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H.R. 476, THE HOUSING FAIRNESS ACT OF 2009

HEARING

BEFORE THE

SUBCOMMITTEE ON
HOUSING AND COMMUNITY OPPORTUNITY

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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H.R. 476, THE HOUSING FAIRNESS ACT OF 2009

Wednesday, January 20, 2010

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HOUSING AND
COMMUNITY OPPORTUNITY,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2128, Rayburn House Office Building, Hon. Maxine Waters [chairwoman of the subcommittee] presiding.

Members present: Representatives Waters, Velazquez, Cleaver, Green, Donnelly, Kanjorski, Himes; Capito, Marchant, Jenkins, and Lee.

Also present: Representative Garrett.

Chairwoman WATERS. This hearing of the Subcommittee on Housing and Community Opportunity will come to order.

I would like to thank the ranking member and other members of the Subcommittee on Housing and Community Opportunity for joining me today for this hearing on H.R. 476, the Housing Fairness Act of 2009. Today's hearing will examine Congressman Al Green's very important legislation to enhance efforts to combat housing discrimination.

Despite our progress in achieving greater civil rights over the past 40 years, the trend of depriving certain communities of access to fair housing continues today. Mr. Green's bill allows us to finally assess the rampant rates of housing discrimination, and will fully fund and establish a Federal program to process fair housing violations.

Today, we will hear from witnesses about the ongoing disparities in housing, and the challenges with addressing housing discrimination. The witnesses will also discuss how H.R. 476 will help them to address these challenges.

According to a Department of Housing and Urban Development report released last year, more Americans are reporting incidents of housing discrimination than ever before, with disability and race as the leading reasons for filing a complaint.

Despite the growing number of fair housing violations, a much greater number of violations go unreported. The National Fair Housing Alliance estimates that approximately 4 million fair housing violations occur each year, yet less than 31,000 fair housing complaints were actually filed in 2008, which was the highest total number of complaints ever filed in history.

Furthermore, of those housing violations that were reported, private, nonprofit fair housing groups processed approximately 20,000 complaints, which was 66 percent of the total complaint load. Meanwhile, HUD processed a mere 2,100 complaints, State and local agencies processed 8,429, and the Department of Justice filed 33 fair housing cases. It is clear that Federal agencies have either been unable or unwilling to effectively identify and address the issue of housing discrimination.

Little has been done to ensure fair and equal access to housing among minority populations. We know that high rates of racial steering continue to impact African-American and Latino communities. Furthermore, a HUD study found that Asian Americans and Pacific Islanders also face significant level of discrimination when they search for housing in large metropolitan areas nationwide. Much more must be done to protect the fair housing rights of all of our communities.

The Federal Fair Housing Initiatives Program (FHIP) was established to provide grants to fair housing centers to enforce housing laws and educate consumers. However, FHIP has never been fully funded. Thus, it is no wonder that so many fair housing violations were allowed to occur each year. That is why Mr. Green's bill is so crucial.

H.R. 476 would authorize $20 million annually for HUD to administer a nationwide testing program to measure housing discrimination, increase funding of the FHIP program to $52 million annually for 5 years, and require HUD to implement a competitive matching grant program for nonprofits to study the causes and effects of housing discrimination. The benefits of H.R. 476 would be tremendous in preventing millions of fair housing violations from taking place in our neediest communities.

In closing, I look forward to hearing from our two panels of witnesses on their assessment of H.R. 476, to help further fair housing and combat housing discrimination.

I would now like to recognize our subcommittee's ranking member to make an opening statement. Ms. Capito?

Mrs. CAPITO. Thank you. I would like to thank the chairwoman for the hearing today, and Representative Green for his hard work on this issue.

I would like to enter my statement into the record rather than giving it, in the interests of time. But I would also like to ask unanimous consent that Congressman Garrett be allowed to sit in on the committee. And he is going to make an opening statement as well.

Chairwoman WATERS. Thank you very much. I would now like to recognize—without objection, it is so ordered.

Mrs. CAPITO. Thank you.

Mr. GARRETT. Did the ranking member have a statement that she was—

Mrs. CAPITO. I yield the rest of my time to you.

Mr. GARRETT. Oh, okay. I thank you for yielding, and I thank you for the opportunity to be here. And I also first and foremost want to commend Representative Green on offering this very important legislation, and I look forward to the discussion that ensues.

But I also want to formally express my concern regarding another housing issue that we should be considering as well, and that is the bailout of Fannie Mae and Freddie Mac. You know, it was just on Christmas Eve when the Obama Administration and the Treasury Department expanded and extended the bailouts of Fannie Mae and Freddie Mac, and they approved a multi-million-dollar compensation package for their executives. And the CBO, as we sit here, is currently projecting losses of over $400 billion for those entities.

So when all is said and done, when you think about it and we are considering where all this money is going to, the bailout of these firms will probably be more expensive than what we spent on TARP.

Now, since Fannie and Freddie were bailed out, we have had here in this committee room exactly one full committee hearing on the subject, and exactly one subcommittee hearing on this issue. Some people have said that this committee therefore has been negligent in its oversight responsibilities on this very important topic.

And shortly thereafter, on December 30th, Ranking Member Bachus and I wrote a letter to the chairman simply asking him to hold a hearing on this issue. Unfortunately, he has not yet responded to that request.

I understand that this topic may cause discomfort to some Members of Congress, considering the role that they played in shielding the GSEs from any meaningful regulatory scrutiny in the period leading up to their collapse. Nonetheless, we should not let mistakes of the past prevent us from carrying out our oversight responsibilities now going forward.

I also asked the chairman—the chairman has announced a hearing on executive compensation, and that is set for this Friday. But apparently, he still refuses the request from Ranking Member Bachus to have the heads of Fannie and Freddie come to that very important hearing.

The chairman has also stated, "The public, having provided significant support for the purposes of restoring trust and confidence in our country's financial system, rightfully insists that large bonuses such as these awarded by institutions receiving public funds at a time of serious economic downturn should not continue." And I agree.

So in conclusion, as I have heard from many of my constituents back home, it is really unacceptable that this committee not respond appropriately. And so, once again, I will call on the chairman to hold a hearing on this Administration's expanded bailout of Fannie Mae and Freddie Mac, and their approval of millions of dollars of taxpayers' dollars to bonuses to their executives, an issue overarching the issue of housing and fairness to the American taxpayer and to the American buyer of homes as well.

And with that, I yield back.

Chairwoman WATERS. Thank you very much.

Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Madam Chairwoman. And I thank the Ranking Member as well. I would also like to thank the many Members of Congress who have been working on fair housing issues before 1968, at the time of Dr. King's demise, since 1968,

and in fact, during that year of 1968 because that is when the first laws were promulgated. And many have also worked since that time.

As you know, the Fair Housing Act was amended in 1974 to include sex discrimination. It was amended in 1988 to deal with discrimination based upon family status, familial status. And these Members I salute and I thank for what they have done to help make this piece of legislation much better than it was at the time it was initially developed.

I would like to mention HUD, because HUD has played an important role in this. HUD acquires intelligence and empirical evidence such that we can draw conclusions. I would like to note that HUD has data indicating that in 2008, 10,552 housing discrimination complaints were received. And this was the highest number ever received in 2008. It is also interesting to note that this was the third year in a row that there were more than 10,000 complaints received.

We should not assume that all of these complaints have been based upon color. The truth of the matter is that only 2 percent were based upon color. This bill could easily be called the Disability Fairness Act because 44 percent of those discriminated against were persons with disabilities.

And I would add also that it could easily be called the Familial Status Act, because 16 percent of those discriminated against were persons who had children, possibly, and could not get a place to live because they happened to have a child.

This bill is very inclusive in terms of how it impacts discrimination in housing. And I would hope that persons would embrace the notion that we are helping all persons by helping the persons who are so designated by the legislation. When you help one person, you prevent discrimination against other people. It is important for us to remember that this bill is very inclusive in terms of how it deals with discrimination.

It is estimated that about 4 million violations occur each year, and 44 percent of these violations were handled by HUD. And the question becomes, ultimately, what can we do, working with HUD and NGOs, to ensure housing fairness?

My belief is that we can increase the amount that we spend on education. Education is important. Many persons who are working in this marketplace, in the housing market, would do and behave differently if educated properly. We have to ensure that persons understand what the rules are, and my belief is that a good number of them will adhere to the rules, understanding what they are.

We should also increase the testing and the enforcement of the rules once we find that there are persons who have violated the rules. Testing is the best way known to us to acquire the empirical evidence of discrimination actually taking place such that we can have an actionable means by which we can address the discrimination.

We must do more testing, and we have to publish the fact that testing takes place. Testing can also act as a deterrent to prevent others from behaving improperly once it is known that testing is actually taking place.

What is testing? Simply put, you send persons out, all equally qualified. And if you have some persons who are consistently rejected—perhaps a person who is disabled—then you can sense that you have a problem with a person with a disability as it relates to this particular piece of property. Testing really does work. We should do more testing.

We can also increase the funding for not-for-profit housing organizations to engage in investigations, and to also help us to understand the real reasons for this discrimination. If we don't acquire the empirical evidence to properly make the case for why this is happening, it makes it difficult to continue to enforce the laws and to develop the proper regulations to address the problem.

We would like to see NGOs have the opportunity to promulgate, if you will, testing not only to determine what happened but why it is happening. I would also add that we should acquire the empirical evidence to understand how all of this impacts economic stability.

There is a body of evidence indicating that economic stability was impacted by virtue of the behavior of persons in the subprime market in terms of the way they steered persons into these loans. I would hope that we could examine this as well.

Thank you, Madam Chairwoman, and I yield back the balance of my time.

Chairwoman WATERS. Thank you very much. There are no other members desiring to give opening statements at this point. Without objection, Representative Garrett will be considered a member of the subcommittee for the duration of this hearing.

At this time, I will introduce our first witness panel. I am pleased to welcome our distinguished first panel. Our first witness will be the Honorable John Trasvina, Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development.

Thank you for appearing before the subcommittee today. And without objection, your written statement will be made a part of the record.

You will now be recognized for a 5-minute summary of your testimony.

STATEMENT OF THE HONORABLE JOHN D. TRASVINA, ASSISTANT SECRETARY FOR FAIR HOUSING AND EQUAL OPPORTUNITY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. TRASVINA. Good morning, Chairwoman Waters, and thank you, members of the subcommittee. I am pleased to appear before you today on behalf of HUD to discuss our support of and recommendations for H.R. 476, the Housing Fairness Act of 2009, and the Department's fair housing enforcement program and priorities.

And Congressman Green, in particular, I would like to thank you for your tremendous support of fair housing and the fair housing initiatives program, and for proposing H.R. 476.

Thank you, members, for this opportunity to discuss the Department's work with private, nonprofit fair housing organizations. They are crucial to our mission to create and support fair and equitable communities.

Last year, as was noted, more than 10,000 fair housing complaints were filed with the Department, continuing an historical high level. However, we know that the number of complaints is not a full measure of the extent of discrimination.

Our studies show that even in this day and age, African Americans and Hispanics and Asian Americans suffer discrimination at least 1 in 5 times that they seek housing. Our work and the work of FHIP agencies remains critical.

The number of cases does not reflect their severity, either. One current HUD case has been brought against a trailer park owner in Alabama who turned off the water and forced out a White family because he objected to the African-American boyfriend of one of the tenants. When asked how to get the water back on, he responded, "Lose the Black boyfriend."

In addition, he told our investigator that no Federal law would tell him who he had to rent to. Well, today your landlord cannot tell you who you date, and we vigorously enforce Fair Housing Act protections.

In order to realize fair housing and equal opportunity, we need to go farther than we have before and work to create truly open and integrated communities. That means not only continuing to address specific acts of discrimination, but also using fair housing laws to strengthen neighborhoods.

One way we are doing this is by fulfilling the Fair Housing Act's mandate to affirmatively further fair housing. HUD has not always ensured that our money is spent in ways that fulfill this obligation.

In this new day, however, there is a Department-wide commitment to incorporate our mandate to affirmatively further fair housing and to all of our work so that we can fulfill our shared goal of truly integrated and balanced living patterns. To that end, the Department is revising these regulations.

In July, the Department held a listening conference in which more than 600 people participated, in person and by phone and Web across the country. There, fair housing and civil rights groups, mayors, and county and State officials all voiced their desire for HUD to amend its regulations to provide more concrete, specific information and assistance about how to develop a meaningful plan for affirmatively furthering fair housing.

Efforts to affirmatively further fair housing are incomplete without ensuring that the public has a means of redress when their rights are violated. That is why the Fair Housing Act complaints are one of our top priorities.

Individual victims of housing discrimination have an immediate need for HUD's fair housing services. The Department and its State and local partners in the Fair Housing Assistance Program provide these victims with a fair, objective, and free investigation of complaints.

Over the last decade, the Department has become more adept at investigating housing discrimination. The number of cases completed by the Department and our State and local partners has increased by 65 percent, while the length of investigations has decreased.

However, speed must not come at the expense of accuracy. Discrimination victims are not served by a piece of paper saying they

have a good case filed with the government. They want action. At the same time, complainants and respondents want and deserve the right outcome, not simply a quick one.

Thirty-eight percent of our complaints closed last year resulted in a determination on the merits, or a conciliation or settlement agreement. This produced $8.155 million in monetary relief, as well as public interest provisions such as fair housing training and affirmative marketing.

Today, as the scourge of housing discrimination continues, sometimes in old forms, sometimes in new, we must engage a variety of strategies to end these practices, and the FHIP program is central to this effort.

Through the Fair Housing Initiative Program, fair housing organizations assist the Department in combating housing discrimination. These organizations investigate and resolve allegations brought to them by victims of housing discrimination, but they do so in a way that is different and complimentary to our work.

FHIP grantees are the Nation's experts in testing, and the results of these tests often become key evidence in a housing discrimination complaint. A recent major settlement on rental design and construction and access for people with disabilities was made possible in part by the work of HUD-funded tests.

You have invited me here today to discuss our fair housing strategy and H.R. 476. If enacted, it would provide much-needed support for fair housing efforts across the country through increased testing for violations, enforcement against those who have violated fair housing laws, and study of the causes and effects of discrimination.

The first section of the bill requires HUD to conduct a nationwide testing program to detect, document, and measure housing discrimination across the country. We fully support this proposal. Housing discrimination today is often more subtle, and a consumer is not well-positioned to make meaningful comparisons of treatment.

Pair testing, however, is ideally suited to uncover such abuses. The $20 million nationwide testing program envisioned by this bill would lead not only to greater enforcement efforts, but also would deter discrimination.

On the whole, H.R. 476 is consistent with the priorities the Department places on fair housing enforcement, and the tools provided by H.R. 476 will advance the Department's enforcement of the Nation's fair housing laws in the 21st Century.

This week, as the Nation celebrates the birthday of Dr. Martin Luther King, we continue to carry out his dream to end housing discrimination. H.R. 476, if enacted, will enhance this further, and we look forward to working with the subcommittee on this important legislation.

Thank you.

[The prepared statement of Assistant Secretary Trasvina can be found on page 110 of the appendix.]

Chairwoman WATERS. Thank you very much for your testimony. I would like to begin the question period with you.

If you will, would you please recount for us what happened in St. Bernard Parish in New Orleans? As I can recall, there were mul-

tiple laws developed by the local city council basically to keep minorities out of St. Bernard Parish. And they defied HUD. They defied the courts. This went on for such a long period of time.

Now, I understand that it may be resolved at this point. But tell us what happened there.

Mr. TRASVINA. After Hurricane Katrina, the local government there enacted a number of ordinances which had the effect of making it difficult to rent to newcomers to the community. One ordinance would have required individuals who were prospective tenants to be blood relatives of those who already had lived in St. Bernard Parish.

That was subject to litigation. It was struck down. Since that time, there have been other ordinances that have been proposed. We have worked with the fair housing organizations in the New Orleans area that have sued over a number of ordinances.

Since that time, in recent months, we have met with the president of the council and other local officials there. So we have looked at individual potential acts of discrimination, also working with the jurisdiction to try to move forward on—away from that type of restriction because as you note, it was designed to limit the ability of people to rent in St. Bernard Parish.

Chairwoman WATERS. So do they still have an ordinance against multi-family development in St. Bernard Parish?

Mr. TRASVINA. There continue to be restrictions on renting, including requiring particular licenses in order to be able to rent out your home. And these licenses are restricted based upon—you can't have more than one rental being made available within a certain number of feet of another. There are pending discrimination complaints now with us, so we continue to investigate.

Chairwoman WATERS. Are we continuing to—do they get Federal funding in any way in St. Bernard Parish?

Mr. TRASVINA. We are looking at that very closely, and that is—

Chairwoman WATERS. This has been going on a long time, hasn't it?

Mr. TRASVINA. That is correct. The—

Chairwoman WATERS. So how much longer is it going to go on?

Mr. TRASVINA. The litigation, of which we are not a part, is continuing. The decision about funding and our expressions of where St. Bernard Parish needs to be is ongoing.

Chairwoman WATERS. Let me back up. As I understand it, one of the remedies or ways of dealing with discrimination is to discontinue Federal funding. Is that right?

Mr. TRASVINA. That is correct.

Chairwoman WATERS. And as far as I know, Katrina took place, what, almost 5 years ago? How long has it been?

Mr. TRASVINA. I believe it has been 4½ years.

Chairwoman WATERS. How long have you been involved—

Mr. TRASVINA. 4½ years ago.

Chairwoman WATERS. 4½ years ago.

Mr. TRASVINA. Yes.

Chairwoman WATERS. And this case or these cases have been going on for 4½ years?

Mr. TRASVINA. No. They haven't been going on for 4½ years. Some of the initial litigation has been successful. So there have

been a series of ordinances. The most recent ordinance was upheld, but we are working with St. Bernard Parish to ascertain the impact of the most recent ordinance.

Chairwoman WATERS. Do you want to tell me what you have done to stop discrimination in St. Bernard Parish?

Mr. TRASVINA. We have—

Chairwoman WATERS. What has HUD done?

Mr. TRASVINA. HUD has worked with the parish to evolve these ordinances away from the original ordinances. We are now examining the particular complaints that we have. We do not have a determination on the current ordinance right now.

Chairwoman WATERS. I don't know what you just said. But anyhow, you have not been successful yet in helping to contain the local city council in its efforts to prevent minorities from living in St. Bernard Parish. You just have not been successful.

Mr. TRASVINA. That is correct. We are not yet there, where we need to be. And—

Chairwoman WATERS. So how can we have any faith in your ability to deal with discrimination if you have been working on these cases for such a long time and they have been in defiance, I think, of the U.S. District Court on these discrimination ordinances. But you have not been able to do anything. Is that right? Up until this point, you have not been able to turn around any of that?

Mr. TRASVINA. We have not pulled the funding from St. Bernard Parish. That is correct.

Chairwoman WATERS. When are you going to do it?

Mr. TRASVINA. We continue to work on that. And as we resolve the complaints, the jurisdiction will have the opportunity to make its changes before we pull funding. Our goal is not necessarily to pull funding. Our goal is to make sure that they are not discriminating.

Chairwoman WATERS. But you haven't done that very well, have you?

Let me turn to Ms. Capito for 5 minutes.

Mrs. CAPITO. Thank you. I would like to ask a question about the Fair Housing Initiative Program, where you have nonprofits that get grants to do testing and other—how many nonprofits are currently being funded under this program?

Mr. TRASVINA. About 98.

Mrs. CAPITO. 98 across the country?

Mr. TRASVINA. No.

Mrs. CAPITO. Is ACORN one of those organizations?

Mr. TRASVINA. No. ACORN is not receiving funding currently.

Mrs. CAPITO. How do you evaluate the effectiveness of your grantees at this point, the 98 that are receiving grants? Because this bill would expand the funding to these organizations, with the ability to fund even more organizations quite a bit. What kind of evaluation do you have of the 98 that are receiving the funds now as to their effectiveness?

Mr. TRASVINA. They go through a funding competition at the front end, where we have a technical assessment panel looking at their ability and effectiveness in fair housing and their ability to perform what they plan to do.

On the back end, we have government monitors who review particular cases that they handle, review their effectiveness. I would say that overall, without talking about anyone in particular, overall, the cases that come from the FHIPs to us result in a one-fifth higher level of discrimination than other cases.

They are effective in bringing us cases where there is discrimination, so they are effective in discerning it. Also, they are effective in educating communities about what their rights and responsibilities are.

Mrs. CAPITO. Do you also monitor aggrieved persons who are subject to unfair housing practices, that maybe their own claims through Federal court on their own, or maybe through a State or local entity? How do those numbers compare with the number of cases that come through HUD, or with the help of one of these, what do you call them, FHIPs? Am I saying that right?

Mr. TRASVINA. Yes. The FHIPs.

Mrs. CAPITO. Yes.

Mr. TRASVINA. Yes. Well, the FHIPs have a different process than we do. Oftentimes, the FHIPs get information directly, and they work informally because they are there locally in the community. They work informally with the person who feels they have been discriminated against and the prospective landlord or homeowner and conciliate their cases.

Mrs. CAPITO. So the cases might not reach the point of either litigation or anything of that nature, but would be worked out at the local level without HUD's direct involvement. Is that correct?

Mr. TRASVINA. That is correct. And in fact, Congresswoman, many of our cases, about a third of our cases, are conciliated prior to any particular finding. The statute requires that every step of the way, conciliation is attempted.

Mrs. CAPITO. What is the biggest reason for housing discrimination, in your opinion? Why are people discriminated against? Is it race? Is it age? Disability?

Mr. TRASVINA. The single largest cases come in the disability area. In terms of the reason why, oftentimes it is education, people not knowing what their obligations are under the Fair Housing Act as well as not knowing what their rights are.

Mrs. CAPITO. So most of the discrimination would be somebody, say, who might be wheelchair-bound, or something of that nature, not having access? Is that what you are saying?

Mr. TRASVINA. It could be the failure of a landlord or housing provider to have a reasonable accommodation for that individual, for example, yes.

Mrs. CAPITO. Okay. Thank you.

Mr. TRASVINA. Thank you.

Chairwoman WATERS. Ms. Velazquez?

Ms. VELAZQUEZ. Thank you, Madam Chairwoman. Mr. Trasvina, thank you for everything you do—

Mr. TRASVINA. Good morning.

Ms. VELAZQUEZ. —in keeping people informed as to their rights. But I believe that, given the outcomes that we have seen with this housing crisis, there is a long way to go. And we cannot wait until we achieve housing stabilization to get people really educated as to their rights.

In New York City, during the height of the subprime market, Black borrowers were 5 times more likely than White borrowers to enter into a high-cost loan. For Hispanics, the percentage was 3½ times higher than White borrowers.

Can you talk to us about what type of efforts, outreach efforts, are in place now to ensure that minorities and those with limited English proficiency are better informed about their rights when it comes to housing rights? And I just would like your opinion as to how do you expect H.R. 476 will help address these issues?

Mr. TRASVINA. Yes, Congresswoman Velazquez. Since I came on board in May, we conducted a language assessment of all of our offices around the country to determine what languages HUD speaks. And since that time, we have translated about a dozen key HUD documents, not just in fair housing but in other parts of HUD. We have translated two dozen documents into a dozen different languages to make ourselves better accessible to individuals and to community groups.

Ms. VELAZQUEZ. It is not only about languages, but it is also about enforcement and oversight. So can you talk to us about that?

Mr. TRASVINA. Yes. That is correct. In terms of other types of efforts, we work collaboratively with the Department of Justice, with the civil rights division, the Federal Trade Commission, so that the authority over lending, the authority over fair housing, exists in other parts of the government. So we work collaboratively with them.

About 5 percent of our cases come in the area of lending discrimination. And last year, we obtained over $2 million in individual relief for victims of lending discrimination.

Moving forward on H.R. 476, what is already, I think, of critical importance is the role that the FHIP agencies play in reaching communities that, frankly, the government is less able to do. For example, with the Asian-American community, only 1 percent of our cases come from the Asian-American community.

We rely on our partners within the community to reach out. Because of historic distrust and a lack of trust of government agencies, they are an important bridge to those communities for enforcement and also for education.

Ms. VELAZQUEZ. What additional resources and/or partnerships are needed to provide greater outreach to limited English proficiency communities to prevent housing discrimination?

Mr. TRASVINA. Certainly, the ability to reach beyond the fair housing community into the other trusted institutions within communities would benefit us. We have to go beyond just going more than 50 percent of the way. We need to go 90 percent of the way there. And that is why we are increasing our efforts.

One of the things that we just announced at Tennessee State University this Monday was a university partnership so that we will be training the next generation of fair housing activists and those who can take the message out, not only for themselves as new renters, but also to the families. And those particularly in the generation of the first college graduates, they often take the message back to the community.

Ms. VELAZQUEZ. Thank you. Thank you, Madam Chairwoman.

Chairwoman WATERS. You are welcome.

Mr. Marchant?

Mr. MARCHANT. Does your agency monitor the number of private lawsuits that have been filed as a result of perceived discrimination nationwide or State by State?

Mr. TRASVINA. Not State by State. But we monitor those cases, yes.

Mr. MARCHANT. So how many private actions would you estimate there are across the Nation right now?

Mr. TRASVINA. I don't know whether we have that number. But I think what is key, though, is not so much that they are the actions. Some can go straight into Federal court. But most of them are resolved informally. So as I said earlier, a third of our cases are conciliated; many, many cases by the fair housing groups are brought informally. They often do not result in actual Federal court litigation.

Mr. MARCHANT. So most of the cases that you investigate and handle have not gone to the stage of litigation yet?

Mr. TRASVINA. That is correct.

Mr. MARCHANT. Do you have a—what is the penalty if a person is found guilty of discrimination? What is the typical penalty?

Mr. TRASVINA. The penalty can vary. It is in the thousands of dollars for individual violations. But really, the key is getting damages for the individual victims of discrimination, fair housing training, and fines.

Mr. MARCHANT. What would be the desired result of the nationwide testing?

Mr. TRASVINA. The desired result of nationwide testing would be twofold. One is to get a better sense as to how much discrimination is out there. The testing is unique in its ability to really reflect what is going on in a real-life situation.

Surveys don't do it. Looking at the enforcement patterns doesn't do it. But testing does do it because it sends out two trained individuals going out at pretty much the same time. The only characteristic being different is what you are testing for, whether it is gender or race or disability, and being able to get back information about an environment where there may be discrimination.

It also helps us in terms of enforcement. So the goal of testing would be to get an assessment of where we are, what progress we have made, and also possible enforcement actions.

Mr. MARCHANT. What would be the budget of the Fair Housing and Equal Opportunity Division of HUD? What is your operating budget?

Mr. TRASVINA. Our budget, for the FHIP and the FHAP program, it is $50 million. And then we have 600 staff around the country.

Mr. MARCHANT. So this $50 million—the $20 million would be outside of that $50 million?

Mr. TRASVINA. That is correct.

Mr. MARCHANT. And then how much is this bill increasing—so it is increasing at $2 million. From $50 million to $52 million is what this bill increases your budget?

Mr. TRASVINA. Those are the FHIP grants, the grants out to the fair housing organizations.

Mr. MARCHANT. Okay. So $5 million?

Mr. TRASVINA. Yes.

Mr. MARCHANT. Okay. And your purpose for doing that would be to target—would you have a target discrimination that you are looking for, or this would just be a test that would be neutral, and you would be looking for the sources of discrimination?

Mr. TRASVINA. This would allow us to use the expertise of fair housing organizations in a much better way. For example, you go from the State of Louisiana up to the State of Idaho, and everywhere north and everywhere west, you have the same number of FHIP organizations as the States of Ohio and Michigan.

We are missing vast parts of the country with the amount of resources we have with the FHIP grantees right now. So this would enable us to have the same level of quick understanding of what is going on in communities, both in terms of education and enforcement, in vast parts of the country that we currently have in only a few States.

Mr. MARCHANT. Thank you, Madam Chairwoman.

Chairwoman WATERS. Mr. Green?

Mr. GREEN. Thank you, Madam Chairwoman. And thank you for your testimony today, sir. Let me ask quickly a series of questions.

One, is it true that the best way to acquire empirical evidence of this type of invidious discrimination is testing?

Mr. TRASVINA. Testing is both well-accepted by the courts—

Mr. GREEN. Is it true that this is—

Mr. TRASVINA. It is—

Mr. GREEN. But I need to go on, so I need for you to just answer yes or no, if you would. I am sorry. I have a lot that I have to cover.

Mr. TRASVINA. Yes.

Mr. GREEN. Is it true that this is the best way to acquire the actual evidence of what happened?

Mr. TRASVINA. Yes.

Mr. GREEN. And is it true that those who would perpetrate these kinds of dastardly deeds, who would want to perpetuate discrimination, isn't it true that they fear testing?

Mr. TRASVINA. That is correct. A greater amount of testing will produce greater enforcement.

Mr. GREEN. In fact, testing is the thing that they fear the most because they know that they will be caught red-handed if they are tested. And they fear testing. True?

Mr. TRASVINA. I would say that, yes.

Mr. GREEN. And isn't it true that if we really are serious about ending this kind of ugly behavior, we should invest in testing?

Mr. TRASVINA. We do need testing, yes. We are very supportive of the testing program.

Mr. GREEN. And isn't it true that testing not only benefits persons of color, but it also benefits veterans because many of them are among those persons who are disabled and among those persons who are being discriminated against when they are trying to get housing in a fair way? Isn't it true that it will benefit veterans?

Mr. TRASVINA. Yes.

Mr. GREEN. Isn't it true that this legislation, while it does increase funding, isn't it true that if we are serious about it, we would invest as much as we can so that we can move as expeditiously as we can because of situations like the one that was called

to our attention by our chairwoman, wherein we are moving on it but we haven't moved as expeditiously as we can move, and we need more help to move through these programs.

Is this true, that you need more help?

Mr. TRASVINA. Yes. We need more resources and we need more help.

Mr. GREEN. Now, finally, let me ask you this. With reference to pre-application testing, you have a good number of programs in place. Let's talk about post-application testing. Do you do any post-application testing? Post-application meaning after you have applied for a loan, after you have started that process of applying for the loan.

Mr. TRASVINA. Right now, we do not. The problem is that there are other laws that restrict testing in that area. Every actual loan application must be a bona fide loan application, and testing by its nature is a test.

Mr. GREEN. And isn't it true that you have anecdotal evidence of discrimination taking place in the post-application process?

Mr. TRASVINA. Yes. And that is why—we would also look and want to work with you on this bill—

Mr. GREEN. And isn't it true—

Mr. TRASVINA. —to make it easier for us to do post-application testing.

Mr. GREEN. Yes, sir. You really answered my question. But just to continue, to make sure that I have it for the record, isn't it true that it would be of great benefit to have empirical evidence of the invidious discrimination that takes place in post-application testing?

Mr. TRASVINA. Yes, it would, Congressman.

Mr. GREEN. And, now, let's talk just briefly about children. We don't talk a lot about how this has impacted the ability of parents to acquire a place to call home for their children. There are people in this country who will discriminate against you because you have a child and you want a place to stay. Is this true?

Mr. TRASVINA. Yes.

Mr. GREEN. And isn't it true that this testing is going to help children have a place to call home because with this testing, we can cause persons to know that they will be punished if they discriminate against children? True?

Mr. TRASVINA. It will help us eradicate the familial discrimination.

