Inclusive Economics and Home Loan Policies for Informal Workers[1]

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ABSTRACT

The United States has been suffering from a housing crisis that existed long before the proliferation of sub-prime loans and the Great Recession of 2008-2009. For decades, millions of gainfully employed workers have been institutionally excluded from homeownership, simply because they work in the informal economy. Because of this, the economic growth of households in this demographic has been stymied by discriminatory banking policies that heavily prioritize short-term profit maximization over borrower reliability, or loan viability. Many of those affected are historically disenfranchised people,[3] *who systematically have been excluded from the American dream of "a chicken in every pot and a car in every garage,"*[4] *simply for failing to belong to the narrow demographic for whom home loans were originally designed.*

Approximately 37% of working adults[5] *in the United States today undertake some type of informal work, and 16% of working adults are employed on a full-time basis in the informal sector. It is a segment of the working population that funds an imposing amount of sales tax revenue.*[6] *These are not the people who lost their homes in The Great Recession of 2008. Indeed, approximately 70% of the subprime loans issued in 2006 were to upper and upper-middle income borrowers in wealthy neighborhoods,*[7] *and not middle-class working households, or middle-class neighborhoods. It is still the case today that, for workers of the informal economy, homeownership is largely unavailable due to institutional barriers, no*

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[3] The U.S. informal economy consists of 12.3% African Americans, 6.5% Asians, and 17.6% Latinos; and 47% are women. *See* U.S. DEP'T OF LABOR BUREAU OF LABOR STATISTICS, LABOR FORCE STATISTICS FROM THE CURRENT POPULATION SURVEY, 1, 1 (Jan. 22, 2020), https://www.bls.gov/cps/cpsaat18.htm.
[4] Staff Writer, *31st President Achieved Prominence in Four Major Careers During His Lifetime*, N.Y. TIMES, Oct. 21, 1964, at 40 (highlighting the 1928 campaign slogan of a Republican party circular supporting Herbert Hoover's Presidential campaign).
[5] For the purposes of this article, unless otherwise indicated, the term "adults" refers to those aged 21 and older.
[6] It is estimated that workers in the informal sector in Los Angeles County alone paid approximately $440 million in sales tax in one year. Daniel Flaming et al., *Hopeful Workers, Marginal Jobs: LA's Off-the-Books Labor Force*, ECONOMIC ROUNDTABLE, 1, 18 (2005) (citing Keith Hart, Informal Income Opportunities and Urban Employment in Ghana, 11 J. MOD. AFR. STUD. 61 (Mar. 1973)).
[7] Eugene A. Ludwig et al., *Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act,* 4 COMTY DEV. INNOVATION REV. 84, 93 (2009).

matter how modest the home or neighborhood, and no matter how reliable the loan applicant is.[8]

This article describes the lost macro-economic opportunity in failing to provide home loans to qualified households in the informal economy, then providing a survey of solutions with successful track records. These solutions fall with a framework I refer to as inclusive economics. My analysis focuses on one segment of informal economy: the cultural economy, which largely operates in cash and exemplifies how inclusive economics can create wealth in a sustainable way that includes historically dis-enfranchised households.

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[8] Paulina Restrepo-Echavarria & Maria A. Arias, *What is the Informal Labour Market?*, FED. RESERVE BANK OF ST. LOUIS: ON THE ECON. BLOG (Apr. 2017), https://www.stlouisfed.org/on-the-economy/2017/april/informal-labor-market.

INTRODUCTION

Historically, home loan policies, partially designed by federal regulation and implemented by the private sector, have been created to produce the highest profit margin in the fastest manner possible, with little regard to a larger objective of macro-economic stability through increased access to capital. This article dissects the problems of such conduct and prescribes a more macro-economically efficient free market model, designed around fundamental concepts of inclusivity, particularly of the historically disenfranchised population working in the informal economy.

Perhaps, one of the most pronounced illustrations of this phenomenon of exclusion can be found in the cultural economy, where workers are tied to creative endeavors and are often paid in unrecorded cash transactions because of an informal infrastructure, where such infrastructure has become the long-standing norm in their professions. Indeed, in the mentioned economies, the informal nature of the employment does not necessarily arise from the request of the workers, but it is rather a consequence developed out of the employers' convenience. These employers often have developed personnel systems over decades, where book-keeping procedures of their contracts and full-time workers are minimal at best, particularly where their workforce is comprised of a multitude of independent contractors.

Imagine a mid-size American city of 400,000 people, approximately 16,000 of whom are waiters and 4,000 of whom are musicians that receive the bulk of their pay in un-taxed or partially taxed income. In this city, two different workers apply for home loans through a Housing and Urban

Development ("HUD") program that created extremely affordable,[9] high-quality houses for sale to low- and middle-income workers:

i. **Worker A** is a musician who works six days a week. He is paid in cash a different amount almost every night by each of the venues in which he performs. None of the venues track this cash, and none issue him, or any other musician they hire, a 1099 at the end of the year. Worker A lives with three other artists and musicians in an old house that they have improved with their own funds. Worker A has never had a credit card, has never been in debt, and has no credit score, has never filed a tax return, and is unaware as to whether or not his employer pays taxes for him. He believes that he has behaved responsibly by living within his means without the assistance of a bank. Since Worker A moved in seven years ago, the neighborhood has improved immensely, filling in with many other cash-based workers like himself, who live in multiple-income households of unrelated individuals, none of whom own the properties they live in. This roommate situation is ideal not only for cost-containment reasons, but also because the people mentioned here enjoy the benefits of professional development by living with other artists. Worker A has never missed a day of rent in his life**;**

ii. **Worker B** receives continuous income as a waitress in a prestigious, historic restaurant. She has become excellent in her job, as have many of her colleagues, who compositely have helped the city gain its reputation as one of the capital cities for fine dining. Much of her income is received in the form of tips, only part of which is taxed, in accordance with the restaurant's long-standing book-keeping procedures. She has never held a credit card, but in the past, she has taken out a loan for some furniture she was trying to purchase in her low-income neighborhood. She was late on a few payments years ago, eventually defaulted because the interest rate became too burdensome to keep up with, and the furniture was then re-possessed. She lives with her daughter, who recently started working after the birth of her child, and, in addition to helping with caretaking duties, contributes financially to the household.

Worker B also earns semi-regular income as a seamstress for various cultural organizations. With her daughter's income and her supplementary income, she can put some savings away and has remained current on all of her bills in the last four years, ever since she defaulted on

[9] Throughout this article, the word "affordable" will be used in the same manner as defined by the U.S. Department of Housing and Urban Development ("HUD"), i.e., at mortgage costs no higher than 30% of the mortgagee's take-home income. GLOSSARY OF HOUSING AND URBAN DEV. TERMS, HUD.GOV, https://archives.huduser.gov/portal/glossary/glossary.html (last visited Jan. 28, 2020).

her furniture loan. Yet, she has a low credit score because of the default. Both Worker B and her daughter consider their living situation ideal: i) it is helpful for the daughter to have childcare assistance from a trusted relative; ii) living expenses are shared; iii) both of them prefer the company of family to the company of strangers, or to living alone. Worker B has paid rent on time her entire life, even during the layaway furniture mishap, and takes excellent care of the apartment, even adding value through improvements she pays out of her own pocket. Her rent payment exceeds the landlord's monthly payment on the property.

Worker A, the young, touring musician, is perhaps the cliché victim of gentrification, and not always one that elicits sympathy from critics and policymakers. Indeed, it is often assumed that the working artist actively chooses the lifestyle of the low-wage wanderer in a search for authenticity; or that such an artist comes from a background of privilege and financial resources that would enable him to own property with just a single phone call to a family member. Other critics might argue that in fact it is the artist that brings about gentrification by relocating to ethnically diverse and economically distressed neighborhoods only to bring about improvements, that in fact cause gentrification and the eviction of working-class households of color.

Regardless of whether this perception is true, and evidence suggests that it is not,[10] gentrification has the same detrimental effect on the longtime, local family working in hospitality as it does for the touring musician who lives and pays for services and taxes in an area with a large informal economy.

Worker B is part and parcel of a cultural economy just as much as Worker A, the two share many of the same realities:

i. both have developed spendthrift lifestyles, with little to no debt, and are extremely reliable at making their housing payments;[11]

ii. neither of these workers will ever qualify for a conventional home loan, even though a mortgage payment on an equivalent property would be less than the rent they pay;

iii. both have always lived in households that are comprised of multiple income earners under one roof and consider this an ideal

[10] A comprehensive survey with extensive, zip code-based data reflects that neighborhoods with sharp increases in property values, household incomes have little connection to the presence of artists and arts establishments. Carl Grodach et al., *Gentrification, Displacement and the Arts: Untangling the Relationship Between Arts Industries and Place Change,* 55 URB. STUD. 808, 815 (Oct. 2016).

[11] Ed Flynn & Gordon Bermant, *Bankruptcy by the Numbers: Lifestyles of the Rich and Bankrupt*, AM. BANKING INST. J. (May 7, 2015), https://www.abi.org/abi-journal/lifestyles-of-the-rich-and-bankrupt ("The one percent of debtors with the highest general unsecured debt accounted for about 20 percent of all reported unsecured debt. If our sample outliers are representative, the unsecured debt of the upper one percent nationwide is about $8 billion per year.").

living situation, not a temporary, substandard, or unwanted feature;

iv. both workers have sources of untraceable income, even though neither earner is actively trying to hide this income, and both would have a difficult time obtaining income verification enough to satisfy the requirements of a conventional bank;

v. the longer each worker stays in his or her neighborhood, and the more stable and more marketable that neighborhood becomes, the more vulnerable they become to being displaced in order for the landlords to increase rent and attract renters with higher incomes.

Worker A and Worker B are based on real individuals I have worked with through a HUD-funded program and the city described above is not hypothetical but is in fact New Orleans,[12] and resembles many other American cities with large informal sectors.[13] Indeed, this phenomenon is common in many cities where the cost of housing is skyrocketing.[14]

The paradox described above represents a major hazard in the informal economy that affects us on a macroeconomic level: the cost of housing increases and marginalizes locals who comprise a significant segment of our working population in the informal economy.[15] Moreover, because the informal economy at large abundantly comprises over a third of our adult labor force, and a comparably significant portion of our GDP, the

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[12] Kat Stromquist, *Shift Change: How New Orleans Hospitality Workers are Organizing Their Industry*, GAMBIT (Dec. 11, 2007, 4:00 PM), https://www.nola.com/gambit/news/article_22ea6697-3e08-5563-aadc-0dab723d8537.html; *see also* Helen Freund, *Waiting for Change: New Orleans Restaurant Workers, Tips and New Ways to Pay*, GAMBIT (Sept. 26, 2016, 4:00 PM), https://www.nola.com/gambit/news/article_ad42e6ed-7f25-51f4-9330-05aeb70efd2f.html (noting that at least 15,000 workers in New Orleans are tipped food industry workers); Mitchell J. Landrieu, *2013 New Orleans Cultural Economy Snapshot*, THE MAYOR'S OFF. OF CULTURAL ECON., CITY OF NEW ORLEANS, 5, 49 (2013) (noting that about 4,000 are musicians working in approximately 117 live music venues).

[13] In New York City, some have observed the challenges of homeownership faced by Asian immigrants who are highly concentrated in the informal economy, putting many at risk of displacement when rents rise. *See* Tarry Hum, *Minority Banks, Homeownership, and Prospects for New York City's Multi-Racial Immigrant Neighborhoods*, *in* A SHARED FUTURE: FOSTERING COMMUNITIES OF INCLUSION IN AN ERA OF INEQUALITY 140, 152 (2018).

[14] Gentrification of artist neighborhoods has also occurred in Indianapolis. *See* Patrick Sisson, *Can an Indianapolis Arts Collective do Sustainable Development Right?*, CURBED (Jul. 18, 2016, 1:36 PM), https://www.curbed.com/2016/7/18/12214122/artist-gentrification-indianapolis-big-car-collaborative.

[15] The debate of "Exceptionalism" versus "Americanism," and the displacement of the culture bearers in cities with cultural economies has been a lively debate surrounding the post-Katrina development of New Orleans. *See* C. W. Cannon, *'Gentrification Flap Rooted in an Older Debate Over New Orleans 'Exceptionalism'*, LENS, (Apr. 9, 2013), https://thelensnola.org/2013/04/09/gentrification-flap-rooted-in-an-older-debate-over-new-orleans-exceptionalism/; Richard Campanella, *Gentrification and its Discontents: Notes from New Orleans*, NEW GEOGRAPHY, (Feb. 28, 2013), https://www.newgeography.com/content/003526-gentrification-and-its-discontents-notes-new-orleans.

vulnerabilities of this demographic play a significant role in neighborhood destabilization and in our economic growth nation-wide.

This begs us to ask whether the free market, as idealized by Adam Smith and neoclassical conservative economists, has adequately served this large segment of our nation's workers; and, if not, whether this result is due to Workers A & B engaging in "irrational" behavior or rather to some inherent failure of our financial infrastructure.

From the perspective of a neoclassical economist, the eventual removal of Worker A and Worker B from the housing and the neighborhoods they add value to is the correct market result. By contrast, from the perspective of an urban developer seeking to stabilize not only a large portion of a city's population, but also real estate within the city itself, the relevant question might be to ask what policies can strengthen and integrate non-illicit, economic activity and enable workers in those economies to build assets, so that they can stay rooted to the city and continue to comprise a significant portion of the economy.

I propose using a macro-economic lens to identify successful solutions that have been somewhat haphazardly experimented with in recent times; this is a lens I will be referring to in this article as *inclusive economics*. I argue that designing more inclusive economic homeownership policies and programs can effectively address the paradox of displacement resulting from gentrification in a familiar, market-based way. For purposes of comity, I am limiting the scope of this analysis on informal economy to housing and cultural economies, as defined in Part I; though many of the same principles and solutions can be applied to other informal or quasi-informal economies and other legal disciplines.[16]

For these purposes, I provide background on the philosophical underpinnings of inclusive economics, which arguably, are rooted in our nation's history of experimentation with economic policies. The concept of inclusive economics that I am proposing is not a socialist or Marxist critique of Adam Smith-styled ideals of free market capitalism, but rather a deeper dive into specific theories of property law and banking law that addresses practical challenges to wealth-building and economic growth for workers in the informal economy. As stated by Mehrsa Baradaran in her comprehensive work on the underbanked, I too argue that we can "change the world without changing the rules".[17]

Addressing the disparity of wealth and income has become central to our contemporary political discourse. In 2018, voters voiced a clear challenge to the free market system by electing a historic number of candidates who branded their campaigns as overt challenges to the landed

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[16] Agriculture is another example of an informal economy that is not related to arts or culture. *See* USAID, INFORMAL ECONOMY: REGIONAL AGRICULTURAL TRADE ENVIRONMENT (RATE) SUMMARY, 1, 4 (Dec. 2013). Also, by way of example, inclusive economic analysis can also be applied to banking practices in small business loans and intellectual property.

[17] MEHRSA BARADARAN, HOW THE OTHER HALF BANKS; EXCLUSION, EXPLOITATION, AND THE THREAT TO DEMOCRACY 162 (Harvard Univ. Press 2015).

elite.[18] Even aside from the contemporary political zeitgeist, it seems appropriate that we evaluate this conundrum of institutional inequality that has plagued over one-third of our nation's workers with economic instability for decades. Moreover, from a market perspective, this is also a niche of the economy that has yet to realize its full capacity. While social democracies often solve the problem by reducing the disparity of income, this does little to solve the issue of the disparity of assets and wealth. This article is premised on the increasingly popular belief that providing better access to homeownership for historically disenfranchised populations is one of the most effective ways to reduce inequality in the American economy.[19] Under Part I of this article, I provide a set of definitions for the concepts that are central to the discussion of inclusive economics and the on-going housing crisis in the informal economy and explore some underlying philosophies that can serve as a foundation for inclusive economics. Part II focuses on a more detailed analysis of the problem of exclusion of people working in the informal economic market. Finally, in Part III, I look at a variety of potential solutions within this philosophical framework that have been experimented with to date.

The underlying financial principles combined with the tools surveyed below comprise a working definition of inclusive economics that is argued here to be a distinct economic philosophy and legal jurisprudence providing multi-faceted solutions to the disparity of wealth and income in the U.S. and other nations with free market economies. Though inclusive economics can be applied to multiple features of our nation's economic challenges, this article will focus on its application to wealth-building through homeownership policies.[20]

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[18] The Democratic Party developed the Better New Deal platform for the 2018 midterm elections, which focused heavily on economic reform and is arguably responsible for the net gain of 40 Democratic seats in the House of Representatives, the largest gain for the party since 1974, and 7 new governorships. *See* Tara Golshan, *Democrats' New "Better Deal for Our Democracy," Explained,* VOX (May 21, 2018, 4:55 PM), https://www.vox.com/2018/5/21/17376128/democrats-better-deal-democracy-midterm-2018; Harry Enten, *Latest House Results Confirm 2018 Was Not a Blue Wave. It Was a Blue Tsunami*, CNN (Dec. 6, 2018, 6:31 PM), https://www.cnn.com/2018/12/06/politics/latest-house-vote-blue-wave/index.html; *Election Results 2018*, BALLOTPEDIA, https://ballotpedia.org/Election_results,_2018 (last visited Jan. 27, 2020).

[19] Economic stabilization through increased homeownership has been supported by others. Matthew Jerzyk writes: "Gentrification supporters believe that development is best catalyzed by encouraging investment and redevelopment in low-income neighborhoods. On the other hand, gentrification opponents prefer city governments to invest in low-income communities in order to create a home-grown middle class. Despite disagreement, there is a third way […]. Linked to these incentives should be rent control policies targeting absentee landlords and an inclusionary zoning policy creating financial incentives for local renters to become homeowners." Matthew Jerzyk, *Gentrification's Third Way: An Analysis of Housing Policy & Gentrification in Providence*, 3 HARV. L. & POL'Y REV. 413, 429 (2009).

[20] With other writing projects, I intend to explore the application of inclusive economics to business law, intellectual property law, and land use law.

I. DEFINITIONS

While the terms "informal economies", "cultural economies", and "inclusive economics" have been utilized by the philanthropic community and by the academy in varying degrees, I will be using precise definitions provided below.

A. The Informal Economy

The informal economy, as discussed in this article, is limited to industries in which workers engage in productive, non-illicit activities generating income that is untaxed, or is otherwise unregistered by the government.

Since 2009, the U.S. informal economy has grown to approximately $2 trillion in legitimate services, and an additional $625 billion annually in illicit services and contraband, comprising an estimated sum total 8-10% of our GDP.[21] Yet, discussions on informal economy in the academia of the West frequently focus on activity in non-Western countries, many of which are nation-states with limited tax enforcement mechanisms.[22] This is due to the fact that informal economies are much more abundant internationally. Indeed, in nation-states where government resources are few, the informal economy is a matter of course and informal economies often create their own norms, including informal credit circles, as a necessity for providing some structure where law and policy do not exist.[23] In such economies, interpersonal relations are integral to operations and define the availability of finance without a collateral.[24]

In the U.S., particularly in the academic world, the term *informal economy* is often limited to the analysis of illicit industries (*e.g.* drug-dealing and prostitution), all of which are untaxed activities as a consequence of these industries operating entirely outside the law and tax structure.[25]

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[21] *See* Edgar Feige & Richard Cebula, *America's Underground Economy: Measuring the Size, Growth and Determinants of Income Tax Evasion in the U.S.*, MUNICH PERS. REPEC ARCHIVE 1, 17 (Mar. 19, 2011).

[22] *See, e.g.*, Kevin J. Fandl, *The Role of Informal Legal Institutions in Economic Development*, 32 FORDHAM INT'L L.J. 1, 17-20 (2008) (discussing Kenya, Afghanistan, and Columbia); Claire M. Dickerson, *Informal-Sector Entrepreneurs, Development and Formal Law: A Functional Understanding of Business Law*, 59 AM. J. COMP. L. 179 (2011) (focusing on Sub-Saharan Africa).

[23] *See* Arthur J. Jacobson, *The Other Path of the Law*, 103 YALE L.J. 2213, 2228-31 (1994) (citing HERNANDO DE SOTO, THE OTHER PATH: THE INVISIBLE REVOLUTION IN THE THIRD WORLD 6 (June Abbott trans., 1989)); Jane K. Winn, *Relational Practices and the Marginalization of Law: Informal Financial Practices of Small Businesses in Taiwan*, 28 L. & SOC'Y REV. 193 (1994).

[24] *See* Winn, *supra* note 23, at 215. In Taiwan during the Nineties, for example, during its economic rise, multiple forms of informal lending comprised 57% of the nation's gross domestic product. *See* Chun-I Chen, *Underground Investment Firms in the Republic of China on Taiwan: A Comparison with the Development of Banking Law in the United States*, 10 CHINESE (TAIWAN) Y.B. INT'L L. & AFF. 126, 127 n.3 (1990).

[25] Demetra S. Nightingale & Stephen A. Wandner, *Informal and Nonstandard Employment in the United States,* 20 URBAN INST. BRIEF (2011),

Although there has been some academic recognition of non-illicit industries in the informal economy, these treatments are cursory at best and the vast majority of the academic discussion on the U.S. informal economy is focused on the problems presented by illicit activities creating an "underground economy" and on the debate over whether to legalize such an economy.[26] However, this latter analysis of the domestic informal economy is incomplete. Hence, in this article, I focus this article not only on the data proving the enormity of the informal economy at large, but also on its relevance to the U.S. economy. It has been tracked and analyzed that the informal economy is active to the extent that informal lending circles in over eight different U.S. immigrant communities.[27]

Accordingly, I use the term *informal economy* to describe non-illicit activities with wholly or partially untaxed income. While there are many sectors in which the informal is significant (the agricultural economy, or the bitcoin economy), this article focuses on the cultural economy, which includes professions in music, arts, hospitality, and cultural tourism.[28] My use of the term will not include those untaxed industries resulting from illicit activity, not for any normative reason, but rather because the unreported feature of illicit economies is an essential feature of these industries that must operate illegally in order to exist.[29] My focus centers on activities in

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https://www.urban.org/sites/default/files/publication/32791/412372-informal-and-nonstandard-employment-in-the-united-states.pdf ("Informal employment in the United States tends to be overlooked in policy circles. When it is considered, it is often viewed in terms of black market (*i.e.,* criminal and illegal) activities, undocumented immigrants, or white- collar tax evasion. Aside from these stereotypes, though, informal employment represents various economic arrangements. The existence of the informal market has implications for numerous policy options related to workers and their families, and to businesses (particularly entrepreneurial activity and small businesses).").

