AMERICAN ECONOMIC LIBERTIES PROJECT

Executive Summary

Capital Crunch: How the Fall of Local Finance and the Rise of Shareholder Primacy Warped Single-Family Homebuilding in America—And What to Do About It

Author: Laurel Kilgour

Lead Researcher: Ashley Nowicki

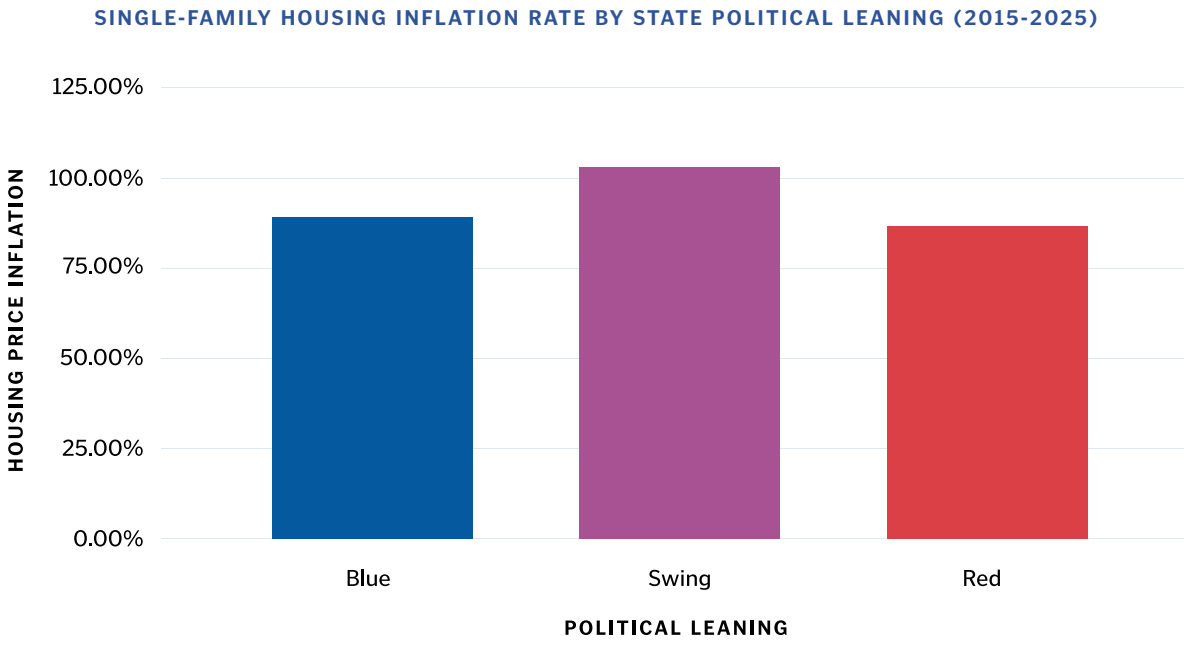
November 2025

EXECUTIVE SUMMARY

Owning a home is the essence of the American dream. But it's an increasingly unaffordable one for many Americans, even as desire for homeownership remains steadfast.[1] This has cascading social and economic effects: when people cannot afford homes, they delay marriage and have fewer children,[2] suffer from more loneliness[3] and financial instability throughout their lives,[4] and are less involved in their communities.[5]

A major contributor to rising home prices: not enough homes are being built.[6] Since the Great Financial Crisis (GFC) single-family housing supply has not kept up with demand, lagging 1990s construction rates by 20 percent.[7] This is occurring even as home prices continue to increase, signaling a shortage.[8] Construction of starter homes is also down.[9]

This is happening around the country. While lower absolute sticker prices for single-family homes make "red" states appear less expensive than those in certain "blue" states, this is a mirage that does not account for lower salaries. After adjusting home prices for median incomes, red states have also become more unaffordable for residents over the last decade.[10]



Single-family home price growth rate by political leaning, 2015-2025[11]

Capital Crunch explores an underexamined factor that has contributed to America's housing crisis: financing and capital markets. Due to a series of federal policy choices that began in the late 1970s and accelerated in the wake of the Great Financial Crisis, smaller homebuilders—generally speaking, any privately-held builder that makes under 500 closings per year[12]—have had increasing difficulty accessing capital as the number of local financing sources has dwindled. Unlike for multifamily construction,[13] there has not been substantial public funding to offset the financing gap for single family-home construction. As a result, the number of homebuilders has fallen since the Great Financial Crisis, and remains well below early 2000s levels.[14] At the same time, publicly-traded

homebuilders—who now lead every major regional market[15]—have apparently responded to Wall Street earnings expectations by hoarding land and establishing price floors for their homes, instead of building enough to meet demand.[16] Although various other factors, such as construction costs and high interest rates,[17] have also constrained homebuilding, this financing gap between smaller homebuilders and publicly traded national giants is a significant part of why, by some estimates, America is short nearly 4 million homes.[18]

Capital Crunch concludes with policy recommendations at the federal, state, and local levels to reinvigorate the housing construction industry, helping smaller homebuilders access capital, preventing large homebuilders and investors from hoarding land and homes, removing red tape that restricts construction of starter and manufactured homes, and strengthening fair competition.

How America's Homebuilding Policies Shifted from Decentralized Abundance to Financialized Scarcity

1. **New Deal Policies Boosted Single-Family Home Construction**

   New Deal policies encouraged and supported single-family home construction and ultimately home ownership. One key method: maintaining a robust network of community banks and savings and loan (S&L or thrift) associations,[19] whose ownership was widely dispersed among community members and which were legally required to focus on channeling local deposits into financing for local homebuilders.[20] Under this decentralized finance system, there was broad credit availability, which supported nearly 100,000 homebuilders by the early 1970s.[21] It supported a competitive and healthy market, providing an abundant supply of affordable homes.

2. **Inflation Led Policymakers to Dismantle Crucial New Deal Housing Finance Supports**

   Following inflation in the 1970s, policymakers began dismantling this decentralized financing framework.[22] Between 1977 and 1982, the number of homebuilders crashed by nearly 30 percent over a five-year period,[23] likely to due to a combination of inflation and the policy responses to it. Chair of the Federal Reserve Paul Volcker increased the federal funds rate rapidly to a peak of 20% in 1981,[24] without taking measures to target more speculative areas of the economy. In other words, the Federal Reserve could have made the cost of borrowing more expensive for speculative finance without hiking the price of borrowing as much for small businesses like homebuilders.[25] Thrifts had become structurally insolvent because

they held many long-term loans at old, low-interest rates while having to borrow for short-terms at new, high-interest rates.[26] Shortly before and after the Fed's rate hikes, Congress—with the support of both Presidents Carter and Reagan—enacted laws in 1980 and 1982 that deregulated the thrifts, ostensibly to help them.[27] But these reforms effectively removed the original purpose of encouraging home ownership and instead incentivized gambling-level risk and outright fraud, even as the Reagan administration slashed funding for oversight.[28] As a result, insolvencies cut the number of thrifts in half within a decade.[29] More broadly: between the 1940s and 1960s, about the number of thrifts held steady at around 6,000.[30] Today, there are less than 600.[31] With each lost thrift, there were fewer financing options for local homebuilders.[32]

3. With Less Local Lending, Large Homebuilders Turned to Capital Markets for Financing

Congress then overcorrected with legislation that abruptly reduced thrifts' lending capacity by 85 percent and reduced their exposure to real estate.[33] Regulators also sold failed thrifts to larger banks.[34] At the same time, federal antitrust enforcers and bank regulators allowed the number of commercial banks to shrink by about one-third due to mergers and acquisitions.[35] Empirical research has shown that as banks grew, they became less likely to lend to small businesses.[36]

With fewer local lenders, "[t]he severe credit crunch forced [large] homebuilders to turn to Wall Street for capital" by going public and selling corporate bonds.[37] Between 1991 and 1993, 15 homebuilders went public.[38] And already-public Lennar raised capital from Wall Street five times in the 1990s and 16 times just between 2000 and 2006.[39] In order to meet revenue and share price targets, large homebuilders spent the capital they raised on mergers and acquisitions to buy their way into appreciating markets.[40] To the surprise of industry-funded academic researchers, publicly traded homebuilders did not achieve significant operational efficiencies of scale,[41] and instead spent profits on geographic expansion and stock buybacks.[42]

4. The Great Financial Crisis: Policymakers Abandoned Small Banks and Builders, While Rewarding Big Banks and Builders

As public homebuilders expanded, they developed integrated mortgage units. The top five homebuilders collectively earned nearly a billion dollars from financial services by 2003.[43] In the early 2000s, after demand stimulated by low interest rates leveled off, some public homebuilders pressured their internal mortgage units to lower lending standards to boost the number of eligible homebuyers,[44] a contributor to the housing bubble that led to the Great Financial Crisis.[45]

Even though prices recovered to pre-crash levels by 2013 and kept climbing—which should have attracted new entrants—housing starts still have not returned to typical levels or kept pace with population.[46] Similarly, only a single-digit percentage of new homes are starter homes—half the rate of the early 2000s and far less than the 40 percent share in the 1980s.[47]

> *"I take real offense that my government is handing these big boys money to put me out of business."* [48]*—Kansas City–area homebuilder, 2009*

After the GFC, policymakers prioritized stabilizing big banks[49] and big businesses—including the largest homebuilders—over local and small homebuilders.[50] The Worker, Homeownership, and Business Assistance Act of 2009 created a tax credit that led corporations to claw back past tax payments from profitable years.[51] Large homebuilders disproportionately benefited from the legislation, despite some having "very strong balance sheets."[52] Specifically, they "dump[ed] land and houses for artificially low prices to generate a loss for tax purposes" because (unlike smaller homebuilders) their debt was not secured by land,[53] and then bought land in regions that were recovering more quickly,[54] which small builders did not have the flexibility or financing to do. In total, the 13 largest builders received over $2 billion in tax refunds in a single year due to this policy choice.[55] For example, PulteGroup received over $450 million in refunds despite having $1.5 billion in cash and equivalents on its balance sheet.[56]

Small and local homebuilders, on the other hand, were "completely cut off" from credit by lenders, forcing many to file for bankruptcy.[57] Around one-third of construction firms[58] and hundreds of small banks[59] went out of business due to the GFC. The overall number of homebuilders still has not recovered to early 2000s levels.[60]

5. Policy Choices Turned Single-Family Homes into Financial Assets for Wall Street

Even as policymakers allowed millions of Americans to lose their homes,[61] Fed Chair Alan Greenspan touted programs to help creditors sell single-family homes to institutional investors for use as rentals,[62] and the FHFA sold foreclosed homes in bulk to institutional investors[63] instead of adjusting mortgages – like during the New Deal – to help families avoid foreclosure.[64]

"Each distressed single-family liquidation creates [not only] a potential renter household" but also "a potential single-family rental unit." For "the first time in history," there is "an opportunity for institutions to own single-family rental properties as part of a larger asset allocation strategy."[65] *– Morgan Stanley, 2011*

This transformed single-family homes into a financial asset class for institutional buyers.[66] There are now nearly a dozen regional markets where investors have captured double-digit market share in single-family home rentals.[67]