Mr. GREEN. And the final thing is this. Would it not be helpful to publish the fact that testing is taking place? Wouldn't it be helpful for you to have the ability to say to the world, we have caught some folks. We are looking for others. Testing is taking place in this country. Would that act as a deterrent?

Mr. TRASVINA. It certainly would after the testing is done. Prior to the testing being done, it probably would hurt the results of the test. But yes, certainly afterwards.

Mr. GREEN. Thank you. And Madam Chairwoman, if I may, I would like to submit for the record a letter in support of this legislation from the National Fair Housing Alliance. And I would ask that it be done without objection.

Chairwoman WATERS. Without objection, it is so ordered.

Mr. GREEN. Thank you, Madam Chairwoman. And I will yield back the balance of my time. You have been very gracious.

Chairwoman WATERS. Thank you very much.

Mr. Donnelly?

Mr. DONNELLY. No, thank you.

Chairwoman WATERS. If there are no other questions from the members of the panel, I would like to thank this witness for his testimony. And we have 30 additional days for members to submit questions. Thank you very much.

Mr. TRASVINA. Thank you.

Chairwoman WATERS. I would now like to call on the second panel.

Our first witness will be Ms. Shanna Smith, president and CEO of the National Fair Housing Alliance.

Our second witness will be Ms. Leslie Proll, director of the Washington office, NAACP Legal Defense and Educational Fund, Incorporated, and co-chair of the Leadership Conference on Civil Rights Fair Housing Task Force.

Our third witness will be Mr. David Berenbaum, chief program officer, National Community Reinvestment Coalition.

Our fourth witness will be Ms. Jeanne McGlynn Delgado, vice president, business and risk management policy, the National Multi Housing Council, and here on behalf of the National Apartment Association.

And our fifth witness will be Professor Brian Gilmore, director, Fair Housing Clinic, Howard University School of Law.

Without objection, your written statements will be made a part of the record. You will now be recognized for a 5-minute summary of your testimony. And we will start with our very first witness, Ms. Shanna Smith.

STATEMENT OF SHANNA L. SMITH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL FAIR HOUSING ALLIANCE

Ms. SMITH. Thank you, Chairwoman Waters, and thank you, Ranking Member Capito, for inviting me to speak about H.R. 476. And I would like to thank Representative Al Green for introducing the legislation.

I have spent my entire career working in fair housing, both in enforcement and education, and education from the standpoint of teaching people how to recognize and report discrimination, but also working with the industry to teach them how to comply with the laws.

The National Fair Housing Alliance is made up the private, nonprofit fair housing centers in the United States. There are fewer than 100. There are none, for example, in West Virginia, and there are other States that have no private fair housing groups.

The private fair housing group, for example, in Toledo, Ohio, serves that metropolitan area. It doesn't serve the whole State of Ohio. These are locally-based organizations.

I am here today to provide strong support for H.R. 476. And I am optimistic because the Fair Housing Act has always enjoyed great bipartisan support. After Dr. King was assassinated, President Johnson went to Senators Mondale and Brooke and said, "You had been pushing this legislation," and within 7 days, the first Fair

Housing Act was passed. And as Representative Green pointed out, we have had amendments to the law and have always enjoyed great bipartisan support.

This legislation currently will improve both enforcement and education efforts surrounding discrimination in housing, in the rental market, in the sales market, in the lending markets, and in the homeowners insurance markets. It will provide sorely needed funding for nationwide systemic enforcement.

One of the reasons systemic enforcement is critical is because there are so few fair housing centers in the United States. It has been since 1991 when the disability amendment became effective under the 1988 amendments. And the National Fair Housing Alliance really didn't look at design and construction cases because we were relying on the Department of Justice, HUD, and other local groups to see that issue.

But 2 years ago, we decided to look at it because we kept seeing the largest builders still building properties that were inaccessible to people who use wheelchairs, to people with mobility issues. And we filed a lawsuit, along with our fair housing groups, in Napa Valley, in Marin, California, in Atlanta, Georgia, and in Melbourne, Florida, against the 5th largest builder in the United States, the A.G. Spanos Companies.

We resolved that case recently. And what I think is unique about the way we resolve cases, it is not just about money. It is not just about damages. While this case, design and construction case, settled for around $15 million, it included the Spanos Companies modifying and retrofitting 82 apartment buildings that they had built since 1991.

It also includes a $4.6 million retrofit fund. They had 123 buildings they built, and not all of them could be retrofitted. So we were able to include a fund where we can make grants to people who currently live in homes or currently live in apartments anywhere in the United States that are inaccessible.

And then the beauty of the settlement is we are working very closely with the Spanos Companies so this kind of mistake doesn't happen ever again. And we are providing expertise and expert information about their future developments.

We had the same kind of partners resolve in administrative complaints with State Farm Insurance Company, Nationwide, and Allstate Insurance Company. So the goal of the private fair housing movement is not just to be combative, but to develop partnerships so discrimination doesn't continue. With systemic investigations, we are able to fill the gap in the United States where is no fair housing enforcement.

Kansas doesn't have a fair housing center any more. There are other States that have no private fair housing centers. And I would just like to say that the increase in the FHIP funding is critical because right now, each fair housing center can get a maximum of $275,000.

When you look at L.A., Houston, Dallas, New York, Atlanta, Chicago, San Francisco—you know, $275,000 is a drop in the bucket. So we do have to increase the funding, but we have to be wise about how we use that, and figure out how to proportion the money according to the geographic population being served.

And finally, education is critical. In the area of education, we have supported multinational media campaigns. State Farm supported us in creating the first campaign that promotes residential integration. All the other campaigns have been teaching people how to recognize and report discrimination, which is absolutely necessary.

But we also wanted to have a partner campaign saying, why is it good that we live together? Because, after all, people learn to live together by actually living together. And we see in the mortgage lending crisis the problem of our inability to investigate beyond the pre-application stage.

And so we would recommend that this piece of legislation also include language that would allow private fair housing groups, through approval with the Department of Justice—because I don't think this privilege of doing these investigations should be done willy-nilly—but approval of the Justice Department to allow us to do full application testing, create profiles in the credit bureau system, and not face risk of a felony charge by the U.S. Attorney because we have created these profiles and we are testing through the whole process.

So we are testing underwriting. We are testing the appraisal practices. We are testing the private insurance companies. And my time is up, but that is one of the other things I think we need in this piece of legislation. Thank you.

[The prepared statement of Ms. Smith can be found on page 96 of the appendix.]

Chairwoman WATERS. Thank you very much.

Ms. Leslie Proll?

STATEMENT OF LESLIE M. PROLL, DIRECTOR, WASHINGTON OFFICE, NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC./CO-CHAIR OF THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS FAIR HOUSING TASK FORCE

Ms. PROLL. Chairwoman Waters, Ranking Member Capito, thank you for allowing the NAACP Legal Defense Fund to testify today. We are the Nation's oldest civil rights legal organization. Since Thurgood Marshall argued *Shelley* v. *Kraemer,* which outlawed racially restrictive covenants, we have fought against housing discrimination.

Sixty years after Shelley and 40 years after passage of the Fair Housing Act, our Nation remains largely segregated by race. The impact of housing discrimination on racial isolation and concentrated poverty is just as powerful today as it was when lawyers told the Supreme Court in Shelley that: "The effects of discrimination permeate the community and exert a baneful influence upon the economic, social, moral, and physical well-being of all persons, White and Black, young and old, rich and poor."

We are pleased to testify here today in support of H.R. 476 for several reasons. First, the bill recognizes the unique role of private fair housing organizations. These organizations are the mainstay of the fair housing movement. They are on the ground collecting information over time and monitoring housing patterns in their own communities.

Their local leadership, continuity, and familiarity with the local housing industry ensured that incidents of housing discrimination, systemic issues, and problematic trends are identified and redressed. And frankly, their onsite capacity for civil rights monitoring and enforcement is unparalleled.

We also support an enhanced role for testing in fair housing enforcement. As civil rights litigators, we cannot overstate the importance of testing in identifying discrimination, and courts have recognized this for 30 years.

Discrimination in the 21st Century is more subtle and more sophisticated, and testing is absolutely necessary to detect it. A key component of this testing program is its systemic nature. We must confront the structural discrimination underlying our housing patterns. We can no longer be satisfied with fair housing enforcement on a case-by-case basis. That approach is similar to trying to desegregate schools one student at a time.

The systemic approach is consistent with the government's longstanding tradition of focusing on large-scale forms of discrimination that otherwise will not be redressed. This is more costly, complicated, and protracted, but it is precisely the type of investigation in which the government should bring to bear its extraordinary resources.

The government can uncover far-reaching discrimination in a manner that cannot be accomplished through the budgets of fair housing organizations, civil rights organizations such as my own, or private attorneys. And the program, as Congressman Green said, can have a deterrent impact on the housing industry as well.

A nationwide testing program comes at an opportune time. In the past decade, we have lamented the lax enforcement of fair housing laws by the government. The number of race cases decreased despite no drop in discrimination, and the Justice Department's own testing program was severely underutilized.

The new testing program should test across the housing industry. A program focused only on rental testing will not address all the segregative forces at work. More sales testing needs to be conducted. From 2000 to 2008, the Civil Rights Division filed no cases based on sales tests, despite the fact it was designed in part to challenge sales discrimination.

We are pleased by the Civil Rights Division announcement of an aggressive campaign against redlining. But the government should also adopt measures for undertaking testing in lending. Fair lending principles should be included in all remedial legislation and policy initiatives to address the financial crisis. And data on race and ethnicity should be collected when implementing foreclosure relief programs, and made publicly available so that programs could be monitored for compliance with fair housing laws.

Finally, we applaud the provision of grants to study the causes of discrimination and segregation, and to evaluate their effects on education in particular. At the Legal Defense Fund, we recognize the deep structural role that residential segregation plays in perpetuating inequality in our Nation's schools.

The racial makeup of neighborhoods is the most important determinant of the racial composition of the schools within them. With the increasing rarity of court-ordered desegregation and judicial

limits on voluntary integration programs, students' educational fates are dependent upon where they live.

In conclusion, persistent housing discrimination, which continues to plague our Nation decades after it was outlawed, imposes high societal costs. Congress should do everything within its power to ensure that the Federal fair housing laws are enforced strongly and fully.

Now is the time for a new approach to redressing and eradicating housing discrimination. With H.R. 476, we are off to a very good start. Thank you.

[The prepared statement of Ms. Proll can be found on page 76 of the appendix.]

Chairwoman WATERS. Thank you very much.

Mr. David Berenbaum?

STATEMENT OF DAVID BERENBAUM, CHIEF PROGRAM OFFICER, NATIONAL COMMUNITY REINVESTMENT COALITION (NCRC)

Mr. BERENBAUM. Thank you, Chairwoman Waters, Ranking Member Capito, and other members of the committee.

The National Community Reinvestment Coalition is pleased to appear here to strongly endorse the Housing Fairness Act of 2009, and to also testify regarding other aspects of the current mortgage crisis that our Nation is facing.

In recent months, regulators, the White House, and Members of Congress alike have acknowledged that unfair, deceptive, or otherwise poor business practices by lenders and other mortgage finance-related institutions played a critical role in the current housing crisis.

Also well-known is the fact that a disproportionate share of abusive, non-traditional, and high-cost lending have targeted financially vulnerable consumers, in particular African-American and Latino households and communities. Quite frankly, this has not been an equal opportunity recession.

Study after study produced by the National Community Reinvestment Coalition, Federal regulators, and a host of other academic and not-for-profit organizations have documented disparities in lending in this Nation.

It is a curious irony that a majority of the meaningful complaints that have been filed in the fair lending space against rating agencies; against lenders who redlined, clearly a stupid business practice; against in fact large national real estate affiliates; large, in fact, underwriters and others in this space, have been identified by private not-for-profit organizations or State attorneys general, not by the very regulators who were charged to police, in fact, our public needs in the space of fair housing.

We strongly support this bill, Congressman Green, but urge, in fact, the committee to increase the amount of funds—$20 million is a drop in the bucket. This is a national crisis. We either float or sink on what in fact is a changing demographic in this Nation.

We are becoming more and more diverse, and businesses that do not meet the needs of African Americans, Latinos, families with children, and other members of our society are, frankly, not com-

peting to position themselves in a profitable way as we move ahead into the future.

Specifically, there are issues emerging every day. Today, FHA Commissioner David Stevens announced reforms to the FHA lending program. This is a very complex issue. But here is a fair lending issue right on top of the announcement—580 is an interesting number for the FICO credit score. It is an attempt to compromise on a very important issue to ensure appropriate capitalization and liquidity, access to credit in the marketplace. But look at all of the national lenders at this moment in time who in fact are using 620 and higher FICO scores.

That has a disparate impact on the basis of race. And where have our fair lending regulators been? It is once again the private fair housing movement that is identifying this issue ahead of regulatory agencies and that paradigm has to change.

I fully support the earlier testimony of the National Fair Housing Alliance, and also the NAACP Legal Defense Fund. This is serious stuff. The fair lending testing that the National Community Reinvestment Coalition has been doing with many of our fair housing members, in fact, is a very, very small amount.

On top of that, we applaud the effort of corporations who are also doing self-testing. If we are going to change the per diem, if we are going to promote an open housing market, we as a nation have to live up to the aspirations that Dr. Martin Luther King saw and this Congress saw when they passed the Federal Fair Housing Act.

Thank you.

[The prepared statement of Mr. Berenbaum can be found on page 32 of the appendix.]

Chairwoman WATERS. Thank you very much.

Ms. Delgado?

STATEMENT OF JEANNE McGLYNN DELGADO, VICE PRESIDENT, BUSINESS OPERATIONS & RISK MANAGEMENT POLICY, NATIONAL MULTI HOUSING COUNCIL/NATIONAL APARTMENT ASSOCIATION

Ms. DELGADO. Good morning. Chairwoman Waters, Ranking Member Capito, and distinguished members of the subcommittee, my name is Jeanne McGlynn Delgado, and I am the vice president, business operations and risk management policy at the National Multi Housing Council.

This morning, I am here on behalf of two trade associations, my own and the National Apartment Association. Our combined memberships include apartment owners, developers, managers, builders, and lenders.

It is a privilege to be here today, and I commend you, Chairwoman Waters, for your leadership in holding this hearing to discuss the various stakeholder perspectives on H.R. 476. And we commend Congressman Green for his leadership in Congress and his continued pursuit of equal opportunity for all.

One in three Americans, or 117 million households, rent their homes. Housing discrimination in the rental market reduces the number of people who otherwise would lease an apartment. For the record, as advocates who are passionate about the benefits of renting, we would like to see the number of renter households in Amer-

ica grow, not decline. Simply put, housing discrimination makes bad business sense.

However, with respect to the issue at hand, I am sure it will come as no surprise that the apartment industry does not exactly embrace additional testing as the best means to combat housing discrimination, at least not in its current form.

While we support the goal of reducing housing discrimination, we believe the creation of a national testing program and a doubling of FHIP funds by itself is not enough to effect the desired change. Therefore, we offer the following observations and recommendations: first, we believe that before instituting another testing program, HUD should conduct a comprehensive review of the existing testing programs to measure their effectiveness, efficiencies, and fairness; second, after completion of this assessment, HUD should consider alternative approaches to current testing protocol; and third, HUD should expand its commitment to industry education and outreach efforts.

We come to these recommendations with a strong belief that more of the same just doesn't work. There seems to be an underlying assumption that fair housing testing equals effective enforcement, and that simply increasing the number of complaints brought against property owners will eradicate housing discrimination.

We disagree. There is no shortage of studies, reports, and analysis quantifying the level of discrimination in housing. However, we are unaware of any research that has measured the effectiveness of the federally-funded testing programs.

So regardless of how we feel about testing in general, clearly, testing files contain valuable data and information that can help inform more effective, not to mention efficient, methods for identifying discriminatory practices and methods to enforce the law against such practices.

While testing for housing discrimination appears fairly straightforward, tests and test results can vary widely. Let me share an example of the kinds of testing cases that can be studied.

A testing program in 2006 in a county in Virginia involved testers making site visits to measure different treatment, with an inquiry for a one-bedroom apartment for a specific time period. The tests were designed to measure the treatment relative to the availability of the unit at the described time based on national origin or race.

In the 50 tests conducted, none showed a difference in treatment. While you might think that is great for the apartment industry, it could easily have gone the other direction, as it did in the following similar testing situation.

In a Maryland city, paired testers seeking a one-bedroom apartment were testing for different treatment based on national origin. In this scenario, a complaint was filed when the minority tester received a price quote that was higher than the White tester.

After a lengthy and costly investigation, guest cards completed by both testers revealed evidence causing the complaint to be dismissed. While one tester sought a one-bedroom unit, the other tester actually requested a one-bedroom den unit, thus explaining the difference in price.

A simple mistake made by the tester resulted in an unfair complaint of discrimination lodged against a housing provider with an otherwise excellent reputation with residents, employees, and in the community. Lessons can be learned from these unfortunate experiences. And as a result, the enforcement tools could be made more effective.

These are just a few examples of how testing results can be inconsistent even when the strategy is fairly straightforward. The likelihood for errors and missteps increases in more complex situations.

In these studies, we suggest that emphasis should be given to those complaints that were investigated and later dismissed with a finding of no reasonable cause. According to the HUD 2008 annual report, in the 2,156 cases closed, of these, 44 percent were dismissed for no reasonable cause. This is a significant number. Of course, not all of these involved testing, but it is a statistic that begs further review.

Let me shift for a moment to what the existing tests and studies don't reveal, and that is the damage caused by an unfair complaint. Just as home-seekers can be victims when subjected to housing discrimination, property owners wrongly accused become victims, too.

When a property owner, or specifically his or her staff, is wrongly accused of discrimination, the damage caused can be severe and long-lasting.

[The prepared statement of Ms. Delgado can be found on page 63 of the appendix.]

Chairwoman WATERS. Thank you very much, Ms. Delgado. Your time is up.

Professor Brian Gilmore?

STATEMENT OF BRIAN GILMORE, CLINICAL PROFESSOR & STAFF ATTORNEY, HOWARD UNIVERSITY SCHOOL OF LAW, FAIR HOUSING CLINIC

Mr. GILMORE. Thank you, Congresswoman Waters, and other members of the committee. I am from the Howard University School of Law Fair Housing Clinic and we have been in operation for 5 years. Our students go out in the community and they educate consumers about their housing and fair housing rights, about the law in the fair housing area, and in other aspects of fair housing.

We fully support H.R. 476, the Housing Fairness Act, as it is in line with the kind of work we do on a daily basis. Our students have become testers. They have tested, and gone out and participated with other nonprofits and done tests, and they realize the importance.

Right now, testing is the only credible evidence that we can have in a court case that might happen in the future, the only competent—as Judge Damon Keith stated many years ago—evidence that we have at the present time.

I would definitely support what Mr. Berenbaum stated because as we started out as a fair housing clinic, what we have become now is a clinic that has other areas, and that area is the mortgage crisis. And people would not believe the volume of problems that we have.

Almost all of the calls we receive on a daily basis—and there are tons of calls—involve mortgage problems, individuals who were given terrible loans. And these are individuals who have been gainfully employed for years, have good credit, and were somehow given a loan that is unbelievable.

We get these on a daily basis. Almost all of these consumers are African American. If they are not African American, they are Latino. And this is just in one area of the country, the Washington metropolitan region. As Mr. Berenbaum stated, I think this is a serious crisis. I would hope that this bill would also be able to try to address that issue because this is a serious crisis.

The homeownership rate for African Americans and Latinos was on the rise until a few years ago, and now it is plummeting. And they are losing valuable wealth, and everybody knows that wealth is opportunity and it dictates the future.

I think that is the most important issue that we have seen at Howard University School of Law since we have been doing the clinic in the last 2 or 3 years. That issue has to be addressed.

The reason why we definitely support this bill as well is because there are a few things out there that we—one thing out there we see that is a lot different. We conducted a survey of consumers, and the consumers, almost all of them, stated that they had been discriminated against, or they applied for an apartment and they didn't receive it.

We just think that the landscape has changed and something has to be done in this area, the fair housing area. And we believe one thing that has not been mentioned by anyone here that I think this committee has to consider in the future is that the entire landscape, the way people get housing, has changed.

You don't get an apartment now by reading a newspaper. You go online. You talk to somebody by e-mail. You don't even hardly meet this person. There are cases now where—I mean, the discrimination is electronic. You don't even hear about it because of the way it is done.

And the way the law is arranged now, it is able to be done, through craigslist, the famous craigslist case. It is just the landscape has changed, and I think that this committee and, you know, the Congress overall, should take into account the way things are drastically changing.

Congressman Garrett said, let's not make the mistakes of the past. I remember he said that in his comments. Let's not make the mistakes of the past. The 20th Century was about housing discrimination. We know that. I think it is time to make a new start, and that is what we try to do every day at the Howard University School of Law.

And I thank you for the opportunity to testify.

[The prepared statement of Professor Gilmore can be found on page 70 of the appendix.]

Chairwoman WATERS. Thank you very much. We will now proceed with our questions.

Ms. Proll and Mr. Berenbaum both kind of alluded to or mentioned in their testimony something about the way the lending institutions dealt with lending as it relates to the foreclosure problem that we have.

Now, recently there was a case brought against Wells Fargo. And I think it had to do with targeting certain communities for predatory lending and unfair products. Were either of you involved in that case?

Ms. PROLL. We were not, but we know the lawyers who were.

Chairwoman WATERS. And am I correct in assuming that it had to do with targeting communities for basically unfair lending practices?

Ms. PROLL. That is right. It is what we call reverse redlining. Rather than circling a red line around a community and not lending to that community, the line was circled around the community and the community was targeted for exorbitant rates, for everything that goes into and caused the foreclosure crisis.

And the theory of the case is that the economic disadvantage that resulted to the Baltimore community was a direct result of Wells Fargo's lending practices.

Chairwoman WATERS. Will the Federal Fair Housing Initiatives Program be able to look at those kinds of discrimination practices along with testing, as it is presented here by Mr. Green?

Mr. BERENBAUM. There is no question that well-designed fair lending tests can probe any number of issues from, for example, the appropriateness of loans suggested to qualified consumers, to steering and other aspects of the current underwriting crisis.

In fact, included in our testimony are summaries from three series of tests in the fair lending space that the National Community Reinvestment Coalition has been involved with. For example, when brokers were being sort of labeled as the cause of the financial crisis, with Fair Housing Initiatives Program support, we went out and tested brokers across the country and found that over 40 percent of the time, discrimination was a factor.

When financial service corporations were in question, we did the same with a HUD FHIP grant, and reported out both to educate the industry and Congress and HUD and others to the issue, but also to bring, as appropriate, enforcement actions. That led to over 15 filings of redlining complaints against financial service corporations who were not regulated institutions by Federal agencies.

Chairwoman WATERS. Thank you very much.

I would like to ask Mr. Gilmore from Howard University whether or not in the educating of the communities that your students go into about fair housing laws, whether or not they are picking up complaints and being able to file those complaints or get them to the Federal Fair Housing Initiatives Program?

I take it that the school does not have a program. But in your educating of students in this area, they could be picking up complaints. What do they do with those complaints?

Mr. GILMORE. Actually, the Howard University School of Law program was founded through a HUD grant, through the FHIP program. It was a special grant many years ago for establishing a law school clinic, fair housing clinic, at an HBCU. It was a very unique program.

So we actually do—we are out in the community, and individuals come to us. We don't file the complaint, but we show the consumer how to file a complaint through the HUD system or, because we

are in the District of Columbia, it is through the D.C. Office of Human Rights, which is like the HUD affiliate in Washington, D.C.

And we will show them that process. And it is an online process, or they can call—for HUD, they will call the Philadelphia office. We would show them how to do that, and then they would take it from there, whether they wanted to file it or if they decided they didn't.

And I will point out that one of the problems over the years has been, when we have heard from the public, is they have lost faith in the ability for the program to work for them. And a lot of people just—they get denied something, for whatever reason, and they just simply forget it. They just forget about it. They sort of walk away from it.

And I think that is also what this is about, is restoring that faith in the Federal Government to take action in situations like this.

Chairwoman WATERS. Thank you very much.

Ms. Capito?

Mrs. CAPITO. Yes. Thank you.

Ms. Delgado, we have heard a lot in the previous panel and the panel here, about the need for more education, I think on both sides of the fair housing issue, both in terms of the potential buyer or renter and also of the owner of the properties maybe not being aware of some of the issues that have to be dealt with in terms of equal access for, say, disabilities and things of that nature.

Your organization obviously represents a vast number of owners and renters of properties. What kind of educational outreach do you do in terms of educating your members?

Ms. DELGADO. We do quite a bit. At every one of our conferences, we have held—in fact in the past several years—courses or forums specifically dedicated to educating on the requirements, the design and construction requirements, of the Fair Housing Act.

Our other group, the National Apartment Association, through their local and State associations, they offer regular training programs and educational programs. Some of our larger members have their own training in-house to mandate that their employees and staff and builders go through all of those training courses.

One of the pieces of information in the 2008 HUD report quantified the number of people who have gone through HUD's Accessibility FIRST training. And that is an area that we commend HUD for doing something like that because I think it is a recognition that the industry is in need of this very technical, detailed information about how to build correctly.

We have a few observations and disagreements over how—the standards to which they are enforcing against. But overall, the educational component is very good, and we would be curious to see how the hotline, the HUD hotline, is used, what kind of information, what kind of questions they are getting, if that is informing their additional educational opportunities.

So with the combination of those things, I think we try to do as much as we can in recognizing the need for that education.

Mrs. CAPITO. Thank you.

Ms. Smith, in terms of the answer that was just given from the one side of the housing equation, is there ever any collaborative ef-

forts between the owners and the renters, between the potential owners—I mean, on the local level.

You talked about you have 98, I think you said, local private fair housing organizations. Are there any kind of coalitions together to make sure that these issues are aired on both sides? Or do you find that there is a lack of—I mean—yes. Let me leave that question out there.

Ms. SMITH. When a complaint is filed, 99 percent of the complaints go to an administrative agency. There are very, very few lawsuits that are filed annually. I guess less than 10 lawsuits, fair housing lawsuits, are filed annually.

In the example that was given, it shouldn't have been a long investigation. The State, local, or HUD investigator should have been able to look at the test reports right away to see that different information was requested and dismiss a case like that.

Testing, the courts and HUD and administrative agencies can look at that. And it takes away the issue of she said/I said.

Mrs. CAPITO. Right.

Ms. SMITH. And it pulls in some objective information about availability. Private fair housing groups, in 9 out of 10 of the cases, develop a relationship with the apartment builder, the complex, the real estate company that has been investigated, to do training.

The difficulty in the rental markets is you have high turnover of managers and supervisors and assistant managers. So you may not be in a situation where they know exactly what the law says when they are operating every day.

But you also have situations where some owners have directed managers to discriminate. And we have cases in Alabama where those managers came forward, and the Fair Housing Act protected them, by being able to file a complaint without retaliation.

I see much more cooperation between the private movement and the industry in training. They have the desire to follow the law. We have the desire to have them follow the law. And I think the California Apartment Association, in particular, has great training programs that they do on a local level.

Mrs. CAPITO. Could I have one final question?

Chairwoman WATERS. Yes.

Mrs. CAPITO. Thanks. This is on a topic near and dear to your heart I wanted to ask about.

Mr. Berenbaum, I believe that your organization has had some exposure to this mortgage fraud that is going on now, with people being contacted and being told, "We are going to help you prevent your foreclosure."

Can you speak to that just generally, what your exposure has been? Is it on the rise? Are you able to detect what the issues are? Are there people getting caught being fraudulent? And that type of thing.

Mr. BERENBAUM. The National Community Reinvestment Coalition is a HUD-certified housing counseling intermediary, and over 150 of our member organizations are providing foreclosure prevention counseling across the country.

In discussion with them and, frankly, from our own work in the space, we were seeing more and more for-profit foreclosure prevention firms opening their doors. Many were former mortgage profes-

sionals. Some were even not-for-profit staff opening doors. Some were lawyers. They really varied. Some were national advertisers. Some were local advertisers, radio or on the utility pole outside a door. Going door-to-door in Las Vegas, and so on.

We decided, using our own resources, to begin a matched pair testing program where we looked at over 100 foreclosure prevention counseling for-profit providers. We are preparing to release that report at this time.

But I can tell you what we saw was widespread misinformation, including statements such as, "Don't pay your mortgage payment. Work with us. Pay our fee"—on average what was a $2,800 fee—"instead of paying your mortgage," when in fact all of those consumers, regardless of where they lived, could receive HUD counseling at no cost. And frankly, they would have received better advice, from what we were learning.

We will share the report with you when we release it in early February.

Chairwoman WATERS. Thank you very much.

We have been joined by Mr. Kanjorski. And without objection, Representative Kanjorski will be considered a member of the subcommittee for the duration of this hearing. Mr. Kanjorski?

Mr. KANJORSKI. Thank you very much, Madam Chairwoman.

Maybe listening to the panel's testimony, am I making an incorrect judgment that we are actually progressing and doing a better job than we did, say, prior to the Fair Housing Act?

Ms. SMITH. I would say that—I have been doing this for 35 years. And you are supposed to say, but you look so young.

[laughter]

Ms. SMITH. And I see major progress in enforcement and education. However, we estimate that 4 million instances of discrimination occur annually, and fewer than 30,000 are reported.

And when you look at where the private fair housing centers are located—in Ohio, Michigan, California, are where they are mostly concentrated—you see most of the cases coming from those areas. Then we have States that may have one fair housing center—for example, Richmond in Virginia—and other States that have no private fair housing centers—North and South Carolina, Idaho, Kansas, New Mexico.

It is a huge gap, as Assistant Secretary John Trasvina testified. There is a huge gap in enforcement. So where there is effective, full service, nonprofit fair housing centers, you see integration. You see cooperation between the enforcement agencies and the industry. But where there isn't, you see this battle going on and people being denied housing every single day without any assistance.

Lending discrimination is rampant, and it is not just the scam issues, which we are testing as well. But 2 years ago, when the credit crunch became tight, we did testing of banks. And we sent in Latinos, African Americans, and White testers to apply for a conventional mortgage loan. Everybody was offered some kind of a loan, but the Whites got the best loan—terms, conditions, interest rates—even though they were less qualified than the Latino and African-American testers.

So in some parts, we are really improving in education and dialogue with the industry. But we have just touched the tip of the

iceberg when we are talking about how this discrimination perpetuates segregation in our country.

Mr. KANJORSKI. Ms. Delgado, you brought out in your testimony some of the failures in the testing system. If you had your way, what would be the changes you would make now to have the Fair Housing Act better applied and to be more efficient and effective in its application? What would be your judgment?

Ms. DELGADO. Thank you for the question. Some of the suggestions we would make would be we think there should be a standard testing protocol. That is, to recognize that, as I said in my testimony, tests are done in various ways, and we are not sure that tests appear to recognize the reality of technological advances, for example, that have been made in the rental marketing practices.

In an example, for a simple test of someone going in and seeking pricing on a one-bedroom unit—I just did this recently myself. I am in the market for a new place to live, and went shopping at one of my members' communities, and asked for some pricing.

Well, it depended. You had to tell them—they had four or five options. Different square feet. Where the unit was located. When did you want to move in? Everyone doesn't move in on the first of the month these days, and that makes a difference in the pricing.

