



The Crisis of Housing Segregation

2007 Fair Housing Trends Report

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Executive Summary

In this first decade of the twenty-first century, when the attention of so many faces outward toward the international world, Americans find themselves confronting a dire crisis right here at home. With four out of every five families making their home in a metropolitan area, the persistent unequal distribution of residential opportunities within our cities constitutes a grave injustice that lies, quite literally, at our doorsteps.¹ Contrary to the rosy portraits painted by some who extol America as a land of unbridled opportunity, the facts are unequivocal: our cities remain segregated—indeed hypersegregated—thanks in large part to individual and systemic racial discrimination in our nation’s housing markets.

This report documents the forms and extent of housing discrimination in America, the ways in which discrimination causes and perpetuates residential segregation, and the costs to all of us—along the dimensions of home equity, public health, educational attainment, and job prospects—associated with our national failure to integrate our neighborhoods.

This failure was not inevitable. Americans glimpsed their first genuine ray of reasonable hope for housing fairness just days following one of their darkest hours. Title VIII of the Civil Rights Act of 1968—better known as the Fair Housing Act—was passed by Congress seven days after the assassination of Dr. Martin Luther King, Jr. Following the example King set in his unrelenting fight for fair housing during the 1965-67 Chicago Freedom Movement, Congress made it illegal for landlords, real estate agents, and other members of the housing industry to discriminate on the basis of race, color, national origin, or religion (sex, disability or familial status were later added as protected classes). As Senator Mondale explained, Congress’s purpose in enacting the Fair Housing Act was to create “truly integrated and balanced living patterns.”²

Additional important victories for fair housing were won when Congress passed the Fair Housing Amendments Act in 1988, which enhanced the fair housing enforcement powers of both the Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ), extended statutes of limitations and filing deadlines, eliminated the ceiling on punitive damages for victims of discrimination, and required HUD to try cases before an administrative law judge. Section 561 of the Housing and Community Development Act of 1987 established the Fair Housing Initiatives Program (FHIP), a measure to fund non-profit fair housing organizations engaged in enforcement, education, and outreach.

Despite these gains, America’s cities remain significantly more segregated today than they were in 1980, nearly a decade before Congress redoubled the nation’s commitment to fair housing.

¹ U.S. Census Bureau, “Population by Metropolitan and Nonmetropolitan Residence, Sex, and Race and Hispanic Origin: March 2002.” Available at <http://www.census.gov/population/socdemo/race/Black/ppl-164/tab21.txt>.

² 114 Cong. Rec. 3422 (1968).

In the pages below, we show that the ongoing crisis of segregation in America is not an accident. The broad tools that Congress gave the Executive Branch to enforce the Fair Housing Act have turned rusty through disuse. In the years following the Fair Housing Amendments Act of 1988, HUD logged nearly 6,000 complaints per year, on average. In 2006 it logged less than half that. Worse still, HUD issued just 34 charges of housing discrimination in 2006. That is, HUD concluded that there was reasonable cause to believe discrimination occurred in— and the Office of General Counsel issued an actual charge of discrimination in— less than one percent the complaints it received. This marks a precipitous decline from 88 charges as recently as 2001. Moreover, HUD routinely has a significant “aged” caseload, and many cases are open for months and even years and never investigated. The Fair Housing Amendments Act regulations require that cases be processed within 100 days, except for complex or systemic investigations. In its annual report to Congress, HUD reported that 1,172 cases passed the 100 day mark in FY06. This does not include the number of cases that were aged prior to the start of FY06, nor the 3,940 ongoing investigations by Fair Housing Assistance Program Agencies (HUD’s counterparts at the state/local levels) that have passed the 100 day mark.

While HUD’s willingness to rest content with issuing charges in just one percent of the complaints it receives is deeply troubling— this has been the trend for at least the last four years— the profound national failure of fair housing enforcement cannot be seen without noting that the incidence of discrimination against African-Americans, Latinos, Asian Americans, and American Indians in rental and sales markets alone is estimated to be at least **3.7 million violations each year**. Indeed, this is an *extremely* conservative estimate, for it does not reflect discrimination against persons with disabilities—the group that files the highest number of complaints with HUD each year— nor discrimination on the basis of religion, sex, familial status, or other national origins. As this report documents, the total number of complaints filed with *all* private and governmental fair housing agencies and organizations in 2006 constitutes **less than one percent** of this already conservative estimate of total violations.

In a country in which private fair housing organizations receive the vast majority of total complaints of discrimination and whose federal fair housing enforcement system is broken, it is perhaps no surprise that the primary federal funding stream for these crucial private organizations, the Fair Housing Initiatives Program (FHIP), is woefully underfunded. Today the program is funded \$6 million below its authorized level of \$26 million, and if its authorized level were indexed to rise with inflation, it would be \$32.8 million today. Many effective private fair housing organizations have had to close their doors in recent years when federal funds have run dry.

The discriminatory behavior we document in this report, and the segregation that is its natural consequence, should not shock anyone acquainted with these facts. But shock it does. Real estate agents who think Whites should live with Whites and Blacks should live with Blacks can make this happen through residential steering, and they can do so with virtual impunity. Mortgage brokers who wish to profit from saddling well-qualified African-Americans with high-interest loans designed for those with bad credit can do so largely without fear of being

identified or charged by HUD or DOJ (whose disappointing enforcement record we also document). Websites designed to bring landlords and renters together can publish discriminatory advertisements that would be illegal if published in the classifieds section of the *Washington Post*. Those who want to “help” the victims of hurricanes that ravaged the Gulf Coast in 2005 can do so on their terms, announcing that there is a “room available to single white mother with child or younger to middle aged white couple.” And municipalities that effectively encourage illegal discrimination by forcing landlords to be on the lookout for illegal immigrants can still receive federal Community Development Block Grant (CDBG) funds, despite these municipalities’ manifest disregard for their legal obligations, under the CDBG program, to “affirmatively further fair housing” with proactive policies.

It is time to strike a new course, one that learns from the systemic failures we document below. America is not yet beyond racism, but we are not beyond reform either. It is our hope that this report, and the recommendations it details, will help guide the collective action that is required to secure equal housing opportunities for each resident of our nation.

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.

Section I: Racial Steering, Closed Doors, and Lost Homes: Documenting Housing Discrimination and its Roots

Real Estate Sales Discrimination

Since 2003, the National Fair Housing Alliance (NFHA) has conducted extensive testing of real estate sales firms. In the twelve metropolitan areas investigated to date, NFHA's testing revealed discriminatory steering practices and other illegal behaviors that are both striking and pervasive. Over the past two years, NFHA has filed several complaints against real estate companies in Georgia, Illinois, Michigan, New York, and Alabama.

Racial steering occurs when real estate agents limit housing choice to neighborhoods occupied predominantly by persons of the buyer's race or national origin: White buyers see houses in White neighborhoods, African-American buyers see houses in African-American neighborhoods, Latinos see houses in Latino neighborhoods, etc.

Current federal, state and local laws, including the federal Fair Housing Act, prohibit housing discrimination. HUD's regulations implementing the federal Fair Housing Act state that:

It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development. (24 CFR Part 14, Section 100.70(a)).

Steering illegally and inevitably constrains the prospects of homeseekers, since agents are often a buyer's only source of information on available houses and often work hard to win the trust of their clients. When agents exploit this trust and steer in ways that perpetuate segregation, their actions help increase demand among certain groups for homes in certain neighborhoods and communities. Greater competition for homes in White neighborhoods caused by steering artificially drives up the values of houses in those neighborhoods and depresses values in integrated and minority neighborhoods.

NFHA discovered significant racial steering in its recent paired testing investigation of several real estate companies in twelve metropolitan areas. Paired testing is an accepted methodology that has been utilized for enforcement and research purposes for decades.³ Fair housing testing is a controlled method for measuring and documenting differences in the quality, quantity and content of information and services offered or given to various homeseekers by housing or housing service providers.

³ The use of fair housing testing evidence has uniformly been accepted by the courts, including the Supreme Court. See e.g. *Havens Realty Corp v. Coleman*, 455 U.S. 363, 373-374 (1982).

The sales tests were structured to capture detailed information about agent and company policies and practices. All sales tests were structured on the basis of race or national origin. Each paired test investigation involved a team of testers, one White and one either African-American or Latino. Two teams of testers contacted the same real estate sales office. In all cases, the teams were assigned similar information about housing needs, financial qualifications and employment history. In every instance, the African-American or Latino teams were slightly more qualified than the White teams. The minority team would have more money for down payment, a higher income, less debt, more tenure at their employment and a higher price range. This methodology eliminates economics as a consideration in home selection, thereby eliminating them as a defense to allegations of ethnic and racial steering.

NRT, Inc.

Throughout NFHA's investigations, one company proved time and again that it maintains a pattern and practice of discrimination based on race: NRT, Inc. NRT is the largest residential real estate brokerage in the country with 1,000 offices and 64,000 agents nationwide. It operates such brand names as Coldwell Banker®, Coldwell Banker Commercial®, ERA®, Sotheby's International Realty® and The Corcoran Group. In 2005, NRT recorded \$220 billion in sales volume, approximately 10 percent of the market, and more than three and a half times the next largest brokerage.⁴ Over the last two years, NFHA has filed administrative complaints of housing discrimination against NRT, Inc. in four cities: Atlanta, Marietta, New York City, and Chicago. NFHA has been unable to resolve these complaints with NRT.

NRT - Coldwell Banker: The Condo Store—Atlanta; Coldwell Banker—Marietta, GA

On October 11, 2005, NFHA filed complaints with HUD against local offices of NRT: Coldwell Banker "The Condo Store," located in Atlanta, and Coldwell Banker Residential Brokerage – West Marietta. The complaints allege that these real estate firms violated the federal Fair Housing Act by repeatedly steering White potential homebuyers to predominantly White neighborhoods and African-American potential homebuyers to predominantly African-American neighborhoods and by denying or failing to keep appointments with African-Americans. Coldwell Banker Marietta also denied or failed to keep appointments with African-American customers. In addition to illegal steering in violation of the Fair Housing Act, some agents made negative comments to White homebuyers about minority communities.

⁴ Based on the National Association of Realtors' estimation of \$2.27 trillion in aggregate new and existing home sales in 2005.

NRT – The Corcoran Group— New York City, NY

In Brooklyn, NFHA's testing of Corcoran Group Real Estate revealed that real estate agents steered home buyers by race and denied basic services to African-Americans. In 2006, NFHA filed a complaint with HUD against the Corcoran Group Real Estate office located in Brooklyn, NY, and its parent company NRT, Inc. This complaint is pending.

NFHA's investigation of The Corcoran Group revealed discriminatory real estate sales practices, including limited service, lack of follow-up and withholding of housing information. Agents provided limited service and information to potential African-American homeseekers. In one test, a White homeseeker saw thirteen homes versus only one seen by an African-American. Agents further engaged in unequal treatment by providing more detailed financial options and incentives to White homeseekers. One agent presented a White homeseeker with a sales application and offered to negotiate a reduced sales price and research alternative living arrangements. The African-American homeseeker received no such service.

Agents at The Corcoran Group also engaged in racial steering. In this investigation's most egregious incident of racial steering, one agent produced a map of Brooklyn and drew a red outline of the areas in which the White homeseeker should consider living. He pointed to the neighborhoods of Prospect Heights, Park Slope, Windsor Terrace, Cobble Hill, Brooklyn Heights and parts of Carroll Gardens as attractive neighborhoods for the White homeseeker, and indicated with arrows the neighborhoods that were "changing." The agent also noted the high quality of schools in the "attractive" neighborhoods as a further indication of their desirability to the White homeseeker. (See maps below. The first includes the agent's markings; the second shows the location of Corcoran Group office locations in New York City and the distribution of African-Americans and Whites.)

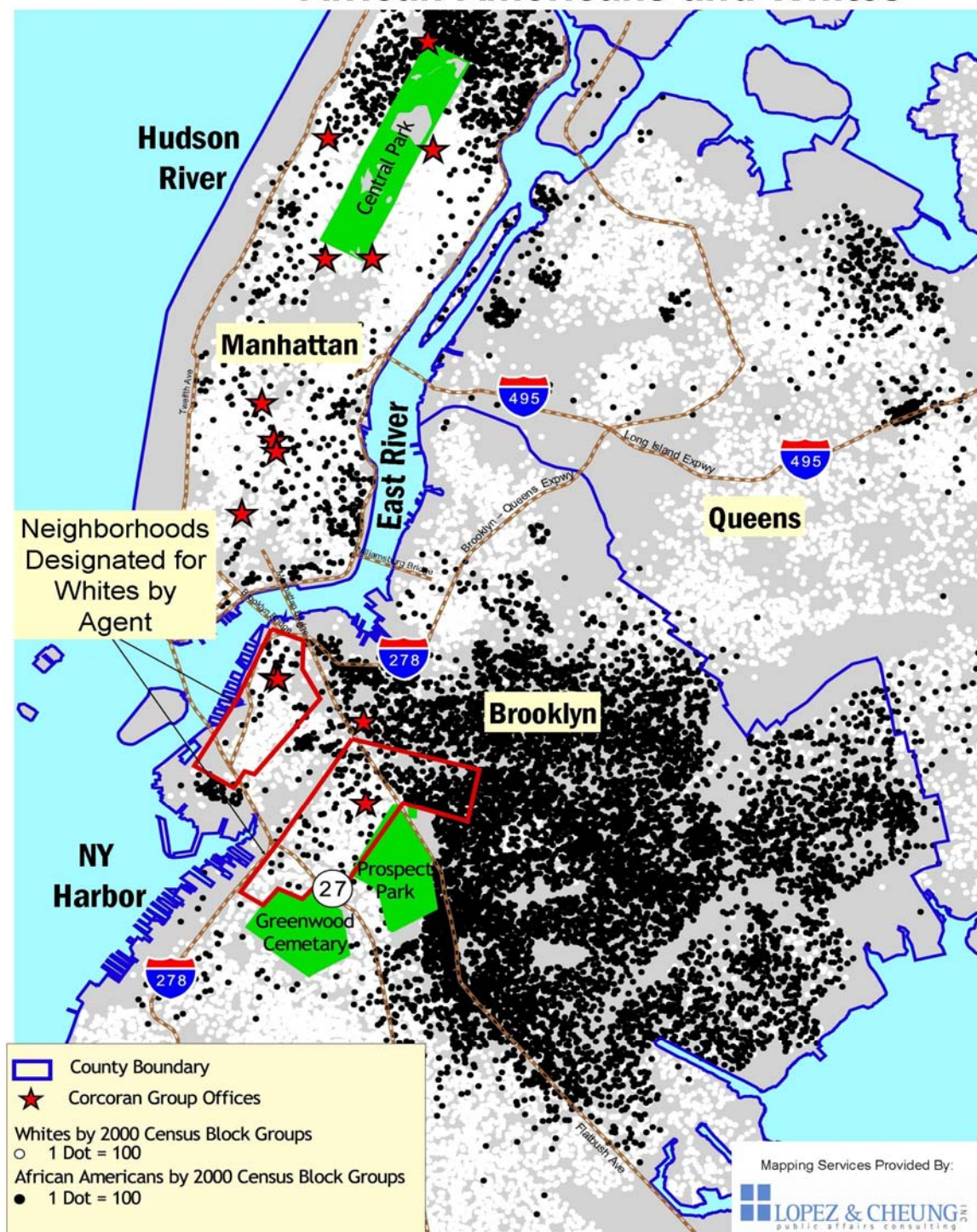
During its sixteen years of existence, NFHA has never uncovered such a literal and blatant example of sales steering. This racial steering tactic is reminiscent of discriminatory conduct from the 1970's when real estate agents would go into White neighborhoods with the specific intention of triggering White flight by showing on a map where an African-American family had bought a house.

