AMERICAN ECONOMIC LIBERTIES PROJECT

# Capital Crunch:

## How the Fall of Local Finance and the Rise of Shareholder Primacy Warped Single-Family Homebuilding in America—And What to Do About It

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***November 2025***

# ACKNOWLEDGMENTS

*Thanks to Bharat Ramamurti, Ganesh Sitaraman, Peter Wissoker, Dave Uejio, Hannah Garden-Monheit, and AELP colleagues for generously reviewing drafts and providing expert insights.*

*Thanks to interns Cody Taylor, Theodore Stern, and Arhon Strauss for assistance with research, data analysis, and citations.*

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# Introduction

For much of the 20th century, America had an ample supply of single-family homes, built primarily by decentralized local homebuilders supported by decentralized local lenders.[1] During that time, housing starts (new home construction) typically met demand.[2] But especially since the Great Financial Crisis of 2008, supply has failed to keep pace with demand, lagging 1990s construction rates by 20%.[3] Even as home prices keep rising, homebuilders are failing to adequately respond to that price signal and ramp up building. In light of this now-persistent shortfall—which is especially acute for starter homes[4]—even though the vast majority of renters would prefer to own a home someday, most now doubt they will ever be able to afford to buy one.[5] This has cascading social and economic effects, including delayed marriage and family formation, and reduced financial security.[6]

How did we get here? Although there are a variety of contributing factors, this paper focuses on one that is significant yet understudied: finance. Beginning in the late 1970s, a shift in the financing behind homebuilding made smaller-scale single-family homebuilding[7] increasingly difficult, eventually driving the largest homebuilders to go public in capital markets governed by a then-new ideology of shareholder primacy. The new influx of capital may have initially stimulated production, but since the Great Financial Crisis, publicly traded homebuilding corporations guided by Wall Street demands for "inventory discipline" have had the incentive—and increasingly, the ability—to prioritize setting higher home prices and amassing control over land through private "land banking" instead of building enough homes to meet demand.[i] New entrants have not filled the gap; indeed, the overall number of homebuilders still remains below early 2000s levels.[8] And in recent years, the Federal Reserve's high-interest-rate policies exacerbated housing affordability problems in a variety of ways—including by raising costs for builders, thereby further restraining production.[9]

This paper examines the shift in America's homebuilding system from decentralized abundance to financialized scarcity, why these changes have made housing unaffordable for millions of people, and what policymakers can do to rebuild a financial system that supports competition, affordability, and the productive use of land. That includes helping smaller homebuilders access capital, preventing large corporations and investors from

i There are, of course, a variety of other factors that impact single-family housing supply to varying degrees. As briefly noted herein, factors such as interest rates and construction costs (e.g., equipment rentals, material, labor, etc.) also affect the amount of housing that can be built, and other relevant factors may include competing uses of land and the impact of other market segments (e.g., resale single-family homes). More broadly, infrastructure such as roads and public transportation can impact the feasibility of development. Buy-side factors (e.g., mortgage rates, investors competing with families for inventory, migration, etc.) can have an impact, too. And this paper does not purport to cover every dimension of the housing affordability crisis.

hoarding land and homes, pursuing targeted regulatory reforms, and blocking anti-competitive tactics that raise barriers to entry.

## During the S&L Crisis, Policymakers Began Dismantling the Decentralized Financing That Used to Spur Smaller-Scale, Local Homebuilding

### New Deal Policies Fostered Abundant Single-Family Home Construction

*"[T]he beginning [of] a great housing program in America ... which will extend for many, many years."*[10] *—Harry Hopkins, Federal Emergency Relief Administrator, National Housing Act Hearings of 1934*

For over half a century, America maintained policies, rooted in the New Deal response to the Great Depression, that encouraged and supported home ownership to enable widespread prosperity and political stability.[11] These included demand-side measures, such as promoting amortized mortgages.[12] But the vision also required fostering an adequate supply of single-family homes—and policymakers did so in a manner so successful that production largely kept pace with a growing population after the postwar baby boom and beyond.[13]

One key New Deal model supply-side housing initiative was maintaining a robust network of community banks[14] and savings-and-loan associations (S&Ls, also known as thrifts), which served as the financial backbone of homebuilding, channeling local deposits into financing for local homebuilders.[15] The Federal Home Loan Bank Act of 1932 established a federal system for supporting this network of decentralized financial institutions with both short- and long-term advances (loans) that helped smooth out their finances, while other New Deal policies reassured their customers through federally insured deposits.[16] Thrifts in particular—which had evolved from small nonprofit cooperatives called "buildings and loans"—were focused on supporting American home ownership,[17] and were legally restricted from venturing outside their lane to maintain that focus.[18] Their financial exposure was also geographically limited; initially, they could only issue loans within a 50-mile range.[19] The Federal Home Loan Bank Board (FHLBB) oversaw 12 regional Federal Home Loan Banks, which in turn interfaced with individual thrifts,[20] typically managed by "local business and community leaders."[21] Some thrifts were state-chartered rather than federally chartered, but even state-chartered thrifts became subject to federal oversight when they sought federal savings account insurance.[22] From the mid-1940s through the 1960s, there were around 6,000 thrifts throughout the country.[23] Thrifts funded "up to

50% of existing single-family home sales and between 25% and 50% of annual new home construction and sales."[24] In addition to fostering private homebuilding generally, thrifts also supported affordable housing programs offered by the Federal Housing Administration and the Veterans Administration.[25]

With the broad credit availability promoted by this decentralized finance system, America's homebuilding markets were, despite some barriers to entry,[26] characterized by a large number of local and regional firms engaged in vigorous price competition.[27] Because firms had to build new houses before demand materialized in order to beat competitors as soon as demand returned, this competition also tended to generate periodic surpluses in housing stock.[28] During the half-century this system was in place, America built large quantities of housing, including single-family homes, at affordable prices.[29]

## Policy Responses to 1970s Inflation and the S&L Crisis Reduced Financing Options for Smaller Builders While Pressuring Larger Builders to Turn to Capital Markets

*"[T]his [deregulatory] legislation can be the Emancipation Proclamation for America's savings institutions."* [46] *—President Ronald Reagan, 1982*

*"The flamboyant adventures of the go-go thrifts have the desperate quality of a joyride by a terminally ill patient."* [47] *—Business Week, three years later*

### Manufactured Housing Used to Spread Mass Homeownership Through Mass Production

In the decades after World War II, there was a boom in manufactured (sometimes called "mobile") homes built off-site in factories.[30] This was driven in part by scale-based operational efficiencies, as well as the adoption of common regulatory standards (e.g., for plumbing, electrical, and heating systems) and educational resources for market participants.[31] Even as the price per square foot for stick-built houses (i.e., homes built on site using a wooden frame) rose modestly, prices per square foot for manufactured homes fell by two-thirds between 1960 and 1973.[32] Although uptake may have been dampened by zoning restrictions that cabined manufactured homes to designated parks—which led to a financing model where buyers typically did not own the underlying land and thus had to take out chattel loans with higher interest rates than typical single-family home mortgages— manufactured homes nonetheless became popular, hitting a peak of about one-third of all single-family housing production in the early 1970s (as shown by the dotted line and the right axis in the chart below).[33] The lowest-income buyers often chose manufactured homes over stick-built homes, even when the latter were eligible for federal subsidies via the U.S. Department of Housing and Urban Development (HUD).[34]

Then, in the mid-1970s, Congress passed a new law—the National Manufactured Housing Construction and Safety Standards Act—that preempted state codes.[35] According to the Minneapolis Fed, HUD's implementing regulations imposed prohibitive costs on manufactured-housing production by adding excessive fire and energy codes.[36] Congress also required manufactured homes to have a "permanent chassis."[37] A chassis is a steel frame that enables the home to be transported—a sensible option for those who want their homes to be readily mobile but an unnecessary expense for the typical buyer who simply wants an affordable home.[38] Today, by one estimate, the chassis requirement adds $5,000 to $10,000 to the cost of each manufactured home.[39] It also limits design options, for example, by making it difficult to add basements.[40] Meanwhile, zoning rules continue to limit where manufactured homes can be situated.[41] That means many manufactured-home owners can live only in parks where they have to pay rent on land, which impacts the overall cost profile for would-be buyers and leaves existing owners vulnerable to price hikes as institutional investors— reportedly, sometimes using funding from Fannie Mae or Freddie Mac—now own over 1,800 parks across the country.[42] Despite modest surges during economic booms, and despite increased lending support from Fannie Mae and Freddie Mac after the Great Financial Crisis,[43] manufactured-home production today remains well below historical levels.[44] More research is warranted into factors that may impact the supply and affordability of manufactured homes, but as noted at the end of this paper, some paths for reform are already clear.[45]

Over the last several decades, the New Deal model for spurring single-family home production has been eroded. Although a few large homebuilders realized in the mid-20th century that they could access cheaper capital by going public,[48] giving them an advantage over smaller homebuilders, homebuilding remained largely decentralized—until the local financing institutions that smaller homebuilders relied upon started scaling back lending.[49]

The first major financial shock for smaller homebuilders came in the late 1970s as high inflation—and the policy responses that ensued—harmed thrifts and homebuilders in tandem. Thrifts became structurally insolvent, [50] and the number of homebuilders crashed by nearly 30% between 1977 and 1982.[51] Many homebuilders attributed their misfortunes to the Federal Reserve. [52] For example, a Kentucky homebuilders' association made "wanted" posters with pictures of Fed governors, accusing them of "premeditated and calculated cold-blooded murder of millions of small businesses."[53]

This crisis was not inevitable. President Nixon's Fed chair, Arthur Burns, had urged Congress to adopt fiscal measures and regulatory reforms to tame inflation, but Congress declined to do so.[54] That meant inflation would be tackled through the Federal Reserve's monetary tools—but the Federal Reserve had already limited its own options for attempting a tailored response to inflation. Although the homebuilding industry had bounced back fairly quickly after the downturn of 1969,[55] some Federal Reserve governors had noticed that certain sectors of the economy—including homebuilding—had borne the "brunt" of reduced lending, while other sectors, such as big business, had enjoyed continued access to credit.[56] So they proposed that the Fed "target its policies more narrowly by embracing its power to differentially price credit," for example, by making loans "more expensive for finance and cheaper for small businesses and home builders."[57] The rest of the Board, however, opposed a 1971 amendment to the Federal Reserve Act that would have directed the Fed to use its discretion to price credit for different sectors differently.[58]

When Paul Volcker became chair in 1979, the Federal Reserve chose to respond to inflation with what came to be called the "Volcker shock"—a high-interest-rate policy where the federal funds rate was rapidly hiked to a peak of 20% in 1981 to slow price increases by increasing unemployment to reduce spending.[59]

The Volcker shock succeeded in the sense of taming inflation.[60] But together, inflation and high interest rates struck a key vulnerability of thrifts: they were "borrowing short and lending long" by giving short-term deposits while offering long-term loans (typically 30-year mortgages) at fixed interest rates.[61] As interest rates skyrocketed, thrifts ran deepening losses because they had to pay more to attract depositors while earning the bulk of their revenue from low-interest rate loans made before rate hikes.[62] Thus, much of the industry was on a path to insolvency.

Congress responded to the mounting financial problems plaguing the thrifts by deregulating the industry. In 1980, President Carter signed the Depository Institutions Deregulation and Monetary Control Act (DIDMCA), and two years later, President Reagan signed the Garn-St. Germain Act of 1982.[63] These reforms allowed thrifts to make adjustable rate mortgages; began phasing out "Regulation Q," which had imposed ceilings on the interest rates thrifts could pay depositors; and allowed thrifts to diversify their loan offerings to include many types of consumer and commercial loans, and even take ownership shares in other ventures.[64] In short, thrifts were no longer restricted to their previous purpose of encouraging American home ownership.

But the reforms—which some thrifts had lobbied for[65]—had a "dismantling" effect, transforming thrifts from reliable housing generators that could only make local, lower-risk investments into vehicles for financial speculation, essentially "eliminat[ing] them by collapsing their functions into large-scale generic financial organizations.[66] Instead of serving their historical purpose of expanding homeownership while offering modest returns to officers and shareholders, thrifts would now serve the end of enriching officers and shareholders, while incidentally supporting some local homebuilding.[67] Moreover, the Federal Home Loan Bank Board eliminated rules that prevented any single stockholder from holding more than 10% of a thrift's stock and that required thrifts to have at least 400 stockholders—which had ensured broad-based ownership that would be responsive to community interests.[68] This change meant that these institutions could now be dominated by a single stockholder.[69]

Notably, Congress did not deregulate in the sense of removing federal backing of deposit insurance. Instead, it more than doubled coverage of individual deposits.[70] Expanding this federal backstop while unleashing riskier investment portfolios "laid the foundation for risk-free fraud."[71] Whereas federal insurance had helped to attract inflows of money—deposits—that spurred outflows of loans to support sound projects, without adequate guardrails, the expanded federal insurance was used to attract deposits to fuel Ponzi-like growth. Loaning to risky borrowers that even commercial banks shied away from—or to co-conspirators—enabled thrifts to charge higher fees that created the appearance of higher accounting income, thereby justifying higher salaries, bonuses, and dividends.[72] Federal insurance guarantees helped attract the "necessary volume" of new money to prop up fraudulent schemes.[73] In tandem with deregulation, the Reagan administration cut the Federal Home Loan Bank Board's budget, reducing the number of field examiners and hindering the agency's ability to over*see* the sector.[74]

These policy choices devastated the industry. Many thrift leaders—especially newcomers to the industry—either took desperate risks to "gamble for resurrection" or committed criminal fraud.[75] Total assets held by thrifts swelled by 56% in just three years.[76] The fastest-growing, most-profitable thrifts in the mid-1980s then turned into the "most catastrophic" failures because of the perverse Ponzi-like incentives lawmakers had

unleashed.[77] Insolvencies cut the number of thrifts in half within a decade.[78] The hardest-hit states had pursued even more aggressive deregulation than the federal government did, but with less sophisticated regulators.[79] Each lost thrift reduced financing options for local homebuilders.[80]

Instead of returning to the New Deal model that supported thrifts, Congress passed a new law—the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)—that capped investments in any one borrower to bring the remaining thrifts "under the same capital standards as those set for national banks."[81] This reduced thrifts' lending capacity by 85% overnight, without a phase-in period.[82] Financial regulators also required thrifts and community banks to reduce their exposure to the real estate sector.[83] In particular, a new agency called the Office of Thrift Supervision capped equity investments in real estate and nonresidential real estate loans.[84]

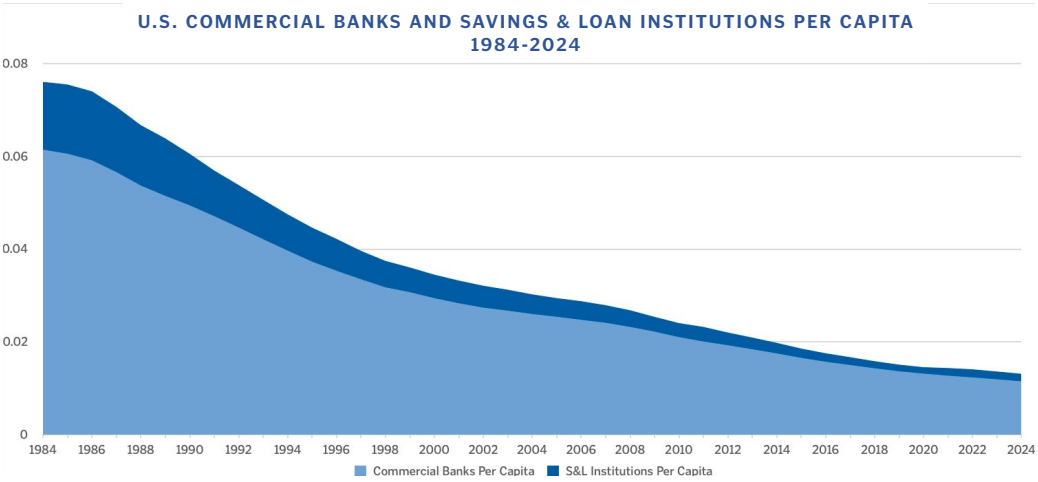
Smaller homebuilders quickly ran into difficulty borrowing after these reforms. The head of an architectural association testified at a congressional hearing the following year that "[t]he credit crunch generated by the loan limitation provisions of FIRREA could not have come at a worse time."[85] Lenders testified likewise.[86] Financing arrangements for projects were typically structured as revolving loans with terms that were intentionally shorter than the anticipated duration of the project to give lenders a mechanism for scheduling interim progress assessments.[87] But FIRREA disrupted projects by imposing the new standards without regard to the impact on loan renewals.[88] One state homebuilder association survey found that most members had more difficulty extending existing loans for real estate acquisition, development, and construction (ADC loans), as well as more difficulty getting new loans—and most members attributed their plight to either FIRREA or "bank examiners."[89] The association president explained that the impact was not limited to risky borrowers, but resulted in terminations of performing loans, which effectively meant "terminating a construction job, even if you're still in the middle of it."[90]

When a smaller homebuilder with a 25-year track record attempted to turn to commercial banks, he found it to be "an arduous and frustrating task at best" to educate entities that "had not history, appetite or desire ... to provide [ADC] loans and certainly not on a fixed rate basis on the terms that are so necessary to make our projects affordable."[91] As a result of these financing challenges, the homebuilder had to scale back on housing production.[92]

Congress also abolished existing regulators of thrifts and created a new, temporary agency—the Resolution Trust Corporation—that sold failed thrifts to Wall Street at "fire sale" discounts, turning once-local institutions into publicly traded bundles of assets.[93] These assets included the core ingredients of homebuilding, from construction equipment to building materials to property.[94] For example, in 1992, the Morgan Stanley Real Estate Fund and publicly traded homebuilder Lennar Corporation together purchased the largest thrift in Florida from the Resolution Trust Corporation.[95] The portfolio included over a

thousand commercial and residential loans and properties, including "thousands of acres already approved for residential construction."[96]

In parallel, other changes also impacted homebuilders' access to credit.[97] In the 1990s, the number of commercial banks in America shrank by about a third, largely due to mergers and acquisitions.[98] That eliminated many local financing sources.[99] Although the U.S. continued to maintain a policy of encouraging larger financial institutions to engage in local lending generally,[100] that did not make up for the preference of larger institutions to focus on larger customers: a 2021 comprehensive retrospective study of actual transactions across two decades at virtually all U.S. banks across confirmed that there is "a clear, consistent and highly significant inverse relationship between bank size and the relative share of small and micro business loans issued by banks."[101] Thus, the larger banks resulting from mergers were more likely to serve larger homebuilders.[102] Large homebuilders also generally enjoy better lending terms.[103]




***The number of thrifts and commercial banks has declined over the past 30 years.[104]***

The largest homebuilders were also able to turn to capital markets as an alternative source of funding.[105] A few were already public companies. For example, Dallas-based Centex, which had gone public in 1969, bought up the largest single-family homebuilder in the Southwest in the 1970s, and by 1992 had grown into a diversified conglomerate that made the most closings on single-family homes in America.[106] Despite dispersed competition in the homebuilding industry, Centex's CEO had told Forbes a few years earlier, that "I think a national recession would be a tremendous opportunity for Centex."[107] Why was he so confident? As Forbes explained, a recession would "drive down the cost

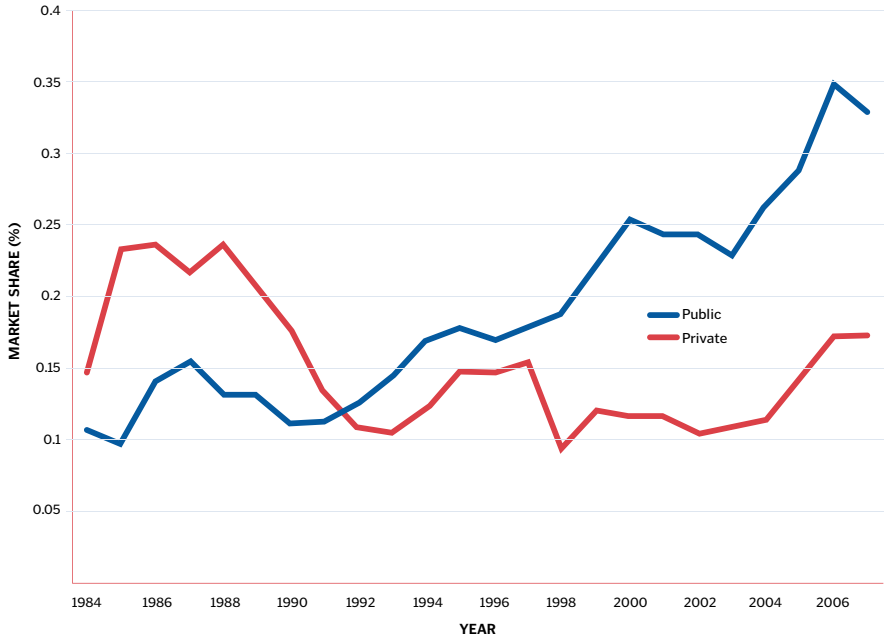
**"The severe credit crunch forced home builders to turn to Wall Street for capital in the belief that equity financing would provide a better way to deal with the cyclical nature of their industry."**

*– Harvard Home Builder Study*

of land and interest rates—the bread of life for home builders—and would almost certainly weed out some smaller, highly leveraged competitors."[108] This bet yielded "high margins" for Centex in 1992 as the economy recovered from the 1990-1991 recession.[109]

With fewer thrifts to rely upon, other large homebuilders saw the writing on the wall: the future lay in capital markets. As industry researchers later recounted, "[t]he severe credit crunch forced home builders to turn to Wall Street for capital in the belief that equity financing would provide a better way to deal with the cyclical nature of their industry."[110] Just between 1991 and 1993, there were 15 homebuilder IPOs.[111] Following the early 1990s recession, "public home builders were able to raise equity capital totaling over 1% of their current market capitalization and public debt totaling over 2% of market capitalization"—working capital that could be used for "land acquisition and development activities."[112] For example, D.R. Horton went public in 1992.[113] Within a decade, it made over a dozen acquisitions around the country, becoming America's new largest homebuilder by volume in 2002.[114] Large homebuilders also sold more corporate bonds—a more reliable source of capital than bank debt.[115] Moreover, publicly traded homebuilders were able to access continuous financing, whereas smaller homebuilders were stuck *see*king financing on a project-by-project basis from a dwindling number of thrifts and local banks.[116]

"By 1996, public homebuilders, as well as the largest private production builders, had completely recovered from the recession of the early 1990s."[117] The overall number of homebuilders also managed to recover past 1970s levels.[118] Nonetheless, public homebuilders had significant advantages over even large homebuilders that stayed private, which quickly translated into greater market share. As illustrated below, public homebuilders first overtook the market share of private homebuilders around 1992—and have built on that lead ever since.




***Market share for public and private homebuilders, 1984 to 2010.***[119]

Thus, whereas homebuilders of all sizes used to have roughly equal access to capital, the funding environment had become more challenging for smaller homebuilders even before the housing bubble burst in 2008.[120]

## Before the Great Financial Crisis, Publicly Traded Homebuilders Focused on Expansion to Maximize Shareholder Value

*"Caution: Contains an explosive idea that maximizes corporate performance and shareholder value." —KB Home Annual Report, 1998*[121]

Going public in the shareholder-value era meant that large homebuilders were quickly pressured to meet aggressive earnings expectations.[122] Much of that expected growth was achieved through mergers and acquisitions, as well as some organic expansion, to reach new geographic markets and market segments.[123]

As public homebuilders expanded, more developed integrated mortgage units, with the top five homebuilders collectively earning nearly a billion dollars from financial services by 2003.[146] By the early 2000s, some public homebuilders turned to another strategy after an initial focus on sales volume may have led to production outstripping homebuyer demand in certain regions:[147] they pressed their own internal mortgage origination units to lower lending standards in order to expand demand by boosting the number of eligible homebuyers. For example, "[b]y 2006 half the loans D.R. Horton wrote were likely non-conforming,"

### Not Your Grandparent's Public Companies—The Rise of Shareholder Primacy

Around the time that many large homebuilders went public, capital markets were changing. In the mid-20th century, the prevailing corporate governance philosophy was "managerial capitalism"—a system where executives and board directors used their business judgment to balance the short- and long-term interests of corporations and various stakeholders therein.[124] By the 1990s, a new paradigm—"shareholder primacy"—was in full swing.[125] Under this approach, other potential corporate objectives had to be subordinated to the goal of maximizing stock prices.[126] A variety of new legal and corporate governance tools were developed to ensure that executives and board directors would focus their decision-making on that metric.[127] In practice, this meant that corporate managers could no longer make decisions "based on their knowledge and instinct, with the advice of their bankers."[128] Instead, corporate managers became more like agents of "stock analysts, investment bankers, and large shareholders (who in many cases replaced the traditional bankers on corporate boards)."[129] This was part of a broader shift towards "financialization," which reoriented America's economy toward financial services and away from manufacturing and other types of commerce involving "real" goods, while also prodding nonfinancial corporations to patronize financial services firms.[130]

Even long-public homebuilders experienced the 1990s as a pivotal transformation.[131] Wall Street set ambitious goals—in some cases, 20% annual growth rates.[132] Public homebuilders responded to these demands in part by entering new markets and pursuing mergers and acquisitions (*see* Sidebar 3). Public homebuilders also adopted various cost-cutting methods that included "shut[ting] unions out."[133] Their growth was typically funded by large commercial and investment banks.[134]

Some industry observers expected that increasing scale and access to capital would lead public homebuilders to invest in operational efficiencies and new technologies, which would help them become even better competitors, yielding more profits to reinvest in setting new industry best practices.[135] Harvard's Joint Center for Housing Studies sponsored an in-depth survey of large homebuilders looking back on their business practices between 1999 and 2004 with the intent of confirming this "virtuous circle hypothesis."[136] The authors of the resulting book candidly acknowledged that their "goal was to examine how—rather than if—industry concentration was leading to greater efficiency."[137] But to their surprise, the evidence led them to conclude that "most major builders did not capture many of the operational benefits of consolidation during one of the strongest market upturns in several generations."[138] Indeed, "large homebuilders did not outperform their smaller competitors on key operational measures," including cycle time, construction costs, and customer satisfaction.[139] Cycle times "increased with division size"[140] and construction costs "rose rather than fell with scale."[141] Nor were they bigger adopters of information technology.[142] Rather, large homebuilders' outsized profits came from buying their way into "higher appreciation" markets.[143] Moreover, although not noted in the study, public homebuilders had initiated stock buyback programs.[144] This meant that money that might have been reinvested in operations under a managerial capitalism model was paid out to shareholders instead. Ironically, the researchers—who were funded in part by the National Association of Homebuilders and supported by an advisory panel including CEOs of the largest homebuilders—ended up titling their book *Bigger Isn't Necessarily Better.*[145]

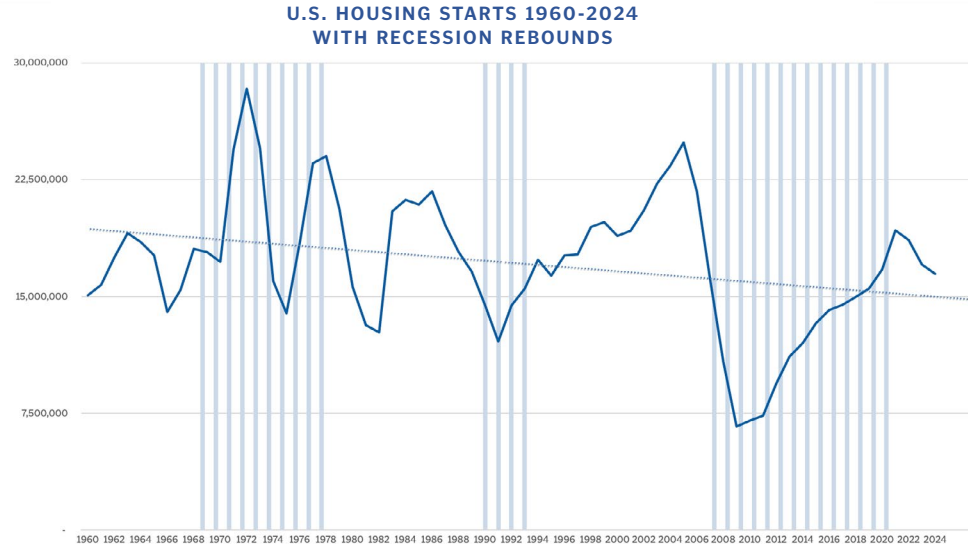
and in 2007 about 30% of Lennar's mortgages were non-prime.[148] Moreover, a Lennar divisional president told a trade magazine that the builder and its mortgage unit had a "master and slave" relationship.[149] That dynamic played a key role in driving the housing bubble that—intermediated by the excessive speculation of a deregulated financial sector[150]—ultimately crashed the global financial system.[151] But it would be the smaller homebuilders that would disproportionately pay the price.

# Policymakers Responded to the Great Financial Crisis by Abandoning Many Smaller Builders and Entrenching Financialization That Paces Production

## Housing Starts—Especially for Starter Homes—Never Fully Recovered After the Great Financial Crisis

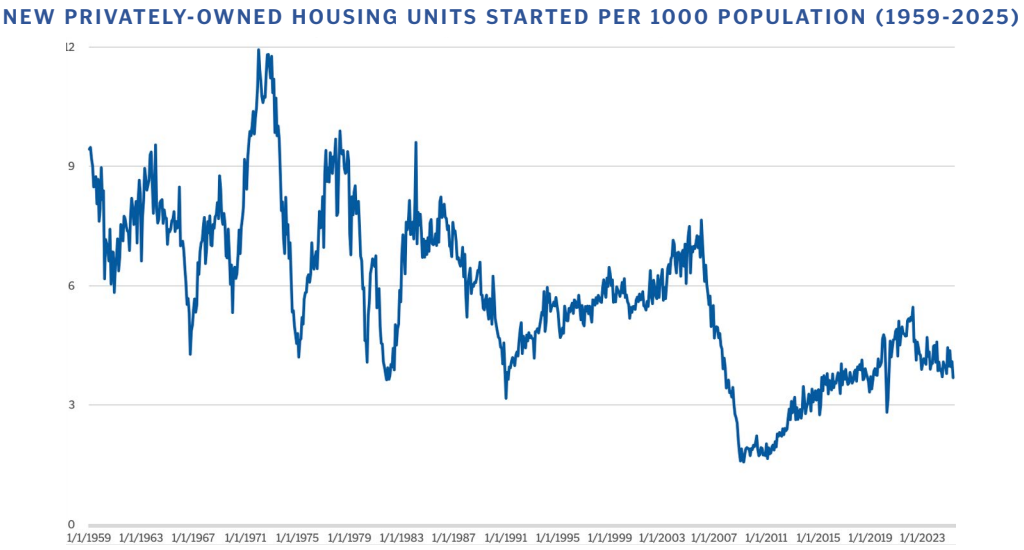
*"[W]hile local economies may experience significant speculative price imbalances, a national severe price distortion seems most unlikely."[152] —Fed Chair Alan Greenspan, 2004*

The Great Financial Crisis brought housing construction to an abrupt halt. New housing starts dropped approximately 80% between 2006 and 2008, cratering to their lowest level in nearly half a century.[153] Nonetheless, demand started recovering within a few years. By 2013, the median sales price of homes had returned to pre-crash levels—and then continued to climb in subsequent years.[154] Historically, such a price rebound would have incentivized more construction.[155] However, after the Great Financial Crisis, the typical sharp surge in new housing starts did not materialize, as illustrated in the chart below.



