

SENATE JUDICIARY PANEL ADDRESSES MARKET COMPETITION IN THE HOUSING INDUSTRY

EXECUTIVE SUMMARY

On October 24, the Senate Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights held a [hearing](#) entitled “Examining Competition and Consumer Rights in Housing Markets.” The panel addressed a range of economic issues impacting housing markets in communities across the country, with a specific focus on market consolidation and other competition factors. One noncompetitive practice that received the panel’s attention was the use of data algorithm tools to set rent prices and the potential for “algorithmic collusion” among landlords seeking a monopolistic housing price for a market. Witnesses also discussed broader housing policy issues such as reforming local zoning regulations to promote new property development and demand-side tax credit reform.

OPENING STATEMENTS

Chair Amy Klobuchar (D-MN) claimed that houses are not as affordable for the current generation of homebuyers as previous generations due to increased prices. The Chair noted that home cost and rent price increase particularly impact low-income families. She cited several issues with the housing market contribute to higher costs, including a lack of transparency into junk fees associated with housing, the use of algorithmic tools which do not calculate competitive rent prices, the proliferation of institutional investors purchasing homes to generate rental income, and insufficient supply of starter homes. Acknowledging that federal antitrust regulations were previously employed to address uncompetitive housing costs in the 1970s, she expressed support for stronger antitrust and consumer protection policies to strengthen the housing industry and consumer rights.

Ranking Member Mike Lee (R-UT) warned that higher housing prices combined with simultaneous inflation across other consumer goods could reduce families’ emergency savings and lead to the necessity of accruing more debt. He highlighted strict state and local zoning regulations countrywide which limit the development of starter homes and other affordable housing units. Ranking Member Lee also expressed concern that compliance with federal programs such as Affirmatively Furthering Fair Housing ([AFFH](#)) increases the cost of constructing housing. Lastly, the Ranking Member promoted his Helping Open Underutilized Space to Ensure Shelter ([HOUSES](#)) Act from last Congress, which would authorize the sale of federal land to states and localities to develop housing units.

WITNESS TESTIMONY

Ms. Diane Yentel ([testimony](#)), President & CEO of the National Low Income Housing Coalition, emphasized the benefits of the Treasury Department's Emergency Rental Assistance ([ERA](#)) program, which provided federal assistance to low-income households to prevent evictions during the COVID-19 pandemic. She noted that there is increased demand and limited supply for affordable housing, in addition to a lack of rights for tenants, as key drivers of rent price increases. Ms. Yentel also agreed with Ranking Member Lee that local zoning regulations limit the expansion of housing supply.

Ms. Vanessa Brown Calder ([testimony](#)), Director of Opportunity and Family Policy Studies at the Cato Institute, expressed concerns that federal, state, and local policies, including federal land ownership and local zoning laws, contribute to rising housing costs. She highlighted the Southern Nevada Public Land Management Act ([SNPLMA](#)) as an example of the sale of federal land to local governments for housing development and expressed support for the HOUSES Act.

Dr. Luis Quintero ([testimony](#)), Assistant Professor at the Johns Hopkins Carey Business School, provided six policy recommendations: (1) Encourage regulatory agencies to be careful in spatially defining local housing markets when revising any actions, such as mergers, that may reduce competition; (2) Consider passing legislation that shifts the burden of proof to companies in large-scale mergers; (3) Encourage enforcement agencies to request mandatory divestitures when large national homebuilders merge and that results in high concentration in local markets; (4) Encourage the federal government to make increasing competition one of the objectives of its housing policies; (5) Encourage federal enforcement of state-wide housing policies; and (6) Consider readopting the "[Philadelphia National Bank](#) presumption," a Supreme Court determination that a merger that would give one entity a 30 percent market share in the relevant market is presumed noncompetitive, for local housing markets.

Dr. E.J. Antoni ([testimony](#)), Research Fellow at The Heritage Foundation, warned that federal fiscal and monetary policy adopted during the pandemic have contributed to inflation in the housing market and other industries. He explained that institutional investors purchasing homes with cash have benefitted from inflated prices, which reduces the supply of rental and purchase of affordable housing units for low-income families. Dr. Antoni recommended that the Federal Reserve should only be tasked with price stability instead of policies to "manipulate" the housing market, such as the purchase of mortgage-backed securities (MBS).

Mr. Maurice Stucke ([testimony](#)), Douglas A. Blaze Distinguished Professor of Law at the University of Tennessee College of Law, raised concerns of algorithmic collusion and discrimination in the housing market as landlords employ artificial intelligence (AI) to set rent prices. He warned that existing antitrust laws cannot address this issue. Mr. Stucke urged Congress to consider the following policy proposals to strengthen U.S. antitrust law: (1) Endorsing the Federal Trade Commission's (FTC) use of its authority under [Section 5](#) of the Federal Trade Commission Act to tackle algorithmic collusion; (2) Creating stronger legal standards to enforce federal law beyond the "[rule of reason](#)"

test provided by the Sherman Antitrust Act; and (3) incorporating broader risks associated with AI and data privacy into policy solutions to address algorithmic collusion.

DISCUSSION AND QUESTIONS

- **Sen. Mazie Hirono (D-HI)** questioned whether antitrust law reforms could support low-income renters in other circumstances beyond algorithmic collusion. Mr. Stucke acknowledged that the FTC could more closely examine how noncompetitive practices such as junk fees and monopolistic mergers persist in competitive markets.
- Sen. Hirono and Ms. Yentel agreed that mitigating hidden fees can help low-income households better afford housing costs.
- Sen. Lee and Ms. Calder discussed the importance of reforming local zoning regulations to expanding housing supply and potential benefits of enacting the HOUSES Act.
- Sen. Lee and Dr. Antoni agreed that federal monetary policy, specifically increased interest rates, has generated upward pressure on housing costs.
- Chair Klobuchar asked Ms. Yentel to discuss the prevalence of added fees for renters. Ms. Yentel noted that in extreme cases some renters could pay up to \$400 per month in fees in addition to base rent costs.
- In response to an inquiry from Chair Klobuchar, Mr. Stucke explained how algorithms can lead to higher housing prices if landlords in a housing market input noncompetitive prices.
- Chair Klobuchar asked how Congress should broadly reform antitrust law, citing the need to build off of the [Merger Filing Fee Modernization Act](#). Mr. Stucke expressed support for her legislation and urged for the readoption of the “[incipiency](#)” standard that has historically been used to regulate noncompetitive mergers to prevent monopolization. Sen. Hirono also highlighted her interest in reforming antitrust law to respond to the use of algorithms for housing prices and other similar services.
- Chair Klobuchar and Dr. Quintero discussed the negative impact of market consolidation among large construction companies on housing supply. Dr. Quintero noted that decreasing numbers of developers could lead to higher costs to build housing units and would fail to make housing more affordable.
- Sen. Lee and Dr. Antoni each expressed concerns with increasing costs of regulatory compliance in the housing industry.
- Sen. Hirono inquired about the potential benefits of relaxing local zoning regulations to develop more housing units, citing the conversion of vacant commercial office units into apartments. Dr. Quintero expressed support for zoning changes but acknowledged it will take time to both reform local laws and develop new housing.
- **Sen. Marsha Blackburn (R-TN)** expressed support for the Affordable Housing Credit Improvement Act ([S.1557](#)), which would revise and expand limits on the Low-Income Housing Tax Credit ([LIHTC](#)). Ms. Calder expressed concerns with the current LIHTC, noting that much of the funding ultimately flows to housing developers rather than tenants. Ms. Yentel also supported the proposed legislation.