

Testimony
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INTRODUCTION

Good afternoon and thank you for this opportunity to discuss fair housing issues in the Gulf Coast after Hurricane Katrina. My name is Shanna L. Smith, and I am the President and CEO of the National Fair Housing Alliance.

The National Fair Housing Alliance (NFHA) is the only national civil rights organization focused solely on eliminating all forms of housing discrimination and promoting residential integration. Based in Washington, D.C., NFHA was founded in 1988 and is a consortium of more than 120 private, non-profit fair housing organizations and state and local civil rights agencies from throughout the United States. NFHA works to educate the public and the housing industry about their rights and obligations under fair housing laws, and it conducts investigations into discriminatory rental, real estate sales, mortgage lending and homeowners insurance practices throughout the nation.

Evidence of Race Discrimination: Within three weeks of Katrina striking the Gulf Coast, NFHA implemented a rental testing investigation to determine if racial discrimination was limiting or denying housing to families who were forced to evacuate their homes in New Orleans, LA, and Biloxi and Gulfport, MS. Initially, NFHA attempted testing in Louisiana and Mississippi but found no housing available. So NFHA focused its testing in five nearby states where so many of the evacuees were trying to relocate: Alabama, Georgia, Florida, Tennessee and Texas. Testing was conducted over the telephone using linguistic profiling controls. Several testers were actual people who had to evacuate because of Hurricane Katrina. The testers identified themselves as Katrina relocatees in their conversation with the apartment manager and also indicated that they were relocating to a city because of new employment or a transfer by their current employer. The tests were primarily conducted with African American and White tester teams; however, Latino and White tester teams were also used in Texas.

NFHA measured what the apartment seekers were told about unit availability (number of units and dates of availability), security deposit, rental rates, discounts for evacuees, and other terms and conditions of apartment leasing. In 66 percent of these tests – 43 of 65 instances – White callers were favored over African-American callers. This is an extremely high rate of discrimination. In several tests, NFHA found slight differences in information provided to the testers and decided to conduct on-site testing at five apartment complexes where the telephone tests alone were not conclusive. African American and White testers were flown to the cities and conducted in-person tests. In three of those five tests, or 60%, the African-Americans experienced discrimination. NFHA inserted a national origin (Latino) tester into the Texas

investigation and found fair housing violations as well. (See full report attached – *No Home for the Holidays: Report on Discrimination Against Hurricane Katrina Survivors.*)

Because of the high levels of discrimination uncovered between September and December 2005, NFHA decided to divert additional resources and continue Katrina-based rental testing. We are currently testing in three more states, and the initial review of the telephone tests in two of those states shows high rates of race discrimination. We are conducting follow-up, in-person tests at several apartment complexes.

Enforcement Actions: In December, NFHA released the results of these tests to the media and announced the filing of five administrative complaints with the United States Department of Housing and Urban Development (HUD) against apartment complexes located in Birmingham, AL, Gainesville, FL, and Dallas, TX. With the pending FEMA action to evict evacuees from hotels, NFHA's first goal is to alert apartment seekers about their fair housing rights as well as to put apartment managers and owners on notice that testing is underway and housing discrimination is a violation of federal law. NFHA's second goal is to utilize the HUD fair housing complaint process to hold accountable the housing providers who have discriminated on the basis of race and national origin. The third goal is to increase housing opportunities for everyone protected by the federal law and open up markets closed to people of color, families with children, immigrant families and people with disabilities.

Assistance to Fair Housing Agencies in the Gulf Coast: In addition to its testing efforts, NFHA is also working with its member fair housing groups in the Gulf Coast region to re-staff, rebuild and expand their capacity to help homeowners and others affected by the hurricanes. Our hurricane relief project, described in more detail below, focuses on fair lending and insurance issues that homeowners are facing as they attempt to repair or rebuild their homes. HUD's Office of Fair Housing and Equal Opportunity extended NFHA's contract with the Gulfport/Biloxi Fair Housing Center and provided funds to the Greater New Orleans Fair Housing Action Center through the state civil rights agency. In the immediate aftermath of the hurricanes, Fannie Mae donated funds to both fair housing centers. NFHA's membership donated \$30,000 to help pay staff at the two centers.

OVERVIEW OF THE INVESTIGATION

The waters have receded from the Gulf Coast in the aftermath of Hurricanes Katrina and Rita. The images of those fleeing New Orleans and those left behind during the hurricane reflected a significant and struggling African-American community. The media images provided graphic evidence of the destructive effects of residential segregation in the United States.