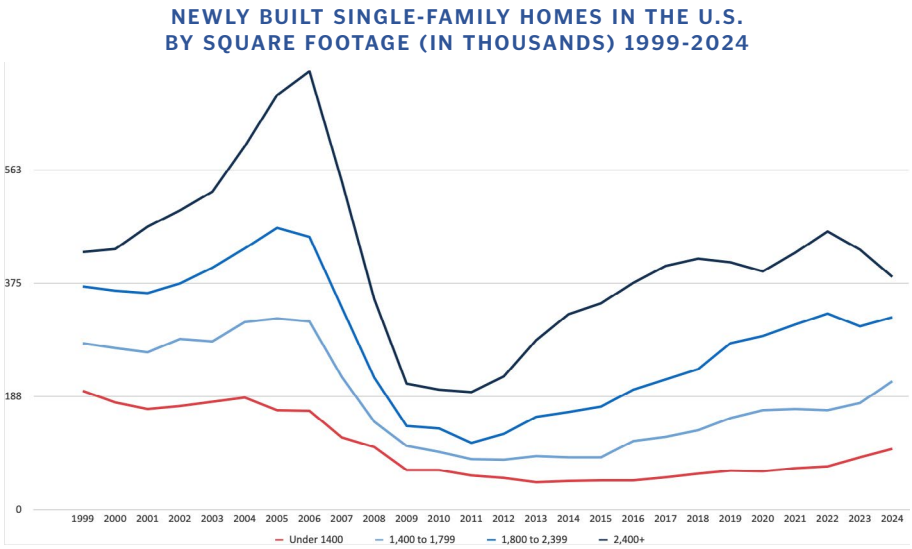

***Sharpness of housing start recoveries after recessions, 1960-2024.[156]***

Since then, housing starts still have not returned to typical levels, and have not kept pace with population levels, as illustrated in the chart below.[157] Although the U.S. population has "nearly doubled since 1960, single-family housing starts are roughly the same."[158] Moreover, whereas single-family home prices used to be specific to particular regions, studies have found increasing "comovement of prices" across regions, suggesting that "non-local factors" such as mortgage rates, inflation, and GDP growth have somehow taken on greater importance in shaping regional market dynamics.[159]



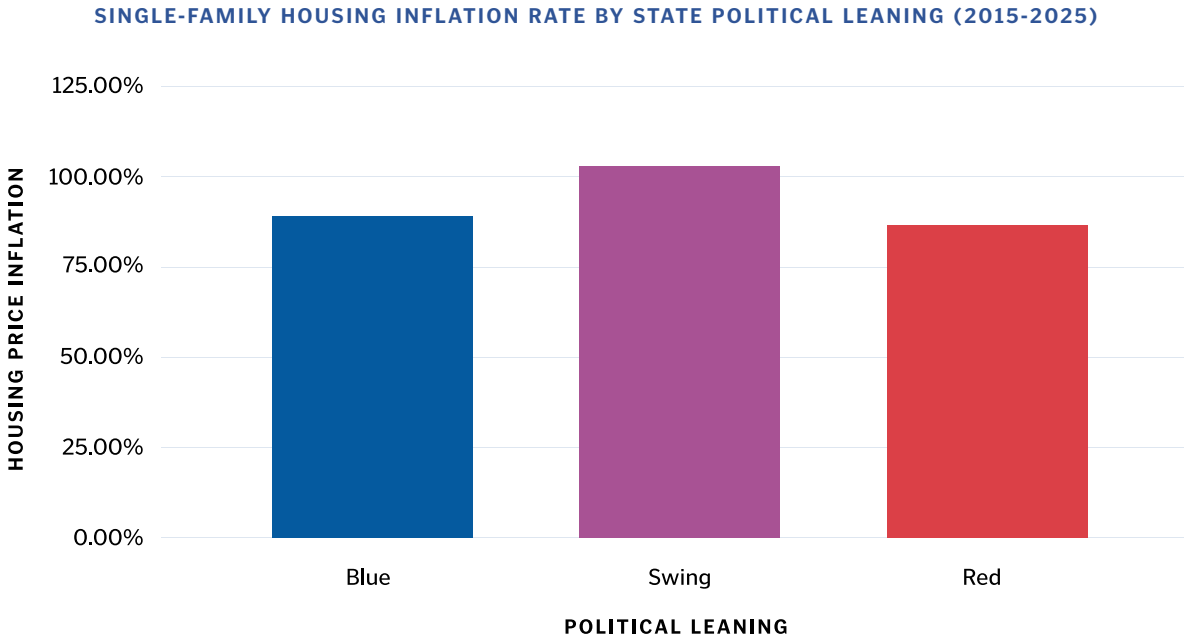

***Housing starts per capita, 1959 -2024.[160]***

The decline in housing production is even more pronounced for entry-level single-family homes. Since the Great Financial Crisis, only a single-digit percentage of new homes have been starter homes[161]—about half the rate of the early 2000s (as shown in the bottom line in the chart below),[162] and far less than the 40% share of the new housing market starter homes held in 1980.[163]




***The declining rate of starter home construction, 1999-2024.[164]***

Although it is clear that housing production has failed to rebound at a national level, there is less consensus about whether under-supply is widespread or limited to particular regions. According to the American Enterprise Institute, for example, only parts of the Southwest and Mountain West, along with certain coastal areas, are experiencing a supply "shortage."[165] Yet other sources indicate that homeownership is now unaffordable for most of the country.[166] Lower absolute sticker prices for single-family homes make "red" states appear less expensive than those in certain "blue" states, but adjusting home prices for median income reveals that red states have also become more unaffordable for local residents over the last decade.[167]




***Single-family home price growth rate by political leaning, 2015-2025.[168]***

Even before the Federal Reserve began hiking interest rates in March 2022,[169] there were only a handful of states where median-priced new homes were affordable for their own residents, and that remains true today.[170]

## Policymakers Gave Big Homebuilders Advantages That Favored Their Recovery Over Local Homebuilders

*"It's no secret that ... the years 2007 to 2010 were far more catastrophic to privately held homebuilders than the nation's largest players."* [171] *—The Builder's Daily*

*"I take real offense that my government is handing these big boys money to put me out of business."* [172] *—Kansas City–area homebuilder, 2009*

What happened? Instead of preserving and strengthening what remained of the competitive New Deal housing supply model, policymakers prioritized stabilizing big banks[173] and big businesses, including large homebuilders.[174] Notably, the Worker, Homeownership,

and Business Assistance Act of 2009 provided a stimulus in the form of a tax credit.[175] Most businesses, including large homebuilders, were eligible, and Congress did not cap refund amounts for the first four tax years.[176] Such choices were "surprising" to industry observers, "given that many [large homebuilders had] very strong balance sheets."[177] Pulte Homes, for example, had $1.5 billion in cash and cash equivalents on its balance sheet, but nonetheless received over $450 million in refunds under the law.[178] Large homebuilders also had "breathing room" thanks to long-term corporate debt arrangements.[179] They continued issuing new debt and equity.[180] By contrast, lenders "completely cut off credit to most small builders, forcing many to file for bankruptcy protection."[181]

**After the Great Financial Crisis, even though Pulte Homes had $1.5 billion in cash and cash equivalents on its balance sheet, it still received over $450 million in tax refunds under the Worker, Homeownership, and Business Assistance Act of 2009.**

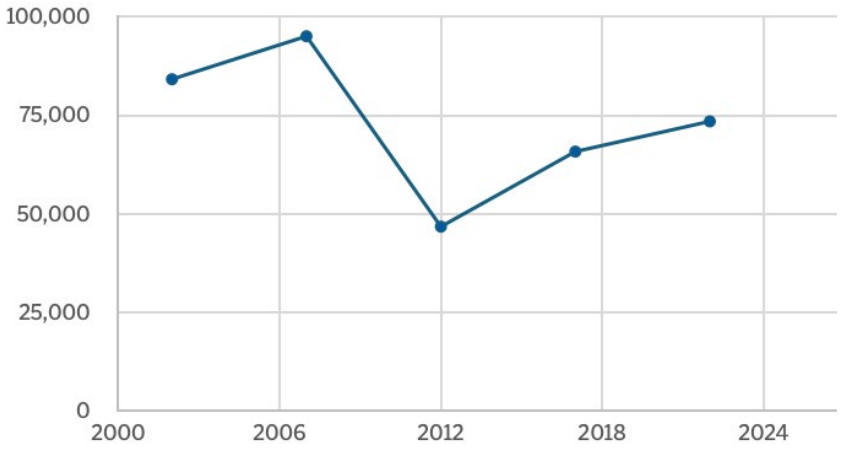
One housing research firm concluded that the 13 largest homebuilders in the country would garner over $2 billion in tax refunds in one year thanks to this policy choice.[182] Large homebuilders benefited disproportionately, in significant part due to their financing advantages.[183] Because large homebuilders were typically financed by debt that is not secured by land, they were well positioned to "dump land and houses for artificially low prices to generate a loss for tax purposes."[184] They could later buy back the same property at a discount—a contractual right Pulte Homes reportedly inserted into its sales deals.[185] Or they could pivot to areas that would recover more quickly. D.R. Horton, for example, sold off thousands of lots in inland California exurbs, while looking for "50- to 150-lot parcels that are already developed and closer to certain cities in the San Francisco Bay area."[186] One large homebuilder that faced more serious balance sheet challenges—Lennar Corporation—sold off "11,000 lots in seven states to Morgan Stanley at far-below market rates."[187] Then it used debt financing to pay over $240 million for a 40% stake in a venture with the FDIC to buy troubled assets from failed banks, and reportedly accrued $4 billion in off-balance-sheet debt via 116 joint ventures.[188] Thus, even the public homebuilders that should have been most chastened by their role in the Great Financial Crisis were not only rescued but set up for accelerating dominance.

## These Policy Choices Hindered the Recovery of Local Homebuilders

Smaller homebuilders could not exploit such strategies to maximize tax refunds and reposition themselves to capture recovering markets because their debt is usually secured by property, giving them fewer options for liquidation.[189] Conversely, smaller homebuilders were left to navigate a market further depressed by the "fire sales" that large homebuilders such as Lennar pursued for tax benefits.[190]

In the aftermath of the Great Financial Crisis, about one-third of construction firms (of all types) went out of business. [191] So did hundreds of small banks.[192] The overall number of single-family homebuilders was cut in half between 2007 and 2012.[193] The policy choice to help large banks and large homebuilders far more than small banks and smaller homebuilders thus accelerated trends toward national-scale financing and homebuilding. As shown below, the overall number of homebuilders remains well below early-2000s levels.

NUMBER OF SINGLE-FAMILY HOMEBUILDERS 2002-2022




*Number of single-family home firms in the U.S., 2002-2022.[194]*

## Meanwhile, Policymakers Began Untethering Local Markets from Local Demand by Turning Single-Family Homes into Assets for Institutional Investors, Who Now Hold Double-Digit Market Shares in Multiple Cities

Besides making pivotal policy choices that impacted homebuilding supply directly, policymakers also made fateful decisions on the demand side that ultimately shaped housing supply as well. In particular, policymakers allowed millions of Americans to lose their homes through foreclosure,[195] then sold them off—but not to ordinary Americans.[196] Instead, they created a new class of corporate homebuyers—setting the stage for public homebuilders to cater more to those buyers and less to families.

In early 2012, Fed Chair Ben Bernanke publicly championed programs to help creditors sell single-family homes to institutional investors for use as rentals, praising their potential for realizing "efficiency gains" at scale.[197] That same year, the Federal Housing Finance Agency (FHFA) sold foreclosed homes in bulk to institutional investors,[198] rather than running the New Deal playbook of adjusting mortgages to help families avoid foreclosure[199]—or at least ensuring that only people who would use foreclosed homes as primary residences could buy them. Also in 2012, real estate investments trusts (REITS), which had long focused on commercial real estate, began featuring single-family rental housing.[200] Investment banks and private equity firms bought up foreclosed properties at courthouse auctions; as

the U.S. Government Accountability Office found, large investors were able to purchase in bulk and in cash, because they could "leverage funding sources such as private equity funds, public equity and debt securities, securitization of rental income, and government-backed loans."[201] This gave them a major advantage over would-be family homebuyers, who generally could not pay in cash and were facing tightening lending standards.[202] At the peak of this phenomenon in October 2012, an estimated 20% of all home sales in the country went to investors.[203] Thanks to Fannie Mae's "REO-to-Rental Initiative," bulk purchases were especially prevalent in the areas most impacted by the financial crisis in Arizona, California, Florida, Illinois, and Nevada.[204]

Residential real estate was especially attractive to investors because, as the CEO of investment bank Blackstone noted, "there's virtually no building going on in the United States," setting the stage for both "rent spikes" and longer-term capital appreciation.[205] Or as Morgan Stanley put it, "[e]ach distressed single-family liquidation creates [not only] a potential renter household" but also "a potential single-family rental unit."[206] That meant, for "the first time in history," there was "an opportunity for institutions to own single-family rental properties as part of a larger asset allocation strategy."[207] Institutional investors then continued to expand their residential real estate portfolios.[208]

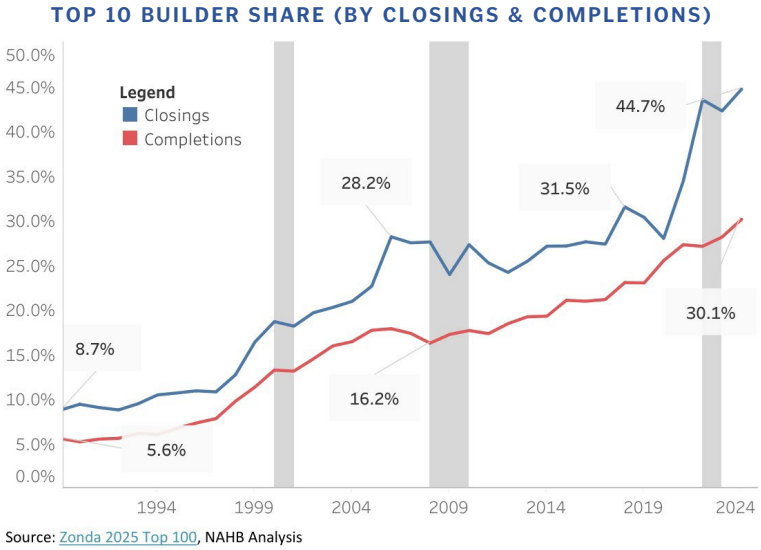
**Each distressed single-family liquidation creates [not only] a potential renter household" but also "a potential single-family rental unit." So for "the first time in history," there is "an opportunity for institutions to own single-family rental properties as part of a larger asset allocation strategy.**

*– Morgan Stanley, 2011*

As a result, single-family homes were transformed into a financial asset class for institutional buyers.[209] Whereas buying a large number of single-family homes used to require too many isolated purchases at disparate times in disparate areas to be efficient, mass auctions provided a strong impetus to invest in the procedural mechanics—and technology—necessary to facilitate more single-family home transactions at scale.[210] By the time this asset class was established, even more homebuilders had gone public.[211] Thus, the sector was poised to cater to corporate buyers. This dynamic has likely shaped some regional markets, because it enables homebuilding firms to set higher price points with less reference to median area incomes, knowing they can likely attract some out-of-state buyers capable of outbidding locals.[212] Moreover, as discussed later, homebuilders now have business lines devoted specifically to institutional investors. Although at a national level, institutional investors own only a single-digit percentage of single-family homes,[213] there are nearly a dozen regional markets where investors have taken a double-digit market share[214]—enough to likely have some impact on prices.[215]

## Publicly Traded Homebuilders Are Now Ubiquitous Nationwide; They Attribute Much of Their Growth to Superior Financing

Publicly traded homebuilders have continued to amass market share.[216] The top 10 builders more than doubled their market share in the last two decades, from just under 21% of closings in 2004 to nearly 45% in 2024, as depicted in the chart below.[217]




***Market share of top 10 homebuilders, 1989-2024.[218]***

All of the top 10 firms now boast over 10,000 annual closings each.[219] The largest homebuilder in America, D.R. Horton, made over 93,000 closings in 2024.[220] Also in 2024, for the first time ever, the top 15 homebuilders captured just over half of all closings.[221]

That same year, the CEO of KB Home attributed large homebuilders' expanding market share to their capital advantages, noting that "smaller builders … are having difficulty with financing" due to the Federal Reserve's post-pandemic high-interest-rate policies.[222] Industry analysts and scholars have likewise observed that disparate access to financing through public capital markets enables large homebuilders to take market share from smaller homebuilders that rely on bank credit.[223] The largest homebuilders also continued to steadily buy market share through acquisitions (*see* Sidebar 3).[224]

## Wall Street Coordinates "Inventory Discipline" and Fosters Land Hoarding by Publicly Traded Homebuilders

*"D.R. Horton has shifted its strategy from exponential growth [in 2005] to returns-focused, disciplined capital allocation [today]."* [225] *—D.R. Horton to investors, Q3 2025*

Public homebuilders have disclosed outsized profits in their annual reports year after year since the Great Financial Crisis. Indeed, Wall Street analysts have calculated that large public homebuilders achieved an average gross margin of 21.9% over the past decade.[226]

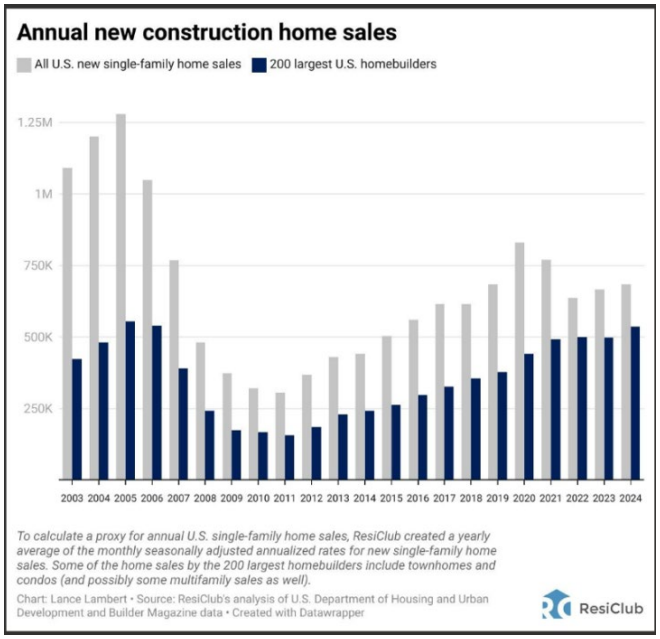
**In April 2025, PulteGroup's CEO told investors that "balancing price and pace with a bias towards price has resulted in gross margin being an important driver of our returns," and its CFO likewise emphasized "prioritizing price and margin over volume"**

These impressive margins—which surged to new heights during the pandemic[227]—suggest that public homebuilders came away from the Great Financial Crisis with new strategies to meet earnings expectations. Instead of erring on the side of overproduction, they appear to have generally focused on maximizing price over volume, enabling them to boost profits even as they time production more selectively than they did before. Wall Street analysts had long criticized homebuilders for continuing to build homes during downturns before demand returned[228]— a practice that came with risks for individual firms, but that was also a hallmark of a dynamic, competitive market that would have rewarded firms that were first off the starting blocks in economic recoveries. But as public homebuilders grew, it appears they began heeding Wall Street's admonitions by timing or restricting output.[229] Today, Wall Street analysts laud "disciplined production across the homebuilding sector" in their stock recommendations.[230] Public homebuilders announce their disciplined production strategies in communications with investors. [231] For example, in 2015, D.R. Horton told investors that it "actively control[s] the number of unsold, completed homes in inventory."[232] In 2016, Meritage Homes told investors that in Phoenix, "[t]he volume is just not there and we're not going to force the market by discounting our prices and taking a lower margin."[233] Similarly, in 2022, D.R. Horton explained that "[w]e attempt to mitigate our exposure to real estate inventory risks by: [c]ontrolling our level of inventory investment."[234] More recently, in April 2025, PulteGroup's CEO told investors that "balancing price and pace with a bias towards price has resulted in gross margin being an important driver of our returns," and its CFO likewise emphasized "prioritizing price and margin over volume"[235] even quantifying the pullback: "[w]e still have the capacity … to build 31,000 homes" in 2025, but "we currently expect to deliver between 29,000 and 30,000 homes."[236] Such statements also raise questions about whether inventory discipline strategies may dictate not only the pace but also the type of inventory that is built, leading to production of higher-priced large homes over less-profitable starter homes.[237]

To be clear, the increasing ability to pace inventory is likely not solely a product of increasing homebuilder concentration, which varies by region. In regions where large homebuilders have fewer competitors, they can be more confident in their ability to take price over volume because they do not need to be concerned about competitors undercutting their price.[238] But Wall Street expectations of inventory discipline can effectively shape business models across all publicly traded homebuilders, encouraging herd behavior that may impact even less-concentrated markets. Moreover, the rise of online services with extensive market analytics about housing starts, inventories, and prices

may be making coordination easier and faster at much lower concentration levels than in pre-digital eras.[239] Indeed, similar dynamics appear to be shaping a related market—rental housing—where federal and state antitrust enforcers have alleged that software firms such as RealPage have coordinated output restrictions (lower occupancy) to maintain high prices.[240] Separate federal litigation alleges the existence of a cartel among providers of home construction rental equipment.[241] Up and down the supply chain, coordination tools magnify the potential for homebuilders to coordinate a reduction in output while maintaining high prices. Of course, from the perspective of individual homebuilders and their shareholders, erring on the side of not overbuilding is fiscally prudent. But from a societal perspective, elimination of surplus production is undesirable because it eliminates downward pressure on home prices.

As the following chart shows, the 25-50% fall in new home production since 2003 correlates with the increasing role of the largest homebuilders—which are typically publicly traded.[242]




***The total number of new home sales has fallen as the percentage of total new home sales controlled by the largest 200 homebuilders has increased.[243]***

By contrast, there does not appear to have been widespread imposition of new restrictive zoning rules around the time of the Great Financial Crisis.[244]

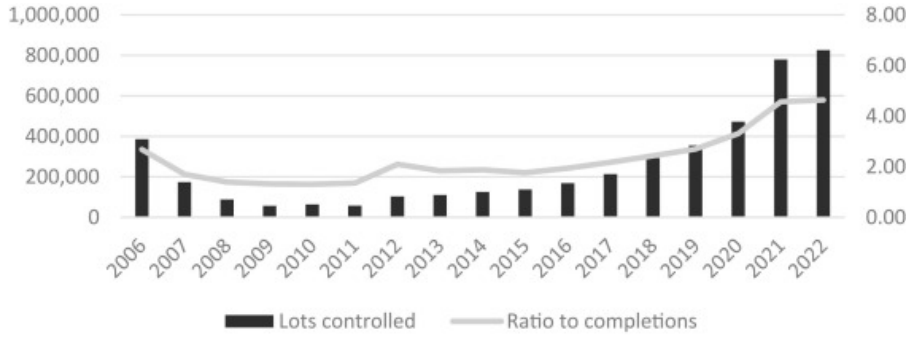
A key part of public homebuilders' inventory discipline strategy appears to be wielding their capital advantages to control land. In the years leading up to the Great Financial Crisis, although they accumulated massive land holdings—a practice called "land banking"[245]—their land strategy did not overshadow their production of single-family homes.

Immediately after the crash, even though homebuilders slashed the number of housing starts—and even though most of the losses they incurred during the Great Financial Crisis came from speculative land investments[246]—some of the biggest players nonetheless focused on amassing large land holdings. In 2010, for example, the CEO of Lennar Corporation told investors that the company would use its $310 million tax refund from the post-crisis policy response discussed above to "capitalize on distressed land-buying opportunities."[247]

Since then, public homebuilders have changed their business model in two ways. First, they pivoted from direct land ownership to a financialized "land-light" strategy to reduce risk.[248] Under the latter approach, homebuilders often need to deposit only 10% to 20% of the land value in order to option land for two to four years.[249] This has been characterized as a kind of "just-in-time" delivery system for serviced development lots or parcels.[250] According to Business Insider, use of this strategy has accelerated even more since the pandemic:[251]

*"Back in 2017, public builders owned about 64% of their lots and optioned the remaining 36%. Those figures have flipped in the years since. The most recent analysis shows that public builders owned just 26% of their lots and had options on the other three-quarters."*[252]

As a result, public homebuilders have accumulated extensive control over land—roughly a million more lots now than in 2020. [253] D.R. Horton alone owns or controls over 600,000 lots.[254] And it assures investors that most of its lot supply is "de-risked," meaning mostly controlled rather than owned.[255]




***Lots controlled by homebuilders and the ratio to completions, 2006-2022. In the past few years, homebuilders have been holding onto land and not building on it.[256]***

By contrast, as Fitch Ratings observed, small private homebuilders face "[t]ight lending standards for construction and development loans" and thus find it more difficult to "obtain financing for land purchases."[257] Major land bankers tend not to deal with small homebuilders very much, regardless of their creditworthiness, preferring to focus on large-scale deals with public homebuilders.[258] And even when smaller homebuilders have land, they often lack adequate financing options to develop the land themselves and sometimes end up selling it to the large homebuilders.[259]

Second, with more acreage under control, public homebuilders now appear to strategically hold land off the market for long periods of time,[260] releasing lots only to the extent necessary to maximize stock prices—rather than to meet housing demand. When there are "delay premiums," [261] public homebuilders—after using their size and credit access to buy up the best land—are incentivized to plan projects to time the market. Land banking can also involve coordination with other industry players, extending the impact of this strategy beyond the market power of any individual homebuilder. As the CEO of one public homebuilder explained, "we're doing joint ventures with either Wall Street private equity or with our friends in the home building industry, the other builders" to control land.[262]

Incentives to pace housing production may be increasing due to macroeconomic factors, with homebuilders reporting negative sentiment about the market for 15 consecutive months.[263] These sentiments have translated into action—or rather, inaction; building permits were down nearly 12% year on year in June 2025.[264] Instead, large homebuilders *see*m to be focused on banking more land, which they can hold onto until the next recovery *see*ms imminent.[265] Lennar, for example, bought 22,000 lots in the second quarter of 2025, and industry observers believe that "investors are most likely setting aside tens of billions of dollars' worth of home lots at builders' behest."[266] One of the largest land bankers, Walton Global, recently launched a private credit offering for $250 million with "[l]and identified and contracted by an A-rated public homebuilder."[267] Such massive land banking has caught the attention of the current administration, with President Trump declaring in an October 2025 social media post that homebuilders are "sitting on 2 Million empty lots, a RECORD."[268]

In parallel with this trend, the cost of land has increased about two and half times as much as the cost of labor and materials in the past decade.[269] And in one recent industry survey, 63% of homebuilders cited cost and availability of developed lots among their most significant building cost problems—slightly ahead of concerns about labor (61%) and material (57%).[270] This suggests that land banking by the largest players is making it more difficult for the rest of the industry to build enough housing to meet demand as smaller homebuilders are locked out of land they might otherwise develop.

## Emerging Research Directions—Concentration Trends

*"Wall Street is pushing the big builders to expand at an incredible pace... They are shopping for acquisitions like crazy, and overpaying for builders and land to get into new markets." — Homebuilder to Professional Builder magazine, 1998*[271]

Most industries in America have been subject to concentration trends in the past several decades,[272] through "persistently high" dealmaking levels.[273] The homebuilding industry, despite still having a significant number of local firms, has not been immune to this trend. Although large homebuilders benefited from the expanded access to capital that came with going public, that access came with strings. By the late 1990s, the largest homebuilders

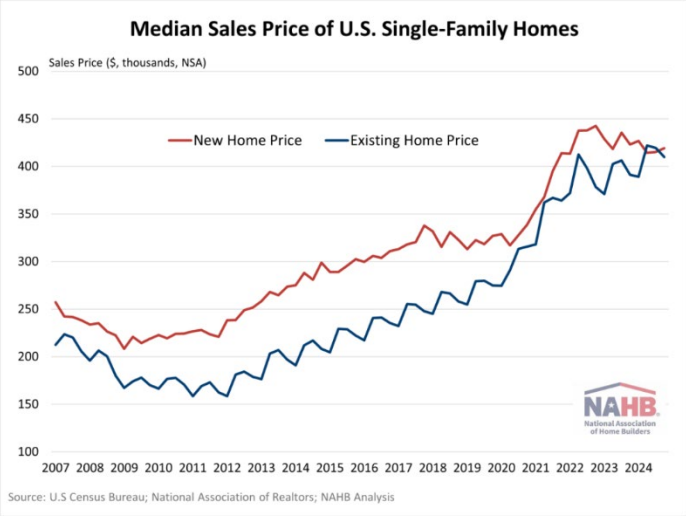
pursued serial mergers and acquisitions (M&A) to meet Wall Street's earnings expectations.[274] And there was little counterbalance to that pressure in an era of lax antitrust enforcement.[275] The National Association of Home Builders found that the top 10 homebuilders' increased share of homes completed for sale from 1994 to 2005 was "due in large part to the companies' growth by acquisition and not ... internal growth."[276] Early on, acquisitive homebuilders sought targets in markets where they did not already operate as the "most effective path to growth"—a move guided more by opportunities to amass "favorable land positions" than by any "desire for scale per se."[277] In the 2000s, public homebuilders continued to buy market share and pursued a series of mega-mergers.[278]

Have regional markets become more concentrated due to M&A? Today, in each of the top 10 housing markets, just 10 builders now collectively control a majority of the market.[279] Out of the top 50 housing markets, America's largest homebuilder, D.R. Horton, is the market leader in 16 markets, and the second-largest homebuilder—Lennar Corporation—leads in 18.[280] In multiple cities, they both have high market shares. For example, D.R. Horton and Lennar together control nearly a third of the Houston-area market.[281] Even though Houston is the only major city in America without comprehensive zoning,[282] and made impactful lot size reforms in 1998 and 2013,[283] according to the American Enterprise Institute, it is nonetheless under-producing housing by tens of thousands of units per year[284]—underscoring the value of studying factors beyond zoning that may impact production. And in some cities, a single firm controls nearly one-third of the market.[285] These concentration trends may not be confined to the top metro areas; by one calculation, as of 2015, 60% of local markets were "highly concentrated."[286]

Have these long-term trends toward concentration among homebuilders impacted housing supply? One scholar developed a counterfactual model showing that if homebuilder concentration had remained at mid-2000s levels, America would be producing 150,000 more homes per year.[287] Avoiding that gap would have made up for more than half of Realtor.com's estimate of the cumulative shortfall in production.[288] More recently, a study of over 888,000 new-home sales following 73 large homebuilder mergers that took place between 2004 and 2019 concluded that "consolidation leads to reduced new-home supply, higher new-home prices, and lower construction quality."[289] Notably, controlling for zoning restrictiveness did not impact these findings, suggesting that "consolidation functions as an independent constraint on housing supply and that zoning reform alone is unlikely to neutralize the market power exercised by dominant builders."[290] Investors have also observed that concentration is creating a "barrier to entry" for smaller builders in some metro areas.[291] Future research should examine impacts on starter homes in particular. Because real estate markets are hyper-local, and the largest homebuilders can control entire developments, research at the neighborhood level may also be illuminating. Notably, under Supreme Court precedent as well as the 2023 Merger Guidelines,[292] existing concentration trends are taken into account when evaluating new transactions, so as to halt such trends in their "incipiency." Another key research subject would be the potential for coordinated effects,[293] given not only the prevalence of publicly traded homebuilders but also new technologies that could facilitate algorithmic coordination of output, prices, or other planning variables.

## The Role of Other Market Segments

Of course, new single-family home sales are not the whole story when it comes to supply. Arguably, homebuilders also face competitive pricing pressures from a more dispersed set of sellers: existing homeowners. However, in practice, new and existing homes were typically distinct market segments, as evidenced by a significant and durable price gap.[294]




***Median sales price of new versus existing single-family homes, 2007-2024.***[295]

It is only since the onset of the pandemic that these market segments have converged.[296] Resale inventory has tightened (thereby pushing up resale prices) in recent years, likely because many people who would otherwise move *see*m reluctant to swap locked-in low mortgage rates for the high mortgages that would be available to finance the purchase of the next property.[297] The price convergence also coincides with investors taking advantage of low interest rates to stock up on single-family housing to be used for rentals,[298] which could also impact resale supply.

In addition, some of the largest homebuilders have a choice of what to build. Depending on zoning and other constraints, including their own expertise and capacity, they can choose between commercial or residential construction—and within the residential category, they can choose between building multi-family dwellings (e.g., apartments and condos) or single-family homes.[299] Logically, land-use choices driven by whatever public homebuilders view as the best options for maximizing share prices could have some impact on the supply of single-family homes.[300] Nonetheless, commercial real estate and multi-family housing are distinct market segments, which may limit their impact on single-family home supply.