[26] Some attention has been given to cattle men and musicians. Jacobson, *supra* note 23, at 2229-31; Aram P. Lief, Musicians Who Busk: Identity, Career, and Community in New Orleans Street Performance (2008) (Thesis, Univ. of New Orleans Scholarworks), https://scholarworks.uno.edu/cgi/viewcontent.cgi?article=1683&context=td; *see generally* Nightingale & Wandner, *supra* note 25, at 1-6; *see also* Kathleen Murray, *Underground Economy*, SAGE BUS. RESEARCHER (2017), http://businessresearcher.sagepub.com/sbr-1863-102479-2775997/20170403/underground-economy.

[27] Cao discusses rotating savings and credit associations in U.S. immigrant communities from Korea, China, Vietnam, Japan, Cambodia, Mexico, Ethiopia, and the West Indies. *See generally*, Lan Cao, *Looking at Communities and Markets*, 74 NOTRE DAME L. REV. 841 (1999).

[28] My definition includes food servers and bartenders, and others who receive a large portion of their income in undocumented tips, in addition to some share of documented income directly from their employers, as part of the informal economy. This is consistent with academic practice in the field of political economy. *See* Olga Kupets, *The Scope and Main Characteristics of Informal Employment in Ukraine Technical Note for the Government of Ukraine*, WORLD BANK (Apr. 2011) http://siteresources.worldbank.org/UKRAINEINUKRAINIANEXTN/Resources/455680-1310372404373/InformalEmploymentinUkraineEng.pdf.

[29] In other words, because illicit industries such as drug-dealing and prostitution must exist in the underground economy as the related economic activity is illegal, for the purposes of this article, I differentiate this type of informal income from untaxed income in the

which workers with legal jobs do not pay taxes in large part due to one or more of the following: i) the established infrastructure of their professions; ii) the low level of financial literacy amongst the workers, or iii) the complicated nature of the tax code for self-employed people.[30]

In summary, the defining features of the informal economy as used in this article are:

i. that it is mostly cash-based;

ii. that it is based on income that is in whole or in part un-recorded through formal measures[31] and that it is un-taxed; and

iii. that it operates within a sort of "dynamic jurisprudence,"[32] in which the rules of operation are not defined by government law but often by long-standing infrastructural traditions. Indeed, businesses within the informal economy can often be less costly to start, in large part because they do not adhere to legal formalities in their inception. Furthermore, as in the international models described above, lending structures available to actors in the informal economy are often informal, if available at all, and rely heavily on interpersonal relationships.

Unsurprisingly, many parallels exist between the non-illicit informal economies in the U.S. and overseas. Many lessons can be learned from the economic development experiments in the informal economy both here and overseas and are discussed in Part III of this Article.

B. *The Cultural Economy*

There are many sub-categories of informal economies, such as the agricultural economy, the block-chain economy, or the cultural economy. I focus on the cultural economy to illustrate the systemic, economic discrimination of workers in this sector of the informal economy.

For the purpose of this article, the *cultural economy* is comprised of industries that generate income through specialized activities of a creative nature, and is often a subset of the tourist economy, though the terms are

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hospitality industry, which can be derived from entirely legal activities such as waiting tables or tour-guiding.

[30] Though I argue that justification for enabling homeownership for these households is predicated on the idea that compliance with tax laws is unduly difficult for practical reasons, I will not be analyzing this justification in much depth. Indeed, one might even argue that the pathway to homeownership is one of the most effective methods to bring informal workers into the formal economy as taxpaying citizens. However, this article focuses on the tools and underlying economic theories that would enhance homeownership opportunities for households in the informal economy.

[31] In other words, I am focusing on industries that are primarily cash-based and are difficult to record or produce evidence to substantiate for home loan process, where no 1099s are issued and it is difficult to obtain letters of verification because the employer considers the book-keeping needed to corroborate too burdensome.

[32] Jacobson, *supra* note 23, at 2214.

distinct in this article.[33] Cultural economy includes visual and performance artists, from musicians to painters.[34] However, as used in this article the term also includes the industries that often accompany a strong base of creatives, such as chefs, waiters, and bartenders, i.e., those professions often categorized under the hospitality industry. From waiters, whose tip income often forms the majority of their income and is often un- or undertaxed, to creatives in the "gig" economy, whose self-employed income is derived from a multitude of individual, discrete, formal and informal contracts, many of the workers in the cultural economy receive income that is either in whole or in-part undocumented.

While the actual work involved and pay structures of the various professions in the cultural economy can vary, workers in the cultural economy all share the same obstacles to wealth-building and financial growth: their lifestyles and the manner in which they receive and record income fall outside the profile of the conventional, single-family Caucasian household whom conventional homeownership underwriting best serves.

For instance, workers in the cultural economy often live in long-term roommate situations well into their adulthood, because this lifestyle serves their professional and economic interests well.[35] They are often self-

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[33] Though not exact, the definition I use of "cultural economy" in this article can be approximated to that defined in Frédéric Leriche & Sylvie Daviet, *Cultural Economy: An Opportunity to Boost Employment and Regional Development?*, 44.7 REGIONAL STUD. 807, 807-808 (2010). This definition is often used interchangeably with the "tourist economy", and for the purposes of this article, I distinguish the cultural economy from the tourism economy of a non-cultural nature, despite the fact that both generate income from tourists. I create this distinction to highlight the key difference that in non-cultural tourist economies the labor force often is comprised of seasonal, transient workers who do not reside at the attraction site on a full-time basis, and accordingly do not have the same motivation for participating in local investment and neighborhood stabilizing activities. Additionally, the labor force of the non-cultural tourist economy is usually paid through W-2 wages, rather than the as in the gig economy of creative entrepreneurs. An example of a tourist economy, that is not cultural in nature and demonstrates these distinctions, can be found in the workers of National Parks. The U.S. National Parks system comprises one of the largest tourist economies in the nation, and a large portion of its labor force is in employment on a seasonal basis, when weather conditions allow for visitors. Many of these workers are paid through W-2 wages either by the federal government, or through for-profit corporations that specialize in managing labor of this nature. These workers are seasonal, often residing elsewhere or nowhere on a full-time basis, and for pragmatic reasons would have no ability or desire to invest locally.

[34] For instance, New Orleans street performers have established unwritten rules regarding work times and locations. The trade continues even today without regulation or permitting requirements. *See* Lief, *supra* note 26, at 55-61. In another example, informal lending circles amongst female entrepreneurs in Latina immigrant communities have clear-cut underwriting standards developed through trial and error. *See* Kelsey Ramirez, *Lending to Hispanics – a whole new ballgame*, HOUSINGWIRE, (Mar. 28, 2017); *see also Creative Vitality in Detroit – The Detroit Cultural Mapping Project*, KRESEGE FOUND. 27-28 (Oct. 2012), https://kresge.org/sites/default/files/Creative-Vitality-in-Detroit-2012-revised071713.pdf.

[35] Hillary Howard, *A Confederacy of Bachelors*, N.Y. TIMES, Aug. 3, 2012("Judith Stacey, a sociologist at New York University and author of the book *Unhitched*, added that traditional

employed freelance entrepreneurs, who have multiple sources of supplemental income at any given time,[36] and frequently have income opportunities that are out-of-state.[37] Cultural workers also have a long history of sharing resources, including everything from materials and tools as in the case of the medieval artisan guilds of Europe,[38] to living/work spaces in New York City that have existed since the 1970's,[39] and to the commercial art sales websites collectively owned and operated in the past 10 years.[40] These qualities are incongruous with the requirements of conventional underwriting for a home loan today.

Entrepreneurship of members of the cultural/informal economy also provides important income opportunities for the historically disenfranchised communities of color who are vulnerable to discrimination in more conventional, formal workplaces.[41] Indeed, institutionalized racism has little effect on the development of small businesses meeting local need for culturally competent services, and, rather than displace white Anglo-workers in the economy, these ethnically diverse micro-businesses result in growth of an economy where there is none.[42]

C. *Inclusive Economics*

Inclusive economics, as defined by this article, has roots in philanthropy and economic development. It is a broad-based philosophy that promotes creative solutions within the free market system to eradicate (or at least reduce) disparity of income and wealth. In the international philanthropy community, inclusive economics describes an ethos of economic development that includes those who are historically disenfranchised. The Rockefeller Foundation and Brookings Institute defines inclusive economics as "[E]xpanded opportunity for more broadly-shared prosperity, especially for those facing the greatest barriers to

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couples and families carried conflicting 'demands and tensions of desire and domesticity', while living among friends meant that 'the vagaries of sexual attraction don't disrupt your security and stability. This kind of communal living is especially good for creative types', she said. 'It's an easy way to get support and it's less of a threat to your artistic life'.").

36 Joanna Woronkowicz & Douglas S. Noonan, *Who Goes Freelance? The Determinants of Self-Employment for Artists*, 43(4) ENTREPRENEURSHIP THEORY & PRAC. 651, 652-54 (2019).

37 *See id.* at 659; *see also* MARIA-ROSARIO JACKSON ET AL., URBAN INST., INVESTING IN CREATIVITY: A STUDY OF THE SUPPORT STRUCTURE FOR U.S. ARTISTS 27-28 (2003).

38 *See* STEVEN A. EPSTEIN, WAGE LABOR AND GUILDS IN MEDIEVAL EUROPE, THE UNIV. OF N.C. PRESS, 10-32 (1991).

39 Colin Moynihan, *Artists' Collective and Burial Society Goes on the Move*, N.Y. TIMES (Sept. 12, 2010), https://www.nytimes.com/2010/09/13/nyregion/13uranian.html?_r=1.

40 *See* NATHAN SCHNEIDER, *An Internet of Ownership: Democratic Design for the Online Economy,*
66(2) SOC. REV. 320, 322-23 (2018).

41 Sonari Glinton, *Some Black Americans Turn to Informal Economy in the Face of Discrimination*, N.P.R. (Oct. 27, 2017), https://www.npr.org/2017/10/27/560239264/some-black-americans-turn-to-informal-economy-in-the-face-of- discrimination.

42 *See id.*

advancing their well-being," and includes concepts of equity, growth, increased participation, stability, and sustainability.[43] Others define inclusive economics as the method of Gandhi in applying a non- linear combination of various economic theories into a contemporary policy.[44] In activism, inclusive economics has manifested itself through large-scale protests of housing policies that discriminate by race and income.[45] In addition to direct action activities, such as protests and impact litigation strategies targeting housing laws and practices, inclusive economic activists have also engaged in affordable home-building volunteerism.[46]

Inclusive economics also has manifested in targeted investment strategies that increase financial literacy education and access to capital. The most renown of these programs is the microfinance movement, first developed in the 1970s in Bangladesh, through the work of Professor Muhammad Yunus who, as an academic experiment, first created a microfinance bank from his personal funds by lending $27 dollars to 42 families. He then founded Grameen Bank, which today has about 2,500 branches and lends billions of dollars to nine million borrowers worldwide, 97% of them being women, with a repayment rate of approximately 99%. The Grameen Bank model has been adopted and replicated internationally by development institutions such as the World Bank and the Ford Foundation. Subsequently, the Lend for America Program was established in the U.S. It applied the concept of microfinance to the Teach for America program structure, a program that trains college graduates to underwrite and issue micro-loans in distressed areas of the country.

Inclusive economic programs have also sought to increase diversity by promoting the inclusion of women, minorities, and rural populations into their economic development strategies.[47] Parts of these strategies include the development of capacity-building resources through training and consulting. Additionally, higher-quality, affordable housing for rent and ownership has also been a funding strategy within the inclusive economic umbrella of the philanthropy and economic development finance worlds.

In his most famous work, *The Wealth of Nations*, Smith

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[43] Rockefeller Foundation, *Inclusive Economy Indicators: Framework and Indicator Recommendations*, ROCKEFELLER FOUND. 1, 3 (Dec. 2016), https://assets.rockefellerfoundation.org/app/uploads/20161212162730/Inclusive-Economies-Indicators-Full-Report-DEC6.pdf.

[44] *See generally* NARENDAR PANI, INCLUSIVE ECONOMICS: GANDHIAN METHOD AND CONTEMPORARY POLICY 23-26 (Sage 2001).

[45] Jimmy Tobias, *Meet the Rising New Housing Movement That Wants to Create Homes for All,* THE NATION (May 24, 2018), https://www.thenation.com/article/archive/the-way-home/.

[46] In 2012, Habitat for Humanity, a housing development nonprofit where a large portion of the building and trades labor is provided by volunteers, ranked as the 6th largest home builder in the U.S.. Staff Writer, *Habitat for Humanity 6th Largest U.S. Homebuilder for the Second Year,* HABITAT FOR HUMANITY (May 18, 2012), https://www.habitat.org/newsroom/05-18-2012-hfh-is-sixth-largest-homebuilder.

[47] *See* Rockefeller Foundation, *supra* note 43, at 14-17.

characterizes the driving forces of capitalist growth to be comprised of what he referred to as "rational choice", balancing self-interest with the common good, competition, and the division of labor.[48] Critics have emerged following every financial collapse in the modern world. One critic based out of the National Institute of Advanced Studies in India, Narendar Pani, has argued that the domino crisis of the Asian nations in the 1990's was due to fiscal and monetary policies adhering too dogmatically to these concepts, and instead defended an inclusion of multiple models and a willingness to experiment with many policies, until one or more of these concepts result in success and financial stability for the nation at large.[49] Such policies and principles of philosophical inclusiveness coincide with the targeted objectives of philanthropists and economic developers who also use the term inclusive economics.

For the purposes of my analysis, the term inclusive economics shall have two key features: i) the inclusion of multiple economic models, and ii) the inclusion of the broadest possible sector of society, particularly workers in the informal economy and others who are disenfranchised by contemporary neoclassical economic policies.

II. THE PROBLEM

A. *Gentrification*

The phenomenon of low-income households being priced out of a neighborhood is frequently referred to as gentrification and is often dismissed as a necessary but inconsequential evil that is part of the process of stabilizing a city. I join other academics in positing that an inflation in housing costs that is disproportionate to income growth can destabilize the region by displacing the economic drivers of a city whose economy is based on culture.[50] Additionally, gentrification eradicates the potential for real economic growth by reducing opportunities for building equity within the middle class in order to better serve the upper-middle and upper classes.[51] While the merits of gentrification will not be disputed or analyzed here, the detriments are widely recognized and significant enough to deserve the

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[48] ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 9-18 (S. M. Soares ed. 2007).
[49] *See* PANI, *supra* note 44, at 11-23.
[50] Cameron Bridgford, *Artist Displacement and the Resurgence of Cities*, DENV. URBANISM (Jan. 8, 2017), https://denverurbanism.com/2017/01/artist-displacement-and-the-resurgence-of-cities-2.html ("Overall, this crisis begs the question of why the contribution of arts and culture to a city's urban landscape is not taken more seriously, not only as a staple of good urban planning and design, but as an economic engine that drives development investment, population growth and tourism. While a city can have a beautifully-designed built environment, without the development of unique character—often driven by, or experiencing contributions from, local artists—that turns a city's space into *place*, the success of an urban environment may be time-limited").
[51] *See generally* Flynn & Bermant, *supra* note 11; *see also* Ludwig et al., *supra* note 7, at 99-100.

creation of an intentional strategy to mitigate such consequences.

As the U.S. continues to deindustrialize, informal economies such as cultural economy do more than provide an intangible cultural resource. Rather, informal economics comprises a meaningful, measurable segment of the economy at large. In cities such as New Orleans, the hospitality industry employs 100,000 of the city's 400,000 residents.[52] In newly deindustrialized Detroit, studies have found that jobs in the cultural economy were of the most resilient throughout the economic downturn of 2008, with significantly higher median incomes than non-cultural professions ($42,000 annually for professions in the cultural economy versus $23,000 annually[53] for professions outside of the cultural economy).[54]

Furthermore, I argue that rooting cultural workers to neighborhoods can also help insulate an urban center from a localized economic downturn by creating a more diversified economy. First, many workers in the cultural economy have income opportunities available to them outside their locality. For instance, regardless of the economic conditions of the city they live in, visual artists have opportunities to sell paintings outside their home city[55] and musicians have opportunities to make income from the traditional path of touring.[56] To be able to generate income outside of their hometown means that their ability to make neighborhood investments is not necessarily affected by the closure of local manufacturing plants. Further, the start-up costs for an artist tend to be lower than, by way of example, the start-up costs of a real estate business. This is particularly true in artistic professions that engage in collective resource-sharing.[57]

In a post-2008 economy, some have asserted that creative economies have become imperative in the revival of affected cities such as Detroit.[58] Indeed, there is a growing recognition in the legal and economic community of the importance of the cultural economy and the creative class in economic

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[52] ROBERT HABANS & ALLISON PLYER, THE DATA CENTER, BENCHMARKING NEW ORLEANS' TOURISM ECONOMY: HOTEL AND FULL-SERVICE RESTAURANT JOBS 1, 2 (2018).

[53] *Creative Vitality*, *supra* note 34, at 1, 10.

[54] Regina Austin argues that cultural collective efficacy has value in the infrastructure norm of sharing resources, contrary to absolute theories of staunch integrationists, who argue that integration into conventional society is an imperative. *See* Regina Austin, *An Honest Living: Street Vendors, Municipal Regulation, and the Black Public Sphere*, 103 YALE L.J., 2119, 2119-29 (1994). In fact, Austin argues, the informal economy promotes distributive justice. *Id.*

[55] *See generally* Zara Stone, *How a 26-Year-Old Artist Makes 40% of Sales Through Instagram*, FORBES (Sept. 19, 2017), https://www.forbes.com/sites/zarastone/2017/09/19/how-a-26-year-old-artist-makes-40-of-sales-through-instagram/#485034e0192b.

[56] *See* Devon Delfino, *How Musicians Really Make Their Money — and it Has Nothing to do With How Many Times People Listen to Their Songs*, BUS. INSIDER (Oct. 19, 2018), https://www.businessinsider.com/how-do-musicians-make-money-2018-10.

[57] See *id*.

[58] *See* RICHARD FLORIDA, THE GREAT RESET: HOW NEW WAYS OF LIVING AND WORKING DRIVE POST-CRASH PROSPERITY 85, 118-19, 128 (Harper 2010).

development, the need for innovative strategies in supporting this sector, and the opportunities for advocacy that "lie at the intersection of the legal and creative community", in which micro-enterprises play an important role.[59] Nevertheless, this economic phenomenon is not exclusive to large urban cities. Anecdotes abound of small, rural cities that have created artistic attractions from whole cloth.[60] Although it is widely recognized that the cultural economy cannot replace the volume of employment that large-scale industry creates, substantial evidence now exists demonstrating that the cultural economy has the potential to create a diverse, more sustainable economy[61] anywhere from Detroit, MI, to Muscle Shoals, AL, where jobs in arts and culture production have created 2,658 jobs resulting in $62.81 million in earnings per year.[62] Though not entirely replacing the hundreds of manufacturing industry jobs lost from 2013-2015 in Muscle Shoals, economists broadly agree that the revival of the music industry did help curb the economic devastation of the city from the manufacturing recession.[63]

Yet, unless artists in cities like Detroit and Muscle Shoals can buy homes, these cultural workers will be inevitably priced out. In short, the workers in the creative sector, who add value to the city by succeeding in their professions, become progressively vulnerable to displacement as the creative sector continues to prosper; stabilizing this sector has importance on a macro-economic scale.[64]

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[59] *See* Amanda M. Spratley, *Connecting Law and Creativity: The Role of Lawyers in Supporting and Creative and Innovative Economic Development*, 8 HASTINGS BUS. L.J. 221, 222 (2012) (arguing that the economy of the Information Age is transforming into one in which creativity and innovation is required, that a link exists "between the creative economy and strengthening regional and local U.S. economies," and that microenterprises play an integral role).

[60] *See* Victoria F. Phillips, *Commodification, Intellectual Property and the Quilters of Gee's Bend*, 15 AM. U. J. GENDER POL'Y & L. 359, 363-65 (2007) (noting that the quilts made by African American women, a tradition dating back to the Civil War and the Underground Railroad, have attracted international visitors and tourists to a rural Alabama town with a population of 275 individuals). In rural Georgia, a story-telling event held by locals in the town of Colquitt, population of 1,879, has blossomed into a tradition attracting 55,000 visitors annually and resulting in approximately $500,000 in annual revenue for a total of $4 million since its inception in 1992. *See* MICHAEL SHUMAN, BUS. ALLIANCE FOR LOCAL LIVING ECONOMIES, MAKING THE CASE FOR LOCALISM: CASE STUDIES OF SUCCESSFUL LOCALIST BUSINESSES (2014), https://bealocalist.org/wp-content/uploads/2016/07/balle-case-studies-2014_zingermanscob.pdf.

[61] *See* JOHN HOWKINS, THE CREATIVE ECONOMY: HOW PEOPLE MAKE MONEY FROM IDEAS 86 (Penguin 2002) (noting that the creative economy comprised $2.7 trillion of the global economy).

[62] *See* Keith D. Malone & J. Douglas Barrett, *Economic Impact of the Arts and Cultural production — Florence-Muscle Shoals MSA*, UNIV. OF N. ALA. MAG. 1, 19 (Feb. 2016).

[63] *See* Staff Writer, *48 Investigates: Can Music Give the Shoals a Sound Economy?*, WAFF 48 (July 16, 2015), www.waff.com/story/29567702/48-investigates-can-music-give-the-shoals-a-sound-economy/ (discussing how the resurgence of the music economy in Muscle Shoals, AL has helped curb the recent decline in factory jobs).