So with a simple request of, I want to know how much it costs for a one-bedroom unit, it could be different for everybody who asks, and it could be different the very next day. So those kinds of things, I am not sure that those are recognized in various testing protocols.

We think it would be helpful for the test results to be disclosed. When someone received a complaint, they should have more than just an anonymous alleged complaint which they have a hard time responding to.

Another recommendation we would make: We think there should be some flexibility built into the system when, say, for example—especially in the more confusing areas of the laws. Someone might ask for an exception to a no-pets policy. Well, that is under reasonable accommodations provision of the Fair Housing Act.

Not everyone is familiar with that. In fact, I think that was also reported in the HUD study, that people are unfamiliar with what those rights are. Why can't the tester prod the person, ask a few additional questions, remind them that these are their fair housing rights?

I think if you just engage in a little education on both parts without what appears to us as mostly a "gotcha" game—because those are the easy things to check off—we think it would go a longer way to actually effecting the change that you are looking for.

Mr. KANJORSKI. Thank you very much.

Chairwoman WATERS. Thank you.

Mr. Green?

Mr. GREEN. Thank you.

Ms. Delgado, I must move quickly, so please forgive me if I appear to be rude, crude, and unrefined. I am going to ask you a question. And so as not to entrap you, I am going to tell you before I ask you this question that I will ask you a follow-up question to ascertain whether or not the answer that you have given me is totally correct.

The question is: Have you examined the protocols for testing promulgated by HUD? Have you examined them?

Ms. DELGADO. I have looked at them, but not in the detail that you would probably follow up in your question.

Mr. GREEN. All right. If you have not fully examined them, why would you make contentions about protocols that you don't fully understand and you haven't fully examined? You see, you are doing what we call in court asking a question that hasn't been answered.

The testing that is being done is not the type of informal questioning that you are talking about. These tests are performed with specific protocols that address the very concerns that you have called to our attention.

So when you make these statements, you are misleading people. This concerns lives. This is about children. This is about veterans. This is about the American society that we live in and we want to make better. So I beg that you give more consideration to those protocols before you make comments such as what you have made.

I would also commend to everyone, given that this is Dr. King's birthday celebration time in this week, read his letter from the Birmingham jail. Read his letter from the Birmingham jail and understand that Dr. King didn't go to jail to write a letter. That is not why he went to jail.

He wrote the letter in response to prominent citizens who wrote him a letter. He wrote his letter responding to people who were saying, "You are moving too fast." He wrote his letter in response to people who were saying, "The time is not right to make this kind of change."

Read that letter from the Birmingham jail, and you will get a greater appreciation for why those who suffer want something to change right now. Those who are denied public housing need help right now, as well as those who are losing their place in the private housing market, too, simply because of who they are.

Quickly, the professor from Howard. You are eminently correct. There is discrimination taking place online. In Houston, Texas, we had a candidate run for office, and she lost. For our purposes, we will say her name is "Shaneney." She lost. "Shaneney" lost. And she came forward and said, "Look at me. I am Anglo. I should not have lost. Other Anglo candidates won who had different names."

Her contention—anecdotally, but I conclude that there is empirical evidence to support it—was that her name caused her to lose. When you apply online, if your name is "Shaneney," it may have an impact on whether you will get a place to stay.

NAACP Legal Defense Fund, not only did you file and win *Shelley* v. *Kraemer,* but also *Barrows* v. *Jackson.* And if my information is correct, approximately 29 of 31 cases before the Supreme Court of the United States were won by the NAACP. You have paid dues, and you have made a difference in the lives of people in this country. People ought to take your testimony seriously because you are talking from years of experience in dealing with these issues.

With the Alliance, I want to thank you for the last comment that you made about how we must do more in the area of testing with reference to lending. You used a term, I believe, "full application testing." Absolutely, full application testing.

And for our edification, let's take a quick survey. Let's test the panel here. How many of you would agree that we need to test to find out if there is discrimination in lending? If you agree, will you kindly extend a hand into the air?

[show of hands]

Mr. GREEN. Let the record reflect that all of the members of the panel are of the opinion that we should should test lending by way of the application process.

And I would add that in doing this, we can also get into that predatory lending that has been called to our attention. We can get the empirical evidence of what is going on. If we really want to deal with this problem, testing is the way to do it. Dr. King did not want to manage racism and segregation. He didn't want to manage it. He wanted to eliminate it.

Now, the question that we in Congress have to ask ourselves is this: Do we want to eliminate invidious discrimination against veterans, against people with children, against ethnic minorities? Or do we just want to manage it? That is the question that we have to deal with.

Thank you, and I yield back the balance of my time.

Chairwoman WATERS. Thank you very much, Mr. Green.

We have just been joined by Mr. Cleaver. Do you have any questions for this panel, Mr. Cleaver?

Mr. CLEAVER. I would just like to associate my comments with Reverend Green.

Chairwoman WATERS. Okay. Thank you.

There are no more questions for this panel. Without objection, your written statements will be made a part of the record. The hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record.

This panel is dismissed, and we thank you so very much for being a part of this hearing today.

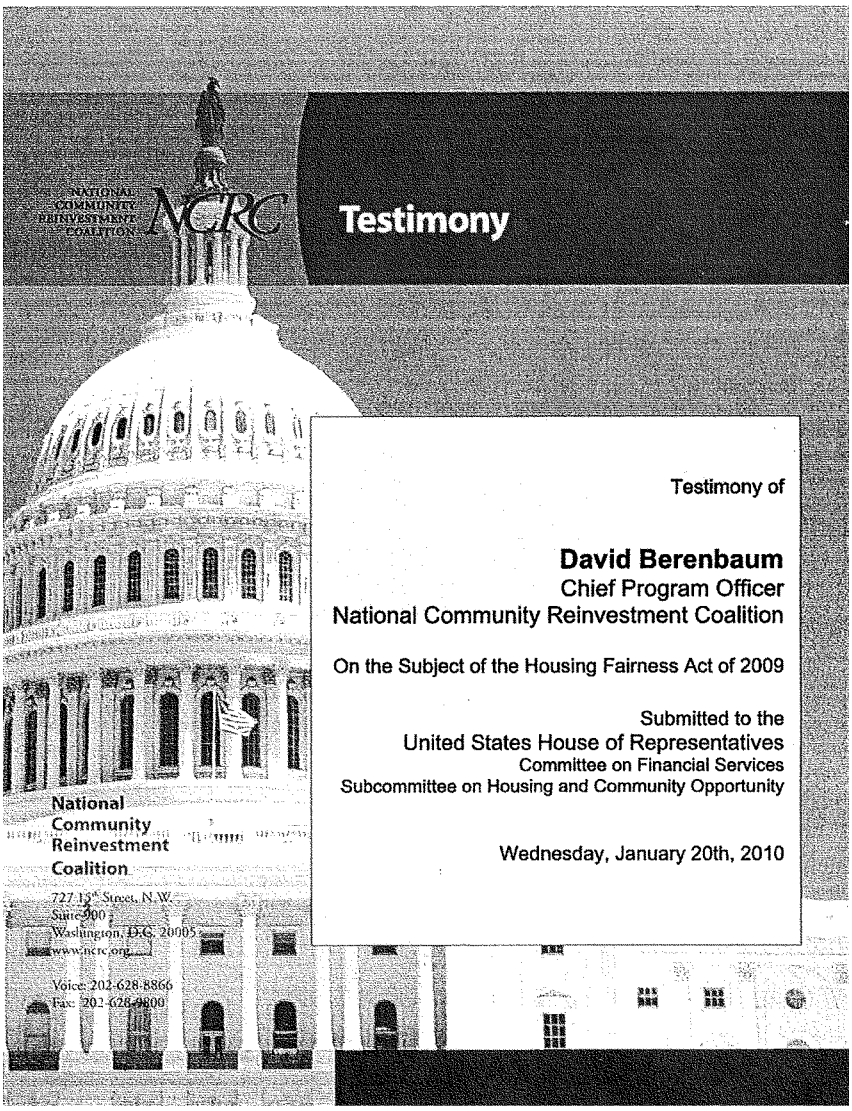
Before we adjourn, the written statements of the following organizations will be made part of the record of this hearing: The National Fair Housing Alliance, and the National Association of Realtors. Without objection, it is so ordered.

This hearing is adjourned. Thank you very much.

[Whereupon, at 11:51 a.m., the hearing was adjourned.]

A P P E N D I X

January 10, 2010


NATIONAL COMMUNITY REINVESTMENT COALITION
NCRC
Testimony
Testimony of
David Berenbaum
Chief Program Officer
National Community Reinvestment Coalition
On the Subject of the Housing Fairness Act of 2009
Submitted to the
United States House of Representatives
Committee on Financial Services
Subcommittee on Housing and Community Opportunity
Wednesday, January 20th, 2010
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Introduction:

The National Community Reinvestment Coalition (NCRC) is honored to testify before the United States House of Representatives Financial Services Committee Subcommittee on Housing and Community Opportunity today in support of H.R. 476, The Housing Fairness Act of 2009.

NCRC is an association of more than 600 community-based organizations that promote access to basic banking services including credit and savings, to create and sustain affordable housing, job development, and vibrant communities for America's working families.

Through our National Neighbors program, NCRC spearheads fair housing and fair lending best practice initiatives, which promote racial and cultural equality, opportunity, and diversity. National Neighbors and our members are committed to an open housing market free of discrimination. In particular, National Neighbors current efforts are aimed at ensuring that solutions to the current mortgage crisis are fair and equitable. National Neighbors support policies that do not place a disproportionate burden on underserved communities, and do not constrict access of underserved communities or qualified applicants to responsibly underwritten and fairly priced mortgage products.[i]

Chairman Waters, and other distinguished members of the Sub-Committee, we applaud your efforts to ensure equal housing opportunity for all Americans by convening this hearing. In recent months, the FDIC, the Federal Reserve Board, the White House and several Members of Congress have acknowledged that unfair, deceptive, or otherwise poor business practices by lenders and other mortgage finance-related institutions played a critical role in the current housing crisis. Also well known is the reality that a disproportionate share of abusive high cost lending targeted financially vulnerable African-American and Latino households and communities.

In the face of this crisis, it is an unfortunate truth that the National Community Reinvestment Coalition and many of our members have brought more complaints as "private attorney generals" under the Federal Fair Housing Act challenging fair lending violations then the regulatory agencies. These violations include reverse redlining, discriminatory underwriting, discriminatory pricing, problematic sub-prime mortgage servicing, overt redlining of urban and rural neighborhoods, and even the role of Wall Street and rating agencies in the current market crisis and individual Federal regulators charged to enforce the law.[ii] The time has come to change this paradigm and to affirm our nations commitment to equal housing opportunity.

To drive home this point, we note that in 2008, DOJ received only 20 fair lending referrals involving potential Equal Credit Opportunity Act claims from the bank regulatory agencies: 12 from the Federal Deposit Insurance Corporation (FDIC); three from the Federal Reserve Board (FRB); our from the Office of Thrift Supervision (OTS); and one from the Office of the Comptroller of the Currency (OCC).[iii]

The proximate result of this failure to enforce Title VIII is that the foreclosure crisis is having its most financially destructive impact on communities of color where discriminatory loans are

heavily concentrated. Billions of dollars in housing equity have been lost. Billions more will be drained over the next year if meaningful foreclosure intervention and active enforcement of the Federal Fair Housing Act is not forthcoming.

To date, despite repeated calls for greater enforcement of Title VIII over the past decade by the National Community Reinvestment Coalition, not enough has been done by Federal and state regulators to challenge the reverse redlining, discriminatory pricing, and predatory lending targeted at people of color, African-American, and Latino communities across the country.

Further, as we will note in this testimony, despite the substantial progress that has been made to celebrate compliance and equal treatment under Title VIII – including industry best practice initiatives, neighborhood diversity initiatives, and fair housing planning programs – much more work needs to be done until we can realize the Fair Housing Act's legislative authors dream of "one America." In fact, this will require a fresh and coordinated look at how we use the law as a policy tool.

Therefore, the most critical recommendation that we will make today is to call for the creation of a Cabinet level civil rights position that reports directly to the President and ultimately to Congress, to ensure that all Federal agencies work collaboratively with each other, with the public and private sectors, and with the States to realize our nation's long established and accepted policy of equal housing and employment opportunity, equal professional service, and equal treatment under the Americans with Disabilities Act (ADA) through the implementation of a National Fair Housing Plan coupled with the new testing initiatives and fair housing planning activity envisioned in HR 476.

As we draft our testimony for this Hearing, NCRC notes the significant announcement by Thomas Perez, the Department of Justice's Assistant Attorney General for Civil Rights, in a speech last week at the Wall Street Project Economic Summit in New York to create a new fair lending unit. DOJ's new Fair Lending unit will investigate and bring enforcement actions against lenders and brokers that have unfairly denied minorities access to home loans. It will also seek to identify companies that targeted minorities for mortgages with loose underwriting standards or high interest rates that forced them into foreclosure. The DOJ Fair Lending unit reportedly already has 38 investigations pending and will examine discrimination that is occurring as minorities try to refinance or modify mortgages. This is a noteworthy step forward by the Department of Justice to reaffirm it considerable commitment to civil rights enforcement, but much more can and should be done.

The Road to Equal Housing Opportunity and One America

The Fair Housing Act was the last major piece of civil rights legislation from the 1960s. Responding to severe societal pressure, Congress intended the Act to effectively outlaw all discriminatory actions within the housing and lending industry. While the principles behind the American Dream promotes wealth, prosperity, and happiness for those who work hard, African Americans, Latinos, and other groups faced serious barriers to achieving the same benefits for their labor. Even African American & Latino veterans were denied access to homeownership when they returned from service abroad. Racial segregation and related stigmatization impacted

educational and employment opportunity and ultimately created serious unrest in urban communities across the nation.[iv]

As a result of the civil rights movement, President Lyndon Johnson created the Kerner Commission to examine these issues and make policy recommendations. According to the report, "All Americans sought both the material assets of the capitalist system and its subsequent psychological benefits of dignity and peace of mind."[v] However, neither of these two American aspirations was attainable for the majority of black households.[vi] The Report warned of an America "moving toward two societies, one black, one white-separate and unequal." The Report urged anti-discrimination and integration programs to quell the unrest and turmoil that loomed. Released on March 1, 1968, the Senate passed the legislation and it sat in the House with the possibility of amendment. It was on April 4, 1968 when rioting and unrest hit a pinnacle with the assassination of Dr. Martin Luther King, Jr. that the House passed the legislation. The Legislation passed on April 10th 1968 and was signed into law by President Johnson the following day.

While the simple purpose of the Fair Housing Act was to respond to the immediate needs of African Americans and all Americans to be free from discrimination, many also recognized it as a tool to promote integration. Senator Mondale is widely quoted as stating that the purpose of the Fair Housing Act was to replace the ghetto with "truly integrated and balanced living patterns."[vii] Similarly, Senator Brooke commented that though the legislation was "a giant step in the right direction," is was not a "cure [for] all of the wrongs and the ills in this country."[viii] This law reflected the ongoing tension between the freedom to live in the area of your choice while also striving for a racially and economically diverse and sustainable society that remains to this day.

Over the past forty years, the Fair Housing Act's broad policy mandates and brief legislative history have forced the courts to play an important role in the statute's interpretation. The Fair Housing Act of 1968 made it unlawful to discriminate in the sale, rental or financing of dwellings on the basis of race, color, religion, sex or national origin. The Act gave the United States Department of Housing and Urban Development Office of Fair Housing & Equal Opportunity (FHEO) the power to investigate complaints received. In 1988 Title VIII was strengthened and handicap and familiar status were added to the Act. Additionally, the Act made it unlawful to design non-handicap accessible housing after March 1991. The Amendment of 1988 also gave HUD the ability to initiate complaint proceedings and impose more meaningful remedies.

The Supreme Court has acknowledged that Congress intended the legislation to be construed broadly, so as to root out discrimination within the housing industry.[ix] This has led to a series of landmark decisions in all aspects of the housing market – from inclusive zoning to supporting a municipality's commitment to neighborhood integration – that benefit the entire American public while affording plaintiffs, who often represent municipalities, victims, industry and other aggrieved parties, the opportunity to enforce their rights in a highly dynamic and complex real estate market. Fair Housing Testing, sometimes referred to as "mystery shopping," and dynamic fair housing planning, must be critical components of HUD's agenda in cooperation with its Fair

Housing Initiatives & Assistance Program (FHIP & FHAP) partners to promote open housing on a neighborhood level.

Fair Housing Violations Impact Upon Individuals & Communities

Vividly demonstrating this point, on January 8th 2008, the Mayor and City Council of Baltimore, Maryland, filed a federal lawsuit against a national bank under the Fair Housing Act. According to the City, the bank engaged in a pattern and practice of unfair, deceptive, and discriminatory lending activity since at least 2000.[x] This precedent-making case documents the need for greater regulatory oversight of financial institutions. This case also dramatically captures the impact of regulators' failure to enforce the Federal Fair Housing Act and its subsequent high cost to homeowners, localities and our economy. While this case was dismissed late last month, the City has announced that it plans on filing a new complaint. Similar cases have also pending or soon will be filed across the country. From Main Street to Wall Street, fair housing plays a critical role in nurturing a viable economy.

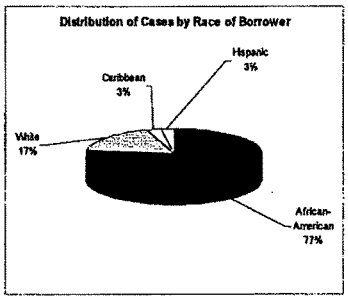
Despite the enactment of the Fair Housing Act, housing discrimination and segregation remain pervasive in the United States. Numerous studies have shown that African-Americans and Latinos often encounter discrimination when they try to rent or buy a home.[xi] Many other groups are also subject to discrimination. People frequently encounter discrimination on the bases of familial status, disability, gender, marital status, source or amount of income, age, military service and sexual orientation.[xii] In fact, many states and localities have expanded the number of groups who are protected under local fair housing ordinances to reflect these issues. NCRC strongly recommends that this Committee in cooperation with the House Judiciary Committee consider expanding the limited number of groups currently protected under the Federal Fair Housing Act.

Forty years after the enactment of the statute, most metropolitan areas in the United States are segregated by race.[xiii] Over two dozen metropolitan areas were identified as "hypersegregated" on the basis of census data from the1980, 1990 and 2000 Census. [xiv] " Hypersegregation" describes Metropolitan Statistical Areas (MSAs) for which census data show high levels of segregation on at least four of five dimensions by which segregation is measured.[xv] Further, virtually all—over 90 percent—of the neighborhoods that were predominantly or exclusively Black in 1990 remain predominantly or exclusively Black in 2000.[xvi]

The consequences of the racial discrimination and segregation are severe, causing personal injury,[xvii] limiting access to good schools and good jobs,[xviii] and making it very difficult for minorities to enjoy appreciating home values and to accumulate net worth.[xix]

For example, A 2006 NCRC review of a sample of our National Homeownership Sustainability Fund (NCRC is a HUD Certified National Housing Counseling Intermediary, providing comprehensive counseling and foreclosure prevention services through the NCRC Housing Counseling Network of partner agencies) program files indicated that abusive lenders targeted minority and low- and moderate-income borrowers and communities with high cost and exotic mortgages.[xx] This was first evidenced in the landmark fair housing case, Hargraves v. Capital City Mortgage Corporation, where the court ruled that the Fair Housing Act prohibited "reverse

redlining."[xxi] Affirming this point, the chart and graph below reveal that a disproportionate number of our Consumer Rescue Fund (CRF) customers were people of color and people with modest incomes. About 77% of the borrowers in the CRF sample were African-American. Almost half (47%) resided in low- and moderate-income neighborhoods and 83.6% of the borrowers had incomes below $45,000.



Distribution of Cases by Income of Borrower

Income of Borrower	Number	Percent
less than $15,000	6	9.84%
$15,001-25,000	14	22.95%
$25,001-35,000	16	26.23%
$35,001-45,000	15	24.59%
$45,001-55,000	5	8.20%
$55,001-65,000	2	3.28%
$65,001-75,000	1	1.64%
$75,001-85,000	2	3.28%
Total	61	100.00%

The recent studies findings that counseling clients were mostly minority and low- and moderate-income is consistent with NCRC's research and other studies. Taken together, they demonstrate that a disproportionate amount of high cost lending is directed towards minority and working class communities. Traditionally underserved communities suffer from less product choice and consequently are more susceptible to abusive high cost and exotic mortgage lending. This remains a serious fair lending issue.

In the communities of Staten Island and Long Island, New York, NCRC's National Homeownership Sustainability Fund and National Neighbors staff assisted over 100 New York City police officers and fire fighters who purchased homes from an unscrupulous housing

developer and mortgage broker. They were targeted because they were African American and Latino. The broker manipulated the origination system by quickly dumping the fraudulent loans onto the secondary market. For these heroic public employees, the American dream of owning a home became their nightmare. Their State Human Rights Office did not help them. HUD did not help them. DOJ did not help them. Only NCRC and our member organizations stepped up to the plate to work with their civil rights counsel. The Plaintiffs ultimately filed a Title VIII claim in Federal Court.[xxii]

Similarly, NCRC's Housing Counseling Network is intervening in a number of cases where borrowers who are members of protected classes have been victimized by appraisal fraud. A sample of loan files revealed that about one fifth of the homes were overvalued by more than 50% of their true value, and two thirds of the homes were overvalued by 15-50% more than their true value.[xxiii] Inflating appraisals leave borrowers with unaffordable loans that they are then unable to refinance because the loan amounts are higher than the true value of their homes, especially in a cooling housing market. The results are too often loss of homeowner wealth, equity stripping, and/or foreclosure.[xxiv]

Many studies have noted that integrated housing is also the key to integrated schools, which is considered equally important to responsible lending under Title VIII. [xxv] As was the case in the 1960s, whites continue to leave urban neighborhoods for suburban life, which leads to a deterioration of the schools in urban areas.[xxvi] Further, economists for the Federal Reserve Board found that Blacks and Hispanics pay more for home purchases and refinancing than Whites.[xxvii] The National Fair Housing Alliance approximates that annually Blacks and Hispanics experience 3.7 million instances of housing discrimination in rental and housing markets.[xxviii]

For all of these reasons, battling housing discrimination and segregation is one of the most important activities in which we can engage. Enabling a family to move into a neighborhood where employment exists, where there are quality schools, and where there is a vibrant community greatly increases the likelihood that our civil society and economy will flourish.

Fortunately, there are powerful laws against private and public discrimination. Unfortunately, they are not adequately applied or enforced. All civil rights advocates hope the Federal government intensifies the enforcement of Fair Housing laws to protect the housing rights of all Americans.

The Dual Lending Marketplace & Foreclosure

Discriminatory policies and practices that have dominated the mortgage markets in minority communities for nearly a century have predisposed minority communities to declining market values. For example, in the 1930s, the Federal Home Loan Corporation (HOLC) institutionalized redlining and that practice became a hallmark feature of the housing markets for decades after the HOLC closed its doors in 1951. Discriminatory underwriting practices required by housing programs of the Federal Housing Administration and Veterans' Administration further marginalized communities of color. Those policies directly contributed to the current financial vulnerability of minority communities and predisposed them to the worst

behavior of the sub- prime and non-traditional mortgage lending market. Predatory lending is merely the most recent discriminatory practice to undermine the housing markets in African American and Latino communities.

A growing foreclosure crisis confronts America as lending institutions have engaged in new forms of dangerous high-cost and non-traditional lending. As this committee knows, most of the high-cost or sub prime lending made in recent years feature adjustable rate mortgages (ARMs) with low "teaser" rates for the first few years followed by rapidly rising rates. Incredibly, many lenders assessed borrowers' abilities to repay only at the low teaser rates. These loose underwriting standards have created the conditions for a perfect storm as almost 2 million of the ARM loans will re-set or start adjusting upward from their initial rates in 2007 and 2008.[xxix]

We commend the Committee for it's work on HR 4173, and note the importance of the new Consumer Financial Protection Agency working in concert with prudential regulators, the Department of Justice and the Department of Housing & Urban Development's Office of Fair Housing & Equal Opportunity.

As you deliberate about the state of fair housing and the effectiveness of the Fair Housing Act, we respectfully ask to focus upon the all too troubling recent indicator that the African American homeownership rate has significantly fallen from 2004 to the 2009.

According to a Pew Hispanic Center study released in April of 2009, the rate of homeownership for all Americans peaked at 69 percent in 2004 and then declined to 67.8 percent by 2008. For African-American households, it fell to 47.5 percent in 2008 from 49.4 percent in 2004. Latinos, native and foreign-born together, had a longer period of growth, with homeownership rising until 2006, to 49.8 percent, before falling to 48.9 percent last year. Homeownership for native-born Latinos fell to 53.6 percent from a high of 56.2 percent in 2005. Other studies identify a higher drop in the rate of homeownership among African Americans. If the rate had remained at its 2004 high, there would be between 390,000 to 500,000 more African American homeowners today.[xxx]

In fact, we fully expect the rate of homeownership for African Americans and Latinos to drop even further in light of recent problematic lending practices, foreclosure trends and economic developments, and the limitations of the Home Affordable Modification and Refinance Programs.

Homeownership reflects a far larger share of the assets of minorities than of Whites: home equity constitutes two-thirds of African-American families' assets, as opposed to two-fifths for White families'.[xxxi] For the large part, because black homeownership rates still lag significantly behind homeownership rates for White families, the median net worth of African- American households in 2002 was $5,988, while median net worth for White households was $88,651.47[xxxii] These trends, then, are profoundly troubling, not only from a civil rights perspective, but also as an economic indicators.

This is not an equal opportunity recession. Although the national unemployment rate is an

uncomfortable 10.2% as of October, that rate for African Americans exceeds 15 percent, and for Latinos unemployment is approaching 13 percent. The unemployment rate for non-Hispanic Whites, by comparison, remains substantially lower.

Because African Americans and Latinos have comparatively few savings, they are poorly positioned to survive a lengthy bout of unemployment. As a result, potentially millions of African-Americans and Latino households could find themselves falling out of the middle class by the time the economy recovers.

Moreover, African Americans and Latinos were targeted disproportionately for deceptive high cost loans. According to a study by the U.S. Department of Housing and Urban Development, subprime loans are five times more likely in African American communities than in White neighborhoods, and homeowners in high-income Black areas are twice as likely as borrowers in lower-income White communities to have subprime loans.

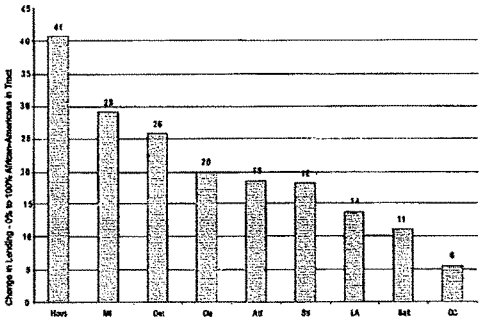
The result is that Blacks and Latinos are over-represented in the foreclosure statistics. African Americans, for example, have experienced a full three-percentage point drop in their homeownership rate since the crisis began.

Research by the National Community Reinvestment Coalition found that predatory lenders aimed their toxic products heavily at women of color. Because African-American children are more likely to reside in female-headed households, black children are also disproportionately harmed as a result of the foreclosure crisis and its attendant stresses.

Finally, in a separate NCRC study, The Broken Credit System, released in 2004, we found that after controlling for risk and housing market conditions, the portion of subprime refinance lending increased when the number of residents over the age of 65 increased in a neighborhood. If a borrower were a person of color, female, and a senior, she was the "perfect catch" for a predatory lender.

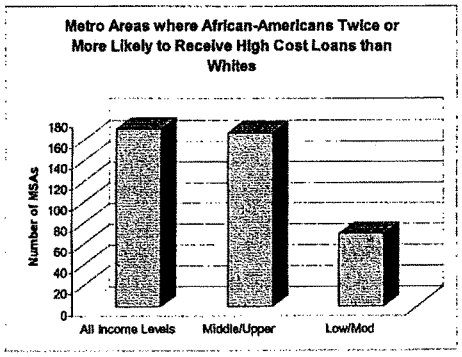
In *The Broken Credit System* report, NCRC obtained creditworthiness data on a one time basis and combined it with 2001 HMDA data.[xxxiii] We found that after controlling for creditworthiness, housing characteristics, and economic conditions, the number of subprime loans increased markedly in minority and elderly neighborhoods in ten large metropolitan areas. Our study revealing pricing disparities was consistent with an analysis conducted by a Federal Reserve economist.[xxxiv]

NCRC selected ten large metropolitan areas for the analysis: Atlanta, Baltimore, Cleveland, Detroit, Houston, Los Angeles, Milwaukee, New York, St. Louis, and Washington DC. After controlling for risk and housing market conditions, however, the chart below indicates the race and age composition of the neighborhood had an independent and strong effect, increasing the amount of high cost sub prime lending.



As expected, the number of subprime loans increased as the amount of neighborhood residents in higher credit risk categories increased. The Center for Responsible Lending also recently used HMDA data with pricing information to reach the same troubling conclusions that racial disparities remain after controlling for creditworthiness.[xxxv]

NCRC, in our 2007 report *Income is No Shield Against Racial Differences in Lending,* analyzed 2005 Home Mortgage Disclosure Act (HMDA) data, and observed striking racial disparities in high-cost lending. If a consumer is a member of a protected class, particularly an African-American or a Hispanic, the consumer is most at risk of receiving a poorly underwritten high-cost loan.



Further, as the above chart indicates, NCRC found that middle-class or upper-class status does not shield minorities from receiving high-cost loans. In fact, NCRC observes that *racial differences in lending increase as income levels increase.*[xxxvi]

Hispanics also experienced greater disparities in high-cost lending compared to Whites as income levels rose. The above chart indicates the five cities were disparities were the greatest. Nationally, LMI MI Hispanics were twice or more likely to receive high-cost loans than LMI whites in 10 MSAs.[xxxvii]

NCRC has consistently maintained that responsible high-cost lending serves legitimate credit needs. Higher-cost loans compensate lenders for the added risk of lending to borrowers with credit imperfections. However, wide differences in lending by race, even when accounting for income levels and credit quality, suggests that more minorities are receiving high-cost loans than is justified based on financial criteria.

Studies undertaken by NCRC and others suggest that minorities are, in fact, receiving a disproportionately large amount of high-cost loans, after controlling for creditworthiness and other housing market factors.

NCRC has also released several other reports documenting the persistence and stubbornness of pricing disparities. For example, our *Homeownership and Wealth Impeded* report uncovered troubling evidence that racial disparities increase when income levels increase,[xxxviii] and similar findings were found in our *2005 report, Fair Lending Disparities: Stubborn and Persistent II*.[xxxix]

In the words of Nobel Prize-winning economist Joseph Stiglitz, the financial system discovered there was money at the bottom of the wealth pyramid and it did everything it could to ensure that it did not remain there. Stated otherwise, the business model for many financial institutions was to strip consumers of their wealth rather than build and improve their financial security.

Ironically, most solutions to date have focused on rewarding the financial firms (and their executives) that created this crisis. But in spite of more than $12.8 trillion of financial support in the form of loans, investment, and guarantees, this approach is not working because consumers continue to struggle in a virtual sea of deceptive mortgage debt and a financial system that is unaccountable to the American public.

