

Unfair and Unaffordable Housing: Chronicle of a Defeat Foretold

by Antonello Tarzia

Abstract: *Housing iniquo ed inaccessibile: cronaca di una sconfitta annunciata.* The huge case-law on the enforcement of the Fair Housing Act of 1968 well explains why the Biden-Harris administration placed equity front and center of the federal housing policy. Despite the enormous and unprecedented financial effort during Covid-19 pandemic, and notwithstanding important results achieved for example in avoiding mass evictions, the Biden-Harris administration has missed its declared goal of making housing globally fair and affordable, as witnessed by the inequality index according to the Gini coefficient (the index measures the statistical dispersion intended to represent income, wealth and consumption inequality). The essay focuses on the different approaches of candidates Trump and Harris to housing and welfare policies, regulation in the housing markets, public spending and inflation, and federalism in housing regulation and zoning. Everything suggests the probable defeat of Mrs. Kamala Harris.

Keywords: Fair Housing and housing affordability; Federal policies and local regulations; Equity; Disparate impact; Municipal zoning; Stimulus package and inflation.

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1. High hopes

On March 7, 2024, in his last Address to the State of the Union¹ President Biden emphatically announced that the best was yet to come.

«I know the cost of housing is so important to you. Inflation keeps coming down. Mortgage rates will come down as well, and the Fed acknowledges that. But I'm not waiting. I want to provide an annual tax credit that will give Americans \$400 a month for the next two years as mortgage rates come down to put toward their mortgages when they buy their first home or trade up for a little more space. That's for two years. And my administration is also eliminating title insurance [fees] on federally backed mortgages. When you refinance your home, you can save \$1,000 or more as a consequence. For millions of renters, we're cracking down on big landlords who use antitrust law ... – who break antitrust laws – by price-fixing and driving up rents.

We've cut red tape so builders can get federally financing, which is already helping build a record 1.7 million new ... housing units nationwide. Now pass ... [my plan] and build and renovate 2 million affordable homes and bring those rents down».

¹ President Biden's *State of the Union Address*, March 7, 2024, available at www.whitehouse.gov/state-of-the-union-2024.

A few days after the speech to Congress,² the Biden-Harris administration specified a wide range of policy lines central to economic agenda to better achieve – in no short time – those objectives. Given that over 1.7 million Americans actually live in public housing, the core of the housing policy has been identified in building and preserving more than two million housing units.

In 2022, with the adoption of the Housing Supply Action Plan,³ the Biden-Harris administration intended to face the decades-long fall in affordable housing supply through a five-years plan focused on reducing barriers to affordable housing construction and preservation. The Plan urged Congress to act on a bipartisan basis in five main areas of concern essential to the 2022-2026 Strategic Plan of the HUD-U.S. Department of Housing and Urban Development: 1) Reward jurisdictions that have reformed zoning and land-use policies with higher scores in certain federal grant processes, for the first time at scale; 2) Deploy new financing mechanisms to build and preserve more housing where financing gaps currently exist; 3) Expand and improve existing forms of federal financing, including for affordable multifamily development and preservation; 4) Ensure that more government-owned supply of homes and other housing would go to owners who will live in them – or non-profits who will rehab them – and not to large institutional investors; 5) Work with the private sector to address supply chain challenges and improve building techniques to finish constructions already started.

As part of the overall policy during the Pandemic, the Homeowner Assistance Fund has helped over 400.000 homeowners to catch up on their mortgage payments and utility costs and avoid foreclosures; the Federal administration pulsed the creation of a network of pro-bono counsellors (involving the Federal Government, State Supreme Courts, State and local governments, Universities, Bar associations, law firms) which helped about 8 million renter households at risk of eviction and kept evictions below pre-pandemic levels (ERA⁴ 1 and ERA 2 programs, which collectively provided over \$46 billion to support housing stability for eligible renters throughout the COVID-19 pandemic).⁵

² The White House, *Fact Sheet: The President's Budget Cuts Housing Costs, Boosts Supply, and Expands Access to Affordable Housing*, March 11, 2024, available at www.whitehouse.gov/briefing-room/statements-releases/2024/03/11/fact-sheet-the-presidents-budget-cuts-housing-costs-boosts-supply-and-expands-access-to-affordable-housing.

³ See A. Tarzia, *Housing and Land Use Policies in the First Two Years of the Biden-Harris Administration*, in *DPCE online*, 2023, No. Sp. 1, 456 ff.

⁴ Emergency Rental Assistance Program: «ERA1 program was authorized by the Consolidated Appropriations Act, 2021 and provided \$25 billion to assist eligible households with financial assistance and housing stability services. The ERA2 program was authorized by the American Rescue Plan Act of 2021 and provides \$21.55 billion to assist eligible households with financial assistance, provide housing stability services, and as applicable, to cover the costs for other affordable rental housing and eviction prevention activities» (www.home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program).

⁵ A. Tarzia, *Housing and Land Use Policies in the First Two Years of the Biden-Harris Administration*, quot.

Since 2022, new areas of focus were added, including commercial-to-residential conversions, and other areas of intervention were further reiterated, chiefly the building of multifamily housing units.

The policy strategy is outlined in the HUD 2022-2026 Strategic Plan and in the HUD Priority goals 2024-2025.⁶ Three Overarching Goals to be achieved have been identified: 1) Pursue Transformative Housing and Community-Building Policy and Programs; 2) Increase Equity; 3) Improve Customer Experience.

These OGs have been converted into 5 Strategic Goals: 1) Support underserved communities, which implies, for example, to take actions to reduce homelessness; 2) Ensure access and increase the production of affordable housing, e.g. by increasing the supply of housing units; 3) Promote homeownership, for example by expanding homeownership opportunities through innovative ownership models, as multifamily homes; 4) Advance sustainable communities, for example by investing in climate resilience and carbon reduction; 5) Strengthen HUD's internal capacity, for example by enhancing financial and grants management.