Brooklyn

vanDam.

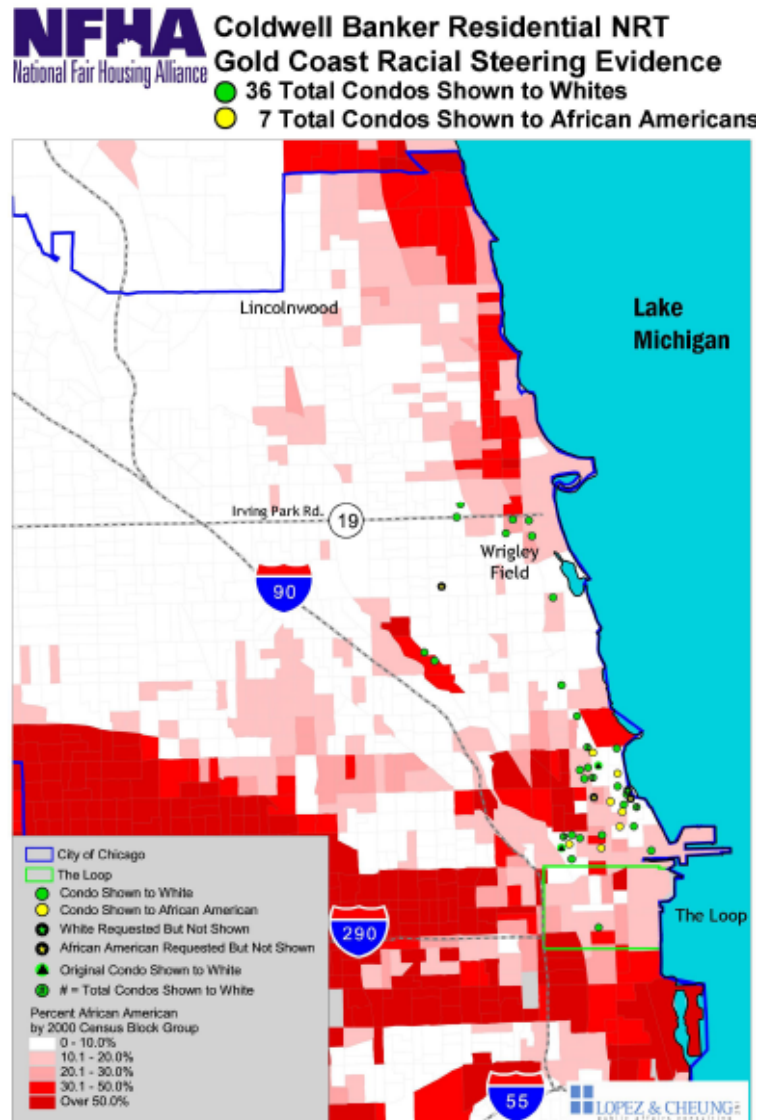


Corcoran Group Office Locations in New York City & Distribution of African Americans and Whites



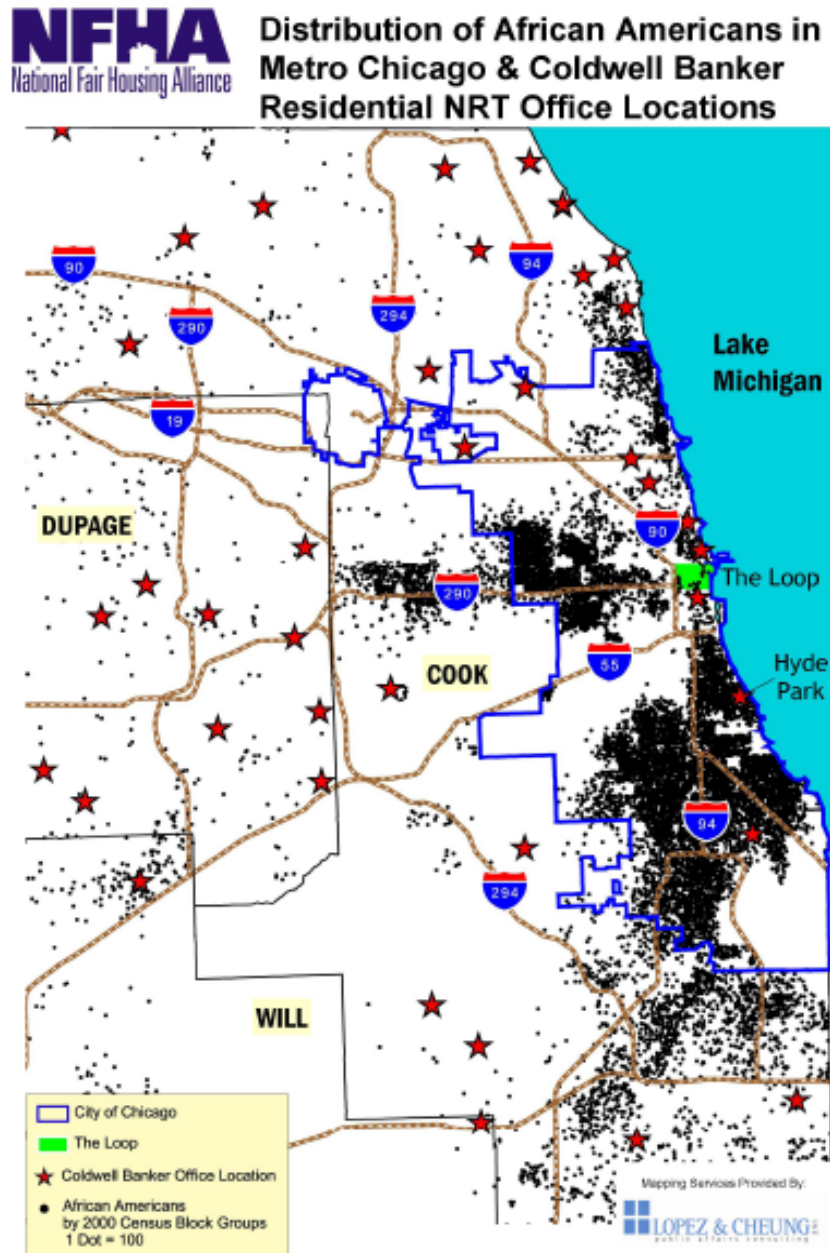
NRT – Coldwell Banker Residential –Chicago, IL

In Chicago, NFHA's testing of Coldwell Banker Residential in its Gold Coast office revealed blatant housing discrimination against African-Americans on the north side of Chicago, including the neighborhoods of Lincoln Park, the Loop, Gold Coast, and Lakeview. Real estate agents consistently showed White homeseekers more condominium units than their African-American counterparts. Overall, agents showed White homeseekers 36 units versus showing only 7 units to African-Americans homeseekers. Against her own economic interest, one real estate agent told a potential African-American homebuyer that he should rent rather than buy, although his financial profile was stronger than his White counterpart's. He was shown no units; the White homeseeker working with the same agent saw 21 units. In another instance, an agent showed a White homeseeker 15 different units; the African-American counterpart saw only three units. (See map below.)



Agents also made derogatory comments about predominantly African-American neighborhoods to White homeseekers. For example, one agent said that she would not recommend Uptown because “it hasn’t turned yet.” She then went on to say that she had an ethical obligation “not to slam a neighborhood – it’s just that it has some crime.”

It comes as no surprise then that the Coldwell Banker Residential offices are located almost entirely in White neighborhoods. The map below indicates the location of the 41 Coldwell Banker Residential offices in the Chicago area. (See map below.)



Century 21 Town & Country—Detroit, MI

In January 2007, NFHA filed a lawsuit against Century 21 Real Estate LLC and its Detroit franchisee, Century 21 Town & Country, in federal district court. The Hollowells, an African-American family in Detroit, have joined NFHA in the suit. NFHA alleges Town & Country agents violated the Fair Housing Act by repeatedly steering potential White and African-American homebuyers based upon their race.

In July 2005, NFHA filed an administrative complaint with the Michigan Department of Civil Rights and HUD against Century 21 Town & Country. NFHA met with Century 21 Town & Country several times in an attempt to resolve its administrative complaints. Over one year later, no resolution was reached. In addition, the Hollowells, an African-American family living in the Detroit Metropolitan Area, filed a complaint with HUD in April, 2006, based on its experience with an agent of Century 21 Town & Country's Grosse Pointe office. That complaint has also not been resolved. Due to this unreasonable delay, NFHA and the Hollowells filed a lawsuit.

During the period of NFHA's investigation, Century 21 Town & Country had 16 metro-Detroit real estate sales offices. Town & Country does not have an office within the Detroit city limits. It employs over 1,000 sales associates and is one of the largest residential real estate companies in the industry as well one of the top-producing firms for the Michigan and metropolitan Detroit real estate markets.⁵ NFHA tested fourteen Town & Country agents. Nine of the fourteen agents (64 percent) engaged in racial steering and/or made negative comments about Detroit and neighborhoods of color. For example, Whites were discouraged from considering homes in East English Village and were instead steered to White neighborhoods, including the Grosse Pointes. On the other hand, agents encouraged African-Americans to buy in African-American neighborhoods, including East English Village. According to 2000 Census data, the population of East English Village is 18 percent White and 81 percent African-American. In contrast, Grosse Pointe is 95 percent White and 1 percent African-American (among other races and ethnicities).⁶ In addition, one agent made it a practice to give potential buyers detailed information about the racial composition of neighborhoods bordering Grosse Pointe and Detroit.

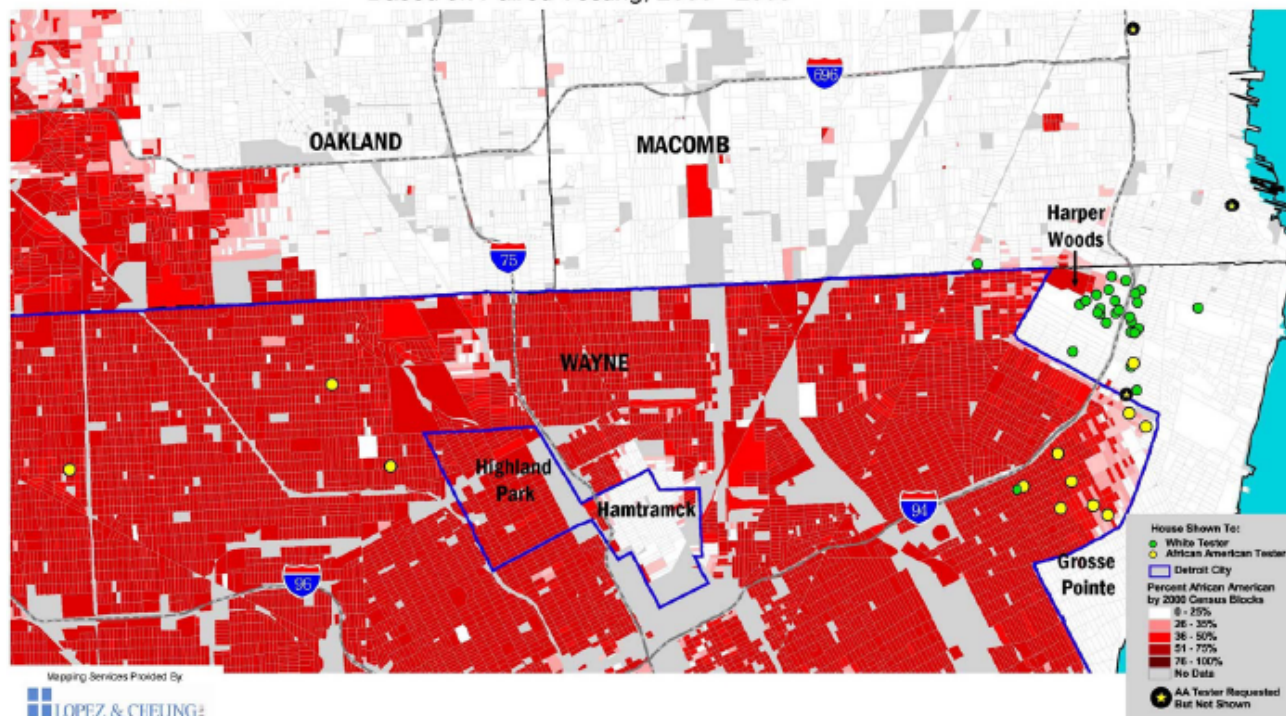
A census tract map of Detroit illustrates its stark segregated residential patterns. When further overlaid with the results of steering uncovered in NFHA's investigation, it is clear that testers were almost always shown homes in neighborhoods where their race predominates. (See map below.)

⁵ Century 21 Town & Country. <http://www.century21town-country.com/>. This franchisee currently has 14 offices.

⁶ U.S. Census Bureau, 2000 Census. Available at http://factfinder.census.gov/home/saff/main.html?_lang=en. Grosse Pointes includes the city of Grosse Pointe, Grosse Pointe Farms, Grosse Pointe Park, Grosse Pointe Shores and Grosse Pointe Woods.

