



Consumer Federation of America

Honoring America's Promise:

**How Passing Unused VA Loan Benefits Down to Veteran's Descendants
Could Narrow the African-American Homeownership Gap**



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The Proposal: Transferring Unused VA Home Loan Benefits to Veteran's Descendants

Last year, President Biden's Executive Order 13985 announced his intention "that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."¹ Chief among the equity challenges facing the nation is the racial homeownership gap, which is most pronounced for African Americans. This paper proposes that the Biden Administration pursue a new, racially neutral, and revenue-generating approach to closing the black homeownership gap by expanding eligibility for the Department of Veterans Affairs' (VA) home loan guaranty program.

Under the proposal, the previously unused home loan benefit for any veteran could be transferred, without limitation, to the veteran's surviving spouse, child, grandchild, and other direct descendants for a period of fifteen years after the enactment of the proposal. For purposes of the program, transferable VA loan benefits would have accrued to veterans whose service period roughly overlaps with the federal government's support of racially restrictive housing policies, namely between the passage of the GI Bill in 1944 up through the enactment of the Community Reinvestment Act in 1977.

With data indicating that less than half of all African-American male veterans during the applicable timeframe resided in owner-occupied housing, this paper conservatively estimates that roughly one million, or 49%, of Black veterans would have unused VA home loan benefits. Multiplying that number by the historic average of 2.33 children per U.S. family for three successor generations would lead to a rough estimate of 12,649,337 descendants of African-American veterans with newly created eligibility to use the VA home loan benefit program under the proposal. That number equates to a little more than 28% of the current African-American population in the United States. Thus, enabling the transfer of VA home loan benefits would make homeownership more easily obtainable for millions of African American households over the course of 15 years, a single generation,² and make a significant contribution to rectifying the damage done by decades of racially discriminatory lending practices.

From both the lender and borrower's procedural perspective, the VA loan process under the benefit transfer proposal would remain unchanged. Specifically, under the proposal, the VA

¹ Exec. Order No. 13,985, 86 Fed. Reg. 7009 (Jan. 20, 2021).

² See Pew Research Center, The Whys and Hows of Generations Research, September 3, 2015, available at <https://www.pewresearch.org/politics/2015/09/03/the-whys-and-hows-of-generations-research/> (noting that "[a] generation typically refers to groups of people born over a 15-20 year span...").

loan process would still be initiated by the borrower securing a certificate of eligibility from the VA. The change would occur only in the VA's criteria for issuing the certificate—i.e. that it be based on the benefit being transferred from the veteran to a descendant. Here, the proposal has a precedent. Education benefit transfer procedures were established by the Department of Veterans Affairs as part of The Post-9/11 Veterans' Educational Assistance Act of 2008.³ Those same processing procedures, which the VA indicates take approximately 30 days,⁴ could be adapted to fit the home loan benefit transfer process.

The federal government's support of racially restrictive housing policies during the applicable timeframe disproportionately prevented African American veterans from accessing their home loan benefit. As a result, they were deprived of the opportunity to generate the wealth needed to support the intergenerational transfers of money that often assists White borrowers' entry into the homeownership market. Passing down the unused VA loan benefit to those veteran's descendants would go a long way towards redressing the inequity created by the federal government's earlier racist policies by allowing descendants the opportunity to purchase homes without a down payment.

Expansion of the VA home loan program may also be a more effective means to assist the 2.9 million "mortgage-ready," African-American borrowers who—because of their higher incomes—find themselves ineligible for existing homeownership initiatives that offer reduced down-payment requirements or access to down-payment assistance due to income restrictions in eligibility criteria.

³ Enacted as Title V of the Supplemental Appropriations Act, 2008 (P.L. 110-252)

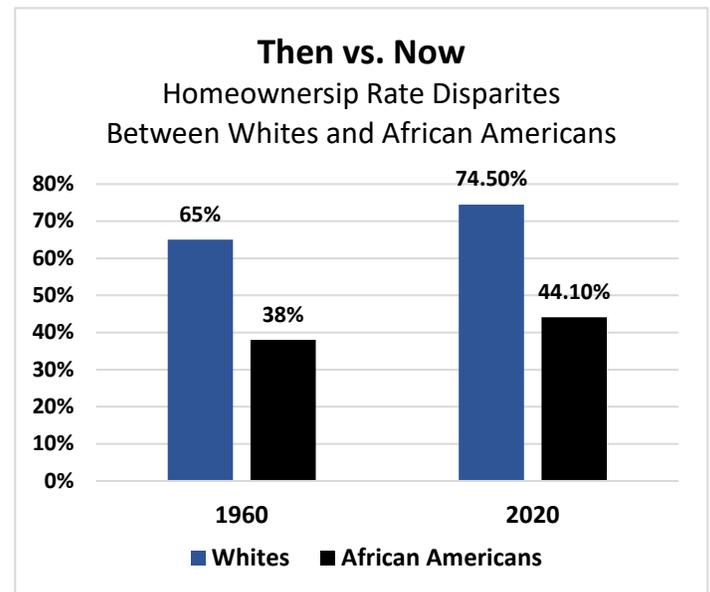
⁴ Department of Veterans Affairs, After You Apply for Education Benefits, available at <https://www.va.gov/education/after-you-apply/> (noting that the VA has an average time of 30 days to process education claims).

The Problem:

America's Long-Standing Black Homeownership Gap

For more than five decades, closing the African-American homeownership gap has proven to be an unsolvable challenge for federal policymakers, consumer advocates, civil rights groups, and the housing industry. Even at its peak of 49.1% in 2004, less than half of all Black households owned a home.⁵ The fact that this peak preceded a wave of predatory lending targeting communities of color brings us to the current bleak reality: *The gap in homeownership rates between African Americans and Whites is higher today than it was in 1960 when federal policy recognized a legal right in the financial sector to deny mortgage loans to borrowers of color based upon their race.*⁶

Of course, the lack of homeownership for the majority of African-American households has a devastating effect on wealth. Because homeownership serves as the primary asset for most American households,⁷ the absence of that asset for Black families plays an outsized role in statistics identifying the typical White family's net worth of \$171,000 as almost ten times higher than the \$17,150 attributed to African Americans.⁸ As the nation trends toward increasing racial diversity,⁹ however, our failure to close the homeownership gap foreshadows devastating financial consequences not only for Black families, but for the housing market, and economy overall.



