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ARTICLE

**BRACING THE WOBBLY “THREE-LEGGED STOOL” BY
INCREASING HOMEOWNERSHIP OPPORTUNITIES FOR
LOW- AND MIDDLE-INCOME WORKERS**

REGINA T. JEFFERSON*

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INTRODUCTION

Traditionally, the primary sources of retirement income were personal savings, the private retirement system, and Social Security. These three sources have been described metaphorically as the “three-legged stool” of retirement security.¹ In this framework, each leg was viewed as a separate and distinct source of income that provided support throughout a worker’s retirement. Each source presented different and varying degrees of risks that were pooled collectively among the individual, the employer, and the government. Each source also functioned independently of the other two. Thus, the traditional framework of retirement income was thought to be ideal because it balanced and diversified the various risks associated with retirement savings.

Although this combination continues to provide retirement security for many higher-paid workers, it is unlikely that these sources will provide adequate amounts for many of today’s low- and middle-income workers at retirement.² As a result, for the first time in recent history, the next generation of retirees are likely to see their living standards decline during old age.³ This probable

¹ Pamela Herd, *The Two-Legged Stool: The Reconfiguration of Risk in Retirement Income Security*, 33 GENERATIONS NO. 3 12, 12 (2009). See ROBERT HOLZMAN ET AL., OLD-AGE INCOME SUPPORT IN THE 21ST CENTURY: AN INTERNATIONAL PERSPECTIVE ON PENSION SYSTEMS AND REFORM, 1–2 (2005). In 1995, income of Americans over 65 was derived 42.8% from Social Security benefits, 19% from pension and annuities, 18.2% from assets (personal savings), 17.8% from earnings, and 2.2% from other sources. Sharon A. Devaney & Ya-Ping Su, *Factors Predicting the Most Important Source of Retirement Income*, COMPENSATION AND WORKING CONDITIONS, Fall 1997, at 26.

² For purposes of this Article, I am defining middle-income using the third- and fourth-income quintiles, which range from approximately \$55,000 to \$149,000 per household. See *infra* text accompanying notes 32–39. Low-income is accordingly defined for purposes of the Article as income falling in the first two quintiles, or households with income below \$55,000. See *Household Income Quintiles: 1967 to 2022*, TAX POL’Y CTR. (May 10, 2024), <https://www.taxpolicycenter.org/statistics/household-income-quintiles> [<https://perma.cc/7G4Y-PXDD>]. In contrast, the Pew Research Center defines “middle income” much more broadly as those earning between two-thirds and twice the median American household income. Jesse Bennett, Richard Fry & Rakesh Kochhar, *Are you in the American middle class? Find out with our income calculator*, PEW RSCH. CTR. (Sep. 16, 2024), <https://www.pewresearch.org/short-reads/2020/07/23/are-you-in-the-american-middle-class/> [<https://perma.cc/68CF-XYJV>]. For a more detailed discussion see *infra* note 32.

³ KARAN KAUL & LAURIE GOODMAN, URB. INST., SENIORS’ ACCESS TO HOME EQUITY 1 (2017), https://www.urban.org/sites/default/files/publication/88556/seniors_access_to_home_equity.pdf [<https://perma.cc/9FCY-P6TR>] (citing numerous studies which predict the current generation of aging Americans will experience declining living standards in retirement). See, e.g., Barbara A. Butrica, Karen E. Smith & Howard M. Iams, *This Is Not Your Parents’ Retirement: Comparing Retirement Income Across Generations*, 72 SOC. SEC. BULL. NO. 1,

outcome is due to a confluence of recent social, demographic, and economic developments that have changed the retirement savings landscape and that threaten the viability of each of the three traditional sources of retirement income.⁴

The national personal savings rate in the United States is very low.⁵ The term “personal savings rate” refers to the percentage of income remaining after individuals pay for taxes and all their other expenses, including amounts spent on both discretionary and nondiscretionary items.⁶ Although the personal savings rate in the United States temporarily increased in early 2020 during the beginning of the COVID-19 pandemic, by mid-2022 most households had consumed their excess savings, and the average personal savings rate had dropped to 2.2%.⁷ This rate was well below pre-pandemic levels and represented the lowest rate that the country had seen since the 2008 recession.⁸ It also represented more than a 50% decline from the prior year’s personal savings rate of 8.8%.⁹ Current data shows that the average personal savings rate

Feb. 2012, at 27.; MELISSA M. FAVREAU ET AL., *URB. INST., BOOMERS’ RETIREMENT INCOME PROSPECTS 2* (2012); Alicia H. Munnell, Wenliang Hou & Anthony Webb, *NRRI Update Shows Half Still Falling Short*, *CTR. RET. RSCH. B.C.*, Dec. 2014, at 1, 5; JACK VANDERHEI, *EMP. BENEFIT RSCH. INST., A POST-CRISIS ASSESSMENT OF RETIREMENT INCOME ADEQUACY FOR BABY BOOMERS AND GEN XERS*, 4, 6 (2011).

⁴ PRUDENTIAL INSURANCE CO. OF AMERICA, *Saving for Retirement at Work: Employee and Business Reactions to an Automatic IRA Concept*, in *PRUDENTIAL’S FOUR PILLARS OF RET. SERIES 1,1*, 19 (2008).

⁵ *Saving rate*, *ORG. ECON. COOP. DEV.* <https://data.oecd.org/natincome/saving-rate.htm> [<https://perma.cc/ZRG2-UQMK>] (last visited Nov. 21, 2025). The personal savings rate is personal savings expressed as a percentage of disposable income. *See Personal Saving Rate*, *BUREAU ECON. ANALYSIS* (Feb. 24, 2023), <https://web.archive.org/web/20230224015019/https://www.bea.gov/data/income-saving/personal-saving-rate> [<https://perma.cc/3PZS-TE2Z>].

⁶ *Saving rate*, *supra* note 5.

⁷ *Personal Savings Rate (PSAVERT)*, *FED. RSRV. ECON. DATA*, <https://fred.stlouisfed.org/series/PSAVERT> [<https://perma.cc/58QB-H36F>] (last visited Nov. 24, 2025).

⁸ Aditya Aladangady et al., *Excess Savings during the COVID-19 Pandemic*, *FED. RSRV.*, (Oct. 21, 2022), <https://doi.org/10.17016/2380-7172.3223> [<https://perma.cc/4WZ4-MR4T>]. Estimates show that American households accumulated approximately \$2.3 trillion in savings in 2020, presumably due to government transfers and the curtailment of spending by social distancing. *Id.* Thus, in early 2020, the personal savings rate reached 9.1% and continued to climb, reaching a high point of 33% by April. *See Personal Savings Rate (PSAVERT)*, *supra* note 7.

⁹ *Personal Savings Rate (PSAVERT)*, *supra* note 7. Expressed in terms of dollars saved, in 2022, Americans had an average of \$9,000 less than in 2021. The economic fallout from COVID-19 continues to impact some parts of the population more than others. Since the outbreak began in February 2020, workers under 30, minorities, and low- and middle-income workers were more likely to report lost jobs and reduced wages. As a result, they are more likely to have taken out debt and put off paying some of their bills, both of which can

reached an all-time low in 2022, but it rebounded slightly in early 2023, reaching 4.9%.¹⁰

The explanation for the low national savings rate is complex and involves numerous variables and uncertainties.¹¹ Thus, it is difficult to predict future savings rates. However, in view of present economic conditions, which include increasing inflation, falling wages, and over-extended credit, it is not difficult to predict that low- and middle-income workers who have competing current consumption needs will continue to have difficulty saving.¹²

Low- and middle-income workers face challenges not only with their personal savings but also with their savings in the private retirement system. Over the last two decades, there has been a discernible shift in the private sector from the use of the collective risk approach of defined benefit plans to the individual risk approach of defined contribution plans. In these plans, participants, rather than employers, make critical decisions regarding their accounts, often without having had the benefit of financial training.¹³ This shift resulted in a reallocation of risks in the private retirement system from the employer to the employee when plan losses occur. Furthermore, the shift created a linkage between the value of retirement benefits in employer sponsored plans with the investment performance of the volatile stock market in much the same way that market performance is often linked to personal savings.

The most recent financial crisis highlighted the extent to which the new structure of the private retirement system places workers at risk during market downturns.¹⁴ When the market collapsed in 2008, many investors suffered significant losses. Many older workers experienced these losses in their 401(k) plans—currently the dominant plan type offered by employers in the private

negatively affect personal savings. NW. MUT., *2022 Planning & Progress Study: Financial Adaptation*, NW. MUT. 6 (2022).

¹⁰ Molly Smith, *US Savings Rate Falls to 17-Year Low Amid Relentless Inflation*, BLOOMBERG (Dec. 1, 2022, at 09:24 ET), <https://www.bloomberg.com/news/articles/2022-12-01/us-savings-rate-falls-to-17-year-low-amid-relentless-inflation?leadSource=verify%20wall> [<https://perma.cc/SB94-W9BN>]. *But see Personal Savings Rate (PSAVERT)*, *supra* note 7 (showing a personal savings rate of 4.7% currently).

¹¹ *See* Aladangady et al., *supra* note 8.

¹² But it is far too early to determine the long-term effects of these changes. *See infra* text accompanying notes 61-65 for a more in-depth discussion of savings patterns during the COVID-19 pandemic.

¹³ *See infra* Section I.B.1 for a more detailed explanation of the differences between the two types of plans.

¹⁴ *See* Alicia H. Munnell & Matthew S. Rutledge, *The Effects of the Great Recession on the Retirement Security of Older Workers*, 650 ANNALS AM. ACAD. POL. AND SOC. SCI., 124, 126, 131, 133-34 (2013); *Income Security, The Effect of the 2007-2009 Recession on Older Adults: Hearing Before the Subcomm. on Primary Health & Aging, Comm. on Health, Educ., Lab. and Pensions*, 112th Cong. 5-7 (2011) (statement of Barbara D. Bovbjerg, Managing Dir., Educ., Workforce and Income Sec. Issues, GAO).

sector.¹⁵ As a result, significant numbers of workers close to retirement were left with insufficient savings in their accounts, forcing them to indefinitely postpone their retirement plans.¹⁶ This situation occurred, at least in part, because of a shift in the private sector from the use of defined benefit plans as primary retirement savings vehicles to 401(k). While traditional retirement plans required employers to make important decisions regarding the retirement accounts such as what amounts to contribute, how to invest the funds, and what form of distribution to take, participants make these critical decisions in 401(k) plans. Moreover, because there is no minimum benefit or insurance protection against account losses in 401(k) plans, participants alone bear the risks of loss attributable to the use of less-than-optimal investment strategies and market volatility. Therefore, the use of 401(k) plans and other elective contribution plans as primary retirement savings vehicles has introduced an individual approach to the retirement savings landscape that gives participants more decision-making authority on the one hand but exposes them to much greater risks of loss on the other.¹⁷ Consequently, when the market crashed in 2008, participants were left alone to bear the losses in their accounts.

Allocation of risk is the primary difference between the collective approach to retirement savings and the individual approach. The individual approach to retirement savings shifts the risk of loss from the employer and the government to plan participants. Although this change affects all participants in elective contribution plans, for numerous reasons it has a disparate impact on low- and middle-income workers. One reason low- and middle-income workers are disproportionately impacted is that it is much more difficult to manage risks with limited resources.¹⁸ Additionally, it is less likely that low- and moderate-income workers will choose to save adequate amounts for retirement in elective contribution plans because they have limited discretionary income.¹⁹ Also, low-

¹⁵ See Alan L. Gustman, Thomas L. Steinmeier & Nahid Tabatabai, *How Did the Recession of 2007–2009 Affect the Wealth and Retirement of the Near Retirement Age Population in the Health and Retirement Study?*, 72 SOC. SEC. BULL. NO. 4, Nov. 2012, at 56; JACK VANDERHEI, EMP. BENEFIT RSCH. INST., *THE IMPACT OF THE RECENT FINANCIAL CRISIS ON 401(K) ACCOUNT BALANCES*, 3–4 (2009).

¹⁶ VANDERHEI, *supra* note 15, at 11–12.

¹⁷ CHERYL R. COOPER & ZHE LI, CONG. RSCH. SERV., R46441, *SAVING FOR RETIREMENT: HOUSEHOLD DECISIONMAKING AND POLICY OPTIONS* ii, 1, 10–11 (2020).

¹⁸ Herd, *supra* note 1, at 13.

¹⁹ See Joelle Saad-Lessler, Teresa Ghilarducci & Gayle L. Reznik, *Retirement Savings Inequality: Different Effects of Earnings Shocks, Portfolio Selections, and Employer Contributions by Worker Earnings Level*, 78 SOC. SEC. BULL. NO. 3, Aug. 2018, at 1–2, 5, (finding that the current design of DC plans disadvantages low earners due to factors such as contribution rates). Interestingly, those with savings in amounts over a month's paycheck are more likely to say they are saving for retirement, while those with less than a month's paycheck in savings are more likely to be saving to pay off debt or for an emergency. CAROLINE RATCLIFFE ET AL., CONSUMER FIN. PROT. BUREAU, *EMERGENCY SAVINGS AND*

and middle-income workers have fewer assets from which to draw when they experience investment losses.²⁰ Therefore, under current conditions, this population is less likely to accumulate adequate amounts for retirement in the private retirement system.

The long-term funding deficiency that Social Security is experiencing also disproportionately impacts the retirement security of low- and middle-income workers. In efforts to address a longstanding funding shortfall, policymakers have modified the payroll tax, changed the basic benefit formula, or increased the eligibility age for the receipt of retirement benefits from the Social Security program on several occasions.²¹ These adjustments have had the effect of reducing net retirement benefits; however, they have not eliminated the funding deficiency. Because low- and middle-income workers more heavily rely on the retirement benefits provided by Social Security, these reductions and uncertainties have a greater impact on their retirement security.

Therefore, each of the traditional sources of retirement income faces challenges, resulting in a three-legged stool that is no longer stable. It is “wobbly.” As a consequence, these sources of retirement income are neither individually nor collectively likely to meet the retirement needs of most workers today or in the future.

Although homeownership has historically not been considered a source of retirement income, owning a home can positively impact one’s retirement security.²² This is because homeownership can protect retirees against the rising cost of rent, and the equity build-up in a home during retirement can significantly reduce the amounts needed from other sources of income.²³

Housing functions as both a capital investment and personal consumption.²⁴ Thus, the policy decisions surrounding homeownership are complex. This

FINANCIAL SECURITY: INSIGHTS FROM THE MAKING ENDS MEET SURVEY AND CONSUMER CREDIT PANEL, 21–22 (2022).

²⁰ BETH BROCKLAND & TANYA LADHA, FINANCIAL HEALTH OF WORKERS IN LOW-WAGE JOBS, FIN. HEALTH NETWORK 15 (2022) (finding that 60% of low-wage workers could not cover three months of expenses with their short-term savings).

²¹ GEOFFREY KOLLMAN, CONG. RSCH. SERV., SOCIAL SECURITY: SUMMARY OF MAJOR CHANGES IN THE CASH BENEFITS PROGRAM (2000), (showing the Social Security Board of Trustees projected financing issues for future Social Security benefits due to economic conditions and changing demographics in 1973). In 1977, amendments were made to increase the tax rate and modify the benefit formula. *Id.* In 1983, Congress enacted provisions meant to further resolve the financing issues by gradually increasing the age of eligibility and accelerating the scheduled tax increases. *Id.*

²² See STEVEN SASS, ALICIA H. MUNNELL & ANDREW ESCHTRUTH, CTR. RET. RSCH. B.C., USING YOUR HOME FOR INCOME IN RETIREMENT 3, 5 (2014).

²³ See STEVEN A. SASS, CTR. RET. RSCH. B.C., IS HOME EQUITY AN UNDERUTILIZED RETIREMENT ASSET?, 2, 3 (2017).

²⁴ Tony Fahey & Michelle Norris, *Housing in the Welfare State: Rethinking the Conceptual Foundations of Comparative Housing Policy Analysis*, 11 INT’L J. HOUS. POL’Y No. 4 439, 440–41 (2011).

duality, however, makes homeownership an excellent way of diversifying the traditional sources of retirement income and providing greater retirement security to underserved populations. Policymakers can focus on either or both functions in framing goals and evaluating strategies regarding the homeownership program.²⁵ Having a fixed place to live during retirement protects seniors against the rising cost of rent, and the build-up of home equity provides an additional source of income for emergencies and increasing expenses during retirement.²⁶

Notwithstanding the financial advantages of homeownership, its dual functions, and the heavy tax subsidy given to those who purchase homes, the homeownership rate in the United States has consistently declined for every generation since the baby boomers.²⁷ The rate of homeownership has fallen most dramatically for middle-income, young, and minority households, who over the last decade have experienced the largest decline in homeownership of any group since the Great Recession of 2008.²⁸ If this trend continues, many of these individuals will not have the opportunity to experience homeownership and the long-term social and financial benefits it provides.

This disturbing prospect is even more likely considering the impact of recent economic events on the housing market. Across the country, the housing market has been increasingly tight, due to a combination of high demand and low inventory.²⁹ This situation has driven home prices to unprecedented levels.³⁰

²⁵ *Id.* at 442.

²⁶ See *infra* text accompanying notes 130–36, 154–55.

²⁷ See Laurie Goodman & Jun Zhu, *By 2040, the U.S. Will Experience Modest Homeownership Decline. But for Black Households, the Impact Will Be Dramatic.*, URB. INST. (Jan. 21, 2021), <https://www.urban.org/urban-wire/2040-us-will-experience-modest-homeownership-declines-black-households-impact-will-be-dramatic> [<https://perma.cc/4YNU-JD5K>].

²⁸ Erik L. Hernandez & Christopher Mazur, *Homeownership by Young Households Below Pre-Great Recession Levels*, U.S. CENSUS BUREAU (Nov. 17, 2022), <https://www.census.gov/library/stories/2022/11/homeownership-by-young-households-below-pre-great-recession-levels.html> [<https://perma.cc/RC9E-R7R5>] (finding homeownership rates declined among adults aged 25 to 34); Mark Mather et al., POPULATION REFERENCE BUREAU, *America's Changing Population: What to Expect in the 2020 Census*, 74 POPULATION BULL. NO. 1, Jun. 2019, at 15–18 (noting homeownership rates declined for both minority and younger households); Scholastica (Gay) Cororaton, *Distribution of Housing Wealth Across Income Groups from 2010-2020*, NAT'L ASS'N REALTORS (Mar. 11, 2022), <https://www.nar.realtor/blogs/economists-outlook/distribution-of-housing-wealth-across-income-groups-from-2010-2020> [<https://perma.cc/FVS7-NMVA>] (saying the largest decline in homeownership rates among income groups was for middle-income earners). The Great Recession of 2008 refers to the economic downturn from 2007 to 2009 after the U.S. housing bubble burst.

²⁹ See JOINT CTR. HOUS. STUD. HARV. UNIV., *THE STATE OF THE NATION'S HOUSING 2022* (2022); see *infra* text accompanying notes 219–226.

³⁰ JOINT CTR. HOUS. STUD. HARV. UNIV., *supra* note 29, at 1; see also S&P Cotality Case-Shiller U.S. National Home Price NSA Index, S&P GLOB. (Oct. 28, 2025),

As of August 2022, home prices rose at an annual rate of 20%, representing more than a 300% increase, compared to the 5.8% annual rate measured in the prior year.³¹ Consequently, many prospective buyers are currently being driven out of the housing market.

Thus, the challenges facing the three traditional sources of retirement income and other asset building programs are substantial, and they disproportionately affect the retirement security of low- and middle-income workers.³² These developments are exacerbated by increasing life expectancies that make it necessary for all workers to save more for retirement than ever before. Another factor adversely affecting the retirement savings landscape is the possibility of long-term effects of the COVID-19 pandemic on savings, employment retiree health, the investment market, and the economy.

To address this retirement savings crisis, it is critically important for policymakers to explore more effective ways of encouraging retirement savings among low- and middle-income workers. Exploring ways of achieving a more equitable distribution of benefits provided by the asset-building programs, such as the private retirement system and the homeownership program, is also necessary to justify the tremendous cost of these tax-supported programs.

The definition of low-and middle-income is not exact and varies among scholars and researchers in different disciplines.³³ For example, “sociologists typically emphasize occupational status or education” in their definitions of middle-income.³⁴ “Philosophers and anthropologists. . .focus on culture, education, and power” while economists more frequently rely on distinctions

<https://www.spglobal.com/spdji/en/indices/indicators/sp-corelogic-case-shiller-us-national-home-price-nsa-index/#overview> [<https://perma.cc/UP5R-GWNX>] (tracking price changes in existing single-family houses).

³¹ JOINT CTR. HOUS. STUD. HARV. UNIV., *supra* note 29, at 9. Adjusting for inflation, the price appreciation for housing was approximately 13% in the year of 2022. *Id.*

³² See BENJAMIN H. HARRIS ET AL., URB. INST. & TAX POL’Y CTR., TAX SUBSIDIES FOR ASSET DEVELOPMENT: AN OVERVIEW AND DISTRIBUTIONAL ANALYSIS, (2014).

³³ See RICHARD V. REEVES, KATHERINE GUYOT & ELEANOR KRAUSE, BROOKINGS INST., *DEFINING THE MIDDLE CLASS: CASH, CREDENTIALS, OR CULTURE?* (2018) [hereinafter *Defining the Middle Class*], <https://www.brookings.edu/research/defining-the-middle-class-cash-credentials-or-culture/> [<https://perma.cc/9AHS-NBPB>]; Richard V. Reeves, Katherine Guyot & Eleanor Krause, *A dozen ways to be middle class*, BROOKINGS INST.: RESEARCH (May 8, 2018), <https://www.brookings.edu/interactives/a-dozen-ways-to-be-middle-class/> [<https://perma.cc/6TM4-T4M2>]; HARRY J. HOLZER, PROGRESSIVE POL’Y INST., BUILDING A NEW MIDDLE CLASS IN THE KNOWLEDGE ECONOMY, 3, 6 (2017).

³⁴ *Defining the Middle Class*, *supra* note 33. See also Richard V. Reeves & Katherine Guyot, *There are many definitions of “middle class”—here’s ours*, BROOKINGS INST.: MIDDLE CLASS MEMOS (Sep. 4, 2018) [hereinafter *There are many definitions of “middle class”*], <https://www.brookings.edu/blog/up-front/2018/09/04/there-are-many-definitions-of-middle-class-heres-ours/> [<https://perma.cc/7B7R-E8KW>].

relating to wealth or income.³⁵ However, a common approach used by many researchers is to define low- and middle-income in terms of quintiles.³⁶ This approach divides the population's income into fifths. Each fifth is referred to as a quintile, and middle-income is defined by some combination of these quintiles. The narrowest definition of middle-income using this approach consists of only the middle quintile, which in 2021 ranged from \$55,000 to \$90,000 for households.³⁷

For purposes of defining low-and -middle income, this Article uses a more expansive definition of middle-income based upon the quintile approach, which includes the third and fourth quintiles. Accordingly, middle-income would include households with income between \$55,000 and \$149,000.³⁸ Low-income would generally refer to households with income falling in the first two quintiles, or income below \$55,000.³⁹ Defining middle-income in this manner is appropriate for the tax and retirement savings issues considered in this Article because this range of income represents the population most at risk of not having sufficient assets at retirement. This definition of low- and middle- income is also consistent with the approach used by the Congressional Budget Office, which is the premier source for estimates regarding income equality and tax burden studies in the United States.⁴⁰

The overarching objectives of any retirement savings program are to encourage individuals to save adequate amounts for retirement while they are working; to protect and grow the saved assets prior to retirement; and to distribute the assets at retirement, preferably in a form that provides protection against premature consumption, market volatility, and unexpected longevity.⁴¹ Although homeownership cannot replace a comprehensive retirement savings

³⁵ *Defining the Middle Class*, *supra* note 33; *There are many definitions of "middle class"*, *supra* note 34.

³⁶ See Steven Pressman, *Defining and Measuring the Middle Class* (Aug. 2015) (unpublished working paper) (on file with AMER. INST. ECON. RSCH.); EMILY ENGEL & TURAN ORAL, FED. RSRV. BANK OF CHI., *RENEWING THE PROMISE OF THE MIDDLE CLASS: EVIDENCE AND INSIGHTS FROM RESEARCH*, 4 fig. 1, 15 fig. 1 (2019).

³⁷ See TAX POL'Y CTR., *HOUSEHOLD INCOME QUINTILES: 1967 TO 2022*, (2024).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ CONG. BUDGET OFF., *DISTRIBUTION OF HOUSEHOLD INCOME, 2019*, (2022); see *Population Profiles: Middle Class Beneficiaries, 2014*, SSA (Mar. 2017), <https://www.ssa.gov/policy/docs/population-profiles/middle-class-beneficiaries.html> [<https://perma.cc/LPT8-3GVN>] (using three middle quintiles of income distribution as its definition of middle class); *Narrative on Income Inequality (Middle Class)*, U.S. CENSUS BUREAU (Sep. 2010), <https://www.census.gov/topics/income-poverty/income-inequality/about/middle-class.html> [<https://perma.cc/4G9W-ERXZ>] (using income quintiles as one of two ways to define middle class).

⁴¹ Protection against unexpected longevity can be achieved using a life annuity, which is a "promise to pay benefits for the remainder of the lifetime of the covered participant." See *Annuities*, Benefits Guide § 4:180 (2017).

program, it can significantly help retirees achieve each of these savings goals. Therefore, this Article argues that efforts should be made by policymakers to strengthen the connection between homeownership and retirement savings policies to provide greater retirement security for all workers, especially for those who are low-and middle-income.⁴²

More specifically, this Article argues that aligning incentives for homeownership with retirement savings policies, so that homeownership would be formally recognized as a source of retirement income, would accomplish the following desirable outcomes: (1) it would serve as an effective way of diversifying the three traditional sources of retirement income, (2) it would foster a more equitable distribution of benefits from the asset building programs that the tax system supports, (3) it would help to ensure that underserved populations have greater retirement security, and (4) it would help to close the ever-increasing retirement savings gap in this country.⁴³

This Article is organized in five sections. Part I provides an overview and analysis of the recent trends, developments, and challenges impacting the traditional sources of retirement income. Part II analyzes and critiques the role and distribution of homeownership in American society. Part III identifies and examines the barriers to homeownership that exist for underserved populations. Part IV analyzes and critiques the structure and effectiveness of the existing tax expenditures for the private retirement system and the homeownership program. Part V identifies numerous ways in which homeownership can provide financial advantages for today’s workers and presents four proposals designed to incentivize homeownership among low-and middle-income workers as a means of increasing their retirement security.

I. TRENDS, DEVELOPMENTS AND CHALLENGES AFFECTING THE TRADITIONAL RETIREMENT SAVINGS SOURCES

The current retirement savings landscape is drastically different than it was in 1974 when the Employment Retirement Income Security Act of 1974 (ERISA) was enacted. The shift from the use of defined benefit plans to defined contribution plans as primary retirement savings vehicles in conjunction with demographic changes, economic downturn, and the effects of the COVID-19 pandemic have placed stress on each of the three traditional sources of retirement savings, making it unlikely that the combined savings from these sources will

⁴² The term “underserved populations” for purposes of this Article includes low- and middle-income workers, young people under the age of 35, and minorities.

⁴³ The wealth gap refers to the unequal distribution of assets between upper-income and low- or middle-income households. See JULIANA MENASCE HOROWITZ, RUTH IGIELNIK & RAKESH KOCHHAR, *Trends in Income and Wealth Inequality*, in MOST AMERICANS SAY THERE IS TOO MUCH ECONOMIC INEQUALITY IN THE U.S., BUT FEWER THAN HALF CALL IT A TOP PRIORITY 12, 19–20 (2020).

meet the retirement needs of many of today's workers.⁴⁴ Consequently, the traditional framework of the three-legged stool can no longer be recommended as a model for a financially secure retirement. This is particularly true in the case of low- and middle-income workers who face even greater challenges saving for retirement because they have fewer assets from which to save and have more competing current consumption needs.⁴⁵ Also, when low- and middle-income workers do save for retirement, they suffer more when volatile market conditions cause losses because they have fewer assets from which to draw in financial emergencies.⁴⁶

The next section of this Article examines in greater detail the specific challenges that the three traditional sources of retirement income currently face. This section also analyzes and critiques the disparate impact that these challenges have on low- and middle-income workers.

A. *Trends in Personal Savings*

The personal savings rate, which is measured by the difference between an individual's income and expenses, has been declining in this country over the last five decades with only a few notable exceptions. In January of 1959, the average personal savings rate in the United States reached a high of 11.3%.⁴⁷ It spiked in the early 1970s, peaking at 17.3% in May of 1975, at a time when a deep recession ravaged the nation.⁴⁸ Although it can be expected that personal savings rates will reach high levels during periods of recession because individuals tend to decrease spending in times of economic distress,⁴⁹ 17.3% was uncharacteristically high.⁵⁰

After spiking in the 1970's, the personal savings rate in the United States declined dramatically, falling to levels as low as 4.5% in January 2000 and below 2% multiple times between 2000 and 2010.⁵¹ More recent data shows that in February of 2024, Americans were saving at an estimated rate of 6.1%.⁵²

⁴⁴ See *Retirement Savings in the Time of Covid-19*, ORG. ECON. CO-OP. DEV. (June 22, 2020)

⁴⁵ See Saad-Lessler, Ghilarducci & Reznik, *supra* note 19.

⁴⁶ See *id.*

⁴⁷ This is the earliest period for which the Bureau of Economic Analysis has data regarding the personal savings rate. *Saving rate, supra* note 5.

⁴⁸ *Id.*

⁴⁹ See Victor Zarnowitz & Geoffrey H. Moore, *The Recession and Recovery of 1973-1976*, 4 EXPLS. IN ECON. RSCH. 471, 486 (1977).

⁵⁰ See generally Ashoka Mody, Franziska Ohnsorge & Damiano Sandri, *Precautionary Savings in the Great Recession* 25 (IMF., Working Paper No. 12/42, 2012) (illustrating how the Great Recession of the mid-2000's resulted in increased personal savings).

⁵¹ *Saving rate, supra* note 5.

⁵² *Id.*

Compared to the savings rates of other industrialized countries, the United States’ personal savings rate is unusually low.⁵³ Out of thirty-five of the Organisation for Economic Co-operation and Development (OECD) countries studied, the United States ranks twenty-eighth.⁵⁴ Thus, by both historical and international standards, the national personal savings rate in this country is lagging.⁵⁵

The low average personal savings rates can be explained by numerous factors.⁵⁶ In recent years, many workers’ wages have declined or failed to keep up with inflation.⁵⁷ Also, inflation in the United States hit a record high in June 2022 of 9.1%.⁵⁸ During this same period, wage growth was consistent with an

⁵³ See *Saving rate*, *supra* note 5.

⁵⁴ *Id.*

⁵⁵ *Personal Savings Rate (PSAVERT)*, *supra* note 7 (showing that the U.S. personal savings rate as of December 2022 is 4.2%); see also *Saving rate*, *supra* note 5 (comparing household savings amongst OECD countries).

⁵⁶ See, e.g., Milt Marquis, *What’s Behind the Low U.S. Personal Saving Rate?*, FRBSF ECON. LETTER No. 2002-09, FED. RSRV. BANK S.F. (Mar. 2002) (recognizing complications in calculating accurate personal savings rates in the United States, and arguing capital gains and losses should be included); William G. Gale & John Sabelhaus, *Perspectives on the Household Saving Rate*, 1 BROOKINGS PAPERS ECON. ACTIVITY 181 (1999); Lawrence Summers & Chris Carroll, *Why Is U.S. National Savings So Low?*, 2 BROOKINGS PAPERS ECON. ACTIVITY 607 (1987).

⁵⁷ As a practical matter, this means that it takes more of people’s salaries to cover the same expenses. Gregory D. Squires, *Social Insecurity: The Roller Coaster Ride of America’s Middle Class*, 24 NOTRE DAME J. L. ETHICS PUB. POL’Y 285, 288 (2010) (noting that though minimum wage has been increased, it is not indexed to inflation and thus falls behind, or barely keeps pace with, inflation); see also Drew Desilver, *For most U.S. workers, real wages have barely budged in decades*, PEW RSCH. CTR. (Aug. 7, 2018), <http://www.pewresearch.org/fact-tank/2014/10/09/for-most-workers-real-wages-have-barely-budged-for-decades/> [<https://perma.cc/F3U6-UN2P>] (“[A]fter adjusting for inflation, however, today’s average hourly wage has just about the same purchasing power as it did in 1978. . . .”); Jay Shambaugh & Ryan Nunn, *Why Wages Aren’t Growing in America*, HARV. BUS. REV.: ECONOMICS (Oct. 24, 2017), <https://hbr.org/2017/10/why-wages-arent-growing-in-america> [<https://perma.cc/PZ8V-9K9Q>] (stating that wages have only grown at a rate of 0.2% per year since the 1970s).

⁵⁸ *Consumer prices up 9.1 percent over the year ended June 2022, largest increase in 40 years*, U.S. BUREAU LAB. STAT., TED. (Jul. 18, 2022), <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> [<https://perma.cc/WL95-6LSA>] . Moreover, relative to productivity, wages in the United States have lagged over the last five decades. LAWRENCE MISHEL, ELISE GOULD & JOSH BIVENS, ECON. POL’Y INST., *WAGE STAGNATION IN NINE CHARTS*, 4 fig. 2, (2015). Wages have grown only 32.7% since 1979, while productivity grew nearly three times as fast at 87.3%. *Productivity-Pay Gap*, ECON. POL’Y INST. (Sep. 3, 2025), <https://www.epi.org/productivity-pay-gap/> [<https://perma.cc/D9MS-K5JL>].

inflation rate of approximately 5.1%.⁵⁹ In a survey conducted by Bankrate, 39% of American workers who received a pay raise in 2021 reported that they were nevertheless struggling to afford basics such as groceries and other household goods because their pay had not kept up with the pace of inflation.⁶⁰

Greater access to consumer credit also affects the savings rate.⁶¹ This access allows individuals to spend more than what they earn, resulting in negative savings rates for many households.⁶² There has also been a discernable increase in aggressive marketing campaigns through television shows, commercials, and the Internet encouraging individuals to consume rather than save.⁶³ The combined effect of these developments has helped to change the savings culture in this country by placing much greater emphasis on consumption.

The decreased personal savings rate in the United States also relates to its demographics.⁶⁴ Older individuals are less likely to save than younger ones.⁶⁵ Accordingly, as a population ages, it can be expected that its average personal savings rate will naturally decline. In 2018, the U.S. Census Bureau predicted that by 2030, 21% of the population in the United States will be 65 years of age

⁵⁹ B.L.S. News Release USDL-23-0147. (July 31, 2025)

⁶⁰ Sarah Foster, *Survey: The most workers in four years say their pay isn't keeping up with inflation*, BANKRATE (Oct. 14, 2025), <https://www.bankrate.com/personal-finance/pay-raise-survey-september-2022/> [<https://perma.cc/K8XN-S6N7>].

⁶¹ Andrew Haughwout et al., *Balances Are on the Rise—So Who Is Taking on More Credit Card Debt?*, FED. RSRV. BANK N.Y.C.: LIBERTY ST. ECON., (Nov. 15, 2022), <https://libertystreeteconomics.newyorkfed.org/2022/11/balances-are-on-the-rise-so-who-is-taking-on-more-credit-card-debt/> [<https://perma.cc/F94D-ZUQE>]. Credit is harder to get after the recession due to Dodd-Frank, though.

⁶² *The New Economics of the Middle Class: Why Making Ends Meet Has Gotten Harder: Hearing Before the S. Comm. on Fin.*, 101st Cong. 1, 3, 15 (2007) (statement of Elizabeth Warren, Harv. L. Prof.).

⁶³ See Rajeshni Naidu-Ghelani, *The bias that makes us spend and not save*, BBC: WORKLIFE (Mar. 20, 2019), <https://www.bbc.com/worklife/article/20190320-decoding-the-bias-that-makes-us-spend-and-not-save> [perma.cc].

⁶⁴ A. Lans Bovenberg, *Why Has US Personal Saving Declined?*, 27 FIN. & DEV. 10, 10-11 (1990).

⁶⁵ This is even more alarming when one considers that in 2017, 67% of 18–24-year-old Americans had between \$0 and less than \$1,000 in personal savings. The number is not much better for 25–34-year-olds at 61%. See Kathleen Elkins, *Here's how much money the average millennial has in savings*, CNBC: MAKE IT (Sep. 19, 2017, at 04:05 ET), <https://www.cnbc.com/2017/09/14/how-much-money-the-average-millennial-has-in-savings.html> [<https://perma.cc/JD5X-5QUZ>].

or older, compared to 12% in 2000.⁶⁶ Based upon these projections, the average savings rate is likely to further decline over the next few years.⁶⁷

Another factor affecting the savings rate in the United States is the structure of the federal income tax, which does not incentivize personal savings. Unlike a consumption tax in which savings are not taxed and therefore encouraged, the federal income tax generally does not favor personal savings.⁶⁸ Therefore, unless individuals choose to save in tax-preferred retirement savings arrangements, such as employer-sponsored plans, Traditional IRAs, or Roth IRAs, there are no tax incentives available for savings.⁶⁹

It is important to note that in the first two years of the COVID-19 pandemic, there was a significant increase in personal savings in the United States, with

⁶⁶ Jonathan Vespa, *The Graying of America: More Older Adults Than Kids by 2035*, U.S. CENSUS BUREAU (Oct. 8, 2019), <https://www.census.gov/library/stories/2018/03/graying-america.html#:~:text=Starting%20in%202030%2C%20when%20all,add%20a%20half%20million%20centenarians> [https://perma.cc/L88L-BN93].

⁶⁷ Lisa Hetzel & Annetta Smith, *Census 2000 Brief: The 65 Years and Over Population*, U.S. CENSUS BUREAU (Oct. 2001), <https://www.census.gov/library/publications/2001/dec/c2kbr01-10.html> [https://perma.cc/9EKQ-PSJC].

⁶⁸ Under the rules of a traditional employer-sponsored retirement plan or IRA, the Tax Code provides a subsidy that allows the individual to exclude or deduct upfront the amounts contributed to the account, exclusions on the build-up of earnings on those assets as they accrue, and the individual is not taxed until she decides to take a distribution on the amounts withdrawn at her ordinary income rates. See Daniel I. Halperin & Alvin C. Warren, Jr., *Understanding Income Tax Deferral*, 67 TAX L. REV. 317, 324 (2014) (providing an in-depth overview of tax deferral for qualified retirement savings plans). This statement excludes the favorable tax treatment of houses and capital gains.

⁶⁹ The personal savings rate includes contributions to 401k and IRA plans. It excludes, however, any personal savings in the form of capital gains. See, *Are 401k and IRA Contributions Included in the National Savings Rate, and if so, How is this Calculated?*, FED. RSRV. BANK S.F. (Aug. 1, 2005), [https://www.frbsf.org/education/publications/doctor-econ/2005/august/401k-ira-national-savings-rate/#:~:text=Since%20IRA%20and%20401\(k,included%20in%20national%20saving%20computations](https://www.frbsf.org/education/publications/doctor-econ/2005/august/401k-ira-national-savings-rate/#:~:text=Since%20IRA%20and%20401(k,included%20in%20national%20saving%20computations) [https://perma.cc/DR4K-7BSZ]; Dean Baker, *A Quick Note on That Record Low Savings Rate*, CTR. ECON. POL’Y RSCH. (Dec. 6, 2022), <https://cepr.net/a-quick-note-on-that-record-low-savings-rate/> [https://perma.cc/P7PF-LFV5]. For this reason, aggregate retirement savings has risen higher relative to other forms of savings. MONIQUE MORRISSEY, ECON. POL’Y INST., THE STATE OF AMERICAN RETIREMENT SAVINGS (2019). In 1950, pension funds held only 3% of all financial assets. JOHN H. LANGBEIN ET AL., PENSION AND EMPLOYEE BENEFIT LAW 18 (6th ed. 2015) (citing RICHARD A. IPPOLITO, PENSIONS, ECONOMICS AND PUBLIC POLICY 123–124 (1986)). In contrast, in 1984, they held 16.7%. *Id.* By 1998, pension funds held more than 27% of all equities and approximately 12% of all corporate and other nominally taxed bonds. *Id.* (citing EBRI PENSION INVESTMENT REPORT: 4TH QUARTER 1998 at 37, Table 19, 1999). Thus, compared to both personal savings and the economy, retirement assets have grown more rapidly.

rates surging as high as 26.6% at one point.⁷⁰ This increase was attributable to people's reluctance to spend during the pandemic, the availability of fewer spending opportunities, as well as the infusion of government cash that was initially provided to ward off economic calamity. The savings increase was not experienced universally, however. Many individuals lost their jobs, and many others did not benefit from the infusion of governmental funds. Thus, rather than experiencing increased savings rates, some individuals saw their personal savings dwindle or become depleted during this period.⁷¹ As a result of these unprecedented Covid-related developments and their disparate impacts, it is much too early to know to what extent, if any, there will be long term effects on individual personal savings patterns in the United States after the pandemic ends and economic conditions change.⁷²

The savings culture and conditions in this country have changed dramatically over the last few decades, with the savings gap widening.⁷³ Despite the personal savings rate spike attributable to the COVID-19 pandemic, economists have predicted that it is unlikely that there will be a meaningful increase in the average personal savings rates anytime soon in the United States.⁷⁴ For these reasons,

⁷⁰ *Saving rate*, *supra* note 5; see Aladangady et al., *supra* note 8. DAVID CHO, LAURA FEIVESON & EUGENIO PINTO, FED. RSRV., EXCESS SAVINGS DURING THE COVID-19 PANDEMIC (2022).

⁷¹ Talmon Joseph Smith, *Americans' Pandemic-Era 'Excess Savings' Are Dwindling for Many*, N.Y. TIMES (Dec. 7, 2021), <https://www.nytimes.com/2021/12/07/business/pandemic-savings.html> [<https://perma.cc/T5PK-P7SB>]; KIM PARKER, RACHEL MINKIN & JESSE BENNETT, PEW RSCH. CTR., ECONOMIC FALLOUT FROM COVID-19 CONTINUES TO HIT LOWER-INCOME AMERICANS THE HARDEST (2020).

⁷² For people who experienced increased savings rates, it is difficult to know if they will continue to save at higher rates after the governmental funds are no longer available and they resume normal spending patterns. For people who experienced financial hardships and whose savings were exhausted, it is difficult to determine how long it will take for them to be able to save again.

⁷³ Peter Coy, *We Can't Keep Spending Like This*, N.Y. TIMES (Dec. 2, 2022), <https://www.nytimes.com/2022/12/02/opinion/saving-rate-decline-economy.html> [<https://perma.cc/V9J7-63V2>] (commenting on changes to personal savings since 2019 that widened savings gap); Derek Thompson, *Why Don't Americans Save More Money?*, ATL. (Apr. 19, 2016), <https://www.theatlantic.com/business/archive/2016/04/why-dont-americans-save-money/478929/> [<https://perma.cc/66U6-KVFP>] (theorizing why the U.S. savings rate is so low); see Kerwin Kofi Charles, Erik Hurst & Nikolai Roussanov, *Conspicuous Consumption and Race*, 124 Q. J. ECON. 425, 436–40 (2009); Marianne Bertrand & Adair Morse, *Trickle-Down Consumption* 1, 3, 11 (Nat'l Bureau of Econ. Rsch., Working Paper No. 18883, 2013) (finding that as households are exposed to more wealth, they shift spending habits from purchasing “non-rich goods”— gas, utilities, food—to “rich goods,” such as clothing, jewelry and furniture; stating further that this sense of “conspicuous consumption” is contagious).

⁷⁴ See, e.g., Felix Richter, *Everyday prices are surging. What effect does that have on personal savings in the US?*, WORLD ECON. F. (Jun. 23, 2022), <https://www.weforum.org/agenda/2022/06/inflation-affecting-savings-americans/>

personal savings should not realistically be viewed as a significant source of retirement income for most workers in the current savings landscape.

B. Trends in the Private Retirement System

1. Characteristics of the Private Retirement System

The private retirement system is tax preferred, employment based, and voluntary. Each of these characteristics significantly influences coverage patterns as well as the operations of the retirement savings program. When ERISA was established in 1974, approximately 50% of the private, nonagricultural workforce was covered by a private retirement plan.⁷⁵ Since the passage of ERISA, coverage rates in the private retirement system have not significantly improved. A recent study conducted by AARP in 2022 showed that as many as 48% of Americans between the ages of 18 to 64, or nearly 57 million people, work for employers that do not offer retirement plans.⁷⁶ This means that almost half the workers in the United States currently do not have access to a private retirement plan. Most of the uncovered population are individuals at the bottom half of the income spectrum who are more likely to have difficulty saving for retirement without the benefit of tax incentives or non-elective contributions.⁷⁷ Therefore, since the passage of ERISA, expanding coverage in the private retirement system among low-and middle-income employees has remained a challenge for federal pension policy.⁷⁸

Not only is low coverage a problem for low- and middle-income workers in the private retirement system, but so is the recent shift in risk allocation. When ERISA was enacted, defined benefit plans were the prevailing plan type.⁷⁹ In defined benefit plans, the employer is responsible for funding the plan at a level sufficient to pay all promised benefits at retirement, regardless of the investment

[<https://perma.cc/WH5L-TMSB>]; Ellen Chang, *Consumer Savings Shrink to 2008 Lows*, THE STREET (Oct. 4, 2022, at 11:56 ET), <https://www.thestreet.com/investing/consumer-savings-shrink-to-2008-lows> [<https://perma.cc/TP4A-LY8B>]; Orla McCaffrey, *Don't Expect Rising Interest Rates to Boost Your Savings Account*, WALL ST. J. (Feb. 9, 2022, at 05:30 ET), <https://www.wsj.com/articles/dont-expect-rising-interest-rates-to-boost-your-savings-account-11644402600> [<https://perma.cc/QR69-HJPQ>].

⁷⁵ See, e.g., *General Tax Reform: Panel Discussion Before the H. Comm. of Ways and Means*, 93rd Cong. 78 (1973) (statement of Prof. Daniel Halperin, U. Pa.).

⁷⁶ DAVID JOHN, GARY KOENIG & MARISSA MALTA, AARP PUB. POL'Y INST., PAYROLL DEDUCTION RETIREMENT PROGRAMS BUILD ECONOMIC SECURITY, (2022).

⁷⁷ LANGBEIN ET AL., *supra* note 69, at 22–23.

⁷⁸ *Id.*

⁷⁹ ERISA is a federal tax and labor statute that sets minimum standards for pension and other benefit plans established by employers in the private sector. It was enacted to protect the interests of employer benefit plan participants and their beneficiaries. 29 U.S.C. ch. 18 §§ 1001(b)-(c), 1001a.(a), (c) (1978). See *History of EBSA and ERISA*, U.S. DEP'T LAB., <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/history-of-ebsa-and-erisa> [<https://perma.cc/V88N-2R5Z>] (last visited Nov. 13, 2025).

performance of the plan assets.⁸⁰ In these plans, participation is typically non-elective, with a life annuity as the normal form of distribution.⁸¹ In order to protect plan participants in the event of employer insolvency, employers who sponsor defined benefit plans are required to insure the accrued retirement benefits up to a statutory limitation through the Pension Benefit Guaranty Corporation (PBGC)⁸², which is a United States federally chartered corporation established by ERISA for this purpose.⁸³ As a result, the risks of loss in defined benefit plans are allocated among the employer, the employee, and the federal government.⁸⁴

In defined contribution plans, including 401(k) plans, the risks of loss are allocated differently. In these plans, each participant is assigned an individual account and the participant is not guaranteed a specific amount at retirement.⁸⁵ The retirement benefit in a defined contribution plan is determined by the balance of the account at retirement, which reflects employer and employee contributions as well as investment returns.⁸⁶ In the event of poor investment performance in defined contribution plans, there is neither a promised benefit nor insurance protection. Therefore, the plan participants bear the risks of loss alone.⁸⁷ When participants terminate employment in defined contribution plans, their retirement benefits typically are paid in the form of lump sums rather than life annuities.⁸⁸ Unlike life annuities, lump sums do not provide a guaranteed stream of income that protects participants against premature consumption, market volatility, or unexpected longevity.

⁸⁰ In Defined Benefit Plans, the retirement benefit is expressed as an annual benefit, payable in the form of an annuity at an age specified in the plan. A general “annuity is defined as a series of specified income payments, payable over a specified period,” whereas “[a] promise to pay benefits for the remainder of the lifetime of the covered participant is called a life annuity.” See *Annuities*, Benefits Guide § 4:180 (2017).

⁸¹ LANGBEIN ET AL., *supra* note 69, at 38.