Likely more significant is the advent of "build-for-rent" single-family homes that are intended to be bought by investors rather than by families. This now impacts the planning of entire developments. For example, Lennar told investors that in 2019 it had launched a "single-family rental program where [Lennar's] homebuilding operation will be building and selling homes in bulk in communities where the land is owned by third parties with no lease up risk to Lennar," and then "expanded this program to include building and selling incremental single-family rentals in bulk in separate sections of some of our larger existing communities."[301]

This emerging niche took off during the pandemic, with the share of "built-for-rent" housing among all single-family homes nearly doubling, from 5% in 2021 to 9% in 2024.[302] There are signs this market segment is becoming entrenched. In 2024, Lennar formed a joint venture with Invitation Homes,[303] which describes itself as the "nation's largest single-family home leasing and management company."[304] Then in 2025, as overall demand slowed, "instead of lowering home prices for the public, [Lennar] launched an online marketplace available exclusively to deep-pocketed investors and corporate landlords"—such as "Blackstone and Greystar, the largest corporate landlords in the country."[305] Lennar's services include data analytics that calculate projected returns on rentals, and its purchase agreements feature adjustable-rate mortgages targeted toward "buyers who plan to sell or flip properties in the first few years."[306] Other top public homebuilders also have built-for-rent business lines.[307] And just a few months ago, a private equity firm closed the "first-ever single-borrower, single-family rental (SFR) securitization consisting entirely of [built-for-rent] communities."[308] More empirical research is warranted to assess the impact of these market dynamics on single-family home supply and impacts on specific regions and market segments such as starter homes.

## Barriers to Entry That Prevent Smaller Homebuilders from Filling Supply Gaps

The changes in policy and market structure detailed in this paper have made it substantially more difficult for new entrants to challenge incumbents, and for smaller homebuilders to expand production.[309] Smaller homebuilders were also disproportionately impacted by tightened construction lending standards imposed in the wake of the 2023 collapse of Silicon Valley Bank.[310] As noted above, publicly traded homebuilders tout their superior access to capital in communications to investors. Institutional investors have also taken note of the decline of regional banks. For example, a private equity firm recently announced aspirations of "filling the void left by regional banks in real estate lending,"[311] although it is unclear how their terms compare to those offered by the thrifts and community banks of the past. Scarce financing makes starting new homebuilding companies and surviving economic downturns more difficult.[312] So does land banking by larger homebuilders, which forces smaller homebuilders to either pay premiums or wait longer for land access.[313]

New entrants also face higher barriers to entry, especially in a high-interest-rate environment. Homebuilders of all sizes rank the Federal Reserve's high-interest-rate policies as among their top concerns.[314] But public homebuilders have been able to turn this into an advantage over smaller homebuilders by offering mortgages that are several percent below market rates—using the same mortgage service subsidiaries that contributed to the

Great Financial Crisis.[315] Like other mortgages, those with buydowns may be purchased or securitized by Fannie Mae or Freddie Mac.[316] To match the overall financial package offered by homebuilders with integrated mortgage services, smaller homebuilders would have to set the sticker prices of new homes as much as 20% to 30% below the prices set by larger homebuilders offering below-market mortgages.[317] Large homebuilders' strategy here resembles predatory pricing; if smaller firms are driven from the market, larger homebuilders could then remove mortgage discounts, hike prices, or do both to boost profits.

How do public homebuilders use integrated mortgage units for their competitive advantage? Homebuilders typically purchase forward commitments from private equity firms—essentially "tranches of money at below market rates."[318] That cheaper capital enables the homebuilders to offer homebuyers below-market mortgage rates—often half as much as prevailing rates.[319] This has been enormously successful in a high-interest-rate environment, with one dominant homebuilder reporting a "capture rate" of 84%[320]—meaning that the vast majority of people who buy their homes also use their mortgage services. In Nevada, for example, four of the top 10 mortgage lenders in 2024 were publicly traded homebuilders.[321] Homebuyers enticed by lower monthly payments are willing to make the tradeoff of paying higher sticker prices.[322] Accordingly, dominant homebuilders "can sell their houses at higher prices with higher gross margins, while issuing bigger mortgages with bigger origination fees and bigger resale values on the securitization market."[323] Not only do they earn higher margins; the higher prices keep area prices higher by generating higher comps.[324] A good deal for homebuyers in the short run thus likely drives up home prices in the long run, while also raising barriers to entry because competitors would need their own mortgage services or have to make unsustainable price concessions to compete.[325]

Pairing homebuilding with mortgages may just be the start of platformization—integrating different levels of the housing supply chain and linking services to create massive conglomerates.[326] D.R. Horton, for example, already offers title services and home insurance.[327] Meanwhile, private equity firms have been rolling up other parts of the housing supply chain, showing a "strong interest in subcontractors … in areas like roofing, HVAC, pipe repairs, electrical work, concrete, and landscape services."[328] Industry analysts have speculated that a "real estate play" targeting regional homebuilders would help them build out a "larger platform."[329] Equally, large homebuilders could wield their superior access to capital to buy out related parts of the housing supply chain, creating their own platforms. Such platformization would further raise barriers to entry for smaller homebuilders.

Smaller homebuilders also appear to be disadvantaged by a variety of anti-competitive practices. For example, smaller homebuilders may be disproportionately disadvantaged by excessive regulatory requirements that make building affordable homes prohibitively

slow and expensive.[330] The largest homebuilders have an incentive to lobby for byzantine permitting requirements that serve as barriers to entry, precisely to box out rivals with more capital constraints.[331]

Smaller homebuilders are also likely disadvantaged by unfair pricing terms from suppliers of homebuilding goods.[332] It appears that large homebuilders pressure suppliers to grant preferential pricing terms that may not be available to smaller homebuilders.[333] Although the Harvard Home Builder Study found that large homebuilders failed to achieve better efficiencies overall, they did report instituting "corporate-negotiated pricing programs with suppliers" that featured "volume discounts, or rebate programs."[334] Today, for example, Wall Street analysts note that D.R. Horton receives volume discounts and "rebates" from materials suppliers.[335] Given that D.R. Horton's "key material dependencies" are in lumber, concrete, and steel,[336] these would be worthwhile supplier relationships to investigate. Similarly, PulteGroup reportedly "buys directly from manufacturers in bulk, using its size to get a better price."[337] Demanding different price terms for the same volume of goods can, in some circumstances, constitute illegal price discrimination.[338]

As significant as these challenges are, the industry-defining question is what will happen to small homebuilders during the next severe economic downturn. The foregoing history of the S&L crisis and the Great Financial Crisis shows that, especially during hard times, policy choices shape the contours of the homebuilding industry and define recovery trajectories in profound ways. Large homebuilders are still armed with the tools that enabled them to turn even their mistakes into advantages over smaller builders during previous downturns, but they now have deeper footprints in more markets than they did then and pose more risk of becoming "too big to fail." Without careful attention to incentives and uneven consequences, policy choices made during the next downturn could prove to be even more consequential than mistakes of the past. And even if economic troubles stay at bay in the near term, chronic lags in single-family home supply make a holistic rethink of policy frameworks around homebuilding finance long overdue.

## Policy Recommendations

*"Maybe I'll make less money per home, but I get to build more homes. And I'm going to fix a societal problem." —Family-owned developer using Utah's low-interest loan program*[339]

To restore affordability, competition, and productive land use, policymakers must address financialization, capital concentration, and the collapse of decentralized lending. We recommend the following policy solutions.

### 1. Support and Expand Lending to Local Builders

Every level of government has a role to play in restoring and expanding financial support for local homebuilders, including by preserving the remaining decentralized financial institutions they rely upon:

» *Federal Agencies*

The Federal Reserve should pursue its statutory mandate to regulate credit[340] by allocating credit in a manner that restricts excessive financial speculation without harming single-family homebuilders and manufactured housing companies.[341] The Secretary of Housing and Urban Development should conduct a review of Federal Housing Administration construction financing programs to identify barriers to the use of manufactured home construction methods.[342] Fannie Mae should expand its support for single-family home construction, especially by smaller homebuilders.[343] To preserve decentralized finance, the Federal Reserve, the FDIC, and the OCC should revitalize their merger oversight, and the Antitrust Division of the Department of Justice should independently exercise its authority to block bank mergers as well.[344]

» *Congress*

Congress should develop lending facilities for small homebuilders[345] and ensure that economic rescue packages include small homebuilders and do not place them at a disadvantage relative to public homebuilders.[346] Congress should also reform exceptions to bank merger law that favor the largest banks.[347] In addition, maintaining a fair playing field in mortgage services is one way of promoting the general financial stability of small lenders, which then lend to smaller homebuilders. Accordingly, Congress should make appropriations to support housing construction[348] and codify the Federal Housing Finance Agency's policy of requiring Fannie Mae and Freddie Mac to charge uniform guarantee fees to all lenders,[349] ensuring that smaller lenders can offer mortgage pricing that is competitive with larger lenders.[350]

» *State and local governments*

State and local governments should issue bonds[351] to establish revolving loan funds or other lending facilities for smaller homebuilders, administered through local banks and credit unions.[352]

### 2. Adopt a Land-Value Tax to Discourage Land Hoarding

State and local policymakers should discourage land hoarding and speculation by large homebuilders and financial firms by implementing a land-value tax, which bases property taxes mostly or entirely on underlying land values rather than the value of

improvements added to land.[353] Shifting away from taxing the value of improvements would promote homebuilding because "unless the economic benefits of improving a parcel of land outweigh the costs associated with an increased tax burden, a landowner will only improve their land until the point where it no longer becomes economically feasible."[354] By tying taxes to land value instead, that disincentive to make improvements—such as building housing—is removed.[355] In addition or alternatively, policymakers could implement a land-hoarding tax by specifically taxing undeveloped land above a certain threshold to disincentivize excessive land banking, which holds land off the market.[356]

### 3. Ban Corporate Ownership of Single-Family Homes and Mandate Divestiture

Congress and state legislatures should prohibit corporate and institutional investors from owning single-family homes and require them to divest their existing portfolios over a defined transition period.[357]

In the meantime:

- Congress should end tax breaks that facilitate ownership of large numbers of single-family homes and manufactured-home parks[358] and also codify recent policies by Fannie Mae and Freddie Mac not to lend to institutional investors that buy single-family rental homes (or manufactured home parks).[359]
- The SEC should stop postponing the implementation of the amendments to Form PF adopted in 2024, which would require private fund advisers to make high-level disclosures about real estate funds, and should consider further amendments to collect more relevant information.[360]
- The FTC, having already collected public comments on "large-scale single-family rental owner operators," should proceed with a Rule 6(b) study of the industry.[361]

### 4. Enable More Scrutiny of Homebuilding M&A to Stop Trends Toward Concentration

Federal and state antitrust enforcers should use their existing authorities to scrutinize transactions that would exacerbate trends toward concentration.[362] However, current statutory reporting exceptions and thresholds hinder the ability of enforcers to detect many anti-competitive transactions. Accordingly, Congress should enact the Housing Acquisitions Review and Transparency (HART) Act (S.4620),[363] which would require corporations and private equity firms that purchase large volumes of housing to report such transactions to federal antitrust enforcers. Congress should also close the loopholes in the Hart-Scott-Rodino (HSR) Act and its implementing regulations that exempt purchases of "raw land"[364] and certain acquisitions of realty[365] from reporting. More generally, Congress should lower HSR thresholds and require reporting of serial

acquisitions.[366] States that have not done so already should adopt "mini-HSR" acts to ensure they are informed about large deals that may impact their constituents.[367]

**5. Reform Excessive Regulatory Barriers to Entry**

State and local governments should reexamine zoning and permitting requirements and consider amending them to prevent dominant homebuilders from using regulatory complexity as a barrier to entry, while preserving legitimate regulatory protections that serve the public.[368] Not only do some states and cities impose requirements—such as minimum lot and house sizes[369]—that impact housing supply, developers often draft initial codes, covenants, and restrictions (CCRs) for homeowners associations (HOAs) that specify minimum home sizes.[370] Restricting or banning such requirements could help resurrect construction of starter homes.[371] However, zoning reforms are more effective when paired with financing efforts and other policy measures.[372] For example, Washington, D.C., not only rezoned certain commercial and industrial land for residential purposes (without citywide de-zoning) but also purchased land for development and used a $1.3 billion Housing Production Trust Fund to provide inexpensive loans for affordable housing. [373] In six years, construction of housing of all types surged nearly 70%, from about 4,000 units per year to 6,700 units per year—outpacing Houston's construction rate on a per capita basis.[374]

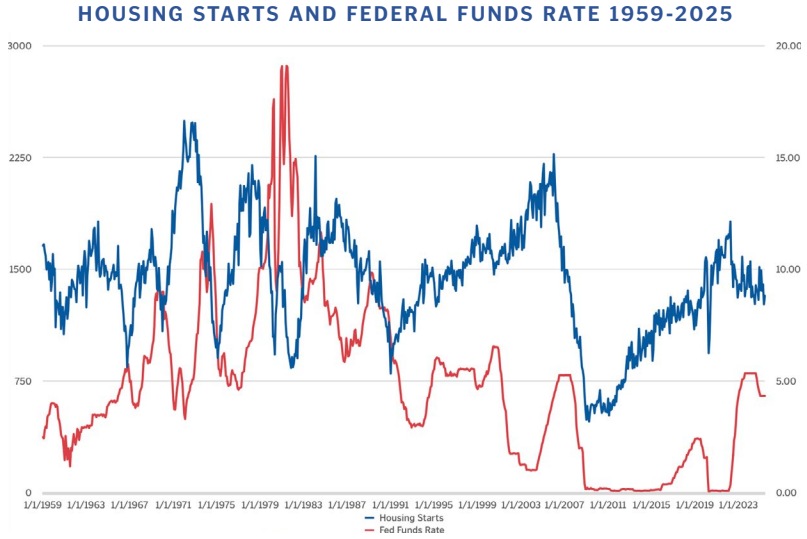
Regulatory reform is also important for unleashing more production of manufactured homes. State and local governments should revise or eliminate zoning requirements that have the effect of limiting where manufactured homes can be located. Congress should take measures such as repealing the statutory requirement for all such homes to have a "permanent chassis" and directing HUD to develop standardized codes to streamline manufactured home construction.[375]

**6. Investigate Supplier Price Discrimination Favoring Large Homebuilders**

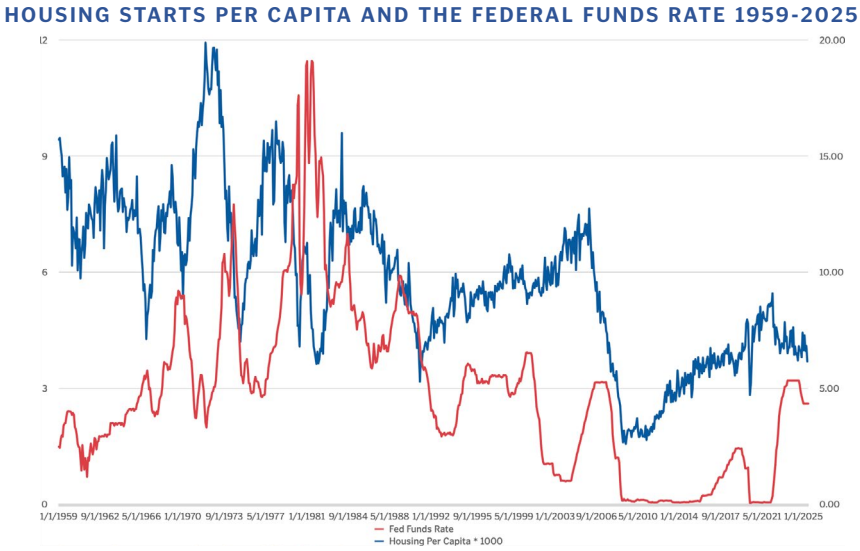
Federal and state law enforcers should investigate possible price discrimination claims under the Robinson-Patman Act or other applicable laws[376] to prevent large homebuilders from securing preferential terms (e.g., pricing on key inputs such as lumber) that are unavailable to smaller competitors.

## The Slowdown in Housing Starts Is Not Simply Due to Interest Rates

The decrease in housing starts over the last several decades is not simply a function of interest rates; the long period of low interest rates after the Great Financial Crisis did not trigger significant construction revival, as shown in the charts below.




***New housing starts and the federal funds rate, 1959-2025.***[377]

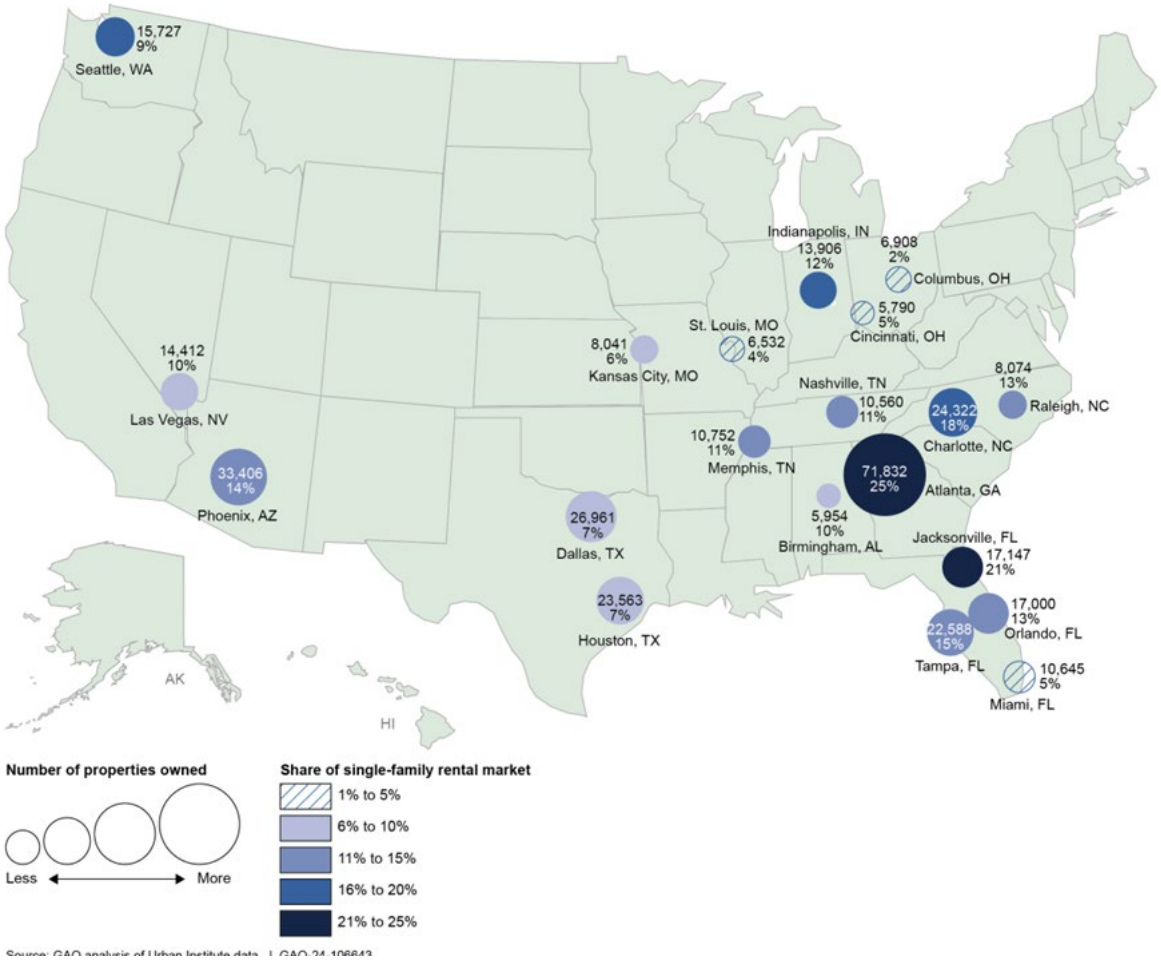



***New housing starts per capita and the federal funds rate, 1959-2025.***[378]

## Where Institutional Investors Hold Single-Family Rental Homes

Institutional investors (defined as investors with over 1,000 homes) have double-digit market shares in over a dozen cities.[379]

**Figure 6: Estimated Share of the Single-Family Rental Market Held by Investors with over 1,000 Homes in Selected Areas, as of 2022**




Source: GAO analysis of Urban Institute data. | GAO-24-106643

## Public Homebuilders Have Grown Mainly Through M&A

Since the 1990s, public homebuilders have pursued growth through M&A. The top five public homebuilders more than doubled their market share from under 4% in 1995 to over 8% by 2000.[380] Similarly, "home builder growth in 1999-2004 occurred primarily through acquisitions rather than through internal expansion."[381] "Lennar, for example, achieved its number two ranking in 2006 in part through its acquisition of U.S. Home in 2000, doubling the size of the company, and its subsequent purchase of twelve private builders."[382] Empirical research confirmed that in some metro regions, the homebuilding market structure was "at odds with the perfect-competition paradigm."[383] These M&A trends were driven in significant part by Wall Street growth expectations.[384]

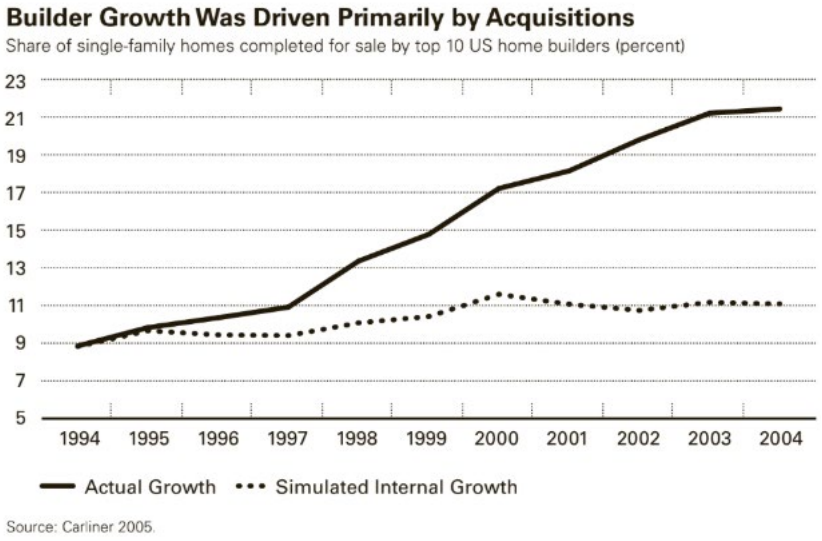
**Table 2.** Total Closings and Percentage Change from Mergers and Acquisitions

| Company | 1993 | 2004 | Change 1993-2004 | Percent through Acquisition/Merger |
|---|---|---|---|---|
| D.R. Horton | 1,668 | 44,005 | 42,337 | 45.1 |
| Pulte Homes | 9,798 | 38,612 | 28,814 | 38.7 |
| Lennar Corp. | 4,634 | 36,204 | 31,570 | 55.7 |
| Centex Corp. | 11,685 | 32,896 | 21,211 | 15.6 |
| KB Homes | 5,982 | 26,937 | 20,955 | 63.2 |
| Beazer Homes USA | 2,496 | 16,437 | 15,921 | 72.9 |
| The Ryland Group | 8,319 | 15,101 | 6,782 | 19.9 |
| Hovnanian Enterprises | 3,671 | 14,586 | 10,915 | 105.8 |
| M.D.C. Holding | 3,344 | 13,876 | 10,532 | 20.5 |
| NVR | 4,248 | 12,749 | 8,501 | 7.0 |
| Total | 55,845 | 251,383 | 195,538 | 46.1 |

*Source: Builder Magazine, Mergers Online and NHAB Economics*

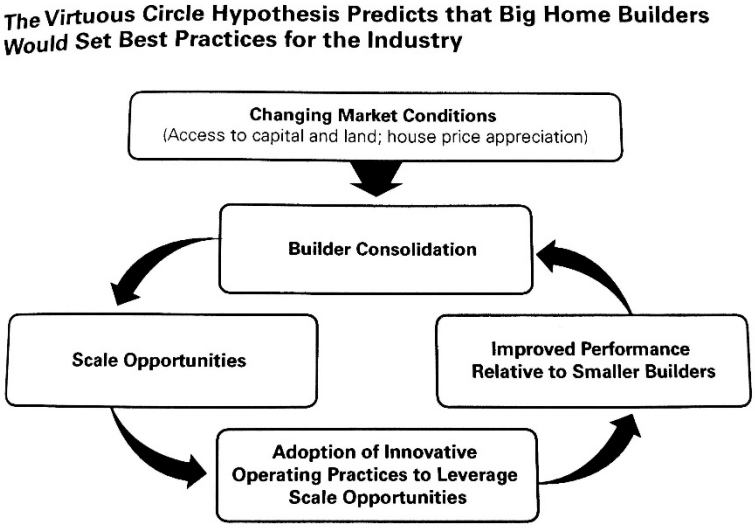
***The total number of home closings and percentage change from mergers and acquisitions for the top homebuilders, 1993-2004.*** [385]

Although public homebuilders had some organic growth, the majority of their growth came through M&A, as shown below.



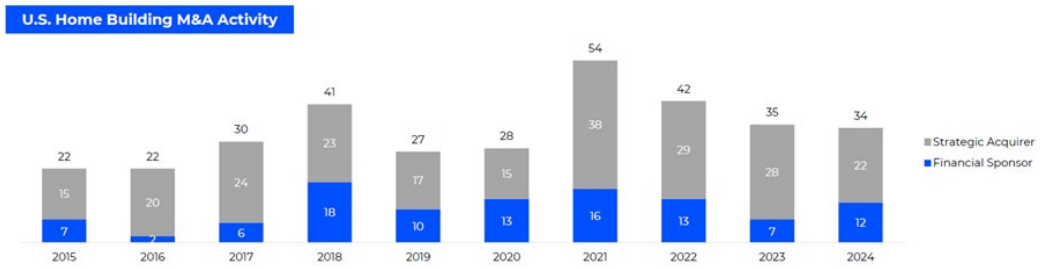

***From 1994 to 2004, homebuilder growth was driven by acquisitions.***[386]

The lead researchers of the Harvard Home Builder Study expected that this would lead to a "virtuous" cycle of big homebuilders setting "best practices" for the industry, as depicted in the diagram below.[387]

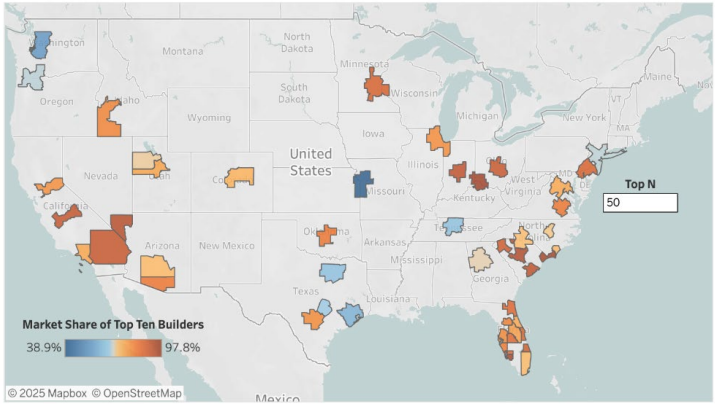


But they concluded that, in reality, increasing consolidation did not drive a virtuous cycle; public homebuilders pursued consolidation to attract Wall Street capital to buy land and market share rather than to invest in improving their operational efficiency.[388] They found that "across a wide variety of practices at the division level, the largest homebuilders were no more likely, and in some cases less likely, to adopt advanced coordination and construction practices than smaller builders in the sample."[389] Thus, "performance—as measured in terms of costs and cycle times for construction—did not improve with builder size."[390] The researchers behind the Harvard Home Builder Study attributed large homebuilders' failure to improve operations in part to their growth by acquisition strategy, which "created a major obstacle to reaping the benefits of scale," given the "difficulty of merging acquired units with distinct operational practices, personnel, internal incentive systems, and cultures."[391] There was often an "inverse relationship [ ] between operational efficiency and financial performance within the home building industry."[392] Only "[i]n markets where builders were forced to compete [did they] improve their operating performance."[393]

Homebuilder consolidation accelerates in response to economic shocks.[394] After the Great Financial Crisis, M&A often took the form of mega-mergers.[395]




***Homebuilder M&A by "strategic acquirers" (usually larger homebuilders) and "financial sponsors" (private equity firms), 2015-2024.[396]***




Data Source: BUILDER MAGAZINE Local Leaders; Data Year: 2024; Analysis: NAHB Economics & Housing Policy.

***The top 10 builders dominate multiple major metro areas.[397]***

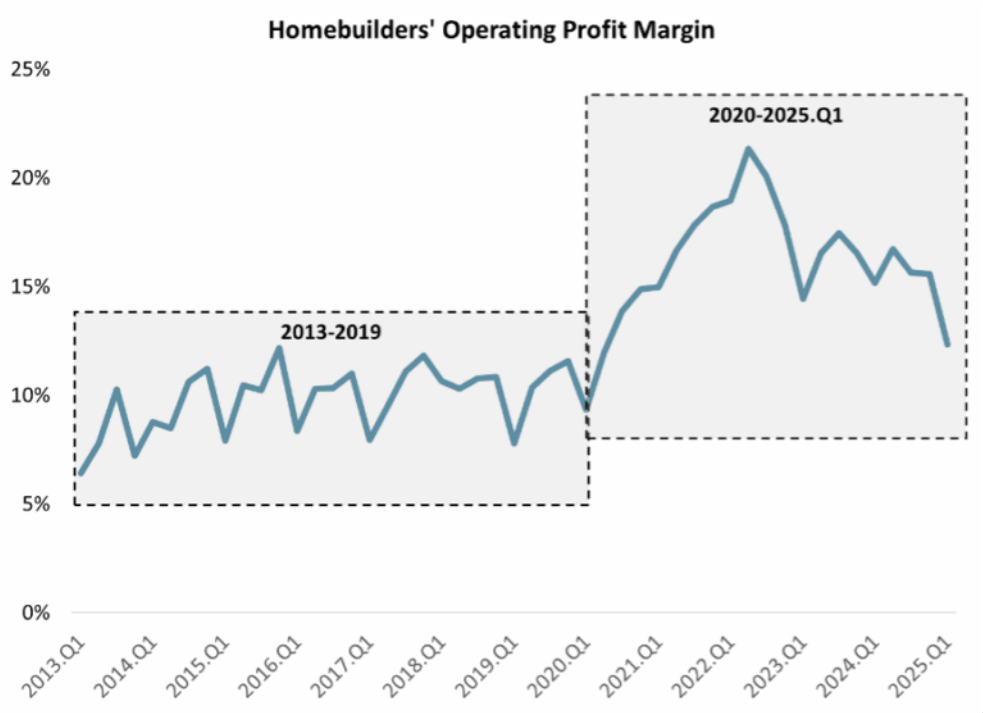
Notably, acquirers have paid increasing premiums for homebuilding firms. Construction Briefing magazine reported earlier this year that buyers have become willing to pay more than twice as much for companies at the same profitability level compared to 2006.[398] Such overpayment is one hallmark of finance-driven concentration.[399]

In addition, the top homebuilders appear to have adopted tactics that may be consistent with emerging market power in some regions.[400] A recent Hunterbrook Media investigation based on interviews with 60 homeowners in D.R. Horton and Lennar properties across 16 states found that the homebuilders maintain their high margins[401]—earning upwards of $88,000 gross profit per home—in part by cutting corners in construction and using deceptive sales tactics and unfair contracts to shift risks onto homebuyers.[402]Many new homes are, allegedly, plagued by defects and building code violations, including "water intrusion, truss and joist deficiencies, ventilation problems, and missing or inadequate fireproofing or insulation," as well as "foundation cracks, improper grading, and plumbing issues."[403] The ability to reduce quality without losing customers or damaging profits is a classic indicator of market power.[404] In 2024, "D.R. Horton agreed to a 16.1 million settlement... to resolve claims of widespread construction defects—including roof and siding issues—affecting more than 200 homes in South Carolina."[405] But homeowners often have to sign mandatory arbitration clauses that prohibit jury trials and prevent them from banding together to *see*k redress.[406]

Moreover, research indicates that in concentrated markets, the largest homebuilders have been able to speed up their own construction without passing on the benefits to consumers in the form of increased supply or reduced prices.[407] They appear to leverage their buyer power to "better secure access to scarce inputs, such as inspectors, subcontractor labor and building materials," yielding "a substantial private efficiency gain" that "comes at the expense of market-wide efficiency," slowing the overall market by 8.5%.[408]

## Public Homebuilders Have Persistently High Profit Margins

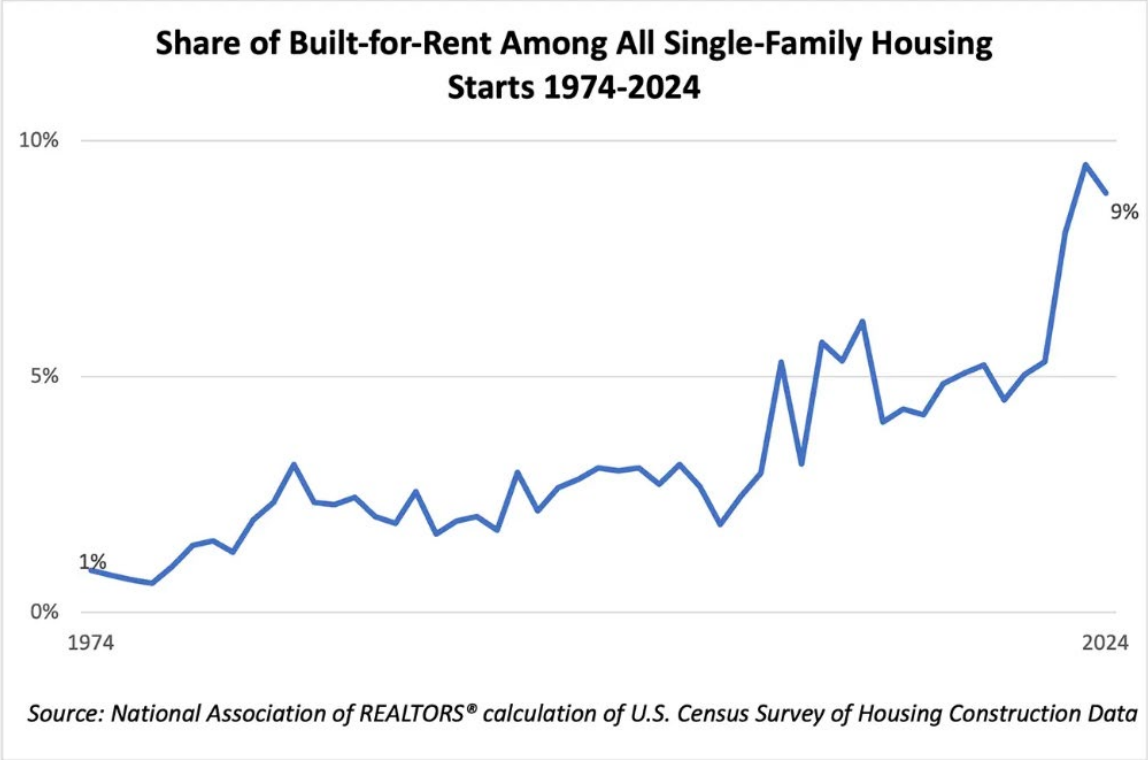
The top public homebuilders enjoyed an average operating margin of nearly 10% between 2013 and 2019—which then reached new heights during the pandemic, with an average operating margin of 16% between 2020 and 2025.[409] According to one estimate, the "range from peak to trough profits for homebuilders [since early 2020] has resulted in as many as 4.7 million American [h]ouseholds being unable to afford the price of the median new house."[410]




***Homebuilders' operating profit margins, before versus during and after the pandemic.***[411]

## "Built-for-Rent" Single-Family Housing Has Grown Significantly

Single-family homes built to be rented out by investors have become an increasing part of the market.




