A Research Black Paper

HEIRS' PROPERTY IN THE UNITED STATES

Its Destabilizing Structure and Contribution to Black Property and Wealth Erosion

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National Association of Real Estate Brokers

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National Association of Real Estate Brokers

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With Message from Courtney Johnson Rose, President, National Association of Real Estate Brokers

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ACKNOWLEDGEMENTS

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The authors thank Courtney Johnson Rose, President of the National Association of Real Estate Brokers (NAREB), for the opportunity to prepare the Heirs' Property in the United States report. We also thank the NAREB Board of Directors and C Renee Wilson, NAREB Executive Director, for their support in preparing the report.

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ABOUT THE NATIONAL ASSOCIATION OF REAL ESTATE BROKERS NAREB

NAREB was founded in 1947 in Tampa, Florida, as an equal opportunity and civil rights advocacy organization for African American real estate professionals, consumers, and communities in the United States. Our purpose remains the same today, but we are more focused on economic opportunity than civil rights. Although composed principally of African Americans, the REALTIST® organization embraces all qualified real estate practitioners who are committed to achieving our vision, which is "Democracy in Housing."

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MESSAGE FROM THE PRESIDENT

Dr. Courtney Johnson Rose

President
National Association of
Real Estate Brokers, Inc.

January 14, 2025

Since the end of slavery, heirs' property discrimination has been a relentless force behind the loss of generational wealth in African American communities. This bias, stemming from unclear property ownership passed down through generations without a formal will or legal documentation, is a ticking time bomb. When land is maintained as heirs' property, all descendants hold fractional ownership, making the property vulnerable to legal challenges, forced sales, and exploitation by developers or outside parties.

As this comprehensive study demonstrates, public policies have aided private and public entities in the unscrupulous and predatory acquisition of land owned by Black families, creating a long history of effective land theft from the Black community. Heirs' property issues continue disproportionately to impact Black households, thereby making the need for urgent reforms as important today as they were a century ago.

The combination of a lack of access to legal advice and institutions, discriminatory actions by federal, state, and local governmental entities, and legally condoned violence and hate crimes by White supremacists against Blacks has resulted in the exploitative and frequently illegal taking of 90% of the land that was held by Blacks in 1910.

The loss of that property has stifled the economic mobility of millions of Black Americans. The amount of property lost by Blacks translates into millions of acres, and the consequences extend beyond individual families to entire communities. The majority of land lost has been farmland that was painstakingly acquired by Blacks in the years immediately following the emancipation of Black slaves. Agricultural lands represent significant economic asset, a cultural legacy, and a path to generational wealth. The loss has disrupted livelihoods, eroded community stability, and diminished the economic impact of agricultural contributions from African American farmers.

Moreover, some of the farmland that Blacks have lost over the past 100 years has been converted into valuable and exclusive residential and commercial property. This means that the loss of Black farmland is not simply a matter of Blacks playing a lesser role in agricultural production.

With the rise of urbanization and industrialization between 1880 and 1929, many African Americans migrated from the rural South to cities for better economic opportunities. In the North, discriminatory policies such as redlining and exclusionary zoning practices prevented Blacks from buying homes or owning property in desirable neighborhoods. As a result, many Black families were forced to live in lower-income areas with limited access to resources and opportunities for upward mobility.

In recent years, some of these lower-income, Black communities have become attractive to wealthier households as inner cities have enjoyed a renaissance over the past three decades. Due to similar challenges faced by Black farmlands, that is, properties falling into heirs' status, upon the death of the property title holder, the loss of Black land in urban communities is also a problem that demands attention.

At the same time, heirs' property discrimination plagued Black communities, perpetuating cycles of poverty and hindering wealth accumulation. Without clear titles to their land, families could not secure loans or investments for improvements, creating a cycle of disinvestment and decay in their neighborhoods.

The inability of Black heirs to secure clear titles for property owned by their ancestors has obstructed economic advancement opportunities and stripped families of their collective identity and history tied to their land. NAREB calls for reforming laws and providing resources to address heirs' property issues. We are shining a bright light on the sins of the past and demanding that critical steps be taken toward economic justice and remedying these long-standing inequalities.

NAREB thanks James H. Carr and Michela Zonta for their exemplary work telling the story of how generations of Blacks have been robbed of their land, their wealth, and their futures. We recognize the collective effort needed to address this issue and vow to work alongside others to help Black families reclaim and preserve their land and help reverse decades of inequity. We will advocate for a combination of public policy, education, and grassroots actions to protect our remaining land and ensure equitable opportunities moving forward. This work is essential to honoring the legacy of past generations and empowering future ones.

CONTENTS

INTRODUCTION

Much of the literature on the racial wealth gap between Black and non-Hispanic White (White) households has focused on the disparities in homeownership rates between those two demographics. Significant attention has particularly been paid to the discriminatory practices mandated by federal housing agencies during the post-WWII era and continuing blatant, disparate, and systemic discrimination by private institutions and individuals since the passage of the 1968 Fair Housing Law.

Today's Black homeownership rate is 45.7 percent, just slightly higher than in 1968. The gap in homeownership rates between Black and White households is greater today than it was more than half a century ago.

Although federally mandated housing discrimination, as well as other racially motivated and damaging federal urban policy actions, have resulted in the loss of billions of dollars of Black wealth, an equally significant contributor to the Black-White racial wealth gap has been the historical and continuing loss of Black heirs' property. This latter issue has captured relatively little broad public attention within the racial wealth gap discourse until relatively recently.

Heirs' property refers to a type of ownership where multiple generations inherit a family-owned property, typically without a clear legal arrangement proving ownership and defining each person's share.[1] Unfortunately, many people mistakenly believe that if they live in the home of a parent or grandparent who passes away, they become the legal owner because of their occupancy of the property or relationship to the deceased owner. Or a parent may believe that because they have only one child, the parent's ownership of the property will automatically transfer to their child. Neither of these circumstances nor similar assumptions are accurate.

When landowners pass away without leaving a will or clear directives, their assets enter a legal process called probate. In probate, the court values them, pays outstanding taxes, settles debts secured by the property, and designates heirs according to a set of intestate succession rules that typically vary by state.

Less than one-quarter of Black households, compared to more than half of White households, have wills or other legal estate planning documents to efficiently direct the ownership rights of their properties to their heirs. Once designated as "heirs" property, the property can face a litany of negative consequences due to the lack of an identifiable legal title holder. For example, heirs' property does not qualify for refinancing with traditional lenders, it can be ineligible for various federal, state, or local tax breaks or government support, and it is more vulnerable to foreclosure or a forced sale at auction.

The issue of heirs' property is not limited to rural areas, although that is where the greatest loss of Black land has occurred. Heirs' property, for example, represents two percent of all residential properties in Philadelphia, where it is prevalent in predominantly Black neighborhoods.[2]

Partition sales, a legal tool designed to address heirs' property, along with numerous other methods—many of which were illegal and may involve threats or violence[3]—have contributed to the ongoing loss of Black-owned farmland over the last century. Farmland once owned by Black farmers has routinely been absorbed by White owners and has often merged into larger estates that would attract the attention of Wall Street investors. One historically significant example is Kiawah Island, South Carolina, known today for its luxurious resorts but previously home to Blacks after the Civil War when many freed slaves acquired land there.

Kiawah Island is only one of thousands of examples of critical land loss by, and economic exploitation of, Black families that has occurred throughout the United States over the past century. As in the case of federally mandated discriminatory homeownership practices against Black households, the loss of Black heirs' property has frequently been supported or carried out by government entities.[4] Discriminatory practices related to Heirs' property continue today. Only a small number of Black farmers have managed to retain or reclaim their land, leaving the majority without ownership of valuable agricultural land, particularly in the Deep South.[5]

This research highlights five aspects of Black property ownership and wealth accumulation in the United States that are neither well-known nor fully acknowledged by federal legislators or the American public in general. Those facts are as follows:

(1) Blacks owned millions of acres more land a century ago than they hold today;

(2) The largest share of property owned by Blacks was farmland throughout the South, some of which is today among the most expensive property in the U.S.;

(3) The combination of a lack of access to legal advice and institutions, discriminatory actions by federal, state, and local governmental entities, and legally condoned violence and hate crimes by White[8] supremacists against Blacks, has resulted in the exploitative and frequently illegal taking of 90 percent of land that was held by Blacks in 1910;

(4) The discriminatory actions by the Department of Agriculture over the past century have contributed to the loss of Black land and wealth on a level comparable with that inflicted by the discriminatory lending practices of the federal housing finance agencies established in the 1930s; and

(5) the disproportionate loss of Black[9] property continues today due to heirs' property issues, including the lack of accurate estate planning documents ensuring the efficient transfer of Black property owners' rights to their heirs.