⁸² To protect defined benefit plan participants in the event that the employer becomes insolvent, the PBGC insures a limited accrued benefit. See generally 29 U.S.C. §§ 1301–1311. See also Regina T. Jefferson, *Striking a Balance in the Cash Balance Plan Debate*, 49 BUFF. L. REV. 513, 517 (2001).

⁸³ The PBGC is a U.S. agency established to protect retirement benefits of workers who participate in private sector defined benefit pension plans. It insures their benefits if the plan sponsor becomes insolvent or is unable to meet its pension obligations. See LANGBEIN ET AL., *supra* note 69, at 181–183.

⁸⁴ See 29 U.S.C. §§ 1301–1311.

⁸⁵ See 29 U.S.C. §§ 1107(d)(3)(A)–(B); José Martin Jara, *What Is the Correct Standard of Prudence in Employer Stock Cases?*, 45 J. MARSHALL L. REV. 541, 547 (2012).

⁸⁶ See Jeffrey M. Colon, *Oil and Water: Mixing Taxable and Tax-Exempt Shareholders in Mutual Funds*, 45 LOY. U. CHI. L.J. 773, 801–02 (2014).

⁸⁷ See Anne M. Tucker, *Retirement Revolution: Unmitigated Risks in the Defined Contribution Society*, 51 HOUS. L. REV. 153, 184 (2013) (discussing three risks shifted to employees through defined contribution plans).

⁸⁸ 26 U.S.C. § 402(e).

The shift to an individual approach by way of the domination of defined contribution plans in general and 401(k) plans in particular over the last few decades has effectively reallocated decision-making authority and all forms of risk from the employer and the federal government to the employee.⁸⁹ This development has made it unlikely for many workers to have adequate savings at retirement, especially those who are low- and middle-income.⁹⁰

2. The Impact of Participant-Directed 401(k) Plans

Most 401(k) plans are participant-directed, which means that the participant, rather than the employer, determines how the contributed funds are invested.⁹¹ As a result, in participant-directed 401(k) plans, participants not only decide whether and the extent to which they participate but also the way the funds in their accounts are invested.⁹² The failure of participants to make optimizing choices regarding any of these critical decisions can significantly affect the performance of the plan and, ultimately, their retirement security.⁹³ Although this is the case, and investment decisions are complex, participants typically must make these choices without the benefit of financial education or any form of protection if losses occur.

The prevalence of participant-directed 401(k) plans requires plan participants to make investment decisions that impact every critical stage of retirement saving. However, at each stage, this impact is felt more by low- and middle-income individuals, because workers with fewer assets have less discretionary

⁸⁹ See 26 U.S.C. § 410(a)(1)(A) (2006). See also Edward A. Zelinsky, *The Defined Contribution Paradigm*, 114 YALE L.J. 451, 455–58 (2004) (noting that “[a] defined benefit pension . . . specifies an output for the participant.”).

⁹⁰ MORRISSEY, *supra* note 69.

⁹¹ *Retirement topics: Participant-directed accounts*, INTERNAL REV. SERV., <https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-participant-directed-accounts#:~:text=Plan%20accounts%20where%20participants%20exercise,to%20direct%20their%20own%20investments> [https://perma.cc/79GB-DQS2] (Aug. 26, 2025).

⁹² In section 401(k) plans, the decision of whether and the extent to which to participate generally is left to the employee. In such plans, employees are allowed to elect to have portions of their salaries contributed to the plan as deferred compensation rather than to receive them as current compensation in the years in which they are earned. To encourage greater participation, employers offering 401(k) plans often match some percentage of the employee’s elected contributions. For example, a common formula is when the employer matches 100% of the first 1% of compensation contributed by the employee and then 50% of the contributions in excess of 1%. See Regina T. Jefferson, *Redistribution in the Private Retirement System: Who Wins and Who Loses?*, 53 HOW. L.J. 283, 303 (2010) [hereinafter Jefferson, *Redistribution*].

⁹³ Regina T. Jefferson, *Balancing Greater Protection with Individual Choice in 401(K) Plans*, in BEYOND ECONOMIC EFFICIENCY IN UNITED STATES TAX LAW 193, 193 (Wolters Kluwer 2013) (noting these critical decisions previously were made by employers or financial professionals). See *infra* Section V.A.

income and are less likely to elect to contribute to their 401(k) plans. When they do choose to save, low-wage workers are more likely to use conservative investment allocations, which may not provide the level of investment returns necessary to accumulate sufficient funds for retirement. Also, because their accounts are generally small, they do not benefit from the principle of economies of scale, which provides greater returns and reduced costs on larger amounts.⁹⁴ Additionally, when the retirement funds are ultimately distributed, low-wage workers are more likely to choose lump sum payments as opposed to annuities, which allows for greater leakage from their retirement savings.⁹⁵ Finally, in the event that losses occur, low- and middle-income workers are less likely to have other resources upon which to rely during retirement to avoid financial hardship.⁹⁶ The cumulative effect of these realities leave many low- and middle-income workers in elective contribution plans without adequate amounts for retirement security.

Therefore, the retirement savings landscape has changed dramatically since the passage of ERISA. For all practical purposes, there is no longer a difference between the type and degree of risk associated with personal savings and those associated with participant-directed 401(k) plans that now dominate the private retirement system.⁹⁷

The individual approach of 401(k) plans, especially in the case of participant-directed 401(k) plans, operates much like personal savings, with the success of the plan being linked to the timing of market fluctuations and the individual saver's ability to use prudent investment strategies.⁹⁸ Although some workers may desire to use recommended investment strategies such as "buy low sell high," they may be unable to do so when they have limited resources. For example, if a participant has a financial emergency and has no resources other than what they have saved in the plan, the participant may feel compelled to make a withdrawal from a retirement savings plan, if the plan allows for some

⁹⁴ This is particularly of concern in small- and middle-size plans. See Eric Toder & Karen E. Smith, *Do Low-Income Workers Benefit from 401(k) Plans?*, URB. INST. (Discussion Paper No. 11-03) (2011).

⁹⁵ U.S. GOV'T. ACCOUNTABILITY OFF., PRIVATE PENSIONS: PARTICIPANTS NEED BETTER INFORMATION WHEN OFFERED LUMP SUMS THAT REPLACE THEIR LIFETIME BENEFITS 36 (2015); see Leslie A. Muller, *Perspectives: Does Retirement Education Teach People to Save Pension Distributions?*, 64 SOC. SEC. BULL. No. 4 (2003). The term leakage refers to the use of retirement savings prior to retirement for non-retirement purposes.

⁹⁶ Herd, *supra* note 1, at 13; see Beth Brockland & Tanya Ladha, *Financial Health of Workers in Low-wage Jobs*, FIN. HEALTH NETWORK (July 28, 2022) <https://finhealthnetwork.org/research/financial-health-of-workers-in-low-wage-jobs/> [<https://perma.cc/MSU2-LXRW>] (finding that 60% of low-wage workers could not cover three months of expenses with their short-term savings).

⁹⁷ Herd, *supra* note 1, at 13.

⁹⁸ See *id.* at 12.

form of early distribution.⁹⁹ This would not be an option in a traditional defined benefit plan, where typically early distributions are not allowed.

Beginning with the passage of the Pension Protection Act of 2006 (PPA), Congress passed legislation that has improved the effectiveness of 401(k) plans.¹⁰⁰ This legislation introduced numerous rules that were designed to enhance retirement savings in elective contribution plans in general and 401(k) plans in particular. The changes made by PPA included provisions that encourage automatic rollovers, establish safe harbors for automatic enrollment, and require faster vesting.¹⁰¹ Many of these changes were based on behavioral finance research that found individuals were less likely to opt out of participating in the plans that their employers sponsor when they were already enrolled in them.¹⁰² Although the adjustments of PPA and subsequent legislation have helped participation and coverage rates, these changes had relatively minor effects on the retirement security of low- and middle- income workers.¹⁰³ This is primarily because the changes made by these laws do not address the impediments to savings that low- and middle-income workers face in saving for retirement: the risk allocation of plan losses in 401(k) plans that disproportionately impact low- and middle-income workers, the lack of financial knowledge of most plan participants, or the inequitable distribution of tax benefits in the private retirement system relative to income.¹⁰⁴

C. Social Security

⁹⁹ See *Investing Strategies: Diversifying Your Portfolio*, VANGUARD, <https://investor.vanguard.com/investor-resources-education/portfolio-management/diversifying-your-portfolio> [<https://perma.cc/LKG6-Y66U>] (last visited Nov. 24, 2025).

¹⁰⁰ Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (2006).

¹⁰¹ Among its many other amendments to ERISA, the PPA updated funding and benefit requirements for single- and multi-employer benefit plans, made efforts to increase the financial health of PBGC, and provided for greater disclosure of plan information. Pub. L. No. 109-280, 120 Stat. 780 at §§ 101–07, 201–21, 401–12, 501–09 (2006). Pension Protection Act of 2006, Pub. L. No. 109- 280, 120 Stat. 780 (2006), made comprehensive changes to ERISA in response to the changing pension landscape. DAVID N. LEVINE & AUGUST A. IMHOLTZ III, *INTRODUCTION TO ERISA: A COMPREHENSIVE GUIDE* § 1.08 (Paul J. Schneider & Brian M. Pinheiro eds., 3d ed. 2008).

¹⁰² Nudge theory, developed by Richard H. Thaler and Cass R. Sunstein in their book, *Nudge: Improving Decisions About Health, Wealth and Happiness*, suggests individuals can be influenced to make better decisions through subtle and non-coercive interventions or “nudges” to steer individuals towards a desired outcome. See RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH AND HAPPINESS*, YALE UNIV. PRESS (2008); Adam Oliver, *From Nudging to Budgeting: Using Behavioural Economics to Inform Public Sector Policy*, J. SOC. POL’Y 685 (2013).

¹⁰³ Jefferson, *Redistribution*, *supra* note 92, at 303–04.

¹⁰⁴ *Id.*

The final leg of the traditional stool to be considered is Social Security. The Social Security Act of 1935 created the public retirement savings system, reflecting the belief that the government has a responsibility to protect the well-being of its citizens through grants, pensions, and other forms of benefits, especially when they have financial or social needs.¹⁰⁵ In connection with this responsibility, the Social Security program has two explicit objectives. The first is to provide a minimum standard of living for the elderly, disabled and their dependents.¹⁰⁶ The second is to help moderate declines in living standards that result from retirement, disability, or death.¹⁰⁷

Social Security benefits are funded by a mandatory, flat-rate, payroll tax on wages.¹⁰⁸ The payroll tax rate currently is 6.2%.¹⁰⁹ The tax rate is set by statute and is paid by employers and employees in equal amounts.¹¹⁰ By making the Social Security program mandatory, the government draws upon the earning power of the entire workforce to provide support for the retirement needs of the elderly and disabled.¹¹¹ Social Security pays benefits in the form of life annuities, and it does not permit distributions prior to designated retirement ages.¹¹² Thus, the structure of the program's benefits effectively provides workers a guaranteed rate of return on the payroll taxes they pay.¹¹³

¹⁰⁵ Social Security Act of 1935, 42 U.S.C. §§ 301–1397mm (2012) [hereinafter SSA 1935]. See Patricia P. Martin & David A. Weaver, *Social Security: A Program and Policy History*, 66 SOC. SEC. BULL., 1, 3–6 (2005).

¹⁰⁶ Wilbur Cohen, *Social Security Objectives and Achievements*, 18 SOC. SEC. BULL. 2, 2-3 (1955); see Regina T. Jefferson, *Privatization: Not the Answer for Social Security Reform*, 58 WASH. & LEE L. REV. 1287, 1290 (2001).

¹⁰⁷ Cohen, *supra* note 106.

¹⁰⁸ *How is Social Security Financed?*, SOC. SEC. ADMIN., <https://www.ssa.gov/news/en/press/how-is-social-security-financed.html> [<https://perma.cc/QA8E-QDDF>] (last visited Nov. 21, 2025).

¹⁰⁹ *Id.* See also Cost-of-Living Increase and Other Determinations for 2016, 80 Fed. Reg. 66963 (Oct. 30, 2015); *Contribution and Benefit Base*, SOC. SEC. ADMIN., <https://www.ssa.gov/oact/cola/cbb.html> [<https://perma.cc/2WUB-ZRYQ>] (last visited Nov. 21, 2025) [hereinafter *Soc. Sec. Contribution and Benefit Base*]. Through guaranteed benefits, the program ensures that workers have the means of securing their basic needs in retirement. See also Alison M. Shelton, *Social Security: The Minimum Benefit Provision*, CONG. RSCH. SERV., 1 (2012) (“The goal of the Special Minimum PIA is to provide a minimum benefit for those who work in covered employment for many years but at low earnings.”).

¹¹⁰ 26 U.S.C. §§ 3101, 3111.

¹¹¹ LANGBEIN ET AL., *supra* note 69, at 21.

¹¹² Brendan McFarland, *Retirement in Transition for the Fortune 500: 1998 to 2013*, 24 TOWERS WATSON INSIDER, No. 9, Sep. 2014, at 1 (noting that only 118 Defined Benefit plans were offered in 2013, down from 299 plans in 1998).

¹¹³ A general “annuity is a series of specified income payments, payable over a specified period”; whereas “[a] promise to pay benefits for the remainder of the lifetime of the covered participant is called a life annuity.” *Annuities*, Benefits Guide § 4:180 (2017). Security retirement benefits also include a survivor benefit for the spouse. See SOC. SEC. ADMIN., *Survivors Benefits*, SSA PUB. NO. 05-10084 (2015), at 1–3. These benefits are automatically

The Social Security program has been very successful in reducing poverty among the elderly in this country.¹¹⁴ However, the program currently faces a long-term funding deficiency that threatens its success.¹¹⁵ This funding shortfall occurred primarily because of changing demographics.¹¹⁶ The number of workers aged 65 and over compared to the numbers of workers between the ages of 20 and 64 has changed dramatically since the inception of the Social Security program.¹¹⁷ This relationship, referred to as the “worker to beneficiary ratio,” compares the number of current workers paying employment taxes to the number of retirees currently receiving benefits.¹¹⁸ This ratio was 8.6 to 1 during the 1950’s, approximately twenty years after the program began; today it is 2.8 to 1.¹¹⁹ Although there always has been an expectation that the “worker to beneficiary ratio” would decrease over time, the ratio precipitously declined after 2010 as the Baby Boomer population began to reach retirement age.¹²⁰

adjusted to prevent a decline in purchasing power due to inflation. Currently, this adjustment is based on changes in the Consumer Price Index (CPI), the benchmark measure of inflation produced by the Bureau of Labor Statistics.

¹¹⁴ KATHLEEN ROMIG, Ctr. BUDGET & POL’Y PRIORITIES, SOCIAL SECURITY LIFTS MORE PEOPLE ABOVE THE POVERTY LINE THAN ANY OTHER PROGRAM (2025). However, there are still 36.8 million people living in poverty, a rate of 11.1%. *National Poverty in America Awareness Month: January 2025*, U.S. CENSUS BUREAU (Jan. 2025), <https://www.census.gov/newsroom/stories/poverty-awareness-month.html> [<https://perma.cc/4LRM-WD5H>].

¹¹⁵ Stephen C. Goss, *The Future Financial Status of the Social Security Program*, 70 SOC. SEC. BULL. 3, Aug. 2010, at 111.

¹¹⁶ See, e.g., Gayle L. Reznik, Dave Shoffner & David A. Weaver, *Coping with the Demographic Challenge: Fewer Children and Living Longer*, 66 SOC. SEC. BULL. 4 (2007), <https://www.ssa.gov/policy/docs/ssb/v66n4/v66n4p37.html> [perma.cc]; BARRY F. HUSTON, CONG. RSCH. SERV., SOCIAL SECURITY: DEMOGRAPHIC TRENDS AND THE FUNDING SHORTFALL, i, (2019) (“[R]esearch has shown demographic factors to be one of the leading contributors to the increasing imbalance between costs and revenues.”).

¹¹⁷ See *Strengthening Social Security to Meet the Needs of Tomorrow’s Retirees: Hearing Before the Subcomm. On Soc. Sec., Pensions and Family Pol’y of the S. Comm. on Fin.*, 113th Cong. (2014) (statement of Stephen C. Goss, Chief Actuary, Soc. Sec. Admin.).

¹¹⁸ *Ratio of Social Security Covered Workers to Beneficiaries Calendar Years 1940–2013*, SOC. SEC.: SOC. SEC. HIST. <https://www.ssa.gov/history/ratios.html> [<https://perma.cc/PDR4-B4QY>] (last visited Nov. 20, 2025); *FACT Sheet*, SOC. SEC. ADMIN. <https://www.ssa.gov/news/press/factsheets/basicfact-alt.pdf> [<https://perma.cc/3U3M-ZQPH>] (last visited Nov. 20, 2025). This relationship is also referred to as “age dependency.” *Metadata Glossary*, WORLD BANK: DATA BANK, <https://databank.worldbank.org/metadataglossary/gender-statistics/series/SP.POP.DPND> [<https://perma.cc/MA2N-PBCH>] (“Age dependency ratio is the ratio of dependents—people younger than 15 or older than 64—to the working-age population—those ages 15–64.”).

¹¹⁹ *Ratio of Social Security Covered Workers to Beneficiaries Calendar Years 1940–2013*, *supra* note 118.

¹²⁰ *Gross, supra* note 115, at 113.

As this cohort continues to transition into retirement, the worker to beneficiary ratio will continue to decrease. Longer life expectancies and lower birth rates will cause the ratio to decline further, thereby expanding the existing funding deficit.¹²¹ Therefore, unless Congress takes action to immediately reduce the deficit, the Social Security Board of Trustees projects that Social Security benefits will not be payable in full on a timely basis after 2035.¹²² At that point, the trust fund would be depleted and benefits would have to be reduced or paid on a delayed schedule.¹²³ Either of these outcomes would pose tremendous financial hardship on vast numbers of retirees.

Social Security was established as a supplement to other sources of retirement income. As such, it was never intended to serve as the primary source of retirement income; however, many retirees today depend on it as their primary source of retirement income.¹²⁴ It is estimated that presently 51% of retired households rely on Social Security benefits for more than half of their total income, and 25% of retired households rely on it for 90% of their income.¹²⁵ Therefore, any reduction of Social Security benefits could trigger a substantial decline in retirement security for the large number of current and future retirees who heavily, or will heavily, rely on their Social Security benefits throughout retirement for income.¹²⁶

Although Social Security is an important source of retirement income for many retirees in the United States, the program's benefits are relatively modest by international standards. As of December 2022, the average retirement benefit provided by the Social Security program was \$1,688 per month or approximately \$20,200 per year.¹²⁷ Represented as a percentage of median earnings, this replacement rate places the United States Social Security program at 31 in a ranking of 34 developed countries' public retirement systems.¹²⁸

¹²¹ See Huston, *supra* note 116.

¹²² Summary: *Actuarial Status of Social Security Trust Funds*, Soc. Sec. Admin. 1 (updated June 2022).

¹²³ Goss, *supra* note 115, at 1–2.

¹²⁴ Martin & Weaver, *supra* note 105, at 10.

¹²⁵ Irene Dushi, Howard M. Iams & Brad Trenkamp, *The Importance of Social Security Benefits to the Income of the Aged Population*, 77 SOC. SEC. BULL., May 2017, at 2..

¹²⁶ See *id.*

¹²⁷ SOC. SEC. ADMIN.: RSCH. STAT. & POL'Y ANALYSIS, MONTHLY STATISTICAL SNAPSHOT, DECEMBER 2022, tbl. 2 (2022).

¹²⁸ Kathy Ruffing, *Social Security Benefits Are Modest by International Standards*, CTR. BUDGET & POL'Y PRIORITIES 1–2 (Dec. 4, 2013, at 02:30 ET), <https://www.cbpp.org/blog/social-security-benefits-are-modest-by-international-standards> [<https://perma.cc/B8T2-Z73D>]. See also Regina T. Jefferson, "Let Them Eat Cake": Examining United States Retirement Savings Policy through the Lens of International Human Rights Principles, 31 HARV. HUM. RTS. J. 63, 97 (2018) [hereinafter Jefferson, *Let Them Eat Cake*].

In a 2021 index prepared by Mercer and the Chartered Financial Analyst (CFA) Institute¹²⁹ which evaluated and graded 43 different government retirement systems based on adequacy, sustainability, and integrity, the United States’ Social Security system scored as low as a C+. ¹³⁰ This outcome is disturbing and elucidates the financial pressures that the United States Social Security program currently is experiencing.

Workers desiring to receive their Social Security retirement benefits early are permitted to do so after they reach age 62 and prior to attaining normal retirement age. However, the decision to take benefits early can significantly reduce an already modest retirement benefit. For example, a worker eligible for a \$1,000 monthly Social Security benefit at a full retirement age of 66 would receive only \$750 per month at age 62, or a 25% reduction.¹³¹ Presumably, the only reason individuals take Social Security benefits prior to attaining full retirement age is because they need cash immediately or because they are in poor health and do not expect to live long enough to reach the average life expectancy based on actuarial predictors.

Longer life expectancies exacerbate the impact of the reduction in benefits resulting from the decision to take Social Security benefits early. Longer lifespans mean longer retirements, and longer retirements mean that retirees’ assets must last for longer periods of time. The fact that women can expect to live approximately five years longer than men¹³² makes saving for retirement particularly challenging for female workers.¹³³ Because women live longer than men, they require more resources, and their savings need greater protection against the erosive effects of inflation during retirement than their male

¹²⁹ The Chartered Financial Analyst (CFA) Institute is a global organization that offers professional certifications for finance and investment professionals. *About CFA Institute*, CFA INST., <https://www.cfainstitute.org/about/who-we-are> [<https://perma.cc/L3SH-45GH>]. The organization’s mission is to promote the highest ethical and professional standards in the investment industry. *Id.*

¹³⁰ MERCER CFA INST. GLOB. PENSION INDEX 2021, PENSION REFORM IN CHALLENGING TIMES 5 tbl. 1 (2021)

¹³¹ See *Starting Your Retirement Benefits Early*, SOC. SEC. ADMIN., <https://www.ssa.gov/benefits/retirement/planner/agereduction.html> [<https://perma.cc/NJX4-ZT7Y>].

¹³² Based on 2021 data, the CDC estimates that the average life expectancy for a female in the United States was 79.1 years, while the average life expectancy for a male in the United States was 73.2 years. The overall average life expectancy for an individual in the United States is 76.1 years. ELIZABETH ARIAS ET AL., PROVISIONAL LIFE EXPECTANCY ESTIMATES FOR 2021, 1 (Ctrs. for Disease Control and Prevention 2022).

¹³³ Having lower average wages with longer life expectancies, women have a much higher risk that inflation will erode their retirement benefits. See Grace Enda & William G. Gale, *How does gender equality affect women in retirement?*, BROOKINGS INST. (July 2020), <https://www.brookings.edu/essay/how-does-gender-equality-affect-women-in-retirement/> [<https://perma.cc/C5ZV-XRD9>].

counterparts. However, on average, women generally receive smaller retirement benefits than men due to lower earnings and wage histories.¹³⁴

Although saving for retirement has never been easy, workers today face many more challenges than their predecessors. As discussed above, personal savings rates are low, and in the private retirement system current workers have been given more decision-making responsibilities and less protections in the private retirement system so much so that their 401(k) plans are the functional equivalent of personal savings. Thus, as 401(k) plans increasingly become more popular, the retirement system once represented by the “three-legged stool” effectively has only two legs, personal savings and Social Security, and can no longer operate as a multi-tiered program providing protection to retirees from diversified risks and markets.¹³⁵ Furthermore, the uncertainty surrounding the Social Security program compounded by longer life expectancies negatively impacts the retirement security of some of the most economically vulnerable populations.

Added to the challenges of saving adequate amounts for retirement is the increasing cost of housing. Surveys show that housing costs are the average retiree’s largest expense.¹³⁶ Therefore, preparing for housing expenses is a critical aspect of retirement planning, and owning a home can be an important way to meet and control this cost. The next section of this Article examines the important role of homeownership in American society, and it analyzes and critiques the existing distribution of homeownership and home wealth across the nation.

II. HOMEOWNERSHIP AS A SOURCE OF RETIREMENT INCOME

In preparing for retirement, workers must consider not only their incomes during retirement but also their essential expenses. A 2022 survey conducted by the Employee Benefits Research Institute showed that, on average, retirees

¹³⁴ See, e.g., Amanda Barroso & Anna Brown, *Gender Pay Gap Held Steady in 2020*, PEW RSCH. CTR. (May 25, 2021), <https://www.pewresearch.org/fact-tank/2021/05/25/gender-pay-gap-facts/> [<https://perma.cc/FQ4S-8DMS>] (finding that in 2020 women earned 84% of what men earned based on their analysis of median hourly earnings for full and part time workers); Jessica Semega et al., *Income and Poverty in the United States: 2019*, U.S. CENSUS BUREAU REP. P60-270, <https://www.census.gov/library/publications/2020/demo/p60-270.html> [perma.cc] (noting that in 2019 women earned 82.3% of what men earned based on their analysis of full time workers); Matthew S. Rutledge, Alice Zulkarnain & Sara Ellen King, *How Much Does Motherhood Cost Women in Social Security Benefits?*, CTR. RET. RSCH. B.C., 2 (Oct. 2017).

¹³⁵ See TYLER BOND & DAN DOONAN, NAT’L INST. RET. SEC., *THE GROWING BURDEN OF RETIREMENT: RISING COSTS AND MORE RISK INCREASE UNCERTAINTY* 15 (2020).

¹³⁶ BRIDGET BEARDEN, EMP. BENEFIT RSCH. INST., *2022 SPENDING IN RETIREMENT SURVEY: UNDERSTANDING THE PANDEMIC’S IMPACT* 14 fig. 13 (2022); see Tom Huddleston Jr., *Millennials and Gen Zers do want to buy homes—they just can’t afford it, even as adults*, CNBC (Jun. 12, 2022, at 09:00 ET), <https://www.cnbc.com/2022/06/12/millennials-and-gen-zers-want-to-buy-homes-but-they-cant-afford-it.html> [<https://perma.cc/6L2E-RH4A>].

currently spend approximately one-third of their monthly income on housing and housing related expenses.¹³⁷ Experts have predicted that housing costs expressed as a percentage of income will rise for both renters and homeowners because the prices for apartments and houses are increasing at unprecedented rates.¹³⁸

Nationwide, from 2017 to 2022, average rents rose by 5.77%¹³⁹, with the greatest increase of 14.07% occurring from 2021 to 2022.¹⁴⁰ Since December 2022, average rents rose by as much as 7.4%.¹⁴¹ At that time, this rate of increase was the highest pace that rents had risen in 40 years. The impact of this increase was also widespread. For example, in Manhattan, the most densely populated borough in New York City, the average monthly rent reached a record high of \$5,000; in Miami and Tampa, Florida the average rent jumped by almost 50% since before the pandemic; and nationwide, the median monthly rent increased to \$2,000 for the first time in history.¹⁴²

The cost of apartments in professionally managed properties rose even more. On average, the rent for these properties increased by as much as 11% nationally in the first quarter of 2022.¹⁴³ Depending on location, some professionally managed properties rose by rates in excess of 20% during the same period.¹⁴⁴ The cost of owner-occupied housing also soared over the last two years. Home

¹³⁷ BEARDEN, *supra* note 136.

¹³⁸ Patrick S. Duffy, *Housing Market Predictions for the Next 5 Years Promise Lots of Surprises*, U.S. NEWS & WORLD REPT. (Jan. 20, 2023), <https://web.archive.org/web/20230130193829/https://realestate.usnews.com/realestate/housing-market-index/articles/housing-market-predictions-for-the-next-5-years> [<https://perma.cc/M9CH-LSJ9>].

¹³⁹ Year over Year (“YOY”) is “used to compare financial results with those of the same period in the previous year.” *Year-over-year*, CAMBRIDGE BUS. ENG. DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/year-over-year> [<https://perma.cc/E4CE-LCVV>].

¹⁴⁰ Jennifer Brozic & Andrew Depietro, *Average rent increase in the U.S. in 2022*, CREDIT KARMA, (Oct. 20, 2022), <https://www.creditkarma.com/insights/i/average-rent-increase#average-rent-increase-over-the-years> [<https://perma.cc/6AUN-JQ32>].

¹⁴¹ *Change in Typical U.S. Monthly Rent From Last Year*, Zillow Rsch: Renting, <https://web.archive.org/web/20230306013358/https://www.zillow.com/research/renting/> [<https://perma.cc/XD2J-83D5>] (last visited Mar. 6, 2023).

¹⁴² Madeline Ngo, *Rising Rent Prices are Keeping Inflation High*, Vox (Sep. 14, 2022, 12:20pm EDT), <https://www.vox.com/policy-and-politics/2022/9/14/23351128/inflation-rent-prices-high> [<https://perma.cc/24YF-V4JP>]. It is interesting to note that studies further showed that some of the largest increases in rent prices occurred in areas where rents had plummeted in the early months of the pandemic. JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *supra* note 29, at 1. For example, apartment rents in New York fell by as much as 15% in the first quarter of 2021; however, they rose by 20% in the first quarter of 2022, resulting in a 11% net increase from 2021 to 2022. *Id.*

¹⁴³ JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *supra* note 29, at 1 (relying on data from CoStar).

¹⁴⁴ *Id.*

price appreciation nationwide reached 20.6% in March of 2022, surpassing the previous high of 20.0% in August of 2021.¹⁴⁵ This increase marks the highest jump in the three decades that this information has been kept.¹⁴⁶

Increasing prices in the housing and rental markets makes planning for housing costs more critical in retirement and financial planning than ever before. There are also significant benefits associated with homeownership that make it a very effective way of meeting some important social needs prior to and during retirement. The next sections of this Article address these benefits in greater detail and identify the barriers to homeownership that disproportionately impact certain populations.

A. *The American Dream and the Importance of Homeownership*

It is unclear who first made the connection between the American Dream and homeownership, but it is a well-established one.¹⁴⁷ According to a poll taken regarding perceptions about the American Dream, nearly 90% of those surveyed agreed that “homeownership is an important part of the American dream.”¹⁴⁸

The programs and policies that foster homeownership in the United States are extensive, reflecting the importance of homeownership in American society. Some commentators maintain that these policies, along with the tax benefits that support them, have helped to equate owning a home with citizenship in the United States.¹⁴⁹ Notwithstanding the wide range of support and tremendous cost of the existing homeownership program in the United States, achieving homeownership is increasingly unattainable for numerous underserved populations due to persisting wealth gaps, new economic barriers, and tax policies that favor high-income individuals.¹⁵⁰

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ James Truslow Adams has been credited with popularizing the phrase “American Dream” in his 1931 book, *The Epic of America*. See JAMES TRUSLOW ADAMS, *THE EPIC OF AMERICA* 415 (1931). See also JOHN KENNETH WHITE & SANDRA L. HENSON, *THE AMERICAN DREAM IN THE 21ST CENTURY*, 1–17 (2011) (providing an overview of the birth and persistence of the American Dream throughout American history).

¹⁴⁸ David Streitfeld & Megan Thee-Brenan, *Despite Fears, Owning Home Retains Allure, Poll Shows*, N.Y. TIMES (June 29, 2011); see also Gregory Schmidt, *Homeownership Remains the American Dream, Despite Challenges*, N.Y. TIMES (June 2, 2022) (finding that 74% of respondents ranked owning a home as a higher gauge of success than a career or education).

¹⁴⁹ See Anne B. Shlay, *Low-Income Homeownership: American Dream or Delusion?*, 43 URB. STUD. 3, 511–12 (2005).

¹⁵⁰ See U.S. Dep’t Hous. & Urb. Dev., *Paths to Homeownership for Low-Income and Minority Households*, EVIDENCE MATTERS, Fall 2012, at 1 [hereinafter U.S. Dep’t Hous. & Urb. Dev., *Paths to Homeownership*]; *What Can be Done Today to Expand Homeownership in Underserved Communities Despite Covid-19*, FREDDIE MAC: SINGLE FAMILY TEAM (Dec. 14, 2020), <https://sf.freddiemac.com/articles/insights/what-can-be-done-today-to-expand-homeownership-in-underserved-communities-despite-covid-19> [https://perma.cc/CHU9-QCHW].

There are significant social and financial benefits associated with homeownership for both individuals and society.¹⁵¹ Homeownership benefits individuals and their families by helping them build economic security and by providing an array of social benefits.¹⁵² In a survey sponsored by Fannie Mae, some of the most cited social reasons for individuals wanting to own a home were “a good place to raise their children, a safe place to live, more space for family, and control over one’s living space.”¹⁵³ Homeownership also helps society by fostering stable and vibrant communities, characterized by increased volunteerism, improved health, and crime reduction.¹⁵⁴

Furthermore, control over one’s living space can provide additional stability for seniors faced with the prospect of having to move out of their homes due to age-related infirmities or disabilities. According to a report issued by AARP, 90% of seniors surveyed expressed a preference for staying in their homes as they age.¹⁵⁵ Seniors who own a home, rather than rent, are more likely to age in place because they can more easily modify their homes to make them safe. For example, stair railings can be installed, wheelchair ramps can be added, and other adjustments can be made as necessary to accommodate aging household members.¹⁵⁶ Creating certainty about living arrangements reduces fear and

¹⁵¹ William M. Rohe, Shannon Van Zandt & George McCarthy, *Home Ownership and Access to Opportunity*, 17 Hous. Stud. 1, 52 (2002) (finding that homeownership generally leads to social benefits such as improved psychological and physical health, youth behaviors, civic involvement, neighborhood stability and stronger social networks); Scholastica (Gay) Cororaton, *Single-family Homeowners Typically Accumulated \$225,000 in Housing Wealth Over 10 Years*, NAT’L ASSOC. REALTORS (Jan. 7, 2022), <https://www.nar.realtor/blogs/economists-outlook/single-family-homeowners-typically-accumulated-225K-in-housing-wealth-over-10-years> [https://perma.cc/U9TQ-B2EZ] (finding that five year home price appreciation outpaces wage growth in 97% of metro areas).

¹⁵² Laurie S. Goodman & Christopher Mayer, *Homeownership and the American Dream*, 32 J. ECON. PERSPS. 1, 31, 43-50 (2018).

¹⁵³ See U.S. Dep’t Hous. & Urb. Dev., *Paths to Homeownership*, *supra* note 150.

¹⁵⁴ SOCIAL BENEFITS OF HOMEOWNERSHIP AND STABLE HOUSING 7-15 (Nat’l Assoc. Realtors 2012).

¹⁵⁵ AARP RSCH., 2021 HOME AND COMMUNITY PREFERENCES SURVEY: A NATIONAL SURVEY OF ADULTS AGE 18+ CHARTBOOK 32 (2022), https://www.aarp.org/content/dam/aarp/research/surveys_statistics/liv-com/2021/2021-home-community-preferences-chartbook.doi.10.26419-2Fres.00479.001.pdf [https://perma.cc/5T9H-PV7L].

¹⁵⁶ These accommodations for renters may be possible under the Americans with Disabilities Act (ADA) or the Fair Housing Act’s (FHA) reasonable accommodations for a disability must be made. However, renters may be unaware of their rights under FHA or may have a hard time enforcing them. See, e.g., Tyler Walicek, *Lawsuit Uncovers Chicago’s Failure to Provide Disability Protections in Housing*, TRUTHOUT (Feb. 20, 2023), <https://truthout.org/articles/lawsuit-uncovers-chicagos-failure-to-provide-disability-protections-in-housing/> [https://perma.cc/3QY2-LJJ7] (reporting on a suit against the City of Chicago for building affordable housing units that were not ADA or FHA complaint) (finding 100% of 200 developments surveyed were noncompliant and that the City of Chicago has

anxiety for many aging individuals, which can positively affect the retirement planning process.

While owning a home may have numerous social and psychological benefits, the financial benefits of homeownership cannot be overstated. One of the financial benefits of homeownership is that it can be less expensive than renting.¹⁵⁷ Even with the rising cost of housing, a 2017 study conducted by the Housing Finance Policy Center found that throughout the nation, owning a home with a mortgage is more affordable than renting.¹⁵⁸ This study showed that a family with median income, paying 3.5% down on an average cost house, spent approximately 26.8% of its income to pay the monthly mortgage.¹⁵⁹ By contrast, a family with the same income spent approximately 28.1% of its income to pay rent.¹⁶⁰

This result is in part due to the tax benefits that are afforded to homeowners.¹⁶¹ These benefits are substantial, and they effectively reduce the cost of housing for homeowners, freeing up income to be spent on other goods and services and offsetting some of the costs associated with home ownership, such as maintenance and property taxes. Because there are no comparable tax benefits for renters, renting households do not receive comparable reductions in their housing expenses.¹⁶²

Another financial benefit that homeownership provides is protection against the rising cost of rent. Historically, rent has increased at an average rate of 3% annually.¹⁶³ In recent months, however, rent has risen by amounts in excess of

never sanctioned an owner for noncompliance); SP GROUP LLC, ACCESSIBILITY IN HOUSING: FINDINGS FROM THE 2019 AMERICAN HOUSING SURVEY 4 (U.S. Dep't Hous. & Urb. Dev. 2021) ("For example, about 4 in 10 U.S. households that include a person with accessibility needs do not currently have accessibility features such as ramps, lifts, or a bedroom and full bathroom on the entry level, which are features that they might need.").

¹⁵⁷ Goodman & Mayer, *supra* note 152, at 44–50 (noting that owning a home is generally financially advantageous to renting and offers a chance to build wealth). *See also* MIKE LOFTIN, HOMEOWNERSHIP IS AFFORDABLE HOUSING . 1 (Urb. Inst Mar. 2021), https://www.urban.org/sites/default/files/publication/104214/homeownership-is-affordable-housing_0_0.pdf [<https://perma.cc/BZD4-63KY>].

¹⁵⁸ LAURIE GOODMAN ET AL., BARRIERS TO ACCESSING HOMEOWNERSHIP: DOWN PAYMENT, CREDIT, AND AFFORDABILITY 13–16 (Urb. Inst. 2017).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *See* discussion *infra* Section IV.B.

¹⁶² *See, e.g.,* Odeta Kushi, *Should you rent or buy? First American crunches the numbers*, FORTUNE (Dec. 5, 2022), <https://fortune.com/2022/12/05/housing-market-rent-or-buy-real-estate-odeta-kushi> [<https://perma.cc/SN6A-EW2Z>]; *Buying vs. Renting*, NAT'L ASSOC. REALTORS <https://www.nar.realtor/buying-vs-renting> [<https://perma.cc/TTU3-KU37>] (last visited Nov. 24, 2025).

¹⁶³ Michael Hyman, *The Impact of Financial Literacy on Homeownership: Financial Literacy Indicators*, NAT'L ASSOC. REALTORS (Mar. 4, 2019).

historical norms.¹⁶⁴ Having a fixed rate mortgage provides protection against such increases by locking in monthly payments. This allows homeowners to maintain the largest portion of their housing expenses at the same level for the duration of their mortgages. Although it is possible for property taxes and other expenses associated with homeownership to rise, the monthly housing payment, which is typically an individual’s largest monthly expense, remains the same under a fixed-rate mortgage. By locking-in the cost of their monthly housing payments, homeowners can stabilize their financial positions.¹⁶⁵ Thus, homeownership is an effective way of hedging against the effects of inflation in the rental market.¹⁶⁶

An additional financial benefit to owning a home is that it is an effective wealth building tool. The build-up of home equity allows homeowners to improve their financial positions over time.¹⁶⁷ The accumulated equity derived from owning a house is determined by two critical variables.¹⁶⁸ The first is the amount of mortgage debt associated with the house, and the second is the value of the house.¹⁶⁹ The difference in these two variables determines the amount of equity that a homeowner has. Home equity rises over time as homeowners pay their monthly mortgage amounts; when the mortgage is paid off, the equity equals the value of the home.¹⁷⁰

Home equity is currently one of the two largest sources of wealth for American households.¹⁷¹ It accounts for 27.8% of household wealth and is only surpassed by retirement plan assets, which account for 36.2% of household

¹⁶⁴ Rose Horowitch, *U.S. rents surge, leaving behind generation of younger workers*, REUTERS (Sep. 21, 2022), <https://www.reuters.com/markets/us/us-rents-surge-leaving-behind-generation-younger-workers-2022-09-21> [<https://perma.cc/7U9K-5LZ4>]. See *supra* text accompanying notes 130–136.

¹⁶⁵ See Loftin, *supra* note 157, at 8.

¹⁶⁶ Todd Sinai & Nicholas S. Souleles, *Owner-Occupied Housing as a Hedge Against Rent Risk*, 120 Q. J. ECON. 763, 785 (2005).

¹⁶⁷ Home ownership also sets future generations up for success as the homeowner passes that wealth down to the next generation. See JUNG HYUN CHOI, JUN ZHU & LAURIE GOODMAN, *INTERGENERATIONAL HOMEOWNERSHIP: THE IMPACT OF PARENTAL HOMEOWNERSHIP AND WEALTH ON YOUNG ADULT’S TENURE CHOICES* (Urb. Inst. 2018).

¹⁶⁸ Alicia Munnell, Wenliang Hou & Geoffrey T. Sanzenbacher, *How Much Does Housing Affect Retirement Security? An NRRRI Update*, 16-16 CTR. RET. RSCH. B.C., Sep. 2016, at 1.

¹⁶⁹ *Id.* (explaining that the remaining mortgage amount reduces home equity, meaning those without mortgages have greater home equity).

¹⁷⁰ Jason Fernando, *Should You Use a Home Equity Loan for Retirement Savings and Investing?*, INVESTOPEDIA (Jan. 10, 2025), <https://www.investopedia.com/should-you-use-a-home-equity-loan-for-retirement-savings-and-investing-5295526> [<https://perma.cc/TL25-N5F6>].

¹⁷¹ DONALD HAYS & BRIANA SULLIVAN, U.S. CENSUS BUREAU, *WEALTH OF HOUSEHOLDS: 2020, CURRENT POPULATION REPORTS 3*, fig. 1 (2022), <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p70br-181.pdf> [<https://perma.cc/Q29F-2Z6U>].

wealth.¹⁷² Studies comparing homeowners' wealth to that of renters' show that homeowners accumulate significantly more wealth than their renting counterparts.¹⁷³ This is the case for both low- and high-income households, although the difference is relatively smaller for low-income households.¹⁷⁴ The built-up equity in a home not only increases homeowners' net worth over their working lives but also provides an additional source of income during retirement for emergencies and targeted spending.¹⁷⁵

In addition to the financial benefits listed above, homeownership functions as a diversifying source of wealth in retirement. This is because home prices are only weakly correlated with capital markets.¹⁷⁶ Therefore, homeownership can effectively serve as a financial backstop if other investments falter.¹⁷⁷ This diversifying function is particularly important in the current retirement savings landscape, where the success of employer sponsored 401(k) plans, much like personal savings, is strongly linked to the stock market.¹⁷⁸

Also, homeownership is a form of forced savings.¹⁷⁹ Every month when homeowners pay their mortgage, a portion of the principle is paid down, and

¹⁷² *Id.*

¹⁷³ A recent study conducted by the Federal Reserve found that the median net worth of American homeowners is as much as 40 times higher than the median net worth of renters, and the median net worth of homeowners is two times the median net worth of all Americans. Neil Bhutta et al., *Changes in U.S. Family Finances from 2016 to 2019*, FED. RSRV. BULL., September 2020, at 11 tbl. 2, <https://www.federalreserve.gov/publications/files/scf20.pdf> [<https://perma.cc/8LHJ-959B>].

¹⁷⁴ Therefore, it is more efficient for households to spend their money on mortgage payments rather than the cost of monthly rent, in many cases. Daniel R. Carroll & Ross Cohen-Kristiansen, *Evaluating Homeownership as the Solution to Wealth Inequality*, FED. RSRV. BANK CLEV. (Dec. 20, 2021) <https://www.clevelandfed.org/publications/economic-commentary/2021/ec-202122-evaluating-homeownership-as-the-solution-to-wealth-inequality> [<https://perma.cc/WL34-7H8B>]; Hyman, *supra* note 163.

¹⁷⁵ Cororaton, *supra* note 28; see Adam Shell, *Why You Might Need a Home Equity Line of Credit and Why You Might Not Get One*, AARP (Apr. 12, 2022), <https://www.aarp.org/money/credit-loans-debt/info-2022/home-equity-line-credit.html> [<https://perma.cc/DFJ4-YR4U>].

¹⁷⁶ See Karl E. Case, John M. Quigley & Robert J. Shiller, *Comparing Wealth Effects: The Stock Market vs. the Housing Market*, 5 ADVANCES MACROECONOMICS 1, 17 (2005).

¹⁷⁷ Alexandre Tanzi, *US Homeowners Have a Fat Equity Cushion for Real-Estate Downturn*, BLOOMBERG: WEALTH ECON. (Nov. 3, 2022, 1:00 PM GMT) <https://www.bloomberg.com/news/articles/2022-11-03/us-homeowners-have-a-fat-equity-cushion-for-real-estate-downturn#xj4y7vzkg> [<https://perma.cc/4AH9-T4SX>]. See CHRISTOPHER E. HERBERT, DANIEL T. MCCUE & ROCIO SANCHEZ-MOYANO, HARV. UNIV., JOINT CTR. HOUS. STUD., *IS HOMEOWNERSHIP STILL AN EFFECTIVE MEANS OF BUILDING WEALTH FOR LOW-INCOME AND MINORITY HOUSEHOLDS? (WAS IT EVER?)* (2013).

¹⁷⁸ See *supra* text accompanying notes 84–87.

¹⁷⁹ See Jerusalem Demsas, *The Homeownership Society Was a Mistake*, THE ATLANTIC (Dec. 20, 2022), <https://www.theatlantic.com/newsletters/archive/2022/12/homeownership->

their home equity correspondingly increases. In this way, homeowners are forced to save rather than relying on their own discipline. However, unlike other forms of forced savings, such as non-elective retirement plans, which have been criticized by skeptics as paternalistic, most non-homeowners have the desire to purchase homes.¹⁸⁰ The most recent Aspiring Home Buyers Profile shows that as many as 87% of non-owners prefer to buy a house over renting.¹⁸¹ Therefore, homeownership is consistent with the existing preferences and values of most individuals, regardless of income.¹⁸² The savings generated through homeownership are also self-imposed. For these reasons, presumably, there would be great support for tax incentives designed to encourage homeownership among underserved populations.¹⁸³

Notwithstanding the wide appeal of homeownership across the income spectrum, the existing homeownership program favors high-income individuals and does not provide comparable incentives for low- and middle-income individuals. This is because its benefits are based on deductions rather than credits, and the program is not structured to address the impediments faced by underserved populations in purchasing a home. To correct this situation and ensure that all workers have equal access to the benefits of homeownership, both in their working lives and in retirement, it is important for policymakers to find new and better ways of fostering sustainable homeownership for underserved populations.¹⁸⁴

real-estate-investment-renting/672511/ [https://perma.cc/AN3Z-5VQD] (criticizing homeownership as an investment and describing it as “a form of forced savings”).

¹⁸⁰ Jacob Hale Russell, *The Separation of Intelligence and Control: Retirement Savings and The Limits of Soft Paternalism*, 6 WM. & MARY BUS. L. REV. 35, 35 (2015); see Paul M. Secunda, *The Behavioral Economic Case for Paternalistic Workplace Retirement Plans*, 91 INDIANA L. J. 505, 512 (2016).

¹⁸¹ NAT'L ASS'N. REALTORS, ASPIRING HOME BUYERS PROFILE 9 (2017), <https://www.nar.realtor/sites/default/files/reports/2017/2017-aspiring-home-buyers-profile-02-01-2017.pdf> [https://perma.cc/4ED8-WBFN].

¹⁸² Gregory Schmidt, *Homeownership Remains the American Dream, Despite Challenges*, N.Y. TIMES (Jun. 2, 2022). This makes homeownership different than retirement savings, for example, which are not universally desired. Thus, behavioral and tax incentives are required to encourage retirement saving. See Stephen A. Sass, *Can We Increase Retirement Saving?*, CTR.RET. RSCH. B.C., Sep. 2016, at 2–3, https://crr.bc.edu/wp-content/uploads/2016/08/IB_16-15.pdf [https://perma.cc/4DPZ-NW4A]. This is why many employers use matching to entice employees to save. *Id.*

¹⁸³ See 26 U.S.C. § 163(h)(2)(D) (permitting the deduction of mortgage interest).