Illegal housing, lending and insurance discrimination and residential steering based on race and national origin created the housing segregation in New Orleans, the Gulf Coast and most other communities throughout the United States. In order to ascertain whether or not those forced to relocate because of the hurricanes would experience discrimination, NFHA conducted testing of rental housing providers in seventeen cities. Housing discrimination based upon race, color,

religion, sex, national origin, disability or familial status is illegal.¹ NFHA's investigation into rental housing practices following the hurricanes documented violations of the federal Fair Housing Act in five states to which many hurricane victims fled: Alabama, Georgia, Florida, Tennessee and Texas. Out of 65 tests of rental housing providers, African-Americans experienced discrimination in 43, or 66 percent, of the transactions. NFHA is currently conducting further testing to ascertain treatment of displaced people based on race, national origin, disability and family status.

In these tests, both testers explained that they were relocating because of Hurricane Katrina and that they were employed. The African American and White callers asked for the same size apartment and had the same number of people in their family, but the African American tester made more money than the White tester. In 43 of the 65 tests, Whites were given truthful information about the availability of units or the terms and conditions for securing an apartment. In contrast, information was withheld from or provided differently to their African-American counterparts. Many types of differential treatment were detected in the tests, but most fell into the following categories:

- Failure to tell African-Americans about available apartments;
- Failure to return telephone messages left by African Americans, but calls returned to Whites;
- Failure to provide information to African-American testers;
- Quoting higher rent prices or security deposits to African-American testers; and
- Offering special inducements or discounts to White renters.

To counteract these widespread findings of race discrimination against Hurricane Katrina survivors, NFHA has filed complaints alleging violations of the federal Fair Housing Act with the U.S. Department of Housing and Urban Development against five apartment complexes. More complaints based on the test results will be filed in the near future.

HURRICANE RELIEF PROJECT

As you may know, NFHA has extensive experience working with mortgage lenders and insurance companies. Most of our insurance relationships have resulted from successful HUD conciliations with State Farm and Allstate and successful litigation and settlements with Liberty Mutual, Travelers/Aetna, Prudential and others. NFHA provides fair lending consulting services to several lenders and mortgage servicers. Some of these corporations have stepped forward to assist NFHA by providing funding for NFHA's hurricane relief project.

¹ Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988, (42 U.S.C. § 3601 et. seq) prohibits discrimination in housing and housing related transactions based on race, color, religion, sex, national origin, disability or familial status. Its legislative history is entwined with the national experience of urban riots and civil unrest, and its passage was expedited in response to the assassination of Dr. Martin Luther King, Jr. and the release of the Kerner Commission Report that concluded that America was "moving toward two societies, one black, one white — separate and unequal." In enacting the Fair Housing Act, Congress' purpose was "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601 (2004). The ultimate purpose of the FHA was to create "truly integrated and balanced living patterns." 114 Cong. Rec. 3422 (1968).

NFHA is working with its member fair housing organizations in the Gulf Coast region to re-staff, rebuild and expand their capacity to help homeowners affected by the hurricanes. It will be critical to identify and challenge predatory lending schemes, home repair scams and insurance redlining practices as the Gulf Coast is rebuilt. NFHA and its local members will focus on fair housing questions or concerns that homeowners may have about their mortgages, their property/casualty insurance or their building/repair contractors. The funds we have raised will provide full time staff support at each fair housing center to help address lending and insurance issues. We are also providing support to our member groups' efforts to make sure that fair housing and residential integration are an integral part of rebuilding plans for Gulf Coast communities. We are pleased to have the financial support of a number of lender, insurance and philanthropic partners for this project and will be happy to report back to you in the future about the problems and concerns that our members encounter.

RAMIFICATIONS OF HOUSING DISCRIMINATION ON KATRINA SURVIVORS

Under normal market conditions, HUD-funded studies and rental audits by private non-profit fair housing agencies have documented high levels of discrimination against African-Americans, Latinos, Asian-Americans and people with disabilities. Given the devastating images of New Orleans and the Gulf Coast, NFHA is concerned that hurricane survivors who fall within these protected groups will face even higher levels of discrimination.

What is happening now in the face of the current crisis?

- What would be the impact of almost one million displaced households on the housing market nationwide?
- How many people of color, families with children, single female-headed households, and individuals with disabilities will experience discrimination as they search for new housing in the rental and real estate sales markets?
- How many renters and homeowners will experience discrimination when filing a claim with their insurance company?
- How many people will become victims of predatory lenders as they seek to obtain financing to repair or replace their homes?
- How much worse is the level of discrimination in housing markets inundated with those forced to evacuate the Gulf Coast areas?