Fully understanding the legal and economic consequences of heirs' property designation and successfully addressing them remains critical today for the advancement of Black landownership and successful intergenerational transfer of wealth.

This paper discusses the challenging struggles experienced by former slaves after Emancipation to amass a sizable amount of land despite numerous racist actions by public and private entities.

The paper also discusses recent actions by states and local nonprofits to better ensure the legal transfer of heirs' property to Black descendants of former property owners, as well as ways to ensure current Black property owners secure the appropriate legal documents necessary for a smooth intergenerational transfer of wealth to their intended heirs.

HOMEOWNERSHIP AND THE RACIAL WEALTH GAP

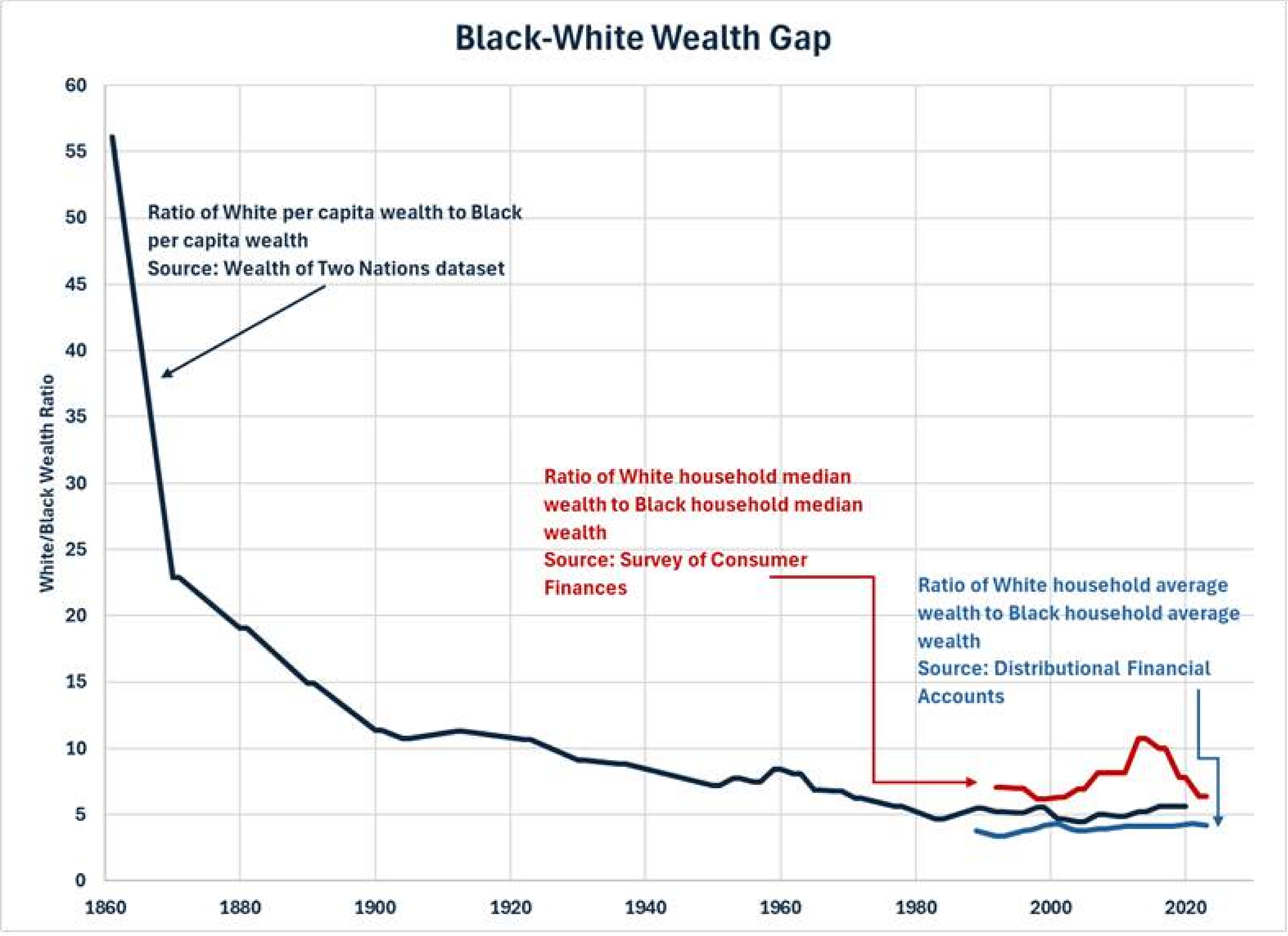
Several analyses of the racial wealth gap document the persistence of unequal wealth between Blacks and Whites.[6] Estimates of the racial wealth gap vary widely based on data sources, definitions, and measures.

While some estimates are based on median household net worth, others are based on average household wealth. Furthermore, wealth data typically used for analyses of the racial wealth gap are available from different sources, such as the Federal Reserve's Survey of Consumer Finances (SCF)[7] and Distributional Financial Accounts (DFA),[8] as well as the U.S. Census Bureau's Survey of Income and Program Participation (SIPP).[9]

A new dataset, compiled through a variety of historical sources and made available by the authors of the working paper titled "Wealth of Two Nations: The U.S. Racial Wealth Gap, 1860-2020,"[10] covers approximately 100 years of absent wealth information, spanning from 1860 to the 1980s, the period when contemporary wealth surveys commenced.

Exhibit 1 presents the evolution of the racial wealth gap, comparing three different measures and data sources. The exhibit shows that the wealth gap between Blacks and Whites narrowed immediately after the abolition of slavery and during the Reconstruction era that lasted between 1863 and 1877.[11] However, this gap leveled off in the early 1980s. Since then, the gap has increased, although its magnitude varies depending on the data utilized to calculate the gap.

EXHIBIT 1



Source: Compiled with data from Board of Governors of the Federal Reserve System. DFA: Distributional Financial Accounts. Distribution of Household Wealth inthe U.S. since 1989. https://www.federalreserve.gov/releases/z1/dataviz/dfa/distribute/table/#quarter:138;series:Net%20worth;demographic:race;population:1,3;units:levels;range:2009.1,2023.4. Accessed Oct. 2024; Derenoncourt, Ellora. US Inequality Data. Wealth of two nations: The U.S. racial wealth gap, 1860-2020. https://sites.google.com/view/ellora-derenoncourt/us-inequality-data. Accessed Nov. 2024; Board of Governors of the Federal Reserve System. Greater Wealth, Greater Uncertainty: Changes in Racial Inequality in the Survey of Consumer Finances, Accessible Data. https://www.federalreserve.gov/econres/notes/feds-notes/greater-wealth-greater-uncertainty-changes-in-racial-inequality-in-the-survey-of-consumer-finances-accessible-20231018.htm#fig2. Accessed Nov. 2024.

Federal Reserve System data on the racial distribution of wealth indicate that in the fourth quarter of 2023, the average net worth – the value of assets that households own minus the liabilities that they owe – was $1,415,470 for White households compared to $332,390 for Black households.[12] That statistic, however, is a conservative estimate of the Black-White racial wealth gap.