⁵ See National Association of Real Estate Brokers, 2019 State of Housing in Black America at 13.

⁶ 2020 data derived from Quarterly Residential Vacancies And Homeownership, Third Quarter 2021, Release Number: CB21-166 (November 2, 2021), available at <https://www.census.gov/housing/hvs/files/currenthvspress.pdf> (last accessed 11/15/21).

⁷ National Association of Home Builders, Homeownership Remains Primary Driver of Household Wealth, (February 18, 2021), available at <https://nahbnow.com/2021/02/homeownership-remains-primary-driver-of-household-wealth/>.

⁸ Kristin McIntosh, Emily Moss, Ryan Nunn, and Jay Shambaugh, "Examining the Black-white wealth gap," Brookings Institute, February 27, 2020, available at <https://memphis.uli.org/wp-content/uploads/sites/49/2020/07/Examining-the-Black-white-wealth-gap.pdf>

⁹ William H. Frey, "The Nation Is Diversifying Even Faster Than Predicted, According To New Census Data," Brookings Institute (July 1, 2020), available at <https://www.brookings.edu/research/new-census-data-shows-the-nation-is-diversifying-even-faster-than-predicted/>.

Traditionally, experts seeking to narrow the homeownership gap have focused on a relatively uniform series of policy prescriptions:

- Down payment assistance;¹⁰
- Increased enforcement of fair housing/fair lending laws;¹²
- Expanded Community Reinvestment Act obligations for financial service providers;¹⁴
- Direct reparations.¹⁶
- Financial education and counseling;¹¹
- Incentives for lenders to expand the credit box;¹³
- Reimagined models of ownership through experimental products,¹⁵ and

But, whether due to lax enforcement, lack of political will, market rejection, poor implementation, or sheer ineffectiveness, none of these policy solutions has been able to move the needle forward by increasing the African-American homeownership rate by any meaningful amount.

For example, from a policy perspective, down payment assistance is one of the most prominent solutions proposed to tackle the gap.¹⁷ A recent and promising effort along this vein has focused on the creation of a down-payment assistance program for first-generation homeowners.¹⁸ Yet, like its predecessors, that proposal faces the uphill battle of receiving

¹⁰ See, e.g., Black Homeownership Collaborative, “Our 7-point plan to create 3 million net new Black homeowners by 2030,” available at https://3by30.org/?utm_campaign=Press%20Release%20-%20BHC%20Announcement%206.18.21&utm_medium=email&utm_source=Eloqua.

¹¹ *Supra* n. 5 (“Pre-purchase homeownership counseling is a fundamental foundational to bridging these barriers, as well as growing the pool of mortgage ready homebuyers.”).

¹² See, e.g., Linda Bell, “The Black Homeownership Gap: A Fair Housing Leader’s Solutions,” NerdWallet, February 24, 2021, available at <https://www.nerdwallet.com/article/mortgages/the-black-homeownership-gap-lisa-ricce> (quoting Lisa Rice, President of the National Fair Housing Alliance, “We haven’t had full and complete enforcement of the laws that are on the books, the Fair Housing Act, The Equal Credit Opportunity Act and the Community Reinvestment Act. We really need to beef up enforcement of those laws.”).

¹³ See, e.g., Center for Responsible Lending, “Civil Rights and Housing Groups Support a Broad Price-Based QM Definition to Ensure Access for Consumers of Color,” (September 10, 2020), available at <https://www.responsiblelending.org/media/public-comment-dodd-frank-mortgage-rule-update-civil-rights-and-housing-groups-support-broad>.

¹⁴ See, e.g., Stella J. Adams, “Putting Race Explicitly into the CRA,” 167, *Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act*

¹⁵ See, e.g., Urban Institute, “A Five-Point Framework: Reducing the Black Homeownership Gap,” available at <https://www.urban.org/sites/default/files/2019/06/20/black-homeownership-framework.pdf> (advocating for the need to “[e]xpand innovative forms of financing for homeownership and product development efforts (e.g. shared equity, tax savings programs, etc.”).

¹⁶ Dedrick Asante-Muhammad, Jamie Buell, Joshua Devine, “60% Black Homeownership: A Radical Goal for Black Wealth Development,” NCRC (available at <https://ncrc.org/60-black-homeownership-a-radical-goal-for-black-wealth-development/>).

¹⁷ National Association of Real Estate Brokers, 2019 State of Housing in Black America at 12 (“One of the most often repeated policies to deal with the low Black homeownership rate is down payment assistance”).

¹⁸ See Center for Responsible Lending, National Fair Housing Alliance, First Generation: Criteria for a Targeted Down Payment Assistance Program (May 21, 2021), available at <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-nfha-first-generation-jun21.pdf>.

adequate funding from direct federal appropriations or another sufficient, long-term funding source.¹⁹ And, like others in the past, efforts to fund the most recent proposal through the Biden Administration’s Build Back Better Act appear to have stalled.²⁰

In truth, it is unreasonable to think that any one solution is capable of closing racial homeownership gaps given the breadth and impact that racially discriminatory policies have had in molding the housing markets and the overall financial conditions for people of color in the United States. Yet, this paper is premised upon the idea that it is equally unreasonable to propose the same series of policy prescriptions that have been advanced for decades without success and somehow expect a different result. It is time to try something new.

