OBAMA-BIDEN TRANSITION PROJECT

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December 2008

The Future of Fair Housing:

Report of the National Commission on Fair Housing and Equal Opportunity

NFHA National Fair Housing Alliance

LCCR Education Fund

Lawyers' Committee for Civil Rights Under Law

LDF Opened Educate Empower

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COMMISSION HEARINGS

July 15, 2008
Chicago, Illinois, Access Living

July 31, 2008
Houston, Texas, National Bar Association Annual Conference

September 9, 2008
Los Angeles, California, Mexican American Legal Defense and Educational Fund

September 22, 2008
Boston, Massachusetts, Suffolk Law School

October 17, 2008
Atlanta, Georgia, Morehouse College

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Executive Summary

> *"Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."*
>
> Dr. Martin Luther King, Jr.

That "inescapable network of mutuality" described by Martin Luther King, Jr. begins in our communities. Where we live shapes our lives, our interactions with others, our work life, our health, and our education. Each of us has a role to play in creating communities that are welcoming, safe, and open to all.

Today, this goal is more important than ever because the nation is becoming increasingly diverse. Currently, African Americans, Latinos, Asian Americans and Native Americans make up more than 30 percent of our population. In a few decades, those groups are projected to represent a majority of U.S. residents. These groups represent our future workers, the people whose skills and talents must be harnessed to ensure the nation's economic viability.

Forty years ago, Congress passed Title VIII of the Civil Rights Act of 1968 (the "Fair Housing Act"), which prohibits discrimination in public and private housing markets that is based on race, color, national origin, religion, sex, disability, or familial status. The Act requires communities and the federal government to proactively further fair housing, residential integration, and equal opportunity goals; however, equal opportunity in housing remains a major challenge, with collateral impact far beyond four walls and a roof.

That is why the Leadership Conference on Civil Rights Education Fund, the National Fair Housing Alliance, the NAACP Legal Defense and Educational Fund, and the Lawyers' Committee for Civil Rights Under Law came together to form the National Commission on Fair Housing and Equal Opportunity to investigate the state of fair housing in this 40th anniversary year.

Our seven-member commission was co-chaired by two former U.S. Housing and Urban Development (HUD) Secretaries, the Honorable Jack Kemp, a Republican, and the Honorable Henry Cisneros, a Democrat, confirming that fair housing is not a partisan issue. Over the past six months, we held hearings in five major U.S. cities – Chicago, Houston, Los Angeles, Boston, and Atlanta – to assess our progress in achieving fair housing for all.

The hearings exposed the fact that despite strong legislation, past and ongoing discriminatory practices in the nation's housing and lending markets continue to produce levels of residential segregation that result in significant disparities between minority and non-minority households, in access to good jobs, quality education, homeownership attainment and asset accumulation. This fact has led many to question whether the federal government is doing all it can to combat housing discrimination. Worse, some fear that rather than combating segregation, HUD and other federal agencies are promoting it through the administration of their housing, lending, and tax programs.

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We heard testimony from hundreds of witnesses that there are still far too many segregated neighborhoods where skin color determines school quality and economic opportunity; and where municipal services track race and income, rather than need.

The hearings showed us that discrimination continues to be endemic, intertwined into the very fabric of our lives. Ironically, even though more Americans than ever are living in diverse communities, residential segregation remains high. Sustaining the racial and ethnic stability in diverse communities remains a challenge because of perceptions and prejudices that devitalize them. And while nationally the incidence of discrimination is down, there are at least four million fair housing violations in our country every year. That is far too many.

Demographics tell the tale.

Today, two-thirds of new households being formed are either racial or ethnic minorities or immigrants. This population is now looking for housing for the first time. In addition, now more than ever, individuals with disabilities are rightfully seeking greater access to opportunities in every sector. Equal opportunity in housing offers the chance to live, work, and interact in richly diverse settings and opens doors to other opportunities – in education, health care and employment.

For all of these reasons, our communities and neighborhoods must reflect a richer, more robust heterogeneity, one that draws on the strengths of all Americans. Everyone recognizes that our nation's ability to achieve any measure of economic, educational, or social justice is tied to our ability to promote fairness in our housing system.

While what we learned about the state of fair housing was sobering, this report is by no means gloomy. We have made progress. The combined efforts of leaders within our communities, fair housing advocates, committed members of the housing industry and government action has ensured that housing opportunities are fairer than they were four decades ago. Most states and many localities have fair housing laws, some of which provide greater protection than the federal Fair Housing Act. The ethical codes of most housing industry groups include a commitment to fair housing, and state real estate licensing laws require fair housing training and continuing education. HUD's 2000 Housing Discrimination Study showed a reduction in the overall discrimination rate in residential sales and information on housing availability, though an increase in racial steering.

And our witnesses did not just testify about problems. People came forward with solutions. All over America, thoughtful advocates, housing experts, and families are working to find ways to build equal opportunity in housing.

Over time, Americans have become more interested in living in communities that are racially and ethnically diverse. Many fair housing organizations are well established and provide a broad range of fair housing services to our communities, including work to build alliances with housing industry groups and local governments to produce quality training and effective outreach, working to build public support for fair housing.

Yet much more is needed.

Equal housing opportunity must be our collective goal. But as recent history has demonstrated, we cannot get there working in silos. Only together, with a mix of education, enforcement, and policy tools, working across partisan lines, with government and private partnerships coordinated at the local, state, regional and federal level, can we begin to make our dreams real.

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Summary of Recommendations

The following is a summary of the recommendations in our report. These recommendations attempt to capture the innovation, ideas, and spirit of change from people from all over the country who are working to make equal opportunity happen for all of us. We believe that the following actions are critical to move us forward toward our vision of creating and sustaining stable, diverse, inclusive neighborhoods across America.

CREATE AN INDEPENDENT FAIR HOUSING ENFORCEMENT AGENCY

In order to address the longstanding and systemic problems with fair housing enforcement, we recommend the creation of an independent fair housing enforcement agency to replace the existing fair housing enforcement structure at HUD. Support for an independent fair housing enforcement agency was the most consistent theme of the hearings.

A reformed independent fair housing enforcement agency would have three key components: (1) career staff with fair housing experience and competence as the key criteria for employment; (2) an advisory Commission appointed by the President with the advice and consent of the Senate that is broadly representative of industry, advocates, and enforcers; and (3) adequate staff and resources to make fair housing a reality. Such an agency would be empowered at the public policy level to work with the HUD Secretary to advance proactively all of the fair housing issues that are critical to building stronger communities.

The Government Accounting Office should immediately conduct a study of the options for establishing an independent fair housing agency or commission that would provide national leadership for change on fair housing related issues. The agency would focus solely on fair housing enforcement, required by Section 810 of the Fair Housing Act, 42 U.S.C. §3610, and fair housing and fair lending education. Although this type of structural change is not without costs and challenges, making the agency independent should help restore credibility to the effort in light of the many problems experienced with placement of fair housing enforcement at HUD.

As an interim step to seeking legislation for an independent agency, HUD should act immediately to strengthen its fair housing work by dividing the current Office of Fair Housing and Equal Opportunity into two offices, separating fair housing enforcement from fair housing program compliance.

The Office of Fair Housing, headed by a Deputy Secretary, would retain sole authority for all aspects of fair housing enforcement and education, including the Fair Housing Initiatives Program, which funds private fair housing groups and fair housing education, and the Fair Housing Assistance Program, which funds state and local enforcement agencies. It would include investigative staff and lawyers to work jointly on strengthened enforcement (including investigations), rapid response to cases requiring immediate attention, and improved training and quality assurance in investigations. The Office of Civil Rights, headed by an Assistant Secretary, would retain internal programmatic and compliance responsibilities for fair housing—including HUD's responsibility for affirmatively furthering fair housing in its own programs and among HUD grantees and its obligation to enforce other civil rights laws, such as Section 504 of the 1973 Rehabilitation Act and Title VI of the 1964 Civil Rights Act. A third office, the President's Fair Housing Council, would work with both of the new offices in promoting compliance with fair housing.

REVIVE THE PRESIDENT'S FAIR HOUSING COUNCIL

In order to build, sustain, and grow strong, stable, diverse communities, we need strong federal leadership that coordinates fair housing policy and practice across agencies. In order to accomplish this, we strongly

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recommend that the President's Fair Housing Council be revived and given a stronger mandate in the new administration. It must be staffed and reconvened as soon as possible – either within HUD or as part of the proposed White House Office of Urban Policy.

All of the federal agencies with responsibility over housing and urban development activities are obligated not only to promote fair housing, but to "cooperate with the Secretary [of HUD] to further such purposes." (42 U.S.C. § 3608). This requirement has generally been honored in the breach.

Executive Order 12892 (1994) took this requirement of cooperation one step further, by establishing the President's Fair Housing Council, which is required to "review the design and delivery of Federal programs and activities to ensure that they support a coordinated strategy to affirmatively further fair housing." The Fair Housing Council has been severely underutilized, and to our knowledge has only met once. Yet the Council has the potential to go beyond the housing-related agencies delineated in the Fair Housing Act to bring in virtually every other cabinet agency whose work may directly or indirectly affect housing.

The Commission also recommends that the federal agencies participating in the Council expressly require collaboration between their grantees at the metropolitan and regional level to support fair housing goals. The collaborative cross-agency work of the Council should be mirrored in every metropolitan area.

The Fair Housing Council, working through federal agencies such as the Department of the Treasury, Department of Education, and financial institution regulators, would play a critical role in coordinating the work of the various federal government agencies that influence housing and lending policy and practice. As a key element of a proposed White House strategy on metropolitan policy, the Fair Housing Council could ensure that fair housing is an integral part of the strategy to rebuild our urban infrastructure and create diverse and thriving regions.

ENSURE COMPLIANCE WITH THE "AFFIRMATIVELY FURTHERING FAIR HOUSING" OBLIGATION

One of the basic principles in the Fair Housing Act and the Housing and Community Development Act of 1974 is that the federal government, and all of its programs and activities, must take proactive steps to advance fair housing, not just to avoid discriminating. Unfortunately, the government and its grantees have not taken this mandate seriously. In order to make this statutory obligation a reality, we must make changes in federal programs and activities to avoid further segregation and promote wider housing choices for families.

Since 1968, the Fair Housing Act has contained a requirement that HUD and other federal agencies engaged in housing and urban development and grantees that they fund, act in an affirmative way to further fair housing. The courts have consistently recognized that this affirmatively furthering duty requires HUD to "do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases."[1]

However, despite the strong statutory underpinning for the affirmatively furthering obligation, the testimony unanimously reported that the process was not functioning as intended. HUD has not been successful in bringing the affirmatively furthering obligation to life.

The federal government's three largest federal housing programs (Section 8, public housing, and the Low Income Housing Tax Credit) serve more than 4.5 million families

1 *N.A.A.C.P. v. Sec'y of Housing & Urban Development*, 817 F.2d 149, 155 (1st Cir. 1987) (Breyer, J.)

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and yet do very little to further fair housing and, in some cases, work to create and/or maintain segregated housing patterns. These programs must be reoriented to focus, in part, on helping families move to less racially and economically segregated communities.

For example, the Section 8 Housing Choice Voucher Program, which creates a portable housing benefit that can be used by an eligible family to rent private apartments in multiple locations, could be reformed to increase access of eligible families to high opportunity communities[1i], by including higher rents where necessary, improving administrative portability of vouchers across jurisdictional lines, re-establishing housing mobility programs to assist voucher-holders seeking to move to higher opportunity areas, creating strong incentives and performance goals for administering agencies, and providing incentives to recruit new landlords into the program. We should mandate that families be provided information and counseling about their range of housing choices, including choices in more integrated areas.

The Low Income Housing Tax Credit (LIHTC) program, administered by the Internal Revenue Service and state housing finance agencies, is the nation's largest low-income housing production program and yet has operated with little or no civil rights oversight since its inception in 1986. This program must be reformed to include fair housing requirements for site selection, affirmative marketing, and reporting of racial/ethnic data to ensure that this program works to further fair housing goals.

Other federal housing initiatives, including HOPE VI, the Community Development Block Grant, the HOME program, USDA housing programs, and emerging programs such as the National Housing Trust Fund, must also be held to high fair housing standards. And HUD must do more to stop segregation of people with disabilities within its own housing programs.

With federal leadership that includes a more powerful structure for this affirmatively furthering fair housing concept, communities will be empowered to develop and implement their own coordinated strategies for moving fair housing forward in a way that advances diversity and inclusion in neighborhoods and throughout metropolitan areas.

STRENGTHEN COMPLIANCE WITH THE AFFIRMATIVELY FURTHERING FAIR HOUSING OBLIGATION BY FEDERAL GRANTEES

The current federal system for ensuring fair housing compliance by state and local recipients of housing assistance has failed. HUD must reform its current structure by strengthening its leadership in enforcement of the affirmatively furthering obligation.

Currently, HUD only requires that communities that receive federal funds "certify" to their funding agency that a jurisdiction is affirmatively furthering fair housing. HUD requires no evidence that anything is actually being done as a condition of funding, and it does not take adverse action if jurisdictions are directly involved in discriminatory actions or fail to affirmatively further fair housing.

Instead, a regulatory structure must provide guidance and direction to ensure that programs receiving federal funds advance fair housing. A reformed structure should be based on existing guidance in HUD's Fair Housing Planning Guide but expanded to contain specific activities that are required to be undertaken consistent with this report.

HUD must also provide training and technical assistance to support the reformed affirmatively furthering initiative, including training and technical

1i See testimony of john powell (Los Angeles); Kirwan Institute for the Study of Race and Ethnicity, *The Geography of Opportunity: Review of Opportunity Mapping Initiatives* (July 2008) (Los Angeles Exhibit)

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assistance to support groups that will work locally and regionally in communities to advance fair housing principles.

Through regulations, HUD should confirm its authority to undertake reviews of grantees for their compliance with the affirmatively furthering fair housing obligation, and specific sanctions should be spelled out for grantees found to be in non-compliance.

STRENGTHEN THE FAIR HOUSING INITIATIVES PROGRAM (FHIP)

Funding for the Fair Housing Initiatives Program must be significantly increased. The Fair Housing Initiatives Program was created in the late 1980s to support and fund fair housing enforcement and education across the country. While the program has been an effective change agent in communities, severe funding constraints and an erratic funding stream have limited its usefulness.

Current appropriation levels are grossly inadequate to fund existing private fair housing groups to perform enforcement activities. A full service private fair housing group that successfully competes in FHIP can be awarded no more than $275,000 per year, whether it is located in New York City or Savannah, Georgia. Although about 140 agencies have received enforcement grants over the past ten years, current funding levels permit many fewer groups to be funded every year to conduct enforcement activities. Only 28 groups in the country received consistent funding over the five year period from FY 2003-2007 and 26 private fair housing groups, including some of the oldest and most respected groups, have closed or are at risk.

Additional funds will allow a significant increase in the presence and effectiveness of the program, increasing the public's awareness about fair housing rights, developing partnerships with industry leaders in communities, supporting increased fair housing enforcement and helping build, or rebuild, diverse communities.

Also, the FHIP program should have eligibility and performance standards established in joint consultation between federal program personnel and private fair housing groups, to ensure that organizations receiving FHIP funds use them effectively.

ADOPT A REGIONAL APPROACH TO FAIR HOUSING

To make real progress toward equal housing opportunity, all of the jurisdictions within a metropolitan area must be coordinated in their efforts.

The starting point for a comprehensive regional fair housing process begins with fair housing performance goals for each federal housing program and each state and local grantee in a region. Funding of state and local entities through the popular HOME and Community Development Block Grant (CDBG) programs should be conditioned on meeting these goals. Each federal housing program in the region – including Section 8, LIHTC, and public housing – should also be redirected to support a share of specific regional opportunity goals.

A key aspect of this enhanced regional coordination should be to revive a regional planning coordination system such as the federal government's prior "A-95 Review process," which required regional planning organizations to develop fair housing plans with specific target performance goals for each major metropolitan area. This process empowered regional planning agencies to review and sign off on federal grants to municipalities for their conformance with the regional plan. Just as the President's Fair Housing Council seeks to coordinate federal activities across agencies to support fair housing, all the agencies operating in a metropolitan area should coordinate their activities, with fair housing as a central component. Implementation of major investments in transportation, employment, education, commercial development, and other infrastructure enhancements should be aligned with fair housing goals, to support

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and develop diverse, sustainable communities with access to opportunity for all residents of the region.

ENSURE THAT FAIR HOUSING PRINCIPLES ARE EMPHASIZED IN PROGRAMS ADDRESSING THE MORTGAGE AND FINANCIAL CRISIS

The current mortgage crisis has its roots in decades of discriminatory housing and lending practices. Exploitative predatory lending has had its most devastating effects in communities that are predominantly Black and Latino, causing an unprecedented loss of wealth to those communities Given this, it is critical that the solutions that have been proposed to address our current mortgage crisis comply with the mandate that all government housing and lending programs affirmatively promote fair housing. In the foreclosure context, this means assessing the racial impacts of alternative plans and seeking approaches that are racially fair— approaches that do not further segregate and isolate low-income communities of color, but rather promote diverse neighborhoods.

In addition, fair lending enforcement by the federal government must be improved by: (1) fostering better coordination between HUD's administrative enforcement of the Fair Housing Act, the Department of Justice, the bank regulatory agencies, and private fair housing groups; (2) prioritizing fair housing and fair lending litigation to identify and eliminate discriminatory predatory lending practices and policies; and (3) ensuring the legal standard for violation of the Fair Housing Act and the Equal Credit Opportunity Act includes the well-established disparate impact standard.

HUD should also implement a special fair lending initiative to fund the investigation and redress of discriminatory practices in the lending sector. This initiative must include an evaluation of programs like the Neighborhood Stabilization Program to ensure that they promote fair housing goals.

CREATE A STRONG, CONSISTENT, FAIR HOUSING EDUCATION CAMPAIGN

Despite all of the evidence that deeply entrenched discrimination and segregation continue, and the evidence that large parts of our communities are at risk, there has been no national government leadership, and no national message, about the importance of these issues.

HUD should use its direct budget authority to fund basic education and outreach materials, written in easy- to-understand language, in multiple languages, and in accessible formats. These materials should be available in many formats, such as Power Points, videos, fact sheets, public service announcements, and brochures targeted to the different types of consumers of fair housing services.

In particular, the FHIP program should fund a five-year coordinated national multimedia campaign with two components: one that will educate consumers to recognize and report all types of discrimination for all protected classes and to recognize the value of challenging discrimination; and one that will recognize and advance the idea that diverse communities are stronger communities. A five-year program is necessary to achieve real inroads into the reported lack of public knowledge about fair housing and the high numbers of people who are unwilling to challenge housing discrimination. Both campaigns will chip away at stereotypes, an essential element in the plan to promote neighborhood diversity.

Many industry groups have already moved into the area of education. Successful programs can be identified by a reformed fair housing office, replicated, and made available though the Internet. The materials must include basic and advanced content. Many housing providers have developed relative sophistication in this area, but many others have not. A variety of different approaches will be

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needed to reach housing industry representatives of all types, including HUD-funded and tax credit properties.

A revitalized approach to fair housing research will be an important component of a strengthened fair housing presence by developing data and analyzing the effectiveness of strategies to power new approaches to advancing fair housing.

CREATE A NEW COLLABORATIVE APPROACH TO FAIR HOUSING ISSUES

No single agency or approach can change the face of our communities. We must develop and support a new collaborative spirit to bring muscle to the strategies we envision. We can replicate strategic partnerships developed between some real estate associations and private fair housing centers to educate and monitor rental and sales practices and develop partnerships with corporations who support workplace diversity to help create neighborhood diversity. This new approach will search out best practices and the most effective strategies from the housing industry, corporations, state and local governments, and fair housing practitioners and advocates to strengthen our communities. It will seek to involve constituencies at the local level that can bring new ideas and new energy to revitalize and empower our communities to promote residential integration.

Passage of the Fair Housing Act 40 years ago was the beginning, not the end, of our struggle to achieve equality in pursuit of the American dream. We know that our dream cannot be fulfilled without calling on the best and brightest leadership from communities across our country to work with federal, state and local officials from many different offices and perspectives.

But we also know that our country cannot reach its fullest potential – one nation, indivisible, with liberty and justice for all—without a national commitment to address injustice and recognize that the success or failure of our communities depends on us all.

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INTRODUCTION

Forty years after the passage of the Fair Housing Act in 1968 and 20 years after the Fair Housing Amendments Act of 1988, the National Commission on Fair Housing and Equal Opportunity (Commission) was convened to address the significant and ongoing national crisis of housing discrimination and residential segregation. The Commission conducted regional hearings in Chicago, Los Angeles, Boston, Atlanta, and Houston, to collect information and hear testimony about the nature and extent of illegal housing discrimination and its origins, its connection with government policy and practice, and its effect on American communities.

In this report, the Commission calls for renewed efforts to end both old and new patterns of housing discrimination through better enforcement, better education, and systemic change.

When the Fair Housing Act was first passed, racially and ethnically diverse neighborhoods were generally discussed only in terms of benefits to racial or ethnic minorities. Today, many recognize that diverse neighborhoods have tangible benefits for all people who live in them and that true diversity is more than just "racial integration." Rather, a diverse community is one where all residents are included, where no group is privileged above any other group, and where everyone has equal access to opportunity.

The goal of the fair housing movement is to support and promote these inclusive, diverse communities of choice: communities and neighborhoods where families choose to live; where housing and schools are stable and well supported; where employment is accessible; and where all racial and ethnic groups, and persons with disabilities, are an integral part of the larger community.

What are some of the characteristics of these communities?

- Inclusive, diverse communities have quality schools with diverse student bodies that enhance outcomes for all children.
- Inclusive, diverse communities have a healthy, robust housing market that competes for buyers and renters from all racial and ethnic groups in a region and cannot be easily targeted by predatory lenders.
- Inclusive, diverse communities contribute to the regional economy with a range of housing choices for workers of all income ranges, and help to prevent the harmful concentration of racially isolated poverty at the core of the metropolitan region.
- Inclusive, diverse communities incorporate accessible design and housing options that maximize inclusion of persons with disabilities in the built environment and in communications.
- Inclusive, diverse communities successfully resist sprawl and its negative social and environmental impacts by consolidating growth for a mixed income, diverse population along efficient transportation corridors and by bringing workers closer to regional job centers.

We also recognize that these inclusive and diverse communities can be formed in different ways. They

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may include predominantly White suburban towns that are becoming more economically and racially diverse; or integrated older inner-ring suburbs facing high rates of foreclosure, which may need infrastructure and marketing support to maintain a stable, diverse population over time; or lower income urban neighborhoods experiencing gentrification and the accompanying influx of new money and community services that brings both benefits and threats to existing residents. Each of these community contexts demands different types of support in order to maintain a stable, inclusive, diverse character.

Congress passed the Fair Housing Act in 1968 to guarantee the right to choose where to live without facing discrimination or legally imposed obstacles. This is a core value that needs no additional justification. But it is also important to recognize the other benefits and values that are promoted by inclusive and diverse communities:

Diversity in communities leads to diversity in schools

A diverse, inclusive learning environment is one of the most important benefits of fair housing. In most parts of the country, housing and school segregation are closely linked. Most school districts rely on geography to assign students, resulting in school demographic patterns tracking residential patterns. School diversity has been shown to reduce racial prejudice, increase racial tolerance, and even improve critical thinking skills[1]. Minority students who attend diverse schools are more likely to graduate from high school, attend and graduate from college, and connect to social and labor networks that lead to higher earning potential as adults[2].

Inclusive and diverse communities can break down social divisions.

The deep geographic racial divide in the United States feeds a sense of fear, suspicion, and alienation. In his testimony, Professor john powell highlighted the impacts of this racial divide on economic inequality, and the sense of unfairness and resentment that geographic separation can foster:

> [I]n many regions, we are polarizing into socially, economically and racially isolated enclaves of extreme high and low opportunity. A range of high and low opportunity areas is to be expected; people and places are diverse. The challenge for us, for our democracy, and for our children is not that a range of communities exist, but that the gulf between the high- and low-opportunity areas today is often so wide as to hardly be transcended. Often, the highest performing schools, the healthiest air and groceries, the most active social networks critical to finding sustainable employment are concentrated together and removed from the vast majority of residents. These "favored quarters" dot our regions and threaten to undermine a sense of shared community[3].

Just as school integration can reduce racial prejudice among children, we can expect a similar result in shared communities and neighborhoods. For example, recent research shows that sustained cross-racial contact lowers stereotyping and prejudice, even on a subconscious level[4].

Inclusive and diverse communities provide a base for family economic success.

A home is the major asset for the vast majority of American families and the primary means of building equity and passing wealth from one generation to the next. Yet segregation has made minority families more

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vulnerable to predatory lending practices as well as to the devastating social and depreciation impacts associated with foreclosures concentrated in a community.

Inclusive, diverse communities attract a wider range of potential buyers from throughout the metropolitan area, which sustains housing prices and leads to more balanced appreciation in home value. Diverse communities are also less likely to be targeted for predatory or subprime loan products.

Inclusive and diverse communities provide access to opportunity for lower income families.

Racial segregation separates lower income African-American and Latino families from opportunity in metropolitan areas,[5] which predictably leads to depressed outcomes in education, employment, health, and other measures.

In the 1980s, the Gautreaux Assisted Housing Program demonstrated that families benefited by moving from high poverty, racially isolated neighborhoods to very low poverty, racially integrated suburban communities. These new areas also happened to be areas of high opportunity, with high quality schools and richer employment offerings, which led to positive results for many Gautreaux movers and their children (including higher rates of employment for mothers and academic benefits for children).[6] There was also evidence that these moves to higher-opportunity areas gave residents a "new sense of efficacy and control" and more interracial contact, leading to a reduction in racial stereotypes.[7]

Inclusive and diverse communities support smart growth and environmental values.

"Smart growth" planning emphasizes mixed use, mixed income, higher density, pedestrian-friendly communities that are accessible to public transportation, enjoy ample open space and recreational opportunities, and reduce traffic congestion, energy consumption, concentrated poverty, and sprawl. Many smart growth advocates have rejected a no-growth approach to limiting sprawl and have embraced affordable housing as a key element of socially equitable smart growth planning.[8] Affordable housing development distributed equitably across communities in a region furthers smart growth goals by increasing housing densities, encouraging transit-oriented development, bringing low-wage workers closer to jobs, and shifting land use planning from the local to the regional level.[9]

Inclusive and diverse communities support regional and global competitiveness.

America's economy is now centered in metropolitan areas that "encompass large cities, old and new suburbs, and even exurban and rural areas that, by virtue of their interwoven labor and housing markets, share common economic destinies."[10] But segregation has a detrimental impact on the competitiveness of metropolitan areas in our increasingly global economy. A true rebirth of distressed areas (and the cities in which they are located) will only occur if we make these places "neighborhoods of connection that are fully linked to metropolitan opportunities" for individuals and families with a broad range of incomes.[11]

A recent report about Minneapolis/St. Paul explains the consequences of our nation's current course that is reflective of the situation throughout the nation: "Without serious attention to the next generation of workers, who are more likely to be minority, and more likely to be poor, the Twin Cities workforce will be smaller and less skilled than currently, presenting the possibility of a less competitive future."[12] Reducing

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disparities between individuals of different backgrounds and socioeconomic statuses is critical to economic competitiveness and "can promote a strong future workforce, improve the region's fiscal situation, and build a healthier region."[13]

All over America, thoughtful advocates, community organizers, and families are working to find ways to build equal opportunity in housing. In this report, we build upon that innovation, those ideas, and the spirit of change, offering concrete recommendations for actions that we believe are critical to move us forward toward our vision of creating and sustaining stable, diverse, inclusive neighborhoods across America.

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I. Forty Years After the Passage of the Fair Housing Act, Housing Discrimination and Segregation Continue

The continuing levels of racial and economic segregation in America's metropolitan areas result from a long history of public and private discriminatory actions. Segregation is rooted in historical practices but is maintained and sometimes worsened by continued discriminatory practices, including: present-day discrimination and steering in the private rental, sales, lending, and insurance markets; exclusionary zoning, land use, and school policies at the state and local governmental level; continuing government policies affecting the location of subsidized housing; the limited choices provided to those who receive federal housing assistance; income and wealth differences; and bank and insurance disinvestment in minority neighborhoods.

Since 1980, the level of Latino segregation has remained constant. Although there have been moderate declines in the degree of African-American segregation during that time, the rate is still very high, especially in metropolitan areas with the largest Black populations.[14] According to Professor John Logan, the racial and ethnic makeup of neighborhoods experienced by the average White American is starkly different than those experienced by the average Latino or Black American.[15]

The degree of economic segregation facing families of color is even starker. Although there are more poor Whites than poor Blacks and Latinos, high poverty neighborhoods (30 percent poverty and higher) are disproportionately Black and Latino; the higher the poverty concentration, the more likely that the neighborhood will be racially isolated. For African Americans and Latinos, relatively high incomes are no protection against segregation, as "disparities between neighborhoods for Blacks and Hispanics with incomes above $60,000 are almost as large as the overall disparities, and they increased more substantially in the [1990s]."[16]

The harms of racial isolation and concentrated poverty are well-documented and represent a dark reverse image of our positive vision for an inclusive, diverse society. As Professor powell summarized in his Commission testimony:

> Fifty years of social science research has demonstrated that racially isolated and economically poor neighborhoods restrict employment options for young people, contribute to poor health, expose children to extremely high rates of crime and violence, and house some of the least-performing schools. A vast research literature documents

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> the ways in which social opportunities, and the advantages they confer, cluster and accumulate spatially. Neighborhoods powerfully shape residents' access to social, political, and economic opportunities and resources. A number of studies have linked segregation to an increased likelihood of perpetrating and being victimized by violence and crime. The level of stress experienced in high-poverty, isolated neighborhoods contributes substantially to this risk. When people face a high level of stress, child abuse, neglect, and family breakups are more likely….In addition, a voluminous literature has examined the "spatial mismatch" between predominantly African American, older urban neighborhoods and the employment opportunities in the suburbs and exurbs. And new research is emphasizing the importance of access to a diverse social network and workforce intermediaries to overcome the social dimension of the spatial mismatch…. Researchers have also found that the poverty rate of a school influences educational outcomes far more than the poverty rate of an individual; and that impoverished students do better if they live in middle-class neighborhoods and/or attend more affluent schools.[17]

Housing segregation and school segregation are also intertwined, creating a vicious cycle of a lack of opportunity and a lack of education.[18] The shifting demographics of America's cities are consequently making our public schools increasingly more segregated,[19] a trend that is further exacerbated by recent Supreme Court decisions restricting the options available to achieve greater diversity within schools.[20] These circumstances perpetuate racial inequality, as African Americans and Latinos are more likely to be educated in schools where students experience more health problems, and in schools that have fewer resources, higher dropout rates, less experienced teachers, and lower rates of college attendance among graduates.[21] Unless efforts are made to increase diversity within schools and improve the diversity of neighborhoods, segregation in schools and housing will only worsen.[22]

How we got here: The historical roots of housing segregation

During the last century, the residential segregation and isolation of most African Americans has been an almost permanent feature of housing patterns in the United States. No other ethnic group in America's history has been isolated to a similar extent. Most immigrants to the United States live in ethnically diverse areas, and even areas considered "ethnic enclaves" contain a wide variety of nationalities and serve only as a fleeting, transitory stage in the process of assimilation.[23] Our nation's highly segregated housing patterns did not occur by accident; they are a product of a complex web of decisions made since the beginning of the 20th century.