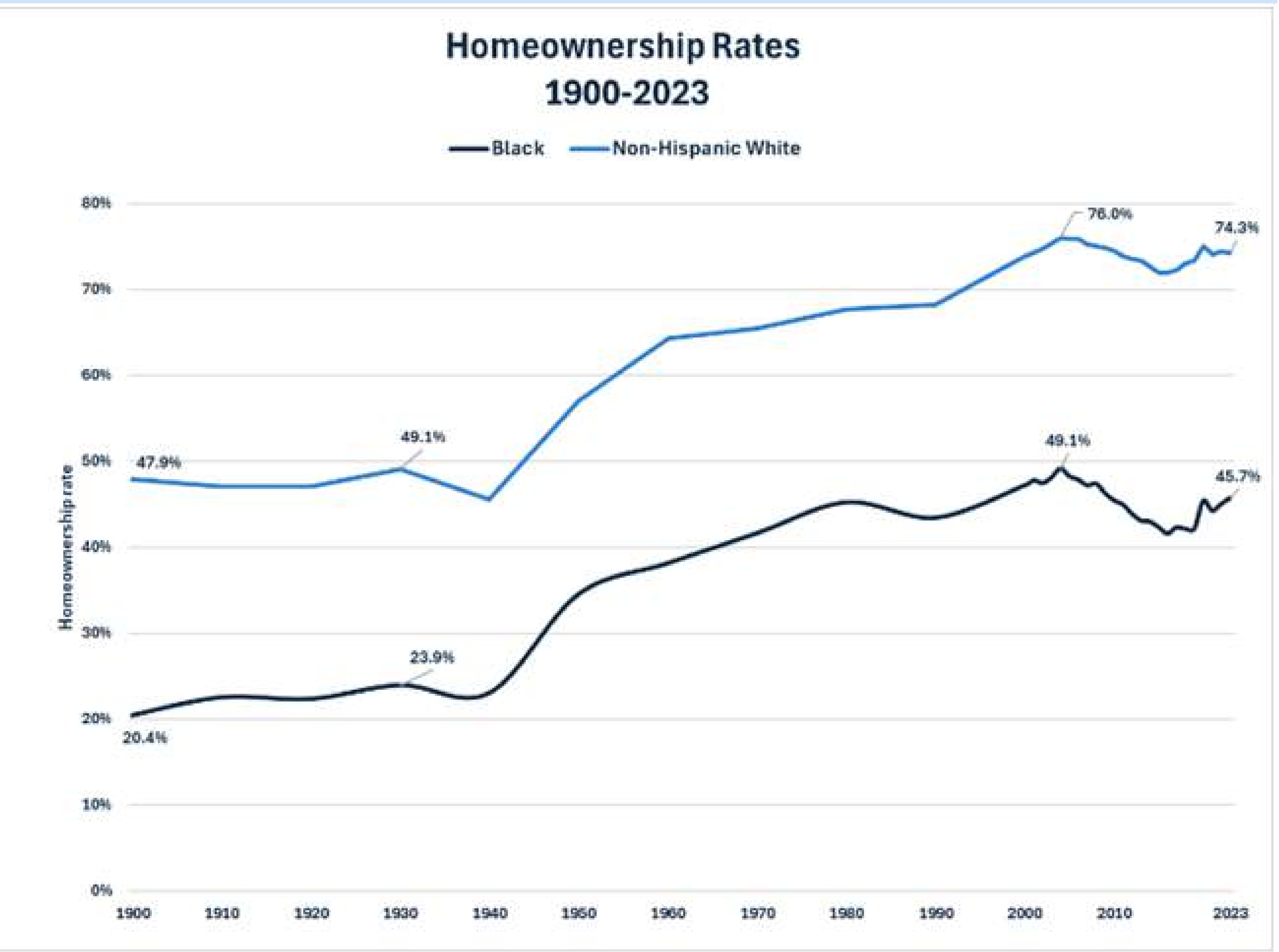
When comparing median household net worth, the U.S. Census Bureau estimates that White households hold ten times more wealth than Black households.[13] The differences are particularly acute at the extreme ends of the wealth spectrum. On the lower bound, nearly 25 percent of Black households, compared to one in twelve White households (8.6 percent), have zero or negative household net worth.

At the high end of the wealth spectrum, nearly 35 percent of White households have a median net worth of $500,000 compared to only 10 percent of Black households. In their book titled *Just Action: How to Challenge Segregation Enacted Under the Color of Law*, Richard Rothstein and Leah Rothstein estimate that Black household wealth is only 5 percent of that of White households.[14]

The enduring nature of the racial wealth gap can be traced back to historical injustices, including slavery and discriminatory policies and practices following its abolition, particularly those related to Blacks' achievement of homeownership, which is considered the most significant contributor to the racial wealth gap.

As multiple editions of NAREB's annual State Housing in Black America have discussed, the Black homeownership rate today is only marginally above the rate at which it stood at the time of enactment of the 1968 Fair Housing Act. Further, the gap between Black and White homeownership has increased over the past half-century (Exhibit 2).

EXHIBIT 2



Source: U.S. Census Bureau. Current Population Survey/Housing Vacancy Survey, 12 Mar. 2024. https://www.census.gov/housing/hvs/data/prevann.html. Accessed Oct. 2024.

In response to the extraordinary economic collapse of the Great Depression, the federal government enacted several housing financial institutions and policies to stimulate the economy through the expansion of homeownership and accumulation of savings in the form of home equity.

Between 1934 and 1938,[15] the Federal Housing Administration (FHA), the Home Owners Loan Corporation (HOLC), the Federal National Mortgage Association (Fannie Mae),[16] and the Federal Home Loan Banks[17] were established. In contrast to previous programs that either excluded Blacks or hindered their involvement, the newly established federal housing finance agencies actively took steps to weaken Black homeownership and the stability of Black communities, ultimately affecting Black wealth negatively.

Government entities have used eminent domain to seize land from Black property owners, often for public projects or urban redevelopment, such as those implemented through the Urban Renewal program of the mid-1950s. Major federal investments in highway development were strategically planned to create barriers between White communities and those with significant populations of Black Americans and other minorities.

Federal programs undermined Black families by encouraging the migration of economic activity away from Black communities and gutting vibrant Black urban neighborhoods and the critical social, religious, and economic infrastructures they provided to Black families.

Numerous studies have documented how federal support for homeownership primarily targeted White borrowers while systematically excluding Blacks and other communities of color.[18]The HOLC, for example, institutionalized redlining, the practice of assessing neighborhoods' quality based on their racial demographics, with predominantly black areas receiving the lowest ratings and being considered too risky for government-backed loans.

Investment consistently bypassed central cities where people of color resided, and slum-clearance initiatives often displaced minority communities without providing suitable housing alternatives, as restrictive covenants barred them from moving to integrated areas. In the post-war era, the FHA and the Veterans Administration adopted the HOLC rating criteria, denying loans to inner-city communities of color and predominantly serving White buyers, thus encouraging White flight and suburbanization.

These practices negatively impacted property values in Black neighborhoods and perpetuated racial segregation. Modern predatory lending practices further impacted Blacks' accumulation of equity and wealth. Lacking access to federal housing finance institutions, most Blacks who purchased homes relied on highly exploitative loan products that made homeownership nearly impossible to achieve or sustain.

NAREB has discussed these predatory loan programs during the mid-to-late 1900s in previous publications.[19] The most significant and recent surge of exploitative home loan products targeting Black households involved predatory subprime mortgage lending, which surged in the early 2000s. By 2008, these products had become so widespread and abusive that they led to millions of mortgage foreclosures and caused the near collapse of the entire U.S. housing finance system.

Housing policies are essential for grasping the racial wealth gap, but they represent only a portion of the history surrounding Black land ownership and the loss of Black wealth. Yet the decline of Black landownership since the late 1800s surpasses the total amount of property that Blacks currently own, as discussed in the next section.

BLACKS LAND OWNERSHIP AFTER EMANCIPATION

The issue of Black land loss dates back to the mid-1800s. While the Emancipation Proclamation officially freed enslaved Blacks, who played a critical role in the agricultural economy, it failed to guarantee their right to own land. After the American Revolution, the Land Grant and Homestead Grant programs provided land to Revolutionary War veterans as compensation.[20]

Numerous Black leaders and abolitionists recognized the value of land ownership for wealth creation and advocated for land redistribution for the newly freed Black population.[21] For a brief time, the federal government aimed to make the Homestead program more equitable and accessible to people of color, especially those formerly enslaved who had not received any compensation for their years of forced labor.

In January 1865, Gen. William T. Sherman issued Special Field Order No. 15, which promised formerly enslaved people 40 acres of confiscated land in South Carolina, Georgia, and northern Florida, along with loaned mules. However, President Andrew Johnson's Amnesty Proclamation in May 1865 reversed these efforts, resulting in the eviction of many freed people from their lands later that year. The Freedmen's Bureau's Circular No. 15 and Johnson's pardons facilitated the return of land to former Confederate owners, undermining the bureau's mission to assist newly freed individuals.[22]

The Southern Homestead Act (SHA) was enacted in 1866 to provide land to Blacks and loyal Whites. Initially, it offered unoccupied southern land, but by 1867, even landless former Confederates could apply. However, much of the land was un-farmable, and administrative processes were slow, with few land offices available. Many recently freed individuals had no cash or experience with the government, complicating the application process. Additionally, they were often tied to labor contracts that could lead to re-enslavement if broken.

