the manufactured housing industry to provide public evidence that supports their argument that it should be easier to charge manufactured home buyers more for a loan. Despite my requests for such information, the industry will only provide data if I promise to keep it confidential. If the industry wants to address what they consider a problem with legislation, the American people deserve empirical evidence to prove the point.

I want to see improvements in the financing options for manufactured home buyers. I want to see financing that enables them to enjoy sustainable and equity-building homeownership. The Financial Services Committee has jurisdiction over HUD's FHA program and the Federal Housing Finance Agency. Let us urge those agencies to strengthen their investments in manufactured home loans such as implementing the duty-to-serve rules at FHFA or making it possible for FHA loans to serve more manufactured home buyers. If we want to improve the financing for manufactured home buyers, we should not make it easier to steer manufactured home buyers to high cost lenders and charge higher fees and interest rates.

http://www.seattletimes.com/seattle-news/lawmakers-call-for-federal-investigation-of-warren-buffetts-mobile-home-business/

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Lawmakers want federal regulators to investigate Warren Buffett's mobile-home company after a Seattle Times/BuzzFeed News report that found company practices have harmed minority communities.

By Daniel Wagner and Mike Baker *BuzzFeed News / Seattle Times*

Senior Democratic lawmakers want federal regulators to investigate Warren Buffett's mobile-home company after a Seattle Times/BuzzFeed News report that found the company's predatory practices have harmed minority communities.

U.S. Rep. Maxine Waters of California, the top Democrat on the House committee that oversees financial companies, called on the Justice Department and the Consumer Financial Protection Bureau (CFPB) to "investigate and pursue appropriate corrective action" about "potentially discriminatory lending and collection practices" at Clayton Homes and its lenders, Vanderbilt Mortgage and 21st Mortgage.

"I was appalled," Waters said of the findings in the recent Seattle Times/BuzzFeed News investigation. "There is no place for the kind of sleazy and deceptive practices alleged in The Seattle Times articles. I was further taken aback by Mr. Buffett's defense of Clayton's lending practices, given the concerns that were raised" in articles earlier last year by The Seattle Times and the Center for Public Integrity.

The letter was also signed by Democratic Reps. Keith Ellison, of Minnesota; Emanuel Cleaver, of Missouri; and Michael E. Capuano, of Massachusetts.

"Surely, if news outlets can launch an investigation into potential violations of federal fair lending and consumer protection laws, agencies charged with protecting the nation's consumers should be able to investigate these allegations," Waters wrote in a letter sent Tuesday to U.S. Attorney General Loretta Lynch and CFPB Director Richard Cordray.

The Seattle Times/BuzzFeed News investigation, published last month, detailed how Clayton Homes charges minority borrowers higher annual interest rates than white borrowers. The company systematically pursues minority homebuyers and baits them into costly subprime loans, the investigation found. It found that many of the loans fail, allowing Clayton to repossess and resell the homes.

The company's practices described in the story "are clear violations of federal fair lending and consumer protection statutes," Waters wrote in the letter. She noted that many of the issues were first raised in a previous story in the series in early 2015, as Clayton pressed Congress to roll back key consumer protections. Waters asked the two agencies to update her on any actions taken in response to the stories.

The company did not immediately answer a request for comment Tuesday evening. In response to last month's investigation, Clayton issued a news release accusing the reporters of "activism masquerading as journalism" and stated: "We categorically and adamantly deny discriminating against customers or team members based on race or ethnicity."

The Justice Department enforces federal fair-lending laws. The CFPB oversees nearly all consumer loans. The issues raised in the stories by The Seattle Times and BuzzFeed News "are squarely within the Agencies' authority," Waters said.

Clayton Homes is a wholly-owned subsidiary of Berkshire Hathaway, the investment conglomerate that Buffett founded and controls.

Clayton earned more than a half-billion dollars, before taxes, in the first nine months of last year. The company dominates nearly every part of the mobile-home industry. It builds homes, sells them, finances them and provides insurance and other add-on products.

In minority communities, Clayton's grip verges on monopolistic. Last year, according to federal data, the company made 72 percent of the loans to black people who borrowed to buy mobile homes.

Last month's investigation described "a disturbing business model" that leaves "already vulnerable consumers uniquely susceptible to default," wrote Waters.

Mike Baker: mbaker@seattletimes.com or 206-464-2729. On Twitter @ByMikeBaker http://www.seattletimes.com/business/real-estate/the-mobile-home-trap-how-a-warren-buffett-empire-preys-on-the-poor/

The mobile-home trap: How a Warren Buffett empire preys on the poor

Originally published April 2, 2015 at 9:30 pm Updated February 1, 2016 at 3:46 pm

Billionaire philanthropist Warren Buffett controls a mobile-home empire that promises low-income borrowers affordable houses. But all too often, it traps those owners in high-interest loans and rapidly depreciating homes.

By Mike Baker and Daniel Wagner
The Seattle Times / The Center for Public Integrity

First of a series

EPHRATA, Grant County — After years of living in a 1963 travel trailer, Kirk and Patricia Ackley found a permanent house with enough space to host grandkids and care for her aging father suffering from dementia.

So, as the pilot cars prepared to guide the factory-built home up from Oregon in May 2006, the Ackleys were elated to finalize paperwork waiting for them at their loan broker's kitchen table.

But the closing documents he set before them held a surprise: The promised 7 percent interest rate was now 12.5 percent, with monthly payments of $1,100, up from $700.

The terms were too extreme for the Ackleys. But they'd already spent $11,000, at the dealer's urging, for a concrete foundation to accommodate this specific home. They could look for other financing but desperately needed a space to care for her father.

Kirk's construction job and Patricia's Wal-Mart job together weren't enough to afford the new monthly payment. But, they said, the broker was willing to inflate their income in order to qualify them for the loan.

"You just need to remember," they recalled him saying, "you can refinance as soon as you can."

To their regret, the Ackleys signed.

The disastrous deal ruined their finances and nearly their marriage. But until informed recently by a reporter, they didn't realize that the homebuilder (Golden West), the dealer (Oakwood Homes) and the lender (21st Mortgage) were all part of a single company: Clayton Homes, the nation's biggest homebuilder, which is controlled by its second-richest man — Warren Buffett.

Buffett's mobile-home empire promises low-income Americans the dream of homeownership. But Clayton relies on predatory sales practices, exorbitant fees, and interest rates that can exceed 15 percent, trapping many buyers in loans they can't afford and in homes that are almost impossible to sell or refinance, an investigation by The Seattle Times and Center for Public Integrity has found.

Berkshire Hathaway, the investment conglomerate Buffett leads, bought Clayton in 2003 and spent billions building it into the mobile-home industry's biggest manufacturer and lender. Today, Clayton is a many-headed hydra with companies operating under at least 18 names, constructing nearly half of the industry's new homes and selling them through its own retailers. It finances more mobile-home purchases than any other lender by a factor of six. It also sells property insurance on them and repossesses them when borrowers fail to pay.

Berkshire extracts value at every stage of the process. Clayton even builds the homes with materials — such as paint and carpeting — supplied by other Berkshire subsidiaries.

More than a dozen Clayton customers described a consistent array of deceptive practices that locked them into ruinous deals: loan terms that changed abruptly after they paid deposits or prepared land for their new homes; surprise fees tacked on to loans; and pressure to take on excessive payments based on false promises that they could later refinance.

Former dealers said the company encouraged them to steer buyers to finance with Clayton's own high-interest lenders.

Under federal guidelines, most Clayton mobile-home loans are considered "higher-priced." Those loans averaged 7 percentage points higher than the typical home loan in 2013, according to a Times/CPI analysis of federal data, compared to just 3.8 percentage points for other lenders.

Buyers told of Clayton collection agents urging them to cut back on food and medical care or seek handouts in order to make house payments. And when homes got hauled off to be resold, some consumers already had paid so much in fees and interest that the company still came out ahead. Even through the Great Recession and housing crisis, Clayton was profitable every year, generating $558 million in pre-tax earnings in 2014.

The company's tactics contrast with Buffett's public profile as a financial sage who values responsible lending and helping poor Americans keep their homes.

Berkshire Hathaway spokeswoman Carrie Sova and Clayton spokeswoman Audrey Saunders ignored more than a dozen requests by phone, email and in person to discuss Clayton's policies and treatment of consumers. In an emailed statement, Saunders said Clayton helps customers find homes within their budgets and has a "purpose of opening doors to a better life, one home at a time."

(Update: After publication, Berkshire Hathaway's Omaha headquarters sent a statement on behalf of Clayton Homes to the Omaha World-Herald, which is also owned by Berkshire. The statement and a closer look at Clayton's claims can be found here.)

First, a dream

As Buffett tells it, his purchase of Clayton Homes came from an "unlikely source": Visiting students from the University of Tennessee gave him a copy of founder Jim Clayton's self-published memoir, "First a Dream," in early 2003. Buffett enjoyed reading the book and admired Jim Clayton's record, he has said, and soon called CEO Kevin Clayton, offering to buy the company.

"A few phone calls later, we had a deal," Buffett said at his 2003 shareholders meeting, according to notes taken at the meeting by hedge-fund manager Whitney Tilson.

The tale of serendipitous dealmaking paints Buffett and the Claytons as sharing down-to-earth values, antipathy for Wall Street and an old-fashioned belief in treating people fairly. But, in fact, the man who brought the students to Omaha said Clayton's book wasn't the genesis of the deal.

"The Claytons really initiated this contact," said Al Auxier, the Tennessee professor, since retired, who chaperoned the student trip after fostering a relationship with the billionaire.

CEO Kevin Clayton, the founder's son, reached out to Buffett through Auxier, the professor said in a recent interview, and asked whether Buffett might explore "a business relationship" with Clayton Homes.

At the time, mobile-home loans had been defaulting at alarming rates, and investors had grown wary of them. Kevin Clayton was seeking a new source of cash to relend to homebuyers. He knew that Berkshire Hathaway, with its perfect bond rating, could provide it as cheaply as anyone. Later that year, Berkshire Hathaway paid $1.7 billion in cash to buy Clayton Homes.

Berkshire Hathaway quickly bought up failed competitors' stores, factories and billions in troubled loans, building Clayton Homes into the industry's dominant force. In 2013, Clayton provided 39 percent of new mobile-home loans, according to a Times/CPI analysis of federal data that 7,000 home lenders are required to submit. The next biggest lender was Wells Fargo, with just 6 percent of the loans.

Clayton provided more than half of new mobile-home loans in eight states. In Texas, the number exceeds 70 percent. Clayton has more than 90 percent of the market in Odessa, one of the most expensive places in the country to finance a mobile home.

To maintain its down-to-earth image, Clayton has hired the stars of the reality-TV show "Duck Dynasty" to appear in ads.

The company's headquarters is a hulking structure of metal sheeting surrounded by acres of parking lots and a beach volleyball court for employees, located a few miles south of Knoxville, Tenn. Next to the front door, there is a slot for borrowers to deposit payments.

Near the headquarters, two Clayton sales lots sit three miles from each other. Clayton Homes' banners promise "$0 CASH DOWN." TruValue Homes, also owned by Clayton, advertises "REPOS FOR SALE." Other nearby Clayton lots operate as Luv Homes and Oakwood Homes. With all the different names, many customers believe that they're shopping around.

