



The Big Picture:

How Fair Housing Organizations
Challenge Systemic and Institutionalized
Discrimination

2011 Fair Housing Trends Report

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About the National Fair Housing Alliance

Founded in 1988 and headquartered in Washington, DC, the National Fair Housing Alliance is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. Through comprehensive education, advocacy and enforcement programs, NFHA protects and promotes equal access to apartments, houses, mortgage loans and insurance policies for all residents of the nation.

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Executive Summary

As the nation continues to reel from the foreclosure and economic crises, private non-profit fair housing organizations are taking stock of their communities. They are evaluating what went right, what went wrong, and what needs to happen next.

It is hard to see any part of society left untouched by the foreclosure crisis and its attendant economic ramifications. Brokers and big banks targeted families and communities – and disproportionately families and communities of color – for mortgage loans that could never have been repaid. Some of the worst lenders lost their shirts and went under, but many others got bailed out and got a wink from their regulators to keep right on going, while entire communities were wiped out.

Mortgage loans were bundled together, then securitized and traded by Wall Street players who were focused on profits rather than unjust and sometimes illegal treatment of borrowers. But housing is not just a commodity on the market to be traded – families and their homes, their livelihoods, and their communities are at stake.

Fortunately, private, non-profit fair housing organizations are stepping up to fight the negative effects of the foreclosure crisis. Moreover, these groups are continuing their efforts to rid the nation of intractable, systemic discrimination. Groups from New York to Marin County, from New Orleans to Milwaukee, and many places in between, are determined to promote diverse, inclusive communities and to protect our communities against those who would rather keep us divided.

As Census 2010 numbers show, our nation has become slightly more integrated over the past ten years, but segregation remains a stark, serious problem. Whereas 10 years ago, 69 percent of individuals in large metropolitan areas were living in areas of high segregation between Whites and African-Americans, that number is at 65 percent.¹ Yes, segregation has decreased, but we have a long road ahead.

Section I of this year's report highlights the groundbreaking work that private fair housing organizations are undertaking with limited staff and funding to tackle systemic issues while continuing to help individual families. Section II contains the 2010 national data on fair housing and Section III describes trends in public and private fair housing enforcement. Section IV includes a summary of major policy issues facing the civil rights movement, their fair housing implications, and advocacy by fair housing groups that made a difference.

The Fair Housing Act makes it illegal to discriminate based on race, color, national origin, religion, sex, disability or familial status. This law applies to housing and housing-related activities, including apartment and home rentals, real estate sales, mortgage lending, and homeowners insurance. The Fair Housing Act contains a purpose in addition to eliminating discrimination: to promote integration. Fair housing organizations are working today to root out systemic discrimination and to see to it that we instead become a nation of diverse, inclusive communities.

¹ Gurian, Craig, "New maps show segregation alive and well," Remapping Debate, April 20, 2011.

Section I. Fair Housing Groups Tackle Systemic Issues and Vindicate Individual Rights

Since the summer of 2009, when the United States reached a landmark settlement with Westchester County, New York, for its failure to promote fair housing through its expenditure of Community Development Block Grant (CDBG) funds, the fair housing movement has anxiously awaited from HUD the arrival of more clear guidance on how the federal government will address issues of systemic discrimination, segregation, and structural racism.

While Census data have shown that we have made some progress as a country toward becoming more integrated, the progress has been slow and anything but steady. Indeed, many of the same barriers that led to our country's segregation by race and class remain firmly entrenched and either ignored, unacknowledged, or even supported. New fair housing challenges are emerging in the rubble of the foreclosure crisis: communities of color lack access to good credit; affordable rental housing is growing scarce as the number of people seeking it grows by the day; the once-narrowing racial divide in homeownership has widened to unacceptable levels; and segregated neighborhoods of color are scarred by both the sheer number of foreclosed properties that mark their streets and by banks' pattern and practices of neglect.

Now, more than ever, we need a broad and affirmative vision for fair housing. This vision calls for the availability of safe credit options for all people and all neighborhoods and leaves no room for redlining or restricting credit choices of people of color; it demands that affordable, pro-integrative rental opportunities be available in communities that have many resources but few people of color; and it does not accept America's demographic status quo.

Realizing this vision requires the federal government to take a substantial leadership role. Over the last year, this has happened to a limited extent. Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in the summer of 2010, which established the Consumer Financial Protection Bureau, a new regulator with the authority and will to challenge discriminatory lending practices, and HUD has shown more willingness to tackle systemic housing discrimination.

However, a deeper commitment is needed, one that gets to the institutional heart of the work that HUD does rather than relying entirely upon the hard work of current staff. HUD must continue to evaluate, and where appropriate, change its rental assistance programs to allow recipients of housing assistance to make integrative housing choices.² HUD must also establish through fair housing

² This includes necessary administrative and programmatic changes, such as changes to the Section 8 housing choice voucher program that will open metropolitan areas rather than create Section 8 submarkets, particularly in the way that HUD establishes Fair Market Rent standards. On April 20, 2011, after great delay, and after much prompting from the civil rights community, HUD issued an invitation to Public Housing Authorities around the country to join its Fair Market Rent demonstration. PHAs use fair Market Rents to determine the maximum size of a moving subsidy for which families using Section 8 vouchers can qualify. When the Fair Market Rent covers a large geographic area, housing choices for voucher holders will be limited: high-rent neighborhoods will be too expensive, and low-rent neighborhoods will artificially increase the rents they charge. In this demonstration project, participating PHAs would adjust the size of the area in which they were assessing fair market rent to the zip code level. This would keep the federal government from overpaying for

regulations a clear regime of responsibilities that municipalities assume upon accepting HUD funding. The regulations should include, but not be limited to: (1) explicitly promoting racial integration, (2) eliminating housing discrimination of all types, and (3) predictable and well-applied enforcement mechanisms to punish municipalities for non-compliance.

In the absence of clear direction in the form of proposed or final rules, but acknowledging a willingness by HUD to continue to enforce civil rights obligations, the fair housing movement has increasingly turned its attention toward systemic issues. Below, we highlight key examples of work that has been done by NFHA and local fair housing organizations, particularly in the areas of affirmatively furthering fair housing and lending. In addition to NFHA's own work, we highlight the work of the Metropolitan Milwaukee Fair Housing Council, the Greater New Orleans Fair Housing Action Center, the Gulf Coast Fair Housing Center, St. Louis Equal Housing Opportunities Council, Fair Housing of Marin, and the Anti Discrimination Center of Metro New York. Although we cannot be satisfied with the federal infrastructure in place to handle issues of these types, and will continue to look forward to paradigm-changing regulation, we can find hope in the examples below.

A. Fair Housing Organizations Promote Integration and Hold Localities Accountable

Under the Fair Housing Act, all federal housing and community development dollars carry an obligation to "Affirmatively Further Fair Housing." In the context of a number of HUD programs, including Community Development Block Grants and HOME funding – federal programs upon which local and state governments often rely – recipient municipalities and jurisdictions must conduct a serious analysis of barriers to fair housing choice that exist within the locality, establish steps to overcome those barriers, and then establish a plan and timeline to enact the identified steps. As we have seen, especially over the last two years, many municipalities are reluctant to fight the entrenched municipal and community interests that reinforce patterns of segregation, and often even use federal funding to perpetuate segregation. Fair housing organizations have been at the forefront in fighting to ensure that all Americans benefit from housing funding in a fair way.

Metropolitan Milwaukee Fair Housing Council: Challenging barriers in an affluent and exclusive county in the most segregated metropolitan area in the country

In March 2011, the Metropolitan Milwaukee Fair Housing Council (MMFHC) filed a housing discrimination complaint against Waukesha County, Wisconsin, an affluent county outside of Milwaukee. In its complaint, MMFHC alleged that the County discriminated on the grounds of race, color, and national origin and also failed to affirmatively further fair housing. Much like in the Anti-Discrimination Center of Metro New York's famous case against Westchester County, New York,³ MMFHC has alleged that Waukesha currently fails to comply with its civil rights certifications and also fails to ensure that the towns, cities, and villages within the county also comply with their

vouchers in low-rent neighborhoods all the while increasing opportunity for voucher holders in higher-rent areas. For more information, please see

http://prrac.org/full_text.php?text_id=1217&item_id=11375&newsletter_id=0&header=Current%20Projects3

³ For more information on Westchester County's failure to affirmatively further fair housing, see www.antibiaslaw.com.

obligations. Like Westchester, Waukesha operates as an Urban County Consortium. The County receives funding from HUD which it then distributes to participating municipalities within its boundaries.

As is the case with many other cities in the Midwest and on the eastern seaboard, the Milwaukee-Waukesha metropolitan area is deeply segregated. A recent Salon.com article analyzing 2010 Census data named Milwaukee the most segregated city in the country and noted that it has the lowest rate of African-American suburbanization of any large city in the country.⁴ Ninety percent of all African-Americans living within the metropolitan area live in the City of Milwaukee.

Waukesha County, which borders Milwaukee County, is also starkly segregated. Unlike its neighboring city, Waukesha is predominately white. In 2000, nearly 96 percent of the population was white while only 0.73 percent was Black; 2010 census data demonstrate that this did not change significantly. Thirteen municipalities within the county did not have a single African-American resident.

Although it receives federal funds (\$12.5 million in CDBG funding and HOME funding from 2006 until 2010), the county has failed to identify impediments to fair housing choice that have caused this segregation, and it has also failed to take any sort of steps to overcome it. As a result, the county has maintained its racial homogeneity and is marked by deep exclusionary zoning laws that restrict rental units and multi-family buildings in an area where African Americans and Latinos are far more likely to rent than own a home. Evidence cited in MMFHC's complaint against the county indicates that the county's lack of analysis of fair housing impediments, lack of oversight of its sub-recipients, and lack of stated plans to overcome impediments to fair housing should not be surprising: municipalities in the county have long histories of NIMBYism and have regularly stymied the construction of affordable housing that holds pro-integrative possibilities.⁵ HUD is currently investigating MMFHC's case against the county.