By the end of the SHA in 1876, about 28,000 individuals received land, but only 4,000 to 5,500 were Black, while over 1.6 million White families benefited from the original Homestead Act and were granted hundreds of millions of acres.[23]

Blacks also gained property through the South Carolina Partition Law (1868). Black landowners, however, were vulnerable to land loss due to historical inequalities and lack of legal representation. Georgia's Homestead Exemption Law (1867) protected some properties from creditors but excluded jointly owned land, placing additional financial strain on Black landowners, who risked the loss of their ancestral property.[24]

In 1872, Congress revised the Homestead Act to ban discrimination based on “race or color” in granting homesteads. However, like the Civil Rights Act of 1866, measures to enforce anti-discrimination laws became ineffective after Reconstruction.

In the absence of government-led land redistribution, many Black farmers often entered unfair contracts with White landowners, becoming sharecroppers or tenant farmers. Sharecroppers received a small plot of land, tools, seeds, and supplies, agreeing to give a portion of their harvests to landowners and keeping the rest. Tenant farmers, on the other hand, paid cash to rent land and provided their own seeds and equipment, which gave them slightly better conditions and more control over farming and finances.
Both arrangements were exploitative. Although chattel slavery was abolished, White landowners continued to ensure a steady supply of Black labor and imposed arbitrary rules on their tenants' lives. These agreements often left farmers in debt, as the rent was commonly higher than the profits obtained from their crops. Consequently, many sharecroppers became trapped in a cycle of debt with little opportunity to break free.

To maximize their income, sharecroppers relied heavily on cash crops like cotton, which provided some profits but gradually depleted the soil's fertility, ultimately making future harvests less productive. This cycle has led many historians to characterize tenant farming and sharecropping as a form of "slavery under another name."[25]

Most importantly, in the 1870s, Southern states began implementing Black Codes and Jim Crow laws, which restricted economic opportunities for African Americans and pushed many into sharecropping. Crop lien laws allowed landowners to provide credit to sharecroppers based on expected yields, often leading to debt and dependency.

Debt peonage further entrenched this cycle by enabling landowners to keep sharecroppers in perpetual debt through exploitative practices. In response, some states passed tenant farming acts to offer limited protections for sharecroppers, regulating contracts and evictions.

Jim Crow laws were soon enacted across the country to re-establish conditions akin to slavery and to create opportunities exclusively for White people while preventing Blacks from accessing societal benefits.[26] From that time on, until the Civil Rights Act of 1964, Black Americans were cut off from estate planning, formal deeds, federal loans, and grants.[27]

Most Black farmers acquired land through their connections and collaborations with White landowners.[28] Landowners capitalized on the opportunity to incentivize tenant farmers by allowing them the chance to purchase specific parcels of land in return for improved farming practices.

However, some Blacks were able to purchase their own land largely due to support from the Black community. The Second Morrill Act of 1890 led to the establishment of state agricultural colleges for black students. Key figures like Booker T. Washington were vital in establishing agricultural colleges and extension services aimed at Black farmers. These programs provided enhanced training, enabling farmers to grow a broader range of crops and boost their earnings, thus freeing them from reliance on the cotton market.

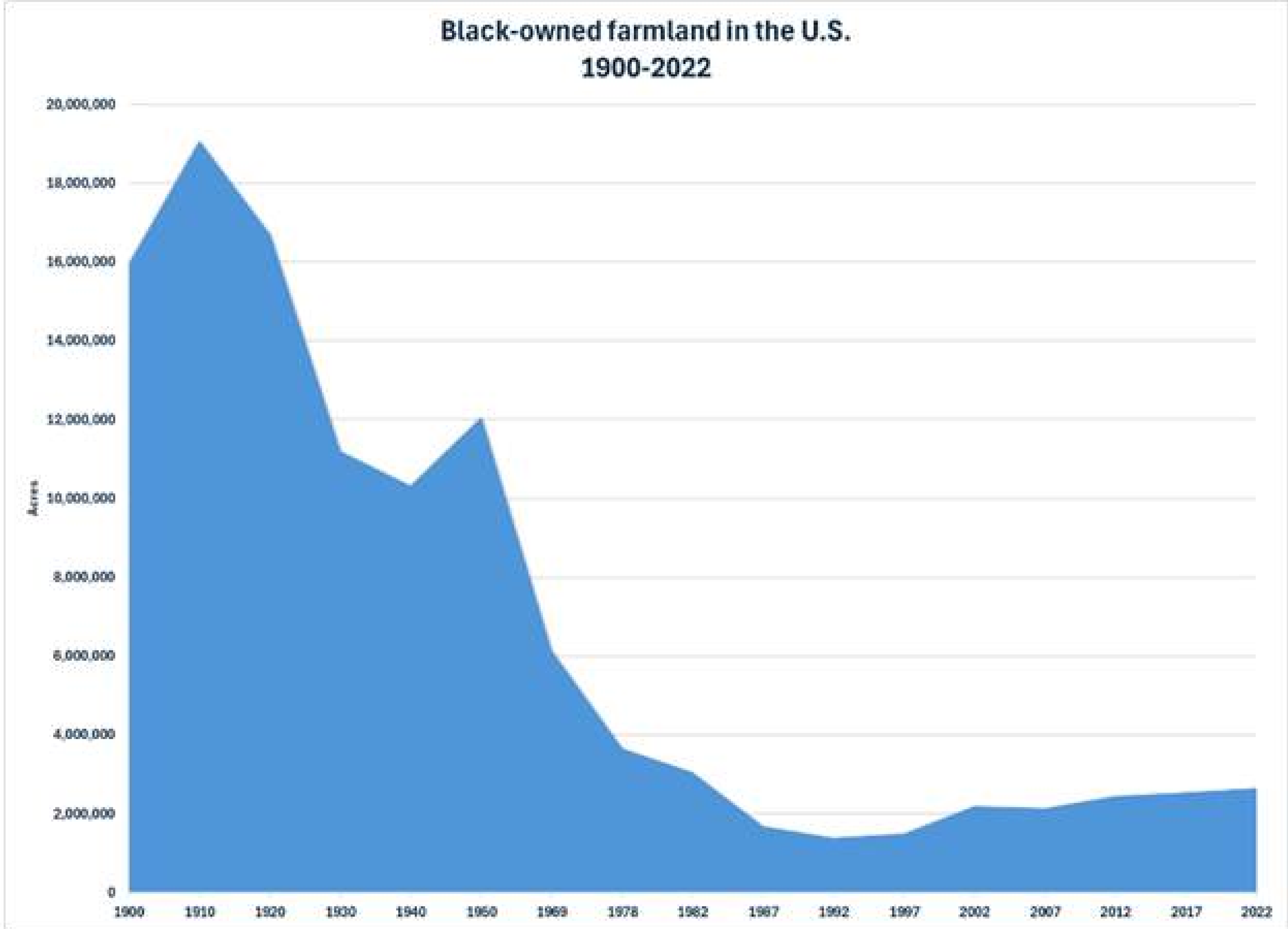
Additionally, cooperatives formed within Black churches played a role in pooling resources for land purchases, although their development was often limited by "Black codes" that curtailed the ability of Black individuals to create their own financial institutions.[29]

REMARKABLE BLACK LAND OWNERSHIP SUCCESS DESPITE RELENTLESS OBSTACLES

Even with increasing segregation and disputes over land ownership, freed slaves and their descendants were able to acquire a substantial amount of land during the Reconstruction era. Several factors in the late 1800s and early 1900s played a role in the growing financial independence of Black farmers, including rising global cotton prices and the reduction of farmland prices in the East due to westward expansion. White farmers claiming land under the Homestead Act began selling their Eastern farms at lower prices, giving Black farmers a chance to buy land.

