

NFHA



National Fair Housing Alliance

2004 Fair Housing Trends Report

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**National Fair Housing Alliance
1212 New York Avenue, NW
Suite 525
Washington, DC 20005
(202) 898-1661**

www.nationalfairhousing.org

Introduction

The 2004 Fair Housing Trends Report is based on 2003 complaint data compiled from National Fair Housing Alliance (NFHA) member agencies nationwide, the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Justice (DOJ) and 95 state and local government agencies. NFHA has collected this type of data on an annual basis since 1996. This report contains information about complaints only and does not reflect the full incidence of housing discrimination in rental, sales, lending and insurance marketplaces. **In fact, more than 35 years after the passage of the federal Fair Housing Act, at least 3.7 million fair housing violations still occur annually.**

Our report this year documents the fact that the high level of housing discrimination in the United States continues unabated. Although this level is unacceptable in and of itself, the number of complaints filed with public and private enforcement agencies reflects only a fraction of the incidence of housing discrimination.

This year's *Fair Housing Trends Report* also contains an analysis of HUD's enforcement performance over the past three years, based in part on documents provided to NFHA by HUD through a Freedom of Information Act request. Although it has provided fiscal year data to NFHA for its annual *Trends Report* in past years, HUD this year did not provide information that included a breakdown by protected class or regional HUB office for either HUD or Fair Housing Assistance Program (FHAP) agencies. Nevertheless, we have sufficient data to demonstrate that fair housing enforcement at HUD is in crisis.

At the request of Congress, the General Accounting Office is currently conducting an assessment of HUD's Office of Fair Housing and Equal Opportunity. Part one of GAO's report is due later this month.

This report contains the following sections:

- I. The Incidence of Housing Discrimination**
- II. Housing Discrimination Complaint Data for 2003**
- III. Federal Enforcement of the Fair Housing Act**
- IV. The Fair Housing Initiatives Program**
- V. Recommendations**

I. The Incidence of Housing Discrimination

Housing discrimination is a national problem that still affects millions of people. Housing choice plays a crucial role in determining one's ability to access critical societal and economic functions: quality schools, jobs, health care services, recreational facilities, public services, and transportation. Recent research by

the United States Department of Housing and Urban Development (Housing Discrimination Study 2000, Phases One, Two, and Three) has documented significant levels of discrimination against African Americans, Latinos, Native Americans, Asian Americans, and Pacific Islanders.¹ There is no comparable data for persons with disabilities, yet this group files the highest number of complaints with HUD each year. Whether or not the discrimination is blatant, done with a “we don’t want you people here” attitude, or done politely through more subtle differences in treatment, housing discrimination is a fact of life for large numbers of people in our society.

A recent study commissioned by NFHA found that race discrimination in the housing market occurs more than an estimated 1.7 million times a year for African Americans alone. These results are based on data produced by HUD’s Housing Discrimination Study 2000 (HDS 2000).² A study of these numbers is under preparation by John Simonson of the Center for Applied Public Policy at the University of Wisconsin – Platteville. Dr. Simonson is currently revising his report to include final statistics for Latinos, Native Americans, and Asians Americans and Pacific Islanders. Dr. Simonson’s research is based on the probability that discrimination will occur for certain types of transactions, demographic data on race and national origin, and information about moving patterns. (It should be noted that one of the caveats to Dr. Simonson’s research is an assumption that home seekers search for housing in a similar manner, regardless of race or national origin.)

The breakdown of instances of discrimination against African Americans is as follows:

- There were an estimated 498,000 instances of discrimination against prospective renters in the availability of apartments—covering issues about whether or not units were available, whether units that were similar to the unit that was advertised were available, and the number of units about which applicants were told;
- There were an estimated 1,068,000 instances of discrimination during the process of inspecting rental units, including whether African American and white applicants were able to inspect a unit at all, the number of units shown, and whether the units shown applicants of different races were similar;
- There was a total of 193,000 instances of racial discrimination encountered by African Americans seeking housing in the real estate sales market; and
- There were an estimated 25,000 instances of discrimination against prospective homebuyers in terms of whether were available, an estimated

¹ Housing Discrimination Study (Discrimination in Metropolitan Housing Markets, National Results from HDS 2000, Urban Institute 2001) available at <http://www.huduser.org/publications>.