6. Wall Street Demands for Industry Discipline Made a Bad Situation Worse

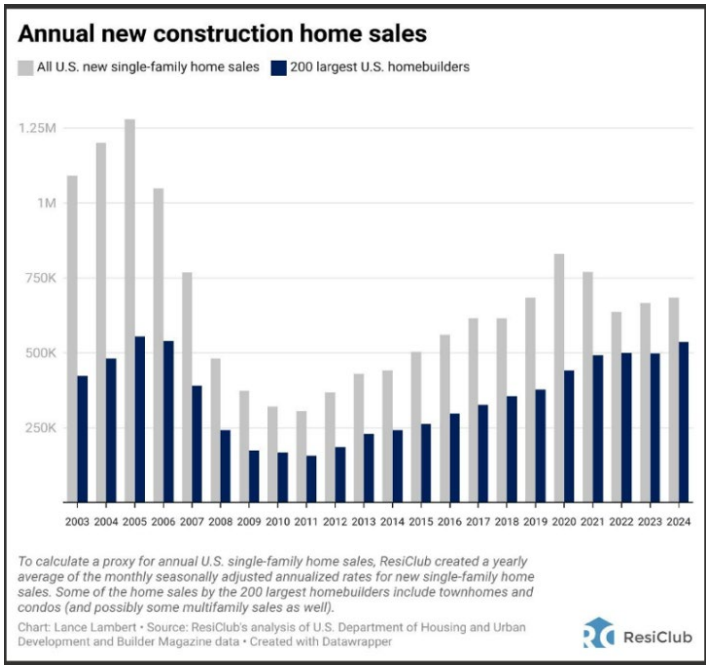
Public homebuilders have enjoyed an average gross margin of nearly 22 percent over the past decade.[68] Over that time, they adopted new strategies to meet earnings expectations, apparently focusing on maximizing price over volume, enabling them to boost profits. Wall Street analysts long criticized homebuilders for continuing to build before demand returned.[69] Today, they cheer "disciplined production across the homebuilding sector" in their stock recommendations.[70] Communications from public homebuilders to investors illustrate this shift. For example:

» **2015:** D.R. Horton declared that it "actively control[s] the number of unsold, completed homes in inventory."[71]

» **2016:** Meritage Homes stated (about Phoenix) that the "volume is just not there and we're not going to force the market by discounting our prices and taking a lower margin."[72]

» **2025:** PulteGroup said it "balanc[es] price and pace with a bias towards price," "result[ing] in gross margin being an important driver of our returns" and "prioritizing price and margin over volume" as it plans to build 1,000 fewer homes than it has capacity to for.[73] (Notably, Bill Pulte, a grandson of the PulteGroup founder, served as a Board member from 2016-2020, and is currently Director of the FHFA)

Wall Street expectations can effectively shape business models across all publicly traded homebuilders, encouraging herd behavior that may impact even less-concentrated markets. Moreover, online services with extensive market analytics may make coordination easier and faster at much lower levels of concentration.[74]



The number of new homes built per year has fallen as the largest 200 homebuilders have gained more influence over the market.[75]

A key part of this strategy appears to be wielding capital advantages to control land, through a privatized version of a practice called "land banking."[76] Since the GFC, they have mostly optioned land instead of buying it.[77] As a result, public homebuilders have gained extensive control over land—about a million more lots now than in 2020.[78] Meanwhile, private homebuilders have more difficulty financing land deals, as banks prefer to focus on large-scale deals with public homebuilders instead.[79]

"Big Homebuilders [sit] on 2 Million empty lots, A RECORD."[80]
– President Trump, Oct. 2025

Public homebuilders appear to strategically hold land off the market for years, releasing lots only when doing so would maximize stock prices rather than meet housing demand.[81] The cost of land has increased at two and a half times the rate of labor and materials cost for the past decade.[82] Most homebuilders cite land cost and availability among their biggest problems, suggesting that public homebuilders' land banking has made it more difficult for others to build,[83] forcing smaller homebuilders to pay premiums or wait longer for land access.[84]

7. High Interest Rates Enable Predatory Mortgage Prices That Threatens Smaller Builders

Another major challenge for smaller homebuilders is that some public homebuilders offer mortgages through in-house units at several percent below market rates.[85] They "sell their houses at higher prices with higher gross margins, while issuing bigger

mortgages with bigger origination fees and bigger resale values on the securitization market."[86] To compete, smaller homebuilders would need to set the sticker prices of new homes as much as 20 to 30 percent below prices set by larger homebuilders offering below-market mortgages.[87] Ultimately, this can function like predatory pricing, driving smaller homebuilders out of the market. Large homebuilders also pressure suppliers to grant preferential terms,[88] which can worsen the ability of smaller homebuilders to stay competitive, given cost inflation along the supply chain.

8. Other Market Segments May Also Have Some Impact on Supply

Historically, new and existing homes were distinct market segments,[89] but since the pandemic, they have converged[90]—likely because many people who would otherwise move are reluctant to swap low mortgage rates for the higher rates to finance the purchase of the next property.[91]

Manufactured homes also historically spread mass homeownership after World War II.[92] Various anticompetitive laws and regulations added unnecessary expenses,[93] as well as put manufactured homes in parks where owners do not own the underlying land, making them vulnerable to price hikes by institutional investors.[94] This limits manufactured homes' ability to fill market gaps.

A new factor constraining the supply of single-family homes is the development of "build-for-rent" (BFR) homes intended for investors.[95] The share of BFR among single-family homes nearly doubled during the pandemic, from 5 percent in 2021 to 9 percent in 2024.[96] Top homebuilders also have build-for-rent business lines,[97] including Lenmar, the nation's second-largest national homebuilder, which formed a partnership with Invitation Homes, the "nation's largest single-family home leasing and management company."[98] And in 2025, a private equity firm launched the first dedicated securitization of single-family BFR homes.[99]

Policy Recommendations

Support and Expand Lending to Local Homebuilders

Congress should

» Develop lending facilities for small homebuilders[100] and ensure that any future economic rescue packages include small homebuilders and do not place them at a disadvantage relative to public homebuilders.[101]

» Target any expansion of tax credits in a manner that offsets the market power of larger homebuilders, mitigates risk for smaller homebuilders, and creates pathways to market entry for new homebuilders.[102]

» Reform the failing bank exception that allows the largest banks to make acquisitions they would otherwise be barred from consummating; they should be able to buy failing banks only if there are no other bidders.[103]

» Appropriate funds that federal agencies can administer for single-family home construction.[104]

» Codify Federal Housing Finance Agency policy that requires Fannie Mae and Freddie Mac to charge uniform guarantee fees to all lenders,[105] ensuring that small lenders can offer mortgage pricing that is competitive with larger lenders.[106] Codification is especially important in the event that Fannie Mae and Freddie Mac are removed from conservatorship of FHFA, because then they would be able to discontinue the guarantee fee parity policy, and charge smaller lenders higher fees than large lenders.[107]

Federal Agencies

» The Federal Reserve Bank should pursue its statutory mandate to regulate credit[108] by allocating it in a manner that restricts excessive financial speculation without harming single-family homebuilders and manufactured housing companies.[109]

» The Department of Housing and Urban Development (HUD) should conduct a review of the Federal Housing Administration construction financing program to identify and remove barriers for manufactured home construction methods.[110]

» The Federal Housing Finance Agency (FHFA) should review existing housing programs to promote the inclusion of smaller homebuilders.[111]

» Fannie Mae should expand support for single-family home construction, especially by smaller homebuilders.[112]

» The Federal Reserve, Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) should revitalize their merger oversight to preserve decentralized financing.[113]

» The Department of Justice's Antitrust Division (DOJ ATR) should exercise its independent authority to block further bank mergers to address the consolidation of financing as well.[114]

State and Local governments should

» Issue bonds[115] to establish revolving loan funds or other lending facilities for smaller homebuilders, administered through local or regional banks and credit unions.[116] Revolving loans are funds that pay out loans and are later replenished, allowing for more loans to go to other borrowers.[117]

Adopt a Land-Value Tax to Discourage Land Hoarding

» To address land hoarding, state and local policymakers should implement a land-value tax, which bases property taxes on the underlying land values rather than the value of improvements added to the land.[118] Taxing land instead of property removes disincentives to make improvements (such as building housing).

» Alternatively, policymakers could implement a land-hoarding tax by specifically taxing underdeveloped land above a certain threshold to disincentivize excessive land banking, which holds land off the market.[119]

Ban Corporate Ownership of Single-Family Homes and Mandate Divestiture

» Congress and state legislatures should prohibit corporate and institutional investors from owning single-family homes and require them to divest their existing portfolios over time.[120]

» Congress should end tax breaks that facilitate ownership of large numbers of single-family homes and manufactured-home parks,[121] and codify Fannie Mae and Freddie Mac policies not to lend to institutional investors buying single-family rental homes or manufactured home parks.[122]

» The Securities and Exchange Commission (SEC) should stop postponing its implementation of the amendments to Form PF that would require private fund advisors to make high-level disclosures about real estate funds, and should consider further amendments to collect additional relevant information.[123]

» The Federal Trade Commission (FTC), having already collected public comments on "large-scale single-family rental owner operators," should proceed with a 6(b) study on the industry.[124]

Enable More Scrutiny of Homebuilding M&A to Stop Concentration Trends

» Federal and state antitrust enforcers should use their existing authorities to scrutinize transactions that would exacerbate trends toward concentration.[125]

» Congress should pass the Housing Acquisitions Review and Transparency (HART) Act (S.4620), which would require corporations and private equity firms that purchase large volumes of housing to report such transactions to federal antitrust enforcers.[126]

» Congress should close loopholes in the Hart-Scott-Rodino (HSR) Act and its implementing regulations that exempt purchases of "raw land"[127] and certain acquisitions of realty from reporting.[128]

» Congress should lower HSR reporting thresholds and require reporting of serial acquisitions from participating parties.[129]

» States that have not already done so should adopt "mini-HSR" legislation to ensure that they are informed about large deals that may impact residents.[130]

Reform Excessive Regulatory Barriers to Entry

» State and local governments should reexamine zoning and permitting requirements and consider amending them to prevent dominant homebuilders from using regulatory complexity as a barrier to entry, while preserving legitimate regulatory protections that serve the public.[131] Emerging research and successful reforms on the ground confirm, however, that regulatory reforms alone are insufficient, and should be paired with other measures, as discussed above.

» This includes reforming both state and private regulations (including codes, covenants, and restrictions (CCRs) for homeowners' associations (HOAs)) that specify minimum lot and house sizes.[132] Banning or limiting minimum requirements could help fuel construction of starter homes and housing supply.

» State and local governments should revise or eliminate zoning requirements that have limited where manufactured homes can be located.

» Congress should repeal requirements for manufactured homes to have a "permanent chassis" that turns them into mobile homes, and direct HUD to develop standardized codes to streamline manufactured home construction.[133]

Investigate Supplier Price Discrimination Favoring Large Homebuilders

» Federal and state law enforcers should investigate possible price discrimination claims under the Robinson-Patman Act, Section 5 of the FTC Act, Section 6(b) of the FTC Act, and other applicable laws to prevent large homebuilders from securing preferential terms unavailable to smaller competitors. This includes pricing on key inputs, such as lumber.

The history of homebuilding in the United States demonstrates how not just demand but also government policy and financial interests have shaped the housing industry, determining whether an adequate supply of homes will be available to buyers at reasonable prices. Regulatory mistakes made in the wake of the Great Financial Crisis are a significant contributor to America's current housing crisis. The result is millions of Americans who are either locked out of the home-buying market due to a lack of supply and resulting inflated prices, or rent-challenged, paying landlords significantly more than they can comfortably afford to keep a roof over their head. Policymakers need to address the challenges outlined in this paper to effectively confront and end the current shortages and price surges and restore a healthy balance to both the housing market and American life.