House-sized banners at dealerships reinforce that impression, proclaiming they will "BEAT ANY DEAL." In some parts of the country, buyers would have to drive many miles past several Clayton-owned lots, to reach a true competitor.

Guided into costly loans

Soon after Buffett bought Clayton Homes, he declared a new dawn for the moribund mobile-home industry, which provides housing for some 20 million Americans. Lenders should require "significant down payments and shorter-term loans," Buffett wrote.

He called 30-year loans on mobile homes "a mistake," according to notes Tilson took during Berkshire Hathaway's 2003 shareholders meeting.

"Home purchases should involve an honest-to-God down payment of at least 10% and monthly payments that can be comfortably handled by the borrower's income," Buffett later wrote. "That income should be carefully verified."

But in examining more than 100 Clayton home sales through interviews and reviews of loan documents from 41 states, reporters found that the company's loans routinely violated the lending standards laid out by Buffett.

Clayton dealers often sold homes with no cash down payment. Numerous borrowers said they were persuaded to take on outsized payments by dealers promising that they could later refinance. And the average loan term actually increased from 21 years in 2007 to more than 23 years in 2009, the last time Berkshire disclosed that detail.

Clayton's loan to Dorothy Mansfield, a disabled Army veteran who lost her previous North Carolina home to a tornado in 2011, includes key features that Buffett condemned.

Mansfield had a lousy credit score of 474, court records show. Although she had seasonal and part-time jobs, her monthly income often consisted of less than $700 in disability benefits. She had no money for a down payment when she visited Clayton Homes in Fayetteville, N.C.

Vanderbilt, one of Clayton's lenders, approved her for a $60,000, 20-year loan to buy a Clayton home at 10.13 percent annual interest. She secured the loan with two parcels of land that her family already owned free and clear.

The dealer didn't request any documents to verify Mansfield's income or employment, records show.

Mansfield's monthly payment of $673 consumed almost all of her guaranteed income. Within 18 months, she was behind on payments and Clayton was trying to foreclose on the home and land.

Many borrowers interviewed for this investigation described being steered by Clayton dealers into Clayton financing without realizing the companies were one and the same. Sometimes, buyers said, the dealer described the financing as the best deal available. Other times, the Clayton dealer said it was the only financing option.

Kevin Carroll, former owner of a Clayton-affiliated dealership in Indiana, said in an interview that he used business loans from a Clayton lender to finance inventory for his lot. If he also guided homebuyers to work with the same lender, 21st Mortgage, the company would give him a discount on his business loans — a "kickback," in his words.

Doug Farley, who was a general manager at several Clayton-owned dealerships, also used the term "kickback" to describe the profit-share he received on Clayton loans until around 2008. After that, the company changed its incentives to instead provide "kickbacks" on sales of Clayton's insurance to borrowers, he said.

Ed Atherton, a former lot manager in Arkansas, said his regional supervisor was pressuring lot managers to put at least 80 percent of buyers into Clayton financing. Atherton left the company in 2013.

During the most recent four-year period, 93 percent of Clayton's mobile-home loans had such costly terms that they required extra disclosure under federal rules. Among all other mobile-home lenders, fewer than half of their loans met that threshold.

Customers said in interviews that dealers misled them to take on unaffordable loans, with tactics including last-minute changes to loan terms and unexplained fees that inflate loan balances. Such loans are, by definition, predatory.

"They're going to assume the client is unsophisticated, and they're right," said Felix Harris, a housing counselor with the nonprofit Knoxville Area Urban League.

Some borrowers felt trapped because they put up a deposit before the dealer explained the loan terms or, like the Ackleys, felt compelled to swallow bait-and-switch deals because they had spent thousands to prepare their land.

Promise denied

A couple of years after moving into their new mobile home, Kirk Ackley was injured in a backhoe rollover. Unable to work, he and his wife urgently needed to refinance the costly 21st Mortgage loan they regretted signing.

They pleaded with the lender several times for the better terms that they originally were promised, but were denied, they said. The Ackleys tried to explain the options to a 21st supervisor: If they refinanced to lower payments, they could stay in the home and 21st would get years of steady returns. Otherwise, the company would have to come out to their rural property, pull the house from its foundation and haul it away, possibly damaging it during the repossession.

They both recall being baffled by his reply: "We don't care. We'll come take a chainsaw to it — cut it up and haul it out in boxes."

Nine Clayton consumers interviewed for this story said they were promised a chance to refinance. In reality, Clayton almost never refinances loans and accounts for well under 1 percent of mobile-home refinancings reported in government data from 2010 to 2013. It made more than one-third of the purchase loans during that period.

Of Washington's 25 largest mobile-home lenders, Clayton's subsidiaries ranked No. 1 and No. 2 for the highest interest rates in 2013. Together, they ranked eighth in loans originated.

"If you have a decrease in income and can't afford the mortgage, at least a lot of the big companies will do modifications," said Harris, the Knoxville housing counselor. "Vanderbilt won't even entertain that."

In general, owners have difficulty refinancing or selling their mobile homes because few lenders offer such loans. One big reason: Homes are overpriced or depreciate so quickly that they generally are worth less than what the borrower owes, even after years of monthly payments.

Ellie Carosa, of Napavine, Lewis County, found this out the hard way in 2010 after she put down some $40,000 from an inheritance to buy a used home from Clayton priced at about $65,000.

Clayton sales reps steered Carosa, who is 67 years old and disabled, to finance the unpaid amount through Vanderbilt at 9 percent interest over 20 years.

One year later, Carosa was already having problems — peeling paint and failing carpets — so she decided to have a market expert assess the value of her home. She hoped to eventually sell the house so the money could help her granddaughter, whom she adopted as her daughter at age 8, attend a local college to study music.

Carosa was stunned to learn that the home was worth only $35,000, far less than her original down payment.

"I've lost everything," Carosa said.

'Rudest, most condescending' agents

Berkshire's borrowers who fall behind on their payments face harassing, potentially illegal phone calls from a company rarely willing to offer relief.

Carol Carroll, a nurse living near Bug Tussle, Ala., began looking for a new home in 2003 after her husband had died, leaving her with a 6-year-old daughter. Instead of a down payment, she said, the salesman assured her she could simply put up two acres of her family land as collateral.

In December 2005, Carroll was permanently disabled in a catastrophic car accident in which two people were killed. Knowing it would take a few months for her disability benefits to be approved, Carroll said, she called Vanderbilt and asked for a temporary reprieve. The company's answer: "We don't do that."

However, Clayton ratcheted up her property-insurance premiums, eventually costing her $803 more per year than when she started, she said. Carroll was one of several Clayton borrowers who felt trapped in the company's insurance, often because they were told they had no other options. Some had as many as five years' worth of expensive premiums included in their loans, inflating the total balance to be repaid with interest. Others said they were misled into signing up even though they already had other insurance.

Carroll has since sold belongings, borrowed money from relatives and cut back on groceries to make payments. When she was late, she spoke frequently to Clayton's phone agents, whom she described as "the rudest, most condescending people I have ever dealt with." It's a characterization echoed by almost every borrower interviewed for this story.

Consumers say the company's response to pleas for help is an invasive interrogation about their family budgets, including how much they spend on food, toiletries and utilities.

Denise Pitts, of Knoxville, Tenn., said Vanderbilt collectors have called her multiple times a day, with one suggesting that she cancel her Internet service, even though she home-schools her son. They have called her relatives and neighbors, a tactic other borrowers reported.

After Pitts' husband, Kirk, was diagnosed with aggressive cancer, she said, a Vanderbilt agent told her she should make the house payment her "first priority" and let medical bills go unpaid. She said the company has threatened to seize her property immediately, even though the legal process to do so would take at least several months.

Practices like contacting neighbors, calling repeatedly and making false threats can violate consumer-protection laws in Washington, Tennessee and other states.

Last year, frequent complaints about Clayton's aggressive collection practices led Tennessee state officials to contact local housing counselors seeking information about their experiences with the company, according to two people with knowledge of the conversations.

Treated like car owners

Mobile-home buyers who own their land sites may be able to finance their home purchases with real-estate mortgages, which give them more federal and state consumer protections than the other major financing option, a personal-property loan. With conventional home mortgages, companies must wait 120 days before starting foreclosure. In some states, the foreclosure process can take more than a year, giving consumers a chance to save their homes.

Despite these protections, two-thirds of mobile-home buyers who own their land end up in personal-property loans, according to a federal study. These loans may close more quickly and have fewer upfront costs, but their rates are generally much higher. And if borrowers fall behind on payments, their homes can be seized with little or no warning.

Those buyers are more vulnerable because they end up being treated like car owners instead of homeowners, said Bruce Neas, an attorney who has worked for years on foreclosure and manufactured-housing issues in Washington state.

Tiffany Galler was a single mother living in Crestview, Fla., in 2005 when she bought a mobile home for $37,195 with a loan from 21st Mortgage. She later rented out the home.

After making payments over eight years totaling more than the sticker price of the home, Galler lost her tenant in November 2013 and fell behind on her payments. She arranged to show the home to a prospective renter two months later. But when she arrived at her homesite, Galler found barren dirt with PVC pipe sticking up from the ground.

She called 911, thinking someone had stolen her home.

Hours later, Galler tracked her repossessed house to a sales lot 30 miles away that was affiliated with 21st. It was listed for $25,900.

Clayton wins concessions

The government has known for years about concerns that mobile-home buyers are treated unfairly. Little has been done.

Fifteen years ago, Congress directed the Department of Housing and Urban Development to examine issues such as loan terms and regulations in order to find ways to make mobile homes affordable. That's still on HUD's to-do list.

The industry, however, has protected its interests vigorously. Clayton Homes is represented in Washington, D.C., by the Manufactured Housing Institute (MHI), a trade group that has a Clayton executive as its vice chairman and another as its secretary. CEO Kevin Clayton has represented MHI before Congress.

MHI spent $4.5 million since 2003 lobbying the federal government. Those efforts have helped the company escape much scrutiny, as has Buffett's persona as a man of the people, analysts say.

"There is a Teflon aspect to Warren Buffett," said James McRitchie, who runs a widely read blog, Corporate Governance.

Still, after the housing crisis, lawmakers tightened protections for mortgage borrowers with a sweeping overhaul known as the Dodd-Frank Act, creating regulatory headaches for the mobile-home industry. Kevin Clayton complained to lawmakers in 2011 that the new rules would lump in some of his company's loans with "subprime, predatory" mortgages, making it harder for mobile-home buyers "to obtain affordable financing."

Although the rules had yet to take effect that year, 99 percent of Clayton's mobile-home loans were so expensive that they met the federal government's "higher-priced" threshold.

Dodd-Frank also tasked federal financial regulators with creating appraisal requirements for risky loans. Appraisals are common for conventional home sales, protecting both the lender and the consumer from a bad deal.

Clayton's own data suggest that its mobile homes may be overpriced from the start, according to comments it filed with federal regulators. When Vanderbilt was required to obtain appraisals before finalizing a loan, company officials wrote, the home was determined to be worth less than the sales price about 30 percent of the time.

But when federal agencies jointly proposed appraisal rules in September 2012, industry objections led them to exempt loans secured solely by a manufactured home.

Then Clayton pushed for more concessions, arguing that manufactured-home loans tied to land should also be exempt. Paul Nichols, then-president of Clayton's Vanderbilt Mortgage, told regulators that the appraisal requirement would be costly and onerous, significantly reducing "the availability of affordable housing in the United States."