The time has come to change the paradigm, and to affirmatively further fair housing. *HR 476 represents a step in the right direction and works to accomplish this national policy priority.*

A particularly disturbing aspect of these lending trends is that they have disproportionately targeted members of protected classes under the Fair Housing Act and negatively impacted our nation's most financially vulnerable households.[xl] In fact, NCRC testing has repeatedly documented and reported on this troubling race line in America.

National Neighbors Fair Lending Testing Confirms Discrimination and HMDA Analysis Findings

Mortgage brokers are the point of entry for most families seeking to buy a home or refinance a mortgage. Prior to the financial crisis at the height of the market, brokers facilitated up to 70% of loans made in this country. While professional and honest brokers serve an important role in the marketplace, unscrupulous brokers, however, set up borrowers for failure the moment they submit applications and sign loan documents. Unfortunately, NCRC has documented through a nationwide testing project or "audit" that too many brokers engage in steering and discriminatory practices.

Housing experts Kathleen C. Engel and Patricia A. McCoy have written that, "When people of color are in the market for home loans, they often do not look beyond sub prime 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. [xli] 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."*[xlii]

NCRC's National Neighbors initiative regularly engages in fair lending testing, often described as "mystery shopping," and has consistently uncovered disparate pricing and treatment for minorities with the same or better qualifications than whites. NCRC has reached these findings regardless of whether the financial institutions tested are brokers, mortgage companies, or other types of financial institutions.

From 2004 to 2006, with support from the United States Department of Housing & Urban Development Fair Housing Initiatives Program Private Enforcement Initiative, NCRC conducted mystery shopping of financial service corporations, mortgage bankers and brokers, both large and small. Posing as loan seekers, both White testers (the control group) and Black or Hispanic testers (the protected group) met with and called local originators to inquire about their loan options. The protected-class testers were actually given more attractive profiles in terms of their amount of equity, credit standing and employment tenure, and should have logically received better treatment. Instead, NCRC's fair lending testing of mortgage brokers uncovered a 46% rate of disparate treatment based on race and national origin.[xliii]

Our results documented the following patterns:

- African Americans and Latinos were discouraged 25% of the time concerning their efforts to meet with a broker, while white testers were discouraged only 12% of the time in their efforts to obtain credit.

- African Americans and Latinos were questioned about their credit over 32% of the time. White shoppers were only questioned about credit 13% of the time.

- White mortgage seekers had specific products discussed with them 91% of the time, while African Americans and Latinos had specific products discussed with them 76% of the time. Further, White testers received two rate quotes for every one quoted to African American and Latino testers.

- NCRC documented pricing discrimination in 25% of the fair lending tests, and noted that fees were discussed 62% of the time with white testers but only 35% of the time with "protected testers."

- Fixed rate loans were discussed 77% of the time with white testers but only 50% of the time with African American and Latino testers.

These results are troubling and document the fact that even when controlling for credit and individual applicant qualification factors, African Americans and Latinos are being discriminated against in the marketplace and being forced to pay a "race tax" due to unequal access to credit.

The results also affirmed an earlier 2004 NCRC fair lending audit of financial service providers also conducted with support from the HUD Fair Housing Initiatives Program Private Enforcement Initiative, which also found that African Americans and Latinos were treated differently more then 40% of the time.

Testing Vignettes:

Some striking but not uncommon examples or *vignettes* of the testers experiences include the following:

> *At the suburban Baltimore branch of a major sub-prime lender, the White tester was told of a 5.75%, 30 year fixed interest rate, while the Black tester was told the 30 year rate was 8.85%. The White tester was told the 2 year adjustable rate was 4.99% and the Black tester was told the rate for that product was 7.6%. The Black tester was told that since her husband made more money (just slightly more), the lender would rely on the husband's income and credit. The White female tester was not asked about income, nor told about this policy.*
>
> *At the Atlanta office of a major sub-prime lender, the White tester was asked more questions and given far more information. The White tester was given printouts, had options run based on an application, and the loan officer later faxed the White tester a letter outlining options along with a detailed computer printout of the options. The White tester's visit lasted 20 minutes longer during which the loan officer tried to sell the White tester on the company and provided substantive information about loan products. The loan officer did not try to ascertain any information about the Black tester's credit.*

The testers visited the Chicago branch of the sub-prime subsidiary of a major national lender. The White tester was given extensive information about loan products, rates, and monthly payments. The loan officer recommended the White tester refinanced and said a 30 year fixed rate would be 5.5% and cost $715.41 a month, with an interest only "ARM" the payment would be $451 a month, a15 year fixed would be at a 4.3% rate with a payment of $980. The White tester was told of $1,400 in fees. Conversely, the Black tester was treated rudely, made to wait 20 minutes and then told they don't do home equity loans. The Black tester was not given any substantive information, and was given a referral to other lenders.

At the Los Angeles branch of a sub-prime subsidiary of a major national Financial Service Company, the White tester received basic rates and loan information based on the loan officer's review of a computer program. The Black tester did not receive this type of information. While the loan officer acknowledged that the Black tester was qualified based upon the information given, the Black tester was told she could not get rate information without a credit check. The White tester got far more information about loans and the lending process than the Black tester, and the White tester's interview was longer and more thorough.

In 2005 and 2006 NCRC conducted over 100 fair lending tests of more than 60 brokers in six major metropolitan areas throughout the United States including Atlanta, Baltimore, Chicago, The District of Columbia, Los Angeles, and St. Louis. The testing was conducted on the basis of race and national origin.

The testing uncovered a 46% rate of disparate treatment based on race. The findings of this fair lending testing initiative also revealed pervasive discriminatory and "predatory" practices by mortgage brokers in several metropolitan areas across the country. The findings of these tests were quite significant as they illustrated racially discriminatory lending practices, and significant differences in treatment in nearly half of the tests including: charging different interest rates for equally qualified borrowers based on race, steering minority borrowers to non- prime products providing substandard service and treating African-American mystery shoppers with less courtesy than their white counterparts.

The testing also uncovered several practices that may have a disparate impact upon African-American and Latino consumers, and predominately African American or Latino communities. The testing revealed a need for enforcement action to combat discriminatory conduct. Finally, the testing uncovered the need for changes in the policies and practices of many of these brokers in order to make loans more accessible to all consumers on an equal basis.

The types of differences in treatment detected were consistent with earlier testing of the retail subprime marketplace and included differences in: interest rates quoted; information given regarding qualification standards; fees required, acceptable ratios, interest rates, loan programs, and terms of loans; levels of courtesy and service; materials and literature given; number and types of questions asked of the testers. Additionally, the White testers were more often "referred up" to the lender's prime lending division, or to a bank; quoted lower interest rates; were given more detailed information. The White testers were often assumed to be qualified, and given

recommendations based upon assumed qualifications. The Brokers spent more time with the White testers and gave them more advice and recommendations, and the White testers received more follow-up. Some examples of the experiences of testers during this round of testing include:

In a Los Angeles broker test, both the Black and the White testers were able to meet in person with the same broker. The White tester was asked if she would like something to drink, had five different loans discussed with her, and was given information on what the monthly payments would be for four of them. These options included loans with and without her paying points. The Black tester received a quote for only one loan product, and while the loan was described as fixed the product description appeared to be adjustable.

In a Los Angeles test of a broker, both the Black and the White tester met with the same broker. The broker discussed first mortgages with the White tester, but not with the Black tester. She stated to the Black tester that the tester's husband could call and receive more information. No such statement was made to the White tester.

In a Metropolitan Washington D.C. test, the Black tester met with a broker who told him that rates were increasing by a quarter of a point each day, the broker gave him a list of items that would be needed if they decided to go with the company. At no time did the broker provide any rate or product information. The White tester was given a price quote for 6.375% with no points. The broker calculated the monthly payment for him, gave an estimate of fees ($3000 to $4000, with $318 upfront for the appraisal and credit check) and advised a 3 to 4 week turnaround time. The White tester was not given a list of items needed, only a business card. The White testers interview lasted 22 minutes, while the protected tester's lasted 12 minutes.

In a test of a Baltimore broker, testers were given different recommendations and levels of service. The White tester was told that her current rate of 7.75% could be reduced to 5.75% and she could get cash out in a first mortgage transaction. The Black tester was told that her rate of 8% was high, but the broker did not give her a first mortgage scenario in which she could reduce the rate. Instead, he recommended the Black tester get a 8.75% HELOC. The broker told the Black tester that she was getting less competitive pricing because she was getting a loan for less than $70,000.

At an Atlanta mortgage broker, the Black tester asked for a $25,000 loan for home improvement. The broker told the Black tester that he did not do loans less than $75,000 and he referred the Black tester to a local bank loan officer. The test lasted only five minutes. When the White tester visited the same the broker the White tester was also referred out for a second mortgage loan, but the broker also met with the White tester for thirty five minutes and gave the White Tester information on three different first mortgage loans options with cash out. The broker stated to the White tester that he knew of an appraiser who could ensure that the loan would be within 80% LTV because he "knew how to get value out of homes."

FORECLOSURE PREVENTION SCAMS

Foreclosure prevention and mortgage rescue modification scams present a growing concern for the consumer protection community. Numerous consumer complaints and NCRC's mystery shopping investigation confirm that companies that pose as rescuers are a pervasive threat to community stability and sustainable homeownership. In order to address this concern, NCRC proposes that strong federal consumer protection legislation be enacted and that HUD funding for "FHIP's" and "FHAP's" be increased. While HUD has launched a program in cooperation with NeighborWorks, the FTC, and the civil rights community, more still needs to be done.

Responding to an increased number of rescue scam complaints, and concerns from regulators, NCRC undertook a testing initiative to learn more about this emergent industry and its operators. Our methodology involved replicating the behavior of a troubled borrower who is on the cusp of foreclosure, is seeking help, and is a viable candidate for assistance.

Through this investigation NCRC examined the practices of over 100 foreclosure prevention service providers. Though this audit documented many reputable foreclosure prevention providers, it also uncovered numerous suspicious practices including: Advertisements that led consumers to falsely believe that the service was affiliated with a government agency, charging high upfront fees of several thousand dollars, guarantees of success to draw the consumer in, consumers being told not to pay their mortgage and to send the money to the service provider instead, consumers being told that they could turn over their deed to the service provider and stay in their home. It was particularly noteworthy that in most instances the exorbitant fees being charged to consumers were for the same services that are offered by non-profit housing counseling agencies free of charge.

In addition to the misleading advertisements, a great number of service providers had other suspicious practices. Many had numbers that were rerouted to service provider in California or in Florida. Many providers seem to operate the same service under different names. Many of the service providers disappeared during the pendency of the testing project, which is consistent with the "fly by night" nature of this emergent industry.

Testing of foreclosure prevention service providers reveals that consumers experience a wide range of treatment. In the best-case scenario, consumers receive fair advice, and cost-effective strategies for preserving homeownership, though these same services can be obtained at no charge from nonprofit or public organizations. However, many companies are revealed to be sources of misinformation. Further testing is needed to fully assess the nature of the problem, but many avenues for consumer-protection enforcement are already apparent.

The testing results underscore the need for an effective legislative solution. Modification and/or refinance companies are often operating in a regulatory vacuum, without any accountability. Left unchecked, these re-invented industry players will create problems for the most financially vulnerable consumers. Given the current economic environment, appropriate legislation is needed, and soon. NCRC recommends that the Foreclosure Rescue Fraud Act of 2009 be strengthened and passed with all due speed.

NCRC is now proposing to conduct further testing under the FHIP program to document racial disparities in this exploding marketplace.

The Impact of Steering, Equity Stripping & Discriminatory Loans

Price discrimination is not often discussed in the context of predatory lending, but we believe that it is a central element of both predatory lending and fair lending violations. When a borrower is steered towards a loan with an Annual Percentage Rate (APR) two or three percentage points higher than the loan for which she qualifies, the borrower will pay tens or hundreds of thousand of dollars more in mortgage costs due to the discrimination. This represents a substantial loss of wealth, which could have been used to send a child to college or start a small business. When several residents of a minority or working class neighborhood suffer price discrimination, the neighborhood loses millions of dollars that could have been reinvested in neighborhood businesses and other institutions to build wealth.

The effects of the housing crisis on neighborhoods will be significant. According to the Center for Responsible Lending, foreclosures in 2005 and 2006 alone 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.*[xliv]

Additional research by Dan Immergluck of the Georgia Institute of Technology shows that for "every foreclosure 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."[xlv]

When houses are foreclosed and then abandoned, as they often are, cities must often absorb the cost of 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."[xlvi]

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.[xlvii]

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.[xlviii] This has a tremendous effect on funding for schools and provision of municipal services of all types.

Credit Rating Agencies

Credit rating agencies reaped millions of dollars in fees for providing inflated ratings to residential MBS and collateralized debt obligations. These practices contributed to the funding of hundreds of billions of dollars of loans that were not underwritten for long-term sustainable homeownership. The President's Working Group on Financial Markets in March 2008 cited "the erosion of market discipline" by credit ratings agencies and "flaws in credit rating agencies' assessments" as being among the underlying cause of financial market collapse. More recently, the Congressional Oversight Panel asserted that credit rating agencies perhaps played the "decisive" role in endangering the financial system.[1]

NCRC has filed fair lending complaints with the United States Department of Housing & Urban Development Office of Fair Housing & Equal Opportunity against Fitch, Inc., Moody's Investors Service, and Standard and Poor's. NCRC alleges that these agencies substantially contributed to the housing and foreclosure crisis in African-American and Latino communities by making public misrepresentations about the soundness and reliability of subprime securities' ratings. The rating agencies fueled imprudent high-cost mortgage lending disproportionately targeted to minority communities, which contributed to high-default and foreclosure rates in violation of the *Fair Housing Act.*

The State of Fair Housing Enforcement

Strong evidence suggests that the lending market is not working in an efficient or equitable manner for working families and that the state of fair lending and consumer protection regulatory infrastructure is not at the point where it can effectively combat the enormous barriers in the marketplace for traditionally underserved populations.

Current federal fair lending efforts are inadequate to protect the interests of working families and minority consumers. In September of 2005, the Federal Reserve Board stated that it referred about 200 lending institutions to their primary federal regulatory agency for further investigations based upon the Federal Reserve's identification of significant pricing disparities in HMDA data.[xlix] An industry publication subsequently quoted a Federal Reserve official as stating that these lenders accounted for almost 50 percent of the HMDA-reportable loans issued in 2004.[l] In September of 2006, the Federal Reserve Board referred a larger number of lenders, 270, to their primary regulatory agencies for further investigations.[li]

Unbelievably and inconceivably, not a single case of discrimination or civil rights violations has arisen from the roughly 470 Federal Reserve referrals. While the HMDA data analysis by itself cannot conclude which financial institutions were discriminating, it is beyond credulity to

[1] Congressional Oversight Panel, Special Report on Regulatory Reform: Modernizing the American Financial Regulatory System – Recommendations for Improving Oversight, Protecting Consumers, and Ensuring Stability, January 2009, p. 40. http://cop.senate.gov/documents/cop-012909-report-regulatoryreform.pdf

conclude that Federal Reserve investigators could be so consistently inaccurate in their assessments about possible violations of fair lending laws. When the HMDA data was not as detailed, the Department of Justice in the 1990s settled about a dozen cases alleging discrimination with major lenders including Long Beach Mortgage and Huntington.[lii] These settlements had industry-wide impacts, as lending institutions knew that the Department of Justice was serious about enforcing the nation's civil rights laws. A resumption of these settlements by the Department of Justice would send a clear signal to the bad actors in the lending industry.

HUD recently announced that it has implemented several measures, which include (1) revising its Title VIII Investigator's Handbook; (2) implementing new processes to improve the timely completion of inquiries; (3) joint training between FHEO investigators and attorneys from HUD's Office of General Counsel (OGC) to promote collaborative investigations; and (4) FHAP attorney training to facilitate idea sharing and consistency of enforcement. Additionally, HUD established a Fair Housing Training Academy to teach effective investigation techniques to FHAP investigators throughout the country, created a systemic unit to investigate pattern and practice issues and to create greater consistency in fair housing enforcement, and launched a national fair lending education and outreach campaign to educate consumers about their rights and resources that are available. HUD's FHEO is also implementing systemic testing and investigations. These are important steps forward, but additional steps are required as demonstrated by a recent U.S. General Accounting Office (GAO) Report.

In April 2004, the GAO[liii] conducted a study that reviewed several aspects of the fair housing enforcement process. Both timeliness and effectiveness of the enforcement process were listed as being continuous concerns. According to the study, although the Fair Housing Act mandates HUD to complete its investigation within 100 days, unless it is impractical to do so, only 41% of FHEO investigators and 33% of Fair Housing Assistance Program (Local government agencies who have laws that are substantially equivalent with the Federal law and have been authorized to investigate complaints by HUD FHEO) investigators complied with the 100 day processing requirement. Additionally, the report noted that between 1996 and 2003, the most frequent outcome of investigations received a no reasonable cause finding. The Statement of Work for this procurement concluded that of the approximately 7500 FHEO inquiries filed each year, as few as 39% to as many as 95% of the inquiries are deemed non-jurisdictional, and thus never become filed complaints.

In the broader real estate market, recent reports document that the Federal government is filing fewer housing discrimination charges even as consumer complaints against landlords, real estate agents and mortgage brokers have risen steadily. Many renters and buyers who seek help from the U.S. Department of Housing and Urban Development are unlikely to get relief for their complaints, which can include alleged discrimination by landlords and sellers based on race, religion, sex or disability.[liv] Unfortunately, it has also been our experience in several of the fair lending complaints that NCRC has filed, that we have found a lack of expertise and capacity for processing the complaints among the HUD staff in the field offices or local Fair Housing Assistance Programs. This is primarily due to limited resources, but has prompted NCRC and many civil rights groups to rely on the HUD Conciliation process, or in the alternative, direct negotiation with respondents or Federal litigation.

If HUD is to implement the testing included in HR 476, it will require additional resources and funding to establish the necessary capacity to successfully administer the national testing program. Ironically, the private sector has embraced the utility of "testing" or mystery shopping. The time has come for HUD and other regulators to augment their testing program for research, enforcement, and to ensure equal access to housing, financial products and a safe and sound housing market free from discrimination. Of course, enforcement based testing need not be statistically relevant, but ongoing audit based testing will prove helpful to policy makers in the fair housing planning and legislative process. HUD Secretary Cuomo, for example, applauded the work of the Fair Housing Council of Greater Washington, now the Equal Rights Center, which conducted testing over a period of four years, each year probing a different industry, which led to new public and private sector best practices, enforcement, fair housing planning activities, dialogue and served as a model for the last HUD National Housing Discrimination Study. The HUD study documented that the greatest share of discrimination faced by African American and Hispanic home seekers was being told that units were unavailable when they were being actively shown to non-Hispanic whites.[lv] Asian and Pacific Islander Americans faced similar levels of discrimination, both as renters and prospective home buyers. It has been almost a decade since HUD published these national studies, and further studies are needed to develop understand the extent and scope of housing discrimination across the country.

Fair Housing Planning & Affirmatively Furthering Fair Housing

HUD administers the Housing and Community Development Act of 1974, as amended, which is the dominant statute for the Community Development Block Grant (CDBG) program. HUD, through the program, requires that each federal grantee certify to HUD's satisfaction that (1) the awarded grant will be carried out and administered according to the Fair Housing Act, and (2) the grantee will work diligently to affirmatively further fair housing. This certification to HUD was used much more effectively in the past decade and NCRC strongly recommends that this oversight panel examine the Consolidated Plan process not only for what can be accomplished through local, regional or state fair housing planning and partnerships, but also as a model for national fair housing policy implementation.

The Anti-Discrimination Center of Metro New York with assistance from the United States Department of Housing & Urban Development recently settled a civil case against Westchester, County in New York State[lvi] alleging that the county should have pushed communities to desegregate, and if they failed to do so, deny them a share of the $45 million in community development grants the county received from the federal government from 2000 to 2005. The lawsuit also alleged that the county made a false claim when it certified that the communities had met the demands of the Fair Housing Act, which include a requirement to "affirmatively further" fair housing.

Community groups and the general public would have much more assurance that fair housing and fair lending reviews were rigorous if the federal agencies subscribed to similar fair housing planning goals. For example, based on the risk factors identified in HMDA and CRA data screening-- Did the agencies probe for race or gender discrimination? Did they scrutinize loans

for evidence of flipping or steering? A detailed description of the types of fair lending tests conducted and the results of those tests would provide a level of public confidence in fair lending enforcement that is currently lacking. Through Federal Fair Housing Planning, with a cabinet level appointment coordinating the effort, all Federal departments could more effectively celebrate and work for open housing.

HR 476 is critically needed to support a comprehensive national fair housing planning effort to document ongoing discriminatory housing and mortgage lending practices and understand the depth of the problem. NCRC will continue to work at all levels, through litigation, enforcement services, testing investigations, training and research to further our coalition's goals of identifying and eradicating fair housing and lending violations. Further, NCRC and our members recommend that 3% of Federal Block Grants go to affirmatively further fair housing and fair housing planning on at the state, regional and local level.

For years the federal government utilized a guideline that 3% of Community Development Block grants be dedicated towards fair housing planning. These guidelines were de-emphasized during the late Clinton years, and were wholly disregarded under the Bush Administration.

Channeling these funds towards fair housing planning would ensure that all Federal and state agencies work collaboratively with each other and the public and private sectors, to realize our nation's long established and accepted policy of equal housing and employment opportunity, equal professional service and equal treatment under the Americans with Disabilities Act (ADA). Currently, all states and localities that receive funding from the Community Development Block Grant must have Analysis of Impediments to Fair Housing plans that are updated every five years. These plans should act as guides for municipalities, be aggressively enforced and be updated every three years to reflect changes in the market. All Federal agencies should ensure that their public and private sector partners are working to affirmatively further fair housing, and re-establishing the 3% guideline will steer state and local governments in the right direction.

Increase HUD Funding for office of Fair Housing and Equal Opportunity (FHEO)

The United States Department of Housing and Urban Development (HUD) is dedicated to ensuring that every American has access to safe, decent, affordable housing. Within HUD, the office of Fair Housing and Equal Opportunity (FHEO) is one of largest civil rights agencies in the country, with a staff of over 600 in 54 offices around the United States.

Under the leadership of the Obama Administration and Assistant Secretary of FHEO John Trasvina, the Office has expanded its efforts to enforce fair housing laws via state and local agency partners, both public and private.

For FY 2010, HUD requested and received $72 million in funding for the Fair Housing and Equal Opportunity programs the Fair Housing Initiatives Program (FHIP) and the Fair Housing Assistance Program (FHAP).[2] While this represented an $18.5 million increase over the

[2] See H.R. 3288: Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010.

previous year, substantially more resources need to be dedicated to these key programs if we want to take the necessary steps to adequately assess the scope and depth of housing discrimination nationwide. NCRC recommends increasing appropriated funding for these programs.

To effectively administer and enforce America's fair housing and fair lending laws, the FHEO staff needs additional personnel and training. By more adequately supporting and staffing its offices across the country, FHEO can better serve and protect the civil rights of all persons covered by the law. Further, HUD can help build the capacity of FHIP and FHAP partners, by providing additional funding, coordinating systemic investigations, and providing technical assistance and conducting workshops.[3] These workshops can provide valuable tools to help local and statewide organization to respond challenging or emerging fair housing issues within their jurisdictions. They also can act as forums where HUD officials can receive feedback directly from those on the front lines of combating housing discrimination.

Prudential Regulators Need to Conduct In-House Supervisory Testing

The House of Representatives recently passed legislation to create a new Consumer Financial Protection Agency. In the interim before the Senate passes similar legislation to create the Agency, the current government regulators charged with enforcing fair housing laws must be fully supported to that end.

The Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), the Office of the Comptroller of Currency (OCC) and the Federal Reserve Board (the Fed), all contain civil rights divisions dedicated to enforcing fair lending and fair housing law. NCRC has worked and will continue to work with these agencies, as well as the Justice Department, to help design and implement testing "mystery shopper" programs as described above. Such testing has proven critical in detecting and prosecuting those who violate fair housing and fair lending laws. However, as mentioned above, the task of comprehensively addressing ongoing discrimination would be most effectively addressed through a cabinet level position. A Secretary of Civil Rights would be able to coordinate among the various agencies while leveraging the strength of the many thousands of federal employees dedicated to ensuring compliance with civil rights laws.

IV. Recommendations

Pass HR 476 to Bolster Fair Housing Law Enforcement

Enforcement activity should be coordinated on an interagency basis and focus on issues identified by Federal, state and local fair housing analysis of impediments and plans. Federal agencies should annually report to Congress the number of fair housing and lending

[3] Typically, a 1-2 day workshop can cover the following topics: 1. Organizational development (board development, tax status, etc.) 2. Financial management. 3. Grant applications. 4. Performance measurement and evaluation. 5. Strategic planning.

investigations, types of investigations, and outcomes of these investigations. National testing audits should be coupled with state and local enforcement based follow-up by qualified FHIP and FHAP agencies.

HUD, the Department of Justice and State Fair Housing Assistance Program agencies must investigate, mediate and charge more complaints, including pattern and practice, architectural accessibility and fair lending matters. Regulatory capacity to investigate national fair lending systemic investigations must be also increased including investing in training, staff resources, and interagency collaboration. Congress should also act to ensure that claims that present ongoing acts of discrimination are permitted. This is particularly important in design and construction and fair lending matters.

Create a Cabinet Level Civil Rights Position to Coordinate National Civil Rights Policy

Equal opportunity in housing, employment and public accommodations are core to our nation's democratic values. The Creation of a Cabinet level civil rights position will affirm our nation's commitment to an open society while ensuring that we effectively leverage and coordinate all Federal resources to affirmatively further fair housing. Only a holistic approach, coordinating all Federal agencies – from the HUD to the Commerce Department to Education – will produce sustainable communities that celebrate our nation's diversity.

Establish a Federal Interagency Fair Housing Planning Policy For All Federal Programs and Recipients of Federal Funds

Modeled on HUD's state requirement, all Federal agencies would have to ensure to Congress' satisfaction that all agencies administer their programs and ensure that their public and private sector partners work to affirmatively further fair housing. When a Cabinet level position is created, this would become a component of that office. Regarding to state, regional and local consolidated plan fair housing planning activities, HUD should issue stronger regulations that ensure meaningful analysis of impediments documents that are updated every three years and ensure progress by localities in overcoming the issues in identified. Further, re-establish the rule of thumb that entitlement communities need to apply three percent of CDBG support to programs that affirmatively further fair housing with meaningful oversight by the HUD Secretary.

Fair Housing & Fair Lending Enforcement Must be More Transparent and Effective

In order to make this process more transparent and thereby increase public confidence in the process, the federal agencies should annually report to Congress how many fair housing and lending investigations they have conducted, the types of investigations, and the outcomes of these investigations. This annual reporting should also include information on fair lending compliance exams conducted in conjunction with CRA exams and HUD's processing of fair lending complaints. Enforcement activity should be coordinated on an interagency basis and

focus on issues identified by Federal, State and Local Fair Housing Analysis of Impediments and Plans. Coordination, by definition, should include Federal, State and Local agencies and Fair Housing Assistance Program and Fair Housing Initiatives Program organizations coordinating effective fair housing programs. Implicit in this recommendation is that both HUD, the Department of Justice and State Fair Housing Assistance Program agencies must investigate, mediate and charge more complaints, including pattern and practice, architectural accessibility and fair lending matters. Regulatory capacity to investigate national fair lending systemic investigations must be also increased. This will require an investment in training, staff resources, and interagency collaboration. Congress should also act to ensure that claims that present ongoing acts of discrimination are permitted. This is particularly important in design and construction and fair lending matters.

Support for Fair Housing Agenda and a Financially Inclusive Society

HUD's Fair Housing Initiatives Program (FHIP) and the Fair Housing Assistance Program (FHAP) provide funds for nonprofit organizations, local and state agencies, respectively, to engage in fair housing and fair lending enforcement, complaint processing, education, and outreach activities. For the next fiscal year, HUD requested $72 million for these programs. While this request was substantively met, it is critical that these funds be allocated in an equitable way that does not leave entire communities stranded. NCRC believes an appropriate way of determining funding for fair housing programs would be to allocate a proportional commitment indexed to indicators such as levels of segregation, racial disparity in lending, foreclosure rates, and other measurements of inequality.

Expand the Number of Groups Who Are Identified as "Protected Classes" under Title VIII

NCRC strongly recommends that this Committee consider expanding the limited number of groups currently protected under the Federal Fair Housing Act. Many States and localities have added Age, Source of Income, Military Service and Sexual Orientation, as protected classes due to reports and complaints that have documented discrimination in housing against members of these groups.

California, Connecticut, the District of Columbia, Hawaii, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont, and Wisconsin have laws prohibiting discrimination against gays or lesbians. California, Connecticut, Minnesota, New Mexico, Rhode Island and New York City also protect transgender individuals. In addition, many cities have passed laws that make discrimination on the basis of sexual orientation illegal, including Atlanta, Chicago, Detroit, Miami, New York, Pittsburgh, St. Louis, and Seattle.

Source of Income Laws to protect consumers who receive public assistance or HUD Section Eight Vouchers have been enacted in California, Connecticut, Minnesota, North Dakota, Wisconsin, the District of Columbia, Chicago, New York City. Examples of source of income discrimination complaints include, "We don't take people on SSI." "Two years steady employment required." "Each roommate has to make three times the rent." "I've found that

people on public assistance don't fit in well here." "We don't give home loans unless you are employed full-time." "Even if you have Section 8, you must make three times the full rent." "Don't bother applying if you don't have a job."

New York, the District of Columbia, Illinois, & Massachusetts have passed laws against housing discrimination against those in military service, which includes protection for active military members and veterans.

We recommend that the House Judiciary Committee amend Title VIII to include these groups, and also consider others as appropriate.

Support Public & Private Partnerships that Celebrate Fair Housing

Congress should support innovative programs and partnerships among communities, real estate providers, financial institutions and other market participants designed to focus the fair housing movement on the importance of realizing racial and economic integration. Particularly, partnerships that celebrate neighborhood diversity, smart growth & environmentally significant programs, and those that empower open housing and strong tax bases utilizing a comprehensive fair housing plan should be funded. Congress should also consider investment tax benefits or similar public sector incentive support, i.e., community development finds, CDFI, etc. to overcome identified fair housing impediments.

Expand The Community Reinvestment Act to Non-Bank Lending Institutions

Large credit unions, investment banks, rating agencies, insurance providers and independent mortgage companies do not abide by CRA requirements. NCRC and Government Accountability Office (GAO) research concludes that large credit unions lag behind CRA-covered banks in their lending and service to minorities and low- and moderate-income borrowers and communities.[lvii] In reviewing the role of Title VIII, we ask that you collaborate with the House Financial Services Committee and consider *the Community Reinvestment Modernization Act of 2009* or HR 1479, co-sponsored by Rep. Eddie Bernice Johnson and Luis Gutierrez.

HR 1479 will expand the CRA to cover mortgage companies, insurance companies, securities firms, and non-depository affiliates of banks, as well as mainstream credit unions. It also increases the number of geographical areas on CRA exams to include areas where banks make loans through brokers and other non-branch channels. Unlike their counterparts, The Federal Reserve Board, in its review of HMDA data, found that bank lending exhibited fewer disparities in geographical areas covered by their CRA exams than in areas not covered by their exams.[lviii] Lastly, HR 1479 requires that CRA exams consider lending, investment, and services to monority communities in determining a regulated institution's score. CRA's mandate of affirmatively meeting credit needs is currently incomplete as it is now applied only to low- and moderate-income neighborhoods, not minority communities.