¹⁸⁴ U.S. Dep't Hous. & Urb. Dev., *Paths to Homeownership*, *supra* note 150. Some commentators, however, have cautioned that the conclusion that homeowners accumulate more wealth over time than renters is not the same as saying the financial returns of homeownership exceed those of other forms of investment. They maintain that whether the returns are greater relative to other investments depends on the period that is being analyzed as well as the types of other investment that are being considered. For example, investment in a home has been shown to both lead and lag relative to many common stocks depending on the time of investment. In contrast, investment in a home generally exceeds those of safer

B. *Prevalence and Distribution of Homeownership*

The United States Government has implemented myriad policies, programs, and tax incentives in support of homeownership.¹⁸⁵ The Homestead Act of 1862, the introduction of the 30-year mortgage by Fannie Mae in 1938, and the creation of the GI Bill in 1944 are just three examples of the types of initiatives that have brought home ownership within the reach of millions of Americans.¹⁸⁶ Today, more than 63.5% of all Americans own their homes, up from 44% in 1940.¹⁸⁷ Homeownership reached an all-time high of 69% in 2004.¹⁸⁸ Since the Great Recession, however, homeownership rates have consistently declined across all income levels.¹⁸⁹

This trend has generally held constant. During the early periods of the pandemic, however, household growth outpaced projections. Much of the growth that occurred during this time was among millennials who had delayed

corporate bonds and United States government securities, at any time the comparison is being made. William C. Apgar & Zhu Xiao Di, *Housing Wealth and Retirement Savings: Enhancing Financial Security for Older Americans*, JOINT CTR. FOR HOUS. STUD. HARV., Sep. 2005, at 9.

¹⁸⁵ See President Bill Clinton, Remarks on National Homeownership Strategy (Jun. 5, 1995) (transcript available in the U.C. Santa Barbara American Presidency Project); President George W. Bush, Remarks by the President at the Signing of the American Dream Downpayment Act (Dec. 16, 2003). Fannie Mae made the 30-year fixed-rate mortgage popular in the U.S.; however, the 30-year mortgage “was not officially authorized by Congress until 1948 (for new constructions) and 1954 (for existing homes).” David Insley, *How the 30-Year Mortgage Came to Dominate the Industry*, GUARANTEED RATE AFFINITY (Sep. 3, 2021), <https://www.grarate.com/article/history-30-year-mortgage> [<https://perma.cc/KV8X-7SEZ>].

¹⁸⁶ Homestead Act of 1862, Pub. L. No. 37-64, 12 Stat. 392 (1862) (repealed 1976); National Housing Act, 12 U.S.C. § 1716 (1934); GI Bill, Servicemen’s Readjustment Act, Pub. L. No. 78-346, 58 Stat. 284 (1944). See, e.g., *Homestead Act (1862)*, NAT’L ARCHIVES: MILESTONE DOCUMENTS, <https://www.archives.gov/milestone-documents/homestead-act> [<https://perma.cc/A7ZY-2XXQ>] (describing the Homestead Act); INTEGRATED FIN. ENG’G, INC., U.S. DEP’T HOUS. & URB. DEV., EVOLUTION OF THE U.S. HOUSING FINANCE SYSTEM 5-6 (2006) (outlining the effect of the Federal Housing Agency on creating longer-term mortgages); *Servicemen’s Readjustment Act (1944)*, NAT’L ARCHIVES: MILESTONE DOCUMENTS, <https://www.archives.gov/milestone-documents/servicemens-readjustment-act> [<https://perma.cc/WPL7-LFHJ>] (noting that after bill passed veterans were responsible for buying 20% of all new homes).

¹⁸⁷ U.S. DEP’T HOUS. & URB. DEV., U.S. HOUS. MKT. CONDITIONS SUMMARY, HOMEOWNERSHIP-PAST, PRESENT, AND FUTURE (1994), <https://www.huduser.gov/periodicals/ushmc/summer94/summer94.html> [<https://perma.cc/WKT8-XE9Z>]; U.S. CENSUS BUREAU, ANNUAL HOMEOWNERSHIP RATES FOR THE UNITED STATES BY AGE GROUP: 1982–2021 (2025), <https://www.census.gov/housing/hvs/data/charts/fig07.pdf> [<https://perma.cc/9RED-T7HZ>].

¹⁸⁸ *Homeownership rate in the United States from 1990 to 2024*, STATISTA (June 2025), <https://www.statista.com/statistics/184902/homeownership-rate-in-the-us-since-2003/> [<https://perma.cc/A644-PBNT>].

¹⁸⁹ Cororaton, *supra* note 28.

living on their own until reaching their mid-thirties.¹⁹⁰ The increase in household growth among this group was attributable to numerous factors, including low unemployment, income gains from expanded unemployment benefits and stimulus payments, and the moratorium on student loan payments—all of which helped many younger adults gain the financial footing to form their own households.¹⁹¹

Notwithstanding the significant increase in household formation and homeownership rates among young adults between 2020 and 2022, this cohort’s homeownership rate is still low relative to prior generations at similar ages.¹⁹² The lower household formation and homeownership rates among the younger population suggests that there is still pent-up demand among this group that may not be met, depending on the effects of inflation, interest rates, the supply of housing, and other factors that currently present barriers to homeownership.¹⁹³ Thus, many younger individuals, unlike prior generations, may be unable to purchase homes unless economic conditions improve.¹⁹⁴

Although homeownership rates have declined in recent years, the aggregate value of owner-occupied housing in the United States has significantly increased over the last two decades.¹⁹⁵ This increase has not been evenly distributed among all income levels, however, and has disproportionately accrued to high income households.¹⁹⁶ A study conducted by the National Association of Realtors (“NAR”) that considered 917 metropolitan areas, determined that the value of owner occupied housing increased by \$8.2 trillion, or 66%, from 2010 to 2020.¹⁹⁷ Of that total increase, as much as 71% accrued to high income households; 26% to middle-income households; and only 4% to low-income households.¹⁹⁸

Not only did the aggregate value of housing not increase at the same rate for low- and middle-income households during the study period but also the rate of proportion of total homeowners for this population fell much more severely

¹⁹⁰ JOINT CTR. FOR HOUS. STUD. HARV., *supra* note 29 at 2–3. According to a study conducted by the Joint Center for Housing Studies of Harvard University, this population alone increased overall annual household growth by an additional 400,000 between 2020 and 2022. *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Baby Boomers, ranging from age 57 to 71, comprised approximately 33% of all homeowners. *Id.* This figure is twice as high compared to the percentage of Millennials, who are in the 27 to 41 age range. *Id.* Although their homeownership rates did not appreciably increase, the number of homeowners aged 65 and over increased faster than the number of younger homeowners. *See id.* at 17, 22.

¹⁹⁵ Cororaton, *supra* note 28.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

during the same time, relative to other groups.¹⁹⁹ In 2020, low-income homeowners comprised 27.2% of total homeowners, which was down from 38.1% in 2010.²⁰⁰ The proportion of middle-income homeowners also declined during the study period, dropping from 45.5% in 2010 to 43% in 2020.²⁰¹ In contrast, the proportion of high-income homeowners increased from 16.4% in 2010 to 29.8% in 2020.²⁰² This change represented an 11.1 million increase in the number of high-income homeowners.²⁰³

The ability to sustain homeownership is also related to income. A study conducted by the United States Department of Housing and Urban Development (“HUD”) showed that roughly half of low-income households lost homeownership within five years of purchasing a home.²⁰⁴ Other studies show that significant numbers of low-income homeowners are at risk of being unable to sustain homeownership beyond the first two years, due to the costs of necessary repairs and other unexpected expenses.²⁰⁵

Reports from the 2020 U.S. Census Bureau indicate that, in addition to disparities relative to income regarding ownership rates, house values, and home retention, there are similar disparities relative to race and ethnicity.²⁰⁶ In 2020, the homeownership rate for Black Americans was approximately 43%; for Hispanics it was approximately 51%; and for White non-Hispanics the rate was approximately 72%.²⁰⁷ These differences are even greater when age is factored

¹⁹⁹ *Id.*

²⁰⁰ *Id.* This is almost 44 percentage points below the rate of homeownership for high-income households. U.S. Dep’t Hous. & Urb. Dev., *Paths to Homeownership*, *supra* note 150.

²⁰¹ Cororaton, *supra* note 28. However, there was an increase of 979,143 in the number of middle-income homeowners. *Id.*

²⁰² *Id.*

²⁰³ *Id.* This same study showed from 2010 to 2020 the average rate of homeownership declined for all income groups. *Id.* The largest decline occurred during the study period among middle-income homeowners, falling 9.4% from 78.1% to 69.7%. *Id.* During the same period the homeownership rate for low-income individuals fell 2%, and for high income ones 4%. *Id.* A decline of this magnitude has not been seen since the Great Recession of 2008. *Id.*

²⁰⁴ CHRISTOPHER E. HERBERT, & ERIC S. BELSKY, U.S. DEP’T HOUS. & URB. DEV., HOMEOWNERSHIP EXPERIENCE OF LOW-INCOME AND MINORITY FAMILIES: A REVIEW AND SYNTHESIS OF THE LITERATURE 9 (2006); see U.S. Dep’t Hous. & Urb. Dev., *Paths to Homeownership*, *supra* note 150; Carolina Katz Reid, *Achieving the American Dream? A Longitudinal Analysis of the Homeownership Experiences of Low-Income Households*, 20 (Apr. 2004) (Ph.D. dissertation, Washington University).

²⁰⁵ 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 HOUS. POL’Y DEBATE 317, 317 (2011).

²⁰⁶ Brandi Snowden & Nadia Evangelou, *Racial Disparities in Homeownership Rates*, NAT’L ASS’N. REALTORS (Mar. 3, 2022), <https://www.nar.realtor/blogs/economists-outlook/racial-disparities-in-homeownership-rates> [<https://perma.cc/KEW4-6MHA>].

²⁰⁷ U.S. CENSUS BUREAU, QUARTERLY HOMEOWNERSHIP RATES BY RACE AND ETHNICITY OF HOUSEHOLDER FOR THE UNITED STATES: 1994–2024

in the calculations. Among populations under the age of 35, approximately 46% of White families own their homes as compared to 17% of Black families.²⁰⁸

There also are significant disparities in home values relative to race. Comparable homes in predominately Black neighborhoods are valued at \$48,000 less than homes in predominately White neighborhoods.²⁰⁹ However, undervaluation by appraisers of minority-owned homes has been identified as a significant factor contributing to this difference. These biases appear to reflect a longstanding practice in the housing industry that recently received a great deal of attention from the media and policymakers.²¹⁰

<https://www.census.gov/housing/hvs/data/charts/fig08.pdf> [<https://perma.cc/ENJ8-9NZV>]. See also NAT'L ASS'N. REALTORS, 2023 SNAPSHOT OF RACE AND HOME BUYING IN AMERICA 7 (2023), <https://cdn.nar.realtor/sites/default/files/documents/2023-snapshot-of-race-and-home-buying-in-the-us-03-02-2023.pdf> [<https://perma.cc/RXG4-284M>].

²⁰⁸ NEIL BHUTTA ET AL., FED. RSRV., DISPARITIES IN WEALTH BY RACE AND ETHNICITY IN THE 2019 SURVEY OF CONSUMER FINANCES, fig. 3 (2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.html> [<https://perma.cc/G9BD-9VRB>]. Homeownership rose sharply from young to middle-age, regardless of race or ethnicity; however, within each age group there are significant gaps in homeownership relative to race, with the largest gaps between White and Non-White families. *Id.*

²⁰⁹ RASHAWN RAY ET AL., BROOKINGS INST., HOMEOWNERSHIP, RACIAL SEGREGATION, AND POLICY SOLUTIONS TO RACIAL WEALTH EQUITY (Sep. 1, 2021), <https://www.brookings.edu/articles/homeownership-racial-segregation-and-policies-for-racial-wealth-equity/> [<https://perma.cc/9ZPN-JF5W>]; see LISA J. DETTLING ET AL., FED. RSRV., RECENT TRENDS IN WEALTH-HOLDING BY RACE AND ETHNICITY: EVIDENCE FROM THE SURVEY OF CONSUMER FINANCES (2017), <https://www.federalreserve.gov/econres/notes/feds-notes/recent-trends-in-wealth-holding-by-race-and-ethnicity-evidence-from-the-survey-of-consumer-finances-20170927.html> [<https://perma.cc/F92F-V4ND>].

²¹⁰ See MAUREEN YAP ET AL., NAT'L FAIR HOUS. ALL., IDENTIFYING BIAS AND BARRIERS PROMOTING EQUITY: AN ANALYSIS OF THE USPAP STANDARDS AND APPRAISER QUALIFICATIONS CRITERIA 15 (2022). The federal government has taken several measures to stem appraisal bias. In 2022, President Joe Biden placed the Secretary of Housing and Development in charge of a task force focused on eradicating discrimination in appraisals. White House, *Fact Sheet: Biden-Harris Administration Releases Action Plan to Address Racial and Ethnic Bias in Home Valuations*, Briefing Room: Statements & Releases (Mar. 23, 2022), <https://web.archive.org/web/20241025132859/https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/23/fact-sheet-biden-harris-administration-releases-action-plan-to-address-racial-and-ethnic-bias-in-home-valuations/> [<https://perma.cc/UX85-9ZLK>]. Fannie Mae and Freddie Mac, the two government-sponsored entities that buy loans from lenders and package them into investments, are in the process of implementing a change to use desktop appraisals. They cite numerous reasons for making this change, including reducing racial bias as well as alleviating a logjam that has delayed closing in some parts of the country, due to an appraiser shortage that dates back several years. News Release, Fed. Hous. Fin. Agency, FHFA Announces Two Measures Advancing Housing Sustainability and Affordability (Oct. 18, 2021), <https://www.fhfa.gov/news/news-release/fhfa-announces-two>

Obtaining an appraisal is necessary when homeowners are interested in selling their homes or using their home equity as security to borrow money. In this process, appraisals are supposed to be objective and reflect the fair market value of homes independently of the identity of the homeowners so that lenders have adequate collateral for their loans.²¹¹ However, numerous studies have shown that this is often not the case. When the homeowners are Black or Latino, appraisers often undervalue their homes.²¹²

Valuation gaps by hundreds of thousands of dollars are not uncommon.²¹³ An analysis of the home appraisal industry released by Freddie Mac²¹⁴ in September

measures-advancing-housing-sustainability-and-affordability [https://perma.cc/J6P8-DZPW].

²¹¹ *Racial and Ethnic Valuation Gaps in Home Purchase Appraisals*, FREDDIE MAC (Sep. 20, 2021), <https://web.archive.org/web/20250129232422/https://www.freddiemac.com/research/insight/20210920-home-appraisals> [https://perma.cc/J4AM-4QJ8].

²¹² JONATHAN ROTHWELL & ANDRE M. PERRY, BROOKINGS INST., BIASED APPRAISALS AND THE DEVALUATION OF HOUSING IN BLACK NEIGHBORHOODS (Nov. 17, 2021), <https://www.brookings.edu/research/biased-appraisals-and-the-devaluation-of-housing-in-black-neighborhoods/> [perma.cc]; see, e.g., Tracy Jan, *Home Values Soared During the Pandemic, Except for These Black Families*, WASH. POST (Mar. 23, 2022), <https://www.washingtonpost.com/business/2022/03/23/home-appraisal-racial-bias/> [perma.cc]; Debra Kamin, *Black Homeowners Face Discrimination in Appraisals*, N.Y. TIMES (Aug. 25, 2020) [hereinafter Kamin, *Black Homeowners Face Discrimination*], <https://www.nytimes.com/2020/08/25/realestate/blacks-minorities-appraisals-discrimination.html> [https://perma.cc/QWA9-479K]; Debra Kamin, *Remote Appraisals of Homes Could Reduce Racial Bias*, N.Y. TIMES (Mar. 21, 2022) [hereinafter Kamin, *Remote Appraisals of Homes Could Reduce Racial Bias*], <https://www.nytimes.com/2022/03/21/realestate/remote-home-appraisals-racial-bias.html> [https://perma.cc/QMR4-KRWH]; Jennifer Ludden, *The effort to diversify the field of home appraisal*, NPR (Feb. 28, 2023), <https://www.npr.org/2023/02/28/1160157734/the-effort-to-diversify-the-field-of-home-appraisal> [https://perma.cc/ZDS8-YBGZ] (“[T]oday U.S. appraisers are more than 90% white and two-thirds male. . . [R]acial bias can creep into appraisals, intended or not, and that may have devastating consequences for Black homeowners.”).

²¹³ ROTHWELL & PERRY, *supra* note 212 (“The contract price is one agreed to by the buyer and the seller. In most markets the transaction would take place as soon as that agreement was reached, but housing is different because an intermediary—usually a bank—has a stake in avoiding loans that reflect an inflated valuation of the underlying property. If Black or Latino or Hispanic buyers routinely bought homes above their ‘true’ price, this would be reflected in lower resale value. The Freddie Mac economists ruled this out, however, by observing no meaningful racial difference in purchase price for recently sold homes, after adjusting for home qualities.”); see Dorothy A. Brown, *Shades of the American Dream*, 87 WASH. U.L. REV. 329, 331, 335 (2009).

²¹⁴ ROTHWELL & PERRY, *supra* note 212 (“Freddie Mac is a government-sponsored enterprise chartered to buy mortgages from banks in order to lower the cost and increase the supply of residential loans.”).

of 2021, confirmed these trends and patterns.²¹⁵ The Freddie Mac study found that homes in minority neighborhoods were much more likely than homes in White neighborhoods to be valued below what a buyer has offered to pay.²¹⁶ The share of under-valued homes was 7.4% in majority White neighborhoods, 12.5% in majority Black neighborhoods, and 15.5% in majority Latino or Hispanic neighborhoods.²¹⁷ The New York Times reported that a Black woman saw her home appraisal value increase by as much as 40% when she removed evidence of her race, such as photographs and cultural artifacts from her house.²¹⁸

The occurrences of these valuation gaps are not restricted to minority neighborhoods. Valuation gaps are regularly reported in mixed race and predominantly White neighborhoods as well.²¹⁹ For example, in 2000, D.L. Hughley, an American actor and comedian, received an appraisal on his home for \$500,000, which was close to what he paid for it when he purchased it three

²¹⁵ *Id.*

²¹⁶ *Id.* In 2018, researchers from Gallup and the Brookings Institution published a report on the widespread devaluation of Black-owned property in the United States. ANDRE PERRY, JONATHAN ROTHWELL & DAVID HARSHBARGER, *THE DEVALUATION OF ASSETS IN BLACK NEIGHBORHOODS* 3 (Metro. Pol’y Program Brookings & Gallup, 2018), https://www.brookings.edu/wp-content/uploads/2018/11/2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf [<https://perma.cc/BX8Z-5KKC>]. The researchers discussed this report in a 2019 hearing before the House Financial Services Subcommittee in a hearing about the home appraisal industry. *See Know Your Price: The Devaluation of Residential Property in Black Neighborhoods: Hearing on H.R. 2852 Before the Subcomm. on Hous. Cmty. Dev. & Ins. of the H. Comm. Fin. Serv.*, 116th Cong. (2019) (statement of Andre M. Perry, David M. Rubenstein Fellow, Metro. Pol’y Program, Brookings Inst.), <https://docs.house.gov/meetings/BA/BA04/20190620/109685/HHRG-116-BA04-Wstate-PerryA-20190620.pdf> [<https://perma.cc/VTW2-G9RE>]. The report found that a home in a majority Black neighborhood is likely to be valued for 23% less than a near-identical home in a majority white neighborhood; it also determined this devaluation costs Black homeowners \$156 billion in cumulative losses. PERRY, ROTHWELL & HARSHBARGER, *supra* at 3.

²¹⁷ ROTHWELL & PERRY, *supra* note 212.

²¹⁸ Kamin, *Black Homeowners Face Discrimination*, *supra* note 212; *see also* Debra Kamin, *Home Appraised with a Black Owner: \$472,000. With a White Owner: \$750,000.*, N.Y. TIMES (Aug. 18, 2022), <https://www.nytimes.com/2022/08/18/realestate/housing-discrimination-maryland.html> [<https://perma.cc/S98T-UTXS>]; Vanessa Romo, *Black couple settles lawsuit claiming their home appraisal was lowballed due to bias*, NPR (Mar. 9, 2023, at 14:21 ET), <https://www.npr.org/2023/03/09/1162103286/home-appraisal-racial-bias-black-homeowners-lawsuit> [perma.cc].

²¹⁹ Kamin, *Black Homeowners Face Discrimination*, *supra* note 212 (“Many appraisers, both during the hearing and in the weeks after, defended their practice, noting that it’s their job to report on local market conditions, not set them.”). However, market conditions do not explain situations where minority owns houses are appraised for less in predominantly White neighborhoods. Whether appraisers are devaluing Black homes or entire neighborhoods, the core issue is the same.

years prior.²²⁰ Hughley added a pool and new hardwood floors after purchasing the home.²²¹ The home was located in a primarily White neighborhood in Los Angeles that had experienced a steady uptick in property values during the time Hughley owned the house. After receiving the appraisal value, Hughley's bank flagged the report and ordered a new appraisal, which came in at \$160,000 higher. The appraiser was fired, and Mr. Hughley went on to sell his home for \$770,000.²²²

These trends and results illustrate the disparate impact and distribution of benefits related to the homeownership program relative to income, age, and race in the United States. Like in the private retirement system, high-income individuals, who arguably need assistance least, disproportionately benefit from the homeownership program. Consequently, significant numbers of workers still face the prospect of having insufficient savings to sustain financial security during retirement. This is the case notwithstanding the vast amounts of revenue forgone in connection with both the homeownership program and the private retirement system. This outcome suggests that policymakers should explore ways of addressing existing impediments to homeownership as a method of providing greater retirement security for underserved populations.

The next section identifies and describes the most frequently occurring barriers to homeownership encountered by prospective homebuyers. These barriers include: the rising cost of housing, the inability to save for a down payment, and difficulties meeting the requirements for traditional financing arrangements. In many cases, these barriers prevent individuals from ever being able to purchase homes, which can ultimately impact their short- and long-term financial security. Each of these barriers is discussed in greater detail below.

III. BARRIERS TO HOMEOWNERSHIP

A. *Rising Cost of Housing*

Housing prices have been increasing at unprecedented levels.²²³ One of the reasons for the rising cost of housing is inflation. Inflation causes the cost of

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *U.S. Home Price Insights—February 2023*, CORELOGIC (Feb. 7, 2023) [hereinafter, *U.S. Home Price Insights*], <https://web.archive.org/web/20250319050833/https://www.corelogic.com/intelligence/u-s-home-price-insights-february-2023/> [https://perma.cc/R4X3-8YZP]. This includes distressed sales as well. In March 2022, the appreciation in home prices climbed to 20.6%. JOINT CTR. HOUS. STUD. HARV. UNIV., *supra* note 29, at 9. In August of 2021 it reached a high of 20.0%. JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *supra* note 29 at 1. House prices nationwide increased year-over-year by 6.9% from 2021 to 2022. This rate of increase in housing prices represents the greatest change in housing cost that has occurred in the three decades for which such information has been recorded. *Id.*

housing to rise in the same way that it causes the price of goods and services to rise.²²⁴ Over the twelve-month period from April 2022 to April 2023, the Consumer Price Index (CPI) was 5%.²²⁵ However, the increase in the cost of housing for this same period far exceeded this percentage.

The increase in housing prices is widespread and has not been limited to specific geographic areas.²²⁶ From 2021 to 2022, 67 of the top 100 housing markets in the United States experienced record high appreciation.²²⁷ In the remaining 33 major markets, home prices increased by at least 9%, which also exceeded the CPI for that period.²²⁸

Numerous variables have contributed to the increasing cost of housing. There have been severe constraints on supply in the housing market coupled with significant increases in demand.²²⁹ This combination has helped to drive high prices.²³⁰ New construction is one of the easiest ways to add to supply; however, during the pandemic, new construction was curtailed by rising labor costs and building material prices.²³¹ This situation was exacerbated by chronic labor shortages as well as restrictive local land use regulations that made it difficult for developers to build modestly priced housing.²³² Some experts have warned that these conditions are not likely to change in the near future, explaining that “[h]ousing construction is not increasing at the level needed to combat the shortage.”²³³

²²⁴ JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *supra* note 29, at 38. *See also Median Sales Price of Houses Sold for the United States*, FED. RSRV. ST. LOUIS (July 24, 2025), <https://fred.stlouisfed.org/series/MSPUS> [perma.cc].

²²⁵ *Consumer Price Index Summary*, BUREAU LABOR STAT. (Apr. 12, 2023), <https://www.bls.gov/news.release/cpi.nr0.htm> (noting a 5% increase overall since April 2022) [perma.cc]. The CPI measures the percentage change in the price of goods and services that are consumed by households.

²²⁶ JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *supra* note 29, at 1.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Also, the inventory of existing homes for sale reached a low point in 2022. *Id.*

²³⁰ *Id.* at 6. *See also* Elliot Anenberg & Daniel Ringo, *Housing Market Tightness During COVID-19: Increased Demand or Reduced Supply?*, FED. RSRV. (July 8, 2021), <https://www.federalreserve.gov/econres/notes/feds-notes/housing-market-tightness-during-covid-19-increased-demand-or-reduced-supply-20210708.html> [perma.cc]; Jared Bernstein et al., *Alleviating Supply Constraints in the Housing Market*, WHITE HOUSE: COUNCIL ECON. ADVISORS (Sep. 1, 2021), <https://www.whitehouse.gov/cea/written-materials/2021/09/01/alleviating-supply-constraints-in-the-housing-market/> [perma.cc].

²³¹ JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *supra* note 29, at 2. Even rental vacancies in professionally managed apartments rates also reached a low during this same period. *Id.*

²³² *Id.*

²³³ TJ Porter, *How Interest Rates and Economic Factors Impact Housing*, BANKRATE (Dec. 19, 2022), <https://www.bankrate.com/real-estate/interest-rates-housing/> [perma.cc]. *See also* Jacqueline Ganun, *The U.S. Needs More Homes, But Builders May Be Slowing Construction*, NPR (Jun. 15, 2022), <https://www.npr.org/2022/06/15/1105240933/the-us-needs-more->

An aggressive movement of investors into the single-family home market also has contributed to the lack of availability of median-priced houses and to rising home prices.²³⁴ Investors increasingly are purchasing lower and moderately priced homes to upgrade for resale or to convert to rentals.²³⁵ In 2021, investors purchased as many as 19% of the single-family homes on the market, as compared to 16% between 2017 and 2019.²³⁶ This pattern has significantly reduced the already limited supply of homes that would appeal to first-time and middle-income buyers.²³⁷

Another factor reducing the number of available houses for owner-occupants has been the rising sales of second homes and vacation properties.²³⁸ The Redfin Second Home Demand Index reports that in mid-2020, the demand for second homes increased by more than 80%, which significantly outpaced the demand for primary homes. Since the beginning of the pandemic in March of 2020, the demand for these properties has remained high and above pre-pandemic levels.²³⁹ Although this trend has primarily occurred in rural areas, it has impacted the overall supply of housing.²⁴⁰

Additionally, higher interest rates have affected the cost of housing. Since December 2021, the Federal Reserve has raised interest rates multiple times in efforts to curb inflation.²⁴¹ However, higher interest rates make the cost of borrowing money more expensive, and prospective homebuyers are negatively impacted when this happens. To numerically illustrate the impact of increasing interest rates on the cost of housing, consider a \$250,000 fixed mortgage. At a 4% fixed interest rate, this mortgage would cost the homebuyers \$1,193 per

homes-but-builders-may-be-slowing-construction [perma.cc]; Chris Arnold, *There's Never Been Such a Severe Shortage of Homes in the U.S. Here's Why*, NPR (Mar. 29, 2022, at 07:00 ET), <https://www.npr.org/2022/03/29/1089174630/housing-shortage-new-home-construction-supply-chain> [https://perma.cc/EMC7-UA7P]. Simply put, prices fall when more houses are available; prices rise when more people want houses.

²³⁴ JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *supra* note 29, at 2 (using data from report prepared by Core Logic, which provides housing and financial analytics).

²³⁵ In September 2021, investors purchased 29% of the homes in the bottom third of area sales prices, as compared with 23% of homes in the top third. JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *supra* note 29, at 12.

²³⁶ *Id.* at 2.

²³⁷ *Id.* at 12.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Taylor Tepper, *Federal Funds Rate History 1990 to 2025*, FORBES ADVISOR, <https://www.forbes.com/advisor/investing/fed-funds-rate-history/> [https://perma.cc/56QV-M5MN] (last visited Nov. 11, 2025) (showing seven rate increases before 2023 on Mar. 17, 2022, May 5, 2022, Jun. 16, 2022, Jul. 27, 2022, Sep. 21, 2022, Nov. 2, 2022, and Dec. 14, 2022).

month; whereas the same mortgage at 6% would cost \$1,498.²⁴² Expressing this difference as a percentage, a 2.0% increase in interest rates is equivalent to a 27% increase in home prices.²⁴³

Rising interest rates, in combination with rising prices, have also raised the minimum income needed to qualify for a traditional mortgage.²⁴⁴ As a result, the income required to purchase an average-priced house has increased from \$79,600 in April 2021 to \$107,600 in April 2022.²⁴⁵ This change alone effectively priced nearly four million prospective buyers out of the housing market.²⁴⁶ It can be expected that this development will have long-term effects with many prospective buyers either being unable to qualify for as large of a traditional mortgage as they would have previously, or they will be unable to afford a traditional mortgage at all.²⁴⁷

Thus, the combination of inflation, a limited supply of houses, and rising interest rates have driven up the cost of housing. As a result, an increasing number of Americans say that the availability of affordable housing is a major problem in their local communities. In a survey conducted by the Pew Research Center in October 2021, approximately 49% of people surveyed said affordable housing was a problem.²⁴⁸ This number was up from 39% in 2018.²⁴⁹ In a similar study conducted in 2021, approximately 70% of those surveyed said that they believed young adults today have a more difficult time buying homes than their parents did a generation ago.²⁵⁰

This situation has helped to create a pressing housing affordability crisis that affects people with the lowest incomes most. Rising house prices, however, are not the only obstacles that low- and middle-income individuals encounter when

²⁴² Kiah Treece, *Mortgage Calculator: Estimate Your Home Loan Payments*, FORBES ADVISOR, <https://www.forbes.com/advisor/mortgages/mortgage-calculator/> [<https://perma.cc/QR9C-C8NK>] (last visited Nov. 11, 2025).

²⁴³ JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *supra* note 29, at 3.

²⁴⁴ *See infra* Section III.B.

²⁴⁵ JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., *supra* note 29, at 4.

²⁴⁶ *Id.*

²⁴⁷ Low interest rates can offset rising home costs. Between 2021 and 2022, interest rates were historically low. JOINT CTR. HOUS. STUD. HARV. UNIV., *supra* note 29, at 3. Although home prices rose sharply during this time, lower interest rates “h[eld] down monthly mortgage payments.” *Id.* at 3. This effect made it possible for many individuals, as many as 2.2 million, to become new homeowners, despite rising prices. *Id.*

²⁴⁸ Katherine Schaeffer, *A growing share of Americans say affordable housing is a major problem where they live*, PEW RSCH. CTR. (Jan. 18, 2022), <https://www.pewresearch.org/fact-tank/2022/01/18/a-growing-share-of-americans-say-affordable-housing-is-a-major-problem-where-they-live/> [<https://perma.cc/K7RS-FMDH>].

²⁴⁹ *Id.*

²⁵⁰ Katherine Schaeffer, *Key facts about housing affordability in the U.S.*, PEW RSCH. CTR. (Mar. 23, 2022) [hereinafter *Key Facts About Housing Affordability*], <https://www.pewresearch.org/fact-tank/2022/03/23/key-facts-about-housing-affordability-in-the-u-s/> [<https://perma.cc/PZ28-WT2J>].

attempting to buy a home. Qualifying for a traditional home mortgage is another barrier with which prospective buyers must contend.

B. *Satisfying the Requirements for a Traditional Mortgage*

Most individuals in the United States require mortgages to purchase their homes; however, many low- and middle-income individuals fail to qualify for “traditional mortgages” under existing standards.²⁵¹ As a result, many of these households are forced to turn to the use of alternative financing arrangements that typically are more risky, more costly, and subject to fewer consumer protections and regulatory oversight than are “traditional mortgages.”²⁵² Therefore, removing or minimizing existing barriers to traditional financing is an essential step in increasing opportunities for homeownership among underserved populations. The following sections focus on two requirements that often prevent members of underserved populations from qualifying for traditional mortgages: having a down payment and obtaining favorable credit scores.

1. A More Stringent Down Payment Requirement

Saving for a down payment is a significant barrier that many low- and middle-income borrowers encounter when attempting to qualify for a traditional home mortgage. Households that desire homeownership must have sufficient liquid assets to satisfy the down payment requirements. Down payments serve multiple purposes for lenders. They provide a cushion against credit losses in the event of default, and they demonstrate that the prospective borrower is prepared for homeownership.²⁵³ Furthermore, the ability to save for a down payment suggests to the lender that the prospective borrower is more likely to save for other purposes, including home maintenance and repairs.²⁵⁴ Thus, having a cash down payment is important in securing a traditional mortgage to

²⁵¹ Ryan Canavan, Tara Roche & Rachel Siegel, *Millions of Americans Have Used Risky Financing Arrangements to Buy Homes*, PEW CHARITABLE TRUSTS (May 23, 2022), at 8, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/04/millions-of-americans-have-used-risky-financing-arrangements-to-buy-homes> [<https://perma.cc/3GA4-NJQP>].

²⁵² *Id.* at 1. The term “traditional mortgage” used in this context, refers to agreements that generally involve a third-party lender who has no interest, prior or otherwise, in the property that is being purchased, except for the underlying loan. Under such agreements, all the terms of the loan are required to comply with applicable federal and state regulations and protections.

²⁵³ U.S. DEP’T HOUS. & URB. DEV., LITERATURE REVIEW: THE CREDIT ENHANCING FUNCTIONS OF DOWNPAYMENT AND DOWNPAYMENT SUBSTITUTES, 1 (2017) [hereinafter U.S. THE CREDIT ENHANCING FUNCTIONS OF DOWNPAYMENT AND DOWNPAYMENT SUBSTITUTES] <https://www.huduser.gov/portal/sites/default/files/pdf/Downpayment-LitReview.pdf> [<https://perma.cc/G7EK-P7LK>].

²⁵⁴ *Id.*

purchase a home, and the inability to save for one excludes many potential borrowers from entering the housing market.²⁵⁵

With the supply of houses falling and house prices and interest rates continuing to rise, the requirements for obtaining a traditional mortgage have become much more burdensome.²⁵⁶ The down payment that a first-time home buyer is required to make for an average priced home generally is 7% of the sale price.²⁵⁷ Therefore, based on the current prices for a median-priced home of approximately \$391,000, buyers today would need \$27,400 for a down payment.²⁵⁸ This requirement alone rules out 92% of renters, whose median savings are only \$1,500.²⁵⁹

Not having cash down payments has been shown to be the most critical barrier to homeownership that prospective buyers face, especially for first-time homebuyers and low- and moderate-income households.²⁶⁰ According to a study conducted by the Urban Institute, renters viewed the inability to save for a down payment as one of the leading obstacles that they faced in purchasing a home.²⁶¹ More than 50% of renters surveyed in a study conducted by the Housing Finance Policy Center (HFPC) indicated that they chose to rent because they could not afford a down payment.²⁶² Another study conducted by the United States Department of Housing and Urban Development shows that a lack of wealth, which directly affects a borrower’s ability to save for a down payment, poses a higher barrier to homeownership than having low income or a poor credit history.²⁶³

For these reasons, it is not uncommon for underwriters to permit prospective homeowners to obtain funds from third-party sources to meet their down payment requirements. One of the most common sources tends to be gifts from family members.²⁶⁴ Other common sources are seller-funded down payment assistance, and nonprofit and government agency grants.²⁶⁵ A study conducted

²⁵⁵ *Id.*

²⁵⁶ *See supra* Section III.A.

²⁵⁷ JOINT CTR. HOUS. STUD. HARV. UNIV., *supra* note 29, at 4.

²⁵⁸ *See id.*

²⁵⁹ *Id.*

²⁶⁰ THE CREDIT ENHANCING FUNCTIONS OF DOWNPAYMENT AND DOWNPAYMENT SUBSTITUTES, *supra* note 253, at 17–18.

²⁶¹ LAURIE GOODMAN ET AL., *supra* note 158, at 2.

²⁶² *Id.*

²⁶³ CHRISTOPHER E. HERBERT ET AL., U.S. DEP’T OF HOUS. & URB. DEV., HOMEOWNERSHIP GAPS AMONG LOW-INCOME AND MINORITY BORROWERS 14 (Mar. 2005) (compiling research that shows lack of wealth is the most important barrier to homeownership); *see* Irina Barakova et al., *Does Credit Quality Matter for Homeownership?*, 12 J. HOUS. ECON. 318, 332 (2003), (finding the wealth constraint is the largest barrier to homeownership above credit quality).

²⁶⁴ DR. JESSICA LAUTZ ET AL., 2022 PROFILE OF HOMEBUYERS AND SELLERS 7 (Nat’l Assoc. Realtors, 2022) (finding 22% of first-time buyers used a gift to finance the down payment).

²⁶⁵ THE CREDIT ENHANCING FUNCTIONS OF DOWNPAYMENT AND DOWNPAYMENT SUBSTITUTES, *supra* note 253, at 17–18.

by GAO regarding Federal Housing Administration (FHA)-insured loans “showed that 55% of FHA-insured loans had some form of down payment assistance.”²⁶⁶

Numerous states currently sponsor low-down payment and down payment assistance programs that provide grants and loans to potential homeowners.²⁶⁷ Although these programs are helpful, they alone cannot solve the problem nationwide. The structure and benefits of these programs are not standard the eligibility requirements that lenders impose can vary significantly from state to state, and many potential borrowers are unaware that this form of assistance is available to them.²⁶⁸ Furthermore, the costs for these programs varies significantly depending on where taxpayers reside, and not all lenders offer such programs.²⁶⁹ As a result, similarly situated borrowers in different geographic areas are currently treated very differently.²⁷⁰ Therefore, the status quo does not adequately address the challenges that many potential borrowers encounter in saving for a down payment.

To better assist low- and middle-income taxpayers nationwide in overcoming some of the impediments that they face in attaining and maintaining homeownership, multiple bills recently have been introduced. One such bill is the Down Payment Toward Equity Act.²⁷¹ This legislation establishes a grant program to provide down payment and other home purchase assistance to underserved populations.²⁷² The Act proposes to pay up to \$25,000 cash to eligible home buyers to assist with their down payments or to offset their expenses for closing costs, taxes, and interest.²⁷³ These funds could also be used

²⁶⁶ See *id.* at 18.

²⁶⁷ See Tara Siegel Bernard & Ron Lieber, *Your 2023 Guide to Low-Down-Payment Mortgages*, N.Y. TIMES (Jan. 1, 2023), <https://www.nytimes.com/2023/01/01/your-money/low-down-payment-mortgages.html> [<https://perma.cc/P9ZN-6BYS>]; see *HomeOne*, FREDDIE MAC, <https://sf.freddiemac.com/working-with-us/origination-underwriting/mortgage-products/home-one> [<https://perma.cc/9WE2-NPCH>] (allows qualified first-time buyers to finance a mortgage with a down payment of 3%); *Single Family Housing Direct Home Loans*, U.S. DEP'T AGR., <https://www.rd.usda.gov/programs-services/single-family-housing-programs/single-family-housing-direct-home-loans#overview> [<https://perma.cc/S96M-2WAU>] (assists low-income home buyers in eligible rural areas to finance their home with no down payment); *American Dream Mortgage*, U.S. BANK, <https://www.usbank.com/home-loans/mortgage/american-dream-mortgage.html> [<https://perma.cc/9K2U-U27K>] (provides 3% down payments and some assistance funds).

²⁶⁸ See LAURIE GOODMAN ET AL., *supra* note 158, at VI, 2.

²⁶⁹ See *id.* (“There are 2,144 active programs across the country, and 1,295 agencies and housing finance agencies offering them at the local, state, and national levels.”).

²⁷⁰ See *id.* (“Eligibility for down payment assistance programs is determined by such factors as loan amount, homebuyer status, borrower income, and family size.”).

²⁷¹ Downpayment Toward Equity Act of 2021, H.R. 4495, 117th Cong. (2021).

²⁷² *Id.*

²⁷³ *Id.*

for pre-occupation home modifications to accommodate eligible buyers or members of their household with disabilities.²⁷⁴

Another bill introduced by lawmakers was the First-Time Homebuyer Act of 2021, which grants first-time home buyers up to \$15,000 in refundable federal tax credits.²⁷⁵ The bill provides that all eligible first-time home buyers would automatically receive a tax credit, with no action beyond filing a tax return required by the homeowner.²⁷⁶ Because the credit is refundable, taxpayers with tax liabilities less than \$15,000 would receive the difference via direct deposits.²⁷⁷

Together, these two bills create a forty-thousand-dollar incentive for eligible individuals who want to buy their first home.²⁷⁸ Neither of these bills, however, has yet become law. Therefore, policymakers should continue to search for ways to assist otherwise qualified potential homebuyers in meeting the lender’s increasingly stringent down payment requirements.²⁷⁹

²⁷⁴ *Id.*

²⁷⁵ First-Time Homebuyer Act of 2021, H.R. 2863, 117th Cong. (2021).

²⁷⁶ CONG. REP. SERV., Bill Summary, First-Time Homebuyer Act of 2021, H.R. 2863, 117th Cong. (2021), (“This bill modifies the first-time homebuyer tax credit. Specifically, it increases the allowable dollar amount of the credit from \$8,000 to \$15,000, revise the income formula for determining the maximum allowable credit, replaces the limitation on the credit based on purchase price (currently \$800,000) with a limitation based on area median purchase price, and revises rules relating to recapture of the credit and to members of the Armed Forces.”).

²⁷⁷ A refundable tax credit can lower the amount of tax a taxpayer owes and refund the taxpayer back if the credit is more than what the taxpayer owes. *Refundable Tax Credits*, IRS (Aug. 25, 2025), <https://www.irs.gov/credits-deductions/individuals/refundable-tax-credits> [<https://perma.cc/AQ4E-TS26>].

²⁷⁸ See First-Time Homebuyer Act of 2021, H.R. 2863, 117th Cong. (2021); Downpayment Toward Equity Act of 2021, H.R. 4495, 117th Cong. (2021).

²⁷⁹ Formalized down payment assistance programs are a useful source of funds for households who desire homeownership but lack down payment savings. Christopher E. Herbert & Winnie Tsen, *The Potential of Downpayment Assistance for Increasing Homeownership Among Minority and Low-Income Households*, 9(2) CITYSCAPE 153, 175 (2007). However, some critics have expressed concern that mortgages associated with down payment assistance programs suffer from a lack of investment by the borrower, which is made manifest by higher rates of default and other shortcomings. Michael Stegman, *How the Presence and Type of Down Payment Assistance Affects the Performance of Affordable Mortgage Loans*, JOINT CTR. HOUS. STUD. HARV. UNIV. (Oct. 28, 2019), <https://www.jchs.harvard.edu/blog/how-the-presence-and-type-of-down-payment-assistance-affects-the-performance-of-affordable-mortgage-loans> [<https://perma.cc/JV8W-C2ZP>]. Some studies have shown that borrowers who make down payments using their own savings are significantly less likely to default than borrowers whose down payments come from relatives, government agencies, or nonprofits. THE CREDIT ENHANCING FUNCTIONS OF DOWNPAYMENT AND DOWNPAYMENT SUBSTITUTES, *supra* note 253, at 18. While the most effective way to provide down payment assistance to low-income households is debatable, the fact that there is a need for such assistance is not. As was noted earlier, when prospective

2. A More Stringent Credit Score Requirement

Having a favorable credit score also is an important factor in securing a traditional mortgage to purchase a home. Credit scores are used by lenders to measure the likelihood that borrowers will pay back the funds they owe.²⁸⁰ Although there are numerous types of credit scores used for this purpose, FICO scores are the industry standard, ranging from 300 to 850.²⁸¹ The higher the score, the more likely it is that the loan will be approved. Lenders rely on credit scores not only to determine whether to approve the loan applications of prospective borrowers but also to determine the rates of interest that they charge the borrowers.²⁸²

Multiple factors are considered in calculating an individual's credit score. These factors include: payment history, the amount of debt owed by the individual, how long the person has been using credit, whether the credit account is for a new or recent purchase, and the type of credit previously used by the borrower.²⁸³ Each variable is counted and weighed differently, with payment history being the most heavily considered.²⁸⁴

buyers fail to meet the requirements of a traditional mortgage, such as having the required down payment, they are driven out of the housing market completely, or they are forced to use riskier and less cost-efficient alternative financing arrangement, which may prevent homeowners from retaining their home or fully capitalizing on the built-up equity. Canavan, Roche & Siegel, *supra*, note 251, at 4.

²⁸⁰ *What is a FICO Score?*, CONSUMER FIN. PROT. BUREAU (Sep. 5, 2025), <https://www.consumerfinance.gov/ask-cfpb/what-is-a-fico-score-en-1883/> [<https://perma.cc/U497-GGNBf>].

²⁸¹ *Id.* ("FICO stands for the Fair Isaac Corporation . . . FICO was a pioneer in developing a method for calculating credit scores based on information collected by credit reporting agencies."). The scores are grouped into five categories: Poor (less than 580); Fair (580 to 669); Good (670 to 739); Very Good (740 to 799); and Exceptional (800 to 850). Kiah Treece & Jordan Tarver, *What is a FICO Score, and Why Should You Care?*, FORBES: ADVISOR (Dec. 17, 2021), <https://www.forbes.com/advisor/credit-score/what-is-a-fico-score/> [<https://perma.cc/L2BK-MRGM>].

²⁸² *FICO® Score, The Score That Matters®*, MYFICO: EDUC. <https://www.myfico.com/credit-education/fico-scores-bridge> [<https://perma.cc/AF6X-F945>] (last visited Nov. 14, 2025). Today, more than 90% of top lenders use FICO Scores to make their lending decisions. *Id.* Scores use unique algorithms to calculate credit risks based on the information contained in the credit report. *Id.* Although other companies often design their credit scores to look like a FICO score, the mathematical formulas that they use can vary significantly. See Rebecca Lake, *FICO Score vs. Other Credit Scores*, INVESTOPEDIA (Feb. 20, 2023), <https://www.investopedia.com/fico-score-vs-credit-score-5214435> [<https://perma.cc/6BYK-QLBJ>].

²⁸³ There are three main national credit bureaus used to collect the data for borrowers' credit report: Experian, Transunion, and Equifax. Lake, *supra* note 282.

²⁸⁴ A person's credit history is weighted 35%, amounts owed are weighted 30%, length of credit history is weighted 15%, new credits accounts are weighted 10%, and the types of credit used are weighted 10%. *Id.* Additionally, the national credit score requirements have tightened by historical standards. LAURIE GOODMAN ET AL., *supra* note 158, at 10. The national median

Since the 2008 financial crisis, the median credit score for new purchase mortgages has steadily risen. Prior to the financial crisis, the median credit score for purchases was 692, while the median credit score for purchases in 2022 was 768.²⁸⁵ In 2017, 23% of borrowers had credit scores below 700.²⁸⁶ Borrowers with credit scores below the median have difficulty obtaining a mortgage.²⁸⁷ Thus, requiring high credit scores prevents many potential homebuyers from obtaining mortgages.

As could be expected, the trend of increasing required median scores burdens certain segments of the population more than others.²⁸⁸ For instance, there is a moderate correlation between income and credit score.²⁸⁹ Lower income earners tend to have lower credit scores, and higher income earners tend to have higher credit scores.²⁹⁰ This is the case even though low income does not necessarily

credit score for new mortgages currently is 768. CTR. FOR MICROECONOMIC DATA, FED. RSRV. BANK N.Y., QUARTERLY REPORT ON HOUSEHOLD DEBT AND CREDIT, (2022). This score reflects an increase of over 20 points over the past decade and has prevented many potential homebuyers from obtaining mortgages. LAURIE GOODMAN ET AL., *supra* note 158, at 8. These developments and trends collectively have created greater financial barriers for potential buyers, particularly first-time and middle-income home buyers.

²⁸⁵ CTR. FOR MICROECONOMIC DATA, *supra* note 284, at V (stating in 2017 that “the median credit score of new purchase mortgage originations has increased considerably in the postcrisis period. The median credit score for purchase mortgages is 779, compared with the precrisis median of 692”); LAURIE GOODMAN ET AL., *supra* note 158, at 10 (stating that in 2022 “[t]he median credit score of newly originated mortgages declined again, to 768”).

²⁸⁶ LAURIE GOODMAN ET AL., *supra* note 158, at 10 (“[T]he share of borrowers with LTV ratios greater than 95 percent and credit scores below 700 is 23 percent.”).

²⁸⁷ *Id.* at V, 8. Although the credit scores required by the Federal Housing Administration (FHA) have traditionally been lower than those used by other lending institutions, they are still too high for some potential borrowers. *Id.*; *see infra* text accompanying notes 490–96.