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Until the end of the Civil War, slavery dominated the landscape for African Americans. During that time, however, there were small pockets of African Americans living in "free" states in the North and increasingly moving to the new American West. Cities were relatively small and compact, with the bulk of the population still living in rural areas, with much more dispersed populations. Following the Civil War, Jim Crow and the Black Codes made economic, and thus residential, choice nearly impossible for Blacks in the South. In the North, the numbers of Black residents remained small.

However, the Industrial Revolution pushed the cities across America to grow and to become new, bigger and more powerful economic centers. The rise of industrialization was accompanied by a migration of African Americans from farms to cities.

The 20th century brought with it social, political, and economic forces that directly led to the highly segregated housing patterns visible today. Many smaller communities, particularly throughout the Midwest, but also in the West, had begun practices that systematically excluded people of color in overtly discriminatory ways. Dubbed "sundown towns" for their implicit—and sometimes explicit—rules that people of color were required to leave their borders before sunset, these communities posted signs warning African Americans to leave before sunset or not enter at all, enacted racial ordinances, encouraged racially restrictive covenants, conducted "freeze-out" and "buy-out" campaigns, and participated in overt intimidation often accompanied by violence. The effects of these exclusionary policies are still prevalent today, as nearly all of the Midwest's sundown towns remain virtually all-White.[24]

The rise of industrialization was accompanied by a migration of African Americans from farms to cities to help meet the demand for labor. [25] However, various "legal" measures were taken in response to the rising numbers of African Americans in cities. For example, a number of cities in the South adopted ordinances that established separate neighborhoods for White and African-American residents. After the Supreme Court held one city's residential segregation law unconstitutional in 1917,[26] "racial segregation in southern cities was accomplished by the same means as in the north: through violence, collective anti-Black action, racially restrictive covenants, and discriminatory real estate practices."[27]

Prior to the New Deal, direct governmental support for segregation "consisted primarily of the judicial enforcement of privately drawn restrictive covenants."[28] Frequently included in property deeds, racially restrictive covenants controlled how property could be developed or used, or who could live on the property. By the 1920s, deeds in nearly every new housing development in the North prevented the use or ownership of homes by anyone other than "the Caucasian race."[29] Many new homes still recorded racially restrictive covenants even after the Supreme Court held them unenforceable in 1948.[30] As a result, people of color were excluded from many communities, limiting where they could settle and beginning the trend toward increased segregation. During the 1920s, property values became tied to race "as a means to legitimize racial exclusion and protect racial boundaries."[31]

By the 1930s, most cities had well-defined boundaries within which African Americans and other people of color were allowed to live. This discrimination was racial, not economic, and even middle class and upper-income African Americans were confined to segregated areas. To accommodate the growing population of African Americans in these increasingly overcrowded areas, single family homes were subdivided into multifamily homes with high cost rentals.[32] By 1940, spatial isolation had become a permanent fixture of the residential structure of African-American community life, and that isolation only increased during the next 30 years.[33]

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Beginning in the 1930s, a number of government agencies were formed that affected housing patterns in the United States. The U.S. Housing Authority ("USHA") established a public housing program to improve housing conditions for low-income Americans, but nearly all of this affordable housing was in segregated public housing projects. Public housing programs were segregated by law in the south and nearly always segregated in the rest of the country in deference to local prejudice, with housing projects for African Americans usually adjoining segregated neighborhoods or built on marginal land near waterfronts, highways, industrial sites, or railroad tracks.[34] As one historian noted, "The most distinguishing feature of post-World War II ghetto expansion is that it was carried out with government sanction and support."[35]

Other federal agencies were developed during the New Deal to increase homeownership rates among Americans, but in practice these programs generally benefited Whites only.[36] These agencies provided "crucial financial support to the housing industry"[37] and facilitated the movement to the suburbs by making the purchase of suburban homes cheaper than renting in the cities.[38] For example, to "assist" with lending decisions, the Federal Housing Authority prepared "neighborhood security maps" that were based largely on the racial, ethnic, and economic status of residents.[39] Indeed, a national trade association explicitly stated that minorities caused adverse influences upon a neighborhood.[40] The American Institute of Real Estate Appraisers began using a ranking system that assessed risk based on the racial composition of the community, with English, Germans, Scotch, Irish, Scandinavians ranked at the top of the list and "Negroes" and "Mexicans" ranked at the bottom of the list.[41] Lending institutions and the federal government employed underwriting guidelines that favored racially White, homogenous neighborhoods and led to the creation of a separate and unequal lending and financial system.[42]

Because federally-backed mortgages were rarely available to residents of "transitional," racially mixed, or minority neighborhoods, lenders began "redlining" those neighborhoods, circling on a map the areas where people of color lived to denote that mortgage lending would not be available.[43] Redlining significantly contributed to segregation by encouraging White Americans to purchase homes in stable White communities and discouraging any investment in communities where people of color resided.

In addition, federal agencies "endorsed the use of race-restrictive covenants until 1950" and explicitly refused to underwrite loans that would introduce "'incompatible' racial groups into White residential enclaves."[44] These government policies were also adopted by the private sector. For example, from the 1930s to the 1960s the National Association of Real Estate Boards issued ethical guidelines that specified that a realtor "should never be instrumental in introducing to a neighborhood a character or property or occupancy, members of any race or nationality, or any individual whose presence will be clearly detrimental to property values in a neighborhood."[45]

Together, these federal agencies financed almost half of all suburban homes in the 1950s and 1960s, helping the American homeownership rate to increase from 30 percent in 1930 to more than 60 percent by 1960.[46] However, these discriminatory lending policies resulted in the widespread use of race to determine eligibility for housing credit.[47] Consequently, Whites received essentially all (98 percent) of the loans approved by the federal government between 1934 and 1968.[48]

The 1950s and 1960s saw the migration of three million African Americans from the South.[49] With the large-scale departure of White Americans from cities to the suburbs came an unprecedented increase in the physical size of the areas in which

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African Americans lived.[50] This expansion was also facilitated by individuals looking to make a profit, who brought about rapid racial transitions in neighborhoods through the practice of "blockbusting." These individuals sold one or two houses on a block to carefully selected African Americans and then capitalized on the other residents' fear of declining property values, inducing them to sell their homes at low prices. These homes were then sold to African Americans at higher prices, effectively resulting in a block-by-block expansion of African-American residential areas.[51]

Housing patterns for low-income Americans also changed during the period. By the mid-twentieth century, federal housing legislation was focused on eliminating substandard living conditions through the clearance of "blighted" areas and provided federal subsidies for cities attempting to fix the serious housing shortage in American cities.[52] However, federally-assisted urban renewal projects demolished 20 percent of central city housing units occupied by African Americans during the 1950s and 1960s, and 90 percent of the low-income housing units destroyed by urban renewal were never replaced.[53] People of color made up more than 60 percent of those displaced by urban renewal.[54]

For many of the displaced, public housing became the only option. But as Commission Co-Chair Henry Cisneros testified before Congress in 1995, HUD had been "complicit in creating isolated, segregated, large-scale public housing" and "HUD has traditionally been part of the problem."[55] Most of the public housing built from the 1950s to the 1970s was comprised of large, densely populated "projects," often consisting of high-rise buildings located in poor, racially segregated communities.[56] Public housing became, in effect, a "second ghetto" subsidized by the federal government, where "government took an active hand not merely in reinforcing prevailing patterns of segregation, but in lending them a permanence never seen before."[57] Over time, the extent of segregation in public housing has only increased as the demographics of cities and public housing have changed, with fewer Whites and more African Americans living in public housing.[58]

All this activity resulted in intensified residential segregation of African Americans. Between 1950 and 1970, the African-American population doubled in most large Northern cities, but residential segregation was maintained as White Americans put into effect a "policy of containment and tactical retreat before an advancing color line."[59] After the urban riots in the 1960s, the Kerner Commission Report famously noted that the United States was becoming "two nations—one White, one Black—separate and unequal."[60]

The Fair Housing Act was passed in 1968 to address this continued segregation and prohibit discrimination in housing. It prohibited discrimination based on race, color, religion, and national origin. Importantly, Congress declared that "it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."[61] The Fair Housing Act is rooted in both the 13th and 14th Amendments to the Constitution. It prohibits not only intentional discrimination, but also policies and practices that have a discriminatory effect or perpetuate segregation. It also includes a provision that is unique in civil rights laws – a requirement that that HUD and other federal agencies and their grantees "affirmatively further" fair housing to assess and address the racial impacts of official actions and to affirmatively promote residential integration in federal policy.[62]

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In 1988, Congress amended the Fair Housing Act to add persons with disabilities and families with children to the list of protected classes. In addition, the enforcement mechanism of the Act was greatly strengthened by providing an administrative enforcement process at HUD in which HUD findings of reasonable cause and charges of discrimination could be heard by a HUD administrative law judge or in federal court. In addition, HUD and the Department of Justice were authorized for the first time to seek monetary damages for victims of discrimination and civil penalties.[63]

Despite the promise of the Fair Housing Act, the rate of housing discrimination remains high

When the Fair Housing Act became law in 1968, high levels of residential segregation had already become entrenched. However, the Act's promise as a tool for deterring discrimination and dismantling segregation remains unfulfilled. During the 40 years since the Act was passed, these segregated housing patterns have been maintained by a continuation of discriminatory governmental decisions and private actions that the Fair Housing Act has not stopped.

For example, some local governments have used the zoning power delegated by state governments to indirectly control who may live within their boundaries.[64] There has been a consistent pattern of exclusionary zoning and land use decisions that have been barriers to the building of affordable housing in predominantly White neighborhoods in local jurisdictions with a predictable segregative and discriminatory impact on minorities.[65] Similarly, low-density-only zoning has been common, despite its tendency to reduce the rental housing available and thus effectively excluding African Americans and Latinos from living in certain neighborhoods or even entire communities.

Private actions have continued to contribute to the maintenance of segregated housing patterns since the passage of the Fair Housing Act. The number of discriminatory acts has persisted even with the increased enforcement authority given to the federal government by the Fair Housing Amendments Act of 1988.[66] Although national surveys of housing discrimination over the past three decades show some declines in the most blatant forms of discrimination, overall levels of discrimination remain unacceptably high. Indeed, the practice of "steering" appears to be on the rise.[67] The Supreme Court has described steering as a "practice by which real estate brokers and agents preserve and encourage patterns of racial segregation in available housing by steering members of racial and ethnic groups to buildings occupied primarily by members of such racial and ethnic groups and away from buildings and neighborhoods inhabited primarily by members of other races or groups."[68] The most recent national study, HUD's 2000 *Housing Discrimination Study*, reported very high levels of discrimination and steering against Black, Latino, Asian and Native American home seekers based on the experience of paired testers (investigators posing as renters or homebuyers) in major metropolitan housing markets.[69]

Another study conducted by HUD through the Urban Institute about lending practices found that African-American and Hispanic homebuyers in the two cities tested – Los Angeles and Chicago – faced a significant risk of unequal treatment when they visited mainstream mortgage lending institutions to make pre-application inquiries.[70] Specifically, African Americans and Hispanics were told about fewer loan products, offered less assistance, and denied basic information about loan amount and house price.[71]

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Housing discrimination distorts the real estate market in ways that both harm home seekers and frustrate the clear majority of real estate professionals who work hard to practice fair housing in their day-to-day business. When rates of discrimination are high it is difficult for those who are strong supporters of fair housing to function efficiently in the marketplace.

People with disabilities have also suffered a long history of residential discrimination and exclusion. For people with disabilities, whether physical, developmental, cognitive, or psychiatric, housing choice has always been quite limited. Historically, the nation's policy was to segregate people with disabilities in every aspect of community life. Housing providers were free to discriminate against people with disabilities, and housing, especially multifamily housing, was typically inaccessible to individuals with disabilities. Even today, many people with disabilities are forced into institutional settings that resemble medical centers and cannot find appropriate, affordable, accessible housing.[72]

Although some progress has been made in expanding housing options for people with disabilities, testing has shown that discrimination is still common. In fact, "net measures of systemic discrimination against persons with disabilities are generally higher than the net measures of discrimination on the basis of race and ethnicity."[73]

Families with children also have had great difficulty finding housing historically, whether due to individual discrimination by owners or rental agents, exclusionary zoning policies, or the disparate impact of seemingly neutral policies.[74] Use of occupancy restrictions that limit the number of occupants in a unit to fewer than two persons per bedroom, or rental agents who emphasize the lack of children or play areas in a building, tend to disproportionately exclude families with children and also violate the Fair Housing Act.[75] As one witness explained, "individual suburbs tend to discourage the building of new housing for families with children" because of a desire to maximize tax revenues with the fewest service expenditures.[76] Moreover, "in urban areas families with children in the rental market tend to be minority group members, while White families with children tend to be suburban homeowners. Thus, policies against children can carry significant racial impact."[77]

Although much of the discussion about housing issues for the poor focuses on those living in metropolitan areas,[78] the rural poor are generally poorer than their counterparts in metropolitan areas. Rural minorities are more likely to live in poverty than are rural Whites, with housing quality a salient problem.[79] For instance, in Southern and Western states, some towns and cities have expanded their borders but excluded long-standing communities of color at the towns' fringes.[80] Such exclusion creates enclaves with inferior or no access to basic public services such as water, sewer, or police protection that are enjoyed by White residents.[81]

The rural poor live in terrible housing conditions, if in housing at all. A 1999 survey found that 11 percent of California's farmworkers lived in dwellings not known to county tax assessors or the U.S. Postal Service—mostly structures not intended for human habitation, such as garages, sheds, shacks, or "under the trees." Overcrowding is another problem, especially for rural Latinos. The same survey found that 48 percent of California farmworkers lived in crowded conditions and 25 percent in extremely crowded conditions. Children live in the majority of these overcrowded homes.[82] Studies have also linked adverse health outcomes to substandard rural housing conditions, including high rates of autism among children whose mothers lived near fields sprayed with pesticides.[83]

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Rural communities have been affected by the issues facing the poor generally, such as high rates of foreclosures of subprime loans, and rising housing costs as a result of sprawl extending from metropolitan areas.[84] Language barriers are only increasing, as large numbers of indigenous people who speak neither English nor Spanish make up an increasing number of migrants.[85]

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II. Fair Housing Enforcement at HUD is Failing

The Fair Housing Act prohibits discrimination in housing based on race, color, religion, national origin, sex, disability (handicap) and familial status.[86] Generally, the government's enforcement process begins when an individual files a discrimination complaint with either HUD's Office of Fair Housing and Equal Opportunity (FHEO) or a state or local governmental fair housing enforcement agency (FHAP agency). Many of these complaints are referrals by private nonprofit fair housing organizations that conduct testing and investigation of housing discrimination allegations.

The administrative enforcement process is intended to provide an impartial investigation of claims filed with HUD and FHAP agencies. The Fair Housing Act requires that complaints be investigated within 100 days if feasible and that the parties be provided a written statement of reasons when an investigation is not concluded within 100 days. There is also a statutory obligation to engage in conciliation efforts to attempt to resolve complaints. At the close of the investigation, the investigating agency makes a determination as to whether or not there is reasonable cause to believe that discrimination has occurred. If a determination of reasonable cause is made, the government charges the respondent with violating the law and brings a complaint on behalf of the complainant in an administrative hearing before a HUD administrative law judge or a judicial proceeding.

Extensive testimony and evidence presented to the Commission incontrovertibly demonstrated severe and ongoing problems with HUD's administrative enforcement of the Fair Housing Act. Indicators show that there are problems in many areas.

More than four million instances of housing discrimination occur annually in the United States and yet fewer than 30,000 complaints are filed every year. In 2007, the 10 HUD offices processed 2,440 complaints, the 105 FHAP agencies processed 7,700 inquiries, and the 81 private fair housing agencies processed 18,000 complaints. Literally millions of acts of rental, sales, lending, and insurance discrimination, racial and sexual harassment discrimination, and zoning and land use discrimination go virtually unchecked.[87]

One key enforcement indicator is the number of cases in which HUD issues a charge of discrimination after an investigation. A charge is a determination that there is reasonable cause to believe that discrimination has occurred. In FY 1995, for example, 125 cases were charged. The number has spiraled downward in recent years, with charges issued in only 69 cases in 2002 and 31 cases in 2007.[88]

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Fair Housing Act Cases in which HUD Issued a Charge[89]

Fiscal Year	Number of Charges Issued
2001	88
2002	69
2003	23
2004	43
2005	47
2006	34
2007	31

The opportunity for a quick administrative hearing as one of the options for fair housing enforcement was considered a positive feature of the Fair Housing Amendments Act of 1988. HUD's failure to properly investigate cases, make determinations, and issue charges, particularly in recent years, has made a farce of the system. Especially revealing is that there were no administrative law judge hearings in 2005 and 2006 and only two in 2007.[90] At present, there are no administrative law judges with fair housing knowledge and experience assigned at HUD.[91]

Setting too high a standard for a cause determination and issuance of a charge

One possible explanation for the low number of charges issued by HUD is that the reviewing attorneys set the bar too high. The administrative standard for permitting a Fair Housing Act claim to go forward to a hearing is a determination that there is "reasonable cause" to believe that the Fair Housing Act has been violated.[92] "Reasonable cause exists *when one can conclude* based on all relevant evidence [...] that a *violation may have occurred*."[93] The purpose of the reasonable cause determination is to screen out cases that lack evidence of discrimination. However, many HUD offices and FHAP agencies now apply a higher standard, one that exceeds even the "preponderance of evidence standard" required for a finding of liability. In short, they require too much proof before making a determination that a violation has occurred.

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Delayed investigations

Congress intended the administrative process under the Fair Housing Act to be "economical and efficient,"[95] and to provide unrepresented victims of discrimination with a speedy and comprehensive remedy.[96] The FHA requires HUD to complete its investigation of fair housing complaints "within 100 days after the filing of the complaint...unless it is impracticable to do so."[97]

There have been repeated patterns of delays in completing investigations.[98] A report issued in 2001 by the National Council on Disability found that investigations were open much longer, on average, than 100 days. In FY 2000, for example, the average case was open 497 days from the date it was filed until the date it was closed.[99] A review of all of HUD's cases in which a charge was issued between January 2004 and October 21, 2008, indicates that the average age of cases in which a determination of reasonable cause was made and a charge issued was 502 days. The shortest time period between the filing of a complaint and the issuance of a charge was 143 days, while the longest was 1254 days.[100]

Delays in the administrative processing of cases have been so severe that they have served as the basis for dismissal of cases by courts and administrative law judges.[101]

Missed opportunities for systemic investigations

HUD has the authority to initiate its own investigations of discriminatory practices, providing a potent tool for large-scale investigations that can lead to sweeping change. Systemic investigations examine whole agencies or industries for widespread entrenched discriminatory practices, such as real estate steering, lending and insurance discrimination, and redlining, design and construction issues, zoning issues, and restrictive ordinances, in contrast to complaint-based investigations spurred by individual complaints of discrimination. Systemic investigations are the most efective and efficient way to bring about change and end behavior that perpetuates segregation and have the capability to reach the kinds of discrimination that are not identified by victims, or where the victims may be unaware of their rights or reluctant to file complaints. However, there is a consistent pattern of missed opportunities for systemic investigations in HUD enforcement.

HUD's authority to initiate its own investigations holds great promise but has been underutilized.[102] Although HUD's 2007 report to Congress indicates that FHEO filed 12 Secretary-initiated complaints and undertook four Secretary-initiated investigations,[103] HUD's website lists only three Secretary-initiated complaints that have been resolved since 2002.[104] It appears that multiple complaints involving the same factual situation were counted multiple times in HUD's report to Congress. Of the three complaints listed on HUD's website, one is incorrectly listed as involving discrimination based on race/color rather than discrimination based on familial status. None of the complaints involved discrimination in lending, none were about subsidized housing, none challenged illegal activities causing segregation, and all involved individual circumstances rather than discrimination across neighborhoods or communities.

There have been a variety of problems in HUD's handling of complaints that allege systemic discrimination. For example, the National Fair Housing Alliance states that it brought cases against four major insurance companies that were never fully investigated and languished for years.[105] It also filed eleven cases based on testing done as a follow up to HUD's 2000 *Housing Discrimination Study*. Although the cases were filed almost three years ago, only one has been resolved.[106]

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Independent studies confirm deficiencies in investigations

Recent independent studies conducted by the Government Accountability Office (GAO) and HUD's Office of Inspector General found significant deficiencies in investigations by HUD and FHAP agencies—the kind of deficiencies that indicate a failure to follow the Fair Housing Act and HUD policy for investigations and which put otherwise strong cases in jeopardy. The problems include poor contact with complainants, poor contact with respondents, poor case processing and investigation, and poor efforts to resolve the complaints.

Two GAO studies concluded that many potential complainants were poorly treated and that staff did not move quickly and thoroughly to identify and file genuine complaints to begin an investigation.[107] GAO found that only 16 percent of complainants who were identified as having potential cases were assisted with filing complaints. Even worse, 30 percent of callers who attempted to file a complaint could not get through on their first try, and some callers did not receive a call back even after three tries. Finally, when complaints were filed, only half were filed within 20 days from the initial date of contact with the agency. This kind of delay results in lost housing opportunities, missed opportunities to conduct testing, and loss of credibility about the agency's functions.

Lack of proper case processing, including notifying a respondent about a pending complaint, creating investigative plans, and providing both parties copies of the final decision are serious issues that can delay or defeat a case. GAO found that complaint notification letters were not found in 14 percent of the files for the complainants and 12 percent of the files for the respondents. Evidence that those letters had actually been received was not found in the files for complainants 33 percent of the time and for respondents 32 percent of the time. The studies conduced by the GAO and HUD's Office of Inspector General both found that investigative plans were either missing from files altogether or missing important information.

In 2006, 90 percent of the cases closed without a reasonable cause determination lacked an investigative plan. In 2007, 74 percent of those cases lacked investigative plans. The independent studies found that there was no notice of the final decision given to either a complainant or a respondent in more than half of the files where a cause determination was made (two files of four in 2006; two of three in 2007). A recent study by HUD's Office of Inspector General found similar problems.[108]

The Fair Housing Act requires the parties to conduct adequate conciliation efforts throughout the life of a case; the failure to engage in conciliation efforts has resulted in the reduction of damages to complainants and the dismissal of fair housing cases entirely.[109] In 2006, there was no evidence of conciliation efforts in any of the four reasonable cause determination files reviewed by GAO. In 2007, 33 percent of the cause determination files lacked documentation of conciliation efforts.[110]

Inconsistencies among HUD and its regional offices

Witnesses identified inconsistencies in the application of the law and in investigative processes among HUD regional offices.[111] They described difficulties in getting complaints filed, outcomes that were inconsistent with court rulings on the Fair Housing Act, and delays throughout the process.[112] "HUD investigators do not have consistent training on the Fair Housing Act, investigation strategies and techniques, legal standards and case law, testing and more. There are also significant levels of inconsistent treatment of complaints and investigative processes between the ten HUD regional offices, so that different complainants with identical cases would have different treatment, different outcomes, and different levels of access to justice depending upon which region in which they filed a complaint."[113] In addition, a recent court decision found HUD's determination letter practice to be confusing and inconsistent. The court concluded that inconsistency among and within regions was "unreasonable."[114]

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FHEO HAS FAILED TO PROVIDE ADEQUATE STAFF AND LEADERSHIP IN THE CIVIL RIGHTS ARENA.

HUD has chronically understaffed its fair housing enforcement, and many staff are poorly trained and directed about how to accomplish fair housing enforcement. At least 750 FTEs (Full Time Equivalent positions) are necessary for the existing fair housing work alone.[115] HUD's staffing of the entire Office of Fair Housing and Equal Opportunity (FHEO) office, which has responsibility for enforcement as well as program compliance monitoring, has not reached that staffing level since FY 1994.[116] At 579 FTEs in FY 2007, the staffing numbers for FHEO are wholly inadequate and at their lowest levels since 1989.

STAFFING LEVELS FOR FHEO BY FISCAL YEAR

YEAR	FTEs FOR ALL OF FHEO
1989	625
1990	697
1991	740
1992	724
1993	729
1994	750
1995	684
1996	657
1997	621
1998	621
1999	582
2000	584
2001	622
2002	592
2003	744
2004	710
2005	624
2006	598
2007	579

Training that increases skill level and productivity must to be a priority for every fair housing enforcer.[117] There has never been an effective ongoing training program for FHEO staff. Training must be provided, and provided again, on all core functions of investigative work. Use of the internet to provide updated information, resources, case analysis, conciliation agreements, and other documents must be increased to keep all fair housing staff up to date on developing law and to help ensure consistent application of the law.[118] Computer-based systems should also be developed and enhanced to support monitoring of case investigation activity and monitoring of Congressionally funded programs that advance fair housing.

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Other problems with HUD-based enforcement

HUD's Office of Fair Housing and Equal Opportunity (FHEO) is responsible for much more than enforcement of the Fair Housing Act. It enforces seven civil rights laws besides the Fair Housing Act, six Executive Orders, and Section 3 of the Housing and Urban Development Act of 1968. It conducts a series of activities relating to compliance with these other civil rights laws, including complaint investigation, compliance reviews, and reviews of applications for funding. Because enforcement of the Fair Housing Act is only one component of its activities, there are often conflicts in resource utilization, including staffing, travel funds, contract funds, and educational activities. There is too much on the table, and the various agency priorities are often competing for very limited resources.

Two former Assistant Secretaries of Fair Housing and Equal Opportunity, Roberta Achtenberg and Elizabeth Julian, described the structural conflicts and powerful internal constituencies at HUD that present significant challenges to the ability of HUD to play an effective role in fulfilling the promise of the Fair Housing Act.[119] Because HUD programs provide housing that is covered by the Fair Housing Act, there are grave internal disputes when enforcement action is taken, and deeply entrenched opposition from other offices of HUD to change that would advance fair housing principles. This opposition resulted in sometimes cramped interpretations of the law and resistance to significant expansion of fair housing enforcement activities. Former Assistant Secretary Achtenberg testified that in some cases, strong housing industry constituencies within HUD resisted pro-fair housing changes.[120]

The current enforcement system is not trusted by those who are most likely to use it. "Americans do not file complaints and use their fair housing rights because they have concluded they are essentially useless."[121] Several studies, including two conducted by HUD itself, concluded that large percentages (more than 80 percent of Americans and 88 percent of New Yorkers) would do nothing when confronted with discrimination because it would do no good.[122]

A 2005 GAO sample survey of HUD and FHAP complainants found that half of all complainants were somewhat or very dissatisfied with the fair housing enforcement process. The GAO found that these negative views towards the fair housing investigative process diminished "the Act's effectiveness in deterring acts of housing discrimination or otherwise promoting fair housing practices."[123]

The enforcement system for fair housing is currently separated into two parts: FHEO, which is responsible for investigations, conciliation, and fair housing programs and education; and the Office of General Counsel, which is responsible for a variety of functions including concurrence on reasonable cause determinations and issuance of legal opinions. This separation between the investigators and the lawyers often ends up stalemating and delaying cases. Competing priorities in time and responsibility can cause case delays. In addition, disagreements between the two offices frequently results in non-concurrence by the General Counsel's office regarding whether a particular set of facts is sufficient for a reasonable cause determination.

Currently, FHEO typically fully investigates a case before presenting it to the Office of General Counsel for review. There have been missed opportunities to involve the General Counsel's office in the development of cases, to discuss questions about jurisdiction and planning an investigation, and to suggest avenues of investigation that might avoid legal pitfalls. Leaving the input of the General Counsel's office until the end of an investigation can result in delays and failed cases. A reformed Office

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of Fair Housing should combine attorneys and investigative staff in headquarters and in the field under one management scheme and in one office to make the process faster, more effective, and more consistent.

Recommendations

CREATE A NEW, INDEPENDENT FAIR HOUSING ENFORCEMENT AGENCY

In order to address the longstanding and systemic problems with fair housing enforcement at HUD, we recommend that preparation begin immediately to support the establishment of an independent fair housing enforcement agency that can provide the country with a powerful force that supports fairness and fair housing choice in a unified and systemic way. Support for an independent fair housing enforcement agency was the most consistent theme of the hearings. The evidence shows that the current enforcement system set forth for HUD in the Fair Housing Act (42 U.S.C. §3601 et seq.) is broken and has been for some time.

Fair housing enforcement and education at HUD have lost the confidence of the American public. Internal conflicts with HUD program areas over enforcement and interpretations of the Fair Housing Act have hampered strong enforcement. In addition, staffing and other budget constraints have prevented adequate staffing of fair housing functions. Internal battles between fair housing staff, fair housing lawyers, and program lawyers result in slow or no change in critical areas.

A new independent agency could be advised by an appointed commission that brings together representatives of industry, advocates, and enforcers. Unlike the structure of the Equal Employment Opportunity Commission (EEOC), this commission would have no authority over day-to-day operations or enforcement.

It would help develop a strategic plan to advance fair housing issues and have the charge to provide input and leadership within its constituencies to support fair housing efforts at the national, regional, and local levels. Housing industry, practitioners, and advocates should be represented on such a commission.