Enhance the Quality of HMDA Data

NCRC believes that Congress and the Federal Reserve Board (which implements the HMDA regulations) must enhance HMDA data so that regular and comprehensive studies can scrutinize fairness in lending. More information in HMDA data is critical to fully explore the intersection of price, race, gender, age, and income.

The first area in which HMDA data must be enhanced is pricing information for *all* loans, not just high-cost loans. The interest rate movements in 2005 demonstrate the confusion associated with classifying the loans that currently have price information reported. Economists as well as the general public do not know whether to call the loans with price reporting, "subprime," "high-cost," or something else. If price were reported for all loans, the classification problems would be reduced. All stakeholders could review the number and percentages of loans in all the price-spread categories. The most significant areas of pricing disparities could be identified with greater precision.

HMDA data must contain credit score information similar to the data used in NCRC's "Broken Credit System" report released in the winter of 2003. For each HMDA reportable loan, a financial institution must indicate whether it used a credit score system and whether the system was their own or one of the widely used systems such as the Fair Isaac Corporation (a new data field in HMDA could contain 3 to 5 categories with the names of widely used systems). The HMDA data also would contain an additional field indicating in which quintile of risk the credit score system placed the borrower.

Another option is to attach credit score information in the form of quintiles to each census tract in the nation. That way, enhanced analyses can be done on a census tract level to illustrate whether pricing disparities still remain after controlling for creditworthiness. This was the approach adopted in NCRC's "Broken Credit System" and in studies conducted by Federal Reserve economists.

Finally, HMDA data must contain information on other key underwriting variables including the loan-to-value and debt-to-income ratios as proposed by the *Community Reinvestment Modernization Act of 2009 (H.R. 1479)*, mentioned above. H.R. 1479 would also create a database on foreclosures and delinquencies that would be linked with HMDA data. This would be an important data enhancement resource that would help policymakers understand which loan terms and conditions (such as specific loan-to-value ratios and fixed or ARM loans) are more likely to be associated with delinquencies and foreclosures.

Additionally, homeowner's insurance is essential to acquiring and maintaining housing. Currently, there is a limited amount of publicly accessible data available about where homeowner's insurance policies are being written, the types of policies being written, how much coverage is being provided and what is the cost of each individual homeowner's insurance policy. HR 1479 would require data similar to the Home Mortgage Disclosure Act (HMDA) to homeowner's insurance and would allow government agencies and advocacy groups to understand the overall amount of coverage offered to consumers by homeowner's insurance

providers and identify any disparities that may exist among those protected by the Fair Housing Act.

Conclusion

NCRC's 600 member organizations strongly support the creation of a Cabinet level civil rights position to coordinate our nation's historic commitment to open housing. We also respectfully request that this Committee act to ensure that all of the Federal regulators that are charged with enforcing the Fair Housing Act do so with transparency, and in a coordinated and effective manner to ensure that the United States remains economically competitive and retains a strong tax base.

Further, a renewed commitment to national, state and local fair housing planning and testing is required, coupled with a meaningful policy commitment that recognizes the critical role that an open housing market represents to a viable economy.

Despite the enactment of the Federal Fair Housing Act over forty years ago, the dual lending marketplace continues to flourish and reinforce housing discrimination and segregated housing patterns that preclude racial diversity and inclusiveness. This not only affects our communities, but also affects our entire society. To quote Dr. Martin Luther King Jr., "We may have all come on different ships, but we're in the same boat now."

Thank you and we look forward to working with you in the future.

[ii] National Neighbors, a program of the National Community Reinvestment Coalition, is dedicated to creating public and private sector partnerships and programs that promote racial and cultural equality, opportunity and diversity. It does this by increasing multi-cultural dialogue and access, influencing public policy, and developing national models that support healthy and sustainable communities through the realization of our nation's civil rights laws. Through the National Neighbors initiative, NCRC convenes, supports and pursues workshops, conferences, investigations of civil rights complaints, systemic "testing," education and outreach, fair housing planning and "best practice" compliance initiatives. National Neighbors provides technical assistance to NCRC's members in urban, suburban and rural communities to promote economic mobility and ensure fair housing for working families throughout our nation. National Neighbors advances fair lending and fair housing through multifaceted programs, including: private enforcement; education and outreach; fair housing planning; comprehensive voluntary compliance services; and testing and building partnerships among communities, real estate providers, financial institutions and other market players.

[ii] See for example, NCRC v. Southstar, NCRC v. Wilmington Finance, NCRC v. Novastar Financial, NCRC v. Accredited Mortgage, NCRC v. Allied Mortgage, NCRC letter to SEC concerning role of Rating Agencies in sub-prime market failure (2008), and other enforcement actions cited at www.NCRC.org.

[iii] The Attorney General's 2008 Annual Report To Congress Pursuant To The Equal Credit Opportunity Act Amendments Of 1976 Submitted By Grace Chung Becker Acting Assistant Attorney General, April 24, 2009

[iv] See *Segregation: The Rising Costs for America* – which documents how discriminatory practices in the housing markets through most of the past century have produced extreme levels of residential segregation that result in significant disparities in access to good jobs, quality education, homeownership attainment and asset accumulation between minority and non-minority households. Edited by James H. Carr and Nandinee K. Kutty.

[v] National Advisory Council on Civil Disorders, Report on of the Commission on Civil Disorders vi at 92. (1968) (hereinafter Kerner Report)

[vi] Id.

[vii] See Trafficante v. Metro Life Insurance Company, 409 U.S. 205, 211 (1972), quoting Senator Mondale

[viii] 114 Cong. Rec. 6000 Statement of Senator Brooke.

[ix] Trafficante, at 409-412 (applying generous construction of standing to Fair Housing Claims)

[x] Mayor and City Council of Baltimore v. Wells Fargo Bank, Complaint for Declaratory and Injunctive Relief and Damages, Page 2. 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 the banks 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

[xi] See HUD National Housing Discrimination Study (HDS) 2000; See also John Yinger, Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination 33-35 (Russell Sage 1995); See also John Yinger, Access Denied, Access Constrained: Results and Implications of the 1989 Housing Discrimination Study 80-85, in Clear and Convincing Evidence: Measurement of Discrimination in America (Michael Fox and Raymond J. Struyk, eds., Urban Institute Press 1993).

[xii] See U.S. Dept. of Housing and Urban Development, 1995 Annual Report to Congress: The State of Fair Housing in America 5-10 (describing discrimination on the bases of sex, disability, and familial status); id. at 47 (listing numbers of complaints filed). See also Michael H. Schill and Samantha Friedman, The Fair Housing Amendments Act of 1998: The First Decade, 4 Cityscape 57, 61-64 (1999) (providing more recent information about the numbers of complaints on these bases).

[xiii] See Douglas S. Massey and Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass 61-78, 221-223 (Harvard U. Press 1993).

[xiv] Massey and Denton, supra note 3 at 74-75; Nancy A. Denton, "Are African Americans Still Hypersegregated?," in Residential Apartheid: The American Legacy 63 (Robert D. Bullard et al. eds., UCLA Press 1994).

[xv] See Massey and Denton, supra note 3, at 74-75.

[xvi] Rawlings, L., et. al., "Race and Residence: Prospects for Stable Neighborhood Integration," in Neighborhood Change in Urban America, n. 3 (March 2004), p. 2.

[xvii] See Gwendolyn Brooks, "The Ballad of Rudolph Reed," in Blacks (Third World Press 1991).

[xviii] See Massey and Denton, supra note 3, at 149-153, 160-162; Gary Orfield, Segregated Housing and School Resegregation, in Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education 291-330 (Gary Orfield et al. eds. New Press 1996).

[xix] See William A. Darity, Jr., and Samuel L. Myers, Jr., Persistent Disparity: Race and Economic Inequality in the United States Since 1945, at 149-154 (Edward Elgar 1998); Melvin L. Oliver and Thomas M. Shapiro, Black Wealth/White Wealth: A New Perspective on Racial Inequality (Routledge 1995); John Yinger, Closed Doors, Opportunities Lost, supra note 1.

[xx] For more detail about the CRF fund, see the report by NCRC and the Woodstock Institute, *Asset Preservation: Trends and Interventions in Asset Stripping Services and Products*, September 2006, at

http://www.ncrc.org/policy/analysis/policy/2006/2006-09_LifetimeOfAssets_NCRC-WoodstockPaper.pdf

[xxi] Hargraves v. Capital City Mortgage Corp. C.A. No. 98-1021 (U.S. District Court, D. D.C.)

[xxii] See www.consumeraffairs.com/news/housing_scam.html

[xxiii] See NCRC's report, *Predatory Appraisals: Stealing the American Dream*, June 2005, http://www.ncrc.org/responsible-appraisal/pdfs/AppraisalReport.pdf

[xxv] See Gary Orfield, Unexpected Costs and Uncertain Gains of Dismantling Desegregation, in Dismantling Desegregation, supra note 8, at 73, 105; Gary Orfield, Metropolitan School Desegregation Impacts on Metropolitan Society, 80 Minn. L.Rev. 825 (1996); William L. Taylor, The Continuing Struggle for Equal Education Opportunity, 71 N.C. L.Rev. 1693 (1993); Institute of Race and Poverty, Examining the Relationship between Housing, Education, and Persistent Segregation (U. Mn.1998); Myron Orfield, Metropolitics: A Regional Agenda for Community and Stability 90 (Brookings Institution/Lincoln Institute of Land Policy 1997); Florence Wagman Roisman, Sustainable Development in Suburbs and Their Cities: The Environmental and Financial Imperatives of Racial, Ethnic, and Economic Inclusion, 3 Widener L.Symp.J. 87, 106 (1998).

[xxvi] American Metropolitics: The New Suburban Reality. Myron Orfield, 2002.

[xxvii] Robert B Avery, Kenneth P. Brevoot and Glenn B. Canner, "Higher-Priced Home Lending and the 2005 HMDA Data." Federal Reserve Bulletin (2006) A 123-166.

[xxviii] NFHA 2006. "Unequal Opportunity: Perpetuating Housing Segregation in America, Fair Housing Trends Report." Washington, DC NFHA.

[xxix] "Regulators are Pressed to Take Tougher Stand on Mortgages," by Gregg Hitt and James R. Hagerty, Wall Street Journal, March 23, 2007

[xxx] Housing Vacancy Study, U.S. Census Bureau, U.S. Department of Commerce, 2007

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

[xxxii] Miriam Jordan, "Wealth Gap Widens in U.S. Between Minorities, Whites," Wall Street Journal (October 18th, 2004), Page A2.

[xxxiii] *Broken Credit System: Discrimination & Unequal Access to Affordable Loans by Race & Age*, November 2003.

[xxxiv] Paul S. Calem, Kevin Gillen, and Susan Wachter, *The Neighborhood Distribution of Subprime Mortgage Lending*, October 30, 2002. See also Paul S. Calem, Jonathan E. Hershaff, and Susan M. Wachter,*Neighborhood Patterns of Subprime Lending: Evidence from Disparate Cities*, in Fannie Mae Foundation's Housing Policy Debate, Volume 15, Issue 3, 2004 pp. 603-622.

[xxxv] Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages,* see http://www.responsiblelending.org/issues/mortgage/reports/page.jsp?itemID=29371010

[xxxvi] The lending disparities for African-Americans were large and increased significantly as income levels increased. In the *Income is No Shield* report, NCRC found that African-Americans of all income levels were twice as likely or more than twice as likely to receive high-cost loans as whites in 171 metropolitan statistical areas (MSAs) during 2005. MUI African-Americans were twice as likely or more than twice as likely to receive high-cost loans as MUI whites in 167 MSAs. In contrast, LMI African-Americans were twice as likely or more than twice as likely to receive high-cost loans as LMI whites in 70 MSAs. Moreover, MUI African-Americans receive a large percentage of high-cost loans. In 159 metropolitan areas, more than 40% of the loans received by MUI African-American were high-cost loans.

[xxxvii] Income Is No Shield, NCRC 2007 - MUI Hispanics were twice or more likely to receive high-cost loans than MUI whites in 75 MSAs. In addition, the percentage of high-cost loans received by MUI Hispanics was high. For MUI Hispanics, more than 40% of the loans received were high-cost in 71 MSAs and more than 30% of the loans received were high-cost in 137 MSAs.

[xxxviii] To access NCRC's report, *Homeownership and Wealth Building Impeded*, please go to http://www.ncrc.org/policy/analysis/policy/2006/2006-04-20_NCRC-OA-PRRACReport.pdf
[xxxix] *2005 Fair Lending Disparities: Stubborn and Persistent II*, May 2006.
[xl] *Income is No Shield Against Racial Differences in Lending. National Community Reinvestment Coalition, 2007.* Using HMDA data from 2005 (the most recent year available for industry-wide data), NCRC observes striking racial disparities in high-cost lending. If a consumer is a minority, particularly an African-American or a Hispanic, the consumer is most at risk of receiving a poorly underwritten high-cost loan.
[xli] Kathleen C. Engel and Patricia A. McCoy, "From Credit Denial to Predatory Lending," in Segregation: The Rising Costs for America, op. cit., p. 93.
[xlii] 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 44.
[xliii] NCRC's broker testing yielded 106 total complete, matched-pair tests. Individuals located in the metropolitan areas of Atlanta, Baltimore, Chicago, the District of Columbia, Houston, Los Angeles and Saint Louis tested brokers that were local, established businesses. In conducting the broker testing, NCRC found several companies with particularly egregious initial results. In these cases, testers were again dispatched for follow up testing to confirm and further investigate the practices of these companies. Of the 106 total tests, 84 separate companies were tested, the difference being as a result of 22 follow up tests.
[xliv] See Sub-Prime Lending: Net Drain on Homeownership" CRL Issue Paper No. 14, Center for Responsible Lending, March 27th, 2007.
[xlv] Testimony of Dan Immergluck, PH.D., before the Committee on Oversight and Government Reform, Sub-Committee on Domestic Policy, March 21st, 2007.
[xlvi] Engel and McCoy, "From Credit to Predatory Lending," p. 101
[xlvii] "After Foreclosures, Crime Moves In," Boston Globe, November 18th, 2007.
[xlviii] Joint Economic Committee Report, Page One.
[xlix] Robert B. Avery, Glenn B. Canner, and Robert E. Cook, *New Information Reported under HMDA and Its Application in Fair Lending Enforcement*, Federal Reserve Bulletin, Summer 2005, http://www.federalreserve.gov/pubs/bulletin/2005/05summerbulletin.htm
[l] Inside Regulatory Strategies, November 14, 2005, p.2.
[li] Joe Adler, *Big Increase in Lenders with Suspect HMDA Data*, American Banker, September 11, 2006.
[lii] There were a couple of cases in 2002 and 2004, but these cases were before the new HMDA pricing information was available. The cases involved the Department of Justice versus Decatur Federal Savings and Loan, September 1992; Shawmut Mortgage Company, December 1993; BlackPipe State Bank, December 1993; Chevy Chase, FSB, August 1994; Huntington Mortgage Company, October 1995; Security State Bank of Pecos, October 1995; Northern Trust Company, 1995; First National Bank of Gordon, April 1996; Long Beach Mortgage Company, September 1996; First National Bank of Dona Ana County, January 1997; Albank, August 1997; Deposit Guaranty National Bank, September 1999; Mid America Bank, FSB, 2002; Fidelity Federal Bank, FSB, July 2002; First American Bank, July 2004.
[liii] Fair Housing: Opportunities to Improve HUD's Oversight and Management of the Enforcement Process. Washington, DC: United States General Accounting Office, April 2004.
[liv] HUD, as the agency responsible for investigating and prosecuting cases under the Federal Fair Housing Act, filed thirty on discrimination charges in 2007 and thrity six in 2006. Charges for the same two year period dropped 65% from the last two years of the previous administration. One hundred and eleven charges were filed in 1999 and eighty two in 2000. Complaints during the same period rose from fewer than 7,100 in both 1999 and 2000 to more than 10,000 in both 2006 and 2007. Notably, settles most of its discrimination complaints out of court, but the agency is settling more cases overall than during the previous administration, while the percentage of settled cases has declined. In 1999, HUD settled 778 cases, 42% of the total investigated. In 2007, it settled 948 cases — 36.5% of the total investigated. HUD

dismissed nearly two-thirds of the 2,595 investigated complaints filed last year. The majority of the remaining 7,000 complaints go to HUD-certified and funded local and state agencies. Housing cases at the civil rights division of the Justice Department, which prosecutes cases in which investigators find patterns of discrimination, also have dropped. The department filed 35 civil lawsuits in 2007, marking a steady decrease since 1999.

[lv] See http://www.huduser.org/portal/publications/hsgfin/hds/html

[lvi] See http://www.nytimes.com/2007/02/04/nyregion/nyregionspecial2/04wemain.html?pagewanted=1

[lvii] NCRC, *Credit Unions: True to their Mission?*, 2005, http://www.ncrc.org; and Government Accountability Office, *Credit Unions: Greater Transparency Needed on Who Credit Unions Serve and on Senior Executive Compensation Arrangements*, November, 2006

[lviii] Avery, Robert B., Glenn B. Canner, and Robert E. Cook, "New Information Reported under HMDA and Its Application in Fair Lending Enforcement." *Federal Reserve Bulletin*, Summer 2005. Avery, Robert B., Kenneth P. Brevoot, and Glenn B. Canner, "Higher-Priced Home Lending and the 2005 HMDA Data," *Federal Reserve Bulletin*, September 2006.

Statement of the National Multi Housing Council / National Apartment Association

Before the U.S. House of Representatives

Financial Services Subcommittee

Housing and Community Opportunity Subcommittee

Wednesday, January 20, 2010

10:00 a.m.

2128 Rayburn House Office Building

Washington, D.C.

H.R. 476, the Housing Fairness Act of 2009

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Chairman Waters, Ranking Member Capito, and distinguished members of the Subcommittee, my name is Jeanne McGlynn Delgado. I am Vice President of Business Operations & Risk Management Policy for the National Multi Housing Council.

This morning I am here on behalf of two trade associations that represent the private apartment industry—the National Multi Housing Council (NMHC) and the National Apartment Association (NAA). NMHC and NAA represent the nation's leading firms participating in the apartment industry. Their combined memberships include apartment owners, developers, managers, builders and lenders.

The National Multi Housing Council and the National Apartment Association represent the nation's leading firms participating in the multifamily rental housing industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management, and finance. The National Multi Housing Council represents the principal officers of the apartment industry's largest and most prominent firms. The National Apartment Association is a federation of 170 state and local affiliates comprised of more than 50,000 multifamily housing companies representing more than 5.9 million apartment homes. NMHC and NAA jointly operate a federal legislative program and provide a unified voice for the private apartment industry.

We commend you Chairman Waters for your leadership in holding this hearing to discuss the various stakeholder perspectives on H.R. 476, the Housing Fairness Act, as introduced by Rep. Al Green (D-TX). The apartment industry takes its responsibility to advance fair housing in all of its communities and as such commends Congressman Green for his leadership in Congress in his continued pursuit of equal opportunity for all.

One in three Americans or 117 million households rent their homes. Housing discrimination in the rental market reduces the number of people who otherwise would lease an apartment. As the industry advocates who are passionate about the benefits of renting, we would like to see the number grow, not decline. However, I am sure it will come as no surprise; the apartment industry does not embrace additional testing as an effective, efficient or fair means to combat housing discrimination. While the goal of HR 476, to reduce housing discrimination is supported by the apartment industry, we are concerned that the means to get there can be improved. Our concerns focus on the primary provisions of this legislation, the creation of a national testing program coupled with a doubling of the funding authorization for the Fair Housing Initiatives Program (FHIP), which currently finances testing activities of state and local fair housing organizations. Without corresponding program improvements, we do not believe this initiative will decrease discriminatory behavior. We believe there is merit in the matching grant program to study the causes of housing discrimination and certainly support all efforts to educate industry along with consumers. We appreciate the opportunity to weigh in on this proposal and hope that you will consider our recommendations.

It is important to note, that despite our concerns over enhanced funding, Congress already approved through the 2010 Appropriations process a budget of $72,000,000 for FHIP/FHAP. This almost triples current funding levels and represents a significant increase from the level of funding proposed in HR 476. While this new funding level shifts the focus of the bill's proposed doubling of FHIP funds, our underlying concerns remain, for which we make the following recommendations for improvement.

I. Before instituting another testing program, HUD should conduct a comprehensive review of the existing testing programs to measure effectiveness, efficiencies and fairness, especially relative to dismissed cases.
II. HUD Should consider alternative approaches to current testing protocol.
III. Expand industry education and outreach efforts and opportunities.

The apartment community and the industry's commitment to fair housing

NMHC and NAA members remain committed to the goal of making housing available to all persons without regard to race, color, religion, sex, national origin, handicap or familial status as well as the additional locally protected classes

In furtherance of this commitment, the industry invests a significant amount of time and resources to educate their staff about their obligations under the Fair Housing Act and the Americans with Disabilities Act. NMHC and NAA offer educational opportunities at the national level through our respective organizations at conferences, educational forums and ongoing communications. Courses are also offered at the state and local levels level through local apartment association training sessions and conferences. It is also not uncommon for companies to institute their own educational training programs to ensure consistent and accurate information is taught.

The "Fair Housing and Beyond" seminar, developed by the NAA can be taken as a classroom-delivered course or in an online format to attract the broadest audiences. Coursework covers the range of issues a leasing associate, a property manager or construction staff need to know to ensure compliance with the law. It is therefore our belief that compliance with the law is especially high among the professionally managed apartment communities. Our members are proud of their record on fair housing. Those who have found themselves unfairly on the receiving end of a fair housing complaint, offer valuable perspective on these issues.

I. The effectiveness, efficiency and fairness of testing programs

There is no shortage of studies, reports and analysis quantifying the level of discrimination in housing, lending and insurance. These studies have value and it is the data from such work that help drive policy decisions and legislative proposals such as this one. Such studies are instructive to the industry as it reinforces the areas of the law to which they must pay additional attention and adjust educational programs. However, we are unaware of any research that has measured the effectiveness of federally funded testing programs. There seems to be an underling assumption that fair housing testing equals effective enforcement and that simply increasing the number of complaints brought against property owners will eradicate housing discrimination. We do not agree with that premise. In fact, we continue to support the position that testing should be limited to those cases in which a resident, or prospective resident believes their rights under the FHA have been violated. We do not support random testing by fair housing organizations claiming to have suffered an injury by diverting its time and resources to conduct investigations and testing. While this matter most likely will continue to play out in the courts, for the purposes of this legislation we do believe there is valuable data and information about rental business practices found in those testing results that can help inform more effective, not to mention efficient, methods for identifying discriminatory practices and methods to enforce the law against such practices.

Testing has become a common investigative tool used by administrative agencies and non-profit fair housing groups. Testing is designed to compare the treatment of protected class home seekers with that of someone who is not part of a protected class. It is assumed in such testing protocol, that all other variables are exactly the same, i.e., similar qualifying requirements, same leasing agent, testers who visit the property on the same day and approximate time, etc. The information collected by the testers is documented and depending on the perceived findings, may form the basis of a discrimination complaint. While it appears fairly straightforward, tests and test results can vary widely.

In a report by a Virginia County Human Rights Commission, a testing program conducted in 2006 limited its efforts to initial site visitations with an inquiry for a one bedroom apartment for a specific

time period. The testers did not complete an application, or participate in the qualifying process. The tests were designed to measure treatment relative to the availability of the unit at the desired time based on national origin or race. In the 50 tests conducted, none showed a difference in treatment in any of the tests. While these results appear to reflect positively on the industry, it is clear that such a test could have easily gone the other direction as it did in the following scenario.

An apartment owner in Baltimore experienced different results from similar testing strategy, i.e. paired testers seeking a one bedroom apartment. In this scenario a complaint was filed when the minority tester received a price quote that was higher than the white tester. After a lengthy and costly investigation, guest cards completed by both testers revealed evidence which caused the complaint to be dismissed. While one tester sought pricing for a one bedroom unit, the other tester requested pricing for a one bedroom/den, thus explaining the difference. A simple mistake by the tester resulted in an unfair complaint of discrimination lodged against a housing provider with an otherwise excellent reputation with residents, employees and the community. This complaint did not arise from an actual aggrieved resident or prospective resident but from a random/targeted testing program. NMHC/NAA members can cite countless complaints that arose from testers employed by private fair housing groups that have eventually been dismissed due to sloppy testing practices or simply an unfair description of the treatment received. If lessons can be learned from these unfortunate experiences, it would be irresponsible to not take advantage of this opportunity to improve the testing protocol going forward.

But what happens to this information? Does the sponsoring fair housing organization use this feedback to reform its testing protocol training coursework in an effort to improve its overall effectiveness? Countless reports and studies cite these results but mainly to quantify levels of housing discrimination. While these examples lightly touch on the likely inconsistencies that are certain to exist on a grander scale, they underscore the need for a full review of the testing standards and protocol being utilized today before repeating the same mistakes with increased funding levels.

Such a study should be carefully designed to include at a minimum a full review of:

a) reasons for the tests; b) types of tests performed and number; c) varying protocols used; d) alleged discriminatory acts; e) specific protected class; f) the type of property /year built; g) specific investigation process details including start and closed time period; h) approximate cost to complainant and respondent; i) tester training requirements; and j) outcome. The process should evaluate the investigative procedures that lead to a charge of discrimination or a determination of no reasonable cause. If the case is dismissed, the reason for the dismissal including an itemization of tester errors or other testing flaws if applicable. Additionally, information about the reason for the test, i.e. random or follow up to a complaint, is also relevant and informative in assessing these programs. In addition, tester education should be compiled and evaluated to ensure adequate training is provided in the areas of federal, state and local fair housing laws, including the design and construction requirements as included in the 1998 FHAA and its accompanying requirements for reasonable accommodations and modifications. The tester should also be fully versed at playing the role of the tester; conducting the test, the debriefing process, have knowledge of current rental apartment marketing practices, and relevant documentation. There is significant risk of harm that can result from poorly executed testing unless the tester is well equipped with knowledge about the test he/she is about to undertake.

The NMHC/NAA believe such a study should be conducted and the results used to reform outdated testing programs and even then, we strongly believe such testing should be limited to those cases in which there is an aggrieved party and not just for the purposes of random testing by fair housing organizations to beef up the number of complaints. But until such as review is done, funding the same programs at higher levels will not yield the desired results and should be placed on hold.

A significant number of complaints are dismissed citing "no reasonable cause"

In HUD's 2008 Annual Report on Fair Housing, HUD/FHAP agencies reported 10,552 complaints. The numbers have held relatively constant at this level for the last several years. Of these, HUD closed 2156 cases. Of these, 44% were dismissed for no reasonable cause. It is not clear how many of those complaints were the result of testing, clearly a percentage of them. Therefore when a complaint is investigated and dismissed, it is equally important to investigate the facts and circumstances of those cases, especially if we are to learn anything from these results relative to enforcement activities that include testing.

What the testing programs and the studies do not reveal is the damage caused by an unfair complaint. Just as home seekers can be "victims" when subjected to housing discrimination, property owners who are wrongly accused are "victims" too. The success of an apartment community is largely due to its reputation, which is developed over time by quality service and product. When a property owner is wrongly accused of discrimination, the damage caused can be severe and long lasting. Anyone can file a complaint, even if only based on the suspicion of a violation. Residents, prospective residents, and visitors are provided with increasingly easier means and encouragement to file a complaint. Every complaint sets a range of activities in motion. The investigation process involves identifying relevant people who have had contact with the complainant, including property management leasing staff, maintenance professionals, and others but may also include residents or visitors who may have knowledge of the events. All records need to be collected including resident files, work orders, leases, accounting files, telephone records, notes from conversations, guest cards and electronic records. It can cost a property owner thousands of dollars, countless staff hours, emotional anguish and compromised reputation. When such complaints are initiated by a testing organization rather than out of an alleged act of discrimination against a resident or prospective resident and found to be baseless, the harm is much greater.

Consider an example of a complaint served upon an apartment owner in the aftermath of Hurricane Katrina. According to the fair housing group conducting the tests, 65 properties in 5 states were tested and results showed a level of discrimination of 66% against African American evacuees. Complaints were filed with HUD against 5 apt owners described as the most egregious instances of different treatment occurring. The property owner I reference, a member of the NMHC and NAA, learned of the complaint while watching the NBC nightly news. It appeared the fair housing group notified the press as it simultaneously served the complaint. After an approximately 9 month investigation, the complaint was dismissed for lack of evidence of discriminatory behavior. The bottom line relative to fair housing testing enforcement, this complaint will just become another data piece that will feed into the 2009 HUD Report of the State of Fair Housing. However, the damage done to the company and the leasing staff involved is much deeper. Death threats were received by the staff, forcing one of the professionals to resign due to the stress of the ordeal. The company had to endure the negative publicity generated from the national news coverage throughout the investigation process. Importantly, this was a company who volunteered over 2,000 hours to hurricane relief efforts during the period preceding the complaint, donated $50,000 to the Red Cross relief efforts, raised funds from its residents and staff to direct to New Orleans victims, and organized a company wide rebuilding effort in that city in which they helped to build a community center and refurbish a firehouse. This company was also one of the first that stepped up and offered in some cases free housing to evacuees and in other cases reduced rent and flexible lease terms. NMHC/NAA are very proud of how the apartment industry responded to the needs of the hurricane victims and evacuees, especially those in need of housing. In fact the city of Houston along with the Houston Apartment association worked tirelessly and effectively to develop and facilitate a voucher program to assist evacuees with transitional housing until they could return to New Orleans.

II. **Alternative Approaches should be Considered**

Increasing the number of tests just to increase the number of complaints is short sighted and misses the goal of reducing discrimination. More is not always best, at least not until the evidence proves otherwise. We believe there are alternative approaches to the enforcement process that HUD should consider.

- Development of a standard testing protocol. As mentioned above two similar tests can yield very different results. What we do know relative to this specific case which resulted in a filed complaint is that the paired testers did not ask for the same type of unit. Even if their requests were similar, the tests do not appear to recognize the reality that pricing of apartments is in many markets a sophisticated process. There are various pricing methodologies employed in today's market and are dependant on several variables such as: vacancy rate, location of unit, square footage, move in date, etc. And so it is very likely that several pricing options are disclosed to a prospective shopper. Testing protocols must adapt this sophistication into its models and strategies.

- Disclose the test results. If a property owner receives a complaint of housing discrimination based on tester results from a site visit, the details of the test along with test results should be made available to the respondent. If tests are conducted in a professional manner according to strict testing standards and protocol, intake personnel adequately educated about fair housing laws and its various interpretations and nuanced nature, then there should be no reason to withhold test results that form the basis for the complaint. Otherwise, it is unfair to expect an apartment owner to respond in a meaningful way to an anonymous alleged complaint of discrimination offering no details of the alleged practice or act triggering the complaint.