²⁸⁸ RACHAEL BEER, FELICIA IONESCU & GENG LI, FED. RSRV., ARE INCOME AND CREDIT SCORES HIGHLY CORRELATED? (2018), <https://www.federalreserve.gov/econres/notes/feds-notes/are-income-and-credit-scores-highly-correlated-20180813.html>

[<https://perma.cc/79W6-DPZ2>]. The FHA currently requires a credit score of 580 for minimum 3.5% down payments but this is still much too high for some potential borrowers and disproportionately burdens certain segments of the borrowing population. *See* LAURIE GOODMAN ET AL., *supra* note 158. *See infra* text accompanying notes 490–496.

²⁸⁹ BEER ET AL., *supra* note 288.

²⁹⁰ *Id.* A survey released by the Consumer Federation of America and VantageScore Solutions, LLC showed that low-income households are more “likely to apply for credit in the next 12 months”; yet the survey revealed that these households generally knew much less about credit scores than households with higher income. Elizabeth Gravier, *Many consumers don’t understand these 5 basic credit score concepts, survey says*, CNBC SELECT (Jan. 31, 2023), <https://www.cnbc.com/select/cfa-and-vantagescore-consumer-credit-survey-results/> [<https://perma.cc/9FMW-ZM XR>].

indicate high risk.²⁹¹ There is also a strong correlation between age and credit scores.²⁹² Young adults have the lowest average credit score of any group in the country, with the 18- to 26-year-old population having the lowest.²⁹³ This group's average FICO score is as much as 37 points lower than the average overall credit score.²⁹⁴

One of the most significant challenges that low-income and young borrowers face in obtaining favorable credit scores is establishing a credit history.²⁹⁵ The most effective way to establish a credit history is to have a credit card and to pay the credit card bill on time. However, obtaining a credit card with limited income can be difficult.²⁹⁶ Also, individuals with low incomes, especially younger ones, are often given lower credit limits, which makes it less likely for them to keep their credit utilization low. As a rule, high utilization will negatively impact an individual's credit score.²⁹⁷ For example, if the limit on a credit card is \$1,000, "charging a few hundred dollars" would be problematic, as it places the borrower close to the limit.²⁹⁸

Also, it is not uncommon for low-income households to have different spending patterns than higher-income households. These differences have been shown to adversely affect the credit scores of low-income individuals. For example, low-income households often pay rent rather than a mortgage.²⁹⁹ They

²⁹¹ See BEER ET AL., *supra* note 288; Kartik Athreya, Xuan S. Tam & Eric R. Young, *A Quantitative Theory of Information and Unsecured Credit*, 4 AM. ECON. J.: MACROECONOMICS 153 (2012).

²⁹² LUCAS NATHE, FED. RSRV., DOES THE AGE AT WHICH A CONSUMER GETS THEIR FIRST CREDIT MATTER? CREDIT BUREAU ENTRY AGE AND FIRST CREDIT TYPE EFFECTS ON CREDIT SCORE, (2021), <https://www.federalreserve.gov/econres/notes/feds-notes/does-the-age-at-which-a-consumer-gets-their-first-credit-matter-20210715.html> [<https://perma.cc/7P6B-PRX5>].

²⁹³ *Average Credit Scores by Age, State, and Income*, AM. EXPRESS (Dec. 21, 2022), <https://www.americanexpress.com/en-us/credit-cards/credit-intel/credit-score-by-age-state/> [<https://perma.cc/96ZR-E8BA>] (finding 18 to 26-year-olds have an average credit rating of 680).

²⁹⁴ *Id.*

²⁹⁵ NATHE, *supra* note 292.

²⁹⁶ See Lyle Daly, *Why Young Adults Have the Lowest Average Credit Score*, MOTLEY FOOL: THE ASCENT (Nov. 10, 2021), <https://www.fool.com/the-ascent/credit-cards/articles/why-young-adults-have-the-lowest-average-credit-score/> [<https://perma.cc/5WRP-KUJK>].

²⁹⁷ Credit utilization is defined as a measure of the amount of available credit that an individual has used, expressed as a percentage of their total credit limit. *What is Amounts Owed?*, MYFICO:CREDIT EDUCATION <https://www.myfico.com/credit-education/credit-scores/amount-of-debt> [<https://perma.cc/VV7L-2ZNP>] (last visited Nov. 20, 2025); see *id.*

²⁹⁸ Daly, *supra* note 296.

²⁹⁹ Schaeffer, *Key Facts About Housing Affordability*, *supra* note 250.

may also make day care payments instead of credit card payments.³⁰⁰ Until recently, non-traditional measures of repayment such as these were not counted for the purpose of calculating a credit score.³⁰¹ Therefore, even when payments for rent were made on a timely basis, they were generally not considered in the calculation of a credit score.³⁰² This omission significantly disadvantages low-income individuals in the credit scoring process.

While race is not an explicit factor in the credit system, studies show that race also correlates with individuals' credit scores and approval rates.³⁰³ Surveys show that Black and Hispanic Americans often have lower credit scores than do White Americans.³⁰⁴ Also, according to a report issued by the Federal Reserve, Black and Hispanic Americans are less likely to be approved for credit than White and Asian Americans.³⁰⁵

From the 1930s through the 1960s, numerous federal policies existed that refused to insure home loans for Black Americans.³⁰⁶ This explains why 98% of the loans that were approved during that time were awarded to White Americans.³⁰⁷ Although the Fair Housing Act of 1968 and the Equal Credit Opportunity Act of 1974 eliminated these overt racial and socioeconomic biases

³⁰⁰ See LIANA CHRISTIN LANDIVAR ET AL., WOMEN'S BUREAU, U.S. DEP'T OF LAB, CHILDCARE PRICES IN LOCAL AREAS 8 (2023) (noting that families living under the poverty rate spent 30% of their income on childcare).

³⁰¹ Press Release, Fannie Mae, Fannie Mae Launches Rent Payment Reporting Program to Help Renters Build Credit, (Sep. 27, 2022), <https://www.fanniemae.com/newsroom/fanniemae-news/rent-payment-reporting-program-launch> [<https://perma.cc/8S5A-3VK4>].

³⁰² FICO credit score is calculated by factoring your payment history (35%), credit utilization (30%), credit age (15%) and credit mix (10%). Lake, *supra* note 282; Fannie Mae, *supra* note 301.

³⁰³ See Natalie Campisi, *From Inherent Racial Bias to Incorrect Data—The Problems with Current Credit Scoring Models*, FORBES: ADVISOR (Feb. 26, 2021), <https://www.forbes.com/advisor/credit-cards/from-inherent-racial-bias-to-incorrect-data-the-problems-with-current-credit-scoring-models/> [<https://perma.cc/566C-6NEP>].

³⁰⁴ Kassandra Martinchek et al., *Credit Health during the COVID-19 Pandemic*, URB. INST. (Mar. 8, 2022), <https://apps.urban.org/features/credit-health-during-pandemic/> [<https://perma.cc/7ZFX-DY5T>] (showing the share of subprime credit scores are highest for Black, Hispanic, and Native American communities).

³⁰⁵ See KENNETH BREVOORT ET AL., FED. RSRV., ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2020 41 tbl. 9 (2021).

³⁰⁶ See *generally* SAM FULWOOD III, CTR. FOR AM. PROGRESS, THE UNITED STATES' HISTORY OF SEGREGATED HOUSING CONTINUES TO LIMIT AFFORDABLE HOUSING (2016), <https://www.americanprogress.org/article/the-united-states-history-of-segregated-housing-continues-to-limit-affordable-housing/> [<https://perma.cc/AS9Y-U9FF>]; Terry Gross, A 'Forgotten History' of How the U.S. Government Segregated America, NPR (May 3, 2017) <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america> [<https://perma.cc/5QSZ-NJVA>]; RICHARD ROTHSTEIN, THE COLOR OF LAW (Liveright, 2017).

³⁰⁷ FULWOOD III, *supra* note 306.

in the credit scoring system, a historical legacy of discrimination based on such biases continues to impact this process negatively.³⁰⁸

Danielle M. Burns, head of business development at CNote, explains, “[t]he credit system currently in place favors and supports those who historically have had higher education, higher-paying jobs and overall greater access to the resources and tools needed to demonstrate creditworthiness.”³⁰⁹ As a result of this reality, access to affordable home loans is extremely limited for lower income, young, and minority borrowers, and this situation has worsened since the foreclosure crisis of 2008.³¹⁰ Thus, the residual effects of the past discriminatory policies and rules remain in the credit-scoring system today.³¹¹

Higher credit scores not only increase the likelihood that borrowers will qualify for home mortgages, but they also have significant long-term financial consequences.³¹² Credit scores can determine whether borrowers qualify for lower mortgage interest rates and for lower mortgage fees.³¹³ Some lenders will even reduce their down payment requirements for borrowers with higher credit scores.³¹⁴ Therefore, a high credit score could save a borrower thousands of dollars in fees and mortgage interest payments over the life of a loan. It could

³⁰⁸ Michelle Singletary, *Credit scores are supposed to be race-neutral. That’s impossible.*, WASH. POST (Oct. 16, 2020), <https://www.washingtonpost.com/business/2020/10/16/how-race-affects-your-credit-score/> [https://perma.cc/6TQJ-RC5C].

³⁰⁹ Tamara Holmes & Nicole Dieker, *How Race Affects Your Credit Score*, BANKRATE (Nov. 23, 2021), <https://www.creditcards.com/credit-management/how-race-affects-your-credit-score/> [https://perma.cc/9WWZ-XHZK]. CNote is an investment company to support underserved communities. See *About Us*, CNOTE, <https://www.mycnote.com/about-us/> [https://perma.cc/QV5E-M72P] (last visited Nov. 20, 2025).

³¹⁰ *Increasing Access to Sustainable Mortgages for Low-Income Borrowers*, U.S. DEP’T HOUS. & URB. DEV.: EVIDENCE MATTERS <https://archives.huduser.gov/portal/periodicals/em/spring16/highlight3.html> [https://perma.cc/H7KZ-YXVQ] (last visited Nov. 20, 2025).

³¹¹ FULWOOD III, *supra* note 306. For a more in-depth discussion of discriminatory federal policies and practices regarding housing, see ROTHSTEIN, *supra* note 306.

³¹² *Credit Scores and the Home Buying Process*, EQUIFAX (June 14, 2021), <https://web.archive.org/web/20221130094506/https://www.equifax.com/personal/education/credit/score/credit-scores-and-home-buying-process/> [https://perma.cc/D9PK-8A4E].

³¹³ *Id.*

³¹⁴ Nicole Shea, *Seven Factors That Determine Your Mortgage Interest Rate*, CONSUMER FIN. PROT. BUREAU: BLOG (Sep. 29, 2017), <https://www.consumerfinance.gov/about-us/blog/7-factors-determine-your-mortgage-interest-rate/> [https://perma.cc/5955-B7W5]; EQUIFAX, *supra* note 312. Also, the higher the credit score, the better the interest rate a borrower may get on not just home mortgages but also on credit cards and auto loans. See *How Does Your Credit Score Affect Your Interest Rate?*, CAP. ONE (Aug. 5, 2021), <https://www.capitalone.com/learn-grow/money-management/how-credit-score-affects-apr-interest-rate/> [https://perma.cc/SAX9-8N6F]; Sarah O’Brien, *Interest Rate Hikes Have Made Financing a Car Pricier—Especially if You Have Bad Credit. How Much You Could Pay*, CNBC (Nov. 3, 2022), <https://www.cnbc.com/2022/11/03/how-your-credit-score-affects-the-cost-to-finance-a-car.html> [https://perma.cc/JFR3-Z459].

also determine if a borrower’s monthly mortgage payments are sustainable or not.³¹⁵

The fact that individuals with low credit scores are required to pay more for the interest and fees associated with their loans prevents many low-income and minority households from qualifying for traditional home mortgages.³¹⁶ It also imposes financial hardships on those who do qualify, setting in motion a vicious cycle.³¹⁷ Higher interest rates can lead to greater debt, which in turn can lead to even lower credit scores.

Recent innovations and new products allow for a much more comprehensive assessment of creditworthiness and have begun to consider nontraditional forms of payments.³¹⁸ For example, Experian Boost is a new feature that permits consumers to instantly improve their FICO Score by giving them credit for on-time payments of utilities, telecom services, rent, and certain streaming accounts.³¹⁹ Also, FICO has begun launching new credit scoring models that incorporate alternative data such as checking and savings account usage.³²⁰ Using new tactics and products such as these to boost borrowers’ credit scores can dramatically increase an individual’s financial security.³²¹ However, these products have not yet become standard and are not available to all lenders.³²² As a result, most borrowers currently do not benefit from these types of innovations.³²³

³¹⁵ EQUIFAX, *supra* note 312.

³¹⁶ Holmes et al., *supra* note 309.

³¹⁷ *Id.*

³¹⁸ Brian Kreiswirth, Peter Schoenrock & Pavneet Singh, *Using alternative data to evaluate creditworthiness*, CONSUMER FIN. PROT. BUREAU: BLOG (Feb. 16, 2017), <https://www.consumerfinance.gov/about-us/blog/using-alternative-data-evaluate-creditworthiness/> [<https://perma.cc/NF5P-RN33>]; see *CFPB Study Details Rapid Growth of “Buy Now, Pay Later” Lending*, CONSUMER FIN. PROT. BUREAU: NEWSROOM (Sep. 15, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-study-details-the-rapid-growth-of-buy-now-pay-later-lending/> [<https://perma.cc/MSA3-LYPZ>].

³¹⁹ Stefan Lembo Stolba, *What Is Experian Boost®?*, EXPERIAN (July 31, 2025), <https://www.experian.com/blogs/ask-experian/what-is-experian-boost/> [perma.cc] (allows consumers to improve their FICO score by giving credit for on-time utility, telecom, rent and certain streaming bills).

³²⁰ *UltraFICO™* (infographic), in FICO (giving an alternative credit score which can adjust FICO score based on users’ shared data on banking habits).

³²¹ See Barbara A. Butrica & Stipica Mudrazija, *Financial Security at Older Ages* (Ctr. for Ret. Rsch. at Bos. Coll., Working Paper No. 2020-19, 2020); BETH BROCKLAND ET AL., FIN. HEALTH NETWORK, U.S. FINANCIAL HEALTH PULSE: 2019 TRENDS REPORT (2019).

³²² See Tara Siegel Bernard, *No Credit Score? No Problem! Just Hand Over More Data.*, N.Y. TIMES (Nov. 29, 2021), <https://www.nytimes.com/2021/11/29/your-money/credit-score-alternatives-options.html> [<https://perma.cc/623P-27LS>] (noting the alternative crediting system may be taking advantage of consumer data without much oversight).

³²³ *Id.*

Thus, the current lending practices present a catch-22 for many low-income individuals. These practices fail to promote equitable and sustainable access to home ownership by preventing many low-income individuals from having the opportunity to accumulate home wealth, even when they could otherwise afford to purchase homes. They also worsen the economic situations of low-income individuals who do qualify for traditional loans by requiring them to pay higher fees. Consequently, establishing more inclusive criteria for credit scoring should be a priority among policymakers to increase access to traditional financing for underserved populations, thereby providing more equitable and greater homeownership opportunities.

C. *The Role of Alternative Financing*

When prospective buyers fail to meet the requirements for obtaining a traditional mortgage, they are often forced to use riskier and less cost-efficient alternative financing arrangements.³²⁴ However, these arrangements are fraught with potential problems and can contribute to a homeowners' inability to retain ownership or to fully capitalize on the built-up equity that has accumulated in the home.³²⁵ Examples of the most popular alternative financing arrangements include installment sales contracts, "rent-to-own agreements," and seller-financed mortgages.³²⁶

In the case of an installment sale, the seller retains full legal ownership until the final payment is made.³²⁷ Consequently, over the life of the loan the buyer is left without clear rights to either the home or the equity that has accrued. In rent-to-own arrangements, prior to purchase, the seller also is the landlord, and the buyer occupies the property as a tenant.³²⁸ The buyer typically pays an upfront fee or down payment in exchange for the option to purchase the home within a designated period.³²⁹ At the time the buyer exercises the option to purchase, a portion of the buyer's previous monthly rental payments is applied towards the down payment for purchase. Under such arrangements, the rent charged by the seller often significantly exceeds the market rent for a comparable property.³³⁰ Furthermore, if the buyer is unable or unwilling to

³²⁴ *Millions of Americans Have Used Risky Financing Arrangements to Buy Homes*, PEW CHARITABLE TR.S (Apr. 14, 2022), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/04/millions-of-americans-have-used-risky-financing-arrangements-to-buy-homes> [<https://perma.cc/EG38-LENM>].

³²⁵ *Id.* ("Further, the available evidence indicates that lease-purchase agreements, seller-financed mortgages, and land contracts often share risky features that lead buyers to pay higher costs and can result in default and potentially loss of the home and all funds paid.").

³²⁶ *Id.*

³²⁷ Installment sales are also referred to as "land contracts." *Id.*

³²⁸ *Id.* These may also be referred to as lease purchase agreements.

³²⁹ *Id.*

³³⁰ *Id.*

finalize the purchase, it is not unusual for the terms of the agreement to allow the seller to retain all or part of the buyer’s payments.

Seller-financed mortgages are another common example of alternative financing. In these arrangements, the seller acts as a lender, directly extending credit to the buyer to purchase the home.³³¹ Because very few states have enacted laws regarding seller-financed mortgages, and the federal law only applies if sellers finance more than three properties per year,³³² these arrangements can leave buyers without clear recourse if the seller fails to take steps to ensure that the home is habitable, the contract terms are fair, or the title has no competing claims.³³³

The use of alternative financing arrangements is not rare. A survey conducted by the Pew Charitable Trusts showed that 20% of all households that borrowed in connection with the purchase of a home had used some form of “alternative financing at least once” in their lives.³³⁴ Some buyers had used alternative financing arrangements for multiple home purchases. This data highlights the fact that some borrowers encounter barriers to traditional mortgage financing not only in connection with first-time home purchases but also with subsequent ones.³³⁵

The survey additionally showed that low-income borrowers were more likely to use alternative financing to purchase their homes than were middle- and high-income borrowers.³³⁶ Among borrowers who currently have active financing debt associated with their homes, households with annual income below \$50,000 disproportionately utilized some form of nontraditional financing to purchase their homes.³³⁷

One reason low-income borrowers are forced to use alternative financing is the lack of availability of relatively small mortgages, which disproportionately affects the purchase of modestly priced homes. In many communities across the United States, mortgages for less than \$150,000 are unavailable, despite there being an abundance of homes in that price range.³³⁸ The denial of small

³³¹ *Id.*

³³² See *Seller Financing: Impact of the Safe Act and the Dodd-Frank Act*, NAT’L ASSOC. REALTORS (July 5, 2011); *Millions of Americans Have Used Risky Financing Arrangements*, *supra* note 324.

³³³ *Millions of Americans Have Used Risky Financing Arrangements*, *supra* note 324.

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.* The likelihood of using alternative financing not only varies by income but also by race. *Id.* Among Hispanic households that have financed a home purchased, 34% reported using alternative financing at least once as compared to 23% of non-Hispanic, Black households, and 19% of White households. *Id.*

³³⁸ See Alex Horowitz & Tara Roche, *Small Mortgages Are Hard to Get, Even Where Home Prices Are Low*, PEW CHARITABLE TR.S (Sep. 11, 2020), <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/09/11/small-mortgages-are-hard-to-get-even-where-home-prices-are-low> [https://perma.cc/28XP-2H3E] (“The

mortgages has been on the rise since the 2008 financial crisis, and poor credit worthiness apparently is not the reason. A study conducted by the Urban Institute found that the credit profiles of small mortgage borrowers were similar to those of larger loan borrowers.³³⁹ These findings show that the lack of availability of small loans is not a function of risk but rather of profit. Lenders are reluctant to offer small loans because market and regulatory forces create disincentives for them to do so.³⁴⁰ Factors such as high fixed origination and servicing costs; similar regulatory requirements regardless of loan size; and insufficient appraisal data, especially in lower-cost neighborhoods, create disincentives for lenders to provide small loans, as they reduce profit margins.³⁴¹

Therefore, policymakers should consider ways of addressing the barriers to homeownership that disproportionately burden underserved populations, including difficulties saving for down payments, rigid credit scoring requirements, and the shortage of relatively small traditional home mortgages in their efforts to increase homeownership. Eliminating or breaking down these barriers is necessary to achieve a more equitable distribution of benefits provided by the homeownership program and to justify the tremendous cost of the tax expenditures supporting the program.

Tax expenditures are designed to encourage socially desirable behavior among all taxpayers, and in theory, they are universal in their application.³⁴² However, in reality, the structure of many tax expenditure programs disproportionately benefits high-income taxpayers.³⁴³ “This result occurs in part

prevalence of small mortgages has decreased since the Great Recession. Between 2009 and 2018, the number of mortgages of \$10,000 to \$69,999 declined 38% and those for \$70,000 to \$150,000 fell 26%. By contrast, mortgages above \$150,000 increased by 65%.”); ALANNA MCCARGO ET AL., URB. INST., SMALL-DOLLAR MORTGAGES FOR SINGLE-FAMILY RESIDENTIAL PROPERTIES 18–20 (2018); Ben Eisen, *Small Mortgages Are Getting Harder to Come By*, WALL ST. J. (May 9, 2019), <https://www.wsj.com/articles/small-mortgages-are-getting-harder-to-come-by-11557394201> [<https://perma.cc/4WMU-5SBK>].

³³⁹ MCCARGO ET AL., *supra* note 338, at 18–20. See Horowitz & Roche, *supra* note 338.

³⁴⁰ Horowitz & Roche, *supra* note 338.

³⁴¹ *Id.*

³⁴² Jefferson, *Redistribution*, *supra* note 92, at 294.

³⁴³ See I.R.C. § 32(b) (2012) (utilizing income phase-outs to target specific groups, such as the Earned Income Tax Credit (“EITC”)). See, e.g., Teresa Ghilarducci & Ismael Cid-Martinez, *Transforming Federal and State Retirement Tax Deductions to Refundable Tax Credits*, 17 MARQ. BENEFITS & SOC. WELFARE L. REV. 87, 108 (2015); THOMAS L. HUNGERFORD, CONG. RSCH. SERV., RL33641, TAX EXPENDITURES: TRENDS AND CRITIQUES 2 (2008) (“[M]ore well-off taxpayers benefit disproportionately from tax expenditures because of the progressive nature of the income tax system.”); Gillian Lester, *Can Joe the Plumber Support Redistribution? Law, Social Preferences, And Sustainable Policy Design*, 64 TAX L. REV. 313, 334 (2011) (“[M]iddle- and high-income citizens receive benefits through a system of quasi-private ordering subsidized by tax expenditures that in turn are financed by general revenues, while low-income citizens depend on means-tested benefits that are ungenerous, short-term, and administratively burdensome to qualify for.”); Brown, *supra* note 213 at 341 (noting that tax deductions are less valuable for low-income workers); Eric M. Zolt,

because of the progressive tax rate structure of the federal income tax system,” which “makes exclusions, deductions, and tax deferral more valuable to taxpayers with higher marginal tax rates.”³⁴⁴ As a result, higher income taxpayers disproportionately benefit from tax deductions and exclusions.³⁴⁵ The deductions and exclusions allowed for the homeownership program and the private retirement system are not exceptions.

For example, deducting \$2,000 for property taxes paid or for a contribution made to a private retirement plan would save a taxpayer in the top 37% tax bracket \$740; however, it would save a taxpayer in the 22% bracket only \$440. Disparities in benefit levels exist not only by tax bracket but also by income.³⁴⁶ Although individuals with \$100,000 of income or more represent only 32% of the taxpaying population, they received more than 95% of the tax benefits from the mortgage interest deduction in 2022.³⁴⁷ These disparities are due to the fact that higher income taxpayers typically have higher marginal tax rates, pay more in interest and property taxes, and are more likely to itemize deductions on their tax returns.³⁴⁸

Deterrence Via Taxation: A Critical Analysis of Tax Penalty Provisions, 37 UCLA L. REV. 343, 358 (1989) (“Professor Surrey contended that tax expenditures benefit high-income taxpayers more than low-income taxpayers because they provide greater dollar benefits as a taxpayer’s marginal tax rate rises.”); Thomas D. Griffith, *Theories of Personal Deductions in The Income Tax*, 40 HASTINGS L.J. 343, 353 (“[U]nder a progressive rate structure a deduction or exclusion of a given amount has a greater dollar value to the rich than to the poor because the rich are subject to higher marginal rates.”).

³⁴⁴ Jefferson, *Redistribution*, *supra* note 92, at 294.

³⁴⁵ See also *supra* text accompanying notes 204–05. In the Budget and Impoundment Control Act of 1974 (“Budget Act”), the term “tax expenditure” is defined as “revenue losses attributable to provisions of the Federal tax laws” that allow preferential tax treatment. Congressional Budget Act of 1974, Pub. L. No. 93-344 § 3(a)(3), 88 Stat. 297, 299 (1974). Tax expenditures exist in many forms, including exclusions and deductions from income, credits against a taxpayer’s tax liability, favorable tax rates, and the deferral of payment of tax liabilities. See, e.g., I.R.C. § 121 (2012) (providing an exclusion of gains from the sale of a principal residence); I.R.C. § 32(b) (2012) (providing credits against tax liability); I.R.C. § 1031 (2012) (providing tax deferral for exchanges of certain held property). The Budget Act also requires that any budget submitted to Congress contain a detailed analysis and tabulation of all income tax expenditures. See PHILIP D. OLIVER, TAX POLICY 682 (2d ed. 2004). Therefore, the determination of whether a provision is considered a “tax expenditure” depends on whether it is consistent with generally accepted measurements of net income. See also ALAN COLE, TAX FOUND., CORPORATE VS INDIVIDUAL TAX EXPENDITURES 2 (2014) (stating that the definition of a tax expenditure “depends crucially on what [] ‘normal’” is, adding that “the true nature of tax expenditures will always be somewhat subjective.”).

³⁴⁶ *What are the tax benefits of homeownership?*, TAX POL’Y CTR.: BRIEFING BOOK (Jan. 2024), <https://taxpolicycenter.org/briefing-book/what-are-tax-benefits-homeownership> [<https://perma.cc/5BDT-T6TG>].

³⁴⁷ *Id.*

³⁴⁸ *Id.*

Accordingly, as matters of both pension and tax policy, it is important for policymakers to reevaluate the structure and effectiveness of the tax incentives for retirement savings and homeownership to address existing disparities and to achieve a more equitable distribution of benefits from these programs. The next section of this Article provides a description and analysis of the tax expenditures for the existing private retirement system and homeownership program and examines the distribution of benefits they provide.

IV. STRUCTURE AND COST OF THE EXISTING TAX EXPENDITURES FOR RETIREMENT SAVINGS AND HOMEOWNERSHIP

A. *The Tax Expenditure for the Private Retirement System*

The private retirement system is employment-based, voluntary, and tax preferred. The rationale for the employment-based characteristic of the private retirement system is that employees obtain comparative advantages from saving for retirement in traditional employer-sponsored plans as opposed to personal savings arrangements.³⁴⁹ One such advantage stems from the fact that an employer who invests large sums of money benefits from economies of scale.³⁵⁰ Consequently, in employer-sponsored plans, the average investment returns should be higher and the administrative costs lower than what they would be for individual investors.³⁵¹ Another reason employees are more likely to receive greater returns inside a plan than outside is because employers are in a better position than employees to retain the services of financial experts to manage and optimize the returns on the retirement funds.³⁵² However, with the prevalence of participant-directed 401(k) plans that require participants, not employers, to make investment decisions about their individual accounts, this often is not the case. Thus, in the changing retirement savings landscape, fewer and fewer plan participants actually benefit from the perceived advantages of employment-based retirement savings arrangements.³⁵³

Another consequence of the private retirement system being employment-based is that both the receipt of benefits and the adequacy of benefits from the program are uncertain. Because there are notable differences in coverage rates from one industry to another, plan participation regularly bypasses a significant percentage of the labor force. For example, as many as 92% of workers in the public sector are covered by employer-sponsored plans as compared to only 69% of workers in the private service industry.³⁵⁴ Similarly, the coverage rate in the

³⁴⁹ See Patrick W. Seburn, *Evolution of Employer-Provided Defined Benefit Pensions*, MONTHLY LAB. REV., 16, 17 (1991).

³⁵⁰ See LANGBEIN ET AL., *supra* note 69, at 28–29.

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ See *supra* Section I.B.2.

³⁵⁴ John, Koenig & Malta, *supra* note 76; see *Retirement Plan for Workers in Private Industry and State and Local Government in 2022*, BUREAU LAB. & STAT.: THE ECON. DAILY

private manufacturing industry is significantly higher than that of the construction industry.³⁵⁵

Salary levels and attrition rates also can impact the receipt of plan benefits. Because low-income workers are more likely than high-income workers to be employed in industries that do not offer retirement plans, their coverage rates are significantly lower. Even when workers are covered by employer-sponsored plans, however, there are significant differences in the amounts that are contributed relative to income.

In 401(k) plans, where covered workers must choose whether and the extent to which they contribute to their employer-sponsored retirement plan, it is not surprising that low- and middle-income workers contribute at lower rates than their higher-income counterparts. In 2016, only 13% of workers with incomes below \$24,000 had retirement account savings at all, compared to 88% of employees making over \$121,020.³⁵⁶ Furthermore, when low- and middle-income workers do contribute, they typically contribute much smaller percentages of their income than higher paid workers.³⁵⁷ When small amounts are consistently contributed, the retirement account balance is likely to be grossly inadequate in providing retirement security. Additionally, differences in attrition rates relative to income can contribute to uncertainties and disparities regarding the receipt of retirement benefits. This is because when workers lose their jobs prior to becoming vested, they also lose their retirement benefits.

Other characteristics of the private retirement system are that it is employment based and voluntary. The fact that the private retirement system is voluntary makes it necessary for the government to provide tax incentives for employers to incur the economic and administrative burdens of establishing and maintaining qualified plans.³⁵⁸ This need “creates tension between having

(Feb. 1, 2023), <https://www.bls.gov/opub/ted/2023/retirement-plans-for-workers-in-private-industry-and-state-and-local-government-in-2022.htm> [<https://perma.cc/7BWZ-ZT2D>]. Note that the AARP study includes a more expansive definition of worker than others, such as the one used by the BLS.

³⁵⁵ ADP, RETIREMENT SAVINGS TRENDS: HOW EMPLOYERS CAN EXTEND COVERAGE AND SIMPLIFY THE RETIREMENT PROCESS 7 (2015) (noting that the high rate in the manufacturing industry “could reflect the prevalence of unions in this sector”).

³⁵⁶ MORRISSEY, *supra* note 69, at fig. 9. For ranges of income quintiles, see *Household Income Quintiles: 1967 to 2022*, *supra* note 2.

³⁵⁷ See Toder & Smith, *supra* note 94, at 11–12 (“[H]igh-income employees contribute more than [low-income ones],” which results in “high-income households hold[ing] a disproportionate share of assets in employer-sponsored defined contribution plans and individual retirement accounts.”).

³⁵⁸ See EDWARD HARRIS & JOSHUA SHAKIN, U.S. CONG. BUDGET OFF., PUB. NO. 4038, THE DISTRIBUTION OF MAJOR TAX EXPENDITURES IN THE INDIVIDUAL INCOME TAX SYSTEM 14 fig. 5 (2013); see also Daniel I. Halperin, *Interest in Disguise: Taxing the “Time Value of Money”*, 95 YALE L.J. 506, 539 (1986); cf. PEW CHARITABLE TR.S., HOW STATES ARE WORKING TO ADDRESS THE RETIREMENT SAVINGS CHALLENGE: AN ANALYSIS OF STATE-

stricter rules” to encourage greater coverage rates “on the one hand, and not deterring employers from offering and maintaining qualified retirement plans on the other.”³⁵⁹

One of the purposes of the favorable tax treatment afforded private retirement plans is to entice high-income individuals, such as owners of businesses, managerial employees, or others in positions of authority, to influence employers to establish retirement savings plans that also cover individuals who could not save on their own for retirement.³⁶⁰ Each year, the Treasury forgoes billions of dollars in tax revenue in connection with the private retirement system.³⁶¹ In 2022, the tax expenditure for this program alone was \$288.1 billion.³⁶²

The tax incentives for the private retirement system consist of deductions and deferrals. Contributions to qualified plans made by employers are not taxed as income when they are made; they are taxed later when employees retire and begin to take distributions.³⁶³ “The fact that deductions and tax deferral are more valuable to workers who have higher marginal tax rates contributes to lower coverage and participation rates among low- and middle-income workers in the private retirement system.”³⁶⁴

Notwithstanding the existence of these costly tax incentives, a large number of employees are not covered in the private retirement system.³⁶⁵ Furthermore, in the plans that are offered by employers, fewer and fewer employees are choosing to participate.³⁶⁶ Therefore, increasing plan coverage and the adequacy of retirement benefits in the private retirement system is a growing problem for policymakers.

SPONSORED INITIATIVES TO HELP PRIVATE SECTOR WORKERS SAVE 8–12 (2016) (Providing a range of ways to increase participation in voluntary retirement savings programs).

³⁵⁹ Jefferson, *Let Them Eat Cake*, *supra* note 128, at 77.

³⁶⁰ See SASS, *supra* note 182, at 4.

³⁶¹ See BILL HABIB, U.S. CONG. BUDGET OFF., PUB. NO. 57413, THE DISTRIBUTION OF MAJOR TAX EXPENDITURES IN 2019 (2021).

³⁶² For defined contribution plans, it was \$193.4 billion. For defined benefit plans, it was \$94.7 billion. Alex Muresianu, *JCT Tax Expenditure Report: Not All Expenditures Are Created Equal*, TAX FOUND.: BLOG (Feb. 13, 2023), <https://taxfoundation.org/largest-tax-expenditures-saving-investment-tax/> [<https://perma.cc/UG8K-CLKA>] (calculating expenditures based on the Joint Committee on Taxation’s JCX 22-22 Report).

³⁶³ Workers are subject to tax if they terminate employment and take distributions prior to retirement. See 26 U.S.C. § 72(d).

³⁶⁴ Jefferson, *Let Them Eat Cake*, *supra* note 128, at 78.

³⁶⁵ Stephanie Horan, *The Prevalence of Employer-Sponsored Retirement Plans in the U.S.—2021 Study*, SMARTASSET (June 17, 2021), <https://smartasset.com/data-studies/prevalence-of-employer-sponsored-retirement-plans-us-2021> [<https://perma.cc/2LUK-CT65>].

³⁶⁶ *Id.*

B. *The Tax Expenditure for Home Ownership*

Expanding homeownership has been a longstanding policy in the United States, dating back to the signing of the Homestead Act by President Abraham Lincoln.³⁶⁷ Home ownership is promoted through policies that provide favorable tax treatment in connection with the purchase of a home.³⁶⁸ Collectively, these provisions constitute an extensive tax expenditure program.³⁶⁹

A significant tax benefit that homeowners receive is that they are not required to pay federal income taxes on the rental value of their homes. Under the broad definition of income used in the tax law, homeowners should be taxed as if they were paying rent to themselves. This is because the rental value of a home is just as much a return on investment as is interest on a savings account or cash dividends paid on a stock investment.³⁷⁰ Economists refer to the rental value of a home as “imputed rent.”³⁷¹ “Imputed rent” is defined as the rental price an individual would pay for the equivalent of any asset that they own.³⁷² Although the concept can apply to any capital good, it is often used in connection with the housing market.³⁷³

The exclusion of imputed rent is a substantial and costly benefit to homeowners. The Department of the Treasury annually forgoes tremendous revenue in connection with this tax treatment. The Office of Tax Analysis (OTA) of the Treasury estimated that in fiscal year 2022, the exclusion of “imputed rent” alone reduced federal revenue by approximately \$128.9 billion

³⁶⁷ Homestead Act of 1862, Pub. L. No. 37-64, 12 Stat. 392 (1862); *Homestead Act (1862)*, NAT’L ARCHIVES, <https://www.archives.gov/milestone-documents/homestead-act> [<https://perma.cc/6NUC-RX7X>] (last visited Nov. 24, 2025).

³⁶⁸ These include: (1) the home mortgage interest deduction; (2) the deduction for real property taxes; (3) the exclusion of gain from the sale of a principal residence; (4) tax-exempt bonds for owner-occupied housing; (5) mortgage credit certificates; (6) qualified first-time home buyer distributions from an individual retirement plan; (7) exclusion from gross income of the rental value of parsonages and military housing allowances; and (8) exclusion discharge of certain qualified principal residence indebtedness.

³⁶⁹ Homeownership is generously supported in the United States because it is believed to benefit both individuals and society. *See* discussion *supra* Section II.A.

³⁷⁰ Homeowners are effectively both landlords and renters, but the United States federal income tax law ignores these simultaneous roles by allowing homeowners to exclude the rental value of their homes. Several European countries, including Belgium and the Netherlands, currently tax the imputed rental income of owner-occupied housing. While the calculation of the value can vary, a common method for estimating imputed rents for housing is the comparison approach. The comparison approach matches rents in tenant-occupied housing units to similar owner-occupied housing units. If the units are comparable, the owner occupant’s imputed income is the cost that they avoid in renting the other unit. *What are the tax benefits of homeownership?*, *supra* note 346.

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.*

annually.³⁷⁴ Although this benefit is less well-known relative to the other tax benefits that homeowners receive, the opportunity to live in a home rent free is nevertheless an important part of a homeowner's investment return.

Another significant tax benefit that homeowners receive is that they are permitted to reduce their taxable income by deducting the state and local property taxes that they pay on their homes.³⁷⁵ "That deduction is effectively a transfer of federal funds to jurisdictions that impose a property tax . . . allowing them to raise property tax revenue at a lower cost to their constituents."³⁷⁶ It is estimated that this deduction cost the federal government \$5 billion in forgone revenue in 2022.³⁷⁷ This figure reflects a significant decline relative to prior years, however, because the Tax Cuts and Jobs Act (TCJA) placed a cap of \$10,000 on the state and local taxes that are eligible for the deduction.³⁷⁸

Perhaps the most well-known tax benefit that homeowners receive is the mortgage interest deduction.³⁷⁹ Under this provision, homeowners who itemize rather than use the standard deduction are permitted to reduce their taxable incomes by deducting the interest that they pay on their home mortgages.³⁸⁰ The rules governing the home mortgage interest deduction are complex and contain numerous limitations and restrictions regarding the type of debt, the type of security for the debt, and the amount of interest that may be deducted.³⁸¹

³⁷⁴ *Id.*

³⁷⁵ 26 U.S.C. § 164.

³⁷⁶ *What are the tax benefits of homeownership?*, *supra* note 346.

³⁷⁷ *Id.*

³⁷⁸ *Id.* The Tax Cuts and Jobs Act was passed in 2017 and almost doubled the standard deduction and restricted other deductions. See *How did the TCJA change the standard deduction and itemized deductions?*, TAX POL'Y CTR.:TAX POL'Y BRIEFING BOOK (May 2020), <https://www.taxpolicycenter.org/briefing-book/how-did-tcja-change-standard-deduction-and-itemized-deductions> [<https://perma.cc/26KC-Y4KC>].

³⁷⁹ See 26 U.S.C. § 163. Also note that these two provisions alone affect approximately forty million taxpayers each year. STAFF OF JOINT COMM. ON TAX'N, 112th CONG., PRESENT LAW, DATA, AND ANALYSIS RELATING TO TAX INCENTIVES FOR HOMEOWNERSHIP 2 (Comm. Print 2011). Note that some have observed that the significant "growth in the income tax during World War II led to a narrative that the mortgage-interest deduction encouraged homeownership." William G. Gale, *Chipping away at the mortgage deduction*, BROOKINGS INST. (May 13, 2019), <https://www.brookings.edu/opinions/chipping-away-at-the-mortgage-deduction> [<https://perma.cc/K2W8-LPN3>] [hereinafter Gale, *Chipping Away*]. However, critics of this theory point to numerous studies that they believe "belie[] this claim. Canada, the United Kingdom, and Australia have no mortgage-debt subsidies, yet their homeownership rates are slightly higher than in the U.S. A large reduction in the mortgage-interest deduction in Denmark in 1987 had virtually no effect on homeownership rate." *Id.*

³⁸⁰ 26 U.S.C. § 163. See *infra* text accompanying notes 388–392.

³⁸¹ See INTERNAL REVENUE SERV., HOME MORTGAGE INTEREST DEDUCTION (2022).

For example, the mortgage interest deduction is limited to “qualified residence interest.”³⁸² Qualified residence interest means any interest paid or accrued during the tax year on either “acquisition indebtedness” or “home equity indebtedness” related to a “qualified residence.”³⁸³ A qualified residence is defined as the taxpayer’s principal residence but may include a second residence, if the second residence is selected by the taxpayer for this purpose and is used as a residence by the taxpayer for a requisite amount of time.³⁸⁴

The TCJA changed the requirements for the home interest deduction, which significantly impacted its use. “Prior to [the enactment of] the TCJA, the deduction was limited to interest paid on up to \$1 million of debt incurred to purchase or substantially rehabilitate a home.”³⁸⁵ Homeowners also were permitted to “deduct interest paid on [amounts] up to \$100,000 of home equity debt, regardless of how they used the borrowed funds.”³⁸⁶ The TCJA, however, restricted both the mortgage amount and the use of the borrowed funds allowed for this provision. The deduction currently is limited to the “interest on up to \$750,000 of mortgage debt incurred after December 14, 2017,” and the use of the borrowed funds is now restricted “to buy[ing] or improv[ing] a first or second home.”³⁸⁷

Another change made under the TCJA that affected the use of the home interest deduction was the increase of the standard deduction. To take the home mortgage interest deduction, taxpayers must itemize rather than use the standard deduction.³⁸⁸ In recent years, the standard deduction has been steadily getting larger.³⁸⁹ This trend resulted in fewer taxpayers itemizing their deductions, making fewer taxpayers eligible to use the home mortgage interest deduction.³⁹⁰

³⁸² 26 U.S.C. § 163(h)(3) (2017); Pub. L. No. 99-514, 100 Stat. 2085 (1986), at 2246–48. See discussion of itemized deductions *infra* p. 176–77.

³⁸³ 26 U.S.C. §§ 163(h)(3)(A)(i)–(ii), (4)(A).

³⁸⁴ Principal residence is defined in § 121 of the Internal Revenue Code, and section 280A(d)(1) sets forth the rules that determine the amount of time the taxpayer must use the second house for personal reasons in order to have it classified as a residence. 26 U.S.C. §§ 121, 280A(d)(1). A qualified residence can be a house, condominium, cooperative, mobile home, house trailer, or boat. See 26 U.S.C. § 163(h)(2)(D), (3).

³⁸⁵ *What are the tax benefits of homeownership?*, *supra* note 346.

³⁸⁶ *Id.*

³⁸⁷ *Id.*; see HOME MORTGAGE INTEREST DEDUCTION, *supra* note 381. Accordingly, the funds could have been used for personal expenditures such as vacations, automobiles, and education health expenses.

³⁸⁸ Taxpayers can either itemize their deductions or take the standard deduction. See *infra* text accompanying notes 471–73.

³⁸⁹ *How did the TCJA change the standard deduction and itemized deductions?*, *supra* note 378; Janet Berry-Johnson & Kemberley Washington, *The IRS Has Supersized Standard Deductions For 2023. Is That Good For Your Taxes?*, FORBES: ADVISOR (Mar. 2, 2023), <https://www.forbes.com/advisor/taxes/standard-deduction/> [<https://perma.cc/H66R-FNKW>].

³⁹⁰ TAX POL’Y CTR., STANDARD DEDUCTION AMOUNT, TAX YEARS 1970–2024 (2024); see Jason Harrison, *Reviewing How TCJA Impacted Mortgage Interest and State and Local Tax*

According to research conducted by the Urban Brookings Tax Policy Center in 2017, prior to the passage of the TCJA—when the standard deduction was \$6,350—20% of the 150 million tax returns the IRS received claimed the interest deduction.³⁹¹ In 2018, after the passage of the TCJA and the standard deduction almost doubled relative to the prior year, the number of filers using the home mortgage interest deduction plummeted.³⁹² In 2018, only 8%, or approximately 12.3 million taxpayers, claimed the deduction.³⁹³ This change represented a 13% decline from 2017.³⁹⁴ For first-time purchasers, the percentage of households taking the deduction was even lower because they disproportionately fell in lower tax brackets and used the standard deduction rather than itemizing their deductions.³⁹⁵

As a result of all these changes, after the TCJA became effective, the annual cost for the home interest deduction declined dramatically. Estimates from the Office of Tax Analysis (OTA) show that the cost for the mortgage interest deduction was approximately \$34.4 billion in fiscal year 2022.³⁹⁶ “Prior to enactment of the TCJA, OTA estimated that the cost of the mortgage interest deduction would have been \$106.2 billion in fiscal year 2022.”³⁹⁷ Thus, the decrease in cost due to the adjustments described above was significant.³⁹⁸ However, this decrease means that fewer taxpayers now choose to use the home interest deduction.³⁹⁹ Furthermore, those who do currently use the mortgage

Deductions, TAX FOUND. (Oct. 14, 2021), <https://taxfoundation.org/mortgage-interest-deduction-tcja/> [<https://perma.cc/ZV6P-ZFNX>]. The deduction for state and local taxes was limited to \$10,000. *Id.*

³⁹¹ William R. Emmons, *Fewer Tax Breaks for Homeowners: A Good Thing?*, FED. RSRV. BANK ST. LOUIS: ON THE ECON. BLOG (Mar. 20, 2018), <https://www.stlouisfed.org/on-the-economy/2018/march/fewer-tax-breaks-homeowners-good-thing> [<https://perma.cc/6FQP-CMZM>]; Gale, *Chipping Away*, *supra* note 379; TAX POL’Y CTR., *supra* note 390.

³⁹² MARK P. KEIGHTLEY, CONG. RSCH. SERV., IF12789, SELECTED ISSUES IN TAX POLICY: THE MORTGAGE INTEREST DEDUCTION, SERVICE 2 (2024). For example, married couples filing jointly in 2018 had a standard deduction of \$24,000, which was up from \$12,700 in 2017. Emmons, *supra* note 391. The standard deduction for single filers was \$13,850, which was up from the prior year. For heads of households, the standard deduction increased from \$19,400 to \$20,800. Berry-Johnson & Washington, *supra* note 389.

³⁹³ Jim Tankersley & Ben Casselman, *As Mortgage-Interest Deduction Vanishes, Housing Market Offers a Shrug*, N.Y. TIMES (Aug. 4, 2019), <https://www.nytimes.com/2019/08/04/business/economy/mortgage-interest-deduction-tax.html> [<https://perma.cc/Q6PN-EQRQ>].

³⁹⁴ DEP’T TREASURY INT’L REVENUE SERV., INDIVIDUAL INCOME TAX RETURNS 2018 6 (2020).

³⁹⁵ Gale, *Chipping Away*, *supra* note 379.

³⁹⁶ *What are the tax benefits of homeownership?*, *supra* note 346.

³⁹⁷ *Id.*

³⁹⁸ Gale, *Chipping Away*, *supra* note 379; *What are the tax benefits of homeownership?*, *supra* note 346.

³⁹⁹ Gale, *Chipping Away*, *supra* note 379.

interest deduction are disproportionately high-income and arguably do not need assistance purchasing a home.⁴⁰⁰

Therefore, the home mortgage interest deduction is not without controversy.⁴⁰¹ Although the home mortgage interest deduction has been a part of the tax law for an extensive period of time, some critics object to it because studies show the deduction does little to increase the rate of home ownership but rather encourages buyers to choose bigger homes.⁴⁰² Another reason for the controversy surrounding this provision is that the deduction does not help all homeowners.⁴⁰³ The deduction applies only to homeowners who itemize their deductions. As a consequence, many low and middle-income taxpayers do not benefit from this provision because they use the standard deduction,⁴⁰⁴ which, as discussed above, is a result exacerbated by the TCJA.⁴⁰⁵

Many skeptics express concern that the mortgage interest deduction is also unfair to renters.⁴⁰⁶ “Taxpayers who do not own their homes have no comparable ability to deduct interest paid on debt incurred to purchase goods and services,” or to receive federal assistance with their housing expenses.⁴⁰⁷

Finally, in addition to the exclusion of imputed income and the deductions for taxes and interest paid in connection with home mortgages, homeowners are permitted to “exclude from taxable income up to \$250,000 (\$500,000 for joint filers) of capital gains” when they ultimately sell their homes.⁴⁰⁸ Ordinarily, these taxpayers would be required to fully recognize the gains on the sale or exchange of their homes.⁴⁰⁹

⁴⁰⁰ WILL FISCHER & CHYE-CHING HUANG, CTR. BUDGET & POL’Y PRIORITIES, n. 7, (2013); Christine Smith, *Why Economists Don’t Like the Mortgage Interest Deduction*, FED. RSRV. BANK ST. LOUIS: OPEN VAULT BLOG (May 8, 2018), <https://www.stlouisfed.org/open-vault/2018/may/why-economists-dont-like-mortgage-interest-deduction> [<https://perma.cc/MAN8-S6DX>].