² HDS 2000 reported on the probability (using percentages) that discrimination would occur; NFHA’s commissioned study reports instead on the number of instances of discrimination.

66,000 instances of discrimination in the process of inspecting properties for sale, 27,000 instances of discriminatory steering, 36,000 instances of discrimination in financing alternatives, and 39,000 instances of discriminatory encouragement directed toward white prospective purchasers as compared to black prospective purchasers.

The following charts illustrate findings of the extent of racial discrimination in the sales and rental markets.

INSTANCES OF DISCRIMINATION AGAINST AFRICAN AMERICANS		
<u>INSTANCES OF DISCRIMINATION</u>	<u>RENTAL</u>	<u>SALES</u>
Overall Availability	498,000	25,000
Overall Inspection	1,068,000	66,000
Agent Encouragement	60,000	39,000
Overall Cost		
Financing Assistance		36,000
Steering		27,000
TOTALS	1,626,000	193,000

The numbers for Latinos, Asian Americans and Pacific Islanders, and Native Americans are contained in the following charts.

INSTANCES OF DISCRIMINATION AGAINST LATINOS (HISPANICS)		
<u>INSTANCES OF DISCRIMINATION</u>	<u>RENTAL</u>	<u>SALES</u>
Overall Availability	542,022	8,716
Overall Inspection	381,724	
Agent Encouragement	164,399	14,207
Overall Cost	90,170	
Financing Assistance		63,609
Steering		14,726
TOTALS	1,178,315	101,258

INSTANCES OF DISCRIMINATION AGAINST ASIAN AMERICANS AND PACIFIC ISLANDERS		
<u>INSTANCES OF DISCRIMINATION</u>	<u>RENTAL</u>	<u>SALES</u>
Overall Availability	145,911	38,831
Overall Inspection		69,206
Agent Encouragement	79,380	28,456
Overall Cost		
Financing Assistance		56,570
Steering		4,349
TOTALS	225,291	197,412

INSTANCES OF DISCRIMINATION AGAINST NATIVE AMERICANS		
<u>INSTANCES OF DISCRIMINATION</u>	<u>RENTAL</u>	<u>SALES</u>
Overall Availability	99,235	
Overall Inspection	35,784	
Agent Encouragement	40,546	
Overall Cost		
Financing Assistance		907
Steering		4,654
TOTALS	175,565	5,561

These numbers combined total **3,702,402** instances of housing discrimination annually – just for persons in these protected classes, i.e. not including discrimination based on disability and familial status, two of the most common types of discrimination, or religion or sex. Despite these compelling numbers, it should be noted that the number of incidents of discrimination is *undercounted*. See NFHA's *Summary Analysis of the Housing Discrimination Study 2000, May 2003*, available at www.nationalfairhousing.org.

Studies by social scientists and others echo these findings. A 1995 study by John Yinger found that the cumulative likelihood of experiencing some form of racial discrimination in US rental markets was 53 percent.³ The HDS 2000, which NFHA believes significantly undercounted the incidence of housing

³ Yinger, John. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*. New York: Russell Sage Foundation (1995).

discrimination, found that whites were favored over African Americans in rental housing transactions 20.6 percent of the time.⁴ A study of the general public found that 14 percent of adults, the equivalent of more than 28 million people, said that they had experienced housing discrimination at some point in their lifetime.⁵

II. Housing Discrimination Complaint Data for 2003

The data are comprised of more than 25,000 claims/complaints of housing discrimination made in 2003. NFHA members received 17,022 complaints in 2003 with 85 agencies reporting, compared to 17,543 complaints in 2002 with 91 member agencies reporting. The number of complaints received by HUD increased by about nine percent, from 2,511 to 2,745 nationwide, while the number of complaints filed with state and local agencies increased by approximately four percent, from 5,129 to 5,352. The Department of Justice handled 35 complaints in 2003, compared to 63 in 2002.