- Offer the owner a reasonable opportunity to respond or address the alleged violation. For example, if a tester visits a leasing office to inquire about a unit and makes a request for a reasonable accommodation, and the leasing agent hesitates or informs the tester that he or she doesn't think they can meet their request, rather than immediately assuming this reaction constitutes a violation of the Fair Housing Acts' reasonable accommodation requirements, the testing protocol should include a requirement that the tester inform the agent of the law's obligation and ask for reconsideration or take the request to a higher level manager. There are many provisions of the FHA Act that given the complex array of probable scenarios require additional analysis before a decision can be rendered. This is particularly true in requests for reasonable accommodations and modifications. Even the Department of Justice (DOJ) recognizes the sometimes confusing nature of these provisions as it recently released another version of a Q & A on these topics. But in a testing scenario, it is not unusual for a tester to take the initial response and if not in the affirmative, record it and it gets interpreted as a violation. Much more can be accomplished if the tester prodded the agent to revisit the request with her manager and upon doing so, a satisfactory result can be reached and an enhanced understanding of the law's obligations is expressed. In the case of an actual prospect, this would be the preferred result of an apartment search. In addition, in situations involving design and construction claims, HUD should instruct agency and enforcement staff to demonstrate

that a property owners' design for accessibility was not a reasonable interpretation of the law before filing a complaint.

III. Expand Industry Education Efforts and Outreach

In a 2005 study, HUD and the Urban Institute revealed that ½ of Americans do not know that it is illegal to deny a reasonable accommodation or modification to a disabled person. While I cannot speak to the accuracy of these numbers, clearly this statistic implies a steep learning curve for both consumers and industry. Rather that exploit this weakness through testing, a better role for government is to identify educational outreach programs to enhance the industry's understanding in this very complex area of law.

The FHIP program limits the use of grant money for educational efforts to no more than 10%. This appears counterintuitive when HUD studies report a high level of unawareness of the fair housing laws and its protections, both by consumers and industry. In 2004, HUD introduced their Housing Accessibility Website and training modules. This site has been very helpful to both industry and fair housing community to help navigate the very technical and often confusing requirements of the FHA Design and Construction Requirements. HUD reports having held 22 training sessions in 18 at which 1,724 building professionals received instruction on the laws requirements. These kinds of educational efforts directed at industry are welcomed and encouraged. A review of the use and effectiveness of its HOTLINE would be useful in deciphering the kinds of questions posed by industry and the responses to those questions.

While I cite the Fair Housing Accessibility First Training program as an example of the kinds of efforts HUD should engage relative to education of industry, we also believe some adjustments are in order to more fully match the requirements of the law. For example, the training program teaches compliance to a specific safe harbor, which is simply that, a safe harbor and not the mandatory minimum requirements. As you know, the design and construction requirements for accessibility have been the source of many testing efforts and subsequent claims of violations by fair housing organizations. These claims insist that any owner who did not build according to a HUD safe harbor is in violation of the law and declare all such properties within a stated portfolio as inaccessible to the disabled residents and visitors. This, along with the issue of fair housing group testing, is certain to work its way through the courts, but I raise it as an example of the very technical nature of these laws and the challenges of measuring compliance using outdated, ineffective and unfair testing programs.

Efforts to conduct a thorough education program as well as supporting website and hotline are the kind of educational tools the industry supports and benefits from. HUD should continue to complement these education initiatives with FHIP funding.

NMHC and NAA are grateful for the privilege to be here today and the opportunity to express our views on these important issues. We hope our observations, experiences and recommendations will be considered as you proceed with further action on this legislation. We look forward to working with you to help shape effective programs to enhance awareness and understanding of the fair housing laws, its obligations on industry and the rights granted to all Americans. Thank you.

HOWARD
UNIVERSITY

School of Law
Fair Housing Legal Clinical Program

Testimony

From: Brian Gilmore, J.D. Esq.
Clinical Professor & Staff Attorney
Howard University School of Law
Fair Housing Clinic

To: Subcommittee on Housing and Community Opportunity

Date: January 20, 2010

RE: Housing Fairness Act – H.R. 476

The Howard University School of Law Fair Housing Clinic is a unique educational and advocacy clinic founded on the campus of the Howard University School of Law through a grant from the U.S. Department of Housing and Urban Development in 2004. It is the only law school clinic in the country devoted to educating the public on housing discrimination and topical housing issues through the use of law students matriculating at a historically black college or university.

Since 2005, law students, future lawyers, have designed and implemented programs on housing and housing discrimination that educate and inform the public on very important housing issues including housing discrimination, predatory lending, and loan modifications as a result of foreclosures. Students have organized and participated in events in and around the Washington D.C. area in libraries, community centers, public schools, and even at subway stations. The effort is to

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take the information on housing and housing discrimination directly to those who might need it most.

In addition, and specifically for purposes of this hearing on the Housing Fairness Act, the law students have trained to become testers in actual fair housing testing efforts by a local non-profit program (The Equal Rights Center) in the District of Columbia. These individual experiences, and our intensive study of fair housing and housing issues, has convinced our clinic that H.R. 476, the Housing Fairness Act is a law that is long overdue. There is nothing more important in the investigative process of a far housing case than testing at the present time.

United States Appeals Court Judge Damon Keith referred to testing as the only competent evidence available to prove unlawful testing. In addition, many others describe testing as "frequently valuable" and an important tool not only in identifying those who discriminate but is also beneficial to landlords who do not discriminate. Considering that the task is to aggressively fight housing discrimination, a real commitment to testing could be crucial to reversing recent trends that point towards discrimination.

In a recent ongoing survey of consumers in the Washington D.C. area conducted by the law students at the Howard University School of Law, over 46 percent of the respondents indicated that they believed they had been or had been discriminated in seeking housing. In addition, nearly 50 percent stated that they believed that when they had been denied housing, housing had been available where they had applied for that housing. This is very troubling considering that this area is generally considered to be diverse and very open to diversity.

The recent survey, conducted in Washington D.C., and Montgomery County, Maryland, is ongoing, and just a tiny snippet of the potential level of discrimination in existence in housing in one area in the United States. However, additional evidence of discrimination exists in the Washington D.C. area in Prince George's County.

According to a report in 2005 as reported in the Washington Post, African-Americans were much more likely to be sold a more high priced default prone mortgage loan than their white counterparts. This included African-Americans with very good credit scores and substantial income levels. Similar reports have surfaced in other parts of the country where African-Americans with high income and high credit scores were sold an inferior mortgage product usually reserved for those with poor credit.

At the Howard University School of Law Fair Housing Clinic on a weekly basis, approximately half of the inquiries from members of the public seeking assistance with or questions about their housing problems involve local residents who have legal problems with their mortgages. Almost all of the callers to the clinic are African-Americans. The callers that are not African-American are Hispanic or a member of another minority group.

For the last 18 months, individuals seeking assistance with potential foreclosures is steady and high in volume. Nearly all of them now own a home that is worth less than they owe on the mortgage. In addition, nearly all of them were sold a adjustable rate mortgage with a "teaser" rate that they were advised they could modify at a later date easy. However, most of these clients now cannot modify their

loans (except through administration programs) and many of them cannot locate their original mortgage broker.

In addition to these housing problems, if there are areas of concern regarding fair housing work, it is the rise of source of income discrimination or denial of housing because the applicant is seeking to secure housing using a voucher from the federal government. More and more our clinic is receiving calls from individuals who are being denied housing because of source of income discrimination.

However, because source of income (voucher) is not a protected class under the Federal Fair Housing Act, it is an area that offers fewer options for resolution than individuals discriminated against on the basis of race or national origin. But, it is our belief that the source of income's overall effect is to discriminate on the basis of race considering that many of the complaints we receive alleging this form of discrimination are from minority voucher holders. The nature of the voucher system prevents the individual from spending a great deal of time on complaining about housing denials.

Nevertheless, a nationwide testing program of the nature described in H.R. 476 – the Housing Fairness Act - is an important step in addressing discrimination in the country, and most importantly preventing future discrimination. Testing is an essential tool of fair housing enforcement and was an important tool (though not necessarily formalized) in combating housing discrimination even prior to the passage of the Fair Housing Act of 1968.

Additional funding is certainly necessary to expand enforcement of fair housing laws. For so long, funding levels simply seemed inadequate and prevented various programs from pursuing testing efforts that would have greater impact.

Two very important observations from our work over the years must be stressed. Despite the efforts of so many lawmakers, and housing advocates, the Fair Housing Act has not had the impact that many hoped it would have when passed in 1968. In addition, despite the fact that it is believed that there are perhaps millions of discriminatory acts that occur in housing each year, only a small number of these incidents get reported.

The reasons for this discrepancy: housing providers are not fearful that they will get caught engaging in discriminatory conduct and those seeking housing have lost faith in the government's ability to address discriminatory housing practices. One way to raise the level of trust the public has in the enforcement capability of the federal government is through increased testing. Testing will lead to the discovery of more violations. It will also make housing providers aware that there is a price to pay in discriminating.

It is also likely that technology has proven to create more problems for fair housing organizations engaged in anti-discrimination efforts. The digital marketplace in which we all now reside is having an impact, as it is on most other institutions in society. Newspapers are electronic. Privacy and information transfer is different and oftentimes anonymous. E-mails, text messaging, social networking sites are all new areas of communication where discriminatory housing practices could be taking root in subtle ways. Individuals can operate in secrecy.

It is our belief that an examination of how the digital marketplace has impacted fair housing enforcement is in order. It is likely much more severe than we realize and this should be examined to determine if there is a need to strike a better balance between privacy and the free exchange of ideas and promoting a society free of housing discrimination. The various cases involving housing discrimination that have come to light since the digital marketplace has become more influential is clear evidence that there is a need to re-examine these new areas of communication in the public sphere.

Finally, it is the belief at Howard University that the past effects of discrimination in housing must be addressed as well in order to forge a future in the U.S. of improved relations. These effects include segregated neighborhoods across the country that came to be segregated because of the actions of the federal government through the Federal Housing Administration between 1934-1968.

While the discriminatory conduct of FHA is the subject of discussion in many books, there has never been any discussion as to how those discriminatory neighborhood patterns across the country can be reversed and real diversity promoted in these communities. Our suggestion: commission a study on how to turn FHA's legacy of segregation into a future of racially and economically diverse neighborhoods and communities. To prevent future discrimination is great; to fix the mistakes of the past, however, is very important as well.

Testimony of Leslie M. Proll

Director, Washington Office

NAACP Legal Defense & Educational Fund, Inc.

Before the U.S. House of Representatives Financial Services Committee

Subcommittee on Housing and Community Opportunity

Hearing on

"H.R. 476, the Housing Fairness Act of 2009"

Rayburn House Office Building
Room 2128

January 20, 2010

INTRODUCTION

Good morning, Congresswoman Waters, Ranking Member Capito and Members of the Subcommittee. My name is Leslie M. Proll. I am the Director of the Washington Office of the NAACP Legal Defense & Educational Fund, Inc. (LDF), the nation's oldest civil rights law firm. I am also the Co-Chair of the Housing Task Force of the Leadership Conference on Civil Rights. Prior to coming to Washington, I spent nearly a decade litigating fair housing cases throughout Alabama. I have brought cases involving discrimination in the rental of apartments, including tax credit properties; discrimination in real estate sales; racial harassment and intimidation in connection with housing; lending discrimination; discrimination in municipal zoning; and discrimination against African-American real estate agents who sought to provide equal housing opportunities for their customers. I helped to establish the first private fair housing organizations in Alabama, have represented such organizations in fair housing cases, and have litigated several fair housing cases which included evidence of testing.

We are pleased today to testify in support of H.R. 476, which would widely expand proven and effective measures for detecting and redressing housing discrimination. Housing issues remain at the core of our nation's structural inequality. We are keenly aware of the need for strengthened enforcement of fair housing laws. There is also a real sense of urgency for creative ideas and solutions for promoting a more integrated society at all levels. In our opinion, Congress should be doing everything within its power to increase authorization for the Fair Housing Initiatives Program, ensure that testing programs are fully funded and widely available as primary

enforcement tools for battling the entrenched problem of discrimination, and advance research around the causes and effects of housing discrimination and segregation.

THE NEED FOR ENHANCED FAIR HOUSING ENFORCEMENT

Last year, we celebrated the 40th Anniversary of the passage of Title VIII of the Civil Rights Act of 1968 (the "Fair Housing Act"). Unfortunately, our nation still remains largely segregated by race, leading many to call the Fair Housing Act the broadest civil rights statute and the most underutilized. African Americans still experience the highest degree of residential segregation. As of 2000, the dissimilarity index in the average metropolitan area for African Americans and whites was .65. In other words, 65% of the African-American population would have to move in order to become fully integrated in a metropolitan area.[1]

The most recent national Housing Discrimination Study, sponsored by HUD and conducted by the Urban Institute, discovered high rates of housing discrimination nationwide in the rental and sale of housing. Nationwide, the study found discrimination in 20.3% of the instances in which an African American tried to rent an apartment and in 16.8% of the instances in which an African American attempted to purchase a home. Hispanics experienced discrimination 23.4% of the time in attempted rentals and 18.3% of the time in home sales. For Asians and Pacific Islanders, the report uncovered discrimination 21.5% of the time in rentals and 20.4% of the time in home sales.

[1] E.Glaeser & J. Vigdor, RACIAL SEGREGATION IN THE 2000 CENSUS (2001). The Brookings Institution Survey Series. The Brookings Institute, Center on Urban and Metropolitan Policy, *available at* http://www.brookings.edu/es/urban/census/glaeser.pdf.

Discrimination at these rates—over one in five instances for rentals across racial groups —is deeply troubling, especially given that such actions have been illegal for decades.[2]

The devastating impact of housing segregation and discrimination on our communities and social structures cannot be overstated. Persistent segregation is closely linked to the harms associated with racial isolation and concentrated poverty. It was over sixty years ago that the Supreme Court struck down racially restrictive covenants in *Shelley v. Kraemer.* [3] In a companion case, LDF founder Charles Hamilton Houston explained the impact of housing discrimination in language that still resonates today:

> [Racially restrictive covenants] have been a direct and major cause of enormous overcrowding into slums, with consequent substantial disorganization of family and community life. These effects have not been, and cannot be, in our fluid society, confined to the intended victims of the restrictions; they permeate the community and exert a baneful influence upon the economic, social, moral, and physical well-being of all persons, white and black, young and old, rich and poor. They are incompatible with the foundations of our republic and their judicial approbation may well imperil our form of government and our unity and strength as a nation.[4]

In recognition of the continued pervasiveness of housing segregation and discrimination, last year LDF—in partnership with the National Fair Housing Alliance, the Lawyers' Committee for Civil Rights, and the Leadership Conference on Civil Rights —established the National Commission on Fair Housing and Equal Opportunity to create and implement a vision for bringing about a more integrated residential America. The Commission was chaired by former Secretaries of Housing and Urban Development,

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[2] Jeffrey Dillman, *Symposium: New Strategies in Fair Housing: New Strategies for Old Problems: The Fair* Housing *Act at 40*, 57 Clev. St. L. Rev. 197, 201-202 (2009).
[3] 334 U.S. 1 (1948).
[4] Consolidated Brief for Petitioners at 8, *Hurd v. Hodge*, 334 U.S. 24 (1948) (Nos. 290, 291).

Henry Cisneros and the late Jack Kemp. The Commission held a series of hearings around the country for purposes of collecting testimony about the nature and extent of housing segregation and discrimination as well as proposals and recommendations for building and sustaining a more inclusive society. A final 85-page report was issued in December 2008, which called for better enforcement, improved education and most importantly, systemic change.[5] Among the recommendations made by the Commission were to create an independent fair housing enforcement agency, revive the President's Fair Housing Council, and undertake a series of steps to ensure that the relevant enforcement agencies were in full compliance with their statutory and regulatory obligations under the Fair Housing Act and related statutes.[6]

THE IMPORTANCE OF THE FAIR HOUSING INITIATIVES PROGRAM

LDF applauds the provision in H.R. 476, which increases the authorization for the Fair Housing Initiatives Program (FHIP). In fact, we recommend that the authorization be increased to an even higher amount than that provided for in the legislation.

In our opinion, private fair housing organizations are the mainstay of the fair housing movement. Established in communities all over the nation, these organizations are often the only entities in a particular area equipped to identify and redress housing discrimination. The Civil Rights Division of the Department of Justice, national civil rights organizations, and private attorneys can only litigate a certain number of cases at

[5] The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity, NAACP Legal Defense & Educational Fund, Inc.; National Fair Housing Alliance; Lawyers' Committee for Civil Rights; Leadership Conference on Civil Rights, *available at* http://www.naacpldf.org/content/pdf/housing_discrimination/fair_housing_report.pdf.
[6] *Id.* at Executive Summary, III – VIII.

once. Fair housing organizations are on the ground, collecting information over time, and monitoring housing patterns in their own communities. Their local leadership, continuity, and familiarity with the local housing industry ensure that incidents of housing discrimination, systemic issues, and problematic trends are identified and redressed. Frankly, their onsite capacity for civil rights monitoring and enforcement is unparalleled in the civil rights field. As others will testify today, their very existence is dependent upon funding from HUD. It is incumbent upon Congress to ensure that the valuable services they provide in eradicating discrimination in housing continue.

It is also appropriate that HUD funding be restricted to those organizations which are "qualified private nonprofit fair housing enforcement organizations." This provision ensures that federal funds are directed to only those organizations with the structure and experience necessary to carry out effective enforcement efforts.

TESTING AS A POWERFUL ENFORCEMENT TOOL

LDF strongly supports the provision set forth in H.R. 476 to advance the role of testing in fair housing enforcement. A fully funded program for nationwide enforcement testing could help to overcome the formidable obstacles to equal housing opportunity.

Testing has long been viewed—by both advocates and courts—as a powerful tool for detecting and addressing discrimination in housing. Because applications for housing are generally more transitory in nature, it is often difficult to discern comparison treatment; hence, persons who are discriminated against are not likely ever to know that the discrimination occurred. More than twenty-five years ago, the Seventh Circuit noted

in *Richardson v. Howard*, "It is frequently difficult to develop proof in discrimination cases and the evidence provided by testers is frequently valuable, if not indispensable."[7]

The use of testers to collect evidence regarding the practices, policies, and procedures of agents, brokers, and managers for the purpose of ascertaining their compliance with fair housing laws has long been endorsed by the Supreme Court and other federal courts. In 1982, the Supreme Court issued its seminal decision in *Havens Realty Corp. v Coleman*, which granted testers standing to sue for injuries under the Fair Housing Act, describing testers as "individuals who, without an intent to rent or purchase a home or apartment, pose as renters of purchasers for the purpose of collective evidence of [unlawful practices]."[8]

Since that time, numerous courts have recognized that testing plays a pivotal role in ensuring compliance with the Fair Housing Act. *See, e.g.*, *Kukui Gardens Ass'n. v. Jackson* ("Courts have opined that the [Havens] decision may have been a recognition that testing may be the only effective method of enforcing the fair housing laws.");[9] *Indep. Living Res. v. Oregon Arena Corp.*, ("Testing was the most effective method-and perhaps the only effective method-of enforcing the FHA. If the [testing] organization lacked standing, then the Act likely would go unenforced, the illegal practice would continue, and the defendant would not be held accountable for its conduct.").[10]

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[7] 712 F.2d 319, 321 (7th Cir. 1983).
[8] 455 U.S. 363, 373 (1982).
[9] No. 06-00534, 2007 WL 128857, *6 (D. Haw. Jan. 11, 2007) (unpublished).
[10] 982 F.Supp. 698, 761 n.86 (D. Or. 1997).

As housing discrimination has become more subtle and sophisticated, reliance on testing methodology has become even more critical. As early as 1975, courts recognized the unique ability of testing to detect subtle discrimination:

> The evidence resulting from the experience of testers is admissible to show discriminatory conduct on the part of the defendants. The Fair Housing Act of 1968 was intended to make unlawful simpleminded as well as sophisticated and subtle modes of discrimination. It is the rare case today where the defendant either admits his illegal conduct or where he sufficiently publicizes it so as to make testers unnecessary. For this reason, evidence gathered by a tester may, in many cases, be the only competent evidence available to prove that the defendant has engaged in unlawful conduct."[11]

Fortunately today, there are relatively fewer instances of overt examples of discrimination—"smoking guns" or statements laced with expressly racist overtones. Discrimination today is more subtle, more sophisticated and therefore not immediately detectable. As the Third Circuit noted recently in the employment context:

> Anti-discrimination laws and lawsuits have "educated" would-be violators such that extreme manifestations of discrimination are thankfully rare. Though they still happen, the instances in which employers and employees openly use derogatory epithets to refer to fellow employees appear to be declining. Regrettably, however, this in no way suggests that discrimination based upon an individual's race, gender, or age is near an end. Discrimination continues to pollute the social and economic mainstream of American life, and is often simply masked in more subtle forms. It has become easier to coat various forms of discrimination with the appearance of propriety, or to ascribe some other less odious intention to what is in reality discriminatory behavior. In other words, while discriminatory conduct persists, violators have learned not to leave the proverbial "smoking gun" behind. As one court has recognized, "[d]efendants of even minimal sophistication will neither admit discriminatory animus or leave a paper trail demonstrating it."[12]

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[11] *Zuch v. Hussey*, 394 F. Supp. 1028, 1051 (E.D. Mich. 1975).
[12] *Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1081-82 (3d Cir. 1996) (quoting *Riordan v.* Kempiners, 831 F.2d 690, 697 (7th Cir.1987)).

Thus, in order to address vigorously housing discrimination in its 21st Century form, testing has actually increased in value as an enforcement tool.

Today, testing evidence is routinely admitted in Fair Housing Act cases, as it can often be "highly probative" in determining whether discrimination occurred. *Inland Mediation Bd. v. City of Pomona.*[13] Accordingly, courts commonly rely on testing evidence when adjudicating various types of cases brought under the Fair Housing Act. *See, e.g., Paschal v. Flagstar Bank* (lending discrimination);[14] *United States v. Balistrieri* (rental discrimination);[15] *City of Chicago v. Matchmaker Real Estate Sales Center* (sales discrimination).[16] At times, courts have even determined the liability of defendant real estate companies and agents solely on the basis of testing evidence. *See, e.g.*, *Cabrera v. Jakabovitz.*[17]

TESTING AS AN INVESTMENT IN ENFORCEMENT

Given the successes associated with the use of testing as a tool for investigating and redressing housing discrimination, it makes perfect sense for Congress to consider enhanced means by which to promote the use of testing. In our opinion, allowing the Department of Housing and Urban Development (HUD) to undertake a nationwide enforcement testing program to detect patterns of discrimination is an extremely worthy use of federal resources.

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[13] 158 F.Supp.2d 1120, 1133 n.9 (C.D. Ca. 2001).
[14] 295 F.3d 565, 578-79, 583-84 (6th Cir. 2002).
[15] 981 F.2d 916, 929 (7th Cir. 1992).
[16] 982 F.2d 1086, 1095 (7th Cir. 1992).
[17] 24 F.3d 372 (2d Cir. 1994).

First, it is critical that the testing is devoted, in large measure, to addressing systemic discrimination. While individual instances of discrimination certainly should be detected and redressed wherever possible, the new testing program contemplated by H.R. 476 is consistent with the federal government's longstanding tradition of focusing on eradication of large-scale forms of discrimination that otherwise will likely not be redressed. Identification of systemic discrimination is more costly, complicated and protracted than that involving individual cases of discrimination, but this is precisely the type of investigation in which the federal government should bring to bear its extraordinary resources. Moreover, discrimination that adversely impacts a particular racial group is also actionable under the fair housing law. By establishing a nationwide testing program, the government heightens the possibility of uncovering far-reaching discrimination in a manner that simply cannot be accomplished with the budgets and resources of fair housing organizations, civil rights organizations or private attorneys.

Undoubtedly, the nationwide testing program can have a deterrent impact on members of the housing industry. Apartment owners, real estate companies, and mortgage lenders can use this opportunity to take affirmative steps to improve compliance with fair housing laws on the part of their managers, employees and agents so as to avoid enforcement problems that may be detected through a nationwide testing program. As many local fair housing advocates appreciate, even the prospect of testing in any given geographic area can help to increase awareness on the part of agents, managers and other real estate actors on fair housing rights and responsibilities.

The inception of a nationwide testing program is now more necessary than ever, given the recent diminished federal enforcement of the fair housing laws. Unfortunately, in the last decade, the Justice Department was often subject to politicization of its enforcement agenda.[18] As a result, the Civil Rights Division filed only approximately seven cases per year addressing housing discrimination on the basis of race.[19] Moreover, most of these cases involved discrimination in the rental market, and not the sales, lending or insurance markets where cases tend to be more complex and resource-intensive.

Regrettably, the Civil Rights Division's own testing program, established in 1991, remained virtually dormant for most of the past decade. From 2001 through 2008, the Division brought only 16 cases based on testing for discrimination against all four of the protected classes that are the subject of the testing program – race, national origin, disability or familial status.[20] In sharp contrast, the Division appears to have filed 69 cases based on evidence generated by the testing program in the years from 1991 until 2000.[21]

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[18] *Civil Rights Division Oversight, Hearing Before the S. Judiciary Comm.*, 110th Cong., 1st Sess. (June 21, 2007); *Oversight of the Civil* Rights *Division: Hearing Before the S. Judiciary Comm.*, 109th Cong., 2d Sess. (Nov. 16, 2006); *Oversight Hearing on the Voting Section of the Civil Rights Division, Hearing Before the Subcomm. on the Constitution, Civil Rights & Civil Liberties, H. Judiciary Comm.*, 110th Cong., 1st Sess. (Oct. 30, 2007); *Oversight Hearing on the Employment Section of the Civil Rights Division, Hearing Before the Subcomm. on the Constitution, Civil Rights & Civil Liberties, H. Judiciary Comm.*, 110th Cong., 1st Sess. (Sept. 25, 2007); *Changing Tides: Exploring the Current State of Civil Rights Within the Department of Justice, Hearing Before the Subcomm. on the Constitution, Civil Rights & Civil Liberties, H.* Judiciary *Comm.*, 110th Cong., 1st Sess. (Mar. 22, 2007).

[19] Hous. & Civil Enforcement Section, Civil Rights Div., U.S. Dep't of Justice, Complaints Filed, *available at* http://www.usdoj.gov/crt/housing/fairhousing/caseslist.htm.

[20] Fair Hous. Testing Program, Civil Rights Div., U.S. Dep't of Justice, *available at* http://www.usdoj.gov/crt/housing/fairhousing/testing.htm.

[21] *Id.*

This low number proves even more disappointing given the effort by the Civil Rights Division to enhance its testing in this area as part of its "Operation Home Sweet Home" initiative in 2006. According to testimony by Deputy Assistant Attorney General for Civil Rights Jessie Liu before the Judiciary Committee of the U.S. House of Representatives, the Division "committed additional resources to [the] fair testing program and enhanced [its] targeting."[22] Although the Division apparently conducted more than 500 paired tests in fiscal year 2007, the testing program produced only three race or national origin cases.[23]

In our opinion, it is entirely appropriate that the new testing contemplated by H.R. 476 be conducted by qualified fair housing enforcement organizations. As noted above, private fair housing groups have proven essential to enforcement efforts across the country. These organizations are at the forefront in identifying, testing and litigating fair housing complaints in the local community. Armed with information and experience, they can design and implement tests in ways which can maximize the use of federal funds and resources.

There is no question that private fair housing organizations are best equipped to conduct the testing envisioned under H.R. 476. These organizations have conducted rental, sales, lending and insurance testing for decades, with much success. The Fair Housing Center of Metropolitan Detroit, with the assistance and support of the National Fair Housing Alliance (NFHA), publishes annually a summary of discrimination lawsuits

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[22] *Hearing Before the Judiciary Comm., U.S. House of Representatives, Enforcement of the Fair Housing Act of 1968*, 110th Cong., 2d Sess. (June 12, 2008) (testimony of Jessie Liu, Dep. Assist. Att'y Gen., Civil Rights Div., U.S. Dep't of Justice).
[23] *Id.*

assisted by the efforts of the fair housing organizations that are members of NFHA. The most recent report, issued in June 2009, helps to demonstrate the significant positive impact that private fair housing organizations have had:

* Between 1990 and 2008, NFHA member organizations have helped recover over $275,000,000 for victims of housing discrimination.

* The total number of member-assisted lawsuits filed and/or open between January 1, 2000 and December 31, 2008 was 1605. Of those cases, 1165 had a disclosed financial recovery.

* Nearly half of all lawsuits filed (47.7%) and successfully concluding in a disclosed financial settlement (49.1%) between 2000 and 2008 included testing evidence. In that time period, testing evidence helped to garner more than $55 million for plaintiffs. This demonstrates how important testing remains in the investigation process and for the resolution of housing discrimination complaints.

* The number of successfully concluded lawsuits (including cases with disclosed and non-disclosed settlements, and court or jury decisions for the plaintiffs) was 1298, or 94% of all closed lawsuits.[24]

Indeed, private fair housing organizations have long provided the vast majority of testing evidence used in housing discrimination litigation.[25] Without such evidence, it is unlikely that many of the meritorious claims filed over the past decade could have succeeded.

Finally, we believe that it is imperative that the nationwide testing program provide for testing across the housing industry. A program devoted exclusively to testing in the rental market will not successfully identify and redress the myriad types of housing

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[24] Fair Housing Ctr. Of Metro. Detroit, *$275,000,000 and Counting: A Summary of Housing Discrimination Lawsuits That Have Been Assisted By the Efforts of Private, Non-Profit Fair Housing Organizational Members of the National Fair Housing Alliance*, on file with the author of this testimony, 16-19 (2009).
[25] *See id.;* Clifford C. Schrupp and Michael Olshan, *Symposium: An Assessment of How Local, Private, Non-profit Fair Housing Organizations and Private Attorneys Can Successfully Cooperate for the Enforcement of Fair Housing* Laws, Wayne L. Rev. 1541, 1544-45 (2005).

discrimination that continue to plague our cities and suburbs. Sales testing, for example, has long been a part of the testing protocol in fair housing law. *See, e.g.*, *Chicago v. Matchmaker Real Estate Sales Ctr.*, (upholding steering claims by the City of Chicago and others against real estate agents);[26] *Heights Cmty. Cong. v. Hilltop Realty* (racial steering proven through use of "checkers" contracted by City of Cleveland Heights for audit).[27] However, the only testing cases filed by the Civil Rights Division from 2000 to 2008 addressed rental discrimination. The more complex, resource-intensive sales cases were not prosecuted despite the fact that the charter of the Division's testing program expressly states that it is designed to challenge discriminatory practices in the sale of housing.[28] It is critical that this new program under H.R. 476 devote the time and resources necessary to conduct testing in the real estate market, which can uncover a host of problems including but not limited to racial steering and failure to negotiate.

It is incumbent upon the federal government to develop effective measures for conducting testing in the lending and insurance industry. One of our strongest criticisms of the government's enforcement efforts over the past decade arises in the area of lending discrimination against homebuyers. During the eight years of the Bush Administration, the Civil Rights Division brought only five home mortgage discrimination cases on behalf of persons in a minority group.[29] All of the cases involved redlining claims and

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[26] 982 F.2d 1086 (7th Cir. 1992).
[27] 774 F.2d 135 (6th Cir. 1985).
[28] Fair Hous. Testing Program, Civil Rights Div., U.S. Dep't of Justice, *available at* http://www.usdoj.gov/crt/housing/fairhousing/testing.htm.
[29] Hous. & Civil Enforcement Section, Civil Rights Div., U.S. Dep't of Justice, Fair Lending Enforcement, *available at* http://www.usdoj.gov/crt/housing/fairhousing/caseslist.htm#lending. The Division filed six other cases under the Equal Credit Opportunity Act, alleging discrimination on the basis of gender, marital status, race or national origin in the provision of consumer loans.

likely represented only a fraction of the cases that could have been filed under a more aggressive enforcement approach.[30] Most importantly, the cases did not address the pernicious practices—increasingly common over the past decade—involving predatory lending and reverse redlining, which have now gripped our financial system.