In 2013, regulators conceded. They will not require a complete appraisal for new manufactured homes.

Mike Baker: 206-464-2729 or mbaker@seattletimes.com. On Twitter @ByMikeBaker

http://www.seattletimes.com/seattle-news/times-watchdog/a-look-at-berkshire-hathaways-response-to-mobile-home-investigation/

A look at Berkshire Hathaway's response to mobile-home investigation

Originally published April 6, 2015 at 3:20 pm Updated December 22, 2015 at 1:35 pm

By
Mike Baker and Daniel Wagner
The Seattle Times / The Center for Public Integrity

After The Seattle Times and The Center for Public Integrity published their investigation of Berkshire Hathaway's mobile-home business, Berkshire sent a statement to a newspaper it owns, calling the story "misleading." It did not point to any factual inaccuracies.

For months, Berkshire Hathaway and its mobile-home subsidiary, Clayton Homes, had ignored or declined reporters' requests to discuss the company's treatment of consumers.

Here's a look at the company's statement, published by the Omaha World-Herald, and the credibility of its claims:

CLAIM: "Clayton Homes' policies, procedures and training are designed to ensure that customers have a choice of lenders. A list of all available lenders is posted and provided in company-owned retail locations."

FACTS: Customers historically have not been given a choice of lenders, according to customers interviewed for this report. In early 2015, a reporter visited Clayton-owned and -affiliated dealerships in eastern Tennessee, and saw large, house-sized banners promoting Clayton loan products. There were no comparable signs related to other lenders. Promotional materials related to other lenders at one dealership consisted of small, trifold brochures located on a side table in one room of the dealership.

CLAIM: "Customers are encouraged to select more than one lender so they can compare options – and select the loan program that best serves their needs."

FACTS: Numerous customers interviewed for this story said they were told that Clayton lenders were the only option or the best option. Some did not realize, nor were they told, that the home dealers and lenders were part of the same company. They said they were never encouraged to explore alternatives.

CLAIM: "The retailer selling the home receives no financial incentives from the lender the customer chooses."

FACTS: Two former dealers interviewed for this story said they received financial incentives, which they called "kickbacks," to finance buyers through Clayton lenders or to sell Clayton insurance products in the years after the Berkshire Hathaway merger. A third former manager, who worked for the company until 2013, described ongoing pressure from his supervisor to put at least 80 percent of borrowers in Clayton financing.

CLAIM: The New York Times recently wrote that Clayton's financing division was distinguished by a lack of predatory or exploitative consumer practices and that its collections activities were "cited as best practices."

FACTS: The item was not written by a New York Times staffer. It appeared on its website as a guest blog labeled "Another View," and was written by George Washington University Professor Lawrence Cunningham. A former corporate lawyer, Cunningham is a longtime Buffett acolyte whose most recent book was called "Berkshire Beyond Buffett: The Enduring Value of Values." The blog post itself was adapted from that book.

CLAIM: "Our lending policy and procedures help ensure that we evaluate each customer's reasonable ability to repay the loan for which they have applied."

FACTS: Loan documents reviewed for this story indicate that borrowers with very low credit scores received loans whose payments consumed a large majority of their monthly incomes. Rising premiums on Clayton-brokered insurance caused monthly payments to become unaffordable for some borrowers, especially those on fixed incomes. Several borrowers said their incomes were not verified.

CLAIM: "Appraisals are ordered from an unaffiliated third party on all loans secured by land that we finance, and a copy is provided to the customer prior to closing of the loan."

FACTS: In 2014, 65 percent of Clayton's loans were not secured by land and therefore would not be subject to the procedure described. Moreover, Clayton has pressured federal financial regulators against proposals that would require appraisals on more of the company's transactions. And the company succeeded in preventing rules that would have required full appraisals, including inspections, on loans for new homes secured by land.

CLAIM: Loans over the past year had an "average total down payment of just under 19 percent."

FACTS: Clayton is not referring to down payments in the traditional sense. The company promotes "$0 CASH DOWN" loans and allows customers to put up land that they own instead. Land collateral is fundamentally different from a cash down payment, mainly because it does not reduce the balance of the loan or increase the borrower's equity in the purchased asset.

The "just under 19 percent" refers to a combination of cash down payments and the value of land. The Times and CPI reviewed more than 20 loans originated since the Berkshire merger that included no cash down payment, and one from 2010 that included a $1 down payment.

CLAIM: "The only 30-year loans being offered by our lenders are through the government FHA title II loan program."

FACTS: Reporters reviewed numerous loan files of conventional (non-FHA) 30-year loans originated by both Vanderbilt and 21st Mortgage since the Berkshire acquisition. A brochure available in early 2015 at a Clayton store mentions 30-year financing options in the course of advertising biweekly payment plans that reduce the length of the loan.

Clayton-owned Vanderbilt Mortgage's online loan calculator uses a 30-year loan term as its default setting. (Update: The company changed the default setting to 23 years after this story was posted.)

CLAIM: "Interest rates on manufactured homes can be higher than loans for site-built homes."

FACTS: Clayton's loans are particularly expensive, even among its peers. Among new loans considered "higher-priced" by the federal government in 2013, Clayton's averaged 7 percent above prime, compared with an average of 3.8 percent above prime for all other mobile-home lenders.

CLAIM: Clayton's retail locations operate under different names because it produces numerous brands of homes and wants to emphasize a "broader selection for customers."

FACTS: The brands of homes available at a given Clayton store do not always correspond to the trade name of that store. For example, lots called Clayton Homes may sell a full range of models, not just those branded as "Clayton."

Numerous customers reported that they thought they were shopping with different companies when they visited Clayton dealers operating under different brand names.

CLAIM: "Clayton Homes' retail locations make up approximately 12% of the industry's retail locations."

FACTS: Clayton owned 326 dealerships at the end of 2014, but counted 1,336 independent retailers as affiliates in its latest annual disclosure. Affiliates work closely with the company to sell its homes and finance them through 21st Mortgage, one of Clayton's lenders.

CLAIM: "The overwhelming majority of Clayton Homes' customers report high levels of satisfaction with their home purchase and mortgage."

FACTS: Clayton's customer satisfaction data was based on research the company funded.

Mike Baker**: 206-464-2729 or mbaker@seattletimes.com; on Twitter: @ByMikeBaker. **Daniel Wagner

http://www.seattletimes.com/business/real-estate/us-house-oks-cutting-safeguards-for-mobile-home-buyers/

U.S. House OKs cutting safeguards for mobile-home buyers

Originally published April 14, 2015 at 8:19 pm Updated December 18, 2015 at 11:48 am

House Republicans passed a bill that rolls back safeguards protecting mobile-home buyers from predatory sales practices and high-interest loans.

By Daniel Wagner
Special to The Seattle Times

WASHINGTON — The U.S. House voted Tuesday to roll back safeguards aimed at protecting mobile-home buyers from predatory sales tactics and high-interest loans.

The bill passed with strong support from Republicans, helped by a handful of Democrats. Other House Democrats objected vigorously, with several citing the findings of a recent investigation by The Seattle Times and The Center for Public Integrity.

The investigation, "The Mobile-Home Trap," found high interest rates, excessive fees and predatory sales practices by industry leader Clayton Homes, part of Berkshire Hathaway, an investment conglomerate run by billionaire Warren Buffett.

The bill "would allow an incredibly profitable industry to make even more money by charging exorbitant fees to borrowers," said Maxine Waters of California, the top Democrat on the House Financial Services Committee. If it's enacted, she said, fewer people who take out costly loans would be protected against predatory lending.

The bill would reverse rules put in place as part of a sweeping financial overhaul in 2010 known as the Dodd-Frank Act. It would raise the interest rates permitted on some mobile-home loans before they trigger extra protections for borrowers such as pre-loan counseling. The bill also would let mobile-home salespeople work closely with buyers to arrange financing.

Every voting Republican but one supported the bill. Among the yea votes was Rep. Dave Reichert, R-Auburn. Reichert did not respond to a request for comment.

Rep. Denny Heck, D-Olympia, voted against it, saying it was "about relaxing an awful lot of consumer protections among our most vulnerable population."

Clayton Homes, by far the biggest player in the mobile-home industry, earned $558 million before taxes in 2014, a 34 percent increase over the previous year.

Clayton lends at unusually high rates. Under federal guidelines, most Clayton loans are considered "higher-priced." Those loans averaged 7 percentage points higher than the typical home loan in 2013, according to a Times/CPI analysis of federal data, compared with just 3.8 percentage points above for other mobile-home lenders.

The bill's sponsor, Rep. Stephen Fincher, R-Tenn., said Democratic opposition to the bill "doesn't hurt Warren Buffett, it hurts the people in Frog Jump," the area in western Tennessee where he lives.

Customers, including several from Tennessee, told reporters that Clayton sales staffers steered them to finance at high rates with the company's own lenders. Many said they were unaware that the lenders, Vanderbilt Mortgage and 21st Mortgage, were part of the same company that built and sold them their homes.

Former dealers also said the company encouraged them to put buyers in Clayton loans.

Under existing rules, sales reps on mobile-home lots may not provide a borrower with information about financing unless they first register as loan officers. Tuesday's bill would exempt all mobile-home sales reps from registration unless they received extra pay for arranging financing.

Clayton last year built nearly half of the industry's new homes. It finances more mobile-home purchases than any other lender by a factor of six. It sells property insurance on them and repossesses them when borrowers fail to pay.

Many buyers end up trapped in loans they can't afford and in homes that are almost impossible to sell or refinance, the investigation found.

Clayton and Berkshire Hathaway did not respond to requests for comment Tuesday.

Republicans said passing the legislation would help poor borrowers get loans that they might not otherwise be offered.

They also said that mobile-home buyers need salespeople to help them understand financing options, and that mobile-home loans now trigger extra consumer protections too easily because such loans tend to be smaller than regular mortgages.

Fincher, the bill's sponsor, received more campaign money from Clayton employees than any other candidate in the 2014 election cycle: $15,150. Clayton was his fourth-biggest financial backer, according to the Center for Responsive Politics, a nonprofit tracker of political money. Fincher's office did not respond to a request for comment.

Clayton also donated $8,750 to Rep. Jeb Hensarling, R-Texas. Hensarling chairs the House committee that delivered Fincher's bill to the floor.

Shortly before the vote, Waters proposed an amendment that would exempt from the rollback of rules any lender that has "engaged in unfair, deceptive, predatory, or abusive lending practices."

The amendment "is for veterans like Dorothy Mansfield, who should be honored for their sacrifices to this country — but were instead targeted. Just 18 months after being steered into a predatory mortgage she couldn't afford, Mansfield was facing foreclosure."

Mansfield is among the borrowers profiled in the Times/CPI story, published earlier this month. Waters also entered the story into the Congressional Record, the official archive of events and debates of the U.S. Congress.

The bill's prospects in the U.S. Senate are uncertain. President Obama has said he will veto it if it passes both houses.

