FIGHTING DISCRIMINATION AGAINST THE DISABLED AND MINORITIES THROUGH FAIR HOUSING ENFORCEMENT

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON
HOUSING AND COMMUNITY OPPORTUNITY

AND THE

SUBCOMMITTE ON
OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

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FIGHTING DISCRIMINATION AGAINST THE DISABLED AND MINORITIES THROUGH FAIR HOUSING ENFORCEMENT

TUESDAY, JUNE 25, 2002

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
AND SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC.

The subcommittees met, pursuant to notice, at 2 p.m., in room 2129, Rayburn House Office Building, Hon. Sue Kelly [chair of the Subcommittee on Oversight and Investigations] presiding.

Present: Representatives Kelly, Gary G. Miller of California, Tiberi, Frank, Waters, Gutierrez, Velazquez, Watt of North Carolina, Lee, Inslee, Schakowsky, Moore, Jones of Ohio, and Clay.

Ex officio present: Representatives Oxley and LaFalce.

Chairman KELLY. This joint hearing of the Subcommittee on Oversight and Investigations and the Subcommittee on Housing and Community Opportunity will come to order.

I want to thank all Members of Congress that are present today. There will be others. We have a busy day. Without objection, all members present will participate fully in the hearing, and all opening statements and questions will be made part of the official hearing record.

Beyond the issue of availability of affordable housing is the ability of the disabled and minorities to access what housing is currently available. Unfortunately, discrimination continues to be a disturbing problem in our nation, which is very apparent in housing.

The disabled have a particularly hard time since the wrong housing reduces their ability to function even in the confines of their own homes. As a nation, we have recognized these problems and have enacted laws which created agencies dedicated to stopping housing discrimination and ensuring more homes are accessible to the disabled.

It is for this reason that I have become very frustrated when I read reports which state that these laws are not being enforced and the agencies created to investigate and correct these wrongs have been failing in their jobs.

One issue I continually hear about when I am in New York is the desperate need for housing for people with disabilities. We have

adults who desperately want to get out on their own, to hold jobs, pay taxes, and simply have no options for housing.

Think about people of slight or profound disability even, and the courage that it takes for them to enter the world on their own. That desire to become an active part of society must not be thwarted by a lack of available affordable housing.

It is my hope that with today's hearing we can all gain a better understanding of what the issues are which face the disabled and minorities seeking homes and better living conditions within those homes.

We will discuss why efforts to enforce fair housing laws have failed, and what is and can be done to rectify the situation. But, most of all, I hope that we can agree to work together to renew our efforts to ultimately solve this problem.

There must be zero tolerance for discrimination against the disabled and minorities. The need for clean, safe, affordable housing for minorities and the disabled has never been greater. Addressing this housing shortage and fighting discrimination must be a top priority in our nation's housing policy.

I now want to ask unanimous consent to insert in the record the opening statement of the co-chairman, whose subcommittee is a part of this hearing today, and that is Congressman Marge Roukema, Chairman of the Subcommittee on Housing and Community Opportunity.

[The prepared statement of Hon. Marge Roukema can be found on page 54 in the appendix.]

Ms. Roukema is going to try to be with us here today, but she is not here for this opening statement. So I would like unanimous consent to place it into the record. And, with that, I will turn now to my friend from Massachusetts, Mr. Frank, for his opening statement.

[The prepared statement of Hon. Sue W. Kelly can be found on page 56 in the appendix.]

Mr. FRANK. Thank you, Madam Chair. I am pleased that a request which we made for this hearing was agreed to. And I am pleased that we have a chance to address this very important subject.

There is a great myth that plagues our politics. Whenever we try to enact legislation to protect people against unfair discrimination, the opponents of that legislation conjure up all sorts of horrors.

They paint a picture of a world in which innocent employers, building owners, rental agents, et cetera, are at the mercy of this gaggle of vicious potential plaintiffs and are often mistreated by overbearing enforcement agents.

In fact, as we know, the great scandal of anti-discrimination laws is that they are substantially underenforced. The problem with laws against discrimination in every case is that it is hard to enforce them.

It is hard to enforce them. You get a transition period. There is a practice of people being bigoted. A societal consensus finally gets to the point where we can outlaw that, and for the first couple of years you catch a few of the bigots because they are too dumb to disguise their bigotry.

But after awhile the warriors may, those who want to do this, figure it out. And we then deal with a subtler form of discrimination, subtler only in its expression, not in the terrible impact it has on its victims.

And because under American law, the burden of proof is on those who would seek to establish that things have been done wrong because people are careful not to say incriminating things in the presence of witnesses or write them down, we find ourselves in a very difficult situation when we try to enforce the law.

I will say, for those who raise questions about affirmative action, the major role of affirmative action in many cases is not to achieve some foreordained result, but because it can be an important evidentiary tool, if in fact people have an employment practice, or a residential bias, or have sold houses to a population that is substantially different than the underlying population; if people who suffer from disabilities, or who are a particular ethnic group are clearly excluded from a particular place. That is a piece of evidence.

At any rate, because it is so hard to enforce, it becomes very important for us to do this kind of oversight. It becomes very important for us to focus on this. It also is the case that because enforcement is so hard, it is expensive. And we have not in general funded those agencies that are charged with protecting people against discrimination at nearly the level they ought to be.

They are formal law enforcement. And if we are serious about the law that says you should not deny someone a place to live because of her disability, or his color, or children, then we ought to put our money where our mouth is and provide the enforcement entities. And we do not do that nearly enough.

So that is another important piece of this that we have to do. We have got to make sure that people are adequately financed so they can in fact carry out their responsibilities in this area.

The purpose of this hearing is to get some progress reports. But I know what we will find out is that we have underenforced these laws, as we have underenforced all anti-discrimination laws. It is not a partisan matter; it is an institutional bias.

The last point I would make—and I assume we will see some numbers on this—one of the unfortunate facts about any anti-discrimination law I have ever seen is that the backlog of complaints is excessive; that people file a complaint and have to wait months, over a year.

That simply is intolerable. That is a failure of will. And the basic point that we need to get across is we have not discharged our moral obligation to our fellow citizens to protect them against unfair prejudice just by passing a law.

Passing the law is a necessary first step. But if all we do is pass the law, and do not provide the vigilance, and the resources, and the energy to enforce it, then we have done very little to protect people.

So I am glad that we have this hearing. And I look forward to demonstrating here today our commitment to making sure that this law against discrimination and housing is in fact enforced.

Chairman KELLY. Thank you very much, Mr. Frank.

Ms. Velazquez, I understand you have an opening statement.

Ms. VELAZQUEZ. Thank you. And, first, I would like to thank Chairwomen Roukema and Kelly, and ranking members, Frank and Gutierrez, for convening this hearing today. The subject of discrimination involved public and private housing markets. It is one that needs to be addressed, and I appreciate the efforts of this body to do so.

As our Federal housing policy has evolved over the years, a number of programs and initiatives have been implemented that are intended to ensure that not only do families have safe, affordable places to call home, but that they are in neighborhoods that we will all feel comfortable raising our children in.

Hope VI was specifically created with this intent. Furthermore, the 1998 public housing reform law espoused the theory of deconcentration of poverty. Unfortunately, the impact of these theories have not been what was hoped; 4.9 million American families have worst case housing needs.

These are families who pay more than 50 percent of their income for rent, or live in severely substandard housing. Last year, we heard from several witness who believed that the number of families in such situations might even be greater than the 4.9 million cited in HUD's most recent report on that topic.

Even more alarming is the fact that the number of families who pay more than 50 percent of their income in rent is rapidly increasing in urban areas and among working minority families. These are many of the same people for whom our educational system is failing. This is especially hard on the children.

When you add the burdens of an unstable housing situation, it is little wonder that these children are being left further behind with each passing year. Yet, the administration has paid little attention to the office charged with reversing these trends.

Eighteen months into the President's term, the position of Assistant Secretary for Housing—for Fair Housing and Equal Opportunity—remains unfilled. In fact, the current nominee, Ms. Carolyn Peoples, was only submitted by the President in May.

Furthermore, she has had very limited experience administering fair housing laws. I take this to be a troubling indication of the low level of importance placed on these issues by the administration, one that I hope will soon be reversed.

This void has left us with a backlog of fair housing complaints that members of our communities tell us take far longer than the statutorily required deadline of 100 days to address.

I would be interested in hearing how many complaints are currently pending we fulfill, and how long it typically takes to process them. I also look forward to learning what specific specs HUD intends to take to improve its record on this score.

I look forward to the testimony of all of our witnesses, and hope that we can begin to bring forward some practical solutions to reversing the trends of minorities lagging behind the Nation in almost statistical analysis of housing affordability. Thank you, Ms. Chairwoman.

Chairman KELLY. Thank you, Ms. Velazquez.

Mr. Miller, do you have an opening statement?

Mr. GARY G. MILLER OF CALIFORNIA. Well, thank you, Madam Chair. I am just very pleased that we are having this hearing. I think some things might be blown out of perspective.

I have to agree that there has been a lack of enforcement on certain programs and policies, and especially when it comes to disabled and minorities in the past. But I think that is somewhat in the past.

I think the new administration is making every attempt to remove the problems that we faced in the past. So I do not know that it is necessarily a problem that requires new legislation.

I think it is a problem that needs focusing upon. And I think that is what we are doing in this hearing. And I think that if we can get the dialog going with the administration—and I know how the President feels strongly about this issue—and then, that impetus is put toward enforcement, I think the problems are going to be resolved.

But it is a timely hearing. And it is a timely issue that needs to be dealt with. And, again, like I said, I think the issue is acknowledgement there has been a problem through lack of oversight and lack of enforcement. And I am encouraged that we are taking those steps. And I am looking forward to hearing the gentlemen speak to us today. I yield back.

Mr. FRANK. If I could just have 30 seconds. I neglected—and maybe you should cover it—but it is impossible to convene on this subject without noting the enormous loss in the death of Justin Dart. And I should have mentioned that at the outset.

But Justin Dart was such a dedicated pioneer on behalf of this that, as we convene here, shortly after his death, I just thought it was important to take note of that.

Chairman KELLY. Thank you for reminding all of us.

Mr. Gutierrez.

Mr. GUTIERREZ. Good afternoon, Chairman Roukema, and Chairman Kelly, and ranking member Frank.

It has been more than three decades since the passage of the Federal Housing Act, and we can still see, hear, and experience housing discrimination almost the same way we did more than 30 years ago.

In the year 2000, Federal agencies reported more than 22,000 complaints. I think it is a telltale sign that out of these numerous complaints, race was the most commonly reported discrimination, followed by disability and familial status.

Last year, the number of complaints increased approximately 23,500, but these numbers do not tell the whole story. HUD estimates that more than 2 million incidents of housing discrimination occur each year.

It has been documented that victims of housing-related discrimination or hate activity feel isolated, afraid, shocked, and vulnerable. It is typical for these victims to decide not to report their case because they may fear retaliation, mistrust of law enforcement, experience cultural language barriers, or just fear deportation.

Our nation's heartland seems to be sovereignly segregated according to the best information available. The cities of Chicago, Detroit, Milwaukee, Cleveland, St. Louis, all ranked among the ten metropolitan areas with the most black/white segregation.

At the same time, Hispanics in Chicago, Cleveland, and Milwaukee live in more pronounced segregation than Latinos in any other major metropolis. In fact, segregation for Latinos is greater in Chicago than in any other major metropolitan region in the country.

Let us remember the sad, but direct, correlation between segregation and poor schools, which, in turn, have fewer resources for Latino and black children who attend them. Research shows that economic differences alone cannot explain the highly segregated pattern of housing choices because serious racial discrimination continues to exist within each economic group.

You can make money. Does it mean that you necessarily will live in a segregated community—I mean a desegregated community?

I think the majority of us here today might agree that one of the most important reasons for the sluggish movement toward diversity in the housing is what looks to be racist tendencies. Studies show that even people who work hard, maintain good credit, and have strong references are still being discriminated because of the color of their skin, because they have small children, or because they suffer from a disability.

Fair housing efforts have long been underfunded and undervalued. At the same time, the economic and social costs of housing discrimination, and segregated housing patterns continue to be overwhelming.

It is time for Congress, for all of us here today, to allocate additional funds to HUD's Office of Fair Housing and Equal Opportunity in an amount sufficient so that this office can process all housing discrimination complaints in a timely and effective manner; that is in 100 days, or preferably less, as it should be at HUD, and in accordance with the Fair Housing Act, and not at a 500 day pace that we currently have, and equality in housing doesn't happen in a vacuum.

It is there for each of us to see, feel, hear, bite, or ignore it, profit, or suffer from it, tolerate it, initiate it, and sometimes even die because of it. I look forward to hearing all of the testimonies this afternoon.

Chairman KELLY. Thank you very much, Mr. Gutierrez. Ms. Lee.

Ms. LEE. Thank you, Madam Chair. I would like to just ask permission to put my full statement into the record, and just make a couple of comments.

Chairman KELLY. So granted, no objection.

Ms. LEE. I would like for your unanimous consent. Thank you.

I just want to thank you, Chairwoman Roukema, and our ranking member, Mr. Frank, for holding this very important hearing. Housing, as many of us continue to say, should be really a basic right of every human being.

And, therefore, it is extremely important that we have an honest and a fair system that works to improve the lives of everyone regardless of their race, nationality, disability, age, sex, sexual orientation, or religion. And so, this is an extremely important hearing. Just this past weekend I had a town meeting in my district, actually, in Oakland, on housing.

And, of course, issues with regard to discrimination came up. And I think that we need to understand also clearly the commit-

ment of HUD, in terms of its priority in tackling the issues with regard to fair housing enforcement; but also what is going on with this vacancy with regard to the Assistant Secretary for Fair Housing and Employment Opportunity and find out the status of that, and what has been the problem in this slow movement in terms of filling this vacancy.

So, thank you again, Madam Chair, for the hearing, and I appreciate being able to submit my full record.

[The prepared statement of Hon. Barbara Lee can be found on page 70 in the appendix.]

Chairman KELLY. Thank you very much, Ms. Lee. If there are no further opening statements, I will introduce our first witness, Mr. Kenneth Marcus, the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity at HUD.

Mr. Marcus, we thank you for testifying before us today, and I welcome you on behalf of the committees. Without objection, your written statements and any attachments will be made part of the record.

You will now be recognized for a 5-minute summary of your testimony. Before you begin, let me explain that we have lights on the ends of the table. Those lights are the indicators for the 5 minute period.

The green light means that you will have 4 minutes in which to speak; the yellow light means you have 1 minute; the red light means that you are out of time. I tend to try to give people the ability to finish their closing sentence when that red light comes on.

But I do feel that since we have your written testimony, it will be and is a part of our record, we really feel that you probably can sum this up in 5 minutes, and we ask that you do so.

That being said, please proceed, Mr. Marcus, and thank you for being here.

STATEMENT OF KENNETH L. MARCUS, GENERAL DEPUTY ASSISTANT SECRETARY FOR FAIR HOUSING AND EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. MARCUS. Thank you; thank you, Chairman Kelly; thank you, members of the committee.

My name is Kenneth L. Marcus, and I am the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity at the U.S. Department of Housing and Urban Development. I am honored to testify before you today on HUD's efforts to enforce those laws that protect the right of every American including minorities and persons with disabilities to freely choose where they will live.

No one should be precluded from seeking the house of their choice, or purchasing the house of their dreams because of their race, color, religion, national origin, sex, familial status, or disability.

Secretary Mel Martinez has repeatedly emphasized that aggressive enforcement of the Fair Housing Act, and the other civil rights acts regarding housing, will be a high priority of this department during this administration. HUD and the State and local agencies

that enforce substantially equivalent laws receive an average of 10,000 complaints a year alleging Fair Housing Act violations.

The most meaningful contribution HUD can make to the fight against housing discrimination is the prompt and successful resolution of complaints from individuals who have come forward to us to report claims of discrimination. There have been comments already this afternoon concerning the speed with which we resolve complaints.

We, at HUD, do believe that we must improve our track record with respect to the enforcement of the Federal fair housing laws, and with respect to the timing within which we complete the resolution of these cases.

During previous years, the Department developed a bad reputation for its delays in processing Fair Housing Act cases, to the extent that even today, many of the Department's constituents express reluctance to file complaints with the Department out of a belief that nothing will come out of it.

At the end of fiscal year 2000, the percentage of fair housing cases remaining open past the statutory deadline of 100 days was well over 80 percent. At the end of the first fiscal year of the Bush administration, fiscal year 2001, we had reduced the aged-case inventory to 37.1 percent.

This was the first time since the passage of the Fair Housing Act Amendments Act of 1988 that HUD's aged-case backlog had dropped below 50 percent. HUD is also stepping up its efforts to combat lending discrimination. The Department will soon provide a contract for an enforcement project that targets mortgage lending discrimination generally and predatory lending, in particular.

In addition, this year's Fair Housing Initiatives Program encourages grant proposals from fair housing groups, who among their activities, place a special emphasis on educating and enforcing the Fair Housing Act against predatory lending practices.

In addition, the Department is focused on a wide variety of other priorities and initiatives. For instance, the Department, through the FHIP program, is focusing attention on problems faced by persons within the Southwest border area, which may include predatory lending and other discriminatory lending activities.

In addition, through the FHIP program, and in other ways, we are also working to implement the Bush administration's commitment to tapping the potential of faith-based and grass roots organizations by partnering them with the traditional fair housing organizations.

HUD has a great responsibility to make sure that its own programs are accessible to people with disabilities; and, also to safeguard their rights because a disproportionate share of people with disabilities rely on federally assisted housing.

Even within the last several months, in the District of Columbia and Boston alone, we have increased the number of accessible housing units for a person with a disability by over 1200, and entered into the voluntary compliance agreements that will increase the number by over 1200 units.

In addition, we are working to increase the number of accessible private housing opportunities that are available to persons with disabilities. For instance, HUD has awarded over two-and-a-half

million dollars to KPMG to develop and conduct training and technical guidance on the Fair Housing Act accessibility requirements for persons engaged in designing, approving, and building multifamily housing.

As part of this project, KPMG will set up resource centers in different parts of the country where architects, builders, and others can obtain technical guidance on specific design questions.

In addition to making sure that new housing is built correctly in the first place, and taking action against those housing providers who have failed to comply with the provisions of the Fair Housing Act, HUD is also enforcing the Fair Housing Act against those housing providers who refuse to make reasonable and necessary allowances in their building operation for persons with a disability.

In closing, we believe that all of these efforts, and others that I have discussed in my written remarks, when combined with appropriate enforcement actions and timely processing of complaints will enable the Department and our nation to strike a decisive blow in the fight against discrimination.

We look forward to working with industry, community leaders, local governments, fair housing advocates, and Congress, to bring everyone in America over the threshold to equal opportunity and justice.

This concludes my formal statement. I am happy to answer questions.

[The prepared statement of Hon. Kenneth L. Marcus can be found on page 87 in the appendix.]

Chairman KELLY. Thank you very much, Mr. Marcus. We appreciate your statement. I have read reports that have warned about the problems that the HUD 20/20 Management Reform Program caused at HUD.

Is correcting the problems you have found at HUD, as a result of the 20/20 Management Reform Program; is that one of the largest problems that HUD faces now?

Is that one of your biggest problems right now?

Mr. MARCUS. We certainly have a number of management problems in the Department. And I think some of them at least were mentioned in the report to which you allude. There were many problems that HUD faced over the years with respect to management it is hard really to list them.

Certainly, the question of how best to deploy the community builders, which I think may be one of the specific issues discussed in that report, has been a huge challenge for the Department, and is one of the areas in which the Department has focused a great deal of resources.

Chairman KELLY. Is that part of the 20/20 Management Reform?

Mr. MARCUS. Yes, I think that is one of the areas.

Chairman KELLY. What else in that 20/20 reform is difficult for you right now?

What are you needing to change to help correct the situation?

Mr. MARCUS. I think that the greatest problems have involved the distribution or misdistribution of staffing resources and personnel, and ensuring that we can retain appropriate lines of reporting authority within the Department that had been redistributed, and to make sure that the program areas including FHEO, are able

to best marshall the resources within the Department in order to achieve our mission.

Chairman KELLY. During the downsizing at HUD, under Secretary Cuomo, the Office of Fair Housing and Equal Opportunity was absolutely decimated. They lost money; they lost many experienced staff; staff resigned; they took early retirement.

I would like to know if this is, in fact, true because it is what I have read. And I would like to know what you are doing to rectify that problem because it seems to me that right now this is what this hearing is about. It is about that office, and it is being effective at doing its job.

Mr. MARCUS. There is no question that we lost a large number of incredibly talented people during that period and through that process. And there is no question that that loss is going to be very difficult to deal with. Many of the most vital, engaged, committed, and talented people we had unfortunately left the Department at that time.

We are dealing with it in a number of different ways. One way that we are dealing with it, of course, is through the redeployment of the community builders. The Office of Fair Housing has already employed at least a handful of very talented, experienced fair housing professionals through that process.

And we will be getting at least another couple of dozen by the end of this fiscal year, who are already becoming involved in our compliance and enforcement efforts. In addition, we have focused on the notion of succession and are planning to deal with the loss of experienced people. By bringing in interns and others, we're attempting to remedy the problems created by the loss of personnel.

I am happy to report that in my several months since joining HUD, I have found that we have a number of extraordinarily talented and committed professional staff within the Office of Fair Housing and Equal Opportunity, who are doing a tremendous amount of work to deal with the sorts of problems to which you refer.

Chairman KELLY. I want to go back to that just a little bit because it seems to me that what you just stated was that you did not feel that given the resignations and the lack of money that the Fair Housing and Equal Opportunity Office could continue to really function properly. It was not functioning properly, and you are taking steps now.

I just want to be clear on the record. You are now taking steps that are going to rectify the situation that was created under Secretary Cuomo, is that correct?

Mr. MARCUS. Let me say that we faced an enormous number of challenges when we came in, and we have taken a number of measures to try and deal with them.

The redeployment of the community builders has been a bold move forward, I believe, to strengthen fair housing, enforcement and compliance through the use of personnel. And we are attempting in various ways to change management and administrative procedures also to deal with those problems. And I believe that we will do so.

Chairman KELLY. I want to go back to that one more time. From what I read in your testimony, and in testimony of others, the part-

nership between HUD and the fair housing agencies that were getting the fair housing initiatives program funds started to deteriorate in 1998. And they have just gotten worse and worse. I want to know how this happened, and I want to know what is being done to resolve that.

Mr. MARCUS. There is no question that the relationship with the Fair Housing Initiatives Program recipients has deteriorated a great deal over the last few years. I was not, of course, here in 1998, so others can give you a better explanation of the exact date.

But I understand that it is approximately that number of years that the trust and relationship with those organizations has become strained and difficult. Let me say that I have done everything that I can to work as closely as possible with those organizations.

I believe there are across the country, and in this very hearing room, some extraordinarily dedicated professionals through the FHIP program, who are working very hard with us to implement our programs throughout the country.

I have tried to establish as open a door policy as I can, both with regular policy meetings with FHIP recipients, and also with meetings with myself and with staff to try and get a better understanding of how we can strengthen that relationship, and to repair the loss of trust that had evidently developed in prior years.

Chairman KELLY. Thank you very much. I see I'm out of time. We will go now to Mr. Frank.

Mr. FRANK. Mr. Marcus, one of the rules we have here that I don't like, and I have in the past myself, when I was a chair, was the administration witness always testifies first. And that's a problem, because sometimes what I want to ask people about are what other people think.

So I have had a chance to read some of the other testimony. And I wonder if you could respond to a couple of points:

One is that HUD has imposed restrictions with regard to the form which has to be used, and what the Lawyers Committee for Civil Rights asserts in this statement of Arnwine is that there is a website that has forms, and that they have had cases where people have filled out the form on the website, turned it in, and have been told that was the wrong form; and in one case at least that led to a year's delay intervening so the case could not be filed at all.

And is there a strict requirement—I guess it is two part: Is there some strict requirement as to form? I would say with victims of discrimination, who may not always be the most sophisticated, I would hope we would have some flexibility.

And, second, and even more disturbing, is there a form on the website that is out there that if people use it, it does not count? Could you respond to that?

Mr. MARCUS. I would be delighted to respond to it, because I think the more that we can do to educate people as to their options for coming to us the better because we are in any number of different——

Mr. FRANK. All right. Mr. Marcus, let's be specific with what I just asked you.

Is there a very specific form, and have different versions of the form that would not be accepted been available recently?

Mr. MARCUS. No, Congressman. There are several different forms there. We have a form available on the website. We will be happy to look at it to see if we can simplify it. One way is to use the website. Another way is to use——

Mr. FRANK. No, excuse me, but maybe I was not clear. I was not suggesting that that form was too complicated. I was saying that we have an assertion that people who use the form on the website were then told that was the wrong form. I thought I was clearer than that. I was not talking about complications. Are you aware that that may have happened?

Mr. MARCUS. I am not aware, and I have not yet read the testimony, but let me say this. We have tried to communicate throughout the field that if anyone comes to us with anything that even remotely sounds like it may be a claim under the Fair Housing Act, we will look behind the form with which they come to us.

It could be oral, it could be written. They could fill out a form on the website. They could not fill it out if they even think they might——

Mr. FRANK. Well, that is what I would hope would happen. And I would hope then maybe if we got these specific examples submitted to you, you could address them, and we could figure out what the groups, the way in which we could avoid that.

Let me ask you then about the budget. What was the budget in the last year of the Clinton administration?

Mr. MARCUS. It was approximately $23 million and 22—$24 million for the FHIP program, $22 million for the FHAP program.

Mr. FRANK. Forty-six total. What's it this year? What was requested for this year—for the current, for the next fiscal year, for 2003?

Mr. MARCUS. We have requested level funding.

Mr. FRANK. Are the number of complaints going up?

Mr. MARCUS. Well, that is a difficult question, Congressman. We have fewer complaints so far this year, although this is a seasonal matter. But the fact is we have somewhat fewer complaints this year, even for this time in prior years.

So we are going down a little bit in complaints. But we think that as we increase education and outreach, it is hard to say, we might be back.

Mr. FRANK. I must say, I think level funding is inappropriate, and this is part of the problem. I think the funding was too low, in the first place. And only the level funded, I don't think gives anybody an impression that this is something we are very serious about. And I include in this both branches, legislative and executive.

The other assertion that was troubling that I hope you would be able to address would be the notion that in cutting down the backlog there has been a kind of emphasis on speed and cutting down the backlog; and that cases in the backlog have not gotten the full individual treatment that they would have gotten if they were not in the backlog.

Would you respond to that accusation?

Mr. MARCUS. Yes, Congressman Frank. And I would like to because I think that is a very important point.

I have considered the reduction of our aged-case backlog to be the singlemost important administrative or managerial problem that we have right now, and we have given it a great deal of focus.

But I have also, every time I have discussed with staff the problem of aged-case backlog resolution, tried to emphasize that we are not simply in the business of resolving cases within 100 days. We are in the business of ensuring that persons claims are resolved appropriately, and that we are reducing discrimination in the United States.

Now trying to make sure that that happens, and that procedures are in place to ensure that aged-case backlog resolution does not come at the expense of a thorough resolution of the complaints is a difficult matter that we have looked at in a few different ways.

One thing that I have done is to try to ensure that we are developing goals and timetables which, while ambitious, are attainable. I would have liked, for instance, to be able to reduce our aged-case backlog over the course of this year down not just to 35 percent, but to 25, or 20 percent.

But in speaking with staff, I have been convinced that there is a certain point to which we can reduce it this year consistent with a complete and thorough investigation; and that if we push people to go further, they might not meet those goals.

But they might do so only at the expense of a thorough investigation. So I have tried to make sure to push people only as far as we can legitimately do so, consistent with a thorough investigation.

We have also tried to make sure that where there is any indication from anyone that an individual case has not gotten the care and attention that it deserves including cases that may have been dismissed or determined not to be a basis for reasonable cause determination, that we go back and look at it to see whether in fact we did not do it right because of the rush to resolution.

So this is a problem that we deal with both in terms of developing priorities and objectives, and also in terms of dealing with specific individual cases.

Chairman KELLY. Thank you very much. Ms. Velazquez, have you questions?

Ms. VELAZQUEZ. Thank you, Chairwoman.

Mr. Marcus, I heard that you are making reference three times for the record that this office under Andrew Cuomo was practically dismantled. And maybe that explains why I endorse, and I am on the record supporting Carl McCall for Governor in New York.

But, putting that aside, does that also explain the fact that it took that administration 18 months to submit Ms. Peoples' name for that position?

Mr. MARCUS. Let me try to hit on both parts of that. First, my concern in discussing the problems that we have faced has really been to try and identify what the challenges are, as opposed to assessing blame. Because we certainly have our share of challenges.

As for the nomination of Mrs. Peoples, of course, I have not personally been involved in that. I understand that the emphasis has been on finding the right person, even if it takes a little bit longer.

And based on my assessment, and that of everyone that I have talked to who has met with her, I think that there is a general con-

sensus that Mrs. Peoples will be an assistant secretary worth waiting for.

Ms. VELAZQUEZ. Well, I have my concerns in terms of the fact that she has very limited experience at administering fair housing laws. I just would like to ask you, Mr. Marcus, what assurances can HUD give this committee that Ms. Peoples and other seniors at HUD will address the concerns of fair housing, civil rights, and disability advocates to regain public confidence in the enforcement of civil rights laws protecting minorities and people with disabilities?

Mr. MARCUS. Well, you know, there is what we can say to try and provide assurances; and then, in the end, there is what we do, and what we can do.

In terms of what we can say, I am proud to be able to tell you that from when I first met Secretary Mel Martinez, he has emphasized to me, as he has emphasized to other members of his staff, the commitment of this administration and this Department, not just to the enforcement, but to the aggressive enforcement of the Fair Housing Act.

And everything that I have seen from the attitudes of everyone in the Department, and certainly the attitude that I share, is that the Fair Housing Act must be aggressively enforced in this country.

Now we have been here a short time, but I think that we have already at least made progress in terms of dealing with a substantial aged-case backlog and on increased the number of charges last year. And I think in the end it will be a question of whether we are able to increase with that record.

Ms. VELAZQUEZ. Thank you. I would like to read from page 2 of your testimony. At the bottom, when you made reference to the study title, "All Other Things Being Equal," prepared testing study of mortgage lending institutions, you said, "The study revealed that while the majority of mortgage lending transactions do not involve discrimination, blacks and Hispanics in the market studied tended to receive less information, less assistance, and worse terms."

Mr. Marcus, if this is not discrimination, what do you call this?

Mr. MARCUS. It looks like discrimination to me. That's what I would call it. Perhaps the language needs a little clarification.

And let me say what I intended to emphasize in this language is that when we looked at treatment of different persons in Chicago and Los Angeles at the pre-application stage of mortgage lending, what we found is that for the most part, most African-Americans and Hispanics received the same information, assistance, terms, and treatment as did white people, mostly the same.

However, there was a statistically significant number of African-Americans and Hispanics who received worse treatment at that stage. And that looks like differential treatment to me.

Ms. VELAZQUEZ. Mr. Marcus, what specific steps will HUD take to reverse this trend?

Mr. MARCUS. Well, that is an excellent question, and we are doing a few things. The first and most focused thing that we are doing in response to this is developing a special contract that we will have competitively bid out for a fair housing organization, or organizations which can focus on the problems of mortgage lending discrimination, to go out, and to help us with enforcement, and per-

haps also education and outreach, to ensure that where there are people committing this sort of discrimination, we will be able to find them, and make sure that we cure the problem.

But we are using both HUD resources, as well as the FHIP process, to ensure that there is a new and increased emphasis on mortgage lending discrimination.

Ms. VELAZQUEZ. Thank you, Ms. Chairwoman.

Chairman KELLY. Thank you very much. I would like a bit of clarification, Mr. Marcus. You did this study referred to, that Ms. Velazquez referred to, on page 2 in your testimony, with regard to blacks and Hispanics and mortgage lending.

What emphasis are you placing on people with disabilities? Have you done a similar study with that?

Mr. MARCUS. We have not done a similar study in the past. And I don't think that there is a similar study that has been done in the past, but we believe that there needs to be one.

And so, for the first time, we will be commissioning a nationwide, very rigorous study of discrimination against persons with disability including failure to make reasonable accommodations which will be a part of the HDS or housing discrimination study that had begun in prior years, but which will only now reach the question of discrimination against persons with disabilities.

Chairman KELLY. And when do you expect that study to be done? You are going to field it at what—can you give me some time parameters?

Mr. MARCUS. It will start later in this year, and we expect to have results during the next fiscal year.

Chairman KELLY. Thank you. Perhaps, we can pursue it a little further and get it moved up more quickly. I turn now to Mr. Tiberi.

Mr. TIBERI. Thank you, Madam Chair. Just one question to—one question. Well, I apologize for coming in late and not hearing your testimony, had an opportunity to review it. And in reviewing it, you mentioned the issue of the disabled. I am going to read back to you a letter that was sent to Secretary Martinez on March 5th of 2002, by Jeffrey Rosen, on behalf of the National Council of Disability.

In the third paragraph I quote, "Leaving the February meeting, however, many attendees shared with me their convictions that outside of the modest initiatives described by Deputy Assistant Secretary Kenneth Marcus, HUD has done little to develop a strategic plan to address the housing needs of people with disabilities. Although the meeting was styled as a listening session, there was frustration expressed by the participants about the lack of substantive responses by HUD. Too many longstanding concerns expressed at the meeting. Since several had traveled long distance, a great personal expense, they set high expectations for any outcome. There was no articulation at this meeting of further information since then about how its plan for meeting follow-up, action."

Mr. Marcus, can you tell us today in June, where we are, where HUD is, in terms of this issue?

Mr. MARCUS. Well, I think that there are a number of different disability issues that are involved in the concern that Mr. Rosen raised. I will tell you that there is no set of issues that has received greater attention within the Office of Fair Housing than this set of issues involving persons with disabilities.

I believe we were able at the time of that meeting to discuss with Mr. Rosen the progress that we had made in the District of Columbia with our compliance review there. As I recall, we might not yet have been able to disclose to him the success, which we shortly after were able to achieve, in terms of dealing with the Boston Housing Authority.

Over the course of the year, we will complete 80 compliance reviews under Section 504 of the Rehabilitation Act, which will be an increase of one-third over last year's. We have started a number of those reviews since we saw Mr. Rosen, and we will complete a substantial addition of other ones afterward as well.

I believe that since then we have also published a series of initiatives that we would be doing in connection with the Olmstead issue. President Bush has also outlined initiatives in connection with the new freedom initiative. I have met with other disability groups individually since then.

I have also met with some groups in connection with larger meetings that we have. And we certainly look forward to having other meetings to hear other concerns and to work for or with them in the future.

Mr. TIBERI. Just one follow-up. Do you find that there is some difficulty in trying to get your HUD regional offices to exercise directives equally, officially?

Mr. MARCUS. Well, I will say this. There has been, over the years, a tendency to have either greater devolution to the field, or greater control by headquarters. Over the last few years, both during this administration and the prior administration, I would say we have had a greater degree of decentralization.

That has had both advantages and disadvantages. The advantages have included a greater degree of work being done by the people who have knowledge of the specific local conditions, which I believe has been very important for some of these successes we have achieved.

On the other hand, one of the down sides is that it is more difficult to achieve consistency and standardization both in quality and in the outcome of what they do in the field.

Now, to the extent that we continue in that direction, and I think that we have had very favorable gains so far from moving in that direction, what I think we need to do is be more creative in the way in which we conduct headquarters review and oversight of what is being done in the field.

We have implemented various procedures along those lines and will continue to. And I think that as we continue with that oversight, we will be able to deal with the disadvantages, while at the same time receiving the advantages.

Mr. TIBERI. Thank you. I yield back the balance.

Chairman KELLY. Thank you, Mr. Tiberi. We go now to Ms. Tubbs-Jones.

Mrs. JONES OF OHIO. Thank you, Madam Chairwoman. I would like to thank my colleagues for allowing me to question early because I have another committee meeting to get to.

I, for the record, want to say that Doug Shelby, my HUD community partner, is doing one heck of a job in the city of Cleveland. So

when you talk to him tell him his Congresswoman spoke highly of him.

We were very pleased very recently to break ground on Arbor Village Apartments—did I skip you, Mr. Gutierrez—OK—to break ground on Arbor Village Apartments, which is affordable rental housing in the city of Cleveland, with up to four bedrooms for families. So we are real excited about that opportunity.

Let me understand what you—I am a former trial lawyer with the Equal Employment Opportunity Commission. And so, this term of "aged-case resolution," means is of significance to me. When you—what does aged-case resolution for HUD mean?

Mr. MARCUS. Under Title VIII, it means that we are required, unless impracticable, to complete the processing of a Title VIII complaint within 100 days.

Mrs. JONES OF OHIO. OK. So assume you come in as the new General Secre—General Deputy—excuse me for not knowing all of these names.

Mr. MARCUS. It is a mouthful.

Mrs. JONES OF OHIO. It is—a Secretary of Fair Housing. And you 700 case—well, let me say 50 just for example. Does someone then take those 50 and review them if they are past 100 days, and figure out we are going to—how you are going to handle these, or what happens?

Mr. MARCUS. Well, there are, Congresswoman, in my view, two parts to the problem. One is managing new cases to prevent them from becoming aged; and the other part of it is dealing with those cases that are already aged; and, in particular, those which are super aged, which is to say, over 1 year old, to make sure that we are addressing the older cases.

Mrs. JONES OF OHIO. Well, let's talk about not the ones coming in. Let's talk about those that are already there. What do you do?

Mr. MARCUS. From the manager's point of view, the first thing that you do is survey the problem and develop a set of objectives and procedures for managers in the field to deal with these problems.

You come up with goals and timetables for how many you feel that it is appropriate to achieve in a particular year, and how many people you want to do it; and then you develop a series of procedures to assist managers in doing so, which may include, and have included, specific task forces——

Mrs. JONES OF OHIO. Hold on, Mr. Marcus. I don't mean to cut you off. All of that sounds wonderful. And I have been there, as a trial lawyer, and had all of these edicts come down from Washington about how you resolve cases. But to Mrs. Jones, who is sitting out there with a complaint that has been sitting over 100 days or a year, none of that has any real meaning to her.

And I guess really what I want to say to you and the people who are within your department, that regardless of these wonderful things we can put out there, the most important thing that we can do for these folks is to see that their cases see the light of day, and that they get some just resolution.

And I am going to cut that off because I only have 5 minutes. I want to ask you about something else.

You are saying on page 3 of your report, bottom 2–3, that you will provide a contract for an enforcement project that targets mortgage lending discrimination and predatory lending in particular; and you would place special emphasis on educating and enforcing, and that you are going to do contracts to people to do that kind of work.

I would hope that in the RFP's that you put out for that work, that in there is included something to allow neighborhood input. Because, very often, there are organizations that represent or even bid to the Federal Government that they are capable of doing XYZ work, and the community people actually have worked with those organizations.

And I am not saying they should totally be able to nix, but you ought to have some type of input as to their reputation in the community for doing the work. Could you let me know whether or not that is something that could be included in your RFP for work in communities across the country?

Mr. MARCUS. Sure. What I can say, to start with, is that we do share that concern. And when we work with fair housing initiative programs through our NOFA, or Notice of Funds Availability, one of the considerations that we have is whether an organization has support and a strong reputation within the community.

So it is something that is built into the program by which we usually distribute funds. As for whether there are any problems or not with an RFP in doing that, I don't know. But it is certainly something we will consider because it is already one of the factors that we do keep in mind.

Mrs. JONES OF OHIO. What else are you doing in this same area with regard to predatory lending, sir?

Mr. MARCUS. We——

Mrs. JONES OF OHIO. I am out of time. I am sorry. Am I out of time? Real quick.

Mr. MARCUS. We have just done some training on that subject during a policy conference earlier in this month to try and bring our partners up to speed on it. We are emphasizing it through our FHIP NOFA, and we have the contract.

Chairman KELLY. Thank you, Ms. Tubbs-Jones.

Mrs. JONES OF OHIO. Thank you, Madam Chairwoman. And, Mr. Gutierrez, if I stepped in your way, I absolutely do apologize.

Chairman KELLY. Thank you, Ms. Tubbs-Jones. Mr. Gutierrez.

Mr. GUTIERREZ. Thank you. I understand that Hope in their Wheaton office filed 21 complaints with HUD from Elgin homeowners, landlords, and tenants who have been the victims of a targeted campaign of civil and constitutional rights.

Did you receive those complaints?

Mr. MARCUS. I am familiar with those complaints. We do have those.

Mr. GUTIERREZ. And did you evaluate those complaints?

Mr. MARCUS. We have evaluated the Elgin complaints over a period of—it has now been years, as has the Department of Justice.

Mr. GUTIERREZ. And what is the result of the evaluation of those complaints? Were they substantiated, or did you think they were frivolous?

Mr. MARCUS. We are now in a—fairly far along in a process of——

Mr. GUTIERREZ. Have you made any findings on the 21 complaints?

Mr. MARCUS. We did make a referral to the Department of Justice. We found that there was cause to refer the case for a suit, yes.

Mr. GUTIERREZ. For suit, to the Department of Justice. And where is that case at now?

Mr. MARCUS. The case is now being conciliated. And there have been fairly active settlement discussions undergoing—not only within the last several months——

Mr. GUTIERREZ. Are you involved in those settlement discussions?

Mr. MARCUS. Not personally, but I have kept——

Mr. GUTIERREZ. Is HUD involved in those settlements?

Mr. MARCUS. HUD is involved in it, and they have been——

Mr. GUTIERREZ. And what is the position of HUD in the settlement discussions.

Mr. MARCUS. If we can get an appropriate outcome, we believe that a mutually agreeable resolution would be good for everyone. But until we actually have one, or don't have one, I cannot really say. But it is something that is moving along very quickly, and does have a lot of attention. And some of our very——

Mr. GUTIERREZ. When do you think it will be resolved?

Mr. MARCUS. That is up to the parties. I understand there is a——

Mr. GUTIERREZ. You don't have any further role in this issue, other than to refer it to the Department of Justice?

And you feel as though now that it has been referred to the Department of Justice, you don't have any relationship to the situation?

Mr. MARCUS. Well, I would not say that, Congressman. Since it is a zoning and land use case, we do not have the same degree of involvement that we would——

Mr. GUTIERREZ. Well, not a zoning and—I don't think you are going to get involved in a landing and zoning issue. You are going to get involved because people may have used land and zoning issues to discriminate against a particular racial or ethnic group. So it is really about using these things.

Mr. MARCUS. I would say it is both of those. But where it is about that set of issues, we refer to the Department of Justice. Now just because we referred the case to the Department of Justice, that does not mean that we are not involved. And we have been very much involved in the question of whether it can be settled.

Mr. GUTIERREZ. What are you going to do to resolve this issue, or what is the Department of HUD going to do to resolve this issue?

Are you just going to let Justice continue to discuss it, and to try to find a solution to it?

Mr. MARCUS. I am hopeful that there may be a resolution of this very soon.