Endnotes

1 Mike Winters, "The average age of U.S. homebuyers jumps to 56 – homes are 'wildly unaffordable' for young people, real estate expert says," CNBC, November 4, 2024, https://www.cnbc.com/2024/11/04/homebuyer-average-age-rises-to-56-amid-rising-homeownership-costs.html; Matt Egan, "More than half of American renters who want to buy a home fear they'll never afford one," CNN (July 29, 2024), https://www.cnn.com/2024/07/29/business/millions-of-renters-fear-theyll-never-be-able-to-buy-a-home. Most voters across the political spectrum say that addressing the supply of affordable homes and high housing costs is an important priority and rank affordability of all types of housing as a top financial issue. *See, e.g.*, Francis Torres, "U.S. Opinions on Housing Affordability: A BPC/NHC/Morning Consult Poll," Bipartisan Policy (June 10, 2024), https://bipartisanpolicy.org/blog/opinions-on-housing-affordability-poll; Jennifer Ludden, "As millions struggle with home prices, housing becomes a top issue for voters," NPR (June 24, 2024), https://www.npr.org/2024/06/24/nx-s1-5015224/price-cost-election-housing-rent-voters-biden-trump.

2 *See, e.g.*, E.J. Antoni, "The Housing Crunch Is Causing Americans To Delay Marriage and Children," The Heritage Foundation (Feb. 14, 2024), https://www.heritage.org/housing/commentary/the-housing-crunch-causing-americans-delay-marriage-and-children; Thomas P. Boehm and Alan Schlottmann, "Wealth accumulation and homeownership: Evidence for low-income households," 10 Cityscape 2, 225-256 (2008), https://www.jstor.org/stable/20868659; https://www.nlc.org/article/2025/09/09/why-every-city-must-see-housing-as-a-workforce-issue/.

3 Shams Rahman and David R Steeb, "Unlocking the door to mental wellness: exploring the impact of homeownership of mental health issues," National Institutes of Health, December 18, 2024, https://pmc.ncbi.nlm.nih.gov/articles/PMC11656966/; Marlee Bower et. al., "Can Our Housing Environments Impact Loneliness? A Tale of Two Studies," October 17, 2025, https://bristoluniversitypressdigital.com/edcollchap-oa/book/9781529246735/ch006.xml.

4 Kim Manturuk, Sarah Riley, and Janneke Ratcliffe, "Perception vs. reality: The relationship between low-income homeownership, perceived financial stress, and financial hardship," https://www.sciencedirect.com/science/article/abs/pii/S0049089X11001803.

5 Brian J. McCabe, "Are Homeowners Better Citizens? Homeownership and Community Participation in the United States," January 7, 2013, Social Forces, Volume 91, Issue 3, https://academic.oup.com/sf/article-abstract/91/3/929 /2235796; William M. Rohe and Victoria Basolo, "Long-Term Effects of Homeownership on the Self-Perceptions and Social Interaction of Low-Income Persons," November 1997, Sage Journals, Volume 29, Issue 6, https://journals.sagepub.com/doi/abs/10.1177/0013916597296004.

6 Freddie Mac, "Housing Supply: A Growing Deficit," Research Note, May 7, 2021, https://www.freddiemac.com/research/insight/20210507-housing-supply.

7 *See, e.g.*, Luis Quintero, "Fewer Players, Fewer Homes: Concentration and the New Dynamics of Housing Supply," Johns Hopkins Carey Business School Research Paper No. 18-18, 1 (Aug. 15, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3303984.

8 *Id.*

9 *See* Andra Hopulele, "Starter Homes & Where to Find Them: The Once-Ubiquitous Entry-Level House Is Becoming the Stuff of Myths," Point2Homes (Oct. 17, 2022), https://www.point2homes.com/news/research/starter-homes-where-to-find-them-entry-level-house-myth.html.

10 *See, e.g.*, Na Zhao, "NAHB Priced-Out Estimates for 2022," NAHB, Table 2 (Feb. 2022), https://www.nahb.org/-/media/05E9E223D0514B56B56F798CAA9EBB34.ashx; Jing Fu, "House Price Appreciation by State and Metro Area: First Quarter 2025," National Association of Home Builders, Eye on Housing, (June 10, 2025), https://eyeonhousing.org/2025/06/house-price-appreciation-by-state-and-metro-area-first-quarter-2025/.

11 Calculations by Cody Taylor. Data source: Zillow's Home Value Index for Single-Family Homes, https://www.zillow.com/research/data/. This data set covers the average of prices by state from the 35th to 65th percentile. Color coding: Blue = State voted for Biden in 2020 and Harris in 2024, Red = State voted for Trump in both 2020/2024, and Swing = State voted for Biden 2020 but Trump in 2024.

12 The Harvard Home Builder Study used 500 closings per year as a minimum cutoff for studying larger homebuilders in 2004. Frederick Abernathy, (Abernathy) Kermit Baker, Kent Colton, and David Weil, "Bigger isn't necessarily better: Lessons from the Harvard home builder study," Lexington Books, 5 (2011) ("[N]early 750 institutions failed during the early 1990s recession, and many others ceased lending to builders or homebuyers."). at 108. Today, all builders on Builder magazine's Builder 100 list make over 500 closings per year. *See* Builder, "2025 the Top 100," (Q3 2025), https://www.builderonline.com/builder-100/builder-100-list/2025/. Other narrowing criteria could be used, such as regional footprints, but for purposes of this paper a key differentiator to demarcate size is whether builders have access to capital markets.

13 Multifamily construction has often been supported by public revolving loans, which are "funds that pay out loans and are later replenished, enabling more loans to other borrowers." *See, e.g.*, Max Harrison-Caldwell, "YIMBYs are on a winning streak – so where's the housing? Three ideas to fix the crisis," The San Francisco Standard (July 31, 2025), https://sfstandard.com/2025/07/31/yimbys-housing-ceqa-newsom/.

14 U.S. Census Bureau, Construction: Summary Statistics for the U.S., States, and Selected Geographies," https://data.census.gov/table/ECNBASIC2022.EC2223BASIC?t=New+Housing+%28Construction+and+Sales%29; NAICS

code 236115: New Single-Family Housing Construction (except For-Sale Builders); NAICS code 236117: New Housing For-Sale Builders (operative builders); *see also* Gopal Ahluwalia, Kermit Baker, Kent W. Colton, "Concentration in the Homebuilding Industry: Trends, Strategies, and Prospects," University of Harvard, Joint Center for Housing Studies, (April 2022), https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_homebuilding_industry_concentration_ahluwalia_2022.pdf.

15 Builder Online, "2025 Local Leaders," (2025), https://www.builderonline.com/land/local-leaders-list/2025/.

16 Brent W. Ambrose, "Housing After the Fall: Reassessing the Future of the American Dream, The Homebuilding Industry," Pennsylvania State University, Institute for Real Estate Studies, (Feb. 6, 2009), https://www.smeal.psu.edu/bires/documents/homebuilding ("between 2000 and 2005, the 23 large public home builders tracked by SNL RealEstate increased their land holdings by 328 percent"); *see also* Abernathy, supra note 12 at 5 ("Home builder consolidation was … motivated less by the desire for scale per se than to attract sufficient interest from Wall Street investors to secure the capital necessary to develop favorable land positions."); Will Frank et al., "Banking on the Future: Builders and Land Bankers Grow Together," John Burns Research & Consulting (April 24, 2024), https://jbrec.com/insights/builders-investors-team-for-land-banking-deals-that-benefit-both/; Cameron Murray, "Time Is Money: How Landbanking Constrains Housing Supply," 49 Journal of Housing Economics 101708 (2020), https://www.sciencedirect.com/science/article/abs/pii/S1051137720300449; Professor Michael E. Porter, "The U.S. Homebuilding Industry and The Competitive Position of Large Builders," Centex Investor Conference, (Nov. 18, 2023), https://www.hbs.edu/ris/Publication%20Files/US_Homebuilding_Industry_a866f140-77c6-4bd5-afe3-5f1d702fff98.pdf (noting trend toward "greater inventory discipline in the market"); *see also* Joe Weisenthal and Tracy Alloway, "I Want to Believe in Abundance," Bloomberg News (March 24, 2025), https://www.bloomberg.com/news/newsletters/2025-03-24/i-want-to-believe-in-abundance ("[A]ny impulse to abundantly build out less profitable lines of business undoubtedly strikes at the heart of how American capitalism works").

17 NAHB, "How Soaring Prices for Building Materials Impact Housing," July 26, 2024, https://www.nahb.org/blog/2024/07/how-soaring-prices-building-materials-impact-housing.

18 *See* Hannah Jones and Danielle Hale, "Housing Supply Gap Reaches Nearly 4 Million in 2024," Realtor.com (March 10, 2025), https://www.realtor.com/research/us-housing-supply-gap-2025/.

19 Community bank dispersion was a general feature of America's New Deal banking system. As the Supreme Court observed in 1963, "ours is essentially a decentralized system of community banks," and "control of commercial banking is diffused throughout a very large number of independent local banks—13,460 of them in 1960—rather than concentrated in a handful of nationwide banks, as, for example, in England and Germany." U.S. v. Phila. Nat'l Bank, 374 U.S. 321, 325 (1963). Most banks were backed by federal deposit insurance and subject to "frequent and intensive" exams via the Federal Reserve System. *Id.* at 229. Among other things, this system fostered stability; whereas a "typical year in the 1920's" featured hundreds of bank failures, there were only a single-digit number of annual bank failures in the late 1950s and early 1960s. *Id.* at n. 6.

20 Peter M. Carrozzo, "A New Deal for the American Mortgage: The Home Owners' Loan Corporation, the National Housing Act and the Birth of the National Mortgage Market," 1 U. Miami Bus. L. Rev. 17, 33 (2008), https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1066&context=umblr at 6.

21 *See, e.g.*, U.S. Dept. of Commerce, Bureau of the Census, "1972 Census of Construction Industries," Industry and Special Statistics (June 1976), https://archive.org/details/1972censusofcons01unit/mode/2up; John Herzog, "Structural Change in the Housebuilding Industry," 39 Land Economics 2, 133-41 (1963), https://doi.org/10.2307/3144749.

22 Fred E. Case, "Deregulation: Invitation to Disaster in the S&L Industry," 59 Fordham L. Rev. S95-96 (1991), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2923&context=flr.

23 U.S. Dep't of Commerce, Bureau of the Census, "1987 Census of Construction Industries," 1-6, Table 2 (March 1990), https://upload.wikimedia.org/wikipedia/commons/0/0a/1987_Census_of_Construction_Industries._Industry_Series._General_Contractors-Single-Family_Houses_(IA_1987censusofco871unse).pdf (number of single-family homebuilders declined from 100,993 in 1977 to 72,115 in 1982).

24 *See, e.g.*, Kenneth J. Robinson, "Savings and Loan Crisis: 1980-1989," Federal Reserve History (Nov. 22, 2013), https://www.federalreservehistory.org/essays/savings-and-loan-crisis; Jeanna Smialek, "America's Inflation Villain Gets a Makeover," New York Times (April 21, 2023), https://www.nytimes.com/2023/04/21/business/economy/arthur-burns-inflation-paul-volcker.html.

25 *See, e.g.*, Chris Hughes, Marketcrafters: The 100-year Struggle to Shape the American Economy, Simon and Schuster, 106 (2025) (discussing Fed governor Andrew Brimmer's proposal); Sherman J. Maisel, "Credit Allocation and the Federal Reserve," remarks at the Banking Research Center at Northwestern University (April 22, 1971), https://fraser.stlouisfed.org/files/docs/historical/federal%20reserve%20history/bog_members_statements/maisel_19710422.pdf; Brendan Greeley, "The contentious idea that still challenges the Fed," Financial Times (April 22, 2023), https://www.ft.com/content/9c2f28b6-b31e-47ca-87a2-aa91340c083d.