Century 21 Town & Country Racial Steering Evidence

Based on Paired Testing, 2003 - 2005



Coldwell Banker/Joe T. Lane Realty – Clayton County, GA

In April, 2005, NFHA filed a complaint against Coldwell Banker/Joe T. Lane Realty in Clayton County. That complaint is pending with HUD. NFHA's testing revealed that agents of this company steered White homeseekers to homes in White communities and steered African-American homeseekers to majority African-American communities. A Joe T. Lane agent also made numerous negative comments to White homebuyers about African-Americans and minority communities. The agent indicated to one White homeseeker that Whites wanted to keep things the way they were and were moving further and further south to Henry County to do so.

Steering in the Joe T. Lane case was not limited to homes but extended to comments about and steering away from schools and school districts. The Joe T. Lane office is located in Clayton County, Georgia. The Harvard Civil Rights Project has identified Clayton County as having the most rapidly re-segregating school district in the country.⁷ Given the words and actions of the Joe T. Lane agents, this comes as no surprise. White testers were consistently told of schools they should avoid. At the same time, African-American testers were told nothing about schools

⁷ Frankenberg, Erica and Lee, Chungmei, *Race in American Public Schools: Rapidly Resegregating School Districts*, The Civil Rights Project, Harvard University (August, 2002).

and were shown homes located in the very same school districts Whites were told to avoid. NFHA's investigations clearly demonstrate that schools have become a proxy for race and that steering based upon the racial demographics of schools is pervasive.

Re/Max Buckhead – Atlanta, GA

In October 2005, NFHA filed a complaint with HUD against Re/Max Buckhead. NFHA's testing uncovered agents at this Re/Max location consistently and repeatedly steering White homeseekers to majority White neighborhoods and African-American homeseekers to majority African-American communities. During some tests, agents made negative comments about the City of Atlanta and other neighborhoods of color. In two instances, Black testers were shown homes in neighborhoods with significantly higher minority populations. In one instance, the agent did not keep appointments with the Black homeseeker. In another case, a Black homeseeker requested to see a house well north of the city (in a mostly White neighborhood), but was not shown that house. This complaint is currently pending with HUD.

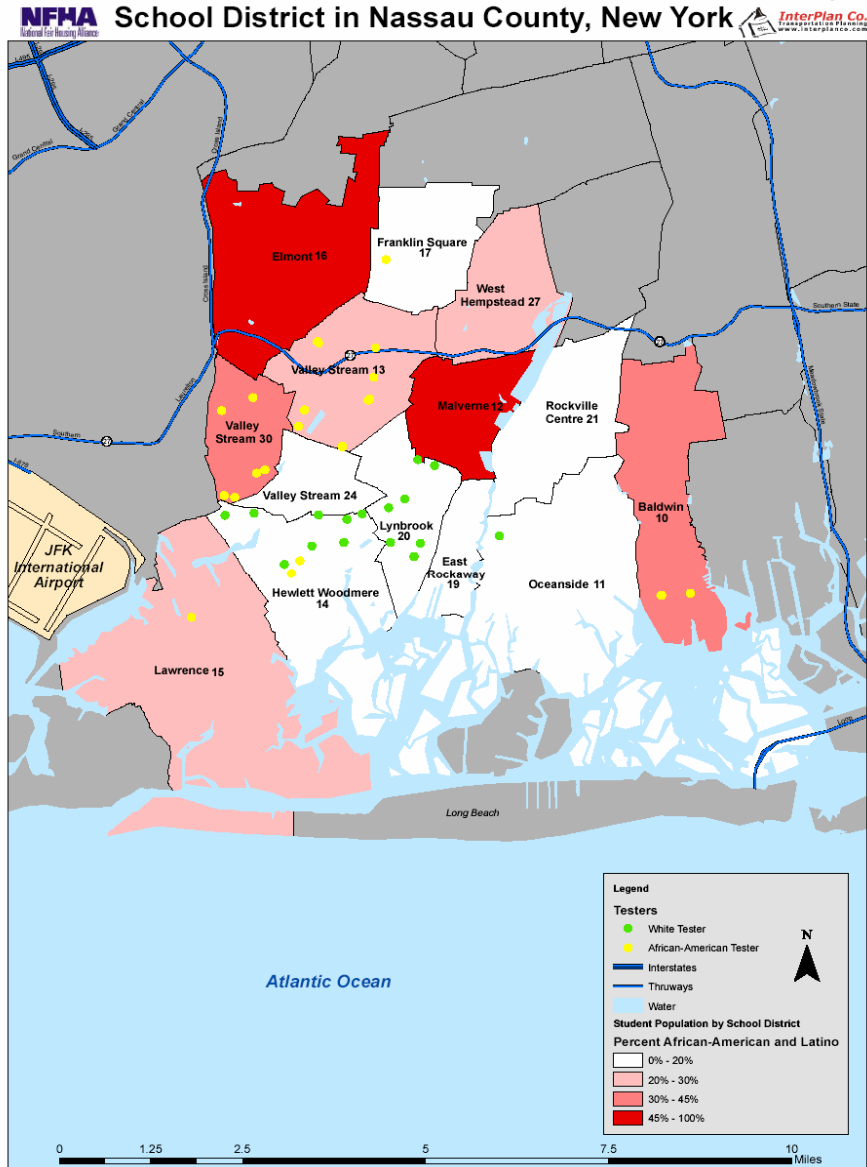
Julia Stevens Realty – Long Island, NY

In June 2006, NFHA filed a complaint with HUD against Julia Stevens Realty, a real estate company located in Nassau County. NFHA's complaint alleges that agents of this company repeatedly showed and recommended homes and school districts to White homeseekers in White communities and showed and recommended homes and school districts to African-American homeseekers in communities and school districts with higher African-American and Latino populations.

Testing revealed that White homebuyers were steered away from communities and school districts with more students of color. Agents made negative comments to White homebuyers about neighborhoods and school districts that contained high concentrations of African-Americans and Latinos, while recommending and showing homes in neighborhoods and school districts with significantly higher White populations. African-American homebuyers were marketed homes and schools in the very areas that Whites were told to avoid. (See map below.) Equally disturbing, real estate agents made negative comments about Jews to both White and African-American homebuyers. Agents repeatedly discouraged non-Jewish White homebuyers from considering neighborhoods with significant Jewish populations.

In one example of anti-Semitic comments, an agent drove a White tester past her own home. She pointed to a picture of Jesus that a relative had placed in the window to "show those Jews." The same agent later said that it was good to have some Jews in a neighborhood because they have a lot of money and they would never sell their homes to Blacks, thereby keeping the property values up. This complaint is pending.

Percent African-American and Latino Student Population by School District in Nassau County, New York

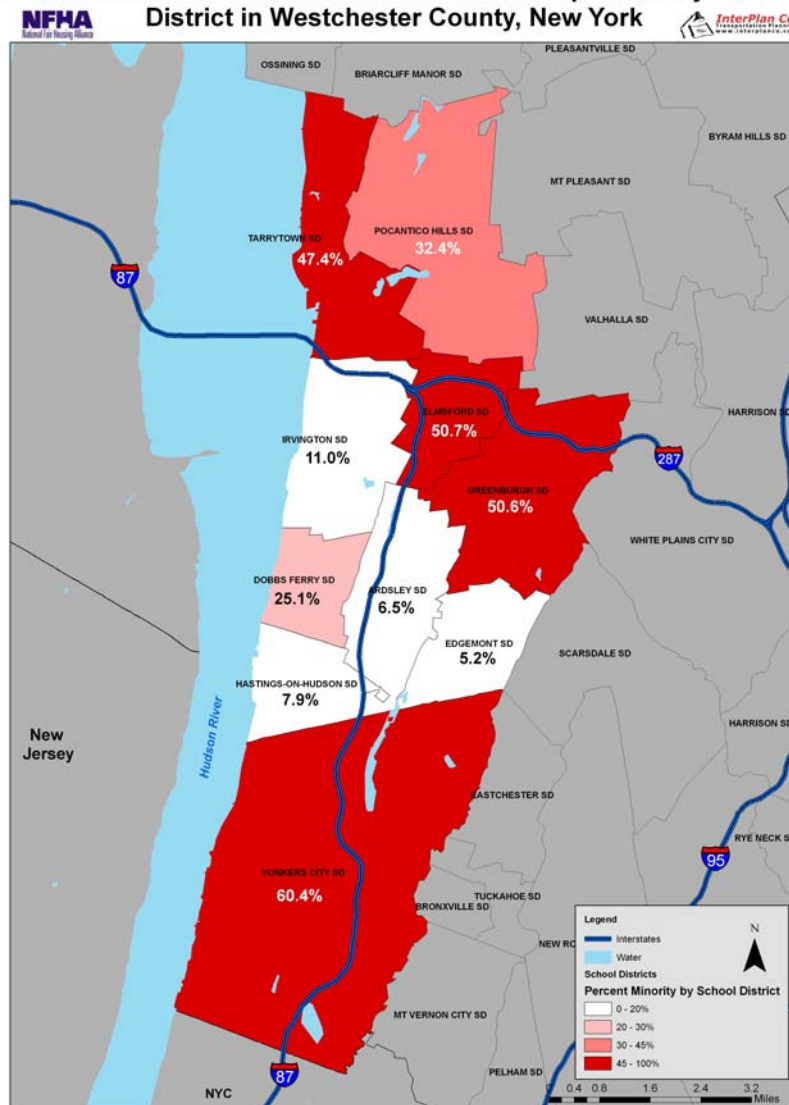


Peter J. Riolo Real Estate – Westchester County, NY

In March 2006, NFHA filed a complaint with both HUD and the Westchester County Human Relations Commission against Peter J. Riolo Real Estate, a real estate company located in Westchester County. The complaint alleges that agents of this real estate company repeatedly showed and recommended homes and school districts to White homebuyers in White communities and showed and recommended homes and school districts to African-American and Latino homebuyers in communities and school districts with higher minority populations. (See map below.)

The pattern that emerged from a series of tests in Westchester County was striking. Agents repeatedly told Whites that they should not consider Tarrytown/Sleepy Hollow schools. The unified schools of Tarrytown have high student test scores, a 98 percent graduation rate, and 84 percent of their graduates continuing on to college. White testers acting as home seekers were told to avoid Tarrytown schools and agents even said the schools were “bad”, but Latino homeseekers were told that Tarrytown schools were good. Whites were told that Tarrytown had a more “diverse population” and a “large Spanish speaking population.” At the same time, Latinos were shown and marketed homes in the Tarrytown school district. Agents are fully aware that they are not allowed to discuss the racial or ethnic composition of neighborhoods and schools. This complaint is pending.

Percent Latino and African American Student Population by School District in Westchester County, New York



Rental Discrimination in the Wake of Hurricane Katrina

NFHA's recent investigations have not been limited to real estate sales practices. In December 2005, NFHA issued *No Home for the Holidays*, a report describing a 66 percent rate of discrimination against African-American hurricane evacuees. In an investigation conducted three weeks after Hurricane Katrina, NFHA uncovered differential treatment of White and African-American homeseekers, including quoting higher rent prices or security deposits to African-American testers and offering special inducements or discounts to White renters.

In response to these troubling findings, NFHA initiated an investigation of housing discrimination in several cities to which many persons had evacuated in an effort to monitor whether hurricane evacuees were receiving fair and equitable access to housing. From mid-September through mid-December, 2005, NFHA conducted investigations of rental housing providers in seventeen cities in five states (Alabama, Florida, Georgia, Tennessee and Texas). Most of the differential treatment revealed in NFHA's testing fell into the following categories: failure to tell African-Americans about available apartments; failure to return telephone messages left by African-Americans; failure to provide information to African-American testers; quoting higher rent prices or security deposits to African-American testers; and offering special inducements or discounts to White renters. As a result, NFHA filed five complaints with HUD against apartment complexes in Birmingham, AL, Dallas, TX, and Florida. Currently, four complaints are pending with HUD regional offices, while the fifth complaint in Florida has settled.

In 2006, based on additional testing, NFHA released *Still No Home for the Holidays*, which reported race discrimination in two housing complexes in Texas and Florida. As a result, NFHA filed additional complaints with HUD against Crestbrook Apartments in Burleson, Texas, and Governors Gate Apartment Homes in Pensacola, Florida. Both of these complaints are pending. The 2006 tests once again uncovered differential treatment in the following areas: failure to tell African-Americans about available apartments; failure to return telephone messages left by African-Americans; and failure to provide information to African-Americans.

Other Fair Housing Concerns in 2006

Predatory Lending

Predatory lending is the practice wherein a mortgage lender or broker takes unfair advantage of a borrower by employing fraud and deception to make loans detrimental to the borrower. Predatory loans drain wealth and strip equity from homeowners and homebuyers. The most common features of predatory loans are excessive fees and interest rates, loans made without regard to ability to repay, loan flipping, prepayment penalties unrelated to an interest rate reduction, and undisclosed balloon payments. Predatory lenders also perpetrate outright fraud through inflated property appraisals or "bait and switch" tactics that mislead borrowers about

the terms of their loan. Unscrupulous lenders prey on vulnerable persons and take advantage of borrowers' lack of financial sophistication,⁸ including seniors, people of color and others by providing loans that make the borrowers worse off than they were before the new loans are made. Abusive subprime practices trap homeowners in over-priced loans and contribute to the current epidemic of foreclosures.

As shown in the charts below, African-American and Latino borrowers receive a disproportionate share of subprime mortgages:⁹

People of Color Receive Disproportionate Rate of All Subprime Loans

	# Higher Cost	% of Total Loans to Each Group
African-American	388,471	52%
Latino	375,889	40%
White	1,214,003	19%

Another study revealed even starker differences: African-Americans were six times more likely than Whites to receive higher-cost loans. The same study revealed that Latinos were 4.8 times more likely than Whites to receive higher-cost loans.¹⁰ These disparities are even more disturbing in light of the enormous losses in the subprime market. Recent lending data show that subprime mortgages—which make up 13 percent of the overall mortgage market—account for over 60 percent of new foreclosure filings.¹¹ Thus, African-American and Latino families, which already lag far behind White families in wealth and ownership, are more likely to receive dangerous, high-cost subprime loans than White borrowers. In fact, studies show this is true even when families of color have similar income levels and credit scores.¹²

⁸ Stein, Eric, *Quantifying the Economic Cost of Predatory Lending*, Center for Responsible Lending (2001), available at <http://www.responsiblelending.org/pdfs/Quant10-01.pdf>

⁹ Calculations from data reported in Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner, Higher-Priced Home Lending and the 2005 HMDA Data, Federal Reserve Bulletin A123, A160-161 (September 8, 2006).