Mr. GUTIERREZ. OK. I guess I am hopeful, too. So we each share the same hopefulness. I guess what are we going to do so that it gets done?

Mr. MARCUS. We have had people working very long, hard, intense hours.

Mr. GUTIERREZ. How long do you think it is going to take before it gets resolved? Do you have any sense of——

Mr. MARCUS. I don't know for sure, but there is a city council meeting tomorrow.

Mr. GUTIERREZ. There is a meeting tomorrow?

Mr. MARCUS. There is a city council meeting tomorrow. That is one possible date. But I don't want to say for sure because——

Mr. GUTIERREZ. You mean the city council of the city, Elgin, the same one you found that discriminated against the families?

Mr. MARCUS. Yes.

Mr. GUTIERREZ. We are going to let them be the determining factor in how this thing gets settled?

Mr. MARCUS. All of the parties have been involved. And I can tell you that we have some of our most senior, talented people in the Chicago region who have been working to try and make sure that is a resolution that will solve this problem and help the families.

Mr. GUTIERREZ. I want to help the families, too. But, as you say, it has been going on for years, and we need to settle this situation so that it doesn't continue, whether in Elgin—because you know that there are other suits, Moline and other municipalities, in the state of Illinois that are also—everybody is awaiting the outcome of this one.

So I would suggest that we get on it, so that we can make this—because I heard you speak to a timely fashion and how that that is very important in your administration. Well, I think it should be also important that once you have a finding of discrimination, that that also gets settled.

Because simply saying that somebody got discriminated against, and saying we found that discrimination, and letting it move on without a solution, is not really a solution to the discrimination.

Let me ask, since time is going to be a matter of essence here, how many current complaints do you have before HUD?

Mr. MARCUS. Let me answer. But before I answer that, let me make sure that I did not create confusion in my answer to your prior question.

When we made the referral to the Department of Justice in the Elgin matter, it was not predicated upon a finding of discrimination. Because the way the procedure works with the referral in matters of this kind, we don't make that affirmative finding at that time.

But that was just a clarification. The question, I am sorry, is how many complaints we have?

Mr. GUTIERREZ. So you are saying that HUD never found that there was discrimination in this matter, and simply referred the case to Justice with no determination?

Do you refer all of your cases with complaints to the Department of Justice?

Mr. MARCUS. We have different procedures, depending on the type of case.

Mr. GUTIERREZ. What did you find relevant in these 21 complaints that would compel you to send it to the Department of Justice when you do not send all cases to the Department of Justice?

Mr. MARCUS. What was relevant under the statute was that it fell under the general rubric of land use and zoning, and that we would not be able to make a finding that there had been discrimination at HUD. It was the Department of Justice would have to either make that finding.

Mr. GUTIERREZ. Did they find one?

Mr. MARCUS. Their process is to file suit when they find it, and they have not yet filed suit. And there is a question of whether it will be settled prior to that.

Mr. GUTIERREZ. So, in other words, no one has really found in this administration after 18 months that there has been any discrimination on these 21 complaints—either HUD or the Department of Justice?

Mr. MARCUS. Well, it is not just this department. The process is either to file the case or to engage in the settlement discussions. And what has been going on has been the settlement discussions, which we hope will resolve the matter favorably for everyone.

Mr. GUTIERREZ. All right.

Chairman KELLY. Thank you very much.

Ms. Lee.

Ms. LEE. Thank you, Madam Chair. Let me ask Mr. Marcus a couple of questions with regard to your response to the Chair, as it relates to many people who actually left HUD who were responsible for the enforcement of fair housing laws.

You indicated that there were many talented and experienced people, who, for whatever reason, are not there now. I would like to get a sense of what that is about. Why aren't they there and what happened? I mean, were they civil servants? Were they Schedule C, or why did they leave? Was it as a result of reorganization, or just—could you, you know, elaborate a bit on that?

Mr. MARCUS. Well, I am referring to career people, rather than Schedule C. And while I am sure, since there were so many, that there were a large variety of reasons, and while I was not personally there at the time, I have certainly heard many stories of frustration and dissatisfaction with the way things were going in the last few years and a lot of people concerned about the way the Department was going, and retiring perhaps a little bit earlier, or just leaving for greener pastures. Our concern is not so much to find out in each case why people left, but to find a way to keep good people committed to what we are doing and to make sure we make the best use that we can of our existing resources.

Ms. LEE. But has the enforcement of our fair housing laws and EEO laws, has that been a problem, as a result of the turnover, or do the backlogs and complaints reflect any staffing issues? And what is your staffing pattern like now?

Mr. MARCUS. Well, I can tell you there have been findings of various organizations including the National Council of Disability which do connect matters such as the aged-case backlog to the reduction in staffing numbers, and to the loss of talented staff.

We have found that we have substantial problems as a result of the turnover and the loss of experienced people. And I think that that is undoubtedly connected with some of the problems that we have.

I am sorry. The follow-up question?

Ms. LEE. Your current staffing patterns, I mean, are you fully staffed now, or what do you think has been your direction, in terms of——

Mr. MARCUS. We are certainly better staffed than we were last year, and last year we were better staffed than the year before.

In 1999, we had over 590 people. That slipped a little. In 2000, it was 587. It was at a little over 600 in 2001. When you exclude the Office of Departmental Equal Employment Opportunity, which was merged into us last year, we now have I believe approximately 610, who are within FHEO right now, plus another couple of dozen people who are assigned to us, but have not formally joined us. So I would say we have a couple dozen beyond what we had before.

Ms. LEE. OK. And, now, could you, at some point, give us an ethnic breakdown of your employees, and also who are responsible for the enforcement of fair housing laws?

And also, this Office of Disability, is that up and running, or do you have that fully staffed? Is it there? Is it not there? I hear different——

Mr. MARCUS. We have a disability office within the Office of Fair Housing and Equal Opportunity, which is staffed by some extraordinary people. And since you have given me the opportunity, perhaps I could recognize the director, Milton Turner, of that office, who is here. We are staffed with a number of very committed people there, who are doing great work.

Ms. LEE. Great, OK. And you will be able to provide us the ethnic breakdown of your—ethnic agenda breakdown of the employees?

Mr. MARCUS. We will be able to provide that.

Ms. LEE. Thank you very much.

Chairman KELLY. Thank you, Ms. Lee. We go to Mr. Clay.

Mr. CLAY. Thank you, Madam Chair. I appreciate the opportunity to have this hearing today. We are facing a tremendous problem of fair housing complaints filed by people with disabilities, African-Americans, Hispanics, Asians, and women. And in 2000, there were in excess of 23,000 complaints filed.

The National Fair Housing Alliance reported that the complaints are highest among African-Americans, people with disabilities, and families with children. And, Madam Chair, I would like to ask unanimous consent to submit my entire statement to the record. Thank you.

[The prepared statement of Hon. William Lacy Clay can be found on page 59 in the appendix.]

Let me ask you, Mr. Marcus. Is there an Acting Assistant Secretary for Fair Housing and Equal Opportunity?

Mr. MARCUS. I am the General Deputy Assistant Secretary. And I am serving in the function of the assistant secretary for most purposes.

Mr. CLAY. So you are handling the responsibility of the Assistant Secretary?

Mr. MARCUS. Yes, Congressman.

Mr. CLAY. And has this vacancy affected the manner in which HUD ensures compliance in enforcing fair housing laws?

Mr. MARCUS. We have worked as hard, and I would like to think as effectively, in the absence of a Senate-confirmed assistant sec-

retary. As we would under any other circumstances, we have, aside from that person, the other 630-some-odd employees who continue to work very hard to achieve our mission goals.

Mr. CLAY. How about the disparity between the amounts of complaints handled by private and government agencies?

Mr. MARCUS. That is difficult to compare—in part because the term "complaint" is defined differently by different organizations. So, to some extent, we are dealing with apples and oranges.

However, I am certainly pleased to see that so many matters are being handled by private organizations. Many of the organizations are being funded by HUD, some of them are not.

To the extent that these organizations are working with us, whether they are receiving our funds are not, we certainly encourage them to file complaints with HUD, so that we can utilize the resources that we have to solve the problems that they identify.

Mr. CLAY. Twice as many private agencies handle these complaints, as opposed to HUD and stage agencies. I mean what is the reason for that?

Mr. MARCUS. Again, it is hard to break down the numbers exactly because the term "complaint" is defined differently. I think that many of the matters that are identified by the private organizations will later be brought to HUD or state agencies; others they will not bring to us for a variety of reasons including if they don't pan out.

I think that certainly those private agencies involved in our FHIP program serve a very valuable function when they find a very large number of potential claims and bring to us those which they believe truly to be actionable.

I also believe that private organizations in many cases have greater ties to the community; and, in some cases, greater levels of trust within some communities, and are able to reach out a little bit more effectively to communities. But that is one of the reasons that we like to work with them.

Mr. CLAY. I see. The administration has made a number of public pronouncements about its commitment to the rights of people with disabilities, and I commend you and the Secretary for that commitment.

Does the administration intend to dedicate more mainstream housing resources to people with disabilities?

Mr. MARCUS. I can tell you, speaking as acting head of the Office of Fair Housing and Equal Opportunity, that we intend to work to make sure that more mainstream inaccessible housing that is noncompliant is brought into compliance.

And we are making sure that through the discrimination side, that we are working to try and bring a greater number of—what you might call mainstream housing into availability and into compliance.

Mr. CLAY. And does that include new housing coming on line, new units coming on line?

Mr. MARCUS. Yes, we are working in a number of different ways to try and make sure that new units are accessible. When that comes to public housing it involves, for instance, providing notices to all public housing authorities of the requirements under the Rehabilitation Act to provide accessible features.

When it involves private housing, it can come in the form of a number of initiatives that we have to try and make sure that new housing is accessible for persons with disabilities.

That includes, for instance, working with the International Code Council to try and ensure that local governments around the country are aware of the Fair Housing Act requirements, and to the extent that they choose to, can incorporate our requirements into their codes.

It also involves a variety of education initiatives that we try and ensure that architects, builders, and other development professionals are aware of, and what their requirements are, so that they can build new compliant housing.

Mr. CLAY. What steps, if any, has the Secretary taken to appoint a National Consumer Advisory Committee, as called for by the National Council on Disability report?

Mr. MARCUS. There have been a number of discussions about what is the best way to gain access to the views of disabled persons and disabled advocacy groups.

What we have been doing so far has largely been a series of informal meetings including, in some cases, very regular staff meetings and contacts with disabled people, as well as more formalized meetings to get their views.

There has been some discussion about whether an advisory group under that statute would be appropriate. It would have some advantages, some disadvantages, some questions about who the appropriate membership is, who is excluded, who is included, so on, and so forth.

My concern has been to try and ensure that we have the greatest possible number of views that we are hearing, so that we are not just getting the views of only a small number of people.

Mr. CLAY. So you will not assemble a commission?

Mr. MARCUS. I don't want to close the door to that option. We certainly have not committed to it yet. And our approach, at this point, has been to try to work informally, and to the greatest extent possible, to try and get all of the groups that have concerns, and who would like to speak to us, to do so, rather than limiting it to specified finite number of commission members.

Mr. CLAY. All right. Thank you.

Chairman KELLY. Thank you, Mr. Clay.

We go now to Ms. Waters.

Ms. WATERS. Well, thank you very much, Madam Chairlady. I would like to submit my opening remarks.

Chairman KELLY. So moved.

[The prepared statement of Hon. Maxine Waters can be found on page 75 in the appendix.]

Ms. WATERS. Thank you very much. I hear my colleagues asking a lot about the complaints that are filed, and talking about the need for more housing, and certainly the need to make sure that the disabled are included in the construction and rehab in ways that will accommodate them.

And, of course, we all have questions about predatory lending. And we cannot help but wonder to what extent the predatory lending practices of our financial services community is eliminating the ability for people to have adequate fair and decent housing.

With all of that, let me just ask. The President rolled out an initiative. And the intent of that initiative, as I understand it, was to increase the number of housing units available because of the crisis that we have; to support minorities and the disabled, and their ability to access safe and decent housing; and all of that.

I have not heard the particulars of this initiative. Could you explain to us what the President and this administration is going to do to expand the housing units that are available, and to make sure that they are accessible to minorities and the handicapped? How do you do that?

Mr. MARCUS. That is a big question, which has received—we are glad to observe, a great deal of attention first from the White House, and from the Secretary; and then increasingly through the media during this June month of home ownership.

Within the Office of Fair Housing and Equal Opportunity, we deal with one portion of the larger problem. I can tell you that throughout the Department, virtually every program area is involved in the question of how can we make home ownership available to a greater number of people in general; and then, specifically, how can we close what is referred to as the minority home ownership gap.

Our portion within the Office of Fair Housing and Equal Opportunity has been to find out to what extent has the lack of home ownership, and, particularly, that home ownership gap been the result of discrimination?

And to the extent that it has been, how can we use the tools that have been legislatively afforded to us in order to try and break down those obstacles to home ownership which are associated with discrimination?

And we have focused on that from the discrimination point of view in a number of ways. The first has been to determine how can we increase public trust and confidence in our complaint procedure, so that when people face discrimination, they will come to us.

And that has led to the reforms that we are trying to work on involving aged-case processing that I have talked about. We are also concerned that the lending process might be a barrier to home ownership.

Ms. WATERS. If I may just interrupt you for a moment, let me refer you to—I guess this is your statement for today—where on page 2, you say the study that you have been involved in reveal that while the majority of mortgage lending transactions do not involve discrimination, blacks and Hispanics in the markets studied tended to receive less information, less assistance, and worst terms.

Let's see if we can't get in sync on what discrimination—a definition of discrimination. What do you mean that the lending transactions do not involve discrimination, and then you go on to describe other forms of discrimination?

So I want to make sure that we have kind of a same definition of discrimination.

Mr. MARCUS. Let me apologize again for what might be some lack of clarity in this sentence.

What we tried to do in this study is to ask what happens when caucasians, African-Americans, and Hispanics in Chicago and Los

Angeles go to lending officers and various financial institutions seeking a loan.

And what we found is looking under any number of different specific criteria, most Hispanics and African-Americans received initially the same assistance, information, and terms and conditions in the loans that were offered to them, as the caucasians did. There was no way of determining any difference.

However, while most people did not face discrimination, we did find that there was a statistically significant percentage of both African-Americans and Hispanics in both of those cities who did receive either less information about loans, or else they got the same information but they got less assistance; or if they got the same assistance, they received worse loan terms.

Now, on the one hand, we are concerned that the information not be taken out of context because we want to make sure that people do not avoid mainstream lending institutions for fear of discrimination and end up in predatory lending situations.

But, on the other hand, even though most people did not face disparate treatment, we are very concerned that there are some——

Ms. WATERS. Do you have any numbers? Do you have numbers on that portion which you identify as the ones that were discriminated against?

Mr. MARCUS. Yes, we would be happy to provide the study for you, if you would like. I don't have the numbers with me. I can say that it was significantly below half. But, on the other hand, it was enough that all of our experts agreed that it was statistically significant, and I can provide the details for you.

Chairman KELLY. Thank you very much, Ms. Waters.

Mr. Gutierrez, you have a point of clarification here?

Mr. GUTIERREZ. Yes, just the same—the way you had one on disability, I have one on discrimination. Sorry, I don't—and forgive me.

If you get worse terms, if you get less information, that is not discrimination. Let me just finish. First, you state it is not discrimination; and then when I asked you about Elgin, there were 21 complaints made, you said that was a zoning and land use.

So if I use zoning and land use against a particular group of people—in the case of Elgin, latinos—it is a zoning and land use, it is not a discrimination issue. It doesn't—I am sorry—any one of those things that you use that are targeted to a particular group of people, as far as I am concerned, would be discrimination.

Because if I show up in a wheelchair, and you say I discriminated because I did not like the model of the wheelchair, not that the person was disabled, and that you found that models of wheelchair people get a certain—it just—I think we had better clarify what discrimination constitutes.

Mr. MARCUS. Sure. I don't think we have any real difference of agreement. Where it is difference in assistance, whether it is difference in information, whether it is difference in terms, I consider any of that to be discrimination.

And even if most people don't face it, we at HUD are very concerned about it. And since we found that it appeared that some people did get either less information, or less assistance, or less of

anything, we considered that as discrimination. And that is why we are going to focus in on it.

Now I don't think that it is any less discrimination if it takes place in a zoning area than if it takes place anywhere else. It is just that under the statute, HUD is not supposed to make that finding, the Department of Justice is. So it is not a question of whether it is discrimination or not, it is a question of who has the statutory authority to make the finding.

Chairman KELLY. Thank you very much, Mr. Marcus.

Mr. MARCUS. Thank you.

Chairman KELLY. Mr. Gutierrez and Ms. Waters have both raised the same issue that came forward in my mind when I read your testimony; and that is the definition of discrimination. At this point, it seems to be very fluid.

I am wondering if there isn't some way we could ask you to get together with the Department of Justice and sort of give us all some kind of definition of how you are—how you, in your department, your agency are going to handle the question of what defines discrimination.

Because, as Mr. Gutierrez says, if somebody appears in a wheelchair, but they are discriminated against because that model wheelchair isn't approved of for one reason or another, is that—does that qualify, or does the color of somebody's skin qualify?

I think this is a very, very important issue. And, obviously, it is a bipartisan concern. So, perhaps, you would be willing to do that for us.

Mr. MARCUS. We will be happy to talk to the Department of Justice on that.

Chairman KELLY. Thank you. And I hope you will get back to us.

Mr. MARCUS. Yes.

Chairman KELLY. Thank you very much. The Chair notes that some members may have additional questions for you, Mr. Marcus. They may wish to submit those in writing. So, without objection, the hearing record will be held open for 30 days for members to submit written questions to you.

And we would like to have you place that response in the record. And if you can respond to some of the issues that Mr. Gutierrez and I just raised, I would appreciate that.

We will excuse Mr. Marcus, with our great appreciation. Thank you very much.

Mr. MARCUS. Thank you.

Chairman KELLY. And, at this time, we would like to call for the second panel of witnesses. As the second panel takes their seats at the witness table, I am going to begin the introductions.

For our second panel, we welcome Ms. Sara Pratt, a Civil Rights and Fair Housing Consultant, on behalf of the National Council on Disability; and Ms. Becca Vaughn, Topeka Independent Living Resource Center Advocacy Coordinator; on behalf of Disability Rights Action Coalition for Housing.

I want to thank each of you for being here and testifying for us today. And I welcome you on behalf of the full committee. Without objection, your written statements and any attachments that you have brought will be made part of the record.

And, at this time, I want to insert as a part of the record, with unanimous consent, a statement from the United States Department of Agriculture, sent to Chairman Roukema, who is the co-chairman of this hearing today.

[The following information can be found on page 166 in the appendix.]

Chairman KELLY. But, without objection, your statements are a part of the record, and you will each now be recognized for a 5-minute summary of your testimony. Thank you very much. And we will begin with you, Ms. Pratt.

Pull, if you could, Ms. Pratt, just make sure——

Ms. PRATT. Can you hear me?

Chairman KELLY. Yes, we can. Thank you.

STATEMENT OF SARA K. PRATT, CIVIL RIGHTS AND FAIR HOUSING CONSULTANT ON BEHALF OF THE NATIONAL COUNCIL ON DISABILITY

Ms. PRATT. Chairwoman Kelly, and ranking member Gutierrez, and other members of the committee, thank you so much for the privilege of allowing me to testify before you today.

As you have heard, I am testifying on behalf of the National Council on Disability. It will come as no surprise to committee members that illegal discrimination is alive and well, and actively occurring today in our country's cities and towns.

It occurs in rural areas, and in urban areas; it occurs wherever apartments are rented, wherever houses are sold, wherever loans are made, and wherever people who look a little different move into new neighborhoods. Discrimination is as active in programs funded by the Federal Government as it is in private housing.

Many observers would say that discrimination is more likely to occur in programs funded by the Federal Government, especially when the discrimination is directed at people with disabilities and minorities who make up disproportionate numbers of the poor, the underhoused, and the homeless in our country, those who are most likely to seek housing from public housing authorities and assisted housing providers.

I am one of three authors of a report issued by the National Council on Disability last November, a report called "Reconstructing Fair Housing." That report documents 11 years of enforcement of two major civil rights laws entrusted to HUD for enforcement by Congress.

One law, the Federal Fair Housing Act, applies to almost all housing related transactions in this country. The other, Section 504 of the 1973 Rehabilitation Act, prohibits discrimination based on disability by housing that is funded by Federal dollars, in this case, from HUD.

These laws provide two critical pieces to protect people who are injured by illegal discrimination. One is, as guaranteed by the Fair Housing Act, inexpensive and speedy resolution of their claims through administrative enforcement by HUD with full remedies where discrimination is identified.

And, second, HUD initiated action to protect people proactively. Separate from a complaint investigation process, they are requiring compliance by its programs with nondiscrimination requirements.

The National Council on Disabilities Report concludes that HUD has not funded or supported a strong effective functional system to administer either part of this process. This failure has resulted in an increasing loss of faith in the complaint process, a sense that filing a complaint does not really make a difference.

It has also resulted in something just as important, harm to victims of discrimination, who do not know about their rights, who are not protected by HUD even in its own programs and activities, who are not protected by a timely and effective enforcement process, and who thereby suffer discrimination without recourse.

The National Council on Disabilities report concludes that the Department of Housing and Urban Development must do much more to address unlawful discrimination by housing providers.

In summary, the report identifies three important ways in which that should be done. First, the Secretary of HUD and the political leadership of the department must lead the department in a top-down and bottom-up coordinated commitment to preventing illegal discrimination, and righting the wrong wherever discrimination has occurred.

This includes an organized civil rights enforcement program that has long-term and short-term goals, that has a strategy and a rationale that is coordinated with HUD's program offices, and that includes strong, consistent, and speedy enforcement by program and fair housing staff jointly; that is to say, between public housing authority, PIH staff, and fair housing staff jointly between housing staff and fair housing staff jointly, and so forth.

HUD should use program sanctions, like refusing to fund discriminators, and like debarment, routinely, and frequently in cases involving discrimination by those who discriminate, and are funded by taxpayer money.

Two, HUD must make a significant and sustained financial investment in enforcement of the Fair Housing Act, and the other civil rights enforced by HUD. HUD's Office of Fair Housing and Equal Opportunity must be resourced to help its committed staff do what must be done more effectively.

This includes, specifically, HUD must increase its staffing of the Office of Fair Housing and Equal Opportunity to a minimum of 750 full-time equivalents, the staffing level at which FHEO operated most effectively in the mid–90's.

HUD must provide more and consistent training for its staff, and for its funded programs, and HUD must significantly increase contract funds to support civil rights enforcement and compliance.

In addition, HUD must support unequivocal, and unrelenting enforcement of the non-discrimination requirements of both Section 504, and the Fair Housing Act, for rental and home ownership housing including housing operated by HUD, the Hope VI program, the Home Program, the Section 8 Project base program.

When compliance reviews conducted 13 years after the Fair Housing Amendments Act were passed, and after Section 504 regulations were adopted, and units are still, in public housing authorities, not accessible to people with disabilities, and other significant issues of discrimination remain, HUD should be referring these matters to the Department of Justice for litigation. Thank you.

[The prepared statement of Sara K. Pratt can be found on page 93 in the appendix.]

Chairman KELLY. Thank you, Ms. Pratt.

Ms. Vaughn.

STATEMENT OF BECCA VAUGHN, TOPEKA INDEPENDENT LIVING RESOURCE CENTER ADVOCACY COORDINATOR ON BEHALF OF THE DISABILITY RIGHTS ACTION COALITION FOR HOUSING

Ms. VAUGHN. I found it easier than Sara. Thank you very much. I am honored to be here today to share our collective thoughts and experiences concerning fair housing; or, perhaps, I should say the lack of fair housing rights, and the blatant discrimination perpetuated against folks with disabilities.

I have been working in the disability rights movement most of my life, and I particularly have an emphasis on housing. Most of the folks that I have served over the years are people not only with disabilities, but other protected status as well.

So I just wanted to share that a little bit, and who I am. I am not merely concerned today. And I believe I have heard that from you all. I think that we are all outraged at some—at the horrendous discrimination that continues to just erode away at the core of our great nation.

I have to interject quickly that often those very entities that have been entrusted with the enforcement of our fair housing rights, have been the ones violating them the most. And I share that from personal experience.

I find that extremely difficult today, in that, we sat and we heard HUD talk about all of their wonderful commitments. And, yet, many people in this room, and you all yourselves, can sit here, and you know that it is just pretty words.

There are people every day that are literally dying on the streets. They are becoming homeless because of lack of enforcement because we continue to fund programs that are segregated, because we continue to allow folks to ask prohibited inquiry questions and the nature or severity of disability.

We continue to allow folks to be forced to accept services in order to get a roof, just a human basic right of a roof. All of these things, in DRACH's opinion, add up to equal status of lack of enforcement on denying Americans with disabilities equal opportunity in our country for housing of choice.

We believe that there are many things that have to be addressed by this body if we are to truly achieve full integration and compliance. We believe that we must have full implementation of the Olmstead initiative. We must stop funding programs that perpetuate segregation on the basis of a specific diagnoses of disability.

We believe that this body must, in fact, disallow programs that require a human to accept a service. And we must increase home ownership rates of folks with disabilities; currently, less than 2 percent is what we think. That is pretty pitiful.

And we would like to see that these are addressed in a global arena, as opposed to segregated arena. And we have some specific recommendations. One of the most important I think is that because of the blatant non-compliance with our fair housing rights,

we literally have been X'd out, or stepped out—let me correct myself—stepped out of the housing market through attitudes and through actual cement barriers.

I think that we could begin to make a good progress in this country with the National Visitability initiative as well. That is why I would like to plant the seed with you today. Visitability is just what it says, the ability to visit our friends, family, and loved ones.

It is currently law in five states in our country and numerous cities, and DRACH would recommend that we seriously consider possibly following up on this type of initiative. I think it works hand-in-hand with the enforcement that we are here today addressing. And that is probably about all I am going to say.

I just really feel honored to be in your presence to share this information. I would love to spend more time talking about all of the cases that we have worked on over the years.

And, hopefully, this is the beginning, that we can work together, a grass roots and the legislators, toward stopping this pattern of blatant discrimination that keeps Americans with disabilities separated. Thank you.

[The prepared statement of Becca Vaughn can be found on page 154 in the appendix.]

Chairman KELLY. Thank you, Ms. Vaughn. Certainly, if you would like to submit any further written material to the committee, we are more than willing to accept anything you would like to give us.

Ms. Pratt, I understand that you worked on these issues at HUD in the prior administration, and then left, due to being dissatisfied with the efforts that the senior HUD management had made in this area.

Can you discuss with us—I wonder if you will discuss that with us, and if you have seen more of an effort made by this current HUD leadership?

Ms. PRATT. I resigned my position, a senior SES position at HUD, HUD's Office of Fair Housing and Equal Opportunity, in 1999. There are three key reasons that I found problematic, as someone whose entire career has been devoted to administrative enforcement of fair housing and civil rights laws.

First is the diminished staffing and resources for fair housing and civil rights enforcement in the beginning of 1995, and continuing thereon, that caused the necessity of running from one enforcement issue to the next, always trying to keep up without adequate resources to be able to address the many, many civil rights issues that HUD confronts.

Second, my concern dealt with the devolution to field offices of significant decisionmaking authority without adequate oversight systems and guidance, a process which I think exacerbated some of the structural problems.

And the third is the lack of top-down leadership that has to happen at HUD. The program offices, as well as the Office of Fair Housing and Equal Opportunity, have to share in a commitment to enforcement of the laws.

I have to tell you that staffing numbers that I heard Deputy Assistant Secretary Marcus, who, by the way, I have a great deal of respect for, the numbers that he gave me on staffing of 610 full-

time equivalents is way below what the National Council on Disability Report suggests is adequate funding for fair housing and civil rights enforcement.

And that is a specific finding, that the most effective work that was done in fair housing in the last 11 years was during the period 1993 and 1994, where there was more staffing, more cases charged, more complaints filed, and complaints investigations occurred more quickly.

Chairman KELLY. Thank you. Ms. Pratt, on page 4 of your testimony, you talk about the annual number of cause cases that dropped from 324 in 1994 to 96 in 2000. When I read that, I was just astonished at the lack of—96 only in 2000.

What factor was the most significant in causing this?

Ms. PRATT. I believe it was the lack of staffing and other financial resources for fair housing and civil rights enforcement at HUD. The National Council on Disabilities findings include a finding that there was a significant drop in the number of staff during that time period for fair housing enforcement and for compliance.

In addition, there was a drop of $1.8 million during that time period in contract money that supported investigations, the kind of money you would use to do training, to hire expert witnesses, and so forth.

Chairman KELLY. I just want to be clear. That is what you feel happened from 1994 to 2000; that it was a significant drop. And that is part of what you have, as I understood you correctly, what made you feel that you were seeking employment elsewhere. Is that fair to say?

Ms. PRATT. What I have recited to you are among the findings of the Reconstructing Fair Housing Report. They also happen to be consistent with my own views of the process.

Chairman KELLY. On page 4 of your testimony, "Underenforcement," you state that one of the factors that have attributed to enforcement failures is a recent lack of effective management of HUD's fair housing enforcement and compliance operations.

When did these failures begin? And are we now seeing any improvement? And how long do you think it should take to correct some of these failures?

Ms. PRATT. I believe that throughout the 11 years examined through the Reconstructing Fair Housing Report process, there were areas in which strong management processes were lacking. HUD undertook an evaluation of its own enforcement process in 1995, through a study conducted by Price Waterhouse.

Those recommendations which were designed to improve the effectiveness of fair housing enforcement were unfortunately not all implemented. In addition, the current administration's lack of issuance of guidance that will ensure consistent decisionmaking among regions appears to be a continuing problem that has not been addressed by this administration, and which began very significantly during the devolution process in the mid-'90's.

Chairman KELLY. You are asking for more oversight, basically?

Ms. PRATT. The National Council on Disabilities recommendations include development of stronger guidance systems, better technology systems, and more management oversight for more consistent and stronger outcomes nationally.

Chairman KELLY. Thank you. I am out of time.

Mr. Gutierrez.

Mr. GUTIERREZ. Thank you both for being here. I guess I want to ask Ms. Vaughn. You said that certain types of people with disabilities that have certain medical conditions shouldn't be segregated.

Are you specifically talking about people that are HIV positive or have AIDS, and the development of housing for them? And if that is a group, are there other groups like that?

Ms. VAUGHN. Yeah, I was not specifically talking about any of the groups, but there are many programs within HUD that continues to be funded, that do allow for targeted housing toward specific groups of folks. It could be spinal cord injury; it could be multiple sclerosis; it could be cerebral palsy; it could be HIV AIDS. I mean there is—MRDD, mental retardation.

I mean there is several of the programs and mortgage guarantee programs that HUD does fund those type of projects; and, in DRACH's opinion, in direct violation of fair housing because we believe that that adds to the attitudinal barriers, as well as—you know, segregation is not a good thing in any form, we have found that out in this country.

So we are not saying that the individuals that have AIDS, HIV, mental health issues, don't deserve housing. We are saying perhaps we need to look at a better way of adequate funding attached to the people, so that they and their support team can then make an informed choice and have the resources in place, you know, to find the best option.

For example, most folks that I work with that have mental illness—or Tourette Syndrome would be another good example, are not able to live in a multi-family complex. It is not workable.

So we tend to have a high rate of eviction. So there is a lot of homelessness because of that, so single family, detached units, is a preferred method. But the resources being attached to a building limits those opportunities for folks.

Mr. GUTIERREZ. OK. Do you feel the same way, Ms. Pratt?

Ms. PRATT. I think Congress, when it passed the HOFWA, a program in particular, said in the enabling legislation that any other provision of law, notwithstanding the HOFWA program, was allowed to serve particularly people with AIDS. So Congress made that decision.

The difficulty comes not with congressional intent on particular matters, from my point of view, but on programmatic decision-making or interpretations made much further down the food chain at front line levels at HUD, or even in policies at HUD, as opposed to congressional determinations.

Mr. GUTIERREZ. OK. And, Ms. Pratt, is HUD properly staffed at the current moment to deal with the complaints, and the discrimination that exist in housing in the United States of America?

Ms. PRATT. Based on what Mr. Marcus earlier testified to, it is not.

Mr. GUTIERREZ. And what would, in your opinion, be a correct amount of staff?

Ms. PRATT. A minimum of 750 full-time equivalents.

Mr. GUTIERREZ. Or another 140 people?

Ms. PRATT. That is correct.

Mr. GUTIERREZ. As an advocate for people with disabilities, are we—Mr. Marcus spoke when we—I know I believe we were asking him about how many—what they were doing in terms of—and he said, "Well, we are enforcing it. We are making sure that when public housing does this, or when somebody develops this"—in other words, we are telling people build homes with people for—that people with disabilities can use. That is what I heard him say. But I think the question was—and so I will ask you.

Are there enough units being created currently, so that people with disabilities can find a unit?

Ms. PRATT. Absolutely not.

Mr. GUTIERREZ. And what would you suggest that we do?

Ms. PRATT. Well, I would suggest, at the very least, that Congress invite HUD to take stronger enforcement efforts against public housing authorities, and assisted housing providers, who already have had on the books for 13 years obligations to provide accessible units.

And housing authorities such as the Boston and D.C. housing authorities who now, 13 years later, have 10 or fewer accessible units in total non-compliance with the law should be the subject of stronger enforcement action than simple agreements to do better in the future.

HUD should send a message to assisted and public housing providers, as it should send all of its programs, that people with disabilities and other people who are subject to discrimination need to be considered and treated in an appropriate way upfront in the programs and not excluded by making agreements with units with steps.

Mr. GUTIERREZ. Let me ask you one last question. If in a municipality zoning and land use issues arose, and 21 people in wheelchairs, and in other conditions of disability were the only ones targeted by these zoning, and it was found that they are the only ones, is it a land—in your opinion, is it a land use and zoning issue, or is it a discrimination issue against people with disability?

Ms. PRATT. Representative Gutierrez, it is a discrimination issue.

Mr. GUTIERREZ. Thank you very much.

Ms. PRATT. You are welcome.

Chairman KELLY. Thank you. Ms. Lee.

Ms. LEE. Thank you, Madam Chair. Let me just ask you a couple of things about a couple of points Mr. Marcus made, primarily in his written testimony. I am not sure if he presented this today verbally. But he indicated that the President in his new freedom initiative has launched an effort designed to help persons with disabilities live more independently in all communities.

Do you have some feedback on this new freedom initiative, in terms of what you think that it will accomplish, and if it is going to take care of the needs of the disabled community?

Ms. PRATT. I can't testify about that from the point of view of the National Council on Disability because that was not a subject in the report. I do not believe—I may be wrong on this—but I do not believe that HUD has issued information that identifies what actions it will take with respect to specific implementations of the new freedom initiative.

Ms. LEE. Ms. Vaughn, do you have any take on this?

Ms. VAUGHN. Yeah, our opinion of it is that—what initiative was that? I am sorry.

Ms. LEE. Within the new freedom initiative which the President recently announced, there is an effort incorporated in this to assist people with disabilities to live more independently.

Ms. VAUGHN. I am sorry. I was being facetious. That is how we feel out in the community, is that we know about the initiative, and very active in its—or attempting to be active with implementation of that.

And often out in the community, that is what we will say. We will say, "Well, what initiative? Is there one?" So that is sort of——

Ms. LEE. That is an answer in itself.

Ms. VAUGHN. HUD did issue a preliminary report under that. I actually brought it to D.C., but I left it in my room. But I can get that for you.

And, again, and just like Sara said, I mean, they did not really recommend any options, solutions to achieve the goal of the plan of the freedom initiative which is integration and full recognition of civil and human rights for folks with disabilities.

Ms. LEE. OK, thank you. Madam Chair, perhaps, then, this committee needs to look at how that provision should be implemented. It may require some legislation from our committee to make sure that it is implemented in a way that makes sense for people living with disabilities.

Chairman KELLY. Well, I think that that is part of the reason why I am glad you asked the question. That is what this hearing is about.

Ms. LEE. Thank you, Madam Chair. And let me just ask one more question about the enforcement of the provisions of the Fair Housing Act for the past 11 years as it relates to the enforcement with regard to people living with disabilities, and enforcement of disability—what do you think has been the trend—I mean are you—do you think we are making progress, in terms of equal opportunity and fairness in housing for people with disabilities, or do you think we are stuck?

Ms. VAUGHN. Is that for both of us or?

Ms. LEE. Yeah.

Ms. VAUGHN. In DRACH's experience—and we are a national grass roots organization, and we are folks with disabilities ourselves—we have found that it is sort of the old adage of you take—you know, you roll a couple of inches forward, and then you lose a few inches backwards.

We have seen some progress made on the grass roots level, in that, we feel like that we have done a good job with outreach in educating individuals with disabilities themselves about their existing rights, and how to exercise those rights.

We continue to see that there are institutional barriers, and primarily perpetuated by the very enforcers of our rights. HUD, in this case, FHAP agencies, real quick story is I had a FHIP grant a couple of years ago. We did a statewide project to train folks on these issues, an outreach to building industry, you know, everyone in the state, very successful project, 18 month grant.

We reapplied to do it four state. And our region in Kansas City HUD said, "You are not going to do it. We are not going to approve it. And all we want you to do is to send us the list of people you talked to, and then we will decide if there is a complaint."

So all of our efforts to do education were stopped by HUD regional office. We pulled off the grant, my organization did, because we felt like that we would not be a part of them attempting to water down the importance of our rights.

This is just a little story that happens every day, trying to assist folks to exercise their rights through filing complaints has been a really incredible experience as well. Oftentimes, folks are very intimidated to even come to the decision to file a complaint.

I mean it is a very hard thing because you might lose the little roof that you have. And so, oftentimes we are asked to be representatives of those complaints. And it took me about 4 years in Kansas city office before they—I came up with the right form that would recognize that the individuals wanted me to assist them in representation on their fair housing complaint.

So I don't know if that answers your question. But we feel like we have done some great work on the grass roots advocates level, and feel like that we have the tools to be able to effect greater change. But we are interfered with often by the folks that are entrusted to investigate and uphold those civil rights.

Chairman KELLY. Thank you, Ms. Lee.

Ms. Waters.

Ms. WATERS. Well, I think this hearing is absolutely making it clear that these very serious problems exists, and it seems to have even gotten worse, as it relates to both discrimination against minorities and the disabled. There are a couple of things I am wondering about, you may be able to help me with.

The first is I am beginning to understand the definition of the disabled to include the elderly, that may be living in public housing that needs some assistance in order to pay their rent, or to just get some very basic things done.

I don't really believe that—or most of the elderly in public housing is getting that kind of assistance. What I think is happening is we have a growing number of elderly, who may be entering the first stages of Alzheimer's. They want to stay in their homes. They do not want to go to nursing homes or group living. They can prepare food for themselves.

They can take care of themselves pretty good, but they cannot carry out all of the functions that they have been doing when they were younger, and before they started to enter this stage. They could probably stay in their homes another four or 5 years with a little bit of assistance.

Do these people qualify as the disabled? And what do you know about this group of folks? What are we doing with them? Either Ms. Pratt or Ms. Vaughn.

Ms. VAUGHN. Thank you. It is an excellent question. I think you are on the edge of an incredibly important issue in our country that we are facing right now. The issue of having adequate in-home community supports is a very critical issue to our nation.

Now, as you all know, we have several—there are two national legislations pending, Mi Casa. Hopefully, all of you all are endors-

ing that. It is Mi Casa. And what that is, is that would amend the social security law in order to really throw open the door to the possibility of additional services in-home supports for folks of any age with any disability that need the assistance based on financial need, as well as degree of disabling condition.

And I think that we have to—when we look at—the reason I mentioned Olmstead before in my testimony was because that is what Olmstead is, it is a most integrated setting.

OK. So folks do not have to unnecessarily be institutionalized early, or whatever; when, in our opinion, they never need to be if there is adequate in-home services. And, certainly, folks who are aging often want to tell you, "Well, Representative Waters, I am a person with a disability."

I know you had heard that before. But they do need some increased attendant services. If they are getting adequate housing that fits their needs, as far as affordability and accessibility goes, and they are being reasonable accommodated in those needs, then we have to assure that there is adequate funding for the in-home support.

I am not sure that we can pay for that through housing funds—and I am not sure we would want to because that may limit our housing funds. But I believe that we have to again look for equal opportunity for people with disabilities of any age, is a holistic approach.

I mean it is a global issue, several issues that are rolled to one. And you cannot have success without the other one there.

Ms. WATERS. Thank you. Let me just. What do you know about this memorandum of understanding that is in the testimony that was just given of Mr. Marcus between the Department of Justice and the Treasury to ensure low income residential renting housing is placed in service under the IRS administered low income housing tax credit program, and that it is accessible to people with disabilities.

It seems to me there is great potential there, but I have not heard any details or specificity about how we can take the tax credits and force or dictate to those who get them, the developers who have the advantage of the support from their tax credits, how can we get more housing for the disabled?

Ms. PRATT. Well, this memorandum of understanding addresses low income tax credit housing issue if identified correctly. Most of that housing was built since 1994. And all of that housing is required, most of it, not all of it, but most of it has been built since 1994, and it is covered by the Federal Fair Housing Act. It is required to be accessible and usable, accessible to and usable by people with disabilities.

Unfortunately, we hear increasing reports of discrimination by tax credit properties, either that they have not been built to be accessible in the first place; that they discriminate based on race or national origin, or that they discriminate against Section 8 certificate and voucher holders, something that is covered by Federal law. They are prohibited from discriminating against Section 8 holders, as a matter of Federal law.

These are matters which should be handled through complaints investigated by HUD. Unfortunately, it appears that the amount

and extent of discrimination out there exceeds the number of complaints that are currently being handled by the Department.

IRS has the ability to condition tax credits on compliance with the laws currently. It has never exercised the authority. It is a process that is monitored by state housing finance agencies and reported to the IRS, and the IRS has the capability of conditioning tax credits for properties that engage in unlawful discrimination.

Ms. WATERS. Thank you.

Ms. VAUGHN. Additionally, if I may, the Section 42, which is what you are referring to, the low income housing tax credit, currently are not seen as a recipient of Federal financial assistance. So 504 does not—is not enforced on those properties.

I believe that would be a very good move to include that. What 504 gets us, of course, is the greater accessible units in the very newest part of towns with the nice features, and those type of things.

I know in my state in Kansas, we actually exceed the Federal requirement, and that we do require our low income housing tax credits we administer in our state to have the features of Section 504, but that is not the norm.

Chairman KELLY. Thank you both very much for your testimony today. The Chair notes that some members may have additional questions for the panel, and may wish to submit them in writing.

So, without objection, the hearing record will remain open for 30 days for members to submit questions and for responses for the record.

The second panel is excused, and we thank you very much, with great appreciation for your time.

Ms. VAUGHN. Thank you.

Chairman KELLY. As our third panel takes their seats, which I hope they will be doing now, I will begin the introductions.

