NFHA
National Fair Housing Alliance

Dr. King's Dream Denied: Forty Years of Failed Federal Enforcement

2008 Fair Housing Trends Report

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Introduction

On April 4, 1968, the Rev. Dr. Martin Luther King, Jr., was assassinated, unleashing a firestorm of civil unrest in urban communities across the nation. His murder demonstrated that we were still a nation divided by race—in our neighborhoods, our schools, our workplaces, and our places of worship. It revealed with alarming clarity that race was a pungent, debilitating force that must be addressed. A week to the day after Dr. King's assassination, President Lyndon Johnson signed into law the federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968). The law, co-sponsored by Senators Walter Mondale and Edward Brooke, had been languishing in Congress for two years; it passed only in response to the assassination and subsequent events. Many people forget that Dr. King focused heavily on fair housing issues with a keen recognition of what costs our society would pay for continued patterns of segregated living. Passage of the Fair Housing Act was a fitting, if inadequate, tribute to his memory.

As laws go, the Fair Housing Act better represented the intent of Congress that we achieve "truly integrated and balanced living patterns" than the practical necessities of achieving such patterns. Given the centuries-old practices of discrimination and denial of opportunity, founded in a legacy of slavery and government policy, the law was only a starting point in our nation's efforts to achieve equal housing. It relied primarily on voluntary compliance and private enforcement of its mandates.

In 1988, the law was amended by the Fair Housing Amendments Act, co-sponsored by Senators Edward Kennedy and Arlen Specter. This law significantly strengthened the enforcement powers of the Act, giving the Departments of Housing and Urban Development and Justice the authority and mandate to enforce the expanded and comprehensive requirements of the law while still providing for a private enforcement mechanism. The Fair Housing Act is now one of the most powerful tools in our civil rights arsenal. But a tool is only effective when wielded with skill and intent, and this report documents a failure on the part of the federal government to wield this tool effectively.

This year, we commemorate the fortieth anniversary of the Fair Housing Act and the twentieth anniversary of the Fair Housing Amendments Act. We commemorate, not celebrate, because we are still so far from achieving the balanced and integrated living patterns envisioned by the original Act's authors. While we have made some progress in reducing levels of residential segregation, most Americans live in communities largely divided by race and ethnicity. There are at least *four million* acts of housing discrimination every year. And we are on the brink of an economic crisis fueled by a failed subprime lending market, a market built primarily on borrowers and neighborhoods of color. The current foreclosure crisis is the embodiment of a history of discrimination in housing, lending, and insurance markets and reeks of both the complicity and failure of the federal government.

This report provides insight into our nation's struggles to achieve the benefits of living in richly diverse communities. We have come only a small way in attaining those benefits and must rededicate ourselves with intensity and determination to make fair housing a reality for all.

Executive Summary

The current foreclosure crisis is, at its core, the largest fair housing and civil rights issue facing our nation today. It is a manifestation of a history of discrimination and segregation and threatens to wipe out many of the advances we have made in the forty years since the passage of the Fair Housing Act in 1968. Section I of this report tells the story of how the subprime foreclosure crisis came about, what role discrimination and segregation played in its development, and what impact it will have on the already disadvantaged communities it has hit hardest. We reach an unimpeachable verdict on the following two propositions. First, the subprime foreclosure crisis has greatly contributed to problems we are facing as a nation. Second, the subprime crisis has been an unmitigated disaster for minority communities.

Forty years after the passage of the Fair Housing Act, there are more than 3.7 million instances of discrimination each year against African-Americans, Latinos, Asian Americans, and American Indians in rental and sales markets.[1] 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 disabilities—the group that files the highest number of complaints with HUD each year—nor discrimination on the basis of religion, sex, color, familial status or other ethnicities. It also does not reflect discrimination in the following areas: lending, insurance, planning, and zoning or racial and sexual harassment. The number does not include instances of linguistic profiling (discrimination on the telephone), discrimination via the internet, or discrimination when applications are filed or when people already occupy a residence. So, **we can easily estimate the annual incidence of discrimination to exceed four million** and can only wonder and worry about how much more there might be.

Testing programs have documented extensive and systemic patterns of discrimination in rental, real estate sales, mortgage lending, and homeowners insurance markets. Recent testing has identified continued racial steering by real estate agents and a failure of

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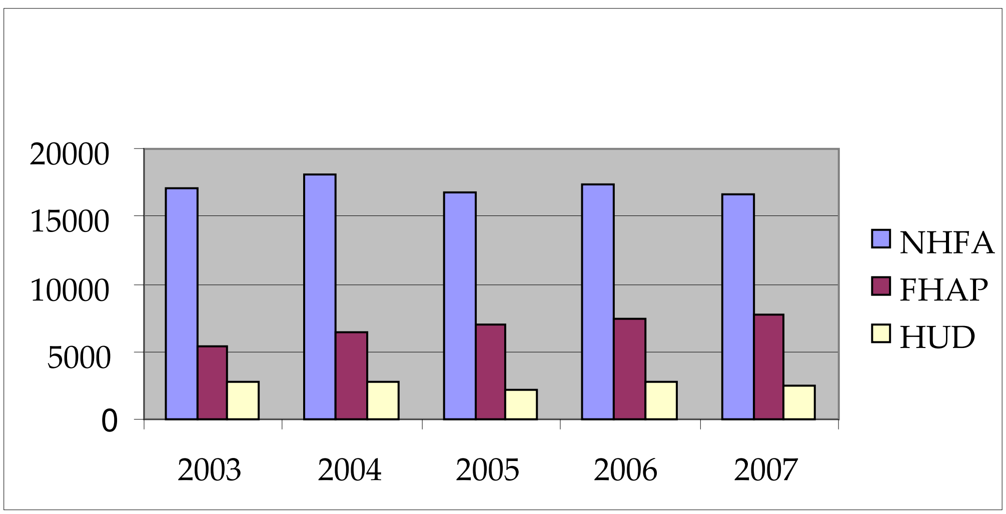
[1] For the basis of this estimate, see NFHA's *2004 Trends Report*, which reports findings from a study of Housing Discrimination Study 2000 data by John Simonson, University of Wisconsin – Platteville.

builders of multi-family housing to comply with design and construction standards that are now twenty years old. Section II provides information about the current state of fair housing and issues of particular concern in 2007, including the failure of Community Development Block Grant recipients to affirmatively further fair housing, discrimination on the basis of religion by an insurance company, use of credit scores as a proxy for race, and continued failures in the Gulf Coast that prevent a meaningful recovery for all of its residents, particularly those in classes covered by the federal Fair Housing Act.

In 2007, there were 27,023 complaints of housing discrimination. The number of complaints filed, however, still represents **less than one percent of the annual incidence of discrimination.** The total number of complaints has been fairly consistent over the past five years. *Private fair housing organizations continue to process more than 60 percent of the complaints*, despite the fact that over the past five years more than 25 organizations have closed or been on the brink of closing and survive with drastic reduction in staff.

Housing Discrimination Complaints



A large preponderance of complaints concern rental housing practices, as discriminatory practices in real estate, mortgage lending, and homeowners insurance transactions are difficult for home seekers to identify and few private fair housing agencies have staff available to address these complex areas. This highlights the need for comprehensive examination of these housing market sectors by the Department of Housing and Urban Development and the Department of Justice. Section III provides more detailed information about fair housing complaints filed with both public and private fair housing organizations.

One of the obvious reasons for continued high levels of discrimination is the failure of the Administration to request sufficient funding, the failure of Congress to allocate sufficient resources, and the failure of HUD and DOJ to effectively enforce the Fair Housing Act. Section IV highlights how the fair housing enforcement system has failed to fulfill this nation's mandate to eliminate discriminatory housing practices. HUD's efforts are characterized by inconsistent case processing standards, inadequate knowledge of legal standards and case law, and inability to process cases even remotely within the time frame required by law. The Department of Justice brings few cases each year, brings few race-based cases despite the incidence of racial discrimination and segregation, and in recent years has adopted policies that inhibit even further its ability to effectively enforce the Fair Housing Act.

Private fair housing organizations shoulder the greatest burden of fair housing education and enforcement activities in the United States, but their efforts are constrained by inadequate and inconsistent funding. HUD's Fair Housing Initiatives Program is the primary source of funding for many fair housing organizations. In the past five years, twenty-six private fair housing organizations have closed their doors or are in danger of closing. Funding streams are compromised by HUD's inconsistent methods of awarding grants, as well as awarding grants to organizations without the expertise or qualifications to provide fair housing education or enforcement services, at the expense of existing, full-service agencies.

These failures to enforce the Fair Housing Act have resulted in continued patterns of residential segregation based on race and ethnicity. Those patterns are costly to segregated communities and to the nation as a whole, as summarized in Section V. Unemployment levels for African-Americans and Latinos are significantly higher than for Whites, due in large part to the mismatch between the location of employment centers and minority neighborhoods. Children in segregated minority neighborhoods go to schools with significantly fewer resources and programs, have lower scores on performance tests, and graduate with alarmingly less frequency than students who attend predominantly White schools. There are significant adverse consequences for the health of persons residing in minority neighborhoods. People in communities of color have access to fewer health care facilities and physicians and their treatment is often characterized by a lower standard of care.

Our nation needs a host of changes in order to fully address discrimination and reduce segregation. This report contains several recommendations (Section VI), most important of which are that we need an independent fair housing enforcement agency, additional funding for fair housing education and enforcement programs, improved case processing by HUD and DOJ, regulatory changes to address unfair and predatory lending practices, and a more just and transparent process of implementing recovery efforts in the Gulf Coast region of the United States.

This report documents a problem too costly for our country to ignore. We can no longer tolerate housing discrimination and the persistence of segregated neighborhoods. The federal Fair Housing Act can help take us closer to our goal of balanced and integrated living patterns but only if it is utilized as the excellent tool that it is. As we commemorate the fortieth anniversary of the passage of this critical civil rights legislation, we must renew our commitment as individuals and a nation to creating the vibrant, diverse communities envisioned by Dr. Martin Luther King, Jr.

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: Discrimination and the Inevitable Foreclosure Crisis

The subprime lending/foreclosure crisis is, finally, impossible to ignore. What has largely been relegated to the Business and Metro sections of many newspapers in recent years has now morphed into a bona fide financial crisis, with the danger of triggering a full-fledged economic crisis. Front pages of the world's most prominent newspapers are now awash with retrospectives and prognostications, diagnoses and warnings. Bear Stearns, not long ago worth $25 billion, was on the verge of being sold in March 2008 for just under $1.2 billion. And the Federal Reserve has already taken unprecedented action to grease the wheels of the nation's financial markets by risking taxpayers' money for mortgage-backed assets whose true value (if any) no one can be sure of. No one is quite sure how all this will play out, although it is safe to say that there are some extremely rocky times ahead.

But before all the recent drama unfolded, the roots of this crisis were apparent to those who pay at least as much attention to Main Street as they do to Wall Street. And for those who are acquainted with the streets of America's minority communities, the writing was clearly on the wall. Indeed, many housing scholars and activists, as well as advocates for minority communities, had been speaking of a subprime foreclosure crisis long before investors were experiencing wobbly knees. Yet because, at that time, the crisis was "only" affecting a narrow segment of the population, it received a fraction of the attention it is now getting.

Unfortunately, this suggests that there is some danger that now that the nation's financial and political elites are in "crisis mode," the families and communities who are victims of the subprime problem will fade into the background without ever having had their story told. And with the foreclosure crisis now moving "upmarket," as economist Dean Baker puts it, many will conclude that nothing especially problematic occurred within the subprime market. For those in the prime market are starting to feel the pinch too. But the ills of the subprime market cannot be chalked up to economic storms in which we have all been caught and which we must each weather using whatever resources we can muster. The subprime mortgage crisis was not and is not a purely natural phenomenon. Like the weather, it was foreseeable; unlike the weather, it was entirely avoidable.

The origins of the subprime foreclosure crisis can be found, in large part, in the ongoing racial discrimination and segregation whose roots reach back to the discriminatory social, financial and government policies of the early twentieth century. By the late 1960s, these forces had led to the creation of many communities of color beset by poverty, poor education, overcrowding, and dislocation from jobs and financial services. And despite the passage of the federal Fair Housing Act forty years ago in 1968, anemic fair housing enforcement has left the door open to predatory and abusive lenders who have little incentive to ensure that their underwriting practices lead to sustainable homeownership. Finally, in its shortsighted search for ever higher profits, Wall Street and hard money lenders were willing to overlook these practices by keeping its eye on the dollar signs that preceded abusive fees and the percentage signs that preceded predatory interest rates. Content that mortgage brokers were simply doing their job and confident that rising house prices would keep newly minted homeowners afloat, investors continued to send funds into minority neighborhoods—until, that is, the house of cards came crashing down.

This section of the report tells the story of how the subprime foreclosure crisis came about, what role discrimination and segregation played in its development, and what impact it will have on the already disadvantaged communities it has hit hardest. As for the larger financial and/or economic crises now gripping the nation, we do not argue that the problems in the subprime sector are the sole cause of our wider current economic woes. In many respects, the economic jury is still out on that question. But we do have an unimpeachable verdict on the following two propositions. First, the subprime foreclosure crisis has greatly contributed to problems we are facing as a nation. Second, the subprime crisis has been an unmitigated disaster for minority communities.

A History of Discrimination and Segregation

The Influx of Migrant Blacks to the North

The story of the subprime mortgage crisis in many ways begins at least as far back as the early 1900s. The relevant history is both complicated and bleak, but the key elements for the purposes of this report are these. According to housing scholar and historian Douglas Massey, who co-authored the landmark 1993 fair housing book *American Apartheid*, there was a short time after the Civil War when "it seemed that Blacks might actually assume their place as full citizens of the United States."[2] However, as industrialization increased in the North, the demand for migrant Blacks also increased, often due to their usefulness as strike breakers. "Poor rural Blacks with little understanding of industrial conditions and no experience with unions were recruited in the South and transported directly to northern factories…"[3] So the northern migration by Southern Blacks was looked upon as an effective way to satisfy industrial needs.

The Emergence of Especially Harsh Racism

In combination with their reaction to this new threat posed by a migrant Black population, plain old (re-)emergent racism on the part of White unions gave rise to

[2] Douglas S. Massey, "Origins of Economic Disparities: The Historical Role of Housing Segregation," in James H. Carr and Nandinee K. Kutty, eds., *Segregation*: *The Rising Costs for America* (New York: Routledge, 2008), pp. 39-80, p. 40.

[3] Ibid., p. 48.

"unusually severe discrimination," including the exclusion of Blacks from the skilled-craft unions, and the relegation of Blacks to the least lucrative contracts and jobs. As Blacks responded to this mistreatment by crossing more picket lines, a "cycle of mutual hostility and distrust" was entrenched, fueled by ever more increases in the Black population as a result of agricultural downturns in the South and the start of a labor-intensive war mobilization in 1914.[4]

As the years passed, these racist attitudes became more prevalent and their manifestations, including violence and destruction of property (often with dynamite), became more insidious, and "by World War II the foundations of the modern ghetto had been laid in virtually every northern city."[5] If there was any good news to be had it was that many had turned away from violence during the 1920s,[6] fearing legal action; the bad news is unsurprising: many Whites diverted their energies into establishing discriminatory housing and zoning policies designed to insulate "their" neighborhoods from Black residents. Various "neighborhood improvement associations" worked to win zoning restrictions that would fall hardest on Blacks, threatened to boycott real estate agents who were willing to work with Blacks, and sought to increase property values so they'd be within the reach of only Whites. Contracts, known as "restrictive covenants," were drawn up between members of a neighborhood so that White residents were legally bound to refrain from selling or renting to prospective Black residents.[7]

The Role of Real Estate Agents and Associations

A central player in the establishment and perpetuation of segregated cities was the real estate industry. Many local real estate boards worked to establish restrictive covenants, while an early incarnation of the national real estate association adopted an article in its code of ethics which held that "a Realtor should never be instrumental in introducing into a neighborhood…members of any race or nationality…whose presence will clearly be detrimental to property values in that neighborhood."[8] Taking a perhaps more financially lucrative tack, many real estate agents engaged in "blockbusting," the practice of scaring White homeowners out of a neighborhood with rumors and actions suggesting that the neighborhood was ripe for "racial turnover," and then buying properties cheaply from Whites and selling them for higher prices to incoming Blacks.

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[4] Ibid.

[5] Ibid., p. 50.

[6] One tragic exception is the story of Dr. Ossian Sweet (among others). See *One Man's Castle: Clarence Darrow in Defense of the American Dream* by Phyllis Vine.

[7] Douglas S. Massey and Nancy A. Denton, *American Apartheid* (Cambridge: Harvard University Press, 1993), p.36ff.

[8] Massey, "Origins of Economic Disparities," op. cit., p. 56.

