Section I: History and Legal Framework

History: Redlining Perpetuated a Dual Credit Market and Is One of the Key Drivers of Today's Wealth Gap

Consumers in the U.S. do not have equal or equitable access to the financial markets. Centuries of discriminatory policies, segregation, and disinvestment have led to the creation of the dual credit market in which banks and credit unions are concentrated in predominantly White communities, while payday lenders, check cashers, title money lenders, and other non-traditional financial services providers are concentrated in predominantly Black and Latino communities. An analysis by Trulia revealed stark disparities in the location of financial services. The research showed that communities of color had 35 percent fewer mainstream lenders than predominantly White communities. Moreover, there were twice as many non-traditional financial institutions — like payday lenders and check cashers — in communities of color. This, of course, is a legacy of our nation's long history of redlining and lending discrimination. However, current practices are also contributing to the growing disparity in credit access. For example, according to one analysis by Standard and Poor's, banks today are closing their branches in high-income, affluent Black neighborhoods at a higher rate than they are closing branches in low-income non-Black areas.

This dual credit market arose because for much of America's history, communities of color were systematically excluded from economic opportunities through explicit policy decisions. In fact, many of our laws — Indian Removal Acts, Slave Codes, Fugitive Slave Acts, Repatriation Acts, Chinese Removal Act, Black Codes, Sundown Ordinances, Japanese Internment Act, Racially Restrictive Covenants, and much more — were explicitly and purposefully designed to provide opportunities to Whites and to simultaneously deny opportunities to people of color.

New Deal Policies Created Redlining and Perpetuated the Dual Credit Market

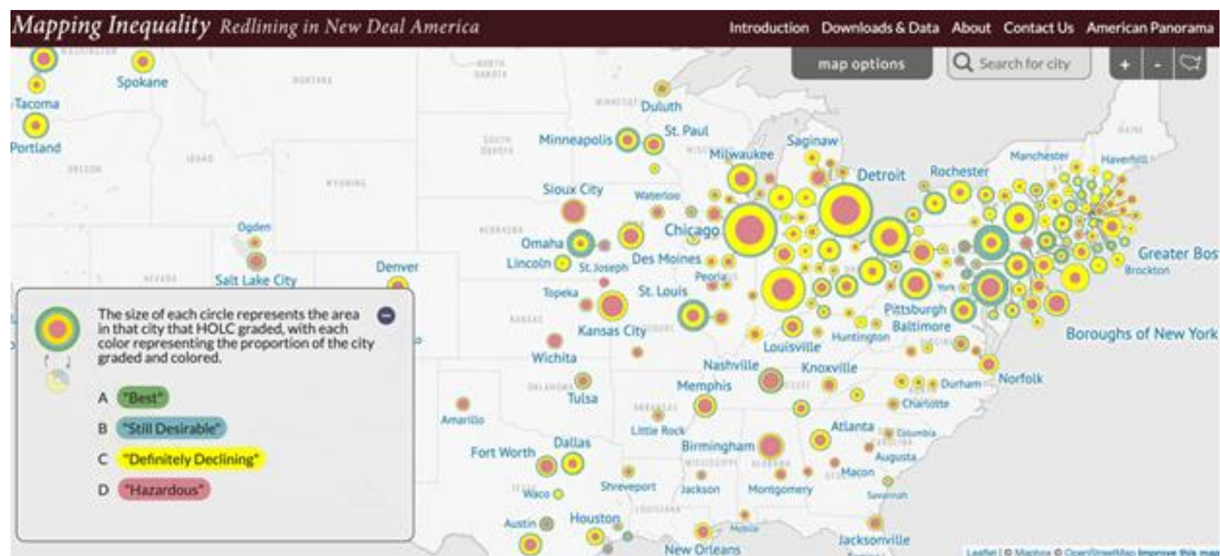
Even laws that appeared to be racially neutral were implemented with racialized policies. In particular, the New Deal's federal Home Owners Loan Corporation ("HOLC") developed one of the most harmful policies in the housing and financial services markets by perpetuating a system that included race as a fundamental factor in determining the desirability and value of neighborhoods. This system included Residential Security Survey forms that explicitly captured the percentage of "Negro" populations and other racial groups living in an area and then utilized that race-based data to grade the neighborhood. The HOLC's policies and procedures helped systematize redlining as well as the unfounded association between race and risk in U.S. housing and financial services markets.

The HOLC appraisal system also included the creation of appraisal maps that were color-coded to indicate the desirability of neighborhoods. Areas that were homogenous and White were deemed to be the First Grade and shaded as green on the map. Communities of color were coded as "hazardous,' were signified by red shading on the map, and were assigned a lower value. Areas that contained even small numbers of Black residents were coded as "hazardous" and shaded red. Moreover, areas that were adjacent to communities with Black residents could be downgraded simply based on their proximity to a community of color. These communities

were downgraded based on an unfounded association between race and risk, not based on an analysis of whether a particular resident could afford a mortgage loan.