***Share of built-for-rent among all single-family housing starts, 1974-2024.***[412]

# Endnotes

1 *See*, e.g., David A. Price and John R. Walter, "It's a Wonderful Loan: A Short History of Building and Loan Associations," Federal Reserve Bank of Richmond EB19-01 (Jan. 2019), https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_brief/2019/pdf/eb_19-01.pdf; New Geography, "The Fate of America's Homebuilders: The Changing Landscape of America," (June 9, 2009), https://www.newgeography.com/content/00844-the-fate-america%E2%80%99s-homebuilders-the-changing-landscape-america; Brent W. Ambrose and J. Peek," Credit Availability and the Structure of the Homebuilding Industry," 36 Real Estate Economics 4, 659-692 (2008), https://sci-hub.se/10.1111/j.1540-6229.2008.00226.x, ("Ambrose Credit Availability Paper").

2 *See*, e.g., U.S. Department of Housing and Urban Development (HUD) Office of Policy Development and Research, "Housing Market Conditions Summary," (Summer 1994), https://www.huduser.gov/periodicals/ushmc/summer94/summer94.html; Federal Reserve Bank of St. Louis, FRED, New Privately-Owned Housing Units Started: Total Units, 1959-2025, https://fred.stlouisfed.org/series/HOUST; FRED, Population, Total for United States, 1960-2025, https://fred.stlouisfed.org/series/POPTOTUSA647NWDB.

3 *See* Luis Quintero, "Fewer Players, Fewer Homes: Concentration and the New Dynamics of Housing Supply," Johns Hopkins Carey Business School Research Paper No. 18-18, 1 (Aug. 15, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3303984 ("As of 2022, the number of new housing units… still lags even the 1990–2002 average by 20%") (internal citation omitted); *see also* infra, Section II.a.

4 *See* infra, section II.a.

5 Matt Egan, "More than half of American renters who want to buy a home fear they'll never afford one," CNN (July 29, 2024), https://www.cnn.com/2024/07/29/business/millions-of-renters-fear-theyll-never-be-able-to-buy-a-home. Most voters across the political spectrum say that addressing the supply of affordable homes and high housing costs is an important priority and rank affordability of all types of housing as a top financial issue. *See*, e.g., Francis Torres, "U.S. Opinions on Housing Affordability: A BerkinPC/NHC/Morning Consult Poll," Bipartisan Policy (June 10, 2024), https://bipartisanpolicy.org/blog/opinions-on-housing-affordability-poll; Jennifer Ludden, "As millions struggle with home prices, housing becomes a top issue for voters," NPR (June 24, 2024), https://www.npr.org/2024/06/24/nx-s1-5015224/price-cost-election-housing-rent-voters-biden-trump.

6 *See*, e.g., E.J. Antoni, "The Housing Crunch Is Causing Americans To Delay Marriage and Children," The Heritage Foundation (Feb. 14, 2024), https://www.heritage.org/housing/commentary/the-housing-crunch-causing-americans-delay-marriage-and-children; Thomas P. Boehm and Alan Schlottmann, "Wealth accumulation and homeownership: Evidence for low-income households," 10 Cityscape 2, 225-256 (2008), https://www.jstor.org/stable/20868659.

7 For purposes of this paper, smaller homebuilders generally refers to privately-held homebuilders that make under 500 closings per year. The Harvard Home Builder Study used 500 closings per year as a minimum cutoff for studying larger homebuilders in 2004. *See* Abernathy, note 79 at 108. And today, all builders on Builder magazine's Builder 100 list make over 500 closings per year. *See* Builder, "2025 the Top 100," (Q3 2025), https://www.builderonline.com/builder-100/builder-100-list/2025/. Other narrowing criteria could be used, such as regional footprints, but for present purposes a key differentiator to demarcate size is whether builders have access to capital markets.

8 *See* U.S. Census Bureau, "Construction: Summary Statistics for the U.S., States, and Selected Geographies," https://data.census.gov/table/ECNBASIC2022.EC2223BASIC?t=New+Housing+%28Construction+and+Sales%29 (NAICS codes 236115 and 236117).

9 *See*, e.g., Danielle Kaye, "New Home Construction Slows as Mortgage Rates Remain High," New York Times (June 20, 2024), https://www.nytimes.com/2024/06/20/business/economy/new-home-construction-mortgage-rates.html. In addition, "[m]any homeowners with mortgage rates that are substantially lower than current rates feel locked in, limiting their mobility and restricting the amount of housing on the market." *Id.*

10 Peter M. Carrozzo, "A New Deal for the American Mortgage: The Home Owners' Loan Corporation, the National Housing Act and the Birth of the National Mortgage Market," 1 U. Miami Bus. L. Rev. 17, 33 (2008), https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1066&context=umblr (internal citation omitted).

11 *See*, e.g., Matt Stoller, "The Housing Crash and the End of American Citizenship," 39 Fordham Urban Law J. 4, 1185 (Feb. 2016), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2428&context=ulj. These policies were successful: homeownership grew from 44% in 1940 to a peak of 69% in 2004. *See*, e.g., U.S. Census Bureau, "Historical Census of Housing Tables: Homeownership," (2000), https://www.census.gov/data/tables/time-series/dec/coh-owner.html, and Mark Doms and Meryl Motika, "The Rise in Homeownership," (Nov. 3, 2006), https://www.frbsf.org/research-and-insights/publications/economic-letter/2006/11/the-rise-in-homeownership/. Because New Deal era policies failed to adequately address existing segregation and discrimination in housing, additional reforms were made in the civil rights era. *See*, e.g., Price Fishback et al., "New evidence on redlining by federal housing programs in the 1930s," 141 Journal of Urban Economics (2024), https://www.nber.org/system/files/working_papers/w29244/w29244.pdf.

12 *See*, e.g., Carrozzo, *supra* note 10 at 26.

13 Lynne Doti, "Financing the Postwar Housing Boom in Phoenix and Los Angeles, 1945-1960," Chapman University, https://digitalcommons.chapman.edu/cgi/viewcontent.cgi?article=1100&context=economics_articles; David Mason, "Savings and Loan Industry," https://eh.net/encyclopedia/savings-and-loan-industry-u-s/.

14 Community bank dispersion was a general feature of America's New Deal banking system. As the Supreme Court observed in 1963, "ours is essentially a decentralized system of community banks," and "control of commercial banking is diffused throughout a very large number of independent local banks—13,460 of them in 1960—rather than concentrated in a handful of nationwide banks, as, for example, in England and Germany." U.S. v. Phila. Nat'l Bank, 374 U.S. 321, 325 (1963). Most banks were backed by federal deposit insurance and subject to "frequent and intensive" exams via the Federal Reserve System. *Id.* at 229. Among other things, this system fostered stability; whereas a "typical year in the 1920's" featured hundreds of bank failures, there were only a single-digit number of annual bank failures in the late 1950s and early 1960s. *Id.* at n. 6.

15 *See*, e.g., Carrozzo, *supra* note 10 at 6.

16 U.S. Federal Housing Finance Agency, "About FHLBank System," https://www.fhfa.gov/supervision/federal-home-loan-bank-system/about; James Andrew Wollam, "An Investigation of the Factors Affecting the Growth of Iowa Savings and Loan Associations, 1945-1965," (August 1967), https://escholarshare.drake.edu/server/api/core/bitstreams/0da0dd93-8182-46cd-8d17-bf2942b8c4f5/content.

17 *See*, e.g., George G. Kaufman, "The Incredible Shrinking S&L Industry," Federal Reserve Bank of Chicago, Chicago Fed Letter, No. 40, (Dec. 1990), https://www.chicagofed.org/publications/chicago-fed-letter/1990/december-40 ("The market share of S&L assets increased steadily from 6% of the assets of 11 major types of financial institutions in 1950, to ... 15% in 1980."); David Mason, "Savings and Loan Industry (U.S.)," Economic History Association, https://eh.net/encyclopedia/savings-and-loan-industry-u-s/; Kenneth Snowden, "A Historiography of Early NBER Housing and Mortgage Research," (July 2014), https://www.nber.org/system/files/chapters/c13003/c13003.pdf. In some ways, the New Deal codified existing decentralization. *See* Kenneth A. Snowden, "Building and loan associations in the US, 1880–1893: The origins of localization in the residential mortgage market," 51.3 Research in Economics, 227-250, 227 (1997), https://www.sciencedirect.com/science/article/abs/pii/S1090944397900454 ("building and loans had adopted the principle of localization by the 1890s").

18 Fred E. Case, "Deregulation: Invitation to Disaster in the S&L Industry," 59 Fordham L. Rev. S95-96 (1991), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2923&context=flr; *see also* Snowden at 227 ("home builders and real estate professionals continued to dominate the management of S&Ls well into the post-World War II era").

19 *Id.* at S95.

20 *See*, e.g., Kitty Calavita et al., Big Money Crime: Fraud and Politics in the Savings and Loan Crisis, 10 (1997), https://www.ojp.gov/pdffiles1/Digitization/176104NCJRS.pdf

21 Case at S93, S95 (1991); *see also* Snowden at 227 ("home builders and real estate professionals continued to dominate the management of S&Ls well into the post-World War II era").

22 Case at S96.

23 David Mason, "Savings and Loan Industry," Economic History Association, https://eh.net/encyclopedia/savings-and-loan-industry-u-s/.

24 Lawrence J. White, "The S&L Debacle," 59 Fordham L. Rev. S57, S62 (1991), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2921&context=flr.

25 Fred E. Case, "Deregulation: Invitation to Disaster in the S&L Industry," 59 Fordham L. Rev. S93 (1991), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2923&context=flr (noting over 90,000 "establishments" for single-family home general contractors and operative builders).

26 *See*, e.g., Peter Wissoker, "Putting the Supplier in Housing Supply: An Overview of the Growth and Concentration of Large Homebuilders in the United States (1990-2007)," 3 (2016), https://sci-hub.st/10.1080/10511482.2015.1115418 ("The [homebuilding industry can be *seen* to have six defining features: (1) a long lead-time from conception to finished home; (2) significant up-front costs; (3) a highly-structured production process; (4) a high degree of regulation; (5) a range of firm sizes ... and (6) a product that lasts for many years. Its inputs are land, building materials, and labor.").

27 *See*, e.g., U.S. Dept. of Commerce, Bureau of the Census, "1972 Census of Construction Industries," Industry and Special Statistics (June 1976), https://archive.org/details/1972censusofcons01unit/mode/2up; John Herzog, "Structural Change in the Housebuilding Industry," 39 Land Economics 2, 133-41 (1963), https://doi.org/10.2307/3144749.

28 *See* Basel Musharbash, "Messing with Texas," BIG (May 30, 2025), https://www.thebignewsletter.com/p/messing-with-texas-how-big-homebuilders.

29 In 1940, there were around 529,600 housing starts, meaning 17 starts per 1,000 households. By 1972, housing starts climbed to 2.36 million per year, or 35 per 1,000 households. By 2000, housing starts had slowed to 1.57 million per year, about 14.9 starts per 1,000 households, but remained above pre-war levels. In 2005, during the housing bubble, housing starts surged to 2 million per year, about 18.8 starts per 1,000 households. Demographia, "USA Housing Starts Per 1,000

Households, 1920-2008: All Housing Units," https://demographia.com/db-hstarts.pdf; Home Price to Median Household Income Ratio, 1955 to Present, https://www.longtermtrends.net/home-price-median-annual-income-ratio/.

30 This is distinct from other types of housing (e.g., modular or panelized) that are not fully assembled before delivery. Jeff Horwich, "Learning from the first (and only) manufactured housing boom," Federal Reserve Bank of Minneapolis (Feb. 28, 2025), https://www.minneapolisfed.org/article/2025/learning-from-the-first-and-only-manufactured-housing-boom.

31 *Id.*; *see also* Kerman Mobile Homes, "Top 5 Driving Forces Behind Manufactured Home Quality and Affordability," (March 1, 2025), https://www.kermanmobilehomes.com/top-5-driving-forces-behind-manufactured-home-quality-and-affordability (generally discussing scale advantages of mobile homes).

32 Horwich, *supra* note 30.

33 *Id.* Geographically, the proportion varied from a single-digit percentage of housing in the Northeast to about half of all new single-family housing in the South and Mountain West.

34 *Id.*

35 *Id.* The manufactured-home industry has long been targeted by lobbying from groups focused on stick-built homebuilding. *See*, e.g., James A. Schmitz, Jr., "Solving the Housing Crisis will Require Fighting Monopolies in Construction," Minneapolis Fed (Dec. 11, 2020), https://www.minneapolisfed.org/research/working-papers/solving-the-housing-crisis-will-require-fighting-monopolies-in-construction.

36 Horwich, *supra* note 29.

37 42 U.S.C. § 5402(6).

38 Libby O'Neill, "Senators Gallego and Tillis Introduce Bipartisan Legislation to Remove Permanent Chassis Requirement for Manufactured Housing," National Low Income Housing Coalition (July 28, 2025), https://nlihc.org/resource/senators-gallego-and-tillis-introduce-bipartisan-legislation-remove-permanent-chassis.

39 Andrew Justus and Alex Armlovich, "Two big developments in manufactured housing reform: New rules, new bill," Niskanen Center (Oct. 21, 2024), https://www.niskanencenter.org/two-big-developments-in-manufactured-housing-reform-new-rules-new-bill/.

40 Andrew Justun and Alex Armlovich, "Eliminating the Chassis Requirement to Free Manufactured Homes from Local Discrimination and Regulatory Dead Weight," Federation of American Scientists, (Feb. 21, 2024), https://fas.org/publication/manufactured-home-chassis-requirement/.

41 *See*, e.g., Mobile Agency, "Understanding Zoning Laws for Manufactured Home Communities," https://www.mobileagency.com/understanding-zoning-laws-for-manufactured-home-communities/.

42 *See* Private Equity Stakeholder Project, "PESP Private Equity Manufactured Housing Tracker," (July 2025), https://pestakeholder.org/pesp-private-equity-manufactured-housing-tracker/; *see also id.* ("Almost half (49%) of the private equity-owned parks identified for this tracker were financed by Fannie Mae or Freddie Mac. In contrast, Fannie Mae or Freddie Mac financed just 9% of all the manufactured home parks in the U.S."); Michael Casey and Carolyn Thompson, "Rents spike as large corporate investors buy mobile home parks," PBS News (July 25, 2022), https://www.pbs.org/newshour/economy/rents-spike-as-large-corporate-investors-buy-mobile-home-parks ("about a fifth of mobile home parks, or around 800,000, [were] purchased" by institutional investors just between 2014 and 2022, followed by "complaints of double-digit rent increases"); *see also* Sam Garin, "Concerns surround appointment of private equity insider to head up Federal Housing Finance Agency," Private Equity Stakeholder Project, (Jan. 27, 2025), https://pestakeholder.org/news/concerns-surround-appointment-of-private-equity-insider-to-head-up-federal-housing-finance-agency/.

43 Fannie Mae and Freddie Mac instituted programs to develop loan products to support manufactured-home development pursuant to the Housing and Economic Recovery Act of 2008. *See* Federal Housing Finance Agency, "Fannie Mae and Freddie Mac Support for Manufactured Housing," (Feb. 27, 2024), https://www.fhfa.gov/blog/statistics/fannie-mae-and-freddie-mac-support-manufactured-housing.

44 Horwich, *supra* note 30. Geographically, the proportion varied from a single-digit percentage of housing in the Northeast to about half of all new single-family housing in the South and Mountain West. *Id.* Today, manufactured homes are most prevalent in rural areas and small towns, where they comprise 13% of occupied dwellings. *See* Federal Housing Finance Agency, "Fannie Mae and Freddie Mac Support for Manufactured Housing," (Feb. 27, 2024), https://www.fhfa.gov/blog/statistics/fannie-mae-and-freddie-mac-support-manufactured-housing.

45 *See*, e.g., Consolidated Class Action Complaint, In re Manufactured Home Lot Rents Antitrust Litigation, Case No. 1:23-cv-06715, ECF No. 127 (N.D. Ill. Dec. 15, 2023), https://storage.courtlistener.com/recap/gov.uscourts.ilnd.438209/gov.uscourts.ilnd.438209.127.0.pdf (alleging price fixing conspiracy to inflate manufactured home lot rents); Mordor Intelligence, "United States Manufactured Homes Market Size & Share Analysis – Growth Trends and Forecast (2025-2030)," https://www.mordorintelligence.com/industry-reports/united-states-manufactured-homes-market ("Clayton Homes, Skyline Champion Corporation, and Cavco Industries together shipped just under half of all HUD-code units in 2024").

46 Ronald Reagan, "Remarks at the Annual Convention of the United States League of Savings Associations in New Orleans, Louisiana," (Nov. 16, 1982), https://www.presidency.ucsb.edu/documents/remarks-the-annual-convention-the-united-states-league-savings-associations-new-orleans.

47 Calavitas at 35 (quoting Business Week, "The Casino Society," 78 (Sept. 16, 1985)).

48 *See*, e.g., Encyclopedia.com, Centex Corporation, https://www.encyclopedia.com/social-sciences-and-law/economics-business-and-labor/businesses-and-occupations/centex-corp; Lennar, Company Profile, Investor Relations, https://investors.lennar.com/company-profile; Blake Downer, "PulteGroup Is Building Long-Term Shareholder Value," (June 19, 2023), https://seekingalpha.com/article/4612280-pultegroup-is-building-long-term-shareholder-value.

49 *See* Ambrose Credit Availability Paper, *supra* note 1. In 1893, there were nearly 6,000 S&L institutions. Office of the Comptroller of the Currency, "The Federal Thrift Charter Is Created," https://www.occ.treas.gov/about/who-we-are/history/history-of-the-occ/1914-1935/1914-1935-the-federal-thrift-charter-is-created.html/. By the end of 2024, there were under 550 S&L's remaining. Gayle Sato, "What Is a Savings and Loan Association?," Experian (April 27, 2025), https://www.experian.com/blogs/ask-experian/what-is-savings-and-loan-association/; OCC, "Federal Savings Associations Active," (July 31, 2025), https://www.occ.gov/topics/charters-and-licensing/financial-institution-lists/thrifts-by-name.pdf.

50 Lawrence J. White, "The S&L Debacle," 59 Fordham L. Rev. S57, S62 (1991), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2921&context=flr.

51 U.S. Dep't of Commerce, Bureau of the Census, "1987 Census of Construction Industries," 1-6, Table 2 (March 1990), https://upload.wikimedia.org/wikipedia/commons/0/0a/1987_Census_of_Construction_Industries._Industry_Series._General_Contractors-Single-Family_Houses_(IA_1987censusofco871unse).pdf (number of single-family homebuilders declined from 100,993 in 1977 to 72,115 in 1982).

52 *See* William Greider, Secrets of the Temple, New York: Simon and Schuster, 461 (1987).

53 *Id.*

54 *See* Chris Hughes, "Rethinking Arthur Burns, the 'Worst' Fed Chair in History," 67 Democracy Journal (Winter 2023), https://democracyjournal.org/magazine/67/rethinking-arthur-burns-the-worst-fed-chair-in-history/.

55 Compare FRED, "Population, Total for United States," (July 2, 2025), https://fred.stlouisfed.org/series/POPTOTUSA647NWDB with FRED, "New Privately-Owned Housing Units Started: Total Units," (Aug. 19, 2025), https://fred.stlouisfed.org/series/HOUST; FRED, "Dates of U.S. recessions as inferred by GDP-based recession indicator," (July 20, 2025), https://fred.stlouisfed.org/series/JHDUSRGDPBR.

56 Edwin L. Dale Jr., "The Fed as Allocator," New York Times (March 28, 1971), https://www.nytimes.com/1971/03/28/archives/the-fed-as-allocator-primmer-theme-wins-support.html.

57 Chris Hughes, Marketcrafters: The 100-year Struggle to Shape the American Economy, Simon and Schuster, 106 (2025) (discussing Fed governor Andrew Brimmer's proposal); *see also* Sherman J. Maisel, "Credit Allocation and the Federal Reserve," remarks at the Banking Research Center at Northwestern University (April 22, 1971), https://fraser.stlouisfed.org/files/docs/historical/federal%20reserve%20history/bog_members_statements/maisel_19710422.pdf; Brendan Greeley, "The contentious idea that still challenges the Fed," Financial Times (April 22, 2023), https://www.ft.com/content/9c2f28b6-b31e-47ca-87a2-aa91340c083d.

58 Hughes at 109; *see also* Edwin L. Dale Jr., "The Fed as Allocator," New York Times (March 28, 1971), https://www.nytimes.com/1971/03/28/archives/the-fed-as-allocator-primmer-theme-wins-support.html (Senator Proxmire explained that imposing "[r]eserve requirements on commercial bank assets could provide an effective means of insulating the housing industry from the ups and downs of monetary policy. … If effectively used by the board, this authority could alleviate the burden of monetary policy on such sectors of the economy as housing, urban and rural development, state and local governments, small business and agriculture.").

59 *See*, e.g., Kenneth J. Robinson, "Savings and Loan Crisis: 1980-1989," Federal Reserve History (Nov. 22, 2013), https://www.federalreservehistory.org/essays/savings-and-loan-crisis; Jeanna Smialek, "America's Inflation Villain Gets a Makeover," New York Times (April 21, 2023), https://www.nytimes.com/2023/04/21/business/economy/arthur-burns-inflation-paul-volcker.html.

60 *Id.*

61 Lawrence J. White, "The S&L Debacle," 59 Fordham L. Rev. S57, S62 (1991), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2921&context=flr.

62 *Id.*

63 White at S64.

64 *Id.* at S64-65; Calavita at 26-27; Paul Calem, "The New Bank Deposit Markets: Goodbye to Regulation Q," Federal Reserve of Philadelphia (1985), https://core.ac.uk/download/pdf/6592293.pdf. The Federal Reserve and FDIC initiated the earliest steps toward deregulation of interest ceilings in 1978, by introducing money market certificates—small-time deposit

accounts with ceilings set by the six-month Treasury bill yield. *See* Michael Varley, "The Unintended Consequences of Deregulation: Insights from the Savings and Loan Industry," 11 (Oct. 13, 2023), https://ssrn.com/abstract=4601618. The Volcker shock overlapped with lifting interest rate ceilings, to deleterious effects. "S&L's exposed to the partial repeal of Regulation Q experienced a large credit crunch when interest rates soared during the Volcker rate hikes." *Id.* at 20. The Garn-St. Germain Act allowed S&Ls to make "consumer loans, up to a total of 30 percent of their assets; make commercial, corporate, or business loans; and invest in nonresidential real estate worth up to 40 percent of their total assets." Calavita at 12. In addition, it "allowed [S&Ls] to provide 100 percent financing, requiring no down payment from the borrower." *Id.*

65 Calavita at 90-91 (also noting that co-sponsor St. Germain was investigated by both the Department of Justice and the House Ethics Committee for misconduct relating to his close ties with the U.S. League of Savings Institutions; however, no formal prosecution was initiated).

66 Fred E. Case, "Deregulation: Invitation to Disaster in the S&L Industry," 59 Fordham L. Rev. S93, S96-97 (1991), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2923&context=flr; *see also* Federal Deposit Insurance Corporation, "The Savings and Loan Crisis and Its Relationship to Banking," https://www.fdic.gov/resources/publications/history-eighties/volume-1/history-80s-volume-1-part1-04.pdf. ("Sharp entrepreneurs realized the large potential profit from owning an S&L, whose charter now allowed a wide range of investment opportunities without the corresponding regulation of commercial banks.").

67 Case at S97.

68 Federal Deposit Insurance Corporation, "Division of Research. History of the Eighties: An examination of the banking crises of the 1980s and early 1990s," Chapter 4, Vol.1, 175 (1997), https://www.fdic.gov/resources/publications/history-eighties/volume-1/history-80s-volume-1-part1-04.pdf ("Traditionally, federally chartered stock associations were required to have a minimum of 400 stockholders. No individual could own more than 10 percent of an institution's outstanding stock, and no controlling group more than 25 percent. Moreover, 75 percent of stockholders had to reside or do business in the S&L's market area."); Calavita at 12; Case at S97.

69 Calavita at 12; Case at S97.

70 *See*, e.g., Calavita at 11 ("At the same time that [DIDMCA] unleashed savings and loans to compete for new money, it bolstered the federal protection accorded these 'free enterprise' institutions, increasing FSLIC insurance from a maximum of $40,000 to $100,000 per deposit.").

71 *Id.*; *see also* Case at S97 ("While purportedly intended to introduce market discipline and competition to S&L industry, deregulation spared the S&Ls the market's rod of discipline-risk—and thus spoiled them."); White at S65-66 ("[B]y allowing thrifts to pay market rates of interest and by increasing the insured amount, the capability for funding the increased opportunities for risk-taking had also increased. … Because all the thrifts had been running losses during 1980, 1981 and 1982, their net worths were effectively gone. With the owners' stake gone, there was no incentive for them to avoid risks.").

72 Calavita at 41.

73 Calavita at 42.

74 White at S66; Will Kenton, "Savings and Loan Crisis (S&L): What Happened and Aftermath," Investopedia (July 21, 2024), https://www.investopedia.com/terms/s/sl-crisis.asp; FDIC at 179 ("To gain entry into the S&L industry, one either acquired control of existing institutions (many of which had converted from mutual to stock) or started de novo institutions. Between 1980 and 1986 nearly 500 new S&L charters were issued … with more than 200 of these issued in just two years: 1984 and 1985. In 1981 stock S&Ls had constituted 21 percent of the industry; in 1986 they constituted 38 percent and controlled 64 percent of the industry's total assets.").

75 Calavita at 33, 35, 77 ("In [just] the twenty-six insolvent thrifts studied by the GAO, 85 criminal referrals were filed, naming 182 suspects and citing 179 violations of criminal law"); *id.* at 78 ("Since 1985, in the Northern District of Texas alone, a total of 550 people have been convicted of bank and savings and loan fraud."). Organized crime may have been involved. Case at S100-101. Before the crisis, only a single-digit percentage of fraud and embezzlement cases the FHLBB referred to the Department of Justice involved thrifts. Case at S100.

76 FDIC at 178.

77 Calavita at 42.

78 George G. Kaufman, "The Incredible Shrinking S&L Industry," Federal Reserve Bank of Chicago, Chicago Fed Letter, No. 40, December 1990, https://www.chicagofed.org/publications/chicago-fed-letter/1990/december-40; Reuters, "Chronology-S&L Crisis of the 1980s," (Aug. 9, 2007), https://www.reuters.com/article/world/us/chronology-sl-crisis-of-the-1980s-idUSB381052/; Timothy Curry and Lynn Shibut, "The Cost of the Savings and Loan Crisis: Truth and Consequences," Yale School of Management, 2000, https://elischolar.library.yale.edu/cgi/viewcontent.cgi?article=12223&context=ypfs-documents (the number of S&Ls declined from 3,234 in 1986 to 1,645 in 1995).

79 *See*, e.g., White at S65 ("At the state level, states such as Florida, California, Texas, Arizona, Louisiana, Arkansas and Colorado were even more liberal in the deregulation on the asset side of their state-chartered but federally insured S&Ls.

For example, California had an 'anything-goes' policy permitting investment in just about anything."); Calavita at 13 ("As the federal system deregulated, state agencies were compelled to do the same, or risk their funding" because S&Ls could switch from state to federal charters.); *id.* at 36-37 ("Texas, which in the early 1980s was considered a model for deregulation, incurred by far the most failures and the costliest insolvencies, followed by California, which by 1983 had enacted comparably permissive deregulation. … Of the 26 most costly failures examined by the GAO, 10 were located in Texas and 8 in California. The regional pattern remained constant for the rest of the decade. Of the thrifts placed in [Resolution Trust Corporation] conservatorship in its first year of operation in 1989, four times as many were located in Texas as in any other state, followed by California" and those states were over-represented in fraud losses. There were other factors as well. Because of an oil-price crash in the mid-1980s, Texas also experienced a general banking bust around the time of the S&L crisis, such that nine of the 10 largest commercial banks in Texas were either closed or acquired. *See* White at S66-67; Mariam Yousuf and Prithvi Kalkunte, "Texas community banks grapple with national stresses as elevated rates pose new tests," Federal Reserve Bank of Dallas (Aug. 14, 2024), https://www.dallasfed.org/research/swe/2024/swe2412; Jody Grant, "The 1980s Banking Crash Humbles Dallas," Dallas Magazine, (Jan. 13, 2010), https://www.dmagazine.com/publications/d-magazine/2010/january/the-1980s-banking-crash-humbles-dallas/.

80 Cf. Phila. Nat'l Bank, 374 U.S. at 375 ("A bank failure is a community disaster; its impact first strikes the bank's depositors most heavily, and then spreads throughout the economic life of the community."); Frederick Abernathy, Kermit Baker, Kent Colton, and David Weil, "Bigger isn't necessarily better: Lessons from the Harvard home builder study," Lexington Books, 5 (2011) ("[N]early 750 institutions failed during the early 1990s recession, and many others ceased lending to builders or homebuyers.").

81 U.S. House of Representatives, Subcommittee on General Oversight and Investigations, Committee on Banking, Finance, and Urban Affairs, "The Unintended Effects of FIRREA on the Home Building Industry and Other Related Industries," (Feb. 7, 1990), https://babel.hathitrust.org/cgi/pt?id=uc1.31210014948499&seq=5 (FIRREA Hearing) (pp. 1, 7). FIRREA also temporarily increased budgets for federal law enforcers while extending statutes of limitations to better address backlogs and the tens of thousands of criminal referrals the FBI had received. Calavita at 127-129, 141.