These strategic goals have been considered critical to achieve Equity, placed front and center through various Executive Orders and Memoranda to HUD to cope with housing discrimination and to reverse the alleged harm caused by prior federal policies. Equity is well defined by the Executive Order 13985 signed by President Biden in his first day in office, on January 20, 2021:

«the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality».⁷

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Over the next 2 years, Congress passed landmark legislation aimed at championing racial equity and advancing equal opportunity for underserved communities: the American Rescue Plan Act of 2021 (Public Law 117-2); the bipartisan Infrastructure Investment and Jobs Act (Public Law 117-58) (Bipartisan Infrastructure Law); division A of Public Law 117-167, known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022; Public Law 117-169, commonly referred to as the Inflation Reduction Act of 2022; and the Bipartisan Safer Communities Act (Public Law 117-159).

As stated in the Executive Order 14091, «achieving racial equity and support for underserved communities is not a one-time project. It must be a

⁶ See www.hud.gov/HUD-FY22-26-Strategic-Plan-Focus-Areas.

⁷ Executive Order 13985 of January 20, 2021, *on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, and, a few days later, *Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies*, January 26, 2021; a few months later, Executive Order 14035 of June 25, 2021, *on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce*.

multi-generational commitment»⁸ involving all federal agencies, which «shall comprehensively use their respective civil rights authorities and offices to prevent and address discrimination and advance equity for all, including to increase the effects of civil rights enforcement and to increase public awareness of civil rights principles, consistent with applicable law».

Biden-Harris' struggle for equity and fairness is well explained by the huge case-law still surrounding the enforcement of the Fair Housing Act of 1968. According to data reported by the U.S. Department of Justice - Civil Rights Division, between 2018 and 2024 alone 398 complaints⁹ have been filed before federal courts alone to redress discriminatory practices based on race or color, religion, sex (female sexual harassment and unlawful retaliation mostly), national origin, familial status, or disability.

Cases of discrimination against people with disabilities are still very frequent today (129 out of 398 in the period 2018-2024), often due to the refusal to provide reasonable accommodation solutions¹⁰ and/or to allow them to live with their assistance animals;¹¹ in many cases, violations of FHA's accessibility requirements in construction that provoke inaccessible housing¹² have been alleged. In some cases,¹³ local authorities were brought before courts for establishing restrictive zoning regulations that actually banned people with disabilities impeding their integration into the community according to the Supreme Court's 1999 decision in *Olmstead v. L.C.*¹⁴ and in violation of the Americans with Disabilities Act of 1990.

In the period considered, and even after several landmark cases decided by the Supreme Court,¹⁵ 37 cases out of 398 insist on discrimination in financing or refinancing mortgages¹⁶ or violations of the Equal Credit Opportunity Act of 1974¹⁷ typically on the base of race/color/national origin or gender, for example by operating an illegal land sales scheme targeting tens of thousands of Hispanic borrowers with false statements and predatory loans.¹⁸ Courts' scrutiny often focuses also on the location choices

⁸ Executive Order 14091 of February 16, 2023, on *Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*.

⁹ Data updated as of December 12, 2024, available at www.justice.gov/crt/housing-and-civil-enforcement-cases.

¹⁰ *Ex multis, United States v. Indian Oaks Apartments LTD.* (M.D. Ga.), Case 5:24-cv-00379-MTT.

¹¹ *Ex multis, United States v. Tammy Estrada* (E.D. Wis.), Case 1:24-cv-01496-WCG.

¹² *Ex multis, United States v. Atlantic Development Group, LLC* (S.D.N.Y.), Case 1:17-cv-00332 and Case 1:19-cv-09551.

¹³ For example, *United States v. City of Springfield* (C.D. Ill.), Case 3:16-cv-03331-SLD-JEH.

¹⁴ *Olmstead v. L.C.*, 527 U.S. 581 (1999).

¹⁵ For example, *Hawkins v. Community Bank of Raymore*, 577 U.S. 495 (2016).

¹⁶ Recently, *United States v. Rocket Mortgage* (D. Colo.), Case No. 1:24-cv-02915.

¹⁷ *Ex multis, Consumer Financial Protection Bureau v. Fairway Independent Mortgage Corp.* (N.D. Ala.), Case 2:24-cv-01405-AMM.

¹⁸ *Consumer Financial Protection Bureau and United States v. Colony Ridge Development, LLC* (S.D. Tex.), Case 4:23-cv-04729.

of bank branches in predominantly White neighborhoods¹⁹ if not completely outside of majority Black and Hispanic neighborhoods.²⁰

Civil rights are also impaired in more than a few different and particular cases: many complaints deal with special land uses applications related to the exercise of the religious worship, in violation of RLUIPA-Religious Land Use And Institutionalized Persons Act of 2000 (31 cases out 398), or excessive burdens set by Cities regulations on religious land use in violation of the Establishment Clause;²¹ some cases regarded the refusal to rentals to move in with their emotional assistance animals;²² 48 cases regarded violations of the Servicemembers Civil Relief Act (SCRA)²³ which provides legal and financial protections in bankruptcy proceedings to those who have answered the Nation's call to serve;²⁴ other cases involved the familial status because of no-children clauses in residential rental agreements.²⁵

Discrimination on ethnic/racial/national origin basis really comes in many forms, traditional or new. Among the last ones, the District Court for the Southern District of New York recently ruled against Meta's housing advertising system that discriminated against Facebook users based on their race, color, religion, sex, disability, familial status, and national origin, in violation of the Fair Housing Act (FHA). Specifically, the complaint alleged, among other things, that Meta used algorithms in determining which Facebook users should receive housing ads and that those algorithms relied, in part, on characteristics protected under the FHA.²⁶

¹⁹ *Ex multis, United States v. Citadel Federal Credit Union* (E.D. Penn.), Case 2:24-cv-05426-JP.