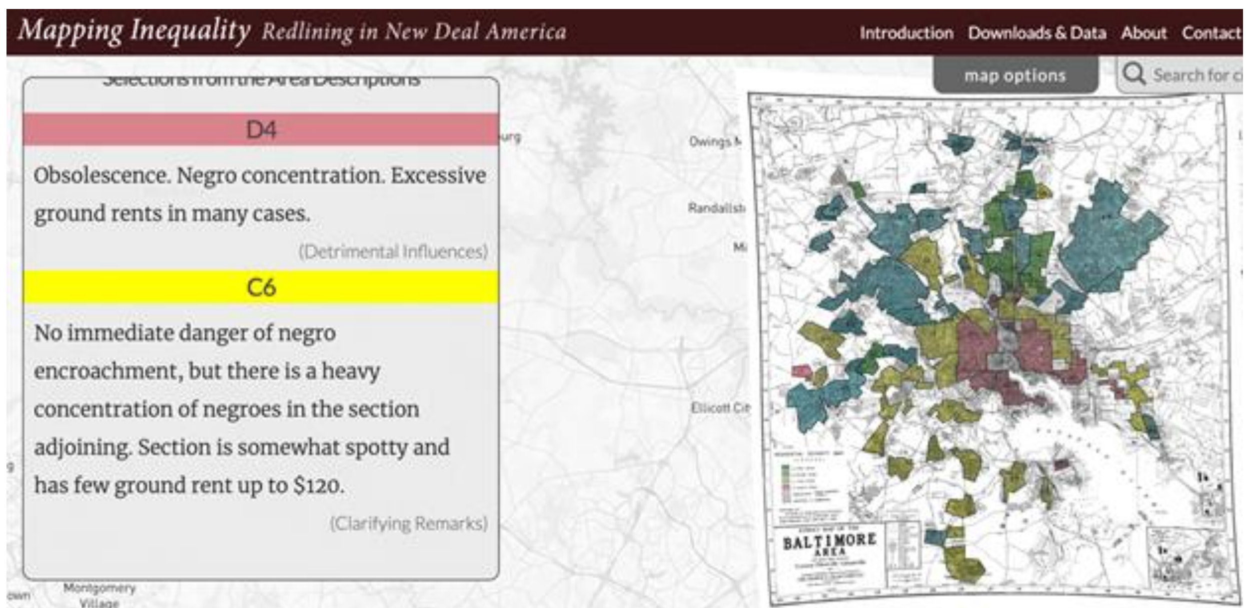
Notably, the data used to create the maps were not just collected randomly, but rather were based on the opinions of the leading real estate professionals at the time, including appraisers. Later, the Federal Housing Administration adopted these maps and race-based policies as the basis for its mortgage insurance underwriting decisions. Thus, the maps not only reflected the race-conscious views of the nation's housing industry leaders at the time, but were also used to amplify and codify these views throughout the housing system.

A collaboration of academics has produced an interactive online tool known as "Mapping Inequality," which documents how the HOLC used their racially biased views to determine the economic value of a community on the basis of race. Below are examples of the tool and an archived HOLC map of Baltimore.



Source: Mapping Inequality

This is the landing page of the "Mapping Inequality" tool. The graphic at the left shows the HOLC map legend where red signifies a community that was deemed "Hazardous."



Source: Mapping Inequality

This is the HOLC's map of Baltimore, which color coded the communities of color as red and "hazardous" based in part on "Negro concentration."

Underwriting and Appraisal Policies Further Perpetuated the Unfounded Association between Race and Risk

In addition to the mapping system, explicitly discriminatory underwriting and appraisal policies perpetuated the unfounded association between race and risk in the nation's housing and financial markets. For example, the Federal Housing Administration encouraged the use of racially restrictive covenants and required them in exchange for supporting the new housing developments built throughout the nation's suburban communities. Even after the Supreme Court declared that racially restrictive covenants were not enforceable in 1948, the Federal Housing Administration gave preferential treatment to developers that adopted them. Additional examples include (emphasis added):

1938: Federal Housing Administration Underwriting Manual —

"Areas surrounding a location are investigated to determine whether **incompatible racial and social groups** are present, for the purpose of making a prediction regarding the probability of the locations being invaded by such groups. If a neighborhood is to retain stability, it is necessary that properties continue to be occupied by the **same social and racial classes**. A change in social or racial occupancy generally contributes to instability and a decline in values."