82 Specifically, "[t]he limitation on a loan to one borrower by [an S&L] was lowered from 100 percent of the institution's capital to 15 percent." FIRREA Hearing at 1. The implementation was immediate. *Id.* at 186 ("Almost overnight, FIRREA cut the commercial real estate lending limits…"); *id.* at 208 ("An overnight change in the delivery of financing is akin to pulling the emergency cord on a speeding train – chaos reigns and people get hurt.").

83 Advisory Commission on Regulatory Barriers to Affordable Housing, "Not In My Back Yard, Removing Barriers to Affordable Housing," Report to President Bush and Secretary Kemp, (July 8, 1991), https://www.huduser.gov/publications/pdf/notinmybackyard.pdf. ("The transition to a new housing finance system is imposing costs and creating problems in certain respects. [The 1989 Financial Institutions Reform, Recovery, and Enforcement Act] limits the amount an S&L can lend to any one borrower, relative to the S&L's capital. This restriction is forcibly changing the borrowing practices of some builders, requiring them to develop new relationships with new lenders. At the same time, financial regulators have forced some S&Ls and banks to adopt stricter underwriting criteria for real estate loans.").

84 Department of Treasury, Office of Thrift Supervision, "Community Development Investment Authority, A Guide to the Federal Laws & Regulations Governing Community Development Activities of Savings Associations," (December 1998), https://www.occ.treas.gov/static/ots/ceo-memos/ots-ceo-memo-102.pdf.

85 U.S. House of Representatives, Subcommittee on General Oversight and Investigations, Committee on Banking, Finance, and Urban Affairs, "The Unintended Effects of FIRREA on the Home Building Industry and Other Related Industries," (Feb. 7, 1990), https://babel.hathitrust.org/cgi/pt?id=uc1.31210014948499&seq=60 (p. 56). A real estate development firm client wrote to the architect that he predicted that the fallout from the S&L crisis "will result in dramatic consolidation in the building and development industry. Small good projects will be driven into receivership. Mergers and workouts will occur. Small entrepreneurs will be squeezed out of the market and a cleansing will occur. Large builders, developers, and financiers will align and dominate the market. … I am convinced that it will ultimately lead to less competition and higher prices." *Id.* at 57.

86 *Id.* at 64.

87 *See*, e.g., *id.* at 65.

88 *Id.*

89 Iver Peterson, "Builders Feel Pinch of New S&L Act," New York Times, (April 22, 1990), https://archive.is/ByG3r.

90 *Id.* One Dallas-area homebuilder, with a decade of experience, told Congress that when the thrift he relied upon failed, even though "all of [his] loans were current and performing … all funding was stopped," so he had resorted to paying expenses out of pocket for a year and half to survive while waiting for a legal settlement with the thrift. Id at 71. The sudden loss of lending meant that he not only had difficulty paying suppliers and had to lay off employees, but also had to shut down projects. *Id.* Just when the settlement was nearly ready, the thrift balked because the loan would not conform with FIRREA. *Id.*

91 *Supra* note 85 at 69.

92 *Id.* at 69 ("FIRREA has really served to effectively throttle the future land development and housing production of my

company and force a future existence that not only will provide to be significantly more costly for the customers that we serve, but extremely impeding to our efforts to product and provide affordable housing to our community.").

93 *See* Case at S103; Kenneth J. Robinson, "Savings and Loan Crisis: 1980-1989," Federal Reserve History, (Nov. 22, 2013), https://www.federalreservehistory.org/essays/savings-and-loan-crisis ("In 1989 [Congress] passed the Financial Institutions Reform, Recovery and Enforcement Act of 1989 that instituted a number of reforms of the industry. The main S&L regulator (the Federal Home Loan Bank Board) was abolished, as was the bankrupt FSLIC. In their place, Congress created the Office of Thrift Supervision and placed thrifts' insurance under the FDIC. In addition, the Resolution Trust Corporation (RTC) was established and funded to resolve the remaining troubled S&Ls. The RTC closed 747 S&Ls with assets of over $407 billion. The thrift crisis came to its end when the RTC was eventually closed on December 31, 1995."); Calavita at 116 (noting that bidders who gave generous campaign contributions were given exclusive access to certain assets, while others were ignored); Stephen Labaton, "Fraud Uncovered in Property Sales in Savings Rescue," New York Times (June 21, 1990), https://www.nytimes.com/1990/06/21/business/fraud-uncovered-in-property-sales-in-savings-rescue.html; Tyson Freeman, "The 1990s: Real Estate Goes Public As A Hit on 'The Street'," National Real Estate Investor, (Sept. 30, 1999), https://archive.is/5f9YU; Barbara Alexander, John T. Dunlop Lecture, "The US Homebuilding Industry: A Half-Century of Building the American Dream," (Oct. 12, 2000), p. 31, https://www.jchs.harvard.edu/sites/default/files/dl-transcript/m00-1_alexander.pdf.

94 *Id.* The investment firm Blackstone also purchased multi-unit apartments for the first time in 1991, enticed by bargain prices and the prospect of high, steady yields from rental income. Brett Christophers, "How and Why U.S. Single-Family Housing Became an Investor Asset Class," 49 Journal of Urban History 2, 430-449 (2021), https://doi.org/10.1177/00961442211029601 ("Christophers How and Why Article"). However, the firm "made no further investments in residential property" until 2011, because its clients were still "haunted" by the S&L crisis and therefore reluctant to dabble in residential real estate. *Id.*

95 Company Histories, "Lennar Corporation," https://www.company-histories.com/Lennar-Corporation-Company-History.html.

96 *Id.*

97 There were also buy-side changes that eroded decentralized finance, as policymakers deregulated interstate banking rules, creating nationwide mortgage markets. Christopher Serkin and Ganesh Sitaraman, "Post-Neoliberal Housing Policy," Vanderbilt Policy Accelerator, Vanderbilt University, 25 (April 2025), https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/412/2025/04/22200114/Post-Neoliberal-Housing-Policy.pdf.

98 Federal Deposit Insurance Corporation, "BankFind Suite: Find Annual Historical Bank Data," https://banks.data.fdic.gov/explore?displayFields=STNAME%2CTOTAL%2CBRANCHES%2CNew_Char&selectedEndDate=2024&selectedReport=CBS&selectedStartDate=1934&selectedStates=0&sortField=YEAR&sortOrder=desc (total commercial banks changed from 12,347 in 1990 to 8,315 in 2000). This bank merger wave was facilitated in part by deregulation. *See* Calavita at 180 ("In 1994 Congress approved and President Clinton enthusiastically endorsed the lifting of barriers prohibiting banks from operating branches across state lines beginning in 1997 (formerly, banks were required to establish independent subsidiaries for their regional operations)"); Tara Rice and Christian A. Johnson, "Assessing a Decade of Interstate Bank Branching," FRB of Chicago Working Paper No. 2007-03 (March 2007), https://ssrn.com/abstract=981214.

99 When community banks merge or are acquired by non-local financial institutions, it can create notable lending gaps for small businesses. *See*, e.g., Jessica Weisman-Pitts, "The Changing Landscape: How Consolidation Affects Small Community Banks," Global Banking & Finance Review (March 11, 2025), https://www.globalbankingandfinance.com/the-changing-landscape-how-consolidation-affects-small-community-banks.

100 In particular, the 1977 Community Reinvestment Act (CRA) requires the Federal Reserve and other federal banking regulators to encourage local lending. *See* Federal Reserve Board, Community Reinvestment Act (CRA), https://www.federalreserve.gov/consumerscommunities/cra_about.htm and https://www.federalreserve.gov/consumerscommunities/cra_resources.htm#regulators.

101 Achraf Mkhaiber and Richard A. Werner, "The relationship between bank size and the propensity to lead to small firms: New empirical evidence from a large sample," Journal of International Money and Finance, Volume 110, (February 2021), https://www.sciencedirect.com/science/article/pii/S0261560620302370 (studying the ratio of small business loans to all business loans based on "data on over 14,000 active and inactive U.S. banks of all sizes, from 1994 to 2013, [with] over 178,000 observations"); *id.* ("Small business loans are defined by the FDIC as the amount of currently outstanding commercial and industrial loans with original amounts less than $1,000,000 held at domestic bank offices"); *id.* ("From … robustness tests we know that the regression results from the main sample – that large banks are more prone to issuing large loans to large businesses and small banks more prone to service small firms – remains robust when controlling for different market and economic conditions by focusing on banks in urban areas"), https://www.sciencedirect.com/topics/economics-econometrics-and-finance/macroeconomic-performance.

102 *See*, e.g., C.R. Somerville, "Does the Lender Matter? Lender Type and Home Office Location and Real Estate Development Lending," 19 Canadian Journal of Administrative Sciences-Revue Canadienne Des Sciences De L Administration, 321-332 (2002), https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1936-4490.2002.tb00278.x (study in British Columbia finding

that smaller banks are more likely to provide lending to smaller homebuilders, while larger banks are more likely to fund larger homebuilders).

103 *See*, e.g., Abernathy, *supra* note 80 at 30 (In 2004, "[f]or buildings selling 10,000 or more homes a year, the cost of borrowing averaged 160 basis points (1.6 percentage points) below that for builders selling between 2,500 and 9,999 units a year.").

104 Data sources: Federal Deposit Insurance Corporation, Commercial Banks – Structure, https://banks.data.fdic.gov/explore/historical/?displayFields=STNAME%2CTOTAL%2CBRANCHES%2CNew_Char&selectedEndDate=2024&selectedReport=CBS&selectedStartDate=1934&selectedStates=0&sortField=YEAR&sortOrder=desc; Federal Deposit Insurance Corporation, Savings Institutions – Structure, https://banks.data.fdic.gov/explore/historical/?displayFields=STNAME%2CSAVINGS%2Cnewcount%2Cchartoth%2Ctochrt&selectedEndDate=2024&selectedReport= 92SIS&selectedStartDate=1934&selectedStates=0&sortField=YEAR&sortOrder=desc; FRED, "Population, Total for United States," (July 2, 2025), https://fred.stlouisfed.org/series/POPTOTUSA647NWDB.

105 *See*, e.g., Abernathy at 8 (According to a 2002 report, "large publicly traded builders typically had a 125 basis-point advantage on debt. … [E]quity capital costs for builders were 10-15 percent, compared with 20-25 percent for private builders. For a $200 million company that is 50 percent leveraged … the annual benefit of equity financing was $5 million.").

106 Company Histories, "Centex Corporation," https://www.company-histories.com/Centex-Corporation-Company-History.html (Centex Corporation History). Centex even acquired four failing thrifts in 1988 in exchange for tax benefits but transferred them back to the government in 1994 after Congress imposed assistance payments from the Federal Savings and Loan Insurance Corporation. *See* Centex Corp. v. United States, 395 F.3d 1283 (Fed. Cir. 2005).

107 Centex Corporation History.

108 *Id.*

109 *Id.*

110 Abernathy, *supra* note 80 at 5.

111 Wissoker, *supra* note 26 at 13. NVR went public in 1986. Funding Universe, "NVR Inc. History," https://www.fundinguniverse.com/company-histories/nvr-inc-history/. D.R. Horton went public in 1992. Funding Universe, "D.R. Horton, Inc. History," https://www.fundinguniverse.com/company-histories/d-r-horton-inc-history. Meritage Homes went public in 1997. Meritage Homes, "Frequently Asked Questions," https://investors.meritagehomes.com/company-information/faq.

112 Ambrose Credit Availability Paper, *supra* note 1.

113 Company Histories, "DR Horton," https://www.company-histories.com/DR-Horton-Inc-Company-History.html.

114 *Id.*; Forbes, "Profile: Donald Horton & family," https://www.forbes.com/profile/donald-horton/.

115 Michael E. Porter, "The U.S. Homebuilding Industry and The Competitive Position of Large Builders," Centex Investor Conference, (Nov. 18, 2003), https://www.hbs.edu/ris/Publication%20Files/US_Homebuilding_Industry_a866f140-77c6-4bd5-afe3-5f1d702fff98.pdf.

116 Wissoker, *supra* note 26 at 10. Public homebuilders also appear to receive information about market signals as much as a year earlier than smaller homebuilders. *Id.* at 18.

117 Pro Builder, "1996-2006: The Big Boom," (Dec. 31, 2006), https://www.probuilder.com/business-management/economics/article/55196474/1996-2006-the-big-boom.

118 According to economic census data, the number of establishments engaged in single-family home construction plummeted nearly 29% between 1977 and 1982, from over 100,000 firms to just over 72,000. U.S. Department of Commerce, Bureau of the Census, "1987 Census of Construction Industries: General Contractors—Single-Family Houses," https://upload.wikimedia.org/wikipedia/commons/0/0a/1987_Census_of_Construction_Industries._Industry_Series._General_Contractors-Single-Family_Houses_(IA_1987censusofco871unse).pdf (Table 2). That number finally surpassed 1977 levels again by the 1992 economic census. U.S. Department of Commerce, Bureau of the Census, https://www2.census.gov/library/publications/1997/compendia/statab/117ed/tables/construc.pdf (p. 713), and continued to grow in the hot economy of the late 1990s. U.S. Department of Commerce, Bureau of the Census, "1997 Economic Census, Construction, Industry Summary," https://www2.census.gov/library/publications/economic-census/1997/construction/97c23-is.pdf (Table 1); U.S. Department of Commerce, Bureau of the Census, "Construction and Housing," https://www2.census.gov/library/publications/2002/compendia/statab/121ed/tables/construct.pdf (p. 589).

119 Brent W. Ambrose, "Housing After the Fall: Reassessing the Future of the American Dream, The Homebuilding Industry," Pennsylvania State University, Institute for Real Estate Studies, 17, Figure 4 (Feb. 6, 2009), https://www.smeal.psu.edu/bires/documents/homebuilding.

120 Investopedia, "When Did the Real Estate Bubble Burst?," (July 21, 2022), https://www.investopedia.com/ask/

answers/100314/when-did-real-estate-bubble-burst.asp. The number of S&Ls continued to decline; in 2007, just before the Great Financial Crisis, there were about 1,200 still operating. Federal Deposit Insurance Corporation, "Quarterly Banking Profile: Fourth Quarter 2007," (2008), Volume 2, Number 1, https://www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2008-vol2-1/quarterly-v2n1-full.pdf. By the end of 2024, there were under 550 S&Ls remaining. Gayle Sato, "What Is a Savings and Loan Association?," Experian (April 27, 2025), https://www.experian.com/blogs/ask-experian/what-is-savings-and-loan-association/; OCC, "Federal Savings Associations Active," (July 31, 2025), https://www.occ.gov/topics/charters-and-licensing/financial-institution-lists/thrifts-by-name.pdf.

121 *See* Wissoker, *supra* note 26 at fig. 4. In 2000, 11 of the biggest homebuilders formed the Public Building Council of America to attract more Wall Street financing. *Id.* at 12. Whereas in the 1990s the sector was largely supported by investment advisors, after the dot-com bubble burst, pensions and hedge funds joined in. *Id.* at 14.

122 Wissoker, *supra* note 26 at 3.

123 *See* Sidebar 3; *see also*, e.g., Paul L. Knox, Metroburbia, USA, Rutgers University Press, pp. 69-70 (2008) ("Geographic diversification has been important to the success of big firms. … In 2002, D.R. Horton began using some of its existing seventy-seven markets as springboards so smaller satellite markets. The strategy—modeled after Wal-Mart's expansion across the country—enables the company to use much of the same stuff and hold overhead down while capturing market share from small- and medium-size builders."); Wissoker, *supra* note 26 at 10 (noting, e.g., expansion into a broader range of home price segments, and into other categories such as senior communities).

124 *See* Lynn A. Stout, "On the rise of shareholder primacy, signs of its fall, and the return of managerialism (in the closet)," 36 Seattle UL Rev. 1169, 1171-71 (2012), https://scholarship.law.cornell.edu/facpub/865/ (Stout 2012); *see also id.* ("The doctrine known as the business judgment rule allows disinterested directors and executives to sacrifice corporate profits to pursue any lawful corporate objective, including creating good jobs, providing quality products, and protecting creditors.").

125 *Id.* at 1175-76.

126 *See*, e.g., Lynn A. Stout, "The Shareholder Value Myth," Cornell Law Faculty Publications, Paper 771 (2013), http://scholarship.law.cornell.edu/facpub/771 (although framed as benefiting shareholders generally, in practice this theory tended to prioritize short-term over long-term shareholders).

127 *See*, e.g., Stout 2012, *supra* note 124 at 1177-78; Wissoker, *supra* note 26 at 5.

128 *See*, e.g., Wissoker, *supra* note 26 at 2.

129 *Id.*

130 *See*, e.g., Gerald F. Davis and Kim Suntae, "Financialization of the economy," Annual Review of Sociology 41, no. 1: 203-221 (2015).

131 *See*, e.g., Barbara Alexander, John T. Dunlop Lecture, "The US Homebuilding Industry: A Half-Century of Building the American Dream," 30-31 (2000), https://www.jchs.harvard.edu/sites/default/files/dl-transcript/m00-1_alexander.pdf; *see also* Wissoker, *supra* note 26 at 13 ("While Lennar went to the market in the 1970s twice and in the 1980s three times, they went five times in the 1990s and 16 times between 2000 and 2006.").

132 Wissoker, *supra* note 26 at 3; *id.* at n. 31 (citing Builder magazine for Wall Street setting 20% growth target); *id.* at 11 (noting D.R. Horton required each of more than 50 regional divisions to achieve 20% annual growth rates).

133 Wissoker, *supra* note 26 at 10. With peak unionization rates of 30-40% in the 1950s, residential construction was never as densely unionized as commercial and public construction, but experienced similar sharp declines in the 1970s, and decreased to 4-6% in the early 2000s, and eventually hit new lows of 1-3% in the early 2020s. Pathways to Partnership, "The History of Union Density in U.S. Residential Construction," (Aug. 8, 2025), https://ptop.substack.com/p/the-history-of-union-density-in-us; *see also* Nik Theodore, "Rebuilding the House of Labor: Unions and Worker Centers in the Residential Construction Industry," 18.1 WorkingUSA 59-76 (2015), https://onlinelibrary.wiley.com/doi/abs/10.1111/wusa.12153. Residential construction has long used a model where a construction manager hires subcontractors in both basic and specialty trades, with few direct employees. Abernathy, *supra* note 80 at 40-41.

134 *See* Wissoker, *supra* note 26 at 2-3 ("[T]he trade literature of the time … argued that stock analysts created certain demands for constant growth and expansion. The consolidation of market share and growth came through a mixture of mergers and firm expansion, and was funded in large part by the investment bank–issued stocks, bonds, and other financial instruments that were part of a 'fee based services model,'" wherein banks changed their business model to make money "from fees and trading rather than loans."); *see also id.* at 13. Generally, under shareholder primacy, firms "took on debt (sometimes to pay the cost of acquisitions, sometimes to pay for stock buybacks or boost dividends, sometimes to expand the business) to make their bottom line look better than it would if they issued additional stock, as the latter would dilute the price." *Id.* at 5.

135 *See* Abernathy, *supra* note 80 at 1, 10-12.

136 *Id.* at ix; *see also id.* at 10-12, 15. In this study of 41 homebuilders, 22 of the largest 34 homebuilders participated, and all respondents had built at least 500 homes in 2004. *Id.* at 16, 23, 108. The survey asked a variety of questions about their

business practices, and included questions focused on practices related to starter homes in particular. *Id.* at 18.

137 *Id.* at 1 (emphasis in original).

138 *Id.* at viii; *id.* at 69 ("For many of the nation's largest builders, however, efficiency was simply not a priority.").

139 *Id.* at 29, fig. 3.3 (capitalization removed).

140 *Id.* at 55.

141 *Id.* at 53. To the extent large homebuilder have made efficiency gains in subsequent decades, it does not appear they have passed them on to consumers. *See* Zheng Liu, "Building the Bottlenecks: The Impact of Homebuilder Consolidation," (Sept. 11, 2025), https://ssrn.com/abstract=5568219 (finding that large homebuilders that engaged in M&A between 2004 and 2019 did not significantly reduce their construction costs and did significantly reduce cycle time but did not pass that value on to consumers).

142 Abernathy, *supra* note 80 at 71, 75-76.

143 *Id.* at 40; *see also id.* at 56 ("companies focused more on gaining access to and increasing their sales in markets where house prices were appreciating sharply.").

144 Wissoker, *supra* note 26 at 13-14.

145 Abernathy, *supra* note 80 at ix; Appendix A. Along with the Alfred P. Sloan Foundation and the Harvard Joint Center for Housing Studies, the work was funded by the National Housing Endowment. *Id.* at ix. The National Housing Endowment describes itself as the "philanthropic arm of the National Association of Home Builders (NAHB)." National Housing Endowment, "Mission," https://www.nationalhousingendowment.org/about/about-nhe (last visited Sept. 24, 2025). The study's advisory panel included executives from major dealers and manufacturers, along with builders, including the CEOs of Beazer, Centex, and Lennar. Abernathy at Appendix A.

146 Justin T. Pauly, "Innovation and the big builders: barriers to integrating sustainable design and construction practices into the production homebuilding industry: the case of Pulte Homes," 48 (Doctoral dissertation, Massachusetts Institute of Technology) (2005).

147 *See*, e.g., Andrew Haughwout, "The Supply Side of the Housing Boom and Bust of the 2000s," Federal Reserve Bank of New York Staff Report No. 556 (March 2012), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr556.pdf (estimating 3 to 3.5 million excess housing units); Wissoker, *supra* note 26 at 16 (2 million excess homes); *see also id.* at 12 (quoting J. Caulfield, "Starting over," 32 Builder 131–136, 138, 140, 142 (2009)) ("Publicly owned home builders dominated during this period of excess, building and selling homes at record levels, sometimes with little regard for demographic or geographic demand, but often with an eye toward meeting shareholders' growth and profit expectations."); but *see* Kevin Erdmann, "Housing was Undersupplied During the Great Housing Bubble," Mercatus Policy Brief, 4 (April 2018), https://ssrn.com/abstract=3569920 (arguing that although "[t]he number of single-family home starts, especially single-family homes built for sale, did rise to unprecedented levels," that was more than offset by "other categories [that] were either stagnant or in decline," such as multi-family units in superstar cities).

148 Wissoker, *supra* note 26 at 14-16. *See also* Laborers International Union of North America to FTC, "Re: Mortgage Acts and Practices Rulemaking, Rule No. R911004" (July 30, 2009), https://www.ftc.gov/sites/default/files/documents/public_comments/16-cfr-parts-317-and-318-mortgage-acts-and-practices-rulemaking-542308-00037/542308-00037.pdf

149 *Id.*

150 *See*, e.g., Robert Weissman and James Donahue, "Sold Out: How Wall Street and Washington Betrayed America," Essential Information and Consumer Education Foundation (March 2009), https://web.archive.org/web/20250305012235/http://www.wallstreetwatch.org/reports/sold_out.pdf.

151 *See*, e.g., Christopher D. Cook, "Homebuilder Lennar uses federal taxpayer funds to balance its books," San Francisco Public Press (July 6, 2010), https://www.sfpublicpress.org/homebuilder-lennar-uses-federal-taxpayer-funds-to-balance-its-books/. Despite that ignominious history, as detailed later, public homebuilders still have integrated mortgage units.

152 Remarks by Chairman Alan Greenspan, "The mortgage market and consumer debt," America's Community Bankers Annual Convention, Washington, D.C., (Oct. 19, 2004), https://www.federalreserve.gov/boarddocs/speeches/2004/20041019/default.htm.

153 *See* Federal Reserve Bank of St. Louis, "New Privately-Owned Housing Unit Started: Total Units," January 1959 to July 2025, https://fred.stlouisfed.org/series/HOUST; *see also* U.S. Department of Housing and Urban Development Office and Policy, "U.S. Housing Market Conditions," (May 2008), https://www.huduser.gov/periodicals/ushmc/spring08/USHMC_Q108.pdf.

154 Richard Stevens, "History of Housing Market Crashes In The US," New Silver (April 29, 2024), https://newsilver.com/the-lender/history-of-housing-market-crashes/ (Median Sales Price Q1 2007: $257,400; Median Sales Price Q1 2013: $258,400; "Median Sales Price Q1 2014: $275,200; Median Sales Price Q4 2022: $479,500).

155 For example, following the 1969-1970 recession, housing starts jumped 64% from 1.43 million in 1970 to 2.36 million in 1972. Demographia, "USA Housing Starts Per 1,000 Households, 1920-2008: All Housing Units," https://demographia.

com/db-hstarts.pdf. A similar jump of 74.1% occurred from the second post-recession 1975 low of 1.16 million to the 1978 high of 2.02 million starts. *Id.* As late as the 1990-1991 recession, housing starts shot up 27.7% from a 1991 low of 1.01 million to a 1993 high of 1.29 million. *Id.*

156 The chart illustrates housing starts per capita in relation to U.S. recessions. *See* FRED, "Population, Total for United States," (July 2, 2025), https://fred.stlouisfed.org/series/POPTOTUSA647NWDB; FRED, "New Privately-Owned Housing Units Started: Total Units," (Aug. 19, 2025), https://fred.stlouisfed.org/series/HOUST; FRED, "Dates of U.S. recessions as inferred by GDP-based recession indicator," (July 20, 2025), https://fred.stlouisfed.org/series/JHDUSRGDPBR.

157 As of 2022, housing starts not only remained 60% lower than the 2006 peak but also lagged even the average rate from the 1990s by 20%. Luis Quintero, "Fewer Players, Fewer Homes: Concentration and the New Dynamics of Housing Supply," Johns Hopkins Carey Business School Research Paper No. 18-18, 1 (Aug. 15, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3303984. In parallel, housing has become increasingly unaffordable across the country—even when interest rates were near historic lows throughout the 2010s. *See*, e.g., Karan Bhasin et al., "Hitting Home: Housing Affordability in the U.S.," EconoFact, (March 14, 2024), https://econofact.org/hitting-home-housing-affordability-in-the-u-s. Affordability has since deteriorated further since the Federal Reserve nearly tripled interest rates starting in 2022. *See*, e.g., Laura Rodini, "A timeline of the Fed's '22-'23 rate hikes & what caused them," The Street, (April 12, 2024), https://www.thestreet.com/fed/fed-rate-hikes-2022-2023-timeline-discussion; Consumer Financial Protection Bureau, "Data Spotlight: The Impact of Changing Mortgage Interest Rates," CFPB Office of Mortgage Markets, (Sept. 17, 2024), https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-the-impact-of-changing-mortgage-interest-rates/. Christopher D. Cook, "Homebuilder Lennar uses federal taxpayer funds to balance its books," San Francisco Public Press (July 6, 2010),

158 Luke Goldstein and Freddy Brewster, "A New Housing Marketplace That's Keeping Homes Unaffordable," Jacobin, (Sept. 23, 2025), https://jacobin.com/2025/09/housing-lennar-investing-real-estate.

159 *See*, e.g., Wissoker, *supra* note 26 at 18 (citations omitted).

160 The chart illustrates housing starts per capita in the U.S. *See* FRED, "Population, Total for United States," (July 2, 2025), https://fred.stlouisfed.org/series/POPTOTUSA647NWDB; FRED, "New Privately-Owned Housing Units Started: Total Units," (Aug. 19, 2025), https://fred.stlouisfed.org/series/HOUST. Notably, the decline in production is evident even after accounting for interest rate changes. *See* Appendix 1.

161 *See* Andra Hopulele, "Starter Homes & Where to Find Them: The Once-Ubiquitous Entry-Level House Is Becoming the Stuff of Myths," Point2Homes (Oct. 17, 2022), https://www.point2homes.com/news/research/starter-homes-where-to-find-them-entry-level-house-myth.html.

162 Drew Desilver, "A look at the state of affordable housing in the U.S.," Pew Research Center (Oct. 25, 2024), https://www.pewresearch.org/short-reads/2024/10/25/a-look-at-the-state-of-affordable-housing-in-the-us/. ("The peak year this century for new homes of that size was 2004, when 186,000 were built (12.1% of all single-family homes built that year). In 2023, however, only 87,000 new single-family homes (8.7%) were under 1,400 square feet").

163 *See* Hopulele (defining starter homes as under 1,400 square feet). One 2022 study found that median starter homes were affordable in only 15 of the 50 largest cities in America. *Id.* The median age of first-time homebuyers increased from 29 in 1981 to a record high of 38 years old in 2024. Carlos Waters, "Why it's so hard to find starter homes in the U.S.," CNBC (Jan. 14, 2025), https://www.cnbc.com/2025/01/14/few-starter-homes-in-us.html.

164 Source: U.S. Census, "Square Feet of Floor Area in New Single-Family Houses Completed, 1994 to 2015," https://www2.census.gov/programs-surveys/soc/tables/time-series/chars/squarefeet.pdf and U.S. Census Bureau, "Annual Characteristics Table, Square Feet for Single-Family Completed, 1994 to 2024," https://www.census.gov/construction/chars/current.html. The chart combines all categories over 2,400 square feet for ease of viewing.

165 AEI Housing Center and ResiClub, "Counties with the biggest housing market 'shortages'—and none at all, according to AEI," (July 20, 2025), https://www.resiclubanalytics.com/p/counties-with-the-biggest-housing-market-shortages-and-none-at-all-according-to-aei-2025.

166 *See*, e.g., Na Zhao, "NAHB Priced-Out Estimates for 2022," NAHB, Table 2 (Feb. 2022), https://www.nahb.org/-/media/05E9E223D0514B56B56F798CAA9EBB34.ashx; Jing Fu, "House Price Appreciation by State and Metro Area: First Quarter 2025," National Association of Home Builders, Eye on Housing, (June 10, 2025), https://eyeonhousing.org/2025/06/house-price-appreciation-by-state-and-metro-area-first-quarter-2025/.

167 Na Zhao, *supra* note 166.

168 Calculations by Cody Taylor. Data source: Zillow's Home Value Index for Single-Family Homes, https://www.zillow.com/research/data/. This data set covers the average of prices by state from the 35th to 65th percentile. Color coding: Blue = State voted for Biden in 2020 and Harris in 2024, Red = State voted for Trump in both 2020/2024, and Swing = State voted for Biden 2020 but Trump in 2024.

169 *See*, e.g., Laura Rodini, "A timeline of the Fed's '22–'23 rate hikes & what caused them," The Street (April 12, 2024), https://www.thestreet.com/fed/fed-rate-hikes-2022-2023-timeline-discussion. Under Chair Jerome Powell, "[t]he Fed hiked interest rates a total of 11 times between March 2022 and July 2023."

170 In February 2022, NAHB data reveals that in most states, fewer than 30% of households with median incomes could afford the median price new home, and there was only a single state where households that could afford the median new home price outnumbered households that could not afford the median price: Delaware. Zhao at Table 2 (additional calculations by Theodore Stern). According to NAHB, as of 2025 there are only a few states where at least 30% of households can afford a median-priced new home in 2025: Vermont (30.9%), Virginia (36.9%), Maryland (35%), and Delaware (41.8%). National Association of Home Builders, "Table 2 Households Priced Out of the Market by a $1,000 Price Increase, 2025," https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics/priced-out/2025-state_2025.pdf. This would not be as much of a problem if there were more rental options, but nearly half of renters pay more than 30% of their income on housing costs, with renters in the West and South burdened the most. Drew Desilver, "A look at the state of affordable housing in the U.S.," Pew Research Center (Oct. 25, 2024), https://www.pewresearch.org/short-reads/2024/10/25/a-look-at-the-state-of-affordable-housing-in-the-us/.

171 John McManus, "Lennar Lays Out Its '23 Game Plan in 7 Cycle-Tested Strategy Pillars," The Builder's Daily (Dec. 16, 2022), https://www.thebuildersdaily.com/lennar-lays-out-its-23-game-plan-in-7-cycle-tested-strategy-pillars/.

172 Michael Corkery, "Tax Break Divides Large, Small Builders," Wall Street Journal (Feb. 11, 2009), https://www.wsj.com/articles/SB123431491889670953; National Association of Home Builders, President Tom Woods, https://www.nahb.org/why-nahb/nahb-past-presidents/2010s/tom-woods.