Total Complaints				
Agency	Claims/Complaints	2001	2002	2003
NFHA	Complaints	16,500	17,543	17,022
FHAP	Claims and Complaints	5,041	5,129	5,352
HUD	Claims and Complaints	1,902	2,511	2,745
DOJ	Claims and Complaints	49	63	35
Totals		23,507	25,246	25,154

⁴ NFHA believes that the Housing Discrimination Study significantly under counts housing discrimination. For example, this study:

- Excludes many smaller owner-occupied housing units which comprise a significant portion of the rental market;
- Fails to capture housing discrimination that occurs at the preliminary telephone contact stage (an increasingly frequent phenomenon in today's housing markets); and
- Fails to capture discrimination that occurs after an applicant submits an application for housing.

See also: Massey and Lundy, *Use of Black English and Racial Discrimination in Urban Housing Markets: New Methods and Findings*, Population Studies Center, University of Pennsylvania, June 1998 available at <http://www.ksg.harvard.edu/inequality/Seminar/Papers/Massey.PDF>

⁵ *How Much Do We Know?*, United States Department of Housing and Urban Development, Office of Policy Research and Development, 2002, available at <http://www.huduser.org/Publications/pdf/hmwk.pdf>

A. Discrimination by Protected Class

The federal Fair Housing Act prohibits discrimination on the basis of race, disability, familial status, national origin, sex, religion and color. In 2003, race complaints made up twenty-nine percent of the total complaints received, followed by disability and familial status complaints at twenty-seven percent and thirteen percent respectively. Together, these three categories account for sixty-nine percent of all housing discrimination complaints reported. The chart below provides the breakdown by type of reporting agency and protected class.

Discrimination based on national origin is largely underreported due to a variety of issues. Latinos, Asian Americans, and Native Americans experience language barriers and other cultural issues which could include immigration status, hesitancy to challenge authority and a general lack of faith in the justice system.

Percent of Claims by Protected Group in 2003*					
	NFHA	HUD	FHAP	DOJ	ALL
Race	27%	32%	30%	18%	29%
Disability	24%	34%	29%	38%	27%
Family Status	14%	11%	13%	23%	13%
National Origin	10%	8%	11%	13%	10%
Sex	4%	9%	8%	8%	6%
Religion	1%	2%	2%	2%	2%
Color	1%	1%	2%	n/a	2%
Other	19%	2%	4%	n/a	11%

*The "other" category for NFHA complaints consists of state-level protected categories such as source of income, sexual orientation, marital status, criminal history. The "other" category for HUD and FHAP percentages includes retaliation. Complaints may not total to 100% due to rounding.

B. Discrimination by Housing Market Sector

1. Rental Market Discrimination— Private Groups Report 12,091 Complaints⁶

⁶ 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 in other categories such as harassment.

The majority of complaints is filed against apartment owners and managers for discriminating on the basis of race, disability, family status and national origin. The private fair housing movement reported 12,091 complaints of housing discrimination in the rental market. The discrimination may take the form of the landlord's denying that units are available; refusing to make a reasonable accommodation for a person with a disability; quoting higher rents or security deposits; segregating African Americans, Latinos, Asian Americans, or families with children in one part of a building or complex; restricting access to rental property amenities such as swimming pools or community rooms; or initiating eviction proceedings against white tenants who have visitors who are African American, Latino or Asian American.

2. Mortgage Lending Discrimination—Private Groups Report 1,528 Complaints

In 2003, mortgage lending discrimination was the second largest form of discrimination reported to private fair housing groups. Mortgage lending discrimination may take one or several of the following forms: product steering to subprime or FHA loans; stricter qualification standards; higher interest rates, points, fees, and other terms of financing; less assistance in meeting qualification standards; inferior customer service; more costly and lengthier application processes; and inaccurately low appraisals in African American, Latino and integrated neighborhoods. (Note: In the case of predatory lenders, there are also often inflated appraisals.) Mortgage lending discrimination is a growing concern in the private fair housing movement. This year mortgage lending discrimination has moved from the third to the second most common type of discrimination reported. One of the reasons is the increase in predatory lending complaints, particularly from persons who reside in African-American and Latino neighborhoods.

3. Home Sales Discrimination—Private Groups Report 677 Complaints

Sales discrimination takes many forms. Real estate agents may only show homes in predominantly minority neighborhoods to people of color or discourage white buyers from looking in integrated neighborhoods (both situations are considered steering and are violations of the Fair Housing Act). Some sellers refuse to negotiate the price of the home when offers are made by African Americans, Latinos, or Asian Americans but are willing to negotiate when a white buyer makes a similar or less favorable offer. Other sellers take their homes off the market or use delaying tactics in order to avoid a sale to people of color.