²⁰ For example, *United States v. First National Bank of Pennsylvania* (M.D. N.C.), Case 1:24-cv-00088.

²¹ Very interesting is the case *United States v. Town of Colorado City* (D. Ariz.), Judgment And Decree Granting Injunctive Relief, Case 3:12-cv-08123-HRH, on April 18, 2017: a federal jury in Phoenix returned a verdict finding that the towns of Colorado City, Arizona, and Hildale, Utah, and their joint water company steadily discriminated on the basis of religion against individuals who were not members of the Fundamentalist Church of Jesus Christ of Latter-day Saints (FLDS) in the provision of housing, utility and policing services in violation of the Fair Housing Act.

²² *Ex multis, United States v. Madison Property L.L.C., et al* (D. Minn.), Case 0:22-cv-02831-KMM-ECW.

²³ *Ex multis, United States v. Hyundai Capital America* (C.D. Cal.), Case No. 2:24-cv-03818.

²⁴ Servicemembers Civil Relief Act ("SCRA") 50 U.S.C. App. §§501-597b1. According to § 502: «The purposes of this Act are (1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service».

²⁵ *Ex multis, United States v. Isle of Paradise "B", "C", and "E", Inc.* (S.D. Fla.), Case 0:23-cv-62277-WPD.

²⁶ *United States v. Meta Platforms, Inc., f/k/a Facebook, Inc.* (S.D.N.Y.), Case 1:22-cv-05187. In addition to civil penalties that Meta had to pay, under the settlement agreement of June 2022, Meta stopped using an advertising tool (known as the "Special Ad Audience" tool) for housing ads and developed a new system, the Variance Reduction System (VRS), to address racial and other disparities caused by its use of

Finally, disparate impact claims deserve some mention. As reconstructed elsewhere,²⁷ disparate impact – also referred to as “adverse (or discriminatory) effect” – raises when a law, that on its face is neutral, in practice has an oversized effect on a particular group.²⁸ In *Washington v. Davis*²⁹ the Supreme Court had expressly held that disparate impact theory could not be used to establish a constitutional claim under the Equal Protection Clause of the XIV Amendment. Unexpectedly, towards the end of Obama’s Presidency, in a case concerning an alleged disproportionate allocation of low-income tax credit (LIHTC) the Supreme Court upheld a limited disparate impact liability under the Fair Housing Act to «prevent segregated housing patterns that might otherwise result from covert and illicit stereotyping».³⁰

In 2019, claiming that revisions were needed “to better reflect” the ICP ruling, the Trump administration proposed through HUD the reform of 2013 regulation³¹ to shift to plaintiffs most burden of proof in discriminatory

personalization algorithms in its ad delivery system for housing ads. Under the terms of the settlement, Meta also will not provide any ad targeting options for housing advertisers that directly describe or relate to FHA-protected characteristics. In *Onuoha v. Facebook* (N.D. Cal.), Case 5:16-cv-06440-EJD, the plaintiffs alleged that Facebook used its data collection and advertising tools to segregate users of the platform into different groups by race and national origin. That, according to the lawsuit, allowed property owners and developers to target and exclude certain users according to those characteristics from seeing housing-related advertisements. The statement of interest argued that the plaintiffs have alleged sufficient facts to support a claim of housing discrimination under the FHS, and that Facebook didn’t have statutory immunity under the Communications Decency Act for the development of its data collection and advertising tools. See also *National Fair Housing Alliance v. Facebook, Inc.* (S.D.N.Y.), Case 1:18-cv-02689-JGK.

²⁷ A. Tarzia, *Housing and Land Use Policies in the First Two Years of the Biden-Harris administration*, par. 3.2, *The disparate impact liability before the Courts*, quot.

²⁸ «A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, colour, religion, sex, handicap, familial status, or national origin» (24 Code of Federal Regulations § 100.500 (a)).

²⁹ *Washington v. Davis*, 426 U.S. 229 (1976).

³⁰ *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015), often referred to in subsequent case law as *Inclusive Communities* or *ICP*. See Q. Marker, *Zoning for All! Disparate Impact Liability Amidst the Affordable Housing Crisis*, in 88(4) *Univ. of Cincinnati L. Rev.* 1105 (2020), and J. Zasloff, *The Price of Equality: Fair Housing, Land Use, and Disparate Impact*, in 48(3) *Columbia Human Rights L. Rev.* 98 (2017).

³¹ By 2013, twelve federal courts recognized disparate impact liability under HUD’s *Implementation of the Fair Housing Act’s Discriminatory Effects Standard* (78 Fed. Reg. 11460) that set forth a 3 step burden shifting framework inserted in 24 C.F.R. §100.500 (c) – “Burdens of proof in discriminatory effects cases”: (1) «The charging party ... has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect»; (2) «Once the charging party or plaintiff satisfies the burden of proof set forth in paragraph (c)(1) of this section, the respondent or defendant has the burden of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, non-discriminatory interests of the respondent or defendant»; (3) «If the respondent or defendant satisfies the burden of proof set forth in paragraph (c)(2) of this section, the charging party or plaintiff may still prevail upon proving that the substantial, legitimate, non-discriminatory interests supporting the challenged

effect cases by introducing new pleading requirements, new proof requirements, and new defences, all of which would have made it harder to establish that a policy was violating the Fair Housing Act. The new rule was published in the Federal Register in September 2020³² but it was immediately stopped by the U.S. District Court for the District of Massachusetts³³ that issued a nationwide preliminary injunction that delayed the effective date of HUD's 2020 rule until its own final judgment on that case. Anyway, the Biden-Harris Administration proposed the "Reinstatement of HUD's Discriminatory Effects Standard" in 2021, and HUD finally passed the rule on March, 2023.

