

December 2021

## **UPDATE #2: 2021**

*To keep our friends current, here is a summary of the Equitable Housing Institute's (EHI's) activities since our last Update (in June 2021). The headlines are:*

- **U.S. House Subcommittee holds hearing on EHI's draft Economic Fair Housing Act (EFHA) and other proposals for reducing exclusionary housing practices**
- **EHI prepares report addressing needed guidance for application of EFHA**
- **Record increases in housing prices underscore need to control exclusionary housing practices**



### **U.S. House Subcommittee holds hearing on EHI's draft Economic Fair Housing Act (EFHA) and other proposals for reducing exclusionary housing practices**

On October 15, a Congressional subcommittee heard Richard Kahlenberg, Senior Fellow at The Century Foundation, testify in support of the proposed Economic Fair Housing Act (EFHA). Its provisions were proposed initially by EHI,<sup>1</sup> and EHI assisted Mr. Kahlenberg with his hearing preparation.

Mr. Kahlenberg, who has spearheaded the public advocacy for the EFHA, testified before the House Financial Services Subcommittee on Housing, Community Development and Insurance. He pointed out that exclusionary housing practices have a severe and ever-increasing impact on housing opportunities for low- and moderate-income Americans. He also noted that those practices have disproportionate effects on members of minority groups.

Mr. Kahlenberg also pointed out that the EFHA differs from the numerous other proposals that he testified about (including the Biden Administration's proposals) because the EFHA would

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<sup>1</sup> EHI, *Economic Fair Housing Act of 2021: Partial Draft Bill and Comments*, posted at: [https://www.equitablehousing.org/images/PDFs/PDFs--2018-/EHI\\_Economic\\_FHA\\_of\\_2021\\_draft-rev\\_11-30-20.pdf](https://www.equitablehousing.org/images/PDFs/PDFs--2018-/EHI_Economic_FHA_of_2021_draft-rev_11-30-20.pdf).

contain strong enforcement provisions (the same ones already in the Fair Housing Act)—and would expand them to cover exclusionary housing practices against all low- and moderate-income Americans.<sup>2</sup>

Since the enactment of the federal Fair Housing Act in 1968, there has been steady (albeit modest) progress, overall, in reducing the forms of housing discrimination it prohibits, with respect to members of minority groups it protects. However, that statute has not stemmed the tide of economic discrimination caused by exclusionary housing practices, which increasingly impact *low- and moderate-income* members of minority groups and of the general population. Since 1968, there has been a dramatic rise in the proportion of low-income members of minority groups, as well as other low-income Americans, who are forced economically to live in low-income neighborhoods.

For example, an important series of studies found that between 1970 and 2012, the proportion of families in America’s large metropolitan areas who lived in predominantly “rich” or “poor” neighborhoods more than doubled, from 15 percent to 34 percent.<sup>3</sup> Those studies also found a significant, and fairly steady, increase in residential isolation by income in smaller metropolitan areas during that period.<sup>4</sup>

The consequences of that residential isolation are visible. More and more low-income people are unable to attend high-performing schools. They live in areas with few good-paying jobs, and they contend with limited local services. Those problems are not being brought under control by existing laws or programs at any level of government, and they are undermining fair housing opportunity for minority group members and low- and moderate-income Americans generally.

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<sup>2</sup> The seven other proposals for federal action that he testified about had been discussed at the December 2020 Roundtable of housing experts hosted by his organization, The Century Foundation. Those are various proposals to create new financial incentives for states and localities to reduce those practices, or tie existing, housing-related federal grants to anti-exclusionary actions by states and/or localities, and/or improve enforcement of Fair Housing Act requirements as to disparate impacts on minority group members.

<sup>3</sup> K. Bischoff & S. Reardon, *The Continuing Increase in Income Segregation, 2007–2012*, STANFORD CENTER FOR EDUCATION POLICY ANALYSIS 5 (2016). (The percentage who lived in predominantly “middle-income” neighborhoods declined about a 24 percent between 1970 and 2012 (from 85 percent to 66 percent of the residents of those metros). Those large metros are home to roughly 65 percent of the total U.S. population. K. Bischoff & S. Reardon, *Residential Segregation by Income, 1970-2009*, STANFORD CENTER FOR EDUCATION POLICY ANALYSIS 7 (2014).