¹⁰ Campen, Nafici, Rust, Smith, Stein and Kerkhove, "Paying More for the American Dream: A Multi-State Analysis of Higher Cost Home Purchase Lending," a Joint Report By: California Reinvestment Coalition, Community Reinvestment Association of North Carolina, Empire Justice Center, Massachusetts Affordable Housing Alliance, Neighborhood Economic Development Advocacy Project, and Woodstock Institute (March, 2007). Report available at: www.calreinvest.org. This report looks at the cost of home purchase lending in six urban areas – New York City, Los Angeles, Chicago, Boston, Charlotte and Rochester.

¹¹ MBA National Delinquency Survey through the third quarter of 2006, cited in testimony Michael D. Calhoun before the U.S. House Committee on financial Services/Subcommittee on Financial Institutions and Consumer Credit, "The New Regulatory Guidance on Subprime Hybrid Mortgages," (March 27, 2007).

¹² Debbie Gruenstein, Bocian, Keith S. Ernst and Wei Li, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages*, Center for Responsible Lending (May 31, 2006).

To the consternation of consumer advocates and policymakers at the federal and state levels, abuses in home mortgage lending have risen significantly in recent years. Accordingly, so too have enforcement actions and private party lawsuits against institutions accused of predatory lending. According to a recent report by the Government Accounting Office, “in 2002 alone, there were dozens of settlements resulting from accusations of abusive lending. In the largest of these, a major national mortgage lender agreed to pay up to \$484 million to tens of thousands of affected consumers.”¹³

Currently, the Home Ownership and Equity Protection Act (HOEPA) is the only federal law specifically crafted to combat predatory lending for the entire market.¹⁴ In addition, several states and localities have passed supplemental state laws restricting the terms or provisions of certain high-cost loans and/or strengthening licensing regulations for lenders and brokers. In some states, however, federal banking regulators have preempted state laws for the institutions they supervise, thus minimizing the benefits of consumer protection provisions in favor of industry profit and autonomy.¹⁵

Restrictive Ordinances

Due to an upsurge in concern and debate over immigration and immigration reform, 2006 was busier than usual for many civil rights, immigrant rights, and fair housing organizations. These discussions played out not only on cable news shows and in the chambers of the U.S. Congress, but also in city councils, mayors’ offices, state houses, and governors’ mansions. According to the National Conference of State Legislatures, 570 pieces of legislation concerning immigrants were introduced into state legislatures in 2006. Ninety bills in 32 states were passed; 84 were ultimately signed into law.¹⁶ Meanwhile, since the beginning of 2006, at least 35 restrictive immigration ordinances have passed at the local municipal level, with another 35 currently pending further action.¹⁷

¹³ United States General Accounting Office, *Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending* (January 2004), p.23.

¹⁴ The Military Personnel Financial Services Protection Act was signed into law on November 29, 2006 and provides additional protections for military personnel specifically.

¹⁵ Li, Wei & Ernst, Keith, *Subprime Market: State Predatory Lending Reforms*, Center for Responsible Lending (February 2006), available at http://www.responsiblelending.org/pdfs/rr010-State_Effects-0206.pdf.

¹⁶ “2006 State Legislation Related to Immigration: Enacted and Vetoed,” National Conference of State Legislatures, available at <http://ncsl.org/programs/immig/6ImmigEnactedLegis3.htm>. The 32 states were: Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming.

¹⁷ Fair Immigration Reform Movement, Local Immigration Ordinance Database, available at http://64.243.188.204/CCCFTP/local/3.10.07_database.doc. Maps available at <http://www.fairimmigration.org/learn/immigration-reform-and-immigrants/local-level/maps-of-ordinances.html>.

State and local anti-immigrant legislation raises many troubling issues, including serious concerns that such legislation is flatly unconstitutional. For example, a June 2006 analysis by the Congressional Research Service notes that the Supreme Court “has long recognized that regulation of immigration ‘is unquestionably exclusively a federal power;’” and since the federal Immigration and Nationality Act already occupies the regulatory field of immigration law enforcement, “there is reason to believe that state and federal courts would be precluded on preemption grounds from enforcing many aspects of the proposed” anti-immigrant ordinances.¹⁸ Thus, even if the nature of these pieces of legislation would not raise constitutional or other legal issues if they were passed by Congress, Congress’s past substantive action quite likely means that these local ordinances overreach, making them exercises in legal futility.

Nevertheless, it is possible that the courts now deliberating on these issues will not view these considerations as decisive, so it is important that civil rights and fair housing organizations have marshaled additional strong arguments citing civil rights statute violations that these ordinances illegally constitute or encourage.

While the courts have not held that discrimination on the basis of citizenship *automatically* violates the Fair Housing Act’s prohibition against discrimination on the basis of national origin, they have held that ordinances aimed at such discrimination would violate the Fair Housing Act “if such discrimination had the purpose *or effect* of discriminating on the basis of national origin.”¹⁹ Since most restrictive ordinances impose strict liability upon anyone who rents to illegal immigrants, landlords are given incentives (financial and otherwise) to be especially meticulous in deciding to whom they rent. And since landlords are typically ill-trained to determine the authenticity of a prospective renter’s claim to citizenship, they are likely to make determinations on the basis of racial and linguistic profiling. Thus “[p]roperty owners will be vulnerable to lawsuits violating the Fair Housing Act if they abide by the restrictive renting and leasing provisions contained in many of these anti-immigrant ordinances.”²⁰

Thanks to the advocacy and legal activism of civil rights organizations, including fair housing organizations, the Mexican American Legal Defense and Education Fund (MALDEF), the Puerto Rican Legal Defense and Education Fund (PRLDEF), and the American Civil Liberties Union (ACLU), several restrictive ordinances have been successfully blocked by mayors,

¹⁸ Jody Feder and Michael Garcia, “Legal Analysis of Proposed City of Hazleton Illegal Immigration Relief Act Ordinance,” Prepared upon the request of Rep. Paul E. Kanjorski, *Congressional Research Service* (June 29, 2006), esp. pp. 1, 3, 5. Available at

<http://www.prldef.org/Civil/Hazleton/hazleton%20legal%20documents/Hazleton%20Memo.pdf>.

¹⁹ *Ibid.*, p. 8 (emphasis added), citing *Espinoza v. Hillwood Square Mut. Asso.*, 522 F. Supp. 559 (D. Va. 1981).

²⁰ Mexican American Legal Defense and Education Fund, “Legal and Policy Analysis: Local Illegal Immigration Relief Act Ordinances,” available at

<http://www.maldef.org/publications/pdf/LEGAL%20AND%20POLICY%20ANALYSIS.pdf>.

stopped by judicial injunction, and challenged in court, while many others have been thwarted before introduction. MALDEF and the ACLU successfully fought a restrictive ordinance in San Bernardino, CA, while PRLDEF and ACLU are currently awaiting decision in their suit against the town of Hazleton, PA, which last year imposed penalties on businesses who hire and landlords renting to illegal immigrants. In each case, considerations of federal preemption and federal civil rights statutes have been adduced against the ordinances.

Other restrictive ordinances based on race, family status, and other protected classes have also been the focus of fair housing work. An especially troubling ordinance was passed by St. Bernard Parish, LA, in the aftermath of Hurricane Katrina. St. Bernard's "blood-relative ordinance" prohibited owners of single-family homes from renting to anyone not related to the owner by blood. Since 93 percent of owners of single-family homes in the Parish are White, the ordinance effectively prohibited non-Whites from renting houses. The Greater New Orleans Fair Housing Action Center (GNOFHAC) filed suit in U.S. District Court in October 2006 arguing that the St. Bernard's Parish ordinance violates the Fair Housing Act by effectively excluding a protected class of individuals from housing within the municipality. In November 2006, GNOFHAC filed a motion for a preliminary injunction against St. Bernard Parish, which agreed to the motion. A judge subsequently signed the order for the injunction, and the case is still pending.

In another example, the City of Black Jack, MO, removed an unmarried couple and their children from their own home on the grounds that the couple was not related enough to each other to satisfy a municipal ordinance. For the purpose of obtaining an occupancy permit, Black Jack defined a family as (1) an individual; (2) two or more persons related by blood, marriage or adoption; or (3) a group of not more than three persons who need not be related by blood, marriage or adoption. Therefore, an unmarried couple with one child would qualify as a family, whereas an unmarried couple with multiple children would not. Black Jack's restrictive definition of family violated its own local fair housing ordinance, which explicitly bans marital status discrimination. On August 10, the ACLU of Eastern Missouri filed a lawsuit against the city, claiming violation of due process and equal protection, and violation of fair housing laws. On August 15, 2006, the Black Jack city council unanimously passed a resolution changing the definition of family to include an unmarried couple and their children.

Continued Discrimination in the Gulf

NFHA's Hurricane Relief Project has been providing direct assistance to homeowners with mortgage and insurance problems, as well as working with local and national organizations to address public policy issues relating to the rebuilding process. Both of these aspects of our work have highlighted fair housing problems in the Gulf Coast region, including access to CDBG funds, predatory lending, improper structuring of rebuilding grants, insurance coverage, and disability issues.

In the public policy arena, one of the key issues to emerge is the severe lack of resources allocated to rebuild affordable rental housing. This is a fair housing issue because of the large number of members of protected classes who were renters before the storm, including people of color, families with children, people with disabilities, etc. In the City of New Orleans, for example, 75 percent of the population in areas damaged in the storm was African-American, and 53 percent of the residents in these areas were renters²¹. Statewide, approximately 82,000 rental units were lost.²² In Orleans Parish, the figure was approximately 52,000.²³ Of these, 89 percent were affordable to low income households.²⁴ Yet, the Low Income Housing Tax Credit Piggy-Back Program, the state's key program for restoring rental housing, is expected to produce only 25,000 units, less than 30 percent of those that were lost, and addressing only 12.5 percent of the extremely low income renter need.²⁵ In order to ensure that an adequate supply of affordable rental housing is available for people of color, families with children, people with disabilities, and others, much more funding must be appropriated for and targeted to the redevelopment of affordable rental units in New Orleans and across the Gulf.

Our experience assisting homeowners with mortgage and insurance problems has also highlighted other fair housing concerns. The project has worked directly with 150 homeowners since June 2006 and had contact with many more area residents. Almost without exception, our mortgage clients hold subprime, adjustable rate loans known as 2/28s.²⁶ Many of our clients have reduced income since the storm and are not able to continue making their mortgage payments; most of them would never have been able to make the payments once the interest rate on their loans adjusted. In the current market, they can neither refinance nor sell their homes for enough money to pay off the loan.

A sizeable amount of federal funding has been allocated to assisting homeowners to rebuild, and if these funds were distributed fairly, they would be a valuable resource for owners still waiting to repair their homes. However, in Louisiana, Mississippi and Alabama, these programs have a fundamental flaw that disadvantages homeowners in neighborhoods with lower housing values: they use the *lower* of the cost of repairs or the pre-hurricane market value

²¹ John R. Logan, "The Impact of Katrina: Race and Class in Storm-Damaged Neighborhoods, Brown University, unpublished paper, 2006.

²² See Louisiana Recovery Authority website, <http://www.road2la.org/la-hurricanes.htm>.

²³ U.S. Department of Housing and Urban Development Office of Policy Development and Research, "Current Housing Unit Damage Estimates, Hurricanes Katrina, Rita, and Wilma," February 12, 2006 (revised April 7, 2006).

²⁴ National Low Income Housing Coalition, "Hurricane Katrina's Impact on Low Income Housing Units Estimated 302,000 Units Lost or Damaged, 71% Low Income," 2005.

²⁵ National Low Income Housing Coalition et. al., Comments to Louisiana Recovery Authority, The Road Home Housing Programs, Action Plan Amendment for Disaster Recovery Funds, April 17, 2006.

²⁶ 2/28s are loans with fixed, artificially low interest rates for the first two years. After two years, the interest rate rises by 3 percent or so, resulting in a monthly payment increase of 30-50 percent or more. The interest rate adjusts every six months thereafter. These loans also typically include a 2-3 year pre-payment penalty period, requiring the borrower to pay a substantial fee (often 1 percent of the outstanding loan balance or 6 months' interest) in order to pay off or refinance the loan during that time.

of the property as a starting point for calculating the amount of assistance to which a homeowner is entitled, up to a maximum of \$150,000. For a home in an area with high housing values, the pre-hurricane value is likely to be higher than the cost of repairs, and some homeowners have been awarded tens of thousands of dollars more than they need to rebuild. If the same home is located in a lower-priced area, the reverse is true. These programs must be reformed to eliminate this bias against communities with lower housing values, many of which are predominantly occupied by African-Americans.

Our work with homeowners on insurance problems has also highlighted several problems that have fair housing implications. Many homeowners have experienced significant delays in receiving settlements from their insurance companies, and many are caught up in the dispute about whether damage was caused by wind or water, and thus whether it is covered by their homeowners insurance. Those with limited resources, often those who are members of protected classes, cannot undertake repairs without their insurance settlements. Their homes are continuing to deteriorate and their lives have been placed under considerable stress. Many have yet to complete, or in some cases begin, repairs of their homes, so they do not yet know whether the settlements proposed by their insurers are adequate.

The availability and affordability of homeowners insurance is a growing problem in the Gulf. Insurance rates have skyrocketed, increasing as much as 200-300 percent in some areas. Less coverage is available, as companies have stopped offering wind coverage or increased their deductibles for wind and hail. Many companies have pulled out of the market altogether and others are not renewing existing policies. Over 160 companies have active licenses to write homeowners insurance in Louisiana; a recent check of the Louisiana Department of Insurance showed that only 16 are currently writing policies, and a number of those are only renewing existing policies, not offering coverage to new clients.²⁷ Under these conditions, homeowners are forced to buy coverage in the residual market, paying high prices, often for limited coverage.

Most communities in the Gulf have now adopted new flood maps, with new requirements for elevating homes. In some cases, residents may need to elevate their homes as much as 12 feet or more above the base flood elevations. Some funding is available, either under flood insurance policies or through FEMA's hazard mitigation program, to help defray the cost of elevation. However, these funds cannot be used to make elevated homes accessible to people in wheelchairs or with physical disabilities that limit their mobility.