1967: American Institute of Real Estate Appraisers (“AIREA”) Manual, The Appraisal of Real Estate —

“The causes of racial and ethnic conflicts are not the appraiser’s responsibility. However, he must recognize the fact that values change when **people who are different** from those presently occupying an area advance into and **infiltrate** a neighborhood."

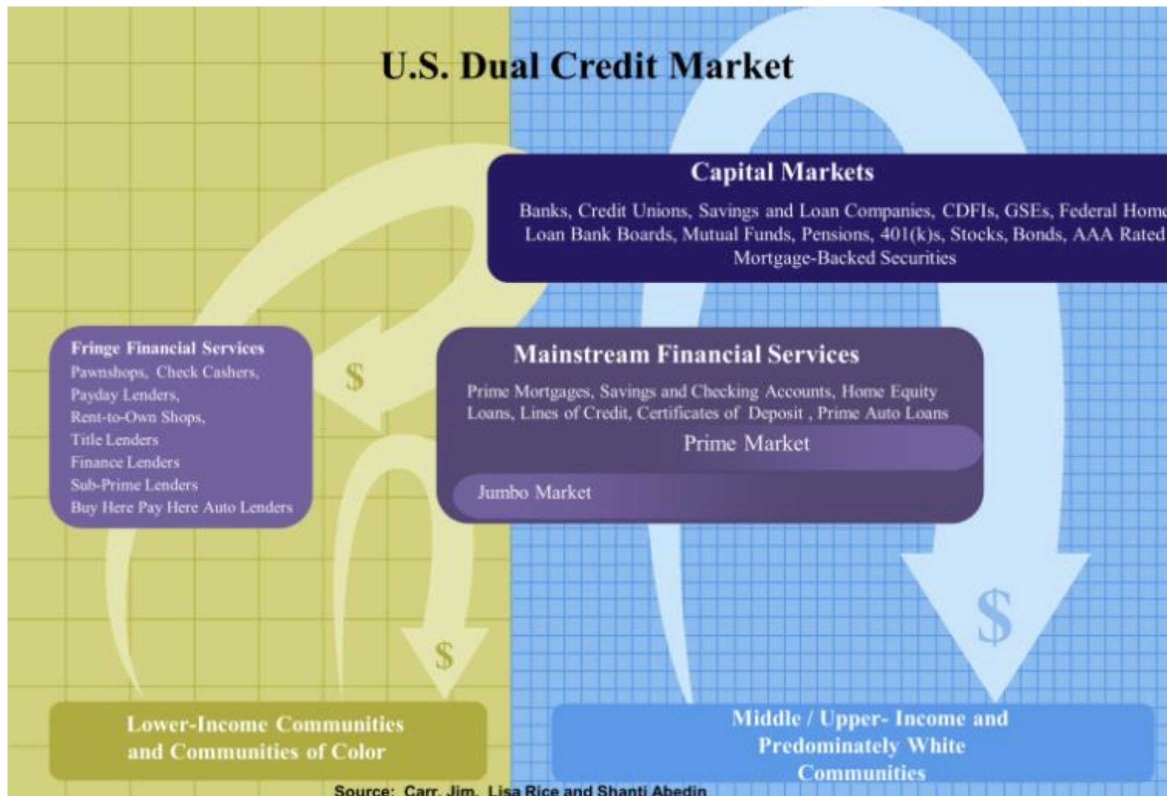
1973: AIREA Course Material —

“Ethnological information also is significant to real estate analysis. As a general rule, homogeneity of the population contributes to stability of real estate values. Information on the **percentage of native born whites, foreign whites, and non-white population is important**, and the changes in this composition have a significance….As a general rule, minority groups are found at the bottom of the socio-economic ladder, and **problems associated with minority group segments** of the population can hinder community growth.”

After decades of these explicitly discriminatory policies, in 1977, the U.S. Department of Justice (“DOJ”) filed suit against the AIREA and three other defendants for violations of the Fair Housing Act, alleging that the defendants had caused lenders and appraisers to treat race and national origin as negative factors in determining the value of dwellings and in evaluating the soundness of home loans. The AIREA settled and agreed to adopt certain policies, including a policy stating that it is improper to base a conclusion or opinion of value, or a conclusion with respect to neighborhood trends, upon stereotyped or biased presumptions relating to race, color, religion, sex, or national origin.

Prior Discriminatory Policies Created Today’s Dual Credit Market as Well as Massive and Persistent Homeownership and Wealth Gaps

The U.S. has a dual credit market driven by centuries of discriminatory policies and practices. The graphic below illustrates this concept with safer, more regulated financial institutions reflected on the blue side and non-traditional, poorly regulated and often less safe financial institutions reflected on the green side of the graphic.