4. Homeowners Insurance Discrimination—Private Groups Report 91 Complaints

Homeowners have a difficult time recognizing insurance discrimination because it happens in a variety of subtle ways. Some African American and Latino persons call agents and leave messages about obtaining insurance but find that their calls are not returned. Discrimination involving “linguistic profiling” – whereby a person is treated differently based on a racially- or ethnically-identifiable voice – is a significant phenomenon in many types of housing transactions. Some agents promise to provide insurance quotes but never do so. Insurance discrimination is often found in the underwriting policies of the company and not in the direct behavior of the agent. For example, urban homes for the most part are insured, but many homes are under-insured because underwriting guidelines will not allow replacement or guaranteed replacement cost coverage on homes built before 1950 and/or which are valued below a minimum amount such as \$60,000. Although the number of insurance discrimination complaints reported to private fair housing groups represents a small percentage of the total, they are on the rise from the previous year. This may be due in part to the increasing use of credit or insurance scoring by some homeowners insurance companies.

III. Federal Enforcement of the Fair Housing Act

The true incidence of discrimination is barely reflected in the combined number of complaints of housing discrimination investigated by private fair housing groups and/or filed with HUD as possible violations of the Fair Housing Act. Neither HUD nor DOJ—both of which handle housing discrimination cases brought under the Fair Housing Act—has taken sufficient enforcement actions to stop discrimination.

In 2003, private fair housing organizations with membership in NFHA investigated more than 17,000 complaints of housing discrimination. Approximately 27 percent of those complaints involved race discrimination. There were 2,745 complaints filed with the Department of Housing and Urban Development’s Office of Fair Housing and Equal Opportunity.⁷ Of those complaints, 32 percent involved race discrimination in housing.

However, HUD had far fewer findings that the law was violated in cases of race discrimination. Last year, HUD issued charges in only four cases involving race discrimination that were filed with HUD. Even if cases filed by DOJ are added,

⁷ FY 2003 Fair Housing End of Year Activity Status Report: HUD/FHAP, September 30, 2003

the total number of cases involving race discrimination in housing filed by the federal government last year totaled only 10.⁸

Therefore, while at least 1.8 million incidents of *race* discrimination in housing occurred last year, the ***United States government brought only 10 cases to oppose race discrimination in housing during the entire year.***

In the past three years, the total number of government cases brought to enforce the Fair Housing Act against race discrimination has dropped every year:

- In fiscal year 2001, only 30 cases were filed involving race discrimination in housing by HUD and DOJ;
- In fiscal year 2002, only 28 cases were filed; and
- In fiscal year 2003, only 10 cases were filed.

A. Complaints Filed

HUD administrative complaint filings have recently increased slightly in number but have not come close to the previous high levels found in the early 1990s. Complaint filings were high in the first years after the Fair Housing Act was amended in 1988 and then began to drop to a low of 1,808 in 1997. Only 2,745 complaints were filed with HUD in 2003, less than half the number filed in 1993.

Administrative Complaints Filed by Year

Year	Number of 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

⁸ Data provided to NFHA by Housing and Civil Enforcement Section, United States Department of Justice, March 24, 2004.

B. Cause Determinations and Charges

After an investigation, HUD makes a determination as to whether or not there is reasonable cause to believe that illegal discrimination has occurred. If HUD makes a determination of no reasonable cause, the complaint is dismissed and HUD takes no further action on the complaint.

If, on the other hand, HUD makes a determination that there is reasonable cause, it must prepare a final investigative report, make a written determination of its cause finding, and issue a charge. Issuance of a charge is the standard way that government enforcement of fair housing laws is initiated. Following issuance of a charge, the parties to a case—the complainant or complainants, the respondent or respondents—may elect to have the case heard in federal district court in a case filed by DOJ. If no election is made, a HUD Administrative Law Judge hears the case.

HUD made only 59 determinations that there was reasonable cause to believe that unlawful discrimination occurred in fiscal year 2003, less than half the number of cause determinations made just two years earlier, in fiscal year 2001.