Overall, from a fair housing perspective, the hurricane-affected communities all along the Gulf are in a precarious position. Unless the course of redevelopment is altered substantially – and soon – it is likely those communities will become more segregated.

²⁷ <http://www.lda.la.gov/>

Internet Discrimination

When the Greater New Orleans Fair Housing Center saw that five websites advertising housing for Katrina evacuees in 2005 featured discriminatory postings, the center initiated complaint proceedings through HUD against the websites' owners, one of which was the Federal Emergency Management Agency (FEMA). These websites featured discriminatory postings, including, "I would love to house a single mom with one child, not racist but White only," and, "Not to sound racist but because we want to make things more understandable for our younger child we would like to house White children." These complaints are pending.

The Chicago Lawyers' Committee for Civil Rights Under Law has also been addressing the issue of internet discrimination. In *Chicago Lawyers' Committee for Civil Rights Under Law v. Craigslist, Inc.*, the nearly 150 advertisements (from July-October, 2005) at issue contained statements including "No Minorities," "African-Americans and Arabians tend to clash with me so that won't work out," "Christian straight single female needed," and "Sorry, no kids."²⁸ Importantly, Craigslist does not deny that such advertisements would violate section 3604(c) of the Fair Housing Act if they were printed in, say, the *New York Times* or *Chicago Tribune*; rather, Craigslist contends that it is protected by the Communications Decency Act and that this protection grants internet companies immunity from liabilities imposed by the Fair Housing Act.

In an *amicus* brief filed in U.S. District Court, NFHA argued in support of the Chicago Lawyers' Committee's case, holding that Congress intended the language of the Fair Housing Act to be "broad and inclusive," and that the Supreme Court itself has ruled that the Fair Housing Act should be given "generous construction."²⁹ Moreover, the Communications Decency Act (CDA) and the Fair Housing Act are perfectly consistent. Whereas the Fair Housing Act was designed to address the specific problem of discrimination in housing, the CDA was designed to address the general problem of "offensive or obscene material" on the internet.³⁰ Finally, CDA by its express terms preempts only inconsistent state laws;³¹ so even if the Fair Housing Act and CDA were inconsistent, nothing in CDA suggests Congress intended it to trump the Fair Housing Act, and everything in the Fair Housing Act suggests that it must be given priority.

²⁸ The Chicago Lawyers' Committee documented 141 such advertisements in its initial legal complaint against Craigslist. The complaint is available at <http://www.clccrul.org/templates/UserFiles/Documents/craigslistcomplaint.pdf>. Cox News Service reported in July 2006 that the Chicago Lawyers' Committee in fact documented "more than 150" discriminatory ads on Craigslist from July 2005 to February 2006. See Rebecca Carr, "Web Sites Carry Discriminatory Ads, Civil Liberties Group Say," Cox News Service (July 16, 2006), available at <http://www.coxwashington.com>.

²⁹ *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209 (1973); and *City of Edmonds v. Oxford Homes, Inc.*, 514 U.S. 725, 731 (1995).

³⁰ *Carafano v. Metrosplash.com Inc.*, 339 F.3d 1119, 1122 (9th Cir. 2003).

³¹ *Doe v. GTE Corp.*, 347 F.3d 655, 660 (7th Cir. 2003).

Unfortunately, these and other arguments did not sway the District Court Judge: the case against Craigslist was dismissed in November 2006. Chicago Lawyers' Committee immediately filed a motion to reconsider which was denied in January 2007. Currently briefs are being filed in support of the Committee's appeal in the United States Seventh Circuit Court of Appeals. Fortunately, the Seventh Circuit has recently criticized the very opinions cited by Craigslist in its defense.³² Indeed, in its original briefs, the Lawyers' Committee urged the District Court to "follow the Seventh Circuit's lead and hold that Section 230 [of CDA] provides legal protection to entities like Craigslist from civil liability only when they undertake good faith, front-end efforts to block and screen" the discriminatory content at issue.³³

Insurance Discrimination Based on Religion

An undercover investigation conducted by testers posing as insurance customers revealed that GuideOne Insurance, through its FaithGuard® endorsement, provides and markets its products and services to homeowners on the basis of their religion and religious status. While the company at times makes reference to "persons of faith" in general, it is clear that the company prefers and targets Christians and churches. NFHA and the Fair Housing Advocates Association of Akron, OH filed a complaint with the HUD. The complaint is pending.

GuideOne indicates that it protects the "most important part of the church – the congregation." The company waives insurance deductibles if there is a loss to personal property while it is in the "care, custody and control" of the insured's church; pays church tithes or donations if the insured suffers a loss of income from a disability; and doubles medical limits for an injury received while sponsoring an activity conducted on behalf of the church.

GuideOne offers and advertises its homeowners insurance products in violation of the federal Fair Housing Act by showing a preference or limitation for churchgoers or Christians to the exclusion of persons of faith who do not attend church, persons of other religions, and non-religious persons. The federal Fair Housing Act prohibits discrimination or preferential treatment by homeowners insurance companies on the basis of race, color, religion, sex, handicap, familial status, or national origin.

³² See *Ibid.*

³³ See CLCCRUL's *Memorandum in Opposition to Defendant's Motion for Judgment on the Pleadings*, May 19, 2006, available at http://www.clccrul.org/projects/the_fair_housing_project/craigslist_lawsuit.html.

Section II: Housing Discrimination Complaints for 2006

Each year NFHA collects data from both private fair housing groups and government entities in order to present an annual snapshot of fair housing enforcement in America. And each year these numbers paint the same picture: even compared to an extremely conservative estimate of the gross number of annual fair housing violations, the aggregate number of complaints documented and investigated by all polled entities is miniscule. The following chart reports on complaint filings and (in the case of DOJ) case filings reported by private and governmental fair housing agencies and organizations since 2002. 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 they are “substantially equivalent” under the law, i.e. that the state or local law is substantially equivalent to the federal law.

TOTAL FAIR HOUSING COMPLAINTS FILED

Agency	Claims/ Complaints	2002	2003	2004	2005	2006
NFHA	Complaints	17,543	17,022	18,094	16,789	17,347
FHAP *	Claims and Complaints	5,129	5,352	6,370	7,034	7,498
HUD *	Claims and Complaints	2,511	2,745	2,817	2,227	2,830
DOJ *	Case Filings	49	29	38	42	31
Totals		25,232	25,148	27,319	26,092	27,706

* HUD, FHAP and DOJ data are for Fiscal Year 2006. 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 2006, there were 27,706 complaints of housing discrimination. This is the highest number of complaints reported in any year going back to 2002. Still, this represents **less than one percent of the estimated 3.7 million** annual housing discrimination violations against African-Americans, Latinos, Asian Americans, and American Indians in rental and sales markets.³⁴ It is crucial, however, to point out that this estimate of annual aggregate fair housing violations is *extremely* conservative. For it does not seek to reflect discrimination against persons with

³⁴ For the basis of this estimate, see NFHA’s *2004 Trends Report*, which reports findings from a study of HDS 2000 data by John Simonson, University of Wisconsin – Platteville.

disabilities—the group that files the highest number of complaints with HUD each year—nor discrimination on the basis of religion, sex, familial status or other ethnicities. It also does not reflect discrimination in the following areas: lending, insurance, planning, and zoning. Since NFHA’s estimate significantly *undercounts* the annual incidence of housing discrimination, the claim that the total number of complaints processed by fair housing organizations and agencies constitutes less than one percent of gross annual violations is extremely conservative.

Discrimination by Protected Class

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

Basis	NFHA	HUD	FHAP	DOJ
Race	22%	44%	38%	29%
Disability	36%	45%	38%	42%
Family Status	13%	11%	15%	10%
National Origin	8%	10%	15%	6%
Sex	4%	10%	9%	19%
Religion	1%	3%	2%	6%
Color	1%	1%	2%	n/a
Other*	16%	3%	6%	n/a

* The “other” category for NFHA complaints represents complaints arising from categories protected at the state or local level including sexual orientation, source of income, marital status, medical condition, age, or student status. The “other” category for HUD and FHAP complaints represents complaints of retaliation. HUD, FHAP, and DOJ data are for Fiscal Year 2006. Totals may exceed 100 percent, because a single complaint may have multiple bases. Percentages are rounded to the nearest whole number.

Discrimination by Housing Market Sector

1. Rental Market Discrimination— Private Groups Report 14,211 Complaints³⁵

Of the many categories of complaint data for housing discrimination, rental cases continue to represent the largest number of complaints. Most housing discrimination complaints are filed against apartment owners and managers for discriminating against renters on the basis of race, disability, family status and national origin. In 2006, private fair housing groups reported

³⁵ 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.

14,211 complaints of housing discrimination in the rental market.

Within the rental market, discrimination operates in a variety of ways, including the following:

- denial of available rental units;
- refusal to make a reasonable accommodation or modification for a disabled individual;
- higher rents or security deposits for minorities and individuals in other protected classes;
- segregation of African-Americans, Latinos, Asian Americans;
- segregation of families with children to certain parts of a building or complex;
- restriction of access to rental property amenities such as swimming pools or community rooms; and
- initiation of eviction proceedings against White tenants who have visitors who are African-American, Latino or Asian American.

2. Home Sales Discrimination—Private Groups Report 710 Complaints

Through complaints and NFHA's testing and investigation program, NFHA has identified a broad range of discriminatory sales behavior. These patterns of behavior include real estate agents who:

- deny appointments to African-Americans;
- require African-Americans and Latinos, but not their White counterparts, to provide proof of financing prior to viewing homes;
- steer Whites to White neighborhoods and people of color to neighborhoods where people of color predominate;
- make discriminatory comments to Whites, including derogatory comments about African-Americans, Latinos and Jews;
- tell Whites what school districts to avoid and, at the same time, show homes to African-Americans and Latinos in the very school districts Whites are told to avoid.³⁶

Patterns of behavior also include a seller's refusal to negotiate the price of the home when offers are made by African-Americans, Latinos, or Asian Americans but a willingness 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.

³⁶ These last two specific forms of discriminatory behavior were uncovered in NFHA's recent sales steering investigation.

3. Mortgage Lending Discrimination— Private Groups Report 1,027 Complaints

Mortgage lenders may discriminate against homebuyers in several ways:

- 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.

Predatory lending practices have also been shown to be targeted at minority neighborhoods, in violation of the Fair Housing Act. Abusive and predatory lending harms individual borrowers and destabilizes communities and neighborhoods by causing widespread foreclosures, which reduces property values. Predatory lending also damages the subprime market by casting suspicion on its legitimacy even when the subprime market, when conducted responsibly and honestly, provides valuable access to credit for some borrowers.

4. Homeowners Insurance Discrimination—Private Groups Report 63 Complaints

Discrimination related to homeowners insurance can be difficult to identify because its implementation is rarely overt. For example, when African-Americans and Latinos call agents and leave messages requesting insurance quotes and other information, they often find that their calls are not returned. Such “linguistic profiling” – whereby a person is treated differently based on a racially- or ethnically-identifiable voice – is a significant and documented phenomenon in many types of housing transactions. The result is that some insurance agents promise to provide insurance quotes but never do so, while sending quotes to Whites.

Also, insurance discrimination is often reflected in the underwriting policies of the company and not in the direct behavior of the agent. For example, urban homes are for the most part 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 dollar value. For example, before a lawsuit that changed its policies in 1990, American Family Insurance in Milwaukee, WI, had an underwriting stipulation for their best policy type (Gold Star) that homes be built after 1945 and have a value of more than \$40,000. Those two underwriting guidelines alone eliminated approximately 40 percent of the homes located in neighborhoods predominately populated by people of color within the city limits of Milwaukee.

5. Harassment—Private Groups Report 564 Complaints

Federal fair housing statutes make it illegal to direct abusive, foul, threatening, or intimidating language or behavior toward a tenant, resident, or homeseeker because of their membership in one of the federally protected classes. Examples of complaints of this kind include racist comments between two tenants and directed at a third or a landlord's intimations that he will get to repairs more quickly if sexual favors are offered by the tenant.

Section III: A Broken System – Enforcement of the Fair Housing Act

The mismatch between the high incidence of housing discrimination and the low incidence of complaints of housing discrimination is due in large part to the lack of enforcement of fair housing laws. Landlords, real estate agents, lenders, insurance agents and others have limited fear of getting caught in the act of discriminating simply because neither the federal nor state nor local governments have made fair housing enforcement a priority. Even those who are prosecuted often pay such a small penalty that discrimination becomes just another cost of doing business. As a result, housing providers continue to discriminate and our country remains highly segregated.

Addressing Less than One Percent of Violations

As mentioned above, while there are well over 3.7 million fair housing violations annually, only 27,706 complaints were filed in 2006. Private fair housing groups processed 17,347 of the 27,706 complaints and cases filed in 2006 – a total of 63 percent of all complaints. (This number does not account for double counting of complaints that are referred to HUD and FHAP, and for which fair housing groups are often not given credit for filing.) HUD processed only 2,830 complaints and state and local agencies (FHAPs) processed 7,498. These are the highest numbers for HUD and FHAPs over the past five years; however, as shown in the chart below, the number of cases HUD is processing has drastically declined since the 1992 high of 6,578 complaints.

HUD Administrative Complaints Filed by Year

Year	Number of HUD 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

Aged Cases

Although the Fair Housing Act regulations require that HUD process a case in 100 days or less (except for complex or systemic cases), HUD routinely has a significant “aged” case load, and many cases are open for months and even years and never investigated. In its annual report to Congress, HUD reported that 1,172 cases passed the 100 day mark in FY06, 80 more than in FY05.³⁷ This does not include the number of cases that were aged prior to the start of FY06. NFHA has several cases filed at HUD, none of which has been investigated within 100 days. Although many of these cases represent complex or systemic issues, only one case has been referred to HUD’s systemic case unit. Some of this may reflect the fact that the Office of Fair Housing and Equal Opportunity is understaffed, and some of it reflects a breakdown of investigatory practices and systems. We also note that there are 3,940 ongoing investigations by Fair Housing Assistance Program Agencies (HUD’s counterparts at the state/local levels) that have passed the 100 day mark.³⁸

³⁷ *The State of Fair Housing – FY2006 Annual Report on Fair Housing*, US Department of Housing and Urban Development, the Office of Fair Housing and Equal Opportunity (March 29, 2007), p. 33.