26 Lawrence J. White, "The S&L Debacle," 59 Fordham L. Rev. S57, S62 (1991), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2921&context=flr.

27 *Id.* at S64-65.

28 *See* Fred E. Case, "Deregulation: Invitation to Disaster in the S&L Industry," 59 Fordham L. Rev. S93, S96-97 (1991), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2923&context=flr; White at S66.

29 *See, e.g.*, Kitty Calavita et al., Big Money Crime: Fraud and Politics in the Savings and Loan Crisis, 10 (1997), https://www.ojp.gov/pdffiles1/Digitization/176104NCJRS.pdf at 33, 35, 77, 78; Fred E. Case, "Deregulation: Invitation to Disaster in the S&L Industry," 59 Fordham L. Rev. S100-101 (1991), https://ir.lawnet.fordham.edu/cgi/

viewcontent.cgi?article=2923&context=flr; George G. Kaufman, "The Incredible Shrinking S&L Industry," Federal Reserve Bank of Chicago, Chicago Fed Letter, No. 40, December 1990, https://www.chicagofed.org/publications/chicago-fed-letter/1990/december-40; Reuters, "Chronology-S&L Crisis of the 1980s," (Aug. 9, 2007), https://www.reuters.com/article/world/us/chronology-sl-crisis-of-the-1980s-idUSB381052/; Timothy Curry and Lynn Shibut, "The Cost of the Savings and Loan Crisis: Truth and Consequences," Yale School of Management, 2000, https://elischolar.library.yale.edu/cgi/viewcontent.cgi?article=12223&context=ypfs-documents (the number of S&Ls declined from 3,234 in 1986 to 1,645 in 1995).

30 *See* David Mason, "Savings and Loan Industry," Economic History Association, https://eh.net/encyclopedia/savings-and-loan-industry-u-s/.

31 *Id.*; Federal Deposit Insurance Corporation, Savings Institutions – Structure, https://banks.data.fdic.gov/explore/historical/?displayFields=STNAME%2CSAVINGS%2Cnewcount%2Cchartoth%2Ctochrt&selectedEndDate=2024&selectedReport= SIS&selectedStartDate=1934&selectedStates=0&sortField=YEAR&sortOrder=desc.

32 Cf. Phila. Nat'l Bank, 374 U.S. at 375 ("A bank failure is a community disaster; its impact first strikes the bank's depositors most heavily, and then spreads throughout the economic life of the community."); Frederick Abernathy, Kermit Baker, Kent Colton, and David Weil, "Bigger isn't necessarily better: Lessons from the Harvard home builder study," Lexington Books, 5 (2011) ("[N]early 750 institutions failed during the early 1990s recession, and many others ceased lending to builders or homebuyers.").

33 The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). U.S. House of Representatives, Subcommittee on General Oversight and Investigations, Committee on Banking, Finance, and Urban Affairs, "The Unintended Effects of FIRREA on the Home Building Industry and Other Related Industries," (Feb. 7, 1990), https://babel.hathitrust.org/cgi/pt?id=uc1.31210014948499&seq=5 (FIRREA Hearing) (pp. 1, 7). FIRREA also temporarily increased budgets for federal law enforcers while extending statutes of limitations to better address backlogs and the tens of thousands of criminal referrals the FBI had received. Kitty Calavita et al., Big Money Crime: Fraud and Politics in the Savings and Loan Crisis, 10 (1997), https://www.ojp.gov/pdffiles1/Digitization/176104NCJRS.pdf at 127-129, 141; Specifically, "[t]he limitation on a loan to one borrower by [an S&L] was lowered from 100 percent of the institution's capital to 15 percent." FIRREA Hearing at 1. The implementation was immediate. *Id.* at 186 ("Almost overnight, FIRREA cut the commercial real estate lending limits…"); *id.* at 208 ("An overnight change in the delivery of financing is akin to pulling the emergency cord on a speeding train – chaos reigns and people get hurt.").

34 *See* Case at S103; Kenneth J. Robinson, "Savings and Loan Crisis: 1980-1989," Federal Reserve History, (Nov. 22, 2013), https://www.federalreservehistory.org/essays/savings-and-loan-crisis ("In 1989 [Congress] passed the Financial Institutions Reform, Recovery and Enforcement Act of 1989 that instituted a number of reforms of the industry. The main S&L regulator (the Federal Home Loan Bank Board) was abolished, as was the bankrupt FSLIC. In their place, Congress created the Office of Thrift Supervision and placed thrifts' insurance under the FDIC. In addition, the Resolution Trust Corporation (RTC) was established and funded to resolve the remaining troubled S&Ls. The RTC closed 747 S&Ls with assets of over $407 billion. The thrift crisis came to its end when the RTC was eventually closed on December 31, 1995."); Kitty Calavita et al., Big Money Crime: Fraud and Politics in the Savings and Loan Crisis, 10 (1997), https://www.ojp.gov/pdffiles1/Digitization/176104NCJRS.pdf at 116 (noting that bidders who gave generous campaign contributions were given exclusive access to certain assets, while others were ignored); Stephen Labaton, "Fraud Uncovered in Property Sales in Savings Rescue," New York Times (June 21, 1990), https://www.nytimes.com/1990/06/21/business/fraud-uncovered-in-property-sales-in-savings-rescue.html; Tyson Freeman, "The 1990s: Real Estate Goes Public As A Hit on 'The Street'," National Real Estate Investor, (Sept. 30, 1999), https://archive.is/5f9YU; Barbara Alexander, John T. Dunlop Lecture, "The US Homebuilding Industry: A Half-Century of Building the American Dream," (Oct. 12, 2000), p. 31, https://www.jchs.harvard.edu/sites/default/files/dl-transcript/m00-1_alexander.pdf.

35 Federal Deposit Insurance Corporation, "BankFind Suite: Find Annual Historical Bank Data," https://banks.data.fdic.gov/explore?displayFields=STNAMEpercent2CTOTALpercent2CBRANCHESpercent2CNew_Char&selectedEndDate =2024&selectedReport=CBS&selectedStartDate=1934&selectedStates=0&sortField=YEAR&sortOrder=desc (total commercial banks changed from 12,347 in 1990 to 8,315 in 2000). This bank merger wave was facilitated in part by deregulation. *See* Kitty Calavita et al., Big Money Crime: Fraud and Politics in the Savings and Loan Crisis, 10 (1997), https://www.ojp.gov/pdffiles1/Digitization/176104NCJRS.pdf at 180 ("In 1994 Congress approved and President Clinton enthusiastically endorsed the lifting of barriers prohibiting banks from operating branches across state lines beginning in 1997 (formerly, banks were required to establish independent subsidiaries for their regional operations)"); Tara Rice and Christian A. Johnson, "Assessing a Decade of Interstate Bank Branching," FRB of Chicago Working Paper No. 2007-03 (March 2007), https://ssrn.com/abstract=981214; When community banks merge or are acquired by non-local financial institutions, it can create notable lending gaps for small businesses. *See, e.g.*, Jessica Weisman-Pitts, "The Changing Landscape: How Consolidation Affects Small Community Banks," Global Banking & Finance Review (March 11, 2025), https://www.globalbankingandfinance.com/the-changing-landscape-how-consolidation-affects-small-community-banks.

36 Achraf Mkhaiber and Richard A. Werner, "The relationship between bank size and the propensity to lead to small firms: New empirical evidence from a large sample," Journal of International Money and Finance, Volume 110, (February 2021), https://www.sciencedirect.com/science/article/pii/S0261560620302370 (studying the ratio of small business loans to all business loans based on "data on over 14,000 active and inactive U.S. banks of all sizes, from 1994 to 2013, [with] over 178,000 observations"); *id.* ("Small business loans are defined by the FDIC as the amount of currently outstanding commercial and industrial loans with original amounts less than $1,000,000 held at domestic bank offices"); *id.* ("From … robustness tests we know that the regression results from the main sample – that large banks are more prone to issuing large loans to large businesses and small banks more prone to service small firms – remains robust when controlling for different market and economic conditions by focusing

on banks in urban areas"), https://www.sciencedirect.com/topics/economics-econometrics-and-finance/macroeconomic-performance.

37 Abernathy, supra note 12 at 5.

38 Peter Wissoker, (Wissoker) "Putting the Supplier in Housing Supply: An Overview of the Growth and Concentration of Large Homebuilders in the United States (1990-2007)," 3 (2016), https://sci-hub.st/10.1080/10511482.2015.1115418 at 13.

39 *Id.*

40 *Id.* at 3 and 10; *see also* Paul L. Knox, Metroburbia, USA, Rutgers University Press, pp. 69-70 (2008).

41 Abernathy, supra note 12 at viii, 53, 56, 69.

42 Wissoker, supra note 38 at 13-14.

43 Justin Talbott Pauly, "Innovation and the big builders : barriers to integrating sustainable design and construction practices into the production homebuilding industry : the case of Pulte Homes," MIT dissertation (June 2005), https://dspace.mit.edu/handle/1721.1/33276.

44 *Id.* at 14-16.

45 *See, e.g.*, Robert Weissman and James Donahue, "Sold Out: How Wall Street and Washington Betrayed America," Essential Information and Consumer Education Foundation (March 2009), https://web.archive.org/web/20250305012235/http://www.wallstreetwatch.org/reports/sold_out.pdf; Christopher D. Cook, "Homebuilder Lennar uses federal taxpayer funds to balance its books," San Francisco Public Press (July 6, 2010), https://www.sfpublicpress.org/homebuilder-lennar-uses-federal-taxpayer-funds-to-balance-its-books/; Comment from Laborers International Union of North America to Federal Trade Commission, "Re: Mortgage Acts and Practices Rulemaking, Rule No. R911004" (July 30, 2009), https://www.ftc.gov/sites/default/files/documents/public_comments/16-cfr-parts-317-and-318-mortgage-acts-and-practices-rulemaking-542308-00037/542308-00037.pdf.

46 *See* Federal Reserve Bank of St. Louis, "New Privately-Owned Housing Unit Started: Total Units," January 1959 to July 2025, https://fred.stlouisfed.org/series/HOUST; *see also* U.S. Department of Housing and Urban Development Office and Policy, "U.S. Housing Market Conditions," (May 2008), https://www.huduser.gov/periodicals/ushmc/spring08/USHMC_Q108.pdf; As of 2022, housing starts not only remained 60percent lower than the 2006 peak but also lagged even the average rate from the 1990s by 20percent. Luis Quintero, "Fewer Players, Fewer Homes: Concentration and the New Dynamics of Housing Supply," Johns Hopkins Carey Business School Research Paper No. 18-18, 1 (Aug. 15, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3303984. In parallel, housing has become increasingly unaffordable across the country—even when interest rates were near historic lows throughout the 2010s. *See, e.g.*, Karan Bhasin et al., "Hitting Home: Housing Affordability in the U.S.," EconoFact, (March 14, 2024), https://econofact.org/hitting-home-housing-affordability-in-the-u-s. Affordability has since deteriorated further since the Federal Reserve nearly tripled interest rates starting in 2022. *See, e.g.*, Laura Rodini, "A timeline of the Fed's '22-'23 rate hikes & what caused them," The Street, (April 12, 2024), https://www.thestreet.com/fed/fed-rate-hikes-2022-2023-timeline-discussion; Consumer Financial Protection Bureau, "Data Spotlight: The Impact of Changing Mortgage Interest Rates," CFPB Office of Mortgage Markets, (Sept. 17, 2024), https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-the-impact-of-changing-mortgage-interest-rates/. Christopher D. Cook, "Homebuilder Lennar uses federal taxpayer funds to balance its books," San Francisco Public Press (July 6, 2010); Luke Goldstein and Freddy Brewster, "A New Housing Marketplace That's Keeping Homes Unaffordable," Jacobin, (Sept. 23, 2025), https://jacobin.com/2025/09/housing-lennar-investing-real-estate.