This story is part of a joint investigation by The Seattle Times and The Center for Public Integrity, a nonprofit investigative newsroom based in Washington, D.C. Mike Baker contributed reporting. Daniel Wagner on Twitter @WagnerReports

http://www.seattletimes.com/seattle-news/buffett-sticks-up-for-mobile-home-business-at-shareholder-meeting/

Buffett sticks up for mobile-home business at shareholder meeting

Originally published May 2, 2015 at 3:13 pm Updated December 18, 2015 at 11:48 am

Warren Buffett opened his shareholder meeting Saturday with a vigorous defense of the mobile-home business that he's helped build into the industry's most dominant player.

By
Mike Baker
Seattle Times staff reporter

OMAHA, Neb. — Warren Buffett opened his shareholder meeting Saturday with a vigorous defense of the mobile-home business that he's helped build into the industry's most dominant player.

Clayton Homes was the subject of a recent investigation by The Seattle Times and The Center for Public Integrity (CPI), which documented how the company has used predatory sales practices, exorbitant fees and home-loan interest rates that can exceed 15 percent. Because Clayton's mobile homes often dwindle in value, borrowers find themselves trapped, unable to sell or refinance due to the punishing lending terms.

The first question Buffett faced at his annual meeting came from a longtime shareholder in Texas who said he was having "heartburn" about issues raised in the story. The shareholder said he previously viewed Berkshire Hathaway as "an ethical company" but was concerned about Clayton and the company's weak response to the Times/CPI story.

Buffett responded that the company has been exemplary in providing loans to people who often have poor credit. He said the company has no interest in providing loans that fail, since the company holds the loans on its books.

"I make no apologies whatsoever about Clayton's lending terms," Buffett told the crowd of 40,000 that gathered in Omaha.

Most Clayton mobile-home loans are considered "higher-priced" under federal guidelines, and those loans averaged 7 percentage points higher than a typical home loan in 2013, compared with just 3.8 percentage points for other industry lenders, according to an analysis of federal data.

Clayton manufactures the homes, sells them at its retail outlets and finances them. While some borrowers have come to view the integration as a way to steer them into Clayton's costly loan products, Buffett disputed that.

He displayed for shareholders a document that prospective borrowers receive, listing some lending options available. What he didn't describe was that Clayton lots are often filled with enormous banners and advertisements touting Clayton's lending products.

The Times/CPI story also documented how dealers had financial incentives in years past to get borrowers in Clayton loans, and one dealer described how his superior at Clayton pushed him to put at least 80 percent of buyers in Clayton loans.

Buffett said the company has a default rate of just 3 percent "in a year," which the company later explained was based on a calculation of the total number of defaults divided by the number of loans still on the company's books. But that method doesn't reflect the total default rate that occurs in loan pools over the course of time — a cumulative number that would better show the likelihood of a new borrower getting a loan that will fail.

For example, another mobile-home lender, Origen Financial, had a pool of loans originated in 2007 that over the next eight years had an annualized default rate often below 4 percent. That loan pool's "cumulative default" rate over eight years topped 20 percent, according to Origen's public financial disclosures.

Kenneth Rishel, an industry consultant for 40 years, has said the industrywide failure rate on nonmortgage mobile-home loans is 28 percent. Citing his own research and conversations with Clayton executives, he said Clayton's two lenders have failure rates of 33 percent and 26 percent.

Clayton has said those numbers are inaccurate but declined to discuss details.

Buffett also disputed a sentence in the story that cited an affidavit explaining the company's profit on sales in Arkansas. He noted that the numbers cited in the affidavit were "gross profit" and that it was wrong not to provide the "net profit" after expenses and taxes.

Earlier in the day, in a brief exchange with Buffett before the event, this reporter asked the billionaire to discuss issues at Clayton. Buffett immediately replied by asking if he and the other reporter on the Clayton story were "roommates." The reporters have never been roommates.

Buffett then asked whether the reporter at Saturday's event has a sister who works as a lawyer. This reporter has no sister who is a lawyer, but co-writer Daniel Wagner has a sister who works as an attorney at a nonprofit law firm in West Virginia that has brought suits on behalf of low-income borrowers against most major home-loan lenders, including Clayton.

Wagner has reported on consumer finance for a decade and was one of the lead Associated Press journalists covering the 2008 financial crisis.

Buffett's Berkshire Hathaway purchased Clayton Homes in 2003. It now constructs nearly half the industry's new homes and finances more mobile-home purchases than any other lender by a factor of six.

Last year, Clayton earned $558 million before taxes.

Daniel Wagner contributed reporting. The Center for Public Integrity is a nonpartisan, nonprofit investigative reporting newsroom in Washington, D.C. Mike Baker: mbaker@seattletimes.com or 206-464-2729. On Twitter @ByMikeBaker

Buffett concedes default rate on mobile-home loans could be much higher

Originally published May 4, 2015 at 6:55 pm Updated December 18, 2015 at 11:48 am

Warren Buffett earlier had touted a 3 percent default rate to Berkshire Hathaway shareholders to rebut claims of predatory lending in a Seattle Times and Center for Public Integrity probe into Berkshire's mobile-home subsidiary, Clayton Homes.

By Mike Baker
Seattle Times staff reporter

Warren Buffett conceded Monday that mobile-home consumers likely default on their loans at much higher rates than the 3 percent figure he gave to Berkshire Hathaway shareholders at their recent annual meeting.

Buffett touted the 3 percent default rate to shareholders in order to rebut claims of predatory lending in a recent investigation by The Seattle Times and The Center for Public Integrity into Berkshire's mobile-home subsidiary, Clayton Homes.

But Buffett's number only counted loans that defaulted in a one-year period. In an interview Monday, CNBC's Becky Quick asked Buffett whether a Times story about the shareholders meeting was correct in saying the default rate was much higher when accounting for the performance of those loans over several years.

"They are correct," Buffett replied, but noted that others report defaults as a one-year rate.

At the shareholders meeting, Buffett seemed to imply that 97 percent of consumers with Clayton financing successfully pay off their loans.

The Wall Street Journal reported: "Only about 3% of Clayton's $12 billion of mortgages on 300,000 homes go sour, Mr. Buffett said. The rest of the borrowers are able to pay off their loans within a 20-year time frame on average."

CNBC's Alex Crippen tweeted a similar characterization: "Buffett at (shareholder meeting): 3% of Clayton borrowers won't be able to pay back and lose their home, but 97% do and get a good home at low cost."

The Omaha World-Herald, Buffett's hometown paper that's owned by Berkshire Hathaway, also reported: "He said only 3 percent of Clayton's buyers default, a small percentage, especially since many of them have poor credit histories. It wouldn't be fair to deny the remaining 97 percent a chance to buy homes because of those defaults, Buffett said."

Most mobile-home financing is done with personal-property loans, not mortgages. Kenneth Rishel, an industry consultant for 40 years, has said the industrywide failure rate on nonmortgage mobile-home loans is 28 percent. Clayton is by far the industry's largest lender, doing six times more mobile-home loans than anyone else.

Citing his own research and conversations with Clayton executives, Rishel said Clayton's two lenders have failure rates of 33 percent and 26 percent.

In a short interview with The Seattle Times over the weekend, Clayton Homes CEO Kevin Clayton called those numbers "totally wrong." But he reiterated that the company would not provide comparable figures. "We're not going to disclose all of our competitive information," he said.

Buffett also told CNBC on Monday that he frequently sees a variety of consumer complaints about his businesses, but that hasn't been the case with Clayton.

"In the last three years … I have not received one letter — and all the letters get to me — I have not received one letter from Clayton Homes," Buffett said.

But in just the last three years in the state of Tennessee, home to Clayton, more than two dozen people have filed complaints to the attorney general's office about Clayton and its subsidiaries.

And one Clayton borrower from North Lewisburg, Ohio, watching CNBC on Monday morning, said he was baffled by Buffett's remarks. Ted Murphy said he had sent a variety of messages to Clayton about what he deemed was a "bait-and-switch" the company previously made on its loan terms.

"I don't care who he is, but he's not telling the truth," Murphy said he told his wife as they watched Buffett. Murphy said the couple feel trapped in their Clayton loan, still owing $40,000 on a home he believes is worth maybe $10,000.

Murphy said he sent his most recent complaint to Clayton a few months ago. After watching Buffett make his claim on CNBC, he immediately sent another.

Mike Baker: 206-464-2729 or mbaker@seattletimes.com. On Twitter @ByMikeBaker

http://www.seattletimes.com/business/real-estate/buffetts-mobile-home-business-has-most-to-gain-from-deregulation-plan/

Buffett's mobile-home business has most to gain from deregulation plan

Originally published May 17, 2015 at 7:00 am Updated January 13, 2016 at 11:17 am

Clayton Homes is pushing Congress to roll back consumer protections on mobile-home loans.

By Mike Baker

Second of a series

Warren Buffett's mobile-home business wants Congress to curtail recent consumer safeguards put in place after the financial crisis, saying a rollback is necessary to ensure that competing lenders continue to provide loans.

But, in reality, the deregulation plan that recently passed the U.S. House would be a boon almost exclusively for Buffett's Clayton Homes, according to an analysis of 2013 federal loan data by The Seattle Times. Based on interest rate levels from that year, Clayton controlled 91 percent of the market segment set to be deregulated.

U.S. Rep. Maxine Waters, D-Calif., the lead congressional critic of the proposed deregulation, gave an exasperated chuckle last week when a reporter told her the 91 percent figure.

"There's something wrong with legislation that would benefit any one company," said Waters, who didn't realize the proposal would serve Clayton to such a large degree. Once open to changes pushed by the mobile-home industry, the congresswoman said she has grown wary of its practices and that perhaps a federal agency like the Consumer Financial Protection Bureau should be investigating Clayton.

A Senate committee is scheduled to take up the House plan on Thursday.

Looser loan rules a boon for Buffett company

The heat maps below show concentrations of 2013 mobile-home loans that had interest rates high enough to require disclosure. Click through each one to see Clayton's share of the loan market and how the company stands to gain from a rollback of consumer safeguards.

Clayton's loans are particularly expensive compared with those of its peers. A recent investigation published by The Times and the Center for Public Integrity showed how the company locks buyers in loans at interest rates that can exceed 15 percent. The nation's largest manufacturer of mobile homes, Clayton sells them at its own retail lots, finances purchases through its own subsidiaries and sells property insurance on them.

Buyers have described how Clayton retail outlets misled them to take on unaffordable loans and steered them to Clayton-owned lenders, Vanderbilt Mortgage and 21st Mortgage, without disclosing the corporate relationships. Former dealers also told of how Clayton Homes pressured or provided incentives to retail outlets to get buyers into Clayton loans.

Aggressive lobbying

Loans with high interest rates can be especially devastating to buyers of mobile homes, since the houses often depreciate swiftly. A buyer with a high rate will still owe a large sum for many years on a home that can be almost impossible to sell or refinance because its value is below the loan balance.

In 2010, responding to the financial crisis, Congress adopted sweeping financial reforms as part of the Dodd-Frank Act. Its provisions included rules protecting mobile-home consumers offered high-cost loans.

Among the changes, starting in 2014 lenders were required to give those borrowers an accounting of all costs and interest rates three days before signing. Lenders also were prohibited from charging prepayment penalties and were required to refer borrowers to pre-loan counseling.

These loans were defined as having an annual interest rate more than 6.5 percentage points above the average prime rate. For smaller loans under $50,000, the protections typically applied to those more than 8.5 percentage points above that benchmark.