Despite facing numerous challenges, such as exploitation by White creditors, harsh labor demands from White planters, disenfranchisement by White politicians, and violence from White mobs—including arsons and lynchings[30]—over 425,000 Black families managed to accumulate enough resources to buy land in the Jim Crow South.[31] From 1875 to 1910, Black land ownership grew from about 3 million acres[32] to approximately 19 million acres, which is about 2 percent of U.S. farmland (Exhibit 3).[33]

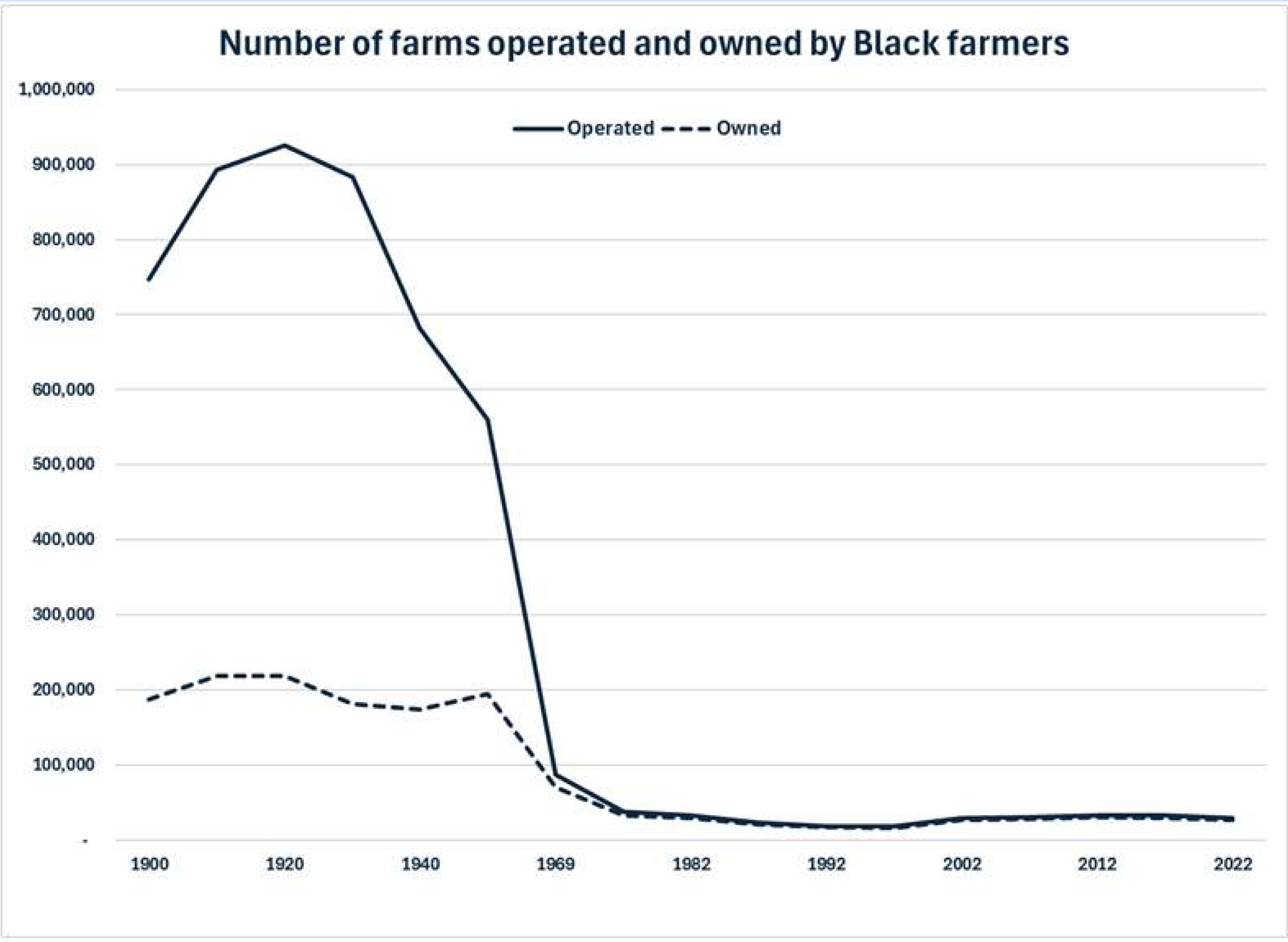
EXHIBIT 3



Source: Compiled with data from U.S. Census Bureau and U.S. Department of Agriculture. Census of Agriculture. Selected years. U.S. Department of Agriculture, National Agricultural Statistics Service, Accessed November 2024.

In 1890, 120,738 Black and mixed-race families owned their farms. That meant that Black and mixed-raced families represented 22 percent of the farms they operated.[34] In 1900, Black farmers owned 187,797 farms or 25 percent of the farms they operated.[35] In 1920, the number of Black farmers reached a peak of 925,710, equivalent to 14 percent of all farm operators (Exhibit 4). Despite this increase, many Black farmers remained sharecroppers or tenant farmers.

EXHIBIT 4



Source: Compiled with data from U.S. Census Bureau and U.S. Department of Agriculture. Census of Agriculture. Selected years. U.S. Department of Agriculture, National Agricultural Statistics Service, Accessed November 2024.

THE STRUGGLE TO RETAIN BLACK LAND OWNERSHIP

Black farmers' achievements in landownership were short-lived. Throughout the 20th Century, Black farmers began to lose their land for several reasons, especially heirs' property issues, where descendants would inherit land without any valid legal documentation proving ownership. Various laws regarding inheritance and property rights affected Black landowners in the U.S.

The Great Depression of 1929 brought about major changes in U.S. agriculture, particularly impacting sharecroppers and Black farmers. As farming became more mechanized,[36] landowners preferred to cultivate their own land, leading many Black families to leave farming for industrial jobs in urban areas during the Great Migration.

New Deal initiatives were designed to lower crop production, such as limiting cotton cultivation, which ultimately benefited landowners but worsened conditions for sharecroppers. New Deal liberals relied on Southern lawmakers to advance their policies, which granted significant influence on the South's elite over legislative matters. This elite group was committed to preserving the region's racial hierarchy and consistently united to defeat any initiatives that posed a threat to it.[37]

Agricultural lending institutions commonly refused loans to Black farmers solely because of their race. The Federal government's New Deal initiative, particularly through the Farmers Home Administration (FmHA), was notorious for rejecting loan applications from Black farmers while approving those from White farmers. When Black farmers did receive loans, they typically faced higher interest rates compared to their White counterparts. In some cases, the disbursement of loans was intentionally postponed, causing farmers to miss the planting season and suffer significant financial setbacks.[38]

During this period, the government launched extensive subsidy programs that saw federal funding for farms increase from 3 percent of farm income in 1929 to 31 percent by 1940. Most of these funds were directed toward affluent White landowners. Southern lawmakers, concerned about federal officials disrupting the established racial hierarchy in their region, made certain that the management of these agricultural programs and funds remained local and under White authority.[39]

Following the *Brown v. Board* decision that overturned the 1896 Plessy v. Ferguson principle of "separate but equal" that was the federal foundation of Jim Crow laws, Southern White politicians and elites—concerned about the potential threat to their authority posed by their Black constituents—resorted to various tactics to maintain their power. This included leveraging the influence of the USDA in the predominantly agricultural Southern states.[40]

By 1961, a massive amount of Black land had already been lost when the Kennedy Administration introduced a USDA loan program designed to support farmers. This program was managed by locally elected officials who frequently denied loans to marginalized Black farmers, especially those unable to demonstrate legal ownership. In contrast, they provided much more favorable terms to White farmers.

As the USDA took control of crop pricing and loan assistance, the trend toward mechanization increasingly advantaged large-scale farmers, enabling landowners to consolidate more land. Meanwhile, Black farmers found it difficult to secure USDA loans,[41] often experiencing lengthy delays in their applications, which forced them to resort to expensive private loans.

This situation led Black farmers into debt, with the looming threat of foreclosure exacerbated by collusion among USDA officials, bankers, and White farmers who sought to undermine the economic strength of Black farmers. Furthermore, certain USDA representatives manipulated agricultural statistics to discredit the abilities of Black farmers, further restricting their access to financial support.[42]

Beyond USDA programs, discriminatory practices by government officials endangered Black farms. Assessors would deliberately overestimate property values, causing property taxes to rise and pushing Black farmers into crippling tax debt, which could ultimately lead to their farms being sold off in tax sales to White landowners at a significant discount.

Moreover, both federal and local governments often employed eminent domain—the compulsory acquisition of land—to take over Black-owned farms, frequently for public projects that ultimately did not materialize.[43]

In addition to land loss due to state-sanctioned violence, intimidation, and lynchings targeting Black farmers and causing their properties to be lost or taken by neighboring White residents, Black farmers also faced discrimination from banks and financial institutions.[44] Many were denied access to federal agricultural benefits, which were often funneled to White farmers by local administrators.