Fair Housing Act Cases in Which HUD Issued a Finding That There Was Reasonable Cause to Believe That Discrimination Has Occurred Fiscal Years 2001, 2002, 2003

REGION	2001	2002	2003	TOTAL CASES 2001-2003
Boston	5	0	2	7
New York	38	16	7	61
Philadelphia	2	0	0	2
Atlanta	10	12	9	31
Chicago	21	15	9	45
Ft. Worth	7	2	0	9
Kansas City	3	3	0	6
Denver	7	11	4	22
San Francisco	14	8	28	50
Seattle	25	6	0	31
TOTAL	132	73	59	264

Unfortunately, for many of the cases for which a reasonable cause determination was made by HUD, there was no issuance of a “charge” of discrimination and no enforcement action was taken. (A charge is required in order for the enforcement action to proceed.) A few of those cases likely were resolved by settlement, but it is unclear what happened to the remaining cases. HUD issued only 23 charges in fiscal year 2003,

although 59 cause determinations were made. That is, of the 59 cases in which HUD found that there was discrimination, only 38.9 percent of the cases had a charge issued and enforcement proceedings started. In contrast, in fiscal year 2002, 94.5 percent of cause determinations were issued as charges.

**Fair Housing Act Cases in which HUD Issued a Charge
Fiscal Years 2001, 2002, 2003, and 2004 to Date, by Region**

REGION	2001	2002	2003	10/1/03 - 4/1/04	TOTAL CASES
Boston	1	3	1		5
New York	17	22	3		42
Philadelphia	1	0	0		1
Atlanta	5	2	9	3	19
Chicago	16	20	7		43
Ft. Worth	7	1	0		8
Kansas City	1	4	1		6
Denver	7	7	0		14
San Francisco	7	4	2		13
Seattle	26	6	0	1	33
TOTAL	88	69	23	4	184

- The number of charges issued by HUD has dropped significantly over the past three years—the number of cases in which HUD issued a charge in 2003 was less than one-third the number of cases in which HUD issued a charge in 2001. Even 88 charges in one year (FY 2001) is much too low when the level of unlawful discrimination in the country remains very high.
- There is no justification for a HUD regional office’s failing to issue a single charge during an entire year; yet the Philadelphia region failed to issue a charge two years in a row. Neither the Denver nor the Seattle offices issued a charge in 2003.
- HUD has consistently set the bar for issuance of a charge too high; issuance of a charge should mean only that there is reasonable cause to believe that there has been a violation – not proof beyond a reasonable doubt.

In reality, the numbers are even lower than those listed above due to duplication. In many cases, there is more than one complaint about the alleged discrimination – and often each is counted as a different case. For example, two or three households may all have encountered the same kind of discrimination by the same entity; typically, these complaints are all investigated together. If the facts support it, a cause determination is made on all of the cases and charges issued in each. When this type of duplication is eliminated, the total number of charges issued drops even further.

C. Department of Justice: Our concerns about the Department of Justice are not limited to the low number of cases it brought last year. DOJ has also failed to file “election” cases (cases in which a party to a HUD complaint that has been charged has elected to have the case heard in federal court, rather than before a HUD Administrative Law Judge) in a timely manner and has not brought any recent cases that include the issue of the disparate discriminatory impact of a policy or practice on a protected class of persons.

IV. The Fair Housing Initiatives Program

Although private fair housing organizations routinely process more than 70 percent of the nation’s fair housing complaints, the primary funding stream for these efforts, the Fair Housing Initiatives Program (FHIP), is woefully underfunded. The efforts of fair housing organizations are critical to the achievement of fair housing in our nation as they provide education on the local level to the housing industry and potential victims of housing discrimination. They also provide front line enforcement of the law, including testing, to substantiate claims of discrimination and to address systemic discriminatory practices. *Despite this, the FHIP program is still funded significantly below the level authorized twelve years ago.*

FHIP is the only program that is funded by the government but operated by private organizations to advance the rights and remedies provided under the Fair Housing Act. First authorized by Congress under the Housing and Community Development Act of 1987 as a demonstration program, the initial FHIP authorization was for \$3 million in 1989 which funded the approximately thirty agencies in existence at that time. The number of organizations that qualify for FHIP funding has increased significantly, with 140 organizations over the past ten years qualifying for awards that are designed to support fair housing enforcement.