Industry officials, including representatives from Clayton, have lobbied aggressively to repeal the Dodd-Frank rules, arguing the standards make it harder for buyers to obtain affordable financing. The mobile-home industry gained traction this year with a bill by Rep. Stephen Fincher, R-Tenn.

Fincher's bill would raise the 8.5 rate rule to 10 percentage points and the small-loan threshold from $50,000 to $75,000. Under current interest rates, that means those smaller mobile-home loans generally wouldn't benefit from the added consumer protections unless they had interest rates close to 14 percent or higher — more than triple the level of a typical home interest rate.

In the last election cycle, Clayton employees gave Fincher $15,150 in campaign contributions, which was more than they gave any other candidate.

Federal home-loan data is not yet available for 2014, when the interest-rate protections took effect. If those rules had been in place in 2013, about 9,700 of the industry's mobile-home loans would have triggered additional consumer protections. Under the new proposal moving through Congress, some 5,600 of those 9,700 would not have qualified for the protections.

Of those, 91 percent were Clayton loans. The industry's second-largest mobile-home lender, Wells Fargo, didn't have a single loan in that pool.

(The rules also add protections for loans that have high fees — information not available in federal loan data.)

Claims don't hold up

Several consumer groups have opposed the plan, including the National Manufactured Home Owners Association, a Seattle-based group that works with mobile homeowners around the country. The group says the legislation would harm homeowners and make homeownership more costly for the poor.

In a brief interview earlier this month at the Berkshire Hathaway shareholder meeting, Clayton Homes CEO Kevin Clayton cast the proposed rollback that passed the U.S. House last month as a lifeline for other lenders, not Clayton. Clayton, whose company was acquired by Berkshire Hathaway in 2003, said the recent rules on costly mobile-home loans had driven some companies out of the business.

"We want more lenders in the industry," Clayton said in an interview. It's a sentiment echoed by Rep. Fincher, who hails from Clayton's home state of Tennessee.

When asked to identify which companies left the industry, Clayton Homes referred questions to the Manufactured Housing Institute (MHI), the industry's trade group. MHI pointed to two banks that had been cited by a lawmaker on the floor of Congress, saying the banks "cited the regulations as a cause for major reductions in their manufactured housing lending."

One of the banks was Five County Credit Union in Maine. Rep. Jeb Hensarling, R-Texas, reading from a document, said Five County reported that it was no longer offering mobile-home loans.

But federal data shows the company has provided just two new mobile-home loans in the nine years before Dodd-Frank protection took effect.

Mike Foley, a Five County vice president, said in an interview that the floor-speech mention was news to him and he was unaware of any company letter sent to Congress. He said he was checking to see what the congressman may have been referring to.

The other bank cited by the industry and by Hensarling in Congress to support the deregulation plan was First National Bank of Milaca. But the bank, in Minnesota, said that while it had concerns about the federal regulations, it was able to provide eight mobile-home loans last year, up from three the year before the high-cost rules took effect.

MHI also told The Times that U.S. Bank stopped making mobile-home loans because of the new regulations. But U.S. Bank continues to provide mobile-home loans directly to consumers, according to the bank, just not through dealers or brokers.

Very few of the bank's loans were subject to the tighter standards. In 2013, of the more than 2,300 new mobile-home loans U.S. Bank provided, just eight of them had interest rates high enough to trigger the stronger consumer protections.

Earnings up despite rules

Clayton said his company is no longer making loans above rates that require extra consumer protections, now about 12 percent interest. He said lenders need the higher rates on those loans to make a profit.

With the rules in effect last year, Clayton still earned $558 million, up 34 percent over the 2013 cycle when the rules had not been implemented.

The bill would also repeal rules that prevent salespeople from advising consumers about financing. That's particularly pertinent to Clayton, which has its own retail outlets that have been touting Clayton financing options.

Clayton is represented in Washington, D.C., by the MHI, which has a Clayton executive as its vice chairman and another as its secretary. MHI spent $4.5 million since 2003 lobbying the federal government.

Fincher declined an interview request through a spokeswoman, as did Sen. Joe Donnelly, D-Ind., the bill sponsor in the Senate.

http://www.seattletimes.com/business/real-estate/citing-seattle-times-stories-nyt-editorial-calls-on-congress-to-protect-mobile-home-buyers/

Citing Seattle Times stories about Buffett's company, NYT editorial calls on Congress to protect mobile-home buyers

Originally published May 20, 2015 at 7:32 am Updated December 18, 2015 at 11:48 am

Citing a Seattle Times investigation that showed how Warren Buffet's company locks buyers in loans at interest rates that can exceed 15 percent, the editorial decried a proposed plan to roll back consumer protections.

By Mike Baker

Seattle Times staff reporters

The New York Times editorial board said Wednesday that Congress needs to protect vulnerable buyers of mobile homes, citing recent stories published in The Seattle Times.

The editorial decried a proposed plan to roll back recent consumer protections for people who get high-cost mobile-home loans. The Seattle Times reported earlier this week that the bill would deregulate a segment of the market overwhelmingly controlled by Clayton Homes, a company that is part of Warren Buffett's Berkshire Hathaway.

"This deregulatory push would harm the mostly rural, older and hard-pressed buyers of mobile homes, as has been made clear in a recent series of articles in The Seattle Times about Clayton Homes," the editorial said.

Last month, a Seattle Times investigation done in partnership with the Center for Public Integrity showed how Clayton locks buyers in loans at interest rates that can exceed 15 percent. Clayton is the nation's largest manufacturer of mobile homes, and it also sells the homes at its own retail lots and finances the purchases through its own subsidiaries. Buyers have described how Clayton retail outlets misled them to take on unaffordable loans and steered them to Clayton-owned lenders.

The New York Times editorial board said the proposed deregulation plan "would put profits from predation above protections for consumers." The bill has already passed the U.S. House and is set to be considered by a Senate committee on Thursday.

The editorial board previously cited the Times/CPI investigation when first addressing the topic last month. In that editorial, the newspaper suggested Berkshire Hathaway shareholders ask Buffett why his company found basic consumer protections to be so threatening.

Buffett did address some Clayton issues at the May 2 shareholder meeting, but he did not discuss the deregulation plan.

http://www.seattletimes.com/seattle-news/times-watchdog/minorities-exploited-by-warren-buffetts-mobile-home-empire-clayton-homes/

Minorities exploited by Warren Buffett's mobile-home empire

Originally published December 26, 2015 at 8:00 am Updated January 13, 2016 at 11:24 am

Clayton Homes has used a pattern of deception to help extract billions from poor customers around the country — particularly people of color, who make up a substantial and growing portion of its business. The company is controlled by Warren Buffett, one of the world's richest men.

By Mike Baker and Daniel Wagner

The Seattle Times / BuzzFeed News

Third of a series

GALLUP, N.M. — After a few years living with her sister, Rose Mary Zunie, 59, was ready to move into a place of her own.

So, on an arid Saturday morning this past summer, the sisters piled into a friend's pickup truck and headed for a mobile-home sales lot here just outside the impoverished Navajo reservation.

The women — one in a long, colorful tribal skirt, another wearing turquoise jewelry, a traditional talisman against evil — were steered to a salesman who spoke Navajo, just like the voice on the store's radio ads.

He walked them through Clayton-built homes on the lot, then into the sales center, passing a banner and posters promoting one subprime lender: Vanderbilt Mortgage, a Clayton subsidiary. Inside, he handed them a Vanderbilt sales pamphlet.

"Vanderbilt is the only one that finances on the reservation," he told the women.

His claim, which the women caught on tape, was a lie. And it was illegal.

It is just one in a pattern of deceptions that Clayton has used to help extract billions from poor customers around the country — particularly people of color, who make up a substantial and growing portion of its business.

The company is controlled by Warren Buffett, one of the world's richest men, but its methods hardly match Buffett's honest, folksy image: Clayton systematically pursues unwitting minority homebuyers and baits them into costly subprime loans, many of which are doomed to fail, an investigation by The Seattle Times and BuzzFeed News has found.

Clayton's predatory practices have damaged minority communities — from rural black enclaves in the Louisiana Delta, across Spanish-speaking swaths of Texas, to Native American reservations in the Southwest. Many customers end up losing their homes, thousands of dollars in down payments, or even land they'd owned outright.

Over the 12 years since Buffett's Berkshire Hathaway bought Clayton Homes Inc., the company has grown to dominate virtually every aspect of America's mobile-home industry. It builds nearly half the new manufactured homes sold in this country every year, making it the most prolific U.S. homebuilder of any type. It sells them through a network of more than 1,600 dealerships. And it finances more mobile-home loans than any other lender by a factor of more than seven.

In minority communities, Clayton's grip on the lending market verges on monopolistic: Last year, according to federal data, Clayton made 72 percent of the loans to black people who financed mobile homes.

The company's in-house lender, Vanderbilt Mortgage, charges minority borrowers substantially higher rates, on average, than their white counterparts. In fact, federal data shows that Vanderbilt typically charges black people who make over $75,000 a year slightly more than white people who make only $35,000.

Through a spokeswoman earlier this month, Buffett declined to discuss racial issues at Clayton Homes, and a reporter who attempted to contact him at his home was turned away by security.

Clayton and Berkshire Hathaway did not respond to numerous requests for interviews with executives, delivered by phone and email, as well as in person at Berkshire Hathaway's headquarters in Omaha. The companies did not answer any of 34 detailed questions about Clayton and its practices. Nor did they respond to an extensive summary of this article's findings, provided along with an invitation to comment. On its website, Clayton says that it seeks to "treat people right" and "preserve our integrity above all else."

(After publication of this article, Clayton issued a news release, accusing the reporters of "activism masquerading as journalism" and stating: "We categorically and adamantly deny discriminating against customers or team members based on race or ethnicity." For two specific categories of loans, the company said, minorities pay the same or slightly lower interest rates than whites.)

Clayton has expanded its minority customer base — 31 percent of its loans went to minorities last year, up from 22 percent in 2008 — with the help of meticulous demographic analysis and targeted sales promotions. Spanish-language ads in Texas promise Latino immigrants without Social Security numbers that they, too, can enjoy the American dream of homeownership.

As it drew in more Latino customers, however, Clayton's practice was not to provide Spanish-speaking customers with translated loan documents or interpreters at closing — even after employees at headquarters complained that too many customers were being misled about loan terms.

Fair-housing laws prohibit lenders from targeting and overcharging people of color, whose communities historically were denied access to credit.

Clayton's practices are part of a corporate culture that has condoned racism, including black employees fired while white workers used discriminatory slurs and kept their jobs, and phone collectors casually insulting borrowers with racist stereotypes.

For an earlier story in this series that detailed Clayton's widespread abuse of borrowers, a Clayton spokeswoman said in a statement that the company helps customers find homes within their budgets and has a "purpose of opening doors to a better life, one home at a time." Buffett later defended the company, telling Berkshire Hathaway shareholders he "makes no apologieswhatsoever about Clayton's lending terms."

For this story, The Seattle Times and BuzzFeed News analyzed hundreds of internal company documents, thousands of legal and regulatory filings, more than 40 hours of internal company audio recordings and federal data on hundreds of thousands of mobile-home loans over a decade. Reporters conducted interviews with more than 280 customers, employees and experts, including some Clayton insiders who said they were appalled by the company's practices.

Meanwhile, in the first nine months of this year, Clayton generated more than half a billion dollars in profit, up 28 percent from the same period last year.