173 *See*, e.g., Dara-Abasi Ita, "Too Big To Fail Banks: Where Are They Now?," Investopedia (April 24, 2025), https://www.investopedia.com/insights/too-big-fail-banks-where-are-they-now/; Mark Gongloff, "Banks Repaid Fed Bailout With Other Fed Money: Government Report," Huffington Post (March 9, 2021), https://www.huffpost.com/entry/bank-tarp_n_1335006. Large banks then went from controlling 50% of industry assets in 2005 to 64% in 2019. *See* Letter from Farm Action and e2 Entrepreneurial Ecosystems to Assistant Attorney General for Antitrust Jonathan Kanter, (Feb. 15, 2022), https://farmaction.us/wp-content/uploads/2022/02/Comment-on-Bank-Merger-Guidelines-from-Farm-Action-e2-Entrepreneurial-Ecosystems.pdf.

174 Lorraine Woellert, "FHFA Will Sell Foreclosed Homes to Investors for Rentals," Bloomberg News (Feb. 27, 2012), www.bloomberg.com/news/articles/2012-02-27/fhfa-to-begin-selling-foreclosed-homes-to-investors-for-rentals; Gretchen Morgenson, "Home Builders (You Heard That Right) Get a Gift," New York Times (Nov. 14, 2009), https://www.nytimes.com/2009/11/15/business/economy/15gret.html.

175 Specifically, the net operating loss carryback provision was extended from two to five years, such that "losses experienced in 2008 could be carried back and used to offset positive income earned during the period 2003-2007, and tax payments associated with this offset income would be refunded in 2008." John R. Graham and Hyunseob Kim, "The Effects of the Length of the Tax-Loss Carryback Period on Tax Receipts and Corporate Marginal Tax Rates," https://www.jstor.org/stable/41790515; *see also* The White House, "Fact Sheet: The Worker, Homeownership, and Business Assistance Act of 2009," Office of the Press Secretary, (Nov. 6, 2009), https://obamawhitehouse.archives.gov/realitycheck/the-press-office/fact-sheet-worker-homeownership-and-business-assistance-act-2009. The Act also extended a tax credit for first-time homebuyers. *Id. See also*, e.g., John Caulfield, "Builders Cash in on Tax Refunds," Builder Online (Feb. 10, 2010), https://www.builderonline.com/money/builders-cash-in-on-tax-refunds.

176 For the fifth year, carryback was limited to 50% of taxable income for that year. *See*, e.g., Stephen M. Packer and William J. Friel, "Effects of the Worker, Homeownership and Business Assistance Act of 2009," Duane Moriss, (Dec. 15, 2009), https://www.duanemorris.com/articles/worker_homeownership_business_law_2009_3503.html#:~:text=Expanded%20NOL%20carryback%20rules%20now,Military%20ExclusionCITE. Arguably, the tax refund would disproportionately benefit large homebuilders even if they did not exploit the fire-sale strategy described here. Researchers calculated that the largest firms would "receive an additional tax refund that amounts to 5.7 percent of their total losses, while the smallest half of firms ... are expected to generate an incremental refund of only 1.3 percent of total losses" because the smaller firms were recording larger percentage losses but could not "recoup a proportional amount of tax refund by carrying back the losses because the losses are quite large compared to profits made over the recent two to five years." John R. Graham and Kim Hyunseob Kim, "The Effects of the Length of the Tax-Loss Carryback Period on Tax Receipts and Corporate Marginal Tax Rates," 62 National Tax Journal, 3, 413–27, 421-422 (2009), http://www.jstor.org/stable/41790515. However, scaling tax refunds by total assets indicated that "both large and small firms appear to receive similar amounts of tax relief, namely 0.39-0.47 percent of total assets." *Id.* at 422.

177 Gretchen Morgenson, "Home Builders (You Heard That Right) Get a Gift," New York Times (Nov. 14, 2009), https://archive.is/Wg1Ho.

178 *Id.*

179 Michael Corkery, "Developer Sells Land Dirt Cheap To Reap Tax Benefits," Wall Street Journal (Oct. 3, 2008), https://archive.is/T55gg.

180 Brent W. Ambrose, "Housing After the Fall: Reassessing the Future of the American Dream, The Homebuilding Industry," Pennsylvania State University, Institute for Real Estate Studies, (Feb. 6, 2009), https://www.smeal.psu.edu/bires/documents/homebuilding (p. 4) ("even in 2008 during the worst market for credit since the Great Depression, the largest public home builders continued to issue new debt and equity").

181 Michael Corkery, "Developer Sells Land Dirt Cheap To Reap Tax Benefits," Wall Street Journal (Oct. 3, 2008), https://

archive.is/T55gg. In 2008, for example, over 140 homebuilders filed for bankruptcy. "Some of nation's biggest home builders face bankruptcy," Journal of Business (May 21, 2009), https://www.spokanejournal.com/articles/10889-some-of-nation-s-biggest-home-builders-face-bankruptcy.

182 *Id.*

183 This was not the only way the Obama administration favored large homebuilders. A publicly traded homebuilder, Beazer Homes, that admitted to committing mortgage and securities fraud settled civil and criminal suits for $50 million dollars, but actually paid a little more than half that amount due to the FBI's flawed accounting of the firm's ability to pay the fine. Federal Bureau of Investigations, "Beazer Homes U.S.A., Inc. Reaches $50,000,000 Settlement of Mortgage and Accounting Fraud with United States," press release, (July 1, 2009), https://archives.fbi.gov/archives/charlotte/press-releases/2009/ce070109.htm; Nathan Atkinson, "Corporate Liability, Collateral Consequences, and Capital Structure," Columbia Business Law Review, (2023), https://www.nathanatkinson.com/wp-content/uploads/2023/08/Atkinson-2023-Corporate-Liability.pdf.

184 Jon Prior, "Law lets Home Builders Recoup Losses with More Back Taxes," HousingWire (Nov. 13, 2009), https://archive.is/0RNxR. Moreover, the extra capital would not create many jobs, since hiring would depend on revived demand. *Id.*

185 *Id.*

186 Michael Corkery, "Developer Sells Land Dirt Cheap To Reap Tax Benefits," Wall Street Journal (Oct. 3, 2008), https://archive.is/T55gg.

187 Christopher D. Cook, "Homebuilder Lennar uses federal taxpayer funds to balance its books," San Francisco Public Press (July 6, 2010), https://www.sfpublicpress.org/homebuilder-lennar-uses-federal-taxpayer-funds-to-balance-its-books/.

188 *Id.*

189 *Id.*

190 *Id.*

191 Over 160,000 construction firms went out of business between 2005 and 2014. Justin Lahart, "Fewer Home Builders Means Happier Homebuilders," Wall Street Journal (May 15, 2017), https://www.wsj.com/articles/fewer-home-builders-means-happier-home-builders-1494870894; *see also* Rose Quint, "US Government: Number of Builders Declined 50% Between 2007 and 2012," Eye on Housing (Sept. 9, 2015), https://eyeonhousing.org/2015/09/us-government-number-of-builders-declined-50-between-2007-and-2012/.

192 U.S. Government Accountability Office, "Financial Institutions: Causes and Consequences of Recent Community Bank Failures," (June 13, 2013), https://www.gao.gov/products/gao-13-704t ("Between January 2008 and December 2011—a period of economic downturn in the United States—414 insured U.S. banks failed. Of these, 85 percent (353) were small institutions with less than $1 billion in assets."). Bank failures were most prevalent in the regions most exposed to the housing bubble. *Id.* ("Ten states concentrated in the western, midwestern, and southeastern United States—areas where the housing market had experienced strong growth in the prior decade—each experienced 10 or more commercial bank or thrift (bank) failures between 2008 and 2011."). Letter from Farm Action and e2 Entrepreneurial Ecosystems to Assistant Attorney General for Antitrust Jonathan Kanter, (Feb. 15, 2022), https://farmaction.us/wp-content/uploads/2022/02/Comment-on-Bank-Merger-Guidelines-from-Farm-Action-e2-Entrepreneurial-Ecosystems.pdf ("just between 2011 and 2019, the country lost nearly a third of its community banks" and "mergers between banks were responsible for 70-75 percent of the annual decline in the number of community banks between 1984 and 2019"). The overall number of banks shrank to just over 5,000 in 2006, and as of 2024, there were only 3,928. Federal Deposit Insurance Corporation, "BankFind Suite: Find Annual Historical Bank Data," https://banks.data.fdic.gov/explore?displayFields=STNAME%2C TOTAL%2CBRANCHES%2CNew_Char&selectedEndDate=2024&selectedReport=CBS&selectedStartDate=1934&selectedStates=0&sortField=YEAR&sortOrder=desc (total commercial banks changed from 12,347 in 1990 to 8,315 in 2000; as of 2024, there are only 3,928).

193 Rose Quint, "US Government: Number of Builders Declined 50% Between 2007 and 2012," NAHB Eye on Housing (Sept. 9, 2015), https://eyeonhousing.org/2015/09/us-government-number-of-builders-declined-50-between-2007-and-2012/.

194 Sources: U.S. Census Bureau, Construction: Summary Statistics for the U.S., States, and Selected Geographies," https://data.census.gov/table/ECNBASIC2022.EC2223BASIC?t=New+Housing+%28Construction+and+Sales%29; NAICS code 236115: New Single-Family Housing Construction (except For-Sale Builders); NAICS code 236117: New Housing For-Sale Builders (operative builders); *see also* Gopal Ahluwalia, Kermit Baker, Kent W. Colton, "Concentration in the Homebuilding Industry: Trends, Strategies, and Prospects," University of Harvard, Joint Center for Housing Studies, (April 2022), https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_homebuilding_industry_concentration_ahluwalia_2022.pdf.

195 *See*, e.g., David Dayen, "A Needless Default," The American Prospect (Feb. 9, 2015), https://prospect.org/economy/needless-default/; Matt Stoller, "The Housing Crash and the End of American Citizenship," 39 Fordham Urban Law Journal 4, 1185 (Feb. 2016), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2428&context=ulj.

196 *See*, e.g., Brett Christophers, "The Role of the State in the Transfer of Value from Main Street to Wall Street: US Single-Family Housing after the Financial Crisis," 54 Antipode 1, 130-152 (July 26, 2021), https://onlinelibrary.wiley.com/

doi/10.1111/anti.12760 ("Christophers Role of State Article").

197 B.S. Bernanke, "Housing Markets In Transition," paper presented to the National Association of Homebuilders International Builders' Show, Orlando, Florida (Feb. 10, 2012), https://www.federalreserve.gov/newsevents/speech/bernanke20110210a.htm.

198 Lorraine Woellert, "FHFA Will Sell Foreclosed Homes to Investors for Rentals," Bloomberg News (Feb. 27, 2012), www.bloomberg.com/news/articles/2012-02-27/fhfa-to-begin-selling-foreclosed-homes-to-investors-for-rentals.

199 *See*, e.g., Carrozzo, *supra* note 10 at 8, 16 (discussing New Deal mortgage relief); Christophers Role of State Article, *supra* note 196 (discussing inadequacy of loan modifications under the Obama administration).

200 *See*, e.g., Nareit, "History of REITs & Real Estate Investing," https://www.reit.com/what-reit/history-reits. REITs are like mutual funds but with operational restrictions such as requiring four-year holding periods for most real estate. *See*, e.g., Brent Ambrose and Peter Linneman, "Old REITs and New Reits," 2 (1998), https://realestate.wharton.upenn.edu/wp-content/uploads/2017/03/300.pdf. This investment vehicle had already undergone significant reforms in the early 1990s, such as tax changes that facilitated and acquisition of property partnerships (via an umbrella partnership REIT structure) and loosening of a "five or fewer" rule that had "limited the ownership position of large shareholders in order to promote REIT ownership among small investors" to allow greater institutional ownership positions. *Id.* at 3-4. As a result, in just a seven-year period from 1990 to 1997, equity-only REIT market valuations skyrocketed from $5.6 billion to $135 billion. *Id.* at 1.

201 U.S. Government Accountability Office, "Rental Housing: Information on Institutional Investment in Single-Family Homes," (May 2024), https://www.gao.gov/assets/gao-24-106643.pdf.

202 *Id.*

203 Christophers How and Why Article, *supra* note 94 ("Based on tagging known institutional investors in public county record transaction data, [one fund in 2018] estimated that some 220,000 SFR homes were now in institutional investor hands; but it reckoned that the real number was likely closer to 300,000. … The most frenzied period of acquisition was the fifteen months beginning July 2012, during which time Blackstone bought just shy of forty thousand homes.").

204 U.S. Government Accountability Office, "Rental Housing: Information on Institutional Investment in Single-Family Homes," (May 2024), https://www.gao.gov/assets/gao-24-106643.pdf ("REO" stands for Real Estate Owned, and refers to property owned by creditors such as banks). As noted in Sidebar 1, private equity firms have also taken control of many manufactured home parks.

205 *See* Christophers, How and Why Article, *supra* note 94.

206 *Id.*

207 Robert Freedman, "Morgan Stanley: U.S. Becoming 'Rentership' Society," Realtor Magazine (Nov. 9, 2011), https://web.archive.org/web/20111102120400/http://speakingofrealestate.blogs.realtor.org/2011/10/31/morgan-stanley-u-s-becoming-rentership-society/.

208 By 2022, the top five investors collectively owned nearly 300,000 single-family homes. U.S. Government Accountability Office, "Rental Housing: Information on Institutional Investment in Single-Family Homes," 13 (May 2024), https://www.gao.gov/assets/gao-24-106643.pdf, and institutional investors (holding at least 100 homes each) collectively owned about 574,000 single-family homes. Laurie Goodman et al., "A Profile of Institutional Investor-Owned Single-Family Rental Properties," The Urban Institute (April 2023), https://www.urban.org/sites/default/files/2023-04/A%20Profile%20of%20Institutional%20Investor%E2%80%93Owned%20Single-Family%20Rental%20Properties_0.pdf.

209 Before the Great Financial Crisis, "[a]round three-quarters of all rental homes were held by entities that owned fewer than ten units. Indeed, as late as 2011, when Blackstone started buying, no single landlord in the United States owned more than one thousand SFRs." Christophers, How and Why Article, *supra* note 94; *see also* Lorraine Woellert, "FHFA Will Sell Foreclosed Homes to Investors for Rentals," Bloomberg News (Feb. 27, 2012), www.bloomberg.com/news/articles/2012-02-27/fhfa-to-begin-selling-foreclosed-homes-to-investors-for-rentals. Institutional investors also wielded capital advantages; Blackstone, via its investment in Invitation Homes, was able to obtain credit on terms far cheaper than any ordinary homebuyer's mortgage rate by securitizing its portfolio. Christophers, How and Why Article, *supra* note 94. ("Finally, and no less importantly, the debt that Blackstone used to finance its investment in single-family homes was not only cheap in absolute and historic terms; it was also cheap in relative terms—which is to say, relative to the interest rates that other categories of homebuyer were required to pay when borrowing. This gave it and its peers another source of enormous competitive advantage.").

210 In addition to the policy choices spotlighted above, which enabled firms to gain institutional experience in mass homebuying they previously lacked, there were parallel technological changes. A GAO report, for example, noted the rise of digital platforms that facilitated more efficient identification and pricing of residential housing purchase opportunities, and mass-management of single-family home rentals. U.S. Government Accountability Office, "Rental Housing: Information on Institutional Investment in Single-Family Homes," 11-12 (May 2024), https://www.gao.gov/assets/gao-24-106643.pdf.

211 *See*, e.g., Rebecca Stropoli, "IPO Scorecard: Return of the Homebuilders," Yahoo! Finance (April 10, 2013), https://finance.yahoo.com/blogs/the-exchange/ipo-scorecard-return-homebuilders-200816722.html.

212 *See* Musharbash, *supra* note 28.

213 Today, "investor-owned homes account for roughly 20% of the nation's 86 million single-family homes," but at a national level, 90% are rentals from mom-and-pop landlords who own 10 or fewer properties. *See* CBS News, "Real estate investors are purchasing more U.S. homes as high prices lock out would-be buyers," (July 8, 2025), https://www.cbsnews.com/news/more-real-estate-investors-buying-homes-housing-market/. Institutional investors that own 1,000 or more homes account for about 2.2% of the market. *Id.*

214 U.S. Government Accountability Office, "Rental Housing: Information on Institutional Investment in Single-Family Homes," (May 2024), https://www.gao.gov/assets/gao-24-106643.pdf. *See* Appendix 2 for chart showing regional market penetration of institutional investors in single family rentals.

215 *See*, e.g., Carkis Garruga et al., "Investors and Housing Affordability," Federal Reserve Bank of St. Louis, Working Paper Series, (Oct. 2020), https://s3.amazonaws.com/real.stlouisfed.org/wp/2020/2020-047.pdf; Hal Singer, "The Rent Is Too Damn High (And Concentration May Be to Blame)," The Sling (Dec. 6, 2022), https://www.thesling.org/the-rent-is-too-damn-high-and-concentration-may-be-to-blame/. In some markets, other types of non-local buyers may impact prices as well. For example, there was an influx of foreign buyers after the Great Financial Crisis, a phenomenon that peaked in 2017 but still continues. Peter Gratton, "Foreign Buyers' Influence On the US Residential Housing Market," Investopedia (July 30, 2025), https://www.investopedia.com/foreign-buyers-and-us-residential-housing-market-11773950; *see also* National Association of Realtors, "International Transactions in U.S. Residential Real Estate," (July 17, 2024), https://www.nar.realtor/sites/default/files/documents/2024-international-transactions-in-us-residential-real-estate-report-07-17-2024.pdf. During the pandemic, some areas experienced migration in the form of an influx of remote-working out-of-state buyers. For example, in 2021, second-home purchases in Montana made up 20% of all home sales statewide; Montana is now one of the states where median-income buyers are least able to afford median-priced homes. Trina Paul, "This State Has the Largest Affordability Gap for Homebuyers – And It's Not What You Think," Investopedia (Aug. 9, 2025), https://www.investopedia.com/this-state-has-the-largest-affordability-gap-for-homebuyers-and-its-not-what-you-think-11785435.

216 Collectively, publicly traded homebuilders increased their national market share from 25% to 37% between 2005 and 2019. Lance Lambert, "Giant homebuilders are eating up more market share—just look at Lennar," ResiClub Analytics (Nov. 22, 2024), https://www.resiclubanalytics.com/p/giant-homebuilders-are-eating-up-more-market-share-just-look-at-lennar; *see also* Lahart, "Fewer Home Builders Means Happier Homebuilders," Wall Street Journal (May 15, 2017), https://www.wsj.com/articles/fewer-home-builders-means-happier-home-builders-1494870894 (noting that the top 10 homebuilders tripled their national market share from 1994 to 2018).

217 Sarah Caldwell, "Top Ten Builder Share Rises Again in 2024," Eye on Housing (July 8, 2025), https://eyeonhousing.org/2025/07/top-ten-builder-share-rises-again-in-2024/.

218 *Id.* As shown, the upward trend also holds for completions, which are "a wider measure of home building that covers not-for-sale home construction." *Id.*

219 Closings differ from housing starts because they count buildings that have been finished and sold. *See*, e.g., Adam Hayes, "Housing Starts: An Important Metric for Real Estate Investors," https://www.investopedia.com/terms/h/housingstarts.asp. Currently, the top 10 homebuilders are, in order based on closings in 2024: D.R. Horton, Lennar Corp., PulteGroup, NVR, Meritage Homes, SH Residential Holdings, KB Home, Taylor Morrison, Century Communities, and Toll Brothers. *See* Builder Online, "2025 The Top 100," https://www.builderonline.com/builder-100/builder-100-list/2025/.

220 Builder Online, "2025 The Top 100," https://www.builderonline.com/builder-100/builder-100-list/2025/.

221 *Id.*

222 Lance Lambert, "Giant homebuilders are eating up more market share—just look at Lennar," ResiClub Analytics (Nov. 22, 2024), https://www.resiclubanalytics.com/p/giant-homebuilders-are-eating-up-more-market-share-just-look-at-lennar.

223 *See*, e.g., Fitch Ratings, "US Homebuilders Maintain Strong Credit Despite Market Pressures," (June 27, 2025), https://www.fitchratings.com/research/corporate-finance/us-homebuilders-maintain-strong-credit-despite-market-pressures-27-06-2025. ("Large public homebuilders have better access to funding, which allows them to steadily grow market share at the expense of smaller private competitors."); Ambrose Credit Availability Paper, *supra* note 1.

224 *See*, e.g., Danielle Nguyen, "Home Builder M&A Explodes in 2024," John Burns Research & Consulting (March 1, 2024), https://jbrec.com/insights/home-builder-ma-explodes-in-2024/. Banking concentration has also continued apace during this time; the sector has shrunk from 15,000 in 1990 to just under 4,000 in 2024. Jeremy C. Kress, "Reviving Bank Antitrust," 72 Duke Law Journal 519-598, (Nov. 2022), https://scholarship.law.duke.edu/dlj/vol72/iss3/1/; FDIC, "Annual Historical Bank Data," https://banks.data.fdic.gov/bankfind-suite/historical.

225 D.R. Horton Investor Presentation (Q3 2025), https://static.seekingalpha.com/uploads/sa_presentations/523/111523/original.pdf.

226 *See* Don Walker, "Dear Consultant: What is land banking, and how is it impacting the housing industry?," John Burns

Research and Consulting (March 26, 2025), https://jbrec.com/insights/land-banking-grows-as-housing-industry-strategy/. The top firms have done even better. D.R. Horton, for example, reported gross profit margins on home sales of 23.5% for fiscal year 2024. D.R. Horton, "2024 Annual Report," https://investor.drhorton.com/~/media/Files/D/D-R-Horton-IR/documents/2024-dhi-annual-report.pdf. (p. 37). Lennar similarly reported gross profit margins of 22.3% for fiscal year 2024. Lennar, "2024 Annual Report," 30 (Jan. 23, 2025), https://investors.lennar.com/~/media/Files/L/Lennar-IR-V3/documents/annual-reports/annual-report-2024.pdf. They also regularly channel hundreds of millions of dollars in profits to stock buybacks. TipRanks, "DR Horton (DHI) Stock Buybacks," https://www.tipranks.com/stocks/dhi/buybacks. TipRanks, "Lennar (LEN) Stock Buybacks," https://www.tipranks.com/stocks/len/buybacks. Notably, the National Association of Home Builders (NAHB) has issued reports of lower margins across its membership. However, the usefulness of this data is limited by low sample sizes and lack of information about size or information of respondents (rather than survey recipients). *See*, e.g., Eric Lynch, "Cost of Constructing a Home-2024," 2 (Jan. 20, 2025), special-study-cost-of-constructing-a-home-2024-january-2025.pdf (noting only 41 usable responses).

227 *See* Appendix 4.

228 *See*, e.g., John O'Dell, "Builders Go Back to Basics: Housing: The developers who have been able to constrain themselves when they saw the market slowing are the ones who will survive the current slump, some experts say," Los Angeles Times (March 17, 1991), https://www.latimes.com/archives/la-xpm-1991-03-17-fi-980-story.html; David S. Hilzenrath, "Developer Shakeout to Continue Into '90s: Construction: Industry observers predict real estate profits will shrink as those who ignored the market and built for tax advantages pay the price," Los Angeles Times (Nov. 5, 1989), https://www.latimes.com/archives/la-xpm-1989-11-05-re-1757-story.html.

229 *See*, e.g., Professor Michael E. Porter, "The U.S. Homebuilding Industry and The Competitive Position of Large Builders," Centex Investor Conference, (Nov. 18, 2023), https://www.hbs.edu/ris/Publication%20Files/US_Homebuilding_Industry_a866f140-77c6-4bd5-afe3-5f1d702fff98.pdf (noting trend toward "greater inventory discipline in the market"); *see also* Joe Weisenthal and Tracy Alloway, "I Want to Believe in Abundance," Bloomberg News (March 24, 2025), https://www.bloomberg.com/news/newsletters/2025-03-24/i-want-to-believe-in-abundance ("[A]ny impulse to abundantly build out less profitable lines of business undoubtedly strikes at the heart of how American capitalism works").

230 *See*, e.g., Investing.com, "Toll Bros. stock rating reiterated at Buy by UBS on positive 2026 outlook," (Aug. 20, 2025), https://www.investing.com/news/analyst-ratings/toll-bros-stock-rating-reiterated-at-buy-by-ubs-on-positive-2026-outlook-93CH-4202608.

231 To be sure, different public homebuilders espouse different strategies relative to each other. Lennar, for example, focuses more on "step-up homes" than starter homes. Eulerpool Research Systems, "Dynamics in the US Construction Sector: Lennar and D.R. Horton Compared," (Oct. 3, 2024), https://eulerpool.com/en/news/all/dynamics-in-the-us-construction-sector-lennar-and-dr-horton-compared (Lennar's "portfolio mainly consists of so-called step-up homes, accounting for 68 percent of the transactions, followed by starter homes at 28 percent and senior housing at 4 percent."). Lennar has framed volume more favorably relative to the other top public homebuilders. *See*, e.g., John McManus, "Leadership: Lennar," The Builders Daily (June 17, 2025), https://www.thebuildersdaily.com/lennars-q2-results-redefine-homebuilding-power-play/. More recently, Lennar has told investors it will "begin to ease back our delivery expectations for the fourth quarter and full year in order to relieve the pressure on sales and deliveries and help establish a floor on margin." *See*king Alpha, "Lennar anticipates Q4 deliveries of 22,000–23,000 homes as company prioritizes margin stabilization," (Sept. 19, 2025), https://*see*kingalpha.com/news/4496732-lennar-anticipates-q4-deliveries-of-22000-23000-homes-as-company-prioritizes-margin. The key question, however, is whether homebuilders have built to capacity over the past decade, i.e., whether they would have built more but for Wall Street pressures to pace production.

232 D.R. Horton, "Form 10-Q," 35 (July 28, 2015), https://investor.drhorton.com/~/media/Files/D/D-R-Horton-IR/documents/quarterly-reports/q3-2015-quarterly-report.pdf; *see also id.* at 34 ("We are focused on growing our profitability, improving our cash flows and managing our product offerings, pricing, sales pace, and inventory levels to optimize the return on our inventory investments.").

233 Roic.ai, Meritage Homes Corp., "Q4 2015 Earnings Call Transcript," (Jan. 28, 2016), https://www.roic.ai/quote/MTH/transcripts/2015-year/4-quarter. The company nonetheless had sufficient financial resources to consider either a stock buyback or investing in "good land opportunities." *Id.* According to AEI, Phoenix City, Arizona, currently has a shortage of 33,883 homes, and Maricopa County currently has a shortage of 88,752 homes. AEI, "U.S. Housing Shortage by State, County, and City," Housing Center, https://heat.aeihousingcenter.org/toolkit/housing_shortage.

234 D.R. Horton, Annual Report 2022, 7 (2023), https://investor.drhorton.com/~/media/Files/D/D-R-Horton-IR/reports-and-presentations/reports/2022-dhi-annual-report.pdf; *see also id.* at 8 ("[w]e attempt to maintain a level of speculative home inventory in each community based on our current and planned sales pace, and we monitor and adjust speculative home inventory on an ongoing basis.").

235 *See*king Alpha, "PulteGroup, Inc. Q1 2025 Earnings Call Transcript," (April 22, 2025), https://*see*kingalpha.com/article/4776887-pultegroup-inc-phm-q1-2025-earnings-call-transcript; *see also*, e.g., D.R. Horton Investor Presentation, 22 (Q3 2025), https://static.*see*kingalpha.com/uploads/sa_presentations/523/111523/original.pdf (D.R. Horton's "Homebuilding Operational Focus" includes "Maximize returns and generate strong cash flows by managing sales pace and pricing in each community" and "Manage land, lot and home inventory prudently to meet demand and gain market share").

236 Seeking Alpha, "PulteGroup, Inc. (PHM) Q1 2025 Earnings Call Transcript," (April 22, 2025), https://seekingalpha.com/article/4776887-pultegroup-inc-phm-q1-2025-earnings-call-transcript.

237 *See*, e.g., Zachary Crockett, "Why America has so many big houses," The Hustle (Dec. 13, 2024), https://thehustle.co/originals/why-america-has-so-many-big-houses (calculating that due to relatively fixed construction costs, whereas a builder might make a profit of 8.4% on a 14,000-square-foot house that sells for $480,000 (i.e., $40,489 profit), that builder could make a 2% higher profit—10.1%—by building a 2,560-square-foot house that sells for $644,750 (i.e., $65,369 profit)).

238 *See* Liu, *supra* note 141.

239 There are a variety of online platforms that provide market analytics relating to homebuilding, such as RSI and Zonda. *See* Residential Strategies, "Our Services," https://www.residentialstrategies.com/our-services/.

240 *See* U.S. Department of Justice, "Justice Department Sues RealPage for Algorithmic Pricing Scheme that Harms Millions of American Renters," press release (Aug. 23, 2024), https://www.justice.gov/archives/opa/pr/justice-department-sues-realpage-algorithmic-pricing-scheme-harms-millions-american-renters. Online services that publicly traded homebuilders.

241 Berger Montague, "Antitrust Lawsuit Targets Cartel Driving Up Construction Equipment Rental Prices" (Apr. 2, 2025), https://www.prnewswire.com/news-releases/antitrust-lawsuit-targets-cartel-driving-up-construction-equipment-rental-prices-302418239.html

242 Lance Lambert, "ResiClub analyzed 20 years of giant homebuilder data-here are 4 key takeaways," ResiClub (May 10, 2025), https://www.resiclubanalytics.com/p/housing-market-resiclub-analyzed-20-years-of-giant-homebuilder-data-here-are-4-key-takeaways.

243 *Id.*

244 *See*, e.g., Serkin, *supra* note 97 at 25. A few scholars contend that the housing shortfall is primarily due to regulatory burdens afflicting certain geographic regions that used to play a leading role in generating supply. *See* Edward L. Glaeser, "America's Housing Supply Problem: The Closing of the Suburban Frontier?," working paper, (May 2025), https://www.nber.org/system/files/working_papers/w33876/w33876.pdf. ("If existing homeowners in high price areas have become better at controlling land use regulations and stopping new construction, then we should expect to *see* a decreasing link between high prices and new construction, which is exactly what the data shows."). Notably, the Minimum Profitable Construction Costs (MPPC) model Glaeser developed—and on which the regulatory burden argument is premised—has previously been criticized for incorporating unrealistic assumptions, including assuming away differences in land value between superstar cities and other regions, then attributing all price differentials to regulatory burdens. *See* Cameron Murray, "Marginal and average prices of land lots should not be equal: A critique of Glaeser and Gyourko's method for identifying residential price effects of town planning regulations," Environment and Planning A: Economy and Space, 53(1), 191-209 (2020), https://journals.sagepub.com/doi/abs/10.1177/0308518X20942874 ("Numerous shortcomings are identified in their theoretical model, including that (a) they ignore that development happens over time; (b) their 'regulatory tax' is simply the location value of land; (c) they reason inconsistently about the source of land prices, arguing that land at the margins is scarce but locations for whole housing lots are not; and (d) there are no optimal lot sizes nor subdivision incentives in their model."); *see also* Cameron Murray, "Ed Glaeser: Harvard's housing huckster," Fresh Economic Thinking (Sept. 8, 2024), https://www.fresheconomicthinking.com/p/glaesers-dreadful-housing-analysis.

245 Brent W. Ambrose, "Housing After the Fall: Reassessing the Future of the American Dream, The Homebuilding Industry," Pennsylvania State University, Institute for Real Estate Studies, (Feb. 6, 2009), https://www.smeal.psu.edu/bires/documents/homebuilding ("between 2000 and 2005, the 23 large public home builders tracked by SNL RealEstate increased their land holdings by 328 percent"); *see also* Abernathy, *supra* note 80 at 5 ("Home builder consolidation was … motivated less by the desire for scale per se than to attract sufficient interest from Wall Street investors to secure the capital necessary to develop favorable land positions."); Will Frank et al., "Banking on the Future: Builders and Land Bankers Grow Together," John Burns Research & Consulting (April 24, 2024), https://jbrec.com/insights/builders-investors-team-for-land-banking-deals-that-benefit-both/; Cameron Murray, "Time Is Money: How Landbanking Constrains Housing Supply," 49 Journal of Housing Economics 101708 (2020), https://www.sciencedirect.com/science/article/abs/pii/S1051137720300449.

246 *See*, e.g., Pat McAllister, "Housebuilders' landbanks: Inventory, asset or hoard?," 152 Land Use Policy, 8 (May 2025), https://www.sciencedirect.com/science/article/pii/S0264837725000365.