Congress has funded FHIP with appropriations at a high of \$26 million in 1995 and a fairly recent low of \$15 million in fiscal years 1997 and 1998. Funding has also been removed from the FHIP budget to fund other projects like the HDS 2000, which, although worthy, are inappropriate uses of FHIP funding. NFHA believes that this occurred because HUD’s Office of Fair Housing and Equal Opportunity has not been adequately funded with contract monies to support education and outreach and research into fair housing issues; therefore, funds have been diverted from FHIP for non-FHIP activities.

Congressional Appropriations for the FHIP Program Since 1991

Fiscal Year	Appropriation (in Millions)
1991	\$ 5.7 million
1992	8.1 million
1993	10.6 million
1994	20.5 million
1995	26.0 million
1996	17.0 million
1997	15.0 million
1998	15.0 million
1999	16.0 * million
2000	18.0 * million
2001	16.5 * million
2002	20.25 million
2003	20.25 million
2004	20.25 million

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

The sister program to FHIP is the Fair Housing Assistance Program (FHAP) – the program that funds state and local government enforcement agencies to conduct investigations of fair housing complaints. FHAP has received progressively increased funding over the past ten years. From an appropriation of \$4.5 million in 1994, the FHAP appropriation has increased more than six times over the past ten years, to a 2004 level of \$27.6 million. *If FHIP had increased at a similar level, it would be funded at \$123 million for fiscal year 2004.*

Instead, FHIP is funded today just below its 1994 level and almost \$6 million below its authorized level of \$26 million. Calculating for *inflation alone*, the 1994 level of FHIP would be \$25.9 million; the authorized level adjusted for inflation would be \$32.8 million.

HUD has also had its share of management problems with regard to FHIP. There have been delays in the publication of Notices of Funding Availability (NOFA), delays in the announcement of funding awards, and further delays in negotiation of contracts that have caused eligible organizations to lose funding, staff, and other resources because they do not have consistent funding. Delays caused by the NOFA process have also caused budget carryovers and occasioned criticism from Congress because funding is not always obligated as quickly as it could be.

A 2001 report by the National Council on Disability (NCD) recommended that FHIP be revitalized because of significant operational flaws that adversely affect enforcement.⁹

V. Recommendations

A. Increase Fair Housing Initiatives Program Funding

NFHA calls on HUD and Congress to increase appropriations for the Fair Housing Initiatives Program to \$26 million in fiscal year 2005. NFHA also encourages HUD and Congress to increase appropriations significantly to \$50 million by fiscal year 2007.

Increased and reliable funding would enhance assistance to victims of discrimination and the housing industry. FHIP is the only source of federal funding for private organizations dedicated to the elimination of housing discrimination. The survival and effectiveness of these organizations is central to the fight for fair housing in this nation. These funds would provide additional resources for: education and outreach; counseling; testing to gather evidence about whether discrimination has occurred; and assistance to individuals who wish to file complaints.

Private fair housing groups have played a key role in many of the cases in which HUD has been willing to take enforcement action by issuing a charge:

- Private fair housing groups funded through FHIP are a major contributor to administrative enforcement. In fiscal years 2001 and 2002, those groups have been involved in about half of the cases in which HUD issued a charge, either as a referring agency or as complainants themselves;
- In fiscal year 2001, FHIP-funded agencies were involved in 47 out of the 88 cases charged by HUD, about 54 percent of the cases; and
- In fiscal year 2002, FHIP-funded agencies were involved in 35 out of 69 cases charged by HUD, about 50 percent of the cases.¹⁰

B. Restructure the Fair Housing Initiatives Program

FHIP should create a long-term (perhaps three- or five-year) grant cycle for qualified full-service private nonprofit fair housing organizations. The program should include funding to provide training to agency personnel and to implement programs to improve and enhance agency

⁹ *Reconstructing Fair Housing*, National Council on Disability, November 6, 2001.

¹⁰ HUD has not provided information for fiscal year 2003 from which NFHA can make similar calculations.

performance. It should also enable agencies to receive both education and enforcement funding simultaneously. The minimum grant award should be \$300,000 annually and increase to \$1 million annually depending upon the population size, number of investigations handled annually, demographics and other performance measures.