The Role of the Federal Government

It wasn't long before the government got in on the act. One example was the Home Owners Loan Corporation (HOLC), established in 1933 in response to the foreclosure crisis associated with the Depression. HOLC utilized a discriminatory risk rating system whereby prospective borrowers were favored if their neighborhood was deemed "new, homogeneous, and in demand in good times and bad."[9] Properties would be ranked low (and thus judged high-risk) if they were "within such a low price or rent range as to attract an undesirable element," which often meant that they were located near a black neighborhood.[10] The so-called "Residential Security Maps" used to make these classifications labeled the lowest ranking neighborhoods "fourth grade," and shaded them in red. According to housing scholars William J. Collins and Robert A. Margo, "the agency's revisions were unprecedented. Private financial institutions incorporated the new rating system in their own appraisals, thereby beginning the widespread institutionalization of the practice known as 'red-lining.'"[11]

As discriminatory policies and practices continued to persist within the real estate sector—one study in 1969 identified 46 separate tactics used by agents to keep Blacks out of White neighborhoods—private banks began to adopt the underwriting guidelines established by the federal government in the HOLC program. Finally, the HOLC risk rating system came to inform the federal government's Federal Housing Administration (FHA) and Veterans Administration (VA) loan programs in the 1940s and 1950s. The FHA made it possible to purchase a house with just a 10 percent down payment, as opposed to the customary 33 percent required before its establishment. Loan terms were also extended from 25 to 30 years. The VA program provided similar benefits, all while following FHA in rating properties in large part on the basis of the "stability" and "harmoniousness" of neighborhoods.[12] "If a neighborhood is to remain stable, it is necessary that properties shall continue to be occupied by the same racial and social classes. Changes in social or racial occupancy contribute to neighborhood instability and the decline of value levels."[13] To implement this policy, the FHA even went so far as to *recommend* the use of restrictive covenants to ensure neighborhood stability.[14]

The notion that race had a direct impact on property values was broadly adopted by the appraisal industry, and appraisers were trained to evaluate properties using race as a

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[9] Ibid., p. 69.

[10] Ibid.

[11] William J. Collins and Robert A. Margo, "Race and Homeownership, 1900-1900," available at: http://eh.net/Clio/Conferences/ASSA/Jan_00/margo.shtml.

[12] Massey, "Origins of Economic Disparities," op. cit., p. 71-72.

[13] Frederick Babcock, Director of FHA Underwriting Division, "Techniques of Residential Location Rating," *Journal of the American Institute of Real Estate Appraisers of the National Association of Real Estate Boards*, v. VI, n. 2 (April, 1938), p. 137.

[14] Massey, "Origins of Economic Disparities," op. cit., p. 71-72.

factor. McMichael's Appraising Manual, for example, provided the following ranking of race and nationality by impact on real estate values (in order of preference):[15]

1. English, Germans, Scotch
2. North Italians
3. Bohemians or Czechs
4. Poles
5. Lithuanians
6. Greeks
7. Russians, Jews (lower class)
8. South Italians
9. Negroes
10. Mexicans

Such lists remained in appraisal manuals long after the Fair Housing Act was passed in 1968.

Similar policies were employed in the insurance industry, as homeowners insurance companies adopted policies that resulted in either the outright denial of insurance in minority neighborhoods or the availability only of policies that provided inadequate protection at excessive cost to consumers.

Given the prevalence of race-based standards in appraisals, insurance, and government mortgage lending programs, it comes as no surprise that private banking and savings institutions also refused to offer mortgage loans in communities of color and integrated communities. *Even after passage of the Fair Housing Act, these practices received tacit approval from the federal banking regulatory agencies. It was not until 1976, when a coalition of civil rights groups sued them for failing to enforce the Fair Housing Act, that the federal banking regulatory agencies even acknowledged that they had any enforcement responsibilities under the Act.*[16] The settlement required the agencies to collect information on the mortgage lending practices of the institutions they regulated, and to establish and implement fair lending examination procedures.

Discrimination and Segregation Led to Civil Unrest

The FHA and VA programs, in combination with declining housing construction costs, quickly led to vast White suburbanization and the abandonment of urban centers. These urban centers increasingly grew to be predominately African-American communities. During the 1950s and 1960s, federal "redevelopment" and "urban renewal" programs were used to eliminate "urban blight" by razing neighborhoods and Black-owned

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[15] McMichael's Appraising Manual, 4th Edition, 1951.

[16] *National Urban League et. al. v. Office of the Comptroller of the Currency, et al* , 1976

businesses. Many homeowners were relocated just blocks away in neighborhoods Whites had abandoned, and low income Black families were relocated to newly constructed public housing that was pushed into the middle of the Black community, thereby stalling encroachment of Black families into White areas.[17] By the 1960s, these policies and practices of segregation and isolation were accompanied by police brutality, while employment and voting rights violations bred fuming resentment that erupted in violent civil unrest.

Current Segregation in the United States

The story of housing segregation and discrimination since those fateful years of the 1960s is, in many ways, a disappointing one. To be sure, some improvements have been made since the federal Fair Housing Act was enacted in 1968 following the landmark events of that year. According to the U.S. Census Bureau, which follows other social scientists in measuring segregation along five different dimensions,[18] "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."[19] 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."[20] 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.[21]

Still, America remains a significantly segregated country. 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.[22] 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,

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[17] Massey and Denton, *American Apartheid*, op. cit., p. 56.

[18] These are: evenness (dissimilarity), exposure, concentration, centralization, and clustering.

[19] 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.

[20] Ibid., p. 64.

[21] 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.

[22] Ibid., p. 3.

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.[23] 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.[24]

These findings confirm that there is an ongoing crisis of segregation in America. While segregation does seem to be declining on some dimensions nationwide, it is declining very slowly, and indeed increasing in some areas. 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.

Bifurcated Financial Service System

In addition to residential segregation, Americans still experience differential access to mainstream financial institutions on the basis of race. Housing experts Kathleen C. Engel and Patricia A. McCoy write that "When people of color are in the market for home loans, they often do not look beyond subprime lenders and mortgage brokers." One reason for this, they argue, is a "lingering mistrust of banks" that developed as members of that community experienced past discrimination by banks when anti-discrimination laws were not adequately promulgated or enforced.[25]

In fact, discriminatory treatment of people of color and members of other protected classes continued even after such actions became illegal under the federal Fair Housing Act.[26] For example, at the request of civil rights groups, in the early 1970s federal banking regulators surveyed the industry about its underwriting practices; a surprising number of institutions acknowledged using prohibited bases in their mortgage lending decisions. Another factor contributing to minorities' patronage of subprime lenders is the failure of regulated depository institutions (banks and thrifts) to develop appropriate lending products and market them effectively and aggressively in communities of color. Additionally, many banks and thrifts simply did not open branches in Black neighborhoods. In recent years this has left a vacuum that has been filled by subprime and payday lending.[27]

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[23] "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.
[24] Ibid., p. 4.
[25] Kathleen C. Engel and Patricia A. McCoy,"From Credit Denial to Predatory Lending," in *Segregation*: *The Rising Costs for America*, op. cit., p. 93.
[26] See, for example, the *National Urban League et al. v. Office of the Comptroller of the Currency, et al*.
[27] James H. Carr and Nandinee K. Kutty, "The New Imperative for Equality," in *Segregation*: *The Rising Costs for America*, op. cit., pp. 1-38, p. 20.

In the decades since the passage of the Fair Housing Act, a number of other laws have been passed that are designed to increase access to mortgages and other types of credit for members of protected classes and low and moderate income consumers. These include the Equal Credit Opportunity Act (ECOA), the Home Mortgage Disclosure Act (HMDA), and the Community Reinvestment Act (CRA). Collectively, these laws have provided important information for tracking mortgage market patterns, endowed numerous federal government agencies with responsibility for overseeing the lending practices and activities of many lending institutions, and created tools for enforcing fair lending compliance. Over the decades, some progress has been made in changing the way mainstream lending institutions view historically underserved communities. Private enforcement actions have provided some of the impetus for this change, as has public policy, on occasion. For example, in the 1990s during the Clinton Administration, CRA enforcement was stepped up and the Department of Justice played a more active role in fair lending enforcement. But, as we will see, the commitment to vigorous enforcement has been sporadic, and the regulatory structure has not kept pace with the changes in the mortgage lending industry. The result is that communities of color have been left vulnerable to exploitation and abuse.

The Context for the Current Crisis

The current crisis arises from the confluence of several trends in the mortgage market that have unfolded over the last decade and a half. These include the increased reliance on technology in mortgage originations, the restructuring of the mortgage lending industry, and the explosion of subprime lending fueled by innovations on Wall Street.

The impact on the mortgage industry of technological advances in computers and data management cannot be overstated. Twenty years ago, most mortgage loans in this country were underwritten manually. This meant that a person reviewed the information collected by the loan officer and made a decision about whether or not to approve the loan based on the credit history of the applicant and the appraised value of the property. This system allowed for wide variations in underwriting standards and how they were interpreted, often to the detriment of members of classes protected by the federal Fair Housing Act.

Automated Underwriting and Credit Scores

In the mid-1990s, this system began to change, largely at the behest of Fannie Mae and Freddie Mac – the government-sponsored enterprises (GSEs) which are the secondary market agencies that buy loans from originating lenders to maintain liquidity in the mortgage market. The GSEs introduced automated underwriting (AU) systems, a faster, more standardized – and theoretically more objective – way of evaluating the risk posed by borrowers. These systems were made possible by the increasing power and decreasing costs of computer technology. They were anchored by another technology-based innovation: credit scores. These are numerical indicators that are derived from an automated analysis of an applicant's historical use of credit. Credit scores were touted as providing an accurate and unbiased assessment of the risk that a particular borrower would default on a loan. Credit scores, in turn, paved the way for the introduction of risk-based pricing – that is, the notion that if a lender could accurately assess the repayment risk of a particular borrower, it could then price that borrower's loan at a rate that reflected that risk. This meant that rather than denying loans to higher risk borrowers, lenders could simply charge them higher interest rates. With the advent of risk-based pricing, credit – high priced credit – began to flow into previously credit-starved communities. Thus, credit scoring and automated underwriting revolutionized the mortgage market.

Industry Consolidation

At the same time as this technological revolution was occurring, there were a consolidation of the industry and a transformation of the channels through which borrowers and lenders came together. The advent of interstate banking in the mid-1980s launched an era of bank consolidation that was unprecedented, with a record number of bank mergers that resulted in a relatively small number of increasingly large institutions. Many small and mid-sized institutions disappeared, gobbled up in the merger mania.

In the race for "financial modernization," bank holding companies became increasingly complex as well, combining many different types of companies under a single corporate umbrella. Thus, a single bank holding company might own a commercial bank, a thrift, a mortgage company, a finance company, and a series of other businesses. This gave the company many different channels through which to serve different customers and communities. For example, the bank and mortgage company might offer prime mortgage loans in upper income, largely White communities, while the finance company might offer subprime loans in lower income communities and communities of color. Thus, the type of loan product a borrower ended up with could have less to do with his or her creditworthiness than with which of the lender's channels was operating in his or her neighborhood. For Community Reinvestment Act purposes, banks can claim credit for loans made by their affiliates, and the regulators do not distinguish between prime and subprime loans. This approach eliminates one potential incentive for banks to make sure that prime loans are available to prime customers, regardless of where they live.

Enter: Mortgage Brokers

This period also saw tremendous concentration within the mortgage lending business and a shift away from retail lending. In 1990, the top 25 mortgage originators nationwide accounted for less than 30 percent of the $500 billion of mortgage loans made that year. By 2002, the top 25 originators accounted for 78 percent of $2.5 trillion worth of loans.[28] Such consolidation was made possible by a change in the way the business was conducted. Lenders discovered that, in many cases, it was much cheaper to rely on third parties to find potential customers and gather their information than to maintain a large staff for this purpose. Thus began the rise of the mortgage broker. There were 7,000 mortgage brokerage firms operating in 1987. That number rose to more than 20,000 by 1995, and by 2002, 44,000 brokerage firms were in operation, with some 240,000 employees.[29] By recent accounts, brokers now originate more than 45 percent of the nation's mortgages.[30]

The use of brokers, who originate 70 percent of subprime loans,[31] represents a radical change from the previous era in which banks and thrifts dominated the mortgage business and made loans on a retail basis, using their own employees who were located in the lenders' branch offices and had direct contact with prospective borrowers. Brokers, in contrast, are independent agents who shop loan applications around among a number of different lenders. They offer borrowers convenience, because they generally go to the borrower, rather than vice versa. Many brokers market their services very aggressively in target communities, putting flyers in mailboxes, knocking on doors, and running ads on late night television. They tend to emphasize low monthly payments and easy qualification standards, rather than the type of loan and its long term costs. Brokers' lower overhead, aggressive marketing, and flexibility and convenience are allegedly difficult for banks to compete with. Many banks have decided, instead, to work with brokers.

In order to attract broker business, lenders offer incentives for brokers to bring loans to them. While they may take different forms, these incentives represent profit to the broker, and are paid for by the borrower. For example, lenders frequently pay brokers "yield-spread premiums," bonuses awarded when the terms of the loans they made were more lucrative than the minimum standards set by the lender. Other brokers received higher fees for selling mortgages with prepayment penalties.[32] Such incentives create a system in which the best deal for the broker is not necessarily the best deal for the borrower. This is a conflict of interest that is rarely apparent to the borrower, rarely resolved in the borrower's interest, and a recipe for abuse.

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[28] William Apgar, et. al., "Credit, Capital and Communities: The Implications of the Changing Mortgage Banking Industry for Community Based Organizations," Joint Center for Housing Studies, Harvard University, March 9, 2004, page 1, available at: http://www.jchs.harvard.edu/publications/communitydevelopment/ccc04-1.pdf.

[29] Ibid, p. 16.

[30] See MBA Research Data Notes, "Residential Mortgage Origination Channels," September 2006, p. 1.

[31] Ibid.

[32] *The Subprime Lending Crisis*, report by the Minority Staff of the Joint Economic Committee, October 2007, p. 20.

Subprime Lending Skyrockets

According to Federal Reserve Chairman Ben S. Bernanke and the Joint Economic Committee of Congress, subprime lending went from being $35 billion a year industry in 1994 to a $190 billion industry in 2001 to $600 billion in 2006.[33] This represents a leap from 4.5 percent of all single family mortgage originations in 1994 to 20 percent in 2006. What made this growth possible was securitization, a financial innovation engineered on Wall Street to attract investors. Securitization involves pooling a large number of mortgage loans and selling financial instruments (securities) backed by the pool. The borrowers' monthly loan payments are collected by an intermediary (a mortgage servicer) and passed along to the investors. Securitization created a massive source of capital utilized by stand-alone subprime lending entities and subprime subsidiaries of traditional banking institutions.

In recent years the predominant loan-type marketed by subprime lenders has been the hybrid adjustable-rate mortgage (ARM)—known as a 2/28 or 3/27 loan. These mortgage loans have a fixed interest rate for the first two (or three) years, at which point the rate adjusts, followed by serial rate adjustments (usually upward) every six months for the remaining 28 (or 27) years of the loan. Of the total subprime mortgage loans originated in 2005, more than 72 percent were either 2/28 or 3/27 hybrid ARMS.[34] The periodic rate increases associated with these loans can increase the borrower's interest rate by 1.5 to 3 percentage points, and the monthly payment can go up by as much as 30 to 40 percent.[35] This leads the borrower to suffer significant payment shock after the honeymoon of low fixed rates has ended. In some cases, there is no "honeymoon" as borrowers start out with unwarranted high interest rates that then adjust ever upward. Subprime hybrid ARMs generally carry pre-payment penalties that are in place throughout – and sometimes beyond – the initial fixed-rate period. Most do not collect monthly escrows for property taxes and insurance, which means that the borrower is responsible for making these payments when they come due.

This type of loan was never designed to be sustainable over the long term. It was predicated on the idea that the borrower could refinance at the point of the initial rate increase. Many borrowers report that this is just what their mortgage broker told them: "Don't worry, when the rate adjusts, you can refinance." And while it was true that housing prices in general were rising at unprecedented rates,[36] it was also true that

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[33] Comments delivered by Ben S. Bernanke at the National Community Reinvestment Coalition Annual Meeting, Washington, D.C., March 14, 2008, available at: http://www.federalreserve.gov/newsevents/speech/bernanke20080314a.htm; Joint Economic Committee Report, op. cit.

[34] Joint Economic Committee Report, op. cit., p. 10.

[35] Ibid.

[36] According to a study by Robert Shiller which tracked the relationship between house price increases and inflation since the late 1800s, in the 100 years preceding 1995 house prices have not

repeated refinancings stripped homeowners of their home equity, with no guarantee of providing an affordable or sustainable loan payment.