[64] Some might argue that many of these households are attempting to evade the law through nonpayment of income taxes and should not be rewarded with opportunities at homeownership. Some counter-argue that there are positive aspects to informal work, one of

B. Conventional Underwriting

At the root of destabilization is the conventional home loan underwriting process.[65] Workers in the cultural economy, as all workers in the informal economy, face a number of institutional challenges in getting a home loan, which are broadly summarized below.

1. The Fico Score

In 1989, the Fair Isaac Corporation developed the FICO score, which is now used in over 90% of U.S. lending decisions.[66] It uses the following factors to derive a score that purports to determine risk: i) payment history of past credit accounts, ii) amounts of credit and loans owed, iii) the length of credit history, iv) the frequency of credit inquiries, and v) the mix of retail

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which is the idea that it is a segue into formal work, with few barriers to entry, and that this type of employment has the potential to strengthen the economy by increasing a household's disposable income when it is not the primary source of income. *See* Nightingale & Wandner, *supra* note 25, at 15. More directly to the point, evidence suggests, however, that workers in the informal economy often lack the financial literacy needed to lawfully pay taxes and develop the type of legal documentation required in order to build wealth and assets; and that in fact the complexity of filing taxes is intentional in order to strengthen the commercial industry behind tax filing assistance. *See* Joseph Bankman, Daniel Hemel & Dennis Ventry, *Why Filing Taxes Isn't Easy*, POLITICO (July 18, 2018, 3:01 PM), https://www.politico.com/agenda/story/2018/07/18/tax-filing-congress-irs-000683. To this narrow point, I argue that on-boarding workers in the informal economy into homeownership is in fact an intensive educational process and excellent method of providing them the financial literacy needed, with one of the strongest incentives for them to become part of the tax base. Few methods provide better motivation to convince workers in the informal economy that the complexity of filing taxes, particularly for those who are self-employed, is worth the drudgery.

[65] It is worth posing the question as to whether Dodd-Frank and the 2018 Dodd-Frank reforms pose problems to workers in the informal economy when qualifying for a loan. I argue that neither did so. The Act sought to curb subprime mortgages that caused the 2009 Recession. However, as argued throughout this article, workers in the informal economy were excluded from homeownership long before the advent of the subprime loan. *See* Carole V. Ellis, *3 Ways the Dodd-Frank Repeal Could Affect You*, THINK REALITY (June 11, 2017), https://thinkrealty.com/dodd-frank-repeal/ ("Dodd-Frank mainly affected conventional homebuyers who found themselves unable to finance their primary home purchases via traditional 30-year-fixed mortgages because lenders were wary of the regulations and legislation. Many analysts blame the act for the 'credit crunch' that has existed since 2008 as lenders backed off lending practices that they felt might open them up to litigation or create another wave of foreclosures in the future, but smaller players were less affected than many had initially feared."). In fact, one might argue that the reforms enacted, such as lowering the loan to income ratio thresholds, and requiring more lender data outside the credit score to determine credit-worthiness, benefit the informal worker in that essentially it encourages the issuance of smaller loans, and thinking beyond the credit score and income paradigm. The 2018 revisions loose some of the regulations in modest ways, by freeing up lending regulations on smaller banks and credit unions; but even before such revisions, Dodd-Frank era lending amongst community banks almost doubled in growth. *See* Ben McLannahan & Barney Jopson*, Small US Banks are Winners from Deregulation, Now They Want More,* FIN. TIMES (June 10, 2018), https://www.ft.com/content/40b19aea-5878-11e8-bdb7-f6677d2e1ce8.

[66] *About*, FICO SCORE (2015), https://ficoscore.com/about/.

credit, installment credit, finance company accounts and mortgage loans.[67]

Just recently, the FICO score calculation adopted a new criterion for analyzing cash transactions as reflected through the borrower's checking account; this new criterion was adopted with the intention of capturing more information and expanding the pool of borrowers who had not taken out loans yet.[68]

Unfortunately, the assumption that all reliable borrowers are measurable through a FICO score is flawed. According to some reports, over one-third of the U.S. population has no credit history and over 16% of the African-American population does not use lending or banking services.[69] It is well-recognized that the members of low- and middle-income households lack the financial literacy needed to make decisions involving long-term financial stability.[70] For the sake of completeness, I hereby recall that financial literacy can be defined as the aptitude to "make informed judgments and to take effective actions regarding the current, and future, use and management of money."[71] It includes the understanding of how credit, budgeting, planning for retirement, saving for major purchases, using bank accounts, and using other financial services, including credit and loans, work.[72] Without this education, homeownership is difficult to achieve.

A lack of financial literacy frequently results in over-use of credit and quickly defaulting without realizing the long- term consequences, as in the situation of hypothetical Worker B, or in not using credit at all under the misperception that such behavior is good for one's credit score, as in the situation of Worker A.

Less than half of U.S. states require financial literacy education in public schools, leaving this education up to parents in most of the country.[73] This is problematic for low- and middle-income households, where evidence

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[67] *Fico Score Education,* FICO SCORE (2015), https://ficoscore.com/education/#VitalPart.

[68] *See* Anna M. Andriotis, *Why Your FICO Score Could Get a Boost in 2019*, WALL ST. J. (Oct. 21, 2018), https://www.wsj.com/articles/want-a-higher-credit-score-soon-your-cash-could-help-1540123200.

[69] Heena Dhir, *Alternative Credit Scoring – Financial Salvation for Those With Low or No Credit Score*, LENDING TIMES (Apr. 4, 2018), www.lending-times.com/2018/04/04/alternative-credit-scoring-financial-salvain-for-those-with-low-or-no-credit-score/; *see also* FED. DEPOSIT INS. CORP., FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS 3 (Oct. 2018), fdic.gov/householdsurvey/2017/2017report.pdf.

[70] *See* Thomas S. Ulen, *A Behavioral View of Investor Protection,* 44 LOY. U. CHI. L.J. 1357, 1369 (2013).

[71] Afton Cavanaugh, *Rich Dad vs. Poor Dad: Why Leaving Financial Education to Parents Breeds Financial Inequality & Economic Instability,* 34 CHILD. LEGAL RTS. J. 59, 63 (2004) (citing U.S. GOV'T ACCOUNTABILITY OFF., HIGHLIGHTS OF GAO FORUM: THE FEDERAL GOVERNMENT'S ROLE IN IMPROVING FINANCIAL LITERACY 1 (Nov. 2004), http:///www.gao.gov/new.items/d0593sp.pdf.

[72] Cavanaugh, *supra* note 71, at 61, n. 19.

[73] *Id.* at 60 (citing COUNCIL FOR ECON. EDUC., SURVEY OF THE STATES: ECONOMIC AND PERSONAL FINANCE EDUCATION IN OUR NATION'S SCHOOLS 2011 (Mar. 2012), http://www.councilforeconed.org/wp/wp-content/uploads/2011/11/2011-Survey-of-the-States.pdf (finding that only twenty-two states require students to take a high school course in economics and only fourteen states require schools to offer a personal finance course).

suggests that this knowledge often does not exist.[74] For instance, nearly one-third of all bankruptcies are filed by those living below the poverty level.[75] Other evidence suggests that financial literacy programs that do in fact exist for the working poor are often administered after-the-fact, in the context of a credit repair process, and can be demeaning and ineffective.[76]

Without the tools to prepare and organize one's financial matters, homeownership for the poor, even if they are likely paying rent rather than a mortgage, is unattainable in households where there is no intergenerational wealth.[77] The skills needed to budget in the long-term, earn interest on savings, plan for a major purchase, navigate underwriting, calculate interest payments and insurance costs, and negotiate with lenders, sellers, and insurance brokers are not intuitive; yet these skills, as measured by FICO, are imperative to homeownership.

2. Tax Returns

Let us return to our not-so-hypothetical Workers A & B, who may have not paid taxes on the entirety of their gross income. Logic stands to reason that those who do not file taxes are unaware of the deductions available for home work spaces, work tools and equipment, for healthcare and childcare costs, or of the multitude of other deductions that could be taken by the self-employed with either the assistance of a tax professional or a high level of financial literacy.

Yet, self-employed people are required to pay 7% more in social security tax and Medicare tax than do the formally employed, and are required to cover their entire health care expenses, unlike many formally-employed workers.[78] To make matters worse, self-employed people are not allowed to offset capital costs and losses the way corporations can.[79] Some have asserted that the self-employment tax (amongst other tax laws unique to the self-employed) have contributed to the failure of some start-ups.[80] Indeed, the tax system is designed for the savvy, and it is often the moderate- and low-income households who pay more taxes not only in self-

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[74] Cavanaugh, *supra* note 71, at 61.
[75] *See* Andrew P. MacArthur, *Pay to Play: The Poor's Problems in the BAPCPA*, 25 EMORY BANKR. DEV. J. 407, 410 (2009).
[76] *Id*. at 425.
[77] *See* JUNG HYUN CHOI, ET AL., INTERGENERATIONAL HOMEOWNERSHIP: THE IMPACT OF PARENTAL HOMEOWNERSHIP AND WEALTH ON YOUNG ADULTS' TENURE CHOICE 17 (2018), https://www.urban.org/research/publication/intergenerational-homeownership.
[78] INTERNAL REVENUE SERV., SELF-EMPLOYMENT TAX (SOCIAL SECURITY AND MEDICARE TAXES) (2018), https://www.irs.gov/businesses/small-businesses-self-employed/self-employment-tax-social-security-and-medicare-taxes.
[79] *See* Kirsten Harrington, *Employment Taxes: What Can the Small Businessman Do?*, 10 AKRON TAX J. 61, 61 (1993).
[80] *Id.* at 62.

employment tax, but also in inflation tax[81] and regressive sales taxes.[82]

On the other hand, a large bulk of people in the informal economy pay billions of dollars in social security taxes and Medicare taxes, without ever being able to benefit from these payments. Many such workers are undocumented immigrants who will never enjoy the privileges of their investments into Social Security, unemployment insurance, Medicare, or federal loan programs,[83] despite the abundant evidence that undocumented immigrants are often exemplary in their ability to repay loans.[84]

Yet, conventional home loan underwriting requires that the borrower produces three years' worth of tax returns.

Sixteen percent of adult workers in the U.S. (aged 21 and older) are employed on a full- time basis from the informal economy, and 37% of adult workers have either part-time or full- time income from the informal economy.[85] The vast majority of housing and banking policies continue to exclude a reliable segment of workers for the sole reason that this income cannot be easily documented, even if the loan applicant has documented her income on her own and has paid taxes on it.

Returning to the scenario described above, assume the hypothetical where Worker A is paid by the bar he performs at in cash, equal to 20% of alcohol sales. The tipped wages and the 20% of the alcohol sales do not run through the restaurant's accounting. The restaurant could document this income and then deduct the amount paid to musicians, but it has decided that this would be overly burdensome. Even if Worker A pays taxes off of tips, many lenders require the worker to cross-reference payment to the worker by requiring corroboration from the various venues at which the worker works. Unfortunately, it is against the venue's best interests to provide such corroboration, because such income is not recorded in its books. The lender may require that Worker A must wait two years before accepting Worker A's records as accurate. This practice is widespread: restaurants are unwilling to track tipped wages and rely on unreliable estimates to pay taxes

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[81] John T. Plecnik, *Abolish the Inflation Tax on the Poor & Middle Class*, 29 QUINNIPIAC L. REV. 925, 927 (2011) (noting that the effect of the so-called inflation tax is regressive "because low-income taxpayers often lack the sophistication or liquidity to invest in hedges against inflation," thereby arguing that the poor and low-income and middle class should be given an "inflation tax deduction" to offset the inflation they pay in their investments).

[82] *Id.*at 928.

[83] *See* Francine J. Lipman, *Taxing Undocumented Immigrants: Separate, Unequal, and without Representation*, 10 HARV. LATINO L. REV. 2, 4 (2006) (citing Paula N. Singer & Linda Dodd-Major, *Identification Numbers and U.S. Government Compliance Initiatives*, 104 TAX NOTES 1429, 1433 (2004)) (describing the more than 500,000 tax returns filed by immigrants "with U.S. addresses who were not authorized to work or even to be in the United States").

[84] *See* David P. Weber, *Halting the Deportation of Businesses: A Pragmatic Paradigm for Dealing with Success*, 23 GEO. IMMIGR. L.J. 765, 779-781 (2009) (citing Miriam Jordan, *Loans to Illegals Seen as Sturdy; Some Undocumented Workers Seen as Better at Paying Back Loans* CHICAGO SUN-TIMES, (Oct. 14, 2007)) (noting that Fannie Mae and Freddie Mac refuse to buy mortgages written to undocumented immigrants as a matter of policy).

[85] *See* Restrepo-Echavarria & Arias, *supra* note 8.

for the employees, if at all. Furthermore, in other cases, it may be that there is no practical way to document income. By way of example, fruit sellers, artisans, or other high-volume hawkers might have no practical way to produce third party validation of their own income records.

This problem is only compounded by the fact that millions of Americans are unbanked or underbanked and do not have bank accounts that would help corroborate informal income, particularly in the informal economy. In 2017, approximately 14 million adults, or 8.4 million households, had no bank account and approximately 50 million adults were underbanked — meaning that they have a bank account but also use alternative financing such as check-cashing, money orders, refund anticipation loans, or other similar services that do not provide the same level of records of transactions as a traditional bank.[86]

The population of the unbanked is comprised of 25% of low-income households, and 13% of medium-income households.[87] According to a 2016 report by the Federal Deposit Insurance Corporation ("FDIC"), rates of unbanked individuals among communities of color are disproportionately high.[88] The research on the reasons why the unbanked choose to be unbanked is scarce, but the lack thereof suggests a few reasons: i) past problems that households have had in managing accounts[89], ii) the fact that traditional banks are often less likely to be located in low-income neighborhoods[90], iii) the inability to meet stringent ID requirements by undocumented immigrants in fear of being deported,[91] iv) fear of reporting requirements[92], v) general mistrust of financial institutions[93], and vi) inertia.[94] Again, it is easy to conjecture that appropriate financial literacy would render many of these reasons meaningless.

Evidence suggests that many in the informal economy are also part of the unbanked demographic. This is reflected in part by the fact that, though unemployment rates increased after the 2007-2009 collapse, consumer spending increased, leading one to conclude that the spending of the unemployed derived from income in the informal economy.[95]

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[86] *See* Fed. Deposit, *supra* note 69, at 1.
[87] *See* MICHAEL S. BARR, NO SLACK: THE FINANCIAL LIVES OF LOW-INCOME AMERICANS 3 (Brookings Institution Press 2012).
[88] *See* FED. DEPOSIT INS. CORP., 2015 FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS 2 (Oct. 20, 2016), https://www.fdic.gov/householdsurvey/2015/2015report.pdf.
[89] *See* James H. Carr & Jenny Schuetz, *Financial Services in Distressed Communities: Framing the Issue, Finding Solutions*, PROGRESSIVE POL'Y INST. 1, 4 (2001).
[90] *See id.*
[91] *See* BARR, *supra* note 87, at 5; *see also* Denise Stanley & Radha Bhattacharya, *The Informal Financial Sector in the U.S.: The Role of Remittances*, Q. REV. ECON. & FIN. 1, 6 (June 19, 2006).
[92] *See* Stanley & Bhattacharya, *supra* note 91, at 4.
[93] *See id.*
[94] *See* BARR, *supra* note 87, at 5.
[95] *See* Murray, *supra* note 26, at 4.

Even if the unbanked were able to overcome the challenges of becoming banked, banks will perceive loans to low- and middle-income households as far more costly than those to the upper-middle class and above, creating additional obstacles. For instance, considering the reality that banks' bottom line is determined purely in short-term profit maximization, many institutions create disincentives for potential low- and middle-income customers even though serving this demographic requires no more from the bank than serving the wealthy. This is because, even though transactional services and costs of infrastructure to serve each of these segments is identical, the bank's ability to issue loans and make other investments is based on the size of the deposit accounts at their institutions. Accordingly, the smaller the accounts, the less the bank can lend and invest, and the opportunity cost of servicing low- and middle-income borrowers causes banks not to provide that service, even if the loan to this demographic is not as risky as it seems. Therefore, banks implement disincentives for lower income patrons, in the form of high opening balance requirements, high penalty fees for failure to maintain a certain balance and high penalty fees for overdrafts.[96]

For these reasons, it is more burdensome and less likely for the worker in the informal economy to meet the income recording requirements of the home lender.

Ironically, the underwriter's requirement for record-keeping is limited to evaluating a borrower's income and there is generally no thorough procedure in place to evaluate the borrower's reliability in making a housing payment, even though reliable records could be easily produced. Indeed, there is no portion of the FICO credit score that reflects the loan applicant's history of rental payment, unless the applicant has a poor history, yet a strong history of rental payment holds little to no weight in the borrower's credit score.[97]

Specifically, loan applicant's rental payment history is reflected in the credit score only if the applicant has been late to the extent that the landlord has filed to evict. If the eviction ends up as a judicial proceeding, the court case is reflected in the underwriting process search of any actions taken against the loan applicant. However, the opposite is not true: there are no credit score points allocated for someone who has paid rent in a timely fashion for decades. This is also true for payment of utilities and other services imperative to daily living: one's credit record is dinged for delinquency, but no points are added for reliable history of payment. While some lenders might request that the potential borrower's landlord complete a Verification of Rent form, this does not outweigh the credit score, even though the credit score is premised on numerous factors that may not be

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[96] *See* BARADARAN, *supra* note 17, at 140-41.
[97] *See* Laurie Goodman & Jun Zhu, *Rental Pay History Should be Used to Assess the Creditworthiness of Mortgage Borrowers*, URB. INST. (Apr. 16, 2018), https://www.urban.org/urban-wire/rental-pay-history-should-be-used-assess-creditworthiness-mortgage-borrowers.

applicable to a lender in the informal work economy.[98]

Paradoxically, studies indicate that rental payment history is highly predictive of whether one is able to make timely mortgage payments, and whether one will be able to handle homeownership expenses. For instance, in a study by the National Fair Housing Alliance, researchers found that rental payment history was a strong predictor of one's ability to pay a mortgage in a timely and consistent manner, and that homeowners share a similar level of expenses with those of similar income and similar rental housing.[99] In other words, homeowners in a middle-class or poorer neighborhood do not have significantly higher housing and upkeep costs than their renter counterparts of similar income and neighborhood. This suggests that, if a middle-class or low-income worker was to purchase a home comparable to their rental property, the worker could be a successful homeowner.

Some scholars forward justifications of racial equity to argue that the informally- employed should not be regulated.[100] I am not addressing this argument, positing instead that there are universally applicable reasons by virtue of which tax returns should not be given so much weight, or even taken into consideration at all, in the underwriting process, because financial tools and those tools necessary to be a law-abiding taxpayer are not tools that are easily accessible to the informal economy.

In summary, buying a house requires tax returns or other records that must be corroborated by a possibly unwilling employer, in addition to bank accounts records which approximately 70 million Americans cannot produce. However, there is little to no requirement for readily available records that reflect how the applicant uses her income, which could easily be verified by landlords and utility companies who likely already produce corroborating documentation as a matter of course.

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[98] *See* Gustan Cho, *When Is Rental Verification Required By Mortgage Lenders*, GUSTAN CHO ASSOCS., (Dec. 2, 2019), https://gustancho.com/rental- verification.

[99] *See* Goodman & Zhu, *supra* note 97.

[100] *See* Austin, *supra* note 54, at 2129 ("What I am arguing here is that the history of blacks' foreclosure from production and commerce and the need to invigorate and further develop the black public sphere, warrant that special attention be paid to even the pettiest form of black entrepreneurial activity . . . Law and public policy cannot create a commercial culture or a set of business practices, let alone business concerns and institutions, that will allow blacks to achieve the proper balance between competition and cooperation. Black people must do that for themselves. Vendors' associations would advance the cause if they chose to engage in a measure of self-regulation.").

3. The Uniform 1/3 Underwriting Metric

Almost all formal lenders in this country use a static index across the nation to determine whether the mortgage is affordable, taking in no consideration the various spending habits from household to household. Under the definition of "affordable" set out by HUD, a mortgage or rental amount is "affordable" if it equals to no greater than one-third of one's take-home income.[101]

This fails to recognize common realities that are particularly relevant to workers in informal economies: i) that in many cities the cost of food and other necessaries are not commensurate to the cost of housing, and ii) that not all consumers live this exact 2:1 ratio of consumer spending to housing payment, a fact that is particularly true in the cultural economy.

The one-third metric is predicated on the idea that the cost of living is uniformly commensurate to the cost of rent nationwide, i.e., if rent or mortgages are high, then so too are food costs and other living expenses. This, however, is not uniformly the case, as evidenced by studies that reveal, for instance, that groceries in New York City are 10% cheaper than in Des Moines, Memphis, Indianapolis, and Milwaukee, cities with significantly cheaper rent and mortgages.[102] Therefore the presumed uniformity uses inherently flawed assumptions.

The metric is premised on the flawed assumption that all households spend in the same way, and that one cannot live comfortably or happily if the cost of housing is more than one-third of the individual's income. However, again, this is often not the case in the cultural economy. Since immemorial time, artists and other creatives have been known to live quite inexpensively in some of this nation's most expensive cities, finding pleasures in lower cost forms of entertainment and dining than the salaried middle and upper-middle class. This continues to be a phenomenon that exists today.[103] Workers in the cultural economy often live what they consider high-quality, spendthrift lifestyles, regardless of the city they are living in and of their cost of housing.

The 2:1 assumption also fails to recognize that in multi-earner households many living expenses (utilities, childcare, and other day-to-day

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[101] U.S. DEP'T OF HOUS. & URB. DEV., AFFORDABLE HOUSING (Dec. 17, 2019), https://www.hud.gov/program_offices/comm_planning/affordablehousing/; *see also* James McWhinney, *How Much Mortgage Can You Afford?*, INVESTOPEDIA (Nov. 19, 2019), https://www.investopedia.com/articles/pf/05/030905.asp ("Most lenders recommend that your DTI not exceed 36% of your gross income").

[102] *See* Jessie Handbury & David E. Weinstein, *Goods Prices and Availability in Cities,* REV. ECON. STUD. 259, 289-90 (2014).