This paper attempts to do just that. But, to be clear, the housing finance program and mortgage product advanced in this paper are, themselves, neither novel, nor new. To the contrary, they are widely credited with being responsible for driving this nation’s expansive growth in homeownership in the first place. What makes this proposal innovative then is the creation of a policy mechanism that expands the pool of individuals eligible to access an existing, successful, and broadly supported mechanism for increasing homeownership opportunities. Specifically, this paper is focused on using the GI Bill, or more specifically the VA home loan program benefits provided to Veterans by the GI Bill, as a modern-day tool to increase homeownership opportunities for families of service members that did not take advantage of the benefit – a policy that would disproportionately but not exclusively affect African-American descendants.

¹⁹ *Id.* at 4 (noting that a fully funded down payment assistance program would require 100 billion dollars).

²⁰ Clare Foran, Manu Raju and Ted Barrett, “Manchin says Build Back Better 'dead' as talks stall on Biden agenda” CNN (February 1, 2022), available at <https://www.cnn.com/2022/02/01/politics/manchin-build-back-better-dead/index.html>.

The GI Bill Solution: Why Expanding Access to the VA Loan Product is Ideal

There are three reasons why expanding access to the VA home loan benefit program is an attractive approach to reducing the black homeownership gap: (1) the program lacks any income or income-paired, geographic restrictions; (2) the proposal would increase revenue for the federal government by decreasing the need to subsidize the Veterans Housing Benefit Program Fund; and (3) in an environment where there is a perceived increase in judicial hostility to using race-based policy preferences to ameliorate systemic discrimination, the proposal creates a race neutral program with exaggerated and disproportionate benefit to African American and other minority descendants. Each of these reasons is discussed in more detail below.

The Importance of Removing Income and Income-Paired, Geographic Restrictions on Assistance

Since the enactment of the Fair Housing and Equal Credit Opportunity Acts, federal policy has sought to **actively** ameliorate the consequences of encouraging and, at times, requiring a racially discriminatory housing finance market through two vehicles: (1) the Community Reinvestment Act, and (2) the requirement that the government-sponsored, mortgage-finance enterprises, Fannie Mae and Freddie Mac, achieve certain affordable housing goals. Yet, rather than addressing the issue of race specifically, each of these “civil rights” policies uses income or income-paired, geographic location tests to target reduced down-payment requirements or access to down-payment assistance to prospective home buyers. These approaches, which were designed to expand lending to lower income groups and underserved communities generally, were automatically presumed to disproportionately benefit communities of color.

Similarly, many down-payment assistance programs, both proposed and existing, also either impose: (1) income-based and loan-limit restrictions on borrowers or (2) income-paired, geographic limitations that would force them to purchase in communities with greater minority concentrations where homes have traditionally experienced less price appreciation.²¹ As a result, these programs have had little impact in

²¹ See, e.g., Peter Warden, “Down payment assistance programs in every state for 2022,” Mortgage Reports, September 23, 2021, (providing a state-by-state listing of available down payment assistance programs and their corresponding income and geographic limitations); *see also* Center for Responsible Lending, National Fair Housing Alliance, First Generation: Criteria for a Targeted Down Payment Assistance Program at 1 (“Eligibility should be limited to first-generation homebuyers whose income is at or below 120% of the Area Median Income.”) (May 21, 2021), available at <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-nfha-first-generation-jun21.pdf>

assisting the Black borrowers who are most likely to be mortgage ready: *those with higher incomes*.²²

A 2021 report by Freddie Mac identified 2.9 million African-American borrowers as “mortgage ready,” meaning they did not have a mortgage, were 45 years of age or younger, had a credit score of 661 or above, a back end, debt-to-income ratio not exceeding 25 percent, no foreclosures or bankruptcies within the past 84 months, and no severe delinquencies within the past 12 months.²³ The same report found that those African Americans were also likely to have higher incomes.²⁴ That finding seems consistent with existing market data. In 2020, for example, African-American homebuyers that obtained an FHA loan had an average income of \$112,000.²⁵ In the conventional market, African American homebuyers had an average income of \$209,000.²⁶ This reality has an obvious implication: *African-American borrowers entering the home purchase market are unlikely to qualify for both the existing and proposed federal and state policy assistance programs that were purportedly designed to assist them in becoming homeowners due to income caps.*

Yet, “[r]esearch has consistently found that a lack of wealth is a significant constraint to accessing mortgage financing.”²⁷ And, for many African Americans, higher income does not translate to greater wealth.²⁸ Thus, a 2018 study on wealth inequality and race found that “black wealth is only marginally higher in the \$100,000 or more group as compared to blacks within the \$40,000 - \$99,000 group.”²⁹ Consistent with that finding, research by the Center for Responsible Lending noted that, “[t]he typical white household whose head has a high school education or lower has \$33,000 more in wealth than the typical Black household whose head has a bachelor’s degree or higher (\$105,590 vs. \$72,450).”³⁰

²² See Freddie Mac, Insight Report: Who Are the Future Borrowers? A Deep dive into their Barriers and Opportunities, October 25, 2021, available at http://www.freddie.mac.com/research/insight/20211021_future_borrowers.page.

²³ *Id.* (noting that the identified “mortgage ready” consumers had higher incomes than those falling within the analysis’s “near mortgage ready” classification.).

²⁴ *Id.*

²⁵ National Association of Real Estate Brokers, 2020 State of Black Housing Report at ES-3, available at <https://www.nareb.com/site-files/uploads/2020/10/2020-SHIBA-REPORT-OFFICIAL-COPY.pdf> (last accessed September 22, 2021).

²⁶ *Id.*

²⁷ Hauren, D.R., Herbert, C.E., and Rosenthal, S.S. (2007). Homeownership gaps among low-income and minority households. *Cityscape: A Journal of Policy Development and Research*, 9 (2) 5-50.