"It's a perpetual system of people who are never able to get themselves out of the hole," said Gwen Schablik, who worked as a collector and handled borrowers' bankruptcies at Clayton's Maryville, Tenn., headquarters from 2011 until she quit in 2014.

"I felt, ethically, I couldn't continue working there," she said.

A culture of racism

David Ashley's problems at Clayton began soon after he became one of the few black employees to serve in management.

One of Ashley's subordinates called him a "coon," and he fired her, he said. To his dismay, a regional manager overruled the decision and warned Ashley not to be so hasty, he said.

Ashley said his bosses grew eager to push him out of his role managing a Clayton lot in Arkansas, even suggesting he had taken some furniture that various employees brought in and out of the lot for staging homes — an accusation that another black manager in the region reported facing around the same time. Both denied taking any furniture.

When they offered Ashley a transfer to a sales lot far from his home, he said, he declined and eventually left his job in December 2012.

"I'm almost a 60-year-old man," he said earlier this year. "It's the first time — living in Arkansas my whole life — and it was truly the first time that I had experienced true racism."

In at least six states, Clayton managers have permitted open racial hostility toward people of color, according to interviews and legal filings by more than 15 former workers with direct knowledge of the incidents. In at least seven cases documented in court records, sales reps — both black and white — were fired after complaining about racism on the job. Four cases were dropped or dismissed, and Clayton settled three.

After one of those firings in South Carolina in 2010, the company hired another black salesman. But that man, Larry Summers, testified in court records that Clayton's workers, despite his many requests, did not train him. He also said that he witnessed a co-worker make racist comments and that black customers were treated with contempt.

"When I was there, I saw they treated black customers differently than what they did white customers, you know?" he said in a deposition. "With their white customers, they're more pleasant." He said he soon quit Clayton.

In Baton Rouge, La., Clayton managers engaged in "malicious and reckless conduct" by allowing employees to harass and fire the store's only black salesman, according to a lawsuit filed by the federal government against the company in 2007.

A regional manager knew about the harassment, four former employees, including the victim, Melvin McNeal, said in interviews. McNeal said he complained about being called "Sambo" and "Buckwheat," but managers defended his colleagues, saying they were "having fun" with him. Two of McNeal's white co-workers backed up his complaints to managers, according to legal filings. They, too, reported being fired.

"I can't help myself, I hate n—s," McNeal's main harasser told a contractor on the sales lot, according to a separate lawsuit filed by the two white co-workers. One remembered the harasser calling the sales lot "n—ville" when black customers arrived to tour homes.

The suit by the two white employees was dismissed for procedural reasons. Clayton settled the federal lawsuit, brought by the Equal Employment Opportunity Commission, in part by agreeing to end racial harassment. The company did not admit or deny wrongdoing.

Steering customers

Laws designed to protect consumers prohibit mobile-home sales reps from doing double duty as loan officers unless they obtain a separate license. They can sell the mobile home, but they may not guide buyers to a particular financing option.

Peter Shaw, who manages Clayton's lot in Gallup, N.M., denied that his employees steer Navajo buyers to Vanderbilt loans. He is "100 percent" sure it doesn't happen, he said, because the company trains its workers that doing so would be "strictly against the law."

Yet in three dozen interviews, Clayton's minority customers said they were led to believe that Vanderbilt was the only option to finance their homes.

One of the Navajo women at the Gallup lot recorded audio of their shopping experience, including the exchange in which a sales agent told them Vanderbilt was the only financing option on the reservation. Even after being told of the recording and its contents, Shaw insisted that his employees follow the law.

In fact, there is a range of options for financing mobile-home purchases on the reservation. Many lenders make loans under a federal program created in 1992 to improve Native Americans' access to home financing. Known as the184 Program, the subsidy guarantees that banks won't lose money on the loans. This allows them to offer interest rates comparable to a prime home mortgage.

The Navajo Nation itself also offers loans to finance mobile homes. Louise Johnson, the head of Navajo Nation's credit-services division, said tribal leaders developed the program after seeing widespread repossessions of mobile homes on the reservation. Her division offers mobile-home loans with an interest rate often under 6.5 percent — half the rate paid by many Clayton borrowers. Yet few Navajo buyers end up borrowing from the tribe.

When he defended Clayton's compliance with the law earlier this year, Buffett said the company's lots use "lender boards" on their walls to show buyers the array of finance options to choose from. But the lender board at the Gallup lot, just five miles from tribal territory, had no information about Navajo credit services. It did list a lender that participates in the federal program. In an interview, however, Shaw dismissed the program as a poor option for many borrowers.

The lender board also has a single large red button labeled, "PUSH ME." By law, Clayton sales agents aren't allowed to pitch for Vanderbilt. But if they or a customer presses the red button, a digital recording does it for them:

"Vanderbilt wants to finance your home. Fast approval. Friendly service. And less than perfect credit accepted," a voice says. "Choose Vanderbilt!"

For years, salesmen received a bigger cut of the sales price if borrowers financed with Vanderbilt. That's no longer the case, but management has imposed new pressures.

Clayton tracks each lot's "capture rate," or what percentage of its buyers borrow from Vanderbilt, internal records show. Managers receive reports that show how their capture rate ranks against other lots' and how their rate has changed over time. Last year, dozens of lots had capture rates exceeding 70 percent, the records show.

Earlier this year, a Clayton retail vice president emailed fellow managers demanding that they explain why some stores fell short of their goals.

"I know some of you are frustrated with your capture rates, as well as [retail lots] not hitting their commitments," Mark Morgan wrote in the email, a copy of which was obtained by The Times and BuzzFeed News. "They will never get to where we need them to be if they don't buy in. We must help get them there."

Papers not translated

Clayton has been especially effective at capturing minority borrowers — and not just Native Americans.

Vanderbilt and Clayton's other lending division, 21st Mortgage, originated 53 percent of all mobile-home loans to Native Americans; 56 percent of loans to Latino and Hispanic borrowers; and 72 percent to blacks, according to 2014 federal loan data from some 7,000 lenders. Among white borrowers who were not also identified as Latino or Hispanic, Clayton's market share was 31 percent.

Clayton was less reliant on lending to minorities in 2004, the first full year after Buffett's Berkshire Hathaway bought the company for $1.7 billion. Around that time, then-marketing manager Robert Fox explained in a recent interview, Clayton was beginning to harness emerging research tools to help identify untapped markets.

After analyzing its Vanderbilt loan portfolio to understand the demographics of its customers, he recalled, Clayton then searched for areas where these market segments — people with similar characteristics — were clustered. Forone presentation in 2005, Fox mapped Houston-area ZIP codes where these potential customers lived. Four of the five market segments he highlighted were identified as ethnically mixed.

"It was extremely cutting-edge for the manufactured-home industry," Fox said.

More recently, Clayton has drawn in minority borrowers with targeted marketing, such as sponsorship of a Lumbee Tribe powwow in North Carolina. Louisiana dealerships have advertised single-parent loan programsin a state where black families are more than twice as likely as white families to be headed by a single parent.

And in Texas, Clayton has blanketed parts of the state with ads, fliers and promotions in Spanish. One store promised to spare buyers the frustration of dealing with "Spanglish" speaking sales agents: "Stop suffering, come to Clayton Homes in Seguin, where we will attend to you 100% in SPANISH!!!!" its website said.

Another lot's Spanish-language ad addressed immigrants who have government tax ID numbers but no Social Security number: "No credit, no Social! Your ITIN and your promise is all we need!"

But when the time came to sign a legally binding loan, the company's Spanish language skills disappeared. Its practice was to provide loan documents, full of dense legal jargon, in English, and not to provide interpreters, according to 12 Spanish-speaking borrowers who purchased homes in Texas over the past few years.

That's how Rocio Orozco, a single mother living in rural Willis, Texas, who speaks only enough English to carry on a simple conversation, said she ended up paying nearly double the interest rate she was promised — and losing $500 of her down payment to her local Clayton-owned dealer before she'd even signed the contract.

After driving past Clayton's dealerships on her way to work each day, Orozco, a manager at Subway sandwich shops, stopped at a Clayton-owned lot in early 2012 to "window shop," she said in an interview conducted through a translator. She said she told the sales reps that she didn't have good enough credit for a loan. Still, she recalled, the rep went to lunch with her, talked to her about their families and told her not to give up hope.

Before Vanderbilt would process her application, Orozco recalled, she was asked for a $500 deposit, delivered on a blank money order. The loan for a double-wide came through, but the $500 disappeared. Documents indicate it was not credited against the cost of her home.

In fact, the loan balance was inflated by $5,866 in fees and Clayton-brokered insurance, nearly as much as her down payment. She hadn't noticed the additional charges until a reporter pointed them out.

She expressed further dismay when the reporter noted that she is paying a 14.2 annual percentage rate on the 20-year loan. The saleswoman had told her she was approved at 8 percent, Orozco said. At the loan closing, the title agent referred by Clayton rushed her through the process, showing her only the blanks on pages requiring her signature, Orozco said.

"I said I couldn't understand them, but they told me it was all simple, just stuff the bank required," Orozco said. On the way out the door, she said, she was handed a stack of documents that she had never had a chance to review.

Among them was a loan application, prepared by Clayton, stating that she made $4,770 a month — far more, she said, than her actual take-home salary.

Joan Norman, Orozco's saleswoman, said she couldn't imagine a case where retail workers would ask for a money order to be left blank. Norman, who no longer works for Clayton, could not explain why the $500 deposit was reflected on some documents but never applied against the cost of Orozco's home.

Now facing monthly payments of about $1,000 that overwhelm her budget, Orozco said she is almost certain to lose the home.

"I'm so stupid," she said. "I thought I could understand it myself, and trust them, because they were so nice. But that all changed the second I signed that paper."

Gwen Schablik said stories like that make her blood boil. Schablik was one of a handful of Spanish speakers working in collections at Clayton back in 2012. Every week, she said, she took calls from people whose weak command of English led them to sign loan documents they couldn't understand.

Schablik and another former employee said several Vanderbilt staffers had raised the issue with their superiors. Managers eventually told Schablik that there was no need to translate the documents, she said.

She continued to raise concerns, writing in an email to Clayton's director of marketing that when she spoke to new borrowers "there were many things they were not made aware about during the sale."

Managers and executives, she said, dismissed her concerns; she recalled one replying, "It doesn't really matter as long as we get the money."

More than a dozen Spanish-speaking borrowers in Texas said they initially dealt with friendly, Spanish-speaking retail staff, only to be rushed through loan closings that the borrowers didn't understand, conducted entirely in English. Many said they were surprised to find that the loan terms were much more costly than they'd been told.

Vanderbilt piles on

Blacks, Latinos and Native Americans tend to have lower median incomes and lower credit scores than white Americans. As a result, the loans they receive — for houses, cars or virtually anything else — often have higher interest rates. So Vanderbilt is not alone in charging minority customers more, on average, to finance their mobile homes. What sets the company apart is just how much more.

The gap between Vanderbilt's disclosed interest rates for whites and those for minorities — more than 0.7 percentage points on the annual rate — is the largest among big mobile-home lenders. That difference can amount to thousands of dollars over the life of an average loan. The disparity persists even after adjusting for income: Minority borrowers earning between $75,000 and $100,000 on average pay interest rates slightly higher than those paid by Vanderbilt's white borrowers making only $25,000 to $50,000, according to a Seattle Times-BuzzFeed News analysis of recent federal loan data.