Loans made to subprime borrowers are in general riskier than loans in the prime market, if only by virtue of their features and pricing structure. The risk associated with these loans has long been recognized. Subprime loans are *eight times more likely to default* than conventional loans. They carry a 72 percent greater risk of foreclosure than fixed-rate mortgages.[37] The implications of this are staggering. With nearly half a trillion dollars in subprime loans set for rate-resets in 2007 and 2008, hundreds of thousands of families will be at serious risk of foreclosure.[38] According to *USA Today*, more than 2 million homeowners are behind in their mortgages and another 2 million face loan resets.[39] With the rapid descent in house-prices, refinancing out of high-rate mortgages is no longer an option for most homeowners in need. Even if it were, it's not clear it would, in the present circumstances, do the trick. And resets are not the only problem. One striking trend has been a markedly higher default and delinquency rate on ARMs issued in recent years, delinquencies occurring well before any scheduled rate reset.[40]

Enter: Investors

One might wonder how it was possible that savvy investors would continue to pour dollars into such a risky proposition. Part of the answer was suggested by the Federal Reserve in November of 2007, when it stated that economic models used by lenders to estimate the likelihood of loan defaults "were overly focused on unemployment as a driver of problem loans," and that lenders' and investors' "confidence about favorable

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risen faster than inflation. But in the period from 1995 to 2006, house prices increased by more than 85 percent *after adjusting for inflation*. See Joint Economic Committee Report, op. cit., p. 2, citing Robert Shiller, Irrational Exuberance website 9/10/07, available at: http://www.irrationalexuberance.com. Dean Baker, co-director of the Center for Economic and Policy Research, estimates that this unprecedented inflation-adjusted increase in house prices likely reflects $8 trillion in housing bubble wealth. See Dean Baker, "Midsummer Meltdown: Prospects for the Stock and Housing Markets" (2007), p. 2, available at:
http://www.cepr.net/documents/publications/DB_Midsummer%20Meltdown%20Final.pdf.

[37] Ellen Schloemer, Keith Ernst, Wei Li and Kathleen Keest, "Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners," December 2006, available at: www.responsiblelending.org. This applies to subprime loans originated in 2000, after controlling for credit score.

[38] See "Snapshot of the Subprime Market," Center for Responsible Lending, November 28, 2007, p. 2, available at http://www.responsiblelending.org/pdfs/snapshot-of-the-subprime-market.pdf.

[39] See "Criticism Rains Down on Mortgage Industry," USA Today, October 23, 2007; available online at http://www.usatoday.com/money/economy/housing/2007-10-23-mortgages-refinance_N.htm.

[40] "As Defaults Rise, Washington Worries," New York Times, http://www.nytimes.com/2007/10/16/business/16lend.html?ex=1350273600&en=bf9fd43058d4d207&ei=5124&partner=permalink&exprod=permalink.

home-price and interest rate developments" led them "to underestimate the risk of nonprime mortgages."[41] Add to this scenario a large pool of investors seeking to increase profits through high-interest lending mediated by brokers looking to originate the highest possible loans to win the highest possible fees and we have a recipe for disaster. Further, under current law, the investors were not liable for any fraudulent behavior on the part of the brokers or lenders who originate the loans in which they invest. Therefore, they had no incentive to weed out abusive practices.

In sum, what developed was a mortgage lending system in which brokers were paid to put borrowers into excessively expensive loans, loan originators immediately sold off their loans and had little interest in their long-term performance, and investors (until the current rash of foreclosures) earned huge profits but bore no liability for the actions of the brokers and lenders. It is hard to imagine a better recipe for fraud and abuse.

The Joint Center for Housing Studies' William Apgar has characterized the situation especially well:

> In a world in which the broker is detached from the lender and the lender is detached from the investor, market feedback loops are broken, or at best are slow to operate. Rather than work to root out abuse, under the current industry structure, some buyers pay more, brokers earn a premium return, and investors are compensated. Yet despite the fact that such high foreclosure rates, if realized, would have potentially devastating consequences for individual borrowers and communities, the [investor] disclosure documents simply state that the pools were priced to compensate investors for bearing the risks. The result is that the impact of foreclosures to borrowers and communities is ignored by the capital markets.[42]

Until now, that is, when those markets themselves are threatened.

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[41] Danielle DiMartino and John V. Duca, "The Rise and Fall of Subprime Mortgages," Federal Reserve Bank of Dallas Economic Letter, v. 2., n. 11 (Nov. 2007), p. 6, available at: http://www.dallasfed.org/research/eclett/2007/el0711.html. It did not help things that some housing scholars were adding fuel to the fire with their own models. For example, in 2003, smack in the middle of the house price run-up, Harvard University's Joint Center for Housing issued a report intended to dispel the worry that the U.S. was experiencing a housing bubble. "Large nominal home price declines are relatively rare and it takes significant and concentrated job losses—well beyond those in evidence in most places today—to precipitate a retreat," it said. See "The State of the Nation's Housing: 2003," p. 5, available at: http://www.jchs.harvard.edu/publications/markets/son2003.pdf.

[42] Apgar, op. cit., p. 44.

Lax Oversight by State and Federal Regulators

Another factor that contributed prominently to the ballooning of the subprime market was the opportunity for lenders to provide financial services in a highly unregulated atmosphere. Many lenders who peddled subprime loans were non-depository financial institutions who, in lieu of being regulated at the federal level, were regulated by various state finance departments. Unfortunately, state regulators, hindered by weak laws or a lack of resources, were not able to keep abreast of the abusive practices being perpetuated in communities across the nation. While many states and localities passed strong anti-predatory lending laws, state regulators were unable to keep up with the practices of the increasing number of lenders doing business within their borders.

In addition, many lenders increasingly relied upon the services of mortgage brokers to generate loans on their behalf. Many mortgage brokers, regulated at the state level, benefited from the lack of resources and legal ability of state regulators to effectively monitor and police their practices. Some states did not even bother to license mortgage brokers. For example, the state of Ohio only passed a law requiring mortgage brokers to be licensed in 2002. The law also required a civil and criminal background check on anyone seeking to obtain a license.

Federally regulated lenders also took advantage of lax oversight to originate huge volumes of loans. Depository institutions were able to use rulings from the Office of the Comptroller of the Currency (OCC) and other regulators to their benefit. The OCC, following a similar ruling issued by the Office of Thrift Supervision, issued a decision providing an exemption for its member institutions from state anti-predatory lending laws.[43] Not only did the decision provide pre-emption for the member bank, but the pre-emption extended to the affiliates and third party vendors of the member institution. Thus mortgage brokers doing business on behalf of the company and any subprime subsidiary would, according to the federal regulators, be exempt from state regulation and state lending laws that prohibited abusive lending practices. This was damaging to communities because many states that had responded more quickly than the federal government and established stringent anti-predatory lending statutes were unable to apply those statutes to the subprime affiliates of some federally regulated banks. However, the OCC ruling and others like it were a boon to lenders who were able to make larger profit margins on subprime loans. Lenders who for years had been telling civil rights and consumer advocacy groups that there was insufficient need for credit in minority neighborhoods, were now able to do high levels of lending through their subprime affiliates in central city neighborhoods – much to the detriment of homeowners and buyers in minority neighborhoods.

[43] *Office of the Comptroller of the Currency v. Spitzer*, 396 F.Supp. 2d 383 (S.D.N.Y. 2005)

Targeting Minority Borrowers

Until recently, the explosion of subprime lending was touted as a good thing, expanding homeownership opportunities for people of color and others previously shut out of the market. The homeownership drive, especially for minority families, began under the Clinton administration and continued under the Bush administration. It was a cornerstone of what President Bush called the "ownership society," with Bush declaring in 2002 that "We want everybody in America to own their own home." He even issued a challenge to lenders to create 5.5 million new minority homeowners by the end of the decade.[44]

Presidents Clinton and Bush were, of course, right that minority homeownership should be a major public policy concern. In the United States, homeownership is the primary source of family asset development and intergenerational wealth accumulation. According to the Harvard Joint Center for Housing Studies, among households under the age of 40 with a net worth between $20,000 to $50,000, homeowners have ten times the median net wealth of renters. Home equity accounts for half of that wealth. When the age-range is broadened to include households in their 40s and 50s, homeowners have almost 14 times the wealth of renters.[45]

Homeownership contributes a far 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'.[46] 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.[47] Done correctly, increasing homeownership could be of tremendous benefit to people of color.

Even before the current crisis occurred, it was never true that subprime lending expanded homeownership for people of color. In fact, the evidence indicates that the opposite was true. HUD's research has found that 80 percent of subprime mortgages were refinance loans, made to customers who already own their home.[48]

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[44] Greg Ip, James R. Hagerty and Jonathan Karp, "Housing Bust Fuels Blame Game," *Wall Street Journal*, March 19, 2008, p. A1.

[45] *The State of the Nation's Housing 2006*, Joint Center for Housing Studies, Harvard University (2006), p. 19.

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

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

[48] See HUD, *Unequal Burden: Income and Racial Disparities in Subprime Lending in America* (Washington, D.C.: HUD, 2000).

Several recent studies document the existence of severe racial discrimination in the subprime market. For example, according to one study that analyzed more than 177,000 subprime loans, borrowers of color are more than 30 percent more likely to receive a higher-rate loan than White borrowers, *even after accounting for differences in creditworthiness*.[49]

Another analysis shows that borrowers residing in zip codes whose population is at least 50 percent minority are 35 percent more likely to receive loans with "prepayment penalties" than financially similar borrowers in zip codes where minorities make up less than 10 percent of the population.[50] More than 70 percent of all subprime loans come with such penalties, which box borrowers into high-rate loans even after they've bettered their credit and wish to refinance.[51] For example, for a family with a $150,000 mortgage at an interest rate of 10 percent, a typical prepayment penalty imposes a fee of $6,000 for an early payoff—an amount *greater than the wealth owned by the median African-American family*.[52]

Another striking study of discriminatory lending practices has found that *high-income* African-Americans in predominantly Black neighborhoods are three times more likely to receive a subprime purchase loan than *low-income* White borrowers.[53]

African-American and Latino borrowers are disproportionately represented in the high-cost loan market, with 55 and 46 percent of African-American and Latino borrowers, respectively, receiving high-cost loans. In contrast, only 19 percent of White borrowers are given high-cost loans.[54]

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[49] See Bocian, D. G., K. S. Ernst, and W. Li, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages*, Center for Responsible Lending, May 2006, p. 3. Available at www.responsiblelending.org.

[50] See *Borrowers In Higher Minority Areas More Likely to Receive Prepayment Penalties on Subprime Loans*, *op. cit*., p. 1.

[51] Keith Ernst, D. N. Goldstein, and C. A. Richardson, "Legal and Economic Inducements to Predatory Practices," in Squires, ed., *Why the Poor Pay More*, op. cit., p. 108. See also Josh Nassar, "Abusive Lending and Pricing Disparities in the Subprime Market," presentation on behalf of Center for Responsible Lending, given at annual conference of the National Fair Housing Alliance, July 10, 2006. On file with the National Fair Housing Alliance; and "Snapshot of the Subprime Market," Center for Responsible Lending, November 28, 2007, p. 3, available at http://www.responsiblelending.org/pdfs/snapshot-of-the-subprime-market.pdf.

[52] See Bocian, D. G. and R. Zhai, *Borrowers In Higher Minority Areas More Likely to Receive Prepayment Penalties on Subprime Loans*, Center for Responsible Lending, January 2005. Available at www.responsiblelending.org.

[53] Center for Responsible Lending's *Fact Sheet on Predatory Mortgage Lending*, *op. cit.* See also *Unequal Burden*, *op. cit*., and *The Impending Rate Shock: A Study of Home Mortgages in 130 American Cities*, ACORN, August 15, 2006, available at www.acorn.org.

[54] 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-

To make matters worse, many borrowers who end up in the subprime market don't even belong there. They actually qualify for loans in the prime market. Fannie Mae and Freddie Mac have found that up to 50 percent of those who end up with a subprime loan would have qualified for a mainstream, "prime-rate" conventional loan in the first place.[55] (According to a study conducted by the Wall Street Journal, this number may be as high as 61 percent.[56])

The Inevitable Foreclosure Crisis

The nation is now finding that the house price increases that masked the problems in the subprime market have ended: the bubble has burst. After reaching its peak in 2005, "the Standard & Poor's/Case-Shiller index of year-over-year home-price appreciation in 10 large U.S. cities was down 5 percent in August [2007]—its biggest drop since 1991," according to the Federal Reserve.[57] In a recent speech, Fed Chairman Bernanke highlighted a recent survey showing that nearly 30 percent of homeowners reported that they saw the value of their house decrease during 2007.[58] And according to Reuters, home prices fell 8.9% in 2007, while Baker calculates that prices dropped at a 16% annual rate in the final quarter of 2007.[59]

Falling house prices have led to record foreclosures in recent months. A recent study by an online marketplace for foreclosed properties reports that more than one million properties went into some stage of foreclosure in 2007, a 75 percent increase from 2006.[60] More than half of these foreclosure starts were on subprime mortgages.[61] The Wall Street Journal reports that, just as the number of homes entering foreclosure in the last quarter of 2007 rose to the highest level on record, last year was also the first time that

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161 (September 8, 2006). See also http://oversight.house.gov/documents/20070322175553-40982.pdf. These figures are based on combining the statistics for both purchases and refinances.

[55] See the Center for Responsible Lending's *Fact Sheet on Predatory Mortgage Lending* at http://www.responsiblelending.org/pdfs/2b003-mortgage2005.pdf, and ACORN's report *The Impending Rate Shock*, op. cit.

[56] See "Subprime Debacle Traps Even Very Creditworthy," December 3, 2007.

[57] Federal Reserve Bank of Dallas Economic Letter, op. cit., p. 8.

[58] Comments delivered by Ben S. Bernanke at the National Community Reinvestment Coalition Annual Meeting, Washington, D.C., March 14, 2008, available at: http://www.federalreserve.gov/newsevents/speech/bernanke20080314a.htm.

[59] Reuters, "Home Prices Plunge at Record Rate in 2007," Feb. 26, 2008, available at: http://www.reuters.com/article/businessNews/idUSNAT00374720080226; Dean Baker, "These Loans Were Made for Walking," available at: http://www.truthout.org/docs_2006/020408B.shtml.

[60]"RealtyTrac, Jan. 29, 2008, available at: http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=3988&accnt=64847.

[61] Bernanke comments to NCRC, op. cit.

“American homeowners, in the aggregate, owned less than half the value of their houses,” at 47.9%.[62] This number stood at higher than 80% in 1945.

These trends have also led to recent declines in homeownership rates. According to the Census Bureau, aggregate homeownership fell in the fourth quarter of 2007 to 67.8 percent, down from 68.2 percent in the third quarter.[63] The news is much worse for African Americans who saw their already severely low homeownership rate decline to 47.7 percent in the fourth quarter of 2007, down fully two percentage points from its peak in 2004.[64] According to Mike Calhoun, President of the Center for Responsible Lending, the subprime mortgage debacle “stands to likely be the largest loss of African-American wealth that we have ever seen, wiping out a generation of home wealth building.”[65]

More than 7 million families in the United States now hold a subprime mortgage, and 2.2 million families with a subprime loan made from 1998 through 2006 will face foreclosure in the next few years. One in five subprime mortgages made from 2005 to 2006 will end in foreclosure.[66] The losses have finally reached a level that is threatening Wall Street and the entire economy. This has spurred long-overdue federal action. But it is unlikely that this action will help the hundreds of thousands of people, many of them people of color, who have already lost their homes to subprime foreclosures.

Given the financial dangers associated with subprime loans, prepayment penalties, excessive fees, exaggerated incomes, and abusively high interest rates, it is clear that the discrimination found in the subprime market constitutes a grave threat to the financial well-being of America’s already under-served populations. African-American and Latino communities have already been hit hard, and we can expect homeownership rates to continue their descent.[67]

The Effects of Foreclosures in Minority Communities

The neighborhood effects stemming from the housing crisis will be enormous. According to the Center for Responsible Lending, foreclosures in 2005 and 2006 alone

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[62] Sudeep Reddy and Sara Murray, “Housing, Bank Troubles Deepen,” *Wall Street Journal*, March 7, 2008, p. A1.
[63] http://www.census.gov/hhes/www/housing/hvs/qtr407/q407press.pdf
[64] Ibid., see also Baker, “Homeownership: The Fast Path to Poverty,” November 12, 2007, available at: http://www.cepr.net/index.php/op-eds-columns/op-eds-columns/homeownership-the-fast-path-to-poverty/.
[65] http://news.bbc.co.uk/2/hi/business/6528387.stm.
[66] “Snapshot of the Subprime Market,”op. cit.
[67] See “Subprime Lending: Net Drain on Homeownership,” CRL Issue Paper No. 14, Center for Responsible Lending, March 27, 2007.

led to the devaluation of 44.5 million homes. The total decline in house values and tax base from nearby foreclosures was estimated to be $223 billion.[68]

Additional research by Dan Immergluck of the Georgia Institute of Technology shows that for "every forclosure within one-eighth of a mile of a single-family home, property values are expected to decline by approximately 1 percent. For neighborhoods with multiple foreclosures, property values are impacted even more. In Chicago, we estimated the cumulative impact of two years of foreclosures on property values to exceed $598 million, for an average of $159,000 per foreclosure."[69]

A 2004 study in Philadelphia found that each home within 150 feet of an abandoned home declined in value by an average for $7,627; homes within 150 to 299 feet declined in value by $6,810; and homes within 300 to 449 feet declined in value by $3,542.[70]

When houses are foreclosed and then abandoned, as they often are, cities must often absorb the cost of dealing with demolishing or otherwise dealing with them. According to Engel and McCoy, "Studies calculating the costs to cities of resolving abandoned and foreclosed residential properties find that they range from $430 to $40,000 per home."[71] And when neighborhoods deteriorate through foreclosures that lead to demolition, crime often increases. A separate study by Immergluck and Geoff Smith of the Woodstock Institute in Chicago estimates that for every one percent in a city's foreclosure rate, crime increases 2.33 percent.[72]

Of course, declining property values and increasing foreclosures are associated with reduced property tax revenue and increased government costs such as fire and police services. On one estimate, state and local governments will lose more than $917 million in property tax revenues as a result of lower housing values stemming from subprime foreclosures.[73] This has a tremendous effect on funding for schools and provision of municipal services of all types.