The Government Accounting Office should immediately conduct a study of the options for establishing an independent fair housing agency or commission that would provide national leadership for change on fair housing related issues. The agency would focus solely on fair housing enforcement and fair housing and lending education; Although this type of structural change is not without costs and challenges, making the agency independent should help restore credibility to the effort in light of the many problems experienced with placement of fair housing enforcement at HUD.

A reformed independent fair housing enforcement agency would have three key components: (1) career staff including attorneys, with fair housing experience and competence as the key criteria for employment; (2) an advisory commission appointed by the president with the advice and consent of the Senate that is broadly representative of industry, advocates, and enforcers, and adequate staff; and (3) resources to make fair housing a reality. Such an agency would be empowered at the public policy level to work with the relevant cabinet secretaries to advance proactively all of the fair housing issues that are critical to building stronger communities.

Interim steps

As an interim step to seeking legislation for an independent agency, HUD could establish a new fair housing enforcement priority by creating a new office that reports directly to the Secretary of HUD. This office would handle all fair housing enforcement work and fair housing education as well as the Fair Housing

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Assistance Program, which funds state and local enforcement agencies.

At the same time, we must strengthen fair housing monitoring and compliance within federal housing programs at HUD, among federal grantees, and within other federal agencies that administer programs that affect housing markets. Our proposals for federal program reform and enhanced fair housing coordination of state and local grantees will also benefit from a fair housing office at HUD that is more deliberately focused on program reform and compliance. It is the Commission's belief that by separating fair housing enforcement from civil rights compliance and monitoring, both functions will be strengthened.

Such an immediate restructuring could occur without significant expense. The current office of Fair Housing and Equal Opportunity would be divided immediately into two offices: the Office of Fair Housing headed by a Deputy Secretary, which would retain sole authority for all of the aspects of fair housing enforcement and education, and an Office of Civil Rights, headed by an Assistant Secretary, which would retain internal programmatic and compliance responsibilities for fair housing, including HUD's responsibility for affirmatively furthering fair housing in its own programs and among HUD grantees, and its enforcement of other civil rights laws such as Section 504 of the 1973 Rehabilitation Act and Title VI of the 1964 Civil Rights Act.[124] A third office, the President's Fair Housing Council, would work with both of the new offices in meeting its responsibilities.

The new Office of Fair Housing would include the current FHEO Offices of Enforcement, including its systemic investigation and lending units, its Office of Policy, and the FHIP and FHAP programs. It would include enforcement, education, and FHIP and FHAP monitoring staff in all of HUD's regional offices. It must also have strong resources to support development and dissemination of fair housing policy, training, and education as described later in this report. The Office must also have its own assigned attorneys, skilled and experienced in fair housing work, at headquarters and in all ten regional offices, and a travel, education, and contract budget that is adequate to support the creation of a strong national enforcement program and a strong public presence for fair housing.[125]

Key new initiatives of a reformed Office of Fair Housing must include: development of an effective systemic investigation unit with staff throughout the country; development of a national rapid response unit that can respond efficiently and effectively to important investigative issues and to strong cases which require immediate attention; a quality assurance unit that would address the concerns about poor performance; outreach to communities that encounter discrimination but which are underrepresented in complaint filings; and outreach to the housing industry, which is often where discrimination is first suspected or detected. Because disability-based complaints make up the largest percentage of complaints filed with HUD, a reformed fair housing office should also increase its investigation of systemic discrimination against people with disabilities.

There is also a strong need for updated guidance for those who work in fair housing enforcement to ensure that the law will be consistently applied. A reformed fair housing organization should develop a system to issue and distribute interpretive guidance on the provisions of the Fair Housing Act and related laws. This interpretative guidance should be publicly available and explain the meaning of court and policy decisions impacting the application of the law.

A reformed fair housing office must recognize the roles of constituencies and political appointments without changing its fundamental mission to provide prompt, impartial investigations, to seek justice, and to use all available resources to advance housing opportunities

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free from discrimination. It must avoid politicization of decision-making in favor of transparent, effective leadership.

A reformed fair housing office must develop meaningful relationships with fair housing constituencies and develop its program in a way that draws from their strengths. The office could use an advisory group to solicit suggestions for fair housing education and enforcement initiatives from industry, advocates, and enforcers, as a powerful way of leveraging the strengths of each of those communities to make change.

Support the Role of the Housing Industry in Fair Housing Enforcement

As a former Assistant Secretary for Fair Housing and Equal Opportunity testified before the Commission, "Industry can be a partner in developing education and training materials with fair housing offices … [I]ndustry groups in general support consistent prompt enforcement, when enforcement is warranted, and they also support consistent guidance and application of the law to avoid inconsistent outcomes from city to city, state to state, or region to region."[126]

Industry involvement in fair housing enforcement efforts can involve several different approaches. First, thoughtful housing industry participants—agents, developers, builders, lenders, insurers—want to avoid being put in a position where the law is violated. The housing industry can support its members with continued educational materials and up-to-date trainings, especially when materials can be updated with current examples.

Second, housing industry representatives are often the first to see and identify housing discrimination. Developers of Low Income Housing Tax Credit properties, for example, may encounter exclusionary decision making by local government officials that is actionable under the Fair Housing Act. Similarly, a real estate agent that is assisting a family in purchasing a house is also injured when the seller refuses to sell to the family because of the buyer's race. Many housing industry representatives live and work in neighborhoods where diversity is appreciated and may believe that they have been denied the opportunities of integrated living when practices that increase segregation occur in that neighborhood. In each of these situations, there should be support for members of the housing industry who file complaints because they have been injured by an act of discrimination.

Housing industry groups often have existing ethical and licensure rules that address acts of discrimination. One way industry groups can support enforcement is to take prompt action through local, state, and national organizations when a member has engaged in discriminatory practices, as demonstrated by findings of discrimination by agencies or courts. When general issues of discrimination arise, dialogue between fair housing practitioners and industry representatives can increase understanding about why discrimination is claimed and can encourage a prompt resolution by industry leadership. In general, industry leaders should encourage open discussion about enforcement activity and support the enforcement process.

Some industry groups are also beginning to engage in self-testing of businesses to examine industry practices for possible discrimination. This is a positive step in industry leadership because it results in higher levels of awareness of the ways in which discrimination may occur in the current marketplace and it can prevent repetition of practices that may be discriminatory.[127]

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III. Fair Housing Enforcement at the Justice Department is Weak

The Civil Rights Division of the United States Department of Justice, specifically the Housing and Civil Enforcement Section (Section), has broad authority under the Fair Housing Act. Most important is its authority to bring systemic cases that allege a pattern and practice of discrimination or the denial of fair housing rights that raise an issue of general public importance.[128] This authority includes discretion to file cases involving the legality of any state or local zoning or other land use law; furthermore, HUD is required to refer any complaint of zoning or land use discrimination to the Department for investigation and determination as to whether to bring suit.[129] It also is required to bring what are known as "election" cases where HUD has made a determination that there is reasonable cause to believe that the Fair Housing Act has been violated and one of the parties to the matter elects to have the issue litigated in federal court rather than before an administrative law judge.[130] These cases typically involve alleged acts of discrimination against individuals or individual entities.

The Department of Justice (DOJ) is the entity in the federal government that has the necessary resources and the authority to develop and litigate the most systemic and damaging patterns of discrimination as well as those of the most public importance. As one Commission witness testified, "A case brought by the Division reverberates throughout the community, the state, and the region. It can have industry-wide impact in terms of deterrence and reform. The broad-based injunctive relief that the Division can pursue cannot be matched through the efforts of individual or private lawsuits alone."[131]

Decline in number of cases brought

In recent years, the number of cases brought by the Section has declined from previous years. Based on an estimate of 30 attorneys, the Section has filed an average of only 6.9 cases per year over the past eight years and nearly all of the cases involved discrimination in the rental market.[132] It is evident that a less aggressive enforcement posture has been implemented in this period. Only a handful of cases address issues involving real estate sales and only five address racial discrimination in subsidized or low income housing.[133] There has been a significant reduction in fair lending cases,[134] and no recent cases have been brought that directly address the types of discriminatory predatory lending practices partly responsible for the present financial crisis. Although the Department of Justice played a key role in challenging racial steering practices in the 1970s,[135] no recent cases alleging real estate steering based on race or national origin have been brought, nor have there been any cases alleging discrimination in the provision of homeowners' insurance, both of which have contributed to segregated residential living patterns.

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Underutilized testing program

One of the Department of Justice's most potent enforcement tools has not been fully and efficiently utilized in recent years. DOJ initiated its own testing program in 1992 and it quickly became an important investigative tool for important pattern and practice cases. For instance, during the three year period from 1996 to 1998, DOJ filed 24 cases based on testing evidence.[136] By comparison, despite an announcement in February 2006 of a "reinvigorated" testing program called Operation Home Sweet Home, in a similar three-year period from 2006 to 2008, DOJ filed only eight cases based on its own testing evidence.[137] Moreover, there are significant differences both in the numbers and the percentages of cases dealing with discrimination based on race and national origin. In the period between 1993 and 2000, a total of 60 cases were filed by DOJ based on testing evidence and of those, 41, or 68 percent, were based on testing evidence involving discrimination based on race or national origin. In the period between 2001 and 2008, DOJ only filed 19 cases based on testing evidence and only eight of those (42 percent) involved discrimination based on race or national origin.

Few land use and zoning cases being brought

Similarly, DOJ has also backtracked with respect to cases alleging discriminatory land use or zoning decisions, an especially important area of fair housing enforcement given the long history of such discrimination and the complexity and difficulty of such cases. According to testimony, "not a single case challenging land use or zoning practices based on race or national origin has been filed…since 2004."[138]

Fair lending cases are not being brought

Litigation by the Department of Justice challenging lending discrimination has also been seriously reduced, which may have contributed to the worsening of the foreclosure crisis.[139] During the 1990s, fair lending enforcement was "ramping up."[140] A total of 14 fair lending cases challenging discrimination in real estate related lending were brought from 1992-2000, many of which challenged discriminatory predatory activities...[141]

But since 2001, fair lending enforcement has been greatly reduced. DOJ has brought only five fair lending cases dealing with residential lending, four that attacked redlining practices and one that attacked discriminatory pricing practices for manufactured homes. None has concerned predatory lending practices despite extensive research demonstrating the discriminatory patterns so prevalent in the sub prime market.[142]

Lack of effective collaboration

DOJ has also been derelict in collaborating with fair housing organizations to build strong cases. As the president of a FHIP-funded fair housing center testified:

> My own agency's experience with the Department of Justice underscores the challenges outlined in the data. On a number of different occasions, the Miami Valley Fair Housing Center has sought the assistance of the DOJ on cases involving a need for systemic investigations or injunctive relief, only to be disappointed. The response from DOJ in each of these cases is relatively consistent and goes something like this: We are "always interested in any cases that you (the private fair housing organization) believe merit our involvement. We encourage you to plan, coordinate and conduct your investigation, then assemble your testing and other documentation, reports and analysis and send it to us for review. Once we have reviewed the materials that you submit, we will notify you regarding whether or not the Department is interested in pursuing the matter.

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This amounts to a ludicrous policy that inappropriately abdicates the DOJ's authority and responsibility under the law. DOJ is the principal legal authority tasked with enforcing federal fair housing laws and it has both a clear mandate and wide discretion with respect to fair housing enforcement. The DOJ should be a partner and resource to private fair housing organizations in their work to identify, address and ultimately eliminate illegal housing discrimination. Instead, our experience is that DOJ encourages us to use scarce resources without any assistance or coordinated effort from DOJ, even when directly requested; DOJ will then "cherry pick" a marginal few cases to engage upon, often after months of consideration, leaving the remaining cases to be pursued by under resourced private fair housing organizations with the invaluable assistance of private attorneys.[143]

Failure to bring disparate impact cases

Another important impediment to effective fair housing and especially fair lending enforcement occurred in 2001 when a DOJ official announced that the Department would not litigate fair housing cases involving policies or practices that relied on a disparate impact analysis to prove a violation of the Fair Housing Act. This announcement ignores the 1994 Interagency Policy Statement on Fair Mortgage Lending Practices stating that violations of fair lending laws could be proven by application of a disparate impact analysis,[144] and is contrary to scores of U.S. Courts of Appeal decisions going back to 1972 recognizing that violations of the Fair Housing Act can be proved using a disparate impact analysis. Because disparate impact claims are often contentious and strongly defended, it is particularly important for the Department of Justice to take a strong role in bringing such cases.

Defending the Fair Housing Act

What has been particularly noticeable in recent years is DOJ's failure to participate in cases presenting serious questions of the Fair Housing Act's application. Those areas include: the applicability Section 804(b) of the Act to post-sales discrimination (for example, failure to provide services on the same basis to minority tenants after they have moved into a rental complex);[145] time limits on continuing violations in the accessible design and construction of buildings;[146] and whether the law's discriminatory advertising prohibitions are voided by the Communications Decency Act.[147] DOJ has also failed to become involved in any of the cases challenging anti-immigrant ordinances that have a discriminatory impact on Latino renters and homeowners.[148] The Department, in its position as the chief enforcer of the Fair Housing Act, has a special role to play in providing guidance to courts on important fair housing issues; unfortunately, it has been almost totally absent in such cases.

Failure to bring any cases arising out of the aftermath of Hurricane Katrina

When the country faced one of the most catastrophic housing crises in its history after Hurricane Katrina, the Department of Justice was absent from enforcement of fair housing rights along the Gulf Coast, despite well-publicized testing by the National Fair Housing Alliance that demonstrated race discrimination against those seeking to relocate to other communities,[149] as well as evidence of blatant discrimination on internet cites offering housing for hurricane victims[150] and discriminatory opposition to desperately needed affordable housing projects.[151] This contrasts with the vigorous enforcement program addressing discriminatory rental practices in south Florida after Hurricane Andrew in 1992.[152]

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Recommendations

STRENGTHEN DOJ'S ROLE IN FAIR HOUSING AND FAIR LENDING ENFORCEMENT

The Civil Rights Division at the Department of Justice must take a stronger leadership role in fair housing and fair lending enforcement by focusing its resources on fair housing cases, and challenging lending discrimination, steering and discriminatory exclusionary zoning practices by local and state governments. Special attention should also be given to addressing discriminatory practices by federally funded and tax credit properties and seeking new ways to combat the failure to promote residential segregation in these programs.

DOJ must work more closely with federal, state and local fair housing enforcers and private fair housing groups to develop systemic investigations and pattern and practice cases. To free up resources to increase systemic cases, it should increase the responsibility of U.S. Attorney offices to handle the "election" cases.

DOJ must better focus its testing program to address real estate sales, steering, exclusionary zoning and predatory lending practices based on race, national origin, and disability and increase the number of cases based on its testing program. DOJ must also reassert its leadership role in fair housing by increased participation as amicus curiae in private cases that involve important fair housing and fair lending issues.

DOJ must bring cases based on the disparate impact theory and involve itself in private litigation to defend against attacks on the disparate impact standard of proof in fair housing and fair lending cases.

DOJ, as well as all federal agencies with responsibility for addressing the increasing number of natural disasters in this country, must also increase its readiness and give much higher priority to investigating and prosecuting discriminatory practices that occur in the wake of catastrophic events such as Hurricanes Katrina and Rita.

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IV. The Need for a Strong Fair Housing Initiatives Program and a Coordinated Fair Housing Assistance Program

The Fair Housing Initiatives Program

Enactment of the Fair Housing Initiatives Program (FHIP) legislation in 1987 served as recognition of the vital role qualified private fair housing centers play in educating the public about fair housing and conducting enforcement activities. Private fair housing enforcement is a critical element of a strong national fair housing enforcement presence.

During the past five years, private fair housing organizations have processed 65 percent of the fair housing complaints in the United States, while Fair Housing Assistance Program agencies (state and local fair housing enforcement agencies with laws substantially equivalent to the federal Fair Housing Act) have processed 25 percent and HUD 10 percent of the cases.[153] Private fair housing groups are on the front line because they are community-based; they often perform a valuable screening and development process before a complaint is filed with an enforcement agency. Private fair housing groups also conduct testing, the single most valuable way of collecting evidence about whether discrimination has or has not occurred. Private groups conduct testing in connection with individual cases, but they also conduct market testing to examine real estate practices or identify whether or not discrimination may be occurring when its victims are unaware that discrimination may have occurred. Market testing provides information about the nature and extent of discrimination in a community. Private fair housing groups have also been at the forefront in bringing novel, systemic, and significant cases in the area of racial and ethnic discrimination in real estate sales, homeowners insurance and mortgage lending discrimination, as well as in sexual harassment and accessibility cases. Private fair housing organizations also have developed broad relationships within their communities, bringing together community based organizations, the housing industry, scholars, and civil leaders to address fair housing issues as they impact local communities.[154]

FHIP is the sole federal program designed to fund private fair housing groups to conduct enforcement, education, and outreach. It has several components: (1) the Private Enforcement Initiative (PEI), which funds enforcement activities for organizations that deal with all protected groups and all types of unlawful housing discrimination to engage in enforcement activity; (2) the Education and Outreach Initiative (EOI), which funds fair housing education; (3) the Fair Housing Organizations Initiative (FHOI), which has funded the establishment of new fair housing organizations; and (4) the EOI National Initiative, which has funded national media campaigns to educate the public and industry about fair housing rights and responsibilities. Other permitted categories are funding for regional and local

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programs and community-based programs that are often not mentioned in funding notices published for the FHIP program. These categories are established by statute.[155] Among the activities authorized by statute but not funded in recent years are the development of new prototypes to respond to new or sophisticated types of discrimination, other special projects,[156] and funding to build the capacity of organizations that are located in underserved areas or which include large populations of people in protected classes. When adequate funding is available, these types of activities should and funded.

Current appropriation levels are grossly inadequate to fund existing private fair housing groups to perform enforcement activities. A full service private fair housing group that successfully competes in FHIP can be awarded no more than $275,000 per year, whether it is located in New York City or Savannah, Georgia. Although about 140 agencies have received enforcement grants over the past ten years, current funding levels permit many fewer groups to be funded every year to conduct enforcement activities. Only 28 groups in the country received consistent funding over the five-year period from FY 2003-2007 and 26 private fair housing groups, including some of the oldest and most respected groups, have closed or are at risk.[157] Funding streams are erratic and unreliable; little financial support exists for fair housing work;[158] and organizations located near each other (but not serving the same population) may not be funded simply because of a decision about geographic dispersion.[159] Budgets are so tight that even one year of lost funding can be enough for an organization to close its doors or to cut back its activities to virtually nothing. Much of the country is not served by private fair housing groups; for example, there is only one such group in all of HUD's Denver region, which includes the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.[163]

HUD's budget requests and Congressional appropriations have simply been too little to fund the eligible private fair housing groups to conduct enforcement activities. FHIP funding levels are virtually flat lined; they have not significantly increased in the past 15 years.

Congressional Appropriations Provided for FHIP Since 1994

**actual funding level available for general FHIP activities, excluding set-asides*

Fiscal Year	FHIP Funding
1994	$21 million
1995	$26 million
1996	$17 million
1997	$15 million
1998	$15 million
1999	$15 million*
2000	$17.4 million*
2001	$14.2 million*
2002	$18.2 million*
2003	$17.6 million*
2004	$17.7 million*
2005	$18 million*
2006	$18.1 million*
2007	$18.1 million*
2008	$21.8 million*
2009 (proposed by the administration)	$19 million*

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HUD's onerous competitive funding process for the FHIP program is in stark contrast to the Fair Housing Assistance Program (FHAP), where eligible agencies of state and local government routinely receive reliable and predictable funding streams as long as they meet certain performance standards.

The FHIP funding process is cumbersome and time consuming. A small office must devote hours of precious time to preparing a major grant proposal, often writing about activities that may be well-suited for a HUD housing program but that bear no resemblance to the tasks and responsibilities of a small non-profit fair housing group.[161] Priorities and requirements for the NOFA change every year; occasionally new categories are created, such as a category to fund a fair housing response to Hurricane Katrina, established at the virtually useless funding level of $50,000. In addition, differences in the panels that review proposals result in anomalous results with one group receiving and another denied funding for what is essentially the same proposal.

FHIP program management has been frequently criticized by independent audits for mismanagement ranging from interference by the office of the Secretary to the program's inability to document its accomplishments, its way of handling the competition for funding a national media campaign, or its provision of funding for an illegal purpose.[162]

Recommendations

INCREASE FUNDING FOR THE FHIP PROGRAM

Funding for the Fair Housing Initiatives Program must be increased. These new funds will allow a significant increase in the presence and effectiveness of a community-based program that can improve the public's awareness about fair housing rights, develop partnerships with industry leaders in communities, support increased fair housing enforcement, and help build, or rebuild, diverse communities.

First year funding for a reformed FHIP program should be, at a minimum, $52 million. In order to create a strong presence in our nation's communities, FHIP eventually should support full funding of private fair housing organizations to conduct enforcement activity in each of the 363 Metropolitan Statistical Areas,[163] at a cost of approximately $109 million per year.

Additional funding for national educational campaigns and local, regional and national enforcement projects should also increase. Overall, the projected appropriations for an expanded FHIP program over the next six years would increase significantly, including routine increases in the amount provided to organizations for enforcement, for education, and for national media campaigns. And in order to ensure that the fair housing issues in communities are approached holistically, fair housing groups should be permitted to secure funds for both education and enforcement in the same year.

Because disability-based complaints make up the largest percentage of the complaints filed, HUD should encourage fair housing organizations to develop contractual partnerships with disability-based organizations on testing, education and enforcement strategies.

REFORM FHIP MANAGEMENT

HUD staff should rewrite the FHIP eligibility and performance standards in consultation with industry and private fair housing groups. Eligibility standards might include compliance with statutorily required standards, confirmation of a full range of services to be provided, establishment of service areas and office locations, and maintenance of financial accountability standards. Certain minimum numbers of activities in identified categories could be required, depending on the type of funding. For example, for an enforcement grant, required activities might include counseling potential complainants, conducting testing directly, conducting

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individual and systemic case investigations, providing education for the public and housing industry, promoting the benefits of diversity in their communities and working with other organizations and policy-makers to effect change, making timely and appropriate referrals to HUD/FHAP administrative enforcement agencies, conducting litigation activities, conducting educational workshops, and so forth.[164] Performance standards would be required and poor or nonperformance could result in technical assistance, performance improvement plans, and ultimately suspension or termination of funding. This approach is much like the system already in place for state and local enforcement agencies in the FHAP program; compliance would be monitored by the reformed fair housing office (and eventually the new independent agency) with on-site performance assessments and remote monitoring.

The Fair Housing Assistance Program

The Fair Housing Assistance Program (FHAP) was established by the Fair Housing Act, 42 USC §3616, 24 CFR 100.115. The program provides that HUD may enter into agreements with state and local governmental units that HUD determines enforce laws with rights and remedies equivalent to the federal Fair Housing Act. Such agencies enforce a state or local law, but are referred cases from HUD for enforcement, receive funding from HUD, and must meet certain performance standards. If HUD receives a case that arises within the jurisdiction of a FHAP participant, HUD refers the complaint to the FHAP agency and generally takes no further action on the case. Neither complainants nor respondents may select HUD over the FHAP agency or vice versa. HUD reports that 37 states plus the District of Columbia and 68 local agencies currently participate in the FHAP program.[165]

FHAP agencies have the same types of problems that are observed in HUD's fair housing offices. A 2005 GAO report that surveyed both HUD's fair housing office and FHAP agencies found problems and delays at the intake process, with 30 percent of complainants surveyed reporting that it was somewhat or very difficult to contact the offices to discuss filing a complaint.[166]

More recent studies by HUD's Office of the Inspector General found many errors in case processing, including several that could result in dismissal of a complaint or other adverse consequences even if complainants had a strong case.[167] These external reviews also found that cases were not always processed in a timely fashion; that required documentation (including documentation of conciliation efforts and letters serving complainant and respondents with documents about the case) was not found; and that the files did not contain investigative plans.[168]

FHAP agency processes need not be identical to processes at HUD, but similar interpretations of the law should apply to cases so there is no unequal justice. However, the Commission received reports of cases handled by FHAP agencies with outcomes that were not consistent with federal law or with HUD policy. Commission witnesses expressed a number of concerns about the lack of enforcement undertaken in cases where the agency had made a determination that there was reasonable cause to believe that the federal law had been violated, as well as in direct cases brought under state law.[169] There are also reports that state and local laws have been changed by judicial or legislative action and are no longer equivalent to the federal Fair Housing Act, without any action by HUD.[170]

The lack of cooperation between HUD and FHAP agencies also leads to inefficient and ineffective enforcement. Novel and complex cases and cases alleging systemic violations are poorly suited for some state or local enforcement agencies. Such cases require relative sophistication and high levels of resources to investigate and prosecute and many FHAP agencies lack that sophistication and those resources. More flexibility is needed to permit cases to be investigated jointly with HUD or only by HUD.

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Recommendations

IMPROVE COORDINATION AND OVERSIGHT OF THE FAIR HOUSING ASSISTANCE PROGRAM

HUD's oversight and coordination of the FHAP program must be strengthened to ensure that the rights and remedies available through state and local fair housing enforcement are consistent with the leadership in a reformed federal enforcement initiative and equivalent in practice to the Fair Housing Act.

Corrective action is needed to ensure that the rights available under state and local law are truly equivalent to rights under federal law and that the administrative process is properly funded to support case processing and litigation, where necessary. Existing authority, including the use of Performance Improvement Plans and suspension or termination of substantial equivalency status should be used when the performance of FHAP agencies and the laws which they enforce are not substantially equivalent to the reformed fair housing enforcement process. The reformed fair housing office should impose sanctions when enforcement is not undertaken in cases where a reasonable cause determination has been made.

Training, binding guidance, and technical assistance must be provided to FHAP agencies to improve their capacity to handle all cases. All of the enforcement improvements recommended for HUD apply with equal force to FHAP agencies. Joint training with HUD, DOJ and FHIP-funded organizations should be conducted routinely. There are good models for HUD, FHIP and FHAP cooperation on investigations and on other operational strategies, such as that facilitated by HUD in its Seattle HUD office.[171-]

At the same time, performance standards directed at high quality performance must be applicable to FHAP agencies, HUD must monitor performance consistently to ensure that the parties' rights to notice, conciliation opportunities, and a prompt effective investigation are protected. There must be adequate funding for equivalent FHAP agencies to ensure effective enforcement.

There should be targeted funding for appropriate education and enforcement efforts, in coordination with private fair housing organizations, the housing industry, and the federal fair housing education efforts.

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V. Fair Housing and the Foreclosure Crisis

When this Commission was created in the spring of 2008, the foreclosure crisis and its impact on the nation's economic well-being was the country's most pressing domestic issue. As the Commission has gone forward with its hearings and as this report is being released, the crisis has grown even worse and the nation now faces its greatest economic downturn since the Great Depression.

What has been greatly overlooked in the federal government's response to this crisis and in media reports is that the roots of this crisis are not simply a result of the rapid growth of collateralized mortgage obligations (the purchase and bundling of mortgages into securities), the exotic loan products that were created for this booming secondary market, and the deregulation of the financial services industry. They also can be traced to historic discrimination and to more recent racial discrimination in housing and mortgage lending. Indeed, in describing the similarity of the causes of the present foreclosure crisis to past discrimination, one Commission witness described it as "déjà vu all over again."[172] Similarly, the disproportionate impact of foreclosures on minority homeowners and renters has been underreported by the media. The impact of this crisis is causing one of the greatest losses of wealth in the American minority community in its history.

Discriminatory causes of the current foreclosure crisis

As noted earlier in this report, a central historical cause of racial inequality in housing has been government and private redlining of neighborhoods that left individuals living in minority neighborhoods without access to mainstream mortgage lending.

Redlining and exclusive lending practices have continued in more recent times. In the 1960s and 1970s, community groups and local government agencies in several cities, including Chicago, Baltimore, and Philadelphia, documented the residential isolation that contributed to the nation's bifurcated lending structure.[173] This research demonstrated that the lack of lending by mainstream financial institutions in under served communities opened the door for finance and high cost lenders to set up shop in these neighborhoods. Financial institutions exploited the lack of mainstream lenders in minority markets through the perpetuation of high cost loans, the use of tenuous housing schemes, and other vehicles that one housing researcher termed "the underworld of real estate finance."[174]

In an attempt to address this longstanding discrimination, HUD reversed its own historical redlining maps and fostered the massive influx of Federal Housing Administration loans into minority and racially changing neighborhoods.

But, in doing this, HUD virtually eliminated sound underwriting and oversight. With the mortgages fully insured to protect the investors, and with no effective monitoring from HUD, abuse was practically assured. Unscrupulous real estate and mortgage companies teamed up to exploit the new minority market through "blockbusting" practices. Whites were persuaded to leave the community for fear of an influx of racial minorities, while minorities were then sold the houses vacated by White homeowners, spurring rapid racial transition. In addition, early enforcement of the Fair Housing Act and Equal Credit Opportunity Act was neither vigorous nor especially effective.[175]

In the 1970s, coalitions of community organizations played an important role in the passage of powerful financial reform legislation, including the Home Mortgage Disclosure Act of 1975 (HMDA) and the Community Reinvestment Act of 1977 (CRA), legislation that helped local community organizations begin rebuilding neighborhoods devastated by discriminatory disinvestment, redlining and blockbusting.[176] Through HMDA data,[177] academics, regulators and advocacy groups developed a large body of research, most of which showed significant lending disparities when comparing Whites with African Americans and Latinos.

Particularly important was the very influential Pulitzer Prize-winning series of articles called "The Color of Money," published in 1988 by *The Atlanta Journal/ The Atlanta Constitution*, which demonstrated racial disparities in home mortgage lending in Atlanta, Georgia.[178] Prompted by the public attention to this series, and the 1988 Fair Housing Act Amendments, which significantly strengthened the federal government's enforcement authority, the Department of Justice commenced inquiries into the lending practices of 64 institutions. Ultimately, in 1992, DOJ filed *U.S v. Decatur Federal Savings and Loan Association*, the first case in which DOJ charged a pattern of racial discrimination in lending through marketing and underwriting practices as well as through the failure to market products to minority neighborhoods.[179] This case ushered in a period of vigorous fair lending enforcement by the DOJ through 1999,[180] which contributed to a significant reduction in redlining practices and increases in mortgages available to minority home seekers.