²⁸ *See, e.g.*, William Dairy, Jr., Darrick Hamilton, Bradley Hardy, Jonathan Morduch, “Wealth Inequality, Income Volatility, and Race,” (December 2018) at 3 (Noting that “higher income blacks and whites have relatively similar (low) income volatility levels, but not similar wealth levels.”).

²⁹ *Id.* at 17.

³⁰ Chirstelle Bamona, “New Report Shows Saving for Mortgage Down Payment is a Substantial Barrier to Homeownership that Particularly Hits Communities of Color and Essential Workers,” April 21, 2021, available at <https://www.responsiblelending.org/media/new-report-shows-saving-mortgage-down-payment-substantial-barrier-homeownership-particularly>.

The explanation for this lies in the correlation between wealth and intergenerational transfers of money. Specifically, “intra-generational transfers account for fully half of total wealth in the United States as well as ‘more of the racial wealth gap than any other demographic and socioeconomic indicators including education, income and household structure.’”³¹ While previous research shows that nearly one-half of all White homeowners receive substantial assistance from their families to satisfy those requirements, seven out of eight African American purchasers saved for their down payments entirely on their own.³² Only the remainder were able to rely on loans or grant assistance from government and nonprofit agencies or seller contributions to satisfy down payment requirements.³³

Because the ability to make a down payment is more directly a function of wealth, rather than income, decades of racially preferential policies designed to increase wealth for Whites have created a built-in advantage for Whites seeking to satisfy the down payment requirement to become homeowners. Meanwhile, decades of racially discriminatory policies designed to deprive Blacks of the opportunity to create wealth have erected a built-in impediment to satisfying the down payment requirement in order to become homeowners. This is the very essence of systemic discrimination.

It also suggests a fundamental flaw in policy approach. Namely, that flaw is that income capping access to reduced down-payment programs or down-payment assistance most likely excludes the Black prospective borrowers that are actually best positioned to convert that assistance into homeownership. Using the area median incomes for the fifteen metropolitan statistical areas (MSAs) with the largest numbers of African American residents in the United States, the table below shows that there are only three MSAs where the average African-American FHA homebuyer’s income would have qualified for a federal homeownership assistance program at a specified income-restriction level. Unsurprisingly, there are no MSAs where the average African-American, conventional borrower with a \$209,000 income would qualify for assistance.

³¹ Vanessa Williamson, “Closing the racial wealth gap requires heavy, progressive taxation of wealth,” Brookings (December 2020), available at <https://www.brookings.edu/research/closing-the-racial-wealth-gap-requires-heavy-progressive-taxation-of-wealth/>.

³² Thomas M. Shapiro, Race, Homeownership, and Wealth, 20 Wash. U. J.L. & Pol’y 53 (2006), 67, available at

³³ Jaya Dey and L. Brown, “The Role of Credit Attributes in Explaining the Homeownership Gap Between Whites and Minorities Since the Financial Crisis, 2012-2018”, Housing Policy Debate, available at <https://safe.menlosecurity.com/https://www.tandfonline.com/doi/full/10.1080/10511482.2020.1818599>.

Table 1

	Metropolitan Statistical Area	Number of African American Residents ³⁴	Area Median Income ³⁵	80% Area Median Income ³⁶	120% Area Median Income ³⁷	Black Homeownership Rate
1	New York, New York (NY-NJ-PA)	3,237,789	\$78,700	\$62,960	\$94,440	33.9%
2	Atlanta-Sandy Springs-Roswell, GA	2,084,212	\$82,700	\$66,160	\$99,240	48.3%
3	Chicago-Naperville-Elgin, (IL-IN-WI)	1,576,952	\$91,000	\$72,800	\$109,200	40.3%
4	Washington-Arlington-Alexandria, DC VA MD WV	1,562,340	\$126,000	\$100,800	\$151,200	51.7%
5	Philadelphia, Pennsylvania (PA-NJ-DE-MD)	1,273,120	\$96,600	\$77,280	\$115,920	48.1%
6	Houston-The Woodlands-Sugar Land, TX	1,237,934	\$78,800	\$63,040	\$94,440	41.1%
7	Dallas-Fort Worth-Arlington, TX	1,220,934	\$86,200	\$68,960	\$103,440	35.3%
8	Miami-Fort Lauderdale-West Palm Beach, FL	1,194,334	\$59,100	\$47,280	\$70,920	46.4%
9	Detroit-Warren-Dearborn, MI	961,076	\$78,500	\$62,800	\$94,200	42.1%
10	Los Angeles-Long-Beach-Anaheim, CA	848,206	\$77,300	\$61,840	\$92,760	31.9%
11	Baltimore-Columbia-Towson, MD	811,018	\$104,000	\$83,200	\$124,800	46.2%
12	Memphis, TN-MS-AR	612,104	\$67,900	\$54,320	\$81,480	44.3%
13	Charlotte-Concord-Gastonia, NC_SC	581,927	\$83,500	\$66,800	\$100,200	44.1%
14	Norfolk-Virginia Beach-Newport News, Virginia (VA-NC) MSA	544,740	\$82,500	\$66,000	\$99,000	42.3%
15	St. Louis, Missouri (MO-IL) MSA	506,762	\$82,900	\$66,320	\$99,480	39.4%

These findings suggest an important conclusion. In the context of homeownership, income is an ineffective proxy for race. Thus, the fact that federal housing policy has relied upon income-based restrictions as a mechanism for targeting assistance to people of color and closing

³⁴ Data derived from "County Population by Characteristics: 2020". United States Census Bureau, Population Division. August 2021, available at <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html>.

³⁵ HUD 2020 Area Median Income Estimates. Author’s calculations used to derive AMI calculations based on the HUD 2020 estimate at 80, 110, and 120% Income-limit subsidy levels. The AMI is used as an income limit in determining the eligibility of single-family loans under the affordable housing goals for the government-sponsored enterprises when those loans are made in minority census tracts—tracts where 30% or more of the population is minority

³⁶ Fannie Mae and Freddie Mac’s HomeReady and Home Possible 97% Loan-to-Value products are generally limited to borrowers with 80% area median income or below. In addition, Community Reinvestment Act loans without a geographic restriction to a low- or moderate-income census tract require borrowers’ incomes to be at 80% area median income or below. Finally, the majority of existing state-based and local down payment assistance programs available in the identified MSAs have 80% AMI income limitations.