[103] *See, e.g.*, Stefanie O'Connell, *Living the Dream on a Budget*, YAHOO FIN. (May 8, 2015), https://finance.yahoo.com/news/living-dream-budget-131400323.html; Carren Jao, *How Do Working Artists Live?,* HYPERALLERGIC (Nov. 18, 2013), https://hyperallergic.com/94192/how-do-working-artists-live/; Pioneer Press, *Who Better Than 'Starving Artists' to Offer Advice on How to Live Within a Tight Budget?,* TWIN CITIES (June 25, 2009), https://www.twincities.com/2009/06/27/who-better-than-starving-artists-to-offer-advice-on-how-to-live-within-a-tight-budget/.

costs) are shared amongst household members in a cost-effective manner, so that costs are a much smaller percentage of an individual's monthly expenses than the 2:1 ratio.

In addition, others have criticized the utility of this calculation, observing that moving away from city centers to decrease housing costs often results in increased transportation and food costs.[104]

In turn, this static threshold excludes households who are able to live comfortably paying more than one-third of their incomes in rent or a mortgage — either because they live in an area where cost of living is disproportionately lower compared with the cost of housing, or because they are able to keep their costs of living low because of spendthrift lifestyles that they find satisfying.

4. Roommate Income

Artists and other creative types have a long history of sharing resources, going as far back as medieval times.[105] This is no less true for housing resources; artists have lived in shared housing not only as a cost-saving technique, but also for reasons of professional development. Particularly in cities with high costs of housing, roommate shares are the one of the most common ways of reducing housing costs in a sustainable way, even in a housing bubble.[106] Additionally, amongst artists, the prevalence of collective living is often seen as a desirable lifestyle with professional and

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[104] This occurs when the cheaper housing is located in areas not serviced by public transportation, thus requiring the increased costs of using a car, including insurance and gas costs that increase proportionately to the distance between one's home and work. *See* Matthew Yglesias, *Everything You Need to Know About the Affordable Housing Debate*, VOX (May 11, 2015, 11:43 AM), https://www.vox.com/2014/4/10/18076868/affordable-housing-explained.

[105] *E.g.*, Gisela Williams, *As Rents Rise, Artists are Reviving the Idea of the Medieval Guild*, N.Y. TIMES STYLE MAG. (Apr. 25, 2019), https://www.nytimes.com/2019/04/25/t-magazine/craft-guild-la-friche-zaventem-ateliers.html; Natalie Hegert, *This 140-Person Art Collective Is Pursuing an Alternative Model for Artists to Make a Living*, ARTSY (July 10, 2017, 7:25 PM), https://www.artsy.net/article/artsy-editorial-140-person-art-collective-pursuing-alternative-model-artists-living; Emily Nonko, *Roommates Forever: Collective Housing on the Market*, PELICAN BOMB (July 14, 2016), http://pelicanbomb.com/art-review/2016/roommates-forever-collective-housing-on-the-market ("Susan Saegert, a professor at the Graduate Center of the City University of New York who studies alternative housing . . . [explains that] '[s]haring is required with millennials and seniors as an economic means.'"). For a discussion of how minority communities have used cooperative housing as a tool to address the rising costs of housing and onslaught of gentrification in New York City, see Susan Saegert & Gary Winkel, *Paths to Community Empowerment: Organizing at Hom*e, 24 AM. J. COMMUNITY PSYCHOL. 517, 543 (1996) ("Thus it seems that the experience of participation and living in an environment of collective decision making has positive attitudinal and behavioral consequences for empowerment at the political level that do not depend entirely on the successes achieved in improving the building or on one's sense of personal empowerment.").

[106] *See* Nonko, *supra* note 105 ("Because New York's apartment inventory offers more large apartments than studios, roommate shares are the most typical solution to cutting housing costs.").

income benefits, rather than merely a fad common in an early stage of adulthood.[107] Within the cultural economy, reliance on one's personal network is imperative- peer interaction and validation is perceived as key to being a professional worker in the cultural economy.[108] Indeed, positive social networks can result in the presence and participation in neighborhood-based cultural activities (music, art, etc.), creating what some have referred to as a "cultural collective efficacy."[109]

The same is true for multi-generational housing situations. Approximately 64 million U.S. individuals (including children) have lived in multi-generational housing, i.e., with multiple adult income earners in the same household with some degree of family relation between them, and this segment of society is comprised significantly of Hispanics, Asians, and families with foreign-born members.[110] In addition to sharing housing costs, some of the other benefits identified in multi-generational housing include childcare and senior care.[111] Aging-in-place models have been characterized as promoting civic engagement both for seniors and their children, and policymakers have begun promoting strategies specifically for the purposes of enabling multigenerational housing to be successful.[112]

While especially relevant within the informal and creative

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[107] *See* Catherine Lacey, *A Way for Artists to Live*, N.Y. TIMES (Apr. 19, 2014), https://www.nytimes.com/2014/04/20/opinion/sunday/a-way-for-artists-to-live.html ("Many artists work service jobs like these in order to make ends meet, but they also happen to be particularly well suited for the cooperative structure. In addition to workers' making a higher wage and having greater control of their schedule, the client's or guest's experience is often better when workers are more deeply invested. Personally, I have never cared much for making a bed, but I've always taken a lot of pride in putting a room together at our bed-and-breakfast because I know it's not just a chore, but a necessary part of being a worker-owner, and I know I'm being paid fairly.").
[108] *See* JACKSON ET AL., *supra* note 37, at 9, 15, 64, 70.
[109] Lisa T. Alexander, *Hip-Hop and Housing: Revisiting Culture, Urban Space, Power, and Law*, 63 HASTINGS L.J. 803, 830–31 (2012) ("Cultural collective efficacy is a form of positive bonding social capital generated through participation in cultural endeavors, which enables some low-income, inner city residents to mitigate the negative effects of living in a poor, racially segregated, and disinvested community. Cultural collective efficacy can also be a source of power that enables existing inner-city from—urban revitalization.").
[110] *See* D'Vera Cohn & Jeffrey S. Passel, *A Record 64 Million Americans Live in Multigenerational Households*, PEW RES. CTR. (Apr. 5, 2018), https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/; *see also* Richard Fry, *More Adults Now Share Their Living Space, Driven in Part by Parents Living with Their Adult Children*, PEW RES. CTR. (Jan. 31, 2018), https://www.pewresearch.org/fact-tank/2018/01/31/more-adults-now-share-their-living-space-driven-in-part-by-parents-living-with-their-adult-children/ (noting that "61 million Americans (including children) resided in intergenerational households" in 2014.).
[111] For instance, adult family members living in the same house can provide the supervision and care required by minor or elderly family members. *See* MILDRED WARNER ET AL., MULTI-GENERATIONAL COMMUNITY PLANNING: LINKING THE NEEDS OF CHILDREN AND OLDER ADULTS 1, 2, 5-6 (Apr. 2010), https://orb.binghamton.edu/cgi/viewcontent.cgi?article=1004&context=public_admin_fac.
[112] *See, e.g.*, *id.* at 4. The informal economy in the U.S. consists of 13.1% African-Americans, 6.9% Asians, and 24% Latinos; and 51.2% are women. For the purposes of this article, unless otherwise indicated, the term 'adults' refers to those aged 21 and older.

economies, adult roommate situations in general are becoming the norm nationwide, as the costs of housing continues to rise. The evidence of roommate income viability is fairly clear: in 2017, almost 79 million people in the U.S., or 39% of the nation's adult population, lived with roommates with whom they had no legal or biological relationship.[113] While many do so for cost-cutting reasons, others have recognized shared adult housing to have companionship benefits that are ideal for unmarried people.[114]

Even outside collective long-term living, the viability of roommate income — even if merely temporary — has also been proven through the phenomena of Airbnb, Vacation Rental by Owner ("VRBO") and other international online platforms for room and whole housing shares. Airbnb, for example, grew in nine years from a successful one night experiment with three air mattresses in San Francisco to a company worth more than $25 billion.[115] In Los Angeles ("L.A.") alone, it generated $660 a month for hosts in 2014, and it asserts that almost half of its L.A. hosts work in the arts, entertainment, or recreation.[116]

Yet, most home-loan underwriters do not recognize long-term or short-term roommate income as viable income for a home loan,[117] and the ones who do enforce narrow stipulations that do not reflect the current housing market in which the sharing economy has become the norm. For instance, the rare lender that recognizes roommate or boarder income requires that the roommate of the new house has been a roommate of the borrower for at least 12 months; such lenders also limit the inclusion of this income to count for no more than 30% of the income used to qualify for the home loan.[118] Moreover, the documentation substantiating this income can

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[113] *See* Fry, *supra* note 110 ("More adults now share their living space, driven in part by parents living with their adult children.").

[114] *E.g.*, Sridhar Pappu, *Age 31 and Up, with Roommates. You Got a Problem with That?*, N.Y. TIMES (May 5, 2016), https://www.nytimes.com/2016/05/06/fashion/mens-style/adult-men-roommates-new-york.html ("To be part of any household — whether with a partner or spouse, other family members, or roommates — means giving up the freedoms that go with the living-alone life. But it can also ward off loneliness.").

[115] Rebecca Aydin, *How 3 Guys Turned Renting Air Mattresses in Their Apartment into a $31 Billion Company, Airbnb*, BUS. INSIDER (Sep. 20, 2019, 10:27 AM), https://www.businessinsider.com/how-airbnb-was-founded-a-visual-history-2016-2.

[116] *New Study: Airbnb Community Generates $312 Million in Economic Impact in LA*, AIRBNB (Dec. 4, 2014), https://www.airbnb.com/press/news/new-study-airbnb-community-generates-312-million-in-economic-impact-in-la.

[117] *See, e.g.*, Natalie Campisi, *Income Requirements to Qualify for a Conventional Mortgage Explained*, BANKRATE (Jan. 7, 2020), https://www.bankrate.com/mortgages/proving-income-to-land-a-mortgage/. Most lenders will only allow rental income from roommates to count in the borrower's income estimate for underwriting purposes, after that income has been proven to exist for two years. Thus, it could count for a refinanced loan, but not the initial loan.

[118] *See* Chad Baker, *How to Use Boarder and Renter Income for Loan Approval*, SAN DIEGO PURCHASE LOANS (Feb. 7, 2018), https://sandiegopurchaseloans.com/boarder-income-loan-approval/.

be strict.[119] The lower-interest rate Federal Housing Administration ("FHA") loans prohibit the inclusion of roommate income altogether, and only allow inclusion of boarder income if the boarder is related to the applicant by blood, marriage, or law, and the rented out portion of the house has its own separate kitchen and bathroom.[120] This position is a structural prejudice against those in the informal economy, and against low to middle-income households, who in fact achieve economic stability through resourceful measures and spendthrift lifestyles. It also excludes those who live in multi-generational arrangements that embed resource-sharing norms into traditional, cultural norms.

Ironically, affordable housing is most often developed through the use of costly low- income housing tax credit ("LIHTC") — programs for multi-million dollar developments, with legal fees and development fees which can cost millions of dollars per project.[121] LIHTC housing, which will be discussed in greater detail later in this article, is speculative by its very nature, and, by virtue of its size, carries a far greater risk than a small home loan to a worker in the informal economy. Even during the drafting and revision of the Dodd-Frank Act, which sought to create underwriting procedures that would reduce the risk of borrowers defaulting on loans, carve-out provisions have always existed for multi-family real estate developers.[122] Thus, in multi-family rental developments, where the total development cost can reach tens or hundreds of millions of dollars, loans secured only in part by the undeveloped property are more readily available to developers than to a worker in the informal economy who is seeking out a mortgage that is equal to, or less than, the rent she has been paying. These considerations apply to loans that can hover around $200,000 and less, including legal and other transactional costs.[123]

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[119] Joe Wallace, *Can I Use Rental Income on My FHA Loan Application?*, FHA NEWS BLOG (June 20, 2011) https://www.fhanewsblog.com/2011/06/can-i-use-rental-income-on-my-fha-loan-application/.
[120] *See id.*
[121] Editorial, *A Tax Credit Worth Preserving*, N.Y. TIMES (Dec. 21, 2012), https://www.nytimes.com/2012/12/21/opinion/a-tax-credit-worth-preserving.html.
[122] Dees Stribling, *Congress Rolls Back 2010 Dodd-Frank Banking Rules*, BISNOW (May 23, 2018) https://www.bisnow.com/national/news/capital-markets/dodd-frank-revision-includes-welcome-tweak-for-cre-88737?utm_source=CopyShare&utm_medium=Browser ("Mainly the bill relaxes Dodd-Frank regulations for all but the largest U.S. banks, but there is also a fairly arcane provision in the language that could help loosen commercial and residential real estate lending, according to industry organizations.").
[123] *See* KENNETH TEMKIN ET AL., URB. INST., BALANCING AFFORDABILITY AND OPPORTUNITY: AN EVALUATION OF AFFORDABLE HOMEOWNERSHIP PROGRAMS WITH LONG-TERM AFFORDABILITY CONTROLS 8, 9 (2010). This Urban Institute study of affordable homeownership programs analyzed the housing cost of five different programs across the country in King County, WA, Duluth, MN, Boulder, CO, San Francisco, CA, and Burlington, VT. Home prices ranged from $87,000 to $289,000. Subsidies per home ranged from $30k to $268,000, sums that were significantly smaller than the initial tax credit subsidy of almost 70% of multi-million tax credit units (*i.e.*, $7 million in a $10 million project subsidized by federal tax credit dollars). This suggests that subsidized houses for

The most obvious reason for this irony is the nature of banking as a for-profit institution, where short-term profit maximization is prioritized over the provision of services. Bigger loans are preferred to multiple smaller loans, as the former maximize profit opportunities with comparatively less work per dollar of interest on the part of the underwriter. The procedure of underwriting intuitively exists for the purposes of determining the reliability of the borrower to pay back the loan. Yet, the focus in the underwriting process in conventional lenders today is on how much the bank can make from a single loan, and less so, if at all, about the borrower's ability to pay back the small loan he actually needs to buy a house. In short, the underwriting process of modern banking mostly exists to serve the wealthy, rather than provide services to the majority of fiscally reliable households.

This offers an explanation as to why roommate income does not factor in underwriting, no matter how reliable that income is: the more work the underwriter has to go through to close a loan, the less likely that loan will be made. Evidence of the potential borrower's history and experience with roommates could be easily produced, as could the viability of roommate income in the neighborhood of the target house. Nonetheless, this loan application will be rejected because underwriting this type of loan would take longer than that of a conventional borrower with a high reported income.

C. The Effects of the Cultural Economy on Immigrant Communities and Non-Immigrant Communities of Color

To exclude households in the informal economy is to exclude more than 16%[124] of working adults from homeownership in a systemic way. To make matters worse, many in the informal economy, including working artists and those employed in hospitality, are already disenfranchised as people of color.[125] Indeed, approximately 28% of the informal economy is comprised of workers who are Latino or African-American.[126] This segment often comprises a need that is unmet by formal industries. For example, some argue that black street vendors are a key component of black culture that the formal retail market fails to serve.[127]

The paradox is that communities of color are often well-equipped to maximize resources available to them and increase stability in maintaining a

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middle to low-income families are not only cheaper to develop, but are also less of a risk per family than per LIHTC project.

[124] Restrepo-Echavarria & Arias, *supra* note 8. With 16% employed full-time in the informal economy, and an additional 25% with informal income that they cannot use to qualify for a home loan, at least some portion of that 25% cannot qualify for a home loan unless their informal income is included in their estimated income.

[125] *See* Alexander, *supra* note 109, at 830 ("The informal arts sector 'is associated with minority, immigrant, and other out-of-the mainstream communities.' It includes 'hands-on creative activity in informal settings as well as the informal economy of under-employed professional and traditional artists.").

[126] Restrepo-Echavarria & Arias, *supra* note 8.

[127] Austin, *supra* note 54, at 2123.

family home. Furthermore, informal income through self-employment is the best method of addressing employment discrimination.[128] Communities of color have been characterized by some academics as possessing "social capital," which essentially is an inclusive form of networking that can connect an individual or an organization to external assets, broader networks, and diverse identities.[129] This tendency towards co-residency and communal interdependence has been effective in absorbing the shocks of major changes in individual lifestyles, such as economic downturn, ailing health, or loss of a loved one.[130] In many nations, co-living has served to strengthen the financial position of an extended family.[131]

People of color are not only excluded from homeownership because of their multi-generational lifestyles, but are also excluded by more blatantly discriminatory policies adopted by lenders, such as the practice of discretionary pricing. Before 2011, banks were allowed to create incentives based on the size and the terms of loans, and this often resulted in discrimination against smaller loans in minority neighborhoods.[132] The Truth in Lending Act was amended to prohibit this practice in 2011.[133] However, it was replaced with another tool that brought about the same result: *discretionary pricing,* the practice in which a bank allows loan officers and brokers to tack on fees to a home loan that exceeds an objectively determined "par rate" of a loan, so as to make up for any lost interest income from smaller loans. Surveys and census data shows that Latinos and African-Americans have been charged more for their loans than their white counterparts of comparable loan values and lending risks, resulting in "billions of dollars of extra payments for their mortgages" and a number of class action lawsuits.[134] Thus, these loan originators are allowed to set target pricing of loans at a higher level for minority neighborhoods, and force minority borrowers to pay additional fees.[135] In effect, it is a revival of redlining that is captured in more complex mechanisms.

It is important to reiterate the distinction between affordable

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[128] *See* Glinton, *supra* note 41.

[129] *E.g.*, Alexander, *supra* note 109, at 807, 808 n.23.

[130] *See generally* Jennifer Reid Keene & Christie D. Batson, *Under One Roof: A Review of Research on Intergenerational Coresidence and Multigenerational Households in the United States*, 4 SOC. COMPASS 642, 647–48 (2010) (discussing factors that lead to multigenerational coresidence).

[131] *See* Merril Silverstein & Claudine Attias-Donfut, *Intergenerational Relationships of International Migrants in Developed Nations: The United States and France*, *in* THE SAGE HANDBOOK OF SOC. GERONTOLOGY 184 (Dale Dannefer & Chris Phillipson eds., 2010).

[132] *Loan Pricing Discretion – Assess Your Compliance*, MORTGAGE COMPLIANCE, https://www.mortgagecompliancemagazine.com/weekly-newsline/loan-pricing-discretion-assess-your-compliance/ (last visited Jan. 27, 2020); *see generally* Robert G. Schwemm & Jeffrey L. Tarem, *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 HARV. CR. C.L.L. REV. 375, 416, 432 (2010) (analyzing issues related to discretionary pricing).

[133] *See* Schwemm & Tarem, *supra* note 132, at 416, 432.

[134] *Id.* at 376..

[135] *E.g., id.* at 376, 396–97.

homeownership and affordable rental, in that (1) homeownership builds wealth in a household in the cultural economy; (2) homeownership guards against displacement; and (3) targeting artists as tenants in the development of low-income rental housing, in the past, has been used to exclude people of color from federally-funded rental projects while masking the effects of NIMBY-ism.[136] Property improvements by renters in the cultural economy, as described in the scenario with Worker A, have also backfired against creative types, who are then displaced once the neighborhood has achieved social stability.[137] While it certainly is not a negative to have affordable rental housing for workers in the informal economy, sustainable homeownership is a tool that curbs exploitive gentrification and fosters sustainable, community-based development in a manner that affordable rental housing cannot, by virtue of the fact that most commercial developers are not based within the communities they develop.

Some argue that this definition of gentrification, in which lower-income renters are replaced with high-income renters, has stabilizing effects for a neighborhood by bringing about an appreciation of property values, reducing crime, and bringing commercial amenities into the neighborhood that otherwise could not be supported by lower-income residents.[138] However, it is virtually undebated, even amongst its advocates, that gentrification results in displacement of the poor, and not in the growth of wealth amongst the poor.[139] Those who hold an opposite view argue that the displacement of the poor who created the value in the gentrified neighborhood is acceptable collateral damage in exchange for growth in neighborhood stability.[140] By contrast, the inclusive economic analysis argues that relocating the wealthy to a creative center at the cost of displacing creatives has limited positive benefits in the long-term and does not create net growth for a city. Instead, the gentrification described above merely reshuffles the wealth of urban professionals who would have lived in other

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[136] NIMBY is the acronym for *not in my backyard*, which is used by housing activists to refer to homeowners who protest the presence of low-income households in their immediate environs. *See* Rolf Pendall, *Opposition to Housing: NIMBY and Beyond*, 35 URB. AFF.S REV. 112, 112 (1999).

[137] In Chicago, multi-generational developers used the local artistic nature of the Pilsen neighborhood to buy up older properties, revitalize them, and then rent at premium rates to individuals from outside the artistic community. *See* JOHN BETANCUR, GENTRIFICATION BEFORE GENTRIFICATION? 27 (2005).

[138] *But see In Praise of Gentrification*, THE ECONOMIST (June 21, 2018), https://www.economist.com/united-states/2018/06/21/in-praise-of-gentrification ("At the same time, the benefits of gentrification are scarcely considered. Longtime residents reap the rewards of reduced crime and better amenities. Those lucky enough to own their homes come out richer. The left usually bemoans the lack of investment in historically non-white neighbourhoods, white flight from city centres and economic segregation. Yet gentrification straightforwardly reverses each of those regrettable trends.").

[139] *C.f.* Terra McKinnish et al., *Who Gentrifies Low-Income Neighborhoods*?, 67(2) J. URB. ECON. 180 (2010) (finding that though educated black households benefited from gentrification, those with less than a high school degree were displaced).

[140] *Id*.

parts of the city, and thus produces no net gain results.[141] Any economic development policy's objective should be wealth growth, not wealth reshuffling, which is essentially what occurs when gentrification results in displacement of the poor. Furthermore, other studies suggest that crime is not reduced through gentrification, but merely migrates; more evidence suggests that, while property crime might be reduced in a gentrified neighborhood, aggravated assaults increase.[142]

In summary, with gentrification and the resulting displacements, the purported reduction of crime is speculative and no new wealth is created for those who were not already in possession of it, particularly in the form of real estate. Disparity of wealth only increases, as some of those displaced become homeless, and property owners gain wealth through the appreciation of their real property, irrespective of stagnant wages, resulting in a housing bubble.