At the same time, the seeds of the present foreclosure crisis were being planted. Substantial lending deregulation in the 1980s greased the wheels for lending in minority communities desperate for credit because of historic redlining. The Depository Institutions Deregulatory and Monetary Control Act (1980) removed usury restrictions on first lien mortgage rates; the Alternative Mortgage Transaction Parity Act (1982) permitted variable interest rates and balloon payments while preempting local government controls; and the Tax Reform Act (1986) eliminated interest deductions for consumer credit, encouraging homeowners to replace consumer debt with mortgages.[181] Not surprisingly, the highly unregulated subprime market exploded and grew at exponential rates.[182] The increased availability of mortgages to minority communities came primarily through a newly created subprime mortgage market that made mortgages available to higher risk and non-traditional borrowers, albeit at higher interest rates. Many of these borrowers were not truly high risk – they were just underserved by conventional lending institutions.

These unregulated conditions allowed predatory lending to thrive in the subprime market. Predatory loans were often marked with deceptive or unfair practices such as pre-paid single premium credit insurance, non-disclosure of fees, and promises to refinance into a better loan at a later date.[183] By the 2000s, these predatory subprime loans had evolved

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to include "exotic" features such as artificially low introductory rates, interest-only mortgages, exploding adjustable rates, [and] pre-payment penalties to preclude refinancing."[184] The securitization of these subprime loans created a seemingly limitless well of funds for these exotic products.[185]

These loans were often marketed in a discriminatory way. Brokers targeted these often unsuitable and unsustainable loans primarily to African-American, minority, and elderly homeowners, through a new discriminatory practice called "reverse redlining."[186] The results were predictable. HUD's examination of the 1998 HMDA data demonstrated that subprime loans were five times more likely to be made in African-American neighborhoods than in White neighborhoods.[187] Analysis of 2006 HMDA data indicates that roughly 54 percent of African Americans and 47 percent of Latinos received subprime loans compared to approximately 17 percent of Whites.[188]

Discrimination was exacerbated because of the profit incentives for predatory lenders, which resulted in many minority individuals being steered to risky subprime loans even when their income and credit scores would have qualified them for prime loans.[189] Homeowners in high-income African-American neighborhoods have been found to be three times as likely to receive subprime loans as residents in low-income White neighborhoods.[190] The *Wall Street Journal's* analysis of subprime loans made since 2000 showed that in 2005, 55 percent of borrowers who received subprime loans had credit scores that would have qualified them for a conventional mortgage, indicating that credit was not a factor in the subprime loan disparities based on race and national origin. The study also revealed that by 2006, that percentage had increased to 61 percent.[191]

Contributing prominently to this ballooning of the discriminatory subprime mortgage market was the opportunity for lenders to provide financial services in a highly unregulated atmosphere. Many lenders peddling subprime loans were non-depository financial institutions that were not regulated at the federal level and not covered by the Community Reinvestment Act (CRA). Furthermore, bank regulatory agencies failed to rein in abusive practices at the lending institutions that were subject to federal regulatory oversight. Even worse, agencies like the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) passed regulations exempting their member institutions from state anti-predatory lending laws, thereby preventing states from effectively challenging discriminatory and predatory lending activities.[192]

Another contributing factor to the rise of discriminatory subprime and predatory lending practices is the halt to vigorous fair lending enforcement by the Department of Justice since 2000. Because of this lack of enforcement at the federal level, the responsibility to combat discriminatory practices at the root of the foreclosure crisis has fallen to private attorneys, states, and municipal governments. While they have few resources to combat the onslaught of abusive lending practices, private attorneys have been initiating innovative litigation strategies.[193] Municipalities are also bringing innovative fair lending cases against lenders alleging that the severe damage to their neighborhoods from foreclosures is a result of the discriminatory reverse redlining practices of these companies.[194] However, without the involvement of DOJ, prospects for meaningful redress are dim. Only the federal government has the enforcement resources necessary to fulfill the litigation needs of such cases.

In recent months, there has been a misleading campaign by some to blame the foreclosure crisis on the CRA, claiming that it forced lenders to make risky loans to uncreditworthy minorities. As one researcher has explained, this is akin to "blaming the canaries in the mine for the explosion."[195] Such an attack is

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without rational support, and by now has been thoroughly refuted.[196] Indeed, on November 20, 2008, the Comptroller of the Currency, John C. Dugan, said he categorically disagrees with suggestions that the CRA is responsible for the current financial crisis.[197]

The foreclosure crisis has had a devastating impact on minority communities

As a result of past and present lending discrimination "both condoned and created by the explicit government policy" African Americans own less property today than they did more than 80 years ago. African Americans owned about 15 million acres of land in 1920. Today, they hold just over 1.1 million acres. African Americans still suffer from the fact that their parents and grandparents grew up in a rigidly segregated America and were exposed to public and private policies that inhibited their ability to accumulate financial capital and assets. Because Whites were helped by the homeownership development policies of the 1930s-1950s and African Americans, Latinos, and other minorities were not, Whites have had a longer time to build and sustain wealth. The wealth that Whites have been able to accumulate and sustain has compounded so that White wealth is held in very diverse portfolios. Conversely, for African Americans and Latinos in particular, housing wealth is a disproportionate share of their total wealth.[198]

We are now in the midst of a mortgage catastrophe that has significantly added to this wealth gap. The Mortgage Bankers Association recently reported that of the 44 million active mortgages throughout the country, approximately 342,000 entered into foreclosure during the third quarter of 2007, the highest rate of foreclosures in more than 35 years.[199] According to RealtyTrac, there were 765,558 foreclosure filings in the third quarter of 2008. Entire communities have been decimated by rampant foreclosures, essentially destroying neighborhood stability and wiping out individual wealth accrual.

The spillover effects of foreclosures harm the entire community, leading to a decrease in property values near the foreclosed home as well as "abandoned homes; increased risks of fire, crime, and drugs; increases in homelessness and job loss; deterioration of schools; and a crippling shortage of city funds for existing social programs."[200]

The recent collapse of subprime loans and the resulting economic downturn has affected the entire United States, not to mention the global financial markets. But its effects have been felt first, and most prominently, in minority communities.[201] In his testimony before the Commission, Professor Melvin Oliver focused on the powerful effects of the subprime mortgage meltdown on the wealth of minority households, particularly African Americans:

> No other recent economic crisis illustrates better the saying "when America catches a cold, African Americans and Latinos get pneumonia" than the subprime mortgage meltdown. African Americans, along with other minorities and low-income populations, have been the targets of the subprime mortgage system. Blacks received a disproportionate share of these loans, leading to a "stripping" of their hard won home equity gains of the recent past and the near future. To understand better how this has happened we need to place this in the context of the continuing racial wealth gap and its intersection with the new financial markets of which subprime is but one manifestation.
>
> Family financial assets play a key role in poverty reduction, social mobility, and securing middle class status. Income helps families get along, but assets help them get and stay ahead. Those without the head start of family assets have a much steeper climb out of poverty. This generation of African Americans is the first one afforded the legal, educational, and job opportunities to accumulate financial assets essential to launch social mobility and sustain well-being throughout the life course.

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Professor Oliver's testimony is even more poignant when one considers that the subprime market was not a home purchase market until more recently. For more than a decade, the majority of loans originated in the subprime market were refinance loans with first-time home buyers representing only 10 percent of the subprime market. Thus, the loans were not contributing appreciably to increases in homeownership. This led the Center for Responsible Lending to accurately project that foreclosures resulting from onerous subprime loans would result in a net drain on homeownership, particularly for African Americans and Latinos.[202] Accordingly, another very unfortunate result of this crisis has been the loss of homeownership for thousands of minority seniors who had worked so hard to build equity and financial security, only to see it stripped away.

Recommendations

INCORPORATE FAIR HOUSING PRINCIPLES INTO FORECLOSURE RELIEF IMPLEMENTATION

In recent months, the federal government has taken unprecedented steps to address the current economic crisis. Much of the focus of this work has been directed at rescuing the financial markets by assistance to financial institutions. At the same time, there has been little relief provided to homeowners facing foreclosure.

The Commission has followed these activities closely. We are concerned with the lack of progress in adopting systematic programs to assist homeowners faced with foreclosure, which hurts minorities disproportionately because of the discriminatory causes just discussed. We are also alarmed by the lack of any attention to the response to the crisis. On two occasions the Commission has written letters raising these concerns (see Appendix B). First, on September 24, 2008, the Commission wrote to the Congressional committee chairs and ranking minority members responsible for drafting emergency legislation to address the financial market meltdown. In that letter, we listed discriminatory practices in the lending market that were a central cause of the current crisis and set forth several fair housing and fair lending principles that we requested be included in the emergency legislation. Second, on October 24, 2008, after emergency legislation had been passed, the Commission wrote to the Secretary of Treasury to urge that his Department not waive or overlook the civil rights requirements applicable to it and to the lenders who would be receiving assistance. We urged that the rescue activities under his jurisdiction be carried out in a non-discriminatory manner and in a manner that met the responsibility to affirmatively further fair housing.

Specifically, the October 24 letter recommended that: the review of loans acquired by any federal agency be given expedited review for potential civil rights violations and unfair and deceptive practices; the Treasury Department promote home preservation measures and protection of the rights of tenants in its loan modification activities; and management of REO properties (i.e. foreclosed properties owned by the mortgagee) obtained through loans acquired pursuant to the rescue bills (such as the Neighborhood Stabilization Program) be handled in a non-discriminatory manner that affirmatively furthers fair housing.

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The principles articulated in the September 24 letter and the specific steps recommended in the October 24 letter with respect to any loan obtained by the federal government are still important as the process of determining appropriate financial rescue steps goes forward. However, these principles still do not appear explicitly in any of the discussion or guidance concerning the rescue packages.[203] Therefore, we reiterate the recommendations in our October 24th letter and further recommend:

- Any federal, state, or local government with responsibility for foreclosure rescue plans, such as loan modification or relief for neighborhoods damaged by foreclosure, must adopt and announce publicly the specific steps it will take, and requirements it will impose, to affirmatively further fair housing and avoid segregation.

- The President's Fair Housing Council should coordinate federal fair lending enforcement by fostering better coordination between HUD, the Department of Justice, the bank regulatory agencies, and private fair housing groups. This should include prioritizing fair housing and fair lending litigation, including cases challenging the disparate impact of practices and policies, such as discretionary pricing policies that have had a discriminatory impact on minority borrowers.

- The President's Fair Housing Council should review the implementation of homeownership preservation, foreclosure prevention, and loss mitigation efforts to ensure that these programs are being implemented in a manner that affirmatively furthers fair housing.

- HUD and the Department of Treasury should develop and apply appropriate sanctions, with due process protections,[204] for any entity seeking foreclosure relief funds that is found to have engaged in violations of the Fair Housing Act.

- HUD should implement a special fair lending initiative in cooperation with private fair housing groups to fund the investigation and redress of discriminatory practices in the lending sector. This initiative must include an evaluation of programs designed to return foreclosed properties to active use so they do not destabilize the surrounding neighborhoods.

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VI. Federal Housing Programs: The Mandate to Affirmatively Further Fair Housing

Since 1968, the Fair Housing Act has required that HUD and other federal agencies engaged in housing and urban development, as well as grantees that they fund, act in an affirmative way to further fair housing.[205] The courts have recognized that this "affirmatively furthering" duty requires HUD to "do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases."[206] The courts have emphasized the importance of both careful fair housing analysis[207] and more diverse housing choices and outcomes.[208] As one state plan framed the goal, "the opportunity to choose where one lives is essential to endowing individuals and families, across a spectrum of race, ethnicity and disability, with the opportunity to have a choice in the selection of schools, access to job opportunities, and an ability to engage as fully equal members of their community."[209]

The affirmatively furthering obligation requires fair housing certifications by recipients of Community Development Block Grant Funds[210] and other federal housing assistance. The obligation to affirmatively further fair housing also includes any federal agency having regulatory or supervisory authority over financial institutions.[211] Two Executive Orders also cover these requirements and Executive Order 12892 established the President's Fair Housing Council to coordinate activities to affirmatively further fair housing across federal government agencies and regulatory bodies.[212]

Despite these strong requirements, the testimony unanimously reported that the process was not functioning as intended. HUD has not been successful in bringing the affirmatively furthering obligation to life. As Senator Edward Brooke, R. Mass., an original co-sponsor of the Fair Housing Act along with Senator Walter Mondale, D. Minn., said in 1968, HUD itself has been part of the problem:

> What adds to the murk is officialdom's apparent belief in its own sincerity. Today's Federal housing official commonly inveighs against the evils of ghetto life even as he pushes buttons that ratify their triumph -- even as he ok's public housing sites in the heart of Negro slums, releases planning and urban renewal funds to cities dead-set against integration, and approves the financing of suburban subdivisions from which Negroes will be barred. These and similar acts are committed daily by officials who say they are unalterably opposed to segregation, and have the memos to prove it. . . . But when you ask one of these gentlemen why, despite the 1962 fair housing Order, most public housing is still segregated, he invariably blames it on regional custom, local traditions, personal prejudices of municipal housing officials.[213]

Witness after witness echoed this powerful statement during the Commission's hearings.[214] Forty years later, HUD still has not adequately advanced fair housing principles in its own programs, and although it has provided guidance on the content of the "affirmatively furthering" obligation,[215] it has failed to adequately monitor or enforce these rules among federal program grantees.

Impact of federal programs on fair housing and integration

The federal government should first look at its own housing programs to reduce segregation and expand housing choices for all American families. As discussed earlier, federal housing programs – particularly public housing and the Federal Housing Administration – have been an important foundation for segregation in this country. Today, for a number of reasons, federal programs are still focusing low-income housing resources in higher poverty, segregated areas.

Fair housing compliance within HUD programs is a key responsibility of each division at HUD, including the existing Office of Fair Housing and Equal Opportunity. It is our hope that removing fair housing enforcement to a separate agency will free the remaining civil rights office at HUD to engage in more focused program compliance activities both within HUD and among HUD grantees.

The three largest federal housing programs (Section 8, public housing, and the Low Income Housing Tax Credit) serve more than 4.5 million families. If these programs were reoriented to permit families and children to move to better schools in less segregated communities, the nation could dramatically alter the face of metropolitan segregation.

Section 8 Housing

The Section 8 Housing Choice Voucher Program currently serves more than two million low-income households. Unlike other housing programs, it creates a portable housing benefit that can be used by an eligible family to rent private apartments in multiple locations.

As Barbara Sard points out:

> The voucher program does a better job than any other low-income housing program of enabling families to live in lower-poverty neighborhoods. But there is mounting evidence that in many metropolitan areas it is not doing as well as it could at helping families to live in safer communities with better schools, services and access to jobs. As a result, it is falling short of its potential to improve the lives of the families it assists. Failing to provide voucher holders access to high opportunity areas may leave them concentrated in a small number of increasingly poor neighborhoods.[216]

The Section 8 program has fallen short of its potential for a number of reasons. There is insufficient counseling and information about the full range of choices families have; low maximum rents restrict tenants to certain areas; landlord discrimination occurs in some areas; and bureaucratic impediments can make moving from one "jurisdiction" to another more difficult than it needs to be.

It is crucially important to expand housing opportunities available to Section 8 recipients, because access to diverse and inclusive communities should not be limited only to middle and upper middle class families. As Xavier Briggs notes, there is also "growing evidence that assisted relocation can dramatically reduce exposure to neighborhood crime and the physical and mental risks associated with daily exposure to gun violence and the threat of same, as well as gang recruitment of boys and sexual harassment of girls."[217]

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Beyond administrative and funding changes, several witnesses supported a stronger geographic targeting of vouchers to areas with excellent schools and rich employment opportunities, as in the original Gautreaux housing mobility program.[218] One simple way of accomplishing this in the regular Section 8 program would be to initially target vouchers to low poverty neighborhoods with a tenant option to opt out of the target neighborhood.[219] Other witnesses pointed to the importance of strategies to better connect families to opportunities in their new communities, and additional counseling to encourage families to stay after making a successful move.[220]

Alex Polikoff, the civil rights lawyer behind the *Gautreaux v. HUD* case, which led to a well regarded housing mobility program for 7000 Chicago families, goes an important step further in his recommendation for a national *Gautreaux* housing mobility program targeted to America's most hyper-segregated metropolitan areas. Mr. Polikoff proposes a new program that would set aside funds for up to 50,000 new geographically targeted vouchers each year that could only be used in low poverty communities with high quality schools and employment opportunities. Participation in the program would be purely voluntary, and only families in segregated, high poverty neighborhoods would be eligible.

Mr. Polikoff's proposal is similar to the important proposal from the Half in Ten coalition[224] calling for the federal government to fund 200,000 new "opportunity vouchers" each year for the next ten years, providing two million households with access to opportunity as part of a strategy to reduce the poverty rate by half in ten years. The coalition's report also recommends that project-based vouchers be "created for specific units in areas with good schools, high-quality public services, and good employment opportunities, and to preserve affordable housing in rapidly gentrifying neighborhoods to prevent displacement of low-income residents."[222] To maximize housing choice, agencies that consider housing needs regionally should be given preference for administering these vouchers. Further, funding for the vouchers should be combined with funding for other mobility programs, such as housing-search assistance and case management services that would allow families to participate in HUD's Family Self-Sufficiency program.[223]

Public Housing and Hope VI

The vast inventory of federal public housing is an essential housing resource for low-income Americans. It is also a monument to segregated housing policies of the 1940s, 50s, and 60s. Today, the pressing need to renovate or replace significant parts of this inventory represents an opportunity to give families in public housing more choices.

The federal HOPE VI program was originally conceived as a way of transforming poverty concentrated, high density public housing into mixed income housing on a more human scale; and at the same time giving public housing residents more housing choice, including the opportunity to live in a new mixed income community. Unfortunately, the program as implemented did not achieve these goals; many public housing residents were not allowed to return to the original development after it was rebuilt, and many others were simply moved into other segregated neighborhoods, rather than into low poverty and racially integrated areas.[224]

As we move forward with public housing redevelopment, HOPE VI and other public housing reform initiatives must open up new choices for residents. We should not simply resegregate public housing residents in low opportunity communities because funds are available to renovate dilapidated housing. A balance must be struck between residents' right to return to a revitalized mixed income community,

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and the rights of other residents (and families on the waiting list) to move to new, less segregated areas of higher opportunity.[225] This balance must promote racially and economically integrated housing, but it is not a one-size-fits-all approach. As Demetria McCain observed in Dallas, the fair housing analysis depends on local context:

> The decision to rebuild some or any units onsite varied depending upon which of the 3 public housing structures were being demolished. Roseland Homes, in a gentrifying area, called for one solution, while a West Dallas project, isolated across the Trinity River in a heavy industrial area and near a lead smelter, called for another.[226]

Other HUD Programs

The project-based Section 8 program, the Community Development Block Grant (CDBG) Program, and the HOME program share some of the tendencies to concentrate poor people only in certain communities or in specific neighborhoods within communities. This is partly the result of HUD program features but also has to do with HUD's traditional deference to local decision-making and the voluntary nature of local participation in federal grant programs. Thus, since not all communities are "required" to participate in HUD programs, most federal assisted housing is funneled to jurisdictions that request it. These segregative tendencies in federal housing programs need to be addressed by both strong new incentives to promote a wider choice of locations as well as stricter program requirements on site selection and affirmative marketing.

Low Income Housing Tax Credit Program

The Low Income Housing Tax Credit (LIHTC) program, administered by the Internal Revenue Service and state housing finance agencies, is the nation's largest low-income housing production program. Like the public housing program, the LIHTC program has failed to promote racial and economic integration. Indeed the program has operated with little or no civil rights oversight since its inception in 1986. As Professor Florence Roisman testified, "Neither Treasury nor the housing finance agencies have taken effective steps to require even that racial segregation be taken into account when decisions are made about where to site LIHTC developments."[227] There are also no affirmative marketing, racial data reporting,[228] or other fair housing requirements in the Department of Treasury's LIHTC regulations, and decisions about which projects to fund are entirely delegated to the states.

The lack of civil rights controls in the LIHTC program is well-illustrated in the state of Texas, where most tax credit units – particularly housing for families – have been placed in predominantly minority neighborhoods, prompting a lawsuit against the state Department of Housing and Community Affairs challenging its lack of fair housing review for LIHTC siting.[229] This pattern of siting tax credit properties in minority concentrated areas is widespread.[230]

Housing for Individuals with Disabilities

When Congress passed the Fair Housing Amendments Act of 1988, it said the new law was:

> A clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream. It repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion.

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The testimony of Marca Bristo at the Commission's first hearing poignantly summarizes the discrimination that people with disabilities face:

> For most of our nation's history, persons with disabilities were viewed as unfit, dangerous, and a detriment to "normal" society. Literally and figuratively, persons with disabilities were treated as second class or even non-citizens. This viewpoint resulted in, condoned and rationalized government-imposed segregation of people with disabilities in every aspect of community life including education, transportation, employment, recreation and, of course, housing. Historically, and even to this day, government-imposed housing segregation has forced persons with disabilities into state-operated and private institutional settings. Because people with disabilities were considered "sick" and in need of treatment and cure, their housing options resembled (and still largely do resemble) medical centers.[231]

More than 51 million Americans have a disability. Of these, 25 million people have ambulatory disabilities, 14.8 million have difficulty hearing, seeing or speaking, and 14.3 million have intellectual, mental, or emotional disabilities.[232] The population of people with disabilities is disproportionately represented among people living in poverty and their numbers are increasing. In 2007, disability discrimination complaints constituted 47 percent of the cases filed with HUD. [233] However, fair housing enforcers are not always familiar with the developing law in this area and sometimes lack sensitivity to issues confronting people with disabilities.

HUD's own programs segregate people with disabilities. HUD programs that combine housing with services for people with disabilities (such as the 202/811 programs) require defined disability or a minimum age as a condition of eligibility, and other options in the community are not available. Mainstream accessible housing units, especially units designed for families, are often not available in public or assisted housing, limiting options for families with a household member who has a disability. Further, HUD does not require that its homeownership programs provide accessible units.[3] Housing options should be expanded for people with disabilities in federal housing programs, to allow them to have real housing choice.[234]

Other Federal Housing Programs

The U.S. Department of Agriculture (USDA) has a significant housing responsibility in rural areas, with programs providing loans and grants for housing and community facilities. Indian tribes also participate in some of these programs intended to assist low-income and very low-income Americans.[235] Despite its civil rights obligations, the USDA has failed to do anything effective to disestablish segregation or promote integration.[236] It has never drafted regulations implementing Title VI, so recipients of USDA funds have no guidance and often no motivation to provide translation and interpretation for beneficiaries of housing programs.[237] Further, many rural fair housing programs receive less attention than they deserve, as a result of the USDA's large-farm bias combined with the urban bias of HUD.[238]

The National Housing Trust Fund, authorized by the Economic Recovery Act, P.L. 110-289, would provide a dedicated income stream for affordable housing development from annual contributions by Fannie Mae and Freddie Mac that are separate from the regular Congressional budgeting process. Although the Fund may not produce revenues up to its potential during the current economic downturn, it has the potential to be a large source of revenue for affordable housing by FY 2010.

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Because the Housing Trust Fund is targeted to very low-income families, it has the potential to further lock in geographically concentrated poverty in racially isolated neighborhoods, if careful steps are not taken to distribute funds in an equitable manner. Strong site selection standards – along with affirmative marketing – should be built into the program, so that the Fund gives poor families living in high poverty neighborhoods real housing choices not just in their current neighborhoods, but also in communities with low poverty rates and high performing schools.

Recommendations

ENSURE COMPLIANCE WITH THE "AFFIRMATIVELY FURTHERING FAIR HOUSING" OBLIGATION IN FEDERAL HOUSING PROGRAMS

Administrative changes to the Section 8 Housing Choice Voucher program that would increase access of eligible families to high opportunity communities should be adopted,[239] including expanding authorization of higher rents where necessary, improving portability of vouchers across jurisdictional lines, re-establishing housing mobility programs to assist voucher-holders seeking to move to higher opportunity areas, creating strong incentives and performance goals for administering agencies, and providing incentives to recruit landlords in high opportunity areas into the program.

A new national housing mobility voucher program should be established for the express purpose of providing desegregated housing options to families in the most segregated metropolitan areas. This purely voluntary program would be targeted to families living in the most poverty concentrated and racially isolated communities, and voucher use would be limited to low poverty and high opportunity communities throughout the metropolitan area.[240-]

HUD and the Department of Treasury should actively support audit testing of discrimination against voucher holders in federally assisted housing (where such discrimination is prohibited), and take appropriate enforcement action against violators.

Strong fair housing regulations and guidelines for state administration of the Low Income Housing Tax Credit Program should be promulgated, including new requirements for site selection, affirmative marketing, and reporting of racial/ethnic data and strong incentives to site LIHTC housing in higher-opportunity areas.

Public housing redevelopment (including a reauthorized HOPE VI program) must include measures to replace all housing units that have been lost, and offer quality fair housing-conscious relocation of displaced residents. Redevelopment plans must support the right of those former residents who wish to return to the redeveloped housing site, while at the same time locating the remainder of replacement housing units in non-segregated neighborhoods and communities throughout the metropolitan region.

Other federal initiatives (including the CDBG Program, the HOME program, and the new National Housing Trust Fund) should also be strengthened to avoid re-concentration of low income families and to promote racially and economically diverse communities. HUD and the USDA should better coordinate their efforts in rural areas to ensure that the fair housing needs of rural areas are not overlooked. USDA should conduct, under contract, additional testing of its rural housing projects and enforcement action should be taken by that testing. Program sanctions should be invoked by USDA pursuant to the Memorandum of Understanding between USDA and

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HUD against rural housing properties that discriminate. USDA should also develop regulations and procedures to facilitate that process.

With regard to housing for persons with disabilities, HUD and other federal agencies must increase their stock of accessible units to address the needs of applicants with disabilities. HUD must clarify its regulations and policy to ensure that federally subsidized homeownership units comply with accessibility requirements under the Fair Housing Act and under Section 504 of the 1973 Rehabilitation Act. Recognizing the lack of accessible properties in the private market, HUD should establish a well-funded national modification fund to pay for reasonable modifications that are necessary to make private units accessible to (or at least usable by) people with disabilities.

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VII. Fair Housing Obligations of Federal Grantees

The current federal system for ensuring fair housing compliance by state and local recipients of housing assistance has failed. HUD only requires that communities receiving federal funds "certify" to their funding agency that a jurisdiction is affirmatively furthering fair housing. HUD requires no evidence that anything is actually being done as a condition of funding and it does not take adverse action if jurisdictions are directly involved in discriminatory actions or fail to affirmatively further fair housing.

Communities that receive CDBG funds, for example, are currently required to prepare an "Analysis of Impediments to Fair Housing Choice" (an "AI") that is part of a Consolidated Plan. Under the law, this means that the jurisdiction must conduct an analysis of housing patterns and practices to identify impediments to fair housing choice within the jurisdiction. A jurisdiction must then create a plan to eliminate the impediments.[241] HUD does not require that AIs be reviewed or approved by HUD as a condition of funding and there are no HUD regulations that identify what must be included in an AI, not even a requirement that efforts be made to reduce existing segregation, consider residential living patterns in the placement of new housing, or promote fair housing choice or inclusivity. AIs in general should examine both government practices and private market practices to identify possible impediments to fair housing. They should require testing to examine whether or not there are forms of housing discrimination occurring in a jurisdiction.[242] The plan to implement an AI must include actions that will overcome the identified impediments.

The AI, or a similar structure, must be required, and reformed, through regulations to contain a genuine examination of barriers to fair housing—whether government induced or industry induced—and a meaningful strategy to remove those barriers. It must include a strong fair housing presence, including meaningful participation by fair housing offices and organizations.[243]

Private fair housing groups, unquestionably knowledgeable about fair housing concerns in their communities and ready, willing, and able to undertake participation in a meaningful process to identify and correct impediments to fair housing, report considerable frustration in trying to advance fair housing principles in local communities under the current system.[244] Many communities were described as having significant issues of segregation, discrimination, and exclusion, including inadequate or inaccessible housing for people with disabilities, persistent racial or ethnic segregation, inadequate communication services for persons with limited English proficiency, lending discrimination targeted at communities of color, discrimination against families with children, and other barriers to fair housing choice. The National Fair Housing Alliance estimates that

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less than 10 percent of the approximately 1,100 CDBG entitlement jurisdictions in the country actually have programs that really address fair housing concerns in their communities.[245]

One Commission witness, William Tisdale, described the approach of West Allis, Wisconsin:

> The Milwaukee suburb of West Allis, for example, claims to affirmatively further fair housing by having a Fair Housing Board that, amongst its duties, is charged with investigating and adjudicating complaints of illegal housing discrimination. Yet, this Board meets once a year for a few minutes, at most, and Board members have publicly stated they had never seen or received copies of the West Allis fair housing ordinance. Unfortunately, HUD has imposed no sanctions on the West Allis CDBG program. What type of remedy or redress can a victim of housing discrimination expect to receive from filing a complaint with this entity?

We envision a strong, federally supported community-based system that organizes key elements in communities to direct attention to, and develop strategies for, affirmatively furthering fair housing. There are examples of strong affirmatively furthering efforts in some communities and community-based neighborhood rebuilding efforts; this system should build on those demonstrated strengths, and through coordination across disciplines, find strategies that will further fair housing principles and that are community- and region-specific.[246]

The current lending crisis provides a useful lens through which to view what could be accomplished through a focus on affirmatively furthering fair housing. Many communities across the country have been devastated by the current foreclosure crisis. The crisis reaches beyond the malignant effects on individual homeowners to reductions in the tax base, boarded up houses in neighborhoods, higher crime rates as neighborhoods are abandoned, and significant scarring of formerly vibrant communities. The data shows that African-American and Hispanic communities have been disproportionately affected by the expansive effects of the meltdown. Federal funds, including those allocated under the Troubled Assets Relief Program and the Neighborhood Stabilization Program, are federal funds; the federal agencies, including the Treasury Department and HUD, are subject to the affirmatively furthering obligation, as are the beneficiaries of the funding, including lenders and communities. Yet there has been almost no discussion of the obligation in Congress.