³⁷ 120% AMI is the income restriction for the proposed first-generation down payment assistance program. Also, under the Community Reinvestment Act, CRA loans, without income restriction, are available for home purchases in nonmetropolitan middle income census tracts (80% - 120% AMI) if they are designated as distressed or underserved by the Federal Financial Institutions Examination Council.

the racial homeownership gap may, by itself, go a long way in explaining why that gap not only persists, but has grown in spite of these policy efforts.

Expanding African Americans’ access to the VA loan program might be a more promising vehicle for increasing the homeownership rate. To date, nearly 90% of all VA loans have been obtained without down payments.³⁸ Moreover, the VA loan program has no loan limits, income restrictions, or geographic limitations.³⁹ There are other product features that also make the VA loan product potentially attractive for Black borrowers. For example, the most common reason financial institutions provide for denying home loans to African-Americans is debt-to-income ratio.⁴⁰ But, rather than having a hard DTI cutoff, the VA loan product offers a residual-income test for higher debt-to-income ratios that may allow more African-American borrowers to qualify for ownership.⁴¹ In addition, the VA loan has no private mortgage insurance requirements thereby increasing mortgage affordability and,⁴² although there is a funding fee, the fee itself can be rolled into financing.⁴³

Side-By-Side Comparison of Conventional, FHA, and VA Loan Features			
	FHA	Conventional	VA
Minimum Down Payment	3.5% with 580 credit score or above 10% down for credit score below 580	3% of purchase price 20% to avoid PMI	0%
Loan Limits	\$420,680 - \$970,800	\$420,680 - \$970,800	No Limit
Private Mortgage Insurance	Required for Life of Loan	Applies if over 80% LTV	No PMI
Debt-to-Income Ratio	43% 57.99% w/ AUS	45% 49.99% w/ AUS	41% No limit w/ satisfaction of residual income test
Minimum Credit Score	500	620	None

³⁸ See, e.g., Lisa Prevost, “A Big Year for VA Loans”, New York Times (January 9, 2014), available at <https://www.nytimes.com/2014/01/12/realestate/a-big-year-for-va-loans.html>.

³⁹ See U.S. Department of Veterans Affairs, VA Home Loan Guaranty Buyer’s Guide, December 2021, available at https://www.benefits.va.gov/homeloans/documents/docs/VA_Buyers_Guide.pdf.

⁴⁰ See, e.g., Consumer Financial Protection Bureau, Data Point: 2019 Mortgage Market Activity and Trends (June 2020), available at https://files.consumerfinance.gov/f/documents/cfpb_2019-mortgage-market-activity-trends_report.pdf (last accessed October 23, 2021).

⁴¹ U.S. Department of Veterans Affairs, VA Home Loan Guaranty Buyer’s Guide (December 2021), available at https://www.benefits.va.gov/homeloans/documents/docs/VA_Buyers_Guide.pdf (last accessed February 7, 2022).

⁴² The absence of private mortgage insurance requirements reduces the cost of ownership, improving affordability.

⁴³ *Id.*

Revenue Generating

Unlike proposals for federally funded, down-payment assistance, a proposal to expand access to the VA home loan program is likely to increase federal revenue for the program and, as a result, decrease or even eliminate the need for mandatory appropriations to the Veterans Housing Benefit Program Fund.

For example, a number of borrowers that currently utilize the VA home loan benefit program are statutorily exempted from paying the program's funding fee.⁴⁴ As a result, in 2022, the Congressional Budget Office projects that VA loan guarantees will trigger a federal budgetary cost of approximately \$2.8 billion, which results in a positive subsidy rate of 1.1 percent.⁴⁵ It is the exemptions that have triggered the positive subsidy rate for the program under the budgetary impact calculation procedures established by the Federal Credit Reform Act of 1990.⁴⁶ But, because borrowers utilizing the proposed home loan benefit transfer program would not be eligible for any of the statutory exemptions to paying the funding fee, their addition to the program would likely create a negative subsidy rate for the Veterans Housing Benefit Program Fund.⁴⁷ Thus, rather than requiring Congress to identify new funds to pay for the initiative, the proposal has the potential to reduce existing federal outlays.⁴⁸ In this environment, it may be reasonable to presume that a revenue positive proposal has a stronger likelihood of garnering the legislative support needed to reach enactment.

Facially Neutral With Disproportionate Benefit to African Americans

Finally, one of the most important aspects of this proposal is the fact that it is facially neutral in creating a class of descendant beneficiaries because it relies upon a veteran's prior use of the home loan benefit, rather than a racial classification, as the litmus test for eligibility. Yet, that denominator disproportionately favors racial minorities precisely because of the federal government's support of racist housing policies throughout the history of the GI Bill program.

The Servicemen's Readjustment Act of 1944, better known as the GI Bill,⁴⁹ was arguably responsible for the single largest expansion of the middle class in the history of the United

⁴⁴ For example, veterans who receive disability or are eligible to receive disability are exempt from paying the funding fee and nearly a third of all U.S. veterans have a reported disability. Other exemptions to paying the funding fee exist for veterans who have received a purple heart and the surviving spouses of veterans who died on duty or due to a duty-related illness or disability.

⁴⁵ Congressional Budget Office, "The Role of the Department of Veterans Affairs in the Single-Family Mortgage Market," available at <https://www.cbo.gov/publication/57462> (last accessed January 31, 2022).

⁴⁶ P.L. 101-508.