There are an estimated 25,000 evacuees still located in hotel rooms paid for by the Federal Emergency Management Agency (FEMA),² but they will be evicted shortly. In addition to evacuees known to be in hotel rooms, an untold number of people are staying with friends and family or living in cars, tents or damaged homes. All are in need of housing, and a large number of them are African-American. As this population seeks a more permanent housing solution and contacts any number of housing providers, a sixty-six percent rate of discrimination could translate into hundreds of thousands of acts of discrimination against Katrina survivors.

² Mississippi Housing Development Authority, "Hurricane Katrina Homeowner's Assistance Grant." February 6, 2006.

FEDERAL, STATE, AND LOCAL GOVERNMENT PARTICIPATION

This is the most massive displacement of population this country has ever experienced. The people displaced by Hurricane Katrina face myriad problems, but finding a place to live for the immediate future and making decisions about long-term housing are among their most critical needs. Given a housing problem of this scope, it is imperative to apply the federal government's best housing expertise. HUD should be called upon to play an active role in the rebuilding of these devastated areas. Further, this situation has considerable racial dimensions, as highlighted by the news coverage in the immediate aftermath of Katrina's landfall and underscored by the results of NFHA's testing. This makes it equally imperative that fair housing be made a central component of all hurricane assistance and all rebuilding efforts.

HUD-FHEO: All federal, state, and local governments involved in the rebuilding efforts along the Coast must make fair housing a component of all housing, lending or grant programs. When it comes to housing, FEMA and the SBA have been out in front, making decisions of great impact. HUD, instead, should be called on to play more of a role.

With regard to housing discrimination, HUD's Office of Fair Housing and Equal Opportunity (FHEO) should utilize the intergovernmental cooperation agreement signed in the 1980s to make all federal agencies accountable to fair housing laws and regulations. FHEO should play a leading role in housing with FEMA. FHEO has already created and distributed brochures and a TV and radio media campaign to alert displaced persons about their fair housing rights. FHEO has also channeled some of its limited funds directly to private non-profit fair housing agencies to help people combat housing discrimination and to open all neighborhoods to displaced families. FEMA staff and volunteers should undergo fair housing training in order to make appropriate referrals to HUD in the event a relocater informs a FEMA employee/volunteer about trouble finding housing.

FHEO Funding: FHEO should be given additional funding in the supplemental appropriations process as well as the annual appropriations process in order to be able to assist more organizations, individuals, and families. Using the limited Fair Housing Initiatives Program (FHIP) funds to target the Gulf Coast will reduce funding nationwide to fight housing discrimination. Many evacuees live outside of the Gulf Coast region, and the other fair housing groups have to address the needs of evacuees as well as their regular complaint load. Clearly, Congress should provide FHEO with additional discretionary funds for the fair housing centers to target the Gulf Coast fair housing issues and provide additional funds for FHEO investigators to be able to conduct on-site investigations of complaints nationwide. Additional funds under FHIP in the amount of \$5 million will go a long way to support enforcement in the gulf region and in states where many evacuees are temporarily residing.

CDBG: \$11.5 billion dollars were appropriated to the Gulf Coast in Community Development Block Grant (CDBG) funds. These funds are sorely needed and will be a great help to the recovery effort. It is important to remember that, by federal statute, all states and municipalities receiving these funds must affirmatively further fair housing. CDBG recipients are legally obligated to work to end racial segregation and provide equal housing opportunities for

everyone. HUD's Office of Community Planning and Development (CPD) should be certain that recipients set aside a percentage of the CDBG funds for fair housing education and enforcement, and CPD should make it clear that fair housing activities need not be limited to the administrative expenditure but can also fall under program expenditures. FHEO and CPD should issue a joint letter to all CDBG recipients explaining the recipient's obligation to "affirmatively further fair housing" and offering suggestions on how the recipient can comply with that obligation.

Congress has shown a dedication to fair housing by stating in the statute that fair housing laws and regulations may not be waived in the use of the emergency CDBG funds. Unfortunately, the statute also requires that only up to 50% of the funds benefit low and moderate income people, much lower than the 70% required under the existing CDBG program. The law also states that the HUD Secretary has the discretion to waive even this low standard. We hope that Congress will work to see that this does not happen.

OTHER HOUSING CONCERNS

I would also like to address a few other housing concerns: the upcoming end to the moratorium on mortgage payments; using independent or public insurance adjusters; and assisting families with insurance issues.