We welcome Ms. Shanna Smith, President and CEO of the National Fair Housing Alliance; Mr. Philip Tegeler, Legal Director of the Connecticut Civil Liberties Union; and Mrs. Barbara Arnwine, Executive Director of the Lawyers' Committee for Civil Rights Under Law.

I want to thank each one of you for testifying before us today, and I welcome all of you on behalf of the entire full committee. Without objection, your written record, or your statements will be a part of the record. And I will go to you now for a brief 5 minute testimony of your statements. And we will begin with you, Ms. Smith.

STATEMENT OF SHANNA SMITH, PRESIDENT AND CEO, NATIONAL FAIR HOUSING ALLIANCE

Ms. SMITH. Thank you to you, Chairman Kelly, and Co-Chairman Roukema, and the ranking members, Frank and Gutierrez.

I am Shanna Smith. I am president of the National Fair Housing Alliance. And I have been working through the HUD process for more than 27 years. I outlined issues of where the deterioration in the relationship between the private fair housing groups and HUD began.

In the eight issues I raised, No. 2 dealt with the requirement that the fair housing groups return their funds to the U.S. Treas-

ury when we recovered money. I wanted to say that while that was implemented under Secretary Cuomo, it was because during the appropriations hearing for the FHIP program, the majority required that we do return these funds.

And we tried to speak with the Republican leadership to explain that it is not double dipping, that it was wise for us to reinvest the monies we receive in settlement back into the program because of the low funding level with the fair housing enforcement.

I am concerned that under the current administration some of the problems continue, and additional problems have been put into place. The last 4 days, we have had our national conference. And the state and local substantial equivalent agencies participated in our conference, and their president was with us.

And I told them that there is this five point penalty for the private fair housing groups who apply under the FHIP program, and that we may not get the money, which means that the state and local agency will have fewer complaints. If they have fewer complaints, then they get less money from HUD. If they get less money from HUD, they can do less work.

I will tell you that we did spend a week with HUD in Orlando for a policy conference, and the private fair housing groups came back very disillusioned. We felt that there is an intent at HUD, to eliminate our work.

And what is remarkable is that out of the 20,000 complaints that were filed just in the past year, that is less than 1 percent of the estimate of housing discrimination that occurs in the United States.

We have done investigations and studies where Hispanics have experienced a 100 percent rate of discrimination. We did this study—it was not a study. I am sorry. It was enforcement investigation in Chicago, and it dealt with homeowners insurance. And every single Hispanic who called to try to get homeowners insurance experienced discrimination.

Every African-American who called, 50 percent of the time to 70 percent of the time, they were denied homeowners insurance. You heard Ken Marcus say that our complaint information, the 23,557 that were dealt with this year, we are dealing with apples and oranges. That is incorrect.

Our complaints are defined exactly how HUD and the state agencies define complaints. A complaint is when someone calls us and we speak to them. We spend 2 hours in our intake with an individual. And we determine during that time if the allegation they are bringing is covered under the Federal Fair Housing Act.

So to say that we had more than 16,000 complaints of discrimination last year, the numbers that HUD and the state agencies get tend to be referrals from us. Their complaints are very—very few of those are in addition to what we refer to them after our investigation.

About a third of the complaints that we handle show no probable cause after an investigation; another third show cause. And we try to take cases through an administrative process to remedy the situation as quickly as possible, to secure housing for the victim of housing discrimination, to secure the loan, to secure homeowners

insurance, to stop the racial harassment, or the sexual harassment of the victim.

Unfortunately, the administrative process fails us completely in securing housing. We are forced to go into Federal and state court to get temporary restraining orders to prevent our client from losing the housing.

One of the things I would like to emphasize is that HUD has had an obligation since 1974 to promulgate in affirmatively furthering fair housing regulation under the Housing and Community Development Act. It is today, 2002, there is still no regulation.

As a result, more than 1,000 communities in states that receive community development block grant monies don't promote fair housing, education, and enforcement. We have recovered and reviewed more than 600 of the analysis of impediments that these cities and states and counties have been required to create and document what are the barriers to fair housing.

What are the barriers to home ownership for people of color, people with disabilities, families with children, and women? And, overwhelmingly, the cities, and counties, and states have failed to address those issues.

The last thing I want to say is that we would recommend that these committees request HUD to provide for you the Urban Institute reports. Congress funded these reports. They are supposed to show us what the rates of discrimination are in rental and sales issues.

The reports and the testing are done, and HUD has those documents. And I think it would help the committee to know what is the nature and extent of discrimination, so you could appropriately fund those programs that address. Thank you.

[The prepared statement of Shanna Smith can be found on page 121 in the appendix.]

Chairman KELLY. Thank you very much, Ms. Smith.

Mr. Tegeler.

Mr. TEGELER. Thank you. My name is Philip Tegeler.

Chairman KELLY. Mr. Tegeler, pull that microphone closer to you.

Mr. TEGELER. Thank you.

Chairman KELLY. And thank you. Would you please pull it a little closer even? I think that we can all hear it better. Thank you.

STATEMENT OF PHILIP TEGELER, LEGAL DIRECTORY, CONNECTICUT CIVIL LIBERTIES UNION

Mr. TEGELER. My name is Philip Tegeler. I am the Legal Director of the Connecticut Civil Liberties Union in Hartford, Connecticut. On behalf of the ACLU, I would like to thank Chairpersons Roukema and Kelly, and ranking members, Frank and Gutierrez, for calling this important hearing on fair housing enforcement.

As an ACLU lawyer, much of my work is focused on government action, as opposed to private acts of discrimination. For example, we have challenged discriminatory government policies onsite selection, tenant relocation, Section 8 administration, admissions policies, and exclusionary suburban housing and zoning policies.

From this perspective, I have a few simple points to convey today. First, few government housing actions are race neutral.

HUD basically has a choice in every program it operates; whether to support continued segregation of our metropolitan areas, or to take affirmative steps to desegregate and to promote racially and economic diverse communities.

Second, because of HUD's powerful impact on race and segregation, the agency's most important fair housing enforcement role is in its own programs in requiring affirmative fair housing enforcement among HUD grantees, which include local public housing agencies, private housing managers, and municipal governments.

The devolution of authority to local PHA's, housing managers, and municipalities has worked in many areas, but it has not been a fair housing success story. Like any other civil rights requirement, fair housing is controversial, and it is susceptible to local political pressure and prejudice.

Congress needs to help HUD take back control of the civil rights review process, and adequately fund and prioritize fair housing enforcement against HUD grantees. This will require, among other things, a fully staffed and funded Office of Fair Housing and Equal Opportunity.

Third, an assessment of racial impacts of actions and policies should be factored into all HUD decisionmaking. This is required in some HUD programs, but is unevenly enforced. Programs like Hope VI, the Home Program, the Low Income Housing Tax Credit Program, and Section 8 need to have much stronger civil rights goals and assessment procedures.

These are programs that directly effect where large numbers of Americans live; and the effects of these programs on racial segregation and poverty concentration, need to be taken much more seriously.

The Section 8 program, which is now called the Housing Choice Voucher Program, is a good case in point. Funding was recently cut for successful programs that helped families find apartments in lower poverty neighborhoods.

These programs, including the Moving to Opportunity Program, and the Regional Opportunity Counseling Program, were working to provide families with information about desegregated housing options and helping them to apply for housing.

Without these programs, it is even more difficult for families to move out of high poverty neighborhoods using housing vouchers. There are many other aspects of the Section 8 program that could be strengthened to promote fair housing.

Just as one example, we could move toward a more efficient regional administration of the Section 8 program. We could change the archaic system for setting local rents to increase the number of neighborhoods and towns that tenants have to choose from.

Section 8 is currently our largest Federal housing program, and it has the most potential of any program to decrease segregation in our metropolitan areas. Fair housing should be part of this program's core design. There are many similar examples throughout HUD's programs.

As I pointed out in my written testimony, a large coalition of legal services and civil rights organizations requested a meeting with Secretary Martinez on these issues last spring, and we would be very much in following up on that request this year.

Finally, we would encourage the committee on, after reviewing the Millennial Housing Commission Report, which was recently submitted to Congress, to ask for a follow up report on fair housing. The Millennial Housing Commission Report contains some very important recommendations on new housing production, particularly housing production for very low income families. But it does not address fair housing enforcement in a systematic way.

To implement these important recommendations, fair housing will need to be factored in from the beginning. And if this committee can appoint some type of task force to look at this, I think it would be very important. Thank you.

[The prepared statement of Philip Tegeler can be found on page 139 in the appendix.]

Chairman KELLY. Thank you very much.

Ms. Arnwine.

STATEMENT OF BARBARA ARNWINE, EXECUTIVE DIRECTOR, LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Ms. ARNWINE. Good afternoon. I am Barbara Arnwine, Executive Director of the Lawyers' Committee for Civil Rights Under Law. I would like to thank——

Chairman KELLY. Ms. Arnwine, are you sure that that microphone is turned on?

Ms. ARNWINE. Let me—how is that?

Chairman KELLY. That is a lot better. Thank you, ma'am.

Ms. ARNWINE. OK. I would like to thank Chairman Sue Kelly, Chairman Roukema, and Representative Frank, for holding these important hearings on fair housing enforcement.

My comments today focus on the Lawyers' Committee's concerns with the Department of Housing and Urban Development's declining efforts at ensuring the principals of fair housing, as set forth in the Constitution and Title VIII of the Civil Rights Act of 1968.

We want to make sure that they are not only memorialized in words, but that these protections are also adhered to indeed by the Department. Over the past 10 years, we have seen the Federal Government's involvement in the enforcements of fair housing and other civil rights laws decrease dramatically.

This trend is alarming at a time when the number of civil rights complaints is rising, and thus the need for leadership of agencies enforcing vital civil rights laws is even greater. Unfortunately, the alarms ring, it has been met by deaf ears at HUD, and other Federal agencies responsible for enforcing and ensuring equal justice under our housing laws.

First, the Lawyers' Committee has serious concerns with the HUD complaint process. The starting point for any problem is the vast reduction and funding of FHEO at HUD. As would be expected, the reduction in funding and staff has taken its toll as HUD has been unable to keep up with its increasing workload by failing to conduct timely and complete investigations of fair housing complaint, HUD prolongs fair housing acts violations, and its conduct threatens this country's commitment to ensuring that every American will be free from discrimination in housing.

What is more troubling than HUD's delay in investigating complaints, or HUD's recent efforts to reduce the backlog of com-

plaints, rather than providing more staff to investigate and pursue these complaints, HUD has taken Congress's clear mandate to operate a straightforward, user-friendly complaint process, and turned it on its head.

They have created an elaborate like system designed to administratively dismiss complaints without conducting any investigation to determine the merits of the underlying client claim. This reprehensible conduct by HUD seemingly returns us to a day where we had a law that banned discrimination, but without "an effective enforcement system to make that promise a reality."

Through the work of the Lawyers' Committee and our affiliates and other groups across the nation, we have seen numerous and repeated failings by the FHEO staff to meet the congressional goals set forth in the Fair Housing Act. The problems we have seen include a couple of examples:

(1) In one case, where there was clear evidence of discrimination including letters signed by the respondent harassing the complainants, and attempts by the respondent to run over the complainants with a car, more than 15 months have passed since the complaint was filed and the investigation has not been concluded.

In another case, HUD refused to accept the complaint because it was printed on an improper form. The form, it should be noted, came from HUD's own website that they recommended to complainants to use.

And, yet, another case brought by the Boston Lawyers' Committee, our affiliate organization, HUD has adopted strained analyses of legal principles that work to deny fair housing organizations standing where established precedent would grant them.

Thus, HUD has adopted legal theories and imposed additional requirements on complainants that are neither required nor permitted under the Fair Housing Act, or HUD's implementing regulations.

The Lawyers' Committee is gravely concerned about these growing burdens, these burdens on complainants with great and important cases that HUD's attempts to reduce its backlog through administrative gimmicks rather than through investigation and resolution of the case is particularly troubling and clearly goes against Congress's intent when they passed the Fair Housing Act amendments in 1988.

Using administrative schemes to avoid HUD's investigative responsibilities is shameful, and also fails to fulfill HUD's statutory obligations to investigate an eradicate housing discrimination. It is clear that further oversight and guidance from Congress is needed now more than ever.

We are not only concerned about these matters, but we also are concerned, as has been expressed by my colleagues, about the failure to merge—to look at the failure to enforce fair housing laws by various cities and regions; and, at the same time, granting them more money under other programs including the Hope VI Program, the Low Income Tax Credit Program, the Community Development Block Grant Program, and others. HUD must gather and use this information.

In closing, we call on Congress to enforce our laws, to hold HUD much more accountable, to make sure that it is complying with its

obligations, and that we must make sure that they do not continue to put stumbling blocks in the path of those who are certain that violations of their rights under the Fair Housing Act, and that instead they are living up to their obligation to affirmatively further fair housing. Thank you so much.

[The prepared statement of Barbara Arnwine can be found on page 76 in the appendix.]

Chairman KELLY. We thank you. That is quite a statement, Ms. Arnwine.

Ms. Smith, in your statement, you go into detail about the downsizing of the Office of Fair Housing and Equal Opportunity, and the staff was just decimated.

Is it your observation that this was not conducted properly, and that a center of knowledge and experience was not maintained there?

Ms. SMITH. I cannot respond to whether it was conducted properly or not because I am not familiar with how HUD moves people around. But we did lose a number of highly skilled people, Sara Pratt being one of them.

I think Sara gave you some of the reasons why she left. But, in addition, there were people who told me they left because of the changes in management; but also because in the appropriations arena, Congress said to HUD under the FHIP program and the enforcement, they could no longer do special enforcement projects.

And by not being able to attack the institutionalized systems of discrimination, people were disillusioned. And the senior—the most senior staff, who were both Republicans and Democrats, who worked at the division left, and went into private practice.

Some came to work for us, some went to work at much lower salaries in the private fair housing movement because they thought they could make a difference. The devolution though was a problem. Devolution in the fair housing side is a serious problem. Headquarters must make the decisions.

Chairman KELLY. I am sorry. I did not mean to interrupt you.

Did you feel that fair housing enforcement was not really a priority for Secretary Cuomo here?

Ms. SMITH. I think enforcement was, but structuring it in a way that would be most effective was difficult. He was competing with mandates from Congress that the private fair housing groups could not bring homeowners insurance actions; that it should not be covered under the law.

He was dealing with the issue of Congress saying that the fair housing groups should not be able to use the awards that they receive, that were given to us by courts, and lawfully given to us to recover our expenses, has to go back to the U.S. Treasury.

And then, on the other hand, he—there was a lot of press that was going on, but there was no consistent funding for the private groups who were bringing and filing the majority of the cases in the country. And the changes to the FHIP NOFA process, we found to be very detrimental to enforcement.

And, now, even more punitive issues have been added into that process. And so, we sit here as the private fair housing enforcement movement and education movement feeling no support from Con-

gress or the Department to do the job that needs to be done, in fact, that HUD's charged to do.

But Congress found in 1990 that fair housing groups do a good job of providing education and enforcement, and therefore created the fair housing initiatives program under President Reagan, and with the leadership in Congress at that time. And it became a permanent program under President Bush, and the money was increased by Congress.

And under Secretary Cisneros, the program expanded. And, as you heard Sara testify, that some of the strongest enforcement was going on because the funds were coming from Congress. We had good leadership in Secretary Cisneros, and then there was a change.

The money had many more conditions placed on it. And even today, with the $20 million that has been allocated, less than $12 million is being used for enforcement for the whole United States.

This is very difficult. It is a sad situation. I have complaints pending at HUD. As a national organization, we have a complaint that was filed in 1997, and very little—there was some investigation in 1999, some in 2000, and HUD has not proceeded with the investigation, and we had to file in Federal District Court. And that is not our chosen way to resolve a complaint. We want to try to work with the industry in an administrative process.

Chairman KELLY. Thank you. I have got a little bit more time. I want to ask you one more question.

You made a special reference to the disaffected populations of non-English speaking immigrants like the Hispanic and the Asian populations. Secretary Cuomo spoke to us then about the efforts that the department was making to address their housing needs.

What is your evaluation of those efforts that he said were being made?

Ms. SMITH. I think the FHIP program has ended up being the catchall for innovative programs when Congress says something, or someone comes up with an idea in fair housing, they say, "Well, we will let the FHIP groups do it." But then there is no corresponding funding for us to do that.

Most of the fair housing, private fair housing agencies have maybe three or four staff people. And we said to Secretary Cuomo at the time, as we said to Secretary Martinez, we need more money, so that we can hire staff who will speak Spanish, who will have connections with the Asian-American communities.

And, as you see, we have a high rate of disability cases that we handle. And that is because HUD and Congress focused money on that, and Secretary Cuomo focused money on disabilities. Our race cases remained level, our disability cases increased, but complaints from people who are Hispanic-Americans and Asian-Americans remain very flat.

And, in fact, we get more than the government gets, and yet it is very difficult unless we get enough money. I think Secretary Cuomo asked for more money for the FHIP program, as I recall, and we did not get it. And if we don't get the money, we cannot reach all of the protected classes, and there are seven of them under the Federal Fair Housing Act.

Chairman KELLY. Thank you very much. My time is up. Mr. Frank.

Mr. FRANK. Ms. Arnwine, I apologize. I had a very important piece of legislation that will be coming up soon deeply affecting the fishing industry in my district and I had to go off.

But I know you were present when I was questioning Mr. Marcus, and he was in fact denying some of the things you asserted. He can't know everything obviously in the Department. And then I had to step out briefly during testimony. But I assume you—did you address that disagreement?

Ms. SMITH. Yes.

Mr. FRANK. And how do you reconcile that?

Ms. ARNWINE. Well, I think it is just embarrassing for HUD to admit that they have forms on their website——

Mr. FRANK. Oh, Ms. Arnwine, you are an expert on a lot of things, but I am an expert in some things. Please do not overestimate HUD's ability to be embarrassed. I think you will find that that is not as easy as you think, but please go forward.

Ms. ARNWINE. I think that he obviously did not want to admit to it. I mean it is embarrassing that they have this form that is on their websites that when complainants go to HUD to try to figure out, you know, how do they come forth and register a complaint, that they find these forms; they then download them—if they are able, you know, they have computer access—they take those forms, they fill them out, they send them to HUD.

They have a very reasonable expectation that those forms are going to be processed and followed up on by HUD. What instead happens is that HUD gets the forms, and in many cases rejects them.

Mr. FRANK. Is that still happening? I mean this is not——

Ms. ARNWINE. Yes, yes, it still happens.

Mr. FRANK. All right. Let me make this proposal.

Ms. ARNWINE. Still happens.

Mr. FRANK. Because I don't want these things just to be brought up here and dropped.

Ms. ARNWINE. Yes.

Mr. FRANK. If you will send to me some documented cases of that——

Ms. ARNWINE. Yes.

Mr. FRANK.—I will then send it on to Mr. Marcus saying "this is what you told me did not happen." I don't mean to say that he was being dishonest. But, obviously, there are things he wasn't aware of, and I will directly call those to his attention, any other disparity of that sort, where you can document them.

Yes, go ahead.

Ms. ARNWINE. Right, because the other thing they do that really is very troubling is that they take the form, sometimes even the forms that they accept, they will take them and they retype them for summaries, and then they send them back to the complainants to sign them.

As you know, that is totally in the 100 days, the complainants get these forms back, don't recognize what is required, and don't know what to do. It is another way where we losing——

Mr. FRANK. All right. Now let me ask you. When they retype it and send it back, does that stop the statute, or does it keep running?

Ms. ARNWINE. No, it keeps running. That is a big problem.

Mr. FRANK. All right. One of the things, if you will remind me, I will say to them that if an application is filed, it seems to me—let me ask you this. You are the experts in law.

Is there any statutory barrier which keeps them from starting the clock on the day they get the completed and formal application rather than the initial one?

I mean could they, if they said, "Well, that is not right, but you have got to redo it, but I will start the clock when I get the new one?" Is there a statutory problem there?

Ms. SMITH. Yeah, there is.

Ms. ARNWINE. The statute talks about 1 year from the date of the discrimination.

Mr. FRANK. All right. So that means then they have to take up. Although maybe we can also look at the statute, and perhaps put into the statute a little more flexibility. But, in the meantime, they have got to work on that.

Ms. Smith, I was very interested in what you had to say, and I—maybe I wasn't paying attention. I don't remember anyone beginning in 1998, calling some of these problems to my attention, obviously, it is something I want to work on. And it began in the last administration. It has carried over. It seems to be wrong in both cases.

I will be working with my colleagues to try to get Secretary Martinez to change some of these policies. I must say, these days privatizing all kinds of things is en vogue; privatizing social security, privatizing prisons, maybe the only thing that some of these people don't want to privatize is enforcement of discrimination because it might be too effective. But I think we probably ought to be somewhat consistent.

One thing particularly troubled me here when you talked about the new restrictions that Secretary Martinez imposed. I want to make sure I understand this. It is one page 6 of your testimony, that the applicant—that is the fair housing group, private applicant—must show that the proposed activities comply with CDBG recipients consolidated plan analysis of impediments to housing.

In fact, it would seem to me that the main reason for having this is to criticize the CDBG recipients. In other words, have I got this right? The CDBG recipient is the local government entity here, correct?

Ms. SMITH. That is correct.

Mr. FRANK. So what they are telling you is that if you were monitoring that entity's fair housing compliance, you must have a plan that is in compliance with their non-compliance. I mean I guess that one seems to me particularly troubling. I don't understand why you should have to comply with the people you are monitoring.

Ms. SMITH. Well, theoretically, had the analysis of impediments been conducted by the cities, and actually documented the barriers to fair housing, and then made recommendations to remove those barriers, and then funded those barriers, then——

Mr. FRANK. Right. But, as you point out, one, we have not, as the Federal Government, done a good job of monitoring that. But, second, it may well be that one of the problems is that the entity has not in fact done a good plan; and then you would be debarred from doing that very fundamental critiquing.

Ms. SMITH. We would lose points in our application. And the competition is so keen, that oftentimes there is one-half point deciding who gets a grant and who doesn't. So when you look at that and you lose points—and there are only about 60 cities that actually have a good AI that we have reviewed.

So, you know, if you lose points there, and then you lose the five points if you are already in a state such as Ohio that has eight great fair housing groups, who work very closely with the Ohio Civil Rights Commission, have great successes, all of those groups are being penalized, and then the Ohio Civil Rights Commission is penalized.

Mr. FRANK. My time is up. I will want to work with you to maybe get a letter that some of my colleagues might join——

Ms. SMITH. Yes.

Mr. FRANK [continuing]. To the Secretary on that. And, Ms. Arnwine, I would like a letter from you, which I will pass along to Mr. Marcus. Thank you, Madam Chair.

Chairman KELLY. Thank you, Mr. Frank.

Mr. Watt.

Mr. WATT. Thank you, Madam Chair, and thank the chair and the ranking member for convening this hearing. And I apologize to this panel of witnesses, and the prior panel of witnesses for being in and out during the course of the afternoon.

I want to say a special welcome to my good friend and long-term colleague, Ms. Arnwine, who spent a good portion of her life in North Carolina, and tell her how great it is to see her continuing to carry on the magnificent work that she is doing on the national stage.

I want to try to get some more details about these two North Carolina cases, in particular, so that I might be able to piggyback on Mr. Frank's letter, and put some additional pressure on HUD to be more timely in its investigation of complaints.

Ms. Jones, Stephanie Tubbs-Jones, raised some of the issues about delays in investigating complaints during one little snippet of time when I was actually in the room earlier today.

What seems to be the problem with getting these investigations to be more timely in you all's experience, if anybody has experience with that? Ms. Arnwine.

Ms. ARNWINE. Thank you very much. We really appreciate it. Thank you. Congressman, for those kind remarks. It is obvious that one of the biggest problems is the implementing regulations that HUD has proffered and operates under. It is their own regulations that is requiring that they, you know, reject complaints.

It is their own lack of I think any kind of sense of imperative for enforcement that allows them to just treat the 100 day requirements just, you know, totally in a casual non-serious manner. It is their own lack of seriousness that allows them to, as you notice, to today to talk about they only are asking for level funding for FHEO.

It is their own lack of a kind of seriousness that I have seen also with the Department of Justice where, as Mr. Frank and others have called, and Mr. Gutierrez have called to our attention today, to even use the term "discrimination."

I mean we have—I was just, you know, in the last number of months, I have been talking to attorneys over at Department of Justice where they have been told to strike from the their briefs the use of the word "discriminatory."

There is this problem that is at HUD, but it permeates this administration of a kind of ambiguity toward recognizing, and admitting to the discrimination that exists in our society. But I really think the regulations are a problem, and a lack of serious leadership over at HUD on these matters.

Mr. WATT. Either of the other witnesses have any experience with this that might be able to give us some insight as to why it is taking so long to process investigation?

Ms. SMITH. Well, in part, just trying to get your complaint accepted with HUD lately has been very difficult. I would say in the last 2 years, when you call, the intake person, who is not trained in what is covered by the law, and what the courts have decided since 1968 about the law will oftentimes reject a complaint.

And then you have the situation that Barbara described where they will fill it out on the internet, mail it in, and then a lot of questions start happening, and the time is ticking all along.

The other issue is during an investigation, I know when the private fair housing centers, who have standing to bring complaints with HUD, as well as in Federal and state court, we have to show an injury, and we know that, in order to file a complaint.

But the HUD investigators have this—it was actually like an eight page checklist that the fair housing groups had to answer before our complaint would be accepted. In fact, in the case that we have pending, the Federal District Court here in the District of Columbia has already denied the motion to dismiss based on standing.

But HUD wants to continue to question, not only the National Fair Housing Alliance, but fair housing groups in Toledo, Milwaukee, and Chester, Pennsylvania, and Richmond, Virginia. We are all together in a lawsuit. And we have all filed complaints in 1997 with HUD, and the standing issue just started in the last 2 years. And we are baffled by this issue.

So if they question groups that have had standing, that can document injury, I wonder what happens to the individual who comes in. And our experience is that we know of cases that have had no investigation started, cases that are five and 6 years old.

In addition, when they were talking about closing out the cases and how important this is, I know of situations where, for example, our attorney was called and said, "Would you withdraw your complaint from HUD?" And if they ask us to do that rather than counting, you know, this case, and taking credit when this case should settle is very frustrating.

And I know of situations where if they called the complainant one time and couldn't reach them, they are calling nine to five, the majority of our clients work. They don't reach them, they will say

the complainant was unresponsive. We couldn't locate them, and then they close the case.

Mr. WATT. Thank you, Madam Chair. My time has expired. I thank the witnesses for being here.

Mr. TEGELER. If I could briefly add one other response to the same question. The problem of delay and understaffing is not limited to HUD enforcement agencies, but also to all of those states where "substantially equivalent" laws have allowed the delegation of complaint processing and fair housing to local agencies.

There are a lot of problems there as well. I think the HUD approval process for those local agencies needs to be much more stringent because we have serious delays in a number of states that don't have HUD processing, per se.

Chairman KELLY. Thank you, Mr. Watt.

Mr. WATT. Thank you.

Chairman KELLY. Now Ms. Lee.

Ms. LEE. Yeah, thank you, Madam Chair.

Once again, I want to thank you for this hearing, and thank the panelists because it is very—I don't know if any other members are feeling this, but I am feeling very frustrated and somewhat angry knowing that these hearings are just the tip of the iceberg in terms of what our constituents are feeling each and every day, and going through each and every day just to be able to be treated fairly and equally.

And, Madam Chair, I think I am seeing this as a bipartisan—has been a bipartisan problem historically. And I think Ms. Smith kind of laid out the history of why some of the frustrations with staff was there, which Mr. Marcus mentioned earlier.

But I guess what I am concluding is—and after listening to Mrs. Arnwine also, that the commitment to fair housing just has not been there. And the congressional constraints have been so onerous, that even if the Secretary of HUD, whomever that Secretary may be, has made it a priority.

The Congress is not going to allow for that to be enacted. We haven't seen much in terms of increasing the funding for programs and for the division which is responsible for fair housing and equal opportunity.

So if we don't put our money where our mouth is, and if the Congress doesn't allow for the enforcement of fair housing or equal opportunity laws, then where are we going? I mean are we going backwards or forward?

I mean we heard the complaints with regard to the previous 10 years, and Ms. Arnwine also talked about the decrease in, you know, the complaint process moving forward. But, yet, now we are hearing that we may be in a similar situation.

And so, is it the culture of HUD, or is it the culture of the Congress? Is it—what is it? Is it we still have problem with equal opportunity for people in our country? I mean I guess I want to know what you guys really think it is.

Ms. SMITH. Well, since I have a grant application pending—but I will be frank. There is a culture of HUD that they can't be an advocate. And in the private fair housing movement, we only become the clients advocate after evidence of discrimination is documented.

We are as skeptical as everybody else when that complaint walks in the door because we can't bring a frivolous action. It hurts our community. It hurts the whole concept of fair housing. We make enemies in the industry if we bring frivolous actions. HUD and the state agencies have to step back and say, "You know, we are the neutral factfinders. We can't advocate for anyone."

As a result, if a fair housing agency isn't helping a client through the process, most victims of housing discrimination don't know what to ask for, and HUD doesn't know how to expand a remedy that changes the institutionalized practices in large industries that occur.

Sometimes there is conflict. HUD administers the FHA program. HUD oversees the GSE's. HUD oversees all of the public housing authorities, and the Section 8 programs. We often have housing discrimination complaints against those very entities. And there is a conflict for HUD to monitor those agencies and enforce the Fair Housing Act.

You heard Sara respond to debarment. We had a case that went to the 6th Circuit Court of Appeals against a large Section 8 developer, and we asked HUD to debar this builder. We have a Federal jury decision, and we had an appellate court upholding that jury decision that this developer discriminated on the basis of religious and national origin.

No steps were taken. And what HUD said to me when I called to find out why, they said, "Shanna, they have the best-looking projects that are out there." I said OK. And they said their management is really good. I said, "Yes, but they discriminate. They don't allow people of color. They don't allow people who are not Christians or Jews to move into their developments."

And there is a culture, and it is a problem. And years ago we thought that Congress should make a separate entity for fair housing enforcement similar to the Equal Employment Opportunity Commission because there is a conflict at HUD. And I think if Congress could look at a separate entity and see the enforcement, see the kinds of education that could be done because we are—I consider ourselves to be evenhanded.

I work with many large corporations including State Farm and Allstate, Nationwide, and Liberty Mutual Insurance companies, who had been seriously violating the law prior to 1996. And we are in partnerships with these companies.

And so, there is a way to work with the companies who have engaged in institutionalized practices of discrimination, eliminate those problems, still work with those same agents that may be having problems on a local level, and handle that.

But HUD does not have that vision of challenging the institutionalized practices that exists in the United States. In Congress, you all haven't just allocated the money. And the lobbies or the interest of the real estate industry, of the insurance industry, of the lending industry have come to you and said, you know, don't regulate us.

But the Fair Housing Act doesn't regulate anything. The Fair Housing Act simply enforces the law. HUD never regulated insurance. We have no interest in regulating insurance. We just want to make sure that their underwriting guidelines are fair, and there

is no disparate impact, based on race, religion, disability, or sex in those laws.

So, if you do something, and either you mandate HUD to change its culture, or create a separate organization that will administer the fair housing money for private groups, and administer the money to the State agencies because now the State agencies tell me they are being micromanaged by HUD, and it just thwarts all of the enforcement.

And any time we have to file a complaint, make a Federal case out of everything that comes forward is not productive. There are small cases that just calling the landlord, and our client says call the landlord, we can wrap it up.

Chairman KELLY. Speaking of wrapping it up, we are well over the time.

Ms. SMITH. Yes.

Ms. ARNWINE. Can I make just one——

Chairman KELLY. Appreciate your passion, but we are out of time.

Ms. ARNWINE. OK.

Chairman KELLY. I note that our members probably have some additional questions, given the testimony that this panel has submitted. You will probably find questions submitted in writing.

So, without objection, 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 third panel is excused, again, with our great appreciation.

And I want to briefly thank all of the members and the staff for their assistance in making the hearing possible. And this hearing is adjourned.

[Whereupon, at 4:55 p.m., the subcommittees were adjourned.]

A P P E N D I X

June 25, 2002

Opening Statement
Congresswoman Marge Roukema
Chairman
Subcommittee on Housing and Community Opportunity

June 25, 2002
"Fighting Discrimination Against the Disabled and Minorities Through Fair Housing Enforcement"

I want to thank the witnesses for coming to testify today on the critical issue of housing discrimination. Today we are here to discuss our nation's fair housing laws and to explore new ways to remove barriers to quality affordable housing.

As many of you know, as Chair of the Housing Subcommittee, I have been working on legislation to increase the availability of affordable housing and expand homeownership and rental opportunities across the country. It is my sincere hope that we will be successful in enacting HR 3995, the Housing Affordability for America Act this year. This country is facing a serious affordable housing problem for minority groups and for those with special needs. We must break down the barriers that prevent certain segments of the population from realizing the American dream of homeownership and our Fair Housing laws are a key component of any housing policy.

In 1968, Congress recognized that fact and enacted the Fair Housing Act. With the passage of that legislation, Congress confirmed its commitment to equal opportunity and equal justice for those needing housing.

In the years since the Fair Housing Act was enacted, we have made significant progress. More families own their homes today than ever before and the Fair Housing laws have played an important part in that success.

The Fair Housing Act covers most housing and promotes equal housing opportunities for all Americans by prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, age, disability, and familial status

I strongly believe that the key to continued success on fair housing centers on aggressive enforcement of the laws that exist.
When the laws are enforced and the programs properly administered, there has been significant expansion of housing, lending, and insurance for those that need it. That is why I want to commend both Secretary Martinez and President Bush for making better enforcement and administration of our Fair Housing Laws a high priority.

Unfortunately, in previous years, HUD's commitment has been less than impressive. Reduction in the HUD staff that enforce and administer the Fair Housing laws has led to lack of enforcement and slow resolution to the more than 10,000 discrimination complaints that are filed each year. Our problems with fair housing are not because there are not enough laws on the books, but because they have not been adequately enforced or administered. We can do better and I know that the Secretary has made a commitment to make this a priority.

In his testimony today, Kenneth Marcus, General Deputy Assistant Secretary for Fair Housing and Equal Opportunity at HUD lays out a variety of steps that HUD is already taking or intends to take in the near future. I am sure that they will go a long way to making sure that we are meeting the needs of persons with disabilities, increasing homeownership and enforcing the Fair Housing Act for all Americans. I look forward to working with the Secretary and the Department on these and other steps that will address the shortcomings that have hampered the programs in recent year.

Statement of Chairwoman Sue Kelly; House Committee on Financial Services Joint Subcommittee on Oversight and Investigations and Subcommittee on Housing and Community Opportunity Hearing on Fighting Discrimination against the Disabled and Minorities Through Fair Housing Enforcement
June 25, 2002; 2:00 p.m.; 2128 Rayburn

This joint hearing of the Subcommittee on Oversight and Investigations and the Subcommittee on Housing and Community Opportunity will come to order.

I want to thank all Members of Congress who are present today. Without objection all Members present will participate fully in the hearing and all opening statements and questions will be made part of the official hearing record.

Beyond the issue of availability of affordable housing is the ability of the disabled and minorities to access what housing is currently available. Unfortunately, discrimination continues to be a disturbing problem in our nation which is very apparent in housing. The disabled have a particularly hard time since the wrong housing reduced their ability to function – even in the confines of their own homes. As a nation we have recognized these problems and enacted laws which created agencies dedicated to stopping housing discrimination and ensuring more homes are accessible to the disabled. It is for this reason that I become very frustrated when I read reports which state that these laws are not being enforced and the agencies created to investigate and correct these wrongs have been failing in their job.

One issue I continually hear about when I am in New York is the desperate need for housing for people with disabilities. We have adults who desperately want to get out on their own, who hold jobs, pay taxes and simply have no options for housing. Think about people of slight or profound disability and the courage it takes for them to enter the world on their own. That desire to become an active part of society must not be thwarted by a lack of available, affordable housing.

It is my hope that with today's hearing we can all gain a better understanding of what the issues are which face the disabled and minorities seeking homes and better living conditions within those homes. We will discuss why efforts to enforce fair housing laws have failed and what is and can be done to rectify the situation. Most of all I hope we can agree to work together to renew our efforts to ultimately solve this large problem.

There must be a zero-tolerance policy for discrimination against the disabled and minorities. The need for clean, safe, affordable housing for minorities and the disabled has never been greater. Addressing this housing shortage and fighting discrimination must be a top priority in our nation's housing policy.

I will now recognize my friend from Massachusetts for his opening statement. Mr. Frank....

Opening Statement
Chairman Michael G. Oxley
House Committee on Financial Services

Subcommittees on Oversight and Investigations and Housing and Community Opportunity

Fighting Discrimination Against the Disabled and Minorities Through Fair Housing Enforcement

June 25, 2002

Today's joint hearing of the Subcommittees on Oversight and Investigations and Housing and Community Opportunity will review important issues involving discrimination in housing and discuss what needs to be done to prevent such discrimination. I thank Chairwomen Kelly and Roukema for calling this hearing and welcome our distinguished witnesses.

Unfortunately, the discrimination that generations of people have nobly fought to eliminate endures in today's society. Racial and economic discrimination taint the advances we make as a nation, and undermine the freedom that is the very fabric of our society. In recent years, we have also encountered an alarming rise in complaints by the disabled against discrimination of various forms. For all of these groups, the discriminatory practices in housing are among the most troubling aspects of their lives.

As members of Congress, we sit in a position to discern the problems of others, gather information, and implement policies to assist those who chose us. As this Committee has so fervently worked towards making the dream of homeownership possible for a greater percentage of Americans, we recognize the problems associated with all aspects related to housing. Discrimination against many Americans in their living arrangements is something that we must address and work to solve. I am confident that in today's hearing, we will receive the information needed to effectively address problems that plague many Americans, so that we may improve the lives of all Americans.

I am pleased to have such notable witnesses before us, as their extensive knowledge shall prove beneficial to us all. By providing us with their perspectives on the problem and their ideas to solve the problem, they serve as the bridge between the problem and the solution. Through an open dialogue with experts in housing and representatives of the victims of housing discrimination, I am sure we can move forward to make life better for these Americans.

I expect this hearing will also highlight the need for better coordination among federal, state, local and private organizations to prevent discrimination in housing. Again, I thank the Chairwomen for convening this hearing and our distinguished witnesses for testifying.

STATEMENT OF THE HONORABLE
WM. LACY CLAY
before the
Subcommittee on Housing and Community Opportunity and
The Subcommittee on Oversight and Investigations

"Fighting Discrimination Against the Disabled and Minorities Through Fair Housing Enforcement"

June 25, 2002

Thank you Madam Chairwoman. I appreciate you having this hearing today, and I look forward to the testimony we are about to hear. We are facing a tremendous problem of fair housing complaints filed by people with disabilities, African Americans, Hispanics, Asians and women. There were in excess of 23,000 complaints filed last year. This is an increase of over 1,500 from the year 2000.

The National Fair Housing Alliance reported that the complaints are highest among African Americans, people with disabilities and families with children. The report further finds that the majority of complaints are filed

against apartment owners and managers for discriminating on the basis of race, disability, familial status and national origin. The Fair Housing Act specifically forbids/prohibits discrimination in housing on any of the just mentioned basis.

There is a ground swell of opinion in Congress that major economic development initiatives must address the need for increasing the availability of affordable housing and expand homeownership and rental opportunities across the country. However, this availability of housing must be for everyone and accessibility must be provided on a level playing field.

The reports of discrimination cover a broad spectrum of the housing area. In addition to the complaints against apartment owners/managers, there are also high numbers of complaints in mortgage lending and sales. We also have high numbers of complaints against housing programs administered by HUD. These complaints are especially troubling in that HUD seems to be indifferent to discrimination findings as they continue to fund these offending communities/organizations with the same millions

of dollars. This indifference is also in violation of HUD's mandates in addressing discrimination in its programs. Additionally, HUD's complaint process is too cumbersome for most laymen to comprehend and work through in a reasonable time.

The testimony today will address some of these discrepancies and hopefully also provide insight on other problem areas. I look forward to today's discussion, and I hope that we can keep our eyes on fundamental questions of the purpose of this hearing and how to make immediate and permanent corrections.

I will have some questions that I will address to the proper witnesses when I am recognized for that purpose.

Madam Chairwoman, I ask unanimous consent to submit my statement to the record.

OPENING STATEMENT OF
LUIS V. GUTIERREZ
RANKING DEMOCRAT
SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS
"FIGHTING DISCRIMINATION AGAINST THE DISABLED AND MINORITIES THROUGH FAIR HOUSING ENFORCEMENT"
JUNE 25, 2002

Good afternoon Chairwoman Roukema, Chairwoman Kelly, Ranking Member Frank.

It has been more than three decades since the passage of the Federal Fair Housing Act and we can still see, hear and experience housing discrimination almost the same way we did more than 30 years ago.

In 2000 alone, federal agencies received more than 22,000 complaints. It's a tell tale sign that out of these numerous complaints, race was the most commonly reported discrimination, followed by disability and familial status. Last year, the number of complaints increased to approximately 23,500. But these numbers do not really tell the whole story. HUD estimates that more than 2 million instances of housing discrimination occur every year.

It has been documented that victims of housing-related discrimination or hate activity feel isolated, shocked, afraid and vulnerable. It is typical for these victims to decide NOT to report their cases because they may fear retaliation, mistrust the law enforcement, have cultural or language barriers, or fear deportation. This helps to explain why illegal-housing practices experienced by members of racial minorities and other groups are still seriously underreported.

Audit investigations conducted in some cities with high percentages of minorities indicate that Hispanics seeking rental units in some areas face discrimination more than 70 percent of the time. This legacy of housing discrimination in the U.S. has forced many people to grow up in segregated communities. It has been proven that segregated neighborhoods have or tend to have segregated schools. And we all know that racial isolation in our neighborhoods and schools fosters the growth of stereotypes, which causes prejudices, which ultimately leads to hate.

I believe that we can all agree that if our communities were racially and ethnically integrated, our nation would be much more tolerant, and many of our current problems involving discrimination for reason of disability, race and socio-economic status would decrease dramatically.

Our nation's heartland seems to be stubbornly segregated. According to the best information available, the cities of Chicago, Detroit, Milwaukee, Cleveland and St. Louis all ranked among the 10 metropolitan areas with the most black-white segregation. At the same time, Hispanics in Chicago, Cleveland and Milwaukee live in more pronounced segregation than Latinos in any other major metropolis. In fact, segregation for Latinos is greater in Chicago than in any other major

metropolitan region in the country.

How can we live together as one nation and claim to be united if half of our country is systematically not allowed to live together in the small communities?

Let us remember that homeownership has always been central to the realization of the American dream. Our government offers substantial tax benefits to those who own compared to those who rent their homes. Homeownership creates family wealth and determines access to education in communities lacking affordable rental housing. However, African-American and Latino families lag far behind Caucasians in homeownership and are grossly underrepresented in most newer suburban communities.