⁴⁷ Under the method established by the Federal Credit Reform Act of 1990, an increase in projected fees for the VA's mortgage guarantee program can decrease the federal government's subsidy rate. For a more detailed explanation of how the VA loan program is funded, see CRS Report R42504, VA Housing: Guaranteed Loans, Direct Loans, and Specially Adapted Housing Grants., available at <https://sgp.fas.org/crs/misc/R42504.pdf>.

⁴⁸ At any rate, because the VA Loan Program is governed by the Federal Credit Reform Act, it is not subject to annual appropriations and is, instead, permanently funded as a matter of law.

⁴⁹ Public Law 346, 78th Congress, June 22, 1944.

States. Among its provisions, Title III, in particular, presented those who had served with an enviable opportunity:

“Any [eligible] Veteran may apply within two years after separation from the military or naval services, or two years after termination of the war....to the Administrator of Veteran’s Affairs for the guaranty by the Administrator of not to exceed 50 per centum of a loan or loans for [the purchase of a home, farm, or business property].”⁵⁰

By providing those who served in the military with the opportunity to pursue their educations and obtain home, business, and farm loans, the law gave millions of servicemembers a solid economic footing.⁵¹ Yet, not all servicemembers benefitted equally:

“The GI Bill deliberately left the distribution and implementation of federal education and housing benefits to universities, private banks, realtors, and white homeowners’ associations, all of whom discriminated openly and pervasively against blacks.”⁵²

Racially discriminatory policies in favor of Whites, both directly perpetuated and implicitly supported by the federal government, left many veterans of color unable to realize the promise this country made to them in exchange for their willingness to risk their lives in defense of the Nation. The results of those broken promises speak for themselves.

The U.S. Department of Veterans Affairs has never opened its records to researchers or published its own comprehensive analysis of the intersection between race and VA loans in the period immediately following passage of the GI Bill.⁵³ Thus, no nationally aggregated statistics on the usage of the VA loan program by African Americans currently exist for the entire timeframe between the enactment of the program and the end of federal support for racist housing policies.⁵⁴ Yet, a series of smaller, regional and state-based analyses from the period

⁵⁰ Servicemen’s Readjustment Act of 1944, Pub. L. No. 78-346, §500-3, 8 Stat. 284, 291.

⁵¹ See, e.g., Michael Bennett, “The Law That Worked,” *Educational Record*, 75 (Fall 1994), pp. 6, 12.(noting that the G.I. Bill “enabled millions of working class Americans to go to college, buy their own homes, and become, in reality, members of the middle class.... rais[ing] the entire nation to a plateau of social well-being never before experienced in U.S. History.”).

⁵² Juan F. Perea, *Doctrines of Delusion: How the History of the G.I. Bill and Other Inconvenient Truths Undermine the Supreme Court’s Affirmative Action Jurisprudence*, 75 *U. Pitt. L. Rev.* 583, 585 (2014).

⁵³ Cyd McKenna, *The Homeownership Gap: How the Post-World War II GI Bill Shaped Modern Day Homeownership Patterns for Black and White Americans* at 58 (2008), available at <https://dspace.mit.edu/bitstream/handle/1721.1/44333/276173994-MIT.pdf?sequence=2&isAllowed=y> (last accessed October 8, 2021).

⁵⁴ Though it has been recognized that the VA did not collect loan data by race, the VA did retain the names of the veteran beneficiaries of VA loan guarantees (whose VA loan applications required the listing of their race) and did track the race of those veterans as part of their service record. See Louis Lee Woods II, “Almost” No Negro Veteran...Could Get A Loan”: African Americans, the GI Bill, and the NAACP Campaign Against Residential Segregation, 1917 – 1960, *Journal of African American History*, Volume 98 Issue 3 392, 405 (2013). Accordingly, it does appear possible to perform this type of analysis.

confirm what most observers of the GI Bill in practice reported: it is “as though the GI Bill had been earmarked ‘For White Veterans Only.’”⁵⁵

In the South, an *Ebony Magazine* analysis of thirteen cities in Mississippi found that, among the 3,229 VA guaranteed loans made in 1947, only two went to African Americans.⁵⁶ And, in the North, a 1950 analysis of VA loans in New York and the Northern New Jersey Suburbs found that fewer than 100 of the 67,000 mortgages insured by the VA covered home purchases by people of color.⁵⁷ These state and regional findings are consistent with the single publicly available national estimate provided by the VA, through G.L. Holland, then assistant to the VA Administrator. Holland suggested that between 1944 and 1955, fewer than 30,000 of the 1,154,486 eligible African American veterans successfully accessed the homeownership program provided by the GI Bill.⁵⁸ As a result, less than 1 percent of the 3,914,535 home loans guaranteed by VA went to African Americans.⁵⁹

To get a sense of the scope of the proposed program, which would extend to veterans with a service period occurring between 1944 and 1977, this paper relied on a 1973 report on census data for Black and White male veterans, which tracked household tenure by period of service.⁶⁰ That data indicates that less than half of all African-American male veterans during the applicable timeframe resided in owner-occupied housing. Using that figure, this paper conservatively estimates that roughly one million, or 49%, of Black veterans would have unused VA Home loan benefits.⁶¹

⁵⁵ Charles G. Bolte and Louis Harris, *Our Negro Veterans* (New York: Public Affairs Committee, Pamphlet #128, 1947), p. 20.

⁵⁶ GI Loans: Colored Vets Who Borrow Cash Prove Sound Business Investments, *Ebony* 10 (August 1957), cited in Onkst, “First A Negro,” pp. 522 -523.

⁵⁷ Lizabeth Cohen, *A Consumer’s Republic: The Politics of Mass Consumption in Postwar America* (New York: Knopf, 2003) p. 171.

⁵⁸ Administrator of Veterans Affairs, *Annual Report for Fiscal Year Ending 30 June 1955* (Washington, DC 1956), 248.

⁵⁹ No “Negro Veteran

⁶⁰ Bureau of the Census, *Subject Report: Veterans 1970 Census of Population*, June 1973.