⁴ Denvir, Daniel. "The 10 most segregated urban areas," *Salon.com*. (March 29, 2011) Available at http://www.salon.com/news/politics/war_room/2011/03/29/most_segregated_cities/slideshow.html.

⁵ *Metropolitan Milwaukee Fair Housing Council v. Waukesha County, Wisconsin*. (Fair Housing Complaint filed with the Department of Housing and Urban Development on March 15, 2011.) Available at <http://www.fairhousingwisconsin.com/PDF/Article%20-%20Waukesha%20HUD%20Complaint%203-15-11.pdf>.

An Update on Westchester County, New York's Continued Failure to Affirmatively Further Fair Housing

In the summer of 2009, Westchester County, New York, entered a consent decree with the United States government in order to resolve a federal lawsuit originally brought by the Anti-Discrimination Center of Metro New York (ADC). In its lawsuit, ADC alleged that the county made fraudulent claims to the United States government when it certified that it had Affirmatively Furthered Fair Housing in order to accept federal CDBG funds. A federal district court judge found that the county had in fact made false claims and had also “utterly failed” to affirmatively further fair housing.

The remedial consent decree to which Westchester County agreed carries many obligations. Importantly, the county must reorient all of its housing programs to reduce segregation and promote integration, and it must also overcome exclusionary zoning in part through building 750 units of pro-integrative affordable housing in areas that are the least integrated.

Unfortunately, since the time the Consent Decree was issued, Westchester has demonstrated its unwillingness to comply with the terms of the order and has instead resorted to its pre-litigation posture: it continues to deny the existence of segregation, it continues to deny that it can compel resistant municipalities to build pro-integrative affordable housing as a matter of public interest, and it continues to site its affordable housing in isolated places that perpetuate segregation.

The fair housing community calls upon the federal government to demonstrate its commitment to fair housing by seeking an order from federal court that enforces the consent decree.

Greater New Orleans Fair Housing Action Center: Addressing the State of Louisiana's widespread discriminatory spending of federal housing funds

In past Trends Reports, we have highlighted the ongoing discrimination by municipalities in the state of Louisiana, particularly in the wake of Hurricanes Katrina and Rita.

For the last five years, NFHA-member Greater New Orleans Fair Housing Action Center (GNOFHAC) has worked to open St. Bernard Parish, Louisiana, to renters. GNOFHAC originally filed suit against the parish following Hurricane Katrina, when the New Orleans-bordering parish passed an offensive and discriminatory “blood relative ordinance,” which allowed residents of the

nearly all-white parish to rent available units only to blood relatives in the wake of the storm. After GNOFHAC and the parish entered into a consent decree to resolve this federal lawsuit, the parish found new ways to limit the ability of African Americans to move into the parish. After a federal court found the parish in violation of the consent decree for discriminatorily rejecting a building permit for a multi-family affordable housing development, the parish council, among other tactics, attempted to issue a building moratorium and also worked to put an anti-development referendum on the ballot during an election. Throughout the process, a federal judge found the Parish to be in contempt of court three times and, in January 2011, HUD opened its own Secretary-initiated complaint against the parish.

In March, GNOFHAC launched a campaign calling upon the parish to stand down. The “Enough is Enough, St. Bernard” campaign calls upon residents of the parish and others to tell parish council president Craig Taffaro, who has repeatedly demonstrated a disregard for civil rights, the orders of federal judges and also the benefits of integration, to abide by court orders and stop jeopardizing the receipt of federal community development funds by the parish.

Meanwhile, both NFHA and GNOFHAC have challenged the formula that the State of Louisiana is using to distribute hurricane relief funds to eligible homeowners. The organizations allege that the state is using a discriminatory formula which provides more money for repairs to similarly situated white homeowners than Black homeowners. In a district court order, a federal judge indicated that even in a very early stage of litigation, the fair housing organizations presented evidence that suggested they could make a *prima facie* case that the formula discriminated against African Americans in Louisiana who wished to rebuild their homes in the wake of a natural disaster.⁶ The case is currently being litigated in federal court in Washington, DC.

In July 2010, GNOFHAC struck at the systemic root of racially discriminatory spending of federal funding when it filed an administrative complaint against the State of Louisiana for its failure to (1) analyze impediments to fair housing choice that exist within the state, and (2) for continuing to award federal CDBG funds to communities within the state that have steered the funds away from pro-integrative housing and infrastructure projects. In spite of many local municipalities’ demonstrated interest in perpetuating segregation, the state made a weak attempt to comply with its civil rights obligations by asking those very same municipalities to conduct a standardized, non-specific survey to identify potential impediments to fair housing choice. It should be no surprise that those municipalities refused to identify any real barriers to housing choice and continued discriminating. Examples abound in addition to St. Bernard:

- The *City of Kenner* adopted multiple building moratoria to prevent the construction of multifamily housing, even while acknowledging that “the continued expansion of the African American and Hispanic populations” would require the city to consider planning and zoning changes.

⁶ *Greater New Orleans Fair Housing Action Center, et al. v. U.S. Department of Housing and Urban Development, et al.* (D.D.C. Case No. 1:08-cv-01938-HHK). Order Denying Plaintiffs’ Motion for Preliminary Relief. (June 29, 2010).

- Since 2006, *Jefferson Parish* has taken aggressive steps to reduce zoning density, and one Parish Councilmember said these choices were made because, “You would be having folks in Orleans Parish who lived in public housing complexes in Jefferson Parish. That’s just not something I’m interested in.”
- Following Katrina, the *Pointe Coupee Parish* sheriff said the Parish “didn’t need those type of people...[meaning] black people from the lower ninth ward who didn’t have a job and mainly were people living off of SSI or didn’t have any disability or whatever.”⁷

By filing an affirmatively furthering fair housing complaint, as well as alleging discrimination on the grounds of race, color, and national origin, GNOFHAC is challenging a pattern and practice of funding municipalities that have habitually defied federal law and housing policy.

B. Fair Housing Organizations Work to Eliminate the Dual Credit Market

As some fair housing organizations are working to tear down the barriers of exclusionary zoning and NIMBYism, other fair housing organizations are working to ensure that financial institutions fairly serve all communities, opening opportunities for wealth building among African Americans and Latinos. The dual credit market in this country has excluded many communities from the benefits of good banking and high-quality credit. The result is a perpetuation of the racial wealth gap that has left so many communities of color behind.

Metropolitan St. Louis Equal Housing Opportunity Council: Bringing banking services to underserved neighborhoods in St. Louis

In December 2010, HUD announced a conciliation agreement between NFHA-member Metropolitan St. Louis Equal Housing Opportunity Council (EHOC) and First National Bank of St. Louis. Under the terms of the agreement, the bank will invest over \$2.5 million in St. Louis City, North St. Louis County, and St. Clair County, Illinois.⁸ EHOC, HUD and the bank reached a settlement shortly before EHOC released “Redlined: A Fair Lending Analysis of the St. Louis Metropolitan Area,” a report which found double-digit declines in lending to African Americans between 2007 and 2009, a period in which white borrowers experienced double-digit increases.

The terms of this agreement were reached after EHOC filed a discrimination complaint against the bank with HUD alleging that the bank failed to offer services and locate branches in African-American neighborhoods. In addition to improving services and lending in these neighborhoods, the

⁷ *Greater New Orleans Fair Housing Action Center v. State of Louisiana* (fair housing complaint filed with HUD on July 29, 2010).

⁸ Department of Housing and Urban Development. “HUD, First National bank of St. Louis Reach Agreement to Increase Investment in Low-Income and Minority Communities: Bank to invest more than \$2.5 million and open new branch.” (Press Release) (December 21, 2010). Available at http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-268.

agreement requires that the bank open a new branch, provide counseling and financial literacy courses to residents, and provide better financial products such as free checking accounts.

Terms of the agreement send a clear message: banks must serve all people equally and must not perpetuate a dual credit system, where geography alone determines the types of financial services to which people will have access.

National Fair Housing Alliance, Connecticut Fair Housing Center, Housing Opportunities Made Equal, and the Miami Valley Fair Housing Center: Turning banks into good neighbors

In April 2011, the National Fair Housing Alliance released a report entitled, “Here Comes the Bank, There Goes Our Neighborhood: How Lenders Discriminate in the Treatment of Foreclosed Homes.” NFHA and three of its member organizations – Housing Opportunities Made Equal of Virginia, the Connecticut Fair Housing Center, and the Miami Valley Fair Housing Center in Dayton, Ohio – investigated 624 foreclosed-upon homes owned by banks in Maryland, Virginia, Connecticut, and Ohio. These homes are also known as real estate owned properties (REOs). The investigation revealed that banks and their hired asset managers better maintain foreclosed homes in white neighborhoods than they do in African-American or Latino neighborhoods. This means that foreclosed homes in white neighborhoods were more likely to have well maintained lawns, to have strong curb appeal, and to look occupied, while foreclosed properties in African-American and Latino neighborhoods were more likely to have poorly maintained lawns and look like preventable eyesores. This discriminatory practice compounds the damage of the foreclosure crisis, which has already cost African-American and Latino neighborhoods billions of dollars in “spillover costs.”⁹

NFHA shared the results of its investigation with Fannie Mae, Freddie Mac, and the Federal Housing Administration (FHA) in order to encourage them to change business practices and to eliminate the discriminatory impact of REO maintenance and marketing. Private banks, however, proved to be far less receptive. If left unaddressed, these banks will continue to perpetuate segregation and impede our country’s economic recovery.

Fair Housing of Marin: Helping Make the Bay Area’s Least Diverse County Accessible

In December of 2010, HUD and Marin County, California, entered into a “Voluntary Compliance Agreement” after HUD found the county had failed to meet its CDBG fair housing responsibilities. At the time of the agreement, HUD Assistant Secretary for Fair Housing and Equal Opportunity John Trasviña said, “This agreement increases Marin’s accountability to its residents and to HUD to carry out its fair housing obligations and document that its programs serve everyone, regardless of race, ethnicity, or disability.”