Therefore, Courts have made small steps forward in supporting plaintiffs' disparate impact claim.³⁴ In 2022 the District Court for the Northern District of NY³⁵ ruled against defendant's policy of only renting out apartments if a prospective occupant spoke and read English. The Court found that the complaint stated a claim for intentional discrimination in that «[d]iscriminatory intent may be inferred from the totality of the circumstances, and this Court discerns no reason why that «would not include evidence of a language policy being used as a proxy for discrimination on the basis of national origin or race». Finally, the Court held that a «Plaintiff does not need to identify the specific national origin or race of particular tenants in order to state a prima facie case of discrimination under the FHA» and that «neither disparate impact nor discriminatory statement claims require a showing that Defendants were aware of the national origin or race of the prospective tenants». Other forms of disparate impact may occur in cases of bans on people with criminal records or of "crime-free" rental policies if less discriminatory alternatives are available.³⁶

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Actually, President Biden's commitment to route out racism in housing market have helped over 250.000 black Americans become homeowners through changes in Federal Housing administration way of considering student loan debt in mortgages, the borrower's positive history of making rental payments, and helping first-time home buyers qualify for their lower cost loans.³⁷

2. Money (expenses of last resort in the 2025 Budget request)

practice could be served by another practice that has a less discriminatory effect». The regulation also provides that any of the defendant's justifications «must be supported by evidence and may not be hypothetical or speculative» (24 C.F.R. § 100.500 (c)(3)).

³² *HUD's Implementation of the Fair Housing Act's Disparate Impact Standard*, in *Federal Register*, Vol. 85, No. 186, September 24, 2020, available at www.federalregister.gov.

³³ *Massachusetts Fair Housing Center, And Housing Works, Inc. v. HUD*, Civil Action No. 20-11765-MGM, Oct. 25, 2020.

³⁴ *DHD Jessamine, LLC v. Florence County et al.* (D.S.C.), 4:22-cv-01235-JD.

³⁵ *CNY Fair Housing v. Swiss Village LLC, et al.* (N.D.N.Y.), Case 5:21-cv-01217-MAD-ML.

³⁶ For example, *Fortune Society Inc. v. Sandcastle Towers Housing Development Fund Corp. et al.* (E.D.N.Y.), Case 1:14-cv-06410-VMS.

³⁷ See National Urban League, *Evaluation for Progress Report on the Biden-Harris Administration*, 2024, at www.nul.org.

In the federal budget, the implementation of the three Overarching Goals with their related Strategic Goals required (or would have required) the use of the following tools.

a) *The Low-Income Housing Tax Credit (LIHTC)*. The main budgetary tool for reaching the 2 million housing units still remains the Low-Income Housing Tax Credit (LIHTC). Created by the Tax Reform Act of 1986, estimates of the LIHTC expenditures for Fiscal Years 2022-2026 give State and local LIHTC-allocating agencies an average of \$13.02 billion in annual budget authority³⁸ to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing targeted to lower-income households. The objective of the Biden-Harris administration was to expand further the LIHTC program: the fiscal 2024 plan called for a \$28 billion expansion in LIHTCs over 10 years, and each state would receive \$4.25 per capita in new potential credits for allocation, with a small state minimum of \$4,901,620 in 2024; according to the 2023 plan for 2025, the amounts would increase to \$4.88 and \$5,632,880.³⁹ In its FY 2025 Budget request, the Biden-Harris administration called for a further increase of 9% the LIHTC allocations (\$4.37 per capita and \$5,039,154 for small States in 2025, which is a more than 50% increase from the current law amount for 2024); \$4.99 per capita and \$5,754,271 for small States in 2026 (a further 14% increase from the proposed 2025 amounts); and, finally, the adjustment of the 2026 amounts for inflation for 2027 and subsequent years.⁴⁰ All of that would have built or preserved 1.2 million affordable rental units.

b) *The creation of a Neighborhood Homes Tax Credit*. The Budget request proposes a new Neighborhood Homes Tax Credit, which would be the first tax provision to directly support building or renovating affordable homes for homeownership. At an estimated cost of \$19 billion over ten years, the revenue ensured by the new tax would lead to the construction or preservation of over 400,000 starter homes in communities throughout the country.

c) *Grants to incentivize more Housing Supply through Housing Innovation*. The 2025 Budget request includes \$20 billion for competitive grants to incentivize State and local jurisdictions and tribes to expand supply; the proposal also requests up to \$100 million—\$15 million over the FY23 enacted level – to continue the Pathways to Removing Obstacles to Housing program, which helps local governments to remove barriers steps to remove barriers to affordable housing caused by outdated zoning, land use policies, or regulations, inefficient procedures, gaps in available resources for development, deteriorating or inadequate infrastructure, lack of neighborhood amenities, challenges to preserving existing housing stock such as increasing threats from natural hazards, redevelopment pressures, or expiration of affordability requirements.

³⁸ See U.S. Congress, Joint Committee on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2022-2026*, JCX-22-22, December 22, 2022, 37.

³⁹ D. Kimura, *LIHTC Changes Included in Biden Budget Proposal*, March 13, 2023, at www.housingfinance.com/news/lihtc-changes-included-in-biden-budget-proposal_o.