Unfortunately, borrowers who access credit with subprime or non-traditional lenders often get trapped and find it extremely difficult to access credit from mainstream lenders. One reason is because some credit scoring systems ding borrowers who access credit from high-cost or finance company lenders – even if the borrower always pays her bill on time. Many alternative financial services providers (the green side of the graphic) do not report positive credit payments to credit reporting agencies. This means that consumers who access credit from the fringe market typically will not gain the benefit of making positive payments because other creditors cannot see that positive payment history. But consumers who access credit from the financial mainstream (the blue side of the graphic) typically gain positive benefits by having their timely payments reported. The ability to access credit from financial institutions who report timely payments to credit reporting agencies is so important because this information is used to enable consumers to develop and build solid credit scores.

Consumers who primarily access credit from alternative financial services providers (the green side of the graphic) are often "credit invisible." That this, they lack sufficient credit data to generate a score. People of color are disproportionately represented among the credit invisible. One reason is that mainstream, traditional lenders (the blue side of the graphic) have long redlined and abandoned communities of color. Even today, banks are closing branches in high-income Black communities at a higher rate than they are closing branches in low-income non-Black communities. Conversely, non-traditional and alternative financial services providers are hyper-concentrated in communities of color. Thus, institutions that report consumers' positive credit behavior are sparsely located in communities of color while institutions that typically do not report consumers' positive behavior are highly concentrated in those communities.

These discriminatory policies and the dual credit market have created distinct advantages for White families, leading to massive homeownership, wealth, and credit gaps that persist today. In particular, because home value has been the cornerstone of intergenerational wealth in the U.S., the historical housing practices have had long term effects in creating some of the current wealth inequalities where White wealth has soared while Black wealth has remained stagnant. In 2019, White family wealth sat at $188,200 (median) and $983,400 (mean). In contrast, Black families' median and mean net worth were $24,100 and $142,500, respectively. These wealth disparities, in turn, reflect intergenerational transfer disparities: 29.9 percent of White families have received an inheritance, compared with only 10.1 percent of Black families. Ultimately, these disparities harm the economy as a whole. For example, researchers from the Federal Reserve Bank of San Francisco have identified redlining as one of the key structural barriers that caused a staggering $22.9 trillion in losses to U.S. economic output over the past 30 years.

This bevy of laws, regulations, and policies created structural inequities and systemic bias that are still being manifest in our society. Residential and school segregation, the inextricable link between place and opportunity, the dual credit market, the inequitable health ecosystem, the patchwork of exclusive and restrictive zoning systems, and additional structurally unfair systems all stem from a long stream of laws that were either explicitly racist, implemented with racialized policies, or produced disparate impacts on communities of color. The effect of these policies was to widen the racial wealth, income, and homeownership gaps.

Legal Framework: Redlining Violates the Fair Housing Act and the Equal Credit Opportunity Act

The fair lending laws were designed to remedy credit discrimination, including redlining. The federal financial regulators have long recognized that redlining violates the fair lending laws, including in the following policy documents:

> 1994 Interagency Policy Statement on Discrimination in Lending: Redlining refers to the illegal practice of refusing to make residential loans or imposing more onerous terms on any loans made because of the predominant race, national origin, etc., of the residents of the neighborhood in which the property is located. Redlining violates both the Fair Housing Act and the Equal Credit Opportunity Act.
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> 2009 Interagency Fair Lending Examination Procedures: Redlining is a form of illegal disparate treatment in which a lender provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located.

Similarly, courts have repeatedly recognized that redlining is a violation of the Fair Housing Act and the Equal Credit Opportunity Act. *See, e.g., Ring v. First Interstate Mortgage, Inc.*, 984 F. 2d 924 (8th Cir. 1993); *Hirschfeld v. Metlife Bank, N.A.*, 2012 WL 3240669 (E.D.N.Y. July 31, 2012); *JAT, Inc. v. Nat'l City Bank of Midwest*, 460 F. Supp. 2d 812, 819-20 (E.D. Mich. 2006); *Hargraves v. Capital City Mortg. Corp.*, 140 F. Supp. 2d 7, 21 (D.D.C. 2000); *Milton v. Bancplus Mortgage Corp.*, 1996 WL 197532 (N.D. Ill. Apr. 19, 1996); *Old West End Ass'n v. Buckeye Federal Sav. & Loan*, 675 F. Supp. 1100 (N.D. Ohio 1987); *Harrison v. Otto G. Heinzeroth Mortg. Co.,* 430 F. Supp. 893 (N.D. Ohio 1977); *Laufman v. Oakley Bldg. & Loan Co.*, 408 F. Supp. 489 (S.D. Ohio 1976).