<sup>4</sup> Bischoff & Reardon (2016), at 5–6, 17 (In those smaller metros, according to the study, the percentage of families who lived in predominantly “rich” or “poor” neighborhoods, as opposed to middle-income neighborhoods, rose from 9.6 percent in 1970 to 21.6 percent in 2012).

## EHI prepares report addressing needed guidance for application of EFHA

EHI has been preparing reports on key challenges and questions that the EFHA will have to address effectively. After finishing its report in June about ways to prevent displacement of current residents of low- and moderate-income urban neighborhoods,<sup>5</sup> EHI began work on a report on important guidance that should be included in the EFHA.

That guidance (“guardrails”) would clarify the difference between legitimate and illegitimate housing-related practices, such as exclusionary zoning, and avoid misapplication of the statute. The importance of such guidance was identified in The Century Foundation’s (TCF’s) April 2021 analysis of the draft EFHA.<sup>6</sup>

One important “guardrail” would clarify which governmental interests are important enough to warrant some exclusionary effects on housing opportunity. EHI’s draft statute proposes applying standards comparable to those used by the U.S. Supreme Court in deciding “disparate impact” cases under the Fair Housing Act and similar, civil rights statutes. *See, e.g. Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015).

Applying the *Inclusive Communities Project* standards to exclusionary housing practices, a housing-related governmental action that has an exclusionary effect on a low- and moderate-income person would violate the EFHA unless: (1) that practice is necessary to achieve a valid governmental purpose, and (2) the purpose could not be achieved by an alternative policy that has a less exclusionary effect.

Completion of the “guardrails” report has been deferred temporarily due to the importance of responding to other inquiries about the EFHA from Capitol Hill. However, we plan to circulate a full draft of the “guardrails” memo to our advisors for comment, next Spring.

## Record housing price increases underscore need to control exclusionary housing practices

Constraints on America’s housing supply “are nearly universal,” and the “supply of existing homes for sale has never been tighter,” according to Harvard University’s *State of the Nation’s*

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<sup>5</sup> *Approaches to resolving displacement concerns in gentrifying, urban neighborhoods*, Equitable Housing Institute (July 6, 2021), posted at: <https://www.equitablehousing.org/images/PDFs/PDFs--2021-/EHIResolving-city-displacement-concerns-7-6-21.pdf>.

<sup>6</sup> Richard D. Kahlenberg, *Tearing Down the Walls: How the Biden Administration and Congress Can Reduce Exclusionary Zoning* (The Century Foundation, April 18, 2021) (“*Tearing Down the Walls*”), posted at <https://tcf.org/content/report/tearing-down-walls-biden-administration-congress-can-reduce-exclusionary-zoning/>. That analysis also addressed other proposals for reducing exclusionary zoning.

*Housing 2021*. The average price of homes for sale rose a staggering 19% in the year ending in September 2021.<sup>7</sup>

“Effective asking rents” for new housing tenants climbed an average of 13.1% in the year ending in October 2021 (*per* RealPage, an online rental real estate platform). The “annual jump in rents for calendar 2021 will be the biggest on record by a sizable margin,” according to RealPage.<sup>8</sup>

Overall inflation in the economy is a problem now, too. The national consumer price index rose 6.2 percent in October, compared with a year earlier (the largest annual increase in about 30 years).<sup>9</sup> However, that increase pales in comparison to the rise in home prices and rents during that period.

The effects of the COVID-19 pandemic have amplified recent housing problems.<sup>10</sup> However, the trend toward more and more burdensome housing prices is decades old. For example, between the 1960’s and 2016, the proportion of American rental households that paid more than 30 percent of their household income for housing (the standard definition of “housing cost burdened”) roughly doubled, from 23.8 percent to 47.5 percent.<sup>11</sup>

American homeowners also experienced housing price increases far greater than typical income increases, between 1960 and 2016. The median home value increased 112 percent during that period, while median income for owners rose only 50 percent.<sup>12</sup>

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<sup>7</sup> S&P Case-Shiller National Home Price Index, posted at: <https://fred.stlouisfed.org/series/CSUSHPIA>.

<sup>8</sup> Greg Willett, *U.S. Apartment Monthly Rent Growth Slows in October*, RealPage (Nov. 4, 2021) (effective asking rents for move-in leases in October 2021 “topped year-ago prices by 13.1%. Annual rent growth over the past decade or so averaged between 3% and 4%, with the 2010s-era peak performance coming when prices jumped a little more than 5% during 2015.”); posted at: <https://www.realtor.com/analytics/u-s-apartment-monthly-rent-growth-slows-in-october/>.