End to mortgage moratorium: The moratorium on mortgage payments is ending in February. Fannie Mae and Freddie Mac should issue guidance on how lenders should proceed post-moratorium, giving homeowners maximum flexibility to develop repayment plans that take into account their current financial situations and the status of political decisions about the rebuilding process. The goal should be to make it possible for people to rebuild and return, regardless of their race, ethnicity, disability or income level. Further, government agencies with supervisory authority over lenders should issue similar guidance, including the federal banking regulatory agencies, HUD, the Veterans Administration, and the Rural Housing Service. Guidance should also be provided to lenders in the subprime market who fall outside the regulatory authority or scope of business of these agencies.

Independent adjusters: Congress should require that independent adjusters be used to evaluate damage assessments and insurance settlements in cases where both flood and other damage occurred. Reports from the field indicate that insurance company adjusters are often settling both types of claims, creating an inherent conflict of interest. The insurance company sells flood insurance for the federal government and sells homeowners policies under its brand name. The same company also settles claims under each policy. This creates a conflict of interest. The adjuster can push the higher costs to flood coverage and lower the amount the insurance company must pay from its reserves.

Independent Assessment Group: Weather forecasters create computer models to predict when and where a hurricane or serious thunderstorm will hit. Tornado paths and wind force can be predicted and calculated. NFHA suggests that Congress work with the National Academy of Sciences or another professional organization to create a software program capable of taking the data following a natural disaster to estimate the causation of damage to property in the path of

hurricanes, tornados or thunderstorms. It may be possible to model damage causation for earth quakes as well. For example, scientists could look at weather data and determine if roofs were blown off from the force of wind, and whether further damage followed because of rain or flooding or both. By providing a professional scientific assessment of what caused the damage—wind, rain, flood—a homeowner can work with an insurer to apportion what cost the insurer will cover based upon the policy. This is a very preliminary sketch for a computer damage assessment modeling program, but the concept could address fairness in paying claims, limit class action complaints because homeowners would have independent scientific information to calculate damage, eliminate the conflict of interest of using company adjusters, and reduce claims that public adjusters work for class action lawyers.

Future of Insurance in Designated Catastrophic Areas: Experience with past large scale natural disasters suggests that, down the road, there may be significant problems with insurance availability and affordability. Property owners may find their insurance policies cancelled or non-renewed, and companies have already begun filing for rate increases. Questions have also begun to be raised about the availability, cost, and eligibility requirements for flood insurance coverage. All of these issues will fall most heavily on the shoulders of people of modest means, and unless addressed, may jeopardize their ability to return to or remain in the Gulf Coast area. Congress can play a useful role in monitoring these developments and helping to devise solutions.

RECOMMENDATIONS

In order to address and combat discrimination against people attempting to find housing in the wake of the hurricanes, NFHA makes the following recommendations. Hurricanes are non-partisan; Congress should work to find a bipartisan solution that is beneficial to *all* hurricane evacuees and that follows the federal Fair Housing Act and other civil rights laws.

1. As all Gulf Coast cities and counties rebuild and create housing opportunities, they must make fair housing a basic component of each program. The redevelopment of communities that are integrated in terms of race, national origin, and economic class must be a priority. Indeed, the Fair Housing Act regulations approved in 1988 state that:

“It shall be unlawful because of race, color....to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate or tend to perpetuate segregated housing patterns or to discourage or obstruct choices in a community, neighborhood or development.” (§100.70)

2. Local fair housing organizations in Louisiana and Mississippi should receive discretionary funding from HUD, CDBG recipients and other entities for their education and enforcement programs. FHIP funds should be maintained for general fair housing education and enforcement. HUD discretionary funds and other non-FHIP resources should also be made available to fair housing organizations in other communities to which significant numbers of people displaced by the hurricanes have relocated, such as Birmingham and Mobile, Alabama, and Houston, Texas.