The inclusive economic analysis I propose asserts that real growth occurs when wealth is created where it once did not exist. In terms of real estate development, one solution to the lack of growth in a neighborhood is not to re-shuffle wealth from one core of wealth to another core of wealth, but rather to enable those in distressed neighborhoods, particularly those who have brought about the appreciation of the neighborhood, to obtain equity in the real estate to which they have already created a gain in value. This can also aid with the growth of commerce, as undercapitalized workers gain equity which gives them the capacity to finance new small businesses to increase growth in existing small businesses, earn roommate and boarder income, or a combination of the above.

Creating homeownership opportunities for low-income workers serves to stabilize the neighborhoods and reduces crime in a way that gentrification, as characterized above, cannot. An increase in homeownership opportunities can therefore result in a net gain for both individual households and the neighborhood as a whole.[143] We as a nation are familiar with the concept of a stable working class rooted in manufacturing, so we should also embrace the concept of the stable working class in the informal economy, which has historically proven to be more agile in times of adversity.

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[141] Sharon Zukin, *Gentrification: Culture and Capital in the Urban Core*, 13 ANN. REV. SOC. 129, 129 (1987) ("Research on gentrification initially concentrated on documenting its extent, tracing it as a process of neighborhood change, and speculating on its consequences for reversing trends of suburbanization and inner-city decline. But a cumulation of 10 years of research findings suggests, instead, that it results in a geographical reshuffling, among neighborhoods and metropolitan areas, of professional, managerial, and technical employees who work in corporate, government, and business services.").

[142] *See* ROWLAND ATKINSON, DOES GENTRIFICATION HELP OR HARM URBAN NEIGHBORHOODS? AN ASSESSMENT OF THE EVIDENCE-BASE IN THE CONTEXT OF THE NEW URBAN AGENDA 11 (2002).

[143] *See* William M. Rohe et al., *The Social Benefits and Costs of Homeownership: A Critical Assessment of the Research* 22 (Joint Ctr. for Hous. Studies of Harvard Univ., Working Paper No. LIHO-01.12, 2001).

III. SOLUTIONS

While this positive characterization of affordable homeownership for the middle- and low-income classes is a disputed conclusion,[144] there is sufficient support for the argument that homeownership, when accompanied by intensive financial literacy programming, can increase individual wealth, strengthen families, and stabilize neighborhoods.[145] Additional evidence suggests that a reduction in crime occurs not when higher income renters move into a neighborhood, but rather when homeownership increases.[146] While gentrification of neighborhoods causes relocation and low-income people of color to be priced out by homeownership programs, studies have also shown that targeted lending for low and medium-income households can in fact have the effect of a sustainable community development, inclusive of longtime residents of color.[147] These same studies, ranging from before and after the housing crisis, conclude that the benefits of homeownership include improvement on the physical and psychological health of both adults and children, academic achievement of children, and increased political as well as neighborhood civic participation.[148] In addition to these qualitative and quantitative studies, it cannot be disputed that the homeowner is privy to a number of legal protections to stay in their home, protections that are not available to renters.[149] Research has also suggested

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[144] *See* A. Mechele Dickerson, *The Myth of Home Ownership and Why Home Ownership is Not Always a Good Thin*g, 84 IND. L.J. 189, 207-13; *see also* Rashmi Dyal-Chand, *Exporting the Ownership Society: A Case Study on the Economic Impact of Property Rights*, 39 RUTGERS L.J. 59, 103 (2007). Both studies are premised on the argument that homeownership of low- and medium-income households increase their risk by imposing a debt they are unable to handle and an understanding of real estate that exceeds household capacity. I argue in this article that not only should inclusive economics include these households through financial products, but also there must also be a large-scale implementation of financial literacy measures accompanying these programs. Additionally, I argue that the housing stock and loan size should be fitted to the housing payment that the target household is already paying, which, in many markets, is often lower than rental payments. Lastly, many of these critiques were written before the housing crash, in which the data, as discussed later in this article, reflect that low and medium-income households were the least affected by the crash — contrary to arguments that low and medium-income homeowners, in the Dyal-Chang's words, use home equity and credit card debt for consumption and subsistence rather than asset building.

[145] *See* Jared Ruiz Bybee, *In Defense of Low-Income Homeownership,* 5 ALA. C.R. & C.L.L. REV. 107, 108 (2013).

[146] *See* WILLIAM M. ROHE & MARK LINDBLAD, REEXAMINING THE SOCIAL BENEFITS OF HOMEOWNERSHIP AFTER THE HOUSING CRISIS 8 (2013). This is largely attributable to the increased civic engagement amongst homeowners that possibly correlates to the lower crime rates.

[147] *See* Elvin K. Wyly et al., *Low- to Moderate-Income Lending in Context: Progress Report on the Neighborhood Impacts of Homeownership Policy*, 12 HOUSING POL'Y DEBATE 87, 119 (2001).

[148] *See id.* at 98.

[149] Stephanie M. Stern, *Residential Protectionism and the Legal Mythology of Home,* 107 MICH. L. REV. 1093, 1094–95 (2009). For example, the eviction process of a renter for non-payment, nuisance, or any number of terms, can be as quick as a month, depending upon the

that the rising cost of rental housing poses a major obstacle to middle-class stability.[150]

In terms of the informal economy, and even more so for the cultural economy, rooting workers to a neighborhood ensures that: (1) the necessary players can afford to continually provide the services that diversify an economy and serve as vital economic drivers; and (2) the newly-rooted homeowners feel accountable to the community and invest in it financially and socially.[151] This would in turn result in stabilization and wealth growth, rather than wealth re-shuffling.[152]

A. *The Argument for Inclusive Economics*

For eons, it seems, economic policy has almost always revolved around stimulus packages, either in the form of tax credits or of capital infusions into the private, government, or non-profit sectors.[153] These national programs have targeted a variety of sectors, including but not limited to housing construction, auto industry, environmentally sustainable technology, or simply wealthy taxpayers who are then left ostensibly to reinvest into the economy without restriction.[154] Somehow, regardless of the party in control of Congress or in the White House, both in times of vulnerability and in times of rapid growth, U.S. economic policy tends to focus on the infusion of capital in the name of an alleged free market capitalism, despite the inherent contradiction. Indeed, it is perceived that such infusions are not welfare policies, but rather stimuli that catalyze the free market.

One of the earliest theorists of the free market philosophy was Adam Smith, a Scottish economic philosopher of the eighteenth century and author of *An Inquiry into the Nature and Causes of the Wealth of Nations*, more popularly known as *The Wealth of Nations*. In this work, Smith lays out a premise for free market laissez-faire principles, asserting that the laws of supply and demand and the human tendency for competition ultimately will be the primary drivers of any capitalist market.[155] He argued that rational human behavior forms the natural basis of an economy, and that human behavior, acting as if by an "invisible hand", serves to make the economy self-regulating and self-corrective and therefore it should not be interfered

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state. Comparing this to the foreclosure process which can take over a year, the homeowner is much better protected from becoming homeless than the renter.

150 ECON. & STAT. ADMIN., U.S. DEP'T OF COM., MIDDLE CLASS IN AMERICA 1 (2010). The other two obstacles, which are also obstacles for workers in the informal economy, are the cost of college and the cost of health care. *Id.*

151 *See* Rohe et al., *supra* note 143, at 12–13.

152 *Id.* at 12.

153 Antony Davies et al., *The U.S. Experience with Fiscal Stimulus: A Historical and Statistical Analysis of U.S. Fiscal Stimulus Activity, 1953-2011* 52-53 (Mercatus Ctr. at George Mason Univ., Working Paper No. 12-12, 2012).

154 *Id.* at 2, 27.

155 ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 84–85 (9th ed. 1799) (1776).

with by central planning.[156]

The U.S. Great Depression and the economic downturn in Europe after both WWI and WWII drove the policy-makers of the West to re-evaluate Smith's *laissez-faire* approach.[157] After the crash of stock prices in 1929, world leaders began to explore different economic philosophies in search of practical solutions that could alleviate widespread poverty and unemployment. In the U.S., President Franklin Delano Roosevelt created his own personal "Brain Trust," consisting of a cabinet of Columbia and Harvard law professors and eventually including the future U.S. Supreme Court Justices Felix Frankfurter and Louis Brandeis, who introduced the President to the economic philosophies of British economist John Maynard Keynes.[158]

Keynes' central opus, *The General Theory of Employment Interest and Money*, posited that effective capitalism required some amount of central planning, especially in times of downturn, wherein governments inject capital into the economy through large scale public works in order to reboot the economy with consumer spending created by the jobs resulting from the government-funded public works.[159] Keynes' philosophies were influential internationally and were adopted by policy-makers globally.[160] His policies only came to be questioned in the Seventies, when uncontemplated inflation resulted in economic stagnation referred to as *stagflation*.[161]

World leaders then returned to the classical economic narrative of Adam Smith adopted by a contemporary of Keynes, Friederich Hayek, an Austrian economist at the London School of Economics, just down the road from Keynes at Cambridge.[162] Hayek's argument for the return of laissez-faire economics by central governments was espoused by world leaders such as Ronald Reagan, whose trickle-down economics, popularly referred to as *Reaganomics*, released corporations from government regulation and increased tax cuts for the wealthy.[163] UK Prime Minister Margaret Thatcher also adopted the principles of Hayek in her economic policies, and is said to have carried a print version of Hayek's works in her purse.[164] These policies, however, also resulted in uncontemplated stagflation and a virtually

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156 *See id.* at 82.
157 *See* ROGER E. BACKHOUSE & BRADLEY W. BATEMAN, CAPITALIST REVOLUTIONARY: JOHN MAYNARD KEYNES 33 (2011).
158 Elliot A. Rosen, *Roosevelt and the Brains Trust: An Historiographical Overview*, 87 POL. SCI. Q. 531, 532, 547 (1972).
159 JOHN MAYNARD KEYNES, THE GENERAL THEORY OF EMPLOYMENT INTEREST AND MONEY 380 (1936).
160 GORDON A. FLETCHER, THE KEYNESIAN REVOLUTION AND ITS CRITICS: ISSUES OF THEORY AND POLICY FOR THE MONETARY PRODUCTION ECONOMY xviii (1987).
161 *Id.* at 287–89.
162 *See id.* at xviii–xix; GERALD R. STEELE, THE ECONOMICS OF FRIEDRICH HAYEK 152 (2d ed. 2007).
163 *See* Paul A. Samuleson, *Reevaluating Reagnomics*, 30 CHALLENGE 58, 60–61 (1987); STEELE, *supra* note 162, at 207.
164 JOHN RANELAGH, THATCHER'S PEOPLE: AN INSIDER'S ACCOUNT OF THE POLITICS, THE POWER, AND THE PERSONALITIES ix (1992).

unprecedented national deficit in the U.S.[165]

By the time, President Clinton landed in office, the nation was still trying to recover from the crushing national deficit caused by Reaganomics under President Reagan and President H.W. Bush, and from the escalation of military spending during the arms race.[166] While Clinton veered away from Reaganomics by instead increasing taxes on the wealthy,[167] he did in fact follow the principles of Hayek and Smith by bringing about the deregulation of the markets, including in lending, which some believe was responsible for the proliferation of sub-prime loans and for the Great Recession of 2008.[168]

With Obama, the principles of Keynesian economics were revitalized through the passage of the American Recovery and Reinvestment Act of 2009 ("ARRA")[169] which invested approximately $830 billion in infrastructure, health, housing, education, and environmentally sustainable industries.[170] By 2014, the ARRA was responsible for creating approximately 13,000 housing units, 25,100 direct jobs, and helped more than 1.3 million households avoid homelessness.[171] Approximately 87% of households in the program obtained permanent housing.[172] Additionally, about 24,000 new energy-efficient public housing units were created and 19,000 units were retrofitted to become more environmentally efficient.[173] Under the Act, programs targeting poverty alleviation and housing credit

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[165] *See* Peter T. Kilborn, *Achievements, but Failures, Too, for Reaganomics*, N.Y. TIMES (July 1, 1983), https://www.nytimes.com/1983/07/01/business/achievements-but-failures-too-for-reaganomics-economic-analysis.html.

[166] *See id.*; *Power of Progressive Economics: The Clinton Years*, CTR. FOR AM. PROGRESS (Oct. 28, 2011), https://cdn.americanprogress.org/wp-content/uploads/issues/2011/10/pdf/clinton_economy.pdf..

[167] *See Power of Progressive Economics: The Clinton Years*, *supra* note 166.

[168] *See, e.g.*, RICHARD A. POSNER, A FAILURE OF CAPITALISM: THE CRISIS OF '08 AND THE DESCENT INTO DEPRESSION vii, 75–76 (2009).

[169] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (codified as amended in scattered sections of 16 U.S.C. & 42 U.S.C.) (The purposes of ARRA include "[m]aking supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization . . . and for other purposes.").

[170] *See* CONG. BUDGET OFF., ESTIMATED IMPACT OF THE AM. RECOVERY AND REINVESTMENT ACT ON EMP. AND ECON. OUTPUT IN 2013 (2014). Economist Jared Bernstein, former economic adviser to Former Vice President Joe Biden, stated "'Just look at the American Jobs Act.' . . . 'That's a $447 billion stimulus program, and they may not want to label it that, because of political reasons, but certainly the measures in there would be very recognizable to Keynes as precisely the right way to help temporarily offset the contraction in private-sector demand." David Welna, *Keynes' Consuming Ideas On Economic Intervention*, NPR (Nov. 16 2011, 12:01 AM), https://www.npr.org/2011/11/16/142348310/keynes-consuming-ideas-on- economic-intervention.

[171] Affordable Housing Finance Staff, *Five ARRA Facts Five Years Later*, AFFORDABLE HOUSING FINANCE, (Feb. 21, 2014), https://www.housingfinance.com/policy-legislation/five-arra-facts-five-years-later_o.

[172] *Id.*

[173] *Id.*

assistance programs that brought innovative financial strategies to the table were created; said strategies pulled low and medium-income borrowers into the homeownership pool.[174]

Evidence suggests that the Act had comparably favorable results beyond housing on a macroeconomic level.[175] ARRA created approximately 6 million jobs[176] saved millions of other jobs, rescued the construction and housing industries, lowered unemployment by 1.4%, and increased the GDP by roughly 3%.[177] A poll by the University of Chicago reflected that amongst a panel of 51 leading economists, approximately 80% agreed that the ARRA reduced unemployment from where it would have been.[178] Others have stated outright that another ARRA is necessary.[179]

Of the $830 billion invested with the ARRA, approximately $14 billion was put into housing, one of the hardest hit industries of the great recession.[180] This injection of capital allowed for some experiments with housing that had never been tried before, and others that were never tried on such a large scale. These programs were the first of their kind to deliberately create homeownership opportunities for the systemically and historically disenfranchised and served as one of the largest scale manifestations of inclusive economics to date. Some of these successful experiments will be discussed further in this section of the article.

In the decade that has passed since the implementation of the ARRA, the inflation observed in the Seventies has yet to manifest itself. Some have

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[174] *See id.*

[175] *See* EXEC. OFF. OF THE PRESIDENT COUNCIL OF ECON. ADVISERS, THE ECON. IMPACT OF THE AM. RECOVERY & REINVESTMENT ACT FIVE YEARS LATER (2014); CONG. BUDGET OFF., ESTIMATED IMPACT OF THE AM. RECOVERY& REINVESTMENT ACT ON EMP. & ECON. OUTPUT FROM OCTOBER 2011 THROUGH DECEMBER 2011 (2012).

[176] THE WHITE HOUSE OFF. OF THE PRESS SECR'Y, FACT SHEET: SEVEN YEARS AGO, THE AM. RECOVERY & REINVESTMENT ACT HELPED BRING OUR ECON. BACK FROM THE BRINK OF A SECOND GREAT DEPRESSION (Feb. 25, 2016), https://obamawhitehouse.archives.gov/the-press-office/2016/02/25/fact-sheet-seven-years-ago-american-recovery-and-reinvestment-act-helped.

[177] *Id.*

[178] *Economic Stimulus (revisited)*, Chi. Booth Initiative on Glob. Mkts. (July 29, 2014, 12:02 PM), http://www.igmchicago.org/surveys/economic-stimulus-revisited.

[179] *E.g.*, George Zornick, *The Stimulus Act was a Success–and We Need Another*, WASH. POST (Feb. 17, 2014), https://www.washingtonpost.com/blogs/plum-line/wp/2014/02/17/the-stimulus-act-was-a-success-and-we-need-another/ ("Gross domestic product and total payroll employment were at historic lows when the stimulus passed, and private-sector layoffs were peaking. All three of these very important indicators began to turn around almost exactly the moment the stimulus passed . . . The Congressional Budget Office concluded that the GDP in the fourth quarter of 2009 was as much as 3.8 percent higher than it would have been without the stimulus . . . At the end of 2010, there were approximately 2.5 million more jobs in the country that wouldn't have existed without the stimulus . . . The bill kept nearly 6 million people out of poverty in 2009 . . . [I]t added just 3 percent to the budget shortfall through 2050, according to CBPP. . . Rubio and his colleagues are, of course, broadly right about the poor fundamentals of the economy, but what the country needs is more of the sort of help the stimulus act provided, not less.").

[180] Affordable Housing Finance Staff, *supra* note 171.

credited this phenomenon to innovative monetary policies of the Federal Reserve allowing for economic stimulation and then undertaking other monetary tools to contract the lending markets in a non-volatile manner. Such tools included ending its purchase of treasury bonds, which had the effect of creating inflation for investors but not consumers (as opposed to the *stop-and-go* policies of the Seventies, in which the Federal Reserve raised and decreased interest rates in response to inflation, unwittingly causing inflation when consumers tried to prepare for volatile prices).[181] These are new devices in the U.S. central banking toolkit, which appear to have curbed the inflation that was projected by others to follow Obama's ARRA.

This abridged history in economic law and policy in the U.S. and the modern world reflects a tradition of experimentation and adjustment of the classical economic concept of the capitalist free market. It also serves as an acknowledgment that unfettered, laissez-faire policies of de-regulation resulted in a cataclysmic collapse of stock prices, as well as in a flood of high- risk sub-prime mortgages, both of which brought the U.S. economy to the brink of collapse. As a nation, the U.S. has always examined and re-examined its economic laws and policies to determine whether the economy had grown as a whole, rather than merely for the wealthy. The most recent economic stimulus package, the ARRA, specifically sought to address the disenfranchisement of the lower class and of people of color[182] from the systems controlling real estate equity and wealth creation. Our history as a nation is indeed a series of experiments in economic law and policy in response to the challenges du jour, with socio-economic harmony as a goal. In a sense, American economic policy is consistent with inclusive economics, which is based on experimentation and inclusion of a multitude of philosophies for the purposes of the greater good.

In recent times, we have seen a plethora of experiments funded by philanthropic foundations and government agencies; the following is a survey of those pilot projects, which, taken together, comprise a working example of what inclusive economic policies look like in the fields of housing finance and economic development. Such policies are not only fair to the historically disenfranchised, but they also create opportunities for the creation of wealth and neighborhood stabilization, both of which play an important role in the macro-economic health of the nation as a whole.

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[181] Kimberly Amadeo, *How the Federal Reserve Controls Inflation*, THE BALANCE (June 17, 2019), https://www.thebalance.com/what-is- being-done-to-control-inflation-3306095.

[182] *See The American Recovery and Reinvestment Act: Minority-Specific Provisions*, NAT'L CONF. OF ST. LEGIS. (Apr. 2, 2009), http://www.ncsl.org/print/statefed/MinorityProvisions.pdf.

B. A Survey of Inclusive Economic Solutions to the Systemic Alienation of Gainfully Employed Informal Workers from Homeownership Opportunities

The questions remains, then, of how inclusive economic policies differ from any other economic philosophy which purports to produce the best interests for society overall, and of what these policies look like in practice. Potential solutions must first address the glaring inequalities in current banking policies and practices, by including the following principles:

> inclusive economic policies must recognize that corporations owe a fiduciary duty to a variety of stakeholders, not just financial investors, but also workers, customers, and those displaced by corporate activity;
>
> inclusive economic policies must recognize and value the diversity of economies, particularly the smaller, more localized economies. Smaller economies are not necessarily superior to large-scale industry, but diversification of an economy into small and large businesses is inherently more stable than an economy entirely dependent on a single, monolithic industry;
>
> inclusive economic policies must recognize the value of informal economies as pre- cursors to industry and create features in our economic system that enable the creation of wealth in households operating within the informal economy;
>
> inclusive economic policies must recognize the diversity of household types in the US that do not fall within the narrow demographic of Anglo-Saxon, nuclear households of privilege, and also recognize the ability of non-nuclear and multi-generational households of color, including immigrant households, to add value to an economy.

In terms of homeownership, we must evaluate these policies as applied to two major features of the homeownership process: i) the underwriting process; and ii) the development of housing stock.

1. Economically Inclusive Tools in Home Loan Underwriting

a. Housing Payment History

Underwriting adjustments should look at rental records to prove reliability and capacity where the home loan applicant is (1) unbanked; (2) has a low or nonexistent credit score; (3) derives a large portion of her income from informal economy; or (4) a combination of these reasons. TransUnion analysts conducted a survey which concluded that 79.1% of sub-prime renters would benefit from including rental payment history in their credit scores.[183] As of the writing of this article, there are fee arrangements

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[183] *TransUnion Analysis Finds Reporting of Rental Payments Could Benefit Renters in Just One Month*, TRANSUNION (June 19, 2014), https://newsroom.transunion.com/transunion-

where one can pay to use rental payment history to help build a credit history; however, this would not build a FICO credit score, which is what is most often used in home loans.[184] Furthermore, reporting in this new system comes directly from landlords who are not required by law to complete the inquiry documents.[185] Beginning in October 2018, FICO started testing out a new type of credit score via Experian and tech company Finicity, that looks more closely at spending and saving habits.[186] FICO underwriting policies continue to expand in this direction, and should include rental payment histories. Moreover, landlords should be required to respond by law to such inquiries, just as a credit card company reports to the credit bureau.