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[68] "Overview of Subprime Mortgage Market" (powerpoint presentation), Center for Responsible Lending, November 29, 2007, p. 18.

[69] Testimony of Dan Immergluck, Ph.D., before the Committee on Oversight and Government Reform, Subcommittee on Domestic Policy, March 21, 2007.

[70] Mayor and City Council of Baltimore v. Wells Fargo Bank, *Complaint for Declaratory and Injunctive Relief and Damages*, op. cit., p. 2

[71] Engel and McCoy, "From Credit Denial To Predatory Lending," op. cit., p. 101.

[72] "After Foreclosures, Crime Moves In," Boston Globe, Nov. 18, 2007, available at: http://www.boston.com/news/nation/articles/2007/11/18/after_foreclosures_crime_moves_in/.

[73] Joint Economic Committee Report, op. cit., p. 1.

Case Study: *Baltimore v. Wells Fargo*

On January 8, 2008, the Mayor and City Council of Baltimore, MD, filed a federal lawsuit against Wells Fargo Bank under the Fair Housing Act. According to the City, Wells Fargo has engaged in a pattern and practice of unfair, deceptive, and discriminatory lending activity since at least 2000.

Baltimore has been hit especially hard by foreclosures in recent years. Foreclosure activity increased fivefold from the first to second quarter of 2007, and there have been more than 33,000 foreclosure filings since 2000. But this wave of foreclosures has fallen disproportionately on Baltimore's African-American communities. In 2005 and 2006, two thirds of Wells Fargo's foreclosures were in census tracts that are more than 60 percent African-American, whereas just 15.6 percent were in tracts that are less than 20% African-American.[74]

The City charges that Wells Fargo employed the practice of "reverse redlining": the bank targeted areas traditionally underserved by mainstream, prime-rate lenders in order to originate lucrative but unduly risky loans with customers who trusted the lender, believed the written loan terms would be the same as the terms promised orally, or lacked the experience or financial knowledge required to identify abusive loan terms. Following a common thread running through minority communities throughout America, Baltimore has struggled to recover from a history of racial discrimination in lending. For example, in 1937, the federal government published a map entitled "Residential Security Map for Baltimore," which was designed to identify neighborhoods within which it was "safe" for lenders to operate without fear of "disruption" by racial tension or poverty-related causes.[75]

As the only lender who made more than 1,000 loans in Baltimore in each year from 2004 to 2006, Wells Fargo's practices have tremendous impact on the stability of the City's housing situation. With a history of discrimination and segregation, Baltimore's minority communities are especially vulnerable to predatory and abusive lending practices. This is precisely what appears to have occurred. Both the City's foreclosures and those connected to Wells Fargo are disproportionately concentrated in Baltimore's African-American neighborhoods. Half of Wells Fargo's foreclosures from 2005 to 2006 were in census tracts that are more than 80 percent African-American, whereas only 15.6 percent were in tracts that were less than 20 percent African-American. And while just 2.1 percent of Wells Fargo's loans in predominantly White neighborhoods result in foreclosure, the figure is four times that in predominantly African-American

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[74] Mayor and City Council of Baltimore v. Wells Fargo Bank, *Complaint for Declaratory and Injunctive Relief and Damages*, p. 2, available at: http://www.relmanlaw.com/City%20of%20Baltimore%20v.%20Wells%20Fargo%20-%2008-cv-62%20-%20Complaint.pdf.

[75] Ibid., p. 12.

neighborhoods. This leads to a foreclosure rate in African-American neighborhoods that is twice the City's average, and a foreclosure rate in White neighborhoods that is half the average.[76]

One startling aspect of Baltimore's minority communities' foreclosure crisis is that approximately 70 percent of Wells Fargo's Baltimore loans that result in foreclosure are fixed rate loans—and this ratio holds constant across both White and African-American neighborhoods.[77] This is startling because it means foreclosures cannot be blamed on the vagaries of fluctuating interest rates, and thus that the underwriting procedures employed by Wells Fargo are highly irresponsible. The fact that there is such a stark differential between foreclosure rates in White neighborhoods and rates in Black neighborhoods can support the charge that the bank's underwriting standards were especially reckless in the latter. Wells Fargo also placed higher-caps on adjustable rate loans made in African-American neighborhoods than it did on those made in White neighborhoods (14.13 percent versus 13.61 percent).[78]

The patterns and practices identified by the City of Baltimore in its lawsuit against Wells Fargo fit the profile of predatory lending described in this report. The origination of unsustainable and discriminatory loan terms in African-American neighborhoods is consistent with a desire to profit by targeting vulnerable communities in order to sell high-cost loans to investors seeking high-returns.

Section II: The Nature and Extent of Housing Discrimination

Forty years after the passage of the Fair Housing Act, there are more than 3.7 million instances of discrimination each year against African-Americans, Latinos, Asian Americans, and American Indians in rental and sales markets.[79] It is crucial, however, to point out that this estimate of annual aggregate fair housing violations is *extremely* conservative. 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, color or other ethnicities. It also does not reflect discrimination in the following areas: lending, insurance, planning, and zoning or sexual or racial harassment in housing. The number does not include linguistic profiling (discrimination on the telephone) or via the Internet or discrimination when applications are filed, offers submitted in sales negotiations or when people already occupy a residence. So, **we can easily estimate the annual incidence of discrimination to exceed four million** and can only wonder and worry

[76] Ibid., p. 17, 20.
[77] Ibid., p. 21.
[78] Ibid., p. 31.
[79] 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.

about how much more there might be. One of the most effective ways of documenting discrimination is through testing of housing, lending, and insurance providers. The National Fair Housing Alliance (NFHA) and its members conduct most of the testing in the United States.

NFHA conducts testing to identify systemic patterns and practices of discrimination. In the 1990s, NFHA brought several cases against the nation's largest homeowners insurance providers and four mortgage lending institutions. These cases resulted in wholesale changes throughout much of the industry. Insurance companies eliminated or revised many discriminatory underwriting criteria, opened many offices or service centers in African-American and Latino neighborhoods, and conducted training and testing of company personnel and agents. There are still insurance agents and companies who do not comply with fair housing laws, and NFHA continues its work to address these discriminatory practices. In November 2007, NFHA and Fair Housing Advocates Association of Akron, OH, filed suit against GuideOne Insurance in the United States District Court for the Northern District of Ohio for discrimination based on religion (more information below).

Real Estate Sales Discrimination

In 2003, NFHA embarked on a multi-year, twelve-city enforcement project to test for housing discrimination in real estate markets. The purpose of this project was to conduct targeted enforcement testing of housing providers who violated the Fair Housing Act during research conducted during HUD's Housing Discrimination Study 2000 (HDS 2000). 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. Since 2005, NFHA has filed 11 real estate discrimination cases with the Department of Housing and Urban Development. *No investigation has yet been completed by HUD.* One case was dual-filed with the Michigan Department of Civil Rights which issued a charge on the same day NFHA filed the case in federal court. (*NFHA & Kimberly Hobson-Hollowell & Darrick Hollowell v. Town & Country – Sterling Heights d/b/a Century 21 Town & Country; Century 21 Real Estate LLC; and Edward Dallas*, US District Court for the Eastern District of Michigan, Southern Division Case No. 4:07-CV-10385). There is extensive information about the testing and cases in NFHA's 2006 and 2007 Fair Housing Trends Report. What follows is a brief summary of the real estate testing findings.

In twenty percent of the real estate tests, African American or Latino testers were denied service by real estate agents or provided limited service. This included refusal to meet with Black or Latino testers, failure to show up for appointments with minority testers, meeting with the minority tester but not showing the tester any homes, and showing only one or two houses to the minority tester, while the White tester saw several houses. There were several instances in which the White tester was offered incentives, such as contributions to closing costs and/or lower interest rates, which were not offered to the African-American or Latino tester. In addition, there were numerous instances in which the Black or Latino tester was required to provide a pre-approval letter or other financial information before viewing houses, while the White tester was not required to do the same. In some instances, both the White and minority teams were requested to provide pre-qualification or pre-approval letters. There were no instances in which a White tester was required to provide a pre-approval letter, while the Black or Latino counterpart was required to provide the letter in order to view homes for sale.

Agents throughout the nation made inappropriate and illegal comments based on race and national origin, racial composition of neighborhoods, religion, and schools. In addition to perpetuating segregation by limiting the neighborhoods in which homes were shown, in numerous instances real estate agents made blatant comments to Whites, African-Americans and Latinos steering them away from certain communities. NFHA discovered significant racial steering by numerous real estate companies in these twelve metropolitan areas. In the tests where testers were actually shown homes, **the rate of racial steering was 87 percent.** This is a significant finding and helps explain continued patterns of racial and ethnic residential segregation in America.

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. This steering occurred even when Whites expressed an interest in seeing homes in interracial neighborhoods or when African American or Latinos asked to see a specific home in a White neighborhood.

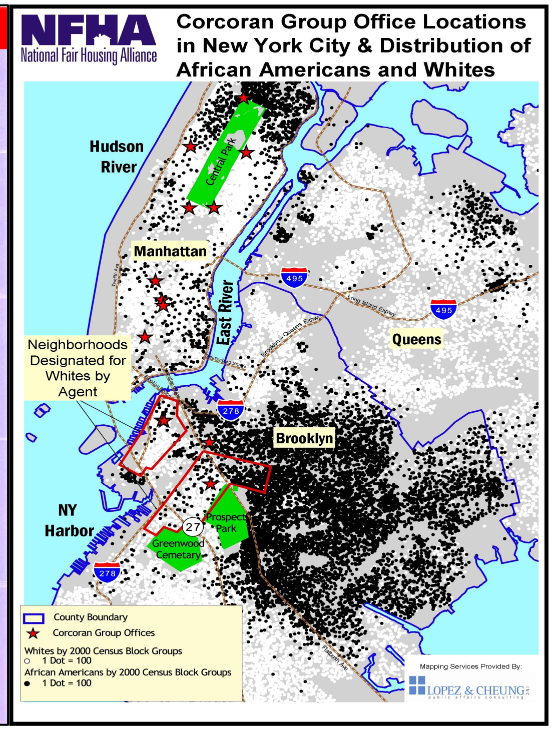
Current federal, state and local laws, including the federal Fair Housing Act, prohibit housing discrimination and steering. HUD's regulations implementing the federal Fair Housing Act state that:

> *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)).

Racial Steering Increased from 1989 to 2000: According to data from the 2000 Housing Discrimination Study, steering by agents, which occurred either by agents verbally discouraging buyers from certain neighborhoods or only showing houses in particular neighborhoods, actually increased from 1989 to 2000.

When White purchasers are discouraged from neighborhoods of color, while African-American purchasers are steered to those same neighborhoods, there is a clear violation of the federal Fair Housing Act. Sometimes real estate agents steer by limiting the location of the homes they show buyers. In other cases, real estate agents steer by making comments and editorializing about communities and neighborhoods. In tests conducted by NFHA, White testers were given *encouraging* information about White neighborhoods. For example, agents made comments about lower tax rates, better schools, and a "better lifestyle." At the same time, agents provided discouraging information to Whites about communities with higher African-American populations, saying that the schools were not as good, referring to the African-American community as a more retail area, and discussing higher taxes and utilities in the African-American community. In contrast, the African-American buyer might be discouraged from looking at the White neighborhood because it has a stigma as "where people come to retire" and encouraged to look at the African-American community because it is less expensive.

This type of editorializing and steering by comments is a violation of HUD's regulations. The provisions related to unlawful steering practices include "discouraging any person from inspecting, purchasing or renting a dwelling because of race . . . or national origin, or because of the race . . . or national origin of persons in a community, neighborhood or development" (24 C.F.R. § 100.70(c)(1)), and "discouraging the purchase … of a dwelling, by exaggerating drawbacks or failing to inform any person of desirable features" (24 C.F.R. 100.70(c)(2)), and "communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents …" (24 C.F.R. 100.70(c)(3)).



In one example, a White male agent produced a map of Brooklyn and drew redlines around the areas where the White home buyer should look for homes. He drew arrows to identify neighborhoods that were "changing." The agent was intentionally steering the buyer away from interracial and neighborhoods of color.

Steering illegally and inevitably constrains the prospects of homeseekers, since agents are often a buyer's primary 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.

While not the exclusive cause of segregation, discriminatory real estate practices clearly contribute to continued patterns of racial and ethnic segregation in the United States. While the Census Bureau documents that rates of segregation have declined between 4 and 12 percent since 1980, the average White person in metropolitan American lives in a neighborhood that is 80 percent White, almost 65 percent of African-Americans live in segregated neighborhoods, and almost 52% of Latinos live in segregated neighborhoods (see additional information about segregation in Section I).

Discrimination against Persons with Disabilities in Design and Construction

In recent years NFHA has increased its testing activities in the area of discrimination against persons with disabilities in the design and construction of housing.

Examples of accessibility barriers include the absence of curb cuts or handicap accessible parking spaces with adjacent access aisles, inaccessible kitchens and bathrooms, narrow door widths and passageways, insurmountable thresholds and inaccessible switches, outlets and environmental controls within units and throughout common use areas. One builder/owner even has step in place to enter the bedroom. In addition, in some Ovation rental communities, model units used to showcase the space to potential lessees are located on the second floor of non-elevator buildings, rendering the model inaccessible to wheelchair users and people with mobility impairments. Such individuals are, thus, denied housing opportunities at these complexes.

Ovation Development Corporation – Las Vegas, NV

On August 7, 2007, NFHA filed a housing discrimination lawsuit against Ovation Development Corporation, a builder and property manager of multi-family rental apartments in the Las Vegas area and several of its affiliated entities. In the lawsuit, NFHA alleges that Ovation discriminated against people with disabilities by improperly building units that failed to comply with federal accessibility standards in their design and construction. The lawsuit was filed in the United District Court for the District of Nevada.

The lawsuit is based on an investigation of 11 apartment complexes. The complexes are located in Las Vegas and Henderson and include Acapella, Adiamo, Amalfi, Firenze, Positano, Tesora, Tivoli, Tuscany, Venicia, Verona and Viviani. Together, the 11 complexes comprise 1,518 ground floor units and 368 buildings. All 11 properties failed to meet the accessibility requirements of the Fair Housing Act, which makes it illegal to discriminate based on race, color, national origin, religion, sex, disability or familial status. In addition, many of the properties also have violations of the accessibility requirements of the Americans with Disabilities Act (ADA).

Since its founding in 2001, Ovation has demonstrated a pattern and practice of discrimination against people with disabilities by designing and constructing multifamily dwellings with significant design flaws that render them inaccessible to people with disabilities. In 2001 and 2005, the U.S. Department of Justice filed two suits against Pacific Properties and Development Corporation, whose principal is the founder of Ovation. The suit alleged inaccessible features at four multi-family housing complexes built by Pacific Properties. In settlement, the founder of Ovation, in his capacity as an officer of Pacific Properties, was placed under a continuing order of the court that prohibited him from participating in the design and/or building of covered multi-family housing without the accessible features mandated by the Fair Housing Act.

A.G. Spanos Companies – Stockton, CA

On June 21, 2007, NFHA and four of its members filed a housing discrimination lawsuit against A.G. Spanos Companies, a builder and developer of multifamily housing and commercial properties in at least 16 states.

The lawsuit alleges that Spanos failed to comply with federal accessibility standards in the design and construction of its properties. The lawsuit was filed in the Federal District Court of San Francisco.

NFHA and its members—Fair Housing of Marin, Fair Housing Napa Valley, Metro Fair Housing Services, and the Fair Housing Continuum—investigated 35 apartment complexes in California, Arizona, Nevada, Texas, Kansas, Georgia, and Florida. All of these complexes failed to meet the accessibility requirements of the Fair Housing Act and the Americans with Disabilities Act. These 35 properties, totaling more than 10,000 individual apartment dwelling units, represent only a sample of the at least 82 Spanos properties that are covered by the federal Fair Housing Act. The suit also alleges that A. G. Spanos has engaged in a continuous pattern and practice of discrimination against persons with disabilities in their design and construction since at least 1991. Spanos Companies' motion to dismiss the fair housing claims were denied by the federal judge on April4, 2008.

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. Only one compliant has been resolved since December 2005. Currently, four complaints are pending with HUD regional offices.

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 Issues and Concerns from 2007

Supreme Court Decision in Voluntary School Integration Case

On June 28, 2007, the United States Supreme Court issued at 5-4 ruling that found unconstitutional voluntary school integration programs in Seattle, WA, and Louisville, KY. These programs were designed to promote integration and opportunity in districts where segregated housing patterns contributed to segregated schools.