⁴⁰ See D. Wallace, P. Lawrence, *Biden-Harris Administration's Proposed 2025 Budget to Include Several Housing Proposals that Combined Could Finance As Many As 2 Million Affordable Homes*, March 7, 2024, at www.novoco.com.

d) *The increase in Banks' Contributions Towards Building Affordable Housing.* President Biden has recommended that each Federal Home Loan Bank double its annual contribution to the Affordable Housing Program, which would raise an additional \$3.79 billion for affordable housing over the next decade and assist nearly 380,000 households.

e) *Preserving Public Housing through Rehabilitation and Redevelopment.* The Budget proposes a one-time \$7.5 billion investment for distressed public housing properties nationwide, which is on top of the recurring annual investments of \$8.5 billion to empower public housing agencies to operate, maintain, and make capital improvements to the about 900,000 public housing units.

f) *Continuing to finance HUD programs already launched:* 1) New Project-Based Rental Assistance (PBRA) for Extremely Low-Income households. The Budget request provides \$7.5 billion in funding for new HUD Project-Based Rental Assistance (PBRA) contracts, which are long-term contracts with private for-profit or non-profit owners to rent new affordable housing units; 2) During the Biden-Harris administration, HUD has allocated \$4.35 billion in funding to build and preserve affordable rental homes and make homeownership a reality for thousands of families. HOME Investment Partnerships Program (HOME) has assisted over 45,000 households since 2021; the Budget request call for \$1.25 billion for HOME to construct and rehabilitate affordable rental housing and provide homeownership opportunities; 3) the Budget provides \$931 million for older adults needs and \$257 million for people with disabilities.

g) *Supporting Affordable Housing in Rural Areas.* The Budget provides \$2.1 billion for US Department of Agriculture's housing programs – an increase of \$191 million over the 2023 enacted level – and the increase of the MF Housing Preservation and Revitalization program to \$90 million, \$54 million over the 2023 enacted level.

h) *The simplification of the statutory definition of manufactured housing.*

i) *Providing Mortgage Payment Relief for First-time Homeowners.*

j) *Launching a First-Generation Down Payment Assistance Program.*

k) *Creating a Housing Voucher Guarantee for Extremely Low-Income Veterans.*

l) *Creating a Housing Voucher Guarantee for Youth Aging out of Foster Care.*

m) *Advancing Efforts to Prevent Evictions and End Homelessness* by bolstering efforts to prevent and end homelessness – by providing about \$8 billion for a grant program to rapidly expand temporary and permanent housing strategies for people experiencing or at risk of homelessness –, and by supporting and encouraging state and local reforms to avoid evictions.

3. Uncomfortable numbers and regulatory labyrinths

Economic studies of Housing markets have identified two main frictions to housing supply: 1) Land-use regulations and zoning; 2) Rising inputs costs associated with constructions⁴¹. According to the Joint Center for Housing

⁴¹ *Economic Report of the President transmitted to Congress, March 2024, together with the Annual Report of the Council of Economic Advisers*, available at www.whitehouse.gov.

Studies of Harvard University, all of that contributed to the loss of 3.9 million housing units with contract rents below \$600 in the last decade;⁴² furthermore, reprocessing the latest data provided by U.S. Census Bureau,⁴³ Moody's Analytics Chief Economist estimated a shortage of affordable housing of 2.8 million units⁴⁴ provoked by the decline in new constructions⁴⁵ and the concurrent reduction of availability of small "starter homes" and low-cost rental units. Given the lack of supply, in the presidential campaign Vice President Kamala Harris proposed partnering with the private sector to build 3 million new homes over four years.⁴⁶

The 4 years of the Biden-Harris administration have been marked by disproportionate data: from the one hand, the enormous and unprecedented financial effort made by the administration to cope with the Pandemic took shape mainly in the American Rescue Plan Act of 2021 – a \$1.9 trillion stimulus package –; from the other hand, inflation – whose CPI basket is made up of housing expenses for at least 25% – rose to record levels (see *infra*, Appendix, table 1) not seen since Jimmy Carter presidency. Inflation peaked at 9.1% year-over-year in June 2022, the highest increase in 40 years.⁴⁷ The Fed reacted by raising interest rates 11 times since March 2022 in an attempt to cool inflation; only in September 2024, the Fed made the first rate cut in four years.⁴⁸ The median sales prices for existing homes have risen from \$283.000 before the Pandemic to \$375.000 in March 2023.⁴⁹ Due to rising costs single family homebuilding dropped 10.8% in 2022.

Rising prices (of land, labor, building materials) and interest rates deteriorated affordability both for renting and purchasing. Between 2000 and 2020s, housing prices tripled while household income doubled⁵⁰ and that contributed to worsening the rate of rent-burdened households. HUD defines families as rent-burdened when the income share spent on housing

⁴² Joint Center for Housing Studies of Harvard University, *The State of The Nation's Housing 2023*, available at www.jchs.harvard.edu.

⁴³ U.S. Census Bureau, *Quarterly Residential Vacancies and Homeownership, Third Quarter 2024*, October 29, 2024, at www.census.gov/housing/hvs/files/currenthvspress.pdf.

⁴⁴ See www.brookings.edu/articles/where-do-the-estimates-of-a-housing-shortage-come-from.

⁴⁵ It must not be forgotten, however, that the Great Recession led to a ten-year long period of underproduction of houses, and that «[h]ome construction per capita has declined every decade since the 1970s» (*Economic Report of the President transmitted to Congress, February 2020, together with the Annual Report of the Council of Economic Advisers*, 270, available at www.whitehouse.gov).

⁴⁶ See J. Ma, *Kamala Harris's housing plan is the most aggressive since post-World War II boom, experts say*, August 26, 2024, and Id., *The housing market's affordability crisis gave Trump a big boost at the polls*, November 10, 2024, both at www.fortune.com.

⁴⁷ Bureau of Labor Statistics, U.S. Department of Labor, *The Economics Daily, Consumer prices up 9.1 percent over the year ended June 2022, largest increase in 40 years* at <https://www.bls.gov/opub/ted/2022/consumer-prices-up-9-1-percent-over-the-year-ended-june-2022-largest-increase-in-40-years.htm>.

⁴⁸ See www.investopedia.com/us-inflation-rate-by-president-8546447.