³⁸ *Ibid.*, p. 55.

HUD Charged only 34 out of 2,830 Complaints in 2006

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 finds reasonable cause, the agency 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(s) and the respondent(s)—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 issued only 34 charges following a determination that there was reasonable cause to believe that unlawful discrimination occurred in fiscal year 2006. The number of charges issued by HUD in 2006 dropped from even the small number of 47 issued in FY 2005. Even the recent high of 88 charges in FY 2001 is much too low in light of the level of housing discrimination in America. 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.

Fair Housing Act Cases in which HUD Issued a Charge Fiscal Years 2001-2006

2001	2002	2003	2004	2005	2006	TOTAL
88	69	23	43	47	34	277

DOJ Filed Only 31 Cases in 2006

The Department of Justice has also filed fewer fair housing cases during the past year than in previous years. DOJ filed 31 fair housing cases in 2006, compared to 42 in 2005, and down from 53 in 2001. The total number of cases filed by DOJ in the last four years (FY03-06) is 29 percent below the total number of cases filed in the preceding four years (FY99-02).

Total DOJ Cases Filed

FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06
48	45	53	49	29	38	42	31

It is interesting to note that DOJ's Housing and Civil Enforcement Section has 40 full-time attorneys on staff, as well as other staff members. In an April 28, 2007 article, the *Washington Post* reported that there are allegations that DOJ's hiring process has become increasingly

politicized under the current Bush Administration particularly in the Civil Rights Division, of which housing is a part.

“Senate and House investigators received a letter from the unidentified Justice employees, who alleged that hiring at the department was ‘consistently and methodically being eroded by partisan politics,’” according to the article. The letter brought specific attention to the Attorney General’s Honors Program and the Summer Law Intern Program; an internal April 26, 2007 memo “returns control of the Attorney General’s Honors Program and the Summer Law Intern Program to career lawyers in the department after four years during which political appointees directed the process.”³⁹

Another reason for the low number of cases may lay in the fact that DOJ has failed to file “election” cases in a timely manner, in spite of its legal requirement to do so, as cited even on its own website.⁴⁰ (This is a case 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.) DOJ has also dragged out cases much longer than required, requiring more and more investigations.

The Fair Housing Amendments Act (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. One example occurred in Chicago where DOJ refused to file a federal suit after HUD referred the case, even in spite of intervention by a congressional representative. The case eventually settled – but the DOJ’s actions served to undercut the relief provided to the complainants in the case.

Another significant problem is DOJ’s refusal to take disparate impact cases. In 2003, DOJ announced that it would no longer file disparate impact cases involving housing discrimination.⁴¹ DOJ’s decision was a sharp break from DOJ’s decades-long, bipartisan policy to litigate these cases aggressively. The federal government is often the only entity with the capacity to investigate and litigate such fair housing complaints. 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. 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. Examples of disparate impact include (1) placing a limit on the number of persons per bedroom, which has a disparate

³⁹ Eggen, Dan and Goldstein, Amy. “Political Appointees No Longer to Pick Justice Interns,” *The Washington Post*, April 28, 2007, p. A02.

⁴⁰ See <http://www.usdoj.gov/crt/housing/faq.htm#enforce>. “If HUD determines that reasonable cause exists to believe that a discriminatory housing practice has occurred, then either the complainant or the respondent may elect to have the case heard in federal court. In those instances, the Department of Justice will bring the case on behalf of the individual complainant.”

⁴¹ HUD HUB Directors’ meeting (Rhode Island, 2003).

impact against families with children and (2) imposing a minimum loan or insurance amount, which has a disparate impact against properties in minority neighborhoods.

Case Study: Racial Discrimination

In the face of the stark segregation in this nation, the high number of race complaints received by fair housing centers, HUD, and FHAPs, and the numerous racial steering cases brought by NFHA and other centers, the federal government charged and filed only 16 cases of race discrimination in 2006. Last year, HUD issued charges in only 12 cases involving race discrimination that were filed with the agency. DOJ filed an additional four race cases.⁴² The total number of race cases filed by DOJ in the last four years (FY03-06) is an astounding 57 percent fewer than the total number filed in the preceding four years (FY99-02).

DOJ Race Cases Filed

FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06
16	21	20	19	7	8	10	8

Federal Obligation to “Affirmatively Further Fair Housing”

The Housing and Community Development Act of 1974 requires federal, state and local entities, including states, cities and counties, to act affirmatively to further fair housing. This “affirmatively furthering” obligation requires that entities that receive funding from HUD take steps to identify and address housing discrimination throughout their communities.

One of the most significant funding streams is the Community Development Block Grant (CDBG) program, used to develop housing and community infrastructure, and to fund programs and activities that benefit low- and moderate-income families and the community at large. HUD requires states, cities and counties that receive this funding to prepare an Analysis of Impediments to Fair Housing Choice (AI) as part of their planning process. CDBG is potential funding for fair housing centers across the country—for fair housing education, outreach and enforcement, assistance in developing and monitoring AIs, and helping to ensure that the recipients of CDBG funding act in a way that is consistent with the Fair Housing Act.

NFHA estimates that less than 10 percent of the more than 1,100 CDBG entitlement jurisdictions in the country actually have programs to address fair housing concerns in their communities. Even fewer provide funding to private fair housing organizations serving their jurisdiction. Without doubt, it has been difficult to enforce this requirement because HUD has not

⁴² Data provided to NFHA by Housing and Civil Enforcement Section, United States Department of Justice, March, 2007. DOJ filed a total of 8 race cases; however four of them were referred from HUD, so they were not included in the “16” total due to double counting.

promulgated regulations for the enforcement of this requirement, although the law was passed in 1974.

Many communities fail to prepare an acceptable AI; in addition, those that do often fail to follow them or do not update them when their communities experience changes. Despite its authority to do so, HUD has not imposed sanctions on communities that have failed to affirmatively further fair housing, has not required communities to update their AIs at least every five years, and has not required communities to follow their AIs. HUD could put some teeth into its scant efforts at monitoring AIs by reducing or terminating funding for those communities that do not follow these requirements.

NFHA applauds HUD for issuing in February 2007 a memorandum of guidance outlining local jurisdictions' obligations to affirmatively further fair housing and to include fair housing in their comprehensive plans and CDBG funding decisions. Building on similar memos by HUD Assistant Secretaries in 1988 and 1991, HUD Assistant Secretary for Community Planning and Development, Pamela H. Patenaude, and HUD Assistant Secretary for Fair Housing and Equal Opportunity, Kim Kendrick, outlined CDBG recipients' obligations to certify that they will use these funds to affirmatively further fair housing within their jurisdictions. This guidance discusses the requirement to conduct and implement an AI. It also states that "one major method for achieving these purposes is funding of local fair housing agencies."⁴³ As stated above, however, HUD has not promulgated sufficient regulations to enforce this guidance.

One fair housing center has taken a unique approach to addressing local jurisdictions that take government funds but do not affirmatively further fair housing: a charge under the False Claims Act of 1863. In 2006, the Anti-Discrimination Center of Metro New York filed *US ex rel, Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, NY*, in which the Center claims that the County presented false claims to the federal government when it repeatedly certified that it had affirmatively furthered fair housing and accepted \$45 million in CDBG funds, violating the federal False Claims Act. The lawsuit alleges that Westchester County is strongly segregated by race and national origin and that the county's AI failed to address the residential segregation over a period of years. The lawsuit charts the numerous situations in which the County has failed to encourage or worked to oppose housing that will serve people of color.

The same pattern of failure to address fair housing issues in communities has been reported to NFHA by many of its members about communities all over the country, but HUD has not taken any meaningful action to sanction these communities.

⁴³ HUD, *Memorandum for Community Planning and Development Field Directors and Fair Housing and Equal Opportunity Regional Directors, et. al., Re: Affirmatively Furthering Fair Housing in the Community Development Block Grant Program* (February 9, 2007), available at <http://www.hud.gov/offices/fheo/promotingfh/fairhousing-cdbg.pdf>.

Fair Housing Initiatives Program (FHIP): Private Efforts Are Underfunded

Although private fair housing organizations routinely process at least two-thirds of the nation's fair housing complaints, the primary funding stream for these efforts, HUD's Fair Housing Initiatives Program (FHIP), is woefully under-funded. 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 frontline enforcement of the law, largely through 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 funded FHIP at a high of \$26 million in 1995. However, in subsequent years, funding has been earmarked for research and other projects, which, while important, are inappropriate uses of FHIP funding.

Congressional Appropriations for FHIP Since 1994⁴⁴

Fiscal Year	Appropriation
1994	\$ 21 million
1995	\$ 26 million
1996	\$ 17 million
1997	\$ 15 million
1998	\$ 15 million
1999	\$ 16 million *
2000	\$ 18 million *
2001	\$ 17 million *
2002	\$ 19 million *
2003	\$ 18 million *
2004	\$ 18 million *
2005	\$ 18 million *
2006	\$ 18 million *
2007	\$ 18.1 million *
2008 – proposed by President	\$ 19.4 million *

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

⁴⁴ FHIP was a pilot program from 1989 to 1993. It was authorized as a program in 1994.

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 13 years. From an appropriation of \$4.5 million in 1994, the FHAP appropriation has increased almost six-fold, to a 2007 level of \$ 25.7 million.

While we have seen some recent improvements, HUD has also had its share of management problems in past years 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 recommended that FHIP be revitalized in light of significant operational flaws that adversely affect enforcement.⁴⁵

FHIP applicants also cite concerns with the process by which FHIP applications are evaluated since similar applications sometimes receive vastly different scores. The evaluation process has often been described as a “lottery,” with no consistent measures for evaluation panel members or from year to year.

In addition, over the past five years, several fair housing organizations nationwide have closed their doors due to lack of funding. (See chart below.) Numerous other organizations have had to significantly curtail or eliminate their enforcement activities due to cutbacks including staff reduction and budget restraints.

⁴⁵ *Reconstructing Fair Housing*, National Council on Disability (November 6, 2001).

Closed Fair Housing Organizations

Organization	Location
Arkansas Fair Housing Council	Arkadelphia, AR
Cuyahoga Plan of Ohio, Inc.	Cleveland, OH
Housing For All	Denver, CO
Housing Opportunities Made Equal at NEWSED Community Development Corporation	Denver, CO
Intermountain Fair Housing Council	Boise, ID
Jackson County Fair Housing Center	Jackson, MS
Kansas City Fair Housing Center	Kansas City, MO
Leadership Council for Metro Open Communities	Chicago, IL
Minnesota Fair Housing Center	Minneapolis/St. Paul, MN
North Carolina Fair Housing Center	Durham, NC
Open Housing Center	New York, NY
Tenant's Action Group of Philadelphia, Fair Housing Program	Philadelphia, PA
Wyoming Fair Housing, Inc.	Casper, WY

Section IV: Segregation and Its Costs – The Avoidable Results of Inaction

The story of segregation in America during the past two decades is not all bad; some improvements have been made. According to the U.S. Census Bureau, which follows other social scientists in measuring segregation along five different dimensions,⁴⁶ “All five measures of segregation indicate a [nationwide] reduction in residential segregation of Blacks [from non-Hispanic Whites] between 1980 and 1990, and a further reduction between 1990 and 2000.”⁴⁷ Moreover, on the single most widely used index of segregation, dissimilarity, “only 8 of 220 metropolitan areas had an increase in residential [Black-White] segregation between 1980 and 2000, while 203 metropolitan areas had a decrease.”⁴⁸ And in a neighborhood-level analysis of 69 of the largest metropolitan areas (25,134 neighborhoods), researchers at the Urban Institute found that the share of these neighborhoods that was “exclusively White”—i.e. less than 5 percent Black—fell from 65 percent in 1980 to 56 percent in 1990 and then to 47 percent in 2000.⁴⁹

While these are certainly improvements, there is no occasion for celebration—at best, the pace of progress is a slow crawl, leaving American neighborhoods extremely segregated on the basis

⁴⁶ These are: evenness (dissimilarity), exposure, concentration, centralization, and clustering.

⁴⁷ U.S. Census Bureau, *Racial and Ethnic Residential Segregation in the United States: 1980-2000* (August 2002), p. 59. Available at http://www.census.gov/hhes/www/housing/housing_patterns/pdf/ch5.pdf.

⁴⁸ *Ibid.*, p. 64.

⁴⁹ Rawlings, L., et. al., “Race and Residence: Prospects for Stable Neighborhood Integration,” in *Neighborhood Change in Urban America*, n. 3 (March 2004), p. 2. Available at http://www.urban.org/uploadedpdf/310985_NCUA3.pdf.

of race and national origin and with little protection against looming forces that could make things much worse. Relying on the same neighborhood-by-neighborhood analysis, the Urban Institute's analysts found that "among neighborhoods that were exclusively White in 1990, 81 percent remained so in 2000, while 15 percent shifted into the *predominantly White* category [i.e. 5 to 10 percent Black population]." Meanwhile, virtually all—over 90 percent—of the neighborhoods that were predominantly or exclusively Black in 1990 were predominantly or exclusively Black in 2000.⁵⁰ It is therefore no surprise that while the typical White resident of a metropolitan area lives in a neighborhood that is 80.2 percent White, 6.7 percent Black, 7.9 percent Hispanic and 3.9 percent Asian, the typical Black resident lives in a neighborhood that is 51.4 percent Black, 33 percent White, 11.4 percent Hispanic, and 3.3 percent Asian.⁵¹ And while segregation has declined by over 12 percent in metropolitan areas which have less than five percent Black population, the decline in metropolitan areas with a Black population of 20 percent or more has been only about half that.⁵²

While social scientists have devised these different indexes of segregation to capture the nuances of the phenomenon, this multifaceted scheme of measurement can lend itself to misuse if improvement along one dimension of segregation is permitted to overshadow problems along another. For example, although Black *isolation*⁵³ declined by 12 percent within the 50 largest metropolitan areas between 1980 and 2000, Blacks' *exposure* to Whites⁵⁴ increased by just one percent.⁵⁵ This means that while the racial composition of *entire* census tracts has become progressively more mixed over the past two decades, this has not led to markedly more interaction between members of different racial groups.