Indeed, rental payment history — particularly where the rental payments meet or exceed the amount of the monthly payment contemplated for the target home (including interest, taxes and insurance) and particularly for households in the informal economy — should trump any calculations regarding payment-to-income ratio. The payment-to-income ratio requires too many assumptions — such as cost of living in a loan applicant's city and spending habits of the loan applicant — that could be radically untrue, particularly for self-employed workers in the informal economy and individuals in the cultural economy, who are known to exhibit a spendthrift lifestyle regardless of their home city, and for individuals who live with extended family who provide a variety of cost-cutting resources for one another.

An underwriting policy that would mandate the use of rental payment history as an influential factor in determining housing payment reliability would in effect enable millions of Americans to become homeowners, particularly in cities where the cost of rental exceeds the cost of a monthly loan payment of principal, interest, taxes, and insurance ("PITI"). Where income is difficult to determine because of the informal book-keeping practices of the employer, the ratio of current housing payment to future housing payment can serve as a replacement to the 1:2 ratio of housing payment to gross income.

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analysis-finds-reporting-of-rental-payments-could-benefit-renters-in-just-one-month/.

[184] *See* Gina Pogol & Richard Barrington, *Can Rent Payments Help Your Credit Score*?, HSH ASSOCIATES (Aug. 13, 2018), https://www.hsh.com/first-time-homebuyer/can-rent-payments-help-your-credit-score.html.

[185] *See* Bev. O'Shea, *How to Report Rent to Credit Bureaus*, NERDWALLET (Jan. 16, 2020), https://www.nerdwallet.com/blog/finance/credit-report-rent-payments-incorporated/; Pogol & Barrington, *supra* note 184.

[186] Sarah Skidmore Sell, *FICO to Test New Type of Credit Score*, ASSOCIATED PRESS (Oct. 22, 2018), https://apnews.com/91fb4a771f3f45aaaa07285a4e742699.

b. Self-Employed, Multi-Earner, Shared-Housing Lifestyles in the Informal Economy

As discussed earlier, roommate income (someone who lives with the applicant who is not a named borrower of the loan) cannot be included into loan applicant income for low cost, federally backed FHA loans. Though some lenders have allowed this inclusion in applications for Fannie Mae-backed loans, the applicant is limited to including only the rental income of a future roommate who has a roommate history with the applicant for one or more years (depending on the lender), and the rental income cannot comprise more than 30% of the income the applicant is reporting to qualify.[187] Additionally, these loans are offered at higher, more unaffordable rates. In addition, the applicant can count up to 75% of rental income only if a roommate is a relative and the housing in question contains a full kitchen and bathroom separate from the single-family home itself.[188]

These policies do not account for the lifestyle undertaken by many in the informal economy, where immigrants and minority families often live in a multi-generational household within a single-family home for reasons of tradition and practicality, in that multi-generational households are better poised to absorb economic shocks at large.[189] The same is true for workers in the cultural economy where workers have demonstrated a long history of effectively sharing resources both in living and working spaces, and in which doing so is perceived not only as an efficient method of reducing the cost of living, but also as a tool of professional development in which artists can more easily collaborate. Policies should be adopted, and legislation should be considered, prohibiting this type of discrimination against workers in the informal economy. Though recent loan products through Fannie Mae have opened the once staunchly locked gate to inclusion of non-borrower income, banking policies should be further adjusted to reflect the regularity and reliability of such income.

The above-mentioned discriminatory policies may have a disproportionate effect on immigrant households and households of color generally. Though this discrimination argument might have some bearing in the Fourteenth Amendment prohibition against protected classes, of which national origin is one such class, I recommend a larger policy scope of inclusion of such types of income that would positively affect non-immigrant roommates as well. The policy should be adopted not only as a response to

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[187] *Homeready Accessory Unit Income and Boarder Income Flexibilities*, FANNIE MAE (July 2019), https://www.fanniemae.com/content/fact_sheet/homeready-boarder-accessory-unit-income.pdf.
[188] *See* Chad Baker, *supra* note 118; *HomeReady FAQs*, FANNIE MAE (Dec. 7, 2019), https://www.fanniemae.com/content/faq/homeready-faqs.pdf.
[189] D'Vera Cohn & Jeffrey S. Passel, *A Record 64 Million Americans Live in Multigenerational Households*, PEW RES. CTR.: FACT TANK (Apr. 5, 2018), https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64- million-americans-live-in-multigenerational-households/.

remediate a discriminatory wrong, but also to promote overall economic growth and increase access to opportunity — an argument that might resonate with a broader political spectrum. In this regard, it is also worth noting that abundant evidence exists that cultural diversity can provide a boom of economic benefits and strengthen urban economic performance overall, even among the demographic of U.S.-born white workers.[190]

Such policies would determine the amount of rent received from roommates, include it to an extent determined by the following factors: i) the vacancy rate in the area;[191] and ii) the period of time in which the loan applicant has lived with any roommates, regardless of whether the roommates are related by marriage and regardless of whether the house has separate bathrooms and kitchens for the roommates. They key factors should be whether the applicant has experience with co-habiting with others, the financial responsibilities affiliated with living a roommate life, and the extent to which the borrower could find another roommate given the vacancy rate of the city. This metric is more inclusive and more informed compared to the existing policies for income calculation, that are too heavily predicated upon the personal history of the applicant with a particular person and upon an arbitrarily determined percentage of inclusion to randomly account for risk.

c. Tax Returns in the Informal Economy

The corollary to giving more weight to rental payment history is to give less weight to an individual's tax return if that individual does not have one for the previous two years but can prove his consumption and payment habits in other ways. Some have argued that a different tax calculation altogether should be used for workers in the informal economy.[192] For instance, given that many in the informal economy are self- employed, pay over 7% more in income tax, and take care of their own health costs, dental costs, work space and equipment, the standard deduction for this demographic should be increased to an extent that would fairly account for the aforementioned costs — thus alleviating them from the burden of having

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[190] Thomas Kemeny, *Cultural Diversity, Institutions and Urban Economic Performance*, 44 ENV'T & PLAN. A: ECON. & SPACE 2134, 2148 (2012) ("Greater urban cultural diversity, signified by the presence of a large and mixed group of immigrants, is associated with considerably higher productivity levels among US-born white male late-career workers who live in metropolitan areas . . .").

[191] Currently Fannie Mae only allows a static 75% of boarder income to be included, and only up to 30% of the applicant's income can be comprised of roommate income. Likely these percentages were applied in order to reflect the risk of roommate income. However, a more accurate figure should be determined by local vacancy rates; it is likely possible that a vacating roommate is easily replaceable in cities like New York City where the vacancy rate is close to 0%. Accordingly, in those cities with low vacancy rates, roommate and boarder income is extremely reliable, and should be accorded the weight that is appropriate for that locality. *See* FANNIE MAE, *supra* note 187; FANNIE MAE, *supra* note 188.

[192] *E.g.*, Julie Gathers, *Beyond Balancing the Budget: Tax Reform to Increase Equity and Reduce Poverty in the Commonwealth of Virginia*, 14 GEO. J. ON POVERTY L. & POL'Y 393, 397 (2007).

past tax returns up to a certain amount.[193] Others have argued for more overall changes applying to the poor; by way of example, at least one scholar has proposed creating a sales tax credit to compensate for the financial illiteracy of low and middle-income households, which in turn prevents them from taking full advantage of the tax deductions that the wealthy have.[194] I propose the less radical approach: increasing the standard deduction for the informal economy — which would excuse the requirement for tax returns for three previous years; in turn, underwriting would rely more heavily on housing payment history reflected through rental receipts, landlord affidavits, and other evidence.

d. Alternative Underwriting Processes

Lenders dealing with workers in the informal economy should also consider other more inclusive methods of underwriting, which take data from a broader set of evidence. Examples can be found in two seemingly opposite directions: i) low-tech micro-finance methods; and ii) new innovations in financial technology practices, or *fintech*.

i. Micro-finance

Former Federal Reserve Board Chairman, Ben Bernanke, described the purpose of microfinance in the U.S. as follows: "to expand economic opportunities for individuals and to foster community economic development by providing small loans and other business services to people who have been traditionally underserved by mainstream financial institutions."[195] By way of example, Kiva is one of the world's largest microfinance platforms and lends $2.5 million on average on a weekly basis worldwide in eighty-six different countries.[196] It boasts a repayment rate of 96.9%.[197] Loans administered by Kiva undergo what they refer to as social underwriting, a process in which the borrower is vouched for by their friends and family (who are lending a portion of the loan), or in the alternative, by a Kiva-approved Trustee.[198] The borrower is then assigned a Field Partner, who operates in the geographic proximity of the borrower, and follows up with the borrower on a regular basis in order to make sure the borrower is compliant and progressing.

The Grameen Bank offers economists a plethora of tools and models for inclusive homeownership financing. Twenty-five years after its inception, in 2008, the Grameen Bank officially opened offices in the United

[193] *See* Plecnik, *supra* note 81, at 928.
[194] *See* Gathers, *supra* note 192, at 400.
[195] Ben S. Bernanke, Chairman, Fed. Res., Speech at the ACCIÓN Texas Summit on Microfinance, Microfinance in the United States (Nov. 6, 2007), http://www.federalreserve.gov/newsevents/speech/bernanke20071106a.htm.
[196] *About Us*, KIVA, https://www.kiva.org/about (last visited Jan. 24, 2020).
[197] *Id.*
[198] *How Kiva Works*, KIVA, https://www.kiva.org/about/how (last visited Jan. 28, 2020).

States.[199] By 2015, it had achieved a default rate of 1% of the loans it issued, exclusively to low-income households who had no credit and were either unbanked or under-banked, disbursing approximately 180,000 loans for a total of $381 million.[200]

The Grameen Bank uses a group lending model in which a potential borrower finds five other borrowers, all of whom attend a week of intensive financial literacy training.[201] Each loan is underwritten by the four other borrowers and the loans are then accompanied by weekly consultations with a servicer in the field who helps assess the lenders' business needs.[202] Loan terms can vary from six (6) to twelve (12) months.

Since the Grameen Bank's inception almost 35 years ago, unaffiliated microfinance programs have been created all over the world, and more and more of its kinks have been remediated. Rare defaults on these types of loans used to have dire effects on the affected household. In some cases, the defaulting borrower would abscond his home village (Uganda), and in other cases, the defaulting borrower would be publicly shamed (India).[203] Other challenges to micro-finance effectiveness have been internal practices of management, use of new technology, and development of products that are relevant to the beneficiaries. These challenges, commonly referred to as *micro-finance banana skins*, have been addressed by academics, and best practices have been deployed internationally.[204] These solutions include an organizational interrogation and revamp of management strategies; among other solutions, defaulting loans are systematically re-structured and the financial coaching continues.[205] However, in order to be effective, micro-finance should be perceived as one tool in a larger policy goal of financial inclusion, and that it requires appropriate infrastructural features such as financial literacy, effective governance, appropriate technology, and culturally appropriate enforcement and implementation.[206]

This concept of social underwriting is not new; in fact, versions of it form the basis of informal loan-making, which comprises 30% of finance in family businesses in Thailand and 94% in Cote d'Ivoire.[207] Moreover, as

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199 *Our Impact*, GRAMEEN AMERICA, https://www.grameenamerica.org/impact/.

200 George Popescu, *Grameen's Outstanding Risk Model in Alternative Lending*, LENDING TIMES (Jan. 22, 2016), https://lending-times.com/2016/01/22/grameens-best-risk-model-in-alternative-lending/.

201 *Id.*

202 *Id.*

203 JAMI SOLLI, THE SMART CAMPAIGN, WHAT HAPPENS TO MICROFINANCE CLIENTS WHO DEFAULT? 4–5 (2015), https://www.smartcampaign.org/storage/documents/what_happens_to_microfinance_clients_who_default_eng.pdf.

204 *See* DAVID LASCELLES & KEYUR PATEL, CTR. FOR THE STUDY OF FIN. INNOVATION, FINANCIAL SERVICES FOR ALL 4 (2005), https://content.centerforfinancialinclusion.org/wp-content/uploads/sites/2/2018/08/Banana-Skins_v8-2016-July.pdf.

205 *See generally id.* at 1, 7 (ranking risks associated with microfinance and implying potential solutions).

206 *See id.* at 1.

207 Alexander Karaivanov & Anke Kessler, *(Dis)Advantages of Informal Loans – Theory*

demonstrated by the existence of Grameen America, this phenomenon is not limited to developing nations. Further, social underwriting is not limited either to commercial or micro-finance loans. Indeed, data from 2011 show as much as 9% of homeowners in the U.S. received a family loan to assist in whole or part with a down payment on a home.[208]

The formalization of social underwriting reduces risk by pulling from a broader array of resources and accompanying it with case management services that are particularly important to those with little financial literacy, who ideally build capacity throughout this process. Finance through formalized social underwriting — specifically geared for the un-banked, underbanked, and generally any worker in the informal economy — creates access to opportunity for those without a mother, father, aunt or uncle to borrow a down payment.

Not only does micro-finance address an immediate need for poverty alleviation, but many of its supporters argue that it can also i) serve to expand the economy by deepening the demographic of the economically active; ii) help the underdeveloped and underbanked mature financially; and iii) pave the way to larger-scale financial reforms.[209]

ii. Fin-Tech

FinTech is a term generally used to refer to the technological advances that improve the "delivery and use of financial services."[210] Underwriting is conducted through a variety of methods. In some instances, FinTech uses traditional factors such as credit scores and debt-to-income ratios to underwrite a loan. Using some familiar factors such as FICO and debt-to-income ratio, FinTech lending in the U.S. has manifested itself as peer-to-peer lending, or P2P lending, which is administered online, without a bank as an intermediary, thereby significantly lowering transaction costs.[211]

In other instances, some FinTech companies use unconventional factors to determine the reliability of loan applicants such as where they live, their participation in organizations, their physical health, their smartphone

and Evidence, 102 EUR. ECON. REV. 100, 100 n. 1 (2018).
[208] *Id.* at 101, n.4.
[209] *See* Michael S. Barr, *Microfinance and Financial Development*, 26 MICH. J. INT'L L. 271, 273, 281 (2004).
[210] Julia Kagan, *Financial Technology – Fintech*, INVESTOPEDIA (June 25, 2019), https://www.investopedia.com/terms/f/fintech.asp.
[211] *See* Eric C. Chaffee & Geoffrey C. Rapp, *Regulating Online Peer-to-Peer Lending in the Aftermath of Dodd- Frank: In Search of an Evolving Regulatory Regime for an Evolving Industry*, 69 WASH. & LEE L. REV. 485, 491–94 (2012). Though banks have been removed from these transactions, it is worth noting that another intermediary exists in P2P lending that makes the loan and then sells the note to investors. *Id.* at 493.

habits,[212] and their social media habits.[213] A company called ScoreLogix uses employment and income information as underwriting factors, while Lenddo uses Facebook profiles and Kabbage uses e-commerce histories from sites such as Amazon.[214] Some argue that these determinants are in fact superior determinants of repayment than the FICO-styled credit score, and point out that the decreased overhead makes them ideal for lower incomes and for smaller loans.[215]

The advantages of FinTech are numerous, and include: i) the reduction in loan processing time; ii) improved infrastructure for handling large volumes of applications; and iii) in relation to the decreased loan processing time, a higher likelihood of getting the optimal market interest rate.[216] Critics may conjecture that expediting the underwriting process will result in higher default rates, but evidence suggests that the opposite is in fact true: the default rate on FHA loans administered via FinTech lenders is 25% lower than that of those handled by traditional methods.[217]

Indeed, FinTech advances have been used by the federal and state governments to more efficiently distribute public benefits with positive results. The federal transition to electronic funds transfer for food stamps, emergency cash assistance programs and welfare benefits has enabled poor people to access low-cost banking services, resulting in savings to the federal government of approximately $100 million annually, and has enabled the working poor to more easily save.[218] According to the Center for Financial

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[212] Susan Adams, *How Tala Mobile is Using Phone Data to Revolutionize Microfinance*, FORBES (Aug. 29 2016), https://www.forbes.com/sites/forbestreptalks/2016/08/29/how-tala-mobile-is-using-phone-data-to-revolutionize-microfinance/; Emily Bary, *How Artificial Intelligence Could Replace Credit Scores and Reshape How We Get Loans*, MARKETWATCH (Oct. 29, 2018, 8:29 AM), https://www.marketwatch.com/story/ai-based-credit-scores-will-soon-give-one-billion-people-access-to-banking-services-2018-10-09.

[213] *See* Christopher K. Odinet, *Consumer Bitcredit and Fintech Lending*, 69 ALA. L. REV. 781, 784 (2018).

[214] *See* Adi Ghosh & Harsh Sharma, *Alternative Credit Scores: Opportunities and Challenges*, TABB FORUM (Jan. 3, 2017), https://webcache.googleusercontent.com/search?q=cache:iUqcqCoyCIoJ:https://tabbforum.com/opinions/alternative-credit-scores-opportunities-and-challenges/+&cd=1&hl=en&ct=clnk&gl=us.

[215] *See* BACKING AUSTRALIAN FINTECH, AUSTRALIAN DEP'T OF THE TREASURY 12–13 (2016), hhttps://treasury.gov.au/sites/default/files/2019-03/Fintech-March-2016-v3.pdf. Austrialia's Department of Treasury published a report, available on its website, outlining its support for Fintech: "The Government recognises Australia's FinTech sector can play a vital role in aiding the positive transition that is occurring in our national economy. . . . FinTech can also help drive improvements in traditional financial services and promote disruption through innovative new products and services, which can offer benefits to consumers and other sectors of the economy. That's why we're working with the FinTech industry to prepare our financial system and economy for the future, and why it is such an important part of our plan to manage our transitioning economy." *Id.* at 13–14.

[216] *See* ANDREAS FUSTER ET AL., FED. RESERVE BANK OF NY, STAFF REPORT NO. 836, THE ROLE OF TECHNOLOGY IN MORTGAGE LENDING 2-4 (2018).

[217] *See id.* at 2–3.

[218] *See* Michael A. Stegman, *Banking the Unbanked: Untapped Market Opportunities for North Carolina's Financial Institutions*, 5 N.C. BANKING INST. 23, 24 (2001).

Inclusion, a working group of the nonprofit ACCION, digital banking and other FinTech tools are imperative in financial inclusion strategies.[219]

Predictably, FinTech has run into some challenges meriting attention by the Consumer Financial Protection Bureau. Some have suggested the impact of FinTech on privacy is significant and regulatory proposals have been made by scores of academics;[220] nevertheless, it is beyond the scope of this article to explore them here. It should be noted, however, that these risks and challenges have been addressed intentionally on a global level, resulting in the creation of the Financial Action Task Force ("FATF"), an intergovernmental global anti-money laundering and counter-terrorist financing standards-setting entity that has made, and continues to make, research-based recommendations.[221]

The potential of combining FinTech practices and innovations to the Community Development Financial Institutions' ("CDFI") purposes and uses has been suggested by contemporary thinkers.[222] According to them, not only could these practices be applied to create consumer credit for the historically underbanked or those without credit, but they could also be used to determine reliability in determining repayment rates of home loans — which has also been suggested by financial analysts.[223] Doing so would surely expand the pool of qualified home loan applicants in an economically inclusive manner. While evidence suggests that FinTech currently serves higher income households, the potential exists to apply the same innovations to the un- and underbanked, both to gain access to low-cost banking services

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[219] Taking data from emerging markets in a variety of countries from Ghana to China, a report included three of the top seven opportunities in a list entitled 'Banks' Top Opportunities in Financial Inclusion' as fintech advances: digital payments, digital ID's, and alignment of all systems to digital banking. SUSY CHESTON ET AL., CTR. FOR FIN. INCLUSION, THE BUSINESS OF FINANCIAL INCLUSION: INSIGHTS FROM BANKS IN EMERGING MARKETS, 9 (2016).

[220] *See* Christopher Bradley, *FinTech's Double Edges*, 93 CHICAGO-KENT L. REV. 61, 66 (2018).

[221] Louis de Koker, *The 2012 Revised FATF Recommendations: Assessing and Mitigating Mobile Money Integrity Risks within the New Standards Framework,* 8 WASH. J.L. TECH. & ARTS 165, 167 (2013).

[222] Charles A. Massiatte, How CDFI's can Leverage Fintech and Banking Innovations to Increase Competitive Advantage of the Inner City (Nov. 2, 2017) (unpublished theoretical paper), https://www.academia.edu/35250278/How_CDFIs_can_Leverage_Fintech_and_Banking_Innovations_to_Increase_Competitive_Advantage_of_the_Inner_City); *see also* Paul Taylor, *Could Fintech Reinvent Housing?*, MEDIUM (Nov. 1, 2017), https://medium.com/@PaulBromford/could-fintech-reinvent-housing-8889adb52800 (hypothesizing on the application of fintech to housing associations in the optimization of rental housing); *see also* Lisa T. Alexander, *Cyberfinancing for Economic Justice*, 4 WM. & MARY BUS. L. REV. 309, 309 (2013) (suggesting that, paired with some recommended regulatory structure, peer-to-peer online financing could effectively mitigate socio-economic inequities in lending).

[223] Jacob Passy, *How Fintech Lenders Give Mortgage Borrowers An Edge,* MARKETWATCH (Apr. 17, 2018 2:10 PM) https://www.marketwatch.com/story/how-fintech-lenders-give-mortgage-borrowers-an-edge-2018-04-16.

and to gain access to consumer credit and mortgages.[224]

e. Factory Loans to the Self-Employed

Often, workers in the informal economy, especially the cultural economy, have cottage industry operations in their homes. For instance, carpenters, visual artists, and other craftspeople use their home as a studio work space; in fact, studies have reflected that the lack of suitable space for their craft is one of the most difficult challenges for workers in the cultural economy to overcome.[225] Musicians might give lessons in their home and concessioners at public performances might use their homes to construct their carts and store inventory. As discussed earlier, many workers in the cultural economy also have the ability of collecting roommate income or short-term rental income.

In 1984, the Grameen Bank began giving home loans referred to as *factory loans*, based on the idea that for many poor people, the home, in addition to providing shelter, also served as a factory for goods for sale.[226] This was a strategy adopted when Bangladesh's Central Bank refused to lend the Grameen Bank money to be loaned out for shelter, or home loans, under the premise that poor people should not take out loans that are not for income-generating purposes.[227] In response, Grameen Bank founder Muhammad Yunus argued that in fact, for many of his clients, the home also served as a place of commerce; in that many used their homes as shops or micro-factories. This argument won the day and since then the Grameen Bank added home loans in the form of factory loans to their portfolio.