Some Clayton sales people try to foist Vanderbilt's costlier loans on customers — in particular poor, minority borrowers — who may have less familiarity with financial documents or who may be less likely to question large tacked-on fees, said three former Clayton workers, including Morris "Cubby" Stone, one of the white Baton Rouge employees who reported being fired after defending a colleague who faced racial abuse.

For decades, until federal fair-housing laws were introduced in the 1960s, banks routinely engaged in "redlining" — literally drawing red lines on maps around minority communities where they would refuse to make loans or open branches.

Clayton appears to have engaged in reverse redlining, seeking out minorities and charging them higher rates, according to a review of company documents, interviews, and an analysis of federal loan data. "Absolutely classic reverse redlining," attorney John Relman called it.

The practice may violate the federal Fair Housing Act or the Equal Credit Opportunity Act, said Relman, who represented the city of Baltimore in a suit against Wells Fargo for reverse redlining. (The bank, which did not admit wrongdoing, settled, agreeing to spend millions of dollars on housing initiatives.)

(In its news release after this article's publication, Clayton said that "we do not 'target' minority markets or engage in 'reverse-redlining.'")

In Louisiana, where Clayton controls 80 percent of the market for mobile-home loans to black people, the company sold Helen Shorts, a disabled grandmother, a loan she had virtually no chance of repaying.

Shorts, who is black, said she lost her previous home to a fire in 2013, leaving her and her family with almost nothing but the clothes they were wearing. Barely able to afford food, she said, they relied on handouts from churches and slept on friends' floors.

When her insurance check finally arrived early last year, Shorts recalled, she and her husband, Leroy, were desperate to turn it into permanent housing for the three grandchildren they look after. She and a girlfriend drove more than 50 miles to a Clayton sales lot in Gonzales, La., that, she said, had advertised homes for as little as $7,000.

Shorts went into the store looking for payments of $300 to $400 a month, she said, something she could afford on her $749 in monthly disability benefits.

The saleswoman, she recalled, later told her that she was lucky to qualify for a loan on a bigger, used mobile home priced at $55,000. Clayton financed it for her with a Vanderbilt loan at a 15.77 annual percentage rate, after a down payment of $7,000.

When she and Leroy returned for the closing, they said that, like many other buyers, they were rushed through it. Agents quickly turned over page after page, saying, "You need to sign right here, sign here, sign here," recalled Leroy, who said he has been unable to work since he went blind in his right eye.

The monthly payments were $851 — about $100 more than the amount she received from her fixed disability payments. Shorts, who said she didn't realize how much she would have to pay every month, made just two payments, then defaulted in June 2014. Clayton filed to seize the home that October.

Even when loans go bad quickly, the sale can be profitable for Berkshire Hathaway. Clayton often marks up new homes about 70 percent over invoice, company documents show. After a 20 percent down payment and thousands of dollars in fees added into the loan, Clayton can recoup more than half the wholesale price of the home in a year.

When borrowers stop paying, the company can repossess and resell the home, again with another markup.

Threats, mockery

Arriving at Clayton's Maryville, Tenn., headquarters each morning, collections workers and their colleagues shuffle past a poster of Warren Buffett pointing to his "rule of thumb."

"I want employees to ask themselves whether they are willing to have any contemplated act appear the next day on the front page of their local paper — to be read by their spouses, children and friends — with the reporting done by an informed and critical reporter," it reads.

"I'd pass by that and I was just, like, 'Are you kidding me?' " said Schablik, the Spanish-speaking employee who, until last year, worked as a Clayton collector and handled borrowers' bankruptcies.

At first, Vanderbilt collection agents — often young, white college students or recent grads — are trained to do things by the book, Schablik and four current and former collectors said. But when these new agents begin working the phones, they said, managers pressure them to be "mean" or "condescending," for example telling customers behind in their payments to cut back on groceries or forgo medical care.

Much of collectors' take-home pay comes from bonuses tied to how many delinquent accounts they bring up to date. As a result, Schablik and several of her former colleagues said, many collectors resorted to tactics of questionable legality: making groundless threats, calling relatives or employers to apply pressure, or berating borrowers until they either cried or figured out how to get some money. Collectors typically were less abusive to white borrowers, they said.

Even when managers were within earshot, white agents openly ridiculed black borrowers, mimicking stereotypical black vernacular on the phone, then referring to them as "n—–s" after hanging up, Schablik and other current and former Clayton employees said. Two collectors recalled English-speaking co-workers talking to Latino borrowers, repeatedly saying, "No dinero, no casa." One collector said she overheard a colleague ask a black borrower if she'd spent all of her money on a hair weave.

On the Navajo reservation, a customer named Sheila Begay said Vanderbilt collection agents told her that Navajo people are "too stupid" to understand loan terms. Her stepfather, Daniel Teller, said they told him Navajos were so poor that they never have money in their pockets. A neighbor, Wallace Archer, recalled a collector asking whether his family had spent all of its money on alcohol.

Tim Williams, the head of one of Clayton's lending subsidiaries, 21st Mortgage, said in a brief interview that his collectors are trained to treat customers with respect. He said accusations that they demeaned borrowers were "very, very unlikely" to be true.

"Believe it or not, not all customers are honest," he said.

At the tail end of the Mississippi Delta, southeast of New Orleans, Jennifer Encalade said she was receiving calls from Clayton's collection agents multiple times a day this summer. One afternoon, while a reporter was visiting, an agent named Jeremy called and began asking questions about her personal life, her financial status and her family. She put the call on speakerphone.

Dissatisfied with her offer to send money after her next payday, Jeremy began to bat around ideas: Is there anyone she could borrow the money from? Was there anything she could pawn or sell? Why didn't she try something?

As her 5-year-old son played quietly on the carpet, Jennifer asked:

"What would you suggest?"

"Uh, donate plasma?" Jeremy replied. "Or donate blood?"

Family legacy taken

In minority communities across the American South where Clayton has established dominance, the company seizes homes and land and resells them in a churn that strips individuals of their assets and communities from holding and building wealth.

On the Navajo reservation, geographically larger than the state of West Virginia, there are fewer than 50,000 occupied housing units of any kind. Clayton has sought to seize homes at least 691 times on the reservation in the past decade, according to a review of records from eight of the Navajo Nation's 11 court districts.

In the rural farming town of Opelousas, La., Kevin Thibodeaux is trying to keep Vanderbilt from taking a piece of land on Lazard Lane that has been in his family for at least four generations. Along the lane are the homes of his mother, aunts and uncles.

"When you turn down that road, it's all family back here," Thibodeaux said. "It goes deep, man."

Like many black families in the area, the Thibodeauxs see owning land as a tangible expression of family roots stretching back to Reconstruction and an economic toehold gained despite the legacy of slavery and the hardships of Jim Crow. In this community beset by poverty, land is many families' most meaningful asset.

In 2009, Thibodeaux was working at Wal-Mart and his wife at a pharmacy as they raised three children. He figured their weak credit would make it impossible to buy a home. When he visited a Clayton-owned retail lot, however, the sales reps told him they could get him a loan — if he put up a piece of land.

Thibodeaux had a parcel he'd bought from his aunt informally, years earlier. Employees at the Clayton-owned lot helped with the paperwork needed to make him the land's official owner, he said, and he signed it over as collateral.

Thibodeaux said he was excited about a Clayton home model called "YES," priced at \$39,000. A Clayton saleswoman, he recalled, said she was trying to get him a government-insured loan. Nearly three months later, he said, she called and told him that Vanderbilt would be his lender. She did not mention that the same company that owned the retail lot also owned the lender, he said. His annual percentage rate ended up at 11.26.

In the months he waited for the loan to come through, the home's price went up — to a little over \$45,000, plus more than \$7,000 in fees and insurance brokered by Clayton.

Within a couple of years, his wife had left him, leaving him with the kids, and he lost his job.

In light of his two years of steady payments, he asked Vanderbilt to adjust his monthly obligation until he got back on his feet. But, he said, "They gave me nothing. I tried everything talking to these people."

Vanderbilt moved to seize Thibodeaux's home in January 2014. He filed for bankruptcy protection and has been paying down his debts. With his new job as a school janitor, Thibodeaux hopes he can hold onto the house and land, but there are no guarantees.

Today, Thibodeaux shares the home with his girlfriend, Linda Lazard, and their children. Lazard, whose sister previously lost family land to Vanderbilt, can rattle off the names of nearby friends and relatives whose lives have been disrupted by the company's aggressive lending and frequent repossessions.

"Boy, for Thanksgiving and holidays, we'll hear something about Vanderbilt or somebody walking up and saying, 'Oh, I got my house, and Vanderbilt financed me,' " Lazard said. "Everybody look like, 'Lord Jesus, do you know what you just got yourself into?' "

With dusk falling over Lazard Lane's majestic trees one recent evening, Thibodeaux's extended family gathered on his wide, patchy lawn for a cookout featuring fried turkey wings. As high school-aged daughters practiced their cheer-squad drills, Thibodeaux talked about his troubles with Clayton Homes and Vanderbilt Mortgage.

"They sold me a dream," he said, pacing back and forth. "Everything changed after I bought the home."

UPDATE: *This story has been updated to reflect a response from Clayton Homes issued after this article was published.*

http://www.seattletimes.com/seattle-news/times-watchdog/seattle-times-responds-to-clayton-homes-claims-about-mobile-home-investigation/

Warren Buffett's mobile-home company denies discriminating against minorities

Originally published January 11, 2016 at 6:00 am Updated January 12, 2016 at 7:00 am

Clayton Homes, Berkshire Hathaway's mobile-home subsidiary, has defended its practices and denied some of the key findings of the recent Seattle Times/BuzzFeed News investigation, including that Clayton targets minority customers and charges them higher borrowing rates.

By Mike Baker and Daniel Wagner

Seattle Times staff reporter/BuzzFeed News

After publication of a recent investigation about Clayton Homes, Berkshire Hathaway's mobile-home subsidiary, Clayton put out a lengthy news releasedefending its practices and denying some of the investigation's key findings, including that Clayton targets minority customers and charges them higher borrowing rates.

In the weeks before publication, Berkshire Hathaway and Clayton Homes declined to talk to reporters or to answer questions provided in writing. Clayton did not respond to a request to comment for this story. Here are some of the claims in the Clayton Homes news release and how they align with the facts:

CLAIM: "The untold story is about families with very few housing and financing options. In 1998, more than 370,000 manufactured homes were produced and two dozen lenders were available. Last year, less than 65,000 homes were produced and only a handful of lenders remained."

FACTS: More than 2,000 companies made mobile-home loans in 2014, including 63 that made more than 100 such loans, according to federal data.

CLAIM: "Over the last three years, the average after-tax profit for each home sold was $746 at retail and $1,554 for each home built."

FACTS: These numbers, which are not publicly available, do not appear to include income from financing, which can far exceed what Clayton can earn from the sale of a home itself. Profit from insurance, warranties and other add-on products can further boost Clayton's earnings from each customer. Clayton Homes (which has two lending subsidiaries, Vanderbilt Mortgage and 21st Mortgage) is classified as a "Financial Products" business in Berkshire's public filings.

Clayton had pretax earnings of $558 million in 2014, according to public filings. If those earnings were divided by the number of homes it built that year — 30,871 — they would come to $18,075 per home.