⁴⁹ Joint Center for Housing Studies of Harvard University, *The State of The Nation's Housing 2023*, *quot.*, 2.

⁵⁰ *Economic Report of the President 2024*, *quot.*, 145.

exceeds 30% (severely rent-burdened when the rate exceeds 50%):⁵¹ as President Biden himself reported to Congress, «[t]oday, nearly 45 percent of renters are rent-burdened and nearly 24 percent of renters are severely rent-burdened»;⁵² all of them amounted to about 19 million persons in 2021. On this basis, HUD defines affordable housing “the one for which the occupant(s) is/are paying no more than 30 percent of his or her income for gross housing costs, including utilities”.

Definitely, there are many contributing causes to unaffordability – among them, for sure, demographic shifts in life expectancy, international immigration, urbanization, fertility – and many negative outcomes in social and economic environment as tough obstacles to domestic migration and job relocations from low- to high-productivity regions – which contribute to a spatial mismatch of workers and jobs, stunt on aggregate economic growth, and preserve socio-spatial segregation – and the increase of commuting times and traffic congestions because homes are frequently located far from workplaces.

Rising prices contributed to widening the gap between wealthy homeowners who benefit from rising values of property in their neighborhood and low-income families victims of exclusionary zoning⁵³ for their income, age, race and ethnicity.⁵⁴ Surprisingly, but with clearly different strategies and purposes, former President Trump⁵⁵ and President Biden⁵⁶ agreed on the fact that lack of housing supply is due to burdensome regulatory regimes established by local governments.

President Biden maintained that main causes of housing supply shortages were selfish homeowners that seek to maximize their home's value; local governments interested in maximizing revenues from property taxation on land value – property taxes typically fund public schools and the greater the tax base per capita, the more funds are available for education –; and developers and landowners who seek to maximize their profit from economic development of residential and commercial real estate. All these factors would lead to zoning and land-use regulations favorable to existing property owners at the expense of renters and would-be property owners:⁵⁷ the tighter zoning and land-use restrictions (prohibitions on multifamily homes, minimum lot size requirements, unreasonable maximum density allowances, height limits, parking requirements, square footage minimums, limits or preclusion to manufactured housing, rehabilitation codes, historic preservation requirements, environmental regulations, tax policies, etc.), the more expensive are the houses. In 2023 HUD announced an award of

⁵¹ These benchmarks are based on Brooke Amendment to Housing and Urban Development Act of 1969 which capped rent in public housing to 25% of family income, later updated in 1980s.

⁵² *Economic Report of the President 2024*, quot., 146.

⁵³ See A. Tarzia, *National urban policies, municipal zoning and disputes over Sanctuary Cities in Metropolitan America*, in *DPCE online*, 2021, 1, 1161, and Id., *Housing and Land Use Policies in the First Two Years of the Biden-Harris Administration*, quot.

⁵⁴ See, ex multis, E.N. Wolff, *African-American and Hispanic Income, Wealth and Homeownership since 1989*, in 68(1) *The Review of Income and Wealth* 489 (2022).

⁵⁵ *Economic Report of the President 2020*, quot., 267 ff.

⁵⁶ *Economic Report of the President 2024*, quot.

⁵⁷ *Ibidem*, 150-151.

\$350,000 to Cornell University's "National Zoning Atlas", aimed at closing data gaps that limit the understanding of the relationship between zoning and segregation, affordability, and other outcomes of interest.⁵⁸

During his first term, President Trump approached affordability (and federalism, in this field at least)⁵⁹ in a different way. In the *2020 Economic Report of the President to Congress* the word "market" with various desinences appeared 766 times, and 166 times in HUD's *Eliminating Regulatory Barriers to Affordable Housing: Federal, State, Local, and Tribal Opportunities*,⁶⁰ in the two documents "market" comes often with "competitive" or "free".⁶¹ Although many federal instruments have a long history that cut across several presidencies – for example The Low-Income Housing Tax Credit –, Trump administration worked «[w]ith the understanding that no two places are the same, and respecting the need for states and localities to make their own policy decisions».⁶²

Trump administration focus was mainly on 11 Metropolitan areas⁶³ where relaxing regulatory barriers – defined as «regulations that drive up home prices at least 25 percent above home production costs»,⁶⁴ working this way as "regulatory taxes" – would have yielded several beneficial effects, for example the reduction of homelessness «by an average of 31 percent». Even in those Metropolitan areas «it is not necessary to build high-rise

⁵⁸ HUD Takes Action to Highlight and Research Land Use and Zoning Reforms, April 6, 2023, available at www.hud.gov/press/press_releases_media_advisories/hud_no_23_072.

⁵⁹ With the noteworthy exception of Trump's struggle against Sanctuary Cities; see A. Tarzia, *National urban policies, municipal zoning and disputes over Sanctuary Cities in Metropolitan America*, quot.

⁶⁰ HUD, *Eliminating Regulatory Barriers to Affordable Housing: Federal, State, Local, and Tribal Opportunities*, January 2021, at www.huduser.gov.

⁶¹ This approach explains the story of the Affirmative Furthering Fair Housing Rule. In July 2015, after two years of discussion and under the decisive impulse given by the Supreme Court in 2015 [*Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015)], HUD announced the "Affirmatively Furthering Fair Housing Rule" (AFFH). Under the rule, state and local governments receiving federal funds for housing and community development were required to identify and address the barriers provoking exclusion on racial grounds, to protect groups such as families with children or persons with disabilities, and to formulate plans to overcome these barriers. Just as HUD had started accomplishing the AFFH Rule, the Trump Administration not only suspended and then terminated it, but also deleted all data and resources related to the Fair Housing planning from the HUD webpage. Under the Biden-Harris Administration, HUD restored the rule in June 2021 [details in A. Tarzia, *Housing and Land Use Policies in the First Two Years of the Biden-Harris Administration*, quot.].