47 *See* Andra Hopulele, "Starter Homes & Where to Find Them: The Once-Ubiquitous Entry-Level House Is Becoming the Stuff of Myths," Point2Homes (Oct. 17, 2022), https://www.point2homes.com/news/research/starter-homes-where-to-find-them-entry-level-house-myth.html; Drew Desilver, "A look at the state of affordable housing in the U.S.," Pew Research Center (Oct. 25, 2024), https://www.pewresearch.org/short-reads/2024/10/25/a-look-at-the- state-of-affordable-housing-in-the-us/. ("The peak year this century for new homes of that size was 2004, when 186,000 were built (12.1% of all single-family homes built that year). In 2023, however, only 87,000 new single-family homes (8.7%) were under 1,400 square feet"); Carlos Waters, "Why it's so hard to find starter homes in the U.S.," CNBC (Jan. 14, 2025), https://www.cnbc.com/2025/01/14/few-starter-homes-in-us.html.

48 Michael Corkery, "Tax Break Divides Large, Small Builders," Wall Street Journal (Feb. 11, 2009), https://www.wsj.com/articles/SB123431491889670953; National Association of Home Builders, President Tom Woods, https://www.nahb.org/why-nahb/nahb-past-presidents/2010s/tom-woods.

49 *See, e.g.*, Dara-Abasi Ita, "Too Big To Fail Banks: Where Are They Now?," Investopedia (April 24, 2025), https://www.investopedia.com/insights/too-big-fail-banks-where-are-they-now/; Mark Gongloff, "Banks Repaid Fed Bailout With Other Fed Money: Government Report," Huffington Post (March 9, 2021), https://www.huffpost.com/entry/bank-tarp_n_1335006. Large banks then went from controlling 50percent of industry assets in 2005 to 64percent in 2019. *See* Letter from Farm Action and e2 Entrepreneurial Ecosystems to Assistant Attorney General for Antitrust Jonathan Kanter, (Feb. 15, 2022), https://farmaction.us/wp-content/uploads/2022/02/Comment-on-Bank-Merger-Guideli nes-from-Farm-Action-e2-Entrepreneurial-Ecosystems.pdf.

50 Lorraine Woellert, "FHFA Will Sell Foreclosed Homes to Investors for Rentals," Bloomberg News (Feb. 27, 2012), www.bloomberg.com/news/articles/2012-02-27/fhfa-to-begin-selling-foreclosed-homes-to-investors-for-rentals; Gretchen Morgenson, "Home Builders (You Heard That Right) Get a Gift," New York Times (Nov. 14, 2009), https://www.nytimes.com/2009/11/15/business/economy/15gret.html.

51 Specifically, the net operating loss carryback provision was extended from two to five years, such that "losses experienced in 2008 could be carried back and used to offset positive income earned during the period 2003-2007, and tax payments associated with this offset income would be refunded in 2008." John R. Graham and Hyunseob Kim, "The Effects of the Length of the Tax-Loss Carryback Period on Tax Receipts and Corporate Marginal Tax Rates," https://www.jstor.org/stable/41790515; *see also* The White House, "Fact Sheet: The Worker, Homeownership, and Business Assistance Act of 2009," Office of the Press Secretary, (Nov. 6, 2009), https://obamawhitehouse.archives.gov/realitycheck/the-press-office/fact-sheet-worker-homeownership-and-business-assistance-act-2009.

52 This was not the only way the Obama administration favored large homebuilders. A publicly traded homebuilder, Beazer Homes, that admitted to committing mortgage and securities fraud settled civil and criminal suits for $50 million dollars, but actually paid a little more than half that amount due to the FBI's flawed accounting of the firm's ability to pay the fine. Federal Bureau of Investigations, "Beazer Homes U.S.A., Inc. Reaches $50,000,000 Settlement of Mortgage and Accounting Fraud with United States," press release, (July 1, 2009), https://archives.fbi.gov/archives/charlotte/press-releases/2009/ce070109.htm; Nathan Atkinson, "Corporate Liability, Collateral Consequences, and Capital Structure," Columbia Business Law Review, (2023), https://www.nathanatkinson.com/wp-content/uploads/2023/08/Atkinson-2023-Corporate-Liability.pdf.

53 Christopher D. Cook, "Homebuilder Lennar uses federal taxpayer funds to balance its books," San Francisco Public Press (July 6, 2010), https://www.sfpublicpress.org/homebuilder-lennar-uses-federal-taxpayer-funds-to-balance-its-books/.

54 Michael Corkery, "Developer Sells Land Dirt Cheap To Reap Tax Benefits," Wall Street Journal (Oct. 3, 2008), https://archive.is/T55gg.

55 *Id.*

56 Gretchen Morgenson, "Home Builders (You Heard That Right) Get a Gift," New York Times (Nov. 14, 2009), https://archive.is/Wg1Ho.

57 *Id.*; *see also* Michael Corkery, "Developer Sells Land Dirt Cheap To Reap Tax Benefits," Wall Street Journal (Oct. 3, 2008), https://archive.is/T55gg; In 2008, for example, over 140 homebuilders filed for bankruptcy. "Some of nation's biggest home builders face bankruptcy," Journal of Business (May 21, 2009), https://www.spokanejournal.com/articles/10889-some-of-nation-s-biggest-home-builders-face-bankruptcy.

58 Over 160,000 construction firms went out of business between 2005 and 2014. Justin Lahart, "Fewer Home Builders Means Happier Homebuilders," Wall Street Journal (May 15, 2017), https://www.wsj.com/articles/fewer-home-builders-means-happier-home-builders-1494870894; *see also* Rose Quint, "US Government: Number of Builders Declined 50percent Between 2007 and 2012," Eye on Housing (Sept. 9, 2015), https://eyeonhousing.org/2015/09/us-government-number-of-builders-declined-50-between-2007-and-2012/.

59 U.S. Government Accountability Office, "Financial Institutions: Causes and Consequences of Recent Community Bank Failures," (June 13, 2013), https://www.gao.gov/products/gao-13-704t ("Between January 2008 and December 2011—a period of economic downturn in the United States—414 insured U.S. banks failed. Of these, 85 percent (353) were small institutions with less than $1 billion in assets."). Bank failures were most prevalent in the regions most exposed to the housing bubble. *Id.* ("Ten states concentrated in the western, midwestern, and southeastern United States—areas where the housing market had experienced strong growth in the prior decade—each experienced 10 or more commercial bank or thrift (bank) failures between 2008 and 2011."). Letter from Farm Action and e2 Entrepreneurial Ecosystems to Assistant Attorney General for Antitrust Jonathan Kanter, (Feb. 15, 2022), https://farmaction.us/wp-content/uploads/2022/02/Comment-on-Bank-Merger-Guidelines-from-Farm-Action-e2-Entrepreneurial-Ecosystems.pdf ("just between 2011 and 2019, the country lost nearly a third of its community banks" and "mergers between banks were responsible for 70-75 percent of the annual decline in the number of community banks between 1984 and 2019"). The overall number of banks shrank to just over 5,000 in 2006, and as of 2024, there were only 3,928. Federal Deposit Insurance Corporation, "BankFind Suite: Find Annual Historical Bank Data," https://banks.data.fdic.gov/explore?displayFields=STNAMEpercent2CTOTALpercent2C BRANCHESpercent2CNew_Char&selectedEndDate=2024&selected Report=CBS&selectedStartDate=1934&selectedStates=0&sortField=YEAR&sortOrder=desc (total commercial banks changed from 12,347 in 1990 to 8,315 in 2000; as of 2024, there are only 3,928).

60 *See* data from U.S. Census Bureau, Construction: Summary Statistics for the U.S., States, and Selected Geographies," https://data.census.gov/table/ECNBASIC2022.EC2223BASIC?t=New+Housing+%28Construction+and+Sales%29; NAICS code 236115: New Single-Family Housing Construction (except For-Sale Builders); NAICS code 236117: New Housing For-Sale Builders (operative builders); *see also* Gopal Ahluwalia, Kermit Baker, Kent W. Colton, "Concentration in the Homebuilding Industry: Trends, Strategies, and Prospects," University of Harvard, Joint Center for Housing Studies, (April 2022), https://www.jchs.harvard.edu/ sites/default/files/research/files/harvard_jchs_ homebuilding_industry_concentration_ahluwalia_2022.pdf.

61 *See, e.g.*, David Dayen, "A Needless Default," The American Prospect (Feb. 9, 2015), https://prospect.org/economy/needless- default/; Matt Stoller, "The Housing Crash and the End of American Citizenship," 39 Fordham Urban Law Journal 4, 1185 (Feb. 2016), https:// ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2428&context=ulj.

62 B.S. Bernanke, "Housing Markets In Transition," paper presented to the National Association of Homebuilders International Builders' Show, Orlando, Florida (Feb. 10, 2012), https://www.federalreserve.gov/newsevents/speech/bernanke20110210a.htm.

63 Lorraine Woellert, "FHFA Will Sell Foreclosed Homes to Investors for Rentals," Bloomberg News (Feb. 27, 2012), www.bloomberg.com/news/articles/2012-02-27/fhfa-to-begin-selling-foreclosed-homes-to-investors-for-rentals.

64 *See, e.g.*, Peter M. Carrozzo, "A New Deal for the American Mortgage: The Home Owners' Loan Corporation, the National Housing Act and the Birth of the National Mortgage Market," 1 U. Miami Bus. L. Rev. 17, 33 (2008), https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1066&context=umblr at 8, 16 (discussing New Deal mortgage relief); Brett Christophers, "The Role of the State in the Transfer of Value from Main Street to Wall Street: US Single-Family Housing after the Financial Crisis," 54 Antipode 1, 130-152 (July 26, 2021), https://onlinelibrary.wiley.com/doi/10.1111/anti.12760 (discussing inadequacy of loan modifications under the Obama administration).

65 Robert Freedman, "Morgan Stanley: U.S. Becoming 'Rentership' Society," Realtor Magazine (Nov. 9, 2011), https://web.archive.org/web/20111102120400/http://speakingofrealestate.blogs.realtor.org/2011/10/31/morgan-stanley-u-s-becoming-rentership-society/.

66 Before the Great Financial Crisis, "[a]round three-quarters of all rental homes were held by entities that owned fewer than ten units. Indeed, as late as 2011, when Blackstone started buying, no single landlord in the United States owned more than one thousand SFRs." Brett Christophers, "The Role of the State in the Transfer of Value from Main Street to Wall Street: US Single-Family Housing after the Financial Crisis," 54 Antipode 1, 130-152 (July 26, 2021), https://onlinelibrary.wiley.com/doi/10.1111/anti.12760; *see also* Lorraine Woellert, "FHFA Will Sell Foreclosed Homes to Investors for Rentals," Bloomberg News (Feb. 27, 2012), www.bloomberg.com/news/articles/2012-02-27/fhfa-to-begin-selling-foreclosed-homes-to-investors-for-rentals. Institutional investors also wielded capital advantages; Blackstone, via its investment in Invitation Homes, was able to obtain credit on terms far cheaper than any ordinary homebuyer's mortgage rate by securitizing its portfolio. Brett Christophers, "The Role of the State in the Transfer of Value from Main Street to Wall Street: US Single-Family Housing after the Financial Crisis," 54 Antipode 1, 130-152 (July 26, 2021), https://onlinelibrary.wiley.com/doi/10.1111/anti.12760. ("Finally, and no less importantly, the debt that Blackstone used to finance its investment in single-family homes was not only cheap in absolute and historic terms; it was also cheap in relative terms—which is to say, relative to the interest rates that other categories of homebuyer were required to pay when borrowing. This gave it and its peers another source of enormous competitive advantage.").