CLAIM: "… while others either failed or exited the market, we kept access to affordable housing and credit available for all families, regardless of race or ethnicity."

FACTS: Clayton's loans are among the most expensive in this industry. In 2014, 98 percent of its loans were "higher-priced" as defined by the federal government, averaging 6.15 points above the prime rate. The rest of the industry averaged 3.1 points over the benchmark, according to federal data.

Clayton charges interest rates that can top 15 percent. At such high rates, borrowers can owe more than the homeis worth even after making payments for 15 years or longer.

CLAIM: "… in 2015, for borrowers with credit scores less than 600, who chose to purchase a home-only placed on private land, and borrowed less than $50,000, the average note rate from Vanderbilt Mortgage was the same for white and nonwhite borrowers. For borrowers with credit scores greater than 720, the average note rate for nonwhite borrowers was 0.07 percent less than that for white borrowers."

FACTS: There are two claims here: one for borrowers with good credit, and one for those with poor credit.

Borrowers with strong scores above 720 are not representative; most of Clayton's borrowers had a score below 620, Warren Buffett told Berkshire shareholders last year. On the other end of the spectrum, many Clayton buyers with weak credit end up with very similar interest rates — at or near the maximum allowable rate before federal high-cost loan rules trigger additional consumer protections.

Federal data disclosures do not include credit scores.

Also, the company refers here to the borrower's "note rate" rather than the Annual Percentage Rate, which can be higher because it factors in any fees tacked onto the loan.

CLAIM: " … none of our rates exceed state or federal high-cost mortgage loan caps …"

FACTS: These federal caps were put in place in 2014. Until then, Clayton's loans often exceeded them. Clayton has fought to avoid or increase these "high-cost" limits.

CLAIM: "Over the past 12 months, over 97 percent of customers have made their payments and many pay their loans off in full early."

FACTS: Buffett highlighted this 3 percent figure at Berkshire's annual shareholder meeting this past spring, but the number only takes into account loans that failed within a given year. Buffett later said the rate could be much higher when the performance of loans over several years was taken into account.

Kenneth Rishel, an industry consultant for 40 years, has said the failure rate on the most common type of mobile-home loan is 28 percent.

CLAIM: "We do not treat customers in a manner that is berating or racially insensitive, and we strenuously object to any suggestion to the contrary."

FACTS: Many dozens of borrowers have reported abusive, belittling collections calls from Vanderbilt and 21st Mortgage. More than a half-dozen current and former collectors, including Gwen Schablik, speaking on the record, confirmed that such treatment was common at Clayton's call centers.

CLAIM: " ... our lenders did not originate any of the loans made to the Native American customers named in the article who claimed that racially insensitive remarks were made in the servicing of their loans. One account was actually repossessed by another lender before we became responsible for the loan."

FACTS: That section of the story discusses borrowers' experiences with Clayton collections agents, whom borrowers must deal with whether the company originated, purchased, or took over servicing the loan. Every consumer mentioned in the story dealt with Clayton.

CLAIM: "If the customer chooses to converse in Spanish, forms translated in both English and Spanish advise the customer that sales and lending documents will be in English, and that the customer needs the ability to read and understand the documents or provide an interpreter to assist them."

FACTS: Clayton acknowledges here that it does not provide translated loan documents, yet the company advertises heavily in Spanish.

None of the Spanish-speaking borrowers interviewed for this story recalled an advisory that they needed to be proficient in English to understand the terms of the loan.

CLAIM: "There are no financial incentives in our retail company for directing business to any particular lender."

FACTS: As noted in the story, Clayton used to pay financial incentives to sales agents for guiding customers to Vanderbilt Mortgage, its in-house lender. Now, the company encourages in-house financing in other ways. According to documents and interviews cited in the story, for example, Clayton ranks sales lots based on what percentage of their sales are financed by Vanderbilt.

CLAIM: "We display information provided by lenders who have approved our retail locations on a lender board for the customer to review. We also work with local lenders in the market. We ask customers to select lenders on a lender choice form, and we encourage them to select more than one lender, so they can compare options to best fit their needs."

FACTS: Dozens of customers said they were told or led to believe that Vanderbilt Mortgage was their only option. In an audio recording captured last summer at Clayton's Gallup, N.M., lot, a sales agent told Navajo customers that Vanderbilt was the only lender that financed mobile-home purchases on the reservation.

CLAIM: " ... in recent discussions, the Navajo Nation's Credit Services department advised that they prefer not to be listed on our lender board ..."

FACTS: Last week, Delores Begay, the loan officer who handles mobile-home purchases for Navajo credit services, said her office previously provided its loan materials to Clayton so that the information about the tribe's lower-cost loans would be available to Navajo customers. Begay said she would like her program to be listed on the lot's lender board: "They should put us on there."

CLAIM: Former employees mentioned in the article made "isolated allegations — often by individuals who were reprimanded or terminated for performance issues — [that] are not reflective of our company, our team members, or our working environment."

FACTS: The story does not rely on a handful of disgruntled employees. Reporters spoke with 17 former and current employees who described racial abuse at Clayton. Others described racial hostility in court documents.

CLAIM: "The article references team members who brought claims against the company. All but one were either dismissed in court or the EEOC determined that their allegations were not sufficient to establish a violation of applicable law."

FACTS: Of the seven cases cited in the story, the EEOC determined that discrimination had occurred in two of them, and Clayton settled them. It also settled a third case. Three other cases were dismissed in court, and a fourth was dropped by the plaintiff, who said he ran out of money to pursue it.

http://www.seattletimes.com/seattle-news/lawmakers-call-for-federal-investigation-of-warren-buffetts-mobile-home-business/

Lawmakers call for federal investigation of Warren Buffett's mobile-home business

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Lawmakers want federal regulators to investigate Warren Buffett's mobile-home company after a Seattle Times/BuzzFeed News report that found company practices have harmed minority communities.

By Daniel Wagner and Mike Baker

BuzzFeed News / Seattle Times

Senior Democratic lawmakers want federal regulators to investigate Warren Buffett's mobile-home company after aSeattle Times/BuzzFeed News report that found the company's predatory practices have harmed minority communities.

U.S. Rep. Maxine Waters of California, the top Democrat on the House committee that oversees financial companies, called on the Justice Department and the Consumer Financial Protection Bureau (CFPB) to "investigate and pursue appropriate corrective action" about "potentially discriminatory lending and collection practices" at Clayton Homes and its lenders, Vanderbilt Mortgage and 21st Mortgage.

"I was appalled," Waters said of the findings in the recent Seattle Times/BuzzFeed News investigation. "There is no place for the kind of sleazy and deceptive practices alleged in The Seattle Times articles. I was further taken aback by Mr. Buffett's defense of Clayton's lending practices, given the concerns that were raised" in articles earlier last year by The Seattle Times and the Center for Public Integrity.

The letter was also signed by Democratic Reps. Keith Ellison, of Minnesota; Emanuel Cleaver, of Missouri; and Michael E. Capuano, of Massachusetts.

"Surely, if news outlets can launch an investigation into potential violations of federal fair lending and consumer protection laws, agencies charged with protecting the nation's consumers should be able to investigate these allegations," Waters wrote in a letter sent Tuesday to U.S. Attorney General Loretta Lynch and CFPB Director Richard Cordray.

The Seattle Times/BuzzFeed News investigation, published last month, detailed how Clayton Homes charges minority borrowers higher annual interest rates than white borrowers. The company systematically pursues minority homebuyers and baits them into costly subprime loans, the investigation found. It found that many of the loans fail, allowing Clayton to repossess and resell the homes.

The company's practices described in the story "are clear violations of federal fair lending and consumer protection statutes," Waters wrote in the letter. She noted that many of the issues were first raised in a previous story in the series in early 2015, as Clayton pressed Congress to roll back key consumer protections. Waters asked the two agencies to update her on any actions taken in response to the stories.

The company did not immediately answer a request for comment Tuesday evening. In response to last month's investigation, Clayton issued a news release accusing the reporters of "activism masquerading as journalism" and stated: "We categorically and adamantly deny discriminating against customers or team members based on race or ethnicity."

The Justice Department enforces federal fair-lending laws. The CFPB oversees nearly all consumer loans. The issues raised in the stories by The Seattle Times and BuzzFeed News "are squarely within the Agencies' authority," Waters said.

Clayton Homes is a wholly-owned subsidiary of Berkshire Hathaway, the investment conglomerate that Buffett founded and controls.

Clayton earned more than a half-billion dollars, before taxes, in the first nine months of last year. The company dominates nearly every part of the mobile-home industry. It builds homes, sells them, finances them and provides insurance and other add-on products.

In minority communities, Clayton's grip verges on monopolistic. Last year, according to federal data, the company made 72 percent of the loans to black people who borrowed to buy mobile homes.

Last month's investigation described "a disturbing business model" that leaves "already vulnerable consumers uniquely susceptible to default," wrote Waters.

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Question for the Record – U.S. Representative Ed Royce (R-Calif.)

Question for: Granger MacDonald, Chief Executive Officer, MacDonald Companies, on behalf of the National Association of Home Builders (NAHB)

Mr. MacDonald, as you know, Fannie Mae and Freddie Mac currently evaluate their ability to purchase a mortgage based exclusively on one credit scoring model, which has created a virtual monopoly in mortgage credit scoring.

Opening up the GSEs to alternative, statistically sound credit scoring models will foster innovation in credit scoring, decrease the potential for another bailout, and widen the pool of potential homebuyers.

Rep. Sewell and I recently introduced the Credit Score Competition Act, to open the door for the GSEs to use multiple credit scoring models. The FHFA has also taken steps towards accomplishing this goal.

Mr. MacDonald, is the GSEs' reliance on a single credit scoring model an impediment to access for credit for certain qualified homebuyers? Does opening the GSEs up to alternative, statistically sound credit scoring models create a more "robust recovery of the housing markets while still protecting the market from another crisis," as you referenced in your testimony?

NAHB Response

NAHB believes that the use of alternative credit score models could offer lending opportunities to borrowers currently lacking access to mortgage credit due to a low or inaccurate FICO credit score. Indeed, as credit scoring models have been developed and enhanced to consider non-traditional credit factors, there is growing evidence that significant numbers of creditworthy borrowers have been blocked from mortgage credit opportunities when lenders use outdated credit scoring models.

Estimates by the developers of credit score models VantageScore 3.0 and FICO Score 9 claim non-traditional credit histories can generate a meaningful credit score for millions of additional U.S. consumers. NAHB fully supports the mandate by FHFA in the 2015 Scorecard calling on Fannie Mae and Freddie Mac to increase access to mortgage credit by assessing the feasibility of using alternative credit score models in their automated loan-decision models. In particular, the Enterprises plan to study the costs and benefits associated with VantageScore 3.0 and FICO Score 9. The 2016 Scorecard directs the Enterprises to conclude their assessment this year and, as appropriate, plan for implementation.

It is our opinion that enabling the GSEs to use non-FICO credit scoring models, following the credit score validation process and other processes as outlined in H.R. 4211, the *Credit Score*

Competition Act of 2015, would help support a stronger, more robust recovery of the housing and mortgage markets while helping protect the market from another crisis. NAHB strongly supports H.R. 4211, and we look forward to working with you as the legislation moves forward in the 114th Congress.

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