Many witnesses mentioned poster contests, bus cards, and other public education strategies as the sole fair housing product of CDBG funded communities. While public education is an important part of developing inclusive communities, basic education is not a substitute for a carefully developed plan with action items, timetables, and strategies to advance fair housing, reduce segregation, and take positive steps to address barriers to fair housing choice in government and industry activities.

A government-wide interdisciplinary effort to remove racial and ethnic segregation and advance fair housing principles is essential to achieve the kinds of communities that are truly inclusive.[247]

Recommendations

STRENGTHEN FAIR HOUSING COMPLIANCE BY FEDERAL GRANTEES

HUD must reform its current structure by strengthening its leadership of the affirmatively furthering obligation. A regulatory structure must provide guidance and direction to ensure that programs that receive federal funds advance fair housing.

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The affirmatively furthering requirement must be monitored aggressively, through HUD's own program monitoring function. Analyses of Impediments must be periodically updated, submitted, and reviewed by a single entity with the authority to return the plans for revision, conduct its own analysis of sitting decisions and all proposed actions, and assess performance under the plans. A reformed structure should be based on existing guidance in HUD's Fair Housing Planning Guide,[248] but HUD should also provide a structure that includes benchmarks and performance standards and sanctions for failing to comply with the requirements.[249]

HUD must provide training and technical assistance to support the reformed affirmatively furthering initiative, including training and technical assistance to support groups that will work locally and regionally in communities to advance fair housing principles.

In addition to a more aggressive monitoring and enforcement effort at HUD, failure to affirmatively further fair housing should become directly actionable through administrative complaints filed by individuals and organizations with the new fair housing enforcement structure.

The CDBG program should provide structural and funding support for community-based initiatives to affirmatively further fair housing at the local and regional levels. Fair housing and affirmatively furthering activities should be funded directly as an eligible activity under the CDBG program by obligating at least five percent be of the CDBG funding to entitlement communities and state agencies to support activities by fair housing groups directly related to affirmatively furthering fair housing.

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VIII. Regionalism and Fair Housing Enforcement

To make real progress toward equal housing opportunity, all of the jurisdictions within a metropolitan area must be coordinated in their efforts, and all of the housing programs and policies within a region must be aligned so that they are pointing in the same direction and mutually supporting the development and preservation of diverse, inclusive communities. HUD has many of these tools available now to accomplish this goal, through its own housing programs and its relationships with its state, local, and private sector grantees – each of whom make a binding promise to promote fair housing through their acceptance of federal housing funds. But additional planning and oversight authority should also be considered, and should include a regional fair housing analysis for all new federal investment in a region, promote fair housing in "smart growth" planning, and require coordination among regional agencies involved in housing, education, employment, transportation and other infrastructure development.

As described by Jill Khadduri (a former director of the HUD Division of Policy Development) in recent court testimony and reiterated by Elizabeth Julian (a former HUD Assistant Secretary), the starting point for a comprehensive regional fair housing process begins with fair housing performance goals for each federal housing program and each state local grantee in a region.[250] Funding of state and local entities through the popular HOME and CDBG programs should be conditioned on meeting these goals. Each federal housing program in the region – including Section 8, LIHTC, and public housing – would also be redirected to support a share of specific regional opportunity goals.

The process described by Khadduri and Julian is not new – it was envisioned as part of the national fair housing structure in the late 1960s and early 1970s. In 1968, the federal law governing Section 701 grants to regional planning agencies was amended to require a "housing element" to assess regional housing needs.[251] This led to the development of "fair share housing plans" in many metropolitan regions. In 1969, this requirement was enhanced by the creation of the so-called "A-95 Review" process that empowered regional planning agencies to review and sign off on federal grants to municipalities for their conformance with the regional plan.[252] This system, which successfully engaged many metropolitan regions in a coordinated fair housing planning process,[253] effectively ended with the Nixon administration's housing moratorium in 1973 and the subsequent passage of the Housing and Community Development Act of 1974, which weakened federal oversight of block grants to cities and towns.

With the renewed emphasis on a metropolitan approach to planning and infrastructure development at the federal level, the federal government may want to revisit the A-95 Review process to consider embedding fair housing analysis in the regional planning process. Just as the President's Fair Housing Council seeks to coordinate federal activities across agencies to support fair housing, all the agencies operating in a metropolitan areas should coordinate their activities, with fair housing as a central component. Implementation of major investments in transportation, employment, education, commercial development, and other infrastructure enhancements should be aligned with fair housing goals, to support and develop diverse, sustainable communities with access to opportunity for all residents.

Enhanced regional planning and cooperation is essential, whether using existing HUD programs and powers, as Khadduri suggests, or through the re-establishment of a more formal regional planning process as originally envisioned when the Fair Housing Act was adopted. The politics of exclusion that led to the demise of these programs have been largely left in the past, and most Americans now understand that no community is an island.

Public Housing Agency Practices

Monitoring and coordination of public housing agency (PHA) programs is a crucial aspect of HUD fair housing oversight and regional coordination. Metropolitan areas often have multiple PHAs with public housing and Section 8 programs operating side by side, often without significant coordination. These PHAs can be leaders for regional opportunity, but problems have sometimes arisen when a PHA restrains opportunities for its residents, or when it becomes an exclusionary gatekeeper. Forceful leadership and coordination by HUD will require a meaningful fair housing element in all PHA plans, with each PHA sharing in target regional fair housing performance goals. PHAs should be encouraged to work together, through coordinated or merged waitlists and affirmative marketing across jurisdictional lines to encourage integration. Promoting marketing to those "least likely to apply" will increase participation in programs in all neighborhoods. Exclusionary practices such as residency preferences, first-come, first-served waitlists, or in-person application requirements should be prohibited or discouraged. Where feasible, Section 8 voucher programs should be administered on a regional basis, with active mobility counseling and landlord recruitment (including sharing of landlord lists across PHAs) to encourage families to consider higher opportunity areas.

Reforming state laws and land use regulation

Well-designed urban planning mechanisms can be effective in reducing income and race-based segregation, but the effect of land use regulations varies dramatically based on the initial design of the regulations and their execution.[254] As discussed earlier in this report, zoning (Americans' favored form of land use control) had historically been employed to separate people by race, and it remains a significant barrier to creating mixed-income communities, especially by controlling the location of multifamily housing[255] or adopting low-density-only zoning that reduces or even eliminates rental housing opportunities for African Americans and Latinos.[256]

Throughout the country, there have been successful efforts to pressure local governments to erect land use barriers to keep development considered less desirable out of politically influential neighborhoods and communities. This phenomenon is known as "NIMBY," an acronym for "not in my back yard." Successful NIMBY campaigns have resulted in a disproportionate share of hazardous land uses being clustered in predominantly minority and poor areas, resulting in well-documented environmental justice concerns.[257] Similarly, local opposition to the

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development of affordable housing has led to its exclusion from many areas and the clustering of public housing, subsidized housing, and other affordable housing in areas that are already predominantly minority and poor. To combat this phenomenon, California, for example, has passed an "anti-NIMBY" law that requires approval of affordable housing developments on sites zoned for residential development unless the development would have a specific and adverse and unavoidable impact on objective health and safety standards that cannot be mitigated.[258]

The NIMBY phenomenon has been a consistent barrier to rebuilding affordable housing on the Gulf Coast in wake of Hurricanes Katrina and Rita in 2005. Many communities in those areas have imposed land use barriers to exclude affordable housing from being rebuilt within their borders. As one attorney noted, "Mississippi's policies at the state level and zoning choices at the local level so far have reinforced pre-existing economic and racial disparities in the area of housing and community opportunity."[259] Similarly, in Louisiana, a number of communities passed ordinances designed to prevent displaced African Americans from relocating within their borders or to limit the affordable housing opportunities.[260] The NIMBY phenomenon has also presented barriers to the placement of temporary housing and the reconstruction of affordable rental housing, and as a result, the only affordable housing that has been approved in Gulfport, Mississippi, for example, is on sites that were previously occupied by subsidized housing.[261]

Anti-immigrant ordinances are a particularly egregious example of the use of land use regulation to erect barriers to fair housing. In an effort to exclude immigrants entirely and others entirely, some municipalities have enacted zoning ordinances that prohibit members of extended families from living together.[262] Even more extreme, between 2005 and 2007, more than 30 municipalities throughout the country (in California, Texas, Missouri, Georgia, New jersey, and Pennsylvania) enacted legislation penalizing and even jailing individuals for renting apartments to illegal immigrants.[263] Without the authority or expertise to determine a potential tenant's immigration status, a landlord may refrain from renting or leasing to anyone he suspects could be an undocumented immigrant, a behavior likely to lead to racial and ethnic profiling and discrimination against people of color, and most commonly, Latinos.[264]

By contrast, states and local governments that have gone beyond traditional zoning regulation to incorporate affordable housing measures, building permit caps, and other land use reforms have had considerable success providing more regional opportunity for low-income residents and minorities.[265] For example, the California Housing Element Law "mandates that local governments adequately plan to meet the existing and projected housing needs of all economic segments of the community."[266] Similarly, in New Jersey, each municipality must provide for its "fair share of the present and prospective regional need" for low-income housing.[267] Although state and local mandates like these have not eliminated fair housing issues, they have contributed meaningfully to an increase in fair housing and affordable housing.[268] Areas undergoing gentrification, too, can adopt inclusionary zoning policies to leverage gentrification for the benefit of less advantaged residents.[269] In areas where the provision of affordable housing is not mandatory, local governments should be encouraged to consider inclusionary zoning policies and to eliminate barriers to fair housing.[270]

Regional planning and "smart growth"

Regional planning initiatives can be instrumental in ensuring that fair housing is available throughout a region. A regional approach to meeting fair housing needs allows for the intentional connection of affordable housing to quality schools, employment opportunities, and an accessible transportation

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infrastructure without being constrained by jurisdictional borders between towns.[271] Because land use regulations have the potential to drastically reduce or enhance regional inequity, [272] analysis of alternative regulatory regimes is necessary to facilitate the transition of our current metropolitan areas into inclusive and sustainable communities of choice and opportunity. It is imperative for our nation to focus on three types of growth – productive, inclusive, and sustainable – to remain competitive in this increasingly global economy.[273]

Interagency cooperation at the regional level should mirror the interagency, metropolitan-centered collaboration promoted by the President's Fair Housing Council. Major federal investments in a region should be assessed for their fair housing impact, with a new fair housing analysis in place modeled on the successful A-95 Review process in the early 1970s. Like smart growth, fair housing should be one of the core principles embedded in the next wave of federal infrastructure development.

Recently adopted anti-sprawl legislation in California (SB 375) expressly enlists "smart growth" land use principles to help curb greenhouse emissions, by encouraging high-density mixed use and mixed income development along public transit corridors. The new law links regional transportation, housing, and environmental planning; and provides incentives for transit-oriented development that includes a minimum portion of low or moderate income housing. This approach, perhaps with a stronger emphasis on inclusive fair housing principles, could serve as a national model for future infrastructure planning.

Recommendations

ADOPT A REGIONAL APPROACH TO FAIR HOUSING

Any system of coordinated metropolitan planning should include consideration of the fair housing impacts of major investments in housing, transportation, health, employment, education and infrastructure development to encourage diversity and access to opportunity throughout metropolitan regions.

The federal government should consider reinstating a regional planning tool such as the A-95 Review process to require regional planning organizations to develop fair housing plans with specific target performance goals for each major metropolitan area. These plans could engage every jurisdiction in the metro area and include specific numerical and geographic targets for each federal housing program operating in the region, with the goal of expanding housing opportunity throughout the region and gradually breaking down historic patterns of segregation and concentrated poverty.

Public Housing Agencies in each metropolitan area should be encouraged and required to act cooperatively to promote desegregated housing opportunities for residents throughout the region.

HUD should encourage model inclusionary land-use regulations like the California Housing Element Law as part of its fair housing mandate to state, county and municipal grantees. Similarly, housing development or rehabilitation funds directed to cities should emphasize setasides of long term affordable housing in neighborhoods experiencing gentrification or similar commercial redevelopment.

Federal "smart growth" initiatives should incorporate fair housing principles and goals to support affordable and inclusive housing development near job centers and along transit corridors. States should be encouraged to link environmental and transportation planning with affordable housing development, similar to California's recent anti-sprawl initiative.

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IX. The President's Fair Housing Council

All of the federal agencies with responsibility over housing and urban development activities are obligated not only to promote fair housing, but to "cooperate with the Secretary [of HUD] to further such purposes." (42 U.S.C. § 3608) This requirement has generally been honored in the breach.[274]

Executive Order 12892 (1994) took this requirement of cooperation one step further, by establishing the "President's Fair Housing Council," which is required to "review the design and delivery of Federal programs and activities to ensure that they support a coordinated strategy to affirmatively further fair housing." The Fair Housing Council, which to our knowledge has only met once, goes beyond the housing-related agencies delineated in the Fair Housing Act to include virtually every other cabinet agency whose work may directly or indirectly affect housing.[275]

The Commission strongly supports the concept of the President's Fair Housing Council, and recommends that it be given a stronger mandate in the new administration and staffed and reconvened as soon as possible – either within HUD or as part of the proposed White House Office of Urban Policy.

The multi-disciplinary approach of Executive Order 12892 recognizes that access to new housing opportunities may be constrained by other government policies and systems that have adapted to entrenched patterns of metropolitan segregation. For example, transportation systems designed in the 1970s to shuttle suburban workers into the central city may need to be retooled to support new commuting and residential patterns; distribution of community health facilities and administration of government-assisted health insurance may need to be adapted to support residential mobility; federal education grants may need to consider fair housing plans and voluntary school integration efforts; and the economic shifts associated with military base realignment should be implemented with regional fair housing planning in mind. The Council, in essence, encourages a federal fair housing review for major programs in all federal agencies, so that these programs are consciously aligned to support, not undermine, fair housing goals.

In particular, interagency fair housing coordination between HUD and the Department of Treasury needs to be strengthened and formalized.

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Recommendations

REVIVE THE PRESIDENT'S FAIR HOUSING COUNCIL

The President's Fair Housing Council, created by Executive Order 12892, should be reconvened and staffed to coordinate cross-agency collaborations to support fair housing. The Council should also undertake a fair housing review of key federal health, education, health, transportation and employment programs to ensure that they support, rather than undermine, fair housing. The Council could be located at HUD or at a new White House Office of Urban Policy.

HUD's fair housing regulations should be replicated at other federal agencies through coordination by the President's Fair Housing Council.[276] The regulations must require that plans to affirmatively further fair housing are periodically updated. The plans must be submitted to, and reviewed by, a single entity with the authority to return the plans for revision, assess performance under the plans and impose sanctions for noncompliance, including reduction, suspension, or termination of funding. The regulations must require that plans are prepared, submitted, and followed, and that funded programs and activities in practice advance fair housing principles consistent with HUD regulations and guidance.

The Commission also recommends that the federal agencies participating in the Council expressly require collaboration between their grantees at the metropolitan and regional level to support fair housing goals. The collaborative cross-agency work of the Council should be mirrored in every metropolitan area (see discussion on metropolitan planning collaboration, above).

As a start, the President's Fair Housing Council should select two to three pilot projects to develop a track record and demonstrate the viability of cross-agency collaboration in support of fair housing. Some prime examples could include targeting of Department of Education magnet school assistance grants to schools in HOPE VI public housing redevelopment areas;[277] coordination of workforce development, day care, education, and transportation supports for families participating in regional housing mobility programs; targeting affirmative marketing assistance to returning service people in the armed forces; and enlisting the entire range of federal programmatic and infrastructure assistance to support and affirmatively privilege diverse, inclusive communities, to ensure that these communities remain stable and successfully integrated over time.

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X. Fair Housing Education

Despite a great deal of creative effort by fair housing groups and many in the housing industry, fair housing remains too low in the public's consciousness. Public education must include the basics—what the law requires, what the interpretations of the law are, what consumers need to know, and best practices for industry on how to be in compliance with the law and affirmatively further fair housing. We must bring to the public principles of housing equity, freedom of choice, and the value to the whole community of diverse and stable neighborhoods with jobs, transportation, health care and quality schools. Despite all of the evidence that deeply entrenched discrimination and segregation continue, and the evidence that large parts of our communities are at risk, there has been no national government leadership, and no national message, about the importance of attentiveness to these issues.

Public awareness of fair housing law is important because the federal approach to fair housing has relied heavily on action taken by individuals who believe they have suffered discrimination and file a fair housing complaint. How will these individuals know to file a complaint if they don't know their rights? How will industry know how to comply with the Act unless we work to educate them?

Over the years, HUD's educational program has relied primarily on under-funded national media campaigns and sporadic and localized reports about enforcement and settlements.[278] There has been no coordinated national education and outreach effort directed at various constituencies: the public at large, potential victims of discrimination, or the various components of the housing industry. The sole industry training program is HUD's FairHousingAccessibilityFIRST program, which was designed to inform the building industry about the design and construction requirements of the Fair Housing Act. HUD's sum total of general educational material amounts to one booklet, "Your Rights and Responsibilities under the Fair Housing Act" and its own website.[279]

Many in the housing industry have actively taken on the task of educating both the public and their constituents, including brokers, agents, and developers. It is crucial that this work be highlighted, supported, and enhanced. It is these industries that are in the housing business and success will come when the vast majority of housing professionals lives fair housing as their way of doing business.

As noted, many industry groups have already moved into the area of education;[280] successful programs can be identified by a reformed fair housing office, replicated, and made available though the internet. The materials must include basic and advanced content. Many housing providers have developed relative sophistication in this area; many have not. A variety of different approaches will be needed to reach housing industry representatives of all types, including HUD-funded and tax credit properties. Some housing industry providers may need materials in language other than English or in accessible

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formats. The content of materials developed directly by HUD must be based on industry input to ensure that the materials serve their intended purpose effectively.

The materials that have been developed with HUD funds by private fair housing groups and state and local enforcement agencies are an untapped resource for basic education materials. A routine function of grant monitoring should be the collection of the videos, brochures, Power Point presentations, and other educational materials created through the FHIP and FHAP programs. There is currently no central system to collect, compile or review these materials, much less to identify the best of them and make them available to organizations and consumers.[281] This basic step would require some staffing in a reformed office of fair housing to make sure that the materials were suitable for distribution under HUD's auspices. Use of the internet to provide downloadable versions of material would conserve printing and duplication costs at the federal level.

HUD must stop its cramped approach to public education in other ways, too. In several recent years, HUD has even failed to provide the national educational campaign required by statute.[282] The statute requires the Secretary of HUD to establish a national educational campaign, including a centralized, coordinated education effort using a variety of media products. Such a national campaign does not currently exist. The FHIP program has routinely announced a competition for a national media campaign but did not fund such a campaign in 2005 or 2006; it did not fund a private fair housing group to conduct such a campaign in 2007, a decision later challenged by HUD's Inspector General.[283] Even when the program was funded, the amount was inadequate to develop and disseminate the types of materials that are needed to make a significant change in the public's ideas about fair housing.

Finally, and most significantly, part of an effort by HUD and a reformed fair housing agency using FHIP and other federal funds to advance diverse communities will require a strong public message about why diverse, stable, strong communities are an important part of the promise that America gives to its residents. This approach is particularly important in bringing the residential choices of different racial and ethnic groups closer together.

Several Commission witnesses spoke to the effects of personal preferences on residential segregation, in the context of a private market that has been distorted by housing discrimination and government policies.

Private preferences can help to perpetuate segregation, but the hopeful news is that most Americans are willing (and many prefer) to live in integrated neighborhoods; and although the definition of what constitutes integration differs for members of different racial and ethnic groups, these preferences can be affected over time by new information and experience.[284] Other Commission testimony suggested that neighborhood stereotypes often initially structure people's choices in a non-integrative direction, but that these stereotypes can also be addressed through education and targeted neighborhood and school improvements,[285] and that lack of information about racially diverse communities significantly contributes to racial segregation.[286] These thoughtful analyses all strongly point to the important roles that the real estate industry, HUD, local governments, and private fair housing groups can play in educating consumers about the value of living in a diverse community and enhancing the attraction, and thus long-term stability, of diverse, inclusive communities.[287]

There is value to sending this message from the

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highest levels of government, to help counter the negative, exclusionary mentality that the country still sees from some national and local leaders. The housing industry has begun some of this work. State Farm's homeowners insurance program has supported a public message entitled "A Richer Life" developed by the National Fair Housing Alliance to draw attention to the societal benefits of encouraging and accepting diversity in communities.[288] Other organizations and localities, including the Village of Oak Park, Illinois, Shaker Heights, Ohio and a program operated by the Fair Housing Center of Greater Boston have as their specific purpose community based programs to support diversity.[289] The Leadership Conference on Civil Rights Education Fund and the National Fair Housing Alliance developed the "CommUNITY 2000" program to support positive community responses to housing-related acts of hate and violence.[290] The "Not in Our Town" program in conjunction with PBS encourages a community response to hate crimes.[291]

Recommendations

STRENGTHEN FAIR HOUSING EDUCATION

A comprehensive national fair housing education agenda must be developed. HUD should use its direct budget authority to fund basic education and outreach materials, written in easy-to-understand language, in multiple languages, and in accessible formats, and targeted to the different types of consumers of fair housing services. Given the variety of fair housing constituents, a "one size fits all" approach cannot be successful with such a variety of fair housing constituents.

FHIP must fund a coordinated national multimedia initiative, as authorized by Congress, for consumers, industry, and the public, which includes messages about the positive aspects of diverse, stable communities and about fair housing rights and responsibilities. It must be developed and funded with a consistent funding stream over at least a five-year period. It must use best practices, be culturally relevant, and address fair housing issues in urban, suburban and rural communities. The products and materials should be developed with input from consumers, industry representatives, and practitioners. Local groups should be able to modify the materials and products for local use.

The FHIP program should not be the sole source of funding for national education campaigns; it is also HUD's responsibility to adequately fund national educational activities that advance fair housing. A reformed fair housing organization must fund education for fair housing practitioners and industry groups as case law develops and judicial decisions influence policy decisions. There should be on-line information and training opportunities as well as other technological initiatives to advance fair housing knowledge.

Fair housing educational materials should include the collection of existing educational materials from many sources, including FHIP and FHAP funded activities and industry resources, with an eye to using existing materials with little or no modification for initial phase-in. A reformed fair housing office should also take the lead in providing information to non-governmental agencies and organizations to help with education, coordinating efforts to maximize impact.

The benefits and importance of living in a diverse community should be communicated in a wide variety of media to a wide variety of audiences in a concerted effort to influence preferences for diverse communities across the board.

Because disability-based complaints make up the largest percentage of the complaints filed with HUD, and because HUD's Disability Discrimination Study recommended "heightened public education and enforcement" to protect the rights of persons with disabilities, HUD should substantially increase funding to educate the public, especially the design and construction industry and housing providers, about disability-based fair housing rights.

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XI. The Necessity of Enhanced Fair Housing Research

Civil rights-related housing research at the federal level must be strengthened and expanded. Although there are good sources of research in some areas, many of which are cited in this report, much more work, and rigorous work, will be needed to support the report's recommendations and advance the principles of fair housing. This research expansion should include initiatives that are cross-cutting and include the relationship between diverse housing and schools, transportation, jobs, and health care. Fair housing research must therefore be a key HUD responsibility, and also be included in programmatic issues at other federal agencies, a process that could be encouraged and coordinated by the President's Fair Housing Council.

The research area must be expanded in at least three areas: (1) collecting and making available data on which strong fair housing strategies can be built; (2) developing substantive research in areas that are important for fair housing activities; and (3) addressing how people and communities react to residential diversity and what actions can incentivize and encourage diverse communities.

HUD's Office of Policy Development and Research (PD&R) historically had strong funding and support for fair housing-related research.[292] That research base should be reestablished and should support academics studying the benefits of residential integration/diversity and its value to education, employment, and corporations in our global economy.

Fair housing issues should no longer be the last of a list of projects considered by HUD's PD&R office. Instead, fair housing perspectives must be integrated into all of HUD's research activities. Former PD&R Assistant Secretary Margery Austin Turner testified that

> Issues of race, ethnicity, segregation, and exclusion should be explicitly incorporated into all of HUD's research. This … requires that researchers seriously consider the ways in which outcomes may differ because of past and continuing patterns of discrimination, segregation, and inequality. For example, research designed to evaluate alternative strategies for preventing foreclosures must consider the racial and ethnic characteristics of the at-risk homeowners, but should also take into account racial and ethnic differences in wealth, employment security, and credit history. It must include an evaluation of programs designed to return foreclosed properties to active use so that they do not destabilize the surrounding neighborhoods; such a study should consider relative effectiveness for minority and White neighborhoods.[293]

Strengthened data collection strategies and accessible data will be increasingly important to achieving diverse and strong communities

Reliable data will be a core requirement for heightened enforcement and for the reformed affirmatively furthering strategies described in this report. Data on patterns of racial segregation, racially and ethnically transition areas, and the omposition of federally funded housing must be

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reliable and readily available in usable formats for researchers, communities and enforcers alike.

Racial and ethnic demographic data must be available to judge the impact of programs as well as the siting of new housing: to assess the effect of lending and foreclosure rescue programs and their effect on segregated living patterns; and to assess the areas that would benefit from increased diversity. Among the data sources that must be explored is census data, including the American Community Survey, in readily accessible formats for use at the block level in local communities to assess indicators of neighborhood segregation, relative wealth, household income, age and disability.

Disability data is often overlooked but requires new focus and attention. As people with disabilities continue to move into communities, and housing programs are developed to meet their specific needs, assessment of the numbers of people and the types of housing they need will become increasingly important. Because much of the accessible housing stock in subsidized housing is in smaller one bedroom and efficiency units, studies of the number of types of units needed by families with one or more disabilities will be needed, as will data that can be used as that housing stock is expanded.

PD&R should assess the data collection and assessment needs associated with analysis of Home Mortgage Act Disclosure (HMDA) data. New HMDA data sets may be needed; continuing challenges will include resources to assess HMDA and current census data and to increase the availability of data about subprime lending and foreclosure patterns combined with racial and ethnic data. Market share data by lender should be collected and made available combined with census data. Homeowners insurance data that permits analysis of applications made, policies written, claims made, and business not written by race, ethnicity and income could be collected in the same way that HMDA data are collected.

Occupancy data for subsidized housing and tax credit properties will continue to be necessary as part of the affirmatively furthering fair housing initiatives. In 2006, the state of Massachusetts passed An Act Relative to Data Collection in Affordable Housing that collects more expansive information about occupancy patterns, including race, ethnicity and disability data. Federal data requirements for the Low Income Housing Tax Credit (LIHTC) program now mirror this requirement and need to be quickly implemented.[294]

The housing needs of families with children and families with a household member who is disabled presents another potential subject for national research. Such research could inform discussions about the need for units with higher numbers of bedrooms in the housing stock. A further area of research should include the effect on families with children of occupancy standards, and the further effect of such standards based on race and national origin.[295]

Consideration should be given to creation of a fair housing impact review system for housing based on the Massachusetts model of data collection. Ginny Hamilton, executive director of the Fair Housing Center of Greater Boston, testified that "Just as developments are required to undergo an environmental impact review before being approved, government funders should require a Fair Housing Impact Review to identify and mitigate any negative impact on protected classes identified by federal and state fair housing laws. A Fair Housing Impact Review would promote housing developments that are open to a wider variety of residents, including racial diversity, people with disabilities, families with children, and Section 8 holders."[296] Such an impact process could be developed using data already being collected in the LIHTC program; HUD should adopt a similar data collection process for public and assisted housing. Residential housing pattern data must be considered as part of this type of impact analysis.

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All of the data should be readily available to researchers and communities in readily usable formats without cost.

Substantive fair housing research should be expanded

Margery Austin Turner also suggested the expansion of substantive fair housing research: "The federal fair housing research agenda should address: 1) the persistence of housing market discrimination and efforts to combat it; 2) the availability and assets of diverse neighborhoods and strategies for educating Americans about them; and 3) the dynamics of neighborhood racial change and strategies for nurturing stable residential diversity."[297] These three prongs of research must be integrated into all of HUD's research and policy initiatives.

In addition, a reformed research function should include "incentives to research and publish articles on the exact nature, extent and qualities of the connection between fair housing and equality in education, and to propose public policies to address both issues in combination."[298] Similar incentives should be offered to support research on the types of health care services, transportation, counseling, job and other services that might be needed to support diverse communities.

Funding for these activities should not be taken from fair housing enforcement or education sources.[299] In particular, existing research on the desirability of diverse neighborhoods and the mechanisms needed to develop and sustain diverse neighborhoods must be funded and directed toward support of incentives and activities that support diverse communities.

The role of the fair housing industry and fair housing organizations

The housing industry, including real estate brokers and agents, rental managers, and affordable housing developers, as well as funding partners such as state housing finance agencies, and the various types of fair housing organizations, including private fair housing groups, must all be part of the discussion about the research that is needed to support the value of diverse neighborhoods and ways to support their development.

Recommendations

ENHANCE FAIR HOUSING RESEARCH AT HUD

Data collection and assessment should be expanded to enable assessment of patterns of residential segregation (including the LIHTC program); data should be collected that ties housing-related activities such as lending and foreclosures, siting of new housing, school composition and performance, and racial, ethnic and disability data.

Substantive fair housing research should be expanded at HUD to address the persistence of housing market discrimination and efforts to combat it; the availability and assets of diverse neighborhoods and strategies for educating Americans about them; the dynamics of neighborhood racial change and strategies for nurturing stable residential diversity; the housing needs of families with children and families of people with disabilities in subsidized and LIHTC housing as well as market rate housing; and the effect of occupancy standards in limiting occupancy based on familial statute, race and ethnicity.

Input must be sought from industry and fair housing organizations to identify the types of research and data that will be most useful in assessing the current status of communities and the research and data necessary to support the development of diverse communities.

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XII. Conclusion

> *"It is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates. This is the next and the more profound stage of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result."*
>
> - President Lyndon B. Johnson

Forty years after the enactment of the Fair Housing Act, we still seek equality as a fact and equality as a result. While it is clear that the United States has made strides in its attempts to rid itself of discriminatory housing practices, there is still much to be done. Though America's demographics have changed since 1968, some old patterns of discrimination persist, while new ones have arisen.

After listening to testimony across America from a diverse and fascinating group of individuals representing many different viewpoints, the Commission has concluded that it is vital that the country renew its efforts to end both old and new patterns of discrimination. The Fair Housing Act, which is a core civil rights law, provides many of the necessary tools for combating these ills, helping to build diverse communities, and ensuring greater housing choices for all of our citizens.