Housing segregation, often reinforced by municipal and educational separation and the migration of minority families into neighborhoods far removed from suburban growth centers, is exacerbating racial and ethnic inequalities. The consequences of this segregation in our metropolitan areas is an uneven patchwork of "have" and "have not" communities. These community divisions are matched with educational opportunities, because almost every city and town has its own school district. An immediate concern is that this housing pattern is likely to perpetuate a *de facto* highly segregated school system that is likely to have disastrous consequences for the educational opportunity of minority and low-income students.

Let us remember the sad but true direct correlation between segregation and poor schools, with in turn means fewer resources for Black and Latino children who attend them. The districts where minorities are finding a significant number of homes are not among those with a high percentage of residents reaching a higher education. Coincidence? Unlikely.

Research shows that economic differences alone cannot explain the highly segregated pattern of housing choices because serious racial segregation continues to exist within each economic group. Though we could say that the causes of segregation are multiple and complex, I think that the majority of us here today might agree that one of the most important reasons for the sluggish movement toward diversity is the housing industry affair with something that looks to be like racist tendencies.

Let me point out some facts:

- Overall, the incidence of housing discrimination is estimated at 56 percent for Black renters; 50 percent for Hispanic renters; 59 percent for Black homebuyers; and 56 percent for Hispanic homebuyers. When seeking housing, Blacks and Latinos will experience discrimination twice as much as any other group.

- $ After race, families with children (of all races) comprise the second largest category of alleged discrimination, with an average of one in four complaints citing this basis.

- $ An analysis of home equity by the Brookings Institution found that Black homeowners typically receive 18 percent less value for their homes than White homeowners.

$ Conventional mortgage loans denial rates of 53 percent for blacks and American Indians and 38 percent for Hispanics, compared with 25 percent for whites.

Unfortunately, people who work hard, maintain good credit and have strong references are still being discriminated against because of the color of their skin, because they have small children, or because they suffer from a disability.

It is obvious that the existing and widespread housing industry practices, procedures or habits are directly interrelated with discrimination. The Fair Housing Act mandates that HUD must protect the right of access of all Americans to fair housing. To achieve that, changes in housing markets must happen. But they are unlikely to occur without changes in funding mechanisms.

Section 504 prohibits discrimination on the basis of disability in programs, services and activities that receive financial assistance. One of the goals of Section 504 is to provide guidance to persons with disabilities about their rights and to exercise those rights. However, this section can only serve its purpose if we have HUD employees who are educated on this section and know how to apply it.

Fair housing efforts have long been under-funded and under-valued. At the same time, the economic and societal costs of housing discrimination and segregated housing patterns continue to be overwhelming.

Some successful plans such as the Fair Housing Education Programs have proven to be effective in alerting consumers to their rights and how to obtain remedies to acts of housing discrimination. Another successful example is the funding of investigations of homeowners insurance companies made by private fair housing groups. These investigations, funded by the Federal Housing Initiatives Program, have led to pioneering settlements with some of the nation's largest insurers who led the industry in changing underwriting guidelines and providing quality homeowners insurance products in urban markets throughout the U.S.

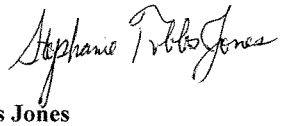
Nowadays, private fair housing organizations process the overwhelming majority of all reported complaints of housing discrimination. In fact, during 2000, private fair housing groups received more than twice as many complaints as government agencies combined. Yet, as complaints to fair housing groups have risen, funding for these organizations, under the Fair Housing Initiatives Program administered by HUD, remains flat.

It is time for Congress to allocate additional funds to HUD's Office of Fair Housing and Equal Opportunity in an amount sufficient so that this office can process all housing discrimination complaints in a timely and effective manner. That is, in 100 days or preferably less, as it should be in accordance with the Fair Housing Act and not in 500 days as it takes now.

Inequality in housing doesn't happen in a vacuum. It is there for each of us to see it, feel it, hear it, fight it, ignore it, profit from it, suffer from it, tolerate it, initiate it, provoke it, perpetuate it or die from it. We need to work together so that discrimination soon becomes only a painful memory and does not remain an ever-happening reality.

We must keep this fair and brave fight alive: A man or a woman's right to find, purchase and finally own his or her own home. This is part of the American freedoms of hope and home.

I look forward to hearing all of the testimonies.



Congresswoman Stephanie Tubbs Jones

Joint Hearing
Subcommittee on Housing and Community Opportunity
Subcommittee on Oversight and Investigations

Fighting Discrimination Against the Disabled and Minorities Through Fair Housing Enforcement

Tuesday, June 25, 2002

Opening Statement

Chairwomen Roukema and Kelly, Ranking Members, Colleagues, and Guests:

Today we have convened to examine the enforcement of fair housing policies for minorities and disabled persons. Housing discrimination denies people access to one of their most pressing needs -- shelter. The enforcement of fair housing policy is an extremely important function of our roles as legislators.

Effective enforcement requires adequate resources and consistent data collection yet, over the past decade, enforcement of the Fair Housing Act has been lax. This failure has resulted from inadequate funding from Congress coupled with a lack of consistency from the Department of Housing and Urban Development, ("HUD") to enforce the law.

In 1988, Congress passed the Fair Housing Amendments Act ("FHAA") which represented a bipartisan consensus that "handicap" and "familial status" (i.e. the presence of children) should not be a barrier to households having a place to live. Over the past decade, HUD has changed its claims process and lengthened the time required to investigate complaints of housing discrimination. As a result, fewer complaints have been resolved and public trust in fair housing laws has eroded. People with disabilities now comprise the largest group of complainants, nearly 42 percent nationally.

The failure to pursue these complaints results in people being forced to live in sub-standard housing, in dangerous, or unwelcoming environments. It also limits the opportunity of disabled persons to live independently and with dignity.

HUD has developed some good guidelines for enforcement, however funding for enforcement resources have been limited. Moreover, gaps in empirical data exist that would allow the agency to see the frequency and types of discrimination. In addition, HUD's inconsistency of enforcement suggests differences between regional offices - in other words, the quality of justice received by an individual can depend on the administrator in charge of the bureau.

This is wrong. We need to ensure that fair housing guidelines are followed. This hearing will likely reveal needed specificities in resources, consistency of enforcement, and data collection. Congress, the Administration, and HUD must work to ensure that no one is left without access to housing, or adequate recourse if housing is denied.

Chairwomen Roukema and Kelly, I thank you for my time.

Statement of
Rep. John J. LaFalce

Before the

Housing and Community Opportunity
and
Oversight and Investigations
Subcommittees

Hearing on
Fighting Discrimination against the Disabled and Minorities
through
Fair Housing Enforcement

June 25, 2002

I commend both Chairs and Ranking Members of the Housing and Community Opportunity and Oversight and Investigations Subcommittees for holding this important hearing entitled Fighting Discrimination against the Disabled and Minorities through Fair Housing Enforcement.

This hearing will analyze the duties of the Department of Housing and Urban Development (HUD) and other responsible agencies regarding their responsibilities in enforcing fair housing laws. I would also like to thank the civil rights and housing advocacy organizations that continuously address fair housing issues. These private fair housing organizations are steadfast in their efforts to tear down housing barriers and process an overwhelming number of fair housing claims. They should be commended for their work.

The Fair Housing Act prohibits discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin in the sale or rental of housing, the financing of housing, the provision of brokerage services, or in residential real estate-related transactions. One of the great challenges we face in this country is how to combat housing discrimination against minorities and the disabled. Sadly, housing and lending discrimination continues to persist nationwide and appears to be increasing in certain areas. At the heart of the issue, housing discrimination is a barrier to affordable housing. Our goals must be its elimination.

Specifically, the HUD Office of Fair Housing and Equal Opportunity ("RHEO.") is charged with enforcing and administering the Fair Housing Act and promoting economic opportunity for low-income persons and businesses that employ them. The Assistant Secretary for Fair Housing and Equal Opportunity position has been vacant for eighteen months. While I am concerned about this vacancy, I would note that the Administration recently submitted a candidate for this position to the Senate.

Equally importantly, we must continue to have oversight hearings regarding HUD's compliance and enforcement of fair housing laws. Some fair housing advocates have cautioned that HUD is falling behind in processing and monitoring fair housing complaints. It is important that HUD address these issues.

But the job of Congress goes beyond oversight. Congress must also analyze the applicable laws and determine if HUD has been given the appropriate legislative and financial tools to lower the occurrences and effects of fair housing discrimination.

We need to look at HUD's reliance on "substantially equivalent" state and local agencies to investigate and adjudicate housing complaints and strengthen their fair housing enforcement responsibilities. We need to ensure that there is fair housing compliance throughout HUD programs, which include the Community Development Block Grant (CDBG) and other agencies' housing and community development programs such as the Low Income Housing Tax Credit. We must also encourage HUD to create regulations that discourage landlords from denying housing to needy families. We need to ensure consistent funding and adequately manage the Fair Housing Initiative Program (SHIP), HUD administered programs which support fair housing laws and equal housing opportunity awareness, in order to address the fair housing needs of this great nation.

It is my hope that these issues will be addressed through this hearing and continued oversight of HUD.

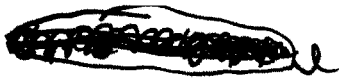
Congresswoman Barbara Lee
Statement on Fair Housing subcommittee hearing
June 25, 2002

Good afternoon. I want to thank Chairwoman Roukema and Ranking Member Frank for holding this important hearing on fair housing. Housing should be a basic right of every human being, and therefore it is imperative that we have an honest and fair system that works to improve the lives of everyone, regardless of their race, nationality, disability, age, sex, sexual orientation, or religion, or familial status.

Just this past weekend, in my district, Oakland, CA, we had a town hall meeting on homeownership and predatory lending. We had hundreds of people there, wanting to know where they fit into the homeownership initiatives proposed by the President and the Congressional Black Caucus. Questions about fair, affordable rental units, transitional housing assistance, and protecting the elderly from predatory lending practices were at the top of many constituent's concerns. I have committed myself to providing housing opportunities for people. We have authorized essential housing programs, and committed millions of dollars for their success. Now, it is time to see that same committment from HUD. The Department of Housing and Urban Development has a responsibility to my constituents, and every person in this country-it must address the concerns of fair housing, civil rights, and the disabled all while regaining public confidence in the enforcement of civil rights laws protecting minorities and people with disabilities.

It has come to this committee's attention that there have been too many cases of unfair or discriminatory treatment to some individuals. Currently, discrimination complaints against the disabled now surpass complaints based on race. A HUD report found that some owners of private, federally subsidized housing discouraged disabled people from applying for housing through discriminatory practices. In Assistant Secretary Marcus' written testimony, he stated-and I quote "I am honored to testify before you today on HUD's efforts to enforce those laws that protect the right of every American, including minorities and persons with disabilities, to freely choose where they will live. No one should be precluded from seeking the housing of their choice or purchasing the home of their dreams because of their race, color, religion, national origin, sex, familial status or disability. Secretary Mel Martinez has repeatedly emphasized that aggressive enforcement of the Fair Housing Act as a high priority of the Department of Housing and Urban Development." While this is an admirable goal and priority to both this committee and to HUD, we all have concerns with the Administration's slow action in filling the position of Assistant Secretary for Fair Housing and Equal Opportunity (FHEO). I need to see the actions of the Secretary and the Administration, as opposed to promises, and I believe that people living in public housing are ready to see the enforcement of laws that are supposed to protect them.

Therefore, I look forward to discussing the need to fill the current vacancy of the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO), and other issues relating to minorities and the disabled in public housing. For many of these people, public housing is their last chance at housing...we have to make sure that this housing is fair, quality, and accessible to all.



First I would like to thank Chairwomen Roukema and Kelly and Ranking Members Frank and Gutierrez for convening this hearing today. The subject of discrimination in both public and private housing markets is one that needs to be addressed, and I appreciate the efforts of this body to do so.

As our federal housing policy has evolved over the years, a number of programs and initiatives have been implemented that are intended to ensure that not only do families have safe, affordable places to call home, but that they are in neighborhoods that we all would feel comfortable raising our children in. HOPE VI was specifically created with this intent. Furthermore, the 1998 public housing reform law espoused the theory of deconcentration of poverty.

Unfortunately, the impact of these theories have not been what was hoped. 4.9 million American families have Worst Case Housing Needs. These are families who pay more than 50% of their income for rent or live in severely substandard housing. Last year we heard from several witness who believed that the number of families in such situations might even be greater than the 4.9 million cited in HUD's most report on the topic.

Even more alarming, is the fact that the number of families who pay more than 50 percent of their income in rent is rapidly increasing in urban areas and among working minority families. These are many of the same people for whom our educational system is failing. This is especially hard on the children. When you add the burdens of an unstable housing situation, it is little wonder that these children are being left further behind with each passing year.

Yet the administration has paid little attention to the office charged with reversing these trends. 18 months into the President's term, the

position of Assistant Secretary for Fair Housing and Equal Opportunity remains unfilled. In fact, the current nominee, Ms. Carolyn Peeples, was only submitted by the President in May. Furthermore, she has had very limited experience administering fair housing laws. I take this to be a troubling indication of the low-level of importance placed on these issues by the Administration, one that I hope will soon be reversed.

This void has left us with a backlog of fair housing complaints that members of our communities tell us take far longer than the statutorily required deadline of 100 days to address. I would be interested in hearing how many complaints are currently pending with OFHEO and how long it typically takes to process them. I also look forward to learning what specific steps HUD intends to take to improve it's record on this score.

I look forward to the testimony of all of our witnesses and hope that we can begin to bring forward some practical solutions to reversing the trends of minorities lagging behind the nation in almost every statistical analysis of housing affordability.

STATEMENT OF CONGRESSWOMAN WATERS
HOUSING AFFORDABILITY ACT OF 2002
THURSDAY, JUNE 18, 2002

Good morning, I would like to thank Chairwoman Roukema and Ranking Member Frank for holding this markup. I appreciate their support and congratulate them for giving attention to such important housing issues. I would also like to commend my colleagues for their efforts and hard work in trying to get this bill to achieve the right balance and purpose.

H.R. 3995 includes provisions to promote affordable housing in our nation, to support and further enhance existing public housing programs, and to give the needy and low-income households an opportunity to enjoy decent and safe living conditions. Over the years, I have been continuously working to address the needs of underprivileged individuals for assistance in affordable housing and acceptable living conditions. I am particularly interested in eliminating all barriers to rental housing and homeownership for the very poor.

I am pleased that the manager's amendment includes two provisions I authored as amendments to H.R. 3995.

One provision requires the Secretary of HUD to add as one of the Selection Criteria to be considered for the award of HOPE VI grants: "a priority for existing residents to return to the revitalized units, if they desire to do so". Existing residents provide stability and continuity to neighborhoods. If they are permanently displaced, they cannot help preserve our communities. We do want stability and continuity in all our neighborhoods and communities.

The second provision I authored is very simple, but it is equally important. It will ensure that community stakeholders, that is, residents, State and local governments, private service providers, financing entities, and developers are all included in the on-going implementation of a revitalization program for HOPE VI projects. Each and every single one of these stakeholders could have valuable contributions to make in order to help further enhance stability and continuity in our communities. I just want to ensure that current law includes this provision.

I appreciate the willingness of the majority to accept my amendments. I also appreciate the support of the Subcommittee on both provisions, and I hope the Full Committee will support them as well.

I look forward to the consideration by members, of all the important housing issues that will be raised during today's Full committee markup of H.R. 3995.

I yield back the remainder of my time.

Lawyers' Committee for Civil Rights Under Law

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202-662-8600

TESTIMONY OF BARBARA R. ARNWINE, EXECUTIVE DIRECTOR OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES, SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT REGARDING HUD ENFORCEMENT

JUNE 25, 2002

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") would like to thank Chairman Roukema and Representative Frank for holding these important hearings and for providing the Lawyers' Committee with the opportunity to participate. We appreciate the opportunity to present the House Committee on Financial Services, Subcommittee of Housing and Community Opportunities, with information about matters critically important to the Lawyers' Committee, our affiliates, and our clients across the country.

The Lawyers' Committee for Civil Rights Under Law is a 39 year old nonpartisan, nonprofit civil rights legal organization. It was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law. Among other things, the Lawyers' Committee has been actively engaged in efforts to combat racial discrimination and segregation in the public and private housing markets, the discriminatory distribution and use of federal funds by municipalities and housing authorities, and racial discrimination and disparities in lending. In particular, the Lawyers' Committee has focused on eradicating the continuing and persistent effects of this country's history of enforced racial segregation. This work is ongoing as the problems of both *de facto* and *de jure* segregation continue.

My comments today focus on the Lawyers' Committee's concerns with the Department of Housing and Urban Development's declining efforts at ensuring that principles of fair housing, as set forth in the Constitution and the Title VIII of the Civil Rights Act of 1968, are not only memorialized in words but are also adhered to by deed. Over the past ten years, we have seen the federal government's involvement in the enforcement of fair housing and other civil rights laws decrease dramatically. This trend is alarming at a time when the number of civil rights

complaints is rising and thus the need for leadership of agencies enforcing vital civil rights laws is even greater. The alarm's ring, however, has been met by the deaf ears of HUD and the other federal agencies responsible for enforcing and ensuring equal justice under law.

Today, I will focus on two major areas of concern. First, the Lawyers' Committee has serious concerns about the HUD complaint process. While Congress intended to provide individuals with a simple mechanism to have their housing discrimination complaints reviewed and investigated by HUD, HUD has created a complex maze of procedures and steps, whose purpose has only discouraged the filing of complaints. A problem related to the complaint process is that continuous reduction of budget and staff for the Fair Housing and Equal Opportunity ("FHEO") office, which is responsible for investigating complaints, has happened at the same that the number of fair housing complaints has steadily increased.

The second area of concern involves HUD's perpetuation and exacerbation of the problems of racial discrimination and segregation in both the public and private housing markets. Specifically, the Lawyers' Committee is concerned that HUD makes no effort to determine the impact that its grants and awards will have on minorities and the communities in which they live. Moreover, even when there has been a finding that a community is violating the civil rights guarantees of the Constitution, HUD has continued to provide millions and millions of dollars in grants, such as funds from the Community Development Block Grant program. This blind eye toward discriminatory behavior is disgraceful and leaves one with the conclusion that it is a purposeful attempt to avoid the federal government's constitutional and statutory responsibility to ensure that the recipients of federal funding do not utilize that funding to discriminate against individuals on the basis of race. Additionally, this conduct violates HUD's affirmative obligation not only to avoid discrimination, but to further the principles enshrined in the

Constitution and the Fair Housing Act to address and solve the problems of racial discrimination in our nation.

II. HUD's Complaint Process Has Failed to Provide An Effective Mechanism For Individuals to Raise Civil Rights Complaints.

Under the Fair Housing Act, a victim of housing discrimination can file a complaint with the FHEO office of HUD. Congress intended the complaint process to be a simple, straight-forward mechanism for individuals to initiate a federal investigation of potential fair housing act violations. In short, Congress intended to provide an enforcement system that will handle complaints quickly, easily, and inexpensively. Instead, HUD has created a complex set of procedures (some of which are hidden from the public) that makes the process far from the user-friendly system it is intended to be. The complicated nature of this system, along with HUD's poor track record in investigating the complaints filed, creates the impression that HUD's intent is to simply eliminate cases from HUD's system or to discourage their filing altogether. Sadly, HUD has failed to meet Congress's mandate, which was to ensure that the federal government takes an active role in enforcing the law and of "transforming the symbol and dream [of equal housing opportunity] into legal and procedural reality."[1]

The starting point for the problem with the HUD complaint process is the failure to fully fund FHEO. According to a report by the United States Commission on Civil Rights, since FY 1994, budget requests for FHEO have decreased by 11.4 percent, while appropriations have fallen by 14.4 percent. This trend has continued in the President's request for FY 2003. In FY 1994, for example, the President requested $51 million. In FY 2003, President Bush's budget request for FHEO is only $46 million. The reduction in funding is only exaggerated when the

[1]134 Cong. Rec. H4605 (1988) (Statement of Rep. Fish, the principal Republican sponsor of the 1988 Amendments to the Fair Housing Act).

President's request is reduced to 1994 dollars, which makes the request only $38 million. Moreover, the number of FHEO staff has also consistently shrunk in size. Again, from FY 1994 to FY 2000, staffing levels dropped from 750 to 584, a reduction of 22 percent. While there has been a slight increase in the number of staff estimated for FY 2003, these numbers still represent a major reduction since fiscal year 1994, particularly given the steady increase in the number of complaints being filed with HUD. In 1994, HUD received approximately 9,500 complaints. HUD itself estimates that it will receive over 11,000 complaints in the current year. As would be expected, the reduction in funding and staff has taken its toll as HUD has been unable to keep up with its increasing workload. By failing to conduct timely and complete investigations of fair housing complaints, HUD prolongs fair housing act violations, and its conduct threatens this country's commitment to ensuring that every American will be free from discrimination in housing.

For example, in March 2001, the North Carolina Fair Housing Center and several African-American female heads of households, who are represented by the Lawyers' Committee, filed a HUD complaint alleging racial and familial status discrimination by a property management company. Despite clear evidence of discrimination, including letters signed by the respondent harassing the complainants and even attempts by the respondent to run over the complainants with a car – more than 15 months after the complaint was filed the investigation has not been concluded and no findings have been issued. In another case, the Lawyers' Committee is representing a community organization in Mebane, North Carolina, which filed a HUD complaint in September 2000 alleging racial discrimination as a result of zoning laws and the discriminatory distribution of community development block grant funding. Again, HUD has not concluded its investigation despite the fact that almost two years has elapsed since the

complaint was filed. Unfortunately, the experience of the Lawyers' Committee is not unique, but instead has become commonplace for those in the civil rights community who have come to expect long delays in the HUD complaint process. These delays are unacceptable, for as we all know, justice delayed is justice denied.

What is more troubling than HUD's delay in investigating complaints are HUD's recent efforts to reduce the backlog of complaints. Rather than providing more staff to investigate and respond to the complaints, HUD has taken Congress's clear mandate to operate a straight-forward, user-friendly complaint process and created a labyrinth-like system, designed to administratively dismiss complaints without conducting any investigation to determine the merits of the underlying claim. This reprehensible conduct by HUD seemingly returns us to a day where we had a law that banned discrimination but without "an effective enforcement system to make that promise a reality."[2]

Through the work of the Lawyers' Committee and its affiliates across the country, we have seen numerous and repeated failings by the FHEO staff to meet the Congressional goals set forth in the Fair Housing Act. As noted above, to address the shameful number of backlog of fair housing complaints, HUD has turned to administrative gimmicks to dismiss, but not to resolve, complaints. The problems we have seen include:

- Refusal to accept validly-filed complaints;
- Dismissal of cases for failing to meet statute of limitations issues, despite the fact that the complaints were timely filed;
- Misapplication of the continuing violations doctrine;
- Strained analysis of standing laws, particularly with respect to Fair Housing Organizations; and
- Allowing complaints to languish for years without any investigation or action.

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[2]U.S. House of Representatives, Committee on the Judiciary, Report 100-711: The Fair Housing Amendments Act of 1988, 100th Cong., 2d Sess. 13 (1988).

The Lawyers' Committee has grave concerns about the imposition of additional requirements on complainants that are neither required, nor permitted under the Fair Housing Act or HUD's implementing regulations. An example of this practice includes cases the Lawyers' Committee has worked on where HUD has refused to accept validly-filed complaints. A quick trip to HUD's internet web site informs victims of housing discrimination that a complaint can be filed with HUD in any number of ways. An individual can send a letter, call the FHEO office, or complete the form provided on the web site. These instructions could not be clearer. Nevertheless, HUD has consistently refused to accept complaints filed pursuant to these requirements. Moreover, because individuals have only one year from the date of the incident to file a complaint with HUD, any refusal to accept a complaint can result in the case being dismissed without any investigation, because of statute of limitations issues.

For example, in 2001, we represented an individual from Portsmouth, Virginia, who alleged that he was denied an apartment because he is African-American. Using the form provided on HUD's own website, our client submitted his complaint to HUD. HUD, however, refused to accept that complaint and told client that it had the authority to require him to use any form HUD desired and that the form on the internet was not good enough. Accordingly, HUD administratively dismissed his complaint. When our client attempted to re-file his complaint, the one-year statute of limitations had already passed.

Similarly, in 2002, the Lawyers' Committee represented a Fair Housing organization in Charleston, West Virginia. Again, just as with our other client, a discrimination complaint was filed using the form listed on the website. Again, HUD refused to accept the complaint as filed, but instead indicated that the organization had to re-submit the complaint on a separate form provided by HUD.

In addition to imposing requirements not authorized by the Fair Housing Act or its regulations, HUD has also adopted strained analyses of relevant legal principles, again with the seeming intent to avoid its obligation to investigate complaints of discrimination. First, HUD has dismissed complaints by ignoring clear and well-settled precedent regarding the fact that fair housing organizations have judicial standing to sue as an aggrieved person under the Fair Housing Act. FHEO has ignored these principles for the purpose of reducing their backlog of cases. For example, the Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association, our Boston affiliate, received a Fair Housing Initiatives Program ("FHIP") grant to conduct testing to investigate instances of redlining in the homeowners insurance industry. After conducting a testing program, which was funded and approved by FHIP, and finding evidence of discrimination, the Boston Lawyers' Committee filed a complaint with HUD. After waiting years for a decision, HUD found that the testers lacked standing to challenge the discriminatory pricing of homeowners insurance policies in minority neighborhoods because the testers did not actually reside in the neighborhoods. In addition, HUD found that at least one of the testers had a financial stake in the outcome of the case, which is not permitted under HUD's regulations regarding testing programs. Yet, the financial stake HUD was concerned with was that the tester could recover damages for the discrimination he faced. Clearly, HUD's regulations were never intended to be so restrictive.[3] Even more disturbing are examples across the country where HUD has found that fair housing organizations lack standing because the fact that they have received FHIP grants – grants provided to nonprofit fair housing organizations to carry out testing and enforcement activities to prevent or eliminate discriminatory housing practices – means that the

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[3]*See* 24 C.F.R. § 125.107(c)(1) (providing that testers may not "have an economic interest in the outcome of the test, *without prejudice to the right of any person or entity to recover damages for any cognizable right*" (emphasis added)).

organization cannot establish any diversion of resources, a prerequisite for organizational standing under the Fair Housing Act. This is so even though the organization may receive the majority of its funding from sources other than HUD. This tortured analysis of the law on standing threatens not only the success of these cases, but also potentially undermines the legitimacy of testing programs generally. These programs are essential to aid in the investigation of violations of fair housing and fair lending practices.

That HUD attempts to reduce its backlog through administrative gimmicks rather than through investigation and resolution of cases is troubling and clearly goes against Congress's intent when it passed the Fair Housing Act Amendments in 1988. Using administrative schemes to avoid HUD's investigative responsibilities is shameful and fails to fulfill HUD's duties to investigate and eradicate housing discrimination. It is clear that further oversight and guidance from Congress is needed more now than ever.

III. HUD Fails to Evaluate Or Consider the Impact That The Programs It Funds Will Have on Minorities and Minority Community.

The Lawyers' Committee is not only concerned about HUD's failure to investigate complaints filed with the agency, but even more significantly, we are concerned with HUD's failure to meet its obligation under the fair housing act to affirmatively further fair housing in the administration of its programs, particularly with respect to the HOPE VI program, the Low-Income Housing Tax Credit Program, and the Community Development Block Grant program. What it takes to meet this obligation is clear. HUD must both gather and make use of racial and ethnic data to prevent discrimination and ensure expanded opportunities when programmatic and funding decisions are made. Unfortunately, the data is not collected, nor is it clear that if it were available that HUD would consider it when decisions are made. This is troubling on many levels. First, the federal government has an obligation to ensure that its funds are not used for discriminatory purposes. Second, given the federal government's well-documented role in creating and maintaining segregation in the public housing market, HUD has a constitutional

obligation to take steps to disestablish and cure the discrimination it was so instrumental in helping to create.

Of particular concern is HUD's implementation of the HOPE VI program, which provides for the demolition and redevelopment of severely distressed public housing. The implementation of the HOPE VI program has resulted in the loss of tens of thousands of public housing units, a housing source upon which communities of color disproportionately rely. HUD, however, continues to approve and fund these demolition applications with little or no understanding of the effect that these programs will have on the housing situation of minorities and minority communities. In this respect, HOPE VI bears a striking resemblance to the Urban Renewal efforts of the past. Urban Renewal, referred to by many as "Negro Removal," uprooted entire minority communities with little to no consideration or concern with the impact on the existing residents. Similarly, through HOPE VI, the federal government is again knocking down minority communities, asserting that it knows the best and most efficient use for those sites. This time, though, there is nowhere for these residents to go. The Lawyers' Committee has seen HOPE VI projects where families whose homes were taken in urban renewal and were relocated into public housing are now being victimized yet again - as HUD has approved the demolition of the public housing they were relocated to. Sadly, HUD makes no effort to ensure that the families who have lost their homes are able to find replacement housing, let alone replacement housing in non-segregated parts of cities. Thus, because fair housing principles are essentially ignored in the HOPE VI review process, the federal government has created yet another program that continues and maintains the deplorable conditions of segregation and isolation that the federal government helped to create. Unless HUD squarely addresses the past and present conditions of racial segregation in the public housing system by taking steps, through the consideration of racial and ethnic data, to reduce, rather than cement, conditions of racial segregation, another chapter in the federal government's perpetuation of segregation will be written, while developers get rich and municipalities increase their tax base, all on the backs of minorities and minority communities.

For these reasons, the Lawyers' Committee calls on Congress to require HUD to enhance fair housing requirements in all of its programs, to collect racial and socio-economic data, and to ensure that this data is utilized to determine what impact its programs will have on minorities and minority communities *before* grants are awarded. And, if the analysis of the program and the data shows a discriminatory impact, HUD must either not award the grant or require the grantee to amend the program to eliminate any discriminatory effect of the program.

Finally, when discrimination is uncovered, HUD must act. As described above, HUD has failed to investigate complaints of discrimination. In addition, HUD has continued to fund programs that it knows have a discriminatory effect. This is just such the case in Huntington, New York, where the Lawyers' Committee is representing a number of African-American residents and a fair housing organization. Huntington, New York, as many of you may know, has had a judicially-recognized history of racial segregation. As the Second Circuit Court of Appeals noted in 1988, Huntington's practices have "reinforced racial segregation in housing," "impede[d] integration," and "significantly perpetuated segregation in the Town." HUD has blindly continued to provide funding to Huntington, despite the Second Circuit's findings, recent complaints filed with HUD, and HUD's own determination that Huntington continues to engage in discriminatory housing practices, which prompted HUD to refer the matter to the Department of Justice. This short-sightedness is unacceptable and is a violation of HUD's affirmative obligations under the fair housing act.

III. Conclusion

In sum, HUD's record on ensuring fair housing is far from meeting Congress's mandate to the agency. HUD, along with each of the federal agencies responsible for enforcement of the nation's civil rights laws, must not only avoid putting stumbling blocks in the path of those asserting violations of their rights under the Fair Housing Act. HUD must also take steps to affirmatively further fair housing by ensuring that its programs and grants do not continue to have a discriminatory impact on minorities and the communities in which they live. Only then will the promise of equal justice under the law become a reality for all.

STATEMENT OF KENNETH L. MARCUS
General Deputy Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY
AND SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

June 25, 2002

Chairwoman Roukema, Chairwoman Kelly, and members of the subcommittees, my name is Kenneth Marcus, and I am the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity at the United States Department of Housing and Urban Development.

I am honored to testify before you today on HUD's efforts to enforce those laws that protect the right of every American, including minorities and persons with disabilities, to freely choose where they will live. No one should be precluded from seeking the housing of their choice or purchasing the home of their dreams because of their race, color, religion, national origin, sex, familial status or disability. Secretary Mel Martinez has repeatedly emphasized that aggressive enforcement of the Fair Housing Act is a high priority of the Department of Housing and Urban Development.

In the 34 years since the Fair Housing Act was passed, significant progress has been made in reducing barriers to fair housing and expanding homeownership opportunity. More minority families own their homes today than ever before, including 48 percent of African-American households and 47.6 percent of Hispanic households.

Despite all that has been accomplished, we recognize that much more needs to be done. While the nation's homeownership rate is higher than ever, a large gap still exists between minorities and whites, 74.3 percent of whom own their homes. President Bush, just last week, acknowledged this disparity when he urged Americans, collectively, to work together to "close the homeownership gap by dismantling the barriers that prevent more minorities from owning a piece of the American dream."

Although discrimination in mortgage lending has been illegal for more than 30 years, a recent survey by the National Community Reinvestment Coalition shows high numbers of Americans still believe it occurs.

The extent to which discrimination against persons with disabilities exists today is also distressing. Despite general awareness of the 1988 Fair Housing Amendments Act and the types of discrimination it prohibits, as evidenced by a recent HUD study, we are finding that the rights of people with disabilities are still frequently ignored. Of the complaints filed with HUD and its partner state and local agencies, the number that allege discrimination on the basis of disability equals, and in some places surpasses, those based on race.

One of the main contributors to the challenges facing persons with disabilities is the acute lack of accessible housing units. Anecdotal evidence and cases investigated by federal agencies indicate a high degree of non-compliance with the provision of the Fair Housing Act that requires accessible design and construction for new multifamily buildings.

Noncompliance with the accessibility requirements combined with the failure of landlords to provide necessary accommodations and modifications has contributed to a

shortage of housing for persons with disabilities in both private and public housing developments.

These are the challenges HUD faces in meeting the needs of persons with disabilities, increasing minority homeownership, and enforcing the Fair Housing Act for all Americans.

Secretary Martinez takes very seriously HUD's charge as the principal federal enforcer of the Fair Housing Act and the laws prohibiting discrimination in federally-assisted housing. HUD and state and local agencies that enforce substantially equivalent laws receive an average of 10,000 complaints a year alleging Fair Housing Act violations. The most meaningful contribution HUD can make to the fight against housing discrimination is the prompt and successful resolution of complaints from individuals who come to us to report claims of discrimination.

HUD must improve its track record in its enforcement of the federal fair housing laws. During previous years, the Department developed such a bad reputation for its delays in processing Fair Housing Act cases that today many of the Department's constituents express reluctance to file complaints with the Department, out of a belief that nothing will come of it. At the end of FY 2000, the percentage of fair housing cases remaining open past the statutory deadline of 100 days was over 80 percent. At the end of the first fiscal year of the Bush Administration, FY 2001, we had reduced the aged-case inventory to 37.1 percent. This was the first time since the passage of Fair Housing Act Amendments of 1988 that HUD's aged-case backlog has dropped below 50 percent.

We are also working diligently to assist state and local partner agencies whom HUD funds under the Fair Housing Assistance Program (FHAP) to reduce their backlog of aged cases. HUD is pleased that the Congress provided funds in the FY 2002 appropriation to assist this effort.

Overall, HUD has stepped up its commitment to prompt, meaningful resolution of these cases and aggressive enforcement when the law has been violated.

We have examined the role that lending discrimination may play in the disparity in homeownership rates between whites and some minorities. A recent HUD-commissioned study, titled *All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions,* examined how lenders treated blacks and Hispanics at the pre-application stage, when they inquired about residential mortgage financing. The study revealed that while the majority of mortgage lending transactions do not involve discrimination, blacks and Hispanics, in the markets studied, tended to receive less information, less assistance, and worse terms.

HUD is stepping up its efforts to combat lending discrimination. The Department will soon provide a contract for an enforcement project that targets mortgage lending discrimination generally, and predatory lending in particular. This year's Fair Housing Initiatives Program (FHIP) encouraged grant proposals from fair housing groups who,

among their other activities, would place a special emphasis on educating and enforcing the Fair Housing Act against predatory lending practices. The recent FHIP Notice for Funding Availability also created a national campaign to educate the public on the dangers of abusive lending practices.

The Department, through FHIP, is focusing attention on problems faced by persons within the Colonias Southwest border area, which may include predatory-lending type practices. We believe that the plight of the persons living in the Colonias is a national problem that deserves national attention.

FHIP also reflects the Bush Administration's commitment to tapping the potential of faith-based and other grassroots organizations, including by partnering them with the traditional fair housing organizations. This both honors and reflects the roots of the fair housing movement within the community of faith-based organizers.

The President has launched his New Freedom Initiative, an effort designed to help persons with disabilities live more independently in all communities.

HUD has a great responsibility to make sure that its own programs are accessible to people with disabilities and otherwise safeguard their rights because a disproportionate share of people with disabilities rely on federally-assisted housing.

During a recent accessibility compliance inspection, HUD found the District of Columbia Housing Authority to be in violation of Section 504 by failing to provide enough accessible units for persons with disabilities. As a result, the Housing Authority signed a Voluntary Compliance Agreement that calls for the DCHA to make 6 percent of its housing stock (about 510 units) fully-accessible to persons with mobility impairments, and make up to 2 percent more (about 170 units) of its housing stock accessible, as needed, to residents who have visual or hearing disabilities. DCHA will meet the 6 percent fully accessible requirement by November 2006.

HUD also found the Boston Housing Authority in violation of Section 504 because it didn't make an adequate number of accessible units available to persons with disabilities. Under a Voluntary Compliance Agreement, the Boston Housing Authority agreed to make five percent of its housing stock, or 700 units, fully-accessible to persons with mobility impairments. Structural modifications must begin no later than July 1, 2002, and must be completed by December 5, 2005.

We have increased the number of Section 504 compliance reviews last year to 60. This year we will complete 80, and we are achieving substantial results. The Department has put renewed effort into training its staff to conduct these reviews effectively and prepare strong Voluntary Compliance Agreements to resolve all findings of non-compliance. In 2002, the Department's offices of Public and Indian Housing, Housing, and Community, Planning and Development have also reissued four notices informing thousands of federal funding recipients of the requirements of Section 504, Fair Housing Act, and the Americans with Disabilities Act.

In addition, we are working to increase the number of accessible, private housing opportunities that are available to persons with disabilities.

HUD has awarded over $2.5 million to KPMG to develop and conduct training and technical guidance on the Fair Housing Act accessibility requirements for persons engaged in designing, approving, and building multifamily housing. As part of this project, KPMG will set up resource centers in different parts of the country where architects, builders, and others can obtain technical guidance on specific design questions.

HUD is also working with industry and others to achieve greater compliance. HUD and the National Association of Home Builders (NAHB) have signed a Partnership Accord, whereby HUD and NAHB will undertake a broad training, education and outreach effort targeted specifically at builders, property owners, civil engineers, architects, building code officials and State and local governments. Together, HUD and NAHB will encourage State and local jurisdictions to adopt and implement building codes that meet the requirements of the Act.

HUD has awarded a $900,000 grant to the International Code Council, in partnership with the National Organization on Disability and with support from the National Association of Home Builders, to undertake a review of State and local building codes, and to encourage the adoption of codes that are consistent with the Fair Housing Act, its regulations, and HUD's accessibility guidelines. The effort calls for ensuring that more apartments, condominiums and other housing covered by the law are built to be accessible to people with disabilities, and to inform state and local governments about the safe harbors for compliance with the Act's requirements.

HUD is also implementing a Memorandum of Understanding with the Departments of Justice and the Treasury to ensure that low-income, residential rental housing placed in service under the IRS-administered low-income housing tax credit program is accessible to people with disabilities. The tax-credit program is currently the largest Federal producer of low-income housing, providing an estimated 100,000 new housing units per year, and it has led to the construction or reconstruction of over 1.2 million units of housing since its inception in 1986.

In addition to making sure that new housing is built correctly in the first place and taking action against those housing providers who have failed to comply with those provisions of the Fair Housing Act, HUD is enforcing the Fair Housing Act against those housing providers who refuse to make reasonable and necessary allowances in their building operation for people with disabilities.

Outside these individual cases that HUD and our partners receive, there's little research available on the full nature and extent of the discrimination people with disabilities face in private housing. HUD will soon seek competitive bids on a $1 million contract to develop methods examining and measuring the discrimination experienced by persons with disabilities when they search for rental housing. This nationwide report, the first of its kind, examine the bias persons with mental and physical

disabilities experience when the seek housing as well as how housing providers address requests for reasonable accommodations and modifications as in the example above.

In closing, we believe that all of the foregoing efforts, when combined with appropriate enforcement actions and timely processing of complaints, will enable the Department and our nation to strike a decisive blow in the fight against discrimination.

We look forward to working with industry, community leaders, local governments, fair housing advocates, and Capitol Hill to bring everyone in America over the threshold to equal opportunity and justice.

This concludes my formal written statement and I am happy to answer any questions you may have.

Pratt

TESTIMONY OF
the National Council on Disability

BEFORE THE HOUSE FINANCIAL SERVICES COMMITTEE
Subcommittee on Housing and Community Opportunity
Subcommittee on Oversight and Investigations

JUNE 25, 2002

The National Council on Disability, or NCD, is an independent Federal agency with fifteen Council members appointed by the President and confirmed by the Senate. The purpose of NCD is to promote policies, programs, practices and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or the severity of the disability, and to empower individuals with disabilities to achieve economic self sufficiency, independent living, and inclusion and integration into all aspects of society.

NCD's mission includes the obligation to conduct studies, evaluate new and emerging disability related policies, and make recommendations to the President, to Congress and to federal officials about ways to promote equal opportunity. "Reconstructing Fair Housing" is one of a series of reports on federal enforcement of civil rights laws. It evaluates the efforts of the United States Department of Housing and Urban Development in enforcing the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. The Executive Summary from this report is attached to this testimony and incorporated into it by reference.

Housing discrimination undermines one of the fundamental premises on which our free society is based because it unfairly, and illegally, denies individuals with disabilities access to the kind of housing that they need to live independent and productive lives.

Federal civil rights laws protect people with a wide range of disabilities, including:

- The woman who uses a wheelchair and who is literally a prisoner in her housing authority apartment because it lacks wide doors, a ramp, and other physical features that would allow her to go in and out of her apartment.
- The deaf older woman who needs a flashing light on the fire alarm signal to tell her she should leave her high rise apartment when there is a fire.
- A young man who is blind needs housing authority staff to read an application or rules to him so he can understand his obligations as a tenant.

- An applicant who has HIV and related conditions and needs a two-bedroom apartment so that the attendant who helps him has a place to stay with him.
- An older gentleman who uses a walker and who cannot get to and from the rental office to pay his rent because there are too many steps—and rent must be paid in person.
- The Section 8 applicant who has severe arthritis and who cannot get into the Housing Authority's Section 8 application office because it has steps.
- The deaf resident who needs interpreter services to understand critical communications with her building manager about housekeeping, rental payment, or property rules.
- The resident with a mental disability who needs extra time from building staff to explain how the appliances work in his new apartment.
- The resident who is on dialysis and needs a transfer to a unit close to the only local hospital that provides dialysis.

While federal laws establish the rights of each of these individuals to be free from disability discrimination, the actual enjoyment of these rights depends upon two factors: (1) The voluntary compliance with these laws by housing authorities, assisted housing providers and private landlords, and (2) The federal government's commitment to enforce these rights when voluntary compliance is not forthcoming.