U.S. Census data from 2010 suggest that almost 7% of the U.S. labor force works from home on a full-time basis, and, of those workers, half of them are self-employed.[228] It is difficult to say what portion of that 7% consists of workers in the informal economy, given the lack of self- reporting of this demographic, but the fact remains that a significant number of workers use their homes to generate income, and, in a sense, their homes are places of business.

In the same way that Yunus argued in 1984 that home loans were actually quasi-business loans that were collateralized by the home; in this sense, especially if compared to the uncollateralized business loan or to the non-income generating home loan, I argue here that home loans for workers in the cultural economy should be seen as not only a home loan, but also a loan for an income-generating property. Thus, underwriting should not only reflect the cultural economy worker's income through the informal sector,

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[224] Karan Kaul, *Will fintech innovation benefit borrowers of all incomes?,* URB. WIRE (Apr. 16, 2018) https://www.urban.org/urban-wire/will-fintech-innovation-benefit-borrowers-all-incomes.

[225] MARIA-ROSARIO JACKSON ET AL., *supra* note 37, at 48–49.

[226] *See* MUHAMMAD YUNUS, BANKER TO THE POOR: MICRO-LENDING AND THE BATTLE AGAINST WORLD POVERTY 129 (2008).

[227] *Id*. at 128.

[228] UNITED STATES CENSUS BUREAU, HOME-BASED WORKERS IN THE UNITED STATES 4 (2010).

but also that the home loan, where applicable, is for a piece of property that also has income-generating capacity.

f. Financial Literacy Education

It is fairly well-established that many workers in the informal economy lack financial literacy and do not understand the long-term impact of operating outside the formal sector.[229] Behaviors that counterintuitively serve as key factors to obtaining credit for a car or a house, such as the importance of filing taxes, even when taxes are not owed, the importance of taking out credit, and maintaining at least a small balance over time, are largely unknown in the informal sector. International research suggests that increasing financial literacy within the informal economy can result in a household's economic stabilization, even in high income countries such as Canada and the U.K.[230]

Indeed, academics and policymakers have proposed increasing financial literacy in the U.S. through an interesting variety of methods.[231] The Riegle Community Development and Regulatory Improvement Act of 1994 established Small Community Development Financial Institutions to specifically address the lack of access to capital in disenfranchised communities, and have undertaken the development of financial literacy programs.[232] Many, including members of the banking community, argue that larger institutions should be adopting the same strategies for its borrowers as well.[233] Other proposals have focused on making financial literacy education available to adolescents,[234] and some have gone as far as to promote the inclusion of financial literacy into high school curricula on a national basis.[235] These programs could and should be expanded to include, and target, the informal economy and the different professions within the informal economy to obtain optimal success. For example, Cities for Financial Empowerment focuses on embedding financial literacy tools

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229 *See generally* Sanderson Abel, *Role of financial literacy in informal sector*, THE HERALD (Aug. 24, 2016), https://www.herald.co.zw/role-of-financial-literacy-in-informal-sector/.
230 *See* Syden Mishi et al., *Impact of financial literacy in optimising financial inclusion in rural South Africa: Case study of the Eastern Cape Province*, ECON. RES. S. AFR. 21–22 (2012), https://econrsa.org/system/files/workshops/papers/2012/mishi-financial-literacy.pdf.
231 *Infra* note 234 and 235.
232 *See* Ronald Phillips, *Impact Investing and Community Development*, 25 MAINE POL'Y REV. 63, 66–67 (2016).
233 Dan Kadlec, *Why Banks are Doubling Down on Financial Literacy*, RIGHT ABOUT MONEY (Mar. 15, 2017), http://www.rightaboutmoney.com/why-banks-are-doubling-down-on-financial-literacy/.
234 Rishika Dugyala, *U.S. Banks Teach Financial Literacy With Hands-On Experience*, REUTERS (Aug. 16, 2018), https://www.reuters.com/article/us-money-banking-literacy/u-s-banks-teach-financial-literacy-with-hands-on-experience-idUSKBN1L111J.
235 *Id.*; *see also* Afton Cavanaugh, *Rich Dad vs. Poor Dad: Why Leaving Financial Education to Parents Breeds Financial Inequality & Economic Instability,* 34 CHILD. LEGAL RTS. J. 59, 65 (2013) (citing U.S. GOV'T. ACCOUNTABILITY OFF., HIGHLIGHTS OF A GAO FORUM: THE FEDERAL GOVERNMENT'S ROLE IN IMPROVING FINANCIAL LITERACY (2004).

within local government and, amongst its toolkits of strategies, provides counsel to mayors on the implementation of financial literacy programming.[236]

g. Low-cost Banking Services and Lending Products

As discussed earlier, through high fees and penalties for low-balance accounts, banks overtly create disincentives to low- and middle-income households in engaging in formalized banking. Banking laws should be revised to prohibit such discriminatory practices and allow low- and middle-income households to take advantage of the same products that are available to higher income households. This phenomenon disproportionately affects communities of color — particularly African Americans, many of whom have limited access to credit in the form of predatory lending from institutions charging exorbitant interest rates, such as payday lenders, pawn operators or rent-to-own stores.[237]

Through Cities for Financial Empowerment, BankOn is a CDFI that partly focuses on making safe, affordable, low-cost bank accounts available on a nationwide basis.[238] These efforts should be duplicated by other CDFIs. Banking laws should in fact mandate larger institutions to provide a certain number of these types of accounts, in an amount determined as a certain percentage of the bank's profit margins. The method of requiring and enforcing the development and expansion of these programs could be embedded in the Community Reinvestment Act ("CRA").

Congress enacted the CRA in 1977 in response to a national outcry over redlining and other discriminatory lending practices targeting low-income households and people of color generally.[239] *Redlining* was a practice in which banks established geographic regions where there was a high concentration of residents of color and made internal policies against lending in those regions.[240] Also common was *reverse redlining*, or targeting these same areas with lending practices that gouged consumers.[241] These practices were first outlawed in 1974, by statute in Illinois, and finally nationwide with the Home Mortgage Disclosure Act of 1975.[242] The prohibition of these practices led to popular demand for an Act that would remediate past practices, and leading to the enactment of the CRA.

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[236] The CFE website is available at https://cfefund.org/.
[237] Regina Austin, *Of Predatory Lending and the Democratization of Credit: Preserving the Social Safety Net of Informality in Small-Loan Transactions*, 53 AM. U. L. REV. 1217, 1226 (2004) (citing CHRISTOPHER L. PETERSON, TAMING THE SHARKS: TOWARDS A CURE FOR THE HIGH-COST CREDIT MARKET 218 (2004)).
[238] The BankOn website is available at https://joinbankon.org/.
[239] 12 U.S.C § 2901 (2012).
[240] Mary Szto, *Real Estate Agents as Agents of Social Change: Redlining, Reverse Redlining, and Greenlining*, 12 SEATTLE J. FOR SOC. JUST. 1, 9–16 (2013).
[241] *Id.* at 28-32.
[242] Pub. L. No. 94-200, 89 Stat. 1125 (1975) (codified as amended in scattered sections of 12 U.S.C.).

However, the CRA itself is rather docile in nature and has been criticized by some as gutless.[243] Rather than creating a set of standards intending to promote investment in low-income households and neighborhoods, the CRA merely encourages banks to do business with low- and moderate-income people. Under the CRA, the Federal Reserve:

> *examines state member banks to evaluate and rate their performance under the CRA;*
>
> *i. considers banks' CRA performance in context with other supervisory information when analyzing applications for mergers, acquisitions, and branch openings; and*
>
> *ii. shares information about community development techniques with bankers and the public.*[244]

The evaluation is conducted using: i) a lending test; ii) a service test; iii) an investment test; or iv) a combination of these three in some permutation, depending on the size of the financial institution.[245] These tests determine whether the bank meets the following grades: i) outstanding; ii) satisfactory; iii) needs to improve; or iv) substantial noncompliance.[246] Regulators look at this score when determining if a bank can expand, merge, or undertake any major activity.[247] In fact, this evaluation process is ostensibly designed to determine whether the bank has complied with banking practices that are non-discriminatory in nature, and no particular set of criteria is set out for this process.

Some banks have interpreted this to mean that a certain percentage of its profit margins should be dedicated to reinvestment into low- and medium-income neighborhoods. In effect, the CRA led to the development of a number of community reinvestment tax credit programs, such as the

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[243] *See* BARADARAN, *supra* note 17, at 155 (citing Charles W. Calomiris et al., *Housing-Finance Intervention and Private Incentives: Helping Minorities and the Poor,* 26 J. MONEY, CREDIT & BANKING 634, 637-38 (1994) (stating that 'the vagueness of the CRA has led to arbitrary enforcement'); *see also* Keith N. Hylton, *Banks and Inner Cities: Market and Regulatory Obstacles to Development Lending*, 17 YALE J. ON REG. 197, 203 (2000) (explaining that enforcement of the CRA has been uneven and unpredictable).

[244] BD. OF GOVERNORS OF THE FED. RES. SYS., COMMUNITY REINVESTMENT ACT (CRA): FEDERAL RESERVE'S ROLE (last updated Dec. 7, 2018), https://www.federalreserve.gov/consumerscommunities/cra_about.htm.

[245] BD. OF GOVERNORS OF THE FED. RES. SYS., COMMUNITY REINVESTMENT ACT (CRA): EVALUATION METHODS (last updated Dec. 7, 2018), https://www.federalreserve.gov/consumerscommunities/cra_exam.htm.

[246] BD. OF GOVERNORS OF THE FED. RESERVE SYS., COMMUNITY REINVESTMENT ACT (CRA): CRA RATINGS (last updated Dec. 7, 2018), https://www.federalreserve.gov/consumerscommunities/cra_peratings.htm; *see also* OFF. OF THE COMPTROLLER OF THE CURRENCY, COMMUNITY REINVESTMENT ACT: OCC'S CRA RESPONSIBILITIES 2 (2014), https://www.occ.gov/publications-and-resources/publications/community-affairs/community-developments-fact-sheets/ca-fact-sheet-cra-mar-2014.html.

[247] COMMUNITY REINVESTMENT ACT: OCC'S CRA RESPONSIBILITIES, *supra* note 246.

Low-income Housing Tax Credit ("LIHTC") program and the New Market Tax Credit program ("NMTC"), both of which are aimed at residential and commercial real estate development in low- and medium-income neighborhoods.[248] While both of these programs address the underdevelopment of disenfranchised neighborhoods, on the financial side, they are a boon to the banking community due to the size of the projects.[249] Others have observed a moderate increase in lending to low-income and medium-income households directly — as opposed to an investment that seeks to benefit this demographic through multi-million-dollar low-income rental housing developments.[250]

However, many, including Arthur Fleming, Chairman of the U.S. Civil Rights Commission argue that the CRA is toothless.[251] Criticized for failing to force banks to issue direct loans or provide services to low- and middle-income neighborhoods, they affirm that the CRA is inconsequential because it is triggered only during a bank merger or other major structural change.

The inclusive economist should counter-argue that the CRA should be given teeth, so to speak. While the merits of real estate development serving low-income beneficiaries is not counter- productive to the goals of inclusive economics, another strategy could be to require direct loans from FDIC-insured banks to low- and middle-income customers. The CRA could, in fact, require banks to dedicate a percentage of their market, determined as a percentage of their profit, to small loans serving low- and medium-income households in low- and medium-income neighborhoods (like the approach of requiring low-cost banking services). These loans do not need be risky, but rather accompanied by extensive financial literacy education and long-term programming that would result in the conventional credit-worthiness of the low-income borrower.[252] They would be heavily underwritten, but using the same guidelines that have worked in other innovative methods such as micro-lending, factory-lending, FinTech, and other more contemporary

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[248] *See* Julie Stackhouse, *The Community Reinvestment Act's History and Future,* ON THE ECON. BLOG (Jan. 25, 2018), https://www.stlouisfed.org/on-the-economy/2018/january/community-reinvestment-act-history-future.
[249] *See* Richard Pinner, *Low-Income Housing Tax Credits*, 20170504A NYCBAR 186 (2017) (finding that banks and insurance companies are the largest investors in the LIHTC and NMTC credit programs, and credit amounts range from $673,000 to $1.1M in states such as New York, California, and Texas).
[250] *See* Eugene A. Ludwig et al., *The Community Reinvestment Act: Past Successes and Future Opportunities*, 1 COMMUNITY DEV. INNOVATION REV. 84, 90 (2009).
[251] *See* BARADARAN, *supra* note 17, at 155; Michael S. Barr, *Banking the Poor*, 21 YALE J. ON REG. 121, 233 (2004); Keith N. Hylton, *Banks and Inner Cities: Market and Regulatory Obstacles to Development Lending*, 17 YALE J. ON REG. 197, 204 (2000).
[252] Steven P. Hornburg, *Strengthening the Case for Homeownership Counseling: Moving Beyond "A Little Bit of Knowledge",* HARV. JOINT CTR. FOR HOUSING STUD. (2004).

innovations. Moreover, the loans' sizes would need to be smaller to reflect the earning capacity of the informal economy worker, and the types of houses would be in the neighborhoods that are redlined in practice.

The CRA could also mandate the creation of *low-income credit unions*[253] from CRA money, as once required by the Riegle Community Development and Regulatory Improvement Act of 1994 ("CDBA"), which resulted in CDFIs that prioritized community development and served targeted areas and targeted households through lending and investment. As recalled above, CDFIs continue to exist today, though funding has varied from President to President. The CRA could designate a bank's CRA funds to develop CDFIs in a manner that emulates the CDBA.

By contrast, others have recommended a more unusual solution adhering to the U.S. banking practices of another era. For instance, author Baradaran proposes in her book, *How the Other Half Banks*, the revival of U.S. postal banking. Dating back to the United Kingdom in 1861, banking was one of the services provided by the U.S. Post Office, created with the intention of increasing the common person's access to financial growth.[254] By 1881, most Western nations and Japan had a form of postal banking.[255] The United States was no exception- in 1871, postal banking was created by President Ulysses S. Grant with the two-fold objective of financing a national telegraph system and increasing financial inclusion of the poor. This system offered a 4% interest rate on deposits, which was challenged by the major banks at the time and subsequently lowered to 2.5%.[256] In the early years, such postal banks offered checking and savings services, but, by 1892, the Populist Party argued that they should have engaged in savings and loan activities.[257] Again, the intention was two-fold: i) to continue to promote financial inclusion; and ii) to stabilize a turbulent banking sector during an era in which bank runs were not uncommon.[258] The central reasoning of John Creswell, U.S. Postmaster General at the time, was that government entities had a fiduciary duty to the general public, whereas the private bankers acted as mere speculators using borrowed capital for the sole purpose of increasing capital.[259]

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[253] This is a practice used in New York. *See* 10 N.Y. Jur. 2d *Banks* § 816 (Nov. 2019).

[254] BARADARAN, *supra* note 17, at 187.

[255] *Id*. at 187-88.

[256] *Id.*; *see also* Mehrsa Baradaran, *How the Poor Got Cut Out of Banking*, 62 EMORY L.J., 483, 488 (2013).

[257] BARADARAN, *supra* note 17, at 189.

[258] *Id.* at 189-90.

[259] *Id.* at 191 (citing POST-OFFICE DEP'T, REPORT OF THE POSTMASTER GENERAL, at XXVII-XXVIII (1873): '[National Banks] are organized to afford facilities to the community by lending money on personal security, dealing in exchange, issuing notes, and receiving deposits, not for permanent investment, but as temporary custodians. Bankers should own the capital they employ. When they

Opposition to postal banking came from a broad spectrum of political interests. Private bankers denounced a lack of necessity, claiming that services were already sufficiently provided by the private sector, and that postal banking represented overreaching government intervention into commerce.[260] Some Democrats and Populists opposed the conglomeration of personal funds in Washington D.C.[261] Nevertheless, by 1947, postal banking deposits reached an apex at $34 billion for 4 million users and administered the sale of about $8 billion in war bonds and Treasury bonds[262]; however, it never entered the home loan industry despite debates in the late nineteenth century.

After the advent of FDIC, created by Roosevelt 1933 as part of his tools to address the Great Depression, banks slowly became perceived as more stable, and, by mid-twentieth century, postal banks saw a loss of 10% a year in deposits.[263] With no war to fund, an increased faith in national banking and an increase in branches and accessibility to these branches with more roads and cars, the postal banking market shrunk; by 1966, Congress legislatively ended the postal banking system, under the perception that the private sector was able more effectively to serve all Americans, including the poor, in ways that were previously only met by postal banking.[264]

In a banking era where speculation has dominated the operational behavior of most national banks and where the poor are rarely served in an equitable manner, but rather are prejudiced from banking services with banking and penalty fees that the wealthy do not pay, it may be worth re-evaluating U.S. Postal banking services as a public amenity that the private sector will not, or cannot, provide. The unbanked would have easier access to low-cost banking services, thus having financial records and making it easier to access credit. And, though U.S. Postal banking never entered the home loans sector, in the FinTech era, low-cost implementation is in the realm of the possible.[265] Nor would the opposition from the private sector be

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attempt to do business on borrowed capital they are operating on a fictitious credit and become mere speculators […] With the Government it is totally different. [Its] paramount consideration should be the best interests of the people, whose agent it is.').

[260] BARADARAN, *supra* note 17, at 194.

[261] *Id.*

[262] *Id.* at 205.

[263] *Id*.

[264] *Id*. at 205-06.

[265] Government to Person Transfers (G2P) have been explored as an on-ramp to financial inclusion in a number of countries overseas, including Pakistan, Colombia, and Brazil. Currently, public assistance recipients in the U.S. receive payments from the government through a debit card. This differs from G2P technology which requires the recipient to keep and maintain a bank account or digital wallet. Paired with the relevant financial literacy programming, G2P in the U.S. could be effective in underwriting loans. *See generally* GUY STUART, CTR. FOR FIN. INCLUSION, GOVERNMENT TO PERSON TRANSFERS: ON-RAMP TO FINANCIAL INCLUSION? 2 (2018).

as vocal as it was when postal banking was first conceived; it could very well be argued that offering smaller loans to lower income people is meeting a niche that would not threaten the bulk of national banks, that have abandoned this segment of the market, and relieve for-profit banks from some of their CRA obligations.

h. Increased Guarantor Financing

Recent philanthropic funding habits now trend away from one-time cash grants and instead look for renewable investments, using a market-based model that is capitalist, but deliberately, more inclusive than most loan products. From the Rockefeller Foundation[266] to the American Association of Retired Persons ("AARP"),[267] contemporary philanthropy organizations are looking at ways to invest their efforts in a long-term, sustainable manner, with a return on investment that can be further re-invested in philanthropic objectives. From offers of low to no-interest financing to creating vehicles to attract private capital in infrastructural projects, the philanthropic sector has explored opportunities to combine financial growth with the goal of solving the social ill.[268] In 2017, Kresge announced a commitment of $150 million in mortgage guarantees in distressed neighborhoods,[269] and the Annie E. Casey Fund, in partnership with a number of other philanthropy groups, created two loan pools guaranteeing 352 loans at $53.6 million.[270] This is a fundamentally new direction from the era of building and selling affordable housing through grants.

This practice is not without precedent in the public sector. Through the United States Department of Agriculture ("USDA") and its subsidiary programs, low-income people in rural areas can access conventional home loans from national lenders, backed with a guarantee issued by the USDA. In essence, when an applicant is applying for a home loan at a conventional bank that would be considered risky, if the home is located in a census tract that meets USDA requirements for rural, the USDA will issue a guarantee on the loan.[271] Such a program provides a guarantee for a demographic that

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266 Rockefeller Foundation, Market-Based Solutions, ROCKEFELLER FOUND. (2014), https://www.rockefellerfoundation.org/market-based-solutions/.

267 Sara Kay & Cynthia Muller, *A Different Spin on a Market-Based Approach*, STAN. SOC. INNOVATION REV. (Dec. 29, 2015), ssir.org/articles.entry/a_different_spin_on_a_market_based_approach.

268 *Id.*

269 Kimberlee Cornett & Kim Dempsey, *Mission, Money & Markets: The Power of the Guarantee*, KRESGE FOUND. NEWS (Sep. 28, 2017), https://kresge.org/news/mission-money-markets-power-guarantee.

270 Hannah Schiff & Hanna Dithrich, *Scaling the Use of Guarantees in U.S. Community Investing*, GLOBAL IMPACT INVESTING NETWORK 20 (2017).