A HUD review of Marin County’s CDBG program found that the county did not sufficiently reach out to underserved communities and also found that the county is starkly segregated: its small

⁹ Center for Responsible Lending. *Foreclosures by Race and Ethnicity: The Demographics of a Crisis*. (June 18, 2010) Available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-b-race-and-ethnicity.pdf>.

African American population is concentrated in Marin City and Latinos are concentrated in parts of San Rafael.

NFHA-member Fair Housing of Marin conducted a comprehensive Analysis of Impediments to Fair Housing Choice following the agreement reached between HUD and Marin County which noted, among other impediments, high levels of segregation, reluctance among people of color to move outside of Marin County and San Rafael into neighborhoods where they fear hostility, exclusionary zoning and municipal resistance to affordable housing, inclusionary housing policies that are not deep enough to create opportunities for very low-income and low-income people, and an inadequate supply of housing for families or people with disabilities.

While Fair Housing of Marin awaits the county's approval of its AI, the draft that it has produced is being heralded as a model analysis by experts in the fair housing field— its analysis is deep and its recommendations are thorough. Staff at the fair housing center are working with the county and other groups during an open public comment period. Ways in which the county will incorporate any comments on the Analysis of Impediments that it receives remains to be seen. According to staff at the fair housing center, the county has been receptive, indicating, hopefully, that a cooperative approach between fair housing advocates and municipalities can bring about necessary integration.

C. Fair Housing Organizations Vindicate the Rights of Individual Victims of Discrimination

In addition to pursuing solutions to systemic problems, fair housing groups also vindicate the rights of individual complainants who seek their assistance. This process, which often requires investigation and follow-through in either an administrative or legal arena, is time consuming but essential.

Highlights of the good work of a number of NFHA members over the past year include:

- The **Fair Housing Center of Greater Boston** filed an administrative complaint with the Massachusetts Commission Against Discrimination after being contacted by a man who was harassed because of his race and sexual orientation. According to the fair housing center, tenants of his building frequently called him derogatory names and slurs based on his race and sexual orientation, and damaged his car on more than one occasion. Because of the fair housing center's intervention, the management company agreed to pay the complainant monetary damages and also moved him to a new, safe apartment complex.
- **South Suburban Housing Center (SSHC)** in Homewood, Illinois, filed a lawsuit against landlord Terence Flanagan in November of 2009, after Flanagan refused to rent a single-family house to an interracial family. Testing by SSHC confirmed the family's story: the landlord told a white tester he would *never* rent to blacks. SSHC turned its evidence over to the Justice Department which litigated the case until a consent decree was filed in January 2011.

- **Housing Opportunities Made Equal of Cincinnati** settled a case on behalf of Vince Igoe. Vince was searching for an apartment in Oakley, Ohio, with the help of his brother Bob. After finding the perfect apartment – one that was located near his job at Whole Foods, near his family and friends, on a convenient bus line, and well-priced – the landlord denied his rental application. The property’s landlord emailed Bob and said he could not rent to Vince because Vince has Downs syndrome. After HOME worked with Vince and Bob to resolve the case, Vince became a local spokesperson for housing rights for people with disabilities. Since then, HOME has received more calls reporting discrimination on the basis of disability.
- In Spokane, Washington, NFHA member **Northwest Fair Housing Alliance** assisted domestic partners Mitch Cain and Michelle DeShane in resolving a fair housing complaint that they filed against the Richland (WA) Housing Authority in April 2009. Mitch, who was transitioning from male to female, and Michelle, a lesbian, filed their complaint after the housing authority would not permit Mitch to add Michelle to his section 8 voucher as a family member. As they applied for a section 8 voucher, a receptionist for the housing authority told them, “I don’t think we take your kind here.” Mitch and Michelle were later told to apply for a voucher from another housing authority which accepted “everyone, even Martians.” The case settled in July 2010, and is often cited by HUD as it works to better protect members of the LGBT community under federal fair housing law.
- The Department of Justice litigated a case on behalf of six women living in Southeastern Michigan who were sexually harassed by their landlord. Initially, two women complained to the **Fair Housing Center of Southeastern Michigan** and reported that property manager Glen Johnson demanded sexual favors in return for repairs or even keys to their property. After investigating, the fair housing center referred the case to the Department of Justice which identified additional victims and filed a federal lawsuit. A jury awarded a total of \$115,000 to six low income women with children who were victims of this sexual harassment.

Fair housing organizations are expending their limited resources to bring about systemic change in the communities in which they operate, while also going to the mat for individual victims of discrimination and seeing their complaints through to completion. This includes filing administrative complaints, resolving complaints through conciliation, or litigating fair housing cases where necessary. As part of a movement, groups are ensuring that more families do not have to endure the stinging hardship of discrimination, are made whole when they do face it, and live in open and accessible communities.

D. Fair Housing Organizations Get a Major Bang for Their Buck

Many fair housing groups are doing incredible work with limited staff and in spite of a funding structure that limits their ability to do systemic work. The average NFHA member organization has a staff of five. Organizations often rely on HUD’s Fair Housing Initiatives Program (FHIP) and CDBG funding. FHIP funding restrictions, which have capped available enforcement funding at an artificial level for many years, left many groups, especially those operating in urban areas or those with statewide service areas, with too few resources to devote to the time-consuming and resource

intensive work of systemic investigations. Similarly, many other groups relying upon CDBG funding from municipalities within their service areas have faced tremendous pressure that keeps them from challenging municipalities that discriminate or that fail to overcome barriers to fair housing.

Fortunately, in HUD's most recent round of FHIP grants, the Department increased the maximum grant size in a way that will better provide groups with necessary capacity to conduct large-scale investigations and enact systemic change. As the examples above show, there is a rich body of work on which groups may build.

Ultimately, in order to best address the numerous fair housing challenges that exist, it is important that HUD make available a dedicated stream of funding for systemic fair housing enforcement. Doing so will necessarily align resources so that fair housing organizations can tackle the deeply entrenched problems of segregation, lending discrimination, racial steering, and the widespread design and construction issues that prevent people with disabilities from enjoying housing.

Such a program is contemplated in U.S. Representative Al Green's bill, H.R. 284, the Veterans, Women, Families with Children, and Persons with Disabilities Housing Fairness Act of 2011. The bill recognizes the important benefit that fair housing testing offers to communities and seeks to make more resources available so advocates can continue to shine a light on discriminatory housing practices. It recognizes that much discrimination remains unreported, and it is a federal policy priority to both identify and eliminate discrimination through comprehensive investigations. In order to do this, the bill authorizes FHIP funding at its current level of \$42.5 million per year, but also authorizes \$15 million per year for nationwide enforcement testing and \$5 million per year for additional fair housing research.

Section II. National Data on Fair Housing

A. Housing Discrimination Complaints for 2010

Each year NFHA collects data from both private fair housing organizations and government entities to present an annual snapshot of fair housing enforcement in America. This year, as in others, the numbers have fluctuated somewhat. After reporting record high numbers of discrimination complaints over the last two years, this year NFHA reports a more modest number of filed complaints, more consistent with that of previous years. This lower number, however, should not provide comfort that the problem of housing discrimination is somehow less significant; indeed, the consequences of housing discrimination scar the country and communities continue to exclude potential residents based on protected characteristics.

It is undeniable that housing discrimination still exists. A conservative estimate puts the number of violations of the law at four million *every year*. Many people do not know their rights under the Fair Housing Act, and of those who do, many do not report housing discrimination because they don't know where to go, they believe nothing will be done about it, or they fear the consequences.¹⁰ Additionally, individual complaints do not tell the whole story for often the resolution of a complaint addresses a larger problem, such as making apartment buildings/complexes accessible to persons with disabilities, opening an entire apartment complex to families with children, or eliminating a city ordinance that excluded affordable multi-family housing.

The following chart lays out the complaint filings and case filings reported by private and governmental fair housing agencies and organizations since 1999. Fair Housing Assistance Program (FHAP) organizations are state and local government organizations that receive HUD funding to investigate and process fair housing complaints. Under the Fair Housing Act, HUD is required to refer cases to these agencies if the agencies are "substantially equivalent" under the law, i.e. that the state or local law is substantially equivalent to the federal law.

¹⁰ Martin D. Abravanel & Mary K. Cunningham, Urban Institute, *How Much Do We Know? Public Awareness of the Nation's Fair Housing Laws*, 2002.

TOTAL FAIR HOUSING COMPLAINTS FILED					
	NFHA Member Complaints	FHAP Claims & Complaints	HUD Claims & Complaints	DOJ Case Filings	Total
1999	11,531	3,676	2,198	48	17,453
2000	15,131	4,971	1,988	45	22,135
2001	16,550	5,041	1,902	53	23,546
2002	17,543	5,129	2,511	49	25,232
2003	17,022	5,352	2,745	29	25,148
2004	18,094	6,370	2,817	38	27,319
2005	16,789	7,034	2,227	42	26,092
2006	17,347	7,498	2,830	31	27,706
2007	16,834	7,705	2,449	35	27,023
2008	20,173	8,429	2,123	33	30,758
2009	19,924	8,153	2,091	45	30,213
2010	18,665	8,214	1,943	29	28,851

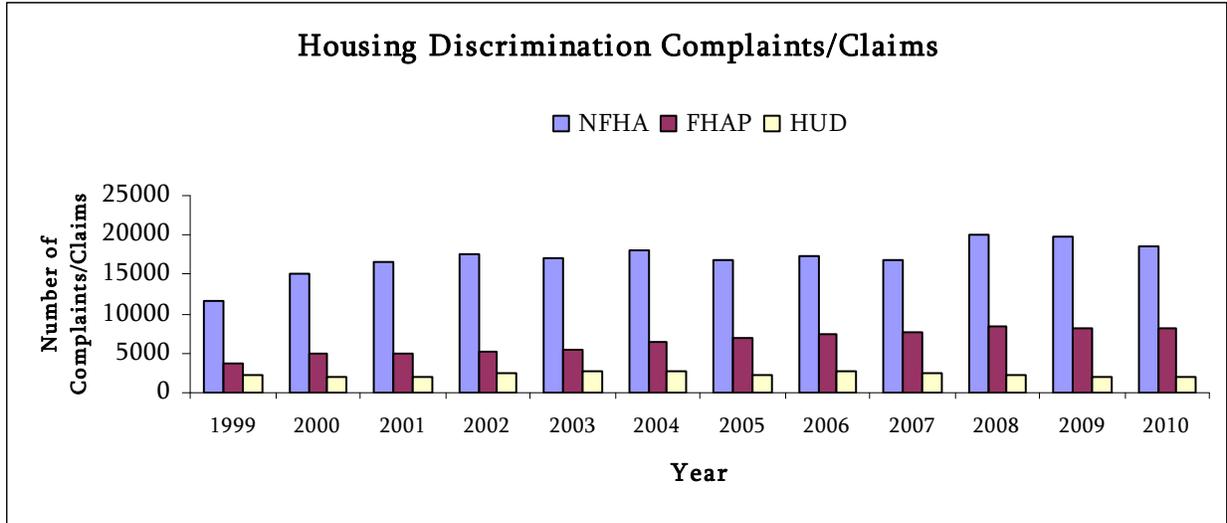
* HUD, FHAP and DOJ data are for Fiscal Year 2010. DOJ data represent case filings of HUD Election and Enforcement cases, and Pattern or Practice cases. DOJ's jurisdiction under the Fair Housing Act is limited to pattern or practice cases and cases referred by HUD. HUD, FHAP and NFHA data represent fair housing complaints received and/or processed.