⁴⁰¹ See Gale, *Chipping Away*, *supra* note 379; Emmons, *supra* note 391.

⁴⁰² Gale, *Chipping Away*, *supra* note 379.

⁴⁰³ Emmons, *supra* note 391.

⁴⁰⁴ William G. Gale, *Gutting the Mortgage Interest Deduction*, TAX POL’Y CTR.: TAXVOX (Nov. 6, 2017), <https://www.taxpolicycenter.org/taxvox/gutting-mortgage-interest-deduction> [<https://perma.cc/VXB3-ALEW>].

⁴⁰⁵ See *supra* text accompanying notes 378-400.

⁴⁰⁶ *What are the tax benefits of homeownership?*, *supra* note 346.

⁴⁰⁷ *Id.*; see UNITED FOR HOMES, REFORMING THE MORTGAGE INTEREST DEDUCTION: HOW TAX REFORM CAN HELP END HOMELESS AND HOUSING POVERTY (2017).

⁴⁰⁸ 26 U.S.C. § 121; *What are the tax benefits of homeownership?*, *supra* note 346.

⁴⁰⁹ 26 U.S.C. § 1001. To exclude gains from the sale of a home, taxpayers must have maintained the home as their principal residence in two out of the last five years. 26 U.S.C. § 121(a). They also must not have claimed the capital gains exclusion for the sale of another home during the prior two years. 26 U.S.C. § 121(b)(3). The estimated cost to the Treasury for this provision alone was \$43 billion in fiscal year 2024. *What are the tax benefits of homeownership?*, *supra* note 346.

Therefore, the tax expenditures for the private retirement system and for the homeownership program are expansive, expensive, and deeply entrenched in existing law. Even so, millions of Americans currently are still faced with the prospect of having too few assets in retirement to maintain their current standards of living and are unable to purchase a home and attain the financial benefits that homeownership provides in their working lives and during retirement. This is particularly true for low-and middle-income workers who, because of the structure of these programs, do not benefit to the same extent as highly compensated workers.

The next section of this Article addresses this inequity and contains proposals to increase homeownership as a means of increasing the retirement security of low-and-middle-income workers, and of achieving a more equitable distribution of benefits from homeownership.

V. PROPOSALS TO ENCOURAGE HOMEOWNERSHIP AS A MEANS OF INCREASING RETIREMENT SECURITY IN UNDERSERVED POPULATIONS

To justify the tremendous cost of the nation's private retirement system, significant changes to existing tax and retirement savings policies are necessary.⁴¹⁰ Even with the number of retirement plans declining, the tax favorable treatment of qualified plans is very costly. Each year the Treasury "forgoes substantial tax revenue" to encourage retirement savings.⁴¹¹ In 2023, the tax expenditure for the private retirement system alone was \$372 billion.⁴¹² An expense of this magnitude suggests that employees covered by and saving in qualified retirement plans should be better off than they would be saving in personal arrangements.⁴¹³ However, in some 401(k) plans where participants make decisions about how much to contribute, how to invest the plan assets, and what form of distribution to take, participants are exposed to the same levels and types of risks associated with their personal savings.⁴¹⁴ Therefore, the shift to the individual approach made manifest by the popularity of 401(k) plans, coupled with the fact that low- and middle-income workers receive relatively few benefits from these increasingly popular retirement savings arrangements,

⁴¹⁰ See discussion *supra* Sections IV.A, IV.B.

⁴¹¹ JEAN ROSS, CTR. AM. PROGRESS, TAX BREAKS FOR RETIREMENT SAVINGS DO NOT HELP THE WORKERS WHO NEED THEM MOST fig. 1 (2022), <https://www.americanprogress.org/article/tax-breaks-for-retirement-savings-do-not-help-the-workers-who-need-them-most/> [<https://perma.cc/VYR2-BZ38>].

⁴¹² TAX POL'Y CTR., *How large are the tax expenditures for retirement saving?*, TAX POL'Y BRIEFING BOOK: KEY ELEMENTS OF THE U.S. TAX SYSTEM (2020) <https://www.taxpolicycenter.org/briefing-book/how-large-are-tax-expenditures-retirement-saving> [<https://perma.cc/SAE7-Y3EC>] (reflecting tax expenditures for both qualified and non-qualified plans).

⁴¹³ See discussion *supra* Section IV.A.

⁴¹⁴ See discussion *supra* Section I.B.2.

makes it difficult to justify not only the employment-based characteristic of the private retirement system but also its tremendous cost.

However, due to the unique structure of the private retirement system and the complexity of the retirement savings crisis, modifying the existing voluntary program with an assortment of relatively minor adjustments is not the solution.⁴¹⁵ This is because one size does not fit all when it comes to retirement savings policy: what is good for employers is not necessarily good for workers; what is good for workers is not necessarily good for taxpayers; and what is good for highly compensated workers is not necessarily good for low- and middle-income workers.

Therefore, solving the retirement savings crisis is a complex problem and requires a nontraditional approach that goes beyond the existing framework.⁴¹⁶ Meaningful pension reform requires the introduction of new incentives that better align with the savings patterns of low- and middle-income workers; provide additional sources of retirement income; offer greater diversity and protection in connection with different markets and risk levels; and achieve a more equitable distribution of benefits to justify the cost of the program. Expanding homeownership opportunities among underserved populations is an example of such an approach.

There is little doubt housing wealth can enhance the financial security of households as they move into retirement.⁴¹⁷ However, without assistance, many renters, especially those with low- and middle-incomes, are unlikely to have the ability to purchase homes during their working lives to benefit from homeownership and the accumulated build-up of home equity it provides.⁴¹⁸ Given the importance of housing wealth as it relates to both workers and retirees, policymakers should explore ways of creating new opportunities that support homeownership across the income spectrum as a matter of retirement policy. Just as the private retirement system makes it relatively easy for plan participants to save for retirement in employer sponsored retirement plans, policymakers should consider comparable ways of expanding opportunities for homeownership for underserved populations as a means to achieve greater retirement security.⁴¹⁹

Although homeownership should not be used to replace either of the traditional sources of retirement income, it could be used effectively to enhance retirement security. This is because homeownership provides numerous financial benefits, such as protecting homeowners against housing inflation, providing an additional source of income during retirement, and diversifying the

⁴¹⁵ See *supra* p. 122.

⁴¹⁶ See *supra* text accompanying notes 100-104.

⁴¹⁷ Apgar & Di, *supra* note 184.

⁴¹⁸ See Bond & Doonan, *supra* note 135; see WILLIAM G. GALE, HILARY GELFOND, & JASON FICHTNER, ECON. STUD. AT BROOKINGS, HOW WILL RETIREMENT SAVING CHANGE BY 2050? PROSPECTS FOR THE MILLENNIAL GENERATION (2019).

⁴¹⁹ See discussion *supra* Section IV.A.

risks of loss associated with retirement savings.⁴²⁰ Homeownership also increases the control that older people have over their living spaces and the likelihood that they will have the option of aging in place. Therefore, retirement reform initiatives should involve not only efforts to make the private retirement system more equitable in its distribution of benefits but also efforts that enable workers across the income spectrum to purchase homes as a means of achieving greater retirement security.⁴²¹

The remaining portion of this Article recommends four proposals for policymakers to consider that are designed to break down existing barriers to homeownership and to strengthen the connection between homeownership and retirement security. These proposals are broadly described below.⁴²²

A. *Proposal to Establish Financial Literacy Education Program*

As a way of increasing retirement security for all workers, the first proposal recommends establishing a federal financial literacy program. The program would be designed to enable individuals to make prudent investment decisions regarding their retirement accounts and to provide a basic understanding of financial matters, including homeownership and the requirements for obtaining a mortgage.

Financial illiteracy in the general population is a growing problem in the United States.⁴²³ Studies conducted by the Financial Industry Regulatory Authority show that as few as one-third of Americans have a working knowledge of compound interest, mortgage rates, and financial risks.⁴²⁴ Only 27% of Americans understand what inflation is and are able to perform simple interest rate calculations.⁴²⁵ Based on a global financial literacy survey conducted by Standard and Poor's, the U.S. population ranked fourteenth in the world in its understanding of the most fundamental financial concepts.⁴²⁶ Another study conducted by the American Public Education Foundation assessed financial

⁴²⁰ See *supra* note 1 and accompanying text.

⁴²¹ See Apgar & Di, *supra* note 184.

⁴²² The proposals provide conceptual descriptions. A detailed summary of each proposal is beyond the scope of this Article.

⁴²³ Doug McMillon & John Hope Bryant, *Financial Literacy Education Could Help Millions of Americans*, TIME (June 10, 2022), <https://time.com/6186290/americans-financial-literacy/> [<https://perma.cc/7B87-R29W>].

⁴²⁴ *Id.*; JUDY T. LIN ET AL., FINRA, FINANCIAL CAPABILITY IN THE UNITED STATES: HIGHLIGHTS FROM THE FINRA FOUNDATION NATIONAL FINANCIAL CAPABILITY STUDY 14 (5th ed. 2022) [hereinafter FINANCIAL CAPABILITY IN THE UNITED STATES].

⁴²⁵ Annamaria Lusardi, Olivia S. Mitchell & Vilsa Curto, *Financial Literacy Among the Young*, 44 J. CONSUMER AFFS. 358, 374 (2010).

⁴²⁶ See LEORA KLAPPER, ANNAMARIA LUSARDI & PETER VAN OUDHEUSDEN, STANDARD & POOR'S, FINANCIAL LITERACY AROUND THE WORLD 23–25 (2016) (estimating only 57% of U.S. adults are financially literate).

literacy in grades K-12 in the United States, and over two thirds of the states received a grade of C or lower.⁴²⁷

States across the U.S. have received low financial health ratings due to several factors.⁴²⁸ Among these factors are low personal savings rates,⁴²⁹ large outstanding student loan balances,⁴³⁰ significant credit card debt,⁴³¹ and inadequate retirement savings.⁴³²

A functional understanding of finances has many positive and practical effects that could alleviate some of these deficiencies. For instance, having financial knowledge has been identified as one of the most important factors that drives households to save.⁴³³ This is because a lack of financial knowledge can lead “households to underestimate the need to set aside resources for savings.”⁴³⁴ Also, a lack of financial literacy can significantly inhibit an individual from achieving important financial goals, such as maintaining a bank account or managing household debt and assets, which can impair one’s ability to purchase a home.⁴³⁵

⁴²⁷ AM. PUB. EDUC. FOUND., *THE NATION’S REPORT CARD ON FINANCIAL LITERACY* (2021).

⁴²⁸ Dani Pascarella, *4 Stats That Reveal How Badly America Is Failing at Financial Literacy*, FORBES (Apr. 3, 2018, at 11:55 ET), <https://www.forbes.com/sites/danipascarella/2018/04/03/4-stats-that-reveal-how-badly-america-is-failing-at-financial-literacy/?sh=1265d4502bb7> [https://perma.cc/A8DW-AWER].

⁴²⁹ LANE GILLESPIE, BANKRATE, *BANKRATE’S 2024 ANNUAL EMERGENCY SAVINGS REPORT*, (2024), <https://www.bankrate.com/banking/savings/emergency-savings-report/> [https://perma.cc/P5SD-AG7K]; Press Release, Bankrate, *Majority Unable to Afford \$1,000 Emergency Expense as Inflation Increasingly Stifles Ability to Save* (Jan. 25, 2023) (noting that 57% of American adults would be unable to pay for a \$1,000 emergency expense from their savings account).

⁴³⁰ Katie Lobosco, *Nearly 9 million student loan borrowers missed their first payment after pandemic pause ended*, CNN (Dec. 18, 2023), <https://www.cnn.com/2023/12/18/politics/student-loan-missed-payments-november/index.html> [https://perma.cc/QK22-LUXH] (noting that approximately 40% of “borrowers who had bills due in October did not make payments by mid-November”).

⁴³¹ Constance Sommer & Poonkulali Thangavelu, *Average credit card debt in the U.S.*, BANKRATE (Feb. 14, 2024), <https://www.bankrate.com/finance/credit-cards/states-with-most-credit-card-debt/> [https://perma.cc/3B7C-3DF2] (noting that 49% of American cardholders carried month-to-month credit card debt and that “[e]mergency expenses is the leading cause for incurring credit card debt”).

⁴³² *Nearly half of American households have no retirement savings*, USAFACTS, (Nov. 9, 2023), <https://usafacts.org/data-projects/retirement-savings> [https://perma.cc/SRT9-HUNF] (“In 2022, almost half of American households had no savings in retirement accounts.”).

⁴³³ U.S. DEP’T Hous. & URB. DEV., *LITERATURE REVIEW*, *supra* note 253, at 5.

⁴³⁴ *Id.*

⁴³⁵ FINANCIAL CAPABILITY IN THE UNITED STATES, *supra* note 424. Financial literacy is defined as the “ability to use knowledge and skills to manage financial resources effectively for a lifetime of financial well-being.” OSCAR CONTRERAS & JOSEPH BENDIX, MILKEN INST., *FINANCIAL LITERACY IN THE UNITED STATES* 5 (2021).

A lack of financial literacy not result not only in lost financial opportunities but can also contribute to the use of ill-advised investment strategies. This reality is particularly problematic in the current retirement savings landscape where 401(k) plans dominate, and participants often are required to make critical investment decisions about how much to save and how to invest the funds in their retirement accounts.⁴³⁶ A lack of financial literacy can prevent workers from being able to make prudent investment decisions and lead to workers having insufficient account balances for financial security when they retire.⁴³⁷ Younger employees are particularly vulnerable in the use of less-than-optimal investment practices regarding their retirement accounts because the compounding of their returns occurs over longer periods of time.⁴³⁸ Therefore, the success or failure of 401(k) plans, particularly those requiring participants to direct their own investments, hinges on financial literacy.⁴³⁹

Financial illiteracy can also hamper retirement security by presenting additional barriers to homeownership.⁴⁴⁰ As discussed above, homeownership is one of the most common ways of building wealth in this country.⁴⁴¹ However, owning a home requires both financial preparation and good financial health, which among other things, consists of building up savings for a down payment and developing a credit history.⁴⁴²

⁴³⁶ See *supra* text accompanying notes 85–93.

⁴³⁷ Regina T. Jefferson, *Rethinking the Risks of Defined Contribution Plans*, 4 FL. TAX REV. 607, 629 (2000) [hereinafter Jefferson, *Rethinking the Risks*].

⁴³⁸ *Id.*

⁴³⁹ “The modern portfolio theory of investment explains that an adequately diversified portfolio should include an appropriate balance of stocks, bonds, and stable value funds,” which present different levels of risk and return. *Id.* at 630. Individuals lacking financial literacy or familiarity with recommended investment practices “generally fail to adequately diversify their retirement accounts, investing disproportionately in stable value funds.” *Id.* “Because a balanced investment portfolio provides a better relationship between return and risk, the failure to adequately diversify” one’s retirement account is problematic. *Id.* This is because “[a] high concentration of stable value, low-yield investments generally produces insufficient investment income over one’s working life to provide financial security” at retirement. *Id.* Those lacking in basic financial skills “also are less likely to recognize the financial indicators on which investment professionals rely to know when to transfer funds from one investment to another.” *Id.* Accordingly, these individuals “may fail to make appropriate changes when such transactions are warranted.” *Id.* “Under other circumstances, [they] may act too hastily.” *Id.* “For example, during market down-swings, inexperienced investors may abandon high-risk, high-return investments too quickly, notwithstanding conventional wisdom that these investments perform best over the long-run.” *Id.*

⁴⁴⁰ See *supra* text accompanying note 184.

⁴⁴¹ See *supra* text accompanying notes 162–165.

⁴⁴² Hyman, *supra* note 163; see discussion *supra* Section III.B.1–2.

Purchasing a home also typically involves the use of a mortgage.⁴⁴³ Because “mortgages are complex financial instruments,” their complexity can discourage individuals from entering the housing market.⁴⁴⁴ Furthermore, there is a correlation between a borrower’s leverage position and a borrower’s level of financial literacy.⁴⁴⁵ The term “leverage” in this context refers to the use of “debt or borrowed funds” to increase one’s return “from an investment or project.”⁴⁴⁶ Studies show that homeowners with poor financial literacy tend to take on larger mortgage debt.⁴⁴⁷ Thus, financial illiteracy can impair an individual’s ability to make prudent decisions regarding not only their retirement accounts as described above but also the financing and purchase of a home.⁴⁴⁸

This Article proposes a federal education program be established to improve financial literacy in the United States as a matter of retirement and tax policy.⁴⁴⁹ Participation in the proposed education program would be required to receive the forms of homeownership assistance proposed below.⁴⁵⁰ The program would be federally sponsored to ensure consistency and greater accessibility, and it could be offered by any one of the three federal government agencies that currently provide government-insured mortgages: the Federal Housing Administration (FHA), the U.S. Department of Agriculture (USDA) or the Department of Veterans Affairs (VA).⁴⁵¹ The program could also be offered

⁴⁴³ PEW CHARITABLE TRS., *supra* note 251, n. 25 (“Pew’s survey found that approximately 45% of U.S. adults currently have debt on their home, including 3% of U.S. adults who use alternative financing and about 42% who have a mortgage.”).

⁴⁴⁴ See John Gatherwood & Jörg Weber, *Financial Literacy: A Barrier to Home Ownership for the Young?*, 99 J. URB. ECON. 62, 67 (2017).

⁴⁴⁵ Raun van Ooijen & Maarten C.J. van Rooij, *Mortgage Risks, Debt Literacy and Financial Advice*, 71 J. BANKING & FIN. 201, 203 (2016).

⁴⁴⁶ Adam Hayes, *What Is Financial Leverage, and Why Is It Important?*, INVESTOPEDIA (Feb. 10, 2024), <https://www.investopedia.com/terms/l/leverage.asp> [<https://perma.cc/Z3SU-MLXF>].

⁴⁴⁷ van Ooijen & van Rooij, *supra* note 445.

⁴⁴⁸ Leora F. Klapper et al., *Financial Literacy and the Financial Crisis* 28–29 (Nat’l Bureau of Econ. Rsch., Working Paper No. 17930, 2012). See *supra* text accompanying note 92.

⁴⁴⁹ Currently, some employers voluntarily offer investment education programs; however, they are not required to do so. See Sharon Epperson & Stephanie Dhue, *Employers offer financial education benefits to help workers handle money concerns beyond retirement planning*, CNBC: YOUR MONEY (Apr. 3, 2023), <https://www.cnbc.com/2023/04/03/employers-offer-financial-education-to-help-workers-manage-money.html> [<https://perma.cc/S7RJ-Q6E6>].

⁴⁵⁰ See discussion *infra* Sections V.B, V.C.

⁴⁵¹ One such existing program is offered by the Federal Deposit Insurance Corporation (FDIC), called Money Smart. *Money Smart*, FDIC (Feb. 27, 2023), <https://www.fdic.gov/resources/consumers/money-smart/> [<https://perma.cc/N83J-42S3>]. “First released in 2001 and” continuing today, it offers workshops and online resources through community and government organizations. *Id.* It includes modules for various ages

through other agencies such as the Small Business Administration (SBA), state agencies, or educational institutions.⁴⁵²

The proposed financial literacy education program would be open to the public for a fee. However, the fee would be waived for individuals with incomes below a certain level and reduced on a sliding scale for individuals with incomes up to a specified amount. When provided by the employer, the value of the education program would be excludable from the employee's income, consistent with the existing rules for other employer provided fringe benefits.⁴⁵³

Employers offering any type of qualified plans with elective features would be required to offer the financial literacy program to plan participants as a way of justifying the tax benefits that employers receive in connection with the retirement plans they sponsor.⁴⁵⁴ The cost of the proposed education program would be deductible by the employer as an ordinary and necessary business expense in the same manner that contributions to qualified plans are currently deductible by the employer.⁴⁵⁵

The proposed financial literacy program would be offered in "a variety of educational mediums."⁴⁵⁶ The exclusive use of written communications would not be sufficient to satisfy the requirements of the program, as "[t]here is substantial evidence showing that printed communication generally is ineffective in aiding the investment education" because people either do not understand it, or disregard it.⁴⁵⁷ Accordingly, the proposed financial literacy program would mandate "a complement of written materials," virtual and live

including K-12 students, young adults, adults, and older adults. *Teach Money Smart*, FDIC (Dec. 29, 2022), <https://www.fdic.gov/resources/consumers/money-smart/teach-money-smart/index.html> [<https://perma.cc/Q7GT-XRJ6>]. The program for adults has fourteen modules including: financial products, tracking income and expenses, making a savings plan, credit reports and improving credit, borrowing, managing debt, managing credit cards, building assets, protecting assets, affordable housing, and the home buying process. *Money Smart for Adults*, FDIC (Sep. 10, 2025), <https://www.fdic.gov/consumer-resource-center/money-smart-adults> [<https://perma.cc/V3VV-X9E9>].

⁴⁵² Caleb Silver, *The Push to Require Financial Literacy Education*, INVESTOPEDIA (Aug. 21, 2022), <https://web.archive.org/web/20220902005317/https://www.investopedia.com/the-push-to-make-financial-literacy-into-law-4628372> [<https://perma.cc/2DUW-EP8B>] ("In North Carolina in 2019, lawmakers passed legislation that requires high school students to take a financial literacy course before they graduate. House Bill 924 created an economic and personal finance (EPF) course to provide basic instruction on fundamental economic principles, including how to manage a credit card, the basics of borrowing money, and how to get a mortgage.").

⁴⁵³ See 26 U.S.C. § 132.

⁴⁵⁴ For other educational proposals see Jefferson, *Rethinking the Risks*, *supra* note 437, at 639–40.

⁴⁵⁵ See 26 U.S.C. § 404.

⁴⁵⁶ Jefferson, *Rethinking the Risks*, *supra* note 437, at 638.

⁴⁵⁷ *Id.*

seminars, and computer software programs for the various modules or units that comprise it.⁴⁵⁸

Additionally, the program would be required to include both general and particularized information for individual workers, considering factors such as age, income, and geography. Because there is a high probability that workers’ financial positions will change over time, and because repetition is an effective way of teaching new and technical information, the proposed financial literacy program would be offered on a continuing basis, with workers encouraged to periodically repeat taking the program.⁴⁵⁹

“Presently, some employers offer one-time retirement planning sessions to older employees who are approaching retirement, but do not provide similar sessions for younger workers.”⁴⁶⁰ However, younger people have more remaining years to work, and their investment time horizons are longer than their older counterparts. Consequently, this approach is problematic. In response to this concern, it would be important for all topics of the proposed financial literacy program to be available throughout an individual’s working career.

Workers receiving preferential tax treatment in connection with either homeownership or any qualified elective contribution plan, such as a 401(k) plan, would be encouraged to take the proposed financial literacy program. However, the content of the program would be broader than the investment education programs presently offered by employers to assist their employees in making decisions regarding their retirement plans.⁴⁶¹ For example, the proposed financial literacy educational program would be required to include modules or units addressing certain key topics relating to homeownership.⁴⁶² These topics would include: (1) budgeting and money management; (2) maximizing personal savings; (3) managing debt; (4) building a credit score;⁴⁶³ (5) investing and retirement planning; (6) understanding Social Security and Medicare; and (7) understanding mortgages, equity loans, home equity lines of credit, and reverse mortgages.⁴⁶⁴

⁴⁵⁸ *Id.*

⁴⁵⁹ See David P. Ausubel & Mohamed Youssef, *The Effect of Spaced Repetition on Meaningful Retention*, 73 J. GEN. PSYCH. 147, 149 (1965); Bruce K. Bromage & Richard E. Mayer, *Quantitative and Qualitative Effects of Repetition on Learning from Technical Text*, 78 J. EDUC. PSYCH. 271, 276 (1986).

⁴⁶⁰ Jefferson, *Rethinking the Risks*, *supra* note 437, at 638.

⁴⁶¹ See Robert C. Lawton, *401(k) best practices: employee education*, EMP.. BENEFIT NEWS (Mar. 21, 2018), <https://www.benefitnews.com/opinion/401-k-best-practices-employee-education> [<https://perma.cc/J8BM-J5N3>].

⁴⁶² See *supra* Section III.

⁴⁶³ Understanding credit and how to build it can dramatically affect people’s financial future and help move them from poverty. See Emily Peiffer, *Busting credit myths can help low-income Americans strengthen their financial health*, URB. INST. (Oct. 1, 2018), <https://www.urban.org/urban-wire/busting-credit-myths-can-help-low-income-americans-strengthen-their-financial-health> [<https://perma.cc/S498-FN3N>].

⁴⁶⁴ CONTRERAS & BENDIX, *supra* note 435.

Basic financial skills such as these are generally not part of the educational programs taught in schools.⁴⁶⁵ As a result, many individuals may never acquire the necessary skills to make prudent financial decisions without having access to financial educational programs such as the one proposed in this Article. This proposed financial literacy program is designed to empower individuals with the knowledge and tools to make sound decisions regarding their short- and long-term financial goals. More specifically, the program's objectives would be to prevent, or at least mitigate, the development of bad money habits as well as to assist individuals in making prudent financial decisions, including those related to the investment of retirement savings accounts as well as to the purchase and maintenance of a home.⁴⁶⁶

B. *Proposal to Replace the Home Mortgage Interest Deduction with a Refundable Tax Credit*

The next proposal recommends replacing the home interest deduction with a refundable credit. As discussed above, under Internal Revenue Code section 163, taxpayers are permitted to deduct the interest that they pay on mortgages secured by their qualified principal residences if the loans are used to purchase or substantially improve the property.⁴⁶⁷

Although, “the [home mortgage interes] deduction has always been regressive,” as earlier explained, “[t]he 2017 tax changes [under TCJA] made it more so.”⁴⁶⁸ In 2018, immediately after the TCJA changes became effective, approximately 17% of those benefiting from the home interest deduction were in the top 1% of households, and 80% were in the top 20% of households.⁴⁶⁹ As little as 4% of the benefits of the mortgage interest deduction accrued to households in the middle-income quintile.⁴⁷⁰

This trend is likely to continue as long as the standard deduction remains high because taxpayers would need to have itemized deductions that exceed the standard deduction for it to make financial sense for them to use the mortgage

⁴⁶⁵ Kamaron McNair, *18 states require personal finance education in schools—here's what they're teaching kids about money*, CNBC: MAKE IT (Apr. 13, 2023), <https://www.cnbc.com/2023/04/13/how-personal-finance-is-taught-in-us-schools.html> [<https://perma.cc/X64P-FCFD>] (Noting that only 40.5% of high school students are guaranteed to take personal finance course).

⁴⁶⁶ See U.S. DEP'T HOUS. & URB. DEV., LITERATURE REVIEW, *supra* note 253, at 11–13. The latter topic would specifically include home ownership education, which would help prospective borrowers understand both the financial and nonfinancial responsibilities of homeownership. As a practical matter, this should reduce home foreclosures and defaults by enabling prospective borrowers to choose appropriate sizes and types of mortgages.

⁴⁶⁷ See *supra* Section IV.B. Also note that the interest can be deducted in connection with a second home as well. 26 U.S.C. § 163.

⁴⁶⁸ Gale, *Chipping Away*, *supra* note 379; see Emmons, *supra* note 391;

⁴⁶⁹ See Gale, *Chipping Away*, *supra* note 379. In the context of taxation, regressivity refers to a tax that applies more heavily to low-income taxpayers. *Id.*

⁴⁷⁰ See *id.*

interest deduction. To illustrate, consider the standard deduction for a married couple filing jointly, which is currently \$24,000, up from \$12,700 in 2021; taxpayers filing a joint return would need to have deductions more than \$24,000 for itemizing to be beneficial to them, and itemizing is the only way for taxpayers to take advantage of the mortgage interest deduction.⁴⁷¹

The mortgage interest deduction is regressive not only because taxpayers must itemize their deductions to take advantage of it but also because deductions are more valuable to high-income taxpayers than to low- and middle-income ones. Deductions reduce taxable income, therefore, the benefit of the interest deduction depends on a taxpayer’s marginal tax rate.⁴⁷² The higher the marginal tax rate, the greater the benefit of a deduction. For example, a \$1,000 deduction would save a 40% bracket taxpayer \$400; whereas it would save a 15% bracket taxpayer only \$150. Adding to the regressivity of the home mortgage interest deduction is the fact that “[h]omeowners with higher incomes tend to have more expensive homes and thus more mortgage interest to deduct.”⁴⁷³

As designed, the mortgage interest deduction does not universally expand homeownership; it primarily benefits high-income taxpayers who presumably could afford to purchase homes without tax incentives.⁴⁷⁴ Furthermore, because the value of the deduction declines when taxpayers fall into lower marginal tax brackets, the deduction is poorly designed to assist homeowners keep their homes in times of financial crisis. For instance, if homeowners lose their jobs and their incomes drop to levels where no federal taxes are owed, the value of the deduction is completely lost.⁴⁷⁵ Arguably, this situation is more likely to occur at times when the taxpayers would be in most need of financial assistance to keep their homes.⁴⁷⁶

In contrast, a tax credit directly reduces a taxpayer’s tax liability, and its value does not depend on a taxpayer’s marginal tax rate.⁴⁷⁷ To ensure that taxpayers, whose credits are greater than their tax liabilities, receive the full value of their credits, it would be necessary to make the proposed credit refundable. When a credit is refundable and the taxes owed by the taxpayer are less than the credit

⁴⁷¹ TAX POL’Y CTR., *supra* note 390; *see* Tankersley & Casselman, *supra* note 393.

⁴⁷² The “marginal tax rate” is the tax rate that applies to an additional dollar of income earned. *See Marginal Tax Rate*, TAX FOUND.: TAXEDU, <https://taxfoundation.org/tax-basics/marginal-tax-rate/> [<https://perma.cc/3BFU-HMF9>] (last visited Nov. 24, 2025). The marginal tax rate varies depending on the income level and the tax bracket that the individual or entity falls under. *Id.* As income increases, the marginal tax rate also increases, leading to a higher percentage of tax paid on each additional dollar earned. *Id.*

⁴⁷³ FISCHER & HUANG, *supra* note 400, at 4.

⁴⁷⁴ *See What are the tax benefits of homeownership?*, *supra* note 346.

⁴⁷⁵ Note that they still may pay substantial federal payroll, state, and local taxes.

⁴⁷⁶ FISCHER & HUANG, *supra* note 400, at 4.

⁴⁷⁷ For example, assume that a taxpayer in the 40% bracket and a taxpayer in the 15% bracket are both entitled to receive a \$1,000 credit. This credit would enable both taxpayers to reduce their tax liabilities by the same amount, regardless of their tax brackets, provided that they both owe at least \$1,000 in taxes.

amount, a refund of the difference would be given to the taxpayer. To illustrate, if a taxpayer owed \$600 dollars in taxes and qualified for a refundable credit of \$1,000, after using \$600 of the credit to reduce the tax liability to \$0, the taxpayer would receive a \$400 refund from the Treasury. If the credit were not refundable, the taxpayer would not receive the full benefit of the \$1,000 credit.

Another important distinction between a deduction and a credit is that eligibility for a tax credit does not depend on whether taxpayers itemize their deductions or not.⁴⁷⁸ A tax credit is equally available to taxpayers who choose to use the standard deduction and to those who choose to itemize.

For all the above reasons, tax credits in general, and refundable tax credits in particular, are often used in connection with tax expenditures designed to assist taxpayers with hardships or to incentivize socially desirable behavior.⁴⁷⁹ Refundable credits are more equitable and efficient for these purposes as they ensure the targeted population receives the full value of the intended benefits. Furthermore, because credits are no more valuable to high-income taxpayers than to low- and middle-income ones, they avoid the “upside-down” subsidy effect of exclusions and deductions.⁴⁸⁰ The upside-down subsidy effect occurs when individuals who have more income receive greater amounts of assistance from the government than individuals who have less income due to the progressive rate structure of the federal income tax.⁴⁸¹

To achieve a more equitable distribution of benefits from the homeownership program, this Article proposes that the home interest mortgage deduction is replaced with a refundable tax credit.⁴⁸² Rather than taking a deduction for the interest they pay on their home mortgages, taxpayers would receive a refundable tax credit based on income and the amount of interest they pay in connection with their mortgages. This change would accomplish several goals. It would bring the incentives for home ownership in alignment with those for retirement in the private retirement system, where tax benefits do not depend on whether a taxpayer itemizes or not. Additionally, it would benefit more low- and middle-income workers by more effectively encouraging homeownership among this population. Furthermore, the built-up equity in the purchased homes would serve to increase the financial security of underserved populations during both their working lives and retirement by providing an additional source of income for emergencies and targeted spending. The proposed structure would have a

⁴⁷⁸ See *supra* text accompanying notes 466–467.

⁴⁷⁹ See *supra* Section IV.A.

⁴⁸⁰ See *Policy Basics: Federal Tax Expenditures*, CTR. BUDGET & POL’Y PRIORITIES (Dec. 8, 2020), <https://www.cbpp.org/research/policy-basics-federal-tax-expenditures> [<https://perma.cc/V94E-VWVM>].

⁴⁸¹ *Id.* A progressive tax structure applies a higher rate to high-income groups than to low- and middle-income groups. *Progressive Tax*, TAX FOUND.: TAXEDU, <https://taxfoundation.org/tax-basics/progressive-tax/> [<https://perma.cc/G9ZS-LUZD>] (last visited Nov. 24, 2025).

⁴⁸² See *supra* text accompanying notes 75–80.

more equitable effect as it provides the same economic benefit to taxpayers across the income spectrum.⁴⁸³

The amount of the proposed credit would be based on the interest paid on a home mortgage up to a specified limit, and it would be available to households under a certain income level. Eligibility for the credit would phase out after a taxpayer’s income reached a certain level. Unlike the existing mortgage interest deduction, the interest paid on the mortgage of second homes would not be included in the calculation of the proposed credit.⁴⁸⁴ Additionally, to incentivize home ownership throughout one’s working life, the proposed credit would not be limited to first-home purchases. It would be available for interest paid, up to a specified amount, on any mortgage used to purchase or repair a taxpayer’s current principal residence, provided that the home was used to secure the debt.

This proposed credit introduces greater progressivity to the existing homeownership program. Numerous other proposals have been presented to scale back or reform the home interest deduction.⁴⁸⁵ Some of them have recommended that the deduction be capped and others have recommended credits, rather than deductions, be given to first time homebuyers.⁴⁸⁶ However, this proposal differs from many other proposals in several important ways: (1) its benefits are not limited to first-time homebuyers, so it encourages homeownership throughout a taxpayer’s working career, like other forms of retirement savings that encourage contributions until retirement age, although the participant may have other retirement plans;⁴⁸⁷ (2) like the mortgage interest deduction, the proposed credit would be available for the duration of the mortgage and is not limited to one use per life;⁴⁸⁸ and (3) this proposed credit is refundable to ensure that all eligible taxpayers receive the full value of their credits, regardless of the amount of their tax liabilities.⁴⁸⁹

⁴⁸³ Some have argued that the deduction in its current form encourages the construction of larger, more expensive homes, rather encouraging home ownership. See Gale, *Chipping Away*, *supra* note 379; see also *What are the tax benefits of homeownership?*, *supra* note 346.

⁴⁸⁴ See *Is the mortgage interest and real property tax I pay on a second residence deductible?*, I.R.S.: FREQUENTLY ASKED QUESTIONS (Aug. 5, 2025), [https://www.irs.gov/faqs/itemized-deductions-standard-deduction/real-estate-taxes-mortgage-interest-points-other-property-expenses-5](https://www.irs.gov/faqs/itemized-deductions-standard-deduction/real-estate-taxes-mortgage-interest-points-other-property-expenses/real-estate-taxes-mortgage-interest-points-other-property-expenses-5) [<https://perma.cc/7MPB-GYA9>] (“Mortgage interest paid on a second residence used personally is deductible as long as the mortgage satisfies the same requirements for deductible interest as on a primary residence.”) (emphasis removed).

⁴⁸⁵ See FISCHER & HUANG, *supra* note 400.

⁴⁸⁶ *Id.*

⁴⁸⁷ Eligible taxpayers could only own one home, however.

⁴⁸⁸ See I.R.S., U.S. DEP’T. TREAS., PUB. NO. 936, PUBLICATION 936 (2024) HOME MORTGAGE INTEREST DEDUCTION (2024), <https://www.irs.gov/publications/p936> [<https://perma.cc/2YVM-4F58>].

⁴⁸⁹ See CHENXI LU, JOSEPH ROSENBERG & ERIC TODER, OPTIONS TO REFORM THE DEDUCTION FOR HOME MORTGAGE INTEREST, TAX POL’Y CTR. 1 (Dec. 8, 2015),

C. *Proposal to Mitigate Barriers to Traditional Financing*

As discussed above, there are numerous barriers preventing low- and middle-income individuals, young people, and minorities from obtaining traditional mortgages in connection with the purchase of a home.⁴⁹⁰ This situation drives some borrowers to use riskier and more expensive alternative financing options and prevents others from being able to purchase homes at all, even in instances where the borrowers could afford the monthly mortgage payments.⁴⁹¹

As a way of responding to these challenges, this Article recommends that policymakers explore new methods of increasing access to traditional financing. This next proposal consists of three recommendations relating to the determination of credit scores, the down payment requirement, and the availability of relatively small mortgages. These recommendations are designed to break down existing barriers to traditional financing and increase homeownership opportunities among underserved populations.⁴⁹²

To address the credit score gap related to income and socioeconomic status, this Article proposes the establishment of new federal standards and benchmarks that require the inclusion of nontraditional forms of payments for calculating the credit scores of low- and moderate-income borrowers. These standards would be designed for use in conjunction with traditional ones.⁴⁹³ All lending institutions offering home mortgages would be required to use the new standards and benchmarks as minimum standards for certain populations. Under this proposal, these institutions would also be incentivized with favorable tax treatment to directly lend to low- and moderate-income individuals and other underserved populations. For example, an incentive comparable to The Low-Income Housing Tax Credit (“LIHTC”) could be established for this purpose.⁴⁹⁴ The LIHTC is a tool currently used for the production of affordable rental housing.⁴⁹⁵ One report notes that “[t]hrough this program, private investors

<https://www.urban.org/sites/default/files/publication/76146/2000542-options-to-reform-the-deduction-for-home-mortgage-interest.pdf> [<https://perma.cc/WS2U-WE57>].

⁴⁹⁰ See discussion *supra* Section III.

⁴⁹¹ Horowitz & Roche, *supra* note 338.

⁴⁹² Factors impacting the real estate market are complex, and fluctuations in the housing market can potentially affect the entire economic system. Therefore, in conjunction with the implementation of the proposals presented in the next section of the Article, it may be useful to conduct a study examining the impact of these changes on the real estate market. See Chuan Zhao & Fuxi Liu, *Impact of Housing Policies on the Real Estate Market - Systematic Literature Review*, 9 HELIYON 10 (Oct. 2023).

⁴⁹³ Caitlin Young, *How Will Proposed Changes to the Community Reinvestment Act Affect Lending to Historically Excluded Communities?*, URB. INST.: HOUS. MATTERS (June 29, 2022), <https://housingmatters.urban.org/articles/how-will-proposed-changes-community-reinvestment-act-affect-lending-historically-excluded> [<https://perma.cc/6DEY-H4U4>].

⁴⁹⁴ See 26 U.S.C. § 42.

⁴⁹⁵ CORIANNE PAYTON SCALLY, AMANDA GOLD & NICOLE DUBOIS, URB. INST., *THE LOW-INCOME HOUSING TAX CREDIT: HOW IT WORKS AND WHO IT SERVES*, at V (2018),

receive a federal income tax credit as an incentive to make equity investments in affordable rental housing.⁴⁹⁶ Similarly, using federal guidelines, lending institutions could be incentivized to lend to individuals representing underserved populations. Alternatively, lending institutions could be encouraged to partner with existing organizations, such as community development financial institutions and low-income credit unions that serve these communities, to increase access to home loans by underserved populations.⁴⁹⁷ Lending institutions should also be encouraged to offer the proposed financial literacy programs discussed above.⁴⁹⁸

Although some state Housing Finance Agencies currently offer homeownership programs that incorporate some of these types of incentives, their requirements and standards vary by state.⁴⁹⁹ Having federal standards and benchmarks would provide greater consistency from state to state. They also would promote more equitable access to homeownership across the income spectrum.

To address the hardship the down payment requirement imposes on low- and middle-income individuals, this Article proposes that down payment assistance be given in the form of a refundable tax credit to all individuals under a certain income who do not currently own their homes, whether they are first time purchasers or not.⁵⁰⁰ Like the First-Time Homebuyer Credit of 2021, the credit

https://www.urban.org/sites/default/files/publication/98758/litc_how_it_works_and_who_it_serves_final_0.pdf [https://perma.cc/S249-PS4K].

⁴⁹⁶ *Id.*; see also Yonah Freemark & Corianne Payton Scally, *LIHTC Provides Much-Needed Affordable Housing, but Not Enough to Address Today's Market Demands*, URB. INST.: URB. WIRE (July 11, 2023), <https://www.urban.org/urban-wire/lihtc-provides-much-needed-affordable-housing-not-enough-address-todays-market-demands> [https://perma.cc/9SGM-7ACR] (noting the impact of these programs on market demands).

⁴⁹⁷ See Press Release, Fed. Hous. Fin. Agency, FHFA Announces Validation of FICO 10T and VantageScore® 4.0 for Use by Fannie Mae and Freddie Mac (Oct. 24, 2022), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Validation-of-FICO10T-and-Vantage-Score4-for-FNM-FRE.aspx> [https://perma.cc/X67M-BGSY] (announcing the approval for Fannie Mae and Freddie Mac to begin using FICO 10T and VantageScore® 4.0 credit score models); News Release, Fed. Hous. Fin. Agency, FHFA Announces Targeted Pricing Changes to Enterprise Pricing Framework (Oct. 24, 2022), <https://web.archive.org/web/20221031010749/https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Targeted-Pricing-Changes-to-Enterprise-Pricing-Framework.aspx> [https://perma.cc/DMW7-ZJK5] (announcing changes to Fannie Mae and Freddie Mac's pricing models to reduce fees for certain borrowers and products).

⁴⁹⁸ See *supra* Section V.A.

⁴⁹⁹ FED. DEPOSIT INS. CORP., AFFORDABLE MORTGAGE LENDING GUIDE, PART II: STATE HOUSING FINANCE AGENCIES 9–12 (2016), <https://www.fdic.gov/resources/bankers/affordable-mortgage-lending-center/guide/part-2-docs/affordable-mortgage-lending-guide-part-2.pdf> [https://perma.cc/29XM-3LUP].

⁵⁰⁰ See Downpayment Toward Equity Act of 2021, H.R. 4495, 117th Cong. (2021); *What are the tax benefits of homeownership?*, *supra* note 346.

proposed in this Article would be limited to the purchase of a primary residence and would not apply to the purchase of second homes or rental property.⁵⁰¹

Eligible home buyers would also have to be 18 or older and purchase from a non-relative.⁵⁰² Eligibility for the credit would be determined by income limits based on geographic area averages. The credit would be calculated using a sliding scale, and it would gradually phase out as income increased.

The income limits for eligibility could be structured in various ways. One possibility would be to use the income limits contained in the First-Time Homebuyers Tax Credit Act of 2025, which takes the location of taxpayers into account to determine income eligibility.⁵⁰³ The locality adjustment accounts for the fact that there are different costs of living across the United States. This bill provides that the earned income of eligible home buyers must not exceed 170% of the area median income (“AMI”) in a given geographic area.⁵⁰⁴ For example, a household in an area with an AMI of \$60,000 could not have an annual income of more than \$102,000 to be eligible for the proposed credit.⁵⁰⁵ This approach ensures that taxpayers receiving the credit are neither disadvantaged nor advantaged by where they live. Alternatively, existing income limits used for the deductibility of contributions to traditional IRAs could be used for this purpose, or completely new limits could be established.

The maximum amount for the proposed tax credit would also be determined by locality adjustments, expressed in terms of the average medium-priced house in a particular area. This approach recognizes that “[h]ousing markets are distinctly local in nature”; consequently, house prices may move up sharply in one region of the country but may lag in others at a given time.⁵⁰⁶ This approach also prevents windfalls for individuals living in areas with less expensive housing. All credit recipients would be required to enroll in the proposed financial literacy education program, regardless of the amount of credit they receive.⁵⁰⁷

This Article further recommends that homeowners receiving assistance from the proposed credit be required to pay the benefits back if they sell their homes within a relatively short time, such as five years. For the same reasons that early distributions from qualified retirement plans are discouraged with an excise tax, homeowners receiving federal assistance through any of the proposed credits

⁵⁰¹ First-Time Homebuyer Act of 2021, H.R. 2863, 117th Cong. (2021).

⁵⁰² This requirement prevents adults from purchasing a home in the name of a child and then claiming the tax credit on the child’s income tax return.

⁵⁰³ H.R. 4717.

⁵⁰⁴ *Id.*

⁵⁰⁵ Dan Green, *The \$15,000 First-Time Homebuyer Tax Credit: Renewed in 2025*, HOMEBUYER.COM, <https://homebuyer.com/learn/15000-first-time-home-buyer-tax-credit> [<https://perma.cc/G389-RJY3>] (last visited Nov. 16, 2025).

⁵⁰⁶ Apgar & Di, *supra* note 184.

⁵⁰⁷ *See supra* Section V.A.

and down payment programs should be discouraged from prematurely consuming their home equity.⁵⁰⁸

A sliding scale like that used in the First-Time Homebuyer Act of 2021 could be used for this purpose.⁵⁰⁹ In this legislation, buyers who sell within one year are required to pay back 100% of the credit, 75% in two years, 50% in three years, and 25% in four years. Repayment in this fashion would serve to both discourage early sales and recoup the cost of the credit. For the proposed credit, however, there would be an emergency exception for job relocation and serious illness in connection with early sales. To reduce default rates among homeowners and to improve financial literacy, all credit recipients would be required to take the financial literacy education program proposed above, regardless of the credit amount they received.⁵¹⁰

The next recommendation relating to the financing of home purchases focuses on the use of alternate financing arrangements. As discussed above, millions of Americans are forced to use more risky and less regulated alternative financing arrangements to purchase their homes because they either do not qualify for traditional mortgages or because they have trouble finding traditional mortgages for lower-priced properties.⁵¹¹ Notwithstanding the wide use of these arrangements, the actual impact of the alternative financing market is uncertain because there is no systematic national collection of data about these purchases; “[i]n many states, the agreements don’t have to be recorded in a public registry,” as is the case with traditional mortgages.⁵¹²

This Article recommends that a special advisory board be established to better understand the impact and magnitude of alternate financing arrangements in the housing market and the conditions that drive the use of these arrangements. The advisory board would be charged with studying alternative financing, including the establishment of national standards, and considering ways of increasing the availability of small mortgages without compromising existing consumer protections. It would also oversee efforts to collect and maintain data regarding the scope and scale of alternative financing arrangements in order to assist policymakers in understanding and evaluating the impact and risks of these types of financing.

⁵⁰⁸ 26 U.S.C. § 72(t) (“If any taxpayer receives any amount from a qualified retirement plan (as defined in section 4974(c)), the taxpayer’s tax under this chapter for the taxable year in which such amount is received shall be increased by an amount to 10 percent of the portion of such amount which is includible in gross income.”).

⁵⁰⁹ See *supra* text accompanying notes 275–277.

⁵¹⁰ See *supra* text accompanying notes 275–277.

⁵¹¹ Ann Carrns, *Some Home Buyers Turn to Alternative Financing as Other Options Dwindle*, N.Y. TIMES (Apr. 25, 2022), <https://www.nytimes.com/2022/04/22/your-money/house-mortgage-alternative-financing.html> [<https://perma.cc/MG74-VEMK>].

⁵¹² *Id.*

D. *Proposal to Better Assist Homeowners in Protecting and Preserving Their Homes*

1. Equity Until and During Retirement

The challenge of any effective retirement savings plan is not only to encourage people to save for retirement but also to protect and preserve the saved assets until retirement. This is necessary to justify the cost of the favorable tax treatment retirement savings arrangements receive as well as to ensure the assets saved for retirement are not prematurely consumed.⁵¹³ Housing wealth is often the largest asset owned by retirees in the United States, and built-up home equity can be a valuable source of income during retirement. Much of this housing wealth is attributable to the favorable tax treatment that homeownership receives in the United States.⁵¹⁴ Therefore, as matters of tax and retirement savings policy, the last proposal in this Article is aimed at providing greater retirement security by preserving and better protecting the home equity that has been encouraged by preferential tax treatment.