People with disabilities, like the rest of society, want to be able to choose a place to live without discrimination, to seek and find housing they can live in and afford in convenient locations, to be able to use their home, to live free of stereotypes, and to be treated fairly.

Although Congress has enacted two laws to ensure that these fundamental premises are met—Section 504 and the Fair Housing Act—NCD's report concludes that the promise of these laws has not been met because the key federal agency that enforces these laws—HUD—needs to do more.

Section 504 was enacted in 1973 as part of Rehabilitation Act legislation. It applies to the activities of recipients of federal financial

assistance and it is enforced by the federal agency that provides the funding. HUD, as the primary federal funding source for housing, was the last Cabinet-level agency to adopt regulations implementing Section 504, in 1988. In the same year, Congress passed the Fair Housing Amendments Act, adding disability as a protected class under the landmark 1968 legislation that prohibits discrimination in virtually all housing-related transactions.

While Section 504 applies only to housing programs that receive federal financial assistance, the Fair Housing Act applies to virtually all housing units in the country. Together, the two laws prohibit discrimination, require physical accessibility, and require that "reasonable accommodations" (or changes) in policies and practices be made for people with disabilities.

Governmental enforcement of these laws occurs directly, through investigations of complaints filed with the Department of Housing and Urban Development, and for Section 504, through compliance reviews initiated by HUD. HUD's Office of Fair Housing and Equal Opportunity (FHEO) conducts the investigations, makes efforts to resolve the complaints, and makes determinations as to whether or not the law has been violated. When HUD determines that there is enough evidence to believe that the law has been violated, the government takes steps to enforce the laws.

Enforcement also occurs indirectly, where disability-specific instructions and guidance are imposed through program requirements administered by HUD. Without strong, timely enforcement of these laws, people with disabilities may be discouraged from pursuing their rights, and discriminators may be emboldened to continued unlawful discrimination.

The nation's 3300 public housing authorities provide housing for many of the poorest and most disabled populations in the country. They were set up to provide decent and safe housing for low-income people, and they currently house over 1.3 million households. Much of the country's public housing population is either elderly or disabled, or both. Housing authorities typically provide housing,

either directly through conventional rental public housing, indirectly through Section 8 project based or voucher programs, through the HOPE VI program, and now increasingly through homeownership programs designed to reach the poorest of the poor.

NCD's report finds that HUD's efforts to enforce Section 504 have disproportionately been directed at public housing authorities. While limited progress has been made through the use of voluntary compliance agreements, the report concludes that much more must be done to protect individual rights.

NCD found that HUD has tools to protect the rights of people with disabilities, but that it is not using them effectively. Improved efforts are needed in five areas: enforcement, education and outreach, structural accessibility for people with disabilities, overall program requirements that will improve compliance, and effective support and leadership for compliance with these laws.

Enforcement

HUD has had some occasional major successes in enforcing civil rights laws on behalf of people with disabilities against housing authorities, but HUD does not have an effective, consistent national enforcement program for Section 504 or the Fair Housing Act. The NCD report attributes this failure, in large part, to four factors:

- Inadequate staffing and resources for enforcement and compliance
- A lack of consistent Administration and Congressional support for an effective program
- Competing priorities that pull attention away from an on-going core enforcement program
- A recent lack of effective management of HUD's fair housing enforcement and compliance operations.

One important measure of HUD's vigor in enforcing the Fair Housing Act is the number of its investigations that conclude that housing discrimination may have occurred. The annual number of so-called "cause cases" dropped precipitously from 324 in 1994 to 96 in 2000.

Today, more than three quarters of the way through this fiscal year, HUD has only found that the law was violated in 46 cases.

While disability discrimination is now the most common complaint under the Fair Housing Act, NCD found that only one in 40 disability complaints result in a finding that the law has been violated. Overall, there are findings of violations in only 2.4% of all cases.

Another measure of HUD's effectiveness is its compliance with the statutory mandate to conclude Fair Housing Act investigations within 100 days of filing. HUD has not met that target since 1989; in FY 2000, the average age of Fair Housing Act cases closed by HUD was at an all time high of 497 days.

The length of time that it takes HUD to resolve cases, and the lack of effective enforcement efforts, has a direct and chilling effect on public confidence in the process. Without a sense that enforcement will be done promptly, effectively, and fairly, there has already been an erosion of public support for administrative enforcement, increased recourse to the courts, and, unfortunately, a growing reluctance among people who have been victimized by discrimination to file complaints. It is as true today as it ever was that "justice delayed is justice denied."

Key recommendations for improving enforcement and compliance with Section 504 and the Fair Housing Act include:

- HUD should adequately staff and resource its office of fair housing to enable full enforcement of the law and to prevent staff from being diverted from an on-going enforcement and compliance program to meet other priorities.
    - HUD staff has reported that fair housing enforcement initiatives over the past years have resulted in under staffing, and virtual cessation at times, of the Section 504 compliance program. At the same time, fair housing enforcement efforts have not been able to achieve Congressionally imposed case processing time frames. There have not been enough staff to perform either fair housing enforcement or Section 504 compliance functions

effectively, and the work needed by each has drawn staff from the other obligation.
  - HUD lacks institutional knowledge and experience in enforcing civil rights laws due to losses of staff throughout the agency; HUD needs to re-establish and deepen its own institutional knowledge base in these areas.
  - FHEO in particular needs at least two architects with particular expertise in accessibility to assist in conducting investigations and providing technical assistance. The Department of Justice uses architects routinely to assist in Fair Housing Act compliance; HUD should do no less.
- HUD's commitment to enforcement must be department-wide and directed by the Secretary of HUD. Historically, the most effective work in enforcing Section 504 and the Fair Housing Act against recipients of federal funding when there were joint and consistent efforts between HUD's Office of Fair Housing and HUD's Office of Public Housing, and HUD's Office of Counsel to achieve compliance. A recent example of this very effective work was a compliance review and the resulting Voluntary Compliance Agreement (VCA) between HUD and the District of Columbia Housing Authority. This successful strategy should be replicated in dealing with other recipients and throughout the country at the HUB level. Unless the Secretary directs that these activities be coordinated, they will not be.
- HUD should develop an organized Section 504 compliance program that includes short term and long term enforcement strategies, systems for coordination within HUD's offices and with consumers and recipients, identification of recipients and standards where compliance reviews will be initiated, formal guidance for staff on conducting compliance reviews consistently, and a rational and effective use of the compliance review strategy. Again, the Secretary must direct that this effort occur, or it will not happen.
- HUD's fair housing office, since its receipt of the NCD report draft last year, has committed itself to conducting a large number of compliance reviews. But when HUD simply dictates to its field staff that they must conduct X numbers of

compliance reviews, there is no strategy, there is no rationale for its actions, and scarce resources may not be used effectively. An effective strategy could include setting standards for civil rights performance that, if not met, would result in a compliance review, and making those standards public, so housing authorities and other recipients will know more about what is required of them, and HUD can use its limited resources effectively to focus on real trouble spots.

- HUD should use its enforcement sanctions more frequently. HUD has incorporated in its Notices of Funding Availability (NOFAs) language that renders recipients ineligible to apply for funding if they have outstanding, uncorrected civil rights violations. This language should be applied consistently to any recipient who has uncorrected violations. The sanctions should be included in regulatory eligibility requirements, and, if necessary, in statutory requirements, until recipients comply with the law. In addition, when HUD identifies multiple or repeated violations of civil rights laws, it should use its sanctioning authority. HUD has authority to terminate or suspend funding and, in the NOFA, the authority to decline to fund, recipients who discriminate. HUD has an effective administrative hearing process and authority to refer cases to the Department of Justice when there is noncompliance with Section 504 and the Fair Housing Act. Where HUD finds persistent violations, it should exercise its sanctioning authority. It should refer cases to the Department of Justice where there is non compliance; it has done so only two or three times in the past ten years, but there are many examples of housing authorities that have repeatedly or consistently been out of compliance. One only needs to examine the agreements in the District of Columbia and in Boston to see a significant history of noncompliance.
- HUD should expand its Section 504 enforcement and compliance activities beyond housing authorities to other assisted housing providers. HUD's limited compliance program has almost exclusively been focused on housing authorities, but there are many other recipients of HUD funds that are not in compliance with Section 504, including most notably CDBG

recipients, and assisted housing programs like the 202/811 programs.

- HUD should enforce its settlement agreements (called Voluntary Compliance Agreements) with housing authorities effectively and quickly. There are reports of VCAs that have not been complied with for years, with no effective action taken by HUD to enforce them.
- As HUD increases its enforcement activities, it should provide information about its activities to the public. Letters that contain findings of discrimination, voluntary settlement agreements, and results of sanctions and hearings should be made public and should be available on the internet.
- HUD could improve the organization and effectiveness of its Section 504 enforcement and compliance work by expanding an existing Fair Housing Act database, called TEAPOTS, to include templates for Section 504 compliance review and complaint investigations. This system already makes it easier to document investigations and provides an organizational structure for investigatory work in Fair Housing Act cases; it should be immediately expanded to improve timeliness of Section 504 work.

Education and outreach

HUD must improve its education of housing authorities, assisted housing providers and private landlords and owners, as well as consumers, about their obligations under federal civil rights laws. HUD has issued several guidance notices, including one for public housing authorities, about Section 504 and Fair Housing Act requirements that have begun the process of effective guidance, but much more is needed.

Some of the report's key recommendations:

- HUD should listen to people with disabilities and their advocates. In the wake of the NCD report, HUD invited advocates and consumer to a meeting with the Secretary. After that one listening meeting, there have been no further

meetings, and no significant indication of responsiveness to any of the issues raised in the NCD report. Advocates are eager to work with this administration on civil rights issues; HUD should give them the opportunity.

- HUD should provide more training and technical assistance that support compliance with Section 504 and the Fair Housing Act.
    - HUD's Office of Fair Housing and Equal Opportunity needs more contract funds to develop technical assistance and training materials that could be used by its field staff to instruct housing authorities, other recipients of federal financial assistance, private landlords and consumers about the laws. Materials should be prepared that will effectively reach a diverse group of consumers. They should be tailored to reach hard-to-reach populations, including people with various types of disabilities, who may not be aware of their rights under the laws. The Department of Justice and HHS got multimillion-dollar grants for technical assistance relating to ADA and Section 504 compliance, funding that HUD never got. But it's not too late. FHEO's contract budget should be increased immediately, to at least $5.2 million, to accomplish critical work in support of enforcement and compliance.
    - HUD should have a comprehensive, easily administrable program (perhaps offered through a videotape, CD ROM or other self-administrable materials) about compliance requirements that is suitable for smaller housing authorities and assisted housing providers, and a comprehensive package of training materials and information that would be useful for housing authorities facing more complex issues. Contract funds should be made available to fund development and distribution of these materials.
    - HUD should collect and publish its guidance, opinions and interpretations of the civil rights laws in a readily accessible and searchable way. There is no central place even for HUD's own staff to find out what has happened

in other cases, much less resources for housing authorities or advocates.

  - FHEO should develop and fund a civil rights training academy that will offer on-going technical and substantive training for its investigatory and compliance staff and for staff of other program areas. Staff turnover has resulted in a loss of institutional knowledge and skill in investigating and prosecuting cases and advancing civil rights protection and knowledge.
  - HUD should provide ready access to judicial decisions, findings of discrimination and written dismissals of complaints, as well as settlement agreements in Fair Housing Act and Section 504 cases. Both public housing authorities and consumers need a comprehensive understanding of how these civil rights laws have been applied and what they require.
  - HUD should issue a plain English handbook for each type of recipient of its funding, including public housing authorities, that compiles Section 504 and Fair Housing Act requirements and interpretations in one place and that offers sample language for policies, and clear direction for practices. These materials should be comprehensively available on-line, through CD ROM, and in alternative formats so they are usable by people with disabilities.
- HUD's existing materials must be made readily available through its Public Housing and Fair Housing HUBs in alternative formats. The Office of Fair Housing and Equal Opportunity currently does not have funds to make these materials available to the public.
- HUD must enforce existing requirements that housing authorities and other recipients of federal financial assistance communicate effectively with individuals who are disabled, and make their written materials accessible.

Congress funds the Fair Housing Initiatives Program (FHIP) and the Fair Housing Assistance Program (FHAP) to provide a comprehensive national education and enforcement program to combat housing

discrimination. People with disabilities will benefit from more effective operation of these programs.

- HUD's Office of Fair Housing and Equal Opportunity should devise more effective ways to document successes in the FHIP and FHAP programs, particularly those that benefit people with disabilities, and to replicate those successes nationally. Many of these funding programs develop good materials, excellent training and public education packages, effective enforcement strategies, and other information that can benefit compliance, but HUD does not have an effective way to identify these successes, to support and encourage good work, or share the products with others.

Accessibility and Reasonable Accommodations

Two of the key requirements in the Fair Housing Act and Section 504 are their requirements to provide physical accessibility and their requirements that housing providers make "reasonable accommodations" when changes in usual operational rules, policies and practices are needed to effectively house people with disabilities.

There are very significant problems with housing authorities and other housing providers in complying with these requirements that significantly harm people with disabilities. A failure to make housing accessible when it's being built or renovated has negative consequences for people who need accessible housing. It also wastes taxpayer money, because it is more expensive to renovate housing to make it comply with the law than it is to build the housing to be accessible in the first place.

As to physical accessibility, the two laws have slightly different requirements, and there continues to be little compliance with either.

If a housing provider receives federal funding from HUD, it is required by HUD regulation to make 5% of its rental and homeownership units accessible to people with mobility impairments and an additional 2% of its units accessible to people with vision and

hearing impairments, by building the units to comply with the Uniform Federal Accessibility Standards (or UFAS). Housing that is renovated also has accessibility requirements imposed by HUD regulation.

In addition, when housing authorities or any other housing providers build new multifamily rental or sales units of four of more units, they must follow the design and construction requirements found in the Fair Housing Act. These requirements, as demonstrated in the recent HUD agreements with the District of Columbia and with Boston, have been widely ignored by housing providers. This is a particular problem in the HOPE VI program that is generating a high volume of new construction. It is also a problem in the Mod Rehab program. A further issue is the failure of the HOPE VI program to limit the use of two and three story town homes in HOPE VI rental and homeownership developments because these designs limit access dramatically for people with disabilities. The HOPE VI program, and all HUD housing programs, should favor designs that maximize accessibility and visitability for people with disabilities.

- Much more enforcement is needed to ensure compliance with accessibility requirements. Public housing authorities, in particular, have been put on notice for several years, through the Comprehensive Grant and CIAP funding programs, through a round of compliance reviews in the mid nineties, and through written guidance from HUD's Office of Public and Indian Housing for several years about these accessibility requirements. HUD should use its enforcement authority strongly to correct access problem in housing authorities because they have received plenty of notice about the need to comply in this area. HUD should expand its enforcement efforts to reach other assisted housing providers, including programs under its offices of Community Planning and Development and Housing.
- HUD should be praised for developing its new training and technical assistance program to provide more information to housing providers, code officials, architects, builders, consumers and others, about accessibility requirements. This

program is badly needed, with national figures indicating 65-70% non- compliance with the Fair Housing Act's design and construction requirements. The training under this program should be made available to public housing authorities and other recipients.

Housing authorities and other housing providers also must make "reasonable accommodations" by adjusting their policies and procedures so people with disabilities can use the housing. When there's federal funding involved, the housing authority must also make structural changes to housing so people with physical disabilities can use it—even if it was built years ago and otherwise doesn't have to be accessible. Housing authorities and other providers are tremendously confused by their obligation to make reasonable accommodations. A failure to make a reasonable accommodation can make a tremendous difference in the life of a person with a disability. Most cases do not turn on whether or not the accommodation is too burdensome for a housing authority to make; most cases still involve simple accommodations where the housing provider just doesn't understand what is required. HUD can make it easier to understand; HUD SHOULD make it easier.

Program Involvement

Because enforcement of civil rights laws requires a departmental-wide commitment, it is critical that civil rights requirements be incorporated into the program operations in all of HUD's program areas. By including more emphasis on serving persons with disabilities in all of HUD's programs as part of the programs' basic requirements, much non-compliance can be avoided or minimized. A fundamental problem in ensuring civil rights enforcement is to focus all of the attention on HUD's Office of Fair Housing and Equal Opportunity. That focus misses the point. FHEO cannot direct the Office of Public and Indian Housing, or any of the other program offices, to adopt and give priority to program requirements that maximize housing opportunities for people with disabilities. Only political leadership from the administration and from the Secretary of

HUD can do that. Civil rights compliance must be woven through all of HUD's program areas and led by program leadership.

- Each of the key program offices at HUD should develop a plan that is coordinated with FHEO to integrate the housing needs of people with disabilities, and compliance with legal requirements, into program requirements. So, for example, the HUD Office of Community Planning and Development should have regulatory requirements, handbooks, and other program guidance that addresses disability-related issues in the programs that it funds, like Shelter Plus Care, HOME and others. Public housing should require HOPE VI recipients to maximize access in HOPE VI rental and homeownership properties, offer funding incentives for higher levels of access, develop prototype programs to encourage homeownership for people with disabilities, and provide sample housing designs that make housing usable by people with disabilities well beyond the 5% and 2% requirements.
- One important crosscutting issue that is frequently overlooked is that there is no baseline source of information about accessible units in communities, even though many of the affordable units are funded by federal funds. One important initiative HUD could encourage with little additional cost is to require all recipients to give HUD a list of the locations, sizes and numbers of their accessible units and for HUD to publish them, so that applicants, advocates, housing authorities and others could readily locate accessible units. Just this coordination process would help many, many home seekers immeasurably.

Administrative Support and Leadership for Change

Leaders in this administration must steer a clear, strong course toward protection of the rights of people with disabilities. It must be leadership toward change, toward firm enforcement, comprehensive education, and continued attention throughout HUD to increasing and improving housing options for people with disabilities. HUD should not continue making its policy decisions in isolation and it cannot continue keeping those decisions to itself. Disability policy and civil

rights enforcement issues must be woven through all of HUD's operations.

One important tool that the Secretary of HUD has is to increase the visibility and activities of the current Office of Disability Policy and use the office to coordinate the work of all of HUD's program areas. The Secretary should establish, and listen to, a national consumer advisory group that will suggest recommendations for improvement in HUD's programs and civil rights work, so HUD decision-making includes consideration and integration of key housing issues confronted by people with disabilities.

And Congress should direct HUD to identify and implement, with adequate funding, management initiatives and structural and staffing improvements that will directly strengthen its enforcement of Section 504 and the Fair Housing Act, while providing better tools to housing providers about what the law requires. This work will enlarge and strengthen President Bush's New Freedom Initiative and comprehensively and consistently provide the leadership and direction that will give people with disabilities the full, fair choices in housing that they need and that the law requires.

Thank you.

RECONSTUCTING FAIR HOUSING

SECTION II

Executive Summary

The past 12 years of civil rights enforcement by the Department of Housing and Urban Development (HUD) have left America, and in particular people with disabilities, needing more. The late 1980s were characterized by a new commitment to equal housing opportunity: Congress passed the Fair Housing Amendments Act of 1988 (FHAA) and HUD finally promulgated regulations for the enforcement of Section 504 of the 1973 Rehabilitation Act. HUD was empowered to investigate and adjudicate discrimination complaints and to enforce compliance by recipients of federal funds. By the late 1990s, however, HUD had lost control of its own enforcement process, with investigations taking nearly five times as long as Congress mandated and with scarcely 100 cases annually concluding with findings of discrimination during each of the past six fiscal years.

Administrative enforcement of civil rights laws has been hampered by the failure of Congress and HUD to provide the level of resources that effective enforcement requires. Inconsistent and inadequate funding has caused some specific problems for HUD, especially concerning staffing and special enforcement initiatives. The bigger problem has been HUD's failure to provide consistent national leadership and management of the fair housing enforcement process. As a result, the promises of the fair housing laws have been empty for many Americans, with and without disabilities.

The primary focus of this report is the way in which HUD has conducted its administrative enforcement of the Fair Housing Act (FHA) and Section 504 of the 1973 Rehabilitation Act to counter discrimination in housing, and, in particular, HUD's record during the past 12 years in enforcing the rights of people with disabilities under these laws.

A. Overview

Housing discrimination undermines one of the fundamental premises on which our free society is based because it unfairly, and illegally, denies access to the accessible, affordable housing that people with disabilities need to live independent lives. Without effective and fair enforcement of civil rights laws, people who are injured by housing discrimination lack recourse to remedies and rights that Congress passed in an express effort to achieve a country free from invidious discrimination. And without effective and fair enforcement of civil rights laws tied to increased education about those laws, people cannot know the ways in which discrimination may occur so they can avoid discriminating, and those that perpetrate discrimination will not be held accountable for their unlawful actions.

The absence of an effective fair housing enforcement system motivated Congress to pass the FHA and to invest HUD with strong authority to combat discrimination. This report concludes that ineffective enforcement has led to a loss of public trust that the protections of the FHAA and Section 504 will be enforced. When these important civil rights laws are not well enforced, individual victims of discrimination suffer, but the entire country also suffers as ignorance of, and disdain for, the laws increases. Nowhere is this more harmful than in the context of housing, where discrimination can have such a devastating impact on a person's ability to work, to attend school, to be involved in the civic life of the community, and to pursue all the variations on the American dream.

People with disabilities encounter illegal housing discrimination in many different ways: (1) inaccessible housing, (2) stereotypes about the ability to live independently, or (3) the inability to get modifications in rules or policies that have historically excluded people with disabilities. Housing discrimination artificially constricts the housing choice of people with disabilities; as a consequence, they may be forced to live in undesirable, dangerous, or unwelcoming neighborhoods. They may encounter harassment, intimidation, or unfair and illegal treatment.

At the same time, many in the housing industry seek answers to their questions about discrimination. Without answers to those questions, even unintentional discrimination may continue. This country still needs the prompt, effective civil rights law enforcement that impelled Congress to pass the FHA and Section 504.

In 1988, Congress, with strong bipartisan support, passed the Fair Housing Amendments Act, adding handicap and familial status (the presence of minor children in a household) as additional prohibited bases for discrimination and strengthening enforcement authority under the law. Rights of people with disabilities to be free from discrimination in housing were considerably expanded because the amendments provided key protections to them and offered them, for the first time, rights to equal treatment and to reasonable accommodations in policies, procedures, and practices, and rights to have newly constructed multifamily housing designed and constructed to be usable by people with physical disabilities.

During the 1990s, people with disabilities increasingly filed discrimination complaints with HUD under the FHA, until they became the single largest group of complaints filed in fiscal years 1999 and 2000, amounting to nearly 42 percent of HUD complaints filed nationally.

During the same period, however, HUD's enforcement activities diminished. The number of complaints filed overall dropped dramatically, with the number of complaints in FY 2000 amounting to only 30 percent of their level in 1992. HUD's adoption of a new "claims" process designed to examine more closely potential complaints has resulted in many fewer complaints being filed and significant increases in the amount of time HUD takes to actually begin a complaint investigation.

The length of time HUD took to investigate cases increased dramatically from 1990 to 2000. The average age of complaints at their closure was 497 days in FY 2000, nearly five times the 100-day period that Congress set as a benchmark for projected case completion. There are significant regional variations in the duration of investigations as well.

HUD made some progress in its efforts to reduce the number of complaints that were "administratively closed" without a disposition during the mid-1990s. By FY 2000, however, that trend was reversing; about 20 percent of filed complaints were administratively closed, up from 15 percent in the mid-1990s. Between its claims process and its overuse of administrative closures, HUD is failing to deal effectively with many potential complaints.

Conciliations or settlements of complaints amount to close to half of the case resolutions. Investigations with findings of discrimination and decisions to pursue enforcement actior can take more than a year and have been decreasing in number after reaching a relatively high point during the mid-1990s. The number of such decisions is only a small percentage of the cases HUD investigates. Decisions to dismiss cases with findings of no discrimination increased during the 1990s as well and often took longer than a decision t take enforcement action.

Overall, complaints involving discrimination based on disability are more likely to be settled by HUD, less likely to result in a finding that discrimination has occurred, and les likely to be dismissed after investigation compared with other cases. There are, however, wide and troubling differences in outcomes among HUD's various regional offices, suggesting that the kind of outcome a particular case reaches may be related to where a complaint is handled.

Even more troubling are the significant and serious deficiencies in HUD's overall history of enforcement. This study concludes that the devolution of case-processing responsibility combined with the leadership's attitude toward management and significan shortfalls in staffing and resources have caused these deficiencies. The last Administration's "hot case" and "doubling" enforcement action initiatives exacerbated these systemic flaws and made no discernable improvement in enforcement.

HUD's enforcement of Section 504 has been even more troubled. HUD had difficulties ir adopting regulations implementing the law and its enforcement role. Funding has been limited for enforcement activities, and some significant successes in achieving compliance in individual situations have not been replicated.

There are only limited and inconsistent data by which to judge HUD's Section 504 enforcement efforts. The data that are available, however, show that both enforcement and compliance efforts have been marked by long delays resulting from the diversion of limited resources to other activities.

HUD has developed some important guidance, substantive and legal resources, and examples of good enforcement work. However, this information is not widely disseminated to HUD's own enforcement staff or to HUD program areas that could benefit from the information. In addition, this guidance has not been made available to individuals and entities affected by the law.

Good data collection systems and investigative management technology have been developed for FHA cases. Immediate expansion of these systems to support Section 504 enforcement and compliance work is an important priority for HUD.

The Fair Housing Initiatives Program (FHIP) was established by federal statute to fund private fair housing groups, state and local agencies, and advocates. FHIPs provide important services to and products for people with disabilities. Unfortunately, because of poor record keeping and limited financial resources, FHIPs have been unable to produce or replicate these efforts.

FHIPs have raised concerns that HUD's management of the program has resulted in significant delays in providing funding to qualified recipients and a lack of focus on supporting the enforcement and education activities external to HUD that are a critical component of successful law enforcement.

Congress funds the Fair Housing Assistance Program (FHAP) to handle cases at state and local enforcement agencies. While regional differences exist, when compared to HUD, the 86 FHAP agencies have lower percentages of cases administratively closed and a higher percentage of complaints resulting in findings that the law has been violated. They are able to process complaints (including disability complaints) considerably more quickly than HUD. Despite reports of gaps in activity in cases and other performance issues, more effective HUD monitoring of FHAP could reasonably be expected to improve performance even more. Unfortunately, HUD has no sustained process for identifying and disseminating important lessons from the success of the FHAP operations.

This study found startling inadequacies in HUD's management operations and resources supporting enforcement over the past years. HUD's Strategic Plan, Annual Performance Plan, and Business and Operating Plan, all of which direct the priorities and activities of the Office of Fair Housing and Equal Opportunity (FHEO), have been seriously deficient in addressing enforcement and compliance activities, FHIP and FHAP performance, and efforts to improve the civil rights of people with disabilities. Significant work in improving the focus and content of HUD's planning is needed to drive the enforcement and compliance improvements recommended in this study.

Congress has failed to give HUD adequate appropriations to fund its enforcement and compliance activities. FHEO was staffed at lower levels in FY 2000 than it was in 1989, and increases in staff-to-manager ratios have impaired effective day-to-day management activity. The lack of financial resources has impaired staff training, travel, the ability to

support education for the housing industry and the public, and funding for contracts and new initiatives.

This report concludes that HUD has a major challenge ahead of it to fulfill the promise of civil rights enforcement. Without staffing and funding resources, progress cannot and will not be made. Without strong and effective management of compliance and enforcement activities, combined with monitoring, training, technical assistance, and, if necessary, sanctions, progress cannot and will not be made. Without an organized, focused program, progress will not be made. The law is not the problem; the siting of enforcement activities at HUD is not the fundamental problem. The way in which the law is implemented is the problem confronting HUD and this country, and it is this problem that must be addressed now.

B. Summary of Key Recommendations

This report makes a number of recommendations for improvement of HUD's administrative enforcement and compliance activities. These recommendations can be loosely grouped under five major categories:

- **The Administration, HUD, and Congress must improve the enforcement of disability rights guaranteed by the FHA and Section 504 of the Rehabilitation Act; ensure compliance by federal grantees; and make enforcement of disability rights laws a priority.**
- The Administration, HUD, and Congress must ensure that current and future HUD budgets are increased so that adequate resources are provided for the enforcement of housing-related civil rights laws and for ensuring compliance by federal grantees.
- HUD must provide better guidance on the meaning of housing-related disability civil rights laws, including the FHA and Section 504, and must dramatically improve its collection of data about enforcement and compliance activities.
- HUD must improve its identification and dissemination of best practices concerning education, enforcement, and compliance activities.
- The Administration, Congress, and HUD (including its Office of Disability Policy and a National Consumer Advisory Committee) must work together to regain public trust in governmental enforcement and compliance activities.

Detailed recommendations are summarized in Appendix I at the end of this report. But it is clear that prioritization among the many recommendations made for improvement requires, first and foremost, increased attention to and support of enforcement activities by our country's leadership. The degree of the deficiencies in many, if not most, aspects of the government's enforcement of these civil rights laws is so startling and so significant that change must be led from the very top levels of the Federal Government.

The next most significant group of recommendations focuses on addressing the lack of resources for HUD's civil rights enforcement activities. Without adequate resources, laws will not be effectively enforced. The absence of adequate numbers of staff, reliable

funding streams for two statutorily created programs designed to advance enforcement, training and support funds, and data and technology funds have demonstrably hampered enforcement efforts in the past years.

HUD must gather, organize, and make available more information about the provisions of these laws and their interpretations and applications. Increased resources and funding could allow development of education, outreach, training, and technical assistance programs that would serve people protected against discrimination and particularly people with disabilities, housing providers, and others covered by the laws; HUD's own staff and program operations; and the general public. Increased education can both prevent discriminatory practices and reach victims of discrimination to advise them about their rights. Old and new cases, decisions, and interpretations can enable more effective enforcement as well as reducing or preventing discrimination.

HUD has undertaken positive enforcement and compliance activities during the period studied in this report, as have private fair housing groups and state and local enforcement agencies. The absence of effective systems to identify and replicate these best practices remains a major barrier to ongoing improvements in enforcement and compliance.

While following the recommendations described above should dramatically improve HUD's enforcement and compliance work, HUD must finally undertake specific actions that will help regain public trust in its work. The deficiencies that this report identifies have increased the reluctance of many to seek assistance from HUD and has helped create barriers to effective use of enforcement and compliance tools available to the government. The perception that HUD does not do its job efficiently or reliably must be dispelled, first by improved performance and then by affirmative steps to tell the Administration, Congress, advocates, and the public about its good work.

1. Improving Enforcement of Disability Rights and Ensuring Compliance by Grantees

The new Administration and Congress should take positive action to address the deficiencies that this report identifies. Leadership and attention to enhancing civil rights enforcement from the Administration and Congress are critical to improvements in enforcing the laws that are designed to correct discriminatory practices.

Key elements to congressional and Administrative involvement include supporting--by funding, staffing, and management oversight--the efforts of the FHEO to enforce the laws. The office that has the sole responsibility for administrative enforcement of the FHA has fewer staff now than it did in 1989, when the FHAA was passed. It has less than half the staff dedicated to compliance activities that it did in 1989. The following are key recommendations in this area:

- Congress and the Administration should provide enhanced oversight to assess major deficiencies in enforcement and compliance, including evaluating the reasons the absolute number of cause findings, especially those in disability cases,

have declined so precipitously; why there are wide variations on these indicators among the regional offices; why so many cases have been allowed to remain so much longer than the 100 days Congress set as a benchmark for case conclusion; and the ways in which screening of complaints before they are investigated may deter the pursuit of valid complaints.

- The Administration should request and Congress should allocate sufficient funding to ensure that there are adequate and qualified staff available to perform the tasks necessary for efficient enforcement.

- Congress and the Administration should support management initiatives that will focus--through HUD's Strategic Plan, Annual Performance Plan, Business and Operating Plan, and other management tools--on improvements in day-to-day oversight and management of enforcement and compliance activities.

- The Secretary of HUD should act expeditiously to support each of these recommendations and should support expanding and strengthening the existing Office of Disability Policy (and include a National Consumer Advisory Committee) to provide input, guidance, and direction to the Secretary and to all of HUD's program offices.

- FHEO should develop a comprehensive and organized Section 504 compliance program that should include, at a minimum, short- and long-term strategies for enforcing Section 504, a review of the successful ways that FHEO has worked with other HUD program offices to accomplish Section 504 compliance goals, establishment of systems for communication within HUD and with consumers and recipients, and coordination of the work of technical assistance, enforcement, and compliance and development of a systematic plan for improving responses to Section 504 complaints.

2. Dedicating Adequate Resources to Enforcement and Compliance Activities

This report concludes that the lack of sustained, consistent resource support has seriously and adversely affected HUD's ability to enforce civil rights laws. Inadequate numbers of intake, investigative, and mid-managerial staff, judged by standards identified in an independent study of Title VIII of the Civil Rights Act of 1968 (the FHA) enforcement, have contributed to ineffective enforcement and serious lapses in compliance activities. Lack of funds and staff for effective management of the Fair Housing Initiatives Program and the Fair Housing Assistance Program have caused shortfalls in their intended roles. Lack of contract funds has had serious effects on HUD's ability to train its own staff, to develop new enforcement initiatives, and to support even minimal education and outreach activities.

The following are key recommendations:

- At a minimum, HUD should staff its Office of Fair Housing and Equal Opportunity with enough staff to ensure that each investigator carries no more

than 15 cases at any one time. In addition, HUD should significantly increase its staff with persons knowledgeable about Section 504 investigations and compliance to ensure that it can maintain an effective Section 504 program without doing harm to its FHA enforcement and vice versa.

- HUD's Office of Counsel should evaluate its staffing of the fair housing and Section 504 function and ensure that there are adequate numbers of staff attorneys to support those functions.

- As part of its comprehensive effort to more effectively enforce the FHA, HUD should make much more extensive use of Secretary-initiated complaints.

- HUD should provide staff and other supportive resources that will enable FHEO to engage in monitoring of conciliation agreements and Voluntary Compliance Agreements. HUD should refer cases of noncompliance to the Department of Justice (DOJ) when compliance cannot readily be achieved.

3. Improving Policy Guidance and Data Collection

A thorough understanding of civil rights laws is a basic requirement for fair enforcement. Those working to improve compliance must understand the nuances of the law, be up-to-date with new judicial and policy developments, and be able to apply the law consistent with its interpretations. This report describes serious shortfalls in HUD's provision of guidance for its own staff, the absence of systematized sources for policy and legal information about interpreting the laws, and even the lack of basic information about when the law applies.

In addition, HUD's current inability to provide even basic data about the products of its funded programs and about its enforcement and compliance outcomes allows differing and inconsistent interpretations and thereby can adversely affect the public and its own operations.

The following are key recommendations:

- FHEO's Title VIII enforcement handbook should be completed, updated, and treated as binding guidance for enforcement of the FHA for HUD as well as for state and local agencies enforcing laws that are equivalent to the FHA.

- FHEO should develop a similar comprehensive manual that addresses Section 504 enforcement and compliance.

- FHEO should develop an ongoing system to gather and make generally available its interpretations of the FHA and Section 504. The Office of Counsel should undertake, in conjunction with this effort, a similar project to compile legal opinions, interpretative documents such as letters and memoranda, and key court decisions. Such a system should permit ready access to ensure consistent

application of the law, and FHEO and the Office of Counsel should consider establishing a method to make these interpretive decisions available publicly.

- Congress and HUD should fund a Civil Rights Training Academy that will provide basic and advanced skills training and substantive, legal, and technical training first for HUD staff, then for FHAP and FHIP.

- HUD's Secretary should strengthen the existing Office of Disability Policy and provide it with adequate staff and access to review program operations throughout HUD for compliance with the FHA and Section 504 and to advise the Secretary about corrective actions.

- FHEO should reinstate its process for issuing staff and interpretative guidance through memos, notices, and other mechanisms about new and important civil rights enforcement and compliance issues and make its guidance available to the public.

4. Improving Identification and Dissemination of Best Practices

As earlier recommendations are implemented, FHEO is expected to be able to collect and provide to others information about best practices in enforcement and compliance. Existing strategies that accomplish outstanding results should be recognized and honored.

- FHEO should develop systems that will permit it to identify outcomes and best practices among its regional offices, state and local enforcement agencies, and private fair housing groups and make those materials and products accessible to its own staff, to other organizations, and to the public, where appropriate. In particular, FHEO should identify working strategies for community outreach (particularly to people with disabilities), intake, case processing, investigative strategies, and management techniques among its own staff and replicate them in other offices. A similar system should be developed to highlight products of state and local agencies and grantees. FHEO should memorialize unique enforcement and technical assistance efforts, compliance strategies, and other products through distribution of materials, training, and development of national initiatives.

- FHEO should identify the successful approaches it has used to address issues of Section 504 noncompliance and identify the resources and support necessary to apply those approaches to a national compliance strategy. FHEO should make its strategies public and use them to encourage general compliance as well as conduct compliance reviews.

- HUD should continue to explore ways in which it can use FHIP and contract funds to support collaborative work between full service fair housing agencies and organizations representing persons with disabilities.

- HUD should review and incorporate as many of the recommendations made by the Occupancy Task Force mandated by congressional action as are applicable to

HUD's current programs and activities. It should determine whether the recommendations should be applied to programs and initiatives that did not exist when the recommendations were made in 1994 and the most effective ways of applying them.

5. Regaining Public Trust in HUD's Enforcement and Compliance Activities

Without implementation of the leadership, resource, communication, and best practices initiatives that this report recommends, HUD will not be able to regain the trust of the public. With tools that can be developed to focus attention on the many significant accomplishments of FHEO, however, HUD will be able to highlight its contributions to ending discrimination. If Congress provides adequate funding, HUD performs its enforcement and compliance functions effectively, and the systems are in place to identify successful work, HUD's achievements will speak for themselves.

- HUD should develop and implement a system to make its interpretations of civil rights laws generally available. HUD should provide adequate staffing and funding to support this effort.
- HUD should focus its resources on securing resolution of (and compensation in) a broad range of fair housing complaints rather than focusing on settlement of cases designed primarily to garner the most publicity for the agency.
- HUD should maximize the use of its World Wide Web site to inform the public that HUD's funding programs require recipients to comply with the FHA and Section 504.
- FHIP should move expeditiously to develop a comprehensive, organized system to identify outcomes, information, and materials developed as a result of the program and to make them available to the public, especially to organizations and individuals who deal with fair housing issues.

C. Future Prospects

The Administration has taken some actions, and HUD has initiated some disability-related changes since October 1, 2000, the end date for the information covered in this report, that suggest support for future improvements in fair housing enforcement.

President George W. Bush, Vice President Richard Cheney, and Attorney General John Ashcroft have indicated support for fair housing enforcement and, in particular, for increased emphasis on disability rights. While it is too early to say whether this renewed support will make a significant difference in improving enforcement, it is a promising start.

HUD Secretary Mel Martinez has demonstrated his recognition of the importance of disability rights early in his tenure by meeting with several major disability rights organizations. He has also taken steps to implement several key aspects of President

Bush's New Freedom Initiative, designed to assist Americans with disabilities by increasing access to assistive technologies and promoting increased access to community life. Among the President's initiatives are implementation of the American Homeownership and Economic Opportunity Act of 2000, which provides opportunities for Section 8 voucher holders, including people with disabilities, to use those funds for down payment assistance in the purchase of a home.

The lack of management focus and limited staffing and resources remain critical problems in fair housing enforcement. Secretary Martinez's expressed commitments to staffing realignments and increases in management oversight and the use of technology to improve HUD's activities show promise for future enhancements of fair housing work because they have the potential to address problems identified in this report.

HUD has reported that it has engaged in a variety of initiatives to enforce the FHA's design and construction requirements, including completing a review of model building codes and developing, with others, changes to the International Building Code to develop a stand-alone document that publishes access standards for housing. HUD has let a $1 million contract to develop a new training curriculum to provide national training on the FHA's accessibility requirements to a wide audience of builders, developers, architects, and advocates consistent with congressional direction in the FY 2001 budget report language. If Congress approves funding, this project is anticipated to provide accessibility training and technical assistance in an organized way. HUD's Office of Fair Housing and Equal Opportunity also reported that it has conducted six new training activities on a variety of accessibility issues, including a session for the National Association of Attorneys General on access issues and one for BANC One on tax credit housing, with particular emphasis on accessibility and Section 504, as well as more general sessions in Honolulu, Hawaii; Providence, Rhode Island; Pinellas County and Clearwater, Florida; and Maryland. In addition, HUD has announced that it plans to conduct a self-evaluation, as required by Section 504, in FY 2001.

FHEO has advised NCD that it intends to revise the HUD Strategic Plan to include the following language: "Enhance Section 504 enforcement efforts through increased guidance and technical assistance to field staff; increase compliance/monitoring activities; and coordinate such efforts within HUD and other Federal agencies." FHEO has also advised NCD that it intends to revise its FY 2002 Annual Performance Plan (APP) to provide specific measures and indicators to reduce housing discrimination against people with disabilities and that it will "incorporate compliance strategies to specifically address Title VI/Section 504 compliance reviews for people with disabilities in the FY 2003 APP."

These are worthy activities. As detailed in this report, however, much more needs to be done. HUD needs to work continuously with its various stakeholders to ensure that management and program reforms recommended in this report are implemented. HUD needs to work alongside NCD as part of this process. HUD also needs to ensure that its work in this regard incorporates the knowledge generated by the Interagency Council on Community Living, as well as the groundbreaking work being conducted around the

Olmstead Initiative by the Department of Health and Human Services. It is time to restructure fair housing.

Written Testimony
of
Shanna L. Smith
National Fair housing Alliance

BEFORE THE HOUSE FINANCIAL SERVICES COMMITTEE
Subcommittee on Housing and Community Opportunity
Subcommittee on Oversight and Investigations

June 25, 2002

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I. Introduction: My name is Shanna Smith, and I am President/CEO of the National Fair Housing Alliance. I want to thank the committee for inviting me to speak about the issue of fair housing enforcement as it relates to the people, neighborhoods, businesses and local governments who are protected under the federal Fair Housing Act. The National Fair Housing Alliance is a membership organization representing virtually all of the private, non-profit fair housing education and enforcement agencies in the United States.

I have been providing for 27 years fair housing education and enforcement services through private nonprofit agencies, and I have utilized the HUD administrative process since 1975. I am very familiar with how the process functioned before the1988 amendments and since 1989 when HUD implemented new procedures to exercise its authority to enforce the Fair Housing Act. I received scores of comments from the NFHA membership prior to preparing my testimony. The comments detail successes and failures with HUD's administrative case processing and its investigation and resolution of allegations of rental, sales, lending, and homeowners insurance discrimination as well as complaints involving racial and sexual harassment in housing.

My testimony today will focus on the relationship between HUD's Office of Fair Housing and Equal Opportunity (FHEO) and private fair housing agencies and will be limited to:

(1) The Fair Housing Initiatives Program (FHIP), including the Notice of Funding Availability and terms and conditions of grant contracts under FHIP; and

(2) Administrative complaint processing at HUD as it relates to enforcement of the law for members of the protected groups, especially African Americans, Hispanics, Asian Americans and Pacific Islanders.