In 2010, there were 28,851 complaints of housing discrimination, 1,828 complaints above 2007, yet below the numbers of the past two years. Private fair housing groups continue to investigate the highest number of complaints –18,665, or 65 percent of the total complaint load, although there are fewer organizations operating than in 2009.

Specific enforcement initiatives also led to heightened numbers of complaints in past years. In 2008, NFHA members reported a spike in complaints due to a year-long investigation targeting discriminatory Internet housing advertisements. NFHA and its members dedicated significant resources to this activity, and the investigation resulted in the discovery of 7,500 discriminatory rental or sales advertisements and the filing of 1,000 complaints with HUD.¹¹ In 2009, government agencies and fair housing organizations continued to investigate many of these complaints, spending

¹¹ *FOR RENT: NO KIDS! How Internet Housing Advertisements Perpetuate Discrimination*, August 11, 2009, National Fair Housing Alliance.

thousands of dollars in staff time and resources, leaving resource-strapped groups with fewer resources and less time to pursue new complaints. These complaint numbers do not reflect the work of fair housing organizations that received grants under the latest round of FHIP funding (FHIP's first year at \$42.5 million), which is currently being distributed to fair housing organizations.



Private fair housing groups have an average staff size of five. While few in number and largely underfunded, year after year they continue to investigate more fair housing complaints, educate more consumers, and train more industry housing providers than all other entities in the nation combined, including state and federal agencies charged with enforcing the federal Fair Housing Act. Since 1999, private non-profit fair housing organizations have investigated 204,973, or 66 percent, of the fair housing complaints in the United States, while Fair Housing Assistance Program agencies have processed 77,572, or 25 percent, and HUD 27,824, or 9 percent, of the cases. This year's NFHA member data are from 85 private fair housing groups (down from 93 reporting last year), 102 FHAP agencies and 10 HUD regional offices. It should be noted that many cases filed with HUD and FHAP agencies originated with private fair housing organizations. The percentage of complaints handled by fair housing groups has continued at this high level over the past few years, despite the closure or significant reduction in staff of 25 fair housing organizations.

B. Discrimination by Protected Class

The following chart breaks out the percentage of claims/complaints by protected class.

DISCRIMINATION BY PROTECTED CLASS				
Basis	NFHA Members	HUD	FHAP	DOJ
Race	17.4%	36%	34%	48%
Disability	37.9%	53%	46%	28%
Family Status	16.6%	14%	16%	24%
National Origin	9.0%	8%	12%	14%
Sex	4.9%	11%	11%	14%
Religion	0.9%	2%	3%	7%
Color	0.8%	1%	2%	n/a
Other*	12.5%	5%	7%	0%

* The "other" category for NFHA complaints represents complaints arising from categories protected at the state or local level including sexual orientation, source of income, Section 8 voucher holder, marital status, medical condition, age, victim of domestic violence, or student status. The "other" category for HUD and FHAP complaints represents complaints of retaliation. The "other" category for DOJ represents cases based on military status. HUD, FHAP, and DOJ data are for Fiscal Year 2010. Totals may exceed 100 percent, because a single complaint may allege multiple bases of discrimination. Other than NFHA's data, percentages are rounded to the nearest whole number.

This year people with disabilities continued to report the most claims of discrimination overall. At HUD, violation of the rights of people with disabilities amounted to more than half of the claims and complaints processed. DOJ's race and disability numbers have varied over the last three years: 39 percent and 36 percent respectively in FY08, 24 percent and 47 percent in FY09, and 48 and 28 percent in FY10 (however, with DOJ's much smaller case load, a difference of only a few cases has a more significant impact on percentage distribution).

Disability complaints remain high for several reasons. Many apartment owners make direct comments refusing to make reasonable accommodations or modifications for people with disabilities so the discrimination is easier to detect. Additionally, even though HUD has spent millions of dollars on the Fair Housing Accessibility FIRST program attempting to educate architects and builders about their Fair Housing responsibilities, developers continue to design and construct obviously inaccessible apartment buildings that do not meet the Fair Housing Act's standards. Finally, HUD has devoted an office solely to disability issues, and states and local municipalities have robust non-profit and public infrastructure to assist people with disabilities in the event that they are the victims of discrimination.

C. Discrimination by Transaction/Category – Public & Private Data

Rental Market—Public & Private Groups Report 14,782 Complaints¹²

Of the many categories of complaint data for housing discrimination, rental cases continue to represent the largest number of complaints, primarily because it is easier to recognize this type of discrimination. Most fair housing groups have to assign staff to rental complaints, leaving a shortage of resources and trained staff to initiate sales, lending or insurance investigations. Private fair housing groups reported 14,782 complaints of housing discrimination in the rental market, down from 15,624 in 2009; FHAP agencies reported 5,887 and HUD reported 1,358 complaints.

Home Sales— Public & Private Groups Report 441 Complaints

Private groups reported 441 complaints in the home sales market; FHAP agencies reported 659 and HUD reported 110 complaints. Private groups reported 649 complaints in 2009. With a constricted sales market, these numbers are not surprising.

Mortgage Lending— Public & Private Groups Report 1,568 Complaints

All agencies have seen a jump in mortgage lending complaints due to the lending crisis. Private groups reported 1,568 complaints of mortgage lending discrimination in 2010, up from 1,538 complaints in 2009; FHAP agencies reported 332 (compared to 253 in 2009) and HUD reported 135 (compared to 89 in 2009) fair lending complaints. Most of the complaints investigated were based on race. HUD has the authority to initiate its own investigations of discriminatory practices. In FY10 it initiated three investigations into lending discrimination. HUD initiated a total of eight other fair lending investigations from FY06 to FY09.

Homeowners Insurance— Public & Private Groups Report 68 Complaints

Private fair housing groups reported 68 complaints of discrimination in the insurance market, compared to 35 in 2009; FHAP agencies and HUD each reported 1 complaint. Most of these complaints investigated by private groups were based on race discrimination. Discrimination related to homeowners insurance can be difficult to identify because it is rarely overt. Complaints are beginning to focus on insurance companies' denying claims, using credit scores or insurance scores to price insurance products, or canceling policies due to claims' filing.

Harassment—Private Groups Report 1,121 Complaints

Private fair housing groups reported 1,121 complaints of harassment. Of the complaints investigated, 25 percent were on the basis of national origin, 26 percent familial status, 19 percent race, 11 percent sex, and 12 percent disability. The Fair Housing Act makes it illegal to direct abusive, foul,

¹² Complaint data by type of allegation does not equal the total number of complaints because not all organizations provided this type of information, and some complaints fall into multiple categories.

threatening, or intimidating language or behavior toward a tenant, resident, or home seeker because of their membership in one of the federally protected classes, or to someone helping a person exercise his or her fair housing rights. Harassment can rise to the level of a criminal violation under the Fair Housing Act.

Section III. Trends in Public and Private Fair Housing Enforcement

A. U.S. Department of Housing and Urban Development

HUD's Office of Fair Housing and Equal Opportunity (FHEO) has taken significant steps in recent months to improve its staffing, training, and case investigation work, and NFHA is pleased to report that HUD is beginning to overcome many of the organizational hurdles that have previously stymied productive fair housing enforcement. The fair housing movement is encouraged by the hiring by HUD of the highly experienced and consummate fair housing professional, Sara K. Pratt, who is spearheading FHEO's enforcement efforts.

The HUD headquarters office and its ten regional offices around the country are undergoing a major blow to their staffing by losing some key experienced personnel with no signs of replacing them. One example is Region V, covering Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin, and serving five of the nation's top ten most segregated cities in the nation.¹³ Region V has been for years in the top three regions in terms of volume of complaints. Chicago has for years also led all regions in number of cases charged. NFHA has numerous affiliates in the region who have reported that they know of more than ten people who have retired or taken other assignments in the course of the last year. Virtually all of those positions remain unfilled and, given the uncertainty that's presented by the recent budget deal, it's unclear to what extent the Department will have the ability to replace those positions or to find highly qualified persons for them.

But Region V is only an example of a national problem. With the increased emphasis on affirmatively furthering fair housing, regions have been required to divert some of their most qualified and experienced investigators and program staff to address this important departmental priority.

In order to do the work the nation needs the office to do and for the staff to be properly trained, FHEO staffing levels should be increased to at least 750 full-time employees (FTEs) at a cost of approximately \$100 million. The number of employees at FHEO has decreased over the years to its current level of about 570. In FY2011, the Administration requested a *decrease* in funding for staff from the FY10 level in spite of their stated increased attention to fair housing, including the potential implementation of a long-awaited regulation on "affirmatively furthering fair housing" and new initiatives to combat discriminatory mortgage lending and loan scams. Fortunately, the Administration increased its budget request for FY2012, but only to about \$70.7 million, which would provide for 587 FTEs.