3. Federal, state and local government officials must strongly and publicly condemn housing discrimination and make fair housing a priority in appropriate program activities.
 - FEMA must make fair housing a component of the relief it is offering. Its trailer parks must not perpetuate residential segregation. FEMA is not exempt from federal, state or local fair housing laws. Housing for people with physical disabilities must be available. The FEMA trailers are not accessible. FEMA staff should be trained to recognize and refer people who experience housing discrimination to HUD and local fair housing agencies.
 - Municipalities that receive Community Development Block Grant funds are required to affirmatively further fair housing. HUD's Office of Community Development and Planning (CPD) and FHEO should send a directive to all CDBG recipients explaining this requirement and offering suggestions for complying by providing funding for both fair housing education and enforcement activities. CPD should explain that fair housing activities can come from the program and/or administrative categories.
 - CDBG Communities: CPD requires each CDBG recipient to conduct an Analysis of Impediments to Fair Housing and fund programs to remove those impediments. CPD and FHEO should target communities where large numbers of evacuees are residing and evaluate the fair housing programs being implemented to address housing discrimination issues identified in the analysis and insure these CDBG recipients are implementing program to help evacuees.
 - HUD should use discretionary funds for two targeted enforcement investigations: national rental enforcement testing project to uncover the nature and extent of housing discrimination against people displaced by the recent hurricanes and a second national enforcement project to identify predatory lending and repair/rebuilding schemes for homeowners in the Gulf Coast region.
 - As part of settlements with apartment complexes that have violated federal or state fair housing laws, FHEO should include in the conciliation agreements a set-aside of apartments for hurricane victims at below market rates, a requirement to accept Section 8 certificate holders who otherwise meet the application requirements, and funds to support a local radio and print advertising campaign using HUD public service announcements to promote compliance with the Fair Housing Act. HUD can make this part of the agreement it has with state and local agencies deemed FHAP agencies.
 - FHEO should target national media under FHIP to promote compliance with fair housing laws and educate consumers about their right to secure housing, homeowners insurance and mortgage loans and home repairs free from discrimination.
4. The Red Cross, United Way and other charitable organizations must ensure that their programs are administered without regard to race, religion, national origin, etc. These charities are not exempt from federal and local fair housing laws. The housing placement offered must not perpetuate segregation. Congress should seek accountability from the charities on how funds were spent.
5. Congress should explore creating a group of scientists to provide independent assessments of causation of property damage in natural disasters.

6. Fannie Mae and Freddie Mac, federal government agencies with mortgage lending programs, and the federal banking regulatory agencies should issue guidance on how lenders should proceed post-moratorium.

CONCLUSION

The aftermath of Hurricane Katrina demonstrated the devastating impact of social, racial and economic segregation on communities of color. The legacy of segregated neighborhoods continues to this day, where neighborhoods are redlined into zones bereft of economic activity, city and government services are nominal, businesses and grocery stores are few, and property values are stagnant. Segregation exacerbates economic disparities between Whites and people of color, reinforces institutionalized racism within the housing industry and entrenches attitudes about where people of certain races and ethnicities should live. Whites living in segregated communities lose the benefits of multi-cultural and multi-racial associations that the U.S. Supreme Court said are vital to people in its 1972 Fair Housing Act decision in Trafficante v. Metropolitan Life Insurance, Park Merced Apartments.

Professor Craig Colten of Louisiana State University attributes New Orleans' segregated communities, and the subsequent disproportionate suffering of impoverished African Americans, to the legacy of racial inequality and its parallel economic class divisions. Because only those with the highest incomes could afford to live in safer, more attractive areas, the neighborhoods with the fewest services were left to those with the least means. The resulting drain on the tax base left an overall infrastructure weakened and city administrators unable to plan effectively for their citizens.³

The destruction wrought by Hurricane Katrina illuminated the hazards of both racial and economic segregation in our communities and the crucial responsibility that the housing industry has in ensuring equal treatment and promoting integrated neighborhoods. Not only do integrated neighborhoods create a more diverse community and reduce the concentration of poverty in a city, they also sustain better schools, more amenities, a healthy infrastructure, a stronger tax base and a broader mix of businesses. Neighborhood integration provides everyone with the opportunity to have multi-cultural and multi-racial associations.

1,330 people lost their lives as a result of Hurricane Katrina. It also displaced millions of residents, flooded 80 percent of New Orleans and caused \$96 billion in damage. In September, FEMA estimated that 300,000 families were homeless and that 200,000 of them would require government housing as a result of Hurricane Katrina. In addition, surveys of evacuees in Houston indicated that two-thirds did not have available credit or insurance, most family incomes were less than \$20,000 and half had children under 18.⁴

In areas affected by Katrina and throughout the country, it is crucial for federal, state and local agencies to ensure that the federal Fair Housing Act is upheld for all residents in the process of securing safe and decent housing. Additional funding must be made available to promote

³ National Public Radio, *Professor Craig Colten on Race, Poverty and Katrina*, September 2, 2005.

⁴ "Housing the Displaced is Rife with Delays," *The Washington Post*, September 23, 2005.

compliance with fair housing laws and educate consumers about their right to secure housing, homeowners insurance and mortgage loans free from discrimination. It also falls upon the housing and real estate industries to support and advance integration in our neighborhoods so that all citizens can gain equal access to wealth, stability and reliance on our country's social safety net.