There are seven classes protected under the Fair Housing Act: race, color, religion, national origin, sex, disability and familial status. Subgroups are found within each group. Race covers African Americans but also whites who are victims of discrimination. For example, whites have successfully conciliated and litigated complaints when they were threatened with eviction because they had African American visitors. Whites have successfully litigated mortgage lending discrimination cases when the lender refused to provide a loan because they were purchasing a home in an interracial or predominantly African American neighborhood and when the appraiser purposefully under-appraised a home in an interracial neighborhood, causing the loan to be denied.[1]

II. Creation and Purpose of FHIP: In 1987-88, fair housing groups worked closely with HUD, especially FHEO Assistant Secretary Judith Brachman of the Office of Fair Housing and Equal Opportunity, to garner support for a program that would provide direct funding to qualified, private nonprofit fair housing agencies to conduct fair housing education programs and to provide in-take, testing, investigation, conciliation and/or litigation of verified complaints of

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[1] *Old West End Association, et al v Buckeye Federal Saving and Loan; Gosses v TrustCorp.*

housing discrimination. With support from the Reagan administration and leadership from the House and Senate, Congress approved a $3 million pilot program called the Fair Housing Initiatives Program. A companion program (Fair Housing Assistance Program-FHAP), for state and local governments that have laws and procedures for investigating housing discrimination complaints that are substantially equivalent to the federal Fair Housing Act, was approved at the same time.

Congress envisioned that the agencies funded under these programs would work cooperatively with HUD to increase the number of complaints reported annually and to provide swift investigation and resolution for people who suffered the humiliation of housing discrimination. HUD was overwhelmed with complaints following the passage of the amendments, which also added protections for people with disabilities and families with children. By 1991, HUD had a huge backlog of complaints, and victims of housing discrimination found their cases languishing at HUD for years. Many issues contributed to the backlog. When the law took effect in 1989, HUD did not have an effective process in place to handle the increased volume of complaints, staff still needed training in investigating complaints from people with disabilities and families with children and staff needed guidance on utilizing the "prompt judicial action" promise in the new legislation. HUD had brand new authority to charge a complaint and moved very slowly in deciding when and how to exercise that authority.

HUD was divided into ten regions, and there were differing interpretations of the regulations and Fair Housing Act in different regions. Staff at FHEO and the Office of General Counsel worked diligently to create a smoother operation, and Secretary Kemp made fair housing a Departmental priority for the first time ever. However, hundreds of complaints were held at HUD for more than three years, and "prompt judicial action," a process designed to quickly help secure the apartment or home in question, was anything but prompt. Even today it is rarely utilized by HUD; victims of housing discrimination who want an apartment or home illegally denied them must find a private a attorney to obtain a temporary restraining order to take the unit off the market. As a result, HUD may eventually resolve complaints, but complainants rarely get the apartment that was in question.

III. FHIP and GAO: The 1989 initial Notice of Funding Availability (NOFA) for FHIP was welcomed by private fair housing agencies. From 1989 through 1992, HUD followed the mandate of the statute, and FHIP funds were awarded to qualified fair housing agencies. In 1991, Congress asked the General Accounting Office to report on the effectiveness of FHIP. The GAO report applauded the successes of the approximately 30 private fair housing agencies that had received FHIP funds and Congress voted to make FHIP a permanent program. President George H. Bush increased the level of funding to $10 million, and additional initiatives were added to the program, including establishment of new fair housing organizations in under-served areas and capacity-building to help established groups expand services to people alleging discrimination in real estate, lending and insurance markets. In 1989, there were only about thirty private nonprofit fair housing agencies. Today there are approximately one hundred qualified fair housing agencies, but there is only $20 million allocated for both education and enforcement activities.

IV. Public/Private Partnerships: The partnership between HUD and the private fair housing groups receiving FHIP funds was evolving. Secretary Kemp was the first to include an allocation of FHIP funds in the Notice of Funding Availability (NOFA) for special investigations under the Private Enforcement Initiative (PEI). Under his leadership, HUD issued a NOFA for mortgage lending testing to be conducted in three cities. He supported the use of FHIP funds to investigate systemic practices of discrimination that hurt home ownership opportunities for African Americans and Hispanics. Secretary Cisneros continued the use of special PEI projects to address redlining and issued NOFAs to investigate practices that were regional or national in scope. HUD and FHIP recipients collaborated under both Secretaries Kemp and Cisneros. Even with its large backlog of cases, HUD was responsive to fair housing groups and met regularly with them to work out issues that prevented timely and effective investigations and resolutions through conciliation or the Administrative Law Judge process. Investigations into redlining by homeowners insurance companies were funded under Secretary Kemp and were successfully resolved through HUD Conciliation Agreements under Secretary Cisneros.[2]

HUD was making some progress in the mid 1990's on the back log of complaints, but consumer confidence in the federal and state administrative processes was quite low. Fair housing remained a priority under Secretary Cisneros who integrated fair housing responsibilities into every division at HUD, i.e., FHA, Public and Indian housing, CDBG. The Housing and Community Development Act was passed in 1974 with a requirement that recipients "affirmatively further fair housing;" however, regulations were NEVER promulgated to provide guidance on what it means to affirmatively further fair housing. As a result, 98% of the more than 1,000 CDBG recipients do absolutely nothing to promote fair housing. Secretary Cisneros drafted regulations to affirmatively further fair housing for CDBG recipients. Secretary Cuomo released the draft for comment but withdrew them almost immediately when small city mayors complained that the regulations might require them to accept group homes for people with disabilities. Unfortunately, there still is no regulation.

V. Serious Problems in the Partnership: The partnership between HUD and fair housing agencies receiving FHIP funds began to deteriorate in 1998. These problems continue today and have worsened significantly in the past few years. The restrictions listed below have resulted in a serious reduction in the number of complaints filed annually with HUD. In the early 1990s HUD received approximately 10,000 complaints annually. Last year, HUD received fewer than 2,000 complaints. Private fair housing agencies who have historically filed and settled complaints through the HUD process are refusing to apply for FHIP funds because of the government's attempts to micro-manage local investigations and the emphasis on numbers rather than

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[2] The National Fair Housing Alliance and HUD negotiated conciliation agreements with State Farm (July 1996) and Allstate (March 1997) after testing indicated that some underwriting guidelines prevented qualified home owners from purchasing replacement cost coverage for their homes because of the age, value or racial composition of the neighborhood where the house was located. State Farm and Allstate changed the problematic guidelines and found significant increases in homeowners insurance business in urban communities throughout the United States. NFHA continues to work closely with both companies by providing training for agents and self-testing for the companies.

successful resolutions that promote fair housing in local communities.

I will outline in this section only the most egregious issues articulated by private fair housing agencies from throughout the country. The first problems began when Secretary Cuomo mandated the following:

1. Every verified complaint received by a fair housing agency must be filed with HUD and if the complainant does not choose to file with HUD, he or she must state the reason in writing.
2. A fair housing agency must return to the U.S. Treasury all funds recovered in a conciliation or settlement that reimbursed the agency for any of the FHIP funds used in the investigation of the complaint.
3. A fair housing agency must predict how many investigations will result in bona fide complaints.
4. Private Enforcement Initiative (PEI) grants were capped at $125,000 annually at one point regardless of the size of the community served; current caps are higher but not sufficient for some communities.

Secretary Martinez continues the use of the restrictions listed above[3] and has added additional requirements and even penalties such as:

5. Short term funding cycles that are detrimental to long term success.
6. Applicant loses 5 points if located in a state or city with a FHAP agency.
7. Applicant must show the project will become financially independent.
8. Applicant must show that proposed activities comply with CDBG recipients' Consolidated Plan, Analysis of Impediments to Fair Housing.

VI. Brief Explanation of Problems:

1. Every verified complaint received by a fair housing agency must be filed with HUD, and if the complainant does not choose to file with HUD, he or she must state the reason in writing.

Not every complaint requires federal action in order to be resolved. HUD wanted to increase its number of reported complaints, so fair housing agencies suggested that HUD count every complaint[4] that is reported to a private group when HUD funds (FHIP/CDBG) are used to handle the complaint. It should not matter what method a complainant uses to resolve a complaint, but rather that a satisfactory resolution is secured. HUD rejected this suggestion and instead mandated that every complaint supported by evidence be filed with HUD. This requirement might be more understandable for complaints filed by fair housing agencies based on audit

[3] Secretary Martinez eliminated #3 and increased the cap to $275,000 in #4

[4] Complaints are defined as allegations that are covered under the federal Fair Housing Act.

testing and for which there is no individual bona fide complainant; however, the requirement becomes onerous given HUD's tremendous case backlog and poor record of both investigating discrimination cases and finding probable cause of discrimination.

Sometimes a victim of housing discrimination only wants an apartment or a reasonable accommodation/modification and does not want to file a formal complaint with any government agency. After an investigation provides evidence that supports the allegations of discrimination, sometimes the complainant asks the fair housing agency to simply call the landlord/owner to try to secure the apartment Tapping a respondent on the shoulder, rather hitting him/her over the head with a hammer, can be a more effective way of securing the apartment and insuring that a landlord stops engaging in practices that violate the law. Since prompt judicial action is nearly impossible to secure through HUD, a fair housing agency should not be penalized when a complainant chooses an alternative option for resolving a complaint. A complainant should be solely responsible for deciding what method to use to resolve a verified complaint. Fair housing agencies provide the following options to all verified complainants:

- File a complaint with the state or local governmental agency
- File a complaint with HUD
- File a lawsuit in state or federal court
- Have the fair housing agency contact the landlord/seller/lender/insurer
- Do nothing

It can be intimidating to complainants to require them to put in writing the reason(s) they choose not to file with HUD. In fact, Assistant Secretary Eva Plaza understood this and removed the requirement. She understood that Hispanics, Asian Americans and newer immigrants are reluctant to be involved with the government; requiring them to sign a written statement about why they choose not to use the government would further thwart HUD's effort to increase the number of complaints and increase consumer confidence in the system.

However, this requirement has been reinserted in the current NOFA and HUD grant monitors are penalizing fair housing agencies who do not follow this rule.

2. ***A fair housing agency must return to the U.S. Treasury all funds recovered in a conciliation or settlement that reimbursed the agency for any of the FHIP funds used in the investigation of the complaint.***

No other grant program penalizes an agency for doing good work. For example, community development corporations (CDCs) receive federal dollars to build and rehabilitate homes for low and moderate income home buyers. The CDCs sell the homes and plow the profits back into their programs to build or rehab more homes. Every fair housing group that receives reimbursement for costs of an investigation uses those funds to conduct more educational programs or more investigations. The FHIP funds are meager -- just $20 million to cover fair housing education and enforcement for seven protected groups throughout the whole country! It is cost effective -- and a deterrent to future violations -- to require owners, managers, and

corporations who violate the law to reimburse a fair housing agency for its costs in investigating and processing the complaint. Federal judges throughout the country order defendants to reimburse fair housing agencies for their costs. Surely, repeat offenders should be required to reimburse costs, but HUD will not even consider allowing an agency to keep the reimbursement when a repeat offender is involved. Clearly, the repeat offender knows the law but chooses to continue violating the law. The requirement is burdensome and counter-intuitive to the achievement of fair housing.

3. A fair housing agency must predict how many investigations will result in bona fide complaints

Seventy-six private fair housing agencies processed more than 16,000 complaints in 2001 compared to HUD's 2,000. No one has a crystal ball with the capacity to predict how many allegations of discrimination will be supported by testing or other evidence. Some years a private group will process three hundred complaints and the next year receive six hundred complaints. We cannot predict who will violate the law or frequently they will do so. Defense attorneys use this HUD requirement to argue that fair housing agencies must manufacture discrimination in order to continue to receive FHIP funding. Since fair housing groups are penalized in the evaluation process for failing to file more complaints with HUD, a judge or jury might give weight to this defense point.

Unfortunately, HUD staff monitoring FHIP recipients continue to ask why more complaints are not filed with HUD and are stating that the agency may receive a poor program evaluation because it did not file more complaints with HUD. NFHA and its members are careful not to file frivolous claims either with HUD, FHAP agencies or in state or federal courts. We also respect the decisions of a complainant about how to handle the complaint. HUD continues to have a backlog of complaints even when it only receives 2,000 complaints annually. Fair housing is not a numbers game. It is about eliminating discriminatory practices and policies that perpetuate residential segregation, opening up housing opportunities to qualified renters and buyers and promoting integration within Constitutional limitations. Increasing HUD's numbers with complaints that can be resolved quickly at the local level is not the answer. HUD should focus on competent and timely investigation of the complaints it has in the pipeline before requiring FHIP recipients to file more complaints that will surely languish at HUD FHEO or regional counsel offices.

4. Private Enforcement Initiative (PEI) grants were capped at $125,000 annually at one point regardless of the size of the community served; current caps are higher but not sufficient for some communities.

Capping the PEI allocation is not inherently a problem. Capping the PEI allocation across the board at a particular annual level for every FHIP applicant is shortsighted because it fails to take into consideration:

■ **The size of the service area:** At one point, New York, NY, (population 8 million) received $150,000 to investigate housing discrimination while Napa, California (population 70,000) also received $150,000. Napa could make a dent in the problem, while NYC's allocation was a drop in the bucket. The current cap for Private Enforcement Initiative grants is $275,000. This is sufficient for many communities but still not enough for a cities like New York, Detroit, Atlanta, Chicago, Houston, San Antonio, San Diego, San Francsico, Birmingham, Miami, Dallas, Los Angeles and many other metropolitan areas. Even at $275,000, the amount barely covers the costs of operating an agency including salaries for the executive director, fair housing specialist, administrative support, accounting costs, tester fees, training, office space, computers, supplies, travel, conciliation or litigation expenses.

■ **National Origin Issues:** There have been significant increases in Hispanic and Asian American populations in cities throughout the country. HUD requires the fair housing agency to use these limited funds to deal with complaints from African Americans, families with children, people with disabilities as well as the newer populations who often need more assistance working through the process. Areas such as Raleigh/Durham, NC, have seen a dramatic increase in the Hispanic population accompanied by increases in acts of housing discrimination against the families. HUD expects a private group to continue to process its normal complaint load and conduct outreach to increase service to under served groups. More local staff is needed to address the special needs of non-English or limited English speaking complainants. More staff is needed to develop a close relationship with the communities that are under served to gain the their trust by understanding their culture and speaking their language. It is unrealistic for HUD mandate expanded outreach without providing the funds to do it.

5. ***Short term funding cycles are detrimental to long term success.***

The FHIP NOFA currently provides for a one year funding cycle. Grant periods have ranged from 12-24 months (and in limited cases for the creation of new organizations, 36 months). Fair housing agencies can not receive both education and enforcement funds during the same grant cycle. Because fair housing agencies are guaranteed not funding from year to year, the benefit of ongoing enforcement activities is diluted. HUD has not been capable of completing the FHIP NOFA and grant decision process within a twelve month period. Therefore, twelve month grant cycles serious hurt fair housing agencies ability to retain experienced staff. When the grant contract ends, the staff is laid off. A longer grant contract reduces the problem. Ideally, the FHIP program should create a long-term (perhaps 3 or 5 years), entitlement-type grant cycle for qualified private nonprofit fair housing organizations. The program should include funding to provide training to agency personnel and to implement programs to improve and enhance agency performance.

6. ***Applicant loses 5 points if located in a state or city with a FHAP agency and geographic based scoring.***

There can be no rational justification for this penalty in the current FHIP NOFA. Congress expressly created FHIP and FHAP to complement each other and to increase enforcement of fair housing laws throughout the country. There are hundreds of excellent examples of cooperation between recipients of FHIP and FHAP funds. Their cooperation is necessary because there are also important differences between the services provided by fair housing agencies and FHAP agencies. FHAP agencies do not conduct testing. Testing provides definitive evidence of differential treatment because of race, color, religion, national origin, sex, disability of familial status. Testing removes the "he said-she said" issues by providing objective facts for a government investigator, ALJ, state/federal judge or jury. Fair housing agencies cannot subpoena documents. FHAP agencies use information from test reports to review records of the landlord and determine if units were in fact available when the complainant or testers inquired. FHAP agencies stated publicly at the national HUD conference in Orlando, Florida, during the week of June 9, 2002, that evidence provided by fair housing agencies shortens the time for processing the case and helps facilitate conciliation, thereby reducing the case load for the state court system. FHAP agencies also stated that, because testing documents evidence of intentional acts of discrimination, stronger remedies and oversight of violators are negotiated in conciliation agreements.

State and local FHAP agencies that have excellent working relationships with fair housing agencies will be adversely affected by this punitive scoring requirement in the current NOFA. States that will be adversely affected include Arizona, California, Texas, Ohio, Pennsylvania, Florida, North Carolina, Washington, Massachusetts, New York, and Nebraska.

For example, Nebraska has only one private fair housing agency that serves the state. The FHAP agency has contracted with the fair housing agency to conduct testing and investigations, and the agency uses FHIP dollars to enlarge its scope of investigations to monitor illegal sales, lending and insurance practices. The agency will lose five points and be penalized financially simply because Nebraska passed a fair housing law that is substantially equivalent to the federal law.

In Ohio, private fair housing agencies worked with the state legislature to pass a fair housing law substantially equivalent to the federal law. By doing this, Ohio earned the right become a FHAP agency and receive funds from HUD to investigate complaints of housing discrimination. Last year, the Ohio state attorney general, working from a complaint filed by the Toledo Fair Housing Center, settled an insurance redlining complaint for more than four million dollars. The Ohio Civil Rights Commission (OCRC) does not have the testing capability to investigate insurance and lending complaints and, without the cooperation of the private groups in Toledo, Cleveland, Dayton, Cincinnati, and Akron, the OCRC would be hard pressed to investigate cases in a timely manner and would see its number of complaints dwindle. Prior to the establishment of the private groups in Ohio during the 1970s, the OCRC received and processed fewer than 10 housing discrimination complaints annually. Now OCRC processes hundreds of complaints annually – most filed through private fair housing agencies.

The competition for FHIP funds is very keen and often there is just one point separating applicants. The loss of five points because a fair housing group is located in a state or city with a

FHAP agency guarantees a lower score and an increased likelihood that the very groups Congress intended to support through FHIP will be de-funded.

HUD may claim that this penalty is in place to support groups where no FHAP agency exists, such as Alabama, Mississippi and Virginia, but this is backwards thinking. Instead HUD should require the more than 1000 CDBG recipients to use their funds to affirmatively further fair housing.

HUD reserves the right to deviate from the ranked scoring system. This is patently unfair to every applicant. For instance, HUD can decide that only one grant will be awarded per state even though states such as Illinois, California, New York, Florida, Texas, Washington, Massachusetts, Pennsylvania and Ohio have multiple private fair housing agencies operating throughout the state. For example, if the six groups in New York, seventeen groups in California and eight group in Ohio are ranked in the top thirty five eligible applicants, HUD can decide to fund just one applicant in each state and move down the ranking list to fund a group that ranked substantially lower. The rules state that all of the remaining groups in New York, California and Ohio must now go to the bottom of the ranking order. Because of this rule and penalties for being in FHAP state, many fair housing groups did not even bother to apply for FHIP funding. HUD received fewer applications under this NOFA.

7. Applicant must show the project will become financially independent

The only sources of funding for fair housing enforcement are FHIP and CDBG. Rarely will a foundation support enforcement activities. If a private group receives foundation support, it is for seminars, conferences or educational efforts. However, what good is it to educate people about their fair housing rights and responsibilities if follow up enforcement services are unavailable?

Congress established FHIP in 1989 in part because HUD's research estimated that at least two million African Americans[5] experience discrimination in rental housing annually. The research indicated that three out of four times an African American inquires about rental housing, s/he will face discrimination. HUDs 1989[6] research also demonstrated that Hispanics will experience illegal discrimination approximately 50% of the time when seeking to rent or buy a home. Rental audits conducted by fair housing groups in San Antonio, Houston and Fresno between 1996 and 2000 indicate that Hispanics face discrimination 70% of the time they inquire about rental units.

There were only about thirty fair housing groups in existence before FHIP. They were relatively small, three or four person, operations that investigated rental complaints. A few agencies, such as Leadership Council for Metropolitan Open Communities (Chicago), HOME of Cincinnati,

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[5] HUD's 1979 Housing Marketing Practices Survey.

[6] HUD's 1989 Housing Discrimination Study

Toledo Fair Housing Center, Heights Community Congress (Cleveland), Fair Housing Council of Northern New Jersey, and the Open Housing Center (NYC), investigated real estate sales steering practices. They were able to do this because their CDBG communities supported their programs. There is no full service fair housing group operating any where in the United States without the support of FHIP and/or CDBG funds. Congress established FHIP because it knew there was little or no support at the local level for enforcement of the fair housing laws. That remains the case today. Congress determined that it is important to eliminate illegal practices that segregate people and deny housing to people because of their race, religion, color, national origin, sex, disability or because they have children. HUD should recognize the congressional commitment to fair housing and remove all the barriers in the NOFA that undermine continued financial support for private fair housing groups.

8. Applicant must show that proposed activities comply with CDBG recipients' Consolidated Plan, Analysis of Impediments to Fair Housing

While every CDBG recipient is supposed to prepare an Analysis of Impediments (AI) to Fair Housing that identifies barriers to fair housing AND recommends and implements programs to eliminate these barriers, only about 20 cities have developed AI reports that actually identify the problems, make recommendations and fund programs to eliminate the barriers. In the past few years, NFHA has reviewed approximately 650 AI reports. The majority fail to correctly identify what housing discrimination involves. Most believe landlord-tenant housing problems involving evictions, non-payment of rents, and housing code violations are fair housing concerns. Many AI reports are just two or three pages long and do not include information on the nature, extent or type of barriers members of protected groups experience in their communities. Some cities believe only low or moderate income people are affected by discriminatory housing practices and ignore the illegal discriminatory housing practices that middle and upper income people of color, women, and families with children face.

Since the overwhelming majority of CDBG recipients fail to identify housing discrimination as a problem in their community, then the activities proposed by applicants for FHIP funding cannot comply with the activities listed in a CDBG recipient's Consolidated Plan or AI. Again, a fair housing agency applying for FHIP funds is unfairly penalized because its CDBG recipient fails to meet HUD requirements.

However, those handful of CDBG recipients who correctly identify and define barriers to fair housing in their Consolidated Plan and AI are also the same recipients who tend to financially support their private nonprofit fair housing agency.

HUD should simply make CDBG recipients follow the rules and not penalize a fair housing agency for a locality's failure to affirmatively further fair housing. For years, the private fair housing movement has been begging HUD to issue regulations defining "affirmatively furthering fair housing" requirements so fair housing groups can seek funding from their CDBG recipients; however, rather than issue long overdue regulations, HUD is penalizing the very agencies that assist victims of illegal housing discrimination.

VII. Successes and Failures in HUD Enforcement

When the partnership between private fair housing agencies and HUD is working, there has been significant expansion of housing, lending, and insurance opportunities for people of color, persons with disabilities and families with children. HUD has worked with fair housing groups across the country to conciliate complaints. Resolutions have included significant payments of compensatory damages to victims of housing discrimination and concrete relief that includes monitoring future practices of a company and employee training.

However, the number of complaints processed by HUD and successful resolution of complaints filed continues to dwindle. There has been a dramatic reduction in the number of "cause findings" since 1994. Secretary Cisneros caused 324 cases in 1994. Caused cases dropped significantly under Secretary Cuomo to 96 in 2000 and, so far in this fiscal year, only 46 cause findings have been issued.

Drop In Cause Findings: In the past three years, many experienced staff at FHEO headquarters resigned or took early retirement. During the downsizing at HUD, FHEO was decimated nationwide. FHEO is still seriously understaffed, and the staff needs more training. Investigators report that they are unable to travel to cities to investigate complaints, interview witnesses face to face, identify and interview past or current tenants, or review all appropriate documents. The statute requires early attempts at conciliation, but when an investigator cannot provide evidence of a violation because s/he cannot conduct an on-site interview or investigation, the respondent has no motivation to engage in conciliation. Attempting conciliation prior to some investigation makes the respondent feel like the process is designed to favor the complainant and it makes the complainant feel that HUD is not taking their allegation seriously. The goal of early settlement is to reduce the pain and suffering of the victim by securing the housing and relief that promises to terminate the discriminatory housing practice. The benefit to the respondent is reduced costs to defend himself.

Micro-Managing Grantees: For the past thirty years, fair housing agencies have managed to successfully bring both administrative and legal cases without HUD staff micro-managing their day to day work. However, in the past three years, HUD has tried to insert its bureaucratic process in the daily work of private, non-profit fair housing agencies. For example, HUD staff are now trying to critique testing methodologies, read case files and recommend filing of complaints. HUD FHEO headquarters and other staff have never structured complaint-based testing that must withstand the scrutiny of a federal or state court judge, never trained or debriefed testers, or conducted a full in-take of a complainant in order to develop a testing methodology. Yet, HUD wants to dictate which cases should be filed and when. HUD grant monitors are asking fair housing agencies to complete all cases within 100 days. While most complaints handled by fair housing agencies can, and indeed are, completed within 100 days, there are complaints that require long term testing to demonstrate a pattern or practice. IN addition, some complaints cannot be tested within the100 days because there is no apartment available. In these situations, fair housing agencies keep the case open and periodically check for vacant units in order to conduct a test. The irony of this new FHIP requirement is that HUD is

required by law to complete its investigation within 100 days, and HUD has never even come close to meeting that statutory requirement. Fair housing agencies must respond to complainants in a timely fashion because we can held liable if a complainant is not advised about his/her rights under state and federal laws. HUD, however, has complaints that are three, four and even five years old still waiting for an investigation.

VIII. Status of Complaints Nationally: The 2002 NFHA Fair Housing Trends Report is based on 2001 complaint data compiled from National Fair Housing Alliance (NFHA) member agencies nationwide, the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Justice (DOJ) and more than 70 state and local government agencies. Summarizing the report, we find the following:

Housing discrimination persists nationwide and is severely underreported. The recent data indicate that housing discrimination continues unabated and that the number of complaints filed with both public and private fair housing enforcement agencies represents only about *one percent* of the annual estimated incidence of housing discrimination in the United States.

Complaint volumes are highest among African Americans, people with disabilities, and families with children. Together, these complaints comprise the majority (71 percent) of all reported housing discrimination complaints.

Housing discrimination is least reported among Hispanics, Asians and women who are sexually harassed in housing. While studies conducted in California and Texas reveal that Hispanics are discriminated against as much as 70 percent of the time in their search for housing, this is not reflected in the level of reported complaints. Anecdotal evidence from NFHA member agencies reveals that women are extremely fearful of the ramifications of reporting sexual harassment by those responsible for providing, managing and maintaining their housing.

Lending discrimination continued to rise in 2001. As stories of predatory lending abound in the newspapers, detailing complex marketing schemes by unscrupulous lenders to strip wealth from low income and minority communities, complaints alleging lending discrimination increased in 2001.

Private fair housing organizations processed the overwhelming majority of all reported complaints of housing discrimination. In fact, private fair housing groups in 2001 received more than twice as many complaints as government agencies combined. Yet, as complaints to fair housing groups have risen, funding for these organizations, under the Fair Housing Initiatives Program (FHIP) administered by HUD, remains flat.

Housing Discrimination Complaint Data

The data are comprised of more than 23,500 claims/complaints of housing discrimination made in 2001. NFHA members received 15,131 complaints in 2000 (76 agencies reporting) and 16,500 complaints in 2001 (79 agencies reporting). The number of complaints received by HUD has

decreased, while the number of complaints to state and local agencies has increased slightly. The complaints handled by DOJ from 2000 to 2001 have increased by 15 cases nationwide, from 49 to 64.

Total Complaints			
Agency	**Claims/Complaints**	**2000**	**2001**
NFHA	Complaints	15,131	16,550
HUD	Claims and Complaints	1,988	1,902
FHAP[7]	Claims and Complaints	4,971	5,041
DOJ	Claims and Complaints	49	64
Totals		**22,139**	**23,557**

A. Discrimination by Protected Class

The federal Fair Housing Act prohibits discrimination on the basis of race, disability, familial status, national origin, sex, religion and color. In 2000, race was the most commonly reported discrimination basis, followed by disability and familial status. In 2001, this trend continued with race complaints making up 32 percent of the total complaints received, followed by disability and familial status complaints at 24 percent and 15 percent respectively. Together, these three categories account for 71 percent of all housing discrimination complaints. The chart below provides the breakdown by type of reporting agency and protected class.

Percent of Claims by Protected Group in 2001					
	NFHA	**HUD**	**FHAP**	**DOJ**	**ALL**
Race	32%	33%	32%	30%	32%
Disability	22%	32%	27%	37%	24%
Family Status	15%	13%	15%	22%	15%
National Origin	10%	9%	11%	8%	10%
Sex	7%	9%	9%	3%	8%
Religion	1%	1%	2%	n/a	1%
Color	2%	3%	4%	n/a	3%
Other	11%	n/a	n/a	n/a	7%
TOTAL	100%	100%	100%	100%	100%

7 Fair Housing Assistance Program (FHAP) agencies are state and local government jurisdictions with fair housing laws deemed by HUD to be substantially equivalent to the federal Fair Housing Act.

IX. Recommendations

The National Fair Housing Alliances makes the following recommendations that would move our nation towards the achievement of equal housing opportunity.

Fair Housing Initiatives Program (FHIP) Funding

FHIP funding should be dramatically increased to address the fair housing needs of the nation. One of the reasons housing discrimination is chronic is that so few resources have been allocated to both educate people about fair housing and enforce fair housing laws. Despite the fact that there are an estimated two million instances of housing discrimination each year, the amount allocated by Congress to the FHIP program has never exceeded $25 million and in recent years has been as low as $15 million. For 2003 fiscal year Congress allocated $20,250,000 -- an amount still woefully short of what it will take to provide fair housing for our nation. FHIP is the primary source of funding for private nonprofit fair housing organizations throughout the country. The inadequate and inconsistent nature of the funding means that no agency has sufficient funds in any community to educate consumers, work with housing providers on compliance, and conduct investigative and enforcement activities.

HUD's management of the FHIP program has been inconsistent, deleterious and has strayed from the original intent of the FHIP legislation. HUD should adhere to the original purpose of the program, which was to allocate FHIP funds to qualified fair housing agencies with proven track records in both education and enforcement and to establish new fair housing groups. HUD keeps trying to increase the number of agencies that apply for FHIP funds without considering that fair housing enforcement is a specialize profession. Would the government offer funds to cure cancer to an advertising agency? Of course not. So why does HUD think the skills to investigate violations of federal laws can be left up to any group claiming to have experience? Housing discrimination is serious, complex problem. Qualified professionals should be used to address to challenge. The quality of the applicant and not the quantity of applications should be the yard stick used to measure who receives FHIP funding.

Ideally, the FHIP program should create a long-term, entitlement-type grant cycle for private nonprofit fair housing organizations. The program should include funding to provide training to agency personnel and to implement programs to improve and enhance agency performance. In addition, HUD should explore ways to reach persons who have traditionally been reluctant to file housing discrimination complaints – Hispanics, Asian Americans, Native Americans, and women who have been victims of sexual harassment in housing.

Community Development Block Grant (CDBG) Program

HUD should immediately promulgate and enforce meaningful regulations that require, without exception, all CDBG entitlement communities to address housing discrimination in all its forms.

There are 1,075 CDBG entitlement jurisdictions in the country, all of which are required to "affirmatively further fair housing." It is difficult to enforce this requirement, however, because HUD has failed to promulgate regulations for the implementation of this requirement, although the law was passed in 1974. Only a handful of these recipients of significant federal funds actually have programs to address fair housing concerns in their communities. Even fewer provide funding to private fair housing organizations serving their jurisdiction. If every CDBG recipient promoted education and offered enforcement of the federal Fair Housing Act, more than 1,000 communities would be actively working to eliminate residential segregation and open communities to members of protected groups.

Funding for and Commitment to HUD's Office of Fair Housing and Equal Opportunity

Congress should allocate additional funds to HUD's Office of Fair Housing and Equal Opportunity in an amount sufficient to process all housing discrimination complaints in a timely (100 days or less, in accordance with the Fair Housing Act), and effective manner.

The Office of Fair Housing and Equal Opportunity has been gradually depleted of resources and staff. It has been under-staffed in recent years of the *minimum* needed to meet its fair housing enforcement obligations. The amount of staff has never even been adequate to process complaints in the time period mandated by the statute. Additional funding should be allocated to HUD's complaint intake, investigation and administrative enforcement process.

Under the prior administration, control of fair housing functions was "devolved" from the D.C. headquarters office to ten HUD regional offices (HUBs). Unfortunately, there is inconsistency between the HUB offices in the interpretation and application of the law, case processing standards, types and amounts of remedies and relief, and other functions such as conciliation procedures. Control of HUD's fair housing enforcement program and responsibility for quality control and review should be housed in the headquarters office to ensure that all victims of housing discrimination and all respondents are treated with consistent policies and practices under the law.

Fair housing has long had bi-partisan support. It is time for Congress to re-commit itself to the fundamental principles of justice that formed this country and to its goal of ending housing discrimination and segregation in this nation.

X. Rural Housing Services/USDA

Approximately two years ago USDA approached NFHA to conduct testing of elderly and family

projects that it funds. Initial tests showed high rates of discrimination against Hispanics and African Americans. USDA released an RFP to conduct testing in several states. NFHA was the successful bidder.

The National Fair Housing Alliance is under contract to the US Department of Agriculture to conduct tests of rental housing complexes funded through USDA housing programs. The tests will cover a number of protected classes, including race, ethnicity, disability, and familial status. These complexes are all located in rural communities. Testing will be conducted in several regions throughout the United States. NFHA will also develop and provide a training program for USDA property managers that can be used as guidance in complying with civil rights laws.

NFHA is working with existing fair housing agencies to conduct the testing. Problems in rural housing program have been ignored for years, but NFHA commends the USDA for implementing a testing program, participating in the tester training program to learn, first hand, how testing is conducted and to provide adequate funds to do a thorough job.

XI. Recommendations for USDA

NFHA recommends that USDA establish a grant program to fund fair housing education and enforcement activities in rural communities, especially in communities where federal dollars are used to support rental housing and new construction and rehabilitation.

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TESTIMONY

OF

PHILIP TEGELER

LEGAL DIRECTOR

CONNECTICUT CIVIL LIBERTIES UNION

ON

FIGHTING DISCRIMINATION AGAINST THE DISABLED AND MINORITIES
THROUGH FAIR HOUSING ENFORCEMENT

BEFORE

OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE

AND

HOUSING AND COMMUNITY OPPORTUNITY SUBCOMMITTEE

OF THE HOUSE OF REPRESENTATIVES

COMMITTEE ON FINANCIAL SERVICES

JUNE 25, 2002

Nadine Strossen *President* **Anthony D. Romero** *Executive Director* **Kenneth B. Clark** *Chair, National Advisory Council* **Richard Zacks** *Treasurer*
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Good afternoon. My name is Philip Tegeler, and I am the legal director of the Connecticut Civil Liberties Union in Hartford, Connecticut. On behalf of the ACLU, I would like to thank Chairpersons Roukema and Kelly, and Ranking Members Frank and Gutierrez for calling this important hearing on fair housing enforcement. I am also here as an active member of the Housing Justice Network, a coalition of legal services and civil rights groups coordinated by the National Housing Law Project, and I am grateful for the opportunity to testify on an issue that has been a central focus of my work and the work of many of my colleagues.

As an ACLU office, much of our fair housing work in Connecticut has focused on government action, as opposed to private acts of discrimination. We have analyzed the role of state, local, and federal governments in perpetuating patterns of racial and economic segregation, and we have tried to use the civil rights laws to expand housing choices for low income families of color outside of high poverty neighborhoods. We have successfully challenged discriminatory government policies on site selection, tenant relocation, Section 8 administration, tenant selection, and exclusionary suburban housing and zoning policies. As sociologists Massey and Denton have observed, "racial residential segregation is the principal structural feature of American society responsible for the perpetuation of urban poverty and represents a primary cause of racial inequality in the United States."[1] We take this message very seriously in our work, not just in housing but also in education law, voting rights, and criminal justice reform.

In this context, HUD's role as a fair housing enforcement agency is only one aspect of its larger responsibility to promote fair housing in federal housing and community development programs. Few government housing actions are race neutral, and HUD has a choice in every program it operates: whether to passively support continued segregation of our metropolitan areas or to take affirmative steps to support racially and economically diverse communities. HUD also has a special role to play in requiring affirmative fair housing compliance among its grantees - which include local Public Housing Agencies (PHAs), private housing managers, and municipal governments. HUD's internal programmatic goals and policies also have an enormous impact on fair housing.

My testimony today will address some concrete steps HUD can take to provide renewed leadership in the area of fair housing.

The need for a more searching review of the racial impacts of HUD programs

The most basic aspect of HUD's obligation to affirmatively further fair housing is the requirement that HUD consider whether its actions will have a discriminatory or segregative effect, and if so, to take steps to ameliorate such effects. This legal obligation was clarified many years ago, in cases like *Shannon v. HUD*,[2] which essentially created the site and neighborhood standards that restricted placement of low income public housing projects in racially segregated neighborhoods. In *Shannon*, the Third Circuit held that under national housing policy and the Fair Housing Act the federal agency "must utilize some institutionalized method whereby, in considering site

[1] DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993).
[2] 436 F.2d 804, 821 (3d Cir. 1970).

selection... it has before it the relevant racial and socio-economic information necessary ... to make an informed decision on the effects of site selection ... on racial concentration." The principle that federal housing policy makers have a duty to consider the racial, ethnic, and economic segregation impacts of their decisions has been reaffirmed in several decisions since *Shannon*, including *NAACP v. Secretary*,[3] which faulted HUD for failing to affirmatively further fair housing in its programs in the Boston area.[4]

In some key program areas, HUD appears to have lost sight of this obligation to analyze and address fair housing impacts. For example, in the HOPE VI program, HUD's ambitious public housing redevelopment program, there is no formalized fair housing review of the effect of loss of housing on minority families. Because of the deeply segregated pattern of public housing occupancy in this country, and the deterioration that has been permitted to occur in many projects occupied by people of color, most of the projects selected for demolition under HOPE VI will be occupied predominantly by Black and Latino families. From a fair housing perspective, the question facing HUD in such projects is whether the HOPE VI development process will be an opportunity to enhance housing choices and reduce segregation. Can the hardships of relocation be minimized? Will residents be meaningfully involved in the decision making process? Will existing residents be affirmatively assisted in moving to housing outside areas of poverty and outside areas of minority concentration? Will the public housing authority's plan further racial and economic integration in the city and region, or will it simply resegregate displaced residents in other struggling urban neighborhoods? What steps can be taken to ameliorate these impacts? We raised these concerns with the Clinton administration in 1999, and the problem has only intensified since then.[5]

Similarly, in the Low Income Housing Tax Credit program, which is technically not a HUD program but is currently the largest federal low income housing production program,[6] there are no civil rights assessment criteria to guide site selection, marketing, or other aspects of the program, in spite of a recent memorandum of understanding between the Departments of Treasury, Justice and HUD. From a civil rights standpoint, this is a standardless program which is being implemented in a segregated geographic pattern.[7] Nationwide, more than half of tax credit units are in central cities; these units are in census tracts of high minority and poverty concentrations, and even when tax credit units are found in suburban areas, they are frequently sited in census tracts that have a greater than 50% minority population.[8] As one experienced observer noted, "left to their own devices, most projects tend to be occupied by one ethnic or racial group."[9]

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[3] 817 F.2d 149 (1st Cir. 1987).

[4] See also *Alschuler v. HUD*, 686 F.2d 472 (7th Cir. 1982); *Otero v. NYCHA*, 424 F.2d 1122, 1133-34 (2d Cir. 1973); *Garrett v. City of Hamtramck*, 503 F. 2d 1236, 1247 (6th Cir. 1974).

[5] For a detailed review of the HOPE VI program, See NATIONAL HOUSING LAW PROJECT, FALSE HOPE: A CRITICAL ASSESSMENT OF THE HOPE VI PUBLIC HOUSING DEVELOPMENT PROGRAM (2002).

[6] See GENERAL ACCOUNTING OFFICE, TAX CREDITS: OPPORTUNITIES TO IMPROVE OVERSIGHT OF THE LOW INCOME HOUSING PROGRAM Sec. 2 (March 1997).

[7] See Florence Roisman, *Mandates Unsatisfied: The Low Income Housing Tax Credit Program and the Civil Rights Laws*, 52 U. MIAMI L. REV. 1011, 1012 (July 1998).

[8] *Id.* at 1019.

[9] JOSEPH GUGGENHEIM, TAX CREDITS FOR LOW INCOME HOUSING: OPPORTUNITIES FOR DEVELOPERS, NON-PROFITS, AND COMMUNITIES UNDER PERMANENT TAX ACT PROVISIONS 137 (9TH ed. 1996).

Finally, the racial impacts of HUD policies and programs cannot be assessed unless HUD continues to maintain current, accessible demographic data. Much of this data is now seriously out of date, and reporting requirements are not being taken seriously by local housing agencies. Without current demographic and geographic data, we have no way of assessing, for example, where relocated tenants from HOPE VI projects are moving, when Low Income Housing Tax Credit projects are excluding voucher holders or minority applicants, and whether a Section 8 program is successfully providing housing choices to families outside of high poverty neighborhoods.[10] Improving civil rights data collection systems for all HUD programs should be a high priority for this Committee in its oversight role.

Enforcing fair housing compliance among HUD grantees

The devolution of authority to local PHAs, housing managers, and municipalities has not been a fair housing success story. Like any civil rights requirement, fair housing is controversial and susceptible to local political pressure and prejudice. Congress needs to help HUD take back control of the civil rights review process and adequately fund and prioritize fair housing enforcement against HUD grantees.

One case in point is HUD's lax enforcement of civil rights requirements in the Consolidated Plan process. In theory, municipalities are now required to prepare a report and fair housing plan entitled "Analysis of Impediments to Fair Housing" (AI) to accompany their Consolidated Plan (the local annual plan for spending federal Community Development Block Grants, HOME funds, and other federal block grants to municipalities). The AI was to be one method for assessing a municipality's progress in pursuing its affirmative duty to further fair housing, and in theory, the Consolidated Plan is required to be consistent with and support the goals of the Analysis of Impediments. But there are no real penalties for non-compliance, and many municipalities treat the document as a paper requirement with no HUD oversight or consequences.[11] In October 1998, HUD published a proposed regulation that would have put more teeth in the requirement that jurisdictions had to affirmatively further fair housing. The proposed regulation would have required jurisdictions to show that they were addressing impediments to fair housing within their control and that they were taking measures to assist in improving impediments outside of their control. The proposed regulation met with strong opposition from the League of Cities, and HUD retracted the regulation in early 1999. It has not been reissued.