While the opinion of a plurality of the Justices, written by Chief Justice John G. Roberts, Jr., claimed that it was unconstitutional to "discriminate on the basis of race"—i.e. implement race-conscious measures designed to promote integration in schools—in order to combat discrimination on the basis of race, Justice Anthony M. Kennedy, who cast the deciding vote, refused to go so far as Roberts.

In his partial dissention, Justice Kennedy wrote, "in the administration of public schools by the state and local authorities it is permissible to consider the racial makeup of schools and to adopt general policies to encourage a diverse student body, one aspect of which is its racial composition."[80] Schools therefore continue to have the clear endorsement of a majority of the Supreme Court to pursue educational diversity and equal opportunity.

There remain a number of options to create schools that reflect the diversity of our nation, including increased diversity of neighborhoods through funding by Congress for fair housing efforts and better enforcement of the federal Fair Housing Act by the

[80] 551 U. S. ____ (2007), available at: http://www.supremecourtus.gov/opinions/06pdf/05-908.pdf.

Department of Housing and Urban Development, state and local fair housing enforcement agencies, and the Department of Justice.

U.N. Committee on the Elimination of All Forms of Racism

In 1964, in response to the apartheid regime in South Africa, the United Nations approved the Convention on the Elimination of All Forms of Racial Discrimination. Since then, the Convention has been ratified by 173 countries, with the United States Senate ratifying it in 1994. Under this Convention, states are required to examine and address policies that are both explicitly discriminatory as well as those that have demonstrably discriminatory effects. States are also required to take affirmative steps to address discrimination within their borders.[81]

The Convention requires periodic compliance reviews during which parties present evidence of compliance to the U.N. Committee on the Elimination of Racial Discrimination (CERD). CERD then questions the parties' delegations to the U.N. and issues Concluding Observations intended to guide member countries in their implications of their obligations under the Convention.

As part of its compliance review, the United States submitted a report to the U.N. Committee in April 2007. This was only the second report submitted since ratification thirteen years earlier.[82] The United States' 25 member delegation then appeared before the Committee in February 2008.

Prior to the Committee's questioning of the delegation, it had received several reports submitted by "shadow" delegations from various U.S. non-governmental organizations intended to inform the Committee's questioning. One such report, entitled "Residential Segregation and Housing Discrimination," was written by staff of several civil rights and fair housing organizations, including the National Fair Housing Alliance.[83] This report provided extensive evidence to support its conclusion that "racial segregation remains a persistent fact of American life," and that "Discrimination…continues to pervade nearly every aspect of the housing market in the United States."[84]

Having studied this and other shadow reports, the U.N. CERD Committee expressed "open skepticism" regarding the U.S. delegation's claims about America's progress in

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[81] "The International Convention on the Elimination of All Forms of Racial Discrimination—2007," *Poverty & Race*, v. 16, n. 2 (March/April 2007).

[82] Poverty and Race Research Action Council, "Report from Geneva: U.N. Committee Reviews U.S. Record on Race," available at: http://www.prrac.org/pdf/ReportFromGeneva.pdf.

[83] The report is available at: http://www.prrac.org/pdf/FinalCERDHousingDiscriminationReport.pdf.

[84] Ibid.

addressing racial discrimination and disparities, according to one observer.[85] In its Concluding Observations, the Committee registered several concerns and reservations about the U.S.'s compliance. A major concern focused on the U.S.'s disregard for its obligations, under CERD, affirmatively to address "practices and legislation that may not be discriminatory in purpose, but in effect." After expressing concern about the concentration of minorities in poor residential areas, "the persistence of *de facto* racial segregation in public schools," and the "persistent racial disparities in the criminal justice system," the Committee highlighted the United States' "lack of appropriate and effective mechanisms to ensure a co-ordinated approach toward the implementation of the Convention at the federal, state, and local levels."[86]

Westchester, NY, and the 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.

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. To be sure, it has been difficult to enforce this requirement because HUD has not promulgated regulations for its enforcement, 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.

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[85] "Report from Geneva," op. cit.

[86] CERD, "Concluding Observations," March 7, 2008, available at: http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-USA-CO-6.pdf.

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.

On July 13, 2007, Judge Denise Cote issued a ruling on Westchester's motion to dismiss the suit. The motion was denied. In her ruling, Judge Cote highlighted Westchester's own admission that it had not conducted an appropriate Analysis of Impediments, which would require a study of housing discrimination based on race, because Westchester "did not include Yonkers."[87] Judge Cote then went on to note that it is quite unclear why Westchester would think this absolves Westchester from its federal obligations. The case is currently in discovery and depositions stage, with summary judgment motions due September 19, 2008.

Insurance Discrimination Based on Religion

An investigation conducted by testers posing as insurance customers revealed that GuideOne Insurance provides and markets its products and services to homeowners on the basis of their religion and religious status. In November 2007, NFHA and Fair Housing Advocates Association of Akron, OH, filed suit against GuideOne in the United States District Court for the Northern District of Ohio.

GuideOne offers and advertises its homeowners insurance products in a discriminatory fashion based on religious status and a preference for Christians. In addition, GuideOne offers its insurance products and services in a discriminatory fashion by offering special terms and conditions to what it calls "churchgoers." Beginning in 2005 and continuing through the present, GuideOne has developed, marketed, advertised, and added to its homeowners insurance policies a special endorsement under the trade name "FaithGuard." Those terms and conditions include:

a. Waiving the insurance deductible if there is a loss to personal property while that personal property is in the care, custody, and control of the insured's church;

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[87] *United States of America ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County*, No. 06 Civ. 2860, at p. 5 (S.D.N.Y. July 13, 2007) (order denying motion to dismiss).

b. Paying church tithes or church donations up to $750 if the insured suffers a loss of income from a disability caused by any accident that occurs at the insured's residence; and

c. Doubling medical limits for an injury if someone is injured while attending an activity hosted by the insured at the home of the insured if the activity is conducted on behalf of the insured's church.

These benefits of the FaithGuard policy endorsement are not available to persons who suffer a covered loss or disability while engaged in similar activities but who are not religious, who do not belong to a church, or who do not attend church or participate in religious activities.

The FaithGuard endorsement and its benefits were launched in 2005 and are offered in at least 19 states. Those states include: Alabama, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, Ohio, Oklahoma, Oregon, Tennessee, Washington, and Wisconsin. According to statements made by its officials, GuideOne is selling, renewing, or issuing homeowners insurance policies with the FaithGuard policy endorsement at a rate of more than 160 per day.

NFHA and Fair Housing Advocates Association have investigated GuideOne's homeowners insurance policies and practices in Ohio and elsewhere, including through the use of fair housing testing. Plaintiffs' testers called GuideOne, posing as prospective purchasers of homeowners insurance and seeking to secure insurance for homes that they intended to purchase or already owned. These tests confirmed that GuideOne has implemented and maintained the discriminatory policies and practices discussed herein.

In addition, the Plaintiffs' testing and investigation confirmed that GuideOne routinely inquires into the religious affiliation of all applicants for homeowners insurance. It has created a special application form, to Plaintiffs' knowledge not used by any other insurance company, which asks for the applicant's religious denomination. Such an inquiry is illegal under the federal Fair Housing Act.

Federal Trade Commission Report on the Use of Credit Scoring in Insurance

On July 24, 2007, NFHA joined several other consumer and civil rights organizations in condemning a congressionally mandated report on insurance credit scoring by the Federal Trade Commission (FTC). The groups noted that the report seemed as if out of the insurance industry's playbook and they called for Congress to reject the defective study and ban the use of credit scoring in insurance. Section 215 of the Fair and Accurate Credit Transactions Act of 2003 required the Federal Reserve Board and the FTC to study the impact of credit scoring on the availability and affordability of credit and insurance and to determine whether credit scoring was truly related to insurance losses or simply a proxy for race, income or other factors.

Insurance credit scoring is the use by insurers of consumers' credit reports for determining insurance eligibility and premiums. Unknown to most consumers, insurers' use of consumer credit information has spread to almost all insurers and is one of the most important factors in determining how much a consumer pays for auto or homeowners insurance. Previous studies by the Missouri and Texas Departments of Insurance have found that insurance scoring discriminates against low income and minority consumers because of the racial and economic disparities inherent in scoring. The Missouri study concluded that a consumer's race was the single most predictive factor determining a consumer's insurance score and, consequently, the consumer's insurance premium.

The relationship between insurance credit scores and race is so strong that even though the FTC used data handpicked by the industry, it found that credit scoring discriminates against low income and minority consumers, and that insurance scoring was a proxy for race. The FTC study also confirms that, despite growing reliance on credit-based insurance scores, scant evidence exists to prove there is a meaningful connection between a consumer's score and auto insurance losses. Without the need to demonstrate such a connection, insurers could use any consumer characteristic, such as hair color, to price insurance products. Buried in the report is the fact that the alleged correlation between risk and credit-based insurance scores might be explained by other factors. Instead of pursuing these other factors, the FTC employed subjective and pejorative racial stereotypes to try to support the alleged link between credit-based insurance scores and legitimate risk.

The FTC study is fatally flawed because the insurance industry controlled the data used in the analysis. Instead of requiring the submission of comprehensive policy data by a large number of insurers, the FTC used data handpicked by the insurance industry. Two of the five FTC commissioners also either challenged or expressed concerns with the report's findings.[88]

Fair Housing Issues on the Gulf Coast

While so many parts of the country are battling the foreclosure tsunami, the Gulf Coast states have been spared the worst of this storm. In large part, this is because so many homes damaged in another storm – Hurricane Katrina – have yet to be repaired, and so

[88] "I distrust the integrity of the underlying data set upon which the study was based," said Pamela Jones Harbour. Commissioner Jon Leibowitz is quoted as saying that "the differences in credit-based insurance scores across racial and ethnic groups are a disturbing reminder that our society is—still—not race blind, and that vestiges of our history of discrimination remain ever-present."

many homeowners are still waiting for assistance to rebuild. Under these conditions, foreclosure is not a viable option for lenders and servicers. But subprime lending is widespread in the Gulf region, and many homeowners are struggling to make their monthly mortgage payments. Unfortunately, the threat of foreclosure is increasing. NFHA has been working with its members in New Orleans and Gulfport, Mississippi, to offer assistance to homeowners whose mortgage payments are excessive or who are facing foreclosure. The organizations' counselors are having considerable success negotiating loan modifications that result in long-term affordability for homeowners.

Subprime foreclosures aside, the Gulf coast states are still struggling in other ways to recover from the devastation of those storms. And the struggle is greatest for low income people and members of classes protected under the Fair Housing Act. Congress appropriated $16.5 billion in Community Development Block Grant (CDBG) funds to aid the region in recovering from the storms. CDBG funds are intended primarily to benefit low and moderate income people. In addition, Congress requires that they be spent in ways that affirmatively further fair housing.

These mandates should offer hope that the recovery process would create a region that, from a fair housing perspective, is better in the future than it was in the past. However, the Gulf coast states' programs for spending the CDBG funds all contain serious flaws, and HUD has failed to implement requirements that protect the rights and meet the needs of persons covered by the Fair Housing Act. The result is a recovery process that, to date, falls far short of fulfilling that promise.

Three primary roadblocks are hindering the recovery: homeowners lack the funds to fully repair or rebuild their homes, plans for restoring the stock of affordable housing do not come close to meeting the need, and the pace at which federal disaster recovery funds are being made available to those for whom they are intended is far too slow. While the specifics in each state vary somewhat, the issues cut across the Gulf. The examples below illustrate the problems that are preventing an equitable recovery and the development of inclusive communities in the Gulf.

Louisiana: Flawed Formula Leads to Racial Disparities

Louisiana's program for rebuilding hurricane-damaged housing is called the Road Home. The homeowner grant portion of the Road Home was designed to compensate homeowners for their uninsured losses – the cost of damage to their homes that was not covered by insurance or assistance from FEMA.

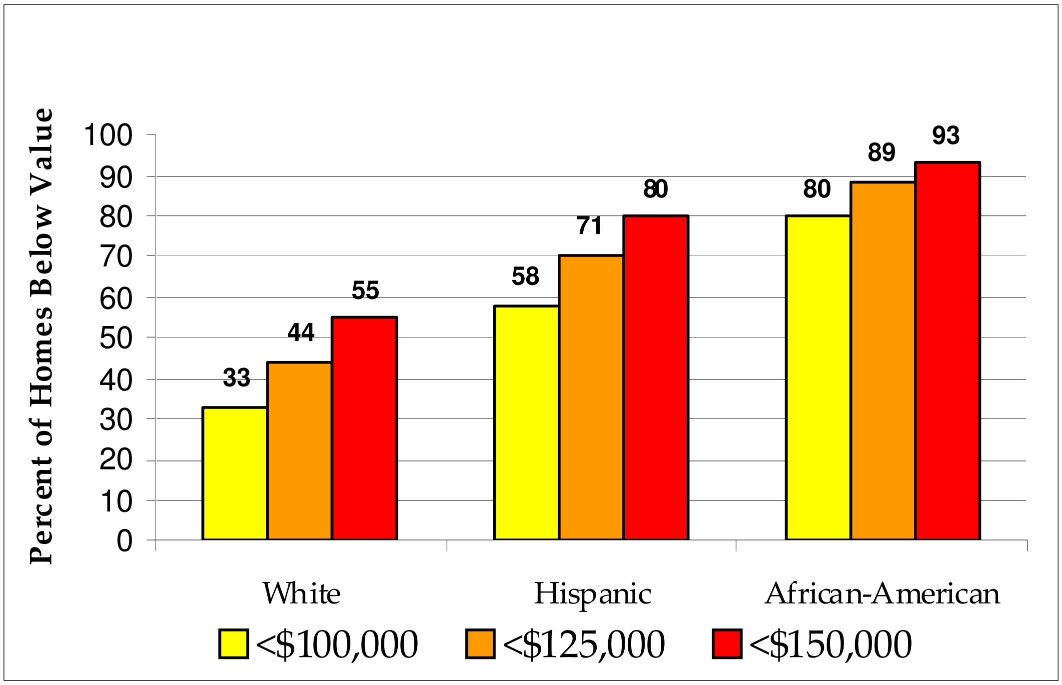
Unfortunately, the formula used by the Road Home to determine the amount of assistance has a built-in racial bias and appears to be systematically providing smaller rebuilding grants to homeowners of color and those whose homes are located in communities of color. This is because the Road Home formula is based on the pre-storm value of the home. An analysis of Census data conducted for NFHA by Calvin Bradford demonstrates that there is a systematic difference in the value of homes owned by African-Americans and Whites in New Orleans. Further, the value of a home is not related to the cost to repair or rebuild that home, and those receiving smaller grants because their homes have lower values are not receiving sufficient funding for the repairs they need to make.

According to the 2000 Census, approximately 33 percent of the homes owned by White homeowners in Orleans Parish were valued at less than $100,000, as compared to nearly 80 percent of those owned by African-Americans. In other words, African-American families were 2.4 times more likely to own a house valued under $100,000 than White families. The situation is similar for Hispanic homeowners: 58 percent of the homes owned by Hispanics in New Orleans are valued at less than $100,000, making them 76 percent more likely than White homeowners to own a house valued at this level.

Looking at homes valued under $150,000 (the maximum Road Home grant amount), we see the same pattern: 55 percent of the homes owned by Whites fall into this category, compared to 80 percent of those owned by Hispanics and 93 percent of those owned by African-Americans, creating disparity ratios of 1.45 and 1.69, respectively. In other words, 45 percent of the homes in Orleans Parish owned by Whites are valued above $150,000, while only 20 percent of those owned by Hispanics and a mere 7 percent of those owned by African-Americans are valued above this amount. **The result is that the vast majority of African-American and Hispanic homeowners in New Orleans – in stark contrast to their White neighbors – would be ineligible for the maximum Road Home grant, even if they didn't receive a penny in insurance or FEMA benefits.** The following chart illustrates these disparities.

Racial Impact of Road Home Formula in New Orleans

Based on Housing Values from the 2000 Census



Clearly, this disparity puts homeowners of color and others in communities of color at a significant disadvantage. It is likely to leave many Louisiana homeowners who are members of protected classes under the Fair Housing Act without sufficient resources to repair or rebuild their homes, or should they choose to sell their homes to the State, without enough funds to purchase another home. This disparity creates a barrier – insurmountable to many – that is making recovery difficult, if not impossible.

A recent report by the Louisiana Housing Finance Agency underscores this point. It flags the problem of basing the calculation for the rebuilding grant on the pre-storm value of homes.

> For areas with lower property values that were severely damaged, the cost of repair exceeds the pre-storm value. With construction costs estimated at $120 per square foot, many homeowners will likely be tens of thousands of dollars short of fully funding repair. Even with the Additional Compensation Grant (ACG) of up to $50,000 for low and moderate income homeowners, there may not be enough funding to replace a home. This is particularly burdensome for middle income families who do not qualify for the ACG but reside in a neighborhood where housing values were low before the storm. There are many instances of this in neighborhoods such as the Lower 9th Ward…where

> homes were completely destroyed and pre-storm value is less than replacement cost.[89]

Although the report does not analyze the data by race, an accompanying map of average grant size by neighborhood demonstrates the racial impact clearly. Lakeview, a predominantly White neighborhood in the northwestern section of Orleans Parish, has the highest concentration of grants at or near the maximum $150,000. In other parts of Orleans Parish, which have higher concentrations of African-American residents, the average Road Home grant amounts are much lower.