2. Ensuring Fair Appraisals

As discussed above, the devaluation of minority homes costs minorities billions of dollars in cumulative losses of home equity.⁵¹⁵ This practice strips minority homeowners of wealth derived from the build-up of their home equity, stymies their paths toward building equity, and perpetuates income inequality in the United States. Furthermore, the undervaluation of home appraisal value forces some owners to seek out more expensive lines of credit when they are attempting to borrow against their homes. Undervaluation can also cause homeowners to list their homes at unrealistically low prices.⁵¹⁶ In all these instances, the devaluation of homes denies homeowners use of the full value of their built-up home equity.⁵¹⁷

This practice continues to disadvantage minority homeowners in their working lives as well as in retirement, when they may be living on fixed incomes with no other assets upon which to rely for emergencies. Therefore, to protect the home equity of minority homeowners, it is necessary for policymakers to better understand the impact, extent, and reasons for undervaluation of minority homes and to find ways of redressing this problem.

⁵¹³ See discussion *supra* Sections IV.A, IV.B.

⁵¹⁴ See discussion *supra* Section IV.B.

⁵¹⁵ See *supra* text accompanying notes 206–218.

⁵¹⁶ See *supra* text accompanying note 212.

⁵¹⁷ Brakeyshia Samms, *Racial Discrimination in Home Appraisals Is a Problem That's Now Getting Federal Attention*, INST. TAX. & ECON. POL'Y: BLOG (Mar. 31, 2022), <https://itep.org/racial-discrimination-in-home-appraisals-is-a-problem-thats-now-getting-federal-attention/> [<https://perma.cc/8G7Q-9SSQ>].

In 2019, a hearing before the House Financial Services Subcommittee brought the issue of appraisal bias to policymakers’ attention. This hearing, discussed a report published jointly by Gallup and the Brookings Institution on the widespread devaluation of Black-owned property in the United States. The report found that a home in a majority Black neighborhood is likely to be valued at 23% less than a near-identical home in a majority White neighborhood.⁵¹⁸ This study also determined that the undervaluation of minority owned properties by appraisers is substantial, reportedly accounting for cumulative losses in home equity of over \$156 billion.⁵¹⁹

The issue of racially biased practices in the appraisal industry has previously received attention at the highest levels of the federal government. In March 2022, the Biden administration announced the creation of a task force to explore appraisal practices in the United States.⁵²⁰ The action plan for the task force is to identify ways of ensuring that the following objectives are met: (1) “federal agencies must improve their enforcement of fair housing laws for the home appraisal industry”; (2) “the appraiser field workforce should be well-trained and diversified”; (3) “appraisers must develop better evaluation methods to reduc[e] biases”; and (4) “the public must be educated about how to get their appraisals reconsidered.”⁵²¹

In addition to supporting the aims and goals of the task force, this Article proposes that the task force’s responsibilities include further study and research of the impact of undervaluation in the appraisal industry. This Article also proposes adopting federal legislation regarding appraisal practices to ensure that there are consistent rules from state to state, and that taxpayers do not have to rely on self-help approaches in finding assistance when infractions occur.

Additionally, this Article recommends a greater use of remote desktop appraisals as a way of addressing appraisal bias. When remote appraisals are conducted, the appraiser never needs to meet a homeowner or to see the family portraits of the homeowner on the wall, which is an approach proven to be useful in reducing the effects of biases in the appraisal process.⁵²² As a representative of Fannie Mae explains, “[t]he traditional appraisal process relies heavily on human observations that can be subject to conscious or unconscious bias, while modern appraisal methodology—such as desktop and hybrid appraisals— involves significant reliance on data and a more arms-length process between the appraiser and the borrower or homeowner.”⁵²³

The primary difference in the traditional approach and the remote process is that the appraisal is based on “tax records and comparable homes rather than on

⁵¹⁸ See Kamin, *Black Homeowners Face Discrimination in Appraisals*, *supra* note 212.

⁵¹⁹ PERRY, ROTHWELL & HARSHBARGER, *supra* note 216, at 3.

⁵²⁰ White House, *supra* note 210.

⁵²¹ Samms, *supra* note 517.

⁵²² Kamin, *Remote Appraisals of Homes Could Reduce Racial Bias*, *supra* note 212.

⁵²³ *Id.*

an on-site inspection.”⁵²⁴ Desktop appraisals also utilize several other resources, such as “floor plans, public records on the home, and resources like Google Maps and 3-D scans.”⁵²⁵ Although desktop appraisals still require the input of trained appraisers at various steps in the appraisal process, their use could significantly reduce the impact of appraisal bias by limiting in-person encounters.⁵²⁶

The use of desktop and other forms of remote appraisals are not novel ideas. In response to the coronavirus pandemic, a federal ruling issued in March of 2020, “temporarily paus[ed] the need for interior home inspections” and “allowed appraisals for homes that were being sold to be done remotely in certain circumstances.”⁵²⁷ This ruling, however, had limited application. For example, it did not affect individuals attempting to refinance their homes; consequently, these transactions continued to require that an in-person appraisal be completed.⁵²⁸

Also, in 2020, the Federal Housing Agency gave lenders more freedom to use automated valuation models, which rely on an algorithm that calculates a home’s value based on a database of home sales. These can be used in conjunction with in-person appraisals or as a replacement for them.⁵²⁹ While the decision to use remote methods of appraisal was primarily intended as a safety precaution at the beginning of the pandemic, this form of appraisal could also be used effectively as a way of redressing biases in the appraisal process.⁵³⁰

Thus, this Article proposes that the use of desktop appraisals and other forms of automated valuation be indefinitely extended until more information about the impact and prevalence of under valuation of minority owned homes can be

⁵²⁴ *Id.*

⁵²⁵ *Id.*

⁵²⁶ *Id.*

⁵²⁷ Kamin, *Black Homeowners Face Discrimination in Appraisals*, *supra* note 212; see Anthony Tellez, *Even home appraisers are doing their jobs remotely*, NPR (Apr. 16, 2022, at 10:41 ET), <https://www.npr.org/2022/04/16/1089694794/housing-market-appraisals-remote-homeowner> [<https://perma.cc/7ZXC-BR76>]. An automated valuation method (“AVM”) is similar to a desktop valuation. However, an AVM is often completely automated with little or no intervention, whereas a desktop appraisal is typically accomplished by using publicly available information. *AVM Consumer Assistance*, COTALITY, <https://www.cotality.com/legal/avm-consumer-assistance> [<https://perma.cc/V8HM-35NZ>] (last visited Nov. 24, 2025).

⁵²⁸ Kamin, *Black Homeowners Face Discrimination in Appraisals*, *supra* note 212.

⁵²⁹ Some have expressed concern about the algorithm’s efficacy in combating discrimination because it depends on what type of data a study uses; for example, a recent study of AVMs showed that significant pricing errors may occur that can also perpetuate racial disparities in home values. See Dan Reed, *Why homes owned by people of color are appraised for less*, GREATER GREATER WASH. (Mar. 3, 2022), <https://ggwash.org/view/83953/why-homes-owned-by-people-of-color-are-appraised-for-less> [<https://perma.cc/N8RS-LP7H>].

⁵³⁰ *Id.*

obtained, and new federal standards and guidelines for home appraisals can be established. Moreover, because refinancing is an important way for homeowners to access their home equity, and this process is affected by the same biases as appraisals for home purchases, this Article recommends that the use of desktop appraisals and other forms of automated valuation be used for refinancing purposes as well.

Continuing the work of the task force on appraisal bias; conducting studies to assess and define the impact of appraisal bias in this country; establishing national standards for the appraisal industry as a means of addressing racial biases; and expanding the use of desktop and other remote appraisals are incremental steps that could significantly minimize the impact of appraisal bias. Because the loss in home equity attributable to appraisal bias impacts minorities' living standards both before and during retirement, these measures are necessary and appropriate for policymakers to consider as a matter of tax and retirement savings policy.

3. Accessing Home Equity

Finally, protecting housing wealth for all homeowners requires greater education, more information, and increased federal guidelines regarding access to home equity. Housing wealth is derived from the build-up of home equity, and can be a valuable asset for retirees living on fixed incomes. This is because built-up home equity can be readily accessed when retirees need additional funds for targeted or emergency expenses by refinancing their homes, obtaining a reverse mortgage, or selling their homes.⁵³¹ Accordingly, home equity can be a valuable source of income during retirement that prevents retirees from having to make financial sacrifices to maintain their pre-retirement standard of living. In this respect, home equity is functionally equivalent to personal savings and the accumulated savings in an employer-sponsored 401(k) retirement plan.

There are currently multiple ways for seniors to access their home equity. The most obvious way is to sell the home and downsize. However, homeowners also can extract their home equity without selling their homes by obtaining “forward or reverse mortgage products,” or by obtaining home equity loans and home equity lines of credit (“HELOCs”).⁵³² Additionally, there are new “sell and stay”

⁵³¹ Aly J. Yale, *How to Build Equity in Your Home*, SACRAMENTO BEE: FINANCE (Dec. 19, 2022, at 15:23 ET), <https://www.sacbee.com/finance/article269627266.html> [<https://perma.cc/EPD7-LE9H>].

⁵³² Karan Kaul, Laurie Goodman & Patrick Simmons, *What's stopping seniors from accessing the wealth stored in their home equity?*, URB. INST. (Feb. 28, 2017), <https://www.urban.org/urban-wire/whats-stopping-seniors-accessing-wealth-stored-their-home-equity> [<https://perma.cc/8HX8-V76G>]. Home equity also is accessed by consuming home equity indirectly by underspending on home repairs and maintenance. *Id.*

schemes that allow homeowners to access their equity, remain in their homes, and become renters.⁵³³

All these methods of accessing home equity can be very helpful to homeowners, particularly older ones, who have substantial equity in their homes but need cash.⁵³⁴ However, each of these products presents both opportunities and risks for homeowners. Therefore, the decision to use any of these arrangements should be made cautiously and with full information about the risks involved, the terms of the applicable loans and leaseback agreements as well as the fee structures and other costs associated with these arrangements.

The biggest risk associated with home equity loans and HELOCs is that homeowners can lose their homes if they miss payments or default on the loans for any reason. The additional risk presented by HELOCs is that they typically have variable interest rates. This means that the borrower is not guaranteed to have consistent monthly payments over the life of the loan. Also, the effective rates for these arrangements are determined by the prime rate, which is the interest rate that banks use to determine their lending rates.⁵³⁵ Thus, whenever the federal government raises interest rates the rates, it will similarly increase rates for home equity lines of credit, which can put a strain on household finances.

Reverse mortgage products, which also present risks, are a common type of mortgage loan available to homeowners age 62 and older.⁵³⁶ Like traditional mortgages, reverse mortgages allow homeowners to borrow funds using their home as security while keeping title to the property. Unlike in the case of traditional mortgages, borrowers with reverse mortgages do not make monthly mortgage payments. Instead, the loan is repaid when the borrower no longer lives in the home. While the borrower lives in the home, interest and fees are added to the loan balance each month and the balance continuously grows.⁵³⁷ Thus, with a reverse mortgage loan, the amount that the borrower owes the

⁵³³ See, e.g., SELL2RENT, <https://sell2rent.com/> [<https://perma.cc/SYR9-TKFX>] (last visited Nov. 24, 2025); *Frequently Asked Questions*, TRUEHOLD, <https://www.truehold.com/faqs> [<https://perma.cc/C4ZW-NL29>] (last visited Nov. 24, 2025); *Make An Informed Decision*, STAY FRANK <https://www.stayfrank.com/everything-you-need-to-know-about-a-home-sale-leaseback> [<https://perma.cc/EYH7-YWNB>] (last visited Oct. 22, 2025).

⁵³⁴ Apgar & Di, *supra* note 184, at 17–18.

⁵³⁵ James Chen, *Understanding the Prime Rate: Definition, Calculation, and Impact*, INVESTOPEDIA, (Nov. 24, 2025), <https://www.investopedia.com/terms/p/primerate.asp> [<https://perma.cc/D5S8-DCJG>].

⁵³⁶ “[T]he most common type of reverse mortgage[] is a special type of home loan only for homeowners who are 62 and older.” *What is a reverse mortgage?*, CONSUMER FIN. PROT. BUREAU (Dec. 21, 2023), <https://www.consumerfinance.gov/ask-cfpb/what-is-a-reverse-mortgage-en-224/> [<https://perma.cc/7KW9-Z3MR>].

⁵³⁷ “With a reverse mortgage loan, homeowners are required to pay property taxes and homeowners insurance, use the property as their principal residence, and keep their house in good condition.” *Id.*

lender goes up, not down, over time. Accordingly, as the homeowner’s loan balance increases, the home equity decreases. When reverse mortgages become due and payable, homeowners, or their heirs, are required to pay back the full account balance associated with the reverse mortgage loan. This expense is typically met by selling the home.

Although reverse mortgages can assist older individuals in converting home equity to cash, with households living longer, an additional risk associated with many such products is that homeowners “will out live the annuity and be forced to move at an advanced age.”⁵³⁸ The only way to eliminate this risk is for the terms of the agreement to guarantee that the homeowners will continue to receive their annuity payments until they die or until they voluntarily move. However, most conventional reverse mortgage products do not include such protections.⁵³⁹

In many cases, older homeowners do not actively seek out arrangements that allow them to access their home equity.⁵⁴⁰ They are frequently made aware of them by aggressive outreach or marketing campaigns.⁵⁴¹ Survey data indicates that many of these “push marketing” tactics leave older borrowers with overpriced mortgage loans containing abusive features and debt they are unable to repay.⁵⁴² This situation can lead to the loss of home equity, foreclosures, and evictions.

An array of new “sell and stay” arrangements that allow homeowners to either rent or purchase their homes after selling them are increasingly becoming available to homeowners.⁵⁴³ These arrangements can be good options for individuals who are struggling to make their mortgage payments or who need to access their home equity for financial emergencies, but they also present tremendous risks.⁵⁴⁴

There are no federal guidelines regulating these new products. Therefore, the fees, costs, and terms associated with them vary dramatically from one state to another and from one product to another.⁵⁴⁵ For example, the now-defunct EasyKnock Company offered homeowners two different options in connection

⁵³⁸ Apgar & Di, *supra* note 184, at 17.

⁵³⁹ *Id.*

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.*

⁵⁴² *Id.*; see Kellie K. Kim-Sung & Sharon Hermanson, *Experiences of Older Refinance Mortgage Loan Borrowers: Broker- and Lender-Originated Loans*, 83 AARP PPI Data Digest 1, 1–2 (2003).

⁵⁴³ See Julie Taylor, *How You Can Sell Your Home and Still Live There After The Sale*, REALTOR.COM (Feb. 7, 2025), <https://www.realtor.com/advice/sell/sell-and-stay-strategy/> [<https://perma.cc/DD4B-ZM7F>].

⁵⁴⁴ See *EasyKnock*, CONSUMER AFFS. (Nov. 1, 2025), <https://www.consumeraffairs.com/finance/easyknock.html> [<https://perma.cc/BR87-P6MU>].

⁵⁴⁵ Sarah Sheehan, *Best Home Sale-Leaseback Companies: 2025 Roundup*, LENDEDU (Sep. 30, 2025), <https://lendedu.com/blog/best-home-sale-leaseback-options/> [<https://perma.cc/T9HN-ZY77>].

with their programs.⁵⁴⁶ One option allowed the homeowner to repurchase the home after selling it within a certain period.⁵⁴⁷ Another option allowed the homeowner to sell the home on the open market rather than selling to the company.⁵⁴⁸ One of the obvious downsides to the “stay and rent option” is that the homeowner no longer builds equity and becomes a tenant. There are also issues related to the payment and assessment of fees and interests that must be considered.

Not surprisingly, fear, complexity, and a lack of understanding about equity loans, HELOCs, reverse mortgage products, and “sell and stay” arrangements deter many seniors from using their home wealth to meet their financial needs during retirement. Homeowners ages 65 and older hold in excess of \$3 trillion in extractable primary residence equity; however, only 6% of senior homeowners express interest in tapping into their home equity for this purpose.⁵⁴⁹ At the same time, almost 37% of senior homeowners in this same age group express concern about their financial situation during retirement.⁵⁵⁰ Therefore, some means of assisting individuals in making informed decisions about the use of arrangements that allow them to borrow against their home equity would be beneficial. Accordingly, this Article recommends that education on equity loans, home equity lines of credit, reverse mortgages, and “sell and stay” arrangements be included in the mandatory financial education program proposed above.⁵⁵¹

CONCLUSION

Because of the importance of wealth accumulation and the challenges that many individuals face in saving on their own, there are currently numerous tax expenditures specifically designed to provide incentives for different methods of individual asset-building behavior.⁵⁵² Each of these tax expenditure programs

⁵⁴⁶ *Programs*, EASYKNOCK (Sep. 30, 2025), <https://web.archive.org/web/20241108011427/https://www.easyknock.com/programs> [https://perma.cc/58LB-YWVF].

⁵⁴⁷ *Sell & Stay*, EASYKNOCK (Nov. 8, 2024), <https://web.archive.org/web/20241108012724/https://www.easyknock.com/programs/sellstay> [https://perma.cc/3QH3-FQ25].

⁵⁴⁸ *Moveability*, EASYKNOCK (Nov. 8, 2024), <https://web.archive.org/web/20241108021510/https://www.easyknock.com/programs/moveability> [https://perma.cc/KF78-LUCC].

⁵⁴⁹ Kaul, Goodman & Simmons, *supra* note 532.

⁵⁵⁰ *Id.*

⁵⁵¹ As a result, younger people would become familiar with both the benefits and risks of these products prior to retirement age. *See id.*; *see also supra* Section V.A.

⁵⁵² Asset building programs can be divided into four main categories: (1) retirement savings, (2) homeownership, (3) savings and investments, and (4) small business

has a profound effect on the financial stability of millions of Americans over their working lives and during retirement.⁵⁵³ The cost for these programs is substantial,⁵⁵⁴ with the federal government spending more than \$1 trillion annually on them in the form of forgone revenue.⁵⁵⁵

Notwithstanding the tremendous amount of revenue forgone in connection with the tax incentives for retirement savings, the confluence of economic, social, and demographic changes in American society has negatively impacted the ability of the traditional sources of retirement income to provide retirement security for most workers.⁵⁵⁶ This reality threatens the retirement security of many low- and middle-income individuals and exacerbates existing social and economic inequalities in this country.⁵⁵⁷ Consequently, there is a critical need for policymakers to consider new and different ways of achieving a more equitable distribution of benefits in the retirement savings system and to increase retirement security among underserved populations.

Purchasing a home is the pathway to wealth accumulation for many individuals in this country.⁵⁵⁸ This pathway can lead to greater financial security during one’s working career and during retirement.⁵⁵⁹ However, the program is currently structured to disproportionately benefit high-income taxpayers. The inability to purchase a home by many low- and middle-income individuals not only perpetuates longstanding wealth disparities in this country, but also

development. LILIAN WOO & DAVID BUCHHOLZ, RETURN ON INVESTMENT? GETTING MORE FROM FEDERAL ASSET BUILDING POLICIES 2 (2007).

⁵⁵³ See *supra* Sections IV.A, IV.B.

⁵⁵⁴ To the extent that recognizable costs and other externalities are unaccounted for, the true costs of tax expenditures are understated. See Leonard E. Burman & Marvin Phaup, *Tax Expenditures, the Size and Efficiency of Government, and Implications for Budget Reform*, 26 TAX POL’Y & ECON. 93, 99 (2012) (explaining that the exclusion of tax expenditures causes overall spending to be understated by approximately one third).

⁵⁵⁵ CONG. BUDGET OFF., THE BUDGET & ECONOMIC OUTLOOK: 2023 TO 2033 27 (2023). The exact cost in connection with any one program is measured in terms of forgone revenue, determined by calculating the difference between the existing tax liability and what the tax liability would have been in the absence of a particular provision. See STANLEY SURREY, PATHWAYS TO TAX REFORM: THE CONCEPT OF TAX EXPENDITURES 30–31 (Harv. Univ. Press 1973). In addition, the staff of the Joint Committee on Taxation publishes annual reports on tax expenditures. See JOINT COMM. ON TAX’N, JCX-22-22, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2022–2026 (2022); U.S. GOV’T ACCOUNTABILITY OFF., TAX POLICY: TAX EXPENDITURES DESERVE MORE SCRUTINY GAO-94-122 33–35 (1994), [<https://perma.cc/4HUY-6VAD>]. This assumes that all other tax expenditures remain constant.

⁵⁵⁶ See discussion *supra* Section I.

⁵⁵⁷ See discussion *supra* Section I.

⁵⁵⁸ See *Research series: How does homeownership contribute to wealth building?*, HABITAT FOR HUMAN., <https://www.habitat.org/our-work/impact/research-series-how-does-homeownership-contribute-to-wealth-building> [<https://perma.cc/FX7X-LDA2>].

⁵⁵⁹ See discussion *supra* Section I.

significantly widens the retirement savings gap.⁵⁶⁰ Given the important role that housing wealth can play during retirement, policymakers should explore ways of strengthening the connection between homeownership and retirement savings policies as a way of providing greater retirement security for workers across the income spectrum.

The four proposals contained in this Article are designed to break down existing barriers to homeownership and to protect the build-up of home equity as a means of increasing retirement security, particularly among low- and middle-income workers.⁵⁶¹ Although homeownership could never serve as a substitute for a comprehensive retirement savings program, it cannot be denied that the financial benefits of owning a home can significantly increase retirement security. Thus, the implementation of these proposals could significantly improve tax and pension policies by diversifying the three traditional sources of income, by achieving a more equitable distribution of benefits from the asset building programs supported by the tax system, by increasing the retirement security of underserved populations, and by helping to close the ever-increasing retirement savings gap in this country.

⁵⁶⁰ See *supra* text accompanying note 176.

⁵⁶¹ See discussion *supra* Section V.

NOTE

**THE CONSTITUTIONALITY OF STATE FUNDING FOR THE
CONNECTICUT TEACHERS’ RETIREMENT SYSTEM**

*Claudio Melendez-Cooper**

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ABSTRACT

Connecticut, the oft-monikered “Land of Steady Habits,” has long struggled with meeting its constitutional obligation to provide free public elementary and secondary education. The school finance system, and its reliance on local property taxes, has left low-property wealth districts with inadequate resources to ensure students receive a quality education. Low-wealth districts lag behind in attendance rates, standardized test scores, graduation rates, and post-secondary outcomes. The contrast with high-wealth districts is stark. Connecticut has the highest achievement gap in the nation between poor and wealthy towns, despite having a progressive education cost sharing (“ECS”) grant formula that equitably distributes more than \$2 billion in state education aid.

This Note argues that the funding system for public schools in Connecticut is unconstitutional under Article Eighth of the Connecticut Constitution, due to the inequitable state education aid distributed outside of the State Department of Education (“SDE”). The constitutionality of such state spending has never been challenged. Although the Connecticut Supreme Court recently reviewed the constitutionality of the state funding system and found the current schema for state funding passed strict scrutiny by providing minimally adequate support and substantially equal educational opportunities, the analysis was limited to the ECS formula and supplemental aid distributed through the SDE.

Education aid distributed outside the SDE, primarily the Teachers’ Retirement System (“TRS”) and education-related debt service payments, has grown exponentially in the past decade. This aid disproportionately benefits high-wealth districts, more than offsetting the equitable distribution of funds administered by the SDE. As a result, Connecticut’s school finance system likely fails strict scrutiny, and the aid of TRS is likely unconstitutional.

INTRODUCTION

Connecticut ignored the wake-up call. Nearly a decade ago, Judge Moukawsher of the Connecticut Superior Court in the Judicial District of Hartford pointedly asked, “Could a functionally illiterate person get a high school degree from Bridgeport?”¹ Bridgeport School District had one of the neediest student populations in the state of Connecticut. The District had a miniscule property tax base to support its operations. Its students’ test scores lagged far behind those of peer students in wealthier districts. This was all known.² But Superintendent Fran Rabinowitz’s answer to the Court’s question

¹ See Memorandum of Decision at 63, *Conn. Coal. for Just. in Educ. Funding, Inc. v. Rell*, No. X07-HHD-CV-14-5037565-S (Conn. Super. Ct. Sep. 7, 2016), <https://www.jud.ct.gov/HomePDFs/CCJEFvRell.pdf> [<https://perma.cc/CX2U-C9XD>].

² See Jacqueline Rabe Thomas, *Troubled Schools on Trial: What Does a High School Diploma Prove?*, CT MIRROR (Dec. 13, 2016), <https://ctmirror.org/2016/12/13/troubled->

should still have been shocking front-page news: an unhesitating, unqualified “yes.”³ A Connecticut superintendent outright admitted that the quality of education in her district was so lacking that she could not guarantee that her high school graduates could read. Instead, this damning acknowledgement was buried as fact #208 in the judge’s fact-finding appendix.⁴ Upon appeal, the Connecticut Supreme Court held that, as a matter of law, the educational opportunities in poor districts were “substantially equal” to those in wealthier districts. Instead of focusing on the law’s apparent indifference towards the prospect of illiterate high school graduates, the headline read “Supreme Court rules education in poor communities meets constitutional standard.”⁵

Superintendent Rabinowitz’s admission was not hyperbole designed to sway the Court; it was an accurate characterization of the pitiful state of education in Connecticut’s poorest communities. The truth of her words, sadly, is now impossible to deny. In 2024, 19-year-old Aleysha Ortiz graduated Hartford Public High School—despite not knowing how to read.⁶ Twelve years of the Hartford education system had utterly failed her. Aleysha’s story captivated the public’s attention in a way that Superintendent Rabinowitz’s testimony did not. Suddenly, across Connecticut, people began asking themselves how such a failure could happen in one of the wealthiest states in the country.

The answer is obvious. As a veteran teacher explained: special education teacher caseloads are too high; class sizes are too big; and multi-language teachers are too few.⁷ In short, low-wealth districts like Hartford do not have sufficient staffing because they are chronically underfunded. The State has an affirmative constitutional obligation to equalize education funding. And despite what the headlines say, the State is probably *not* meeting its obligation.

The Connecticut Supreme Court likely got it wrong. The error was not due to a faulty legal analysis, but rather an incomplete factual picture. The plaintiffs challenging the constitutionality of the State school finance system were myopic: they only challenged the constitutionality of what they could see in the distribution of funds from the State Department of Education (“SDE”). These funds, however, are not the root of the inequities. The true problem is the aid

schools-on-trial-what-does-a-high-school-diploma-prove/ [https://perma.cc/65QM-QRBM].

³ See Conn. Coal. for Justice in Educ. Funding, No. X07-HHD-CV-14-5037565-S, app. 1 at 63.

⁴ See *id.*

⁵ Jacqueline Rabe Thomas, *Supreme Court Rules Education in Poor Communities Meets Constitutional Standard*, CT MIRROR (Jan. 17, 2018), <https://ctmirror.org/2018/01/17/supreme-court-finds-education-in-poor-communities-meets-constitutional-standard/> [https://perma.cc/UC5U-SN3Y].

⁶ Jessika Harkay, *This Hartford Public High School Grad Can’t Read. Here’s How It Happened.*, CT MIRROR (Sep. 29, 2024), <https://ctmirror.org/2024/09/29/cant-read-high-school-ct-hartford/> [https://perma.cc/5DX8-QVV4].

⁷ Tiffany Moyer-Washington, *Opinion: Of Course She Can’t Read*, CT MIRROR (Oct. 29, 2024), <https://ctmirror.org/2024/10/29/of-course-she-cant-read/> [https://perma.cc/7N8Y-E3DM].

provided outside of the SDE through the Teachers' Retirement System ("TRS"). These funds were absent from the Court's analysis. The current method of funding the TRS uses hundreds of millions of State dollars to support some of the wealthiest towns in the entire country. Reforming the TRS funding system can fix the chronic underfunding of poor districts. To comply with the State's constitutional mandate of providing a substantially equal education, the State must cease wasting its limited resources on benefiting the wealthy.

This Note analyzes the constitutionality of Connecticut's school finance system, concluding that the system of aid distributed through TRS contributions and associated debt service payments are likely unconstitutional. Section I provides background on Connecticut's right to education and outlines the legal standard for analyzing whether a school finance system—or any of its components—violates the Connecticut Constitution. Section II provides an overview of Connecticut's school finance system, including its sources of funding, and analyzes school district expenditures by property wealth decile. Additionally, Section II identifies TRS expenditures outside of the SDE that are, in actuality, education expenditures. Section III incorporates TRS data and applies the legal test to conclude that the system of funding teacher pensions likely violates the Connecticut Constitution.

SECTION I: LEGAL STANDARD

The right to education is unique; as a "positive" right, it imposes a requirement upon the government to fulfill it.⁸ Unlike the enumerated rights in the United States Constitution, which are "negative" rights that place "limitations on the scope of government,"⁹ the right to education *forces* a legislature to set up an interventionist and protectionist government that can meet its constitutional responsibilities.¹⁰ Though every state has some constitutional right to education in its respective state constitution, the scope of this right varies from state to state.¹¹ Since the United States Supreme Court explicitly ruled that the right to education is not a fundamental right granted by the Constitution, individual state constitutions and the interpretations of state supreme courts determine state governments' affirmative obligations.¹² And where such affirmative obligations are not being met, activists may utilize

⁸ See EMILY ZACKIN, *LOOKING FOR RIGHTS IN ALL THE WRONG PLACES: WHY STATE CONSTITUTIONS CONTAIN AMERICA'S POSITIVE RIGHTS* 40 (2013).

⁹ See *id.* at 4–7.

¹⁰ See *id.* at 36–37.

¹¹ See *id.* at 67–68; EMILY PARKER, *CONSTITUTIONAL OBLIGATIONS FOR PUBLIC EDUCATION* 50–STATE REVIEW 1 (2016); William E. Thro, *School Finance Litigation as Facial Challenges*, 272 ED. L. REP. 687, 695 n.53 (2011).

¹² See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973); THE FEDERALIST No. 45 (James Madison); U.S. CONST. amend. X; Michael A. Rebell, *State Courts and Education Finance: Past, Present and Future*, 2021 BYU EDUC. & L.J. 113, 113–14 (2022).

litigation and seek judicial enforcement as a mechanism through which to force the government to meet its obligation to fulfill the right to education.¹³

Like many other governments,¹⁴ Connecticut has an affirmative constitutional duty to provide educational opportunities.¹⁵ Recognizing the importance of a robust public education system to promote the economic welfare of its populace, Connecticut included Article Eighth in its Constitution to guarantee free public schools during the 1965 Constitutional Convention.¹⁶ Section 1 of Article Eighth provides: “There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.”¹⁷

The policy rationales for such a provision are clear: education, as the “great equalizer,” elevates the lives of all individuals and enables those entrapped in poverty to escape the endless cycle of economic oppression.¹⁸ Education “is a matter of great public utility . . . it is one of great public necessity for the protection and welfare of the state itself.”¹⁹ The “grave significance” of education is indisputable.²⁰ It is the “very foundation of good citizenship,” and

¹³ See ZACKIN, *supra* note 8, at 60.

¹⁴ See, e.g., 1994 CONST. (Belg.), art. 24 (“Everyone has the right to education with the respect of fundamental rights and freedoms. Access to education is free until the end of mandatory schooling.”); NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 26, para. 1 (Japan) (“All people shall have the right to receive an equal education correspondent to their ability, as provided by law.”); CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS, CP, Artículo 3, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014 (Mex.) (“All people have the right of education.”); S. AFR. CONST., 1996 § 29(1) (S. Afr.) (“Everyone has the right . . . to a basic education.”).

¹⁵ Sheff v. O’Neill, 678 A.2d 1267, 1280 (Conn. 1996).

¹⁶ See Proceedings of the Third Constitutional Convention of the State of Connecticut, Conn. Gen. Assembly, at 1039 (Oct. 15 1965) [https://drive.google.com/file/d/1LnLxcNEARYynoiMs752_ip6rZs_YtP6/view] [<https://perma.cc/FB9M-WJC2>] (Democratic delegate Simon Bernstein introduced the amendment and argued that “a good education of children is . . . [a] benefit to any Commonwealth”).

¹⁷ CONN. CONST. art. VIII, § 1.

¹⁸ See MASS. SCH. BD., ANN. REP. NO. 12, at 59 (1848), <https://usinfo.org/docs/democracy/16.htm> [<https://perma.cc/2C7H-YZAV>].

¹⁹ Bissell v. Davison, 32 A. 348, 349 (Conn. 1894); see Horton v. Meskill (*Horton I*), 376 A.2d 359, 377 (Conn. 1977) (Bogdanski, J., concurring) (“[E]ducation is the very essence and foundation of a civilized culture: it is the cohesive element that binds the fabric of society together. In a real sense, it is as necessary to a civilized society as food and shelter are to an individual. It is our fundamental legacy to the youth of our state to enable them to acquire knowledge and possess the ability to reason: for it is the ability to reason that separates man from all other forms of life.”).

²⁰ San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 30 (1973); accord Larry J. Obhof, *School Finance Litigation and the Separation of Powers*, 45 MITCHELL HAMLIN L. REV. 536, 537 (2019).

creating a free public system that supports the education of the populace is “perhaps the most important function of state and local governments.”²¹

In Connecticut, “the judiciary has a constitutional duty to review whether the legislature has fulfilled its obligation.”²² No educational system can exist without adequate funding, and by conferring a positive right to education, Connecticut opens its school finance system to constitutional challenges.²³ Article Eighth guarantees sufficient “educational inputs” (in other words, expenditures) for students to have access to a minimally adequate education.²⁴ Education funding litigation on adequacy claims—claims that the education provided is inadequate—in Connecticut invokes Article Eighth as the source of law to request judicial review.²⁵

Connecticut’s constitutional equal protection provisions provide additional protections. Section 20 of Article First provides: “No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his civil or political rights because of religion, race, color, ancestry or national origin.”²⁶

When analyzed with Article Eighth,²⁷ the Connecticut Constitution guarantees the right to a substantially equal opportunity to education.²⁸ In terms of a school finance system, the Constitution guarantees that school districts have “substantially equal” funding.²⁹

To summarize, the Connecticut Constitution imposes upon the government two requirements for its school finance system: (1) a requirement for sufficient education inputs to provide a *minimally adequate* education; and (2) a requirement for a *substantially equal* educational opportunity. Connecticut’s school finance system is minimally adequate;³⁰ the likely unconstitutionality of

²¹ See *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

²² *Conn. Coal. for Just. in Educ. Funding, Inc. v. Rell (Conn. Coal I)*, 990 A.2d 206, 219 (Conn. 2010); *Sheff v. O’Neill*, 678 A.2d 1267, 2175 (Conn. 1996) (citing *Marbury v. Madison*, 5 U.S. 137, 177 (1803)) (“[I]t is the role and the duty of the judiciary to determine whether the legislature has fulfilled its affirmative obligations within constitutional principles.”).

²³ See ZACKIN, *supra* note 8, at 102.

²⁴ *Conn. Coal. for Just. in Educ. Funding, Inc. v. Rell (Conn. Coal. II)*, 176 A.3d 28, 61 (Conn. 2018).

²⁵ See, e.g., *Horton I*, 376 A.2d at 362; *Sheff*, 678 A.2d at 1270–71; *Conn. Coal. II*, 176 A.3d at 34–35.

²⁶ CONN. CONST. art. I, § 20.

²⁷ CONN. CONST. art. VIII, § 1.

²⁸ See *Conn. Coal. II*, 176 A.3d at 70.

²⁹ *Sheff*, 678 A.2d at 1281–82; *Zapata v. Burns*, 542 A.2d 700, 705 (Conn. 1988); see CONN. CONST. art. VIII, § 1; CONN. CONST. art. I, § 20.

³⁰ The Connecticut Constitution guarantees a minimal education standard. *Conn. Coal. II*, 176 A.3d at 61. Connecticut adopted the same standards as the New York Court of Appeals, which requires adequate teachers, facilities, and instructional resources. *Campaign for Fiscal Equity, Inc. v. State*, 655 N.E.2d 661, 666 (N.Y. 1995). Specifically, there must be: “(1

the TRS distribution of aid is due to a violation of the substantial equality guarantees.³¹

The right to education in Connecticut guarantees substantially equal inputs—not outputs. Schools “cannot be constitutionally required to overcome every serious social and personal disadvantage that students bring with them to school, and that seriously hinder[s] the academic achievement of those students.”³² If there are sufficient educational inputs, then lackluster educational outputs are due to disadvantaging conditions outside the scope of the right to education.³³ Article Eighth is “not a panacea for all of the social ills that contribute to many of the achievement deficiencies identified by the plaintiffs.”³⁴ Article Eighth does not constitutionally mandate the State to, for example, adjust housing construction policy because a lack of affordable housing near a school has a negative educational impact on low-income students.³⁵ Likewise, Article Eighth does not guarantee children the right to health care, clothes, or even nutrition.³⁶ The fundamental right of education is narrow; the scope of the protection of inputs is limited to *education* inputs. Article Eighth of the Connecticut

‘minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn;’ (2) ‘minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks;’ (3) ‘minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies;’ and (4) ‘sufficient personnel adequately trained to teach those subject areas.’” *Conn. Coal. II*, 176 A.3d at 55 (quoting *Campaign for Fiscal Equity, Inc.*, 655 N.E.2d at 666). The resources in these areas cannot be “so lacking as to be unreasonable by any fair or objective standard” and must “reasonably address the minimal educational needs of the state’s students.” *Id.* Educational inputs must be truly scant to fall below this threshold. *See Zandri v. Butkus*, No. NNH CV22-6127873 S, 2023 WL 6432191, at *3 (Conn. Super. Ct. Sep. 22, 2023) (holding that a geometry class run by an inadequately trained substitute teacher for nineteen days was not “an incursion on the plaintiffs’ constitutionally protected rights to a minimally adequate public education”). To date, the Connecticut Supreme Court has held that low-wealth districts offer minimally adequate educational opportunities. *See Conn. Coal. II*, 176 A.3d at 58 (“[T]he state’s educational offerings, even in the poorest school districts, are sufficient to enable students who take advantage of them to become functional members of society.”).

³¹ *Sheff*, 678 A.2d 1267, at 1281–82; *Zapata*, 542 A.2d, at 705–06 (“The equality of rights provision contained in article first, § 1, of the Connecticut constitution has a meaning equivalent to the equal protection clause contained in the fourteenth amendment to the United States constitution.”); *see* CONN. CONST. art. VIII, § 1; CONN. CONST. art. I, § 20.

³² *Conn. Coal. II*, 176 A.3d at 38–39 (quoting *Conn. Coal. I*, 990 A.2d at 270 (Palmer, J., concurring)).

³³ *See Conn. Coal. II*, 176 A.3d at 66.

³⁴ *Conn. Coal. I*, 990 A.2d at 256; *see also* *Moore v. Ganim*, 660 A.2d 742, 744 (Conn. 1995) (holding that there was no obligation for State to provide subsistence to indigent citizens).

³⁵ *Savage v. Aronson*, 571 A.2d 696, 712–13 (Conn. 1990).

³⁶ *See Conn. Coal. II*, 176 A.3d at 62.

Constitution does not guarantee that each student will receive an education but merely protects the right to an opportunity to receive an education.³⁷

Because the right to education is a fundamental right in the State, “strict scrutiny” applies in analyzing a school finance formula when it infringes upon substantial equality.³⁸ To be sure, “substantial equality” is a nebulous term. Substantial equality means something *close* to absolute equality. Early education finance reformers developed the “fiscal neutrality standard” to determine if a school finance system is absolutely equal.³⁹ A fiscally neutral school finance system is one where public school revenues are exclusively a function of local tax effort, rather than a combination of tax effort and property values.⁴⁰ In other words, a given property tax rate levied by a municipality

³⁷ See *id.* at 60 (citing Campaign for Fiscal Equity v. State, 187 Misc. 2d 1, 4 (N.Y. Sup. Ct. 2001)).

³⁸ See *Horton I*, 376 A.2d at 370–71. Typically, different treatment of a “suspect class” such as race, alienage, and national origin necessitates strict scrutiny analysis. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985); see, e.g., *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003); *Hirabayashi v. United States*, 320 U.S. 81, 101 (1943); *Korematsu v. United States*, 323 U.S. 214, 216 (1944). The Connecticut Constitution identifies religion, race, color, ancestry, national origin, sex, physical disability and mental disability as suspect classes, but leaves out wealth. *Kerrigan v. Comm’r of Pub. Health*, 957 A.2d 407, 422 (Conn. 2008); CONN. CONST. art. I, § 20. Furthermore, the Connecticut Supreme Court has explicitly noted that poverty is not a suspect classification under either the state or federal constitution. *Moscone v. Manson*, 440 A.2d 848, 851–52 (Conn. 1981); see *Harris v. McRae*, 448 U.S. 297, 323 (1980). However, just because wealth is not a suspect class does not necessarily mean that rational basis scrutiny applies if poor populations are being treated worse under the school finance system; the Connecticut Constitution still provides protections that prohibit direct discrimination between the rich and poor because education is a fundamental right. See *Horton I*, 376 A.2d at 374. To meet the mandates of the Equal Protection Clause, the State may not have “sheer irrationality” in a finance system when it leads to discrimination on irrelevant factors like wealth. See *id.* at 373 (“[Plaintiff’s] argument ‘would be similar and no less tenable should the state make educational expenditures dependent upon some other irrelevant factor, such as the number of telephone poles in the district.’”) (quoting Note, *A Statistical Analysis of the School Finance Decisions: On Winning Battles and Losing Wars*, 81 YALE L.J. 1303, 1307 (1972)). Thus, in the provision of educational resources, statutory provisions that directly discriminate based on wealth are still subject to strict scrutiny. See *id.* (“[W]e must conclude that in Connecticut the right to education is so basic and fundamental that any infringement of that right must be strictly scrutinized.”); see *Sheff v. O’Neill*, 678 A.2d 1267, 1276 (Conn. 1996). The discrimination need not be overt; unintentional, facially nondiscriminatory distribution of state aid will still be unconstitutional. See *id.* at 1277.

³⁹ See Linda Wilkins Rickman, *School Finance Reform Litigation: A Historical Review*, 58 PEABODY J. OF EDUC. 218, 220 (1981); Christopher Roellke et al., *School Finance Litigation: The Promises and Limitations of the Third Wave*, 79 PEABODY J. OF EDUC. 104, 106 (2004).

⁴⁰ In economic terms, a school finance system is fiscally neutral when “the elasticity of education expenditure per eligible pupil with respect to wealth is zero.” See William L. Weber, *Fiscal Neutrality and Local Choice in Public Education*, 10 ECON. OF EDUC. REV. 37, 37 (1991).

would always result in the same district revenue per pupil.⁴¹ Local control is maintained, but wealth is excised as a factor in school district funding.⁴²

Connecticut courts, like many across the country, declined to adopt a mandate as strict as the fiscal neutrality standard.⁴³ Even so, the government must still make an “an honest and good-faith effort” to achieve substantial equality.⁴⁴ What this means is that *relative* education inputs matter.⁴⁵ Even if all students statewide are receiving minimally adequate education inputs, a funding formula may still be unconstitutional.⁴⁶

Connecticut courts have repeatedly affirmed that the state school finance system must equalize funding.⁴⁷ But the State has long struggled with this mandate. In 1968, the State had the least equalized school finance system in the nation.⁴⁸ The inequities continue to this day, with the State having the largest funding differences relative to need between high-poverty and low-poverty districts in 2024.⁴⁹ There are, in essence, “two Connecticut”: the high-performing, well-funded suburban Connecticut, and the low-performing, poverty-stricken urban Connecticut.⁵⁰ Courts need an objective standard to determine whether the status quo is constitutional.

⁴¹ See *id.*

⁴² See Roe L. Johns, *Analytical Tools in School Finance Reform*, 2 J. OF EDUC. FIN. 499, 501 (1977).

⁴³ See Roellke et al., *supra* note 39, at 112 (stating “[a]lthough plaintiffs have had some success, most state courts rejected second-wave equality challenges” and noting that, even with a successful equity challenge, “courts [were] unwilling to mandate specific finance reform”); Obhof, *supra* note 20, at 544. The New Hampshire Supreme Court, by contrast, found that “[t]here is nothing fair or just about taxing a home or other real estate in one town at four times the rate that similar property is taxed in another town to fulfill the same purpose of meeting the State’s educational duty” and explicitly ruled that “[t]o the extent that the property tax is used in the future to fund the provision of an adequate education, the tax must be administered in a manner that is equal in valuation and uniform in rate throughout the State.” See *Claremont Sch. Dist. v. Governor*, 703 A.2D 1353, 1357 (N.H. 1997).

⁴⁴ See *Gaffney v. Cummings*, 412 U.S. 735, 743–44 (1973).

⁴⁵ See *Conn. Coal. II*, 176 A.3d at 70.

⁴⁶ *Id.*; see *Horton I*, 376 A.2d at 376 (“Obviously, absolute equality or precisely equal advantages are not required and cannot be attained except in the most relative sense. Logically, the state may recognize differences in educational costs based on relevant economic and educational factors and on course offerings of special interest in diverse communities. None of the basic alternative plans to equalize the ability of various towns to finance education requires that all towns spend the same amount for the education of each pupil.”).

⁴⁷ See *Horton I*, 376 A.2d at 373; Weber, *supra* note 40, at 37.

⁴⁸ See Johns, *supra* note 42, at 504.

⁴⁹ See Bruce D. Baker et al., *The Adequacy and Fairness of State School Finance Systems*, 2024 ALBERT SHANKER INST. 2, <https://www.schoolfinancedata.org/the-adequacy-and-fairness-of-state-school-finance-systems-2024/> [<https://perma.cc/54AZ-7XQM>].

⁵⁰ Gov. Lowell Weicker, Connecticut State of the State Address, at 12:30 (Jan. 11, 1993), C-SPAN, <https://www.c-span.org/program/state-legislature/connecticut-state-of-the-state->

The Connecticut Supreme Court held that each school finance system litigation is “sui generis” and no conventional strict scrutiny test is available to determine whether education is “equalized.”⁵¹ In other words, the usual test of narrow tailoring to serve a compelling state interest does not apply to the right to education.⁵² For claims that the State is not providing substantially equal educational opportunities, the Court adopted a three-part framework to assess the constitutionality of the school finance system.⁵³ First, plaintiffs have the burden to demonstrate that educational expenditure disparities are “more than de minimis.”⁵⁴ To account for differences in school sizes, plaintiffs must measure expenditures on a per student basis.⁵⁵ Second, after such a showing, the burden shifts to the state to demonstrate that the disparities are an incidental effect of a legitimate state policy.⁵⁶ Third, assuming such a legitimate policy exists, the state must then demonstrate that the disparities are “not so great as to be unconstitutional.”⁵⁷

A. *More than De Minimis*

The Connecticut Constitution does not require equality of expenditures to fulfill the obligations under its equal protection clause.⁵⁸ Yet, the courts have not established a firm minimum spending difference threshold that signifies if district expenditure disparities are more than de minimis. School finance litigation cases in Connecticut have used per pupil expenditure ratios between groups.⁵⁹

address/29144 [https://perma.cc/GJ5G-NWY7].

⁵¹ See *Horton I*, 376 A.2d at 373.

⁵² Cf. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995) (applying strict scrutiny to racial classification by examining whether there was a compelling interest and narrow tailoring).

⁵³ The three-part test the Connecticut Supreme Court adopted was “fruitfully borrow[ed]” from the framework federal courts use to test constitutionality of state legislative apportionment plans. *Horton v. Meskill (Horton II)*, 486 A.2d 1099, 1105, 1106 (Conn. 1985) (“[T]he sui generis nature of litigation involving school financing legislation militates against formalistic reliance on the usual standards of the law of equal protection, in particular against the requirement that the state must demonstrate a compelling state interest.”); see *Conn. Coal II*, 176 A.3d at 70.

⁵⁴ *Horton II*, 486 A.2d at 1106.

⁵⁵ See *Horton I*, 376 A.2d at 368; *Horton II*, 486 A.2d at 1107; Johns, *supra* note 42, at 501 (“The most commonly used method of comparing the fiscal resources of school districts is to compare the per pupil expenditures.”).

⁵⁶ See *Conn. Coal II*, 176 A.3d at 70.

⁵⁷ See *id.*

⁵⁸ *Id.*; see CONN. CONST. art. I, § 20.