67 U.S. Government Accountability Office, "Rental Housing: Information on Institutional Investment in Single-Family Homes," (May 2024), https://www.gao.gov/assets/gao-24-106643.pdf.

68 *See* Don Walker, "Dear Consultant: What is land banking, and how is it impacting the housing industry?," John Burns Research and Consulting (March 26, 2025), https://jbrec.com/insights/land-banking-grows-as-housing-industry-strategy/. The top firms have done even better. D.R. Horton, for example, reported gross profit margins on home sales of 23.5% for fiscal year 2024. D.R. Horton, "2024 Annual Report," https://investor.drhorton.com/~/media/Files/D/D-R-Horton-IR/documents/2024-dhi-annual-report.pdf. (p. 37). Lennar similarly reported gross profit margins of 22.3% for fiscal year 2024. Lennar, "2024 Annual Report," 30 (Jan. 23, 2025), https://investors.lennar.com/~/media/Files/L/Lennar-IR-V3/documents/annual-reports/annual-report-2024.pdf. They also regularly channel hundreds of millions of dollars in profits to stock buybacks. TipRanks, "DR Horton (DHI) Stock Buybacks," https://www.tipranks.com/stocks/dhi/buybacks. TipRanks, "Lennar (LEN) Stock Buybacks," https://www.tipranks.com/stocks/len/buybacks. Notably, the National Association of Home Builders (NAHB) has issued reports of lower margins across its membership. However, the usefulness of this data is limited by low sample sizes and lack of information about size or information of respondents (rather than survey recipients). *See, e.g.*, Eric Lynch, "Cost of Constructing a Home-2024," 2 (Jan. 20, 2025), special-study-cost-of-constructing-a-home-2024-january-2025.pdf (noting only 41 usable responses).

69 *See, e.g.*, John O'Dell, "Builders Go Back to Basics: Housing: The developers who have been able to constrain themselves when they saw the market slowing are the ones who will survive the current slump, some experts say," Los Angeles Times (March 17, 1991), https://www.latimes.com/archives/la-xpm-1991-03-17-fi-980-story.html; David S. Hilzenrath, "Developer Shakeout to Continue Into '90s: Construction: Industry observers predict real estate profits will shrink as those who ignored the market and built for tax advantages pay the price," Los Angeles Times (Nov. 5, 1989), https://www.latimes.com/archives/la-xpm-1989-11-05-re-1757-story.html.

70 *See, e.g.*, Investing.com, "Toll Bros. stock rating reiterated at Buy by UBS on positive 2026 outlook," (Aug. 20, 2025), https://www.investing.com/news/analyst-ratings/toll-bros-stock-rating-reiterated-at-buy-by-ubs-on-positive-2026-outlook-93CH-4202608.

71 D.R. Horton, "Form 10-Q," 35 (July 28, 2015), https://investor.drhorton.com/~/media/Files/D/D-R-Horton-IR/documents/quarterly-reports/q3-2015-quarterly-report.pdf; *see also id.* at 34 ("We are focused on growing our profitability, improving our cash flows and managing our product offerings, pricing, sales pace, and inventory levels to optimize the return on our inventory investments.").

72 Roic.ai, Meritage Homes Corp., "Q4 2015 Earnings Call Transcript," (Jan. 28, 2016), https://www.roic.ai/quote/MTH/transcripts/2015-year/4-quarter. The company nonetheless had sufficient financial resources to consider either a stock buyback or investing in "good land opportunities." *Id.* According to AEI, Phoenix City, Arizona, currently has a shortage of 33,883 homes, and Maricopa County currently has a shortage of 88,752 homes. AEI, "U.S. Housing Shortage by State, County, and City," Housing Center, https://heat.aeihousingcenter.org/toolkit/housing_shortage.

73 Seeking Alpha, "PulteGroup, Inc. Q1 2025 Earnings Call Transcript," (April 22, 2025), https://seekingalpha.com/article/4776887- pultegroup-inc-phm-q1-2025-earnings-call-transcript; *see also, e.g.*, D.R. Horton Investor Presentation, 22 (Q3 2025), https://static.seekingalpha.com/uploads/sa_presentations/523/111523/original.pdf (D.R. Horton's "Homebuilding Operational Focus" includes "Maximize returns and generate strong cash flows by managing sales pace and pricing in each community" and "Manage land, lot and home inventory prudently to meet demand and gain market share").

74 There are a variety of online platforms that provide market analytics relating to homebuilding, such as RSI and Zonda. *See* Residential Strategies, "Our Services," https://www.residentialstrategies.com/our-services/.

75 Lance Lambert, "ResiClub analyzed 20 years of giant homebuilder data-here are 4 key takeaways," ResiClub (May 10, 2025), https://www.resiclubanalytics.com/p/housing-market-resiclub-analyzed-20-years-of-giant-homebuilder-data-here-are-4-key-takeaways.

76 Brent W. Ambrose, "Housing After the Fall: Reassessing the Future of the American Dream, The Homebuilding Industry," Pennsylvania State University, Institute for Real Estate Studies, (Feb. 6, 2009), https://www.smeal.psu.edu/bires/documents/homebuilding ("between 2000 and 2005, the 23 large public home builders tracked by SNL RealEstate increased their land holdings by 328 percent"); *see also* Abernathy, supra note 12 at 5 ("Home builder consolidation was … motivated less by the desire for scale per se than to attract sufficient interest from Wall Street investors to secure the capital necessary to develop favorable land positions."); Will Frank et al., "Banking on the Future: Builders and Land Bankers Grow Together," John Burns Research & Consulting (April 24, 2024), https://jbrec.com/insights/builders-investors-team-for-land-banking-deals-that-benefit-both/; Cameron Murray, "Time Is Money: How Landbanking Constrains Housing Supply," 49 Journal of Housing Economics 101708 (2020), https://www.sciencedirect.com/science/article/abs/pii/S1051137720300449.

77 Pat McAllister, "Housebuilders' landbanks: Inventory, asset or hoard?," 152 Land Use Policy, 8 (May 2025), https://www.sciencedirect.com/science/article/pii/S0264837725000365.

78 James Rodriguez, "America's next big land grab," Business Insider (July 23, 2024), https://www.businessinsider.com/land-banking- new-home-construction-real-estate-prices-housing-builders-2025-7.

79 Fitch Ratings, "US Homebuilders Maintain Strong Credit Despite Market Pressures," (June 27, 2025), https://www.fitchratings.com/research/corporate-finance/us-homebuilders-maintain-strong-credit-despite-market-pressures-27-06-2025; *See, e.g.*, Dean Wehrli, "Episode 92: Building Up: Walton Global's Strategic Land Insights," New Home Insights Podcast, 11:03 (April 26, 2024), https://jbrec.com/insights/kate-kaminski-walton-global-experts-in-land-banking-strategy/ (COO of Walton Global: "We are highly focused on investment-grade companies in terms of those that we're looking to do transaction with. But also, it's scale for us. … As you're deploying significant sums of capital, doing a small deal here and there does not move the needle in terms of deploying that as quickly as possible. And so our focus really has to be on some of the larger publics just because of the volume that they do. You know, D.R. Horton and Lennar, building one out of five homes in the U.S. alone every year. … If you focused on those two alone, they could feed your entire pipeline.").

80 https://www.realtor.com/news/real-estate-news/trump-homebuilders-lower-prices; https://truthsocial.com/@realDonaldTrump/posts/115362981423345947.

81 *See, e.g.*, John McManus, "D.R. Horton's Competitive Edge: A Market-Maker's Playbook for 2025," (Jan. 21, 2025), https://www.thebuildersdaily.com/d-r-hortons-competitive-edge-a-market-makers-playbook-for-2025/ (D.R. "Horton's land pipeline strategy, emphasizing options over ownership, locks up significant future capacity.").

82 *See* Carlos Waters, "Why it's so hard to find starter homes in the U.S.," CNBC (Jan. 14, 2025), https://www.cnbc.com/2025/01/14/few-starter-homes-in-us.html.

83 *See* National Association of Homebuilders, "Housing Market Index: Special Questions on Builders Challenges/Problems Faced in 2024 and Expect to Face in 2025," 2 (Jan. 2025), https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics/hmi/special-survey-reports/hmi-january-2025-special-survey-report.pdf?rev=048e8e9ec3f4484c818248baf74d5c34&hash=E9B1D496E563AE83950EDC1ECF2E7193 (in survey of 418 homebuilders, 91 percent ranked high interest rates among the "most significant problems" they faced in 2024).

84 John McManus, "D.R. Horton's Competitive Edge: A Market-Maker's Playbook for 2025," (Jan. 21, 2025), https://www.thebuildersdaily.com/d-r-hortons-competitive-edge-a-market-makers-playbook-for-2025/.

85 *See, e.g.*, Lance Lambert, "Housing affordability is so stressed that Lennar is offering a fixed 4.75percent mortgage rate in Colorado," ResiClub (Oct. 13, 2023), https://www.resiclubanalytics.com/p/housing-affordability-stressed-lennar-offering-fixed-475-mortgage-rate-colorado (Lennar offered 4.75percent fixed rates when market mortgage rates were at 7.66percent).

86 *See* Basel Musharbash, "Messing with Texas," BIG (May 30, 2025), https://www.thebignewsletter.com/p/messing-with-texas-how-big-homebuilders.

87 *Id.*

88 Frederick Abernathy, Kermit Baker, Kent Colton, and David Weil, "Bigger isn't necessarily better: Lessons from the Harvard home builder study," Lexington Books, 5 (2011) at 62, Fig. 5.1.; Homebuilders of all sizes may also be impacted by anti-competitive practices by other actors in the housing supply chain. Notably, a recent lawsuit alleges that most major rental firms for heavy construction equipment (*e.g.*, cranes, excavators, etc.) conspired to hike their rates through a data-sharing platform. Complaint, Kris Swanson Construction LLC v. RB Global Inc. et al., Case 1:25-cv-04236, (April 17, 2025), https://www.locklaw.com/wp-content/uploads/Dist.N.D.Ill_._1-25-cv-04236_1.pdf. Mike Scarcella, "Lawsuit accuses United Rentals, other construction equipment firms of price-fixing," Reuters (April 2, 2025), https://www.reuters.com/legal/litigation/lawsuit-accuses-united-rentals-other-construction-equipment-firms-price-fixing-2025-04-02/.

89 National Association of Home Builders, "New and Existing Home Price Gap Shrinking," (Feb. 25, 2025), https://eyeonhousing.org/2025/02/new-and-existing-home-price-gap-shrinking/. A persistent price differential can be a sign that two products are not in the same relevant antitrust market. Brown Shoe Co. v. United States, 370 U.S. 29 (1962).

90 National Association of Home Builders, "New and Existing Home Price Gap Shrinking," (Feb. 25, 2025), https://eyeonhousing.org/2025/02/new-and-existing-home-price-gap-shrinking/.