NFHA has been working with its local partner, the Greater New Orleans Fair Housing Action Center (GNOFHAC), to bring this and other problems with the Road Home program to the attention of policy makers. We have highlighted the issue through letters to the Governor and the Louisiana Recovery Authority (the agency charged with administration of the Road Home program), as well as letters and testimony to the Louisiana State Senate. We are continuing to pursue changes to the Road Home formula, with the goal of ensuring that homeowners of color receive enough assistance to be able to rebuild their homes.

Mississippi: Failure to Restore Affordable Rental Housing

For members of protected classes, one of the biggest hurdles to recovery from the storms of 2005 is the lack of affordable rental housing. The storms decimated the rental housing stock, and the widespread damage caused increased demand after the storms as homeowners and recovery workers entered the rental housing market. This, in turn, has produced significant rent increases, making it particularly difficult for renters with limited incomes to return. Two important characteristics of the rental housing stock in the Gulf are that much of the stock consists of one or two-unit buildings, in contrast to the apartment buildings that characterize other markets, and many of the affordable units were not subsidized. High reconstruction costs and increased operating costs (utilities, insurance) have put additional pressures on rents for these units, with no subsidies to offset them.

This issue has come to the fore in Mississippi, where the Governor has proposed to divert $600 million in CDBG funds originally earmarked for housing recovery to expansion of the Port of Gulfport, which received approximately $50 million in damage from Hurricane Katrina. The expansion plan involves building new inland facilities for storage, as well as adding casinos, hotels and resort condominiums to the Port. Despite vocal protests from housing advocates, and over the objection of key members of Congress, HUD approved the Governor's requested diversion of funds. This comes at a

[89] "Louisiana and New Orleans Metro Housing Needs Assessment ," Louisiana Housing Finance Agency, February 15, 2008, executive summary at page 9.

time when thousands of Mississippians are still living in toxic FEMA trailers because no other housing is available.

From a fair housing perspective, the Governor's plan is particularly troubling because Mississippi has allocated nowhere near enough funding to restore the affordable rental housing that was lost, and a comparison of the state-wide estimates of units damaged and the number of units expected to be repaired or restored through the CDBG-funded programs currently in place shows a substantial gap.

RENTAL HOUSING UNITS			
	Units Damaged	**Units Replaced w/CDBG Funds**	**Net Loss of Units**
Small Rental	47,013	6,000	41,103
Multi-family Rental	15,457	5,753	9,727
Very Low-Income Rental	37,105	5,730	31,375

NFHA's analysis shows that this loss of affordable rental housing will hit members of protected classes especially hard, since Census figures for the three coastal counties in Mississippi (Hancock, Harrison and Jackson counties) show that prior to the storm they were more likely to be renters:

- White households were least likely to be renters, with 16 percent of White households renting their home in Hancock County, 19 percent in Harrison County, and 20 percent in Jackson County
- African-American households were much more likely to be renters: 35 percent in Hancock County, 21 percent in Harrison County, and 46 percent in Jackson County.
- Hispanic households were even more likely to be renters: 36 percent in Hancock County, 62 percent in Harrison County, and 54 percent in Jackson County.
- Asian-Americans had the highest percentage of renters: 50 percent in Harrison County and 34 percent in Jackson County. The Census reported no Asian households in Hancock County.
- 42 percent of female-headed households were renters, compared to 31 percent of the population overall.
- 36 percent of families with children were renters, compared to 29 percent of households without children. In Harrison County, 42 percent of households with children were renters, compared to 35 percent of households without children.

In collaboration with the Gulf Coast Fair Housing Center, in Gulfport, MS and other local and national allies, NFHA has worked to focus attention – in Mississippi, at HUD and in Congress – on the tremendous need for affordable rental housing in the Mississippi communities devastated by Hurricane Katrina.

NFHA is also focusing on the needs of homeowners. Because of our concerns that Mississippi's formula for homeowner assistance may be biased against members of protected classes, we are working with our allies to obtain detailed information about the characteristics of applicants for those programs and the outcomes of their applications. We are also investigating the impact on protected classes of the eligibility restrictions imposed by the State, among other fair housing issues.

Alabama: Inordinate Delays in Spending

In Alabama, the greatest damage from Hurricane Katrina occurred in Mobile County, particularly in the communities right along the Gulf Coast. Much of this area is unincorporated, and residents are dependent on the County for assistance in rebuilding. Rather than running the disaster recovery programs at the state level, as has been done in Louisiana and Mississippi, Alabama set up a competitive process through which local jurisdictions could apply for funding for a variety of recovery projects. Mobile County received some $17 million in CDBG funding to help rebuild hurricane-damaged housing.

As of this month, two and a half years after Hurricane Katrina, Mobile County has provided assistance to only two homeowners. Hundreds of others are still waiting to find out if they will be eligible for assistance, and if so, how much they will receive. Hundreds of others are hoping for another chance to apply, since the Red Cross and most other charitable organizations are no longer offering assistance in Mobile County. As in other parts of the Gulf Coast region, alternative housing options are extremely limited. Some residents are still in FEMA trailers, often to the detriment of their health. Others are living in homes that are not really habitable or in sheds on the properties where their homes once stood.

The process in Mobile County has been characterized by missteps from the beginning. The program design is very complicated and difficult for residents to understand. Very little outreach was done about the program, and none in languages other than English, despite the presence of significant numbers of non-English-speaking residents. Some homeowners who had applied for assistance from charitable organizations were discouraged from applying for CDBG funds through the County. The time period during which applications were available, and for turning them in, was just a few weeks. Despite all these obstacles, some 1200 residents applied for assistance. Now the County is eliminating homeowners whose properties it believes to have had pre-storm damage or "deferred maintenance," although CDBG guidelines clearly allow for repairs to such homes.

Until the current funds are spent, it will be difficult for Alabama to make the case that more resources are needed. Yet local advocates estimate that at current funding levels, and under current program guidelines, fewer than 10 percent of those who applied will receive rebuilding funds. And no funding has been earmarked for rebuilding rental housing. Clearly, more funding is needed in Alabama. Unfortunately, despite the fact that Alabama's Senator Shelby is the ranking Republican on the Senate Banking Committee – the committee that authorizes funding for this purpose – neither he nor other members of the Alabama delegation have responded to pleas from constituents to request additional recovery funds for the state.

In Alabama, NFHA has been working in partnership with the Fair Housing Center, Inc., of Mobile, and other allies to support the efforts of residents in communities hard hit by Hurricane Katrina. As one of the few national organizations working on hurricane recovery issues in Alabama, we have endeavored to make sure that needs in that state have not been forgotten or overlooked. We have helped to clarify the regulations and requirements of the CDBG program, reviewed and critiqued Mobile County's disaster recovery program and its implementation, and pressed for the County to move more quickly and equitably to get funds into the hands of those who so desperately need them. NFHA and the Fair Housing Center will continue to work toward these goals, and to encourage community residents to organize effectively to speak out on their own behalf.

Section III: A Molehill Compared to a Mountain

Housing Discrimination Complaints for 2007

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 2003. Fair Housing Assistance Program (FHAP) organizations are state and local government organizations that receive HUD funding to investigate and process fair housing complaints. Under the Fair Housing Act, HUD is required to refer cases to these agencies if the agencies are "substantially equivalent" under the law, i.e. that the state or local law is substantially equivalent to the federal law.

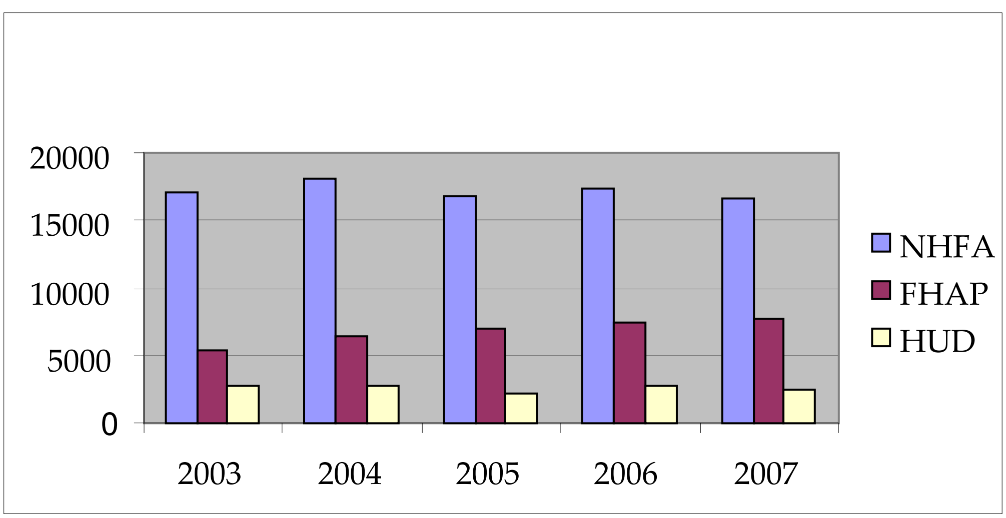
TOTAL FAIR HOUSING COMPLAINTS FILED

Agency	Claims/ Complaints	2003	2004	2005	2006	2007
NFHA	Complaints	17,022	18,094	16,789	17,347	16,834
FHAP *	Claims and Complaints	5,352	6,370	7,034	7,498	7,705
HUD *	Claims and Complaints	2,745	2,817	2,227	2,830	2,449
DOJ *	Case Filings	29	38	42	31	35
Totals		**25,148**	**27,319**	**26,092**	**27,706**	**27,023**

* HUD, FHAP and DOJ data are for Fiscal Year 2007. 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 2007, there were 27,023 complaints of housing discrimination. **The number of complaints filed, however, still represents less than one percent of the annual incidence of discrimination.** The total number of complaints has been fairly consistent over the past five years. Private fair housing organizations continue to process more than 60 percent of the complaints, despite the fact that over the past five years more than 25 organizations have closed or been on the brink of closing.

Housing Discrimination Complaints



Discrimination by Protected Class

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

DISCRIMINATION BY PROTECTED CLASS				
Basis	**NFHA**	**HUD**	**FHAP**	**DOJ**
Race	20%	39%	36%	23%
Disability	33%	49%	42%	49%
Family Status	15%	12%	15%	14%
National Origin	11%	12%	13%	9%
Sex	4%	8%	10%	3%
Religion	1%	2%	3%	3%
Color	1%	1%	2%	n/a
Other*	16%	5%	6%	3%

* 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 2007. Totals may exceed 100 percent, because a single complaint may have multiple bases. Percentages are rounded to the nearest whole number.

Discrimination on the basis of disability has dominated complaint loads for the past few years, and the trend continues for this year as well, for all types of reporting entities. It is important to note that HUD and DOJ have dedicated resources to rooting out discrimination based on disability, and taken those resources away from fair housing efforts for other protected classes.

Discrimination by Housing Market Sector

1. Rental Market Discrimination— Private Groups Report 12,606 Complaints[90]

Of the many categories of complaint data for housing discrimination, rental cases continue to represent the largest number of complaints. Most housing discrimination

[90] 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 multiple categories.

complaints are filed against apartment owners and managers for discriminating against renters on the basis of race, disability, family status and national origin. In 2007, private fair housing groups reported 12,472 complaints of housing discrimination in the rental market.

2. Home Sales Discrimination—Private Groups Report 636 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.[91]

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. There is additional information about discriminatory real estate practices in the section on the state of fair housing as well as extensive information in NFHA's 2006 and 2007 Fair Housing Trends Reports, available on the NFHA website at www.nationalfairhousing.org

3. Mortgage Lending Discrimination— Private Groups Report 1,245 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;

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

- 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. Discriminatory predatory lending harms individual borrowers and destabilizes communities and neighborhoods by causing widespread foreclosures, which reduces property values. There is additional information in this report about discrimination and predatory lending in Section I.

In the face of the subprime foreclosure crisis, the Department of Housing and Urban Development has initiated only three fair lending investigations since 2006 and has processed only 137 fair lending complaints. The Department of Justice filed only one mortgage lending case in 2007. Combined, this amounts to only 10 percent of the cases that private groups have filed.

4. Homeowners Insurance Discrimination—Private Groups Report 46 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. There is additional information about insurance discrimination in Section II of this report.

5. Harassment—Private Groups Report 1,246 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. This year's number of harassment complaints is more than twice the number of harassment complaints received by private groups last year (564).

Section IV: The Federal Fair Housing Enforcement System Is Still Broken

Lack of enforcement of fair housing laws is the main cause of the mismatch between the high incidence of housing discrimination and the low incidence of complaints of housing discrimination. 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, 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.

HUD's Meager Fair Housing Effort

As mentioned above, while there are at least 4 million fair housing violations annually, only 27,023 complaints were filed in 2007. Private fair housing groups processed 16,834 of the 27,023 complaints and cases filed in 2007 – a total of 62 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 2,449 complaints and state and local agencies (FHAPs) processed 7,705. This is a decrease for HUD from last year and modest increase for FHAP agencies from last year. As shown in the chart that follows, the number of cases HUD is processing has drastically declined since the 1992 high of 6,578 complaints.

Number of HUD Administrative Complaints by Year	
1990	4286
1991	5836
1992	6578
1993	6214
1994	5006
1995	3134
1996	2054
1997	1808
1998	1973
1999	2198
2000	1988
2001	1902
2002	2511
2003	2745
2004	2817
2005	2227
2006	2830
2007	2449

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 released April 1, 2008, *HUD reported that 1,353 cases passed the 100 day mark in FY07, 181 more than in FY06.*[92] This does not include the number of cases that were aged prior to the start of FY07. 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 4,081 ongoing investigations by Fair Housing Assistance Program Agencies (HUD's counterparts at the state/local levels) that have passed the 100 day mark, an increase of 141 over FY06.[93]

One NFHA member has several design and construction complaints that have been pending with HUD for almost 4 years. Several of NFHA's cases are three years old. Given HUD non-performance on these complaints, NFHA filed its design and construction cases in federal court.

HUD Charged Only 31 Complaints in 2007

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 31 charges following a determination that there was reasonable cause to believe that unlawful discrimination occurred in fiscal year 2007. The number of charges issued by HUD in 2007 dropped from even the small number of 34 issued in FY 2006. 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.

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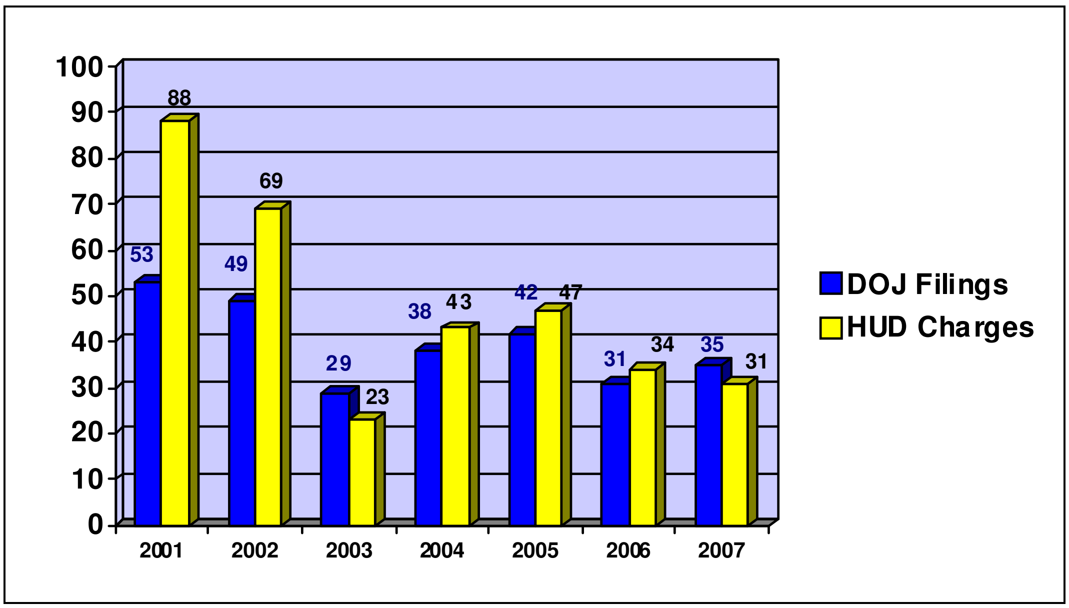
[92] *The State of Fair Housing – FY2007 Annual Report on Fair Housing*, US Department of Housing and Urban Development, the Office of Fair Housing and Equal Opportunity (March 31, 2008), p. 30.

[93] Ibid., p. 56.