It is indisputable that stronger and more diverse neighborhoods benefit everyone. We must therefore make greater efforts to advance fair housing principles throughout the United States through better enforcement, better education, and through systemic change. This will not be easy; it will take a serious commitment from both government and the private sector. The Commission is confident, however, that the effort will be worth it as part of our country's ongoing quest to become a more perfect union.

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Appendix A: Emerging Fair Housing Legislative and Regulatory Issues

Witnesses before the Commission drew attention to a number of areas where legislative or regulatory changes may be needed to address confusion about the ways in which the Fair Housing Act and other laws apply. However, the Commission did not reach consensus on recommending action on any of these proposals. The following is information on the ideas presented at our hearings.

Amendment of the Communications Decency Act

The Fair Housing Act prohibits making, printing or publishing any statement, notice or advertisement that indicates a preference or limitation based on race, color, religion, national origin, sex, familial status or disability.[300] Historically, there is well-established precedent holding newspapers liable for violating Section 804(c) of the Act for running advertisements that include discriminatory statements or preferences.[301] There has also been an increase in the use of the internet age to advertise for apartment and room rentals, real estate sales and other transactions covered by the Fair Housing Act.

Litigation brought against internet providers such as craigslist alleging the publication of discriminatory advertisement has resulted in mixed outcomes because the provisions of the Communications Decency Act have been raised as a defense.[302] The advertisements in question have contained blatantly discriminatory language (such as "no minorities"), which if printed in a newspaper would violate the Fair Housing Act.[303] By holding that discriminatory advertising on the Internet is protected from liability, the courts have created an untenable anomaly.

Use of the internet can be a positive way to provide valuable information about housing choices and neighborhoods. A study by the National Association of Realtors in 2007 showed that 29 percent of homebuyers found their house on the Internet. Using the Internet in ways that do not violate the Act – such as marketing neighborhoods that are diverse – should be encouraged.[304]

Amendment to the Fair Housing Act to provide direct enforcement for failure to affirmatively further fair housing and a claim for damages

The Fair Housing Act requires that federal government agencies and the programs and activities that they fund be operated in a manner that affirmatively furthers fair housing. See 42 USC §3608(e).

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"Federal courts have repeatedly held that §3608 reflects a Congressional desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases….' *NAACP v. Sec'y of Housing and Urban Development*, 817 F.2d 149, 155 (1st Cir. 1987). Or, as the Third Circuit previously put it, "[HUD cannot] remain blind to the very real effect that racial concentration has had in the development of urban blight…[and] must utilize some institutionalized method whereby, in considering site selection or type selection, it has before it the relevant racial and socio-economic information necessary for compliance with its duties under the 1964 and 1968 Civil Rights Acts." *Shannon v. HUD*, 436 F.2d 809, 821 (3d Cir. 1970)."[305]

Although plaintiffs have successfully brought numerous Section 3608 claims in federal court against HUD (using the Administrative Procedure Act) and against state and local housing agencies pursuant to the general civil rights statute, 42 U.S.C §1983, most courts have found no "direct" cause of action against HUD or HUD grantees under this provision, and based on recent decisions on the use of §1983 to enforce federal statutes, some courts are becoming reluctant to entertain a claim based on §3608 against state or local government entities.

More importantly, the Fair Housing Act contains no administrative procedure for HUD to accept a complaint based on Section 3608, leaving some victims of government discrimination without a remedy. In addition, because the Act does not include violation of Section 3608 as one of the provisions that the Department of Justice has authority to enforce, the federal government has no ability to enforce Section 3608 in court. Also, even in private actions brought in court, the deferential standards of review under the Administrative Procedure Act make it very difficult to prove liability against the federal government. Finally, because of sovereign immunity, even if they are successful in their injunctive relief claims, civil rights plaintiffs may not be able to recover damages from federal and state entities for violations of §3608.

An amendment to the Fair Housing Act – defining a discriminatory housing practice to include a violation of the affirmatively furthering provision – would provide several direct remedies including an administrative complaint, an express private right of action in federal or state court, and an authorization for action by the U.S. Department of Justice if the violation amounted to a pattern and practice of discrimination or a matter of general public importance.[306]

For such cases to result in a successful claim of damages against a federal or state agency, there must be an explicit waiver of sovereign immunity.[307] There is no explicit waiver of sovereign immunity in the Act. Holding HUD and other federal agencies directly accountable in damages for their acts of discrimination, including a failure to affirmatively further fair housing, would be a dramatic change in the law. Federal and state agencies own and operate housing; they currently can be sued under the Fair Housing Act for injunctive relief and attorneys' fees, but not for damages. A waiver of sovereign immunity would place the government on the same footing as a private party that discriminates by requiring the wrongdoer to pay damages to compensate victims for the injuries they have suffered as a result of discrimination.

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Amending the Act to provide for direct enforcement of the affirmatively furthering fair housing obligation and for damages payable by federal or state government is a strong remedy, but it is one that should be considered in light of the long history of federal agency complicity in housing discrimination.

Addition of a new protected class—source of income discrimination—to the Fair Housing Act

In many housing markets, one of the key ways housing is provided to low-income tenants living on Social Security, disability retirement, income assistance, or other similar forms of income is through a housing subsidy, the most well known of which is the Housing Choice Voucher Program (also referred to as the Section 8 voucher program).[308] Because vouchers may be used anywhere in the country, they provide the opportunity for housing selection in areas that are not segregated by race, national origin, or other protected traits. Important public policy goals of expanded choice and opportunities for housing in non-impacted neighborhoods will be frustrated if landlords in mostly White and more affluent neighborhoods are free to discriminate against persons holding vouchers, not based on the amount of their income but on its source. Research supports the conclusion that landlords' refusal to accept rental subsidies in more affluent, predominantly White suburban communities is a significant barrier to economic and racial integration.[309]

Discrimination against voucher holders simply because they are voucher holders and other forms of discrimination against otherwise qualified applicants simply because of the source of their income is illegal in a number of states and localities.[310] A September 2008 report by the Fair Housing Justice Center analyzing internet advertisements for housing in New York City found extensive evidence of discrimination based on source of income. One hundred sixty-one real estate companies were responsible for posting 363 advertisements for 412 units with discriminatory restrictions based on source of income.[311]

Two studies conducted by the Chicago Lawyers Committee for Better Housing based on testing to determine if homeseekers who were voucher holders experienced discrimination found that discrimination against voucher holders was widespread and that discrimination was more pronounced when the voucher holder was Black.[312]

Discrimination based on source of income can have a profound effect on the housing choices that are available to homeseekers including an effect of perpetuating neighborhoods that are racially and economically impacted. For that reason, a systematic examination of the need for an amendment to the Fair Housing Act to prohibit discrimination based on source of income is needed. Such an examination should include detailed consideration of the need for such a provision in federal law, the concerns of the multifamily housing industry about such a provision, and the role that this amendment could play in creating more diverse neighborhoods.

In addition to considering broader federal authority that would prohibit source of income discrimination in the private housing market, HUD and the Department of Justice should take immediate steps to enforce the existing rules protecting Section 8 voucher holders from discrimination in federally assisted housing, including the Low-Income Housing Tax Credit Program, the HOME program, the Mark-to-Market program, and multifamily properties purchased from HUD.[313]

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To ensure compliance with these provisions, audit testing should be conducted by HUD (or through private FHIP agencies), and if enforcement authority is unclear, Congress should clarify that these existing non-discrimination provisions can be privately enforced by individuals, fair housing organizations, and HUD/DOJ.

HUD may want to consider funding testing on a larger scale to examine the nature and extent of discrimination based on source of income in localities around the country.

Claification of court decisions

A reformed fair housing agency could consider developing clarifying regulations addressing the issues described below. Legislative changes should be proposed if such regulations do not resolve the issue or if the issue has been adversely decided by the Supreme Court.

- Clarify that a failure to design and construct accessible housing as required by 42 USC 3604(f)(3)(c) is a continuing violation of the Fair Housing Act until the noncompliance has been corrected (correcting the incorrect interpretation provided by the Court in *Garcia v. Brockway*, 526 F.3d 456 (9th Cir. 2008).

- Reject the reasoning that applies the Fair Housing Act only to discrimination in the acquisition of housing and instead allow current homeowners and renters to challenge discriminatory housing practices that affect the continued occupancy of their homes (correcting the decisions in *Halprin v. The Prairie Single Family Homes of Dearborn Park Ass'n.*, 388 F.3d 32 (7th Cir. 2004); and *Cox v. City of Dallas*, 430 F.3d 734 (5th Cir. 2005)).

- Reject the analysis that finds that discrimination in real estate-related transactions does not include the failure to make reasonable accommodations for people with disabilities (*Gaona v. Town & Country Credit*, 324 F.3d 1050, 1056 (8th Cir. 2003)).

Current issues in federal enforcement

On November 13, 2000, HUD published a proposed regulation outlining the application of the Fair Housing Act to acts of sexual harassment in the housing context. However, HUD never issued final regulations. Sexual harassment in housing repeatedly has been the subject of complaints and litigation and court decisions have established the contours of the law.[314] The need for HUD regulations to establish HUD's position with clarity was identified in a 1996 court decision. The Department of Justice has successfully litigated several such cases and firm administrative guidance should be provided to housing providers and enforcers about the application of the law to sexual harassment. A final regulation on sexual harassment under the Fair Housing Act is long overdue.

There is a strong need for updated guidance for those who work in fair housing enforcement to ensure that the law will be consistently applied. A reformed fair housing organization should develop a system to issue and distribute interpretive guidance on the provisions of the Fair Housing Act and related laws. This interpretative guidance should be publicly available and explain the meaning of court decisions and the policy decisions that have been made about application of the law. Ideally, this information will be made available through a website or other system that will organize and categorize information about fair housing enforcement and how the law will be applied.

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Developing a general principle of fair housing choice for low-income families receiving federal housing assistance

The underlying premise for the recommended program changes discussed in this report is that the federal government is not providing sufficient choices for low-income families of color outside areas of minority concentration or areas with high levels of poverty. But even with stronger HUD guidelines and program oversight, there will be continuing pressures on the local level to continue the less controversial status quo approach in terms of siting new housing developments, distributing limited housing acquisition and rehabilitation funds, and marketing affordable housing units to families. To counter this continuing problem of geographic concentration and segregation in HUD and other federal housing programs, and to truly effectuate the principle of fair housing choice, the Inclusive Communities Project has proposed the adoption of an enforceable statutory right to choose non-segregated housing:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no applicant for or resident of federal assisted housing shall be required to accept a housing unit in a development or in a census tract in which his/her race/ethnicity predominates as a condition of receiving said federal low-income housing assistance, either as a temporary or permanent placement.
>
> Sec. 2, *And be it further enacted,* That if an applicant/resident exercises his/her right under this provision then the administering agency shall, at the individual's election, provide all assistance necessary for that individual to obtain a desegregated housing opportunity, including a housing voucher, and counseling and supportive services. This provision shall be enforceable by the individual applicant for or recipient of such assistance.[315]

A statutory change that empowers recipients of federally assisted housing to choose integration would fundamentally change the culture of federal housing programs and force agencies to seriously reexamine the choices they are providing to their clients.

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Appendix B: International Disapproval of U.S. Fair Housing Policy

Housing discrimination and segregation are prohibited not only by U.S. civil rights laws – they are also barred by the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),[316] a legally binding treaty signed by President Lyndon B. Johnson and ratified by the U.S. Senate in 1994.

Like the Fair Housing Act, the CERD treaty goes beyond the prohibition of intentional discrimination; it requires the member states to "review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which," regardless of intent, "have the effect of creating or perpetuating racial discrimination wherever it exists."[317] CERD also requires member states to "particularly condemn racial segregation" and "undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."[318]

In 1995, the Committee on the Elimination of Racial Discrimination issued a detailed interpretation of CERD explaining that the duty to eradicate segregation includes not only the obligation to cease active discrimination, but also the obligation to take affirmative steps to eliminate the lingering effects of past discrimination.[319] It recognized that, although conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an intended or unintended consequence of the actions of private parties.

This past spring in Geneva, a United Nations Committee conducted extensive factfinding and a two-day hearing to consider the U.S.'s compliance with its obligations under the CERD treaty. Numerous U.S. "Nongovernmental Organizations" (including the sponsors of this Commission) were active in monitoring the proceedings and submitting written testimony.[320] The CERD Committee issued the following conclusions regarding United States housing policy:

> The Committee is deeply concerned that racial, ethnic and national minorities, especially Latino and African American persons, are disproportionately concentrated in poor residential areas characterized by sub-standard housing conditions, limited employment opportunities, inadequate access to health care facilities, under-resourced schools and high exposure to crime and violence. (Article 3)
>
> The Committee urges the State party to intensify its efforts aimed at reducing the phenomenon of residential segregation based on racial, ethnic and national origin, as well as its negative consequences for the affected individuals and groups. In particular, the Committee recommends that the State party:
>
> > (i) support the development of public housing complexes outside poor, racially segregated areas;
> > (ii) eliminate the obstacles that limit affordable housing choice and mobility for beneficiaries of Section 8 Housing Choice Voucher Program; and
> > (iii) ensure the effective implementation of legislation adopted at the federal and state levels to combat discrimination in housing, including the phenomenon of "steering" and other discriminatory practices carried out by private actors.[321]

The U.S. is required to respond affirmatively to these findings, and to show progress in meeting the goals of CERD prior to the next periodic review of our compliance with the treaty.

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Appendix C: Commission Correspondence on Foreclosure Relief Implementation

Henry Cisneros
Jack Kemp
Co-Chairs

September 24, 2008

The Honorable Christopher Dodd
United States Senate
Washington, DC 20510
The Honorable Barney Frank
United States House of Representatives
Washington, DC 20515
The Honorable Richard Shelby
United States Senate
Washington, DC 20510
The Honorable Spencer Bachus
United States House of Representatives
Washington, DC 20515

Dear Chairman Dodd, Ranking Member Shelby, Chairman Frank, and Ranking Member Bachus:

The National Commission on Fair Housing and Equal Opportunity has been convened by four national civil rights groups to examine the successes and failures of fair housing enforcement and housing segregation in this country on the 40th anniversary of the Fair Housing Act. Hearings have been conducted in Chicago, Houston, Los Angeles and most recently in Boston on September 22.

We have heard extensive testimony about the origins of the current foreclosure crisis, and the predatory and discriminatory lending practices which have had a direct and significant impact on African American and Latino homeowners and neighborhoods.

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We have heard testimony about communities, state and local governments all over this country devastated by foreclosures, with many more residents on the brink of foreclosure, and we have concluded that without prompt civil rights oriented action, this crisis will leave neighborhoods with abandoned homes, eroding tax bases, increased crime rates, and a loss of wealth in minority communities which will represent the greatest loss of wealth to homeowners of color in modern U.S. history. African-Americans and Latinos will lose up to $213 billion as a result of this crisis.[322]

The Commission urges you to incorporate the following fair housing and fair lending principles in the legislation being considered:

o **The rights of individual borrowers must be protected.** The legislation must protect and support the rights of borrowers to remain in their homes to avoid the destruction of families, neighborhoods and communities. Homeowners must be permitted to use existing rights and remedies under all laws to preserve their homeownership.
o Just as lenders are receiving financial support through federal legislation, **provisions to enable individual homeowners to keep their homes should also be included.** Consideration must also be given to providing support for those homeowners who have already lost their homes.
o The **legislation should create incentives for lenders to prefer working out arrangements with homeowners over foreclosures so families can remain in their homes.** The rights of families to remain in their homes and communities must be preserved. **Lenders and servicers must be given incentives to make loan modifications available** that will be sustainable for the life of the loan.
o This legislation should provide protection against evictions for tenants in single family and multifamily rental housing units that are in foreclosure.
o **Standards or provisions developed in the legislation shall not discriminate** and must be analyzed to make sure that they do not violate the Fair Housing Act, either intentionally or unintentionally.
o **Individual rights to live in stable and integrated communities must be protected.** Borrowers must be advised of their fair lending rights. All decision making by the executive and legislative branch must be reviewed for civil rights concerns and possible enforcement.
o To the extent that federal funds are used to provide funds for lending bailouts, that **funding is subject to the requirements in the Fair Housing Act to affirmatively further fair housing.** We bring to your attention the following important principles:

  o Federal funds are subject to the provisions of the Fair Housing Act, and specifically 42 U.S.C. 3608a requiring recipients of federal financial assistance to act affirmatively to further fair housing.
  o Expenditure of federal funds as part of this legislation must take into account the characteristics of the neighborhood, including the obligation not to perpetuate segregation and to support integration.

o Congress must **consider increased protections** against lending discrimination, increased assurances that will protect against predatory lending and lending discrimination, and increased utilization of fair housing and fair lending protections to avoid a reoccurrence of this problem.
o **Amending the bankruptcy law** to permit bankruptcy judges to modify home mortgages would be an important effort in providing protection for homeowners.
o **The current bailout must include provisions for monitoring and review, including compliance with civil rights and fair housing/fair lending.**

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The current financial crisis resulted in large part due to insufficient fair lending enforcement and a resistance to more vigorous regulation of the subprime market. Congress has a unique opportunity to take action to try to correct some of the failures of the market. Swift action must be taken to benefit homeowners who were unwitting victims of discrimination.

We have heard testimony about the origins of today's foreclosure patterns in neighborhoods that have been racially and ethnically segregated and that were redlined by FHA lending practices years ago, which are now victimized by lending discrimination. We have heard testimony about the depth of lending discrimination against Latinos, with projected foreclosures for 2008 at $92 billion. Although we know that the foreclosure crisis has hit borrowers who are White, Black, Asian American, and Latino, all of the available data tells us that African Americans and Latinos—and neighborhoods of color—will bear the harshest consequences of the foreclosure fallout.

The current financial crisis resulted in large part from discriminatory practices in the lending market as the following facts indicate:

o African-American and Latino homebuyers "face a statistically significant risk of receiving less favorable treatment than comparable Whites when they ask mortgage lending institutions about financing options."[323]
o African-Americans are much more likely than their White counterparts to receive a loan denial.[324]
o African-Americans and Latinos are more likely to receive payment-option and/or interest-only mortgages than their White counterparts.[325]
o African-Americans and Latinos are much more likely to receive a subprime loan than their White counterparts according to HMDA data. Roughly 54% of African-Americans and 47% of Latinos received subprime loans compared to approximately 17% of Whites.
o Even higher income African-Americans and Latinos receive a disproportionate share of subprime loans. According to one study that analyzed more than 177,000 subprime loans, borrowers of color are more than 30 percent more likely to receive a higher-rate loan than white borrowers, **even after accounting for differences in creditworthiness.**[326]
o Another study revealed that high income African-Americans in predominantly minority neighborhoods are three times more likely to receive subprime loans than low-income whites.[327]
o According to a HUD study analyzing homeownership sustainability patterns among first-time homebuyers, it takes African-Americans and Latinos longer to become homeowners. However, once homeownership status is attained, these groups lose their status the quickest. The study reveals that the average homeownership stay for Whites, Latinos and Blacks is 16.1 years, 12.5 years and 9.5 years respectively.
o After foreclosure, the duration of renting or living with relatives is 10.7 years for Whites, 14.4 years for African-Americans and 14.3 years for Latinos.[328]

We urge you to include these principles in the legislation because without a strong civil rights component, the legislation will ignore people of color whose lives and communities are being devastated, again, by unlawful discrimination.

THIS DOCUMENT WAS PRODUCED BY AN OUTSIDE PARTY AND SUBMITTED TO THE OBAMA-BIDEN TRANSITION PROJECT.

Sincerely yours,

Henry Cisneros
Co-Chair

Jack Kemp
Co-Chair

Commissioners
(Titles listed for identification purposes only)

Pat Combs
Immediate Past President,
National Association of Realtors

Okianer Christian Dark
Associate Dean for Academic Affairs
Howard University School of Law

Myron Orfield
Executive Director
Center on Race and Poverty

I. King Jordan
President Emeritus
Gallaudet University

Gordon Quan
Former President Pro Tem
City of Houston

cc: President George W. Bush
Secretary Henry Paulson
Chairman Ben Bernanke
Chairman Christopher Cox
Director James Lockhart
Secretary Steven Preston
Senator Charles Schumer
Senator Mike Crapo
Representative Maxine Waters
Representative Shelley Moore Capito

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Henry Cisneros
Jack Kemp
Co-Chairs

October 24, 2008

The Honorable Henry Paulson
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Paulson:

On behalf of the National Commission on Fair Housing and Equal Opportunity, we are writing to urge you to ensure that all federal lending rescue activities are carried out in a non-discriminatory way that affirmatively furthers our nation's fair housing laws. As the Department takes actions authorized by Congress, it must not waive or overlook civil rights requirements that are applicable to it and to lenders.

The Fair Housing Act and Executive Orders 11063 and 12892 prohibit illegal discrimination and require a recipient of federal funding, public or private, to affirmatively further fair housing.[329] Because funds made available through the Housing and Economic Recovery Act, the Neighborhood Stabilization Act, and the Emergency Economic Stabilization Act are federal funds, federal agencies and lending regulators – including the Department of the Treasury, the Federal Reserve Board, and the Department of Housing and Urban Development (HUD) – must comply with these requirements. In the context of the foreclosure crisis, these requirements call for these agencies and regulators to take into account the racially disproportionate impact of predatory and subprime lending and the historical role of housing segregation and lending disparities in helping exacerbate the crisis.[330]

Accordingly, we urge the Department, the Federal Reserve, and other federal agencies to immediately implement the following recommendations:

Enforcement of Civil Rights Obligations: Every asset that is acquired by a federal agency should be given an expedited review for potential civil rights violations and unfair and deceptive practices. Remedial action should include correction of any violation found. In addition, a good-faith effort should be made by lenders and federal agencies alike to renegotiate the mortgage terms in an expedited manner prior to foreclosure. Any practices that are identified as potentially discriminatory should be referred to the Department of Justice and HUD for further investigation and possible fair housing enforcement actions, as well as to lending regulators for additional review and action.

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Homeownership Preservation: The Department must promote loan modification and homeownership preservation measures in each transaction that it negotiates, including any contract to infuse capital into financial institutions or purchase stock or assets of lenders. Homeownership preservation efforts and the rights of tenants must be undertaken in a non-discriminatory fashion, in a manner that affirmatively furthers fair housing, and in direct proportion to the concentration of foreclosures in particular areas.

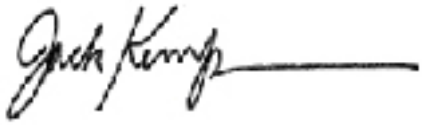
It is critical that the Department establish performance goals and monitoring of progress. In addition, the Department's monthly report to Congress should include aggregated data on the profile of families assisted in foreclosure prevention efforts by a) the type of assistance received, b) the race and ethnicity of the borrower, and c) the geographic demographic information of the properties.

Management of REO Properties: Loans for property obtained pursuant to the Neighborhood Stabilization Act, and loans for any properties acquired by federal agencies through foreclosure, should be reviewed for discriminatory practices. Data should be aggregated and reported in the same way as suggested above to address potential areas of discrimination. This inventory must be handled and disposed of in a non-discriminatory fashion, and in a manner that affirmatively furthers fair housing laws. Furthermore, all REO properties must be marketed and managed by real estate firms and professionals who are in compliance with comprehensive fair housing training. We believe civil rights requirements are core principles that must not be ignored in the current crisis environment. The Department has an important role to play in ensuring that federal foreclosure relief promotes equality of opportunity in housing, rather than perpetuating de facto segregation.

Thank you for your consideration of our concerns and we appreciate the enormity of the challenge. Be assured of our desire to be of assistance.

Sincerely,

Henry Cisneros
Co-Chair



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City of Houston

cc: Secretary Steve Preston
Chairman Ben Bernanke

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Appendix D: Commission Witnesses and Staff

Invited panel witnesses

Dolores Acevedo-Garcia, Harvard School of Public Health

Roberta Achtenberg, California State University, former Assistant Secretary, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development

Gary Acosta, National Association of Hispanic Real Estate Professionals; New Vista

Michael Allen, Relman & Dane PLLC

Janis Bowdler, Wealth-Building Policy Project, National Council of La Raza

Cal Bradford, President, Calvin Bradford and Associates

Chris Brancart, Brancart and Brancart

Xavier Briggs, Massachusetts Institute of Technology

Marca Bristo, Access Living

John Brittain, Lawyers' Committee for Civil Rights Under Law

Tina Brooks, Housing and Community Development, Commonwealth of Massachusetts

Willie Brown, State Farm Insurance

Judith A. Browne-Dianis, Advancement Project

Daniel Bustamente, Greater Houston Fair Housing Center

Harry L. Carey, former Associate General Council, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development

James Carr, National Community Reinvestment Coalition

Connie Chamberlin, Housing Opportunities Made Equal

Scott Chang, Relman & Dane PLLC

Camille Zubrinsky Charles, University of Pennsylvania

Kathy Clark, Chicago Area Fair Housing Alliance

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INVITED PANEL WITNESSES CONTINUED

Cathy Cloud, National Fair Housing Alliance

Foster Corbin, Metro Atlanta Fair Housing Services, Inc.

Wayne Dawson Jr., Savannah-Chatham County Fair Housing Council

Ingrid Ellen, Robert F. Wagner Graduate School of Public Service, New York University

Frances Espinoza, Housing Rights Center

Lance Freeman, Columbia University Graduate School of Architecture, Planning, and Preservation

Fred Freiberg, Fair Housing Justice Center

Hector Gamboa, Spanish Coalition for Housing

John Goering, School of Public Affairs, Baruch College, City University of New York; Ph.D. Program in Political Science, Graduate Center, City University of New York

Ira Goldstein, The Reinvestment Fund

Ginny Hamilton, Fair Housing Center of Greater Boston

David Harris, Charles Hamilton Houston Institute for Race and Justice, Harvard Law School

Jesus Hernandez, University of California – Davis

Helmi Hisserich, Deputy Mayor for Housing and Economic Development Policy, City of Los Angeles

Diane L. Houk, Fair Housing Justice Center

Elizabeth K. Julian, Inclusive Communities Project; former Assistant Secretary, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development

David Kahne, ACLU of Greater Houston

Erin Kemple, Connecticut Fair Housing Center

Maria Kong, National Association of Real Estate Brokers

Henry Korman, Consortium for Citizens with Disabilities Housing Task Force

George Lipsitz, University of California – Santa Barbara

John Logan, Brown University

Lisa Madigan, Illinois Attorney General

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INVITED PANEL WITNESSES CONTINUED

Stuart T. Rossman, National Consumer Law Center

Tim Sandos, National Association of Hispanic Real Estate Professionals

Demetria McCain, Inclusive Communities Project

Jim McCarthy, Miami Valley Fair Housing Center

Deborah McKoy, Center for Cities and Schools, University of California – Berkeley

Bonnie Milstein, Office of Program Civil Rights Compliance, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development

Reilly Morse, Mississippi Center for Justice

Amy Nelson, Fair Housing of the Dakotas

Melvin Oliver, University of California – Santa Barbara

Gary Orfield, Civil Rights Project, UCLA Graduate School of Education and Information Studies

Jose Padilla, California Rural Legal Assistance

James Perry, Greater New Orleans Fair Housing Action Center

Alexander Polikoff, Business and Professional People for the Public Interest

john powell, Kirwan Institute for the Study of Race & Ethnicity, Ohio State University

Leslie Proll, NAACP Legal Defense & Educational Fund, Inc.

Nancy Ramirez, Mexican American Legal Defense and Educational Fund

Mike Rawson, California Affordable Housing Law Project of the Public Interest Law Project

John Relman, Relman & Dane PLLC

Dale Rhines, former Staff Member, Office of Enforcement, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development

Lisa Rice, National Fair Housing Alliance

Keenya Robertson, HOPE, Inc.

Florence Roisman, Indiana University School of Law – Indianapolis

James Rosenbaum, Northwestern University

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INVITED PANEL WITNESSES CONTINUED

Barbara Sard, Center on Budget & Policy Priorities

Robert Schwemm, University of Kentucky College of Law

Shanna Smith, National Fair Housing Alliance

Eboni SternJohn, Minneapolis, MN

Thomas J. Sugrue, University of Pennsylvania

Blair Taylor, Los Angeles Urban League

William Tisdale, Metropolitan Milwaukee Fair Housing Council

Margery Austin Turner, Metropolitan Housing and Communities, The Urban Institute

Cynthia Watts-Elder, Connecticut Fair Housing Center

Bill Wilen, Sargent Shriver National Center on Poverty Law

John Wong, Asian Real Estate Association of America

ADDITIONAL PUBLIC TESTIMONY AND WRITTEN SUBMISSIONS

Dorothea A. Ardoin, Coldwell Banker Schmidt

Michael Blue, Chicago, Illinois

James Robert Breymaier, Oak Park Regional Housing Center

Phyllis Cheng, California Department of Fair Employment and Housing

Vincent Curry, Fair Housing Advocates Association

Jill Fenner, Fair Housing Center of Nebraska

Valerie Fortner, Chicago, Illinois

Brian Gilmore and Lois Hanshaw, Howard University School of Law

Nancy Haynes, Fair Housing Center of West Michigan

Bill Henning, Boston Center for Independent Living

Ilene Jacobs, California Rural Legal Assistance

Bernie Kleina, HOPE Inc.

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Additional public testimony and written submissions continued

Maria Krysan, University of Illinois – Chicago

Jeremy Liu, Asian Community Development Corporation

Bill Martin, Michigan Association of REALTORS®

Clyde Murphy, Chicago Lawyers Committee for Civil Rights Under Law

Jim Park, Asian Real Estate Association of America

John R. Petruszak, South Suburban Housing Center

Mary Prem, Project Sentinel

Theresa M. Ragot, Groton Housing Partnership

Wanda Remmers, Housing Rights Inc.

Gail Schechter, Interfaith Housing Center of the Northern Suburbs

Lennox Scott, John L. Scott Real Estate

Ann Seligsohn, Westchester Residential Opportunities, Inc.

Mark D. Stern, Mark D. Stern, P.C.