HUD is charged with carrying out the Fair Housing Act's mandate to eliminate housing discrimination through effective enforcement. To that end, FHEO is charged with enforcing the Act and other civil rights laws, including Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973,

¹³ Milwaukee (1), Chicago (3), Detroit (4), Cleveland (5), Cincinnati (8). Denvir, Daniel. "The 10 most segregated urban areas in America," Salon.com; March 29, 2011.

Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments Act of 1972, and the Architectural Barriers Act of 1968. HUD has the authority to investigate and conciliate housing discrimination complaints filed under the Fair Housing Act. It can also initiate investigations and file complaints on behalf of the Secretary, as authorized under Section 810 of the Fair Housing Act. In addition to enforcement activities, HUD publishes and distributes educational materials that provide information on how to report unlawful discrimination; administers and manages the Fair Housing Assistance Program (FHAP) and the Fair Housing Initiatives Program (FHIP); establishes fair housing and civil rights regulations and policies for HUD programs; publishes guidance on complying with the requirements of fair housing and various civil rights laws; and monitors and reviews HUD programs and activities for compliance with federal nondiscrimination requirements and the requirement to affirmatively further fair housing.

HUD investigated 1,943 complaints in FY10, a seven percent decline from last year's figure. As shown in the chart below, the number of cases that HUD processed in 2010 is the lowest number since 2001 and amounts to 30 percent of its 1992 high of 6,578 complaints. Some of this decline overall can be attributed to FHAPs taking on many cases; however, in 2010 specifically, the number of FHAP cases increased by only 61 while the number of HUD cases decreased by 148. It remains distressing that the primary federal agency responsible for enforcing the Fair Housing Act has investigated fewer than 2,000 of the millions of violations nationwide.

HUD ADMINISTRATIVE COMPLAINTS	
1990	4286
1991	5836
1992	6578
1993	6214
1994	5006
1995	3134
1996	2054
1997	1808
1998	1973
1999	2198
2000	1988
2001	1902
2002	2511
2003	2745
2004	2817
2005	2227
2006	2830
2007	2449
2008	2123
2009	2091
2010	1943

Charged Cases

If an investigation yields a determination by HUD that there is reasonable cause to believe that illegal discrimination has occurred, the agency will issue a charge. The parties to a case can elect to have the case heard in federal district court in a case filed by the Justice Department or, if no election is made, a HUD administrative law judge will hear the case. The majority of complainants and respondents continue to elect federal court.

In 2009, HUD issued 45 charges following a determination that there was reasonable cause to believe that unlawful discrimination occurred. Many of these charges stem from complaints carried over from previous years. This is a decrease from last year's 54 charged cases, and it amounts to only 2.3 percent of HUD's total complaint load.

FAIR HOUSING ACT CASES IN WHICH HUD ISSUED A CHARGE									
2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
88	69	23	43	47	34	31	48	54	45

Aged Cases

With the exception of complex or systemic cases, the Fair Housing Act regulations require that HUD complete an investigation of a case in 100 days or less. After a complaint is filed, HUD must perform an investigation in order to determine whether there is reasonable cause to believe discrimination has occurred. The result can be that HUD refers a case to a state or local FHAP agency for further investigation, finds cause to believe that discrimination occurred and issues a charge, or finds no cause to believe that discrimination occurred, or a list of other reasons as asserted by HUD laid out in the chart below. One of these actions must be taken within 100 days of a complaint's being filed.

There are many cases which may merit more than 100 days to investigate, especially cases including real estate sales steering, lending, or insurance discrimination. It is important for HUD to take on these cases, especially when considering that study after study has demonstrated continued discrimination in these markets, as well as the damaging effect of this discrimination on the economy and society as a whole. However, the failure to complete a timely investigation leaves the complainant and respondent in limbo—one wondering when they will be helped, the other wondering when they might be exonerated. It is an injustice to both parties to allow a complaint to languish.

HUD routinely carries an "aged" case load; that is, cases that have surpassed the 100 day benchmark without an outcome. In FY10, there were 823 cases at HUD that passed the 100 day mark, a decrease of almost 140 from FY09, and continued improvement from the 1,353 aged cases in FY07. There

were 3,669 aged cases at FHAP agencies (HUD's counterparts at the state/local levels), an increase of 205 since FY09.¹⁴

Administrative Closures and No Cause Cases

In FY10, HUD closed 423 cases and found no cause to believe discrimination occurred in 712 cases, totaling 1,135 cases. FHAP agencies administratively closed 992 cases and found no cause in 3,936 totaling 4,035. Together, HUD and its FHAP agencies closed 5,170 cases in FY10. Remember that these closed cases can be from previous years' complaints, so they do not match the number of cases filed in a particular year. The chart below lists the number of closed cases by HUD and FHAPs, followed by a breakdown of reasons for administrative closures at HUD.

2010 HUD and FHAP CASES CLOSED NATIONWIDE			
	HUD	FHAP	Total
Administrative Closure	423	992	1,415
Conciliation/Settlement/Withdrawn after Resolution	665	2,594	3,259
No Cause	712	3,936	4,648
ALJ Consent Order	11	n/a	11
ALJ Finds Discrimination	1	n/a	1
DOJ Dismissal	9	n/a	9
DOJ Election for Court	22	n/a	22
DOJ Filed Suit	1	n/a	1
DOJ Settlement	1	n/a	1
FHAP Judicial Consent Order	n/a	117	117
FHAP Judicial Dismissal	n/a	130	130
Litigation – Discrimination Found	n/a	8	8
Litigation – No Discrimination Found	n/a	4	4
Hearing – Discrimination Found	n/a	22	22
Hearing – No Discrimination Found	n/a	12	12
Total Closures	1,845	7,815	9,660

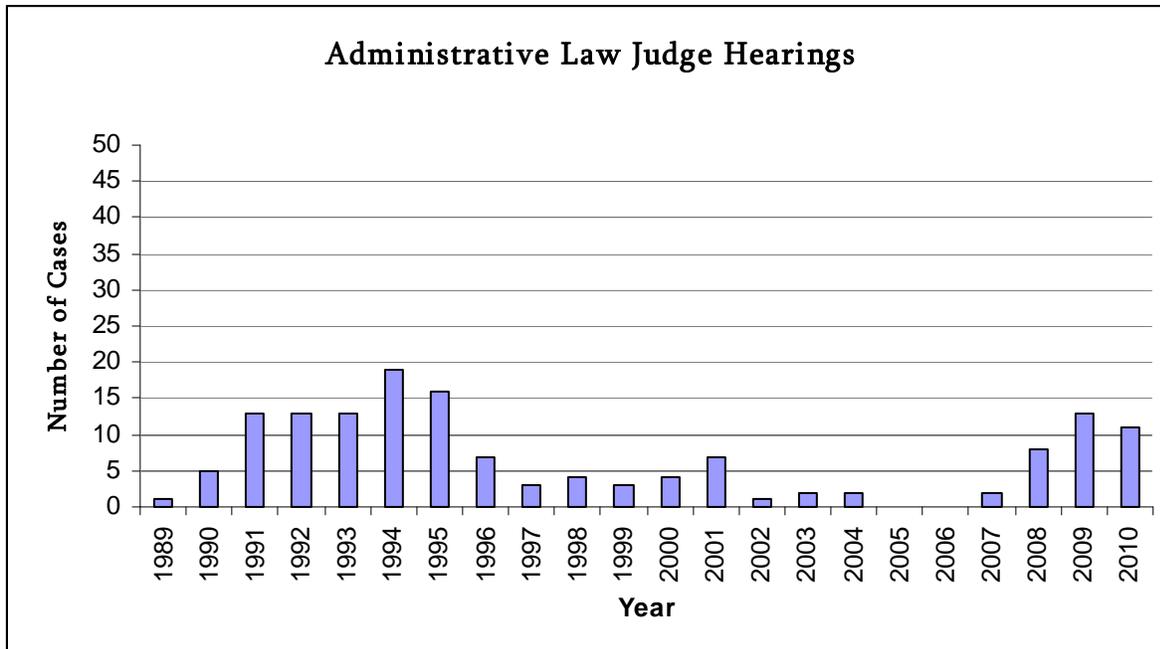
¹⁴ According to a Government Accountability Office 2005 report, only 31 percent of cases met the 100 day deadline; 14 percent take more than 130 days. Government Accountability Office. *Fair Housing, HUD Needs Better Assurance that Intake and Investigation Processes Are Consistently Thorough*. October 2005.

2010 HUD ADMINISTRATIVE CLOSURES

Reason for Closure	Cases
Untimely filed	11
Dismissed for lack of jurisdiction	66
Unable to locate complainant	33
Complainant failed to cooperate	155
Unable to identify respondent	10
Complaint withdrawn by complainant without resolution	146
Unable to locate respondent	2
Closed because trial has begun	0
Total	423

Administrative Law Judge Hearings

If a case is charged but the parties do not elect to have their case heard in federal district court, it will go before an administrative law judge (ALJ) who will decide the case and in some instances assess a civil penalty and award compensatory damages, affirmative relief, and attorneys' fees. The ALJ cannot award punitive damages according to the law. In 2010, parties entered into 11 ALJ consent orders after issuance of a charge. This is a decrease from last year's 13, but remains an improvement from prior years, when eight ALJ proceedings were heard in 2008, two in 2007, and none in 2005 and 2006. The following chart illustrates the number of HUD ALJ proceedings since 1989.



Secretary Initiated Complaints

According to HUD, it “files a Secretary-initiated complaint when it has evidence that a discriminatory housing practice has occurred or is about to occur. HUD also may file a Secretary-initiated complaint when it has received an individual complaint, but believes there may be additional victims of the discriminatory act, or wants to obtain broader relief in the public interest.”¹⁵ HUD filed 10 Secretary-initiated complaints in FY10, including a complaint against Countrywide for its declining markets policy; Bank of America, N.A. for different loan terms for people with disabilities; and Sun-Times Media for discriminatory advertising.