Fair Housing Act Cases in which HUD Issued a Charge Fiscal Years 2001-2007							
2001	2002	2003	2004	2005	2006	2007	TOTAL
88	69	23	43	47	34	31	335

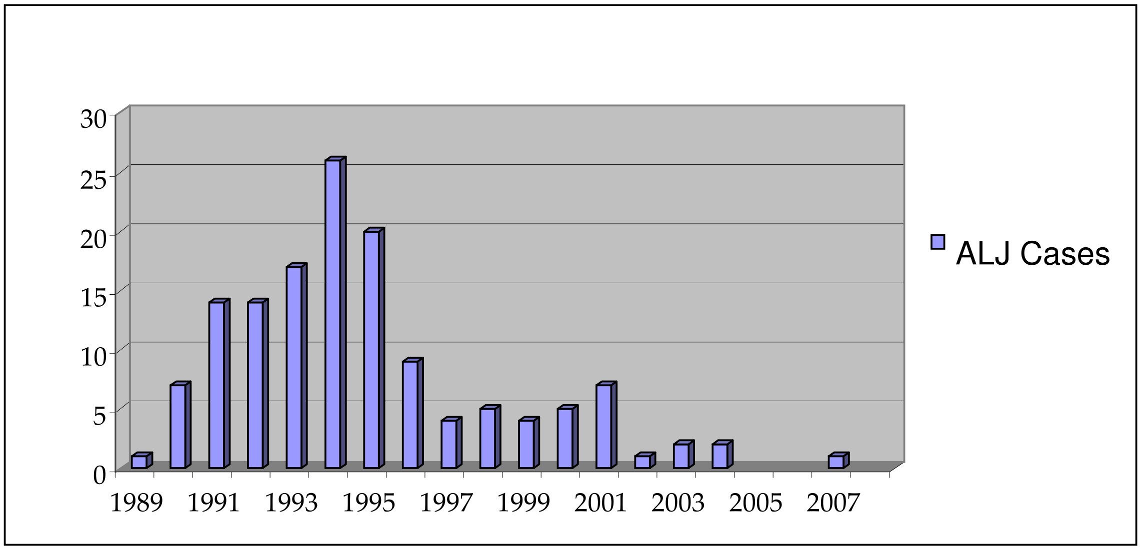
Complaints charged by HUD and consent decrees/lawsuits filed by DOJ



Administrative Law Judge Function is Essentially Defunct

While Administrative Law Judge case processing was considered a positive feature of the Fair Housing Amendments Act of 1988, HUD's failure to properly process, cause, and charge cases, particularly in recent years, has made a farce of the system. The following chart illustrates the number of HUD ALJ proceedings since 1989. **There were no cases in 2005 and 2006 and only two cases in 2007.**

Administrative Law Judge Cases



In February, NFHA staff were told that HUD currently has no Administrative Law Judges for fair housing cases. Fair housing proceedings must be heard by an ALJ in another department, such as the Environmental Protection Agency.

Inconsistent Standards and Inadequate Investigations

HUD enforcement efforts operate largely through ten "HUB" regional offices. HUD allows these offices in many cases to create their own policies and practices. NFHA has provided information to HUD and met with HUD officials on many occasions to object to the fact that fair housing case processing and legal standards differ from region to region. Many investigators lack information related to basic fair housing case law and many are unable to properly investigate a case. In a recent appellate decision in the Second Circuit (*Boykin v. KeyCorp*, C.A.2 (N.Y.), 2008), the Court identified HUD's practice of allowing inconsistent policies between HUBs as a significant problem. In this particular case, HUD's inconsistent policy related to when an administrative case was considered closed and whether or not a regional HUB sent a closure letter to a complainant, even when the matter had been referred to a Fair Housing Assistance Program agency. The court provided the following assessment of HUDs reasoning in the matter: ". . .we note that HUD's own characterization of this interpretation as 'a matter of practice' does not suggest that it was thoroughly considered. Nor can we conclude, on the record before us, that HUD's practice is validly reasoned. "

The following case studies are specific examples of HUD's flawed case processing system.

Case Study: Crestbrook Apartments

Beginning in 2005, NFHA conducted an investigation of the rental practices of Crestbrook Apartments in Burleson, TX. After revealing multiple instances of housing discrimination, NFHA filed a complaint with HUD on December 28, 2006. Through its own subsequent investigation, HUD verified that Crestbrook agents discouraged Black potential applicants by providing false information about the application process and by providing Black potential applicants with less favorable service and information about available units than was provided to White potential applicants. Additionally, HUD uncovered evidence of a practice of discrimination against Black applicants in application procedures.

Despite these discoveries, HUD did not attempt to conciliate or move forward with a charge of discrimination based on the evidence collected. HUD then erroneously and without appropriate process issued a "no reasonable cause" determination in the matter. Yet the evidence clearly meets the standards for housing discrimination set out in HUD's own regulations.[94] Moreover, in its Determination of No Reasonable Cause, HUD distorted facts by ignoring and suppressing evidence of Fair Housing Act violations. Further, HUD neglected to provide NFHA with standard information about the investigation as it progressed and failed to follow procedures established in the federal regulations.

NFHA has since requested that HUD reopen and complete this investigation, issue a finding of reasonable cause, and evaluate the investigative procedures that led to the unwarranted "no reasonable cause" determination. NFHA's request for reconsideration was granted, and the case was reopened. Fortunately, NFHA has the resources and knowledge with which to make such a request; most housing discrimination complainants would be unable to identify and counteract HUD's failures in a similar manner.

DOJ's Dwindling Involvement in Fair Housing Enforcement

DOJ Filed Only 35 Cases in 2007

The Department of Justice has also filed fewer fair housing cases in the past two years than in previous years. DOJ filed 35 fair housing cases in 2007 and 31 cases in 2006, compared to 42 in 2005, and down from 53 in 2001. The number of cases filed each year since 2003 is significantly lower than the number of cases filed from 1999-2002.

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[94] See 24 CFR Part 14.

Total DOJ Cases Filed by Year								
FY99	**FY00**	**FY01**	**FY02**	**FY03**	**FY04**	**FY05**	**FY06**	**FY07**
48	45	53	49	29	38	42	31	35

DOJ's Fair Housing Authority and Mandate

Segregation and discrimination in America are so systematic and so widespread that nothing short of major institutional solutions will do. Indeed, this was the perspective of the Fair Housing Act and its 1988 Amendments, and these pieces of legislation place much authority and responsibility in the hands of the Department of Justice. DOJ is the principal legal authority tasked with enforcing federal fair housing laws, and it has both a clear mandate and wide discretion with respect to fair housing enforcement.

The 1968 Fair Housing Act gave DOJ the authority to prosecute cases involving a "pattern or practice" of housing discrimination, as well as cases involving acts of discrimination that raise "an issue of general public importance." As LCCREF's report *Long Road to Justice* documents, the Civil Rights Division of DOJ used this authority successfully to secure negotiated consent decrees and to challenge discriminatory zoning ordinances in court. One such zoning case involving the city of Black Jack, Missouri, resulted in the court's ruling that an ordinance needn't be intentionally discriminatory to violate the Fair Housing Act. According to the court, "Effect, and not motivation, is the touchstone, in part because clever men may easily conceal their motivation, but more importantly, because…whatever our law was once,…we now firmly recognize that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willful scheme."[95] The authority to prosecute such cases involving "disparate impact" is an important and powerful tool, one that ought to be used vigorously to combat the discrimination that exists today in the housing and lending markets.

In addition to these tools, the Fair Housing Amendments Act of 1988 added to DOJ's fair housing authority and responsibilities. When, after investigation, HUD issues a Charge of Discrimination in response to a fair housing complaint, the complainant or respondent may elect to have the claims asserted either in an administrative proceeding *or* in federal court. If the latter is elected, DOJ "shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court" on behalf of the aggrieved person within 30 days.[96] The 1988 Amendments also require HUD to refer to DOJ all matters involving alleged fair housing violations by any state or local zoning

[95] *United States v. City of Black Jack*, 508 F2nd 1179, 1184-86 (8th Cir. 1975). See the discussion in *Long Road to Justice*, The Leadership Conference on Civil Rights Education Fund, Sept. 2007. Available at reclaimcivilrights.org.
[96] 42 U.S.C. 3612.

or land-use laws, and the Attorney General now has authority to initiate civil lawsuits in response to these referrals.[97] DOJ is also permitted seek monetary relief in "pattern or practice" cases ($50,000 for a first violation and up to $100,000 for subsequent violations).[98]

Finally, the Civil Rights Division of DOJ has the authority to establish fair housing testing programs, which it first did in 1991. The division also subsequently established a fair lending program designed to challenge discriminatory lending mortgage practices and to educate lenders of their obligations under the Fair Housing Act and Amendments.

DOJ's Recent Record

As documented above, the Department of Justice has filed fewer fair housing cases during the past two years than in previous years. DOJ filed 35 fair housing cases in 2007 and 31 fair housing cases in 2006, compared to 42 in 2005, and down from 53 in 2001. While we do not dispute that DOJ has filed several cases with important outcomes, the decline in the number of cases and the failure to focus on patterns that contribute to segregated living in this nation merit serious concern.

The Department provided to NFHA data for Fiscal Years 1999-2007. The data reveal some disturbing trends:

- In the four years 1999-2002, DOJ brought 195 cases; in the five years 2003-2007, DOJ brought 175 cases.
- In the four years 1999-2002, DOJ brought 35 pattern and practice cases based on race; in the five years 2003-2007, DOJ brought 24 pattern and practice cases based on race.
- In the four years 1999-2002, DOJ filed 24 pattern and practice cases based on its testing program; in the five years 2003-2007, DOJ filed 11 pattern and practice cases based on its testing program.
- In the four years 1999-2002, DOJ filed 15 *amicus curiae* briefs; in the five years 2003-2007, DOJ filed 3 *amicus* briefs.

One reason for the decline in filed cases may be that DOJ has recently taken the stance that it is not required to file "election" cases from HUD, insisting that it may instead perform additional investigations, thereby duplicating HUD's activities and prolonging the process. One example occurred in Chicago where DOJ refused to file a federal suit after HUD referred an election case, even in spite of intervention by a Congressional

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[97] See Bill Lann Lee, "An Issue of Public Importance," in *Cityscape: A Journal of Policy Development and Research*, v. 4, n. 3 (1999), pp. 35-56, p. 47n17.
[98] Ibid., p. 37.

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 prosecute disparate impact cases. In 2003, DOJ announced that it would no longer file disparate impact cases involving housing discrimination.[99] 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. As the courts emphasized in permitting disparate impact cases in the first place, many rental, sales, insurance, and related policies are not discriminatory on their face, but have a disparate impact that is at odds with the purpose of fair housing legislation. Recent examples of proposed ordinances and laws that have prima facie disparate impact include (1) placing a limit on the number of persons per bedroom, which has a disparate impact against families with children, and (2) imposing a minimum loan or insurance amount, which has a disparate impact against properties in minority neighborhoods.

In the realm of mortgage lending, the Civil Rights Division failed to recognize and combat the deleterious and discriminatory effects of practices within the subprime market. It also did little to induce or require conventional lenders to operate within minority communities. Although it brought a series of successful, high-profile lawsuits against mortgage lenders engaged in "pattern or practice" discrimination in the 1990s, DOJ has prosecuted only a handful of new lending discrimination cases since 2000, despite the significant discriminatory predatory lending that has been going on throughout the past several years.

Moreover, despite continuing indications of redlining in the homeowners insurance industry, the Division has missed several opportunities to confront the discrimination directly and to correct underlying practices. Aside from two cases in the mid 1990s against the insurance companies Nationwide and American Family, the Division has missed the opportunity to take enforcement efforts in this area, leaving it to the private fair housing groups and their lawyers. One suit brought against Nationwide by Housing Opportunities Made Equal in Richmond, Virginia, was instigated by the housing group's dissatisfaction at the Housing Division's settlement with Nationwide. The subsequent suit resulted in the largest jury verdict ever in a Fair Housing Act case – over $100 million dollars.

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

Although private fair housing organizations routinely process at least 60 percent 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

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[99] HUD HUB Directors' meeting (Rhode Island, 2003).

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 1994[100]	
Fiscal Year	**FHIP Funding**
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 million *
2008	$ 23.6 million +
2009 - proposed	$ 19 million *

**actual funding level available for general FHIP activities, excluding set-asides*
+ actual funding level for FHIP not yet known

Although the official amount proposed by the Administration for FHIP in FY2009 is $26 million, it includes $6.8 million in set-asides, leaving $19.2 million for FHIP activities – a 15% cut from the final budget for FY08.

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.[101]

[100] FHIP was a pilot program from 1989 to 1993. It was authorized as a program in 1994.
[101] *Reconstructing Fair Housing*, National Council on Disability (November 6, 2001).

In FY2009, the President's budget proposal is listed as including $26 million for the Fair Housing Initiatives Program, but this masks a $6 million set-aside for the Housing Discrimination Study of 2010. The Housing Discrimination Study (HDS) is an illegitimate use of FHIP funding, as HDS is designed purely as a research mechanism, and should be funded through HUD's Office of Policy Development and Research.

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, at least fourteen fair housing organizations nationwide have closed their doors due to lack of funding (see chart below.) At least twelve other organizations have had to significantly curtail or eliminate their enforcement activities due to cutbacks, including reduction of staff. All told, **26 fair housing centers, or one quarter of all fair housing centers throughout the country, have closed or are at risk.** In some cases, groups served densely populated and large metropolitan areas; in other cases, groups served an entire state and their closing continues to have a drastic effect on a substantial geographic area.

Part of this problem is related to insufficient funding levels. Part is related to HUD's inconsistent system of funding organizations and its continued practice of funding new, and often unqualified, organizations at the expense of existing and experienced fair housing organizations. Substantial education and outreach funding is provided to organizations without fair housing knowledge or experience. These are often one time grants that do little to promote fair housing, particularly as the organizations are unequipped to deal with any enforcement matters that may arise. In addition, many of these groups are forced to contact qualified fair housing organizations to obtain the necessary information to even fulfill the requirements of the grant agreement.

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
Montana Fair Housing, Inc.	Missoula, MT
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 V: The Costs of Segregation

The costs of discrimination and segregation go far beyond those outlined in the Section I on the current foreclosure crisis and its impact on families and communities. Many of these costs have been documented in a recently published book, **Segregation: The Rising Costs for America**. The book was sponsored by NFHA and co-edited by James H. Carr and Nandinee K. Kutty. The book contains eleven chapters that explore costs related to employment, health care, education, social networks, and discriminatory/predatory lending. What follows is a brief summary of some of the key findings in the book as well as other research related to the costs of segregation. We encourage everyone to read the book for which there is an order form on the NFHA website at www.nationalfairhousing.org.

Employment Inequalities

While employment gaps have narrowed in the past few decades, there are still significant differences in rates of employment between Whites, Blacks, and Hispanics. At the end of 2004, the employment rate for Whites was 63.2 percent and for Blacks was 57 percent. For Hispanics, the rate was actually higher at 63.9 percent; however, the unemployment rate for Hispanics at 6.7 percent was fifty percent higher than the unemployment rate for Whites at 4.6 percent. The unemployment rate for Blacks at 10.8 percent was more than twice the unemployment rate for Whites.[102] These differences in employment rates can be explained to some extent by discrimination in the employment marketplace and by factors associated with segregated residential living patterns.

Recent research in six metropolitan regions by Margery Austin Turner of the Urban Institute finds that "minority workers (and especially low-wage Black workers) [are] overrepresented in central cities, while jobs (especially low-wage jobs) are situated widely throughout the suburbs." Even though there has been some movement of minority workers to residential suburban areas, "these are often not the suburban jurisdictions that offer the most promising job opportunities. Correspondingly, Black workers in particular are underrepresented in jobs that are located in predominantly White suburban communities." Turner adds that ". . .residential segregation continues to put considerable distance between minority workers, especially Blacks, and areas of greatest employment opportunity."[103]

In addition to a "spatial mismatch" between employment centers and African American and Latino neighborhoods, Turner identifies additional factors that affect employment opportunity and success:

> *Skills and Experience*
>
> Key work skills, such as cognitive skills, computer skills, and interpersonal skills, are a growing determinant of employment success, even for low-wage jobs. Racial segregation contributes to minorities' unequal educational attainment, and their disadvantaged position in the labor market.
>
> *Information and References*
>
> A job seeker's access to information about possible job openings and the employer's information about a candidate's likely performance are also important factors in determining labor market success. The spatial separation of employment centers from minority neighborhoods may prevent a minority job seeker from finding out about potential opportunities when they are advertised only in community newspapers, bulletin boards, or help wanted signs. In addition, many employers rely on referrals from existing employees to fill open positions, because so many jobs require cognitive and social skills. Social networks may determine what openings a job seeker learns about, and whether he or she receives credible references.

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[102] Margery Austin Turner, "Segregation and Employment Inequality," in James H. Carr and Nandinee K. Kutty, eds., *Segregation*: *The Rising Costs for America* (New York: Routledge, 2008), p. 133.

[103] Turner in *Segregation*, pp 165-166.