John H. Suhrbier, Winchester Multicultural Network

Hernán Vera, Public Counsel

Lauren Walker, Fair Housing Center; City Council, Tacoma, Washington

John Y. Wong, Chinese American Real Estate Professionals Association

Contributors to this Report

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Philip Tegeler, Poverty & Race Research Action Council

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Julie Fernandes, The Raben Group

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Endnotes

(Note that witness testimony and exhibits from the Commission's five hearings are archived at www.prrac.org/projects/fairhousingcommission.php)

1 U.S. Census Bureau, 2008 National Population Projections (www.census.gov/population/www/projections)
2 N.A.A.C.P. v. Sec'y of Hous. & Urban Development, 817 F.2d 149, 155 (1st Cir. 1987) (Breyer, J.)
3 See testimony of john powell (Los Angeles); Kirwan Institute for the Study of Race and Ethnicity, The Geography of Opportunity: Review of Opportunity Mapping Initiatives (July 2008) (Los Angeles Exhibit)
1 See generally NAACP Legal Defense and Educ. Fund, Inc. & Civil Rights Project/Proyecto Derechos Civiles Still Looking to the Future: Voluntary K-12 School Integration (2008); Amicus Brief of 553 Social Scientists in Parents Involved in Community Schools v. Seattle School District No. 1, 127 S. Ct. 2738 (2007); Erica Frankenberg, Improving and Expanding Hartford's Project Choice Program (2007).
2 Testimony of James Rosenbaum (Chicago), at 2-3; Testimony of john powell (Los Angeles), at 5.
3 Testimony of john powell (Los Angeles), at 2.
4 See Stephen C. Wright, Arthur Aron, Tracy McLaughlin-Volpe, & Stacy A. Ropp, The Extended Contact Effect: Knowledge of Cross-Group Friendships and Prejudice, 73 J. Personality & Soc. Psychol. 73, 73-90 (1997) (finding that knowledge of interracial friendships can lead to more positive attitudes within one group about the members of another group); cf. Elizabeth Page-Gould, Rodolfo Mendoza-Denton, & Linda R. Tropp, With a Little Help from My Cross-Group Friend: Reducing Anxiety in Intergroup Contexts Through Cross-Group Friendship, 95 J. Personality & Soc. Psychol. 1080, 1080-1094 (2008) (finding that cross-group friendship is beneficial for people who are likely to experience anxiety in intergroup contexts).
5 The Geography of Opportunity: Review of Opportunity Mapping Initiatives (Los Angeles Exhibit), at 3-4
6 Testimony of James Rosenbaum (Chicago), at 1-2.
7 Id. at 3.
8 See, e.g., statements of Smart Growth America, www.smartgrowthamerica.org; PolicyLink, www.policylink.org; and the Sierra Club, www.sierraclub.org.
9 See Anthony Downs, Keynote speech given at Brookings Symposium on the Relationship Between Affordable Housing and Growth Management (May 29, 2003) (www.brookings.edu).
10 Alan Berube, Brookings Inst., MetroNation: How U.S. Metropolitan Areas Fuel American Prosperity 8-9 (Nov. 2007).
11 Bruce Katz, Brookings Inst., Neighborhoods of Choice and Connection 2 (July 2004).
12 Rebecca Sohmer, Brookings Inst., Mind the Gap: Reducing Disparities to Improve Regional Competitiveness in the Twin Cities 29 (Oct. 2005).
13 Sohmer, Mind the Gap, at 26; Testimony of Maria Krysan (Chicago)
14 Testimony of John Logan (Chicago), at 1; see also Testimony of Camille Charles (Los Angeles), at 3.
15 Testimony of John Logan (Chicago), at 1.
16 John Logan, Lewis Mumford Ctr. for Comparative Urban & Reg'l Research, Separate and Unequal: The Neighborhood Gap for Blacks and Hispanics in Metropolitan America 2 (2002), available at http://www.s4.brown.edu/cen2000/SepUneq/SUReport/Separate_and_Unequal.pdf.
17 Testimony of john powell (Los Angeles), at 4.
18 Testimony of Gary Orfield (Los Angeles), at 1.
19 Testimony of Gary Orfield (Los Angeles), at 1.
20 Testimony of Gary Orfield (Los Angeles), at 2. See, e.g., Parents Involved in Community Schools v. Seattle School District No. 1, 127 S. Ct. 2738 (2007)
21 Testimony of Gary Orfield (Los Angeles), at 1, 2.
22 Testimony of Gary Orfield (Los Angeles), at 3, 4.
23 Douglas S. Massey & Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass 32-33 (1993); Douglas S. Massey, Origins of Economic Disparities, in The Rising Costs for America 39, 40, 51-53 (James H. Carr & Nadinee K. Kutty, eds. 2008).
24 See generally James Loewen, Sundown Towns (2005). Residents of one sundown town confirm that a whistle at 6 p.m. each night signaled to African Americans that they must leave, while residents of a sundown county confirm that the sheriff met African Americans at the county line to prevent them from entering. Id. at 60, 64. Summaries of Sundown Towns may be found in memos prepared for the hearings in Chicago and Los Angeles ("Supplemental Materials").
25 Massey & Denton, American Apartheid, at 26. Between 1910 and 1930, more than 1.4 million African Americans migrated from the South to the North. Massey, Origins of Economic Disparities, at 49.
26 Buchanan v. Warley, 245 U.S. 60 (1917). In this case the local ordinance prohibited African-Americans from living on blocks where the majority of houses were occupied by White persons.
27 Massey & Denton, American Apartheid, at 41-42.
28 Arnold R. Hirsch, Making the Second Ghetto: Race and Housing in Chicago, 1940-1960, at 9-10 (1983).
29 Testimony of Thomas Sugrue (Chicago), at 1-2; see also Testimony of Jesus Hernandez (Los Angeles), at 5 ("Developers of new suburban tracts used overtly racial covenants as a means to attract buyers, assuring the safety of their investment through the use of 'wise restrictions.'").
30 See Testimony of Jesus Hernandez (Los Angeles), at 6 (noting that local records show new housing tracts in Sacramento recorded racially restrictive covenants as late as 1976, almost twenty years after the Supreme Court held that they were unenforceable in Shelley v. Kraemer, 334 U.S. 1, 22-23 (1948)).
31 Testimony of Jesus Hernandez (Los Angeles), at 3.
32 Massey & Denton, American Apartheid, at 9-10, 43; Testimony of Jesus Hernandez (Los Angeles), at 6. In Chicago, African American families receiving public assistance paid two to three times more for rent than did White families receiving public assistance. Hirsch, Making the Second Ghetto, at 5, 18.
33 Massey, Origins of Economic Disparities, at 67.
34 Testimony of Thomas Sugrue (Chicago), at 3; see also Hirsch, Making the Second Ghetto.
35 Hirsch, Making the Second Ghetto, at 9.
36 See generally Massey & Denton, American Apartheid, at 51-55. In 1933, the government created the Home Owners Loan Corporation ("HOLC"), which "provided funds for refinancing urban mortgages in danger of default and granted low-interest loans to former owners who had lost their homes through foreclosure, enabling them to regain their properties." Testimony of Thomas Sugrue (Chicago), at 2; Massey, Origins of Economic Disparities, at 69. In 1934, President Roosevelt signed legislation creating the Federal Housing Administration ("Administration"), which guaranteed the value of collateral for loans made by private banks. Similarly, the GI Bill loan programs, which were authorized in 1944 and were administered through the Veterans Administration ("VA"), guaranteed mortgages for five million homes in the United States. See Ira Katznelson, When Affirmative Action Was White 115, 139-40 (2005).

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37 Testimony of Thomas Sugrue (Chicago), at 2.
38 Testimony of Florence Roisman (Chicago), at 2.
39 Testimony of Thomas Sugrue (Chicago), at 2-3; Massey, Origins of Economic Disparities, at 69.
40 Testimony of Lisa Rice (Chicago), at 5.
41 Testimony of Lisa Rice (Chicago), at 5-6.
42 Testimony of Lisa Rice (Chicago), at 5; Testimony of Calvin Bradford to House Committee on Oversight and Government Reform, October 24, 2007 (Atlanta exhibit).
43 Testimony of Jesus Hernandez (Los Angeles), at 3; Testimony of Thomas Sugrue (Chicago), at 2 (noting that racially mixed neighborhoods were considered "actuarially unsound"); Testimony of Calvin Bradford (Atlanta), at 1.
44 Testimony of Jesus Hernandez (Los Angeles), at 3; see also Testimony of George Lipsitz (Chicago), at 2; Testimony of Florence Roisman (Chicago), at 3; David M.P. Freund, Marketing the Free Market: State Intervention and the Politics of Prosperity in Metropolitan America, in The New Suburban History 11, 16 (Kevin M. Kruse & Thomas J. Sugrue eds., 2006); Massey, Origins of Economic Disparities, at 71-72.
45 Testimony of Thomas Sugrue (Chicago), at 2; see also Testimony of Jesus Hernandez (Los Angeles), at 2.
46 Testimony of Thomas Sugrue (Chicago), at 2; Kenneth T. Jackson, Crabgrass Frontier 215 (1985).
47 Testimony of Jesus Hernandez (Los Angeles), at 3; see also Massey, Origins of Economic Disparities, at 69.
48 Testimony of George Lipsitz (Chicago), at 2.
49 Massey, Origins of Economic Disparities, at 63-64; see also Hirsch, Making the Second Ghetto, at 16.
50 Hirsch, Making the Second Ghetto, at 27; Massey, Origins of Economic Disparities, at 56-57.
51 Hirsch, Making the Second Ghetto, at 32-34; Massey & Denton, American Apartheid, at 37-38.
52 Testimony of Jesus Hernandez (Los Angeles), at 8; see also Massey & Denton, American Apartheid, at 55-57.
53 Testimony of George Lipsitz (Chicago), at 3; see also Testimony of Florence Roisman (Chicago), at 2; Massey, Origins of Economic Disparities, at 74.
54 Testimony of George Lipsitz (Chicago), at 3; see also Testimony of Florence Roisman (Chicago), at 2; Testimony of Jesus Hernandez (Los Angeles), at 8-10.
55 Testimony of Florence Roisman (Chicago), at 5-6 (citing Thompson v. HUD, 348 F. Supp. 2d 398, 406, 467 (D. Md. 2005)).
56 Testimony of Florence Roisman (Chicago), at 3-6. See generally Thompson, 348 F. Supp. 2d at 465-69 (reviewing history of segregation in public housing); Robert Gray & Steven Tursky, Location and Racial/Ethnic Occupancy Patterns for HUD-Subsidized Family Housing in Ten Metropolitan Areas, in Housing Desegregation and Federal Policy 235 (John M. Goering ed., 1986).
57 Hirsch, Making the Second Ghetto, at 252-54.
58 See, e.g., Thompson, 348 F. Supp. 2d at 406; Walker v. HUD, 734 F. Supp. 1289, 1296 (N.D. Tex. 1989); Gautreaux v. Chicago Hous. Auth., 296 F. Supp. 907, 909 (N.D. Ill. 1969); see also Massey, Origins of Economic Disparities, at 74 ("public housing projects in most large cities had become Black reservations by 1970, highly segregated from the rest of society and characterized by extreme social isolation").
59 Massey & Denton, American Apartheid, at 45-46.
60 Nat'l Advisory Commission on Civil Disorders, Report of the National Advisory Commission on Civil Disorders (1968).
61 42 U.S.C. 3601.
62 42 U.S.C. 3608(e).
63 42 U.S.C. §§3610, 3614.
64 Rolf Pendall et al., From Traditional to Reformed: A Review of the Land Use Regulations in the Nation's 65 Largest Metropolitan Areas 3 (2006) (noting that zoning has long been used to separate people by race and by class);
65 See, e.g., Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252 (1977) (finding that a zoning ordinance that barred construction of multi-family housing, effectively barring African American families from moving to neighborhood) did not intentionally discriminate and did not violate the Constitution). On remand, the Court of Appeals found this ordinance did violate the Fair Housing Act
under a disparate impact analysis, 558 F.2d 1283 (7th Cir. 1977) (Arlington Heights II) 65See, e.g., Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252 (1977); Huntington Branch, NAACP v. Huntington, 844 F.2d 926 (2d Cir.), aff'd per curium, 488 U.S. 15 (1988); United States v. City of Parma, Ohio, 661 F.2d 562 (6th Cir. 1981), U.S. v. City of Black Jack, 508 F.2d 1179 (8th Cir. 1974), etc.
66 Testimony of Robert G. Schwemm (Atlanta), at 3.
67 Margery Austin Turner et al., Urban Inst., Discrimination in Metropolitan Housing Markets: National Results from Phase I HDS 2000, at 6-16 (2002).
68 Havens Realty Corp. v. Coleman, 455 U.S. 363, 366 n.1 (1982).
69 Rates of African American and Latino discrimination are based on 4,600 paired tests in 23 metropolitan areas while rates of discrimination suffered by Asians are based on 889 paired tests in 11 metropolitan areas. Margery Austin Turner et al., Urban Inst., Discrimination in Metropolitan Housing Markets: National Results from Phase I HDS 2000, at i (2002); Margery Austin Turner et al., Urban Inst., Discrimination in Metropolitan Housing Markets: National Results from Phase II HDS 2000, at iii (2002). Native American discrimination rates were studied in the metropolitan areas of three states. Margery Austin Turner et al., Urban Inst., Discrimination in Metropolitan Housing Markets: National Results from Phase III HDS 2000, at 2-1 (2003).
70 Margery Austin Turner, et al., Urban Inst,, All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions, at iii (2002).
71 Id., at iv.
72 Testimony of Marca Bristo (Chicago), at 3.
73 Testimony of Marca Bristo (Chicago), at 5, 7 (citing U.S. Dep't of Hous. & Urban Development, Discrimination Against Persons with Disabilities: Barriers at Every Step (June 2005), available at http://www.hud.gov/offices/fheo/library/dss-dounload.pdf).
74 See Daniel Barkley, Beyond the Beltway: Familial Status Under the Fair Housing Act, 6-WTR J. Affordable Hous. & Community Dev. L. 93, 93. A pair of 1980 HUD surveys found "that 99 percent of respondents reported numerous problems relating to housing discrimination against children"; "that 25 percent of all rental units did not allow children; 50 percent were subject to restrictive policies that limited the ability of families to live in those units; and almost 20 percent of families were living in homes they considered less desirable because of restrictive policies." See id. (citation omitted).
75 See Testimony of Keenya Robertson (Atlanta), at 2 (discussing litigation against an affordable housing developer and property manager in Florida that imposed occupancy restrictions). See, e.g., United States v. Tropic Seas, 887 F. Supp. 1347 (D.C. Haw. 1995); S. Cal. Hous. Rights Ctr. v. Krug, 564 F. Supp. 2d 1138 (C.D. Cal. 2007); Snyder v. Barry Realty, Inc., 953 F. Supp. 217 (N.D. Ill. 1996).
76 See Testimony of Gail Schecter (Chicago), at 2
77 James A. Kushner, Gov. Discrimination: Equal Protection Law & Litig., § 5:15, Children (2008); Testimony of Keenya Robertson (Atlanta).
78 Testimony of Jose Padilla and Ilene Jacobs (Los Angeles), at 3.
79 "Housing Poverty in Rural Areas" (Los Angeles exhibit), at 4, 6.

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80 Charles S. Aiken, Race as a Factor in Municipal Underbounding, 77 Annals Ass'n Am. Geographers 564, 564–79 (1987); Daniel T. Lichter et al., Municipal Underbounding? Annexation and Racial Exclusion in Small Southern Towns, 72 Rural Soc. 47 (2007) (finding White communities less likely to annex African American communities); U.N.C. Ctr. for Civil Rights, Invisible Fences: Municipal Underbounding in Southern Moore County (2006),
81 See, e.g., James Dao, Ohio Town's Water at Last Runs Past a Color Line, N.Y. Times, Feb. 17, 2004, at A2 (describing Zanesville, Ohio's denial of water to an African American community for more than fifty years); Lee Romney, Poor Neighborhoods Left Behind, L.A. Times, Sept. 18, 2005, at B1 (describing exclusion of four Latino neighborhoods from the city of Modesto, California). See Kennedy v. City of Zanesville, Oh., 505 F. Supp. 2d 456 (S.D. Ohio 2007).
82 Testimony of Jose Padilla and Ilene Jacobs (Los Angeles), at 7-8; "The Challenge of Housing California's Hired Farm Laborers" (Los Angeles exhibit), at 5.
83 Testimony of Jose Padilla and Ilene Jacobs (Los Angeles), at 7; "The Challenge of Housing California's Hired Farm Laborers" (Los Angeles exhibit), at 6-7.
84 Testimony of Jose Padilla and Ilene Jacobs (Los Angeles), at 8, 10-11.
85 "Justice at the Margins" (Los Angeles exhibit), at 32.
86 42 U.S.C. § 3601 et seq.
87 Oral Testimony of Shanna Smith (Atlanta).
88 The Commission sent a request under the Freedom of Information Act for data on case processing by HUD and by FHAP agencies, including complaints filed, charges issued, and duration of investigations, covering the years from 1988 though 2008 on September 24, 2008 and it was received on October 1. No data from that request has been provided although the estimated time for response was 45 days from the date of receipt, or November 14, 2008.
89 Nat'l Fair Hous. Alliance, The Crisis of Housing Segregation: 2007 Fair Housing Trends Report (2007).
90 Oral Testimony of Shanna Smith (Atlanta).
91 Testimony of Ira Goldstein (Atlanta), at 3; Oral Testimony of Shanna Smith (Atlanta).
92 42 U.S.C. § 3610(g).
93 U.S. Dep't of Hous. And Urban Development, Guidance Memorandum, Reasonable Cause Determinations under the Fair Housing Act (1999) (emphasis added), available at http://www.fairhousing.com/index.cfm?method=page.display&pagename=HUD_resources_reasonable_cause_memo.
94 Testimony of Jim McCarthy (Chicago), at 4-5; Testimony of Dale Rhines (Boston), at 3-4.
95 U.S. House of Representatives, Committee on the Judiciary, Report 100-711: The Fair Housing Amendments Act of 1988, 100th Congress, 2d Sess. (1988), reprinted at 1988 U.S. Code Cong. & Admin News 2173 at 2178.
96 Oral Testimony of Shanna Smith (Atlanta).
97 42 U.S.C. § 3610(a)(1)(B)(iv)).
98 See, e.g., Testimony of Jim McCarthy (Chicago), at 5; Testimony of Wayne Dawson (Atlanta), at 2-3. Testimony of Foster Corbin (Atlanta), at 3; Oral Testimony of Shanna Smith (Atlanta).
99 Nat'l Council on Disability, Reconstructing Fair Housing 90 (Nov. 2001).
100 Oral Testimony of Shanna Smith (Atlanta).
101 Secretary v. Sparks, HUDALJ 05-92-1274-8 (Feb. 14, 2003) (citing cases).
102 Testimony of Dale Rhines (Boston), at 3-4.
103 U.S. Dep't of Hous. & Urban Development, The State of Fair Housing, FY 2007 Annual Report on Fair Housing, available at http://www.hud.gov/offices/fheo/library/FairHousing-FY2007AnnualReport.pdf.
104 U.S. Dep't of Hous. & Urban Development, Secretary-Initiated Fair Housing Investigations, http://www.hud.gov/offices/fheo/enforcement/sec_initiated.cfm.
105 Oral Testimony of Shanna Smith (Atlanta).
106 Id.
107 GAO, Fair Housing: Opportunities to Improve HUD's Oversight and Management of the Enforcement Process, GAO-04-463 (April 2004), available at http://www.gao.gov/new.items/d04463.pdf; GAO, HUD Needs Better Assurance that Intake and Investigative Processes are Consistently Thorough, GAO 06-79 (October 2005) available at http://www.gao.gov/new.items/d0679.pdf.
108 Department of Housing and Urban Development, Office of Inspector General, Evaluation of FHEO Housing Discrimination Complaint Processing and Compliance, IED 07-001, September 2008, available at http://www.hud.gov/offices/oig/ied/IED-07-001.pdf
109 Secretary v. Sparks, HUDALJ 05-92-1274-8 (Feb. 14, 2003); see also Kelly v. HUD, 3 F.3d 951, 957-58 (6th Cir. 1993); Baumgartner v. HUD, 960 F.2d 572, 579 (6th Cir. 1992).
110 See footnote 22.
111 Testimony of Amy Nelson (Los Angeles), Testimony of Dale Rhines (Boston)
112 Testimony of Amy Nelson (Los Angeles) at 4, Michael Allen memo, Atlanta hearing exhibit. Testimony of Jim McCarthy (Chicago), Testimony of Wayne Dawson (Atlanta), Testimony of Cathy Cloud (Houston),Testimony of Foster Corbin (Atlanta), Testimony of Dale Rhines (Boston).
113 Testimony of Cathy Cloud (Houston) at 9.
114 Boykin v. Key Corp., 521 F.3d 202 (2nd Cir., 2008).
115 Testimony of Roberta Achtenberg (Los Angeles), at 3; Oral Testimony of Shanna Smith (Atlanta); see also Testimony of Elizabeth Julian (Atlanta) at 1.
116 Nat'l Council on Disability, Reconstructing Fair Housing (Nov. 2001); U.S. Dep't of Hous. & Urban Development, The State of Fair Housing, FY 2007 Annual Report on Fair Housing, available at http://www.hud.gov/offices/fheo/library/FairHousing-FY2007AnnualReport.pdf ; U.S. Dep't of Hous. & Urban Development, The State of Fair Housing, FY 2005 Annual Report on Fair Housing, available at http://www.hud.gov/offices/fheo/library/FY2005_Annual_Report.pdf; HUD 2002 BudgetJustifications, available at http://www.hud.gov/about/budget/fy02/cjs/part_2/fairhousing/s_e.pdf; HUD 2004 Budget Justifications, available at http://www.hud.gov/offices/cfo/reports/04estimates/fheose.pdf.
117 Testimony of Dale Rhines (Boston), at 5.
118 Testimony of Roberta Achtenberg (Los Angeles), at 5.
119 Testimony of Elizabeth K. Julian (Atlanta), at 1; see Testimony of Roberta Achtenberg (Los Angeles), at 1-2.
120 Testimony of Roberta Achtenberg (Los Angeles), at 1.
121 Testimony of John Goering (Boston), at 3.
122 Id.
123 U.S. GAO, Fair Housing: HUD Needs Better Assurance that Intake and Investigation Processes Are Consistently Thorough, GAO-06-79, at 72 (2005).
124 This structure is similar to that in other federal agencies with similar civil rights responsibilities, such as the Department of Education.
125 Even as this report is being written, there are reports of investigations that are being delayed because of inadequate travel funds.
126 Testimony of Roberta Achtenberg, (Los Angeles) at 5.
127 Testimony of Bill Martin (Los Angeles) at 1-2.
128 42 U.S.C. § 3614(a).
129 42 U.S.C. § 3610(g)(2)(C); 42 U.S.C. § 3614.

130 42 U.S.C. § 3614(b).
131 Testimony of Leslie Proll (Atlanta), at 4.
132 Id.
133 Id. at 5.
134 See infra, Chapter V.
135 See, e.g., United States v. Bob Lawrence Realty, 474 F.2d 115 (5th Cir.1973); United States v. Northside Realty, 605 F.2d 1348 (5th Cir. 1979); United States v. Real Estate One, 433 F. Supp. 1140 (E.D. MI 1977), United States v. Henshaw Bros., Inc., 401 F. Supp. 399 (E.D. VA 1974).
136 Testimony of Diane L. Houk and Fred Freiberg (Atlanta) at 6.
137 Id. .
138 Id. at 9.
139 See infra, p.
140 Testimony of Ira Goldstein (Atlanta), at 2-3.
141 See United States v. Long Beach Mortgage Co., Case No. CV-96-6159DT(CWx) (C.D. Cal. 1996). which alleged that Long Beach discriminated against African Americans, Latinos, women, and older borrowers. Younger White males were charged lower prices for loans than these groups, with older African-American female borrowers receiving the highest rates . Other discriminatory pricing cases included United States v. Fleet Mortgage Corp Case No. CV 96 2279 (E.D.N.Y. 1996). and United States v. Huntington Case No. 1:95 CV 2211 (N.D. Ohio 1995). In March 2000, DOJ joined forces with HUD and the Federal Trade Commission to bring a predatory lending case against Delta Funding Corp., in which the victims identified were African-American, senior females who had significant equity in their homes but who were cajoled into refinancing into high debt mortgages with substantive fees. United States v. Delta Funding Corp., Case No. CV 00 1872 (E.D.N.Y. 2000). The Department also filed an amicus brief supporting plaintiffs in Hargraves v. Capital City Mortgage Co., the first reverse redlining case. Mortgage Corp.
142 Testimony of Leslie Proll (Atlanta), at 11. DOJ fair lending cases are described on the Housing Section website, http://www.usdoj.gov/crt/housing/fairhousing/caseslist.htm#I The five mortgage lending cases brought since 2001 are United States v. Old Kent, C.A. No. 04-71789 (E.D. MI); United States v. Centier
Bank, C.A. No. 2:06-CV-344 (N.D. IN), United States v. Mid America Bank fsb (N.D. IL), United States v. First American Bank, C.A. No. 04C-4585 and United States v. First Lowndes Bank, C.A. 2:08-cv-00799- WKW-CSV (S.D. AL).
143 Testimony of Jim McCarthy (Chicago), at 7-8.
144 59 Fed. Reg. 18266 (Jan. 20, 1994)
145 Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n, 388 F.3d 32 (7th Cir. 2004); see also Cox v. City of Dallas, 430 F.3d 734 (5th Cir. 2005).
146 Garcia v. Brockway, 526 F.3d 456 (9th Cir. 2008).
147 See, e.g., Chicago Lawyers Committee for Civil Rights under Law v. Craigslist, Inc., . No. 07-1101, 2008 U.S. App. LEXIS 5472 (7th Cir. Mar. 14, 2008), Fair Housing Council v. Roommates.com, 521 F.3d
1157 (9th Cir. 2008).
148 See, e.g., Lozano et al. v. City of Hazleton, 459 F.Supp.2d 332 (M.D.Pa. 2006); Young Apartments LLC v. Town of Jupiter, 2008 U.S. App. LEXIS 11981 June 5, 2008.
149 Testimony of Cathy Cloud (Houston), at 4-6; see also Testimony of Daniel Bustamante (Houston), at 2-3; Testimony of Reilly Morse (Houston), at 2.
150 Testimony of James Perry (Houston), at 1.
151 Testimony of Reilly Morse (Houston), at 4; Testimony of James Perry (Houston), at 2, 3.
152 In written testimony the former head of the Section's testing program described the very vigorous response to Hurricane Andrew in 1992. which included systemic testing investigations in South Florida that ultimately resulted in the filing of eight (8) pattern and practice fair housing cases alleging race discrimination which settled for a total of over $2 million; emergency command centers to take discrimination complaints; and public announcements warning housing providers not to discriminate or take advantage of those families who were trying to locate temporary housing. Testimony of Houk, Freiberg, p. 5. The cases eight testing cases filed were United States v. Natura, Case No. 94-6955 (S.D. Fl) ; United States v. Langlois, Case No. 95-8352 (S.D. Fl); United States v. Araich Anstalt, Case No. 95-8355 (S.D. Fl); United States v. Gordon, Case No. 95-8354 (S.D. Fl); United States v. Jacobson, Case No. 95-1238 (S.D. Fl.); United States v. Kendall House, (S.D. Fl); United States v. Skilken, Case No. 95-8353 (S.D. Fl); United States v. Rosemurgy, Case No. 95-8351 (S.D. Fl)
153 Testimony of Cathy Cloud (Boston), at 1.
154 Testimony of David Harris (Boston).
155 42 U.S.C. § 3616a.
156 42 U.S.C. § 3616a (b)(2)(C).
157 Testimony of Cathy Cloud (Boston), at 4, 7.
158 Testimony of Erin Kemple (Boston), at 6.
159 Testimony of Foster Corbin (Atlanta), at 2. Mr. Corbin's prediction that only one group in Georgia, Metro Fair Housing in Atlanta or Savannah-Chatham County Fair Housing in Savannah would be funded was correct—Metro was funded; Savannah was not.
160 Testimony of Amy Nelson (Los Angeles), at 2.
161 Testimony of Diane Houk and Fred Freiberg (Atlanta), at 9-11.
162 HUD OIG Memorandum AO-174-0801 (July 6, 2000), Audit Memorandum 2001-AO-0802 (February 13, 2001), HUD OIG Audit memorandum 2008-NY-0002 (August 2008).
163 OMB Bulletin 08-01 (November 2007).
164 Testimony of Cathy Cloud (Boston), at 17.
165 U.S. Dep't of Hous. & Urban Development, Fair Housing Assistance Program (FHAP) Agencies, http://www.hud.gov/offices/fheo/partners/FHAP/agencies.cfm.
166 U.S. GAO, Fair Housing: HUD Needs Better Assurance that Intake and Investigation Processes Are Consistently Thorough, GAO-06-79, at 16 (2005).
167 HUD OIG Report 07-001, September 2008, Evaluation of FHEO Housing Discrimination Complaint Processing and Compliance, http://www.hud.gov/offices/oig/ied/IED-07-001.pdf.
168 Id.
169 Testimony of Wayne Dawson (Atlanta), at 3; Testimony of Jill Fenner (Chicago); Testimony of Keenya Robertson (Atlanta), at 4-5; Testimony of Amy Nelson (Los Angeles), at 4.
170 Oral Testimony of Shanna Smith (Atlanta).
171 Oral Testimony of Lauren Walker (Los Angeles).
172 Testimony of Calvin Bradford (Atlanta), at 1.