Since different segregation indexes can yield somewhat different pictures, analysts have devised a *composite* indicator to express the cumulative incidence of segregation. First employed by Douglas S. Massey and Nancy A. Denton in their long-term study of segregation in America that culminated in their path-breaking *American Apartheid* (1993), the term *hypersegregation* is used to denote a situation in which an area is deemed segregated on at least four of the five individual dimensions. When viewed through this lens, the gains America has made on segregation in the past decades are paltry compared to the work that remains.

In 2004, Rima Wilkes and John Iceland published the most extensive study yet of 2000 Census data in order to measure segregation and hypersegregation among Whites, Blacks, Hispanics,

⁵⁰ *Ibid.*, p. 3.

⁵¹ "Ethnic Diversity Grows, Neighborhood Integration Lags Behind," *Report by the Lewis Mumford Center* (April 2001), p. 3. Available at <http://mumford.albany.edu/census/report.html>.

⁵² *Ibid.*, p. 4.

⁵³ I.e. the percentage of residents that is the same race in the average Black resident's neighborhood.

⁵⁴ I.e. the average probability of contact with a white person.

⁵⁵ Camille Zubrinsky Charles, "The Dynamics of Racial Residential Segregation," *Annual Review of Sociology*, v. 29 (2003), pp. 167-207, p. 175.

Asians, and Native Americans.⁵⁶ According to Massey and Denton's analysis of 1980 and 1990 Census data, Blacks were hypersegregated in 16 metropolitan areas in 1980 and in 29 metropolitan areas in 1990. Their analysis found no metropolitan area in which Hispanics were hypersegregated in those years, and it did not seek to measure for the hypersegregation of Asians or Native Americans. Wilkes and Iceland's study shows that hypersegregation is alive and well in America today. According to their analysis, there were 29 metropolitan areas with Black-White hypersegregation in 2000, and two areas with Hispanic-White hypersegregation (Los Angeles and New York).⁵⁷ The 29 hypersegregated metropolitan areas were:

Cities that were segregated on all five dimensions in 2000: Chicago, Cleveland, Detroit, Milwaukee, Newark, and Philadelphia.

Cities that were segregated on four of five dimensions in 2000: Albany, Georgia; Atlanta; Baltimore; Baton Rouge; Beaumont—Port Arthur; Birmingham; Buffalo—Niagara Falls; Dayton—Springfield, Ohio; Flint; Gary; Houston; Jackson; Kankakee, Illinois; Los Angeles—Long Beach; Miami; Memphis; Mobile; Monroe, Louisiana; New Orleans; New York; Saginaw—Bay City, Michigan; St. Louis; and Washington, D.C.⁵⁸

These findings confirm that there is an ongoing crisis of segregation in America. While segregation does seem to be declining on some dimensions nationwide (as evidenced by the Census Bureau's 2002 study⁵⁹), it is declining very slowly, and indeed increasing in some areas.⁶⁰ America's metropolitan areas remain far more segregated than they were in 1980, almost a decade before the Fair Housing Amendments Act of 1988, which expanded the fair housing enforcement powers of both the Department of Housing and Urban Development and the Justice Department.

Wilkes and Iceland's analysis confirms the existence of a further perverse aspect of the ongoing "American apartheid," namely that disparities in income cannot explain the levels of segregation seen in America's metropolitan areas. In fact, other than race, the only feature of a city or of a group's members that is associated with lower hypersegregation is the city's

⁵⁶ Wilkes and Iceland, "Hypersegregation in the Twenty-First Century," *Demography*, v. 41 (February 2004), pp. 23-36.

⁵⁷ *Ibid.*, p. 29. Although Wilkes and Iceland use an improved index for measuring *concentration* (one of the five indexes), they also analyzed the 2000 data using Massey and Denton's concentration index and found that "the number of metropolitan areas that were [Black-White] hypersegregated declined from 29 in 1990 to 23 in 2000. Nine metropolitan areas dropped off the list by 2000...[while] three metropolitan areas—Atlanta, Dayton, and Mobile—became newly hypersegregated in 2000."

⁵⁸ *Ibid.*

⁵⁹ Of which Iceland was himself a coauthor. See note 47 above.

⁶⁰ Especially the South, as indicated by the increased segregation of Atlanta and Mobile registered by Massey and Denton's indexes for hypersegregation (see note 57 above).

percentage of residents in the military.⁶¹ This shows the “overarching salience of race in shaping residential patterns in these highly divided metropolitan areas.”⁶²

Research from the Joint Center for Housing Studies at Harvard’s Kennedy School of Government supports this finding.⁶³ According to Gary Orfield and Nancy McArdle, segregation measures within the Boston metropolitan area “remain high between Blacks and Whites whether we examine those households with incomes below \$30,000 or those over \$100,000.... Forty percent of metro Boston Black households with incomes over \$100,000 in 1999 lived in the City of Boston, versus just 7 percent of upper-income White households.”⁶⁴ Orfield and McArdle estimate that in eighty percent of the Boston metropolitan area, Blacks and Latinos purchase homes at less than half the rate than would be expected on the basis of affordability alone.

Similarly, a study of the Detroit metropolitan area using 1990 Census data showed that, after controlling for educational, occupational, and income levels, “Blacks remained highly segregated and more isolated from Whites at all socioeconomic levels.”⁶⁵ And while a more recent study of 2000 U.S. Census data shows that in the 1990s socioeconomic status began to play a larger role in explaining Black-White segregation, the findings from the Boston metro area nevertheless continue to generalize nationally: “money matters...but race is much more important.”⁶⁶ For example, in 2000, high-income Blacks *were* more likely than low-income Blacks to live in integrated neighborhoods; but they *were not* more likely than Blacks of other socioeconomic status to live in neighborhoods with *high-income* Whites.⁶⁷

While the attitudes and prejudices of everyday homeowners and homeseekers undoubtedly play some role in determining racial patterns within neighborhoods, it is important to point out that most people prefer integrated neighborhoods to segregated neighborhoods. In a 2001 telephone survey of 921 residents of the Washington, D.C. metropolitan area designed to poll Whites, Blacks, Latinos, and Asians in proportion to their representation within the metropolitan population as a whole, George Washington University sociologist Gregory Squires and his associates found that “about 50 percent of Whites...[and] 77 percent of Blacks, would

⁶¹ *Ibid.*, p. 34.

⁶² *Ibid.*, p. 23.

⁶³ Gary Orfield and Nancy McArdle, *The Vicious Cycle: Segregated Housing, Schools, and Intergenerational Inequality* (August 2006). Available at http://www.jchs.harvard.edu/publications/communitydevelopment/w06-4_orfield.pdf.

⁶⁴ *Ibid.*, p. 15.

⁶⁵ Joe T. Darden and Sameh M. Kamel, “Black Residential Segregation in the City and Suburbs of Detroit,” *Journal of Urban Affairs*, v. 22, n. 1, pp. 1-13, p. 9.

⁶⁶ *Ibid.*, p. 16.

⁶⁷ John Iceland, Cicely Sharpe, and Erika Steinmetz, “Class Differences in African-American Residential Patterns in US Metropolitan Areas: 1990-2000,” *Social Science Research*, v. 34 (2005), pp. 252-266, pp. 258-259.

prefer a neighborhood that is racially mixed or where Blacks comprise a majority of residents.”⁶⁸ These findings are consistent with the 1992-1994 Multi-City Study of Urban Inequality, which focused on Atlanta, Boston, Detroit, and Los Angeles, and which found that “[r]elative to the 1970s, Whites express greater comfort with higher levels of integration and fewer said they would be unwilling to enter racially mixed areas...[Meanwhile,] Blacks, Hispanics, and Asians all appear to want both meaningful integration and a substantial co-ethnic presence.”⁶⁹

The Costs of Segregation

Residential segregation is not an isolated social ill whose effects on other facets of life are negligible. Rather, the nexus of segregation is vast, touching the integral aspects of millions of lives, including those that at first appear wholly insulated from its reach. Whether it be the price of one’s home, the job opportunities one faces, the quality of one’s children’s schools, or the health of one’s family, the chances are good that residential segregation has a way of making life more difficult along that dimension—regardless of one’s race. The costs of segregation are many and dear. We document some of them below.

Housing and Homeownership Equity Costs

In the United States, homeownership is the primary source of family asset development and intergenerational wealth accumulation. In 2004, 94 percent of homeowners had equity of 10 percent or more of their home’s current price, and 87 percent had equity of 20 percent or more, according to the Joint Center for Housing Studies. Among households under the age of 40 having a net worth between \$20,000 to \$50,000, owners have ten times the median net wealth of renters, with half of that wealth taking the form of home equity. When the age-range is broadened to include households in their 40s and 50s, homeowners have almost 14 times the wealth of renters.⁷⁰

Data from the 2000 Census reveal the stark disparities in median home values associated with various racial and ethnic groups. The median home value for non-Hispanic White homeowners was \$123,400, compared with \$80,000 for Black homeowners, and \$105,600 for Latino homeowners. And while Black homeownership is at an all-time high, the homeownership gap

⁶⁸ Gregory D. Squires, Samantha Friedman, and Catherine E. Saidat, “Experiencing Residential Segregation: A Contemporary Study of Washington, D.C.,” in *Desegregating the City* (Albany: State University of New York Press, 2005), pp. 127-144, p. 135.

⁶⁹ See Charles, “The Dynamics of Racial Residential Segregation,” op. cit., p. 184; also *Brief of Amici Curiae Housing Scholars and Research & Advocacy Organizations in Support of Respondents in Parents Involved in Community Schools v. Seattle School District No. 1*, et. al. Available at <http://www.prrac.org/pdf/HousingScholarsBrief.pdf>.

⁷⁰ *The State of the Nation’s Housing 2006*, Joint Center for Housing Studies, Harvard University (2006), p. 19.

between Whites and Blacks is larger today than it was in 1940 (a 23 percent gap in 1940, a 28 percent gap today).⁷¹

According to Professor Squires of George Washington University, homeownership contributes a larger share of assets for minorities than for Whites: home equity constitutes two-thirds of African-American families' assets, as opposed to two-fifths for White families'.⁷² In large part because Black homeownership rates still lag significantly behind those for White families, the median net worth of African-American households in 2002 was \$5,988, while median net worth for White households stood at \$88,651.⁷³

One might think that the best way to address these grave disparities lies in promoting greater minority homeownership – this has been the Administration's stated approach, saying it hopes to create 5.5 million new minority homeowners by 2010.⁷⁴ Yet things are not so simple. Indeed, despite the *general* trend toward greater economic prosperity and security for homeowners than for renters, this trend begins to break down when we focus on minority populations, especially African-Americans. For example, African-Americans are the only group within which homeowners live in neighborhoods that are more segregated and less affluent than the neighborhoods inhabited by the typical renter in the group.⁷⁵ Moreover, after analyzing the demographics of bankruptcy, Elizabeth Warren, Gottlieb Professor of Law at Harvard Law School, found evidence showing that homeownership provides differential security against bankruptcy for those in different racial groups: while White renters are three times more likely to file for bankruptcy than White homeowners, Hispanic homeowners and renters file for bankruptcy at roughly equal rates, and "[t]he filing rate for Black homeowners is 37.1 per thousand [homeowners], a 17.8 percent *increase* in the filing rate over the filing rate for Black renters."⁷⁶

Given the amount and forms of lending discrimination and predatory lending documented above, there is no question that the discriminatory and predatory practices of some subprime lenders lead to this perverse phenomenon. These practices ensure that, for many of America's most disadvantaged citizens, the so-called "American Dream" of homeownership is

⁷¹ William J. Collins and Robert A. Margo, "Race and Homeownership: A Century Long View," *Explorations in Economic History*, v.38, n.1 (2001), pp. 68-92; and <http://www.census.gov/hhes/www/housing/hvs/annual06/ann06t20.html>.

⁷² Gregory D. Squires, "The New Redlining," in Squires, ed., *Why the Poor Pay More* (Westport, CT: Praeger, 2004), pp. 1-23, p. 5.

⁷³ Miriam Jordan, "Wealth Gap Widens in US Between Minorities, Whites," *Wall Street Journal* (Oct. 18, 2004), p. A2.

⁷⁴ See, for example, the President's remarks at <http://www.whitehouse.gov/news/releases/2005/07/20050714-4.html>.

⁷⁵ Camille Zubrinsky Charles, "The Dynamics of Racial Residential Segregation," *op. cit.*, p. 179.

⁷⁶ Warren, E. *The Economics of Race: When Making It to the Middle is Not Enough*, Washington and Lee Law Review (Fall 2004), v.61, n.4, pp. 1777-1799; p. 1790f; emphasis added.

increasingly not a route to financial security, but a path to financial ruin.⁷⁷ One study has found that housing and lending discrimination has cost the current generation of Blacks roughly \$82 billion. This translates to a difference in Black/White home equity of \$20,000 per household, on average.⁷⁸ Another analysis estimates that Blacks and Hispanics pay \$4.1 billion each year in higher search costs and lost housing opportunities.⁷⁹ Finally, a recent Brookings Institution study comparing home values to homeowner incomes attributes the gap in home values between White and Black families not to differences in family incomes, metropolitan population size, the share of the population that is minority or even economic segregation; rather, Brookings' David Rusk finds that only racial segregation can account for the gap in home values between Black and White homeowners. Black homeowners receive 30 percent less home value per dollar of income than White homeowners.⁸⁰ Rusk refers to this disparity as the "segregation tax."

Segregation and residential racial steering are not, however, cost-free for Whites. As Georgetown University law professor Sheryll Cashin has observed, the costs in segregation are reflected in the significantly higher price that Whites pay to live in White neighborhoods (to which they are often unwittingly steered, despite showing interest in integrated neighborhoods). On average, Whites pay 43 percent more for their house than a Black person with the same income.⁸¹ This observation is confirmed by NFHA's real estate sales testing.

Job Opportunity Costs

A further consequence of segregation is reflected in a spatial mismatch between residence and job opportunities. According to Squires and Kubrin, "As of 2000, no racial group is more physically isolated from jobs than Blacks.... Compounding these troubles are the 'mental maps' many employers draw in which they attribute various job-related characteristics (e.g. skills, experience, attitudes) to residents of certain neighborhoods."⁸² Again, Boston is a representative case, as "almost three-fourths of job growth go[es] into outlying suburbs with few non-White residents."⁸³ The impact of confinement to segregated inner cities on employment opportunities is starkly revealed in a recent study of families who moved from

⁷⁷ See also Kareem Fahim, "Behind Newark Foreclosure Data, Ruined Credit and Crushed Hopes," *New York Times*, March 28, 2007, p. A1.