A large portion of land loss in Black communities is primarily due to sales partitions. Companies and land investors have engaged in legal actions specifically to seize Black-owned properties, often disregarding the desires of the Black landowners.[45] Partition sales are particularly common in areas where heirs' property has a high market value.[46]

An egregious example is the case of Black-owned land along the Gullah-Geechee coast of South Carolina, where descendants of enslaved Africans have been fighting to preserve family land and cultural legacy.[47] Moreover, misuse of eminent domain by the government that left Black landowners under-compensated, discriminatory tax assessments, and coordinated discrimination from U.S. Department of Agriculture agents further contributed to land loss.

The most significant loss of Black land occurred during the final quarter of the twentieth century and the early part of the twenty-first century.[48] Numerous reports have emerged detailing instances of land loss among Black individuals and communities.[49]

By 1997, Black farmers had lost approximately 90 percent of the farmland they owned in 1910. A recent study by Dania V. Francis and colleagues estimated that the current compounded value of Black land loss from 1920 to 1997 is approximately $326 billion.[50] In 2022, Black farmers owned only 2.6 million acres, representing a mere 0.29 percent of U.S. farmland.[51]

THE ENDURING LEGACY OF BLACK LAND LOSS DUE TO HEIRS' PROPERTY ISSUES

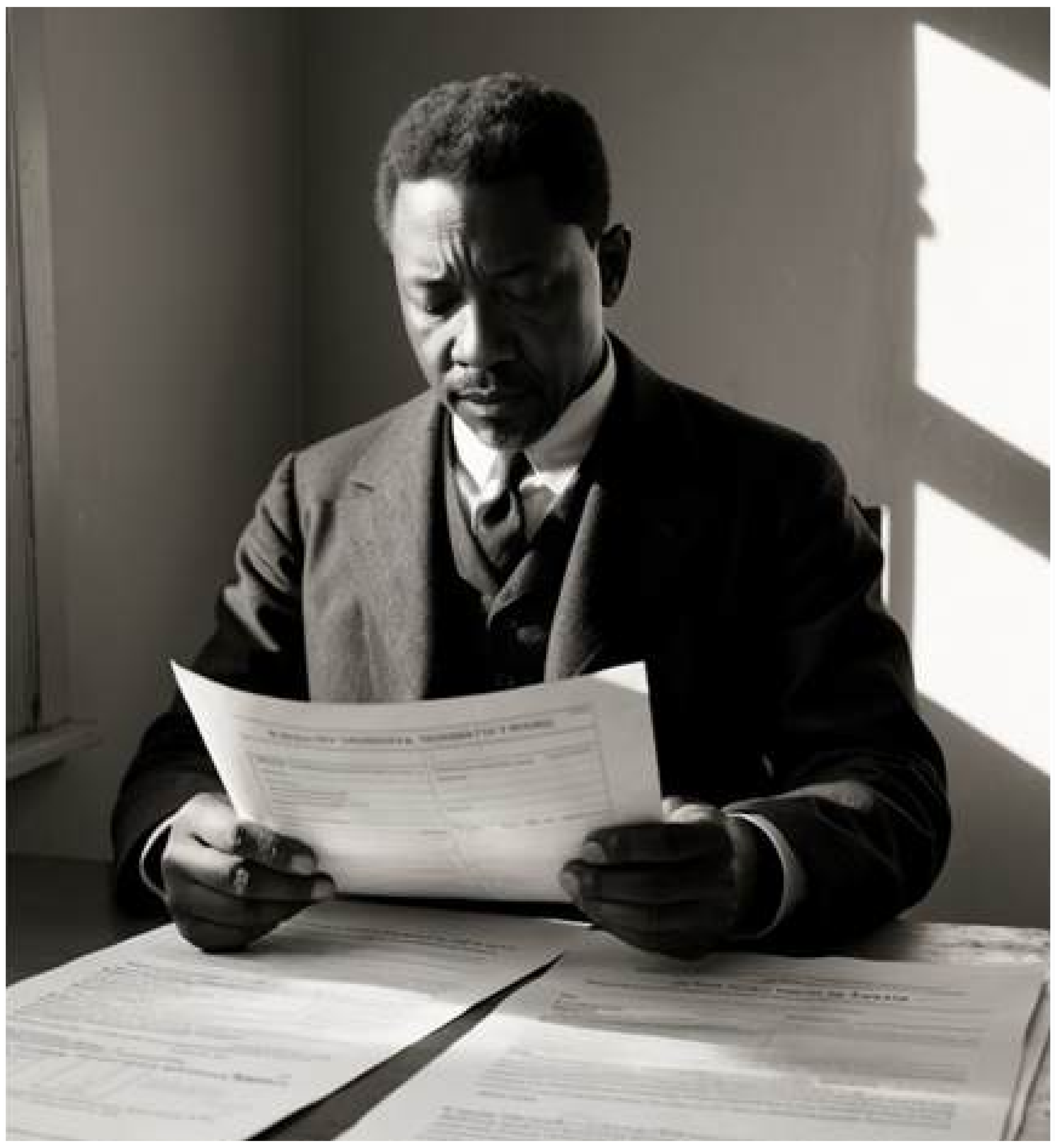
Heirs property has historically represented and continues to be a key factor in the involuntary loss of land among Black families.[52] Heirs' property is particularly common among landowners in the Black community.[53] Reports indicate that half of Black-owned land in the U.S. is classified as heirs' property, with estimates suggesting that as much as half of the 7 million acres of Black-owned land in the South may fall into this category, much of it remaining unused.[54]

Following Emancipation, many Black individuals and families acquired land by investing their own resources into it, but due to a lack of financial and legal means to establish official title transfers for future generations, the land has remained classified as heirs' property for years, sometimes even generations. Without a clear title, Black families have been excluded from the wealth that could be generated from their property.[55]

Intestate succession laws have typically favored biological heirs over non-biological relatives or adopted children, which could disproportionately impact Black families who often had complex family structures due to historical factors such as slavery and migration. In addition, historical discrimination and a lack of resources have made estate planning difficult for many Black farming families.[56]

Determining land ownership can sometimes take years. To clear a title, it is necessary to research the family lineage, carry out land surveys, and thoroughly examine various other documents. Handling these complicated issues usually necessitates the assistance of a lawyer, yet there are not many who focus on estate and heirs' property cases. This can lead to significant costs for legal fees and appraisals.[57]

Limited access to the legal system[58] greatly impacted Black landowners' ability to retain their land. After the Civil War, there were hardly any Black attorneys, and White lawyers often would suffer a stigma if they decided to represent a Black family.[59] Many Black landowners were land-rich but cash-poor, so they could not afford legal representation.[60] Additionally, during the Jim Crow era, Black communities did not trust White Southern courts, which were hostile to Black equality.[61]



Scholars suggest that a significant number of Black households still choose not to engage an attorney for estate planning or probate matters due to their lack of trust in the legal system, past negative experiences with legal issues, and misconceptions about the legal consequences of owning property as tenants in common.[62]

Heirs' property typically has numerous heirs, and this number tends to grow with each new generation. Over time, each new generation—like grandchildren and great-grandchildren—becomes part of the ownership, leading to a situation where a single piece of land may be co-owned by many individuals, some of whom might not even realize they have a share in it.[63] The absence of a specified heir makes it challenging to make decisions about the land.

Fractured ownership is frequently mentioned as a major issue related to heirs' property, as it leads to serious complications, such as ambiguous titles and conflicts over how the property should be managed or sold, ultimately hindering the ability to transfer ownership.[64] Since each heir holds a fractional ownership of the land, major decisions affecting the property require consensus among all heirs.[65]

Disagreements can result in court-ordered partition sales, which often favor exploitative buyers, particularly wealthy developers who prey on unaware heirs. Often, developers hold an advantage due to their financial resources and familiarity with the process. This tactic can force the sale of the entire property if not all heirs agree.

Historically, the legal mechanism of partition sales disproportionately affected Black families, whose property rights were often undermined by more powerful White speculators. The Torrens Act, initially intended to simplify land title registration, was exploited to facilitate partition sales. This allowed one co-owner to sell the property without notifying or gaining consent from other co-owners.[66]

Often, Black heirs lacked the resources to make competitive offers during a sale and were unable to leverage their heirs' property as collateral for a loan, which would help them engage more effectively in the bidding process.[67] Therefore, valuable land owned by Black families was sold off at public auction, usually at prices well below market value, leading to loss of wealth and property.

Fractured ownership can also increase the risk of property tax lien foreclosures on family homes. Heirs are typically ineligible for the "homestead exemption," which lowers property taxes for owner-occupied homes. Without this exemption, rising property values may lead to increasing tax bills. Heirs may miss property tax bills because they are not recorded as owners, leading to unpaid taxes over the years.