⁶² HUD, *Eliminating Regulatory Barriers to Affordable Housing: Federal, State, Local, and Tribal Opportunities*, quot., 6.

⁶³ San Francisco, Honolulu, Oxnard, Los Angeles, San Diego, Washington, Boston, Denver, New York City, Seattle, and Baltimore. «Four of the 11 are located in California, where multifamily homes may be built on less than a quarter of the land in Los Angeles, Long Beach, Anaheim, and San Diego and less than half of the land in San Francisco and Oakland» [*Economic Report of the President 2020*, quot., 282]; see S. Mawhorter, C. Reid, *Local Housing Policies Across California: Presenting the Results of a New Statewide Survey*, Turner Center for Housing Innovation, 2018, available at www.californialanduse.org/download/Turner_California_Residential_Land_Use_Survey_Report.pdf.

⁶⁴ *Economic Report of the President 2020*, 271, according to E. Glaeser, J. Gyourko, *The Economic Implications of Housing Supply*, in 32(1) *J. of Economic Perspectives* 3 (2018).

apartments throughout neighborhoods currently zoned for single-family homes or to eliminate all regulations». ⁶⁵ The approach, therefore, was that of no pervasive intrusion of the federal government into all state and local regulations, that can be beneficial in many cases; ⁶⁶ selective deregulatory actions on selected housing markets ⁶⁷ were needed to improve efficiency of government assistance to low-income families. HUD rental assistance, for example, is tied to market rents in an area: with the same amount of resources, reducing rents in the area would allow HUD to serve more families. Second, excessive regulatory barriers in some selected markets reduce parents' ability to access neighborhoods with high quality services for children, educational ones for example. In 2019 the Joint Economic Committee of the Congress noted that median home values vary widely across ZIP codes in the United States and the average ZIP code associated with a high-quality public school has a significantly higher median home value than the average ZIP code associated with a low-quality public school, even when regional differences are accounted for. ⁶⁸

It is therefore not surprising that housing supply and affordability occupied an important place in the electoral rhetoric of the 2024 Presidential campaign: Trump and Harris coincided only in the idea of limiting the role of the institutional investors in housing markets; their proposals diverged in all other areas as housing supply, zoning regulations, housing finance, helping homebuyers, housing and immigration. ⁶⁹

Undoubtedly, Kamala Harris had to pay for the failure to achieve the affordability objectives in the face of the enormous amount of money poured in by the federal government since 2021.

In addition to the uncontrolled growth of prices, several other indicators did not meet Americans' expectations: as HUD itself reported to Congress, ⁷⁰ in a single night in 2023 the number of homeless people reached its peak since 2007 (see *infra*, table 2).

Table 3 illustrates the trend of homeownership rate: it reached its peak in the middle of the Pandemic, but nevertheless it settled at a good level in the aftermath.

⁶⁵ *Economic Report of the President 2020*, quot., 271. On June 25, 2019, President Trump signed the Executive Order *Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing*, tasked with identifying «practices and strategies that most successfully reduce and remove burdensome Federal, State, local, and tribal laws, regulations, and administrative practices that artificially raise the costs of housing development, while highlighting actors that successfully implement such practices and strategies».

⁶⁶ For example, providing for standards that promote safety.

⁶⁷ «Fortunately, the majority of areas in the United States have relatively well-functioning housing markets in which regulations do not significantly drive up prices» (*Economic Report of the President 2020*, quot., 267).

⁶⁸ Joint Economic Committee of the U.S. Congress, *Zoned Out: How School and Residential Zoning Limit Educational Opportunity*, SCP Report No. 6-19, November 2019, available at www.jec.senate.gov/public/_cache/files/e18ff012-908e-4521-b1ce-a8b7b7f28ee3/jec-report-zoned-out.pdf.

⁶⁹ See www.bipartisanpolicy.org/blog/comparing-the-housing-proposals-of-the-2024-presidential-campaigns.

⁷⁰ HUD, *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress*, December 2023, available at www.huduser.gov.

Finally, considering that as aforesaid the Biden-Harris administration put equity front and center to the housing policy, it is very interesting to analyze the inequality index according to the Gini coefficient (the index measures the statistical dispersion intended to represent income, wealth and consumption inequality). Table 4 shows something unusual and extraordinary from statistics point of view. Apparently, between 2020 and 2022 the inequality rate decreased, suggesting an improvement in the overall situation. It was quite the opposite. The Pandemic impoverished the wealthier classes, tilting the segment downwards in correlation with a flattening of the gaps: those who were wealthy became impoverished.

As it constitutes most of the residentially zoned land in every State of the Union and 70 percent of all residential zoning in America,⁷¹ single family zoning became a Biden-Harris administration's great enemy. But it is the post-war American Dream built upon the idea of the White nuclear family living in a single detached house surrounded by a yard,⁷² those "lily-white" places attracting tens of millions of middle-and working-class families fairly represented in 1950s and 1960s sitcoms.