⁷⁸ Squires and Kubrin, *Privileged Places*, op. cit., p. 9, describing research found in Melvin L. Oliver and Thomas M. Shapiro, *Black Wealth/White Wealth* (New York: Routledge, 1995).

⁷⁹ Camille Zubrinsky Charles, "The Dynamics of Racial Residential Segregation," op. cit., p. 196, describing research found in J. Yinger, *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination* (New York: Russell Sage Foundation, 1995).

⁸⁰ Rusk, David, "The Segregation Tax: The Cost of Racial Segregation to Black Homeowners," The Brookings Institution's Center on Urban and Metropolitan Policy, October 2001, p. 2.

⁸¹ Sheryll Cashin, *The Failures of Integration: How Race and Class are Undermining the American Dream* (New York: Public Affairs, 2004), p. 186.

⁸² Squires and Kubrin, *Privileged Places*, op. cit., p. 13.

⁸³ Gary Orfield and Nancy McArdle, *The Vicious Cycle: Segregated Housing, Schools, and Intergenerational Inequality* (August 2006), p. 20.

segregated urban housing projects to the predominantly White suburbs as part of a scattered-site, low-income housing program. In comparison with those who remained in the inner-city, “[program] participants were significantly more likely to be in high school, in a college-prep track, enrolled in a four year college, employed with benefits, and not outside either the educational or employment systems.”⁸⁴

Health Costs

For minority populations, especially African-Americans, confinement to segregated neighborhoods is, as we have seen, often practically equivalent to confinement to poor neighborhoods. While there are, in absolute terms, more poor Whites in the United States than poor Blacks, race plays a central role in determining the character of the typical neighborhood in which a poor person lives. That is, “most poor white people are residentially located next to non-poor white people, while most poor African-Americans are concentrated in high-poverty neighborhoods.”⁸⁵ And as one would expect, the link between poverty and ill health is also strong. There are many reasons for this, but a major element is the spatial mismatch in poor neighborhoods between residence and health care facilities and professionals. For example, while the overwhelmingly White Washington, DC suburb of Bethesda, Maryland, “has one pediatrician for every 400 children,” the predominantly Black and poor neighborhoods in Washington’s southeast side “have one pediatrician for every 3,700 children.”⁸⁶

Yet there is also reason to believe that the difficulty in gaining access to medical treatment is not the whole story behind, for example, the fact that in 1998 the “age-adjusted all-cause mortality rate for Blacks [was] one and a half times as high as that of Whites”—a number that hadn’t changed in *forty years*.⁸⁷ Further research has found that for a wide range of types of medical care, “African-Americans and members of other minority groups are less likely than whites to receive appropriate medical treatment after they gain access to medical care...and [this] is not accounted for by differences in socioeconomic status, insurance, or disease severity.” The mechanisms underlying these disparities are still unclear, but sociologists strongly suspect that “negative stereotypes of race and residence play a role.”⁸⁸

Educational Costs

Since public schools are funded by property taxes, segregation deprives many school districts of important resources. In order to compensate for the reduced tax revenues as a result of reduced home values, municipalities may be led to increase tax rates, thereby creating new disincentives to move to those communities. In an *amicus* brief recently filed with the U.S. Supreme Court, a

⁸⁴ Camille Zubrinsky Charles, “The Dynamics of Racial Residential Segregation,” *op. cit.*, p. 198.

⁸⁵ David R. Williams and Chiquita Collins, “Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health,” *Public Health Reporters*, v. 116 (Sept./Oct., 2001), p. 409.

⁸⁶ Squires and Kubrin, *Privileged Places*, *op. cit.*, p. 12.

⁸⁷ Williams and Collins, “Racial Residential Segregation,” *op. cit.*, p. 405.

⁸⁸ *Id.*, p. 411.

diverse group of housing scholars and research and advocacy organizations report that in 2002-2003, “only 28% of all White public school students (K-12) attended high-poverty schools (defined as schools where 40% or more of the students were eligible for free and reduced lunches)...In contrast 71% of all Black public school students and 73% of all Latino public school students attended high-poverty schools during the same period.”⁸⁹

Predominantly White schools also benefit from stability in teaching staff. A 2003 report by the *Atlanta-Journal Constitution* described a study by researchers at Georgia State University which found that “White teachers – who compose 80 percent of the state’s teaching force – are much more likely to leave schools that serve higher proportions of Black students. The study found that 32 percent of White elementary school teachers left predominantly Black schools in 2001. This revolving door leads to less experienced teachers in the classroom at Black schools.”⁹⁰

In contrast, the benefits of desegregation are clear, and have been affirmed repeatedly by the Supreme Court itself, most recently in a case involving the University of Michigan Law School:

In addition to the expert studies and reports entered into evidence at trial, numerous studies show that student body diversity promotes learning outcomes, and “better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.” ...These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.⁹¹

⁸⁹ *Brief of Amici Curiae Housing Scholars and Research & Advocacy Organizations in Support of Respondents in Parents Involved in Community Schools v. Seattle School District No. 1, et. al., op cit.*, p. 5, citing Gary Orfield and Chungmei Lee, Civil Rights Project, Harvard University, “Why Segregation Matters: Poverty and Educational Inequality” (January 2005), available at http://www.civilrightsproject.harvard.edu/research/deseg/Why_Segreg_Matters.pdf.

⁹⁰ *Atlanta Journal-Constitution*, “Black Schools, White Schools” (June 22, 2003).

⁹¹ *Grutter v. Bollinger*, 123 S.Ct 2325 (2003).

Section V: Recommendations

A. Increase Fair Housing Initiatives Program Funding

NFHA calls on HUD and Congress to increase appropriations for the Fair Housing Initiatives Program at least to its authorized level of \$26 million in fiscal year 2008. NFHA also encourages HUD and Congress to increase appropriations significantly to at least \$50 million by fiscal year 2009.

There is ample demand for additional HUD Funding. In FY2006, 269 organizations applied for funding under the Fair Housing Initiatives Program (FHIP). Only 102 groups were awarded grants by the Department of Housing and Urban Development (HUD): 54 groups received Private Enforcement Initiative (PEI) grants and 48 groups received Education and Outreach Initiative (EOI) grants. Total demand for FHIP funding in FY06 was approximately \$51,750,000.

An appropriation of \$26 million would enable FHIP organizations to address thousands of additional complaints. This increase also has the potential to accomplish two important goals:

1. encourage those encountering housing discrimination to come forward to file their complaints with greater hope of resolution; and
2. provide fair housing groups with the capacity to address larger systemic issues, including sales practices, predatory lending practices and insurance policies that are discriminatory, thereby having a much broader impact on segregation in our country.

B. Restructure the Fair Housing Initiatives Program

We applaud HUD for following NFHA's suggestion of creating a three-year grant cycle for qualified full-service private nonprofit fair housing organizations beginning with its 2005 SuperNOFA (Notice of Funding Availability). Unfortunately, because of the low level of funding, only 13 organizations were funded at that level. In 2006, an additional 10 organizations were funded, and under the 2007 SuperNOFA, another 10 will be funded under this grant component for a total of only 33 organizations. This longer-term funding for just a few organizations severely constrains the funds available to other qualified organizations. A total of only 54 organizations received enforcement funding in 2006, ranging in size from \$125,000 to \$275,000. More funding is needed to meet the demand.

Also, fair housing organizations should be able to receive education and enforcement funding simultaneously. When FHIP began in 1990, fair housing agencies could receive both education and enforcement grants during the same funding cycle. HUD removed the ability to receive both grants around 1996. (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.) At the same time, HUD has awarded a number of

education grants to groups that have no fair housing expertise, have no fair housing investigation or enforcement program, usually do not address all protected class issues, and are unlikely to continue providing any type of fair housing service to the community in future years. It appears that the 2007 NOFA does not prohibit receipt of both education and enforcement funds, and we applaud HUD for this move. However, the education allocation is only \$1.5 million, so few groups will be able to receive both types of funding, underscoring again the need for a significant increase in the FHIP appropriation.

As outlined in NFHA's proposal entitled *A Reformed Fair Housing Initiatives Program: the Private Enforcement Initiative*,⁹² FHIP should include funding to provide training to agency personnel and to implement programs to improve and enhance agency performance. The minimum grant award should be \$300,000 annually and increase to \$1 million annually depending upon the service area's population size, number of investigations handled, demographics and other performance measures.

C. Implement a Nationwide Testing Program

Given the extent to which NFHA's recent real estate testing program has uncovered discrimination, it is clear that one way to abate discrimination by real estate agents and segregation of our nation's neighborhoods is to implement a significant nationwide testing and investigation program. This program should provide systemic assessments of real estate agents and companies and take appropriate policy and enforcement actions to counteract discriminatory behavior.

The federal government has failed to allocate sufficient resources to implement the measures necessary to enforce the Fair Housing Act. This failure has resulted in segregation, uneven allocation of resources and harm to educational and future employment opportunities for youth in urban communities.

NFHA proposes that the federal government invest in a ground-breaking nationwide testing program that would cover the nation's largest metropolitan areas at a cost of approximately \$20 million. This program would allow for 5,000 paired tests, amounting to an average of fifty paired tests in each of the nation's one hundred largest metropolitan statistical areas (which contain 69 percent of the nation's population).

D. Expand Current Education and Enforcement Efforts

Subsequent enforcement and educational programs, designed to ameliorate discrimination and the harmful costs of segregation, would cost an estimated \$20-25 million. Such a program could be conducted every two to three years until real estate discrimination is negligible. The cost of such a program does not equal even one tenth of one percent of the federal education budget.

⁹² See *A Reformed Fair Housing Initiative Program: the Private Enforcement Initiative*, NFHA (2005).

The relatively small investment would reap enormous future economic benefits in all aspects of our society.

E. Enforce the CDBG Requirement to Affirmatively Further Fair Housing

HUD's Community Development Block Grant (CDBG) funding is the only other federal funding source available for fair housing activities. With the level of housing discrimination that NFHA has documented in its annual *Fair Housing Trends Reports*, combined with the strong evidence of sales discrimination leading to the continued stark segregation nationwide, NFHA urges HUD to promulgate enforceable and meaningful regulations requiring local jurisdictions to include fair housing in their comprehensive plans and their funding decisions. Those regulations should require that Analyses of Impediments to Fair Housing Choice (AIs) are prepared, that they accurately reflect the community's needs and describe strategies to improve fair housing compliance, that plans to address discriminatory behavior are followed, and that the AIs are updated at least every five years. If a state or local government fails to comply with these obligations, the regulations should require that HUD reduce or terminate CDBG funding. HUD's Office of Community Planning and Development (CPD) should require recipients to set aside a percentage of their CDBG funds for fair housing education and enforcement.

F. Fund an Annual National Media Campaign

NFHA calls on HUD to abide by the FHIP authorizing statute to fund an annual national media campaign. HUD failed to fund a national campaign in 2005 or in 2006. In 2006, HUD funded a \$300,000 hurricane-based campaign through the New York State Human Rights Commission which HUD has since characterized as a national media campaign. In the 2007 FHIP Notice of Funding Availability, HUD again violated the statute by requiring the national media campaign applicant to be an advertising firm rather than a non-profit organization as described above. FHEO should target national media under FHIP to promote compliance with fair housing laws and educate consumers about their right to secure housing, homeowners insurance, mortgage loans and home repairs free from discrimination.

The national media campaign should be multi-lingual in order to bridge the cultural and language gaps among different ethnic groups. It could provide much-needed education for the Asian American and Latino communities about their fair housing rights under the law and on how to recognize discrimination when it occurs and file a complaint with the appropriate law enforcement agency. It would empower them to take action when they have been the victim of unscrupulous behavior by a landlord, real estate agency or lending institution.

Furthermore, HUD should actively recruit and nurture multi-lingual and culturally competent staff to perform intake and outreach to their communities, thereby helping individuals identify fair housing violations and lodge official complaints.

G. HUD and DOJ Must Improve Their Processing of Cases

With the annual number of complaints at more than 27,700, and the estimated number of violations at least 3.7 million, it is insufficient that last year HUD issued only 34 charges of discrimination and DOJ filed only 31 cases, 15 of which were HUD election cases, and therefore duplicate some of the HUD charges. These numbers speak for themselves. HUD must also improve its case processing so that cases are investigated in a timely manner.

H. 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 took the position in 2005 that it is not required to file these cases but that it may instead perform additional investigations, thereby prolonging and duplicating the process.

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.

I. 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. 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.

J. 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 and effective civil rights enforcement 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. In addition, HUD collaborates with many actors in the real estate and lending communities, and its ability to effectively enforce the Fair Housing Act with these industry players is compromised by these relationships. The director of this independent agency must be a career position and not a political appointment.

K. Create Alternative Funding Sources

There is a role for funding from foundations, corporations, and other institutions as well. Many foundations, for example, make significant investments in our nation's educational systems and programs but fail to provide funding to address the reasons for the segregated communities that are the very underpinning of disparities in educational resources and achievement. It is unlikely that we will see significant improvements in educational achievement until integration is achieved.

L. Implement an Immediate Moratorium on Subprime Home Foreclosures

For years, predatory subprime lenders have targeted communities of color and aggressively marketed dangerous and abusive loans. As a result, people in communities of color have lost billions of dollars in home equity, and today they are losing their homes on a massive scale.

In April 2007, national civil rights groups, including the Leadership Conference on Civil Rights, NAACP, the National Fair Housing Alliance, the National Council of La Raza, and the Center for Responsible Lending, called for mortgage lenders, loan servicers and the investors who hold unaffordable subprime loans to institute an immediate six-month moratorium on subprime home foreclosures and to work actively with homeowners to help them keep their homes by putting these borrowers into affordable loan products. Lenders, servicers and investors have a variety of tools at their disposal to restructure or otherwise change the terms of mortgages to provide relief to homeowners who now struggle with unaffordable loans that were never designed to be sustainable. The six month period is a time for the industry to work with these groups to establish benchmarks and set long-term goals for easing the foreclosure crisis and to assist borrowers.

The need for a moratorium on foreclosures on unaffordable subprime loans with "payment shock" is urgent. If lenders, servicers, Wall Street and policymakers allow the flood of subprime foreclosures to continue unchecked, years of economic progress in communities of color will be wiped out, and the racial wealth and equity gap will widen even further. Borrowers must be put into affordable loan products now.