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173 Testimony of Calvin Bradford (Atlanta), at 1; Testimony of Ira Goldstein (Atlanta), at 2.
174 Testimony of Calvin Bradford (Atlanta), at 1; Testimony of Ira Goldstein (Atlanta), at 2.
175 Testimony of Calvin Bradford (Atlanta), at 1-2.
176 Testimony of Calvin Bradford (Atlanta), at 2-3. The Community Reinvestment Act requires banking institutions to help meet the "convenience and needs" of their entire communities, including those in lowand moderate-income neighborhoods. Id. at 5.
177 Id. HMDA provides for the collection of data, including location and type, of all mortgage loans. "It has become an indispensable resource not only for community organizations, but for both regulators and enforcement agencies in identifying underserved markets and patterns of possible discrimination and exploitation." Id.
178 Testimony of Calvin Bradford (Atlanta), at 1.
179 United States v. Decatur Fed. Savings & Loan Ass'n, 92-CV-2198-CAM (N.D. Ga.) (complaint filed Sept. 17, 1992).
180 Testimony of Calvin Bradford (Atlanta), at 9; see also Testimony of Ira Goldstein (Atlanta), at 2. During that period, the DOJ filed a number of cases successfully attacking redlining and the discriminatory application of stricter underwriting standards on the basis of race. Summaries of fair lending cases brought by the DOJ during the period of vigorous enforcement in the 1990s may be found at http://www.usdoj.gov/crt/housing/fairhousing/caseslist.htm.
181 Testimony of Jesus Hernandez (Los Angeles), at 12.
182 A Federal Reserve Bank of St. Louis study noted that the B&C lending market grew from $65 billion in originations in 1995 to $332 billion in originations in 2003. Souphala Chomsisengphet and Anthony Pennington-Cross, The Evolution of the Subprime Mortgage Market, Fed. Reserve Bank of St. Louis Rev (Jan. /Feb. 2006).
183 Testimony of John Relman (Los Angeles), at 635; Testimony of Calvin Bradford (Atlanta), at 6-7.
184 Testimony of Melvin Oliver (Los Angeles), at 3-4; see also Testimony of Calvin Bradford (Atlanta), at 3.
185 HUD reported that subprime lending, which totaled $20 billion nationwide in 1993, increased to $150 billion in 1998. Subprime volume reportedly increased to $625 billion in 2005 and to between $600 billion and $634 billion by 2006. Alt-A lending volume increased from $60 billion in 2001 to $400 billion in 2006.
186 Testimony of John Relman (Los Angeles), at 2, 8. The first reverse redlining case was brought by the FTC and a private firm headed by Relman, in which a court for the first time held that lenders who target minority communities to originate unsustainable mortgages violate the Fair Housing Act. Hargraves v. Capital City Mortgage Corp., 140 F. Supp. 2d 7 (D.D.C. 2000)
187 Testimony of Ira Goldstein (Atlanta). See Goldstein Exhibit, Subprime Lending, Mortgage Foreclosures and Race: How far have we come and how far have we to go? <http://www.prrac.org/projects/fair_housing_commission/atlanta/SubprimeMortgageForeclosure_and_Race_1014.pdf>, p.5.
188 Testimony of Cathy Cloud (Houston), at 13; Testimony of Lisa Rice (Chicago), at 6.
189 Testimony of Melvin Oliver (Los Angeles), at 3-4.
190 Testimony of Cathy Cloud (Houston), at 13; Testimony of Lisa Rice (Chicago), at 7.
191 Rick Brooks & Ruth Simon, Subprime Debacle Traps even very Credit-Worthy: As Housing Boomed, Industry Pushed Loans to a Broader Market, Wall Street J., Dec. 3, 2007.
192 Testimony of Cathy Cloud (Houston), at 11-12. The OCC went so far as to successfully seek to enjoin the New York state attorney general from investigating prominent national banks for lending discrimination. Cuomo v. Clearinghouse Association, 510 F.3d 105 (2nd Cir. 2007), petition for writ of certiorari pending, No. 08-453.
193 In the last few years, private efforts to attack the discriminatory practices at the root of the foreclosure crisis have increased. Stuart Rossman, Litigation Director for the National Consumer Law Center, testified that in just over a year, starting in September, 2007, 23 fair lending cases have been brought attacking the discretionary pricing policies of banks, including the practice of providing yield spread premiums to brokers thereby incentivizing the discriminatory marketing and pricing of expensive subprime loans to minorities. Testimony of Stuart Rossman (Boston), at 2-3. Disparate impact analysis is crucial to these suits and has been consistently attacked by the financial industry in many of these cases, thus far with no success. Because of its stance on disparate impact, DOJ has been predictably absent from any defense of this important legal standard in these cases, not to mention its failure to bring any disparate impact cases of its own.
194 Testimony of John Relman (Los Angeles).
195 Testimony of Calvin Bradford (Atlanta), at 4.
196 Indeed, to place blame for the foreclosure crisis on the CRA is absurd for many reasons: 1) the CRA applies only to depository institutions regulated by the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision with assets of $1.033 billion or more. Most subprime lenders were not subject to the legislation because they were not depository institutions. Researchers have noted that at the most, CRA covered entities only originated 1 in 4 subprime loans (Prepared Testimony of Michael S. Barr before the United States House Committee on Financial Services, Feb. 13, 2008). and when they did, they were typically at lower rates than loans made by non-regulated entities and they were less likely to be sold. (Traiger & Hinckley LLP, The Community Reinvestment Act: A Welcome Anomaly in the Foreclosure Crisis (Jan. 7, 2008), available at http://www.traigerlaw.com/publications/traiger_hinckley_llp_cra_foreclosure_study_1-7-08.pdf); 2) the CRA requires covered financial institutions to meet the credit needs of their entire delineated communities in a manner that is consistent with safe and sound lending practices; 3) the CRA was passed in 1977. The last legislative change to the Act occurred in 1999, long before the financial crisis hit. Indeed, the most problematic subprime loans were the 2006 and 2007 vintages. The timeline does not fit to lay even partial blame for the financial crisis at the feet of the CRA; 4) the argument that CRA forced lenders to provide mortgages to unworthy borrowers does not hold water since multiple studies have revealed that many subprime borrowers actually qualified for prime mortgages; 5) the argument that CRA forced lenders to provide mortgages to unworthy borrowers is further undercut by the lack of a private right of action to enforce the CRA. It is a "soft" law used by community groups and regulators, when used effectively, to encourage covered institutions to provide loans to borrowers in under-served communities. Most of the loans originated in under-served communities – even up until 2007 – were originated by noncovered, unregulated financial institutions, highlighting the "softness" of the law; 6) the CRA does not and never has required lenders to provide subprime loans, or any type of loans, to unworthy borrowers, nor does it impose harsh penalties on lenders for not doing so. In fact, the CRA requires lenders to make loans in a safe and sound manner.
197 OCC News Release, NR 2008-136 (November 19, 2008).
198 Testimony of Melvin Oliver (Los Angeles), at 1-2.
199 Testimony of Stuart Rossman (Boston), at 1.
200 Testimony of John Relman (Los Angeles), at 650-51.
201 Testimony of Melvin Oliver (Los Angeles), at 1.
202 Ctr. for Responsible Lending, CRL Issue Paper No. 14, Subprime Lending: A Net Drain on Homeownership (Mar. 27, 2007).
203 For example, in press releases and guidance memorandum from HUD on September 26, 2008 and October 23, 2008 concerning the Neighborhood Stabilization Program, there is no mention of the duty to affirmatively further fair housing in use of these funds. Given that close to $4 billion will be used to assist neighborhoods devastated by foreclosures, which are disproportionately minority neighborhoods, this is a significant opportunity to further fair housing and implementation of the program should explicitly recognize this.
204 24 CFR Part 180, Consolidated HUD Hearing Procedures for Civil Rights Matters.

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205 42 U.S.C. § 3608.
206 NAACP. v. Sec'y of Hous. & Urban Development, 817 F.2d 149, 155 (1st Cir. 1987) (Breyer, J.); Trafficante v. Metro. Life Ins. Co., 409 U.S. 205, 209-10 (1972); see also Otero v. N.Y. City Hous. Auth., 484 F.2d 1122, 1134 (2d Cir. 1973) ("Action must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat."); Shannon v. HUD, 577 F.2d 854 (3d Cir. 1978).
207 Shannon, 577 F. 2d at 821.
208 The strong pro-integration mandate of the Act is also reflected in its legislative history. See generally Florence Wagman Roisman, Affirmatively Furthering Fair Housing In Regional Housing Markets: The Baltimore Public Housing Desegregation Litigation, 42 Wake Forest L. Rev. 333 (Summer 2007).
209 Commonwealth of Massachusetts, Department of Housing and Community Development, Affirmative Fair Housing: Policy and Recommendations, Circulation Draft, August 26, 2008 (Boston Exhibit).
210 The Housing and Community Development Act of 1974, and as amended in 1983, contains two specific provisions that address the Fair Housing Act requirements. Section 104(b)(2) of that Act explicitly required that grants under the Community Development Block Grant Program (CDBG) be "conducted and administered in conformity" with the Fair Housing Act and that the grantee would affirmatively further fair housing. Section 106(d)(5) of the Act requires that CDBG grantees certify their compliance with the Fair Housing Act and certify that they will affirmatively further fair housing. Section 109 of the Housing and Community Development Act of 1974 also requires nondiscrimination in programs and activities conducted under the Act. "The obligation imposed by §3608 is an affirmative obligation, and calls on HUD to ensure that federal housing and community development funds are used to reduce racial segregation, not to perpetuate or exacerbate it." Testimony of Michael Allen (Boston), at 1.
211 42 U.S.C. § 3608(d).
212 Exec. Order No. 12,892, 59 Fed. Reg. 2939 (Jan. 20, 1994)
213 At another point in the debate, Senator Brooke observed: "Rarely does HUD withhold funds or defer action in the name of desegregation. . . . It is clear that HUD is determined to speak loudly and carry a small stick." 114 Cong. Rec. 2281, 2527-28 (1968).
214 HUD has "not developed the enforcement tools or the political will to take on the powerful constituent groups." Testimony of Michael Allen (Boston), at 2. Actions to affirmatively further fair housing are "AWOL." Testimony of Frances Espinoza (Los Angeles), at 1. "Many CDBG jurisdictions do little or nothing that fulfills HUD's requirement that they affirmatively further fair housing"; communities' efforts are meaningless or non-existent. Testimony of William R. Tisdale (Chicago), at 3-4. "Grossly insufficient." Testimony of Constance Chamberlin (Atlanta), at 6.
215 HUD Fair Housing Planning Guide, 1995, Vol. 1, page 1-13.
216 Testimony of Barbara Sard (Boston), at 1; see also Testimony of Florence Wagman Roisman (Chicago), at 6 ("HUD has administered the voucher program in such a way as to discourage families from moving to high opportunity areas.").
217 Testimony of Xavier Briggs (Boston), at 1.
218 Testimony of James Rosenbaum (Chicago), at 1 ("Better targeted vouchers are necessary if we don't want to merely recreate poverty enclaves in new places."); Testimony of Xavier de Souza Briggs (Boston), at 10; Testimony of Alexander Polikoff (Boston), at 4-5; Testimony of Barbara Sard (Boston), at 1.
219 Testimony of Ingrid Gould Ellen (Boston), at 5-6; Testimony of Xavier de Souza Briggs (Boston), at 8 ("Major developments in behavioral economics underline the wisdom of generating better choices for families, making those better choices the defaults or starting points, and then letting families opt out and make different choices if they so desire").
220 Xavier Briggs & Margery Austin Turner, Assisted Housing Mobility and the Success of Low- Income Minority Families: Lessons for Policy, Practice and Future Research, 1 NW J. L. & Soc. Pol'y 25, at www.law.northwestern.edu/journals/njlsp (2006).
221 The Half in Ten coalition includes the Association of Community Organizations for Reform Now (ACORN), the Center for American Progress Action Fund (CAPAF), the Coalition on Human Needs (CHN), and the Leadership Conference on Civil Rights (LCCR).
222 Ctr. for American Progress Task Force on Poverty, From Poverty to Prosperity: A National Strategy to Cut Poverty in Half 36 (Apr. 2007).
223 From Poverty to Prosperity, at 36.
224 Testimony of William Wilen (Chicago); see generally False HOPE: A Critical Assessment of the HOPE VI Public Housing Redevelopment Program (National Housing Law Project et al, 2003); Philip Tegeler, "The Persistence of Segregation in Government Housing Programs," in Xavier Briggs, ed., The Geography of Opportunity: Race and Housing Choice in Metropolitan America (Brookings Institution Press 2005).
225 See "HOPE VI Statement" (Houston exhibit), at 5-6.
226 Testimony of Demetria McCain (Houston), at 5.
227 Testimony of Florence Wagman Roisman (Chicago) at 7.
228 Reporting of racial and other demographic information on LIHTC developments is now required by federal statute (H.R. 3211) but still remains to be implemented by the I.R.S. and state housing finance agencies.
229 Testimony of Demetria McCain (Houston), at 4.
230 Abt Associates, "Are States Using the Low Income Housing Tax Credit to Enable Families with Children to Live in Low Poverty and Racially Integrated Neighborhoods?" (Chicago exhibit).
231 Testimony of Marca Bristo (Chicago), at 3.
232 Id. at 6.
233 U.S. Dep't of Hous. & Urban Development, The State of Fair Housing, FY 2007 Annual Report on Fair Housing, available at http://www.hud.gov/offices/fheo/library/FairHousing-FY2007AnnualReport.pdf.
234 Testimony of Bonnie Milstein (Los Angeles), at 3-5; Testimony of Henry Korman (Boston), at 4, 9.
235 "Housing America's Native People" (Los Angeles), at 4.
236 Testimony of Florence Roisman (Chicago), at 7-8; Testimony of Jose Padilla and Ilene Jacobs (Los Angeles), at 9. The U.S.D.A.'s civil rights regulations are at 7 C.F.R. § 1944.
237 Testimony of Jose Padilla and Ilene Jacobs (Los Angeles), at 9.
238 Testimony of Jose Padilla and Ilene Jacobs (Los Angeles), at 8.
239 Testimony of john powell (Los Angeles); Kirwan Institute for the Study of Race and Ethnicity, The Geography of Opportunity: Review of Opportunity Mapping Initiatives (July 2008) (Los Angeles Exhibit).
240 See Testimony of Judith Browne-Dianis (Houston); Seicshnaydre, In Search of a Just Housing Policy Post-Katrina (Houston exhibit); Civil Rights Statement On Hope VI Reauthorization (Houston exhibit).
241 Fair Housing Planning Guide at 1-2.
242 Id.

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243 Testimony of William Tisdale (Chicago) at 5.
244 See generally Testimony of William R. Tisdale (Chicago); Kathy Clark (Chicago); Frances Espinoza (Los Angeles); Amy Nelson (Los Angeles); Constance Chamberlin (Atlanta); James McCarthy (Chicago); James Perry (Houston); Lauren Walker (Los Angeles); Jose Padilla and Ilene Jacobs (Los Angeles); Cathy Cloud (Houston).
245 Testimony of Cathy Cloud (Houston), at 19.
246 "Affirmatively Furthering Fair Housing Policy and Recommendations" (Boston exhibit); see also Oral Testimony of Blair Taylor (Los Angeles). See, e.g., Hous. Opportunities Made Equal, Analysis of Impediments to Fair Housing in Richmond, Virginia (Oct. 2006), http://www.richmondgov.com/departments/communityDev/docs/RichmondAI.pdf; Fair Hous. Ctr., City of Toledo, Ohio, Analysis of Impediments to Fair Housing, 2005, http://www.toledofhc.org/Tol_AI_2005/Toledo_AI_2005.html.
247 Testimony of Elizabeth K. Julian (Atlanta).
248 U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Fair Housing Planning Guide, Vol. 1 available at http://www.hud.gov/offices/fheo/images/fhpg.pdf
249 Written testimony of Harry Carey (Atlanta).
250 Testimony of Elizabeth Julian (Atlanta); Testimony of Dr. Jill Khadduri (Atlanta Exhibit).
251 This description of the regional planning and A-95 review process is taken from Charles Connerly and Marc Smith, Developing A Fair Share Housing Policy for Florida, 12 J. of Land Use & Environmental L. 63, 74, 75 (Fall, 1996); see also Myron Orfield, Land Use And Housing Policies To Reduce Concentrated Poverty And Racial Segregation, 33 Fordham Urb. L.J. 877 (Mar. 2006).
252 Connerly and Smith, 12 J. Land Use & Env. L. at 74,75.
253 See Orfield, 33 Fordham Urb. L.J.
254 See Rolf Pendall, Robert Puentes & Jonathan Martin, Brookings Inst., From Traditional to Reformed: A Review of the Land Use Regulations in the Nation's 50 Largest Metropolitan Areas 5-6 (Aug. 2006). This report examines different land use regulations in the largest metropolitan areas in the nation and considers the effects that they have had on development in those metropolitan areas.
255 Pendall, From Traditional to Reformed, at 3; see also Testimony of Michael Rawson (Los Angeles), at 1.
256 Testimony of john powell (Los Angeles), at 3.
257 See, e.g., Robert D. Bullard et al., Toxic Wastes and Race At Twenty: 1987-2007 (2007).
258 Testimony of Michael Rawson (Los Angeles), at 3.
259 Testimony of Reilly Morse (Houston), at 5.
260 Testimony of James Perry (Houston), at 2-3. St. Bernard Parish, which is adjacent to the predominantly African American Lower Ninth Ward of New Orleans, made it illegal for an owner of a single family home (93 percent of which are White) to rent to anyone not related by blood. To limit the availability of affordable housing, Jefferson Parish, which also borders Orleans Parish, passed a resolution stating that it did not want any Low Income Housing Tax Credit housing within its borders. Kenner City in Jefferson Parish sought to limit affordable housing by imposing a moratorium on the construction of multi-family housing. Id.
261 Testimony of Reilly Morse (Houston), at 4. In Gulfport, Mississippi "a long series of tax creditfinanced apartment complexes were blocked on pretextual zoning grounds." Id.
262 See, e.g., Nick Miroff, Culpeper Officials Targeting Illegal Immigrants, Wash. Post, Sept. 21, 2006, at T10.
263 See Ken Belson & Jill P. Capuzzo, Towns Rethink Laws Against Illegal Immigrants, N.Y. Times, Sept. 26, 2007; see also Testimony of Nancy Ramirez (Los Angeles), at 2-4.
264 Testimony of Nancy Ramirez (Los Angeles), at 2-3.
265 Pendall, From Traditional to Reformed, at 31.
266 See Cal. Dep't of Hous. & Community Dev., Housing Elements, http://www.hcd.ca.gov/hpd/hrc/plan/he/; Testimony of Michael Rawson (Los Angeles), at 2-3.
267 S. Burlington County NAACP v. Mt. Laurel, 33 A.2d 713, 724 (N.J. 1975).
268 Testimony of Michael Rawson (Los Angeles), at 4 ("[O]ur experience is that when sites are rezoned as part of the housing element process [in California], affordable housing will always follow on some of them."). Inclusionary zoning ordinances have resulted in the production of over 13,000 affordable units in Montgomery County, Maryland, and, since 1999, 29,000 affordable units in California. Id. But see Testimony of Jose Padilla and Ilene Jacobs (Los Angeles), at 10 ("California planning laws . . . sets a lofty tone and demands that local jurisdictions address affordable housing needs and housing equity, but is often is honored only in the breach by local governments resistant to ensuring that decent, safe and affordable housing is made available to farmworkers, immigrants and other especially needy populations").
269 Testimony of Lance Freeman (Atlanta), at 8.
270 Testimony of john powell (Los Angeles), at 8.
271 Testimony of john powell (Los Angeles), at 8.
272 Pendall, From Traditional to Reformed, at 6.
273 Berube, MetroNation, at 23-24; see also Testimony of john powell (Los Angeles), at 6.
274 Such cooperative arrangements have been underutilized but have the potential to enhance fair housing enforcement. For example, in 2000, the Department of Treasury, HUD, and the Department of Justice adopted a "Memorandum of Understanding" to require referrals by DOJ and HUD of discrimination complaints involving tax credit properties to the IRS for notification of owners and appropriate regulatory action.
275 The Council "shall be chaired by the Secretary of Housing and Urban Development and shall consist of the Secretary of Health and Human Services, the Secretary of Transportation, the Secretary of Education, the Secretary of Labor, the Secretary of Defense, the Secretary of Agriculture, the Secretary of Veterans Affairs, the Secretary of the Treasury, the Attorney General, the Secretary of the Interior, the Chair of the Federal Reserve, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chair of the Federal Deposit Insurance Corporation, and such other officials of executive departments and agencies as the President may, from time to time, designate." Exec. Order No. 12,892, 59 Fed. Reg. 2939 (Jan. 20, 1994)
276 Testimony of Michael Allen (Boston), at 2.
277 Testimony of Deborah McKoy (Chicago).
278 Residential Segregation and Housing Discrimination in the United States: Violations of the International Convention on the Elimination of All Forms of Racial Discrimination: A Response to the 2007 Periodic Report of the United States of America 21 (2008), available at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN27.pdf,, finding that "HUD has failed to educate and inform United States residents about their rights and opportunities for redress under the Fair Housing Act. Based on data from HUD-commissioned studies, public knowledge of fair housing law did not improve between 2000 and 2005 despite some efforts by HUD to increase public awareness."
279 Id., finding that "HUD provides virtually no educational materials for the general public about fair housing issues, and materials prepared by its grantees are not distributed nationally or made available by HUD to be replicated by other groups. Contrary to the Fair Housing Act, HUD failed to fund a national fair housing media campaign in fiscal years 2005 or 2006 and failed to provide funding to underwrite previous successful media campaigns." See also Martin D. Abravanel, Urban Inst., Do We Know More Now? Trends In Public Knowledge, Support And Use Of Fair Housing Law 19 (2006).
280 For example, the National Association of Realtors has a strong campaign to advance diversity in their work and on their local boards as well as strong ethical requirements for its members that address fair housing considerations.

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281 Nat'l Council on Disability, Reconstructing Fair Housing 230 (Nov. 2001).
282 42 U.S.C. § 3616a(d).
283 HUD Inspector General, Report 2008-NY-0002, Weaknesses in the Office of Fair Housing and Equal Opportunity's 2007 Award Process for the Fair Housing Initatives Program-National-Based Media Campaign, http://www.hud.gov/offices/oig/reports/files/ig0820002.pdf.
284 Testimony of Camille Zubrinsky Charles (Los Angeles), at 11, 12.
285 Testimony of Ingrid Ellen (Boston), passim.
286 Testimony of Maria Krysan (Chicago), at 3-4 ("The kinds of work currently being done by places like the Oak Park Regional Housing Center or done in the future by the start-up, MoveSmart.org, are two examples of organizations seeking to reduce these kinds of blind spots.").
287 See also Testimony of James Robert Breymaier (Chicago)
288 Nat'l Fair Hous. Alliance, A Richer Life, http://www.aricherlife.org.
289 See, e.g., Testimony of John Suhrbier (Boston), at 1 (regarding the Boston program).
290 Leadership Conference on Civil Rights Education Fund, CommUNITY 2000, http://www.civilrights.org/campaigns/comm2000.
291 Pub. Broadcast Serv., Not in Our Town, http://www.pbs.org/niot/index.html.
292 Testimony of Margery Austin Turner (Atlanta), at 1. "PD&R's capacity to design, fund, and conduct high-quality, high-impact studies has substantially deteriorated in recent years, due to weak leadership, insufficient funding, staff retirements, and an increasingly narrow and constrained research agenda. This
deterioration and its consequences for future housing and urban development policy are documented in a recent report from the National Academy of Sciences, along with specific recommendations for rebuilding HUD's research capacity. The next administration at HUD should implement these recommendations."
293 Id. at 3-4.
294 Testimony of Ginny Hamilton (Boston), at 2; "Data Collection for Government Assisted Housing in Massachusetts Chapter 334 of the Acts of 2006" (Boston Exhibit).
295 Testimony of Keenya Robertson (Atlanta), at 4.
296 Testimony of Ginny Hamilton (Boston), at 2.
297 Id. at 2.
298 Testimony of John Brittain (Boston), at 9.
299 Funding was diverted from the Fair Housing Initiatives Program to support the Housing Discrimination Studies in the early 2000s. The significance of this research work is high, but it does not justify taking funds away from key program that supports fair housing enforcement and education. Testimony of Cathy Cloud (Boston), at 4-5.
300 42 U.S.C. § 3604(c).
301 Ragin v. New.Y.rk Times Co., 923 F.2d 995 (2nd Cir. 1991); Hous. Opportunities Made Equal, Inc. v. Cincinnati Inquirer, 943 F.2d 644 (6th Cir. 1991); Spann v. Colonial Vill., 899 F.2d 24 (D.C. Cir. 1990). 302 Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC, 521 F.3d 1157 (9th Cir. 2008); Chicago Lawyers Comm. For Civil Rights Under Law, Inc. v. Craigslist, Inc., 519 F.3d 666 (7th Cir. 2008).
303 Testimony of Scott Chang (Atlanta), at 6.
304 Testimony of Lennox Scott (Boston), at 1-2.
305 Testimony of Michael Allen (Boston), at 1.
306 Testimony of Michael Allen (Boston), at 4, proposing that the definition of "discriminatory housing practice" provided in 42 U.S.C. § 3602 include "a failure to comply with the obligations of section 3608(e)(5)."
307 Testimony of Scott Chang (Atlanta), at 7, proposing that 42 USC § 3613(c)(1) provide that "the United States and all states shall be liable for actual and punitive damages to the same extent as a private person."
308 Testimony of Cynthia Watts-Elder (Boston), at 2.
309 Margery Austin Turner & Dolores Acevedo-Garcia, "The Benefits of Housing Mobility: A Review of the Research Evidence," in Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program (Poverty & Race Research Action Council, 2005). 310 "State, Local, and Federal Laws Barring Source-of-Income Discrimination" (2008) (Boston Exhibit)
311 Fair Hous. Justice Ctr., No License to Discriminate, http://www.helpusa.org/site/DocServer/report_release_draft.pdf?docID=2121.
312 Testimony of Kathy Clark (Chicago), at 3-4.
313 Voucher non-discrimination provisions can be found at 26 U.S.C. § 42(h)(6)(b)(iv); 26 C.F.R. § 1.42-5(c)(1)(xi) (LIHTC); 42 U.S.C. § 12745(a)(1)(D); 24 C.F.R. § 92.252(d) (2002). HUD PIH Notice 2001-2(HA) (Jan. 18, 2001) (HOME program); 42 U.S.C. § 1437F, Note; 24 C.F.R. § 401.556 (Mark to Market); and 12 U.S.C. § 1701Z—12; 24 C.F.R. §§ 290.19, 290.39 PIH 2002-15(HAs) (Multifamily properties purchased from HUD).
314 See, e.g., Shellhammer v. Llewellyn, Fair Hous. Fair Lending Rep., para 15742 (W.D. Ohio 1983), aff'd 770 F. 2nd 167 (6th Cir. 1985) (unpublished); Krueger v. Cuomo, 115 F. 3rd 487 (7th Cir. 1997); Honce v. Vigil, 1 F.3d 1085 (10th Cir. 1993); Henson v. City of Dundee, 682 F. 2d 897(11th Cir. 1982); HUD v. Kogut, HUDALJ 09-93-1245-1 (April 17, 1995); Beliveau v. Caras, 873 F. Supp. 1393, 1397 (C.D. Cal. 1995); Williams v. Poretsky Mgm't, 955 F. Supp. 490 (D. Md. 1996); New York ex rel. Abrams v. Merlino, 694 F. Supp 1101 (S.D.N.Y. 1988); Reeves v. Carrollsburg Condominiums, 1997 U.S. Dist. LEXIS 21762 (Dec. 18, 1997); United States v. Koch, 352 F. Supp. 2d 970 (D. Neb. 2004).
315 Testimony of Demetria McCain (Houston),
316 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Dec. 21, 1965, 660 U.N.T.S. 195.
317 Id. at art. 2 § (1)(c).
318 Id. at art. 3.
319 U.N. Comm. on the Elimination of Racial Discrimination, Aug. 18, 1995, General Recommendation 19, Racial segregation and apartheid (Forty-seventh session, 1995), ¶ 140, U.N. Doc. A/50/18, reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.6 at 208 (2003), available at http://www1.umn.edu/humanrts/gencomm/genrexix.htm.100
320 See, e.g., Residential Segregation and Housing Discrimination in the United States: Violations of the International Convention on the Elimination of All Forms of Racial Discrimination: A Response to the 2007 Periodic Report of the United States of America (2008) (Chicago exhibit).
321 U.N. Comm. on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination, U.N. Doc. CERD/C/USA/CO/6 (Feb. 2008), available at http://www2.ohchr.org/english/bodies/ cerd/docs/co/CERD-C-USA-CO-6.pdf.
322 This is an estimate for subprime loans taken during the past eight years. Rivera, Amaad et al. Foreclosed: State of the Dream 2008; United for a Fair Economy; 2008.

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323 Turner, et al. All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions. The Urban Institute, 2002.
324 Carr and Megboulugbe. "The Federal Reserve Bank of Boston Study on Mortgage Lending Revisited." Journal of Housing Research, Volume 4, Issue 2, Fannie Mae, 1993.
325 Exotic or Toxic? An Examination of the Non-Traditional Mortgage Market for Consumers and Lenders. Consumer Federation of America, May, 2006.
326 See Bocian, D. G., K. S. Ernst, and W. Li, Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages, Center for Responsible Lending, May 2006, p. 3.
327 The Impending Rate Shock: A Study of Home Mortgages in 130 American Cities. ACORN 2006.
328 Donald R. Haurin and Stuart S. Rosenthal, The Sustainability of Homeownership: Factors Affecting the Duration of Homeownership and Rental Spells. U.S. Department of Housing and Urban Development Office of Policy Development and Research, December, 2004.
329 The fair housing requirements include the obligation not to target neighborhoods or individuals for bad loans because of the race of the neighborhood or borrower. These requirements also prohibit the purchase of loans that include discriminatory terms. There is evidence that widespread discrimination has occurred in the underlying loans that are in foreclosure or heading toward foreclosure. 330 HMDA data reveal that African Americans and Latinos disproportionately received subprime loans. In addition, studies have revealed that significant numbers of consumers who received subprime loans actually qualified for prime loans. Recent analysis of loan portfolios conducted by rating agencies disclosed the tenuous nature of the overwhelming majority of subprime loan products. Subprime loans
often included multiple layers of risk, such as lack of income documentation, high cumulative loan-to-value ratios, high debt-to-income ratios, complex loan terms, the existence of a closed-end second mortgage, and volatile loan payment structures. While numerous studies and analyses have pointed to the highly unregulated subprime lending system, including facets of the securitization process, as being substantial contributors to the current credit crisis, some have erroneously and irresponsibly blamed the crisis on lending associated with the Community Reinvestment Act. Many civil rights, consumer advocacy, federal entities, and mainstream financial institutions, however, have rejected this unfounded argument.

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