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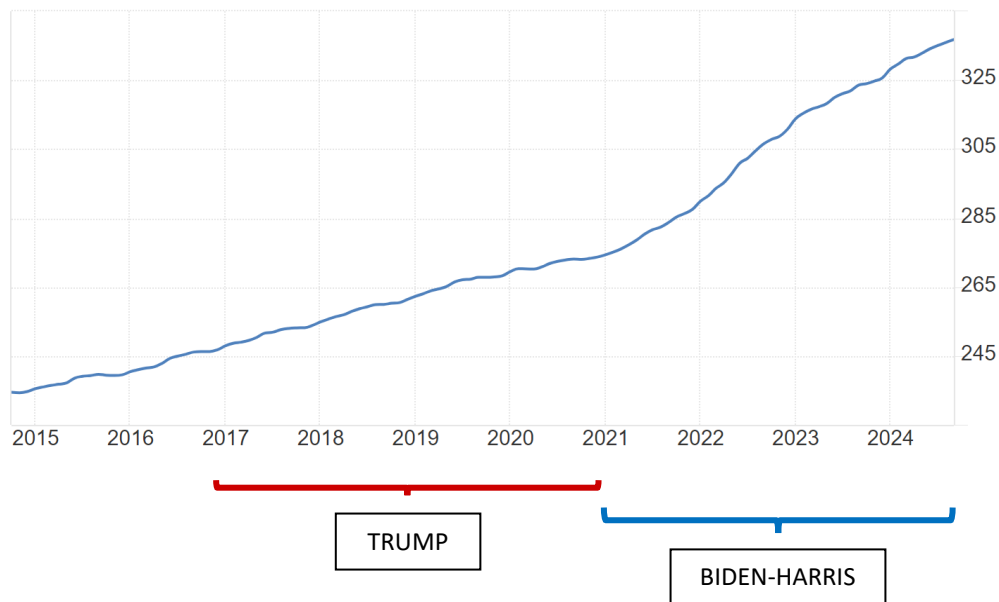
⁷¹ See R. Frank, *End to Single-Family Zoning in Berkeley Forces Us to Reflect on Our Past*, June 7, 2021, at www.sierraclub.org/san-francisco-bay/blog/06/end-single-family-zoning-berkeley-forces-us-reflect-our-past.

⁷² See A.C. Micklow, M.E. Warner, *Not Your Mother's Suburb: Remaking Communities for a More Diverse Population*, in 46(4) *The Urban Lawyer* 729 (2014); see also E. Levy, *The American Dream of Family in Film: From Decline to a Comeback*, in 22(2) *J. of Comparative Family Studies* [monographic number on *The American Dream of Family: Ideals and Changing Realities*] 187 (1991).

APPENDIX

[All tables are self-elaborated, apart from table 2]

Table 1_Consumer Price Index (CPI) Housing Utilities

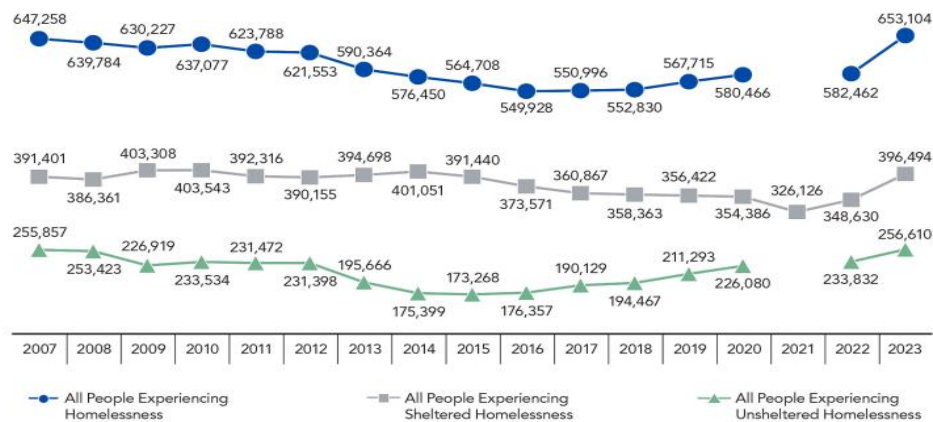


CPI Housing Utilities in the United States increased to 336.78 points in September from 335.93 points in August of 2024. CPI Housing Utilities in the United States averaged 153.20 points from 1967 until 2024, reaching an all-time high of 336.78 points in September of 2024 and a record low of 30.50 points in February of 1967.

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Table 2_PIT Estimates of People Experiencing Homelessness

EXHIBIT 1.1: PIT Estimates of People Experiencing Homelessness
By Sheltered Status, 2007-2023



Source: HUD, *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress*

Table 3_Homeownership rate

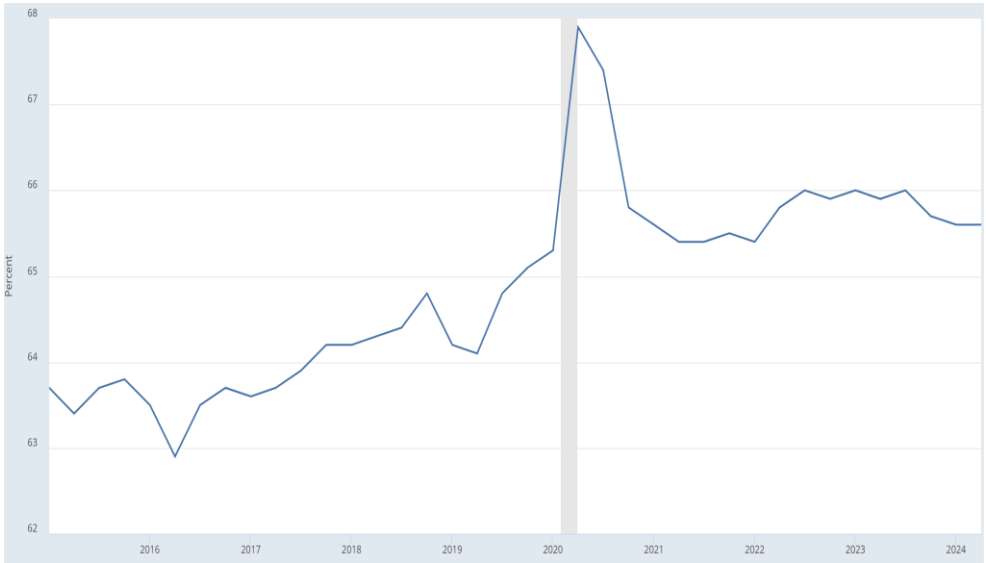


Table 4_Inequality index US, 2017-2023 (standardized data)