2010 Bases and Issues of Secretary Initiated Complaints	
Bases	Filed Cases
Race	3
Race and National Origin	2
Familial Status	3
Disability	2
Total Cases	10
Issues	
Discriminatory refusal to rent	1
Discriminatory refusal to rent, discriminatory advertising, statements and notices, and discrimination in terms/conditions/privileges relating to rental	1
Discriminatory advertisement	2
Discriminatory advertising, statements and notices	2
Discrimination in the terms/conditions for making loans	1
Discriminatory financing (includes real estate transactions) and discrimination in the terms/conditions for making loans	2
Otherwise deny or make housing available and discriminatory acts under Section 818 (coercion, etc.)	1

B. U.S. Department of Justice

This past year, the Justice Department has continued to fulfill its pledge to intensify its fair housing work. This is reflected by the fact the Housing Section of the Civil Rights Division has completed a number of large cases, some of which are described below. In addition, the FY10 budget included funding for six new attorneys, and all of those positions have been filled, including three for the newly created fair lending unit.

¹⁵ *The State of Fair Housing FY08 Annual Report on Fair Housing*, US Department of Housing and Urban Development, p.24.

The Housing Section obtained consent decrees or favorable judgments in 42 cases, including 26 pattern or practice cases. This is the first time in 14 years that the Section has settled this number of pattern or practice cases in one year. The number of new cases filed this year was low at 29, but hopefully this is an anomaly. Of note, HUD election cases were down to 13 from 24 in FY09, and there were no HUD enforcement actions, down from 4 in FY09. That said, given the increase in staff, the stated commitment to fair housing and fair lending by the Department, and the Department's strong authority to bring cases, we expect to see more significant numbers and additional cases next year.

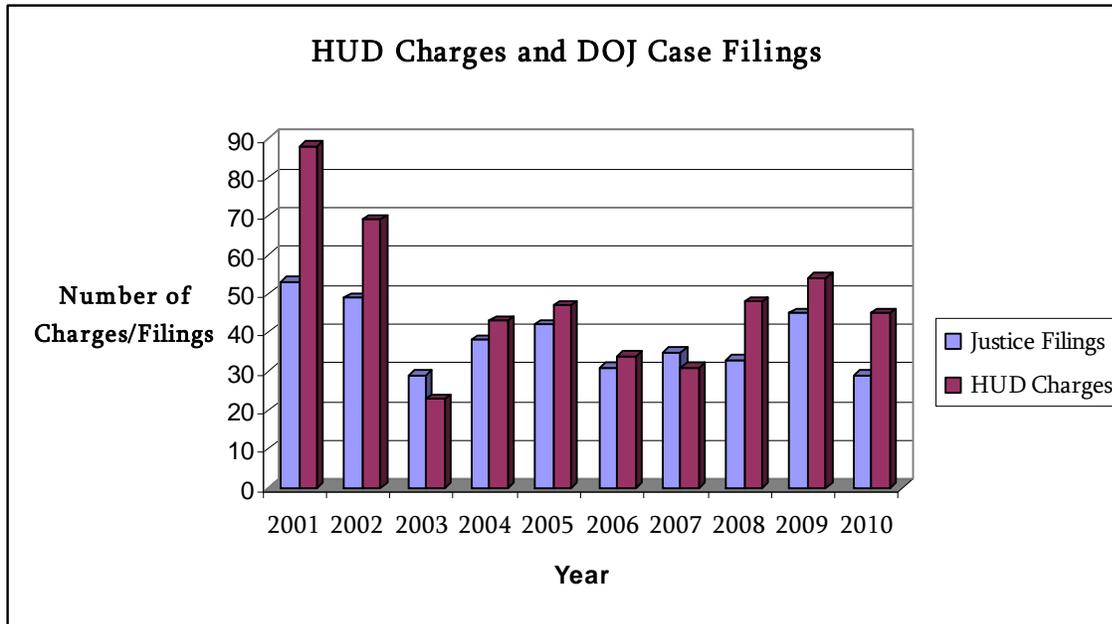
The Department of Justice filed 29 cases in FY10, a 36 percent decrease from the previous year, and the lowest number since FY03. (See charts below.) The breakdown of cases in FY10 by protected class was: 48 percent race, 28 percent disability, 24 percent familial status, 14 percent sex, 14 percent national origin and 7 percent religion. Three of these cases were brought under Title II of the Civil Rights Act of 1964 (public accommodations); one case was brought under the Religious Land Use and Institutionalized Persons Act.

The chart below shows the number of cases filed by DOJ between FY99 and FY10.

TOTAL DOJ CASES FILED BY YEAR											
FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10
48	45	53	49	29	38	42	31	35	33	45	29

The Justice Department's Housing and Civil Enforcement Section is responsible for enforcing the Fair Housing Act, the Equal Credit Opportunity Act, and Title II of the Civil Rights Act of 1964, which prohibits discrimination in public accommodations. ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, national origin, religion, sex, marital status, age or source of income. Under this Act, the Justice Department has the authority to investigate and file a fair lending lawsuit.

The 1968 Fair Housing Act gave DOJ the authority to prosecute cases involving a "pattern or practice" of housing discrimination, as well as cases involving acts of discrimination that raise "an issue of general public importance." The 1988 Fair Housing Amendments Act (FHAA) increased the Department's authority and now the Department can bring cases where a housing discrimination complaint has been investigated and charged by the Department of Housing and Urban Development and one of the parties has "elected" to go to federal court. The chart below compares the numbers of DOJ cases filings and HUD charges.



The FHAA also empowered the Justice Department to initiate civil lawsuits in response to matters that involve fair housing violations by any state or local zoning or land-use laws referred by HUD.¹⁶ Finally, the Civil Rights Division of DOJ has the authority to establish fair housing testing programs, which it first did in 1992. The division also subsequently established a fair lending program designed to challenge discriminatory mortgage and other lending practices and to educate lenders about their obligations under the Fair Housing Act.

During FY10, DOJ reviewed and responded to more than 750 written complaints from individuals. While most of them were not in DOJ’s jurisdiction – i.e. they did not constitute pattern or practice cases – DOJ opened more than 175 new matters for further inquiry or investigation, most of which involved analysis of whether a pattern or practice of discrimination existed. Otherwise, complainants were given information on how to file a complaint with HUD or contact a local fair housing organization.

DOJ’s Recent Record

As mentioned above, the Department has created a new fair lending unit and brought at least three noteworthy cases in 2010.

- In March 2010, as mentioned in last year’s Trends Report, the Department announced a settlement in a disparate impact case: *United States v. AIG Federal Savings Bank (D. Del.)*. The Department obtained an over \$7.1 million settlement with two subsidiaries of American International Group Inc. (AIG) to resolve a complaint alleging pattern or practice

¹⁶ See Bill Lann Lee, “An Issue of Public Importance,” in *Cityscape: A Journal of Policy Development and Research*, v. 4, n. 3 (1999), pp. 35-56, p. 47.

discrimination against African American borrowers through broker fees. The settlement included \$6.1 million in damages for victims and at least \$1 million in funding for consumer financial education.

- A settlement with *United States v. First United Security Bank* in Alabama requires the bank to open a new branch, invest \$500,000 in a special financing program, spend more than \$110,000 for outreach, marketing and services and consumer financial education for borrowers in majority African-American neighborhoods; and create a \$50,000 settlement fund for victims. The bank was accused of discriminatory home mortgage pricing and redlining in violation of the Fair Housing Act and the Equal Credit Opportunity Act.
- A consent order in *United States v. Prime Lending* provides up to \$2 million in damages for African-American borrowers charged higher interest rates than white borrowers, including on federally-insured loans.

In addition, DOJ opened 14 new fair lending investigations.

Some of the Department's cases in 2010 represent the largest settlements ever obtained by DOJ. Two rental housing cases had multi-million dollar settlements. *United States v. Sterling*, involving allegations of race, national origin, and familial status discrimination, settled for \$2.725 million. *United States v. Sturdevant* included claims of racial harassment and retaliation against a former employee of an apartment building and resulted in a \$2.13 million settlement. In addition, the Department obtained a \$1.25 million consent decree in an individual reasonable accommodation case (the highest damage figure ever obtained by DOJ in an individual housing discrimination case).

C. Private, Non-Profit Fair Housing Efforts

Private fair housing organizations operate at the forefront of the housing crisis by educating the community and the housing industry and by enforcing the laws intended to protect all of us against housing discrimination. In 2010, private fair housing organizations investigated 18,665 complaints, 65 percent of the total 28,851 complaints. There are fewer private fair housing organizations than federal, state and local government agencies, yet these private fair housing organizations continue to investigate nearly twice as many complaints with far less money. During the past five years, one-fifth of private fair housing centers have closed, or were forced to significantly curtail or eliminate their enforcement activities and survive with drastic reductions in staff.

When adequately funded, fair housing organizations are well-situated to provide assistance to victims of housing discrimination in their geographic service areas and to utilize their knowledge of community patterns and origins of discrimination to combat systemic housing discrimination. Fair housing groups enforce federal, state and local laws and also educate the public and the industry on their fair housing rights and responsibilities.

These organizations are the only private groups with the capacity to investigate and test complaints of housing discrimination. Courts, researchers, and practitioners have all recognized testing as the most

effective way to detect housing discrimination. HUD, state and local government agencies, and the Department of Justice often rely upon the testing capacity of FHIP-funded organizations to further investigate complaints.

Many fair housing organizations are funded in large part by the Fair Housing Initiatives Program (FHIP). FHIP is a competitive grant program administered by HUD that provides funding to fair housing organizations to combat discrimination in the housing, rental, sales, lending and insurance markets. FHIP is authorized under Section 561 of the Housing and Community Development Act of 1987 and is the primary federal program that funds private fair housing groups throughout the country to assist people who believe they have been victims of housing discrimination, to conduct investigations, and to promote awareness of fair housing laws. Components of the program include the Private Enforcement Initiative (PEI) that enables private fair housing groups to carry out testing and other enforcement activities; the Education and Outreach Initiative (EOI) that funds groups to engage in initiatives that educate the general public about fair housing rights, responsibilities and compliance with the law; and the Fair Housing Organizations Initiative (FHOI) that builds the capacity and effectiveness of fair housing groups and funds the creation of new organizations.