Tax sales represented another avenue for land seizure. Heirs often lack access to tax relief programs available to owner-occupants due to insufficient information or proof of ownership.[68] By the time heirs become aware of their tax obligations, it might be too late to prevent a foreclosure sale, and they may find the tax debt too high to settle quickly. Historically, many Black landowners living on fixed incomes struggled to pay their property taxes. When they fell behind, their properties were auctioned off, often benefiting developers.[69]

In some states, county revenue offices allow anyone to make tax payments. If the owners of a property fail to pay their taxes, the individual who covers those taxes can acquire a tax deed for that property.[70] Unpaid taxes or overdue bills can result in court-mandated divisions of the land or forced sales,[71] ultimately leading to foreclosure and the loss of a property.[72]

Without a clear title assigning ownership to one individual, land classified as heirs' property could not access federal aid programs, further exacerbating the challenges faced by Black farmers in obtaining assistance from the USDA and other organizations. Historically, it has been tough for Black farmers to access USDA programs because they typically could not fulfill requirements such as proving ownership or control of the land, which is necessary to obtain a farm number.

This farm number is crucial for eligibility in various USDA programs, including loans, involvement in county committees,[73] and disaster relief.[74] The impact of the latter issue was starkly illustrated in 2005 after Hurricane Katrina struck New Orleans, where approximately 25,000 families with heirs' property applied for rebuilding grants. According to one real-estate lawyer in Louisiana, title disputes prevented up to $165 million in recovery funds from being claimed.[75]

Many heirs who inherit property may struggle with an existing mortgage, as mortgage companies often refuse to accept payments from non-borrowers or provide information about the loan. When mortgages fall too far behind, heirs risk losing the home through foreclosure, jeopardizing their equity. This situation makes them vulnerable to real estate speculators who seek to buy the property or a partial interest for much less than its value. If a speculator acquires even a small ownership stake, they can force a sale, benefiting from the profit, while the other heirs lose both equity and possibly their home.[76]

Finally, heirs' property cannot be used as collateral for loans related to farmland, home mortgages, or business growth, thereby hindering potential wealth creation. Possessing "dead capital" in the form of heirs' property puts families at risk of being affected by laws that can erode generational wealth, leading to increased financial hardship and displacement due to involuntary land loss.[77]

ADDRESSING BLACK FARMERS' LOSS OF LAND AND HEIRS' PROPERTY ISSUES

The Civil Rights Movement brought increased attention to government agencies, revealing discrimination in USDA loan programs aimed at Black farmers, as reported by the U.S. Commission on Civil Rights in 1965. To tackle these issues, the USDA established a civil rights office; however, this office has often been ineffective and hard to access. Changes in political leadership have impacted its functionality—under Reagan, it was dismantled, but it was reinstated in 1996 under President Bill Clinton, primarily to handle complaints. Progress continued to stall during the George W. Bush administration and Donald Trump administrations.[78]

Unfortunately, during the Obama administration, Tom Vilsack's eight years as head of USDA offered fewer loans to Black farmers than those granted under the previous Bush administration. Between 2006 and 2016, Black farmers faced foreclosure rates six times higher than their White counterparts.

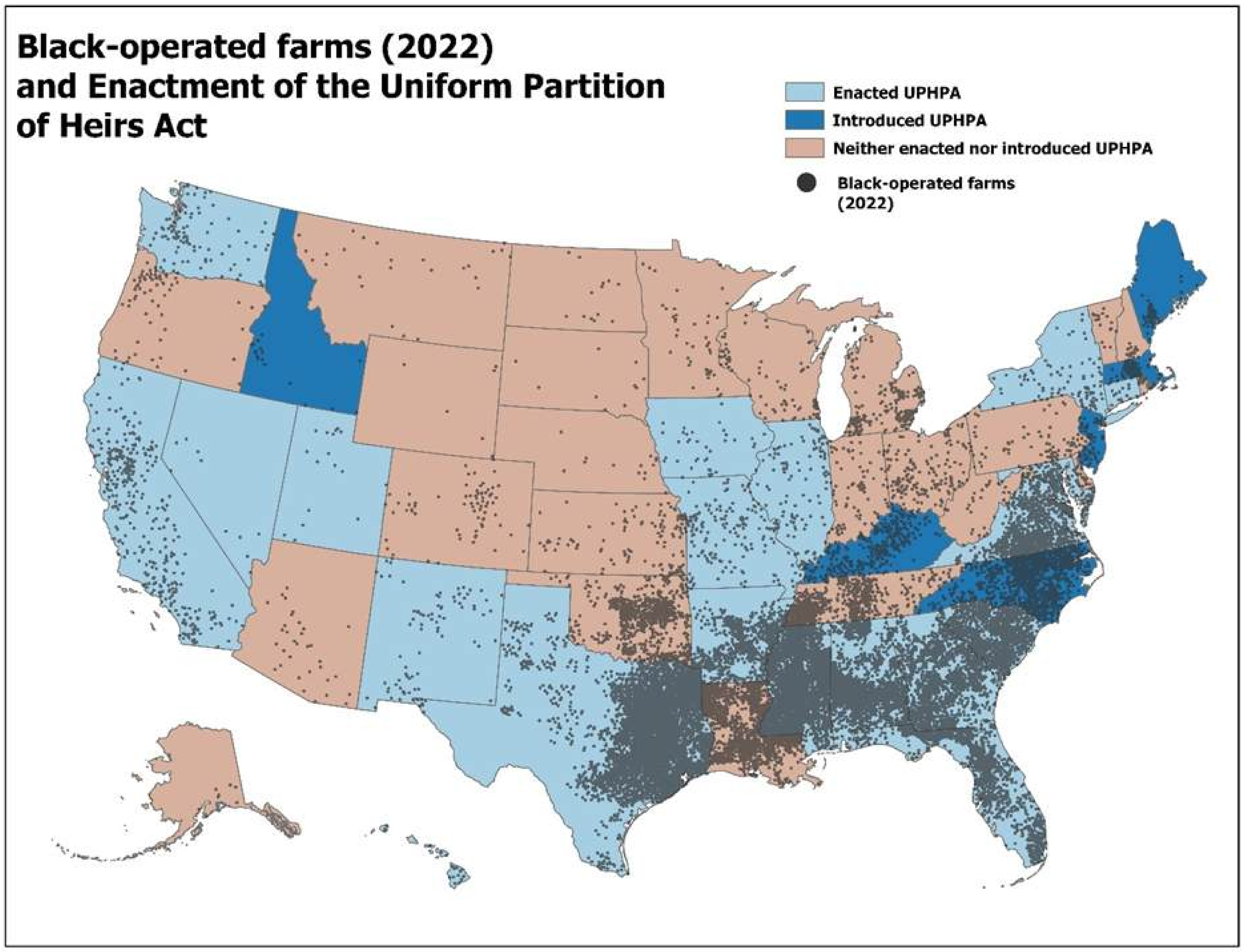
In 1997, John Boyd Jr. and 400 other Black farmers filed a significant lawsuit, Pigford v. Glickman, against the USDA, claiming that USDA officials overlooked complaints from Black farmers and that they faced denial of loans and support due to widespread discrimination. The case was resolved in 1999, resulting in the government providing $50,000 to each of over 16,000 farmers, just a fraction of the financial losses caused by racial discrimination.[79]

Although most states have amended their discriminatory land laws, some property laws are still under review. Those Black farmers who have retained their land often struggle, earning less than $40,000 annually compared to more than $190,000 for White farmers, and their average landholding is about a quarter of that of White farmers.

To protect heirs' property owners from losing their homes and equity through forced partition sales, 23 states have adopted the Uniform Partition of Heirs' Property Act of 2010 (UPHPA)[80] (Exhibit 5). The legislation provides family members with the initial opportunity to purchase, directs most sales to the open market, and requires that courts consider non-economic factors, such as the impact of eviction and the historical significance of the property, when deciding on sales.[81]

The UPHPA establishes safeguards, including requiring notice to all co-owners, mandating an independent property appraisal, and granting co-owners the right to buy out the petitioning co-owner's interest. If no buyout occurs, courts must consider various factors before deciding between partition-in-kind or partition-by-sale. Although it offers protection, fractional owners often struggle to secure resources for buyouts. The New York legislature has introduced further enhancements to the UPHPA for better protection of heirs' property owners.[82]

EXHIBIT 5



Compiled with data from U.S. Department of Agriculture. 2022 Census of Agriculture. U.S. Department of Agriculture, National Agricultural Statistics Service, https://www.nass.usda.gov/Publications/AgCensus/2022/index.php, accessed Nov. 2024; Uniform Law Commission, Partition of Heirs Property Act, https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d, accessed Nov. 2024.