⁵⁹ The lack of a clear threshold is not unusual. In the context of population variances during congressional redistricting, the Supreme Court could not find a “nonarbitrary way to pick a cutoff point at which population variances suddenly become de minimis.” *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969). For state redistricting, a deviation of greater than ten

In *Horton I*, the highest wealth⁶⁰ decile⁶¹ town had a per pupil expenditure of \$1,245, compared with \$813 at the lowest wealth decile, for a ratio of 1.53. The wealthiest district decile spent fifty-three percent more on education per pupil than the poorest district decile. The Court held this was more than de minimis.⁶² In *Horton II*, the Court found that the per pupil expenditures of the 95th percentile spending district was \$4,032, compared with the \$2,370 of the 5th percentile district, a ratio of 1.70, which it held was more than de minimis.⁶³

In *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, the Court found that the spending per pupil in the wealthiest decile for districts with over one thousand students was \$15,714, compared with \$13,416 in the poorest decile.⁶⁴ Although the Court declined to definitively state whether this spending ratio of 1.17 was more than de minimis, it seemed skeptical that a ratio so significantly below that in prior cases would be more than de minimis.⁶⁵

In all of these cases, the courts relied on per pupil expenditure ratios based on nominal costs. Expenditures were not adjusted based on any of the factors that influence the cost to educate a student, such as local economic conditions,⁶⁶ particular district-specific characteristics,⁶⁷ or the needs of the student body.⁶⁸ Students living in poverty will, of course, require more resources in school than students who come from wealthier families.⁶⁹ Likewise, English language learners need additional assistance (and correspondingly, additional funding) to fully understand educational materials and assignments. But courts “have little

percent makes a prima facie case of a more than de minimis difference. *Brown v. Thomson*, 462 U.S. 835, 842 (1983); see *Connor v. Finch*, 431 U.S. 407, 418 (1977). But see *Chapman v. Meier*, 420 U.S. 1, 25–26 (1975) (declining to hold that a plan resulting in a 5.95% variance, if enacted, would be permissible).

⁶⁰ As determined by the yield of property taxes per pupil. See *Horton I*, 376 A.2d at 367.

⁶¹ The wealthiest decile is all of the school districts that are above the 90th percentile in wealth. Likewise, the poorest decile is all of the districts below the 10th percentile in wealth. See *id.*

⁶² See *Horton I*, 376 A.2d at 367. The Connecticut Supreme Court in *Horton I* calculated a ratio ranging from 2.14 to 2.45 over a ten-year period between the ninety-fifth percentile spending town and the fifth percentile spending town. *Id.* But the Court later clarified in *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell* in 2018 that ratios based on high and low spending towns are meaningless unless spending is closely correlated with wealth. *Conn. Coal. II*, 176 A.3d at 71 n.45. The *Conn. Coal. II* Court asserted that the *Horton I* court had found that such a correlation existed because ratios of spending by wealth decile provide truly meaningful comparisons. *Id.* The 1.53 ratio figure is derived from using this clarified methodology. *Id.*

⁶³ *Horton II*, 486 A.2d at 1107 n.15.

⁶⁴ *Conn. Coal. II*, 176 A.3d at 73.

⁶⁵ See *id.* at 73–74.

⁶⁶ See *Horton II*, 486 A.2d at 1107.

⁶⁷ For example, district compactness impacts transportation costs. See Johns, *supra* note 42, at 503.

⁶⁸ See *id.* at 501.

⁶⁹ See *id.*; *Conn. Coal. II*, 176 A.3d at 72 n.46.

institutional competence to make the determination as to which disadvantaging conditions are the most serious” and what the associated additional education expenditures should be to offset these conditions.⁷⁰ Thus, though the educational funding needs of school districts vary, courts declined to consider these differences when determining whether educational expenditure disparities exist.⁷¹

B. Legitimate State Policy

A legitimate state policy must be rational, and any disparities in educational expenditures that result must be merely “incident to the advancement of [the] legitimate state policy.”⁷² The legitimacy of the stated policy can be rebutted if “the Court finds alternative plans are available which both further the state’s rational interest and achieve greater . . . equality.”⁷³ In short, the overall school finance system must serve its stated policy while producing the “minimum deviation” from the goal of education funding equalization.⁷⁴ A school finance system that is “less efficacious than another plan” through non-equalizing provisions must have justifications for said provisions.⁷⁵

The Connecticut Supreme Court applied the reasoning of the United States Supreme Court to determine whether the State had a valid defense against allegations that its education funding system created more than de minimis disparities.⁷⁶ In determining whether congressional apportionments could “deviate” from perfect population parity in *Karcher v. Daggett*, the United States Supreme Court held that specific deviations from parity were permissible if the size of the deviation was small; the particular interest being served by the deviation is important; there is congruence with the plan as a whole with respect to those interests; and there were not viable alternatives that could simultaneously achieve the objectives of the interests and minimize the deviation.⁷⁷ Just like population symmetry serves as the key guiding principle for a state apportioning congressional districts, achieving equalization of each town’s ability to finance education is the axiom of a school finance system.

One legitimate state policy is enabling “local control” of school districts.⁷⁸ For instance, in *Sheff v. O’Neill*, the Connecticut Supreme Court found that the

⁷⁰ See *Conn. Coal. II*, 176 A.3d at 64.

⁷¹ See *id.*

⁷² *Horton II*, 486 A.2d at 1106.

⁷³ See *Gorin v. Karpan*, 775 F. Supp. 1430, 1438 (D. Wyo. 1991).

⁷⁴ See *Kilgarlin v. Hill*, 386 U.S. 120, 123 (1967); see also *Horton I*, 376 A.2d at 359 (noting that State did not choose “the less drastic means for effectuating the local control objective” as a reason for holding state education funding formula unconstitutional).

⁷⁵ *Connor v. Finch*, 431 U.S. 407, 420–21 (1977); *Chapman v. Meier*, 420 U.S. 1, 26 (1975).

⁷⁶ See *Horton II*, 486 A.2d at 1110 n.25.

⁷⁷ *Karcher v. Daggett*, 462 U.S. 725, 740–41 (1983).

⁷⁸ *Horton I*, 376 A.2d at 370.

districting statute, which “establishes town boundaries as the dividing line between all school districts in the state,”⁷⁹ was intended to improve educational outcomes in the state by allowing “local control.”⁸⁰ The Court found that the districting statute contributed to racial isolation but that the intent of the statute was not racial. Since Connecticut had a number of other statutory provisions that promoted diversity in schools and the districting statute was racially neutral on its face, the Court concluded that the districting statute furthered a legitimate state interest.⁸¹

In the context of education funding equalization, maintaining local control is not fundamentally at odds with providing equalization grants designed to give districts a more equal opportunity to finance education.⁸² So long as sufficient equalizing funds are provided, the state “need not place limits on what wealthier towns may spend on education.”⁸³ A school finance system is thus permitted to have more than de minimis disparities to meet this secondary rational state policy.⁸⁴

Specific provisions *within* the school finance system are individually challengeable as unconstitutional.⁸⁵ The justification for non-equalizing provisions in the school finance system must also relate to advancing a rational, legitimate state policy.⁸⁶ Courts may scrutinize whether a policy is rational and legitimate. In *Reynolds v. Sims*, the United States Supreme Court held as unconstitutional Alabama’s apportionment of seats in its state legislature.⁸⁷ The Court noted that, in the past, there may have been a legitimate reason to have deviations from population parity to ensure appropriate representation for

⁷⁹ *Sheff v. O’Neill*, 678 A.2d 1267, 1274 (Conn. 1996).

⁸⁰ *Id.* at 1288.

⁸¹ *Id.*

⁸² *Horton I*, 376 A.2d at 369.

⁸³ *Conn. Coal. II*, 176 A.3d at 74.

⁸⁴ *See Horton II*, 486 A.2d at 1110.

⁸⁵ *See Broadley v. Bd. of Educ. of Meriden*, 639 A.2d 502, 506 (Conn. 1994) (holding that statute mandating program of special education for children with disabilities but not for gifted children did not violate right to substantially equal education because law was rationally based); *Seymour v. Region One Bd. of Educ.*, 803 A.2d 318, 323 (Conn. 2002) (holding that plaintiffs presented justiciable claim where they challenged constitutionality of statute prescribing how regional districts assess costs to member towns).

⁸⁶ *Horton II*, 486 A.2d at 1110 (“It is clear from the trial court’s memorandum of decision that the court found the statutes before it to be unconstitutional because the defendants had failed to prove that the statutes met a compelling state interest. As we have already indicated in this opinion, we believe that the proper test requires the state to prove that the amendments reasonably advanced a rational state policy and that they did not result in an unconstitutionally large disparity. *For this reason, we must remand this case, as to the amendments only, for further proceedings in the trial court in accordance with the substantive standard which we have now articulated.*” (emphasis added)).

⁸⁷ *Reynolds v. Sims*, 377 U.S. 533, 537 (1964).

individuals in rural districts.⁸⁸ Sparsely settled areas with an extremely large geographic footprint stymie effective representation by impairing a citizen's access to their legislator.⁸⁹ But modern advancements in transportation and communication obviate these concerns, and aligning with historic practice alone is not a rational policy.⁹⁰ In *Sutton v. Dunne*, the United States Court of Appeals for the Seventh Circuit affirmed a district court ordering reapportionment and an increase in the size of the Board of Commissioners of Cook County.⁹¹ The Board proffered two rationales to reverse the district court's order: (1) maintaining the historic size of the Board, and (2) saving taxpayers from the added marginal expense of additional Board members.⁹² The Court rejected as illegitimate both of these stated rationales and held that they were "not sufficient justification."⁹³ Thus, aligning with history and saving taxpayers from a relatively small additional burden are not rational and legitimate policies.

Connecticut courts have not ruled explicitly on the rationality of proffered state policies for statutory provisions providing additional funds targeted towards wealthy districts.⁹⁴ In justifying the State's minimum aid grant provision in the finance formula—a provision which increases funding exclusively in districts that would otherwise be too wealthy to qualify for any aid—the State offered the following rationales: (1) provide an incentive to achieve academic excellence; (2) ensure that all towns that comply with state testing and reporting standards receive at least some financial assistance; (3) give the General Assembly a degree of control over the educational programs of wealthy communities; (4) align with historical practice; and (5) facilitate legislative support of fully funding the school finance formula.⁹⁵

A trial court held that these collective policy rationales did not amount to a *compelling* state interest, but this was the incorrect standard.⁹⁶ When the case reached the Connecticut Supreme Court, the Court remanded for the trial court to analyze these policies under the correct standard.⁹⁷ But there was no new trial. There is no record of a holding on whether any of these stated policies constituted a *rational and legitimate* state policy.⁹⁸

⁸⁸ *See id.* at 579–80.

⁸⁹ *See id.* at 580.

⁹⁰ *See id.*

⁹¹ *Sutton v. Dunne*, 681 F.2d 484, 485 (7th Cir. 1982).

⁹² *Id.* at 487.

⁹³ *Id.*

⁹⁴ *See Horton II*, 486 A.2d at 1102 (holding distribution of categorical grants for school construction, transportation, and special education was equitable and therefore constitutional); *Horton I*, 376 A.2d at 367–68 (discussing how State flat reimbursement rate for special education expenditures disproportionately benefited high-wealth districts).

⁹⁵ *Horton v. Meskill*, No. 185283, at *43–44 (Conn. Super. Ct. May 29, 1984).

⁹⁶ *Horton II*, 486 A.2d at 1099.

⁹⁷ *Id.*

⁹⁸ There is no record of any trial or appellate court activity regarding the constitutionality of minimum aid grant provisions after remand. *See* Defendants' Brief in Response to the

C. Disparities That Are Not So Great

Disparities in education inputs that result from legitimate state policies may still be unconstitutional if the disparities are sufficiently large. But just like there is no clear line to determine whether a disparity is more than de minimis, there is no clear line to determine when a disparity is too large. Again, the test applied by the Connecticut Supreme Court is one that it adopted from the United States Supreme Court in a case regarding population parity in state apportionment.⁹⁹ Disparities must be within tolerable limits, and the policies that create such disparities cannot “emasculate the goal of substantial equity.”¹⁰⁰

In *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, the Connecticut Supreme Court noted that the education funding system narrowed significant funding disparities.¹⁰¹ The “tilt” in favor of needier districts and the “strong inverse correlation” between property wealth and state aid showed that the funding system did not emasculate the goal of equity in financing ability.¹⁰² Furthermore, declining to place a cap on district expenditures and allowing local districts to choose to supplement education expenditures with additional local support did not emasculate the goal of equalized ability to finance education.¹⁰³ As a result, the overall school finance system was constitutional.

In *Sheff v. O’Neill*, the plaintiffs advanced a claim that school segregation imperiled their right to a substantially equal education.¹⁰⁴ Though this was not a school funding case,¹⁰⁵ the Court still applied the same three-part test. There, the State failed to meet its “difficult burden” of demonstrating that disparities in racial composition were not so great as to be unconstitutional.¹⁰⁶ The Court noted that over ninety-two percent of the student population in the Hartford School District belonged to minority groups, while only a few neighboring districts had minority enrollment above ten percent.¹⁰⁷ Furthermore, the districting statute was the “single most important factor contributing to the concentration of racial and ethnic minorities in the Hartford public school

Court’s Questions at 11, *Conn. Coal. for Just. in Educ., Inc. v. Rell*, 2016 WL 4922730 (Conn. Super. Ct. Sep. 7, 2016) (No. X07 HHD-CV-1405037565-S); *Horton II*, 486 A.2d at 1110; see also Wesley W. Horton, *Memoirs of a Connecticut School Finance Lawyer*, 24 CONN. L. REV. 703, 718 (1992) (“Since 1985 the case has remained on the back burner. We have not pressed for a rehearing, nor has the State.”). Connecticut continues to have a minimum aid provision that guarantees some manner of state funding to wealthy districts. See CONN. GEN. STAT. ANN. § 10-262f(2)(C).

⁹⁹ See *Horton II*, 486 A.2d at 1107.

¹⁰⁰ *Mahan v. Howell*, 410 U.S. 315, 326 (1973).

¹⁰¹ See *Conn. Coal. II*, 176 A.3d at 75.

¹⁰² *Id.* at 74–75.

¹⁰³ See *id.* at 74.

¹⁰⁴ *Sheff v. O’Neill*, 678 A.2d 1267, 1271 (Conn. 1996).

¹⁰⁵ See *id.* at 1286 n.41.

¹⁰⁶ *Id.* at 1289.

¹⁰⁷ *Id.* at 1272–73.

system.”¹⁰⁸ The Court held that this statute emasculated the goal of eliminating racial imbalances because it perpetuated segregation.¹⁰⁹ Even more damning, the racial imbalances were expected to worsen in the coming years.¹¹⁰

SECTION II: OVERVIEW OF CONNECTICUT SCHOOL FINANCE

Connecticut schools are funded through a combination of local, state, and federal funds. In fiscal year 2023, State sources accounted for 34.6% (\$4.7 billion) of school district revenues out of a total of about \$13.6 billion.¹¹¹ About 57.1% (\$7.8 billion) came from local sources, with the remaining 8.3% (\$1.1 billion) coming from federal sources.¹¹² But this distribution can vary wildly from district to district.¹¹³ State support favoring low property-wealth districts is necessary to reduce the inequities of a school finance system that relies heavily on local property taxes.¹¹⁴ There is an enormous difference in the capacity for towns in different wealth deciles to raise revenue through property tax levies.¹¹⁵

The amount of property wealth in a town determines the town’s ability to raise local revenue to fund education. Property wealth is measured by a town’s equalized net grand list,¹¹⁶ and relative wealth is determined by dividing this sum by town population (colloquially known as the “Equalized Net Grant List Per Capita,” or “ENGLPC”).¹¹⁷

¹⁰⁸ *Id.* at 1274. (emphasis omitted).

¹⁰⁹ *See id.* at 1289.

¹¹⁰ *Id.* at 1285.

¹¹¹ *See* U.S. CENSUS BUREAU, 2023 PUBLIC ELEMENTARY-SECONDARY EDUCATION FINANCE DATA (2024).

¹¹² *See id.*

¹¹³ Conn. State Dep’t of Educ., *Revenue Sources*, EDSIGHT, https://public-edsight.ct.gov/overview/per-pupil-expenditures-by-function---district/revenue-sources?language=en_US [<https://perma.cc/R464-TMAV>] (last visited Jan. 25, 2026).

¹¹⁴ *See Horton II*, 486 A.2d at 1108.

¹¹⁵ *Horton I*, 376 A.2d at 367–68.

¹¹⁶ A town’s equalized net grand list is its taxable property value. A “grand list” contains the assessed values of all property within the town. CONN. GEN. STAT. ANN. § 12-55(a) (West 2024). Towns calculate the “net grand list” by removing tax-exempt property to leave only taxable property. CONN. GEN. STAT. ANN. § 12-89. An “equalized net grand list” reconverts the assessed values in the net grand list into fair market values. CONN. GEN. STAT. ANN. § 10-261(a).

¹¹⁷ Conn. Off. of Pol’y and Mgmt., *Fiscal Years Ended 2018–2022*, MUN. FISCAL INDICATORS, at C-22 (2024) [hereinafter MUN. FISCAL INDICATORS].

Figure 1: Property Tax Revenue by Wealth Decile¹¹⁸

Wealth Decile	Average ENGLPC	Average Municipal Mill Rate ¹¹⁹	Expected Tax Revenue per Capita
1	85,558	43.3	\$3,706
2	116,207	34.9	\$4,057
3	132,679	32.6	\$4,331
4	150,786	30.6	\$4,616
5	163,507	32.4	\$5,297
6	173,908	30.7	\$5,336
7	188,867	31.2	\$5,892
8	223,972	31.2	\$6,991
9	280,389	27.5	\$7,719
10	489,389	18.8	\$9,185

Despite districts in the wealthiest decile having, on average, a property tax rate that is less than half of the tax rates of the poorest decile, they raise more than twice the revenue per capita. Significant state aid is needed to offset these disparities so that the ability to fund education is equalized between wealthy and poor districts.

Connecticut provides state education aid to local public school districts through three different categories: (1) formulaic aid distributed through the Education Cost Sharing (“ECS”) grant;¹²⁰ (2) non-formulaic aid allocated through various different grants administered by SDE;¹²¹ and (3) in-kind aid through the State’s assumption of teacher pension contribution costs in TRS.¹²² ECS is the largest source of state K–12 education aid, dwarfing the combined value of every other non-formulaic grant. But it is only moderately larger than the cost of TRS.

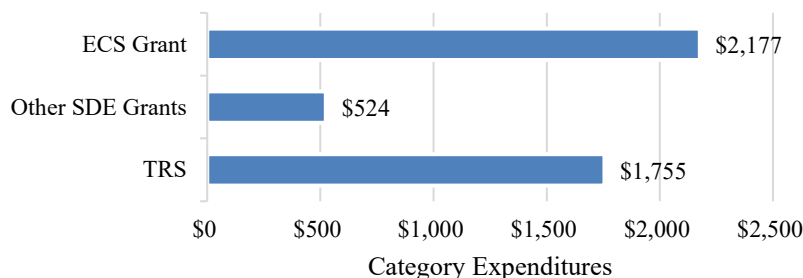
¹¹⁸ See *id.* at B-19–B20.

¹¹⁹ A “mill rate” is the tax rate on property’s assessed value. One mill is equal to 1/1000 of a dollar. *Id.* at A-2.

¹²⁰ CONN. GEN. STAT. ANN. § 10-262h (West 2024).

¹²¹ See Conn. Off. of the State Comptroller, *Budgetary/Statutory Basis (GAAP Based Budgeting) Annual Report for the Fiscal Year Ended June 30, 2023*, at 32–33 (2023) [hereinafter *GAAP Based Budgeting*].

¹²² CONN. GEN. STAT. ANN. § 10-183r (West 2024).

Figure 2: State Education Aid by Category¹²³

¹²³ Note: includes local public school districts' aid only. Conn. State Dep't of Educ., *FY 2023 Grant Payment Report*, GRANT PAYMENT REPORT, <https://www.csde.state.ct.us/public/dgm/grantreports1/paydetlmain.aspx?dyr=2023> (last visited Jan. 23, 2026) [hereinafter *2023 Grant Payment Report*]; *GAAP Based Budgeting*, *supra* note 121, at 33–34; Cavanaugh Macdonald Consulting, LLC, *GASB Statement No. 68 Report for the Connecticut State Teachers' Retirement System Prepared as of June 30, 2023 for Financial Reporting as of June 30, 2024*, CONN. TEACHERS' RET. BD. 14–19 (2024) [hereinafter *GASB Statement No. 68*]. A technical note: the figures here do not equal the \$4.7 billion referenced above because of: (1) the omission of school construction debt service payments; and (2) the inclusion of pension obligation bond debt service payments. School construction is administered by the Department of Administrative Services rather than SDE. CONN. GEN. STAT. ANN. § 10-283 (West 2024). The Connecticut Office of the Treasurer issues general obligation bonds for school construction but does not report what portion of the annual debt service on these bonds is attributable to school construction for individual districts. Message from Sarah K. Sanders, Conn. Off. of the State Treasurer, to Timothy O'Brien, Dep't of Admin. Services (June 13, 2014) ("You have asked 'How much does the State's school construction program cost the State in debt service?' While a simple question, the answer is somewhat complicated. The reason is that when we issue General Obligation bonds, we issue them with level annual principal payments from one to twenty years . . . This fact can distort the portion of debt service attributable to school construction."). Though data is unavailable, the annual debt service cost of school construction is likely several hundred million dollars. *See id.* Yet there is likely no constitutional issue for the school construction program because the State ensures that the program furthers substantial equality by funding greater portions of poorer districts' construction costs. *See* SCHOOL AND STATE FINANCE PROJECT, COMPARING CONNECTICUT'S SCHOOL CONSTRUCTION PROGRAM 8–9 (2018); CONN. GEN. STAT. ANN., § 10-285a(a); *see also* Conn. Off. of the State Treasurer, *2024 Annual Report of the Treasurer*, at 32 (2024) [hereinafter *2024 Annual Report of the Treasurer*]. (describing financing of "the State's socially progressive school construction grant program, which provides significantly higher reimbursement rates to more needy communities."). Pension obligation bond debt service payments should be included in the federal data because the data "includes state payments made on behalf of public school systems." U.S. CENSUS BUREAU, 2023 PUBLIC ELEMENTARY-SECONDARY EDUCATION FINANCE DATA (2024). But Connecticut does not report the bond payments expenditures in its annual reports for TRS. *See 2024 Annual Report of the Treasurer*, *supra* note 123, at 32. Since district-level allocation of the TRS costs are available, however, it is possible to include *all* pension-related district aid rather than just what is in the report used by the Census.

A. ECS Grant

The ECS formula explicitly takes into account property wealth in order to equalize education funding.¹²⁴ The total ECS grant is equal to a foundation amount, \$11,525, multiplied by the number of resident students adjusted by their relative need,¹²⁵ multiplied by a base aid ratio (“BAR”).¹²⁶ The foundation amount represents the estimated cost to educate a general education student, and the adjusted student count accounts for the additional costs associated with high-need students.¹²⁷ Together, they create an estimated district cost for general education in the grant year.¹²⁸

The BAR is the percentage of the state’s portion of the estimated district cost, derived from a municipality’s relative wealth.¹²⁹ Municipal ENGLPC is the main component of the BAR.¹³⁰ The BAR cannot fall below the minimum aid ratio of one percent, which guarantees that wealthy districts receive some state support.¹³¹ In fiscal year 2024, every single municipality in the wealthiest decile would have had a BAR below zero if not for the minimum aid ratio.¹³² That year, municipalities with the minimum BAR received about \$44 million in ECS grants in total.¹³³

¹²⁴ See CONN. GEN. STAT. ANN. § 10-262f (West 2024).

¹²⁵ Every low-income student, defined as a student eligible for a free or reduced-priced lunch (“FRPL”), is counted as 1.3 students. Every English Learner student is counted as 1.25 students. These weights are multiplicative. An additional weight is applied if the percentage of FRPL students exceeds a statutory threshold. *See id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

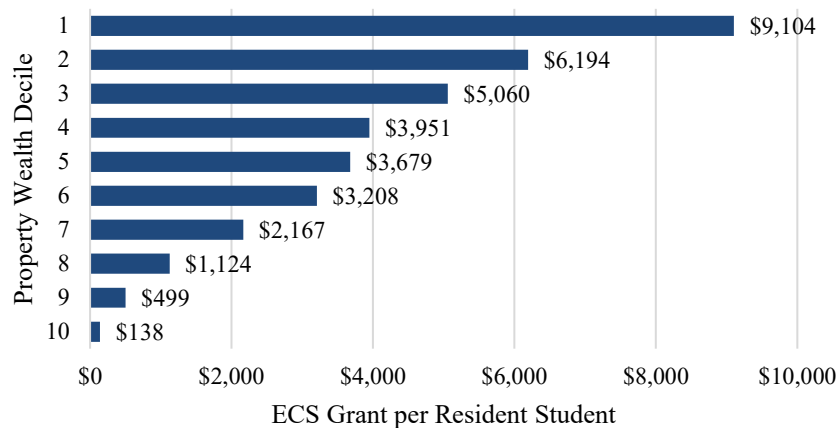
¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ For Alliance districts, which are the thirty-three lowest performing districts academically, the BAR minimum is raised to ten percent. *See* CONN. GEN. STAT. ANN. § 10-262u; CONN. GEN. STAT. ANN. § 10-262f(2)(B)(i).

¹³² Conn. Off. of Fiscal Analysis, *FY 2024 OFA ECS Shell*, CT.GOV CONNECTICUT’S OFFICIAL STATE WEBSITE (2024) [hereinafter *2024 OFA ECS Shell*], https://portal.ct.gov/-/media/sde/grants-management/ecsmbbr/fy_2023-2024_ecs_shell.xlsx.

¹³³ *See id.*

Figure 3: ECS Grant per Resident Student by Wealth Decile¹³⁴

Despite the minimum aid guarantee in the BAR, the ECS formula is very progressive.¹³⁵ Of the roughly \$2.2 billion of ECS expenditures in fiscal year 2023, over half went to the lowest property-wealth decile.¹³⁶ On a per resident student basis, the lowest property-wealth decile receives nearly \$9,000 more than the wealthiest.¹³⁷

B. Non-ECS Education Grants

Outside of the ECS grant, Connecticut provides education funding through various different grants administered by the SDE.¹³⁸ Roughly \$524 million in grants went to traditional public school districts in fiscal year 2023.¹³⁹ The legislature has targeted many of these grants towards the neediest districts.¹⁴⁰ For instance, the Commissioner's Network grant directs roughly \$10 million towards the lowest performing districts, and all but one recipient district out of

¹³⁴ These figures were calculated by dividing the School Year 2022–23 ECS grant by the October 2022 Resident Student Count. See *2024 OFA ECS Shell*, *supra* note 132. A technical note: the ECS grant goes to towns rather than school districts. All towns, even those that participate in a regional school district and do not operate a local school district (or those that participate in a regional school district *and* operate a local school district), receive ECS funding. See CONN. GEN. STAT. ANN. § 10-262h (West 2024). Since school districts and towns are not one-to-one, the ECS grants to towns must be divided by a town's resident student count (rather than a school district pupil count) to derive a state revenue per capita figure.

¹³⁵ See *supra* Figure 3.

¹³⁶ See *2024 OFA ECS Shell*, *supra* note 132; Conn. State Dep't of Educ., *2025–2026 Adjusted Equalized Net Grand List per Capita (AENGLC)*, at 1 (2024) [hereinafter *2025–2026 AENGLC*].

¹³⁷ See *supra* Figure 3.

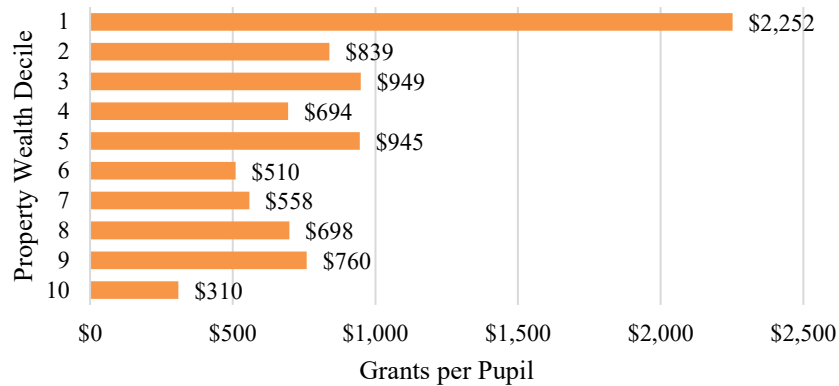
¹³⁸ See *GAAP Based Budgeting*, *supra* note 121, at 32–33.

¹³⁹ *2023 Grant Payment Report*, *supra* note 123.

¹⁴⁰ See *Conn. Coal. II*, 176 A.3d at 41–42.

nine were in the lowest wealth decile.¹⁴¹ Likewise, the Priority School District grant awards \$30 million to the municipalities with the largest populations and the towns with the highest percentage of children in temporary family assistance programs;¹⁴² the majority of recipients fall in the lowest wealth decile.¹⁴³

Figure 4: District Grants per Pupil by Property-Wealth Decile¹⁴⁴



¹⁴¹ See *GAAP Based Budgeting*, *supra* note 121, at 33–34; *2023 Grant Payment Report*, *supra* note 123; *2025–2026 AENGLC*, *supra* note 136, at 1; CONN. GEN. STAT. ANN. § 10-223h (West 2024).

¹⁴² See CONN. GEN. STAT. ANN. § 10-266p (West 2024); *GAAP Based Budgeting*, *supra* note 121, at 33–34.

¹⁴³ *2025–2026 AENGLC*, *supra* note 136, at 1.

¹⁴⁴ *2023 Grant Payment Report*, *supra* note 123. A technical note: these grants go towards districts rather than towns. Though the Connecticut districting statute “establishes town boundaries as the dividing line between all school districts in the state,” towns and school districts are not one-to-one. See *Sheff v. O’Neil*, 678 A.2d 1267, 1288 (Conn. 1996); CONN. GEN. STAT. ANN. § 10-240 (West 2024). Towns may elect to participate in a regional school district, and students may attend magnet schools or participate in other school-choice programs. See Marybeth Sullivan, Conn. Gen. Assembly, Off. of Legis. Rsch., *Models of Public High School Education in Connecticut*, at 3 (2016); SCHOOL AND STATE FINANCE PROJECT, *CONNECTICUT’S OPEN CHOICE PROGRAM*, at 1 (2022). SDE calculates an Adjusted Equalized Net Grand List per Capita (“AENGLC”) rank for each town and traditional public school district, which incorporates both property wealth and per capita income. See CONN. GEN. STAT. ANN. § 10-261(a) (West 2024). The AENGLC rankings include a rank for the regional school districts based upon the wealth of its member towns (and weighted by population). *2025–2026 AENGLC*, *supra* note 136, at 1. These calculations use AENGLC in order to assign all local public school districts to a wealth decile.

C. TRS Contributions on Behalf of Districts

Connecticut completely covers the employer portion of TRS contributions on behalf of districts. The value of the State's assumption of district TRS contributions varies from district to district. TRS is a defined benefit plan.¹⁴⁵ Teachers contribute seven percent of their salary to TRS,¹⁴⁶ and they receive up to seventy-five percent of their "average annual salary"¹⁴⁷ upon retirement.¹⁴⁸ These member contributions supplement the State's contributions to TRS through its budgetary appropriation of funds or bond proceeds.¹⁴⁹ Though the State has considered requiring municipalities to pay for a portion of their TRS pension expenses,¹⁵⁰ the State remains wholly responsible for the employer contributions to TRS.¹⁵¹ Even so, the State has no direct control of teacher salaries—which determine pension benefits paid out by the TRS—because salaries are set at the local level.¹⁵²

¹⁴⁵ See CONN. GEN. STAT. ANN. § 10-183g (West 2024); see also PENSION BENEFIT GUARANTY CORPORATION, A PREDICTABLE, SECURE PENSION FOR LIFE: DEFINED BENEFIT PENSIONS, 3 (Jan. 2000) (discussing properties of a defined benefit plan).

¹⁴⁶ See CONN. GEN. STAT. ANN. § 10-183b(7) (West 2024).

¹⁴⁷ "Average annual salary" is the average of the three highest years of annual salary. See CONN. GEN. STAT. ANN. § 10-183b(4) (West 2024).

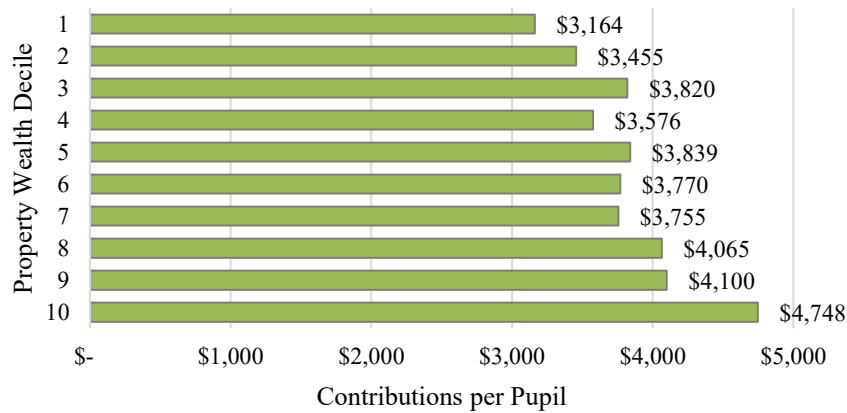
¹⁴⁸ See CONN. GEN. STAT. ANN. § 10-183g (West 2024).

¹⁴⁹ See CONN. GEN. STAT. ANN. § 10-183r(2) (West 2024).

¹⁵⁰ See Press Release, State of Conn. Governor Dannel P. Malloy, Gov. Malloy Asks Towns to Partner in Supporting and Fully Funding the Teachers' Retirement System (Feb. 2, 2017) [hereinafter Malloy Press Release].

¹⁵¹ See CONN. GEN. STAT. ANN. § 10-183r (West 2024).

¹⁵² See Malloy Press Release, *supra* note 150; see also Mike Griffith, *State Teacher Salary Schedules*, EDUC. COMM'N OF THE STATES at 4–5 (Mar. 2016), <https://www.ecs.org/wp-content/uploads/State-Teacher-Salary-Schedules-1.pdf> [<https://perma.cc/T8BV-H5DS>] (note absence of Connecticut).

Figure 5: State TRS Contributions per Pupil by Property-Wealth Decile¹⁵³

D. Overall State Education Aid

The equity of the three different categories of education aid varies greatly. ECS and non-ECS education grants administered by the SDE are equitable and concentrate funds in the poorest districts while providing very little to the wealthiest districts, but the TRS provides more funding per student to wealthier districts. Yet, when the SDE documents the state aid to school districts in its data reports, the agency completely excludes the value of the TRS contributions.¹⁵⁴ The omission is troubling. Providing teachers with retirement benefits is an ordinary operational expense that is completely left out of the dataset, meaning that the data does not accurately represent the cost of educating a child in Connecticut.

A cursory inspection of district revenue sources would thus suggest that Connecticut does allocate the majority of its education funding to low-wealth districts while only allocating a small percentage to high-wealth districts.¹⁵⁵ But a deeper analysis looking beyond the SDE reveals the scope of state support for wealthy districts. When the TRS contributions are combined with the ECS and

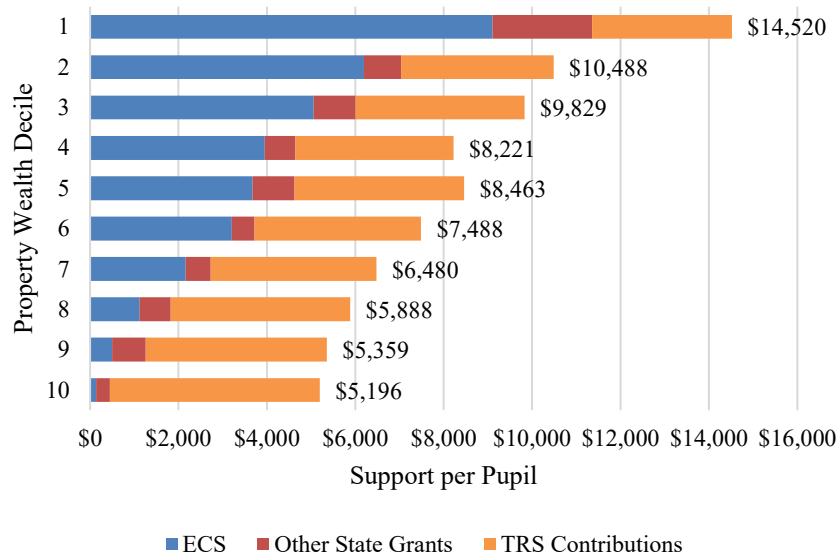
¹⁵³ *GASB Statement No. 68*, *supra* note 123, at 14–19; *2024 OFA ECS Shell*, *supra* note 132.

¹⁵⁴ Conn. State Dep't of Educ., *Per Pupil Expenditures by Function (District) - Report Notes*, at 2, [hereinafter *Pupil Expenditures I*], https://edsight.ct.gov/relatedreports/ReportNotes_PerPupilExpenditurebyFunctionDistrict.pdf.

¹⁵⁵ For instance, SDE reports that high property-wealth towns like New Canaan, Redding, and Fairfield receive over ninety-five percent of their funding from local sources, while low property-wealth districts like Hartford and Bridgeport receive less than twenty percent of their revenue from local sources and about sixty percent from the state. *Revenue Sources*, *supra* note 113.

other state district grants, the equity of the State's education funding system looks dramatically different.

Figure 6: State Support per Pupil by Property-Wealth Decile



The exclusion of TRS is not the exclusion of a minor expense; teacher retirement pension costs have been rising dramatically over the past few decades. The ECS grant totaled \$2.2 billion in fiscal year 2023; state TRS payments were \$1.6 billion, and the associated pension obligation bond debt service payments were an additional \$300 million for a combined \$1.9 billion.¹⁵⁶ This is an enormous sum, yet there is no equity component or scaling based on relative property wealth. As a result, TRS contributions on behalf of high property-wealth districts, which have higher teacher salaries and

¹⁵⁶ Total TRS expenditures exceed the sum of contributions to support teachers in traditional local public school districts because pensions support teachers in districts other than local public school districts, including charter schools, endowed academies, and regional education service centers. Pension obligation bond debt services stem from a 2008 decision by the State of Connecticut to take out \$2 billion in bonds and invest it into TRS to decrease the unfunded actuarial liability, increase the funded ratio, and decrease TRS annual contributions. *OFA Fact Sheet – Teachers' Retirement System (TRS)*, CONN. OFF. OF FISCAL ANALYSIS (Dec. 2023), [https://www.cga.ct.gov/ofa/Documents/year/SMF/2024SMF-20231213_Teachers%20Retirement%20System%20\(December%202023\).pdf](https://www.cga.ct.gov/ofa/Documents/year/SMF/2024SMF-20231213_Teachers%20Retirement%20System%20(December%202023).pdf). In short, Connecticut invested borrowed money. There is nearly \$2.2 billion outstanding on the bonds as of June 2022; Connecticut continues to make debt service payments on these borrowed funds. Conn. Off. of the State Comptroller, *Connecticut Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2022*, at 104 (2023).

correspondingly higher benefits, exceed the contributions for low property-wealth districts on a per pupil basis.¹⁵⁷

SECTION III: ANALYZING THE CONSTITUTIONALITY OF CONNECTICUT'S
SCHOOL FINANCE SYSTEM

Connecticut courts have an obligation to review the legislature's distribution of education aid and judicially enforce the fulfillment of the positive right to education. If the State school finance system is unconstitutional, the courts must order the legislature to create a remedy. Although the school finance system was constitutional in 2017,¹⁵⁸ such a holding should not bind the court in 2025 or beyond. A finance system "hailed today as constitutional does not necessarily mean that it will be given that accolade a decade from now if it's discovered that it is unable to produce a substantially equal education."¹⁵⁹ State spending on the TRS and related debt service, a non-equalizing provision in the school finance system, has ballooned over the past decade.¹⁶⁰ These expenses should be considered education-related costs. Teachers, as part of their compensation package while employed by a school district, receive a pension guarantee from the State that would, absent other tax provisions, be included in their income.¹⁶¹ And TRS contributions by the State are undoubtedly a form of aid to school districts even though funds do not pass through school district coffers.¹⁶² The State cannot substantiate any argument that pensions are not an education input or that pensions should somehow be excluded from substantial equity analyses.¹⁶³ The structure and disbursement of support through the TRS thus falls under the scope of Connecticut's right to a substantially equal education.¹⁶⁴

Under present law, State contributions to the TRS are likely an unconstitutional element in the overall school finance system of Connecticut for the following reasons. First, the per pupil education input disparities between the poorest and wealthiest districts are "more than de minimis."¹⁶⁵ Second, the

¹⁵⁷ See *supra* Figure 2.

¹⁵⁸ *Conn. Coal. II*, 176 A.3d at 69.

¹⁵⁹ Transcript of Hearing on Motions before Appeal at 4, *Horton v. Meskill*, No. 185283, at *43–44 (Conn. Super. Ct. May 29, 1984).

¹⁶⁰ See Conn. Off. of Policy and Management, *Fiscal Accountability Report Fiscal Years 2024–2028*, at 30 (2023).

¹⁶¹ See 26 C.F.R. § 1.61-2(a)(1) (2024); CONN. GEN. STAT. ANN. § 12-701(a)(20)(B)(xxi) (West 2024); CONN. GEN. STAT. ANN. § 12-701(a)(20)(B)(xx) (West 2024).

¹⁶² See *Old Colony Tr. Co. v. Comm'r of Internal Revenue*, 279 U.S. 716, 729 (1929) (holding that employee received income when employer paid an obligation to government on his behalf).

¹⁶³ This is particularly true because pensions are tied to teacher salaries, which relate directly to instruction. By contrast, there would be a colorable argument for eliminating non-instruction education expenses such as transportation or food services from substantial equity analyses. See Johns, *supra* note 42, at 503.

¹⁶⁴ See CONN. CONST. art. VIII, § 1; CONN. CONST. art. I, § 20.

¹⁶⁵ *Conn. Coal. II*, 176 A.3d at 70.

State is likely unable to identify a legitimate state policy that is advanced by fully assuming all district pension contributions.¹⁶⁶ Third, even if the State can identify a legitimate policy, the structure of the TRS funding system directly “emasculate[s] the goal of substantial equity” and thus fails the requirement to ensure that disparities are “not so great as to be unconstitutional.”¹⁶⁷

A. The Connecticut School Finance System Creates More Than De Minimis Disparities.

The differences in education inputs between the lowest wealth decile and the highest wealth decile are sufficiently large as to trigger strict scrutiny. Just as revenues must be measured on a per pupil basis to account for differences in school district populations, so too must education inputs be measured on a per pupil basis to compare the impact of state funding policies on districts in different wealth deciles. School district per pupil expenditures (“PPE”) are the best measure of educational inputs because they capture the actual services provided to each student as a net result of the overall finance system.¹⁶⁸ Higher per pupil expenditures means more inputs: smaller class sizes; more books and supplies; wider course offerings and extracurricular activities; and more selectivity of teacher qualifications.¹⁶⁹ This is why Connecticut courts use the PPE of school districts to measure educational inputs rather than town expenditures per resident student.¹⁷⁰

Depending on the source and methodology, there are varying answers to what a particular district’s PPE is. For example, in fiscal year 2020, the Census reported that Connecticut expenditures on primary and secondary education totaled nearly \$11.6 billion.¹⁷¹ For that same period, the SDE reported total education expenditures of just over \$9.7 billion through its Education Financial System (“EFS”) reporting system.¹⁷² Within Connecticut, the SDE reports multiple figures for total spending in each district. For instance, the net current expenditures (“NCE”) for Ansonia School District in the 2022–23 school year are reported by the SDE as \$42.97 million, but its total district expenditures from the Public School Expenditure Reports for that same year were \$47.58

¹⁶⁶ *See id.*

¹⁶⁷ *See id.*

¹⁶⁸ *See, e.g., Horton I*, 376 A.2d at 368; *Horton II*, 486 A.2d at 1107; Johns, *supra* note 42, at 501.

¹⁶⁹ *See Horton I*, 376 A.2d at 368.

¹⁷⁰ *See id.*; *Horton II*, 486 A.2d, at 1107.

¹⁷¹ U.S. CENSUS BUREAU, 2020 PUBLIC ELEMENTARY-SECONDARY EDUCATION FINANCE DATA (2022).

¹⁷² Conn. State Dep’t of Educ., *Per Pupil Expenditures by Function (District)*, ED SIGHT [hereinafter *Pupil Expenditures II*], https://public-edsight.ct.gov/overview/per-pupil-expenditures-by-function---district?language=en_US (last visited Jan. 25, 2026).

million,¹⁷³ a difference of about \$4.61 million even though both calculations derive their data from the EFS.¹⁷⁴

These variances are attributable to the question of what qualifies as an education expense. While the Census data includes expenditures made by state government on behalf of a public school district, Connecticut's EFS excludes, among other expenditures, debt service payments and State contributions to TRS.¹⁷⁵ The SDE's NCE calculation makes further exclusions, such as tuition revenue, reimbursable regular education transportation, and certain capital expenditures.¹⁷⁶

Since the Census data does not include district-level information,¹⁷⁷ the best figure to use for district comparisons is the PPE listed in the Public School Expenditure Reports because they are more inclusive of actual costs than the alternatives.¹⁷⁸ Even so, this PPE figure does not include *all* costs borne by a school district. The Public School Expenditure Report is limited by the data reported in the EFS, which still omits debt service, adult education costs, community services, and—most importantly—state contributions to the TRS.¹⁷⁹

¹⁷³ Conn. State Dep't of Educ., *2022-23 Net Current Expenditures (NCE) per Pupil (NCEP) and 2023-24 Special Education Excess Cost Grant Basic Contributions* (2024); *Pupil Expenditures II*, *supra* note 172.

¹⁷⁴ CONN. STATE DEP'T OF EDUC., *Net Current Expenditures per Pupil Used for Excess Cost Grant Basic Contributions*, CT.GOV <https://portal.ct.gov/sde/fiscal-services/net-current-expenditures-per-pupil-used-for-excess-cost-grant-basic-contributions> [<https://perma.cc/FKG3-MR2T>] (last visited Jan. 25, 2026).

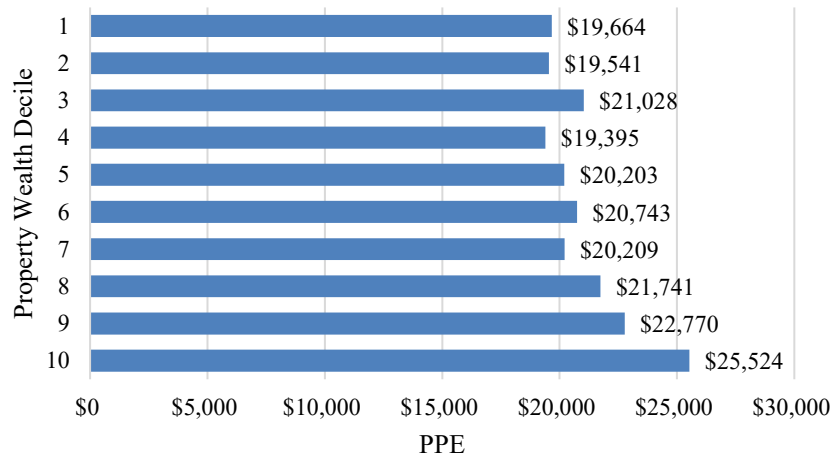
¹⁷⁵ *Pupil Expenditures I*, *supra* note 154, at 2.

¹⁷⁶ See CONN. GEN. STAT. ANN. § 10-261(a)(3) (West 2024).

¹⁷⁷ See U.S. CENSUS BUREAU, 2023 PUBLIC ELEMENTARY-SECONDARY EDUCATION FINANCE DATA (2024) (“While expenditure made by the state government on behalf of the school systems is available on a state aggregate basis, it is frequently not available for each school system in given states.”).

¹⁷⁸ “It is preferable to use the per-pupil expenditures in the Public School Expenditures Reports. . . [because they] better capture the totality of spending within districts.” SCHOOL AND STATE FINANCE PROJECT, FAQs: PER-PUPIL EXPENDITURES & PUBLIC SCHOOL EXPENDITURE REPORTS 4 (2020).

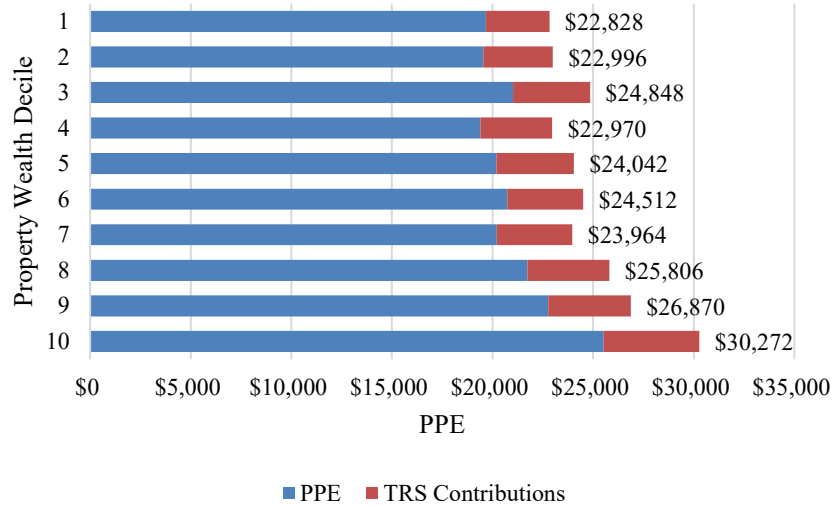
¹⁷⁹ *Pupil Expenditures I*, *supra* note 154, at 2.