91 *Id.*; *see also* Lance Lambert, "Giant homebuilders tighten grip their grip on the housing market—just look at this

map," Fast Company (Oct. 17, 2024), https://www.fastcompany.com/91210557/housing-market-giant-publicly-traded-homebuilders-tighten-grip-map (CEO of KB Home: "we're taking share from two sources. One is smaller builders that are having difficulty with financing. … Banks are very conservative right now on what they'll lend a small builder to go develop lots. But you're also taking share from resale because of the limited resale inventory.").

92 Jeff Horwich, "Learning from the first (and only) manufactured housing boom," Federal Reserve Bank of Minneapolis (Feb. 28, 2025), https://www.minneapolisfed.org/article/2025/learning-from-the-first-and-only-manufactured-housing-boom.

93 *Id.*; James A. Schmitz, Jr., "Solving the Housing Crisis will Require Fighting Monopolies in Construction," Minneapolis Fed (Dec. 11, 2020), https://www.minneapolisfed.org/research/working-papers/solving-the-housing-crisis-will-require-fighting-monopolies-in-construction; 42 U.S.C. § 5402(6); Libby O'Neill, "Senators Gallego and Tillis Introduce Bipartisan Legislation to Remove Permanent Chassis Requirement for Manufactured Housing," National Low Income Housing Coalition (July 28, 2025), https://nlihc.org/resource/senators-gallego-and-tillis-introduce-bipartisan-legislation-remove-permanent-chassis; Andrew Justus and Alex Armlovich, "Two big developments in manufactured housing reform: New rules, new bill," Niskanen Center (Oct. 21, 2024), https://www.niskanencenter.org/two-big-developments-in-manufactured-housing-reform-new-rules-new-bill/; Andrew Justun and Alex Armlovich, "Eliminating the Chassis Requirement to Free Manufactured Homes from Local Discrimination and Regulatory Dead Weight," Federation of American Scientists, (Feb. 21, 2024), https://fas.org/publication/manufactured-home-chassis-requirement/; Mobile Agency, "Understanding Zoning Laws for Manufactured Home Communities," https://www.mobileagency.com/understanding-zoning-laws-for-manufactured-home-communities/.

94 *See, e.g.*, Private Equity Stakeholder Project, "PESP Private Equity Manufactured Housing Tracker," (July 2025), https://pestakeholder.org/pesp-private-equity-manufactured-housing-tracker/; *see also id.* ("Almost half (49percent) of the private equity-owned parks identified for this tracker were financed by Fannie Mae or Freddie Mac. In contrast, Fannie Mae or Freddie Mac financed just 9percent of all the manufactured home parks in the U.S."); Michael Casey and Carolyn Thompson, "Rents spike as large corporate investors buy mobile home parks," PBS News (July 25, 2022), https://www.pbs.org/newshour/economy/rents-spike-as-large-corporate-investors-buy-mobile-home-parks ("about a fifth of mobile home parks, or around 800,000, [were] purchased" by institutional investors just between 2014 and 2022, followed by "complaints of double-digit rent increases"); *see also* Sam Garin, "Concerns surround appointment of private equity insider to head up Federal Housing Finance Agency," Private Equity Stakeholder Project, (Jan. 27, 2025), https://pestakeholder.org/news/concerns-surround-appointment-of-private-equity-insider-to-head-up-federal-housing-finance-agency/.

95 Jessica Lautz, "Built-for-Rent Housing Remains Elevated," National Association of Realtors (Feb. 24, 2025), https://www.nar.realtor/blogs/economists-outlook/built-for-rent-housing-remains-elevated. *See* Appendix 5 for chart.

96 Jessica Lautz, "Built-for-Rent Housing Remains Elevated," National Association of Realtors (Feb. 24, 2025), https://www.nar.realtor/blogs/economists-outlook/built-for-rent-housing-remains-elevated. *See* Appendix 5 for chart.

97 *See* Construction Owners Club, "The top 10 residential builders of 2024," (May 30, 2024), https://www.constructionowners.com/news/the-top-10-residential-builders-of-2024.

98 Lennar, 2024 Annual Report, p. 7, https://investors.lennar.com/~/media/Files/L/Lennar-IR-V3/documents/annual-reports/annual-report-2024.pdf; *see also* Houlihan Lokey at 2 ("As of Q2 2025, Invitation Homes REIT acquired 1,671 homes for $563 million, while disposing of only 828 homes ($320 million). An additional 2,000 homes are in their homebuilding pipeline, primarily focused on the West and Sunbelt markets. These regions include 12 of the 15 U.S. cities with the largest numeric population growth."); Invitation Homes, "Our Story," https://www.invitationhomes.com/about-us (last visited Sept. 14, 2025).

99 *See, e.g.*, Dechert, "Dechert Advises Pretium Partners on First SFR Securitization Consisting Entirely of Build-to-Rent Communities," (July 28, 2025), https://www.dechert.com/knowledge/news/2025/7/dechert-advises-pretium-partners-on-first-sfr-securitization-con.html ("The collateral consisted of 21 build-to-rent (BTR) residential communities comprising 2,020 homes, making this securitization the first of its kind.")

100 The Small Business Administration's 7(a) loan and 504 loan programs are limited to owner-occupied real estate, so they would not cover anything beyond a homebuilder's own offices. Bank of America, "Small Business Administration Loans & Financing," https://www.bankofamerica.com/smallbusiness/business-financing/sba-financing/.

101 The Small Business Administration's Paycheck Protection Program deemed single-family homebuilders ineligible. https://www.novoco.com/public-media/documents/nahb_recommendations_to_white_house_042720.pdf.

102 *See, e.g.*, https://www.economicliberties.us/wp-content/uploads/2025/06/20250418-aelp-antimonopoly-policyagenda-V7.pdf.

103 *See* Rohit Chopra, "Prepared Remarks of CFPB Director Rohit Chopra at the Peterson Institute for International Economics Event on Revitalizing Bank Merger Review," CFPB (March 21, 2024), https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-rohit-chopra-at-the-peterson-institute-for-international-economics-event-on-revitalizing-bank-merger-review/.

104 Paul Williams and Yakov Feygin, "Smoothing the Housing Investment Cycle: Part I," Center for Public Enterprise (July 2024), https://publicenterprise.org/wp-content/uploads/Smoothing-the-Housing-Investment-Cycle-Part-1.pdf at 9, 12 (noting federal agencies that could administer a housing construction fund for multifamily development).

105 U.S. Federal Housing Finance Agency, "Guarantee Fees History," https://www.fhfa.gov/policy/guarantee-fees.

106 Bharat Ramamurti, "Seven Key Questions About the Potential Release of Fannie Mae and Freddie Mac from

Government Conservatorship," AELP (May 2025), https://www.economicliberties.us/wp-content/uploads/2025/05/Fannie-and-Freddie-Piece-5.25-FINAL.pdf; Daniel Hornung and Ben Sampson, "The ABCs of the GSEs: How changes to Fannie and Freddie could impact mortgage rates and homebuyers," Stanford Institute for Economic Policy Research (Sept. 2025), https://siepr.stanford.edu/publications/policy-brief/abcs-gses-how-changes-fannie-and-freddie-could-impact-mortgage-rates-and.

107 Bharat Ramamurti, "Seven Key Questions About the Potential Release of Fannie Mae and Freddie Mac from Government Conservatorship," AELP (May 2025), https://www.economicliberties.us/wp-content/uploads/2025/05/Fannie-and-Freddie-Piece-5.25-FINAL.pdf.

108 "[The Fed] shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates." 12 U.S.C. § 225a.

109 *See, e.g.*, Brendan Greeley, "The contentious idea that still challenges the Fed," Financial Times (April 22, 2023), https://www.ft.com/content/9c2f28b6-b31e-47ca-87a2-aa91340c083d; Robert Pollin, "Public Credit Allocation through the Federal Reserve: Why It Is Needed; How It Should Be Done 1," in G.A. Dymski et al. (eds.), Transforming the US Financial System: An Equitable and Efficient Structure for the 21st Century, Routledge, 321-354 (2016); *see also* Letter from Action Center for Race and the Economy to Chair Jerome Powell and Secretary Steven Mnuchin (May 7, 2020), https://www.economicliberties.us/wp-content/uploads/2020/05/FINAL-Federal-Reserve-Merger-Letter-5.7.pdf.

110 Road to Housing Act, S. 2651 U.S. Senate, 119th Congress (2025), https://www.congress.gov/bill/119th-congress/senate-bill/2651; HUD, "Preservation and Reinvestment Initiative for Community Enhancement (PRICE)," (April 29, 2025), https://www.hud.gov/hud-partners/community-price-awards#openModal; Fannie Mae, "Innovations in Real Property: Manufactured Homes, Alternative Ownership Models, and the Availability of Mortgage Financing," 2022, https://www.fanniemae.com/media/45741/display.

111 U.S. Federal Housing Finance Agency, "Duty to Serve Program," https://www.fhfa.gov/programs/duty-to-serve.

112 *See* Paul Williams and Yakov Feygin, "Smoothing the Housing Investment Cycle: Part I," Center for Public Enterprise (July 2024), https://publicenterprise.org/wp-content/uploads/Smoothing-the-Housing-Investment-Cycle-Part-1.pdf (financing recommendations for multifamily construction note that Freddie Mac's charter may restrict its ability to support construction lending, but Fannie Mae's charter does not contain such limitations, and Fannie Mae has launched pilot programs to support construction).

113 Shahid Naaem, "Revitalizing Bank Merger Enforcement to Restore Competition and Fairness in Banking," American Economic Liberties Project (June 2023), https://www.economicliberties.us/wp-content/uploads/2023/06/062023_AELP_BankMerger_Brief_R2.pdf.

114 Shahid Naaem, "Revitalizing Bank Merger Enforcement to Restore Competition and Fairness in Banking," American Economic Liberties Project (June 2023), https://www.economicliberties.us/wp-content/uploads/2023/06/062023_AELP_BankMerger_Brief_R2.pdf.

115 MRSC, "Types of Municipal Debt," https://mrsc.org/explore-topics/finance/debt/types-of-municipal-debt.

116 Jennifer Ludden, "One possible housing crisis solution? A new kind of public housing for all income levels," NPR (Oct. 7, 2024), https://www.npr.org/2024/10/07/nx-s1-5119633/housing-crisis-solution-public-housing-mixed-income-maryland (Montgomery County, Maryland, created a $100 million revolving fund to build public housing, which enables "cheaper financing with a lower rate of return than private investors would demand."). Utah adopted a low-interest construction loan program specifically targeting starter homes in 2024. See Tony Semarand, "Utah launches all-out push to build thousands of new 'starter homes' that you might be able to afford," The Salt Lake Tribune (May 13, 2024), https://www.sltrib.com/news/2024/05/13/utah-launches-all-out-push-build/. So far, just over 5,000 homes have been initiated. Jennifer Ludden and Marisa Peñaloza, "Starter homes are scarce, so Utah set a target to build more. Here's how it's going," NPR (Sept. 2, 2025), https://www.npr.org/2025/09/02/nx-s1-5431545/starter-homes-utah-housing-cost-affordable-target.

117 Max Harrison-Caldwell, "YIMBYs are on a winning streak – so where's the housing? Three ideas to fix the crisis," The San Francisco Standard (July 31, 2025), https://sfstandard.com/2025/07/31/yimbys-housing-ceqa-newsom/.