Fair Housing Initiatives Program recipients:

- **educate real estate companies, agents, mortgage lenders, and landlords about compliance with fair housing laws;**
- **reach out to consumers about how to recognize and report housing discrimination;**
- **enforce the Fair Housing Act by conducting investigations and testing complaints of housing discrimination.**

In 2009, the President and Congress agreed that FHIP needed a significant increase and raised the FY10 FHIP budget to \$42.5 million. It was funded again at this level in the FY11 budget resolution, and the President has requested the same in his FY12 budget. Still, the demand by fair housing groups for FHIP funds far outweighs the available funds: in FY09, for example, when \$27.5 million in funding was available, eligible and qualified organizations applied for a total of \$75.4 million. Many more groups would apply if more funding were available. In addition, with more funds, more organizations could receive both enforcement and education funding simultaneously. In the longer term, FHIP should expand to full funding of qualified private fair housing organizations to conduct enforcement activity in each of the 363 Metropolitan Statistical Areas, at a cost of approximately \$109 million per year.

Fair Housing Initiatives Budget in Recent Years	
Fiscal Year	FHIP Funding
2003	\$ 20.25 million
2004	\$ 20.25 million
2005	\$ 20 million
2006	\$ 20 million
2007	\$ 20 million
2008	\$ 23.5 million
2009	\$ 27.5 million
2010	\$ 42.5 million
2011	\$42 million
2012 – proposed	\$42.5 million

Currently, HUD is rightly focusing its distribution of funds on enforcement grants; as a result, most eligible, qualified fair housing organizations that applied for enforcement funding in FY10 received awards. In addition, the funding level for enforcement grants increased to \$325,000 from \$275,000, and longer-term grants continued. Larger grants with longer terms are much more beneficial and pragmatic to keep fair housing organizations productive and effective.

In addition, fair housing organizations need the support and funding to address systemic, intractable discrimination. Addressing this type of discrimination, as described in the successful activities in Section I, is the key to changing our neighborhoods and eliminating the damaging discrimination that plagues our communities. HUD should provide additional funding to support systemic investigations, some of which could be joint investigations among fair housing organizations.

These funds should also be flexible without set-asides for specific projects. Foreclosures have destabilized entire communities and brought about a number of issues, some of which are lending related, but others that deal with rental housing, real estate sales, and even insurance. For example, fair housing organizations address fair lending issues by identifying servicers that provide unfair loan modifications to members of protected classes; assist clients who are denied a home mortgage because of their race, national origin, or gender; address rental housing issues by protecting former homeowners from discrimination in the rental market following foreclosure; and work in the real estate sales market by assessing the maintenance, marketing and sales of real estate owned (REO) properties to ensure that banks are fairly selling their stock of foreclosed houses. Fair housing organizations know their communities best and are the best judges of what is needed at the local level. Fair housing organizations must have the capacity to respond to the myriad problems that contributed to and resulted from the crisis, rather than having to respond to specific programmatic set-asides.

Finally, HUD has funded a broad national fair housing media campaign through its 2010 NOFA,. This type of campaign educates the public about its rights under fair housing laws and how to report

a complaint of discrimination. With a new broad-based campaign, additional complaints should be forthcoming as more people learn to identify fair housing violations.

Section IV. Major Policy Issues, Their Fair Housing Implications, and Fair Housing Advocacy that Made a Difference

Since NFHA's last Trends Report, a number of significant policy issues have arisen. Some of those most important to the fair housing community include: major financial reform legislation has been signed into law, and regulators have begun the difficult work of considering regulations to implement the law; federal and state efforts to mitigate the foreclosure crisis have been implemented with only some success; the Administration and Congress have officially begun the conversation about ways in which we should reform the housing finance market; and steps have been taken to better protect the lesbian, gay, bisexual, and transgender (LGBT) community from discrimination in HUD housing programs.

Taken together, these policy issues are all about access and protection. We need to ask ourselves: Who will have access to housing and who will not? Who will be protected by new laws and regulations and who will be left in harm's way? NFHA and its members are advocating for policies that protect families from abuses (be those abusive mortgage loans with tricks and traps designed to extract wealth from families rather than help them build wealth or pervasive harassment in HUD-funded homeless shelters because of actual or perceived gender or sexual orientation) and policies that affirmatively offer families more housing choices (be those well-underwritten and responsible loans with a low down payment or housing programs that reach out to potential residents who are unlikely to apply because of past discrimination.) Below is a review of some of the latest policy issues and initiatives, their fair housing implications, and how fair housing organizations have been at work.

A. Protecting Consumers

President Obama signed The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) into law on July 21, 2010. As its name suggests, the long and comprehensive bill was passed to change the way that Wall Street does business in the wake of the foreclosure crisis and collapse of the American economy.

The Consumer Financial Protection Bureau – Protecting Americans from Discriminatory Lending

From a fair housing perspective, the crown jewel of Dodd-Frank is the creation of the Consumer Financial Protection Bureau, or CFPB. Once it is operational in July, the CFPB will work to make sure that the financial system is working for American families instead of undermining American families, as subprime lenders did before the crisis.

The CFPB will ensure that banks and financial service providers are not unfairly gouging consumers and making profits through fraud, deception, or discrimination. It will demand that financial institutions, through clear disclosures, make the terms and conditions of their products crystal clear instead of seeking to obfuscate terms and conditions that harm families, and it will crack down on financial institutions that break the rules instead of providing cover for them as so many regulators did in the past.

The CFPB will have special fair lending responsibilities, including “ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.”¹⁷ It will undertake this task through its Office of Fair Lending and Equal Opportunity, which will be overseen by an Associate Director for Supervision, Fair Lending, and Enforcement. This division will be in charge of supervising large banks and non-banks for compliance with enumerated consumer laws, including fair lending laws like the Home Mortgage Disclosure Act and the Equal Credit Opportunity Act, and enforcing the laws in the face of non-compliance.

Previously, big banks were supervised by regulators, including the Office of the Comptroller of the Currency and the Office of Thrift Supervision. Financial regulators have historically had a dismal record in ensuring compliance with fair lending laws and did not pay attention at all to who was paying the price for the profits reaped by financial institutions in the pre-crisis years. In an era of rampant mortgage steering and even discrimination – where a person was more likely to receive a subprime loan because of their race, or the racial makeup of their neighborhood, than because of their credit qualifications or income¹⁸ -- these regulators disregarded their jobs of protecting consumers.

However, big banks and many on Capitol Hill seem to have amnesia: they are forgetting the circumstances under which Dodd-Frank became law and are attempting to change the CFPB in such ways that will deeply harm American consumers yet again. The House of Representatives began by attempting to improperly cut the CFPB’s funding, and members have since introduced legislation to change the structure of the Bureau from an agency that is headed by a single director to an agency that is overseen by a 5-person commission. Other legislation would provide other bank regulators – those same regulators that have always been friendly with banks – a heightened ability to veto rules deemed unacceptable. As one advocate has said, these attempts would all “knee-cap” the bureau¹⁹ and leave it less prepared to do the work that it really needs to do: protect the American consumer.

Defining the Qualified Residential Mortgage – Creating a Safe Market While Not Cutting Off Homeownership for the Middle Class

One of the driving factors of the foreclosure crisis was a financial system that obscured risk and encouraged dangerous mortgage lending. Banks made risky loans and then, to avoid the risk themselves, sold the loans to be packaged into securities and then sold to investors. One way in which Dodd-Frank attempts to correct this market failure is by requiring the sponsor of the

¹⁷ The Dodd-Frank Wall Street Reform and Consumer Protection Act. Public Law 111-303Sec. 1021 of Dodd-Frank. Full text available at <http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>.

¹⁸ National Fair Housing Alliance. “A Step in the Right Direction: 2010 Fair Housing Trends Report.” (May 26, 2010) Available at <http://www.nationalfairhousing.org/Portals/33/Fair%20Housing%20Trends%20Report%202010.pdf>.

¹⁹ Mierzwinski, Ed. “In The Public Interest: House Kneecaps Wall Street Reform Funding, But Goal Is Worse: Repeal.” *Huffington Post*. (March 1, 2011). Available at http://www.huffingtonpost.com/ed-mierzwinski/in-the-public-interest_i_b_829659.html.

mortgage-backed security to retain risk in these transactions. In addition, a sponsor may also require the original lender to retain some risk.

However, the legislation provides an exemption: sponsors need not retain risk for loans that meet the definition of a “qualified residential mortgage.” Congress left the details for this definition up to federal regulatory and enforcement agencies.

In Spring 2011, the agencies released a proposed definition for Qualified Residential Mortgage (QRM) that includes a 20% down payment, a low back-end debt to income ratio (36%) for purchases, a high equity standard of 25% to qualify for a refinance, and pristine borrower credit standards by today’s measures.²⁰ A concern expressed by many civil rights and consumer organizations is that enacting such a definition would effectively cut off credit for the middle class and risk perpetuating a dual mortgage market that poorly serves people of color. Loans that do not meet these criteria will carry higher interest rates and costs as compared to QRM loans.

Many consumers will not be able enter the housing market if they only have access to mortgages requiring unreasonably high down payments. According to the Center for Responsible Lending, an average family must save for 14 years just to put down a 20 percent down payment on a median priced house.²¹ In order to make this type of down payment in that time frame, African Americans and Latinos would need to save at rates of 11.5 percent and 9.9 percent -- nearly double the current average savings rate of U.S. households (5.8 percent -- the highest savings rate since the early 1990s.)²² Even in 2009, when mortgage lending tightened and credit became hard to find, 60 percent of new borrowers took out loans with a down payment of under 20 percent.²³ Borrowers taking out low down payment loans make up a critical and large part of the market, even when the market is not in crisis.²⁴ In addition, research demonstrates that loan terms and conditions other than down payment – including loan characteristics and delivery channel – are more accurate predictors of default than the loan-to-value ratio.²⁵

²⁰ The full text of the proposal is available online at <http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-34a.pdf>.

