

December 2008

Executive Summary of

# THE FUTURE OF FAIR HOUSING:

Report of the

National Commission on

Fair Housing and Equal Opportunity

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COMMISSION HEARINGS

JULY 15, 2008

Chicago, Illinois, Access Living

SEPTEMBER 22, 2008

Boston, Massachusetts, Suffolk Law School

JULY 31, 2008

Houston, Texas, National Bar Association Annual Conference

OCTOBER 17, 2008

Atlanta, Georgia, Morehouse College

SEPTEMBER 9, 2008

Los Angeles, California, Mexican American Legal Defense and Educational Fund

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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.

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 devalue them. And while nationally the incidence of discrimination is down, there are at least 4 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.

## **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 Accountability 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

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.”<sup>i</sup>

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

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

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<sup>ii</sup>, 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

<sup>ii</sup> 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)

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

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 through 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

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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