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[10] For example, HUD requires Section 8 administrators to report on a monthly basis the addresses where each Section 8 voucher is used, and HUD is capable of providing the number of Section 8 subsidies being used in each census tract in reports called "Section 8 Deconcentration Analysis Reports." These online, computer generated reports would be extremely valuable to municipal planners who are concerned about avoiding the creation of new concentrations of poverty, and to planners reviewing whether Section 8 Housing Choice Vouchers are a feasible substitute for public housing being demolished or for privately owned multifamily developments being converted in the "Mark to Market" program. Unfortunately, that data is not made publicly available and, even worse, over the last year HUD's computer system for generating these reports appears to have become incapable of producing accurate reports even for the agencies who administer the Section 8 program.

[11] See Deborah S. Kenn, *Housing Choice Case Studies: The Twin Cities Region in Minnesota and City of Rochester/ Monroe County, New York,* 11 JOURNAL OF AFFORDABLE HOUSING, No.3 (Spring 2002).

Similarly, civil rights requirements in the Section 8 program are weak and are often treated as secondary to the goal of housing as many families as quickly and as inexpensively as possible. But there is no inherent conflict here: with higher rents in integrated neighborhoods, and stronger mobility incentives, the Section 8 program can succeed in housing families and providing desegregated housing opportunities at the same time.

Even in HUD programs with extensive fair housing requirements, compliance depends on a strong fair housing division within HUD. Yet the Office of Fair Housing & Equal Opportunity has faced significant loss of staff, and is no longer viewed as a serious oversight presence by local housing agencies.

Missed opportunities in the Section 8 program

Congress should restore funding for Section 8 mobility counselling, to help families find harder-to-rent housing in lower poverty neighborhoods. It is ironic that this funding was terminated at precisely the same time that HUD-funded studies of the Moving to Opportunity demonstration programs were confirming the extraordinary conclusions of the original Gautreaux Section 8 mobility program in Chicago[12]. The evidence on the benefits of integration are increasingly hard to ignore: adults moving from high poverty to low poverty neighborhoods experience greater rates of employment and lower rates of long term welfare dependency, and their children often do better in school, and have higher high school graduation, college attendance and college graduation rates than their peers in the poorest city neighborhoods. The Section 8 program is HUD's most significant tool to provide these kinds of opportunities to families -- but without affirmative counselling, many families will not be able to find housing outside of higher poverty neighborhoods.[13] Mobility counselling needs to be restored, and with it, increased fair market rents (FMRs) and higher Section 8 "payment standards" for housing in lower poverty suburbs.

Protecting innocent tenants and victims of domestic violence

I would also like to take a moment to voice our strong support for Representative Lee's important proposed amendment to House Bill 3995, which would address the recent Supreme Court decision in *Department of Housing and Urban Development v. Rucker*.[14] In that case, the Court construed the public housing statute to permit eviction of tenants for criminal and drug related activity of household members and guests regardless of the degree of responsibility or knowledge of the tenant herself. This decision essentially takes discretion away from courts to

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[12] The Gautreaux program was part of a Consent Order following the U.S. Supreme Court decision in *Hills v. Gautreaux*, 425 U.S. 284 (1976). The program placed thousands of families from Chicago public housing in apartments in lower poverty city and suburban apartments. These families were followed and studied for many years to determine the benefits of their moves. See, e.g., James Rosenbaum, "Black Pioneers: Do Their Moves to the Suburbs Increase Economic Opportunity for Mothers and Children?" 2 HOUSING POLICY DEBATE 1179. The Moving to Opportunity (MTO) Section 8 mobility program was created as a pilot program during the 1990s to study the effectiveness of housing mobility as an anti-poverty strategy in five cities.

[13] See generally, LOCKED OUT: BARRIERS TO CHOICE FOR HOUSING VOUCHER HOLDERS (published by the Lawyers' Committee for Better Housing, Chicago, 2001) (www.lcbh.org)

[14] 122 S.Ct 1230 (2002).

protect innocent family members where they bear no reasonable responsibility for the activity taking place. The decision has been widely criticized in the media for ignoring basic principles of due process, but it is also a fair housing issue, in that many of the victims of these eviction policies are women – mothers and grandmothers, often women of color, who are doing their best to provide a safe home environment for their children and grandchildren.

Representative Lee's proposed amendment would also protect women who are victims of domestic violence by specifying that women (or elderly tenants) who are victims of criminal activity (for example, assault) by a household member would not be automatically evicted from their housing as a result. This basic gender discrimination issue was highlighted in the recent case of *United States and Alvera v. C.B.M. Group, Inc.*[15] (a case in which HUD played a crucial role in finding that a policy of evicting innocent victims of domestic violence violates the Fair Housing Act because of the disproportionate impact upon women). Representative Lee's amendment has received support from a wide spectrum of groups, including the AARP, the NAACP Legal Defense Fund, the National Network to End Domestic Violence, the NOW Legal Defense and Education Fund, and the Bazelon Center for Mental Health Law. We urge members of the Committee to support the amendment.

The need for dialogue on fair housing

HUD also needs to be encouraged to work with the advocacy community on issues of fair housing. Just as HUD regularly reaches out to local PHAs and their trade association, HUD should also solicit the views of the organizations representing the low income families HUD serves. For example, in March of 2001, near the beginning of Secretary Martinez' administration, we submitted a letter to the new administration on behalf of members of the Housing Justice Network and the Leadership Conference on Civil Rights. The purpose of the letter was to identify key civil rights issues facing the new administration and to request an initial meeting to begin a dialogue on some of these issues.

Our letter addressed some of the key civil rights issues facing HUD, including the loss of staff in the Office of Fair Housing & Equal Opportunity (FHEO); the discontinuation of Regional Opportunity Counselling funds in the Section 8 program; the need for enhancing private enforcement through the Fair Housing Initiatives Program (FHIP); the lack of civil rights standards in the HOPE VI and Low Income Housing Tax Credit programs; enforcement of "Section 3" requirements for employment of public housing residents in federal housing and community development projects; the need to reissue the proposed regulation to clarify city and town obligations to affirmatively further fair housing; expansion of enforcement to protect victims of "predatory lending" in minority communities; the need to finalize HUD regulations on gender discrimination in housing; the need for HUD to issue its overdue guidance on assisting clients with limited English proficiency; and the importance of a comprehensive response by HUD to the 1999 U.S. Supreme Court decision in *L.C. v. Olmstead*, to ensure full access to housing and communities for persons with disabilities. The signatories to this letter included the ACLU, the NAACP Legal Defense Fund, the Mexican American Legal Defense Fund, the National Housing Law Project, and a wide range of other civil

[15] No. 01-857-PA (D. Or. filed June 8, 2001)

rights and poverty law advocates (a copy of our letter to Secretary Martinez is attached to this testimony). This would have been -- and still could be -- an excellent basis for beginning a dialogue with HUD on these crucial issues of race and housing. But the Secretary declined to meet. We understand how busy Mr. Martinez and his senior staff have been, but our invitation remains open and we are hopeful that we can begin discussions with this HUD administration on fair housing.

The absence of specific fair housing recommendations in the recent Millennial Housing Commission report

The Millennial Housing Commission was established by Congress in December of 2000 to explore methods "for increasing the role of the private sector in providing affordable housing in the United States," and to examine "whether the existing programs of [HUD] work in conjunction with one another to provide better housing opportunities for families, neighborhoods, and communities, and how such programs can be improved..."[16] The Commission's recent Report to Congress opens with the observation that "consistent enforcement of the nation's fair housing laws is a vital part of making housing a part of the ladder of economic opportunity."[17] But the report is then largely silent on the details of how to improve enforcement of fair housing laws. To its credit, the Commission recommends that new housing for very low income families be placed in low poverty neighborhoods, but this basic policy goal has been widely acknowledged for over a decade, that unless we provide greater access to desegregated housing, we will continue to deny access to equal educational and employment opportunities. The devil is in the details. How will new rental housing for poor people of color be sited in communities that have traditionally been hostile to lower income housing? How can these civil rights goals be reconciled with the desire to devolve control of housing decisions to the local level? Dr. King found his struggle with fair housing issues in Chicago to be among the most difficult and intractable challenges he had faced. It is perhaps not surprising that the Millennial Housing Commission could not reach final consensus on these issues during its deliberations. But these civil rights issues need to be confronted soon, as the important housing production recommendations of the Commission are considered by Congress. We hope that this Committee will now consider appointment of a similar task force or commission on fair housing to enhance civil rights enforcement at HUD and to ensure that fair housing becomes a more integral part of each housing and community development program administered by HUD.

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[16] P.L. 106-74, Sec. 206(b)

[17] MILLENNIAL HOUSING COMMISSION, MEETING OUR NATION'S HOUSING CHALLENGES: REPORT OF THE BIPARTISAN MILLENNIAL HOUSING COMMISSION APPOINTED BY THE CONGRESS OF THE UNITED STATES, 2 (May 30, 2002).

Conclusion and Summary of Recommendations

The duty to affirmatively further fair housing was included in the Fair Housing Act in 1968 because Congress recognized the crucial role of federal government agencies and grantees in contributing to, and potentially combating, serious patterns of racial segregation and discrimination in housing. The importance of this mission has not abated, and fair housing goals will need to be continually integrated in all HUD programs and enforced as to all housing agencies and other grantees that HUD works with on the local level. Some of the specific recommendations we have put forward to address this goal are summarized again below:

Updating and improving access to HUD data systems to analyze racial impacts of its programs;

Instituting formal assessments of the racial impacts and segregative effects of siting and redevelopment decisions in the HOPE VI program and the Low Income Housing Tax Credit Program;

Enforcing meaningful local compliance with the Analysis of Impediments to Fair Housing requirement of the Consolidated Plan process, and issuing regulations to clarify HUD monitoring and enforcement responsibilities;

Strengthening civil rights requirements in the Section 8 voucher program, and increasing fair market rents and payment standards in lower poverty areas to expand opportunities for Section 8 voucher families;

Restoring funding for the Regional Opportunity Counselling program, to provide housing mobility counseling for Section 8 voucher holders;

Passage of the Representative Lee's proposed amendment to House Bill 3995, to moderate the harsh effect of the recent *Rucker* decision;

Encourage HUD to meet with fair housing advocates to work together to improve fair housing enforcement;

Appointment of a new commission or task force to follow up on the unfinished work of the Millennial Housing Commission with a review and analysis of needed changes to federal housing programs to comply with the duty to affirmatively further fair housing.

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March 15, 2001

Honorable Mel Martinez
Secretary of Housing & Urban Development
451 7th Street S.W.
Washington, DC 20410

Re: Key Civil Rights Issues in the New HUD Administration

Dear Secretary Martinez,

On behalf of the undersigned civil rights and housing advocacy organizations, we are writing to congratulate you on your confirmation and to request a meeting at which we can discuss important civil rights issues facing the agency.

As organizations which have fought to ensure fair housing in private and subsidized housing for decades, we write to you as the head of the federal agency which, under the Fair Housing Act, has been given the lead responsibility to combat housing discrimination and residential segregation in all federal housing and community development programs. This responsibility to "affirmatively further" fair housing in not only HUD programs but those of other federal agencies has not been consistently upheld. You arrive at HUD at a particularly critical time given the fundamental changes in the way public and subsidized housing will be provided and the manner in which HUD itself is structured to process fair housing complaints and ensure that its programs are run in a non-discriminatory manner.

Our comments deal primarily with the need to strengthen HUD's fair housing enforcement responsibilities, and to ensure fair housing compliance throughout HUD and other agencies' housing and community development programs. We are also concerned with discriminatory practices that particularly face women, non-English speaking minorities, and persons with disabilities. This list of issues is not intended to be exhaustive. Rather, we wish to highlight the most important civil rights issues facing HUD, where we feel important progress can be made in the next few years.

• Reaffirming Civil Rights Enforcement Priorities

One critical element of the new Administration's civil rights agenda should be ensuring appropriate resources and policies at the federal civil rights agencies. Among these agencies, the ones with responsibility over fair housing issues include: HUD's Office of Fair Housing and Equal Opportunity; the Department of Agriculture's Office of Civil Rights (particularly as it relates to the Rural Housing Service); and the Department of Justice's Civil Rights Division, particularly the Housing and Civil Enforcement Section.

As reflected in a recent report from the U.S. Commission of Civil Rights, the staffing levels in most federal civil rights agencies have decreased in real terms over the past six years. At HUD's Office of Fair Housing and Equal Opportunity (FHEO), for example, staff levels have decreased by 22% between FY 94 and FY 2000 and appropriations have fallen by 14.4%, despite a 15% increase in its Title VIII complaint workload. To remedy this problem, the Administration should increase staffing levels to an appropriate level that, at a minimum, are equivalent to that of FY 94 and correspond to the complaint level at each agency. In addition, HUD's Office of Fair Housing and Equal Opportunity should have its own line item for staffing and support resources in the HUD budget so that the public can evaluate the level of resources provided in each budget. We also strongly urge the Administration to expand the fair lending and land use initiatives of the Justice Department's Housing and Civil Enforcement Section, as well as its more traditional focus on discrimination in rental housing. These efforts have significantly expanded access to homeownership and other quality housing opportunities for minorities and other groups protected under the Fair Housing Act.

• Enhancing Regional Housing Mobility in the Section 8 Voucher Program

Section 8 has been proven to be an effective program for helping low income minority families move to more integrated, lower-poverty neighborhoods, but results could be even better than they have been. The long term educational and employment benefits of mobility have been studied in the Chicago Gautreaux program and in HUD's Moving To Opportunity program. But enormous barriers to mobility continue to thwart Section 8 clients in their search for housing outside of high-poverty neighborhoods. HUD could undertake a number of enhancements to make Section 8 mobility a reality for more families. In HUD's fiscal year 1999 budget, Congress appropriated $10 million for Regional Opportunity Counseling (ROC) funds that have never been expended. HUD also has authority to increase the administrative fees that Public Housing Agencies (PHAs) receive to help families move to areas of low poverty. HUD could also empower its grantees under the Fair Housing Initiatives Program to test for discrimination against Section 8 voucher holders. Opportunities for regional mobility also are enhanced by HUD's recent interim rule that increases fair market rents in metropolitan areas where voucher holders are overly concentrated in certain neighborhoods. Making that rule final, with certain improvements, should encourage and empower housing agencies to promote opportunities throughout their regions.

• Incorporating Fair Housing Requirements into the Low Income Housing Tax Credit Program

The Low Income Housing Tax Credit Program is now the major housing production program in the United States. Until recently, the program was operated with little fair housing oversight. HUD should work with the Treasury Department, pursuant to Executive Order 12892, to enhance fair housing guidelines in the program -- particularly with respect to affirmative marketing requirements, siting of new developments, and access to suburban LIHTC developments by Section 8 participants.

• Enforcing Fair Housing Requirements in the Hope VI Program

The HOPE VI Program generally provides for demolition of severely distressed public housing, and creation of higher income communities on the site of the former public housing development. Fair housing advocates have pointed out that Hope VI should be administered to encourage fair housing goals and to provide adequate safeguards for existing residents in the relocation process. We have proposed that a fair housing impact assessment be incorporated into the HOPE VI program selection process, and that the February 26, 2001 NOFA and all future NOFAs for Hope VI be amended to encourage creation of integrated housing opportunities for public housing residents.

• Continuing To Prioritize Preservation of At-Risk 'Expiring Use' and Expiring Section 8 Contract Housing

Developments with expiring use restrictions and/or expiring project-based Section 8 contracts are a critically important fair housing resource. These developments are often some of the best housing available to low and moderate-income families. They are generally relatively well-built and well-maintained multifamily developments in gentrifying urban or suburban areas, accessible to good schools and jobs, and frequently in communities with very little public housing or rental housing. Once gone, given the rising expense of new construction and rehabilitation and the shrinking availability of sites, most of these developments will likely never be replaced. We applaud HUD for recognizing the critical importance of preserving this housing in developing preservation tools such as the "Mark-Up-To-Market" program. We urge you to continue to make preservation one of HUD's highest priorities by requesting necessary capital and operating funds from Congress and by developing responsive administrative policies to maximize preservation of this crucial fair housing resource.

• Enforcement of Section 3 Employment Requirements

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u, 24 C.F.R. Part 135) provides that training and work opportunities generated by federal housing and community development projects in low income neighborhoods go, to the maximum extent possible, to residents of these communities. The law covers public housing authorities, other HUD grantees, and their contractors. The training and hiring requirement is applicable to the construction, maintenance, and operation of public housing, as well as to construction in other community development programs.

Despite the far-reaching potential of this requirement, Section 3 remains underutilized. Through stronger monitoring and enforcement activities, HUD can use existing resources to improve the long term employment prospects of low income people and strengthen the economic vitality of low income communities. HUD can increase local compliance with Section 3 by transferring enforcement responsibility from the Office of Fair Housing and Equal Opportunity to the Offices of Public and Indian Housing or Community Planning and Development, and also by including Section 3 in regularly required rating systems that PHAs use to report to HUD.

• Issuance of the Final Regulation on Affirmatively Furthering Fair Housing in the Community Development Block Grant Program

The Fair Housing Act requires HUD to administer its programs in a manner to affirmatively further fair housing. 42 U.S.C. § 3608(e)(5). Current regulations require Community Development Block Grant recipients to certify that they will conduct an Analysis of Impediments to Fair Housing Choice and will take action to overcome the effects of any such impediments. The Analysis of Impediments is a review of public and private conditions affecting equal opportunity in housing in a particular community. It is a valuable tool for comprehensively examining and addressing the many institutional forces that continue to keep our cities and suburbs racially segregated as well as practices that affect the location, availability and accessibility of housing. In 1998, HUD proposed regulations which strengthened this requirement by including performance standards to measure a grantee's compliance. These regulations were generally supported by civil rights organizations and housing advocates. The regulation was never finalized.

• Gender Discrimination in Housing

HUD has issued proposed fair housing regulations on sexual harassment. We welcome this effort, as the case law has demonstrated the need for specific guidance from HUD to participants in the housing market and in civil rights enforcement proceedings. We hope that HUD will continue to support these regulations and that they will be issued soon. However, we also share the concerns expressed by some advocates that the new regulations should mirror current fair housing law, and not unnecessarily raise the burden of proof. In particular, some of the complex legal rules that have developed in employment cases do not necessarily need to be imported into the housing context. The unequal nature of the landlord-tenant relationship and the critical importance of the home as the center of family life also supports the need for strong unequivocal protections from sexual harassment in housing.

• Expand Efforts to Combat Predatory Lending

"Predatory lending" refers to a set of unscrupulous practices that result in homeowners paying far more in fees and rates when they refinance or purchase a home, thereby stripping equity from their homes and wealth from their communities. As reflected in a number of recent studies, those who are victimized by these practices are disproportionately elderly and persons of color. HUD should continue to make combating predatory lending a priority by increasing enforcement activity against predatory and discriminatory lending, including use of the Fair Housing Act, RESPA, and GSE oversight authorities as appropriate. HUD can also expand reliable collection of information and data regarding lending institutions by promoting recent proposals regarding the Home Mortgage Disclosure Act (HMDA).

• People with Limited English Proficiency

Department of Justice regulations have long required recipients of federal financial assistance to make sure that federally funded programs are accessible to people with limited English-speaking proficiency (LEP). In recent months many federal agencies, including the Department of Health and Human Services, have adopted guidance that for the first time provides meaningful, practical, program-related direction for federal grantees. The guidance clarifies what steps an agency should take to make its programs and activities accessible to limited English-speaking proficient persons and to be in compliance with Title VI. HUD also prepared a LEP guidance that essentially mirrored the guidance issued by HHS; however, HUD's LEP guidance has not yet been issued. We request that HUD publish and implement the LEP guidance. This will clarify for HUD-funded entities what types of services are needed to make programs and activities accessible to persons with limited proficiency in English.

• Disability Issues

Millions of people with disabilities are living in inappropriate settings, including restrictive congregate facilities, substandard or overcrowded housing, homeless shelters, or at home with aging parents who do not know what will happen to their adult children when they can no longer provide housing for them. The 1999 Supreme Court decision in *L.C. v. Olmstead* calls upon state and local governments to help integrate these people into the American mainstream. To that end, the Department should review programmatic barriers to full participation of people with disabilities in all of its programs, and not focus on a handful of disability "boutique" programs that are underfunded and will never address the full need. The Department and all recipients of its funding must be held accountable for compliance with the Fair Housing Act Amendments of 1988 and Section 504 of the Rehabilitation Act of 1973, including completion of the Department's own Section 504 self-evaluation. Further, the Department should adopt strong measures to ensure that people with disabilities are not being discriminated against when public housing agencies and private owners of assisted housing seek to restrict occupancy to households age 62 and older. Finally, more HUD leadership is needed to ensure the full compliance and enforcement of the accessibility provisions of the Fair Housing Act Amendments of 1988 in the private housing market.

Thank you for your consideration of our concerns. Perhaps more than any other agency, HUD is a bellwether of our nation's commitment to civil rights. We hope we can work with you to continue to improve HUD's civil rights record, and we look forward to meeting with you to discuss these issues. We will contact your office in the near future to request a meeting time.

Sincerely,

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Testimony offered before the Committee on Financial Services
U.S. House of Representatives
One Hundred Seventh Congress
June 25th, 2002

Subcommittees:

Oversight and Investigations
Housing and Community Opportunity

Presented By

Becca Vaughn

Topeka Independent Living Resource Center (TILRC)
&
Disability Rights Action Coalition for Housing
(DRACH)

Advocacy and services provided by and for people with disabilities.

June 25, 2002

Greetings Honorable Subcommittee Members;

My name is Becca Vaughn; I have worked in the disability rights movement for over 20 years, 17 of those at Centers for Independent Living (CIL). I am the Advocacy Coordinator for the Topeka Independent Living Resource Center, Topeka Kansas and also manager of the Independent Living Skills Department. I am a founding member of the Disability Rights Action Coalition for Housing (DRACH), the first and only national grassroots disability housing justice coalition comprised of people with all types of disabilities. I have been the national DRACH Coordinator for the past 7 years. DRACH has worked extensively with past HUD Secretary's and key staff to improving housing opportunities and enforcement of fair housing rights for people with disabilities.

It is with great honor that I stand here before you today to share our collective thoughts and experiences concerning fair housing. Or perhaps it is the lack of fair housing and the blatant discrimination against people with disabilities in America that we are addressing. I am honored to participate with you in this demonstration of your keen sense of leadership in addressing these issues. As we speak, people with disabilities are being segregated, and imprisoned in facilities, against their will, having committed no crime for their incarceration. I am outraged at the lack of equal rights and justice in housing. I am not merely concerned or think we could do a better job at enforcement. I am outraged at this horrific practice of exclusion and discrimination which erodes the very core of our great nation.

Housing discrimination threatens that core in all our communities. Even today, with reports of discrimination against people with disabilities, being at a record high, U.S Department of Housing and Urban Development (HUD), Department of Justice (DOJ) and local Fair Housing Administrative Programs (FHAP) continue to ignore our pleas for equality. We have come to believe our rights are not viewed with the same conviction as those of other protected classes, because of the treatment we encounter when exercising our fair housing rights. Such as having fair housing investigators ask questions that are prohibited and illegal under the Fair Housing Amendments Act (FHAA). Issuing tax credits or building permits to builders who are non-compliant with the accessibility construction laws. Witnessing millions of housing dollars being spent toward the continued segregation of a group of people. And an entire enforcement arena failing to recognize that requiring a person to participate in services, in order to have a roof is illegal, ("special terms and conditions" is prohibited by the FHAA). These events assure us that our rights have not really ever been, nor are they today, fully recognized or honored in the provision of housing and housing products.

We know that it is wrong to force people to live in certain neighborhoods or specific areas of town, for truly we as a great nation have learned that separate is not equal and segregation attacks the very core of democracy, threatening to erode our communities. These things we know are wrong and illegal. Yes, we know that it is wrong and illegal to discriminate. We know that is wrong and illegal to deny a family an equal opportunity to rent or own a home. We know that it is wrong and illegal to refuse to rent/deal with a person based on their color of skin, their ethnic background, gender, or how they worship. It is just as illegal to discriminate based on disability. However, lack of enforcement prevents fair and equal access to housing for Americans with disabilities!

In my 20 plus years of personal and grassroots housing justice advocacy, I have come to realize that our administration and enforcement of fair housing laws make a clear unequal distinction between other protected classes and protection for those with disabilities. HUD, DOJ, FHAP agencies, the protectors of civil and fair housing rights, have perpetuated discrimination, and in fact encourage blatant non-compliance to many of the fair housing rights of those with disabilities.

The National Council on Disability's (NCD) study Reconstructing Fair Housing clearly provides data and statistics which demonstrate the norm of "Unequal Protection Under Law". The NCD report incorporates many suggestions and findings suggested by DRACH. DRACH encourages Congress to take immediate action toward implementation of the specific recommendations contained in the report. The NCD report focuses on one major barrier to obtaining fair housing rights: lack of enforcement. Lack of enforcement is only one of several major global barriers that keep people with disabilities oppressed and unable to access housing of their choice.

Advocacy groups are often ignored in our pleas for information from HUD, and local housing providers. Regional HUD offices refuse to provide reports under the Freedom of Information Act, undermine advocacy group's education and outreach efforts and often inform housing providers that they can violate fair housing laws. HUD continues to fund projects and programs that have never been compliant with Section 504, and continue to promulgate rules and regulations which violate fair housing laws. For example the Shelter Plus Care homeless assistance program (24 CFR 582.315) allows the recipients to require an additional or special service agreement lease in direct violation of fair housing laws.

The following brief vignettes are but a few discriminatory experiences of people with disabilities, in the last year. What is the cost of housing discrimination on a human being? The struggle for freedom has many brave and unsung heroes. These people were not afraid to exercise their rights, even in the face of resistance.

What if someone told you when you could and could not see your children? You have not committed any crime, that prevents you from seeing them, unless becoming very ill, being hospitalized for several months because of your disability and losing your home is a crime. You get homeless assistance. The organization demands you meet with them several times a month (mandatory services), and strangers threaten you with eviction if you see your children. You turn to HUD for help: You file a fair housing complaint because the special terms and conditions they have forced you to participate in have caused you to lose a Section 8 Voucher and your relationship with your children. Again, imagine being discriminated against by the very agency charged with enforcement of your rights. The FHAP in this case closed the investigation and found no reasonable cause, exists to believe discrimination occurred.

Imagine wanting to just go outside. You look down at the three rickety steps and know you are a prisoner in your home. For 10 months you have waited to sit in the sunshine. For 10 months, you have waited for help from HUD because your request for a reasonable modification to have a ramp built was denied by your landlord. Imagine the quality of your life. Now face the hard cold fact that HUD, who have been entrusted to protect our rights, has ruled that "no reasonable cause" exists to believe discrimination has occurred. Imagine you're still sitting at your door.

Picture yourself becoming homeless solely because you no longer wanted to participate in mandatory group counseling because you have secured your own services that work best for you. The people who run the group meetings, who receive public funds have control over your home. You are evicted because you won't agree to their special terms and conditions. You decide to keep your dignity. You look up at the night sky from the hard park bench. You turn to HUD for immediate help. HUD finds they have no jurisdiction and closes your case. You look up and see Venus in the House of Aquarius. That's the only house accessible to you.

DRACH believes that along with lack of enforcement efforts the following are also major global barriers of inequality which keep people with disabilities from realizing the full protection of their fair housing rights.

Olmstead- The lack of affordable, accessible and integrated housing is a major barrier to the implementation of Olmstead.

Segregation - allowing segregated housing to be built, and/or operated with federal financial assistance must end today! (Group homes limited to people with mental retardation, cerebral palsy, aids/HIV only programs/dwellings, and clustered multi-family dwellings for people with disabilities, are examples. This practice results in gimp ghettos.

Special Terms and Conditions-making participation in any service/activity mandatory in order to get housing/housing assistance based on disability, is illegal and violates fair housing laws. This practice must end today! (Examples are an additional lease to force someone to attend group counseling sessions, mandatory meals programs, mandatory purchase of services from the housing provider in addition to HUD subsidized rent, and making someone who uses a power wheelchair pay a higher rent).

Enforcement and Compliance to all fair housing and civil rights laws, must be vigilantly pursued and swift action taken against violators.

Homeownership: People with disabilities must have equal access to homeownership opportunities.

Visitability: All housing dwellings built with, rehabilitated by, or operated with federal financial assistance must be required to add basic accessibility or visitability features. HUD currently endorses incorporation of visitability on a voluntary basis. This requirement would apply to all departmental programs, not just HUD & DOA.

National Home Modification Program, allows low income people with disabilities to access grant assistance to make their homes useable/accessible to them.

These six global areas, if addressed and adequately funded, would jump start us to end the crime of housing discrimination that has created areas of blight across our great nation. In an attempt to provide some solutions I respectfully offer the following action.

Segregation

Examples of current programs which allow/encourage segregation include;

Shelter Plus Care-Homeless Assistance for people with disabilities
HOPWA-Housing Opportunities for People with Aides
Section 811-Supportive Housing for People with Disabilities
HUD's 232 Program (Guarantees loans to build such facilities as nursing facilities, group homes, assisted living dwellings)

Possible Action: Congress pass a law which specifically makes it illegal to use any federal financial assistance toward the creation of "housing" which results in the ghettoization of any specific group of people. Clarify that such "housing" cannot require mandatory participation in any services, cannot be targeted to specific diagnosis (except for those with MCS/EI requiring isolation from chemical toxins often used by majority of households (pesticides, charcoaling), and that any "housing" created with, operated with, or involves federal financial assistance must provide reasonable accommodations to assure equal opportunity for PWDs.

Mandatory Services/Special Terms and Conditions

Examples of mandatory service programs include
HOPWA
811
Shelter Plus Care

Possible Action:	Congress instruct all departments which operate housing programs to explicitly disallow any mandatory service or program components from all/any federally assisted programs.
Visitability:	Pass a national law requiring all/any housing built with federal assistance must incorporate basic features of accessibility.
Home Modification:	Pass a national law requiring states and local government who receive federal housing dollars to offer a modification program.

I freed people from mental institutions in the late 70's when I worked as a Mental Health Tech. I was the keeper of the keys and the people were screaming for freedom. Freeing them was the right thing to do. Today, it is the right thing to do and the human thing to do, in demanding that those who hold the enforcement keys to our fair housing rights, use them! Unlock the past oppressive housing policies, programs, and practices. Release the chains that have denied us our fair housing rights enforcement.

Until we stop the practice of discriminatory HUD practices of paying out over 174 million (2001) in default nursing home/institutional failures (total 234 million of public money perpetuating segregation by propping up an industry that is corrupt and failing), instead focus those dollars on providing real housing opportunities and home and community based attendant services, we will continue our history of exclusion of Americans with disabilities.

It is time to stop throwing our precious funds to corporate welfare, social workers and providers who choose to not comply with fair housing. It is time we give federal financial assistance to the person who qualifies for the assistance based on financial need, not a diagnosis or severity of a disabling condition.

Thank you for your time and attention, I am hopeful today is the beginning of a strong partnership between grassroots and legislatures; toward freedom for all.

For equal rights and justice,

Becca Vaughn

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	2. Organization or organizations you are representing:
Rebecca "Becca" Vaughn	Topeka Independent Living Resource Center, Inc. (TILRC) & Disability Rights Action Coalition for Housing (DRACH)

3. Business Address and telephone number:

501 SW Jackson
Topeka, KS 66603
1-785-233-4572-v/tty

4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2000 related to the subject on which you have been invited to testify?	5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2000 related to the subject on which you have been invited to testify?
☐ Yes ☑ No	☑ Yes ☐ No

6. If you answered "yes" to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.

TILRC recieved $44,490 grant(Subcontract from LINK) from HUD/Fair Housing Iniatives Program (FHIP) to provide state-wide Education and Outreach (EO) on the fair housing rights of people with disbailities. This was an 18 month grant which ended 9/01

7. Signature: 6/18/02

Please attach a copy of this form to your written testimony.

Rebecca (Becca) Vaughn
1219 SW Garfield Street
Topeka, Kansas 66604
(785) 233-4572-days

As a fifth grader in Oklahoma organizing a class petition to have a teacher removed for hitting students, I began to understand the power of grassroots social and political organizing. My life has expressed my continuing commitment to ensuring that all people enjoy equal rights and justice. I have participated in numerous local, State and National coalitions, which work toward these goals.

Professional Activities

- Grassroots organizing on the local, state and national levels
- National Coordinating of the Disability Rights Action Coalition for Housing (DRACH)
- Develop Transitional Living Program
- State legislative coordinating
- Develop materials and present Fair Housing Civil rights training's
- Review and revise legislation, regulatory documents and program guidelines for the national, state and local governmental arenas.
- Participate and organize national "Visitability" events
- Developed state-wide accessibility modification program
- Participate in HUD Negotiated Rulemaking RE: Section 8 Allocation
- Developed national advocacy training manual on fair housing
- Established on-going meeting with the Secretary of HUD concerning Disability Rights
- Mayor's Commission on Affordable Housing-Mayoral Appointee
- Affordable Housing Strategic Planning Committee
- Governors Commission on Housing and Homelessness
- Homeless Task Force member
- United Cerebral Palsy Center of Oklahoma volunteer

Registered Girl Scout for 25 years
President Senior Advisory Council -- 1976
President Cadet Planning Council -- 1973

Organizational Membership

Disability Rights Action Coalition for Housing
Kansas Disability Rights Action Coalition for Housing
Kansas Fair Housing Team Project
National Council on Independent Living
KSADAPT

PUBLIC SPEAKING/PRESENTATIONS

- National Council on Independent Living Conference
- Kansas Human Rights Association
- Independent Living Summit in Kansas City MO
- Kansas Assistive Technology Conference
- Kansas State Legislative Branches
- Presented over 50 Disability Fair Housing training's
- Kansas City MO. Realtors Assn.
- Kansas Disability Caucus
- ADAPT National Leadership Conference and Training in Denver
- Grassroots National Housing Planning Committee Conferences
- National Council on Disability Summit
- Disabled In Action, Harrisburg PA
- Mental Health Survivors: National Alternatives Conference
- 2nd Developmental Disabilities Conference in Kansas
- HUD's Fair Housing Summit

Publications

MOUTH Magazine guest author
Independent Living Research and Utilization guest author
'Responding to HUD's Housing for Persons with Disabilities, Debunking the Myths and Recommending Policies WE Can Live With"
Housing chapter for the Traumatic Brain Injury Manual
Kansas Advocacy and Protective Services, Inc., Housing Chapter for "A Guide to the Legal Rights of Kansans with Disabilities"

SPECIAL SKILLS

Fair Housing Expert
National Trainer
Review and revise governmental documents
Program development
Knowledgeable regarding Fair Housing, Section 504 and the ADA.
Development of numerous housing and civil rights documents.
Organizational and management abilities.
Ongoing relationship and interactions with government officials.
Excellent people skills and community grassroots organizing skills.

PROFESSIONAL EXPERIENCE

2001-Present TILRC Advocacy Coordinator/Independent Living Skills Manager

Provide agency wide coordination of advocacy events, and initiatives. Provide direct supervision to 8 direct service advocates who assist individuals with diverse disabilities in obtaining their goals of independent living. Assist in development of training and outreach materials, legislative documents, and review federal registers, offer regulatory revisions at local, state and national levels on issues affecting the civil, human and fair housing rights of people with disabilities.

1999-2001

Housing Justice for All Co-Project Director

Conduct statewide outreach and education project on the fair housing rights of people with disabilities. Provide direct assistance to individuals with disabilities, general public, housing industry and governmental staff. Develop all outreach strategies and tracking forms. FHIP/HUD funded project.

1998-2001

Housing Activist/National DRACH Coordinator
Topeka Independent Living Resource Center
501 SW Jackson
Topeka, KS 66603

Maintain the national headquarters of the Disability Rights Action Coalition for Housing. Provide national, state and local fair housing and civil rights education and training to consumers, all levels of government, community members and landlords. Coordinate all national activities of DRACH. Review federal, state and local legislation for impact on the civil rights of people with disabilities. Plan and organize national meetings with HUD Secretary and Assistant Secretary's to revise oppressive housing policies that effect people with disabilities. Assist consumers with exercising their fair housing rights through mediation, filing complaints and legal referrals. Have extensive experience with conciliation terms and exploring possible terms for settlement. Develop outreach and educational materials for use by DRACH supporters. Train others on participating in the Consolidated Planning Process and the Housing Authority plans. Assist tenants with organizing tenant's right groups.

1993-1998:

Independent Living Specialist /National DRACH Coordinator
Topeka Independent Living Resource Center
501 SW Jackson Suite 100
Topeka, KS 66603

Provide direct community based, consumer driven skills training and advocacy to individuals with a diversity of disabilities. Participate and organize community education activities concerning public transportation, educational access, employment, housing, peer support, vocational needs and daily living skills. Participate in system advocacy for community recognition of civil rights of people with disabilities. Assist individuals moving from institutions and group living situations to integrated community living. Participated in housing and Fair housing research and activities on the local, State and National levels. Participated in training's, issue written position papers and provide public comment concerning housing and civil rights. Actively participate and train consumers to participate in local, State and National advocacy in the political arena.

September 86-April 92:

Transportation CO - Coordinator
Independence Incorporated
1910 Haskell
Lawrence, KS 66044

Operated and coordinated accessible lift van services for people with disabilities. Wrote daily, weekly and monthly reports concerning all aspects of customer's needs, satisfaction and maintenance, service performances of vehicles. Provided peer support and participated in a wide array of activities relating to the empowerment of persons with diverse disabilities.

April 81-August 84:

Forestry Technician
Kansas State Forestry Extension Office
Kansas State University
Manhattan, KS.

Worked in all areas of forestry and wildlife management at two area lakes. Operated planting and other large equipment relating to planting, plowing fields and maintenance of trees, plants and wildlife crops.

January 81-April 81:

Transit Operator
Douglas County Council on Aging
Lawrence KS.

Drove accessible lift van for senior citizens. Participated in center activities and safety training's.

December 79-January 81:

Volunteer Coordinator
Women's Transitional Care Services
Lawrence, KS.

Developed and presented training on domestic violence intervention to community volunteers for a 24 hour shelter for women and children who were victims of domestic violence. Coordinated over 75 volunteers to answer crisis line, staff shelter, intervention techniques and counseling procedures. Assisted with writing grants and daily operation of the shelter. Developed outreach and marketing materials for volunteers and general community education.

Summer 79:

Camp Counselor
Michigan Girl Scout Council
Lansing, MI.

Supervised and instructed groups of girls in outdoor skills. Lead canoe instructor for the entire camp. Planned numerous activities for small and all camp participants. Areas included survival techniques, backpacking, water safety, canoeing, hiking, cooking, campfire skills, personal growth and hygiene issues and other recreational activities.

December 78-June 79:

Psychiatric Attendant
Central State Mental Hospital
Norman, OK.

Assisted patients with daily activities, peer support and recreational activities. Assisted numerous "patients" with obtaining their freedom.

May 78-September 78:

Verification Clerk
Oklahoma Housing Authority
Oklahoma City, OK.

Verified information on applications for a State wide HUD Section 8 rental housing program.

EDUCATION/CERTIFICATIONS

1978 Graduate of Moore High School, Moore, Oklahoma
Attended Oklahoma City Junior College
Class Study University of Kansas
Certified Transitional Living Skills Trainer for Persons with Head Injuries.
Commercial driver's license
Lived and studied in Mexico for extended period
First Aid and CPR

United States Department of Agriculture
Rural Development

Rural Business–Cooperative Service • Rural Housing Service • Rural Utilities Service
Washington, DC 20250

JUN 25 2002

The Honorable Marge Roukema
Chairwoman
Subcommittee on Housing and Community Opportunity
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Roukema:

Thank you for your June 20, 2002 invitation to provide testimony addressing the Rural Housing Service's activities in enforcing civil rights laws, especially the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. This testimony is to be included in the record of the joint subcommittee hearing entitled "Fighting Discrimination Against the Disabled and Minorities through Fair Housing Enforcement."

The Rural Housing Services (RHS) has a history of administering all of its programs in a manner that ensures that every customer is treated with fairness, equality, and respect. We have taken special steps to enforce fair housing laws and Section 504 of the Rehabilitation Act of 1973 in both our single-family and multi-family housing loan programs.

To give you an example, in fiscal year 2001, over one-third of the 15,763 rural families who received single-family housing direct loans were minorities. Additionally, RHS' multi-family housing tenant population for people with disabilities increased by 3,253 households, for a total of 70,841. Our written testimony will provide more detailed information.

Because RHS has such a large housing portfolio, state personnel are required to conduct regular compliance reviews to ensure that borrowers comply with civil rights laws, especially the fair housing laws. As a matter of record, our field staff and our State Civil Rights Coordinators and Managers conduct approximately 6,000 compliance reviews annually, covering about one-third of the portfolio that require compliance reviews. A trained person, designated by our State Directors, determines if the borrower is in compliance. If the borrower is found to be in noncompliance, RHS has a reasonable and credible process for addressing and remedying any deficiencies.

Additionally, the Department of Agriculture has a Memorandum of Understanding with the Department of Housing and Urban Development that requires coordination and cooperation between the two executive Agencies in the resolution of housing discrimination complaints. The most effective method RHS has to enforce the disability requirements is our Self-Evaluation and Transition Plan process. This process requires all existing borrowers and recipients prior to June 1982 to examine their facility and/or operations to determine if it compiled with the disability

Rural Development is an Equal Opportunity Lender
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, DC 20250

requirements. If compliance issues are found, a transition plan is established, with remedial time frames, to resolve the issue.

In order to assure compliance with future customers under our current disability laws, we have also issued a national regulation. This regulation requires future recipients who may want to participate and receive program benefits, to provide written assurances of compliance with these laws.

We look forward to having the opportunity to personally address any concerns you or your colleagues may have regarding RHS' fair housing activities. Thank you for your continued support of the Rural Housing Service and our efforts to deliver our programs and services to all people fairly, with integrity and equality. An identical letter has been sent to the Subcommittee on Oversight and Investigations.

Sincerely,

ARTHUR A. GARCIA
Administrator
Rural Housing Service

Responses to Rep. LaFalce's June 25 Hearing Follow-Up Questions

1. **Almost eighteen months ago, several disability advocacy groups filed a Section 504 complaint against HUD for pursuing policies and administrative practices that discriminate against people with disabilities in admissions and occupancy to multifamily housing developments. How has HUD responded to that complaint and what steps have been taken to resolve those issues?**

   Response:
   The Department has taken several steps in response to the Section 504 complaint that was filed by the Consortium for Citizens with Disabilities (CCD). HUD has enhanced the Tenant Rental Assistance Certification System to capture information about accessible units in multifamily housing developments and monitor residents' accessible housing needs. Also, HUD, through the Family Report (HUD form 50058), tracks information about accessible public housing units to help determine need and ensure Section 504 compliance. In addition, HUD is revising the Department's Occupancy Requirements of Subsidized Multifamily Housing Programs handbook to strengthen Section 504 compliance, and has developed a software instrument that provides an inventory of all multifamily housing units. HUD is relying on input from CCD to revise the handbook, and incorporated CCD's suggestions when it developed the software instrument.