271 U.S. DEP'T OF HOUS. & URB. DEV., GUARANTEED RURAL HOUSING LOANS (SECTION 502) (2004), available at https://www.hud.gov/sites/documents/19565_502_GUARANTEEDLOA.PDF.

is often unbanked, with a long history of operating in the informal economy.[272] It should also be noted that the delinquency rates of these programs ranged from 7-10% in 2012.[273]

Philanthropic programs from the public and private sectors should continue in this direction and, in fact, should expand. Default rates for these USDA loans continue to trend downwards.[274] Though the default rate for these loans is higher than the national average, which has hovered around 5% since 2016,[275] the return on investment is significantly higher than 100% grant-funded housing, or 60% LIHTC tax credit financing. Even more impressive, defaults for the $53.6 million in home loans guaranteed by the Annie E. Casey Foundation resulted in a 2.5% loss of funds, for a rate of return of 97.5%.[276] This is evidence that a significant number of households previously excluded from conventional home loans have the ability to become successful homeowners in a free market system, with an effective architecture of philanthropic guarantor funds.

i. Replacement Reserve Funds

As with all homeownership, uncontemplated repairs can arise, causing a financial disruption to which low-income households are particularly vulnerable. Studies have shown that maintenance and repair costs have stymied the success of low-income homeownership; in one study, about one-third of the 350 homeowners surveyed encountered unaffordable home repairs within two years of purchase.[277]

Both private philanthropy and government development funds have been developed to provide maintenance and repair assistance. Once again, the USDA leads the way, by providing loans and grants for single family home repairs through the Section 504 Program.[278] Loans are as low as 1%

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[272] Press Release, Tammye Treviño, Administrator, USDA Rural Housing Programs, Statement: USDA Housing Programs Administered in Accordance with Federal Law, (Mar. 18, 2013), https://www.rd.usda.gov/newsroom/news-release/statement-usda-housing-programs-administered-accordance-federal-law.
[273] *Id*.
[274] *Id*.
[275] Troy McMullen, *Mortgage Delinquency Rates Hit Lowest Level Since The Financial Crisis*, FORBES (May 9, 2017, 9:22 AM), https://www.forbes.com/sites/troymcmullen/2017/05/09/mortgage-delinquency-rates-in-the-us-hit-lowest-level-since-the-financial-crisis/#49c2d008681c.
[276] GLOBAL IMPACT INVESTING NETWORK, HEALTHY NEIGHBORHOOD LOAN POOLS I AND II – REPORT: SCALING THE USE OF GUARANTEES IN U.S. COMMUNITIES INVESTING, https://thegiin.org/healthy-neighborhoods-loan-pools-i-and-ii (last visited Jan. 28, 2020).
[277] Shannon Van Zandt & William M. Rohe, *The Sustainability of Low-Income Homeownership: The Incidence of Unexpected Costs and Needed Repairs Among Low-Income Home Buyers,* 21 HOUSING POL'Y DEBATE 317, 332 (2011).
[278] U.S. DEP'T OF AGRIC., RURAL DEV., SINGLE FAMILY HOUSING REPAIR LOANS & GRANTS (2019), https://www.rd.usda.gov/programs-services/single-family-housing-repair-loans-grants.

interest rates with a term of 20 years. Providing replacement reserves has the exponential effect of helping multiple households with the same set of funds, instead of sinking philanthropic resources permanently into individual households. The 504 Program, however, is limited to housing in rural areas, and, while there are FHA-backed conventional loans for urban home repairs, there is no equivalent grant program or loan program with such low rates.

The philanthropic/non-profit affordable housing sector has developed programs comparable to the 504 Program. Habitat for Humanity, one of the largest housing developers in the world, nationally ranked 16th for highest number of home closings in 2015 (3,237 homes),[279] and has also recognized the impact maintenance and repair costs have on low-income homeowners. Many of its branches offer home repair grants through its Home Repair Program, in which homeowners can receive assistance with repairs both in kind or through 0% forgivable loans — which are repayable only upon sale, transfer, or refinance of the loans within seven years of loan issuance, after which time the loans are completely forgiven.[280] While no down payments or monthly payments are required, the borrower must contribute sweat equity into the repairs themselves, or some other function of the program not necessarily requiring arduous physical labor.[281] Other national affordable housing developers offer similar programming. For instance, Neighborhood Housing Services, a nation-wide, full-service housing nonprofit, has a Home Repair Program that also offers low-interest loans underwritten in-house with a target beneficiary group of those who cannot qualify for conventional loans.[282]

Thus, any affordable homeownership program for the informal sector should include a home repair loan program, using those described here as templates. The value proposition has been established and the tool is using a conventional finance tool, a loan, to address a key issue for low- to medium-income homeowners in an effective way that simultaneously increases the financial literacy of the beneficiary.

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[279] *Habitat for Humanity Tops Builder 100 list for Private US Homebuilders*, HABITAT FOR HUMANITY (May 25, 2016), https://www.habitat.org/newsroom/2016/5-25-Habitat-for-Humanity-ranked-top-private-home-builder.

[280] *Home Repairs*, HABITAT FOR HUMANITY, https://www.habitatla.org/housing-initiatives/home-repair- program/ (last visited Jan. 28, 2020).

[281] For instance, if the borrower is physically unable to perform home repair labor, he may contribute to office work tasks related to the administration of the program or other organizational programs. *How to Qualify*, HABITAT FOR HUMANITY, http://www.habitat-nola.org/homes-and-services/how-to-qualify/ (last updated Jan. 28, 2020).

[282] *Home Repair Loan Program*, NHS GREATER CLEVELAND, https://www.nhscleveland.org/lending/home-repair-loan-program (last visited Jan. 28, 2020).

2. Broader Range of Housing Stock and Complementary Zoning Policies

As discussed earlier, many in the informal economy live in lifestyles that might be considered non-traditional. Some live in multi-generational situations under one roof, others live with multiple un-related individuals or households, and others incorporate workspaces into their living spaces. In essence, most in the informal economy are accustomed to living with less individual space, and homeownership opportunities for those excluded from conventional home loans could be designed with smaller square footage for individuals, which brings prices down and makes successful homeownership for low- to medium-income households more feasible. In alternative, the housing stock could be structured as a sharing economy, where some of the more costly features of shelter are shared. Smaller housing stock, *i.e.* lower cost housing stock, can result in expanded inclusivity, in that lower documentable incomes can qualify for mortgages of lower amounts. In conjunction with the alternative methods of underwriting discussed above, smaller housing stock could result in a lower-risk, cost-effective solution for the housing crisis for the low- and moderate-income households in the informal economy.

To do this, however, zoning laws need to be flexible to include the variety of housing that is cheaper to build, either because the increased density allows for an economy of scale that decreases the cost per unit, or because each freestanding unit is smaller than the norm. Policymakers interested in inclusive economics must acknowledge the mathematical fact that zoning restrictions, favoring single-family homes and low-density housing in general, affect housing prices by creating an artificial scarcity of housing.[283] An economically inclusive revised zoning code should permit at least some or all of the following housing types.

a. Smaller Single-Family Homes, Possibly Paired with In-House Underwriting and Extensive Financial Literacy

As above anticipated, one of the most ubiquitous models of affordable homeownership comes from Habitat for Humanity. Their in-house underwriting, financing, and extensive financial literacy coaching (which can last a year or longer) — paired with scaled-down design and architecture, and volunteer labor and sweat equity contribution from the homebuyer — has brought them to the forefront of affordable homeownership development. The qualification period lasts one year, during which time the potential homeowner works on credit repair and puts $225 monthly in escrow for the first year of payments.[284] No down-payment is due, and financing is provided at 0% either in-house or by a partner bank of the program that acquires CRA credits for its participation with a guarantee provided by Habitat in some cases. [285]The borrower

[283] *See* Yglesias, *supra* note 104.
[284] *How to Qualify*, *supra* note 281.
[285] *Id.*

contributes 350 hours of sweat equity through several activities including financial literacy coursework, physical construction of the borrower's home or of other homes in the program and working at Habitat's nationwide chain of home improvement thrift stores.[286]

Following Hurricane Katrina in 2005, Habitat for Humanity created the Musicians' Village with the support of internationally-renowned musicians and New Orleans natives Harry Connick Jr and Branford Marsalis.[287] The program started as 40 houses on an 8-acres school site that had been devastated by the hurricane and focused on creating housing opportunities for musicians and others in the cultural economy. Musicians' Village conducted the underwriting in-house and accommodated the credit and banking challenges faced by workers in the informal economy. As of 2018, Musicians' Village expanded to 77 houses, and a performing arts community space with classrooms, practice spaces, and a toddler-friendly pocket park.[288] The houses themselves are modest, ranging from 2-3 bedrooms, with a three-bedroom averaging 1100 square feet.[289] The units have been standardized into a handful of designs that are duplicated with limited variations in color, trim, floor and countertop finishes.[290]

Critics have observed that Habitat programs serve only a sliver of the low-income population that can qualify for a mortgage and have steady income.[291] Other affordable housing developers have sought to address this problem by developing homeownership units for those making as little as $10,000 a year.[292] In Detroit, Cass Community Social Services is a wrap-around social services provider that undertook the development of tiny homes for sale for low- and very low- income individuals and couples.[293] Constructed on what was once a number of abandoned lots in Detroit, the organization undertook the construction of 25 tiny homes through a lease-purchase program with a rent of approximately $250 a month, each costing $40,000-$50,000, turnkey ready. Closing occurs after 7 years of the program, during which the

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[286] *Home Repair Loan Program*, *supra* note 282.

[287] Staff Writer, *The History of Musicians' Village*, HABITAT FOR HUMANITY BLOG (Aug. 22, 2015), available at http://www.habitat-nola.org/the-history-of-musicians-village/.

[288] *Id*.

[289] *Home Features*, HABITAT FOR HUMANITY, http://www.habitat-nola.org/homes-and-services/home-features/ (last visited Jan. 28, 2020).

[290] *Id.*

[291] Adele Peters, *These Tiny Houses Help Minimum Wage Workers Become Homeowner*, FAST COMPANY (June 6, 2017), https://www.fastcompany.com/40425765/these-tiny-houses-help-minimum-wage-workers-become-homeowners.

[292] *Id.*

[293] *Id*.

beneficiaries are required to meet with a financial coach, attend financial literacy classes on a monthly basis, volunteer eight hours a month, and eventually join a homeownership association.[294]

Neither program is without its critics, primarily for the quality of housing provided. Across the nation, Habitat homeowners have complained of a variety of issues, from cracked foundations[295] to mold.[296] Others have claimed that the houses are built with low-quality craftsmanship, which fail to retain value and easily fall into disrepair, resulting in a potential domino effect on the neighborhood.[297] Tiny homes for the homeless and low-income also have critics who argue that the tiny home phenomenon is a fad imposed upon the poor by the upper-middle class,[298] and does not provide a lasting solution to poverty or substandard housing.

The validity of these criticisms is difficult to evaluate. With regards to Habitat for Humanity, as one of the top ten home developers in the nation, there is insufficient data to determine whether the complaints against Habitat housing are typical of any home developer of its size, or whether Habitat's homeowner critics are far greater than the research records. As for tiny homes, being a relatively new phenomenon dating back barely twenty years,[299] durability of this trend will only be determined with the passing of time.

Regardless, the moderate size and cost of the units, the financing packaging, the financial literacy programming, and the incorporation of sweat equity into pricing and underwriting — used both by Habitat for Humanity and Cass Community Services — offers useful models when considering any type of homeownership housing for low- and medium-

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[294] Megan Woolhouse, *The Tiny Home Evangelist*, BOSTONIA (Mar. 27, 2018), https://www.bu.edu/bostonia/summer18/tiny-home-evangelist/.

[295] John Leland, *Habitat for Humanity's Homes Faulted in Florida*, N.Y. TIMES (Jun. 17, 2007), https://www.nytimes.com/2007/06/17/us/17habitat.html.

[296] Dillon Carr, *Habitat Program Falls Short for Some Families in Penn Hills*, TRIBLIVE (Mar. 1, 2018), https://archive.triblive.com/local/penn-hills/habitat-program-falls-short-for-some-families-in-penn-hills-homeowners-say/.

[297] Ben Johnson, *Blaine Homeowners Fight to Keep Habitat for Humanity Out of Their Neighborhood*, CITY PAGES (Apr. 14, 2015), http://www.citypages.com/news/blaine-homeowners-fight-to-keep-habitat-for-humanity-out-of-their-neighborhood-6548480.

[298] *See generally* Lisa T. Alexander, *Community in Property: Lessons from Tiny Homes Villages*, 104 MINN. L. REV. 385, 391–92 (2019); Miles Howard, *You Can't Just Put Homeless People in Tiny Houses*, THE OUTLINE (May 22, 2018, 11:32 AM), https://theoutline.com/post/4639/tiny-house-affordable-housing-adu-boston-portland; Joel John Roberts, *Housing for Homeless: Size Does Matter*, SAN DIEGO UNION TRIB. (Jan. 9, 2016, 5:00 PM), https://www.sandiegouniontribune.com/opinion/commentary/sdut-homeless-tiny-houses-2016jan09-htmlstory.html.

[299] Emily Nonko, *A Tiny House Movement Timeline,* CURBED (Jul. 19, 2017), https://www.curbed.com/2017/7/19/15974554/tiny-house-timeline.

income, especially those in the informal economy.

b. Conventionally Sized Apartment-Styled Homes, Pooled Ownership through Cooperative

An alternative argument related to the Habitat for Humanity and Tiny Home movements are conventionally built homes of conventional size with pooled ownership. As stated earlier in this article, artists have operated in a cooperative lifestyle dating back to the artisan guilds of medieval times.[300] In the past few decades, this structure of pooling resources has translated into cooperative artist housing, in which residents are also co-owners. Housing cooperatives are not merely borne out of the artistic community; in fact, it was once a common antidote to urban housing shortages after World War II.[301] One of the most successful models from this era was the Mitchell-Llama program in New York City, that created tax incentives for the development of affordable housing in a variety of ownership models – including cooperatives; Stimulated by federally-issued mortgage insurance programs, discounted financing incentives, and subsidy programs, cooperatives were thriving until the 1970's, when President Nixon curbed cooperative subsidies during an era in which condominiums and single-family homes became the preferred housing du jour.[302]

Cooperatives can manifest as apartment buildings or large houses, where each resident owns shares of the property, rather than individual units; cooperatives can also come in the form of co-housing, where there is a common house and shared communal spaces.[303] The cooperative association usually comes with extensive agreements, which often require the owner to occupy, and prevents subletting and other non-residential uses; conveyance of any kind usually requires approval of a cooperative board.[304] Smaller cooperatives can be managed and maintained by owner-occupants to reduce costs, while larger cooperatives might hire third parties to handle management and maintenance. Cooperative housing results in lower property taxes, lower financing rates, and lower transfer costs than condominiums.[305] Federal incentives and support exist today, through a variety of HUD programs that provide mortgage insurance, direct mortgages at low-interest rates requiring little down payment and

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[300] EPSTEIN, *supra* note 38.
[301] NORTHCOUNTRY COOPERATIVE DEV. FUND, HOUSING COOPERATIVES: AN ACCESSIBLE AND LASTING TOOL FOR HOME OWNERSHIP 2 (undated), https://www.cccd.coop/sites/default/files/resources/HousingCoopsAccessibleLastingHomeOwnership.pdf.
[302] Agis Sapulkas, *Moratorium on Housing Subsidy Spells Hardship for Thousands*, N.Y. TIMES, Apr. 16, 1973, at 30.
[303] NORTHCOUNTRY COOPERATIVE DEV. FUND, *supra* note 301.
[304] *Id*. at 3.
[305] *Id*. at 3-4.

favorable loan-to-value ratios of 100% for moderate income cooperatives.[306]

This model has enjoyed high rates of success when exercised in low-income households. In Minneapolis, Northcountry Cooperative Development Fund asserts 50% of its cooperative owners to be first-time homeowners of its cooperatives and that 80% of its current housing portfolio is placed in low-income communities.[307] It operates 105 cooperatives in 11 states at-cost, resulting in carrying costs that are 15-25% below rental market rates, thus enabling low-income households to become owners. The fund boasts a history of 100% mortgage repayment.[308] A limited-equity cooperative model in Davis, California kept homeownership affordable for 30 years amidst sky-rocketing property values.[309]

Some argue that cooperative housing is the single most viable solution to the affordable housing crisis nationwide, asserting that large-scale affordable rental developments through the LIHTC program are vulnerable to either becoming market rate, after the fifteen/twenty-year compliance period has ended, or depreciating into substandard housing. On the contrary, cooperative housing would create an equity opportunity that enables maintenance and an opportunity for a growth in household wealth.[310]

c. Condo-Conversion Incentives of Low-Income Housing Tax Credit ("LIHTC") Apartments

Separate from the low-cost pooled funds in cooperative housing, affordable condominium structures can also provide opportunities for inclusivity, particularly in the instance of low-income housing tax credit units. In 1986, Congress created the LIHTC that provided a dollar-for-dollar tax credit incentive to private equity markets, to invest in the private development of affordable housing for low-income and very low-income

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[306] *See generally Housing Cooperatives Worldwide: About United States of America*, CO-OPERATIVE HOUSING INT'L, https://www.housinginternational.coop/co-ops/united-states-of-america (last visited Jan. 28, 2020); *see also Multifamily Rental Housing for Moderate-Income Families*, U.S. DEP'T. OF HOUSING AND URB. DEV., https://www.hud.gov/hudprograms/mrhmif (last visited Jan. 28, 2020).

[307] NORTHCOUNTRY COOPERATIVE DEV. FUND, *supra* note 301, at 4–5.

[308] *Id.* at 3.

[309] David J. Thompson, *30-Year Study Shows Long-Term Affordability Power of a Limited-Equity Housing Cooperative*, 2018 COOPERATIVE HOUSING J. 15, 16 (2018).

[310] Herbert H. Fisher, *Housing Cooperatives Are the Only Solution Power of a Limited-Equity Housing Cooperative*, 2018 COOPERATIVE HOUSING J. 19, 20 (2018).

renters.[311] The process starts with a developer interested in building and maintaining low-income rental housing. The developer applies to the state authority designated by the federal government to select projects that meet a set of criteria determined by the state.[312] The selected projects are awarded tax credits for 30-60% of the cost of the project, depending on the tax credit program applied for by the developer.[313] The developer then sells the tax credits at a discounted rate to equity investors, who pay for the credits in the form of upfront cash investments into the project. The equity investor then uses the credits to write down its tax burden over the span of ten years.

The projects are frequently financed with not only tax credit investment equity, but also a variety of publicly funded grants from the HUD. Since its inception, the LIHTC program has created approximately 110,000 units a year,[314] for a total of almost 3 million units from 1987 to 2015.[315] By some estimates, this comprises approximately 90% of the affordable housing produced between 1986-2012.[316] Under the Tax Code, the units must remain affordable for at least fifteen years — up to 50 years in some states —[317] and, while incentives exist to refinance the units with more tax credits thus retaining affordability, there is no guarantee of permanent affordability.

Some developers have created lease purchase programs to create homeowners of long-term tenants at the end of the compliance period. These tenants undergo extensive financial literacy training, improve their credit scores, and the management team escrows a down payment from the rents paid.[318] Further, maintenance expenses are shared with the developer who owns the rental piece, along with smaller tasks such as landscaping, cleaning carpets, and re-caulking of bathroom fixtures.[319] After the compliance period, the units are either paid-off in full or mostly paid-off, making the first mortgage extremely affordable. This enables much of the mortgage payment to be deposited in a maintenance reserve for property maintenance fees, so

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311 CORIANNE PAYTON SCALLY ET AL., THE LOW INCOME HOUSING CREDIT: HOW IT WORKS AND WHO IT SERVES 1 (2018).
312 *Id.* at v.
313 *Id.* at 6.
314 *Id.* at 12.
315 *Id.* at 15.
316 Editorial, *A Tax Credit Worth Preserving*, N.Y. TIMES, Dec. 21, 2012, at A30.
317 SCALLY ET AL., *supra* note 311, at 4.
318 KATE MONTER DURBIN, A PATH TO HOMEOWNERSHIP: A GUIDE TO SINGLE-FAMILY LEASE PURCHASE PROJECTS FUNDED WITH THE 9% TAX CREDIT 44-45 (2015).
319 One developer of 650 units requires such tasks of its lease purchase tenants. Katie A. Giordano, Low Income Housing Tax Credits and Lease Purchase as a Means Toward Homeownership in Park Heights 23–24 (May 2010) (unpublished Master's thesis, Johns Hopkins University) (on file with Sheridan Libraries, Johns Hopkins University).

that the properties can remain in good condition.[320] The potential homeowners start the qualification process years before the compliance period ends, and thus have sufficient time to repair credit and provide documentation for any undocumented income.

Because the units can be sold for well-below market value, since the first mortgage on the development has been mostly or entirely paid off, these units are easier to qualify for and well-suited for those in the informal economy who have less-than-usual reported income; they allow for extensive, measured time to transition to formal recording of income. The equity on these units can also be leveraged to finance any repairs needed at the end of the compliance period, since, as stated above, the first mortgages on the units will have mostly been paid off during the fifteen to thirty-year compliance period.

Because first mortgages left on LIHTC units after the extensive compliance period are so low, these units are provided excellent opportunities to create an economically inclusive homeownership program. Over 3 million units have been built since 1987 and continue to complete their compliance period each year.[321] These units can be used to build wealth amongst workers in the informal economy and in low- to middle-income households generally.

CONCLUSION

Our nation is in a moment in time where we are collectively acknowledging that Smith's interpretation and the trickle-down philosophies of market-based systems have failed us in at least three cataclysmic events[322] in the past 100 years. They, therefore, require additional re-evaluation on whether our economy should include a large segment of our society, those in the informal economy who have been historically disenfranchised both by race, geography, and education. We are experiencing an opportunity to be deliberate in proposing thoughtful solutions and to mindfully explore conceptual frameworks that can serve as an umbrella when framing policies in areas such as property law, banking law, and intellectual property law, to name a few.

Inclusive economics does not argue that workers should continue to evade the payment of taxes. Rather, it espouses the idea that — in a society where low- and middle-income workers have little to no access to financial literacy and affordable financial services, and where such workers have demonstrated financial reliability and economic value in ways not measured

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[320] *Id*. at 28.

[321] U.S. DEP'T OF HOUSING AND URB. DEV. OFF. OF POL'Y DEV. AND RES., LOW INCOME HOUSING TAX CREDITS (2019), https://www.huduser.gov/portal/datasets/lihtc.html.

[322] By this, I refer to the Great Depression and to the Great Recession and Housing Crisis of 2008-2009.

by conventional home loan underwriting — policies should be crafted so to enable such households to make better decisions towards building wealth.

Previous policy experiments in the U.S. to promote homeownership have worked in whole or in part, and can add value to our current systems. All of these types of solutions, both in housing finance policies and housing stock development, require long- term programming design and implementation. While such programs are far more labor-intensive with smaller profit margin per dollar than conventional home loan programs, homeownership programs designed within the inclusive economic framework are in a sense less risky because: i) the screening process is significantly more detailed than for the conventional borrower; and ii) the housing stock is more moderate in size and cost.

In conclusion, inclusive economics is worthy of our attention at this juncture in time. We should recognize that in corporate-centered capitalism, there are multiple stakeholders to which fiduciary duties are owed beyond investors. This approach is in line with the various adjustments our nation has regularly and successfully implemented, from Keynesian strategies of government spending. Inclusive economics focuses on wealth growth, instead of wealth re-shuffling, and recognizes the importance of equity-building, neighborhood stabilization, and macro-economic health.