²¹ “Don’t Mandate Large Down Payments on Home Loans: Proposals Would Harm the Economy, Housing Market, and Middle Class Families.” CRL brief (February 25, 2011). Available online at

²² Testimony of Ellen Harnick before the House Financial Services Committee Subcommittee on Capital Markets and Government Sponsored Enterprises (April 14, 2011), 14.

²³ Ibid.

²⁴ Testimony of Mark Zandi before the senate banking Committee Hearing On Public Proposals for the Future of the Housing Finance System. (March 29, 2011). Available online at

http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=2b23a783-35ff-43f3-8b43-ad4b16e1b3cc.

²⁵ Ding, Leih, Roberto Quercia, Wei Li, and Janneke Ratcliffe, “Risky Borrowers or Risky Mortgages?: Disaggregating Effects Using Propensity Score Models,” Available at <http://www.ccc.unc.edu/documents/Risky.Disaggreg.5.17.10.pdf>. Additionally, analysis by the Center for Responsible Lending and a variety of industry groups, including the Community Mortgage Banking Project, the Mortgage Bankers Association, the Mortgage Insurance Companies of America, the National Association of Home Builders, and the National Association of Realtors concluded, “Clearly, moving to higher down payments has minor impact on default rates market-wide, but a major adverse impact on access by creditworthy

B. Reforming the Housing Finance Market

Today there is much discussion on what our country must do with Fannie Mae and Freddie Mac, the large Government Sponsored Enterprises (GSEs) that currently guarantee a vast majority of the market. In actuality, this discussion is less about the GSEs and more about what our expectations should be for a housing finance system and what role the government should play in such a system. A healthy housing finance system should ease the flow of credit by purchasing mortgage loans from originators, giving them additional money, or liquidity, to continue making loans. But it should operate in a way that makes credit available fairly and on reasonable terms to all qualified borrowers and, particularly, for borrowers and neighborhoods that have not historically been served by mainstream lending institutions.

During the Dodd-Frank debate, and afterward, some members of Congress attempted to blame the entirety of the economic crisis on the behavior of Fannie Mae and Freddie Mac, and urged us to immediately “end the bailout of the GSEs” and instead embrace a fully private housing finance system. As a requirement in Dodd-Frank, the Obama Administration released a white paper in February, 2011, offering a number of ways in which the housing finance could be reformed. Options thus far contemplated by Congress and the Administration risk destroying the ability for many people of color to become homeowners.

Yet, our national interest demands a housing finance system that provides opportunities that are appropriate for the circumstances of American families and individuals. Families who are financially ready to own a home must have the opportunity to do so, and must have access to the best credit for which they qualify. They should not be denied access to the appropriate mortgage because of where they live, be it in an urban area or a rural area, nor should they be denied access to the appropriate mortgage because of their race or national origin or those of their neighbors. Moreover, we need a robust market for financing well-located, affordable rental housing that meets the needs of renters who seek good jobs, good schools, and access to municipal services.

NFHA, along with many other national civil rights organizations, has established the following eight policy guidelines that any reform of the housing finance market must meet:²⁶

- Federal housing finance policy must align with and support longstanding federal housing goals to protect against discrimination;
- The federal government has a responsibility to ensure that the secondary market serves all borrowers in a fair and equitable manner and to foster the equalization of homeownership rates;

borrowers to the lower rates and safe product features of the QRM.” Proposed QRM Harms Creditworthy Borrowers and Housing Recovery: White Paper Prepared in Advance of April 14, 2011 House Subcommittee on Capital Markets and Government Sponsored Enterprise Hearing.” Available at <http://www.responsiblelending.org/mortgage-lending/policy-legislation/regulators/FINAL-QRM-white-paper.pdf>.

²⁶ To view the eight principles in detail, please see

<http://nationalfairhousing.org/Portals/33/Civ%20rts%20grp%20mtg%20list%20of%20principles%20PDF.pdf>.

- A reformed housing finance system must eliminate the dual credit market;
- Regulatory oversight of the housing finance system must be rigorous and comprehensive and must include effective fair lending enforcement;
- Secondary market transactions must be transparent and accountable to the public;
- The system must have an affirmative obligation to offer capital and credit in communities devastated by the foreclosure crisis and offer access to families who were targeted for inappropriate and unsustainable mortgages;
- The housing finance system must provide capital for sustainable rental and ownership development in all communities;
- The housing finance system must support product flexibility and sustainable innovation and offer access to institutions of all sizes and in all geographic areas.

C. Opening Housing Opportunities for the LGBT Community

Protections extended to so many Americans under the federal Fair Housing Act do not currently reach the LGBT (Lesbian, Gay, Bisexual and Transgender) community. Predictably, in the absence of such federal protections, many housing providers openly discriminate against LGBT individuals with impunity. Fair housing organizations around the country, especially in places where LGBT people are not protected under state or local laws, report an unfortunate reality: victims of discrimination based on actual or perceived sexual orientation or gender identity are unlikely to report such discrimination because they do not believe they will find any kind of remedy.

Fair housing organizations in Michigan found that 27 percent of same-sex couples posing as homeseekers encountered discrimination on the basis of sexual orientation.²⁷ The National Gay and Lesbian Task Force found in 2007 that between 20 and 40 percent of homeless youth identify as LGBT.²⁸ A comprehensive national survey conducted by the National Center for Transgender Equality and the National Gay and Lesbian Task Force provides a sobering look at the barriers that transgendered people of all incomes face when searching for a home or other shelter. According to the survey, one in five transgendered people has become homeless because of either discrimination or mistreatment based on their gender identity or expression.²⁹

LGBT people who are homeless face significant barriers when seeking the social services they need. According to the 2011 survey, one-in-three transgendered people found themselves turned away from homeless shelters. Of those who did access homeless shelters, 55% reported harassment, 42% said they were forced to live as the wrong gender in order to stay at the shelter, and 47% left the shelters because of the treatment they received.

²⁷ *Sexual Orientation and Housing Discrimination in Michigan: A Report of Michigan's Fair Housing Centers* (2006). Available online at http://www.fhcmichigan.org/images/Arcus_web1.pdf.

²⁸ National Gay and Lesbian Task Force. "Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness," (2007). Available online at http://www.thetaskforce.org/reports_and_research/homeless_youth.

²⁹ Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice at Every Turn: A Report of the national Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

Earlier this year, HUD announced its intention of eliminating discrimination against LGBT people within its own programs and issued proposed guidance. In comments on the proposed rule submitted to HUD, NFHA lauded the Department for taking action to protect all people in its programs – authority given to HUD that is not derived from the Fair Housing Act. The proposed rule included HUD programs such as public housing, rental assistance, mortgage insurance, and community development block grant programs. NFHA suggested HUD strengthen the rule by:

- Affirmatively marketing its programs to LGBT people who were previously excluded and providing a strong enforcement mechanism to sanction non-compliant HUD housing providers;
- Provide clear notification of anti-discrimination protections and information on where victims of discrimination in HUD programs can file complaints;
- Protect people based upon actual or perceived sexual orientation and gender identity, generally;
- Clarify the definition of family to better account for modern family arrangements; and
- Improve the definition of gender identity to make it better applicable to situations in which persons would be victims of discrimination.³⁰

D. Drawing Attention to Discrimination in the REO Market

NFHA recently released the report *Here Comes the Bank, There Goes Our Neighborhood: How Lenders Discriminate in the Treatment of Foreclosed Homes*³¹ that documents differential treatment in the ways in which financial institutions maintain and market foreclosed homes. Due to the housing crisis, many lenders have found themselves in the position of owning foreclosed homes. When banks maintain properties in identifiably white neighborhoods better than they maintain properties in identifiably Black or Latino neighborhoods – as NFHA’s research shows they do in Maryland, Connecticut, Ohio and Virginia – they are not only exacerbating the damage and harm of the foreclosure crisis, they are violating fair housing laws.

Banks, regulators and communities each have a role to play to end discrimination in the real estate owned (REO) property market. In particular, banks must equitably:

- Select real estate brokers to sell foreclosed homes;
- Price foreclosed homes for sale;
- Maintain and renovate foreclosed homes; and
- Advertise and market foreclosed homes.

³⁰ The entirety of NFHA’s comments may be found at <http://www.nationalfairhousing.org/Portals/33/nfha%20lgbr%20comment%20letter.pdf>

³¹ The report can be found at <http://nationalfairhousing.org/Portals/33/There%20Goes%20Our%20Neighborhood%20-%20REO%20report.pdf>

Regulators and enforcement agencies must:

- Develop disclosure rules that will allow advocates to track loan performance and bank activities for homes following foreclosure;
- Develop standards that lenders must follow in managing their REO properties and enforce these standards; and
- Initiate systemic investigations into the ways in which lenders dispose of foreclosed properties, and when necessary, bring enforcement action under the Fair Housing Act.

Communities must:

- Study ways in which lenders maintain, market, and sell foreclosed properties as part of their Analysis of Impediments to Fair Housing Choice; and
- Develop plans to overcome potential fair housing problems associated with REO properties by passing ordinances that hold banks and financial institutions responsible for actions that perpetuate segregation, while not inadvertently holding borrowers and victims of predatory lending accountable.

Section V. Conclusion

Time and time again the fair housing movement reaches the same conclusion – we need to eliminate entrenched discrimination if we are to change the face of our country. While we must address each and every individual complain that we receive, that is simply not enough. We cannot truly call ourselves a nation of equality while so many of our people are in whole communities without access to basic health services, banks, grocery stores, decent schools, or transportation. But by promoting diverse, inclusive communities and fighting discrimination, we can instead create and maintain equal access to these vital services. All around the country, private fair housing organizations are striving to make this happen – one neighborhood at a time.