Any future investigations into housing discrimination undertaken by the federal government must necessarily include measures for addressing the discriminatory causes and effects of the foreclosure crisis. We are pleased by the announcement last week by the Civil Rights Division of an aggressive new campaign against reverse redlining by the lending industry.[31] The government's efforts should include the development of measures for undertaking testing in the mortgage lending industry. It is imperative that fair housing and fair lending principles are included in all remedial legislation and policy initiatives adopted to address the financial crisis. It is also important to collect race and ethnicity data when implementing foreclosure relief programs and to ensure such data is publicly available so that programs can be monitored for compliance with fair housing laws.

THE IMPACT OF HOUSING DISCRIMINATION ON EQUAL EDUCATIONAL OPPORTUNITY

We applaud the provision in H.R. 476 which provides grants to non-profits to study the causes of housing discrimination and segregation and evaluate their effects on education, poverty and economic development. In order to combat entrenched problems

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[30] According to Shanna Smith, private fair housing organizations processed 1,245 lending complaints in 2007. *Hearing Before the Judiciary Comm., U.S. House of Representatives, Enforcement of the Fair Housing Act of 1968*, 110th Cong., 2d. Sess. (June 12, 2008) (testimony of Shanna Smith, Pres. and Chief Executive Officer, Nat'l Fair Hous. Alliance).

[31] Savage, *Justice Dep't Fights Bias in Lending*, NY TIMES, (Jan. 14, 2010).

associated with race discrimination and segregation, it is increasingly necessary to adopt a multi-disciplinary approach.

We are particularly encouraged by the devotion of resources to studying the intersection of housing and education. At LDF, we recognize the deep structural role that residential segregation plays in perpetuating inequality in our nation's schools. The Caucus for Structural Equality has found that "[t]he racial makeup of residential neighborhoods is the most important determinant of the racial composition of the schools within them,"[32] and the strong link between housing discrimination and increased school segregation has been acknowledged by the Supreme Court. *See Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 21 (1971).

We now live in an America where 44% of our public school children are minorities, and the two largest minority populations, African Americans and Latinos, are more segregated than they have been since the death of Martin Luther King, Jr. more than forty years ago.[33] Due in large part to housing discrimination and segregation, nearly 40% of African-American students attend schools where 90% or more of the student body is non-white.[34] These numbers are similar for Latino students.

At the height of desegregation in 1988, the average African-American student attended a school that was one-third white and only one-third of African-American

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[32] Brief of the Caucus for Structural Equity as Amicus Curiae Supporting Respondents at 17, *Parents Involved in Cmty. Schools v. Seattle Sch. Dist. No. 1*, 127 S.Ct. 2738 (2007) (Nos. 05-908, 05-915) (emphasis added). The brief also notes that "[s]egregated housing patterns fuel segregated classrooms and disparate educational outcomes. In turn, low quality public schools reinforce segregated housing patterns due to the strong correlation between housing prices and public school quality . . . In short, school segregation is both an important outcome and a crucial source of residential segregation." *Id.* at 26.
[33] Gary Orfield, *Reviving the Goal of an Integrated Society: A 21st Century Challenge*, *available at* http://www.civilrightsproject.ucla.edu/research/deseg/reviving_the_goal_mlk_2009.pdf, 7 (2009).
[34] *Id.* at 12.

students attended intensely segregated schools with 90 percent or more minority students.[35] Similarly, Latino students attended schools with average enrollments of one-third white, and one-third of Latinos were in intensely segregated schools.

Today, the average African-American or Latino student attends a school that is almost three-fourths minority students.[36] Forty percent of African-American and Latino students attend schools where 70-100% of the children are poor; this is true for only one-thirtieth of white students. As schools continue to resegregate, educational outcomes for minority students have and may continue to worsen.[37]

School segregation is rooted in housing patterns. With the increasing rarity of court-ordered desegregation and the judicial limitations of voluntary integration programs, students' educational fate is dependent upon where they live. When children go to school on a neighborhood basis, existing residential segregation assures segregated educational opportunities by race and class. This is particularly troubling considering that the "segregation of schools is almost never just by race."[38] Racial segregation is typically compounded by economic segregation.[39] Racially isolated schools are likely to host impoverished student populations and be located in high poverty areas.[40]

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[35] *Id.* at 13.
[36] *Id.*
[37] *Id.* at 6.
[38] *Still Separate and Unequal: A Public Hearing on The State of Fair Housing in America: Hearing Before the Nat. Comm. on Fair Housing and Equal Opportunity* (2008) [hereinafter *Hearing*] (statement of Gary Orfield, Dir., The Civil Rights Project), *available at* http://www.prrac.org/projects/fair_housing_commission/los_angeles/orfield.pdf.
[39] *Hearing*, *supra* note 38 (statement of Deborah McKoy, Exec. Dir., Ctr. For Cities and Schools)
[40] Gary Orfield and Chungmei Lee, *Why Segregation Matters: Poverty and Educational Inequality*, http://bsdweb.bsdvt.org/district/EquityExcellence/Research/Why_Segreg_Matters.pdf, 5 (2005).

There are strong links between this dual segregation and educational achievement. Studies show that students attending racially isolated and poverty-concentrated schools are far more likely to drop out and far less likely to attend college than their affluent white counterparts.[41] Segregated, minority schools struggle to attract and retain qualified teachers, have larger class sizes, and have less access to needed education resources.[42] The overall result is a "bifurcated educational system of 'good' suburban schools and 'failing' city schools."[43] That picture is further complicated by the increasing number of racially segregated, high poverty suburban communities.

Racial segregation in education is clearly a pressing problem today. Because we know that residential segregation often results in segregation from educational and other critical opportunities, it is incumbent upon all of us to focus on housing policy and enforcement of fair housing laws as a means to promote integration in education and in the workforce, as well as in residential patterns themselves. We are encouraged by the government's renewed interest in the intersection of education and housing policy, and we urge Congress to fund research that will shed light on the pernicious effects of segregation and discrimination throughout our social institutions.

AFFIRMATIVELY FURTHERING FAIR HOUSING

LDF strongly supports the language in H.R. 476 providing that it is the sense of Congress that the Secretary of HUD promulgate regulations clarifying and reinforcing the

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[41] *Hearings*, *supra* note 38 (statement of McKoy).
[42] *Id.*
[43] *Id.*

obligations of recipients of federal housing funds to affirmatively further fair housing. These regulations are long overdue, and we hope that they will be issued promptly.

In our opinion, HUD should create stronger enforcement mechanisms to ensure that HUD programs as well as recipients of HUD funding live up to their statutory obligation under the Fair Housing Act to affirmatively furthering fair housing. *See* 42 U.S.C. § 3608.

HUD should engage in an internal review of its own programs to evaluate the extent to which programs are encouraging or tolerating racial segregation. Across the country, HUD's own actions have too often perpetuated or exacerbated housing segregation. For instance, in *Thompson v. HUD*, a case that LDF has litigated along with the ACLU of Maryland and private law firms, U.S. District Court Judge Marvin Garbis issued one of the most significant fair housing liability rulings of the past decade. In January 2005, the court held that HUD had violated the Fair Housing Act by failing to take affirmative steps to implement an effective regional strategy for desegregation in the Baltimore metropolitan region. Finding that HUD policies had unfairly concentrated African-American public-housing residents in the most impoverished, segregated areas of Baltimore, the court faulted HUD for treating Baltimore as "an island reservation for use as a container for all of the poor of a contiguous region."[44]

In addition, HUD has often failed to make use of the federal government's authority to exert leverage over local grantees to make sure they comply with their own obligations to affirmatively further fair housing. A significant indication of the current

[44] *Thompson v. HUD*, 348 F.Supp.2d 398, 408 (D.Md. 2005).

administration's new approach in this context is HUD's recent settlement of fair housing litigation in Westchester County, New York. The settlement requires local municipal governments receiving HUD funds to allow production of affordable housing units. In announcing the Westchester settlement, HUD Secretary Shaun Donovan indicated that "[t]his agreement signals a new commitment by HUD to ensure that housing opportunities be available to all, and not just to some."[45]

CONCLUSION

Forty-plus years after the passage of the Fair Housing Act, our nation still struggles with entrenched housing segregation that imposes high societal costs. The future of our democracy and a more integrated America depend on our ability to aggressively identify, remedy, and eliminate discrimination in the housing market while making housing opportunities available to all. Congress should do everything within its power to ensure that the federal fair housing laws are enforced as strongly and as successfully as possible. H.R. 476 provides an effective vehicle for enhancing ongoing enforcement efforts and identifying and deploying more creative methods for combating discrimination in housing.

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[45] *HUD and Justice Department Announce Landmark Civil Rights Agreement in Westchester County*, HUD News Release, Aug. 10, 2009.

Testimony before the House Financial Services Committee Subcommittee on Housing and Community Opportunity

"H.R. 476, the Housing Fairness Act of 2009"

January 20, 2010

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"H.R. 476, the Housing Fairness Act of 2009"

Introduction

Chairwoman Waters, Ranking Member Capito, and members of the Subcommittee, thank you for this opportunity to testify in support of H.R. 476, the Housing Fairness Act of 2009. I would also like to thank Representative Al Green for introducing this important legislation. My name is Shanna Smith and I am the President and CEO of the National Fair Housing Alliance (NFHA). I have spent my entire career combating housing discrimination in its many forms as well as promoting residential integration, beginning in 1975 as the Executive Director of the Toledo Fair Housing Center. I have lead NFHA's office in Washington, DC since it was established in 1988. I appreciate this opportunity to speak with you today about how this bill would assist the government, non-profit fair housing centers, and the housing and lending industries in creating a more diverse, inclusive America.

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. Headquartered in Washington, D.C., the National Fair Housing Alliance, through comprehensive education, advocacy and enforcement programs, provides equal access to apartments, houses, mortgage loans and insurance policies for all residents of the nation. NFHA's "operating members" are those agencies that meet the Department of Housing and Urban Development (HUD) definition of "qualified fair housing organization."[1]

I am here today in strong support of H.R. 476, the Housing Fairness Act of 2009. H.R. 476 will provide resources necessary to realizing the promises of the federal Fair Housing Act. It will improve both enforcement and education efforts surrounding discrimination in home rental, sales, insurance, and lending, will significantly reduce illegal practices, and will open communities and neighborhoods to all Americans. It will provide sorely needed funding for nationwide enforcement testing – funding that will allow HUD and fair housing advocates to systemically address discrimination in all areas of the housing market. It will authorize an increase in funding for the Fair Housing Initiatives Program, the federal program that enables private fair housing organizations working in your districts to educate your communities and redress the housing discrimination suffered by your constituents. It calls for a national media campaign so that the public is fully aware of its fair housing civil rights. And finally, it creates a grant program so that the fair housing movement can continue to be guided by the latest research on the causes of housing segregation and segregation's impact on the vitality of communities.

Based upon my years of experience in the fair housing movement, I can attest to the dramatic impact that systemic testing can have on the functioning of the housing market. In part because

[1] 24 C.F.R. § 125.103. (*Qualified fair housing enforcement organization* (QFHO) means any organization, whether or not it is solely engaged in fair housing enforcement activities, that— (1) Is organized as a private, tax-exempt, nonprofit, charitable organization; (2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and (3) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for FHIP assistance.)

of national and local testing efforts by fair housing agencies, I believe there is less discrimination in the housing market today. Targeted testing of housing service providers has changed the business practices of apartment management complexes, of real estate agencies, of homeowners' insurance providers, of architects and housing developers, and of mortgage lenders and mortgage insurance providers. Through testing and other enforcement activities, NFHA and its members have worked to expand opportunities for everyone. Later in my testimony, I will address specific ways in which NFHA's work has precipitated positive change within the housing industry, such as our enforcement work in the homeowners' insurance industry.

As demonstrated by the foreclosure crisis – which, as we know through anecdotal evidence and empirical study was caused in large part by discrimination – there is still much work to be done. The Housing Fairness Act ensures that the fight to end discrimination in the housing market will continue in a comprehensive way. However, for fair housing organizations to address discrimination fully and completely in the mortgage lending industry, more change is needed. Currently, fair housing organizations are unable to apply the full force of our testing methods to mortgage lending because it is a felony for testers from fair housing organizations to apply for a home loan as part of a discrimination test. In order to identify instances where mortgage lenders steer potential borrowers into different loan terms because of their membership in a federally protected class, qualified fair housing organizations approved by the Department of Justice must have the ability to fully and completely test these lenders' business practices.

Segregation and Discrimination Illegally Limit Opportunities

The Fair Housing Act prohibits housing discrimination on the basis of race, color, national origin, religion, sex, familial status and disability. It also covers all housing transactions and services, including advertising, rentals, sales, lending, and insurance, as well as harassment.

Where one grows up greatly determines many of life's outcomes. Congress recognized this when it passed the Fair Housing Act just one week after the assassination of Dr. Martin Luther King, Jr. Congress gave this civil rights law a dual purpose: to eliminate housing discrimination and to promote residential integration. Congress reaffirmed its commitment to fair housing when it amended the law in 1988 to give HUD and the Department of Justice (DOJ) considerably more authority to prosecute people and businesses that violate the law. There has always been tremendous bi-partisan support for the Fair Housing Act. The law was sponsored in 1968 by Senator Edward Brooke (R-MA) and Senator Walter Mondale (D-MN). President Reagan signed the 1988 amendments and, along with Congress, established the Fair Housing Initiatives Program for private non-private fair housing agencies and the Fair Housing Assistance Program for state and local governments to enforce the law. Congress saw the need for effective enforcement in 1988, but we have yet to achieve that goal.

There are so many benefits to growing up in a racially, ethnically and economically inclusive neighborhood, but unfortunately not enough families have these opportunities. America continues to be racially segregated. This has complex social and economic impacts on residents—Black, white, Latino, Asian, etc.—who live in segregated communities. Isolation

continues to have a negative economic impact for African Americans and Latinos, in particular. Take, for example, the following evidence from *Segregation: The Rising Costs for America*:

> "The quality of schools has for years been, arguably, the single most significant determinant of a quality housing market...[D]iscrimination in housing and residential segregation grievously curtail the access of minority children to good-quality education. [...] Between 1992 and 2002 the number of minority students attending majority-minority schools increased. During the same period, the share of minority students attending public schools with white students declined."
>
> "Not only are suburban job opportunities distant from minority neighborhoods but they are often distant from transit stations."
>
> "Housing location has an immediate impact on access to jobs in terms of distance from jobs and commuting costs. In addition, labor-market outcomes are affected by education levels, skills, experience, attitudes, job-related information, referrals, prejudice, and discrimination – all of which are significantly influenced by the neighborhood of residence."
>
> "Housing location...affects access to good hospitals or other healthcare facilities."[2]

When housing discrimination goes unchallenged, new barriers to housing choice develop. We still face restrictive or exclusionary zoning by local governments; discrimination by private citizens and businesses that refuse to rent or sell to people of color, families with children or people with disabilities; and real estate agents who subtly steer homebuyers to neighborhoods where their race predominates. Loan officers and mortgage brokers steer borrowers to higher cost products because of their race or the racial composition of the neighborhood where their home is located.[3] All of these types of discrimination have been uncovered through testing and investigations by my organization and our members around the country.

"People learn to live together by living together." America's housing market must be free of discrimination and artificial barriers so people can make educated choices about where they live. Since the passage of the Fair Housing Act in 1968, we have made progress towards reducing housing, lending and insurance discrimination and advancing residential integration and equal opportunity. Today, while more Americans than ever are living in diverse communities,

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[2] *Segregation: The Rising Costs for America,* edited by James Carr and Nandinee Kutty. New York: Routeledge, 2008, pages 23-27; 169.

[3] A Center for American Progress study analyzed the 2006 Home Mortgage Disclosure Act (HMDA) data of the 14 so-called systemically significant banks and their subsidiaries, and found that out of 87,000 mortgages originated by these institutions, 17.8% of white borrowers received higher-priced mortgages, while 30.9% of Latino borrowers and 41.5% of African-American borrowers received higher-priced loans. The study also examined the data for borrowers whose incomes were more than twice the area median income for their metropolitan area. Among this wealthy group, 10.5% of white borrowers received higher-priced loans while 29.1% of Latino borrowers and 32.1% of African-American borrowers received these loans.[3] The racial disparity is stark. Jakabovics, Andrew and Jeff Chapman, *Unequal Opportunity Lenders? Analyzing Racial Disparities in Big Banks' Higher-Priced Lending,* (Center for American Progress, September, 2009).

residential segregation remains high, and has at best declined at a snail's pace in some places while worsening in some parts of the country.[4] Moreover, there are an estimated 4 million incidences of housing discrimination each year, helping to sustain residential segregation rather than undo it. Much work remains to be done.

Testing and Research: How Fair Housing Organizations Address Housing Discrimination

The National Fair Housing Alliance combats discrimination in the housing rental and sales markets as well as mortgage lending and homeowners insurance markets. We recognize that housing discrimination can come in many forms, and strive to eradicate it in each of those forms. Private non-profit fair housing organizations occupy the front lines in the fight against housing discrimination. Our groups must be flexible enough to handle individual complaints of discrimination and coordinated enough to identify systemic trends in discrimination.

In 2008, when the public filed over 30,758 fair housing complaints, fair housing organizations, with an average staff size of just five, processed 20,173 of these complaints, almost twice as many as all government agencies combined. The Department of Housing and Urban Development and the Department of Justice processed 2,156 complaints and state and local agencies processed 8,429 complaints.[5] Still, the number of processed housing discrimination complaints pales in comparison to the four million incidents of housing discrimination each year. In order to adequately address housing discrimination, the federal government must take a more active role in addressing discrimination and fair housing organizations must be able to build their capacity to investigate and test complex systemic as well as promoting inclusive communities in their service areas.

One of the most effective tools for rooting out discrimination, as recognized by the U.S. Supreme Court, is testing.[6] Fair housing organizations use testing as a way of determining whether or not housing providers discriminate against members of a protected class. In a test, nearly-identically qualified individuals – one of whom is a member of a protected class and the other of whom is not – will simulate a housing transaction for the purpose of comparing the responses given to them by housing providers.

Testing is the process where individuals or couples posing as renters, homebuyers, loan seekers or homeowners looking for insurance contact the industry representative about the unit, home or product. Testers are trained to document the transaction(s) and report accurately what transpires when they make their inquiry. Testing evidence can vindicate or indict. Sometimes the evidence is insufficient to draw a conclusion and either more testing is needed or research-based investigation is require to make a determination.

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[4] National Fair Housing Alliance, The Crisis of Housing Segregation: 2007 Fair Housing Trends Report, April 30, 2007.
[5] National Fair Housing Alliance, Fair Housing Enforcement: Time for a Change, 2009 Fair Housing Trends Report, May 1, 2009.
[6] *Havens Rrealty Corp. v. Coleman*, 455. U.S. 363 (1982).

Testing has been used in thousands of investigations across the country and is accepted by federal and state courts as evidence. Rental testing can determine if a manager is offering available apartments to all people who inquire. Testing in the real estate sales market can illustrate if agents are steering whites away from interracial neighborhoods or steering Blacks or Latinos into neighborhoods where their race/ethnicity predominates. Testing has uncovered discriminatory underwriting guidelines in the homeowners' insurance market and testing also uncovers design and construction violations that can make thousands of rental units inaccessible to people with disabilities. Each of these practices, identified most clearly by testing, is illegal, denies people the right to live in an inclusive community, and contributes to residential segregation in America.

Since the 1950s, the first "open housing" advocates experimented with testing. It used to be easier to identify discrimination because so often the landlord advertised in writing or verbally stating "No Coloreds or Mexicans" or confided to whites that they did not rent to certain people because of their race, national origin or religion. There is substantial case law from the Chicago, Cleveland, Toledo and Washington, DC areas that documents these practices.[7]

Fair housing organizations have the tools to obtain empirical evidence on housing discrimination – but we need more resources to conduct systemic testing, i.e. beyond simply testing complaints on a case-by-case basis.

Addressing complaints on a case-by-case basis is neither cost effective nor an effective way to combat discrimination. When a complaint comes into a fair housing agency, staff must react to the complaint by conducting an initial investigation/test based on the specific parameters of the complaint's profile. Systemic testing, rather, allows qualified far housing agencies to be proactive by incorporating knowledge of emerging negative housing trends into an investigation and developing a plan to determine if discrimination is driving this trend.

Systemic testing is much more than sending out a two-person team of testers. It requires investigative research and follow-up. For example in just testing an apartment complex, we must gather fundamental information that will allow us to structure the appropriate test(s)—the cost for rent, whether there are income guidelines, the credit score requirements, whether deposits are required, whether a tester must leave a driver's license before seeing a unit, etc. If we are investigating a lender, we must conduct research that helps us understand how the lender operates. We get underwriting guidelines, learn about the policies and practices of making loans, refinancing, branch locations and hours of operation, on-line services and applications. We determine if the lender uses brokers or employees or both to sell the products. We read corporate reports. We will also do additional testing to see if the alleged discriminatory practice is an isolated incident or a pattern of discrimination. These tests require substantial research.

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[7] *City of Evanston v. Baird Warner, Inc.*, No. 89 C 1098 (ND IL 10-23-89); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979); *Heights Community Congress v. Hilltop Realty, Inc.*, 744 F.2d 135 (1985); *Green, Saunders v. Century 21 Briarcrest Realty*, F.2d 460 (1984); *Pinchback v. Armistead Homes Corp.*, No. 89-2117; *City of Chicago et al. v. Matchmaker Real Estate Center, Inc.*, Nos. 91-2494 & 91-3861 (1992); *Alice Payne v. Coldwell Banker Residential Real Estate Inc.*, No. 89-0668 (1990).

Existing Fair Housing Initiatives Program (FHIP) monies as well as a nationwide enforcement testing program authorized under in the Housing Fairness Act will go a long way to providing fair housing advocates with the ability to conduct the necessary investigative research to implement systemic investigations.

However, we believe that an increase to the authorization is warranted. $52 million would fund the existing fair housing organizations – but there are many states and large metropolitan areas with no fair housing agency at all, and many with only one. In fact, due to inadequate funding over the past fifteen years, nearly a quarter of all private fair housing organizations have been forced to close their doors or make significant staffing cuts. By authorizing FHIP funding at a higher level, Congress would enable the creation of more fair housing organizations and better address national discrimination issues.

This funding will allow fair housing organizations to continue their successful work and develop innovative ways to fight emerging discrimination. Testing methodologies for systemic investigations have been honed by private fair housing centers and the National Fair Housing Alliance. However, it is critically important to understand that there is no "cookie cutter" formula for conducting testing. Fair housing organizations must be nimble and adjust to changes in housing providers' business practices. For example, fair housing organizations are currently addressing discrimination in the loan modification industry. Many foreclosure rescue scam artists ask borrowers for money upfront to allegedly modify their loans. These scam artists promise to aid homeowners over the telephone at exorbitant costs to borrowers, and then do not deliver. In order to catch these scam artists and the company for whom they work in the act, fair housing organizations must be able to complete a monetary transaction with them. Additional funds will allow us to tape record these transactions, transcribe the events and file suit in federal court to put them out of business. NFHA intends to refer cases to the appropriate federal agency as well, but they can often be overwhelmed with cases.

Fair housing organizations need the resources to follow through on the discrimination we uncover to take legal action and pay for litigation costs. We can often recover a portion of these costs and then recycle the money back into our testing programs. Private fair housing agencies are also in the unique position to monitor compliance when there is litigation or a settlement. Because we are local, at the grassroots level, NFHA and its members can continue to monitor the lender, mortgage broker and advertising to make sure they businesses not go right back to their illegal practices. We can make sure they don't just change their name and go back into business. The federal government doesn't have fair housing practitioners at this level to measure compliance.

Indeed, it is the early lending litigation by private fair housing agencies that encouraged Congress to force lenders to make appraisal reports available to borrowers and to add "loan withdrawn" to the HMDA report. When we discovered how appraisals were used to devalue homes in Black neighborhoods, we asked Congress to make the appraisal available to the borrower because, after all, they paid for it. Once Congress made this possible, we had access to the appraisal and could see if the lender was undervaluing homes in Black or Latino neighborhoods by commissioning another appraisal report and comparing the results or researching whether or not appropriate comparables were used in the original appraisal.

But these investigations take staff time, expertise and money. Most fair housing agencies do not have a lending expert on staff. Most fair housing agencies have five staff including the executive director, education coordinator, test coordinator, administrative assistant and bookkeeper/accountant. If we are to realize the dual goal of the Fair Housing Act – eliminating housing discrimination and promoting residential integration – we have to conduct systemic testing and investigation.

How H.R. 476 Would Work to Address Housing Discrimination and Segregation

During the last administration, we met with staff from the Office of Management and Budget and discussed how to most effectively achieve the goals of the Fair Housing Act—recognizing the two goals: to eliminate housing discrimination and promote residential integration. We both agreed that approaching fair housing on a case by case level would never achieve the results intended when Congress passed the Fair Housing Act in 1968. We agreed that neither HUD, DOJ nor the private fair housing agencies currently had the resources to examine the millions of incidents of housing discrimination occurring annually in the United States.

More testing will uncover more discrimination, will act as a deterrent for future bad acts, and will encouraging companies to formulate programs and products to promote inclusive communities.

Just taking a quick look at the systemic cases brought by NFHA and its members can illustrate how we can make substantial progress to achieving the goals of the Fair Housing Act.

In 1995, HUD targeted FHIP funds to investigate how homeowners' insurance companies were operating in neighborhoods of colors versus white neighborhoods. These funds were allocated after initial testing by NFHA in 1992 uncovered evidence of discrimination which was shared at a Senate Banking hearing. NFHA also filed HUD 903 complaints against the nation's largest insurance companies. NFHA's insurance investigation showed high rates of discrimination based on race or national origin of the homeowner as well as based on the racial composition of neighborhoods. Discrimination against African-Americans and Latinos included: failure to return calls; refusal to provide insurance coverage; providing inferior coverage; charging a higher price for similar coverage; not offering discounts and special types of coverage; holding customers to more stringent underwriting standards; and discouraging customers from doing business with the company.

State Farm and Allstate resolved the complaints and changed their underwriting guidelines to provide replacement cost coverage to all homes regardless of their age or value. These underwriting changes brought more good business into the companies and opened new markets for all of their products. State Farm took the lead in changing its practices and continues to monitor it business practices by working closely with NFHA.

Subsequently, Nationwide Insurance Company resolved complaints with Justice and litigation brought by fair housing agencies in Richmond, VA, Toledo and Cincinnati, OH and Louisville,

KY. Nationwide then asked NFHA to engage in agent training and monitoring that its agents were following the law. Nationwide also developed new, good business in formerly underserved neighborhoods.

After NFHA and many of its members developed productive relationships with State Farm and Nationwide, both companies contributed to the first nationwide media campaign designed to promote the benefits of living in integrated neighborhoods. State Farm was the major corporate sponsor for the Richer Life media campaign, a campaign designed to increase awareness in White communities about the value of living with people who come from different racial, ethnic and religious backgrounds. www.ARicherLife.org

Nationwide embarked on a media and web campaign with NFHA to help teach homeowners how to reduce the risk of loss on their homes and maintain stable neighborhoods. www.LovingYourHome.org

The systemic testing and investigation that NFHA engaged in could have ended with a hostile environment towards fair housing, but NFHA and these companies saw the benefits of working together to increase business opportunities and at the same time comply with the Fair Housing Act and promote the goals of the law.

Individual complaints can bring systemic results. Sometimes just thoroughly investigating a policy or practice of a company can results in national change. There has only been one fair housing lawsuit filed against a private mortgage insurance company, however its settlement changed industry-norms throughout the country. In 1988, a Latino couple trying to buy a home in an integrated neighborhood, the white sellers of the home and the Toledo Fair Housing Center uncovered underwriting policies that denied mortgage insurance coverage because of the age or value of a home. The Bricenos were approved by a bank to purchase a $35,000 three bedroom home located in an interracial neighborhood. Their loan was denied when the mortgage insurer stated it would not insure the property under any condition because of its age and value. This was a lovely home in a lovely neighborhood. It appraised for the sales price, the couple met all the underwriting criteria and was financially qualified, but they could not be approved for the loan. The mortgage insurers underwriting policies did not have a basis in business and denying mortgage insurance coverage for mortgages under $30,000 would have denied coverage to almost 70% of the homes in Toledo's interracial, Black and Latino neighborhoods. Rather than engaging in lengthy litigation, the president of the company met the Toledo Fair Hosing Center and agreed to change the underwriting policy—but initially only for Toledo. After more discussion, he agreed to eliminate the policy nationwide. Following the settlement, all of the other mortgage insurers eliminated similar underwriting policies.[8]

In another positive outcome, in 2005, NFHA filed a HUD complaint and subsequently a lawsuit against the largest Century 21 franchise in Michigan alleging that 9 of 14 agents tested engaged in racial steering and other discriminatory conduct by discouraging or denying homes to people based on their race. The complaint alleged that whites were discouraged from looking at homes in Detroit's East English Village and Blacks were steered away from homes in the Grosse Pointes. The Michigan Association of Realtors (MAR) contacted NFHA and asked to speak at

[8] *Briceno v. United Guaranty Residential Insurance Co.*, No. 3:89 CV 7325 (N.D. Ohio).

the news conference announcing the filing of the complaint. NFHA agreed and the Realtors made it clear that they did not condone any violations of the Fair Housing Act. And they took their commitment to fair housing one step further and contracted with NFHA and worked through our members in Grand Rapids, Detroit, Kalamazoo and Ann Arbor to create a training program for agents and they are funding a self-testing program. MAR reviewed and approved the testing methodologies used by NFHA and is using it to monitor its members. This is a positive outcome from a lawsuit from the state of Michigan. The initial lawsuit is still pending.

As addressed in H.R. 476, education, including a national media campaign, has a key role to play in reducing discrimination. We need TWO strong, provocative, sustained multi-media campaigns to promote both goals of the Fair Housing Act. FHIP funding should be available under one grant to coordinate and compliment two messages. The first message is that housing discrimination in rental, sales, lending or insurance is illegal and how to spot it and report it. The second and complimentary message tells people about the benefits of living in multi-cultural, multi-racial neighborhood. This national campaign needs FHIP money at the local level so the messages are local and appear on busses, billboards, movie theaters, mass transit, airport dioramas, magazines, Internet ads, TV and radio public service spots as well as buy time. The campaign should also include t-shirts and bumper stickers designed to promote inclusive communities and a cable show discussing the benefits of inclusive communities in this global economy.