247 Michael Gerrity, "Lennar Homes Reports 29% Drop in Revenues, Becomes Profitable in Q4," World Property Journal (Jan. 7, 2010), https://www.worldpropertyjournal.com/us-markets/residential-real-estate-1/real-estate-news-lennar-corporation-new-home-sales-new-home-prices-home-buyer-tax-credit-stuart-miller-1848.php.

248 *See*, e.g., McAllister at 8. Homebuilders did option land in the early 2000s (*see*, e.g., Abernathy, *supra* note 80 at 32-33), but as noted, they pivoted toward that strategy after the Great Financial Crisis. McAllister at 8.

249 James Rodriguez, "America's next big land grab," Business Insider (July 23, 2024), https://www.businessinsider.com/land-banking-new-home-construction-real-estate-prices-housing-builders-2025-7; *see also* Dechert, "Land Banking: A

Sound Approach to Residential Real Estate Pre-Development Financing," (May 15, 2024), https://www.dechert.com/knowledge/onpoint/2024/5/land-banking--a-sound-approach-to-residential-real-estate-pre-de.html. The business model for bankers is that "[r]eturns are earned through fees and margins, generally targeting higher returns than a traditional bank but lower than joint venture equity." Walker, *supra* note 226.

250 McAllister at 8.

251 *Id.*

252 *Id.*

253 James Rodriguez, "America's next big land grab," Business Insider (July 23, 2024), https://www.businessinsider.com/land-banking-new-home-construction-real-estate-prices-housing-builders-2025-7.

254 D.R. Horton, "D.R. Horton, Inc., America's Builder, Reports Fiscal 2025 Third Quarter Earnings and Declares Quarterly Dividend of $0.40 Per Share," (July 22, 2025), https://investor.drhorton.com/news-and-events/press-releases/2025/07-22-2025-110041577

255 D.R. Horton Investor Presentation, 22 (Q3 2025), https://static.seekingalpha.com/uploads/sa_presentations/523/111523/original.pdf (capitalization removed). Whereas in 2005, D.R. Horton had three years' supply of owned lots to 3.7 years' supply of controlled lots, in mid-2025 it had only 1.7 years' supply of owned lots but 5.3 years' supply of controlled lots.

256 Pat McAllister, "Homebuilders' landbanks: Inventory, asset or hoard?," Land Use Policy (2025), https://www.sciencedirect.com/science/article/pii/S0264837725000365 (Fig. 6: Top 3 US Housebuilders: Lots Owned.").

257 Fitch Ratings, "US Homebuilders Maintain Strong Credit Despite Market Pressures," (June 27, 2025), https://www.fitchratings.com/research/corporate-finance/us-homebuilders-maintain-strong-credit-despite-market-pressures-27-06-2025.

258 *See*, e.g., Dean Wehrli, "Episode 92: Building Up: Walton Global's Strategic Land Insights," New Home Insights Podcast, 11:03 (April 26, 2024), https://jbrec.com/insights/kate-kaminski-walton-global-experts-in-land-banking-strategy/ (COO of Walton Global: "We are highly focused on investment-grade companies in terms of those that we're looking to do transaction with. But also, it's scale for us. … As you're deploying significant sums of capital, doing a small deal here and there does not move the needle in terms of deploying that as quickly as possible. And so our focus really has to be on some of the larger publics just because of the volume that they do. You know, D.R. Horton and Lennar, building one out of five homes in the U.S. alone every year. … If you focused on those two alone, they could feed your entire pipeline.").

259 Toll Brothers, Inc., "Q2 2024 Earnings Call," (May 22, 2024), https://investors.tollbrothers.com/~/media/Files/T/TollBrothers-IR/documents/events/transcripts/2024/tol%20-%20transcript%20q2%202024.pdf. (The CEO of Toll Brothers told investors in 2024, "[W]hat we're actually *see*ing more from the smaller builders who are facing some capital crunch is land deals that they have tied up, they've processed approvals on, they thought about building homes on, they're having a hard time finding the regional banks to finance them. And while they can't make a full profit they would have made had they built homes, they can make a fair profit by flipping the land to us. And so, we're *see*ing quite a few deals like that out of the smaller, more local and regional builders.").

260 *See*, e.g., John McManus, "D.R. Horton's Competitive Edge: A Market-Maker's Playbook for 2025," (Jan. 21, 2025), https://www.thebuildersdaily.com/d-r-hortons-competitive-edge-a-market-makers-playbook-for-2025/ (D.R. "Horton's land pipeline strategy, emphasizing options over ownership, locks up significant future capacity.").

261 *See*, e.g., Cameron Murray, "Explainer: Markets efficiently delay building feasible new homes," Fresh Economic Thinking (Sept. 22, 2024), https://www.fresheconomicthinking.com/p/explainer-markets-efficiently-delay (noting the potential for a "delay premium" in the market value of land, which is the "value the owners (buyers and sellers) of land derive from being able to choose when to develop and potentially build something bigger, better, and more profitable in the future on that site."); *see also* Cameron K. Murray, A Housing Supply Absorption Rate Equation, 64 J. Real Est. Fin. & Econ. 228, 230 (2022), https://link.springer.com/article/10.1007/s11146-020-09815-z.

262 Drew Mackintosh, "Builders Go 'Land Light' in an Effort to Improve Returns," Builder Online (March 16, 2021), https://www.builderonline.com/land/builders-go-land-light-in-an-effort-to-improve-returns_o.

263 Homebuilder confidence in the market for new single-family homes decreased 8 points in the one-year period between July 2024 and July 2025, according to the National Association of Home Builders (NAHB)/Wells Fargo Housing Market Index (HMI), marking 15 consecutive months of negative sentiment. National Home Builders Association, "NAHB/Wells Fargo Housing Market Index (HMI)," https://www.nahb.org/news-and-economics/housing-economics/indices/housing-market-index.

264 *See* Houlihan Lokey, "Single-Family Rental (SFR) Market Update," 3 (August 2025), https://cdn.hl.com/pdf/2025/august-2025-sfr-market-update.pdf.

265 James Rodriguez, "America's next big land grab," Business Insider (July 23, 2024), https://www.businessinsider.com/land-banking-new-home-construction-real-estate-prices-housing-builders-2025-7.

266 *Id.*

267 Walton Global, "Walton Global Launches $250 Million Offering Targeting 11.5% Return," press release (July 17, 2025). The company describes itself as a "privately-owned, leading land asset management and global real estate investment company with more than 80,000 acres of land under ownership, management and administration in the United States and Canada, totaling $4.53 billion." *Id.*

268 Reuters, "Trump calls on Fannie Mae and Freddie Mac to get big homebuilders 'going,'" (Oct. 5, 2025), https://www.reuters.com/world/us/trump-calls-fannie-mae-freddie-mac-get-big-homebuilders-going-2025-10-06/

269 Carlos Waters, "Why it's so hard to find starter homes in the U.S.," CNBC (Jan. 14, 2025), https://www.cnbc.com/2025/01/14/few-starter-homes-in-us.html.

270 *See* National Association of Homebuilders, "Housing Market Index: Special Questions on Builders Challenges/Problems Faced in 2024 and Expect to Face in 2025," 2 (Jan. 2025), https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics/hmi/special-survey-reports/hmi-january-2025-special-survey-report.pdf?rev=048e8e9ec3f4484c818248baf74d5c34&hash=E9B1D496E563AE83950EDC1ECF2E7193 (in survey of 418 homebuilders, 91% ranked high interest rates among the "most significant problems" they faced in 2024).

271 Wissoker at 13 (quoting W.H. Lurz, "Merger madness: Threatens smaller builders," Professional Builder, 63, 60–66 (1998)).

272 Even excluding concentration trends from prior decades, 75% of U.S. industries became more concentrated between 2000 and 2015. *See*, e.g., Gustavo Grullon, Yelena Larkin, and Roni Michaely, "Are US Industries Becoming More Concentrated?," (April 2017), https://www.stern.nyu.edu/sites/default/files/assets/documents/Michaely,%20Roni%20-%20Are%20US%20Industries%20Becoming%20More%20Concentrated.pdf; cf. Phila Nat'l Bank, 374 U.S. at 370 ("concentration in banking accelerates concentration generally").

273 Jeffrey N. Gordon, "Too Many Mergers? The Golden Parachute as a Driver of M&A Activity in the 21st Century," 5 (Feb. 15, 2025), European Corporate Governance Institute - Law Working Paper No. 829/2025, Columbia Law and Economics Working Paper No. 5154671, https://ssrn.com/abstract=5154671.

274 *See* Appendix 3 for charts showing the history of homebuilder growth through M&A in the 1990s and 2000s.

275 *See* Filippo Lancieri, Eric A. Posner, and Luigi Zingales, "The political economy of the decline of antitrust enforcement in the United States," No. w30326, National Bureau of Economic Research, 5-8 (2022), https://www.nber.org/system/files/working_papers/w30326/w30326.pdf; Erik Peinert, "Mergers and Smoking Guns," ProMarket (May 13, 2022), https://www.promarket.org/2022/05/13/mergers-and-smoking-guns/.

276 Abernathy, *supra* note 80 at 86.

277 *Id.* at 5.

278 *See* Appendix 3 for details on homebuilder M&A.

279 Builder Online, "2025 Local Leaders," (2025), https://www.builderonline.com/land/local-leaders-list/2025/.

280 Builder, "2024 Local Leaders," 8 (2024) https://s3.amazonaws.com/HW_Assets/Marketing/BD/0324_BD_LocalLeader_Download_ONLINE.pdf.

281 Builder, "2025 Local Leaders," BD_LocalLeader_Download_ONLINE_Finalv2.pdf.

282 *See* Serkin, *supra* note 97 at 10.

283 *See*, e.g., Alex Horowitz and Tara Roche, "Lot-Size Reform Unlocks Affordable Homeownership in Houston," Pew (Sept. 14, 2023), https://www.pew.org/en/research-and-analysis/issue-briefs/2023/09/lot-size-reform-unlocks-affordable-homeownership-in-houston. ("In 1998, policymakers approved an ordinance to allow building on smaller lots, reducing the minimum lot size in the urban core from 5,000 square feet to 3,500 square feet—or to 1,400 square feet for parcels meeting certain standards for open space. In 2013, the policy was expanded to cover nearly the entire city.")Pew, "Lot-Size Reform Unlocks Affordable Homeownership in Houston," (Sept. 14, 2023), https://www.pew.org/en/research-and-analysis/issue-briefs/2023/09/lot-size-reform-unlocks-affordable-homeownership-in-houston.

284 AEI, "U.S. Housing Shortage by State, County, and City," Housing Center, https://heat.aeihousingcenter.org/toolkit/housing_shortage. (AEI calculates that Houston, TX, has a shortage of 38,367 housing units (3.8%) with a 2023 median price to income ratio of 4.5.)

285 Builder, "2025 Local Leaders," (2025), https://s3.us-east-1.amazonaws.com/HW_Assets/Marketing/BD/BD_LocalLeader_Download_ONLINE_Finalv2.pdf, (e.g., Lennar Corp. has a 30.3% market share in the greater Los Angeles area); cf. U.S. v. Phila. Nat'l Bank, 374 U.S. 321, 364 (1963) (a merger that would result in 30% market share would "threaten undue concentration"). The presence of smaller firms does not obviate the need for market share analysis. Phila. Nat'l Bank, 374 U.S. at n. 43 ("In an oligopolistic market, small companies may be perfectly content to follow the high prices set by the dominant firms, yet the market may be profoundly anticompetitive."). According to AEI data, Los Angeles had a 2023 median price to income ratio of 11.5 and a housing unit shortage percentage of 21.3%. AEI, "U.S. Housing Shortage by State, County, and City," Housing Center, https://heat.aeihousingcenter.org/toolkit/housing_shortage.

286 Luis Quintero, "Fewer Players, Fewer Homes: Concentration and the New Dynamics of Housing Supply," Johns Hopkins Carey Business School Research Paper No. 18-18, 1 (Aug. 15, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3303984. This measure, which is based on the anomalously lenient 2010 merger guidelines, likely understates concentration. *See*, e.g., Vivek Bhattacharya, Gastón Illanes, and David Stillerman, "Merger effects and antitrust enforcement: Evidence from us consumer packaged goods," No. w31123. National Bureau of Economic Research, (2023), https://www.nber.org/system/files/working_papers/w31123/w31123.pdf. Under the 2010 merger guidelines, an HHI of 2500 is "highly concentrated." U.S. Department of Justice and Federal Trade Commission, "Horizontal Merger Guidelines," (Aug. 19, 2010), https://www.justice.gov/atr/file/810276/dl?inline, p. 19. The updated 2023 merger guidelines restore the "highly concentrated" metric to the 1980s level of 1,800. *See* U.S. Department of Justice and Federal Trade Commission, "Merger Guidelines," 5-6 (Dec. 18, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf (2023 Merger Guidelines).

287 Future research directions that would be useful for building on these findings would include applying the model to other baseline years (e.g., the 1990s or early 2000s, rather than 2006), expanding from an East Coast data set to other regions of the country and providing more granular geographic data.

288 Building 150,000 houses per year over 15 years would generate 2.25 million more houses. A Realtor.com report estimates that as of 2024 there was a total shortfall of 3.8 million homes compared with demand, including pent-up demand. *See* Hannah Jones and Danielle Hale, "Housing Supply Gap Reaches Nearly 4 Million in 2024," Realtor.com (March 10, 2025), https://www.realtor.com/research/us-housing-supply-gap-2025/.

289 Liu, *supra* note 141 at Abstract; *id.* at 2 ("[F]ollowing a merger, new-home supply declines by 7.6% in overlapping markets relative to non-overlapping markets, and the median price per square foot of newly built houses rises by 6.7%. The merged builder itself is a primary driver of this supply contraction, cutting its own output by 24.3% in overlapping markets post-merge. Construction quality also deteriorates using construction-permit filings shortly after completion as a proxy for repairs."); *id.* at 9 (describing dataset); *id.* at 15 ("prior to the merger, housing supply trends in overlapping and non-overlapping markets move in parallel, with a noticeable divergence emerging only after the merger.").

290 *Id.* at 4-5 (testing against Wharton Residential Land Use Regulation Index); *id.* at 21-22.

291 *See* Lima One Capital, "Ep. 9 – How the Homebuilding Market Got Here & Where It's Heading," (Nov. 22, 2021), https://www.limaone.com/ep-9-how-the-homebuilding-market-got-here-where-its-heading/. (Whalen Capital: "Some of the four MSA is in Texas, where you could have 60-70% of home starts represented by the top eight or 10 builders in the market, major concentration. So then the barrier to entry is very high for smaller private builders, which is putting them into maybe C or D locations or different types of product to try to differentiate themselves.").

292 *See*, e.g., Brown Shoe v. U.S., 370 U.S. 294, 318 nn.32-33 (1962); 2023 Merger Guidelines at 1, 22.

293 *See*, e.g., 2023 Merger Guidelines at Guideline 3.

294 National Association of Home Builders, "New and Existing Home Price Gap Shrinking," (Feb. 25, 2025), https://eyeonhousing.org/2025/02/new-and-existing-home-price-gap-shrinking/. A persistent price differential can be a sign that two products are not in the same relevant antitrust market. Brown Shoe Co. v. United States, 370 U.S. 29 (1962).

295 National Association of Home Builders, "New and Existing Home Price Gap Shrinking," (Feb. 25, 2025), https://eyeonhousing.org/2025/02/new-and-existing-home-price-gap-shrinking/.

296 *Id.*

297 *Id.*; *see also* Lance Lambert, "Giant homebuilders tighten grip their grip on the housing market—just look at this map," Fast Company (Oct. 17, 2024), https://www.fastcompany.com/91210557/housing-market-giant-publicly-traded-homebuilders-tighten-grip-map (CEO of KB Home: "we're taking share from two sources. One is smaller builders that are having difficulty with financing. … Banks are very conservative right now on what they'll lend a small builder to go develop lots. But you're also taking share from resale because of the limited resale inventory."). As of 2024, newly-built homes represented about 28% of all homes for sale. Liu, *supra* note 141 at 16 (citation omitted).

298 For example, institutional investors represented about a quarter of all single-family homebuyers in Atlanta, Georgia, and Jacksonville, Florida, in late 2022. Alexander Hermann, "8 Facts About Investor Activity in the Single-Family Rental Market," Joint Center for Housing Studies, Harvard University, (July 18, 2023), https://www.jchs.harvard.edu/blog/8-facts-about-investor-activity-single-family-rental-market; *see also* Taylor Shelton and Eric Seymour, "Horizontal holdings: Untangling the networks of corporate landlords," 114.8 Annals of the American Association of Geographers, 1819-1831, 1819 (2024), https://taylorshelton.info/publication/horizontal-holdings/horizontal-holdings.pdf ("three firms control more than 19,000 single-family homes across the five core counties of Metro Atlanta, using an extensive network of more than 190 corporate aliases—registered to seventy-four different addresses across ten states and one territory—to hide their holdings behind a veil of secrecy and insulate themselves from liability.").

299 *See*, e.g., Lennar, "Our Leadership Team," https://www.lennar.com/about/leadership (last visited Sept. 24, 2025) ("Corporate enterprises include multifamily communities, commercial properties, land development, financial services, and asset management").

300 A detailed examination of this potential tradeoff, or the role of multi-family dwelling construction in satisfying housing

demand, is beyond the scope of this paper. This paper does not take a categorical position on the optimal balance between single-family homes and multi-family housing, or between private versus public construction and ownership of housing in America. This country has historically pursued a mix of different strategies at different times and places.

301 Lennar Corp., Fourth Quarter Earnings Conference Call, pp. 10-11 (Jan. 8, 2020), https://investors.lennar.com/~/media/Files/L/Lennar-IR-V3/documents/earnings-releases/4th-qtr-2019-transcript.pdf.

302 Jessica Lautz, "Built-for-Rent Housing Remains Elevated," National Association of Realtors (Feb. 24, 2025), https://www.nar.realtor/blogs/economists-outlook/built-for-rent-housing-remains-elevated. *See* Appendix 5 for chart.

303 Lennar, 2024 Annual Report, p. 7, https://investors.lennar.com/~/media/Files/L/Lennar-IR-V3/documents/annual-reports/annual-report-2024.pdf; *see also* Houlihan Lokey at 2 ("As of Q2 2025, Invitation Homes REIT acquired 1,671 homes for $563 million, while disposing of only 828 homes ($320 million). An additional 2,000 homes are in their homebuilding pipeline, primarily focused on the West and Sunbelt markets. These regions include 12 of the 15 U.S. cities with the largest numeric population growth.").

304 Invitation Homes, "Our Story," https://www.invitationhomes.com/about-us (last visited Sept. 14, 2025).

305 Luke Goldstein and Freddy Brewster, "The Corporate Home-Search Site Making Housing Unaffordable," The Lever (Sept. 19, 2025), https://www.levernews.com/the-corporate-home-search-site-making-housing-unaffordable/. ("Real estate experts say Lennar is doing this to juice home sales and steer business toward its lucrative in-house mortgage lender — at the expense of consumers, who are being boxed out of homeownership and forced to pay ever-higher home and rental costs.")

306 *Id.*

307 *See* Construction Owners Club, "The top 10 residential builders of 2024," (May 30, 2024), https://www.constructionowners.com/news/the-top-10-residential-builders-of-2024.

308 *See*, e.g., Dechert, "Dechert Advises Pretium Partners on First SFR Securitization Consisting Entirely of Build-to-Rent Communities," (July 28, 2025), https://www.dechert.com/knowledge/news/2025/7/dechert-advises-pretium-partners-on-first-sfr-securitization-con.html. ("The collateral consisted of 21 build-to-rent (BTR) residential communities comprising 2,020 homes, making this securitization the first of its kind.")

309 *See*, e.g., Thomas Stone, Terminal Economics, "Large home builders have taken over and are restricting new home supply," (Oct. 18, 2024), https://www.terminaleconomics.com/2024/10/18/large-home-builders-have-taken-over-and-are-restricting-new-home-supply/.

310 *See* Ananta Agarwal, "Small U.S. homebuilders tap the brakes as credit squeeze, rising rates hurt," Reuters (July 6, 2023), https://www.reuters.com/markets/us/small-us-homebuilders-tap-brakes-credit-squeeze-rising-rates-hurt-2023-07-06/.

311 Pretium, "Pretium to Originate Up to $5 Billion in Loans to Homebuilders; Secures $550 Million for its Inaugural Institutional Finance Vehicles Dedicated to Creating and Renovating Residential Inventory," (Jan. 16, 2025), https://pretium.com/news/pretium-to-originate-up-to-5-billion-in-loans-to-homebuilders-secures-550-million-for-its-inaugural-institutional-finance-vehicles-dedicated-to-creating-and-renovating-residential-inventory/. (The fund will target a variety of market segments: "renovation of aged houses for homeownership with conventional mortgages; Vertical Construction Loans on Single Family For-Sale Communities and Build-to-Rent Communities; and Horizontal Infrastructure Loans to land developers/lot bankers.")

312 *See*, e.g., Ambrose Credit Availability Paper, *supra* note 1.

313 John McManus, "D.R. Horton's Competitive Edge: A Market-Maker's Playbook for 2025," (Jan. 21, 2025), https://www.thebuildersdaily.com/d-r-hortons-competitive-edge-a-market-makers-playbook-for-2025/.

314 *See* National Association of Homebuilders, "Housing Market Index: Special Questions on Builders Challenges/Problems Faced in 2024 and Expect to Face in 2025," 2 (Jan. 2025), https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics/hmi/special-survey-reports/hmi-january-2025-special-survey-report.pdf?rev=048e8e9ec3f4484c818248baf74d5c34&hash=E9B1D496E563AE83950EDC1ECF2E7193 (in a survey of 418 homebuilders, 91% ranked high interest rates among the "most significant problems" they faced in 2024); *id.* at 8-9 (high interest rates went from being cited as a significant problem by only a single-digit percentage of homebuilders in the 2010s to supermajorities of homebuilders from 2022 onward).

315 *See*, e.g., Lance Lambert, "Housing affordability is so stressed that Lennar is offering a fixed 4.75% mortgage rate in Colorado," ResiClub (Oct. 13, 2023), https://www.resiclubanalytics.com/p/housing-affordability-stressed-lennar-offering-fixed-475-mortgage-rate-colorado (Lennar offered 4.75% fixed rates when market mortgage rates were at 7.66%).

316 *See* Fannie Mae, "Selling Guide," B2-1.4-04, Temporary Interest Rate Buydowns (Aug. 7, 2024), https://selling-guide.fanniemae.com/sel/b2-1.4-04/temporary-interest-rate-buydowns#P1106; Freddie Mac, "Mortgages with Temporary Subsidy Buydown Plans," https://sf.freddiemac.com/working-with-us/origination-underwriting/mortgage-products/mortgages-with-temporary-subsidy-buydown-plans (last visited Sept. 29, 2025); *see also* Wolf Richter, "Mortgage-Rate Buydowns by Homebuilders Are Now All the Rage to Prop Up Sales, Lowering Effective House Prices in a Big Way, but

Don't Get Picked Up by House Price Data," Wolf Street (Sept. 10, 2023), https://wolfstreet.com/2023/09/10/mortgage-rate-buydowns-by-homebuilders-are-now-all-the-rage-to-prop-up-sales-lowering-effective-house-prices-in-a-big-way-but-dont-get-picked-up-by-house-price-data/.

317 Musharbash, *supra* note 28.

318 Jody Kahn and Devyn Bachman, "Rate Buydowns Help Buyers Purchase New Homes," John Burns Research & Consulting, (Dec. 9, 2022), https://jbrec.com/insights/rate-buydowns-help-buyers-purchase-new-homes/.

319 Musharbash, *supra* note 28.

320 PulteGroup, "Q1 2024 Earnings release," 9 (April 23, 2024), https://s22.q4cdn.com/957797852/files/doc_earnings/2024/q1/earnings-result/Q1-2024-Earnings-Release.pdf.

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322 *Id.*

323 Musharbash, *supra* note 28.

324 *See*, e.g., Brandon Ivey, "Fears Homebuilder Buydowns Are Distorting Home Prices," Inside Mortgage Finance (May 15, 2025), https://www.insidemortgagefinance.com/articles/234257-homebuilder-buydowns-influencing-home-prices.

325 *See*, e.g., Jody Kahn et al., "Florida Builders Keep Surfing the Rate Buydown Wave," John Burns Research and Consulting (Sept. 7, 2023), https://jbrec.com/insights/florida-builders-keep-surfing-the-rate-buydown-wave/. ("Smaller production builders may struggle to compete for sales due to limited access or high costs of capital that curb their ability to provide inventory homes and rate buydowns.")

326 U.S. Department of Justice, "Assistant Attorney General Jonathan Kanter Delivers Remarks on the Platformization of Health Care," (Nov. 12, 2024), https://www.justice.gov/archives/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-remarks-platformization-health-care.

327 D.R. Horton, "Services," https://www.drhorton.com/services (last visited Sept. 30, 2025).

328 Neil Gerrard, "What's driving the consolidation of US homebuilders?," Construction Briefing (May 13, 2025), https://www.constructionbriefing.com/news/whats-driving-the-consolidation-of-us-homebuilders/8055801.article?zephr_sso_ott=PtLvh9; *see also* Sean Shapiro, "Private Equity in Roofing: Why Roofing Acquisitions are Booming," Axia Advisors (March 6, 2025), https://axiaadvisors.com/private-equity-in-roofing/; Corey McCusker, "The trend of private equity in construction," Boston Business Journal (July 30, 2025), https://www.bizjournals.com/boston/news/2025/07/30/the-trend-of-private-equity-in-construction.html; Brandon Kochkodin, "A Group for Small Building Trade Businesses Tells Private Equity To Get Lost," Forbes, (Sept. 16, 2025), https://www.forbes.com/sites/brandonkochkodin/2025/09/16/a-group-for-small-building-trade-businesses-tells-private-equity-to-get-lost/.

329 Neil Gerrard, "What's driving the consolidation of US homebuilders?," Construction Briefing (May 13, 2025), https://www.constructionbriefing.com/news/whats-driving-the-consolidation-of-us-homebuilders/8055801.article?zephr_sso_ott=PtLvh9.

330 *See* Liu, *supra* note 141 at 4; Ralph Rosado, "Regulatory Barriers to Home Construction and Rehab," The Project for Lean Urbanism, https://leanurbanism.org/regulatory-barriers-to-home-construction-and-rehab/.

331 *See*, e.g., Wissoker, *supra* note 26 at 4.

332 *See*, e.g., Abernathy, *supra* note 80 at 62, Fig. 5.1.

333 *See id.* Homebuilders of all sizes may also be impacted by anti-competitive practices by other actors in the housing supply chain. Notably, a recent lawsuit alleges that most major rental firms for heavy construction equipment (e.g., cranes, excavators, etc.) conspired to hike their rates through a data-sharing platform. Complaint, Kris Swanson Construction LLC v. RB Global Inc. et al., Case 1:25-cv-04236, (April 17, 2025), https://www.locklaw.com/wp-content/uploads/Dist.N.D.Ill_._1-25-cv-04236_1.pdf. Mike Scarcella, "Lawsuit accuses United Rentals, other construction equipment firms of price-fixing," Reuters (April 2, 2025), https://www.reuters.com/legal/litigation/lawsuit-accuses-united-rentals-other-construction-equipment-firms-price-fixing-2025-04-02/.

334 *See*, e.g., Abernathy, *supra* note 80 at 62, Fig. 5.1; Prapas Dimitrios, "The growing competitive advantage of the larger housebuilders over the smaller in the UK and the USA," University of London, University College London, 10 n. 6 (2005), https://www.proquest.com/openview/709a9c8bd6cdcb6a3bb4ef3c49a26a5c/1?pq-origsite=gscholar&cbl=2026366&diss=y ("Commercial economies of scale mean that larger builders pay lower prices for each unit they purchase and they have increased bargaining power due to their big market share"); *id.* at 42 (elaborating on commercial economies of scale).

335 D.R. Horton, "Annual Report 2024," (Nov. 19, 2024), https://stocklight.com/stocks/us/nyse-dhi/dr-horton/annual-reports/nyse-dhi-2024-10K-241475783.pdf.

336 DCF Modeling, "D.R. Horton, Inc.: Porter's Five Forces: Bargaining Power of Suppliers," (Jan. 2025), https://dcfmodeling.

com/products/dhi-porters-five-forces-analysis.

337 Knox at 72.

338 Katherine Van Dyck, "Price Discrimination and Power Buyers: Why Giant Retailers Dominate the Economy and How to Stop It," AELP (Sept. 2022), https://www.economicliberties.us/wp-content/uploads/2022/09/RPA_Memo_RD2.pdf. Genuine economies of scale are a defense to price discrimination. 15 U.S.C. § 13. Discovery would reveal the extent to which price differences reflect true efficiencies. Smaller homebuilders may be boxed out from accessing other resources as well. Builders Daily notes that the "scale and sway of market leaders" often enables them to "monopolize access to trades and vendor resources." John McManus, "D.R. Horton's Competitive Edge: A Market-Maker's Playbook for 2025," (Jan. 21, 2025), https://www.thebuildersdaily.com/d-r-hortons-competitive-edge-a-market-makers-playbook-for-2025/. They could do so either informally or contractually, through exclusivity clauses.

339 Jennifer Ludden and Marisa Peñaloza, "Starter homes are scarce, so Utah set a target to build more. Here's how it's going," NPR (Sept. 2, 2025), https://www.npr.org/2025/09/02/nx-s1-5431545/starter-homes-utah-housing-cost-affordable-target.

340 *See*, e.g., Benjamin Dinovelli, "The Federal Reserve's Forgotten Credit Mandate," 138 Harvard Law Review 1887 (May 12, 2025), https://ssrn.com/abstract=5253206; https://harvardlawreview.org/print/vol-138/the-federal-reserves-forgotten-credit-mandate/; *see also* John Kandrac, "Can the Federal Reserve Effectively Target Main Street? Evidence from the 1970s Recession," Finance and Economics Discussion Series 2021-061, (March 21, 2022), https://www.federalreserve.gov/econres/feds/can-the-federal-reserve-effectively-target-main-street-evidence-from-the-1970s-recession.htm.

341 *See*, e.g., Brendan Greeley, "The contentious idea that still challenges the Fed," Financial Times (April 22, 2023), https://www.ft.com/content/9c2f28b6-b31e-47ca-87a2-aa91340c083d; Robert Pollin, "Public Credit Allocation through the Federal Reserve: Why It Is Needed; How It Should Be Done 1," in G.A. Dymski et al. (eds.), Transforming the US Financial System: An Equitable and Efficient Structure for the 21st Century, Routledge, 321-354 (2016); *see also* Letter from Action Center for Race and the Economy to Chair Jerome Powell and Secretary Steven Mnuchin (May 7, 2020), https://www.economicliberties.us/wp-content/uploads/2020/05/FINAL-Federal-Reserve-Merger-Letter-5.7.pdf.

342 Road to Housing Act, S. 2651 U.S. Senate, 119th Congress (2025), https://www.congress.gov/bill/119th-congress/senate-bill/2651; U.S. Senate Committee on Banking, Housing, and Urban Affairs, "Scott, Warren Announce Markup of Landmark Bipartisan Housing Legislation from Banking Committee Members," (July 24, 2025), https://www.banking.senate.gov/newsroom/minority/scott-warren-announce-markup-of-landmark-bipartisan-housing-legislation-from-banking-committee-members. There are also worthwhile reforms on the buyer side, such as to permanently authorize a program giving grants so manufactured-home communities can buy their own common land. *See* HUD, "Preservation and Reinvestment Initiative for Community Enhancement (PRICE)," (April 29, 2025), https://www.hud.gov/hud-partners/community-price-awards; *see also* Fannie Mae, "Innovations in Real Property: Manufactured Homes, Alternative Ownership Models, and the Availability of Mortgage Financing," (2022), https://www.fanniemae.com/media/45741/display.

343 *See* Paul Williams and Yakov Feygin, "Smoothing the Housing Investment Cycle: Part I," Center for Public Enterprise (July 2024), https://publicenterprise.org/wp-content/uploads/Smoothing-the-Housing-Investment-Cycle-Part-1.pdf (financing recommendations for multifamily construction note that Freddie Mac's charter may restrict its ability to support construction lending, but Fannie Mae's charter does not contain such limitations, and Fannie Mae has launched pilot programs to support construction). FHFA should also review existing programs that promote housing to incorporate smaller homebuilders. *See*, e.g., FHFA, "Duty to Serve Program," (Sept. 19, 2025), https://www.fhfa.gov/programs/duty-to-serve.