Short term funding cycles are detrimental to long-term success. The Fair Housing Initiatives Program's Notice of Funding Availability (FHIP NOFA) currently provides for a one year funding cycle.

Grant periods have ranged from 12 to 24 months for education or enforcement grants. Because fair housing agencies are not guaranteed funding from year to year, the benefit of ongoing enforcement activities is diluted.

HUD has often not completed the FHIP NOFA and grant decision process within a 12 month period. These delays cause disruptive gaps in funding. In addition, 12 month grant cycles seriously hurt fair housing agencies' ability to retain experienced staff. When the grant contract ends, the staff is often laid off. A longer grant contract reduces the problem.

Fair housing organizations should be able to receive education and enforcement funding simultaneously. When FHIP was initiated in 1990, fair housing agencies could receive both education and enforcement grants during the same funding cycle. The ability to receive both grants was removed around 1996. The National Association of Realtors agrees that fair housing agencies should receive both grants because local fair housing agencies use the funds to educate both housing consumers and housing providers. A full-service fair housing organization is one that conducts education and outreach in conjunction with enforcement. With education and outreach, community members and housing providers become increasingly aware of their rights and responsibilities under the Fair Housing Act.

C. HUD and DOJ Must Improve Their Processing of Cases

With the number of complaints at more than 25,000, and the estimated number of violations at least 3.7 million, it is insufficient that last year HUD issued only 23 charges and DOJ filed only 35 cases (12 of which were the same HUD charges). These numbers speak for themselves. HUD must also improve its case processing so that cases are investigated in a timely manner. It must create a centralized system through which all cases are subjected to the same consistent standards.

D. DOJ Should Be Following the Statute and Pursuing Cases Charged by HUD

The Fair Housing Act as Amended (1988) clearly states that DOJ must pursue cases charged by HUD. DOJ has recently taken the stance that it is not required to file these cases but that it may instead perform additional investigations, thereby prolonging and duplicating the process. DOJ has even stated that this provision of the fair housing law is unconstitutional.

In addition, there are two areas of enforcement at DOJ that have been underutilized in recent years: cases brought under their testing program and lending cases. Cases in those two areas have dropped precipitously in the past few years. With this underutilization, DOJ is neglecting its opportunity and obligation to fight housing discrimination.

E. DOJ Should File Disparate Impact Cases

DOJ has publicly stated its position that it will not litigate disparate impact cases involving housing discrimination. Disparate impact cases are crucial in the fight against housing discrimination. Many rental, sales, insurance, and related policies are not discriminatory on their face, but have a disparate impact on members of protected classes. Among those that are more subtly discriminatory, some have a discriminatory *intent* and others have a discriminatory *impact*. Even though there may not be any intent in the policy, it can have just as detrimental an effect on individuals and families trying to find housing.

F. HUD Must Do More to Reach Out to New Immigrant Groups

Language barriers are only one of the many challenges that new immigrants face in the United States. They must also overcome cultural barriers, learn their rights under civil rights laws, and feel confident enough in the system to file cases. HUD must provide adequate funding for outreach and enforcement for Latinos, Asian Americans, Pacific Islanders, and Native Americans (as identified in HDS 2000) as well as many other new immigrants. This must be accomplished at the local level by providing adequate resources for fair housing agencies to hire staff who will specialize in outreach to these underserved groups. It cannot become an unfunded mandate in the FHIP award. Currently, the maximum amount of any enforcement grant award is \$175,000. This amount is supposed to cover costs of staffing, space, equipment, tester training and tester fees, insurance, fringe benefits, telephone, etc. It is woefully inadequate.

G. Designate the Office of Fair Housing and Equal Opportunity an Independent Agency

HUD's Office of Fair Housing and Equal Opportunity (FHEO) should be designated an independent agency in order to be a truly objective institution.

Currently, when a complaint is filed against a HUD program, or a HUD-funded agency or organization (public housing authorities, for example), HUD's FHEO is responsible for investigating the complaint. This puts FHEO in a position of investigating its own agency. FHEO is fully intertwined in the HUD system, i.e. it must coordinate its efforts with many other offices at HUD. This compromises what should be independent, objective investigations, putting them through the litmus test of public policy considerations and the very real issue of being ranked lower than other HUD priorities. The director of this independent agency must be a career position and not a political appointment.