Fair Lending and the Foreclosure Crisis:
The Need to Improve Mortgage Lending Testing

Lending discrimination in the prime and subprime markets played a significant role in the foreclosure crisis and massive loss of homeownership and wealth for the African American, Latino and Asian American communities. Wall Street investors provided financial incentives to lenders to make Adjustable Rate Mortgages (ARMS). ARMs, Interest Option ARMs and other exotic loan products were created for a niche market—people with incomes that dramatically increase annually and live in neighborhoods with escalating housing prices. These loan products were never intended for the average homebuyer or homeowner to refinance. Yet lenders, investors and federal and state bank regulators allowed the market to be saturated with these products and loan originators and real estate agents pushed these loans onto unsuspecting consumers by stating that the homeowner could simply refinance when the ARM became due, completely failing to remind the homeowner that he/she would have to have a good credit score, money to refinance and an appraisal that fit the market value. Predatory and subprime lenders practiced marketing these products in the Black communities and closed their eyes to inflated appraisals so they could sell this "B" paper to Wall Street investors—always motivated by making more money.

During this time, we were trying to get the attention of the federal regulators, rating agencies and the DOJ because we saw the impact inflated appraisals were having in the Black community well before these schemes were introduced in the suburbs.[9] We saw families and senior citizens

[9] NFHA raised the problem of inflated appraisals at Fannie Mae's annual Fair Lending conferences and especially the year the rating agencies attended. Regulators and Justice Department staff attended these conferences. NFHA

refinancing homes for home improvements and being charged extraordinary fees and credit life insurance premiums upfront that stripped the equity from homes and left the families with a mortgage loan higher than the real value of the home. We told directors of states and local Community Development Block Grant (CDBG) programs that the federal funds since 1975 used to build homes in urban renewal areas would be lost to predatory lenders if they did not work with fair housing agencies to challenge the targeting of Black homeowners. We understood that these practices were focused on neighborhoods of color where homeowners had built equity, but could not get loans from prime lenders because they were not serving the neighborhoods or because the prime lenders were steering Black homeowners to their subprime companies.

However, we were unable to enforce the Fair Housing Act against lenders as effectively as we have been able to enforce the Fair Housing Act against other housing service providers because of current law. As mentioned above, it becomes a felony to conduct full application mortgage lending testing. Mortgage pre-application testing may identify systemic discrimination if lenders are steering women, seniors, or people of color into high-cost subprime loans or to high prices loan products in a prime bank. However, pre-application testing cannot catch the lender who inflates or deflates the appraisal or increases the interest rate or fees at closing or changes the APR or down payment requirement post-application. In order to fully address lending discrimination, the following must happen:

- **Fair housing organizations approved by the Department of Justice must be able to complete full Application loan testing.** We would like to conduct testing to document the illegal loan practices and policies, but traditional full loan application lending testing is currently illegal. It is a felony to provide false information on loan application—even for an organization using a tester with no intention of accepting the loan. Fair housing advocates have been asking the DOJ since 1990 to work with us to assure that legitimate testing be conducted. We have suggested that they establish lender tester profiles in the credit bureau system so that we may test and investigate lending practices all the way through the loan process. We also asked for immunity from prosecution to conduct full application lending testing. In the past, the DOJ replied that it would be up to the local US Attorney to decide whether or not to prosecute the tester. Currently, we have asked the Department to revisit this request; however, I believe the best approach would be narrowly construed legislation that provides an exemption from prosecution for full application lending testing conducted by qualified fair housing agencies approved by the DOJ. Credit reporting companies must also be given the legal authority to work with qualified fair housing organizations approved by DOJ so that they can assist the fair housing agencies in creating credit reports for fair lending testers.

- **Fair housing organizations must have adequate resources to hire fully trained and qualified staff and lending testers, and conduct complicated lending and foreclosure scam tests.** The immediate barrier most fair housing agencies face in investigating and testing scammers is having staff dedicated

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met with the president of Hansen Quality Loan Services prior to its purchase by Fidelity to advise him his system was incorporating inflated appraisals in Black communities and should be changed.

solely to conducting investigations and testing. The next barrier is having the money needed to complete a test. For example, NFHA is testing potential scammers and we need to have funds available to give money to a scammer who guarantees a loan modification if we give them $2,000 or $5,000. While we can forward a complaint to the Federal Trade Commission when someone makes a promise like guaranteeing a loan modification, the evidence for a violation exists when they take money and do nothing. But most organizations do not have money to lose in this transaction.

- **Federal regulators must use their authority to conduct loan testing.** We have also pressed the federal regulators to use their authority to conduct lending testing; however, we were essentially told that economists and researchers believe that lending discrimination does not make economic sense stating it is irrational behavior. The regulators concluded that discrimination would only happen at the initial loan application or pre-application stage by the loan officer or originator. These same researchers upon whom the federal regulators relied upon said that there could be no discrimination down the line in the loan application process because it just didn't make economic sense to deny someone who could afford the loan. They maintained that discrimination would be irrational in spite of successful fair lending litigation beginning in 1974 indentifying discrimination in credit and collateral underwriting guidelines, appraisal practices, and even the underwriting guidelines of private mortgage insurers.[10]

Improving Fair Housing Programs at HUD and Elsewhere to Promote Livable, Inclusive Communities

Overall, HUD's Office of Fair Housing and Equal Opportunity (FHEO) needs to do more to promote fair housing – and this means that FHEO needs to be empowered to do so by being given the resources, staff, better database system and political weight to do so.

In order to promote integration, the Fair Housing Act requires that government agencies spend funds dedicated to housing and community development in a manner that "affirmatively furthers fair housing." This obligation begins with the Department of Housing and Urban Development, but does not end there; rather it applies broadly and means that government agencies spending housing and community development funds – and recipients of government grants – must use those funds in way that helps create integrated, healthy neighborhoods.

First and foremost, as is included in H.R. 476, HUD must promulgate a regulation describing what it means to "affirmatively further fair housing." This regulation will assist jurisdictions in creating their local and state programs, and assist advocates in assuring that every jurisdiction is meeting its responsibilities under the law to promote fair housing.

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[10] *Loftman v. Oakley Saving and Loan; Harrison v. Heinzeroth, McMillan v. Huntington National Bank, Gosses v. Trust Corp, Briceno v. United Guaranty Residential Insurance Co.; Old West End Association, et al. v. Buckeye Federal Savings and Loan;* and a host of cases brought by the Justice Department under the Clinton administration.

HUD has put forth a laudable program to address healthy communities: the Sustainable Communities Initiative. This program, to be conducted with the EPA and the Department of Transportation, could go a long way to promoting fair, integrated communities. The program must incorporate fair housing explicitly into its goals, however, in order to make that work.

In addition, HUD Secretary Donovan should immediately revitalize the President's Fair Housing Council. As laid out by the National Commission on Fair Housing and Equal Opportunity:

> "The President's Fair Housing Council, created by Executive Order 12892, should be reconvened and staffed to coordinate cross-agency collaborations to support fair housing. The Council should also undertake a fair housing review of key federal health, education, health, transportation and employment programs to ensure that they support, rather than undermine, fair housing.
>
> HUD's fair housing regulations should be replicated at other federal agencies through coordination by the President's Fair Housing Council. The Commission also recommends that the federal agencies participating in the Council expressly require collaboration between their grantees at the metropolitan and regional level to support fair housing goals. The collaborative cross-agency work of the Council should be mirrored in every metropolitan area."[11]

As the other government agency responsible for enforcing the Fair Housing Act, the Department of Justice needs to expand its testing program and to bring cases regarding real estate sales and mortgage lending. Rather than testing cases where discriminatory statements are made or someone is blatantly denied an apartment, the Department's program should explore the nuances of discriminatory practices and policies. In our current sales market, Justice should investigate how Real Estate Owned Properties (REO) are being sold. Many communities of color alleged that lenders/servicers are packaging homes in their neighborhoods to investors rather than finding homebuyers to repopulate the neighborhood. They allege that homes in middle class white neighborhoods are being fixed up and marketed to single family buyers. And as mentioned above, predatory and discriminatory lending remain an enormous problem.

Research Needed to Address Housing Discrimination and Segregation

We appreciate the inclusion of funding for research in H.R. 476. The National Commission on Fair Housing and Equal Opportunity recommended various research activities that will help inform us about why discrimination still happens. The following are their recommendations, which the National Fair Housing Alliance fully supports:

> "Data collection and assessment should be expanded to enable assessment of patterns of residential segregation; data should be collected that ties housing-

[11] The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity. December 2008. The Commission was sponsored by NFHA, the Leadership Conference on Civil Rights Education Fund, the Lawyers' Committee on Civil Rights Under Law, and the NAACP Legal Defense Fund.

related activities such as lending and foreclosures, siting of new housing, school composition and performance, and racial, ethnic and disability data.

Substantive fair housing research should be expanded at HUD to address the persistence of housing market discrimination and efforts to combat it; the availability and assets of diverse neighborhoods and strategies for educating Americans about them; the dynamics of neighborhood racial change and strategies for nurturing stable residential diversity; the housing needs of families with children and families of people with disabilities in subsidized and Low Income Housing Tax Credit housing as well as market rate housing.; and the effect of occupancy standards in limiting occupancy based on familial statute, race and ethnicity.

Input should be sought from industry and fair housing organizations to identify the types of research and data that will be most useful in assessing the current status of communities and the research and data necessary to support the development of diverse communities."[12]

Thank you once again for the invitation to testify before you today. I look forward to working with you to promote fair housing and inclusive communities throughout our nation.

[12] Ibid.

Written Statement
Department of Housing and Urban Development
John D. Trasviña
Assistant Secretary for Fair Housing and Equal Opportunity
Before the United States House of Representatives
Committee on Financial Services
Subcommittee on Housing and Community Opportunity
Hearing on the "H.R. 476 Housing Fairness Act of 2009"
January 20, 2010

Chairwoman Waters, Ranking Member Capito, and Members of the Subcommittee, good morning. I am pleased to appear before you today, on behalf of the U.S. Department of Housing and Urban Development to discuss the *Housing Fairness Act of 2009* and the Department's Fair Housing enforcement program and priorities. Congressman Green, I would like to thank you in particular for your tremendous support of fair housing and the Fair Housing Initiatives Program (FHIP) and for proposing H.R. 476. We appreciate this opportunity to discuss the Department's work with private nonprofit fair housing organizations, which are crucial to our mission to create and support fair and equitable communities.

Since the passage of the Fair Housing Act in 1968, we have made significant progress in eradicating housing discrimination. However, in order to realize fair housing and equal opportunity in this country we need truly open and integrated communities. That means not only continuing to address acts of discrimination, but also using fair housing laws to strengthen neighborhoods. With the leadership we have in the executive branch and Congress, we have an unprecedented opportunity to advance fair housing across the nation.

Affirmatively Furthering Fair Housing

As the principle agency for housing and housing policy, the Department must also be a leader in anti-discrimination and anti-segregation policies. In the Fair Housing Act, Congress directed HUD to affirmatively further fair housing. As Senate floor manager of the bill, Senator Phillip Hart in a colloquy stated, "This problem of where a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions." *114 Cong. Rec. 2707 (1968)*. HUD has not always fulfilled its obligation to ensure that our money is spent in ways that affirmatively further fair housing. In this new day, however, there is a Department-wide commitment to incorporate our mandate to affirmatively furthering fair housing into all of our work so that we can fulfill our shared goal of truly integrated and balanced living patterns.

As you know, last year, HUD helped bring about a constructive and important settlement in a case that alleged Westchester County, New York had made false claims to the federal government when it certified that it would affirmatively further fair housing, though it had never

analyzed racial segregation patterns in areas where it placed new affordable housing. Under the settlement, Westchester County must build new affordable housing units in locations that are currently less than 3% African American and 7% Latino. HUD and the County government are working together to ensure that this settlement produces real change in Westchester.

The Department is working very hard on revising our current regulations regarding the obligation of recipients of federal funds to affirmatively further fair housing. In July, the Department held a listening conference attended by over 600 in person and by phone and web across the country. There, fair housing and civil rights groups, mayors, counties, and states all voiced their desire for HUD to amend its regulations to provide more concrete, specific information about how to develop a meaningful plan for affirmatively furthering fair housing. We are currently preparing a rule that would require and assist state and local governments that receive HUD money to promote integration and foster effective social and public services.

In addition, the Office of Fair Housing and Equal Opportunity (FHEO) is working with the Patricia R. Roberts National Fair Housing Training Academy to develop a curriculum on affirmatively furthering fair housing for HUD staff and recipients of HUD funding. We anticipate that the first class will be launched in the summer of 2010.

Despite our growing network of government and private nonprofit agencies, we have yet to reach all discrimination victims effectively. For example, late last year when I inquired into the Department's record in addressing discrimination against Asian Americans, I was startled to learn that fewer than one percent of housing discrimination complaints filed with FHEO involve racial discrimination against Asian American victims. For a host of reasons often attributed language, culture and skepticism of government, we do not yet fully or effectively serve this community or others. To address this, we translated and posted on our web site key HUD documents in 15 languages, including Chinese, Korean, Vietnamese, and Tagalog, and have begun to reach out to trusted community organizations and stakeholders. We can do more in 2010, and we will.

Lending Discrimination

The ability to obtain a loan is critical to buying a home; however, racial and ethnic minorities continue to be subject to different treatment when securing a mortgage. To address lending discrimination, FHEO investigates systemic complaints of lending discrimination as well as individual cases. Approximately 5% of the housing discrimination cases filed with the Department and our state and local agency counterparts each year involve lending discrimination. Individual cases may involve a borrower who either was improperly denied a loan or was provided credit at an exorbitant rate because he or she was a member of a protected class. Thirty percent of these cases result in a determination of "cause to believe discrimination occurred," a settlement or a conciliation. Last year, these cases alone resulted in $2.08 million in

monetary compensation or assistance to complainants and policy changes that opened lending opportunities to thousands of borrowers.

FHEO also undertakes Secretary-initiated investigations based on Home Mortgage Disclosure Act (HMDA) data or other information suggesting that a lender may have discriminated on a prohibited basis, even when no individual borrower has come forward to file a complaint. In 2009, the Department initiated nine of these investigations, up from three in 2008. In addition, my office is working with the Office of Real Estate Settlement and Procedures Act (RESPA) to develop a system to target investigations against those that have perpetrated discriminatory foreclosure rescue scams.

FHEO is also working to educate the public. In October 2009, the Patricia Roberts Harris National Fair Housing Training Academy began its Fair Lending Initiative to combat the effects of the mortgage lending crisis. The courses, entitled "Buyer Beware," "Preventing Foreclosure," "Financial Aspects of Lending," and "Predatory Lending," are geared toward housing providers, housing counselors and homeowners. In designing the courses, the Department emphasized teaching consumers how to identify and avoid deceptive mortgage lending practices. In the past three months, 689 people have attended these courses. Upcoming courses will be held in Miami, Florida on March 5, 2010, and Columbus, Ohio on March 22, 2010. The Department is planning a future course on loan modifications.

Finally, thanks to additional funding from Congress in FY2009 to address mortgage rescue scams and lending discrimination, FHEO established a $2 million mortgage rescue component in FHIP for nonprofit groups assisting victims of fraud and lending abuse (for example, through counseling, loan workouts, etc.). This money will allow consumer advocates and legal assistance groups to build their capacity to provide fair lending assistance. This will add many more groups into the FHIP, expanding the Department's fair lending services.

Title VIII Enforcement

Efforts to affirmatively further fair housing are incomplete without ensuring that the public has a means of redress when their rights are violated. That is why Title VIII complaints are always one of our top priorities. Individual victims of housing discrimination have an immediate need for HUD's fair housing services. The Department and its state and local fair housing partners in the Fair Housing Assistance Program (FHAP) provide these victims with a fair, objective, and free investigation of complaints and, on the complainant's behalf, prosecute cases where we have determined that there is reasonable cause to believe that the they have suffered unlawful discrimination. Our work makes a huge difference in the lives of the complainants. For example, the Department obtained a $63,000 settlement for victims of race discrimination in Alabama. The complainant Melissa Jones entered into a lease agreement with owners Wilbur and Julie Williams to rent a home. In June 2008, while Ms. Jones and her fiancé

were talking with African American neighbors in the front yard, the Williamses drove by and saw the couples talking. Later that same day, Ms. Williams called Ms. Jones and allegedly said, "If y'all want to have African Americans to visit, we're going to ask you to move...We're not having those people at our property. We own the property and...that's never happened and we're not going to start today with it happening." Ms. Williams allegedly made similar discriminatory comments on at least two other occasions. Based on these statements, Ms. Jones and her family vacated the property. The Department charged the Williamses with violating the Fair Housing Act and settled the case under a Consent Order that requires the Williamses to pay Ms. Jones and her family $53,000 for compensatory damages and attorneys' fees, as well as a $10,000 civil money penalty.

In another case, HUD charged the owners and managers of a 44-unit, project-based Section 8 apartment complex in Missouri for refusing to rent to African Americans and men. In the complaint, HUD alleged that the property manager never rented to an unmarried man or an African American, sexually harassed white female tenants and made racially derogatory statements to women with biracial children or African American boyfriends. HUD issued the charges on behalf of four tenants and applicants.

In December, the Department charged a Massachusetts condominium board and management company with discriminating against families with children. Four families alleged that the condominium board, through its management company, fined the families for their children playing in the common area $10 a day and $437.50 for attorney fees, in addition to other fees. However, when adult residents had parties in common area, no fine was issued. To make matters worse, the condominium board, according to the allegations, fined the families $1,000 for filing a fair housing complaint.

Over the last decade, the Department has become more adept at investigating housing discrimination. The number of cases completed by the Department and its state and local partners has increased by 65% in the past 10 years, from 6,503 in FY2000 to 10,700 in FY2009. At the same time, the time spent processing cases has gone down. In FY2000, FHAP agencies completed 27% of their cases within 100 days and just 52% in 200 days. Last year FHAP agencies completed 53% of their cases in 100 days and 81% within 200 days. The Department has made an even more significant improvement. In FY2000, HUD completed only 14% of its cases within 100 days and 27% within 200 days. Last year, HUD completed 58% of its cases within 100 days and 75% within 200 days.

Speed must not come at the expense of accuracy. Discrimination victims are not served by a piece of paper saying they have a case filed with the federal government. They want action. At the same time, complainants and respondents want and deserve the right outcome, not simply a quick one. Thirty-eight percent of complaints closed last year by the Department and FHAP agencies resulted in relief. This includes $8.155 million in relief for the complainant as

well as public interest provisions such as mandatory fair housing training, affirmative marketing, or policy modifications.

We have taken a number of steps to improve our efficiency: bringing more state agencies into FHAP, providing better training for investigators, establishing better incentives for efficient investigations, and streamlining administrative tasks.

Since FY2000, the Department has brought four state agencies into the Fair Housing Assistance Program: Arkansas, Illinois, New Jersey, and Oregon. While the number of complaints handled by FHEO in those states has decreased significantly, complaints of housing discrimination have risen in these states as a result of the FHAP presence. That means we are reaching discriminatory acts we might have previously missed. Deleted: would

The Department has improved both the timeliness and quality of investigations through more training for investigators working in FHAP agencies. The Department requires that fair housing investigators in FHAP agencies satisfactorily complete 200 hours of advanced training in theory and techniques at the Patricia Roberts Harris National Fair Housing Training Academy. Since the Academy opened, 282 fair housing professionals have successfully completed this course work. A recent review of the Academy showed that completion of a course leads to increased competence on the job and improved timeliness and quality of case work. To further encourage FHAP agencies to investigate cases in a timely manner, the Department reduces its reimbursement to FHAP agencies when the investigation takes more than 100 days to complete and the complaint is not complex. FHEO regularly monitors and works with FHAP agencies to assist them with lengthy investigations.

But changes to processing can only get us so far. Some enhancement to enforcement may require larger changes. The Fair Housing Act has had few significant amendments since 1988. Without announcing any legislative initiative today, you can be assured we are reviewing coverage under the Act, the way the Act establishes processes for discrimination complaints and guides our partnerships with FHIP grantees and FHAP agencies, and how to be the strongest agency in the second decade of the 21st century to combat remaining systemic obstacles to fair housing and equal opportunity.

Fair Housing Initiatives Program (FHIP)

As you know, the Fair Housing Act was enacted as the nation's response to Dr. King's assassination in Memphis, in April 1968. President Johnson consulted with Congress and community leaders and concluded that a singular national commitment to end housing discrimination would both bring the nation together and move us forward. Today, the scourge of housing discrimination continues, sometimes in its old forms, and sometimes in new forms. All must act together against housing discrimination, not just government agencies. That is why the Fair Housing Initiatives Program is so vital to this effort.

Through FHIP, 93 fair housing organizations assist the Department in combating housing discrimination. Private enforcement by fair housing agencies in FHIP is critical to the mission of HUD. These organizations investigate and resolve allegations brought to them by victims of housing discrimination, but they do so in a way that is different and complementary to the work of HUD. When an individual does not want to go through the formal process of a full investigation or wants to speak with advocates right in his or her community, private fair housing groups provide on-the-spot assistance without the administrative and legal requirements of a formal legal complaint. As a result, they are often the first line of assistance for victims of discrimination.

Fair housing enforcement organizations also conduct fair housing testing for the Department, FHAP agencies, and individuals to substantiate allegations of housing discrimination. For example, these organizations test real estate agents and rental managers to ascertain whether they offer the same rent, discounts, and services to all applicants. This becomes key evidence in cases filed with the Department and FHAP agencies. For example, in 2008, Project Sentinel, a FHIP grantee for several years, began receiving complaints from Hispanic families at an apartment complex in Campbell, California. The allegations of the five families were similar in nature: that the resident manager Leticia Descalzi had been rude to them because they "couldn't speak English"; that Descalzi issued them rent increases not imposed on non-Hispanic households; that they had been subject to different rules than white tenants; and that Descalzi had threatened to "call INS" when the complainants had requested maintenance. In response to these allegations, Project Sentinel undertook two separate rounds of testing at the property. During these tests, Descalzi failed to return phone calls to the Hispanic testers and when the Hispanic testers reached Descalzi, she made disparaging comments that she did not make to the white tester. For example, she told one Hispanic testers she "didn't want to have to rent to him only to have later to evict him because of noise complaints." The five families and Project Sentinel filed complaints with FHEO, which we then referred to the California Department of Fair Employment and Housing (DFEH), a FHAP Agency. Immediately upon referral from HUD, DFEH contacted the parties, who confirmed their interest in participating in the early-stage mediation program. Through the mediation agreement, the five families and Project Sentinel received a total of$45,000 and letters of apology. In addition, the agreement contained significant public interest provisions requiring the respondents to develop and distribute to residents a written fair housing policy, standardize its procedures for notifying residents of prospective rules violations, eliminate restrictions on the number of visitors, and standardize documentation requirements from prospective applicants.

The investigation and assistance that FHIP agencies provide to the public is outstanding. FHIP grantees often work directly with the individuals to remedy the situation. Fair housing organizations also screen, investigate, and/or test complaints before bringing them to the Department. As a result of these efforts, complaints filed with the Department by FHIP grantees

are 20% more likely to result in a settlement, conciliation, or a finding that discrimination occurred, than complaints that are not referred by a FHIP agency.

In addition, these organizations have played a major role to raise national consciousness about fair housing. Each year the Department awards a national fair housing education and outreach grant through FHIP. Under the current national education initiative, the National Fair Housing Alliance in partnership with the Leadership Conference on Civil Rights Education Fund launched with HUD a multilingual national campaign in mainstream and community newspapers, magazines, radio/TV, buses, movie theaters, and other places. This media campaign is enabling consumers to avoid becoming victimized by predatory lending and foreclosure prevention scams and is assisting consumers who are reentering the rental market in understanding their full range of housing choices. In 2009, the campaign received almost $8.3 million in donated media and resulted in more than 580 million audience "impressions."

Housing Fairness Act of 2009

You have invited me here today to discuss not only the Department's current fair housing strategy, but also H.R. 476-*The Housing Fairness Act of 2009*. H.R. 476 is consistent with the priority the Department places on fair housing enforcement and enables us to do more than we can today. If enacted, H.R. 476 would provide a great deal of support for fair housing efforts across the country through increased testing for violations, enforcement against those who have violated fair housing laws, and study of the causes and effects of discrimination.

The first section of the bill requires HUD to conduct a nationwide testing program to detect, document, and measure housing discrimination across the country. We fully support this proposal. Now, more than ever, testing is an indispensible part of fair housing enforcement. Housing discrimination today is often much more subtle, and a consumer is not well positioned to make meaningful comparisons of treatment. Paired testing, however, is ideally suited to uncover such abuses.

Testing is widely accepted by courts, and many courts have found the testimony of testers to be decisive in housing discrimination cases. As early as 1973, the U.S. Court of Appeals for the 10th Circuit noted in Miller v. Hampton, 477 F.2d 908, 910 n. 1 (10th Cir. 1973), that "it would be difficult indeed to prove discrimination in housing without this means of gathering evidence." The 7th Circuit supported this and observed in Richardson v. Howard, 712 F.2d 319, 321 (7th Cir. 1983) that testing evidence is "frequently valuable if not indispensible."

We too have found testing to be indispensible in many of our investigations. When the Department learned that an apartment complex in Scranton, Pennsylvania, was advertising itself as "21 and older," we initiated an investigation and contracted with the Fair Housing Council of Montgomery County, a fair housing organization, to conduct on-site and telephone tests of the property. The testing evidence was critical to the case. The property manager told one tester, "I

just want to let you know that if you decide to move in, your daughter will be the only child in here." Another tester was given a brochure that contained the statement, "The Mill is an apartment community catering to young professionals and all occupants must be twenty-one years or older." The Department charged this case; the complex has been found liable; and the penalty phase is now pending in federal court.

Fair housing testing was vital again in establishing a case of racial discrimination that the Department charged in 2009. In the summer of 2008, two different African American renters sought to live in a 64-unit townhouse property in Sagamore Hills, Ohio. The manager and part-owner of the property informed them that nothing was available. One of the applicants contacted Fair Housing Advocates Association, a fair housing organization in Ohio, to report suspected discrimination. Fair Housing Advocates Association sent testers to the property. The manager informed the white tester on four different occasions that a unit was available and twice invited the white tester to tour the unit. In contrast, the manager informed the African American tester that nothing was available. On September 28, 2009, HUD charged the owners and managers with violating the Fair Housing Act.

The $20 million nationwide testing program envisioned by H.R. 476 would lead not only to greater enforcement efforts, like the cases described above, but would also deter discrimination. H.R. 476 would authorize more than double the amount currently spent on testing, giving landlords and real estate agents a much greater likelihood of being tested. And as we have seen in numerous other contexts, an increased risk of being caught leads to greater compliance with the law. Moreover, this testing program will build on the Department's decennial housing discrimination study. Through this program, the Department will be able to conduct follow up tests of housing providers that showed evidence of disparate treatment during the study. In addition, fair housing organizations will be able to target testing to those areas of the country that showed high levels of discrimination in the study. We support expansion of testing and we hope the committee will state in the bill or enter into the record its intention that this authorization would build on the Department's decennial housing discrimination study rather than substitute for it.

I fully support the direction of this initiative and note that an effective program to properly administer it is essential to its success. As the former executive director of the Discrimination Research Center and through our own experience here at HUD, I appreciate the effectiveness of testing as a law enforcement tool, and recognize the training, planning, and monitoring essential for it to be admissible in court. In order for testing to have the greatest effectiveness as a civil rights law enforcement tool, the Department should be provided the requisite staffing and technology, such as a database to track testing and training for grantees and staff. In addition, the Department of Justice is an important partner in the fight for fair housing, and the provisions of HR 476 providing for use of the national testing program results should be

clarified to ensure that DOJ, as well as state and local agencies, can bring enforcement actions based on those results.

H.R. 476 would also require annual reports from the Department on its enforcement testing activities. We would like to work with you on the parameters of reporting to ensure accountability while protecting the methodology and individual content of the tests as any law enforcement agency would do with its investigatory tools.

In addition, as we expand fair housing enforcement and testing across the country, it may be harmful to cap the amount funding for education and outreach to the public and housing providers or to limit the amount that can be dedicated to establishing new fair housing organizations. In order to expand fair housing to underserved areas and underserved groups, we need to support development of new fair housing organizations. Further, as new challenges arise, we may need to dedicate funding in ways we cannot anticipate at this time. For example, in HUD's FY2010 budget, the Department responded to the economic crisis by dedicating funding to educate homeowners about discriminatory housing and refinancing schemes. In addition, the Department allocated funding to allow consumer groups to acquire the skills and capacity to handle the discrimination aspects evident in so many of their complaints. This need could not have been fully anticipated five years ago. For those reasons, I ask that you provide the Department with maximum flexibility to respond to the circumstances at hand and not limit the amount of funding per initiative.

On the whole H.R. 476 corresponds to the Department's fair housing priorities. For example, the request in the Act that the Department promulgate regulations regarding affirmatively furthering fair housing is fully consistent with the work already undertaken to develop a rule.

The tools provided by H.R. 476 will advance the Department's enforcement of the nation's fair housing laws in the 21st Century.

This week, as the nation celebrates the birthday of Dr. Martin Luther King, we continue to carry out his dream to end housing discrimination. H.R. 476, if enacted, will advance us further, and we look forward to working with the subcommittee on this important legislation.

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January 19, 2010

The Honorable Al Green
United States House of Representatives
Washington, DC 20515

Dear Congressman Green,

On behalf of the Board and the 220 members of the National Fair Housing Alliance, I write in full support of the Housing Fairness Act (H.R. 476).

Given the gravity of the foreclosure crisis and prevalence of predatory lending in this country, it is imperative that Congress works to combat discrimination and ensure that fair housing and fair lending laws are being enforced. Your bill will go a long way to address these problems and to promote the Fair Housing Act's original dual purpose: eliminating housing discrimination and promoting integration.

Our *2009 Fair Housing Trends Report* estimates that at least 4 million instances of discrimination occur every year in rental and real estate markets alone against African Americans, Latinos, Asian Americans, and American Indians. This number does not include discrimination against persons with disabilities who, in the past few years, have filed more fair housing complaints than any other protected group. This figure also does not include rates of discrimination against families with children or on the basis of other protected classes including religion or gender; nor does it include cases of discrimination in mortgage lending or homeowners insurance.

HUD has reported that the number of complaints filed annually represents less than 1% of the acts of discrimination. There are many reasons for this: discrimination is not always blatant and may not be easily detectable. Most people would not know they had experienced discrimination unless they compared what happened to them to what happened to someone else. And, even when people do know they have experienced discrimination, research shows that they often do not file a complaint because they do not believe anything will be done about it. With your leadership, the Housing Fairness Act can help illuminate these issues and root out violators of the Fair Housing Act.

We appreciate your support of the bi-partisan National Commission on Fair Housing and Equal Opportunity, co-chaired by former HUD Secretaries Jack Kemp and Henry Cisneros, especially its hearing in Houston in 2008. After holding hearings across the country, the Commission released its report, *The Future of Fair Housing*, with substantive recommendations for policy, legislative and legal strategies to strengthen fair housing enforcement and education throughout the country.

One of the Commission's recommendations is strengthening the Fair Housing Initiatives Program (FHIP) at HUD, which is why introduction of your bill is so timely. The *Housing Fairness Act* is needed now more than ever to find solutions to detect discrimination and enforce the Fair Housing Act. As you know, however, this bill would not alter the Fair Housing Act in any way. Instead, the bill would authorize funding for several important provisions to combat housing discrimination including the FHIP program, a nationwide enforcement testing program in partnership with private fair housing agencies, and research examining the causes of housing discrimination and segregation and their effects on education, poverty and economic development.

We look forward to working with you in this nationwide fight against housing discrimination. Thank you for your continued leadership and dedication to this important issue.

Sincerely,

Shanna L. Smith
President and CEO

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