⁶¹ The author believes the estimate is conservative because not all veteran’s residing in owner-occupied housing are necessarily the owner of that housing and, furthermore, those that are owners did not necessarily rely upon the VA home loan benefit to purchase their home. In addition, data from the report is limited to males and thus excludes African American female veterans that were also entitled to the VA home loan benefit.

Table 2: 1970 Snapshot of Black and White Male Veteran Homeownership Numbers by Household Tenure and Period of Service

PERIOD OF SERVICE							
Vietnam Conflict							
Household Tenure	Black Veterans			White Veterans			Percentage Δ ⁶⁴
	Total Number	Residing in Owner-Occupied Housing	Percentage Ownership ⁶²	Total Number	Residing in Owner-Occupied Housing	Percentage Ownership ⁶³	
Head of Family	170,647	55,315	32.41%	2,554,704	1,154,247	45.18%	12.77%
Family Head Relative	123,847	73,309	59.19%	1,092,127	864,313	79.14%	19.95%
Primary Individual	28,292	2,610	9.23%	284,070	34,582	12.17%	2.94%
Korean Conflict							
Household Tenure	Black Veterans			White Veterans			Percentage Δ
	Total Number	Residing in Owner-Occupied Housing	Percentage Ownership	Total Number	Residing in Owner-Occupied Housing	Percentage Ownership	
Head of Family	332,358	190,991	57.47%	4,455,322	3,570,392	80.14%	22.67%
Family Head Relative	50,613	28,301	55.92%	239,365	181,598	75.87%	19.95%
Primary Individual	46,016	8,650	18.8%	248,469	70,427	28.34%	9.54%
World War II							
Household Tenure	Black Veterans			White Veterans			Percentage Δ
	Total Number	Residing in Owner-Occupied Housing	Percentage Ownership	Total Number	Residing in Owner-Occupied Housing	Percentage Ownership	
Head of Family	661,348	428,192	64.75%	10,061,100	8,400,902	83.5%	18.75%
Relative Family Head	71,473	41,949	58.96%	426,468	330,429	77.48%	18.52%
Primary Individual	113,527	28,230	24.87%	710,721	270,732	38.09%	13.22%
World War I							
Household Tenure	Total Number	Residing in Owner-Occupied Housing	Percentage Ownership	Total Number	Residing in Owner-Occupied Housing	Percentage Ownership	Percentage Δ
	Head of Family	64,591	43,209	66.9%	1,062,407	850,899	80.9%
Family Head Relative	9,087	5,762	63.41%	81,714	66,575	81.47%	18.06%
Primary Individual	28,453	10,799	37.95%	237,446	127,994	53.99%	16.04%

Multiplying the number of veterans not residing in owner-occupied housing by the historic average of 2.33 children per U.S. family for three successor generations would lead to a rough estimate of 12,649,337 descendants of African-American veterans with newly created eligibility to use the VA home loan benefit program under the proposal. In terms of descendants, that number would equate to a little more than 28% of the current African-American population in the United States.

⁶² Author's Calculations.

⁶³ *Id.*

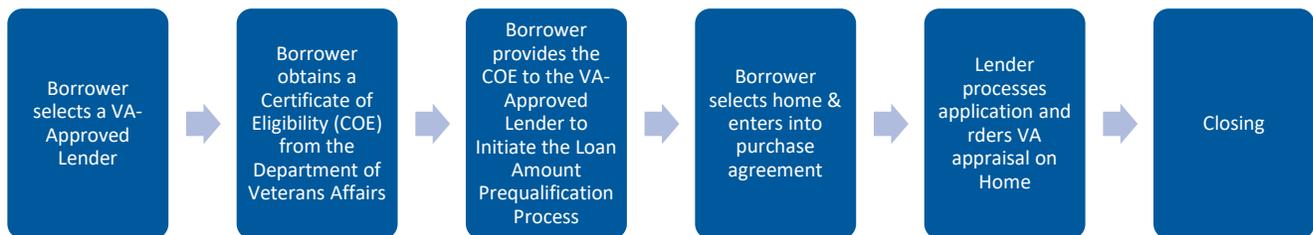
⁶⁴ *Id.*

The Mechanics: How the VA Home Loan Benefit Transfer Program Would Work

Any time an idea is advanced that would expand program access to a new category of borrowers, logical questions from both the lender and borrower’s perspective are, “how will the process work and how onerous will establishing eligibility be?” That’s why it is important to emphasize that, from both the lender and borrower’s perspective, this proposal’s VA loan process is virtually identical to existing procedures.

Currently, a borrower seeking to use the VA home loan benefit program must first apply for and receive a Certificate of Eligibility (COE) in the mail from the Department of Veterans Affairs. Once the COE is received, the borrower would provide a copy to the VA-approved lender to begin the loan application process. The only difference in the process is the type of information the borrower is required to provide in order to obtain the COE. Under the proposal, the benefit transfers to the veteran’s descendants. Accordingly, the Department of Veterans Affairs would likely require the prospective borrower to identify their veteran family member and provide documentation establishing their familial relationship. Pre-existing documentation and recordkeeping requirements already empower the VA to determine whether the member has utilized the home loan benefit.

Purchase Process for Borrower Using VA Loan Benefit Transfer Program



Under the proposal, the VA Loan Benefit Transfer Borrower’s purchase process is identical to the existing procedures for both VA borrowers and lenders.

In the education context, the transfer of GI benefits is not a new concept. Instead, education benefit transfer procedures were established by the Department of Veterans Affairs as part of The Post-9/11 Veterans’ Educational Assistance Act of 2008.⁶⁵ Those same processing procedures, which the VA indicates takes approximately 30 days,⁶⁶ could be adapted to fit the home loan benefit transfer process.