118 *See, e.g.*, Henry George, Progress and Poverty (1879); Greg Miller, "Want to Model a Land Value Tax Shift in Your City? Here's How," (June 4, 2025), https://progressandpoverty.substack.com/p/want-to-model-a-land-value-tax-shift; Robert Stephen Earnest "Ain't No Taxing High Enough: Using Land Value Taxation to Combat the Nation's Rental Affordability Crisis," 39 Minnesota Journal of Law & Inequality 2, 492 (May 2021), https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1663&context=lawineq.

119 See Christopher Serkin and Ganesh Sitaraman, "Post-Neoliberal Housing Policy," Vanderbilt Policy Accelerator, Vanderbilt University, 25 (April 2025), https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/412/2025/04/22200114/Post-Neoliberal-Housing-Policy.pdf at 50 and Cameron K. Murray, A Housing Supply Absorption Rate Equation, 64 J. Real Est. Fin. & Econ. 228, Abstract (2022), https://link.springer.com/article/10.1007/s11146-020-09815-z ("[I]ncreasing the cost to delaying housing development is the primary way to increase the market rate of housing supply").

120 See Christopher Serkin and Ganesh Sitaraman, "Post-Neoliberal Housing Policy," Vanderbilt Policy Accelerator, Vanderbilt University, 25 (April 2025), https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/412/2025/04/22200114/Post-Neoliberal-Housing-Policy.pdf at 51; A Philadelphia Federal Reserve working paper found that "investors raise rents at 60 percent higher rates than the average increase when first acquiring the property, and higher investor share in a neighborhood is correlated with faster rent increases for non-investor landlords." Keyoung Lee and David Wylie, "Institutional Investors, Rents, and Neighborhood Change in the Single Family Residential Market," Federal Reserve Bank of Philadelphia (July 2024), https://www.philadelphiafed.org/

consumer-finance/mortgage-markets/institutional-investors-rents-and-neighborhood-change-in-the-single-family-residential-market. The Humans Over Private Equity (HOPE) for Homeownership Act, for example, would require institutional investors to divest their single-family home holdings by selling over 10percent every year for 10 years, and only to non-corporate (i.e., human) buyers who do not own other residential property. Senator Jeff Merkley, "Senator Merkley, Representative Smith Launch Renewed Effort to Kick Hedge Funds Out of America's Housing Market," (Feb. 27, 2025), https://www.merkley.senate.gov/senator-merkley-representative-smith-launch-renewed-effort-to-kick-hedge-funds-out-of-americas-housing-market/.

121 The Stop Predatory Investing Act would deny "taxpayers owning 50 or more single family properties any tax deduction for interest paid or accrued in connection with any single family residential rental property" and disallow "depreciation of residential rental property owned by such taxpayers." U.S. Senate, S. 2224, 118th Congress, (2023), https://www.congress.gov/bill/118th-congress/senate-bill/2224. Similar reforms could be extended to disincentivize ownership of a large number of single-family homes by any type of entity or individual. About 90percent of non-institutional investors (i.e., individuals and families) own 10 or fewer homes. CBS News, "Real estate investors are purchasing more U.S. homes as high prices lock out would-be buyers," (July 8, 2025), https://www.cbsnews.com/news/more-real-estate-investors-buying-homes-housing-market/. ("[M]om-and-pop investors, or those who own between 1 and 5 homes, account for 85percent of all investor-owned residential properties, while those with between 6 and 10 properties account for another 5percent."). Accordingly, a reasonable cap would not impact most mom-and-pop landlords.

122 Christopher Serkin and Ganesh Sitaraman, "Post-Neoliberal Housing Policy," Vanderbilt Policy Accelerator, Vanderbilt University, https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/412/2025/04/22200114/Post-Neoliberal-Housing-Policy.pdf at 51; Private Equity Stakeholder Project, "New tool tracks private equity ownership of manufactured housing communities across U.S.," (June 11, 2024), https://pestakeholder.org/news/new-tool-tracks-private-equity-ownership-of-manufactured-housing-communities-across-u-s/. In 2018, FHFA directed Fannie Mae and Freddie Mac to terminate controversial pilot programs that made large loans to institutional investors in single-family home rental properties. U.S. Government Accountability Office, "Rental Housing: Information on Institutional Investment in Single-Family Homes," (May 9, 2024), https://www.gao.gov/assets/gao-24-106643.pdf; *see also*, *e.g.*, Georgia Kromrel, "Congressional report finds Invitation Homes downplayed evictions to Fannie Mae," Housing Wire (July 29, 2022), https://archive.is/Otbzo; Jon Boughtin, "Invitation Homes' Troubling Deal," NAR Realtor Magazine, https://www.nar.realtor/magazine/real-estate-news/commentary/invitation-homes-troubling-deal. Congressional action is needed to ensure that FHFA cannot revive this practice, or that Fannie Mae and Freddie Mac cannot do so if their conservatorship under FHFA ends.

123 *See, e.g.*, Peter M. McCamman et al., "SEC and CFTC Further Extend Compliance Date for Form PF Amendments," Mayer Brown (Sept. 25, 2025), https://www.mayerbrown.com/en/insights/publications/2025/09/sec-and-cftc-further-extend-compliance-date-for-form-pf-amendments; CFTC RIN 3038-AF31 and SEC RIN 3235-AN13, "Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers," https://www.sec.gov/files/rules/final/2024/ia-6546.pdf.

124 *See* FTC, "FTC Seeks Public Comment on Single-Family Rental Home Mega Investors Study," (Jan. 15, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-seeks-public-comment-single-family-rental-home-mega-investors-study.

125 As Congress and the Supreme Court have repeatedly emphasized, Section 7 of the Clayton Act is intended to stop concentration in its "incipiency." *See, e.g.*, S. Rep. No. 63-698, at 1 (1914) (The Clayton Act is intended to "arrest the creation of trusts, conspiracies, monopolies in their incipiency and before consummation."); S. Rep. No. 1775, 81st Cong., 2d Sess. (1950) (Section 7 was meant "to cope with monopolistic tendencies in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding."); Brown Shoe v. U.S., 370 U.S. 294, 317 (1962) (Section 7 created "authority for arresting mergers at a time when the trend to a lessening of competition in a line of commerce was still in its incipiency."); U.S. v. Cont'l Can Co., 378 U.S. 441, 461-62 (1964) ("Where concentration is already great, the importance of preventing even slight increases in concentration … is correspondingly great.") (emphasis added) (quotations omitted); U.S. v. Aluminum Co. of Am., 377 U.S. 271, 280 (1964) (finding a 1.3percent market-share increase "reasonably likely to produce a substantial lessening of competition within the meaning of § 7").

126 S.4620, HART Act, 118th Congress, https://www.congress.gov/bill/118th-congress/senate-bill/4620/text.

127 16 CFR 802.2.

128 *See, e.g.*, 15 U.S.C. § 18a(c)(1) (exempting "the acquisitions of goods or realty transferred in the ordinary course of business") and Rules 802.1, 802.2, 802.3, and 802.5. Rule 802.2(d) exempts the acquisition of residential property that is used primarily for residential purposes, including residences, common areas such as parking and recreational facilities, and assets incidental to owning residential property, including cash, prepaid taxes and insurance, and rental receivables. Rule 802.5 exempts acquisitions of investment rental property assets, regardless of whether or not the assets would be exempt under Rule 802.2. Although, on their own, the exemptions provided by Rules 802.2 and 802.5 apply only to the direct acquisition of assets, an additional rule, Rule 802.4, also exempts the acquisition of the voting securities or non-corporate interests of any entity that holds assets, the direct acquisition of which is exempted by the Act or the Rules, so long as that entity does not also hold more than $50 million (as adjusted) in non-exempt assets.

129 AELP, "Antimonopoly Policy Agenda for the 119th Congress," (May 6, 2025), https://www.economicliberties.us/our-work/antimonopoly-policy-agenda-for-the-119th-congress/. ("Congress should lower the HSR thresholds for single transactions to $50 million and require that any company making six or more acquisitions of any size in a single year also needs to submit an HSR notification to the FTC.")

130 Morgan Lewis, "'Mini-HSR' Acts Take Effect in Washington and Colorado, With Similar Legislation Pending in Other States," (Aug. 6, 2025), https://www.morganlewis.com/pubs/2025/08/mini-hsr-acts-take-effect-in-washington-

and-colorado-with-similar-legislation-pending-in-other-states.

131 For a more in-depth discussion of why zoning and permitting reform warrants a nuanced approach, *see, e.g.*, Christopher Serkin and Ganesh Sitaraman, "Post-Neoliberal Housing Policy," U. Pa. L. Rev. (forthcoming), Vanderbilt Law Research Paper No. 5227899, (Apr. 23, 2025) https://ssrn.com/abstract=5227899. ("Like any regulatory regime, however, "zoning" and land use regulations more generally are market-shaping: they can be designed to channel market activity in a variety of directions. Some density limits might overly restrict building in some places, but in others, they help to ensure that infrastructure is developed efficiently, that municipal services are adequate for community needs, and that municipalities are able to attract development and investment in the long run. The question should not be whether zoning is restrictive but rather whether less regulated markets will produce better land use and development outcomes. Sometimes the answer is yes, but sometimes it isn't. With proper design and implementation, zoning can and should play an important role in shaping urban form. Indeed, zoning rules can be designed to enable affordable housing and enhance density. … Particular zoning rules might be problematic of course. But zoning in some general sense is not the villain.")

132 *See, e.g.*, Liam LaMountain, Reilly Loynd, and Sarah Kadous, "Shaping America's Towns and Cities," The Regulatory Review (Aug. 30, 2025), https://www.theregreview.org/2025/08/30/seminar-shaping-americas-towns-and-cities/; NAHB, "Residential Design Standards: How Stringent Regulations Restrict Affordability and Choice," (July 2020), https://www.nahb.org/-/media/NAHB/advocacy/docs/industry-issues/land-use-101/state-local-affordability/residential-design-standards-072020.pdf?rev=5b8a42302456423eac47f974c7afc0c6; Madeline F. Carr and Daniel Boyd Kramer, "Homeowners' associations: Barriers or bridges to more sustainable residential development?," 224 Landscape and Urban Planning (Aug. 2022), https://www.sciencedirect.com/science/article/abs/pii/S0169204622000688. ("HOAs are typically initiated by the housing developer … who drafts CCRs restricting home and yard building materials, home size, landscaping decisions, and limiting neighborhood nuisances, purportedly to maintain property values. … The developer maintains control of the HOA in the initial stages of development, often by being granted a significantly weighted vote in association affairs. As more properties are sold, however, developer control gives way to property owners.")

133 U.S. Senate Committee on Banking, Housing, & Urban Affairs, "Renewing Opportunity in the American Dream (ROAD) to Housing Act, Section-by-Section," (2025), https://www.banking.senate.gov/imo/media/doc/road_to_housing_act_section-by-section.pdf; U.S. Senate, 119th Congress, https://www.banking.senate.gov/imo/media/doc/road_to_housing_act_of_2025_legislative_text.pdf; Rachel Siegel and Linlin Liang, "States Take Crucial Steps to Expand Supply of Lower-Cost Single-Family Homes," Pew (Sept. 3, 2025), https://www.pew.org/en/research-and-analysis/articles/2025/09/03/states-take-crucial-steps-to-expand-supply-of-lower-cost-single-family-homes (collecting state zoning reforms that prohibit certain restrictions on manufactured homes).

AMERICAN ECONOMIC LIBERTIES PROJECT

The American Economic Liberties Project is a non-profit and non-partisan organization fighting against concentrated corporate power to secure economic liberty for all. We do not accept funding from corporations. Contributions from foundations and individuals pay for the work we do.

economicliberties.us | @economicliberties | info@economicliberties.us