Prejudice and Discrimination

> There is strong evidence that prejudiced attitudes on the part of employers result in discrimination against qualified minority applicants. Blacks, in particular, are unlikely to be hired for jobs that require higher cognitive skills, such as daily computer use, arithmetic, and customer interaction. Residential segregation may sustain minorities' misperceptions and fears about Whites. [104]

Paired testing research that showed that Black men were less likely than similarly qualified White men to be invited to apply or be offered an interview of employment dates back to 1990. More recent research shows that persons with names that identify them as members of a particular race or ethnicity are treated differently by potential employers, despite having similar qualifications. Those who submitted resumes with "White" sounding names (Emily and Brendan) were fifty percent more likely to receive callbacks from potential employers than those who submitted resumes with "Black" sounding names (Lakisha and Jamal).[105]

Educational Inequalities

The demographics of housing and schools are deeply interwoven and their reciprocal relationship is important in understanding how segregation is perpetuated. Simply put, segregated neighborhoods create segregated schools because schools draw students from the surrounding geographic region. Alternatively, a school's socioeconomic and racial composition often serves as an indication of its academic quality and signals to parents and homeowners the desirability of the surrounding neighborhood. The effect is that segregated schools reinforce segregated neighborhoods. Moreover, resistance to and fear of integration often results in White flight, further exacerbating neighborhood segregation and disparities in social, economic and racial/ ethnic representation.[106]

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 filed in 2006 with the U.S. Supreme Court, a 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

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[104] Turner in *Segregation*.

[105] Bertrand, Marianne and Sendhil Mullainathan. 2003. "Are Emily and Brendan More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination." NBER Working Paper No. 9873. Cambridge, MA: National Bureau of Economic Research.

[106] Frankenberg, E., *The Impact of School Segregation on Residential Housing Patterns*, Harvard Civil Rights Project, 2002.

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."[107]

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."[108]

In **Segregation: The Rising Costs for America**, Deborah McKoy and Jeffrey Vincent outline the effects on education of neighborhood concentrations of race and poverty:

> **Impacts on Students and Families:** Children in predominantly White schools have higher achievement scores and significantly higher rates of graduation than children in predominantly minority schools.
>
> **Impacts on Teachers and Classrooms:** Teachers in schools in neighborhoods with concentrated poverty have older and fewer instructional resources and less access to multimedia and technology resources.
>
> **Impacts on Schools and School Districts:** School operations are negatively affected by inconsistent fewer resources, and many activities and services, such as sports, art, music, healthcare, and security guards, are reduced or eliminated.[109]

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

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[107] *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.
[108] Atlanta Journal-Constitution, "Black Schools, White Schools" (June 22, 2003).
[109] Deborah L. McKoy and Jeffrey M. Vincent, "Housing and Education," in James H. Carr and Nandinee K. Kutty, eds., *Segregation*: *The Rising Costs for America* (New York: Routledge, 2008), pp. 130-131.

> 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.[110]

Health Inequalities

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."[111] 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."[112]

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*.[113] 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."[114]

In their chapter in **Segregation**, Dolores Acevedo-Garcia and Theresa L. Osypuk offer further documentation of grave racial health disparities. For example, they note that

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110 *Grutter v. Bollinger*, 123 S.Ct 2325 (2003).
111 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.
112 Gregory R. Squires and Charis E. Kubrin, *Privileged Places*, (Colorado: Lynne Rienner, 2006), p. 12.
113 Williams and Collins, "Racial Residential Segregation," op. cit., p. 405.
114 Ibid., p. 411.

"even after taking into account maternal age, education, and health behaviors and medical risk factors during pregnancy, Black babies are more likely to be of low birth weight" than White babies.[115] This is all the more troubling in light of the fact that "Black babies born to immigrant mothers are significantly less likely to be of low birth weight than their counterparts born to (presumably genetically similar) U.S.-born Black mothers."[116]

Acevedo-Garcia and Osypuk also note that after controlling for age, income, education, and location, "Blacks were more likely than Whites to live in inadequate housing." This means, for example, that Blacks are more likely to be exposed to household allergens from "mold, mice and rates, cockroaches, and dust mites," each of which can be associated with asthma.[117] Additional dangerous exposure to toxins and illness often occurs as a result of the presence of lead in the household, unsafe drinking water, ineffective waste disposal, and overcrowding.[118]

Acevedo-Garcia and Osypuk discuss a housing mobility program that was sponsored by HUD and which appears to demonstrate the clear link between poor neighborhoods, in which minorities are disproportionately represented, and negative health outcomes. The Moving to Opportunity (MTO) experiment moved eligible participants from center-city public housing located in high-poverty neighborhoods in five metropolitan areas. Participants "were randomly assigned to one of three groups:"

1. The treatment group (also referred to as the experimental or MTO group) was offered both a Section 8 housing voucher that could be redeemed only in a low-poverty neighborhood…and housing search counseling.
2. The Section 8 group was offered a geographically unrestricted Section 8 housing voucher.
3. The in-place control group did not receive a voucher, but remained eligible for public housing.[119]

Remarkably, "the MTO demonstration has shown better health in the MTO group, and in some instances also in the health of the regular Section 8 voucher group vis-à-vis the control group of public housing families."[120] "MTO adults also showed significant improvement in mental health, including reductions in psychological distress and depression, and increasing feelings of calm and peacefulness."[121]

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[115] *Segregation*, p. 198.
[116] Ibid.
[117] Ibid., p. 206.
[118] Ibid., p. 207.
[119] Ibid., p. 209-210.
[120] Ibid.
[121] Ibid.

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Segregation and the scholarly work that informs its chapters demonstrate clear and entrenched causal connections between discrimination, segregation, and confinement to high-poverty neighborhoods and poor education, lack of job opportunities, and health disparities. The book succeeds in its aim of proving, once and for all, that it is time to ensure that the opportunities so many of us have depended on for success in our lives are delivered to all Americans. Indeed, a compelling argument is made that "many of the programs or opportunities needed to promote economic mobility for historically disadvantaged groups…are the same programs that would benefit most Americans."[122] The bad news is that for too long our nation has been divided by injustice; the good news is that the endeavor finally to secure justice would better our prospects by unifying our country.

Section VI: Recommendations

This report documents a problem too costly for our country to ignore. We can no longer tolerate housing discrimination and the persistence of segregated neighborhoods. Many of the recommendations that follow require additional funding, but these funds represent a small fraction of the cost of failing to address what are comprehensive social and economic ills. Some of these recommendations require only a change in policy. All are necessary to achieve our nation's goal and the benefits of balanced and integrated living patterns.

Increase Fair Housing Funding and Focus Resources on Investigations

Enact the Housing Fairness Act

Introduced in 2007, the Housing Fairness Act (H.R. 2926/S.1733) represents a significant rededication to fair housing funding by the Congress. The legislation authorizes funds to root out housing discrimination through a $20 million nationwide testing program, a doubling of the funding authorization for the Fair Housing Initiatives Program to $52 million, and the creation of a $5 million competitive matching grant program for private nonprofit organizations to examine the causes of housing discrimination and segregation and their effects on education, poverty, and economic development. The nationwide testing program alone 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

[122] James H. Carr and Nandinee K. Kutty, "The New Imperative for Equality," in *Segregation*: *The Rising Costs for America*, op. cit, p. 34.

statistical areas (which contain 69 percent of the nation's population). NFHA urges the Congress to pass this important legislation.

Increase Appropriations for the Fair Housing Initiatives Program

NFHA calls on HUD and Congress to increase appropriations for the Fair Housing Initiatives Program to at least $52 million in fiscal year 2009 to meet the demand. In FY2006, for example, 269 organizations applied for FHIP funding – *a total of $51.75 million in requests* – but only 102 groups received grants totaling $18.1 million. In FY 2007, only 87 groups received grants: 55 organizations received Private Enforcement Initiative (PEI) grants ($14 million) and 32 groups received Education and Outreach Initiative (EOI) grants (3.1 million) for a total of $17.1 million. (HUD has not publicly released the number of organizations that applied in FY2007.)

An appropriation of $52 million would enable FHIP recipients 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.

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 in 2005. Currently, 39 organizations are funded at that level. While this longer-term funding provides some stability, it also constrains the funds available to other qualified organizations because the funding level is so low. A total of only 55 organizations received enforcement grants ranging from $70,000 to $275,000.

As outlined in NFHA's proposal entitled *A Reformed Fair Housing Initiatives Program: the Private Enforcement Initiative*,[123] 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.

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

Fund an Annual National Media Campaign

NFHA calls on HUD to abide by the FHIP authorizing statute to fund an annual national media campaign rather than violating the statute as it has for the past three years. In 2005, HUD failed to fund a national campaign. 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 2007 it violated the statute by funding an advertising agency for the campaign rather than a non-profit organization representing groups of persons protected by the Fair Housing Act.[124] HUD awarded $1 million to New America Media to develop a campaign to educate the public about discriminatory lending.

Create an Independent Fair Housing Enforcement Agency

An independent fair housing agency should replace HUD's Office of Fair Housing and Equal Opportunity (FHEO) in order to provide the United States with a truly objective and effective civil rights enforcement institution. Year after year, we have documented a paucity of cases, mismanagement of investigations, and a failure to charge cases. No improvements have been forthcoming, and HUD's failures have allowed not only for continued residential segregation in this nation but for a host of economic and social costs associated with such segregation.

Currently, when a fair housing/lending 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. There are inherent conflicts of interest within HUD. The Office of Fair Housing and Equal Opportunity must investigate discriminatory claims involving programs and entities funded by other offices of HUD. For example, Flagstar Bank was found to violate the federal Fair Housing Act. HUD received notice of the judge's decision. Flagstar Bank is a FHA direct endorsement lender, which means that FHA accepts loans from the bank without oversight. FHEO was supposed to report the fair housing act violation to FHA and ask that the FHA direct endorsement privilege be rescinded and HUD was supposed to issue a debarment of doing business with Flag Star. Even after a second federal fair housing act action, FHEO and HUD never took any action against Flagstar Bank.

As FHEO must coordinate its efforts with many other offices at HUD, this compromises what should be independent, objective investigations, putting them through the litmus

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[124] 42 USC 3616a section (d)(1) states: "The Secretary, through contracts with one or more qualified fair housing enforcement organizations, other fair housing enforcement organizations, and other nonprofit organizations representing groups of persons protected under title VIII of the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], shall establish a national education and outreach program.

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, lending and insurance communities who may also be the subjects of investigations.

Other recommendations in this report about HUD and related programs should be incorporated into an independent fair housing agency.

HUD and DOJ Must Use Their Full Authority to Enforce the Fair Housing Act

HUD Must 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*, 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; accurately reflect the community's needs; describe strategies to improve fair housing compliance; are followed; and 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 adequate funding for fair housing education and enforcement staff and associated costs.

HUD and DOJ Must Improve Their Processing of Cases

With the annual number of complaints approaching 27,000, and the estimated number of violations more than four million, it is insufficient that last year HUD issued only 31 charges of discrimination and DOJ filed only 35 cases, 16 of which were HUD election cases, and therefore duplicate some of the HUD charges. These numbers speak for themselves. HUD must have consistent and quality standards for investigations, ensure its investigators are well versed in legal standards and case law, and improve its case processing so that cases are investigated in a timely manner. In addition, HUD has spent millions of dollars in the past twenty years educating builders about design and construction requirements. No builder can fail to be acquainted with these requirements. HUD should move these resources to systemic enforcement of the law.

DOJ Must Follow the Statute and Pursue 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 mortgage and predatory 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.

DOJ Must File Disparate Impact Cases

DOJ has publicly stated its position that it will not litigate disparate impact cases involving housing discrimination.[125] Disparate impact cases are crucial in the fight against housing discrimination. Many rental, sales, lending, 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.

Address Unfair and Predatory Lending Practices

Fair housing centers are at the forefront of the foreclosure crisis – working to counsel people who have been victims of housing discrimination and predatory lending practices and finding ways to enforce the laws intended to protect them. Today, too many individuals and families are targeted for abusive home loans that strip away their hard-earned home equity and put their homes at a high risk of foreclosure. People of color are at greater risk of losing their homes – and their hard-earned wealth – as a result of high-cost, risky lending and abusive servicing.

Congress must enact comprehensive predatory lending legislation that includes: effective rights and remedies; prohibitions against steering; a designation of "high-cost" that includes all loan fees; a ban on yield spread premiums; a ban on pre-payment penalties; no federal preemption; and advanced disclosure of costs and fees. NFHA supports S.2452, the Home Ownership Preservation and Protection Act.

The Federal Reserve and other regulators should expand their fair lending examinations to substantially include the actions of the affiliates and third party vendors of their member lending institutions. The Federal Reserve must enact a strong rule under the Truth in Lending Act. The proposed rule states only that creditors would be prohibited from engaging in a pattern or practice of extending credit without considering borrowers' ability to repay the loan; it does not allow for individual or group complaints. This is too burdensome and would probably make it impossible for an

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[125] HUD HUB Directors' meeting Rhode Island 2003.

individual to do anything to remedy his or her situation. The final rule must, among other things, do the following: ban pre-payment penalties and yield spread premiums; restrict bait-and-switch tactics, especially at the closing table; cover all loans, not only subprime loans; require the verification of income on all home mortgages; and require escrowing of taxes and insurance.

To assist those currently in bad loans and at risk of foreclosure, Congress must enact strong legislation that permits bankruptcy courts to restructure mortgages on a family's home. NFHA supports S.2636, the Foreclosure Prevention Act and H.R.3609, the Emergency Home Ownership and Mortgage Equity Protection Act of 2007.

In the face of countless studies demonstrating the targeting of minority homebuyers by unscrupulous lenders, HUD has initiated only 3 fair lending investigations since FY2006 and has processed only 137 fair lending complaints; Justice filed only 4 cases in FY2007. Combined, this amounts to only 10 percent of the cases that private groups have filed. Since federal financial regulatory agencies refer fair housing cases to the Department of Justice, it is clear that these agencies have failed in their responsibility to identify and counteract discriminatory and predatory lending practices. They need to improve training on these issues and increase the attention and importance assigned to fair housing requirements.

Require New Construction to Meet Fair Housing Standards

Multi-family loan originators, the GSEs and regulators should ensure that new construction multi-family housing loans comply with the accessible design and construction requirements of the Fair Housing Act. They should institute appropriate due diligence requirements to ensure multi-family design and construction compliance, including (at a minimum) plan review, architect and developer certification of compliance with FHA and identification of the FHA safe harbor relied upon, contractor certification and on-site review. If lenders ensured that borrowers complied with the law, it would benefit millions of Americans. According to the National Center for Health Statistics, 34.3 million people (12 percent of the U.S. population) are physically limited in their usual activities due to a chronic condition. More than 7 million use assistive technology—canes, walkers, and wheelchairs—for mobility impairments, and more than 4 million use assistive devices such as back braces and artificial limbs to compensate for musculoskeletal impairments. This number will likely grow as veterans return from Iraq and Afghanistan. These veterans deserve to find apartments that are accessible, as required by law.

Gulf Coast Recovery Efforts Must Improve

Increase Funding for Housing Recovery in the Gulf.

Two and a half years after Hurricane Katrina, people of color and low- and moderate-income people in communities all across the Gulf Coast still have nowhere to live or insufficient funds to fully rebuild their homes. More resources are needed to complete the task of rebuilding in a way that provides safe, decent and affordable options to all residents of the region. *Congress must pass S. 1668 or other measures to provide these resources.*

Strengthen the Fair Housing Requirements of CDBG.

CDBG funds are required to be spent in ways that affirmatively further fair housing, but the specifics of this mandate remain ambiguous. NFHA and its members in the Gulf have found a host of ways in which CDBG grantees all across the Gulf have fallen short of fulfilling this fair housing mandate., without consequences. *HUD must strengthen the regulations that implement this requirement and provide more effective oversight. If HUD fails to act, Congress must step in.*

Increase the Transparency, Accuracy and Timeliness of Public Information

While disbursing the funds, rather than reporting on them, is an understandable priority in the aftermath of a disaster the magnitude of the 2005 hurricane season, good public reporting systems are also critical to ensuring that those funds are spent appropriately. For CDBG grantees in the Gulf, there have been considerable time lags in making accurate, understandable information about their spending available to the public in a readily accessible form. Further, current regulations do not require grantees to make public any information about the extent to which the funds benefit members of classes protected under the Fair Housing Act. *HUD must work with grantees to improve the CDBG reporting systems, and it must strengthen the fair housing reporting requirements.*

Improve Eligibility Requirements and Disbursement Systems

Disaster recovery funds must get into the hands of those who need them more quickly, more fairly and with a more transparent process. Two and a half years after the hurricanes, too many people in the Gulf still have not received the assistance they need to rebuild or return to their homes. Some grantees have established guidelines that arbitrarily and unfairly exclude particular groups from eligibility for assistance. In Mississippi, residents whose homes experienced damage from hurricane-force winds, but no storm surge damage, cannot receive assistance. In Mobile County, AL, homeowners who had “deferred maintenance” prior to the storm cannot receive assistance. And in all of the locations where NFHA and its members are working, homeowners have great difficulty getting timely and accurate information about how eligibility for assistance is determined, how their grants were calculated, and the status of their applications. *These systems must be improved and made more transparent and responsive to the public.*