<sup>9</sup> Rachel Siegel, *et al.*, *Prices climbed 6.2 percent in October compared with last year, largest rise in 3 decades, as inflation strains economy*, Washington Post, Nov. 10, 2021, posted at: <https://www.washingtonpost.com/business/2021/11/10/cpi-inflation-october/>.

<sup>10</sup> Emily Badger and Quoc Trung Bui, *Where Have All the Houses Gone?*, New York Times, Feb. 26, 2021 (updated Oct. 22, 2021); posted at: [https://www.nytimes.com/2021/02/26/upshot/where-have-all-the-houses-gone.html?mc\\_cid=3cd9c36c40&mc\\_eid=5fa42b2a45](https://www.nytimes.com/2021/02/26/upshot/where-have-all-the-houses-gone.html?mc_cid=3cd9c36c40&mc_eid=5fa42b2a45).

<sup>11</sup> Joint Center for Housing Studies, Harvard Univ., *The State of the Nation’s Housing 2018 (“SONH 2018”)*, p. 5.

<sup>12</sup> *SONH 2018*, p. 5. The divergence of housing costs and household incomes was fairly steady during that period, for both renters and homeowners, with the most dramatic changes occurring in the 2000s. Further: “Cost-burdened shares continue much higher among black (45 percent) and Hispanic households (43 percent) than among Asian and other minority households (36 percent) or white households (27 percent).” *SONH 2018*, p. 31. Even among households within the same income groups, larger shares of minorities than whites are cost burdened. *Id.*

The “biggest reason behind the constraints on supply is the underproduction of new homes since the mid-2000s,” according to the *State of the Nation’s Housing 2021*. “[O]nly a consistent increase in housing construction over a period of years will provide meaningful growth in inventory in many of today’s tight markets.”<sup>13</sup>

The long-term underproduction of new homes has been driven primarily by the costs of, and constraints on, developing land. Those impediments consist of unduly restrictive land use regulations, including exclusionary zoning, and a variety of other local practices that have exclusionary results, such as unnecessarily complex, time-consuming approval processes that push up development costs.<sup>14</sup> According to Freddie Mac researchers:

- Housing starts as a share of the population decreased by roughly 39 percent in the 15-year period from January 2006 to June 2021.
- The number of new homes being constructed below 1,400 square feet—typically considered “entry-level” homes for first-time homebuyers—is more than 80 percent lower than the amount built in the 1970s.
- The current shortage of homes is close to 3.8 million, up dramatically from the severe shortage in 2018, which was estimated to be 2.5 million.<sup>15</sup>

Regarding how policymakers should respond to the housing shortage, leading real estate analyst Mark Zandi concludes:

Since the costs and constraints of developing land pose the biggest challenge, addressing them would have the biggest impact. The sheer number of local impediments here suggests that federal policymakers would do well to take a top-down approach.<sup>16</sup>

As to specific measures that federal officials should take, Zandi recommends:

From zoning that restricts multifamily development or dense single-family development, to prohibitive permitting and developing fees, there are so many decisions made at the local level that can impede the development of affordable

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<sup>13</sup> Harvard U. Joint Center for Housing Studies, *State of the Nation’s Housing 2021*, 9-10 (2021).

<sup>14</sup> See, e.g., Jim Parrott & Mark Zandi, *Overcoming the Nation’s Daunting Housing Supply Shortage*, p. 4 (Urban Inst. 2021), posted at: <https://www.urban.org/research/publication/overcoming-nations-daunting-housing-supply-shortage>. See also, e.g., *State of the Nation’s Housing 2021*, p. 35 (“perhaps the chief obstacles to housing production are restrictive land use regulations and complex, time-consuming approval processes that push up costs”), *id.*, p. 35.

<sup>15</sup> Freddie Mac, *Housing Supply: A Growing Deficit*, pp. 1-4 (May 2021).

<sup>16</sup> Parrott & Zandi, p. 4.

housing that *federal policymakers should push communities to reorganize their approach to development from the ground up.*<sup>17</sup>

The need for federal regulation of exclusionary housing practices drives EHI's proposal for an Economic Fair Housing Act.

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 **Have a wonderful Holiday Season!** 

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<sup>17</sup> *Id.* (emphasis added)