344 *See* Shahid Naaem, "Revitalizing Bank Merger Enforcement to Restore Competition and Fairness in Banking," American Economic Liberties Project (June 2023), https://www.economicliberties.us/wp-content/uploads/2023/06/062023_AELP_BankMerger_Brief_R2.pdf.

345 The Small Business Administration's 7(a) loan and 504 loan programs are limited to owner-occupied real estate, so they would not cover anything beyond a homebuilder's own offices. Bank of America, "Small Business Administration Loans & Financing," https://www.bankofamerica.com/smallbusiness/business-financing/sba-financing/. Congress should also target any expansion of tax credits in a manner that offsets the market power of larger homebuilders, mitigates risk for smaller homebuilders, and creates pathways to market entry for new homebuilders. For additional proposals relating to multi-family housing and rentals, *see* AELP, "Antimonopoly Policy Agenda for the 119th Congress," https://www.economicliberties.us/wp-content/uploads/2025/06/20250418-aelp-antimonopoly-policyagenda-V7.pdf.

346 Cf. Letter from Gerald M. Howard of the National Association of Home Builders to The President, 1-2 (April 27, 2020), https://www.novoco.com/public-media/documents/nahb_recommendations_to_white_house_042720.pdf (noting that the Small Business Administration's Interim Final Rule for the Paycheck Protection Program deemed single-family homebuilders ineligible, and recommending that the Federal Reserve's Main Street Lending Program lower the minimum loan amount below $1 million for the program in order to be useful to smaller homebuilders).

347 Specifically, Congress should reform the failing bank exception that allows the largest banks to make acquisitions they would otherwise be barred from consummating; the largest banks should be able to buy failing banks only if there are no other bidders. As discussed above, the larger the bank, the less likely it is to lend to smaller homebuilders. Although it is

reasonable to allow acquisitions of failing banks, the nature of the buyer matters. *See* Rohit Chopra, "Prepared Remarks of CFPB Director Rohit Chopra at the Peterson Institute for International Economics Event on Revitalizing Bank Merger Review," CFPB (March 21, 2024), https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-rohit-chopra-at-the-peterson-institute-for-international-economics-event-on-revitalizing-bank-merger-review/.

348 Williams at 9, 12 (noting federal agencies that could administer a housing construction fund for multifamily development).

349 U.S. Federal Housing Finance Agency, "Guarantee Fees History," https://www.fhfa.gov/policy/guarantee-fees.

350 Bharat Ramamurti, "Seven Key Questions About the Potential Release of Fannie Mae and Freddie Mac from Government Conservatorship," AELP (May 2025), https://www.economicliberties.us/wp-content/uploads/2025/05/Fannie-and-Freddie-Piece-5.25-FINAL.pdf. Codification is especially important in the event that Fannie Mae and Freddie Mac are removed from conservatorship of FHFA, because then they would be able to discontinue the guarantee fee parity policy and charge smaller lenders higher fees than large lenders. *Id.* Notably, researchers have estimated that the administration's proposals to privatize Fannie Mae and Freddie Mac could raise mortgage rates "by 0.2 to 0.8 percentage points, corresponding to an increase in payments of $500 to $2,000 per year for the typical homebuyer." Daniel Hornung and Ben Sampson, "The ABCs of the GSEs: How changes to Fannie and Freddie could impact mortgage rates and homebuyers," Stanford Institute for Economic Policy Research (Sept. 2025), https://siepr.stanford.edu/publications/policy-brief/abcs-gses-how-changes-fannie-and-freddie-could-impact-mortgage-rates-and.

351 MRSC, "Types of Municipal Debt," https://mrsc.org/explore-topics/finance/debt/types-of-municipal-debt.

352 Revolving loans are "funds that pay out loans and are later replenished, enabling more loans to other borrowers." Max Harrison-Caldwell, "YIMBYs are on a winning streak – so where's the housing? Three ideas to fix the crisis," The San Francisco Standard (July 31, 2025), https://sfstandard.com/2025/07/31/yimbys-housing-ceqa-newsom/. Typically, this has been applied in public housing context. *See*, e.g., Jennifer Ludden, "One possible housing crisis solution? A new kind of public housing for all income levels," NPR (Oct. 7, 2024), https://www.npr.org/2024/10/07/nx-s1-5119633/housing-crisis-solution-public-housing-mixed-income-maryland (Montgomery County, Maryland, created a $100 million revolving fund to build public housing, which enables "cheaper financing with a lower rate of return than private investors would demand."). Utah adopted a low-interest construction loan program specifically targeting starter homes in 2024. *See* Tony Semarand, "Utah launches all-out push to build thousands of new 'starter homes' that you might be able to afford," The Salt Lake Tribune (May 13, 2024), https://www.sltrib.com/news/2024/05/13/utah-launches-all-out-push-build/. So far, just over 5,000 homes have been initiated. Jennifer Ludden and Marisa Peñaloza, "Starter homes are scarce, so Utah set a target to build more. Here's how it's going," NPR (Sept. 2, 2025), https://www.npr.org/2025/09/02/nx-s1-5431545/starter-homes-utah-housing-cost-affordable-target.

353 *See*, e.g., Henry George, Progress and Poverty (1879); Greg Miller, "Want to Model a Land Value Tax Shift in Your City? Here's How," (June 4, 2025), https://progressandpoverty.substack.com/p/want-to-model-a-land-value-tax-shift; Robert Stephen Earnest "Ain't No Taxing High Enough: Using Land Value Taxation to Combat the Nation's Rental Affordability Crisis," 39 Minnesota Journal of Law & Inequality 2, 492 (May 2021), https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1663&context=lawineq.

354 Earnest, *supra* note 353 at 493.

355 Taxing land value is arguably fairer, because the value of land comes primarily from things that are not attributable to the landowner's labor, such as city infrastructure and amenities, or improvements by neighbors. Progress and Poverty Institute, "How Land Value Taxes Could Promote Fairer Taxes," https://progressandpovertyinstitute.org/how-land-value-taxes-could-promote-fairer-taxes/ (last visited Oct. 2, 2025).

356 *See* Serkin *supra* note 97 at 60 (April 2025); *see also* Cameron K. Murray, A Housing Supply Absorption Rate Equation, 64 J. Real Est. Fin. & Econ. 228, Abstract (2022), https://link.springer.com/article/10.1007/s11146-020-09815-z ("[I]ncreasing the cost to delaying housing development is the primary way to increase the market rate of housing supply").

357 *Id.* at 51. A Philadelphia Federal Reserve working paper found that "investors raise rents at 60 percent higher rates than the average increase when first acquiring the property, and higher investor share in a neighborhood is correlated with faster rent increases for non-investor landlords." Keyoung Lee and David Wylie, "Institutional Investors, Rents, and Neighborhood Change in the Single Family Residential Market," Federal Reserve Bank of Philadelphia (July 2024), https://www.philadelphiafed.org/consumer-finance/mortgage-markets/institutional-investors-rents-and-neighborhood-change-in-the-single-family-residential-market. The Humans Over Private Equity (HOPE) for Homeownership Act, for example, would require institutional investors to divest their single-family home holdings by selling over 10% every year for 10 years, and only to non-corporate (i.e., human) buyers who do not own other residential property. Senator Jeff Merkley, "Senator Merkley, Representative Smith Launch Renewed Effort to Kick Hedge Funds Out of America's Housing Market," (Feb. 27, 2025), https://www.merkley.senate.gov/senator-merkley-representative-smith-launch-renewed-effort-to-kick-hedge-funds-out-of-americas-housing-market/.

358 For example, the Stop Predatory Investing Act would deny "taxpayers owning 50 or more single family properties any tax deduction for interest paid or accrued in connection with any single family residential rental property" and disallow "depreciation of residential rental property owned by such taxpayers." U.S. Senate, S. 2224, 118th Congress, (2023), https://www.congress.gov/bill/118th-congress/senate-bill/2224. Similar reforms could be extended to disincentivize

ownership of a large number of single-family homes by any type of entity or individual. About 90% of non-institutional investors (i.e., individuals and families) own 10 or fewer homes. CBS News, "Real estate investors are purchasing more U.S. homes as high prices lock out would-be buyers," (July 8, 2025), https://www.cbsnews.com/news/more-real-estate-investors-buying-homes-housing-market/. ("[M]om-and-pop investors, or those who own between 1 and 5 homes, account for 85% of all investor-owned residential properties, while those with between 6 and 10 properties account for another 5%."). Accordingly, a reasonable cap would not impact most mom-and-pop landlords.

359 Christopher Serkin and Ganesh Sitaraman, "Post-Neoliberal Housing Policy," Vanderbilt Policy Accelerator, Vanderbilt University, https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/412/2025/04/22200114/Post-Neoliberal-Housing-Policy.pdf at 51; Private Equity Stakeholder Project, "New tool tracks private equity ownership of manufactured housing communities across U.S.," (June 11, 2024), https://pestakeholder.org/news/new-tool-tracks-private-equity-ownership-of-manufactured-housing-communities-across-u-s/. In 2018, FHFA directed Fannie Mae and Freddie Mac to terminate controversial pilot programs that made large loans to institutional investors in single-family home rental properties. U.S. Government Accountability Office, "Rental Housing: Information on Institutional Investment in Single-Family Homes," (May 9, 2024), https://www.gao.gov/assets/gao-24-106643.pdf; *see also*, e.g., Georgia Kromrel, "Congressional report finds Invitation Homes downplayed evictions to Fannie Mae," Housing Wire (July 29, 2022), https://archive.is/Otbzo; Jon Boughtin, "Invitation Homes' Troubling Deal," NAR Realtor Magazine, https://www.nar.realtor/magazine/real-estate-news/commentary/invitation-homes-troubling-deal. Congressional action is needed to ensure that FHFA cannot revive this practice, or that Fannie Mae and Freddie Mac cannot do so if their conservatorship under FHFA ends.

360 *See*, e.g., Peter M. McCamman et al., "SEC and CFTC Further Extend Compliance Date for Form PF Amendments," Mayer Brown (Sept. 25, 2025), https://www.mayerbrown.com/en/insights/publications/2025/09/sec-and-cftc-further-extend-compliance-date-for-form-pf-amendments; CFTC RIN 3038-AF31 and SEC RIN 3235-AN13, "Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers," https://www.sec.gov/files/rules/final/2024/ia-6546.pdf.

361 *See* FTC, "FTC *See*ks Public Comment on Single-Family Rental Home Mega Investors Study," (Jan. 15, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-seeks-public-comment-single-family-rental-home-mega-investors-study.

362 As Congress and the Supreme Court have repeatedly emphasized, Section 7 of the Clayton Act is intended to stop concentration in its "incipiency." *See*, e.g., S. Rep. No. 63-698, at 1 (1914) (The Clayton Act is intended to "arrest the creation of trusts, conspiracies, monopolies in their incipiency and before consummation."); S. Rep. No. 1775, 81st Cong., 2d Sess. (1950) (Section 7 was meant "to cope with monopolistic tendencies in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding."); Brown Shoe v. U.S., 370 U.S. 294, 317 (1962) (Section 7 created "authority for arresting mergers at a time when the trend to a lessening of competition in a line of commerce was still in its incipiency."); U.S. v. Cont'l Can Co., 378 U.S. 441, 461-62 (1964) ("Where concentration is already great, the importance of preventing even slight increases in concentration … is correspondingly great.") (emphasis added) (quotations omitted); U.S. v. Aluminum Co. of Am., 377 U.S. 271, 280 (1964) (finding a 1.3% market-share increase "reasonably likely to produce a substantial lessening of competition within the meaning of § 7").

363 S.4620, HART Act, 118th Congress, https://www.congress.gov/bill/118th-congress/senate-bill/4620/text.

364 16 CFR 802.2.

365 *See*, e.g., 15 U.S.C. § 18a(c)(1) (exempting "the acquisitions of goods or realty transferred in the ordinary course of business") and Rules 802.1, 802.2, 802.3, and 802.5. Rule 802.2(d) exempts the acquisition of residential property that is used primarily for residential purposes, including residences, common areas such as parking and recreational facilities, and assets incidental to owning residential property, including cash, prepaid taxes and insurance, and rental receivables. Rule 802.5 exempts acquisitions of investment rental property assets, regardless of whether or not the assets would be exempt under Rule 802.2. Although, on their own, the exemptions provided by Rules 802.2 and 802.5 apply only to the direct acquisition of assets, an additional rule, Rule 802.4, also exempts the acquisition of the voting securities or non-corporate interests of any entity that holds assets, the direct acquisition of which is exempted by the Act or the Rules, so long as that entity does not also hold more than $50 million (as adjusted) in non-exempt assets.

366 AELP, "Antimonopoly Policy Agenda for the 119th Congress," (May 6, 2025), https://www.economicliberties.us/our-work/antimonopoly-policy-agenda-for-the-119th-congress/. ("Congress should lower the HSR thresholds for single transactions to $50 million and require that any company making six or more acquisitions of any size in a single year also needs to submit an HSR notification to the FTC.")

367 Morgan Lewis, "'Mini-HSR' Acts Take Effect in Washington and Colorado, With Similar Legislation Pending in Other States," (Aug. 6, 2025), https://www.morganlewis.com/pubs/2025/08/mini-hsr-acts-take-effect-in-washington-and-colorado-with-similar-legislation-pending-in-other-states.

368 For a more in-depth discussion of why zoning and permitting reform warrants a nuanced approach, *see*, e.g., Christopher Serkin and Ganesh Sitaraman, "Post-Neoliberal Housing Policy," U. Pa. L. Rev. (forthcoming), Vanderbilt Law Research Paper No. 5227899, (Apr. 23, 2025) https://ssrn.com/abstract=5227899. ("Like any regulatory regime, however, "zoning" and land use regulations more generally are market-shaping: they can be designed to channel market activity in a variety of directions. Some density limits might overly restrict building in some places, but in others, they help to ensure that

infrastructure is developed efficiently, that municipal services are adequate for community needs, and that municipalities are able to attract development and investment in the long run. The question should not be whether zoning is restrictive but rather whether less regulated markets will produce better land use and development outcomes. Sometimes the answer is yes, but sometimes it isn't. With proper design and implementation, zoning can and should play an important role in shaping urban form. Indeed, zoning rules can be designed to enable affordable housing and enhance density. … Particular zoning rules might be problematic of course. But zoning in some general sense is not the villain.")

369 *See*, e.g., Liam LaMountain, Reilly Loynd, and Sarah Kadous, "Shaping America's Towns and Cities," The Regulatory Review (Aug. 30, 2025), https://www.theregreview.org/2025/08/30/seminar-shaping-americas-towns-and-cities/; NAHB, "Residential Design Standards: How Stringent Regulations Restrict Affordability and Choice," (July 2020), https://www.nahb.org/-/media/NAHB/advocacy/docs/industry-issues/land-use-101/state-local-affordability/residential-design-standards-072020.pdf?rev=5b8a42302456423eac47f974c7afc0c6.

370 Madeline F. Carr and Daniel Boyd Kramer, "Homeowners' associations: Barriers or bridges to more sustainable residential development?," 224 Landscape and Urban Planning (Aug. 2022), https://www.sciencedirect.com/science/article/abs/pii/S0169204622000688. ("HOAs are typically initiated by the housing developer … who drafts CCRs restricting home and yard building materials, home size, landscaping decisions, and limiting neighborhood nuisances, purportedly to maintain property values. … The developer maintains control of the HOA in the initial stages of development, often by being granted a significantly weighted vote in association affairs. As more properties are sold, however, developer control gives way to property owners.")

371 Various states and cities have enacted laws and ordinances that would override HOA CCRs. *See*, e.g., Joseph W. Singer, "NIMBY Covenants Are Not Protected by the Takings Clause," (July 21, 2025), Thurgood Marshall L. Rev., (forthcoming, 2025), https://ssrn.com/abstract=5359966 (noting that California; Oregon; Washington; Maine; Montana; Minneapolis, Minnesota; and Cambridge, Massachusetts have enacted laws and ordinances to limit or abolish single-family zoning). Lawsuits have also had some success. *See*, e.g., Richard Lawson, "Rural Georgia Court Strikes Down Minimum Home Size Rule," Builders Daily (Aug. 8, 2025), https://www.thebuildersdaily.com/rural-georgia-court-strikes-down-minimum-home-size-rule/.

372 This is especially true for concentrated markets. *See* Liu, *supra* note 141 at 22 ("the adverse consequences of builder consolidation are broad-based rather than confined to markets with especially restrictive zoning… [thus] reforms to land-use regulations, while crucial, may be insufficient to fully address the supply consequences of consolidation.").

373 *See* Brian Shearer, "To Create Abundant Housing, Ignore the YIMBY Playbook," Washington Monthly (Aug. 14, 2025), https://washingtonmonthly.com/2025/08/14/cities-can-have-abundant-housing-if-theyre-willing-to-work-for-it/.

374 *See id.*

375 For more policy proposals on this and other housing topics, *see*, e.g., U.S. Senate Committee on Banking, Housing, & Urban Affairs, "Renewing Opportunity in the American Dream (ROAD) to Housing Act, Section-by-Section," (2025), https://www.banking.senate.gov/imo/media/doc/road_to_housing_act_section-by-section.pdf; U.S. Senate, 119th Congress, https://www.banking.senate.gov/imo/media/doc/road_to_housing_act_of_2025_legislative_text.pdf; Rachel Siegel and Linlin Liang, "States Take Crucial Steps to Expand Supply of Lower-Cost Single-Family Homes," Pew (Sept. 3, 2025), https://www.pew.org/en/research-and-analysis/articles/2025/09/03/states-take-crucial-steps-to-expand-supply-of-lower-cost-single-family-homes (collecting state zoning reforms that prohibit certain restrictions on manufactured homes).

376 The Federal Trade Commission can also take action against price discrimination under Section 5 of the FTC Act, 15 U.S.C. § 45, and state enforcers can enforce state equivalents of the Robinson-Patman Act. In addition, the FTC can use its Section 6(b) authority to conduct an industry-wide study. 15 U.S.C. § 46(b).

377 Data sources: FRED, "New Privately-Owned Housing Units Started: Total Units," https://fred.stlouisfed.org/series/HOUST; FRED, "Federal Funds Effective Rate," https://fred.stlouisfed.org/series/FEDFUNDS.

378 *Id.*

379 U.S. Government Accountability Office, "Rental Housing: Information on Institutional Investment in Single-Family Homes," 16 (May 2024), https://www.gao.gov/assets/gao-24-106643.pdf.

380 V. 1, 10 (2014),

381 Abernathy, *supra* note 80 at 59.

382 Paul L. Knox, Metroburbia, USA, Rutgers University Press, 67 (2008).

383 C.T. Somerville, "The industrial organization of housing supply: Market activity, land supply and the size of homebuilder firms," 27 Real Estate Economics 669, 671 (1999).

384 *See* Emerging Research Directions: Concentration Trends, Sidebar 3, *supra*; *see also* William W. Bratton & Michael L. Wachter, Bankers and Chancellors, 93 Texas Law Review 1, 10 (2014), https://scholarship.law.upenn.edu/faculty_scholarship/1306 (noting that investment bankers have incentives to "push" deals even when the terms are not in the best interests of their clients, especially when their compensation includes "success fees").

385 Haughwout, *supra* note 147 (Table 2).

386 Abernathy, *supra* note 80 at 5, Fig. 1.3.

387 *Id.* at Fig. 1.5.

388 *Id.* at 5, 11-12, 28.

389 *Id.* at 40.

390 *Id.*

391 *Id.* at 86.

392 *Id.* at 87.

393 *Id.* at 12; *see also id.* at 68, Figure 5.7. In most metro areas where respondent homebuilders operated, the top five builders had 20% to 40% market share. *Id.* at 20-21. Some homebuilders later implemented the type of operational changes recommended by the Harvard Homebuilder Study. In 2005, PulteGroup appointed a new CEO so devoted to mimicking the Walmart business model that he hired a head of logistics from Walmart. *See*, e.g., Thomas Mucha, "The Builder of Boomtown," 6 Business 2.0 8, 47 (2005). The new CEO imposed centralization across divisions, "committed to reducing the total number of floor plans from 2,200 to 600" and otherwise reduced consumer options, and required divisions to switch from using local to national suppliers. Daniel Chaffin and Susan Jensen, "Pulte Homes – Reimagining the Homebuilding Industry," 23 Mountain Plains Journal of Business and Technology, 1, 30-31 (2022), https://openspaces.unk.edu/mpjbt/vol23/ iss1/2 30-31. Although the stock price increased during his 15-year tenure, the company fell behind other large competitors and he was ultimately forced to step down. *Id.* at 21.

394 Liu, *supra* note 141 at 8-9.

395 In 2009, Pulte Homes (then ranked fourth) and Centex (then ranked fifth) merged into the then-largest homebuilding firm in the country, Pulte Group. Reuters, "Pulte to buy rival Centex in $1.3 billion deal," (April 8, 2009), https://www.reuters.com/article/world/pulte-to-buy-rival-centex-in-1-3-billion-deal-idUSTRE53725Z/. In 2013, Tri Pointe (then ranked 82nd) merged with Weyerhaeuser (then ranked 17th). Builder Online, "2014 The Top 100," https://www.builderonline.com/builder-100/builder-100-list/2014/. In 2015, Standard Pacific (then ranked 11th) and Ryland (then ranked fifth) merged to form CalAtlantic. Alex Veiga, "Homebuilders Standard Pacific, Ryland Group agree to merge," The Mecklenburg Times, (June 15, 2015), https://mecktimes.com/news/2015/06/15/homebuilders-standard-pacific-ryland-group-agree-to-merger/. In 2018, Lennar (then ranked second) and CalAtlantic (then ranked fifth) merged into Lennar Corporation, creating the new largest homebuilder. Builder Online, "2018 The Top 100," (2018) https://www.builderonline.com/builder-100/builder-100-list/2018/.

396 National Association of Home Builders, "Top 10 Builder Market Share Across Metros," Eye on Housing (July 22, 2025), https://eyeonhousing.org/2025/07/top-10-builder-market-share-across-metros/. Neil Gerrard, "What's driving the consolidation of US homebuilders?," Construction Briefing (May 13, 2025), https://www.constructionbriefing.com/news/whats-driving-the-consolidation-of-us-homebuilders/8055801.article. Concentration trends are continuing. For example, in late 2024, Lennar Corp. announced its acquisition of Rausch Coleman Homes (ranked 21st). Lance Lambert, "Giant homebuilders are eating up more market share—just look at Lennar," ResiClub Analytics (Nov. 22, 2024), https://www.resiclubanalytics.com/p/giant-homebuilders-are-eating-up-more-market-share-just-look-at-lennar.

397 National Association of Home Builders, "Top 10 Builder Market Share Across Metros," Eye on Housing (July 22, 2025), https://eyeonhousing.org/2025/07/top-10-builder-market-share-across-metros/.

398 Neil Gerrard, "What's driving the consolidation of US homebuilders?," Construction Briefing (May 13, 2025), https://www.constructionbriefing.com/news/whats-driving-the-consolidation-of-us-homebuilders/8055801.article?zephr_sso_ott=PtLvh9#:~:text=On%20the%20flip%20side%2C%20some,ask%20questions%2C%E2%80%9D%20advises%20 Johnson ("The EBITDA multiples (earnings before interest, taxation, depreciation and amortization) that buyers are willing to pay have skyrocketed from 4.2x EBITDA in 2006-2011, to 9.5x in 2021-2024").

399 Denise Hearn et al., "The Roll-Up Economy: The Business of Consolidating Industries with Serial Acquisitions," AELP, 20 (Dec. 2022), https://www.economicliberties.us/wp-content/uploads/2022/12/Serial-Acquisitions-Working-Paper-R4-2.pdf ("One of the lesser known, but particularly important factors driving serial consolidation is 'valuation arbitrage.' … [W]hen a large company acquires a small one in the same industry, there is an immediate financial gain resulting from the acquired company's cashflow being integrated into the acquiring firm's balance sheet."). Serial acquisition strategies are often characterized by inflated multiples of the cash flows of the target business. E.g., *id.* at 21. Sometimes, inflated multiples signal that private equity firms are using debt to outbid other firms. Eileen Appelbaum and Rosemary Batt, "Private Equity Buyouts in Healthcare: Who Wins, Who Loses?," 9-10 (May 15, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3593887.

400 The ability to reduce quality without losing customers or profits is an indicator of market power. Lina M. Khan, "Amazon's Antitrust Paradox," 126 The Yale Law Journal 3, (Jan. 2017), https://www.yalelawjournal.org/note/amazons-antitrust-paradox (firms with market power can "hike prices and degrade service and quality while maintaining profits"); *see also* Maurice Stucke and Ariel Ezrachi, "Antitrust Enforcement and Market Power in the Digital Age: Is Your Digital Assistant Devious?," (2022), https://ir.law.utk.edu/cgi/viewcontent.cgi?article=1026&context=book_chapters (noting that exercise

of market power is more likely when "(1) [a firm] has the ability and economic incentive to intentionally degrade quality; (2) consumers cannot accurately assess the quality degradation; and (3) it is difficult or costly for others to convey to consumers the products' or services' inherent quality differences or to prompt them to switch.")

401 *See*, e.g., Parker Schwartz, "Lennar is a Market Leader at a Good Price," Yahoo! Finance (July 23, 2024), https://finance.yahoo.com/news/lennar-market-leader-good-price-140002115.html; Macro Trends, "D.R. Horton Revenue 2010-2025," https://www.macrotrends.net/stocks/charts/DHI/dr-horton/revenue; Gopal Ahluwalia et al., "Concentration in the Homebuilding Industry," 9, Joint Center for Housing Studies, Harvard University, (April 2022), https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_homebuilding_industry_concentration_ahluwalia_2022.pdf.

402 Hunterbrook, "'House From Hell' – How America's Largest Homebuilders Shift the Cost of Shoddy Construction to Buyers," (June 26, 2025), https://hntrbrk.com/homebuilders/.

403 *Id.* Moreover, in Florida and Texas, homebuilders can "hire their own inspection companies" rather than allow buyers to use independent firms to assess building code compliance. *Id.*

404 *See* Khan, *supra* note 400.

405 Liu, *supra* note 141 at 17 (citation omitted).

406 Hunterbrook, *supra* note 402. Typical contract terms also allegedly include waivers of the warranty of habitability, no escrows, liquidated damages of up to 15% of the value of the home for any delay or cancellation of closing (even for discovery of construction defects), and more. *Id.*

407 Liu, *supra* note 141 at 20.

408 *Id.* Large homebuilders also hoard resources after natural disasters, slowing community recovery. *Id.* at 24.

409 U.S. Lumber Coalition, "High Homebuilder Profits Have Priced Millions Out of the U.S. Housing Market," (Aug. 12, 2025), https://uslumbercoalition.org/resource/high-homebuilder-profits-have-priced-millions-out-of-the-u-s-housing-market/.

410 *Id.*

411 *Id.*

412 Jessica Lautz, "Built-for-Rent Housing Remains Elevated," National Association of Realtors (Feb. 24, 2025), https://www.nar.realtor/blogs/economists-outlook/built-for-rent-housing-remains-elevated.

413 This is distinct from other types of housing (e.g., modular or panelized) that are not fully assembled before delivery. Horwich, *supra* note 30.

414 *Id.*; *see also* Kerman Mobile Homes, "Top 5 Driving Forces Behind Manufactured Home Quality and Affordability," (March 1, 2025), https://www.kermanmobilehomes.com/top-5-driving-forces-behind-manufactured-home-quality-and-affordability (generally discussing scale advantages of mobile homes).

415 Horwich, *supra* note 30.

416 *Id.* Geographically, the proportion varied from a single-digit percentage of housing in the Northeast to about half of all new single-family housing in the South and Mountain West.

417 *Id.*

418 Horwich, *supra* note 30.

419 *Id.* The manufactured-home industry has long been targeted by lobbying from groups focused on stick-built homebuilding. *See*, e.g., James A. Schmitz, Jr., "Solving the Housing Crisis will Require Fighting Monopolies in Construction," Minneapolis Fed (Dec. 11, 2020), https://www.minneapolisfed.org/research/working-papers/solving-the-housing-crisis-will-require-fighting-monopolies-in-construction.

420 Horwich, *supra* note 30.

421 42 U.S.C. § 5402(6).

422 Libby O'Neill, "Senators Gallego and Tillis Introduce Bipartisan Legislation to Remove Permanent Chassis Requirement for Manufactured Housing," National Low Income Housing Coalition (July 28, 2025), https://nlihc.org/resource/senators-gallego-and-tillis-introduce-bipartisan-legislation-remove-permanent-chassis.

423 Andrew Justus and Alex Armlovich, "Two big developments in manufactured housing reform: New rules, new bill," Niskanen Center (Oct. 21, 2024), https://www.niskanencenter.org/two-big-developments-in-manufactured-housing-reform-new-rules-new-bill/.

424 Andrew Justun and Alex Armlovich, "Eliminating the Chassis Requirement to Free Manufactured Homes from Local Discrimination and Regulatory Dead Weight," Federation of American Scientists, (Feb. 21, 2024), https://fas.org/publication/manufactured-home-chassis-requirement/.

425 *See*, e.g., Mobile Agency, "Understanding Zoning Laws for Manufactured Home Communities," https://www.mobileagency.com/understanding-zoning-laws-for-manufactured-home-communities/.

426 *See* Private Equity Stakeholder Project, "PESP Private Equity Manufactured Housing Tracker," (July 2025), https://pestakeholder.org/pesp-private-equity-manufactured-housing-tracker/; *see also id.* ("Almost half (49%) of the private equity-owned parks identified for this tracker were financed by Fannie Mae or Freddie Mac. In contrast, Fannie Mae or Freddie Mac financed just 9% of all the manufactured home parks in the U.S."); Michael Casey and Carolyn Thompson, "Rents spike as large corporate investors buy mobile home parks," PBS News (July 25, 2022), https://www.pbs.org/newshour/economy/rents-spike-as-large-corporate-investors-buy-mobile-home-parks ("about a fifth of mobile home parks, or around 800,000, [were] purchased" by institutional investors just between 2014 and 2022, followed by "complaints of double-digit rent increases"); *see also* Sam Garin, "Concerns surround appointment of private equity insider to head up Federal Housing Finance Agency," Private Equity Stakeholder Project, (Jan. 27, 2025), https://pestakeholder.org/news/concerns-surround-appointment-of-private-equity-insider-to-head-up-federal-housing-finance-agency/.

427 Fannie Mae and Freddie Mac instituted programs to develop loan products to support manufactured-home development pursuant to the Housing and Economic Recovery Act of 2008. *See* Federal Housing Finance Agency, "Fannie Mae and Freddie Mac Support for Manufactured Housing," (Feb. 27, 2024), https://www.fhfa.gov/blog/statistics/fannie-mae-and-freddie-mac-support-manufactured-housing.

428 Horwich, *supra* note 30. Geographically, the proportion varied from a single-digit percentage of housing in the Northeast to about half of all new single-family housing in the South and Mountain West. *Id.* Today, manufactured homes are most prevalent in rural areas and small towns, where they comprise 13% of occupied dwellings. *See* Federal Housing Finance Agency, "Fannie Mae and Freddie Mac Support for Manufactured Housing," (Feb. 27, 2024), https://www.fhfa.gov/blog/statistics/fannie-mae-and-freddie-mac-support-manufactured-housing.

429 *See*, e.g., Consolidated Class Action Complaint, In re Manufactured Home Lot Rents Antitrust Litigation, Case No. 1:23-cv-06715, ECF No. 127 (N.D. Ill. Dec. 15, 2023), https://storage.courtlistener.com/recap/gov.uscourts.ilnd.438209/gov.uscourts.ilnd.438209.127.0.pdf (alleging price fixing conspiracy to inflate manufactured home lot rents); Mordor Intelligence, "United States Manufactured Homes Market Size & Share Analysis – Growth Trends and Forecast (2025-2030)," https://www.mordorintelligence.com/industry-reports/united-states-manufactured-homes-market ("Clayton Homes, Skyline Champion Corporation, and Cavco Industries together shipped just under half of all HUD-code units in 2024").

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