⁶⁵ Enacted as Title V of the Supplemental Appropriations Act, 2008 (P.L. 110-252)

⁶⁶ Department of Veterans Affairs, After You Apply for Education Benefits, available at <https://www.va.gov/education/after-you-apply/> (noting that the VA has an average time of 30 days to process education claims).

The Legislation:

Building Upon Existing Frameworks

There are two existing legislative proposals in the 117th Congress that advance the concept of transferring unused VA home loan benefits:

- (1) H.R. 5905, the Sgt. Isaac Woodard, Jr. and Sgt. Joseph H. Maddox GI Bill Restoration Act of 2021,⁶⁷ and
- (2) S. 1368, the American Housing and Economic Mobility Act of 2021.⁶⁸

H.R. 5905, though not specific to housing, offers the opportunity to accomplish this proposal's objective by explicitly restoring the GI Bill's housing loan and educational benefits to Black veterans of World War II, their surviving spouses, and direct descendants. Introduced by Congressman Seth Moulton and the Majority Whip, Congressman James Clyburn, the Sgt. Isaac Woodard, Jr. and Sgt. Joseph H. Maddox GI Bill Restoration Act of 2021 would allow beneficiaries to access the VA's housing and education programs by certifying that the Black veteran "was denied a specific benefit under the Servicemen's Readjustment Act of 1944 ... on the basis of race."⁶⁹

In contrast, S. 1368, the American Housing and Economic Mobility Act, would restore unused VA home loan benefits to the descendants of veterans of any race if the veteran "served on active duty at any time during the period between June 22, 1944 and April 11, 1968,"⁷⁰ the latter date being the enactment date of the Fair Housing Act. Introduced by Senator Elizabeth Warren with from the Consumer Federation of America (CFA), the program represents an initial effort to outline a VA home loan benefit transfer program as part of a broader package of necessary housing initiatives. This paper's proposal represents a more detailed and thought-out explanation of how the program could work. Presented below is a side-by-side comparison of each proposals with an explanation behind why CFA believes the program features advanced by the current proposal are preferable.

⁶⁷ 117th Cong. (2021).

⁶⁸ 117th Cong. (2021).

⁶⁹ The Sgt. Isaac Woodard, Jr. and Sgt. Joseph H. Maddox GI Bill Restoration Act of 2021, H.R. 5905, 117th Cong. (2021),

⁷⁰ American Housing and Economic Mobility Act of 2021, S. 1368, 117th Cong. (2021).

Table 3: Comparison of VA Benefit Transfer Proposals

	Woodard Maddox GI Bill Restoration Act	Housing and Economic Mobility Act	Honoring America’s Promise Proposal (HAP)	Rationale for HAP Difference
Eligible Category of GI Benefits	Education and Home Loan Benefits	Home Loan Benefits	Home Loan Benefits	CFA’s proposal focuses on the home loan benefit exclusively for federal budgetary impact reasons. Specifically, while the home loan benefit program includes a funding fee that makes it revenue generating, the education benefit is as 100% subsidy—meaning that it requires a commitment of funding by the federal government and, thus, weakens the possibility of political support.
Eligible Category of Veterans	African-American veterans that served in World War II	Any veteran whose service period was between 1944 and 1968 who did not previously use the VA benefit	Any veteran whose service period was between 1944 and 1977 who did not previously use the VA benefit	The racially neutral categorization decreases the possibility of judicial interference with the program and correctly recognizes that other races of veterans, that served, including Whites that wanted to own homes in racially integrated communities, would have been prevented from using the benefit due to federal policy. As the paper shows, a racially neutral classification would still result in significant targeted benefit to African Americans. In addition, the HAP proposal recognizes that federal policy supporting a discriminatory housing market did not end with the enactment of the Fair Housing Act in 1968 and, therefore extends the applicable service period up to the enactment of CRA in 1977.
Program Period	Five Years	No limitation	15 years	Because this program is intended to pass on the homeownership to at least a generation of descendants, it is important that the program last longer than 5 years. However, the absence of any time limitation would ultimately weaken the uniqueness of the benefit to servicemembers. Accordingly, the proposal

				uses a 15 year cut-off to correspond with one generation.
Program Beneficiaries	Veterans, Surviving Spouses, Grandchildren and Direct Descendants	Direct Descendants	Direct Descendants	This proposal focuses on direct descendants due to the passage of time from the relevant service period of 1944 – 1977.
Process for Establishing Eligibility	Certification that veteran was denied the specific benefit because of race	Familial Relationship, VA's existing records on veteran's use of loan benefit	Familial Relationship, VA's existing records on veteran's use of loan benefit	The goal of the transfer benefit program should be to make the process as simple and attractive as possible for participants. Relying on the VA's existing documentation and familial relationship documentation (i.e. birth certificates, etc.) may be a more attractive method for establishing eligibility than requiring individuals to certify to the federal government that a potentially deceased family member that they may or may not have direct interaction with was the victim of racial discrimination in this context and, again, eliminates the potential for challenges to the program based on the use of race-based classifications.

The Conclusion:

Eliminating the African-American homeownership gap has lingered as an unmet policy objective for more than 60 years. Increased enforcement of fair housing and lending laws, industry-driven efforts, expanded accountability for financial service providers under the Community Reinvestment Act, ambitious affordable housing goals, and federal support for down payment assistance programs are important components of the solution, but, by themselves, have proved unable to achieve meaningful progress.

It has been said that “[t]here was no greater instrument for widening an already huge racial gap in postwar America than the GI Bill.”⁷¹ This proposal seeks to use that same GI Bill to correct what it made wrong. By providing homeownership opportunities to African American veterans’ descendants through the transfer of unused VA loan benefits, the nation can make real progress in closing the Black homeownership gap. But, perhaps even more important than that, this nation would have the opportunity to honor its word and finally keep its promise to the men and women who risked their lives in its defense. Our country’s failure to do so in the past is a national embarrassment that cannot be rectified soon enough.

⁷¹ Ira Katznelson, “When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America 121 (2005).”