Figure 7: Traditional Public School District PPE by Wealth Decile¹⁸⁰

The PPE on behalf of students in each wealth decile are all generally around \$20,000. The ratio between the PPE of the highest wealth decile and the lowest is about 1.30. In other words, the highest property-wealth districts spend about thirty percent more on education than the lowest property-wealth districts. But, again, the EFS PPE excludes state contributions to the TRS. Adding these costs in increases the spending ratio from 1.30 to 1.33.

¹⁸⁰ Traditional Public School Districts include the 166 school districts that are either local public school districts or regional school districts; it omits other districts such as RESCs, charter schools, or vocational agricultural program. *Pupil Expenditures II*, *supra* note 172; 2025–2026 AENGLC, *supra* note 136, at 1.

Figure 8: Traditional Public School District PPE with TRS Contributions by Wealth Decile¹⁸¹



As previously discussed, there is no explicit threshold for when education input disparities are more than de minimis.¹⁸² In the context of state redistricting and equal populations, however, any figure more than 1.10 is prima facie evidence that differences are more than de minimis.¹⁸³ But this standard may not apply in the context of education inputs; higher variances in spending ratios are expected in education finance cases than in apportionment cases, given the variances in regional costs and the needs of a particular student population.

There are no cases directly on point for whether the spending ratio of 1.33 between the wealthiest decile and poorest decile districts is more than de minimis. The Connecticut Supreme Court declined to rule on whether a spending ratio of 1.17 between the wealthiest decile and poorest decile districts was more than de minimis.¹⁸⁴ The ratio here is almost twice the disparity of the 1.17 figure that the Court declined to definitively hold was *not* de minimis. The Connecticut Supreme Court has also implicitly stated that a per pupil expenditure ratio of 1.53 between the wealthiest and poorest decile districts was clearly more than de minimis.¹⁸⁵

¹⁸¹ See *supra* Figure 5; *supra* Figure 7.

¹⁸² See *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969).

¹⁸³ See *Brown v. Thomson*, 462 U.S. 835, 842 (1983); *Connor v. Finch*, 431 U.S. 407, 418 (1977).

¹⁸⁴ See *Conn. Coal. II*, 176 A.3d at 73–74.

¹⁸⁵ This is *implicit* rather than explicit because the Court was examining per pupil expenditure ratios of high-spending and low-spending districts rather than high-wealth and low-wealth districts. See *supra* note 62. Since Connecticut did not begin actuarial funding of TRS until 1979, no data existed at the time of this decision on the share of the annual TRS

Further insight on whether this spending ratio is more than de minimis comes by examining the origin of the term. De minimis doctrine stems from longstanding, pre-American legal doctrine that “the law does not take account of trifles.”¹⁸⁶ A trifle is something of little value.¹⁸⁷ A ratio of 1.33 is anything but a trifle—it’s an increase that accumulates to hundreds of millions of dollars. A difference of this magnitude must surely implicate strict scrutiny.

B. There is No Legitimate State Policy Advanced by a School Finance System that Fully Allocates Pension Costs on the State.

Assessing whether a legitimate State policy for the TRS exists is complicated because the legislature is not required to explicitly articulate its rationales.¹⁸⁸ In the absence of any stated legislative policy, courts search for one.¹⁸⁹ The Connecticut Supreme Court has held that the legislature is advancing a legitimate state policy, namely local control, through the present school finance system by allowing local school districts to supplement state education funds with local property taxes.¹⁹⁰ This policy is sufficiently valid to permit more than de minimis education input disparities, but it does not give the legislature carte blanche to formulate any non-equalizing policy it desires within that school finance system.¹⁹¹ To the contrary, the school finance system must have “minimum deviation,” and non-equalizing provisions must serve to advance legitimate state policies.¹⁹² The present school finance system is tested against viable alternatives, and the present system is unconstitutional if the alternatives both further the stated interest and achieve greater equity.¹⁹³

Here, the TRS provides disproportionately more funding to wealthy districts in a manner akin to the minimum aid ratio in the ECS formula.¹⁹⁴ It is worse than “not equalizing;” it is disequalizing. Ostensibly, both TRS and the minimum aid ratio must themselves advance rational state policies to be constitutional.¹⁹⁵ While the State has never had to justify TRS, it has offered a

expense attributable to each individual school district. An expenditure ratio that includes TRS is unavailable. See CTR. FOR RET. RSCH. B. C., LEGACY PENSION DEBT REPORT: CONNECTICUT TEACHERS’ RETIREMENT SYSTEM 1–2 (2022).

¹⁸⁶ See *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 233 (2014).

¹⁸⁷ See Merriam-Webster, *trifle*, <https://www.merriam-webster.com/dictionary/trifle>.

¹⁸⁸ See *Broadley v. Bd. of Educ. of Meriden*, 639 A.2d 502, 507 (Conn. 1994) (citing *Nordlinger v. Hahn*, 505 U.S. 15 (1992)).

¹⁸⁹ See *id.* at 505; *Sheff v. O’Neill*, 678 A.2d 1267, 1288 (Conn. 1996).

¹⁹⁰ See *Horton I*, 376 A.2d at 376.

¹⁹¹ See *Conn. Coal. II*, 176 A.3d at 74.

¹⁹² See *Kilgarlin v. Hill*, 386 U.S. 120, 124 (1967); *Connor v. Finch*, 431 U.S. 407, 420–21 (1977); see also *Horton I*, 376 A.2d at 370 (noting that State did not choose “the less drastic means for effectuating the local control objective” as a reason for holding state education funding formula unconstitutional).

¹⁹³ See *Gorin v. Karpan*, 775 F. Supp. 1430, 1438 (D. Wyo. 1991).

¹⁹⁴ See *supra* Figure 5; *2024 OFA ECS Shell*, *supra* note 132.

¹⁹⁵ See *Gorin*, 775 F. Supp. at 1438; *Kilgarlin*, 386 U.S. at 124; *Horton I*, 376 A.2d at 370.

number of reasons for keeping the minimum aid ratio.¹⁹⁶ Two of these policies—ensuring that all towns receive at least some financial assistance for complying with state testing and reporting standards, and facilitating legislative support to fully fund the school finance formula—could be legitimate state policies served by the minimum aid ratio.¹⁹⁷ Likewise, having a higher minimum aid ratio of ten percent for poor performing school districts also serves a legitimate state policy by providing more funds to academically struggling towns.¹⁹⁸

But if the minimum aid ratio were raised from one percent to, say, one hundred percent, the increase would likely be unconstitutional. Such a provision would eliminate the wealth factor in the ECS formula and provide flat funds per student (adjusted by the child's individual need factors).¹⁹⁹ The Connecticut school finance system's guiding principle is to achieve substantial equality.²⁰⁰ If the State were providing flat funding for each student, it would be incongruent with the goals of *equalizing* the ability of towns to fund education. Moreover, such a policy choice would not further the interest of ensuring *some* financial assistance to all towns and creating an incentive for all towns to fully fund the finance formula.

The TRS is even more unequitable than a hypothetical minimum aid ratio of one hundred percent because it provides *greater* funding to wealthier districts.²⁰¹ The State likely cannot proffer a legitimate state policy for the State to assume full financial responsibility for the TRS because neither historical practice nor economic reasons alone are legitimate.²⁰² Even if it could identify a legitimate policy, there are viable alternatives to *fully* assuming the expenses of TRS. For instance, Governor Malloy proposed billing towns for a portion of the costs associated with their teacher pensions.²⁰³

In a follow-up compromise proposal, Governor Malloy suggested requiring towns to contribute to TRS for only a portion of the normal cost of the associate

¹⁹⁶ See *Horton v. Meskill*, No. 185283, at *43–44 (Conn. Super. Ct. May 29, 1984).

¹⁹⁷ In *Karcher v. Daggett*, the Court observed that “respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives” were “legitimate objectives that on a proper showing could justify minor population deviations.” 462 U.S. 725, 740 (1983). These example objectives are political in nature. Thus, it is conceivable that a politically-motivated objective—like the two proffered policies listed for the minimum aid ratio—might be a legitimate policy.

¹⁹⁸ See *Sheff v. O’Neill*, 678 A.2d 1267, 1273 (Conn. 1996).

¹⁹⁹ See CONN. GEN. STAT. ANN. § 10-262f (West 2024).

²⁰⁰ See *Gaffney v. Cummings*, 412 U.S. 735, 733–44 (1973).

²⁰¹ See *supra* Figure 5.

²⁰² See *Reynolds v. Sims*, 377 U.S. 533, 579–80 (1964); see also *Sutton v. Dunne*, 681 F.2d 484, 488 (7th Cir. 1982) (holding county board’s desire to save taxpayers’ money, while laudable, was not “sufficient justification” for declining to adopt plan to create districts with more equal representation).

²⁰³ See Malloy Press Release, *supra* note 150.

pensions rather than all of the costs.²⁰⁴ An iteration of this proposal was also put forward later by Governor Lamont.²⁰⁵ Implementing such proposals would not be unusual; Connecticut is one of only fifteen states where pension costs are paid fully by the state.²⁰⁶ And two other states, Maryland in 2010 and Maine in 2013, shifted normal cost payments from the state to school districts, just as advocated for by Governors Malloy and Lamont.²⁰⁷

These alternatives to the current TRS funding system demonstrates that feasible alternatives exist that would be more substantially equitable. So long as the alternatives also serve the State's proffered legitimate policy, the present funding of TRS is unconstitutional.²⁰⁸ Because there is no obvious policy served by having the State fully pay for TRS, however, it is impossible to prove that a more equitable alternative to the current system likewise serves that same policy.²⁰⁹ But the burden of proof is on the State, and it seems unlikely the State can make such a showing.²¹⁰

C. Even if There Is a Legitimate State Policy Advanced by a School Finance System that Fully Allocates Pension Costs on the State, Such a Pension Finance Scheme Still Emasculates the Goal of Substantial Equity.

Even assuming that the State can persuade a court that fully financing TRS advances a legitimate state policy, the funding of TRS would still be unconstitutional because it emasculates the goal of substantial equity. The cost of TRS has skyrocketed and is still increasing; the amount spent annually on teacher pensions approaches the amount spent annually on the ECS formula.²¹¹

²⁰⁴ Keith M. Phaneuf & Jacqueline Rabe Thomas, *Malloy Offers Big Compromise to End CT Budget Gridlock*, CT MIRROR (Sep. 5, 2017) <https://ctmirror.org/2017/09/05/malloy-offers-big-compromise-to-end-ct-budget-gridlock/> [<https://perma.cc/DD6E-84AR>]. The "normal cost" is the contribution required to pay for pension benefits accumulated in a single year. Governor Malloy essentially asked for towns to chip in for only present teacher pensions rather than also prior years. *See id.*; *Pension Basics: Normal Cost*, EQUABLE (Aug. 15, 2019), <https://equable.org/pension-basics-normal-cost/> [<https://perma.cc/5JNC-3SH5>].

²⁰⁵ STATE OF CONN. OFF. OF POL'Y AND MGMT., GOVERNOR LAMONT'S FEBRUARY 20, 2019 BUDGET PROPOSAL FOR THE FY 2020–FY 2021 BIENNIUM, at 21 (Feb. 20, 2019).

²⁰⁶ *See* Jean-Pierre Aubry, *What Role Does State Government Play in Funding Teacher Pensions?*, CTR. FOR RET. RSCH. B.C. 2 (Sep. 2024).

²⁰⁷ *See id.* at 4.

²⁰⁸ *See* Connor v. Finch, 431 U.S. 407, 420–21 (1977); Chapman v. Meier, 420 U.S. 1, 26 (1975); Kilgarlin v. Hill, 386 U.S. 120, 124 (1967); *Horton I*, 376 A.2d at 370.

²⁰⁹ Only a minority of the states have a teacher pension system funded like Connecticut's. *See* Aubry, *supra* note 206, at 2. Though this does not necessarily mean that there is no legitimate policy, it does mean there is no debate about the merits of adopting a similar system from which to glean what such a policy might be.

²¹⁰ *See Conn. Coal. II*, 176 A.3d at 70.

²¹¹ *See GAAP Based Budgeting*, *supra* note 121, at 32–34.

Substantial equality cannot be achieved if nearly half of the State's expenditures supporting public school districts are disequalizing.²¹²

If the State allocated the cost of TRS entirely to the employing districts, it could invest the resulting State savings into the ECS formula. Such a maneuver would allow the foundation amount to increase by seventy-five percent, from \$11,525 to \$20,169.²¹³ This foundation amount would be more in line with actual per pupil expenditures.²¹⁴ The cost of fully funding this revised formula would increase ECS spending by about \$1.9 billion over spending levels in fiscal year 2024.²¹⁵ This would make the school finance system substantially more equitable, even after accounting for the increase in district costs as a result of teacher pension costs, as seen in the figure below.

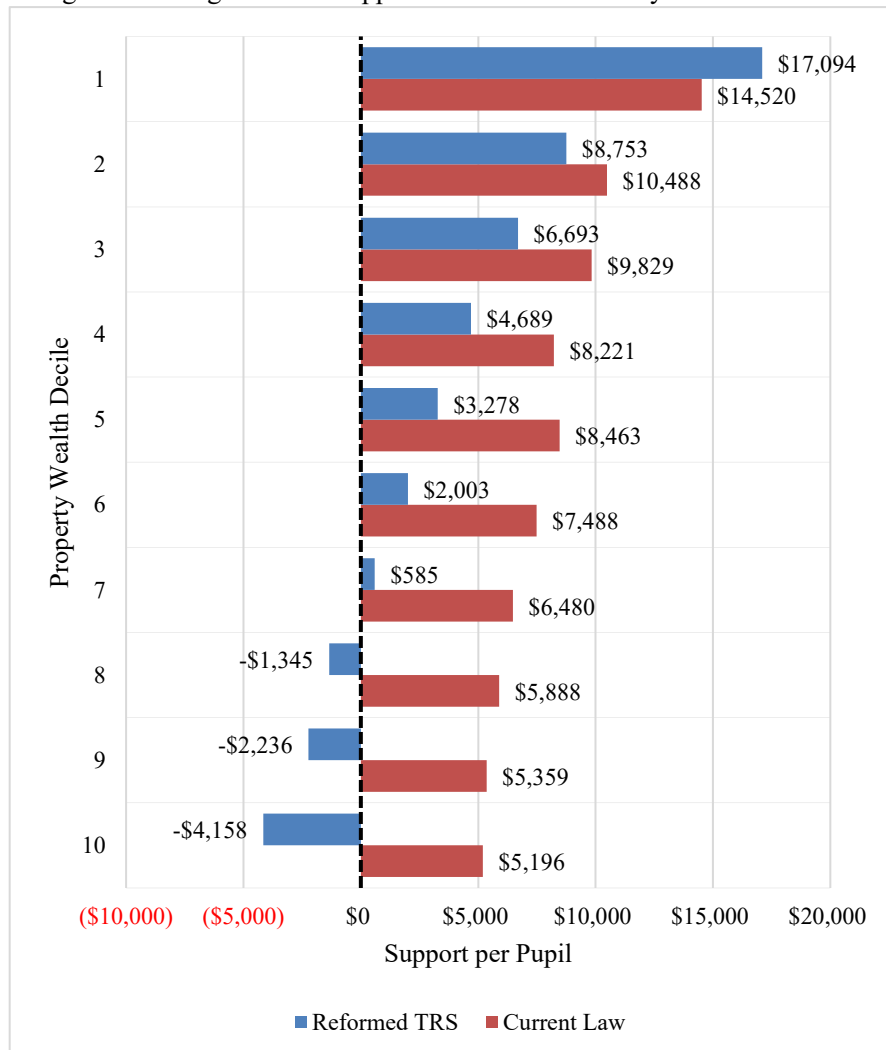
²¹² See Baker, *supra* note 49, at 22 (“Any state aid that is not allocated according to need and local capacity will tend to exacerbate unequal opportunity.”).

²¹³ See 2024 OFA ECS Shell, *supra* note 132.

²¹⁴ See *supra* Figure 8.

²¹⁵ See 2024 OFA ECS Shell, *supra* note 132.

Figure 9: Change in State Support with TRS Reform by Wealth Decile



The net decrease in overall state funding for all wealth deciles, except the poorest, demonstrates just how skewed the current TRS schema is. The ECS formula would be progressive enough to achieve the main objective of substantial equity, but it is insufficiently funded because the State is allocating significant education funds towards TRS. Though education expenditures are increasing, a growing share of those expenditures are devoted to the TRS.

The sheer size of TRS contributions makes it uniquely capable of emasculating substantial equity.²¹⁶ By comparison, the cost of the minimum aid

²¹⁶ See *Sheff v. O'Neill*, 678 A.2d 1267, 1289 (Conn. 1996); *Mahan v. Howell*, 410 U.S.

ratio is miniscule. In fiscal year 2024, the ECS grants to towns with a base aid ratio equal to the statutory minimum totaled less than fifty million dollars.²¹⁷ This would not allow for an increase of the foundation amount by even one percent.²¹⁸ This difference ultimately differentiates the minimum aid ratio (which may be constitutional) from the TRS funding system (which is likely unconstitutional).

CONCLUSION

Article Eighth of the Connecticut Constitution requires the legislature to provide each student a substantially equal educational opportunity. Such a positive right entails a school finance system that equalizes the ability for municipalities to fund education. The State is obligated to create a system where education inputs are substantially equal across municipalities regardless of municipal wealth. If more than de minimis education input disparities exist, the disparities must result from an incidental effect of the school finance system advancing a legitimate state policy, and the disparities cannot emasculate the goal of substantial equity.

The present school finance system in Connecticut fails to do this, primarily because of the disequalizing education aid distributed by the State's assumption of TRS pension obligations. Under the current system, the poorest wealth decile provides significantly fewer education inputs than the wealthiest decile. These disparities are only going to increase, given the projected increase in TRS costs; even if disparities are not currently more than de minimis, they certainly will be in the near future. Although permitting municipalities to supplement state funds with local property taxes serves the legitimate objective of local control, that policy is not furthered by a full assumption of district pension obligations.

Firstly, alternatives exist that would be more equalizing, which means the structure fails strict scrutiny and is unconstitutional. Secondly, the structure fails strict scrutiny because the pension contribution scheme emasculates the goal of substantial equity. The State cannot afford to utilize a foundation amount in the ECS formula that accurately represents the actual costs to education a general education student in the State because so many State resources are allocated towards TRS. Substantial equity cannot be achieved unless a large majority of education funds are distributed equitably.

TRS funding is unconstitutional. The Connecticut Supreme Court must order the legislature to revise the TRS funding schema so that aid in pension payments is equitably distributed. It is no less than the Connecticut Constitution demands. Such a holding would be extraordinary, but not unprecedented. The State must fulfill its obligation to *all* children of Connecticut and provide a substantially equal educational opportunity regardless of wealth.

315, 326 (1973).

²¹⁷ See 2024 OFA ECS Shell, *supra* note 132.

²¹⁸ See *id.*

APPENDIX

These tables contain the raw data used in this Note.

Table 1: Town Information

Code	Town	Population (2022) ²¹⁹	Equalized Net Grand List (FY 2022) ²²⁰	Mill Rate (2022) ²²¹	ENGLPC (FY 2022)	Wealth Decile (2024) ²²²	Resident Student Count (2022) ²²³
1	Andover	3,150	454,286,175	35.9	144,218	4	386.97
2	Ansonia	18,923	1,862,158,093	37.8	98,407	1	2,388.07
3	Ashford	4,222	545,880,312	36.4	129,294	3	517.82
4	Avon	18,871	4,138,176,485	34.2	219,288	9	3,133.65
5	Barkhamsted	3,667	607,068,057	31.5	165,549	5	476.42
6	Beacon Falls	6,126	927,897,227	34.9	151,469	5	724.27
7	Berlin	20,197	3,766,876,389	33.9	186,507	7	2,741.09
8	Bethany	5,277	1,021,488,621	34.5	193,574	8	755.64
9	Bethel	20,684	3,618,731,549	34.3	174,953	6	3,056.47
10	Bethlehem	3,409	691,489,178	27.5	202,842	7	363.14
11	Bloomfield	21,560	3,856,242,814	35.6	178,861	5	2,294.50
12	Bolton	4,834	749,622,556	39.4	155,073	5	701.57
13	Bozrah	2,420	456,595,773	27.0	188,676	5	258.86
14	Branford	28,148	6,406,841,214	29.5	227,613	8	2,622.38
15	Bridgeport	148,377	11,426,465,262	43.5	77,010	1	19,150.59
16	Bridgewater	1,652	652,130,640	17.5	394,752	10	112.00
17	Bristol	61,330	6,909,893,694	38.4	112,667	2	7,929.30
18	Brookfield	17,543	3,960,190,585	30.1	225,742	8	2,601.50
19	Brooklyn	8,502	926,591,314	26.4	108,985	1	1,154.98
20	Burlington	9,710	1,609,189,073	33.4	165,725	7	1,492.32
21	Canaan	1,081	297,415,347	25.7	275,130	9	99.10
22	Canterbury	5,102	607,955,537	23.7	119,160	3	590.00
23	Canton	10,091	1,740,606,002	33.2	172,491	7	1,492.21

²¹⁹ MUN. FISCAL INDICATORS, *supra* note 117, at B-1.

²²⁰ *Id.* at B-34.

²²¹ *Id.*, at D-1–D-170.

²²² See 2025–2026 AENGLC, *supra* note 136, at 1–5. Wealth deciles are derived from the AENGLC Rank (or Weighted Rank).

²²³ 2024 OFA ECS Shell, *supra* note 132.

Code	Town	Population (2022)	Equalized Net Grand List (FY 2022)	Mill Rate (2022)	ENGLPC (FY 2022)	Wealth Decile (2024)	Resident Student Count (2022)
24	Chaplin	2,156	320,868,376	32.5	148,826	3	238.68
25	Cheshire	28,994	5,061,282,379	33.7	174,563	7	4,077.98
26	Chester	3,757	723,782,223	29.5	192,649	6	408.86
27	Clinton	13,399	2,442,344,838	29.8	182,278	6	1,551.28
28	Colchester	15,572	2,252,056,359	33.1	144,622	4	2,211.62
29	Colebrook	1,369	275,208,057	30.9	201,029	7	167.89
30	Columbia	5,258	896,764,543	29.3	170,552	6	614.18
31	Cornwall	1,573	652,655,082	16.7	414,911	10	120.90
32	Coventry	12,285	1,760,193,623	31.2	143,280	4	1,609.73
33	Cromwell	14,317	2,458,662,830	30.3	171,730	5	2,038.75
34	Danbury	86,967	14,001,974,575	27.6	161,003	4	11,704.88
35	Darien	21,926	14,119,331,205	16.8	643,954	10	4,646.72
36	Deep River	4,445	791,938,782	29.6	178,164	6	528.96
37	Derby	12,358	1,169,770,904	38.6	94,657	1	1,358.84
38	Durham	7,207	1,062,373,464	35.6	147,409	5	948.77
39	Eastford	1,675	269,225,835	26.0	160,732	4	179.00
40	East Granby	5,218	1,012,384,886	33.6	194,018	6	847.21
41	East Haddam	8,949	1,551,002,123	30.4	173,316	7	955.84
42	East Hampton	12,960	1,705,346,995	34.5	131,585	3	1,866.49
43	East Hartford	50,718	5,269,862,528	49.4	103,905	1	8,026.66
44	East Haven	27,682	3,411,873,928	34.3	123,252	2	3,136.07
45	East Lyme	18,788	4,074,457,778	28.5	216,865	7	2,462.02
46	Easton	7,630	2,167,761,292	32.4	284,110	9	1,249.94
47	East Windsor	11,176	1,656,190,391	34.5	148,192	4	1,116.52
48	Ellington	16,977	2,147,498,040	31.6	126,495	4	2,627.05
49	Enfield	41,245	5,116,353,761	34.2	124,048	2	5,164.76
50	Essex	6,793	1,809,115,902	22.4	266,321	9	645.44
51	Fairfield	62,871	16,502,489,153	27.0	262,482	9	9,441.06
52	Farmington	26,728	6,434,680,232	28.8	240,747	9	4,040.75
53	Franklin	1,881	376,548,110	23.0	200,185	6	210.55

Code	Town	Population (2022)	Equalized Net Grand List (FY 2022)	Mill Rate (2022)	ENGLPC (FY 2022)	Wealth Decile (2024)	Resident Student Count (2022)
54	Glastonbury	35,199	6,975,180,873	37.3	198,164	8	5,817.61
55	Goshen	3,203	986,314,341	20.6	307,935	9	330.94
56	Granby	11,041	1,764,833,949	39.6	159,844	6	1,694.85
57	Greenwich	63,638	53,622,467,631	11.6	842,617	10	8,588.06
58	Griswold	11,509	1,385,647,339	28.9	120,397	2	1,546.15
59	Groton	37,743	6,930,788,749	26.0	183,631	5	4,448.07
60	Guilford	22,019	5,532,183,161	32.6	251,246	9	3,138.89
61	Haddam	8,670	1,372,903,349	32.2	158,351	6	1,132.01
62	Hamden	60,809	5,986,998,256	52.4	98,456	2	6,226.12
63	Hampton	1,738	305,308,775	23.8	175,667	6	127.00
64	Hartford	120,686	8,062,393,752	74.3	66,805	1	19,083.37
65	Hartland	1,908	306,991,411	27.0	160,897	6	229.67
66	Harwinton	5,562	1,001,264,687	28.7	180,019	7	763.32
67	Hebron	9,121	1,409,758,141	36.3	154,562	6	1,246.25
68	Kent	3,051	1,056,753,799	18.6	346,363	9	235.69
69	Killingly	17,837	2,327,850,321	25.1	130,507	2	2,115.82
70	Killingworth	6,239	1,271,551,771	26.7	203,807	7	732.67
71	Lebanon	7,132	1,219,861,425	28.4	171,041	6	894.00
72	Ledyard	15,456	1,726,045,882	33.6	111,675	2	2,319.91
73	Lisbon	4,242	751,158,014	23.2	177,076	4	580.02
74	Litchfield	8,279	1,870,699,251	27.6	225,957	8	818.94
75	Lyme	2,401	973,841,416	20.0	405,598	10	238.79
76	Madison	17,565	5,125,254,449	28.9	291,788	9	2,477.96
77	Manchester	59,461	7,068,660,765	36.5	118,879	3	7,390.01
78	Mansfield	31,949	1,965,255,463	31.4	61,512	1	1,579.92
79	Marlborough	6,109	872,441,443	35.8	142,812	5	934.13
80	Meriden	60,242	5,675,195,737	40.9	94,207	1	8,867.00
81	Middlebury	7,807	1,683,164,547	34.8	215,597	8	1,206.15
82	Middlefield	4,248	761,588,773	31.8	179,282	5	493.40
83	Middletown	48,729	6,196,990,297	35.7	127,173	3	4,603.35
84	Milford	52,679	11,507,150,449	27.7	218,439	8	5,426.46
85	Monroe	18,796	3,684,657,809	36.4	196,034	7	3,202.95

Code	Town	Population (2022)	Equalized Net Grand List (FY 2022)	Mill Rate (2022)	ENGLPC (FY 2022)	Wealth Decile (2024)	Resident Student Count (2022)
86	Montville	17,891	2,335,597,993	31.8	130,546	2	2,127.64
87	Morris	2,267	638,619,930	24.6	281,703	9	215.58
88	Naugatuck	31,705	3,167,339,939	47.8	99,900	2	4,538.93
89	New Britain	74,396	5,084,900,743	49.5	68,349	1	11,097.79
90	New Canaan	20,775	12,399,515,908	18.2	596,848	10	4,230.76
91	New Fairfield	13,536	3,091,460,994	31.5	228,388	8	2,053.78
92	New Hartford	6,698	1,145,626,713	30.9	171,040	7	882.86
93	New Haven	138,915	13,022,271,480	43.9	93,743	1	18,017.75
94	Newington	30,356	3,951,453,309	38.8	130,170	3	4,044.15
95	New London	27,980	2,725,879,071	38.0	97,422	1	3,324.92
96	New Milford	28,275	4,407,462,848	28.0	155,878	4	3,665.10
97	Newtown	27,577	5,819,344,712	34.7	211,022	8	4,034.62
98	Norfolk	1,594	467,893,475	26.9	293,534	8	152.95
99	North Branford	13,464	1,901,647,632	33.1	141,239	5	1,665.65
100	North Canaan	3,209	534,792,842	29.0	166,654	4	352.41
101	North Haven	24,114	4,996,037,259	30.7	207,184	7	3,126.45
102	North Stonington	5,174	815,412,303	28.6	157,598	4	709.57
103	Norwalk	91,401	23,590,931,324	24.0	258,104	8	11,932.34
104	Norwich	40,009	3,226,101,077	42.0	80,634	1	5,078.31
105	Old Lyme	7,684	2,854,562,244	23.3	371,494	10	1,045.92
106	Old Saybrook	10,535	4,085,424,226	20.1	387,795	9	1,052.20
107	Orange	14,258	3,517,889,933	33.3	246,731	8	2,310.44
108	Oxford	12,941	2,406,878,513	23.0	185,989	7	1,681.03
109	Plainfield	15,143	1,844,664,397	28.3	121,816	2	2,006.00
110	Plainville	17,479	2,415,682,174	34.6	138,205	3	2,217.03
111	Plymouth	11,711	1,267,924,588	40.6	108,268	2	1,424.63
112	Pomfret	4,307	551,043,733	25.7	127,941	4	521.00
113	Portland	9,429	1,396,249,653	35.0	148,080	4	1,288.20
114	Preston	4,840	794,113,894	26.9	164,073	4	588.26
115	Prospect	9,435	1,281,366,382	32.3	135,810	3	1,311.37

Code	Town	Population (2022)	Equalized Net Grand List (FY 2022)	Mill Rate (2022)	ENGLPC (FY 2022)	Wealth Decile (2024)	Resident Student Count (2022)
116	Putnam	9,302	1,286,164,439	20.8	138,268	2	1,059.35
117	Redding	8,746	2,622,997,324	32.8	299,908	9	1,228.08
118	Ridgefield	25,007	7,796,507,417	28.2	311,773	10	4,545.18
119	Rocky Hill	20,712	3,766,723,871	34.1	181,862	6	2,774.17
120	Roxbury	2,279	1,156,373,954	15.4	507,404	10	192.02
121	Salem	4,326	663,959,655	32.2	153,481	5	592.69
122	Salisbury	4,239	2,042,595,994	11.0	481,858	10	350.29
123	Scotland	1,577	210,480,885	39.0	133,469	3	168.08
124	Seymour	16,809	1,888,907,180	34.7	112,375	2	2,185.57
125	Sharon	2,724	1,312,465,949	14.5	481,816	10	147.22
126	Shelton	41,897	8,905,003,964	22.0	212,545	7	4,571.28
127	Sherman	3,537	1,111,450,863	18.6	314,235	10	367.86
128	Simsbury	24,935	4,318,606,166	37.4	173,195	8	4,021.22
129	Somers	9,843	1,332,514,099	26.7	135,377	3	1,309.13
130	Southbury	19,979	3,896,437,889	29.3	195,027	8	2,344.64
131	Southington	43,753	6,339,789,130	29.0	144,900	5	6,124.37
132	South Windsor	26,783	5,132,670,529	37.9	191,639	7	4,678.49
133	Sprague	2,958	316,156,907	36.0	106,882	2	348.00
134	Stafford	11,449	1,177,691,102	34.9	102,864	2	1,365.61
135	Stamford	136,188	36,221,552,565	26.9	265,967	9	15,732.61
136	Sterling	3,623	462,755,373	31.9	127,727	2	428.64
137	Stonington	18,480	5,016,308,615	23.9	271,445	9	1,956.72
138	Stratford	52,477	8,533,418,103	39.5	162,613	4	6,957.09
139	Suffield	15,731	2,492,463,746	28.6	158,443	5	1,991.04
140	Thomaston	7,468	966,768,854	36.1	129,455	4	945.86
141	Thompson	9,315	1,315,197,999	25.0	141,191	3	988.77
142	Tolland	14,577	2,143,140,233	37.1	147,022	6	2,325.67
143	Torrington	35,563	3,632,588,236	46.2	102,145	1	4,025.42
144	Trumbull	37,135	8,285,932,941	35.4	223,130	8	6,574.91
145	Union	793	145,961,174	28.6	184,062	6	79.93
146	Vernon	30,625	3,242,472,970	39.6	105,877	2	3,254.16

Code	Town	Population (2022)	Equalized Net Grand List (FY 2022)	Mill Rate (2022)	ENGLPC (FY 2022)	Wealth Decile (2024)	Resident Student Count (2022)
147	Voluntown	2,592	317,293,685	28.1	122,413	3	317.21
148	Wallingford	44,017	6,402,332,723	28.5	145,451	4	5,424.67
149	Warren	1,352	775,518,965	14.2	573,609	10	119.38
150	Washington	3,666	2,431,008,131	14.3	663,123	10	257.00
151	Waterbury	115,016	8,507,584,377	60.2	73,969	1	17,985.49
152	Waterford	19,603	5,460,500,822	27.6	278,554	8	2,539.96
153	Watertown	22,183	3,222,261,832	34.6	145,258	3	2,687.30
154	Westbrook	6,860	2,180,435,986	25.0	317,848	9	657.95
155	West Hartford	64,271	10,870,763,470	42.4	169,139	7	9,329.12
156	West Haven	55,004	4,334,933,975	34.0	78,811	1	6,701.12
157	Weston	10,354	4,031,034,032	32.9	389,321	10	2,253.08
158	Westport	27,427	15,471,132,194	18.1	564,084	10	5,275.25
159	Wethersfield	27,129	4,060,971,655	40.7	149,691	5	3,751.79
160	Willington	5,544	744,126,619	30.0	134,222	3	587.85
161	Wilton	18,457	6,685,435,895	27.9	362,217	10	3,662.64
162	Winchester	10,240	1,376,206,196	33.5	134,395	3	1,067.79
163	Windham	24,399	1,668,010,736	37.2	68,364	1	3,189.92
164	Windsor	29,453	5,281,482,794	33.3	179,319	5	3,883.78
165	Windsor Locks	12,537	2,357,717,531	25.8	188,061	5	1,561.69
166	Wolcott	16,190	2,106,466,155	33.1	130,109	3	2,293.68
167	Woodbridge	9,051	1,864,201,632	42.6	205,966	9	1,535.25
168	Woodbury	9,802	1,909,030,749	29.2	194,759	8	993.12
169	Woodstock	8,312	1,415,844,750	25.5	170,337	6	1,267.14

Table 2: District Grant Information

Code	Town	Wealth Decile (2024) ²²⁴	ECS Grant (FY 2023) ²²⁵	Non-ECS Grants (FY 2023) ²²⁶	TRS Aid (FY 2023) ²²⁷	District Enrollment (FY 2023) ²²⁸
1	Andover	4	2,004,782	170,302	646,121	197
2	Ansonia	1	18,798,009	3,817,791	5,885,513	2,332
3	Ashford	3	3,461,189	238,177	1,132,974	368
4	Avon	9	579,242	2,234,956	11,076,211	3,106
5	Barkhamsted	5	1,487,360	34,414	565,977	209
6	Beacon Falls	5	4,012,796	-	-	-
7	Berlin	7	5,886,220	2,045,910	8,650,499	2,682
8	Bethany	8	1,767,103	77,178	1,066,835	429
9	Bethel	6	7,912,453	1,256,979	9,243,066	3,223
10	Bethlehem	7	1,180,408	-	-	-
11	Bloomfield	5	6,992,488	7,971,874	6,718,665	2,055
12	Bolton	5	2,683,216	602,794	2,501,166	734
13	Bozrah	5	1,191,325	37,106	633,582	170
14	Branford	8	3,061,068	1,262,660	9,435,010	2,651
15	Bridgeport	1	188,965,409	36,728,036	44,964,710	19,337
16	Bridgewater	10	61,058	-	-	-
17	Bristol	2	49,349,654	9,178,992	21,915,563	7,784
18	Brookfield	8	942,201	933,271	7,847,856	2,563
19	Brooklyn	1	6,977,242	442,113	2,402,184	903
20	Burlington	7	4,190,472	-	-	-
21	Canaan	9	125,752	207	290,526	72
22	Canterbury	3	4,000,991	309,752	1,374,354	474
23	Canton	7	3,580,199	2,133,422	4,472,525	1,528
24	Chaplin	3	1,652,276	123,995	571,428	144

²²⁴ See 2025–2026 AENGLC, *supra* note 136, at 1–5. Wealth deciles are derived from the AENGLC Rank (or Weighted Rank).

²²⁵ 2023 Grant Payment Report, *supra* note 123. Includes the “Education Equalization,” “ECS Alliance District,” and “Two Percent Education Cost Share Grant” grants.

²²⁶ *Id.* Includes all grants with a Code beginning with “11000.”

²²⁷ GASB Statement No. 68, *supra* note 123, at 14–19.

²²⁸ Conn. State Dep’t of Educ., *Enrollment Export*, EDSIGHT, https://public-edsight.ct.gov/students/enrollment-dashboard/public-school-enrollment-export?language=en_US [<https://perma.cc/B9M3-722Q>] (last visited Jan 25, 2026).

Code	Town	Wealth Decile (2024)	ECS Grant (FY 2023)	Non-ECS Grants (FY 2023)	TRS Aid (FY 2023)	District Enrollment (FY 2023)
25	Cheshire	7	9,407,091	1,131,088	13,269,669	4,208
26	Chester	6	910,556	5,005	498,222	222
27	Clinton	6	5,176,545	483,179	5,825,950	1,497
28	Colchester	4	12,060,135	956,695	6,987,121	2,235
29	Colebrook	7	403,912	409	307,889	72
30	Columbia	6	2,323,111	129,892	1,657,592	464
31	Cornwall	10	14,039	207	415,067	94
32	Coventry	4	7,935,627	760,765	4,809,595	1,657
33	Cromwell	5	5,177,736	2,548,138	5,593,751	1,947
34	Danbury	4	42,736,174	10,012,167	30,701,862	12,109
35	Darien	10	769,214	2,822,355	17,385,018	4,700
36	Deep River	6	1,671,063	5,339	505,765	192
37	Derby	1	9,373,359	2,313,736	4,355,786	1,317
38	Durham	5	3,174,726	-	-	-
39	Eastford	4	941,447	226,329	480,832	154
40	East Granby	6	1,480,102	822,560	3,110,213	864
41	East Haddam	7	3,544,631	326,320	3,598,634	990
42	East Hampton	3	6,908,584	901,856	5,894,931	1,770
43	East Hartford	1	58,522,532	8,631,154	19,958,365	6,392
44	East Haven	2	19,882,029	3,129,199	8,293,111	2,885
45	East Lyme	7	6,095,293	270,610	8,524,354	2,617
46	Easton	9	216,382	118,662	3,061,361	903
47	East Windsor	4	5,677,913	991,547	4,159,397	1,030
48	Ellington	4	10,099,936	1,983,357	7,664,363	2,586
49	Enfield	2	29,712,963	3,170,537	15,244,828	4,913
50	Essex	9	134,648	119,474	744,682	301
51	Fairfield	9	1,179,461	3,704,253	32,882,241	9,379
52	Farmington	9	852,767	2,160,307	12,609,209	4,147
53	Franklin	6	736,292	33,361	486,894	187
54	Glastonbury	8	5,384,537	2,408,723	19,028,341	5,663
55	Goshen	9	182,000	-	-	-
56	Granby	6	5,254,531	1,880,471	5,149,186	1,738
57	Greenwich	10	567,531	1,798,823	37,448,216	8,560
58	Griswold	2	10,809,113	1,385,023	4,552,862	1,725

Code	Town	Wealth Decile (2024)	ECS Grant (FY 2023)	Non-ECS Grants (FY 2023)	TRS Aid (FY 2023)	District Enrollment (FY 2023)
59	Groton	5	25,124,493	1,961,070	13,833,577	4,104
60	Guilford	9	1,727,241	873,195	10,213,688	3,155
61	Haddam	6	2,367,950	-	-	-
62	Hamden	2	32,901,082	5,484,168	17,574,994	5,468
63	Hampton	6	1,058,408	76,638	271,571	67
64	Hartford	1	212,334,413	78,100,350	46,853,273	16,774
65	Hartland	6	1,071,722	2,717	468,434	116
66	Harwinton	7	2,451,411	-	-	-
67	Hebron	6	5,997,780	399,913	2,179,766	696
68	Kent	9	32,638	4,280	660,214	194
69	Killingly	2	15,475,452	2,471,409	5,825,608	2,450
70	Killingworth	7	1,743,835	-	-	-
71	Lebanon	6	4,572,577	790,430	3,142,433	958
72	Ledyard	2	11,475,245	2,382,834	7,070,348	2,421
73	Lisbon	4	2,878,253	364,042	1,164,920	437
74	Litchfield	8	1,312,192	123,841	3,127,583	813
75	Lyme	10	129,597	-	-	-
76	Madison	9	404,779	824,707	8,951,886	2,444
77	Manchester	3	41,475,496	6,833,139	20,665,026	6,192
78	Mansfield	1	9,429,885	131,225	3,863,277	1,027
79	Marlborough	5	2,909,524	130,980	1,523,929	456
80	Meriden	1	69,039,946	9,600,847	20,812,796	8,630
81	Middlebury	8	1,253,060	-	-	-
82	Middlefield	5	1,888,165	-	-	-
83	Middletown	3	22,650,520	6,670,749	14,804,684	4,414
84	Milford	8	9,571,589	2,054,436	19,620,801	5,382
85	Monroe	7	5,256,080	735,853	11,046,666	3,398
86	Montville	2	12,832,627	689,436	6,446,742	2,017
87	Morris	9	163,736	-	-	-
88	Naugatuck	2	33,139,027	2,653,461	11,229,229	4,337
89	New Britain	1	103,249,799	15,777,209	28,620,069	9,717
90	New Canaan	10	514,483	816,511	16,064,487	4,168
91	New Fairfield	8	3,491,276	777,038	7,413,769	2,143

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92	New Hartford	7	2,917,688	68,060	1,237,660	443
93	New Haven	1	163,590,869	60,839,096	50,704,543	19,150
94	Newington	3	14,397,126	2,799,556	12,660,883	3,937
95	New London	1	30,344,040	11,827,630	8,776,210	2,948
96	New Milford	4	11,080,275	1,840,036	10,829,176	3,683
97	Newtown	8	4,484,684	1,957,525	13,394,725	4,003
98	Norfolk	8	34,609	311	245,739	66
99	North Branford	5	7,345,449	640,731	5,131,948	1,538
100	North Canaan	4	1,781,954	173,596	703,762	238
101	North Haven	7	4,136,349	1,026,904	9,705,092	3,187
102	North Stonington	4	2,582,042	81,440	2,419,310	759
103	Norwalk	8	13,698,897	15,328,930	40,924,916	11,514
104	Norwich	1	41,218,719	6,223,758	11,336,482	3,348
105	Old Lyme	10	560,155	-	-	-
106	Old Saybrook	9	131,639	142,694	4,580,973	1,070
107	Orange	8	1,019,850	177,616	3,837,521	1,281
108	Oxford	7	3,692,075	797,778	4,858,213	1,717
109	Plainfield	2	14,928,431	1,008,123	5,196,697	1,944
110	Plainville	3	11,137,185	3,151,712	6,870,341	2,291
111	Plymouth	2	9,780,092	1,090,543	4,070,356	1,306
112	Pomfret	4	2,676,937	323,414	1,038,826	370
113	Portland	4	4,548,638	1,390,812	3,822,363	1,240
114	Preston	4	2,953,665	153,025	1,420,659	440
115	Prospect	3	5,143,371	-	-	-
116	Putnam	2	8,338,981	1,171,662	3,113,488	1,185
117	Redding	9	158,764	40,151	3,581,658	832
118	Ridgefield	10	675,677	1,462,730	16,459,179	4,568
119	Rocky Hill	6	5,795,398	810,851	8,533,575	2,550
120	Roxbury	10	91,189	-	-	-
121	Salem	5	2,549,325	53,617	1,151,554	401
122	Salisbury	10	32,924	6,017	942,849	296
123	Scotland	3	1,274,671	118,126	349,152	97
124	Seymour	2	10,781,247	928,095	5,914,367	2,133

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125	Sharon	10	18,677	4,173	593,691	97
126	Shelton	7	6,922,040	2,623,896	13,362,389	4,512
127	Sherman	10	50,112	134,308	1,356,268	265
128	Simsbury	8	7,055,420	4,450,175	13,611,790	4,125
129	Somers	3	5,663,347	348,241	4,293,337	1,345
130	Southbury	8	4,961,814	-	-	-
131	Southington	5	20,398,553	4,172,990	17,393,488	6,284
132	South Windsor	7	10,974,773	2,762,946	14,895,234	4,877
133	Sprague	2	2,685,918	298,556	625,671	276
134	Stafford	2	9,557,982	747,443	4,441,870	1,401
135	Stamford	9	15,859,354	23,218,139	53,633,048	16,158
136	Sterling	2	3,183,377	349,600	917,376	323
137	Stonington	9	1,195,708	417,677	6,039,547	1,800
138	Stratford	4	26,260,635	3,836,253	20,647,061	6,762
139	Suffield	5	6,142,612	1,918,981	6,615,473	2,041
140	Thomaston	4	5,300,449	888,248	2,589,041	820
141	Thompson	3	7,526,230	467,181	2,724,715	927
142	Tolland	6	9,114,161	1,170,925	6,462,339	2,302
143	Torrington	1	28,864,939	2,186,602	11,612,950	3,883
144	Trumbull	8	2,834,362	2,778,775	20,709,837	6,920
145	Union	6	211,728	2,091	213,142	53
146	Vernon	2	20,920,820	2,224,484	9,809,616	3,148
147	Voluntown	3	2,148,207	317,149	764,365	250
148	Wallingford	4	20,875,359	4,194,288	19,792,710	5,335
149	Warren	10	71,047	-	-	-
150	Washington	10	137,390	-	-	-
151	Waterbury	1	164,420,271	30,477,902	41,291,738	18,701
152	Waterford	8	377,227	560,219	8,314,455	2,338
153	Watertown	3	11,704,228	1,535,301	7,540,804	2,598
154	Westbrook	9	53,495	46,967	2,822,925	617
155	West Hartford	7	22,149,807	7,774,484	30,227,801	9,231
156	West Haven	1	51,978,465	6,043,955	16,180,979	5,976
157	Weston	10	213,171	1,018,780	8,563,416	2,197

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158	Westport	10	474,063	1,117,640	21,595,954	5,387
159	Wethersfield	5	12,250,857	3,334,538	10,798,432	3,646
160	Willington	3	3,459,785	126,431	1,377,113	398
161	Wilton	10	567,282	1,371,857	14,973,686	3,788
162	Winchester	3	7,966,128	1,169,480	1,887,886	606
163	Windham	1	30,795,593	6,621,931	9,221,662	3,224
164	Windsor	5	12,170,274	2,448,560	11,640,862	3,337
165	Windsor Locks	5	5,227,628	1,897,336	6,079,432	1,549
166	Wolcott	3	12,402,582	1,409,349	6,490,723	2,139
167	Woodbridge	9	476,022	271,561	2,568,737	848
168	Woodbury	8	2,186,586	-	-	-
169	Woodstock	6	4,928,445	201,202	1,959,495	774
201	Regional School District 01	8	-	1,050,696	2,267,796	326
204	Regional School District 04	7	-	330,296	2,330,548	751
205	Regional School District 05	8	-	714,571	7,334,141	2,075
207	Regional School District 07	7	-	1,076,700	3,013,713	890
208	Regional School District 08	6	-	372,361	4,253,777	1,206
209	Regional School District 09	9	-	615,832	3,522,562	779
210	Regional School District 10	7	-	1,023,264	6,489,522	2,147
211	Regional School District 11	4	-	625	748,323	225
212	Regional School District 12	10	-	615,144	3,361,264	804
213	Regional School District 13	5	-	453,704	5,728,931	1,365
214	Regional School District 14	8	-	2,028,367	5,588,869	1,617
215	Regional School District 15	8	-	2,648,754	11,406,035	3,469
216	Regional School District 16	4	-	983,025	5,816,871	1,958
217	Regional School District 17	6	-	1,209,631	5,764,278	1,814
218	Regional School District 18	10	-	55,290	4,812,197	1,288
219	Regional School District 19	1	-	1,304,601	3,689,879	1,126
206	Regional School District 06	8	-	1,336,100	3,027,510	853