In the American Rescue Plan of 2021, the Biden administration proposed $4 billion in targeted debt relief to farmers of color as part of the COVID-19 stimulus. However, due to pressure from banks and lawsuits claiming "reverse discrimination," the payments were never issued, leaving many Black farmers at risk of foreclosure.[83] The program was later modified to include all financially distressed borrowers, which diluted its focus on addressing USDA's historical racism.[84]

Furthermore, the American Rescue Plan allocated $1.01 billion to tackle the impacts of historical discrimination within USDA programs through a series of efforts, including (1) Enhancing land access and heirs' property initiatives, (2) providing grants for outreach, education, and technical assistance to mitigate barriers to USDA program access, (3) investing in the next generation of agricultural leaders through significant support for minority-serving institutions, and (4) backing the USDA Equity Commission's efforts to promote equitable treatment in all USDA programs.[85]

Despite these efforts, USDA programs still provide much lower compensation to Black farmers compared to White farmers. In 2022, only 36 percent of Black farmers were granted USDA direct loans – loans available to farmers who cannot access credit elsewhere for the purchase of land and farming equipment or operational costs.[86]

Several nationwide initiatives have been working to restore land to Black landowners. For example, the Justice for Black Farmers Act was introduced in Congress in 2023 to expand Black-owned farmland by up to 32 million acres through land grants over the next decade.[87] This legislation would also boost funding for a USDA program to resolve issues of heirs' property.

To address the serious issue of continuing property loss to heirs' property designations, the Federation of Southern Cooperatives has advocated for policy changes that were successfully implemented in the 2018 Farm Bill (Farm Bill).[88] This legislation allows heirs' property operators to use alternative documentation, such as five years of tax documentation showing land occupation, to be eligible for USDA programs and support. Additionally, that bill included a $5 million amendment to help foster intergenerational wealth.

In July 2021, three years after the enactment of the Farm Bill, the USDA announced the Heirs' Property Relending Program.[89] This initiative will allocate $67 million in loans to assist with property disputes that have historically prevented certain producers and landowners from accessing USDA services. Heirs can utilize these loans to address title issues by financing the purchase or consolidation of property shares and covering costs related to succession planning.[90]

On July 31, 2024, the Biden Administration issued relief checks to 43,000 applicants – many of whom are African American – under the 2022 Inflation Reduction Act's Discrimination Financial Assistance Program (DFAP) just before the program was temporarily paused by a federal court. The program aimed at aiding farmers, ranchers, and forest landowners who experienced discrimination prior to January 2021.[91]

RECOMMENDATIONS TO ELIMINATE FURTHER LOSS OF BLACK LAND TO HEIRS' PROPERTY DESIGNATIONS

Tackling the issues of Black land loss and heirs' property requires strong action from policymakers. Advocates continue to emphasize the need to address heirs' property and help Black families better utilize and benefit from their land, transforming it into a source of wealth. For example, the National Consumer Law Center recently published a comprehensive set of legal strategies to address the challenges of heirs' property and prevent home loss.[92] Similarly, the Union of Concerned Scientists has proposed a set of policies that Congress should adopt to reform heirs' property.[93]

NAREB is pursuing several initiatives related to improving heirs' property transfers. Those efforts include:

1. **NAREB Partnership with the U.S. Department of Agriculture.** NAREB has established the Building Black Wealth Tour, which focuses on penetrating targeted Black communities to increase education and awareness of real estate and its value. That initiative has already demonstrated enormous success. For example, on Saturday, April 13, more than 25,000 individuals flocked to events nationwide, marking the National Building Black Wealth Day as designated by the National Association of Real Estate Brokers (NAREB). In over 100 cities, seminars and one-on-one sessions delved into a wide range of topics, from homeownership and property investment to business startups and other wealth-building opportunities. Each location drew an impressive average of 200 to 250 attendees, with an additional 2,000 individuals signing up for virtual sessions via Zoom.

   NAREB's Building Black Wealth Tour has already attracted numerous partners, including the African American Mayors Association, the National Bar Association, Delta Sigma Theta Sorority, Alpha Phi Alpha Fraternity, and Phi Beta Sigma Fraternity. Major sponsors have included Wells Fargo and Fannie Mae. The HUD-approved NID Housing Counseling Agency provided free credit reports at the events and continues to counsel registrants online.

   NAREB's Partnership with the USDA Center for Faith-Based and Neighborhood Partnerships (CFBNB) has extended the reach and substantive content of NAREB's current Black Wealth Tour efforts by expanding their outreach specifically to Black farmers. Events have been hosted in Philadelphia, PA; Phoenix, AZ; Detroit, MI; and Hampton, VA. NAREB led the coordination and logistics for event implementations and worked with the USDA CFBNP to establish the content of each forum. USDA CFBNP coordinated USDA participation in summits. USDA CFBNP provided funding per market for the events.

2. **Memorandum of Understanding with the National Bar Association.** The National Bar Association (NBA) is the nation's oldest and largest network of predominantly African-American attorneys and judges. Founded in 1925, it represents the interests of approximately 65,000 lawyers, judges, law professors, and law students. NAREB has recently joined with the NBA, which also has prioritized addressing effectively the challenges faced by Black households in the transference of properties from ancestors to their heirs. The partnership involves the pairing of two unique and cornerstone organizations of the Black community; NAREB, which is comprised of real estate experts who deal directly with clients whose property may fall into heirs status, and the NBA, which is comprised of legal experts who are best positioned to tackle the complex maze of property title-related legal issues on behalf of NAREB clients and constituents. The partnership is in its infancy but has enormous potential, particularly working to assist in implementation of state and possible national legislation. NAREB has engaged the National Bar Association in their signatory course titled "What to do with Big Mama's House," which has been hosted as part of the NAREB Black Wealth Tour in several dozens of cities across the country to help provide families with information and resources to begin the process of navigating through their heirs' property issues.

3. **Support for National Heirs' Property Protection Legislation**. Several pieces of legislation have recently been introduced in the U.S. Congress to protect heirs' property, including the Heirs Empowerment and Inheritance Rights (HEIR) Act," the "Heirs' Estate Inheritance Resolution and Succession (HEIRS) Act," The Goods Deeds Act,' and "Uniform Partition of Heirs Property Act." NAREB has formally endorsed the latter legislative proposal, which was sponsored by Representatives Nikema Williams and Lizzy Fletcher. That act supports states and nonprofits to assist in the efficient and equitable transfer of property to family members whose property falls into heirs' status.

   That bill provides, in part:

   (1) —The Secretary of Housing and Urban Development (in this Act referred to as the ''Secretary'') shall, not later than 1 year after the date of the enactment of this section, establish a grant program that provides amounts to States that enact or adopt the Uniform Partition of Heirs Property Act as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 2010 or a similar law that the Secretary determines is a substantial equivalent.

   (2) Each State that receives amounts under this section shall use such amounts to assist residents of such State with bona fide expenses relating to establishing and documenting property ownership rights or settling a decedent's estate, including fees and costs related to obtaining title reports and title abstracts, copies of public records, land surveys, heirs search or tracing services, recording and filing fees, notary fees, and legal fees and expenses.

   (3) The Secretary of Housing and Urban Development shall carry out a program under this section to provide grants to qualifying nonprofits (to be used for) housing counseling and legal and financial assistance related to title clearing and home retention efforts for heir(S) property owners.

CONCLUSION

Land ownership offers significant advantages, including greater control over work and personal time, enhanced access to investment capital, and improved educational opportunities for children, contributing to upward mobility. This intergenerational wealth aspect makes the historical loss of Black landownership crucial in understanding today's racial wealth gaps.

Many Black landowners who lost their land lost a key asset for wealth creation, while their White counterparts benefited from easier access to capital, education, and homeownership. Consequently, the wealth gap initially created by slavery and systemic injustices has continued to widen across generations.[94]

Heirs' property significantly contributes to the land loss crisis among Black families, underscoring the need for effective estate planning for those wishing to keep their land in the family. By resolving these cases and consolidating titles, Black families could better utilize and benefit from their land, transforming idle assets into sources of wealth.

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