2. **By July 1995, HUD was to have conducted a self-evaluation of its own compliance with Section 504 of the Rehabilitation Act that bars discrimination against people with disabilities. Was that evaluation completed? If so, what were the results? If not, when will HUD complete the evaluation process?**

   Response:
   Due to funding and staffing constraints, the Department has not completed its self-evaluation. However, HUD's Office of Fair Housing and Equal Opportunity (FHEO) will soon formalize a plan of action that will guide the process. In the meantime, HUD has taken numerous steps to comply with Section 504 in its federally-conducted programs, including: (1) ensuring that HUD headquarters and every field office is accessible to persons with disabilities; (2) providing, through Section 508, the technology that persons with hearing and visual impairments need to do business with the Department; (3) identifying barriers to improving the availability of community-based services for persons with disabilities, as required by Executive Order 13217 [Olmstead]; (4) and providing employees with disabilities reasonable accommodations and equal employment opportunities.

   In addition, the Department routinely takes steps to ensure that all HUD-sponsored training sessions and conferences are accessible to persons with disabilities, and that persons with disabilities have the opportunity to participate in routine HUD activities like contract and grant procurement. Also, FHEO reviews

all updated HUD program regulations, notices, handbooks, and other documents for civil rights implications.

3. **In 1988, Congress directed HUD to complete investigations of Fair Housing Act complaints within 100 days, unless it was impracticable. Is HUD meeting this mandate? How many fair housing complaints were filed by HUD in FY 2001? How many fair housing complaints have been filed in FY 2002? Are the number of complaints increasing?**

   Response:
   HUD takes seriously its charge as the principal enforcer of the Fair Housing Act. Since the beginning of the Bush Administration, HUD, by committing additional staff and resources, has reduced the number of "aged" cases to 37 percent, the lowest percentage since the Fair Housing Amendments Act was passed in 1988. Through HUD's continued emphasis in this area, FHEO is on track to further reduce the percentage of "aged" cases to below 35 percent by the end of this fiscal year. The Bush Administration firmly believes that justice delayed is justice denied, and is committed not just to the expeditious investigation of complaints, but also to the resolution of cases in a complete and thorough manner.

   In FY 2001, 6,973 complaints were filed with HUD and its substantially equivalent state and local agencies. So far this fiscal year, almost 5,600 complaints have been filed. The number of complaints filed with the Department has not increased. Through more aggressive marketing and an increase in education and outreach activities, however, will lead to an increase in the number of complaints filed with the Department. HUD also believes that its more efficient processing of cases and its reduction of its aged-case backlog will boost public confidence in its fair housing mission, thereby stimulating an increase in number of complaints filed.

4. **Some fair housing advocates assert that the complaint backlog and confusing complaint form process is due to mismanagement within HUD. Explain HUD's plans to decrease the complaint backlog and other actions that will address concerns with the complaint process. In detail, explain the different ways to file a complaint and the complete complaint process, including time limits that have been mandated by Congress and established by HUD.**

   Response:
   Outside the statement made by one witness at the June 25, 2002, oversight hearing, HUD has not received reports that its complaint form process is confusing. The Fair Housing Act (42 USC 3610), HUD's regulations (24 CFR 103), and HUD's Handbook set forth the process that HUD follows in accepting and investigating complaints.

   Complaint Process-

The Fair Housing Act requires that complaints be in the form prescribed by the Secretary of HUD and, once completed, contain all of the relevant information the Department needs to pursue an investigation, if warranted. In addition to accepting complaints on the prescribed form, HUD also will accept as a complaint any written statement that adequately sets forth the allegations of a discriminatory housing practice under the Fair Housing Act.

Each complaint must contain substantially the following information:

(1) The name and address of the aggrieved person.
(2) The name and address of the respondent.
(3) A description and the address of the dwelling which is involved, if appropriate.
(4) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

HUD regulations state that complaints, which must be filed within one year of the alleged discriminatory act, are considered filed when they are received by HUD in a form that reasonably meets the foregoing four critical elements of a complaint. A complaint will also be considered filed when HUD reduces to writing information received by telephone or via the Internet.

HUD's handbook states that within twenty days of receipt of an allegation of discrimination, HUD will perfect the complaint for filing (i.e., collect additional information to satisfy the statutory requirements for a complaint), and notify the parties of the filing of the complaint and its control number. So, if a complaint is incomplete upon receipt, HUD will inform the complainant of this and provide appropriate assistance in gathering as much information about the alleged incident as possible, and capture that information on HUD's prescribed form (HUD Form 903—see attached) within this time frame. Also, if HUD receives a complaint that only minimally satisfies the four requirements for filing, and there is no danger of the statute of limitations running out, HUD will also take this twenty-day period to further develop or clarify the incoming statement and prepare the HUD Form 903.

HUD believes that its brochures, its Web site, and telephone intake make it easier, faster, and more accessible--not more confusing--for individuals to file fair housing complaints. Intake staff check HUD's Web site for fair housing complaints twice a day, and respond immediately. Regardless of the medium of transmission, HUD still must make sure that all of the allegations it receives satisfies the regulatory elements that constitute a complaint.

HUD makes every effort to complete an investigation within 100 days, as established by the Act. In our response to Question 3, we explain the efforts we have taken to reduce the percentage of cases that take longer than 100 days to investigate.

5. **During your testimony, the term "discriminatory" was not clearly defined by HUD. In relation to fair housing, how is "discriminatory" defined, and what are examples of "discriminatory" and "non-discriminatory" actions?**

Response:
During the hearing, a couple of Members questioned how HUD defined "discriminatory," which may have been unclear in the following passage in the testimony of former HUD General Deputy Assistant Secretary Kenneth Marcus:

A recent HUD-commissioned study, titled All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions, examined how lenders treated blacks and Hispanics at the pre-application stage when they inquired about residential mortgage financing. The study revealed that while the majority of mortgage lending transactions do not involve discrimination, blacks and Hispanics, in the markets studied, tended to receive less information, less assistance, and worse terms.

If lenders provide "less information, less assistance, and worse terms" to blacks and Hispanics, HUD does consider those practices to be discrimination. Restated, HUD intended to communicate the following: "The study revealed that while a majority of mortgage lending transactions did not involve discrimination, blacks and Hispanics still experienced discrimination in a significant percentage of transactions. This discrimination took the form of lenders providing less information, less assistance, and worse terms." We have attached a copy of the press release HUD issued when it released the study, and the study itself. HUD wished to inform the Committee and the public of both the good news and the bad news: the study found race and national origin do not play a role in the majority of lending transactions (i.e., persons were treated roughly the same), but they do play a role in a significant percentage of lending transactions. HUD is concerned about this level of discrimination, and is undertaking several initiatives to step up its efforts to address mortgage lending discrimination, as stated in the testimony.

6. **According to your testimony, the Clinton Administration budget was approximately $24 million for the FHIP program and $22 million for the FHAP program for a total of $46 million. Given the decreased staffing levels (22% decrease between FY 94 and FY 2000) and the steady backlog of complaints, explain HUD's reasoning for requesting (sic) for FY 2003?**

Response:
The current (FY 2002) budget for the two funded fair housing programs is $25.65 million for the Fair Housing Assistance Program (FHAP), and $20.25 million for the Fair Housing Initiatives Program (FHIP). The level funding the Department requests in its FY 2003 proposed budget, if appropriated, will be used to help the

FHIPs and FHAPs continue their enforcement and education efforts. (Congress provided a $3.5 million special allocation in FY 2002 to assist HUD's efforts to reduce the number of "aged" cases in its inventory. The Department's FY 2003 budget includes a request for that $3.5 million to sustain the effort). FHIP and FHAP funds, however, are not and have never been used to support the Department's processing of fair housing complaints. The Department's processing of its Fair Housing Act complaints and all other fair housing activity is supported solely by its Salaries and Expenses budget. Additional staffing and monetary resources, as the Department and fair housing advocates have noted, will help the Department to carry our its fair housing mission more efficiently and more vigorously.

HUD continues to struggle to address the many challenges it faces in the area of fair housing, with fewer staff and limited resources. One way FHEO is dealing with the challenge is through the redeployment of the Department's community builders. FHEO has already obtained a handful of very talented and capable individuals through this process, and we expect to obtain a couple of dozen more by the end of this fiscal year. HUD also is in the process of changing management and administrative procedures to deal with problems caused by the lack of adequate staffing and resources. In addition, we are focusing on the use of succession planning to deal with the loss of experienced people, bringing in interns and others to try and remedy the personnel constraints caused by staff attrition. All of these measures have helped, but the Department still needs additional staff and resources to ensure that every American enjoys the freedom to choose where they will live.

7. **"The Fair Housing Act requires HUD to administer its programs in a manner that affirmatively furthers fair housing. Is HUD meeting this requirement? Is FHEO adequately staffed to meet this requirement? Also, give examples of problem areas that have been addressed."**

Response:
Yes, HUD is affirmatively furthering fair housing in all of its programs. The requirement is being met through: (1) the Consolidated Plan and Analysis of Impediments to Fair Housing Choice process; (2) the Public Housing Agency Plan process; (3) the program Notices of Funding Availability (NOFAs), where applicants are required to certify to affirmatively further fair housing and to demonstrate in their planned activities how this goal will be met; and (4) the technical guidance to HUD-funded recipients on fair housing planning, including the analysis of impediments to fair housing choice.

One of HUD's management goals is "succession planning," where HUD ensures that there are highly qualified people in all positions, not just today, but tomorrow, next year and beyond. Through succession planning, HUD has identified critical positions and hired, and will continue to hire, new staff to fill

these positions. When HUD's "succession planning" goals are met, it will have additional staff to help in meeting its affirmatively furthering fair housing goals.

Some examples where problem areas have been addressed include:

- Consistent guidance on fair housing planning and the analysis of impediments to fair housing choice. To ensure consistency in fair housing planning and the analysis of impediments to fair housing choice, HUD issued a "Fair Housing Planning Guide" that provides information on how Community Development Block Grant (CDBG), State, and HOME Investment Partnerships Program (HOME) recipients should conduct an analysis of impediments to fair housing choice, undertake activities to correct the identified impediments, and maintain documentary records, including the types of records.

- Accessibility Requirements of the Fair Housing Act. HUD issued a Notice, "Affirmatively Furthering Fair Housing and Accessibility Requirements of the Fair Housing Act," to reemphasize the responsibility of Community Planning and Development formula grant program recipients to affirmatively further fair housing. This includes analyzing compliance with the multifamily design and construction requirements of the Fair Housing Act, and including individuals with disabilities in the citizen participation process of developing Consolidated Plans and Annual Action Plans.

- Public Housing Agencies affirmatively furthering fair housing. HUD issued a regulation requiring Public Housing Agencies (PHA) to certify that they "will affirmatively further fair housing by examining their programs or proposed programs, identify any impediments to fair housing choice within those programs, address those impediments in a reasonable fashion in view of the resources available, work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement, and maintain records reflecting these analyses and actions."

The Department can do more to affirmatively further fair housing. FHEO continues to work with the Department's other program areas to assist them in this effort.

8. Current regulations required Community Development Block Grant recipients to certify that they will conduct an Analysis of Impediments to Fair Housing Choice and will update any action that will overcome the effects of any impediments. However, HUD never finalized proposed regulations which would have strengthened this requirement by including performance standards to measure a grantees performance. Does HUD plan to finalize these proposed regulations?"

Response:

The Department is committed to ensuring that Community Development Block Grant recipients adhere to all HUD administrative and programmatic requirements, including conducting analyses of impediments to fair housing choice, and is considering how best to accomplish this. There are no plans at this time, however, to propose regulatory changes to the existing rule regarding affirmatively furthering fair housing. (Dick Kennedy edited and approved this response, but cautioned that it needs to be cleared by the 10th floor and Bernardi.)

To: Committee on Financial Services
Subcommittee on Housing and Community Opportunity and the
Subcommittee on Oversight and Investigations

Hearing: Fighting Discrimination Against the Disabled and Minorities Through Fair Housing Enforcement

June 25th, 2002

As per the Honorable Chairman Kelly and members of the committee request for additional materials and testimony please find the attached.

Honorable Congresswoman Waters asked specifically about older citizen's receiving adequate in home assistance as they age. I mentioned there was pending legislation which would address this critical issue. Please find the attachment MICASSA1 for additional information on this legislation.

Honorable Congresswoman Lee asked about our opinion on the Presidents New Freedom Initiative. I mentioned that the Housing and Urban Development Department was required (as all other federal departments) to outline measures which would amplify this initiative and include most integrated settings as decided in the Olmstead supreme court. Please find HUD's report in attachment HUD final report to President Olmstead.pdf.

In closing let me thank the members of this committee for taking such a historic first step in addressing the horrendous lack of enforcement of our fair housing rights. What incredible leadership. I would urge Congress to assure that the money you appropriate for housing and fair housing actually reaches and benefits the targeted recipients, and does not perpetuate corporate welfare. Most Americans are capable or want the opportunity to make decisions about where they live. We must assure that federal housing resources support this basic right of choice and provides decent, safe, sanitary, affordable, accessible and integrated housing opportunity for all Americans, inclusive of Americans with disabilities.

I would welcome the opportunity to work with the committee membership on our mutual goals of assuring fair housing.

Respectfully submitted,

Rebecca "Becca" Vaughn

TESTIMONY OF

MOISES LOZA

EXECUTIVE DIRECTOR

HOUSING ASSISTANCE COUNCIL

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

June 25, 2002

My name is Moises Loza, and I am the Executive Director of the Housing Assistance Council (HAC). On behalf of HAC, I would like to thank Chairpersons Roukema and Kelly, and Ranking Members Frank and Gutierrez for calling this hearing on fair housing enforcement.

HAC, founded in 1971, is a nonprofit corporation that supports the development of rural low-income housing nationwide. HAC provides technical housing services, seed money loans from a revolving fund, housing program and policy assistance, research and demonstration projects, and training and information services. HAC works in all areas of rural America but also maintains a special focus on rural high-need groups and regions: Indian country, the Mississippi Delta, farmworkers, the Southwest border colonias and Appalachia.

We believe that fair housing is an essential component to affordable housing for low-income families across rural America. Minorities, the disabled, and families with children are particularly vulnerable to discrimination in rural areas.

In 1998, HAC released a report on *Fair Housing Violations in Nonmetro and Metro Counties*. This report analyzed data collected by the HUD Office of Fair Housing and Equal Opportunity (FHEO) on fair housing violation complaints for fiscal years 1993 and 1994. Some of our findings indicate that fair housing enforcement is not serving rural areas as strongly as urban areas. HAC examined 19,032 fair housing complaints and found that 89 percent of complaints were filed in metro counties and 11 percent were filed in nonmetro counties. This is despite that fact that 20 percent of the U.S. population lives in nonmetro counties, according to the 2000 Census.

HAC's analysis also found that in metro areas, 27.4 percent of complaints were closed due to administrative closure. In nonmetro counties, administrative closure accounted for 34.1 percent of complaints. An administrative closure may be due to a number of factors: inability to locate the complainant, withdrawal of the complaint before resolution, untimely filing, uncooperative complainant, or inability to identify the respondent. While a certain percentage of administrative closures are inevitable, an administrative closure is the least-desirable resolution of a fair housing complaint, as it allows for neither a finding of cause for the complainant or a finding of no cause which would exonerate the respondent.

Another finding of concern to HAC is that of the cases where relief was granted to the complainant, there is a significant gap in monetary relief awarded in metro and nonmetro areas. Successful metro fair housing complaints most often resulted in monetary relief, with 31 percent of successful metro complainants receiving this form of relief. In contrast, only 22.3 percent of successful nonmetro complainants were awarded monetary relief.

The disparities in each of the above comparisons points to a gap in the proper enforcement of fair housing between urban and rural communities. The lower percentage of complaints filed in nonmetro counties, compared with their population, indicates a lack of knowledge of either fair housing rights or a lack of knowledge of where to file a fair housing complaint. This lack of knowledge of fair housing is due in part to the limited amounts of outreach by HUD into rural areas. HUD includes a list

of the recipients of 2001 FHIP grants on its website. Of the 92 recipients of FHIP grants listed on the website, not a single recipient is located in a nonmetro county. While a handful of the recipients indicate that at least a portion of their grant awards would go towards education and enforcement efforts in rural communities, the overall target population of the FHIP grants is an urban one.

The higher percentage of administrative closures in nonmetro counties is also an issue of concern to HAC. Rural areas have smaller populations spread out over wide areas, presenting logistical barriers to the provision of goods and services of all kinds. A high rate of administrative closures may indicate that complaints are being closed not due to the merits of the complaint but due to the higher logistical barriers to investigating complaints. HAC's greatest concern is that rural Americans are being denied equal protection based on their residence.

The disparities in monetary compensation are also troubling to HAC, in that it may also indicate that rural complainants are not being as well served in the complaint process as urban complainants. One positive finding of HAC's analysis is that 27.5 percent of nonmetro complainants received access to denied housing, as opposed to 18.2 percent of metro complainants. This is an encouraging finding, and one that we hope will remain consistent in the future.

There are fair housing concerns in rural America that go beyond the findings of this report. The following issues have been brought to HAC's attention through direct experience and through our communications with grassroots housing organizations.

It is sometimes forgotten that rural America is highly diverse, with regional and local differences that have fair housing implications. The five high-needs populations that HAC works with have their own specific challenges. Hispanics in the colonias on the Southwest border face not only discrimination due to their national origin and familial status, but they also are too often victimized by the specific form of predatory mortgage lending known as "contract-for-deed". Under a contract-for-deed arrangement, a borrower does not hold title to their property until the loan has been paid off. As a result, the failure to make a single loan payment may result in the loss of the home and all the monies previously paid.

In contrast, the rural poor in the Mississippi Delta are predominantly African-American, and face discrimination based on race. Farmworkers across the country are almost entirely Hispanic, and face national origin discrimination, while Native Americans face racial discrimination. Populations in Appalachia have higher rates of disability than the country as a whole. Fair housing enforcement in these communities requires and understanding of the particular circumstances and needs of each population.

There is an acute shortage of affordable housing in rural America, and affordable housing is even scarcer among these high-need areas and in remote rural communities. A persistent barrier to the development of new affordable units is NIMBYism. The development of affordable housing for the elderly is generally supported in communities while housing for families and minorities is often opposed. In 1998, HAC released *Fair Housing, the Zoning Process, and Land Use Policies in*

Rural Areas, a report which detailed instances where NIMBYism led to fair housing violations. In this report, HAC also described how grassroots housing organizations were addressing these challenges. HUD can greatly assist the efforts of these groups by applying the Fair Housing Act more vigorously in NIMBY cases. The protections against disparate impacts may be the most effective when zoning or land use concerns are used as pretexts for discrimination.

A related trend in rural areas is the promotion of "smart growth" policies which are intended to limit suburban sprawl into nonmetropolitan communities. HAC recognizes that the regulation of sprawl is a legitimate concern of communities, but steps must be taken to insure that the rhetoric of smart growth is not used as a cover for NIMBYism.

A common form of predatory lending in rural Americas is through loans for mobile homes. HAC has documented the rapid growth of mobile homes in rural America, and is greatly concerned about a parallel increase in predatory lending. HUD must take a leadership role in combating predatory mobile home loans nationwide.

HAC has worked to support fair housing rights in rural America through research, education and advocacy. HAC provides fair housing training and technical assistance to local housing organizations, groups that are typically grassroots or faith-based and have a strong commitment to fair housing. HAC has also testified before the Millennial Housing Commission on fair housing and looks forward to being able to further discuss rural America's fair housing needs with Congress in the future. In this regard, HAC proposes the following suggestions to promote fair housing enforcement in rural America:

- Equal protection of fair housing rights must be provided in rural America. HUD must increase both its education and enforcement activities in nonmetro communities. Both the FHIP and FHAP programs must target nonmetro areas by selecting recipients in nonmetro counties.

- HUD must build the capacity of fair housing organizations in nonmetro counties. HUD has worked successfully with a large number of community-based organizations to provide affordable housing in rural communities. Many of these organizations have the ability to successfully execute FHIP programs for education/outreach, testing and enforcement. However, these groups may not undertake these efforts without the HUD's initiative. HUD must play the lead role in reaching out to local organizations.

- HUD must work to insure that complaints filed in rural communities receive the same due process as complaints filed in metro areas. HUD should be required to track rates of administrative closures, findings of no cause, and types of awards to insure that nonmetro complainants have the same opportunities for successful resolution as metro complainants.

- National initiatives to support fair housing must also take into account the particular circumstances of high-need areas and populations. General Deputy Assistant Secretary Marcus, in his testimony before this committee, indicated

that HUD will be undertaking an enforcement project in the colonias, with a special emphasis on predatory lending. HAC applauds this initiative and offers its assistance in this effort.

- Special initiatives must also be undertaken to combat discrimination that disguises itself as concern for zoning, smart growth, or related issues. The NIMBY phenomenon is a major impediment to fair housing.

- A special initiative must also be undertaken to combat the rampant spread of predatory lending in mobile-home loans. In these cases, predatory lending is a "pattern and practice" of such a major scale that local organizations lack the ability to pursue enforcement on their own; HUD must take the leadership role in combating the pattern and practice of predatory mobile-home lending.

- The Millennial Housing Commission conducted very productive hearings on issues of fair housing. Unfortunately, the Commission's final report did not include fair housing recommendations. Congress should consider requesting the Commission to provide its findings and recommendations on fair housing.

HAC is committed to furthering fair housing in rural America, and will continue its efforts at research and education. We thank the committee for inviting us to this hearing and offer our assistance whenever you require it again.

NATIONAL COUNCIL ON DISABILITY

An independent federal agency working with the President and Congress to increase the inclusion, independence, and empowerment of all Americans with disabilities.

July 29, 2002

RECEIVED
AUG 1 2 2002

The Honorable Sue Kelly
Chairperson
Subcommittee on Oversight and Investigations
1127 Longworth House Office Building
Washington D.C. 20515-3219

The Honorable Luis Gutierrez
Ranking Minority Member
Subcommittee on Housing and Community Opportunity
2452 Rayburn Building
Washington, D.C. 20515

The Honorable Marge Roukema
Chairperson
Subcommittee on Housing and Community Opportunity
2469 Rayburn House Office Building
Washington, DC 20515

The Honorable Barney Frank
Ranking Minority Member
Subcommittee on Housing and Community Opportunity
B-301C Rayburn House Office Building
Washington, D.C. 20515-6050

Dear Congresspersons:

On behalf of the National Council on Disability (NCD), I want to express my appreciation for your roles in convening the June 25, 2002, hearing entitled "Fighting Discrimination against the Disabled and Minorities through Fair Housing Enforcement." That hearing helped to bring to light a number of important issues that face Congress and the U.S. Department of Housing and Urban Development (HUD) concerning enforcement of the Fair Housing Act. NCD would like to propose a partnership with you and your staff to provide follow-through on these matters.

As you know, NCD is an independent Federal agency whose Council members are appointed by the President and confirmed by the Senate. NCD is charged with conducting

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studies, evaluating new and emerging disability related policies, and making recommendations to the President, to Congress and to federal officials about ways to promote equal opportunity. NCD's recent report, *Reconstructing Fair Housing*, evaluates HUD's enforcement of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, and concludes that the public has lost confidence in the agency.

Because of the breadth of the enforcement problems identified at the hearing, NCD believes that you and your colleagues on the Subcommittees must take a leadership role in rebuilding HUD's ability to vigorously enforce the Fair Housing Act and Section 504 and to clarify that these laws apply to all federally-assisted housing. To that end, we recommend that you give highest priority to the following initiatives:

- **Increasing HUD Enforcement Resources**: As *Reconstructing Fair Housing* documents, HUD's ability to timely and effectively enforce the Fair Housing Act and Section 504 has declined markedly since FY 1994, as FHEO staffing has declined from 750 FTEs to 584 FTEs in FY 2000. As former General Deputy Assistant Secretary Ken Marcus testified, the current FHEO staffing level is only at 610 FTEs. NCD believes it is imperative to restore a minimum level of 750 FTEs to ensure that complaints are resolved fully, fairly and efficiently. HUD must also significantly increase its contract funds to support civil rights enforcement and compliance activities as well as training and public education. NCD's report recommends a contract funding level of at least $5.2 million annually.

- **Manage More Effective Enforcement of Fair Housing and Civil Rights Laws**: *Reconstructing Fair Housing* also concludes that Congressional oversight is needed to support significant changes in leadership and management of HUD's fair housing and civil rights programs. Two particular areas require significant work by HUD: management of its case investigation process and management of the Fair Housing Initiatives Program. The report documents significant area where case processing work by HUD can be improved-- from whether complaints are filed timely when received by HUD, to the length of the time required to investigate and resolve a case, to the reliability of the outcomes given the recent reduction in the number and percentage of cases where HUD finds that the law has been violated. Strong management that addresses both the quality and the quantity of the work is needed. And, as the report concludes, the Fair Housing Initiatives Program needs significant overhaul to prevent its further erosion and politicization. HUD does not provide an effective funding stream for this program and the very effective programs funded by this source cannot be documented due to HUD's failure to use basic grants management strategies.

- **Enhance FHEO's Power and Prestige within HUD**: By the very nature of its

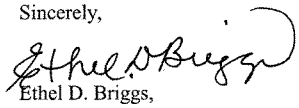
mandate to enforce equal opportunity laws, FHEO frequently comes into conflict with powerful opposing forces, within and outside the agency. By creating a higher-profile entity (perhaps integrated with elements of the Office of General Counsel already involved in enforcement of civil rights laws) that reports directly to the Secretary, HUD can more effectively make equal opportunity its highest priority. The Secretary of HUD must provide the top-down leadership for a Department-wide coordinated effort to prevent and remedy illegal discrimination through this office. One particular area of increased focus should be greater levels of compliance with fair housing and civil rights laws by public and assisted housing.

- **Require HUD to Conduct A Self-Evaluation to Determine Whether its Programs Discriminate on the Basis of Disability**: Under its own regulations–at 24 C.F.R. §9.110–HUD was required to evaluate its own policies and practices, and to take corrective action in the event they discriminate against people with disabilities. This self-evaluation was to be conducted on or before July 18, 1995. HUD is now more than seven years late in fulfilling its obligation, during which time a number of its programs have continued to perpetuate and allow discrimination against people with disabilities. *Reconstructing Fair Housing* recommended that HUD conduct this self-evaluation immediately; its failure to do so will only compound the discrimination experienced by people with disabilities.

- **Clarify That Housing Built with Low Income Housing Tax Credits Is Subject to Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act**: The primary engine for development of new affordable housing in this country–the Low Income Housing Tax Credit–is administered by the Internal Revenue Service and the U.S. Department of the Treasury. Treasury and the Office of Management and Budget have opined that Tax Credits are not "federal financial assistance" within the meaning of these important civil rights laws. That means that developers of Tax Credit housing are not required to build a minimum number of fully accessible units for people with disabilities, and are not subject to Title VI unless they also accept other federal funds.

NCD intends to be an active partner with Congress in bringing about these needed reforms. NCD staff will contact your staff shortly in order to meet and plan for the achievement of these objectives.

Sincerely,



Ethel D. Briggs,
NCD Executive Director

Statement for the Record
John C. Bollinger, Deputy Executive Director
For the
Paralyzed Veterans Of America
To the
Housing and Community Opportunity Subcommittee
And the
Oversight and Investigations Subcommittee
House Financial Services Committee
Hearing on "Fighting Discrimination Against the Disabled and Minorities through Fair Housing Enforcement"
June 25, 2002

On behalf of the Paralyzed Veterans of America (PVA), I thank you for holding this hearing to examine the status of housing discrimination against persons with disabilities and minorities and the effectiveness of fair housing enforcement. PVA is a Congressionally-chartered veterans' service organization representing over 20,000 veterans with spinal cord injury and/or dysfunction. For our members and millions of other Americans with disabilities, affordable and accessible housing is critical to the ability to live independently with their families. The Fair Housing Act, and Section 504 of the Rehabilitation Act as applied to publicly-funded housing, represent a promise that people will not be denied a place to live in their community simply because they have a disability.

Unfortunately, the fulfillment of that promise has not always received the degree of attention from the Department of Housing and Urban Development (HUD) that we believe it should.

Fair Housing Complaint Processing Delays

Many PVA members have experienced long delays in trying to pursue complaints through HUD against multifamily housing complexes that are in violation of the Fair Housing Act Amendments accessibility guidelines. These difficulties were dramatically represented by a PVA member whose fair housing complaint sat unaddressed at HUD from 1994 to 2000 -- well beyond the 100 day deadline for attention to a case. In 2000, our member asked PVA to intervene with HUD on his behalf. PVA staff was referred to half a dozen different officials at the agency before we were informed that the case had been re-referred to HUD's San Francisco office for attention. It took until April of 2001 for that HUD office to decide to pursue a settlement in the case.

PVA recognizes that HUD has for many years received inadequate funding for its fair housing efforts which resulted in significant backlogs of cases in need of investigation. We also acknowledge that Secretary Martinez committed his agency to reducing that backlog and to ensuring that cases are addressed in a timely fashion.

However, HUD should not be allowed to wait six years or even six months to act on a case determined by its own investigators to have merit. This is unacceptable. PVA believes that HUD should be expected to adhere to appropriate timelines in responding to fair housing complaints and urges your committees to call the agency to account for failures to abide by such standards.

Discrimination in HUD-funded Housing

PVA has also found HUD unresponsive when it comes to individuals with disabilities trying to obtain housing in HUD-funded properties built primarily for elderly individuals. For many people with physical disabilities, apartments designed for senior citizens are often the only developments in their communities with the accessibility features they need.

In 1992, the Housing and Community Development Act allowed limitations on entry of non-elderly people with disabilities into certain HUD properties under certain conditions. Title VI-D of that Act was included to address concerns about displacement of non-elderly individuals with disabilities from HUD-assisted properties that chose to designate themselves for senior residents. Unfortunately, lack of guidance from HUD about the requirements of Title VI-D has created a situation in which property managers and local housing officials have felt free to discriminate against individuals with disabilities in admissions and occupancy policies in multifamily assisted housing.

In early 2000, a PVA member, Mr. "P", applied for an apartment for himself and his wife in a HUD 236 property in Jersey City, New Jersey. He identified himself on his application as an individual with a disability under the age of 62 and received a letter from the site manager confirming receipt of his application. The site manager assured him that the complex accepted persons with disabilities under age 62. He was assigned an applicant number and told that he might have to wait three to five years for a unit. In the summer of 2001, Mr. "P" inquired about his status on the waiting list in a telephone conversation with that same site manager. She informed him that he was being taken off the waiting list because he was under age 62 and that the acceptance of his application in 2000 had been due to "human error."

Mr. "P" says that, had he known from the start that he would not be accepted into this complex, he would have continued his search for housing. Unfortunately, because of this development's capricious behavior, Mr. "P" and his wife waited almost two years for a unit that was never going to be offered to them. Since then, the couple has been unable to find an accessible apartment in their price range in Jersey City and has had to move in with friends about an hour from their desired community.

When PVA staff asked that property manager for the tenant selection plan or other documentation justifying the project's rejection of Mr. "P's" application, we were told that a section of a HUD handbook - specifically "Change 24" -- allowed owners/managers to

restrict occupancy to senior households. She also stated that the property did not have any accessible units.

Not only is this manager's statement contrary to what our member was led to believe when he first inquired about an apartment, but it is inconsistent with requirements that Section 236 properties have at least 10 percent of their units designed for the mobility-impaired. Further, this appears to conflict with other sections of HUD's Multi-Family Occupancy Handbook [4350.3 CHG-24] which state that 236 projects may restrict units to the elderly "except to the units designed for handicapped persons with mobility impairments. For units for the mobility impaired, [a] owners may not give elderly persons priority over non-elderly persons."

It is PVA's understanding that Change 24 was drafted before enactment of Title VI-D of the Housing and Community Development Act of 1992. Because HUD has never issued regulations for Title VI-D, considerable confusion exists about the rights of people with disabilities to live in HUD-assisted housing for the elderly. This leads to discriminatory actions and loss of housing opportunities similar to what happened to Mr. "P".

Section 504 Complaint

In January of 2001, PVA, other members of the Consortium for Citizens with Disabilities (CCD) Housing Task Force, the Technical Assistance Collaborative and other disability advocates filed a complaint against HUD pursuant to Section 504 of the Rehabilitation Act. Ordinarily, charges of discrimination are filed against individual property owners or managers, developers or housing authorities. This extraordinary step was taken only after years of frustration on the part of the disability community over repeated instances in which HUD's policies and administrative practices have discriminated against people with disabilities.

Multifamily housing policies such as those described above were among the bases for the complaint. Several studies referenced found that many properties restrict occupancy by *any* non-elders with disabilities, contrary to Title VI-D. A report by commissioned by HUD itself states that "multifamily owners largely ignore HUD rules and handbooks" in screening out people with disabilities. Even after this report, HUD has never taken steps to investigate and overcome this discriminatory behavior.

The complaint also charges that HUD has ignored requirements under the 1992 law to assist people with disabilities displaced by restrictive admissions policies in multifamily properties. HUD neglected to inventory housing lost through elderly-only designation then failed to assure that Section 8 vouchers intended to replace the lost housing were distributed to those most in need. Substantial amounts of funding appropriated for this Section 8 voucher program remain unused because the lack of an inventory has created barriers to allocation. Meanwhile, as people with disabilities struggle to locate

and secure affordable, accessible housing, HUD has indicated plans to redirect those Section 8 funds to other purposes.

Finally, the § 504 complaint notes that HUD has never completed a self-evaluation of its policies, regulations, handbooks, written notices and written guidelines to assure compliance with the antidiscrimination provisions of Section 504. Had such an analysis taken place, many of the discriminatory actions that are the subject of the complaint might have been addressed.

Despite the seriousness of the concerns expressed by the disability community, the agency took six months to acknowledge receipt of the complaint. Several meetings have been held during the past year between the complainants and HUD officials to discuss the issues raised by that document and HUD has begun to pilot test a housing inventory in two regions of the country. However, at the end of June 2002, almost eighteen months after the complaint was filed, the complainants were still awaiting a conciliation offer from HUD.

Conclusion

PVA acknowledges that HUD has taken several steps in recent months to enforce fair housing laws and respond to discriminatory housing actions against persons with disabilities. As noted, there is the Secretary's promise to reduce the backlog of longstanding complaints. We hope that those heartening words will be followed by concerted actions.

Last year, a memorandum of understanding (MOU) was signed between HUD, the Department of Justice and the Internal Revenue Service to identify LIHTC properties in violation of the law and terminate their tax credits. Most tax credit properties have been built since the effective date of the Fair Housing accessibility guidelines and are supposed to be accessible to people with disabilities. Too often, these properties are not compliant with the law and should lose their tax credit status as a result. Complaints against tax credit properties lodged with HUD need to be acted upon in a timely fashion and referred to IRS for prompt sanction. PVA urges Congress to monitor the implementation of this MOU.

HUD has also undertaken the development of a fair housing training curriculum to be made available to the public and interested housing stakeholders. The agency has partnered with the International Code Council to encourage in local building codes the use of code requirements for housing accessibility that would meet Fair Housing standards. HUD also recently engaged the National Association of Homebuilders in an effort to increase attention to the construction requirements of the Fair Housing Act.

These are all commendable actions and we applaud those officials at HUD pursuing these initiatives for their ongoing interest in assuring equal housing opportunities for people with disabilities.

In the future, PVA would like to see a greater commitment throughout HUD to inclusion of people with disabilities in all of its programs and policies. HUD must consider the impact that its actions -- or inaction -- may have on this most vulnerable housing constituency. We urge the members of these Subcommittees to monitor HUD's performance in enforcing fair housing laws, in educating stakeholders and the public about the fair housing accessibility requirements and in incorporating the needs of people with disabilities in its program and policy planning processes.

PVA welcomes the opportunity to work with the members of these Committees in furthering the goals of fair housing and assuring an accessible America for all.

Statement of Arthur A. Garcia
Administrator, Rural Housing Service
U.S. Department of Agriculture

Before the
Subcommittee on Housing and Community Opportunity
and Subcommittee on Oversight and Investigations
Committee on Financial Services
United States House of Representatives
Washington, DC

June 25, 2002

* * * * *

Madam Chairwomen, and members of the subcommittee, thank you for the opportunity to provide testimony on the Rural Housing Service's (RHS) enforcement of fair housing laws.

My name is Arthur A. Garcia, Administrator for the Department of Agriculture's Rural Housing Service. I began my job as administrator in April of this year. As I am new to government service, I must rely on my background and experience to guide me in the early days of my tenure. I would like to share with you just a bit of that history to explain my philosophy and approach to this tremendous opportunity I have been afforded.

Life has not been a privileged experience for my family. I was reared in northern New Mexico where opportunities have never been bountiful. Oftentimes public assistance was the only thing that stood between survival and despair.

My father was not only the first in our family to graduate from college, but he continued on to graduate school and enjoyed a rewarding career as a teacher and school principal. My mother worked hard to raise two boys, and also pursued a career as a secretary and eventually as an operations manager in a stockbroker's office. Although both of my parents worked, our life was not one of affluence. My parents were much like the profile of our self-help clients of today.

Our family never gave up, and all have persevered at their chosen careers. Some of my cousins have succeeded in earning a college degree, but some still struggle. The legacy, however, that has been passed on to us has been one of hard work and compassion for others. My father stressed the value of an education, not for personal gain, but as a tool to better help others. He is the role model and has been an inspiration to me.

It is this perspective that I bring to the job of Administrator of the Rural Housing Service. I am privileged to work with a dedicated group of professionals who believe as I do. With a little help, families can build a foundation for a better life for today and maybe for generations to come.

Owning a home can have a significant impact for the better. We are witnessing the overwhelming benefits that are epiphenomenal to home ownership. As a former community banker, it was my goal to offer an alternative to the bank for customers who could not qualify for a loan. As a result, there were many customers who qualified and obtained their dream homes.

RHS provides dignity and opportunity for rural Americans. That is the approach I took in community banking and that is the approach I bring to my task at hand.

The Rural Housing Service

The Department of Agriculture's Rural Housing Service assists rural America in a variety of ways. Our mission is to improve the quality of life and help build competitive, vibrant communities through loan and grant programs. We promote healthy rural communities by helping to provide decent and affordable housing, as well as essential community services, such as fire protection, health care centers, and childcare centers.

Through partnerships with the private, public, and nonprofit sectors, RHS provides financial and technical assistance to low-income families and rural communities. We also

provide credit to low-income families who otherwise could not achieve affordable home ownership, and to rural areas that would not be able to provide essential community facilities. We administer all of our programs in ways that ensure equal opportunity for everyone regardless of race, color, national origin, religion, sex, marital status, familial status, age, and/or disability.

With the $5.8 billion program funding for Fiscal Year (FY) 2002, RHS will provide assistance to more than 67,000 households for single-family housing homeownership or repairs, construct more than 5,200 new rental-housing units, and provide rental assistance to more than 42,000 very low-income rural renters. Additionally, the FY 2002 budget will provide support for more than 170 new or improved health care facilities, more than 150 new or improved fire and rescue facilities, and more than 80 new or improved childcare facilities. We also will create or preserve more than 40,000 jobs in rural America and serve more than 13 million rural Americans.

In this era of unprecedented economic prosperity, RHS programs ensure that some of rural America's most vulnerable members, including low-income elderly, children, farm workers, and Native Americans, share in our nation's good fortune. Now, I would like to discuss some examples of how our housing programs have assisted rural America.

RHS Homeownership Programs Reach the Underserved

In FY 2001, RHS provided $1.073 billion in Section 502 direct loan funding that assisted 15,763 rural families in obtaining or improving their housing situation. Of these loans, over one-third went to help minority homeowners, as follows: Hispanic (17.2 percent), Black (12.0 percent), Native American (1.4 percent), and Asian/Pacific Islander (1.0 percent). Over 56 percent of these loans helped female-headed households attain homeownership. The 1995 American Housing Survey data showed that our program participants fare quite well compared

with other groups of low- to moderate-income rural residents. Their data showed the following figures for non-Rural Housing Service fund recipients: Hispanic (6.6 percent), Black (7.1 percent), Native American (1.3 percent), Asian/Pacific Islander (0.4 percent), and approximately 23 percent for female-headed households.

This year, an additional $3.37 billion in the Section 502 guaranteed loan program will help about 42,000 low- and moderate-income rural households become homeowners. In fact, 30 percent of the loans made in the guaranteed loan program are made to low-income rural residents. This helps stretch the Agency's Section 502 direct loan funds, and reinforces the critical role RHS plays in housing rural residents. In FY 2001, the Section 502 guaranteed loan program helped more than 29,000 rural homeowners in areas that are not served by other Government loan insurance programs.

For rural Americans with very low-, low-, and moderate-incomes, the Section 502 direct and guaranteed loan programs continue to be the most effective homeownership programs available. Based on the estimates used by the National Association of Home Builders, the FY 2002 budget will help create about 36,000 jobs through the construction of new homes.

The FY 2002 Self-Help Housing Technical Assistance Grants program has a funding level of nearly $34 million. By allowing families to earn "sweat equity" by helping to build their own homes, the self-help program makes housing affordable for many hard-working, very low-income families who otherwise might not ever be able to own their own homes. About 70 percent of the program's participants are members of minority groups, and a significant portion are farm workers. The program requirements are tough: participants must contribute 65 percent of the labor toward construction of their homes. Because owning a home is so important to them, these families are willing to work at their regular jobs and then put in as much as 35 hours

a week on building their houses. We anticipate that the FY 2002 budget will allow RHS to make approximately 20 new technical assistance grants in those areas that do not have self-help housing programs. This, in turn, will enable more than 1,500 families to build their own homes.

RHS Rural Rental Housing Programs Serve the Most Vulnerable Rural Americans

The number of rental units in our multi-family housing portfolio has increased from 468,379 in FY 2001 to 469,932 units in FY 2002, an increase of 1,553 units. Additionally, RHS' tenant population for people with disabilities has increased by 3,253 households, for a total of 70,841 in FY 2002. We also saw an increase with minorities in both the racial and ethnic classifications. For example, the minority tenant population increased from 115,504 in FY 2001, to 117,505 in FY 2002. There was also an increase in tenants who have very low income from 389,362 in FY 2001 to 394,799 in FY 2002. These RHS customers represent 91 percent of the total tenant household income level.

Asian and Pacific Islander tenants represent 1 percent of the tenant population, while American Indian and Alaskan Natives represent 0.6 percent of our total tenant population. Latino or Hispanic tenants represent 8.5 percent and female heads of households constitute 74.5 percent of all tenant heads of households. Additionally, the proportion of elderly, disabled tenants (who by RHS' definition are considered eligible to occupy elderly housing) increased by 1,935 tenants in 2002. Elderly, disabled tenants also increased in 2001, from 56,479 to 59,218 in 2002.

According to the Housing Assistance Council's recent report titled *The State of Rural Rental Housing,* more than 900,000 rural rental households, 10.4 percent, live in either severely or moderately inadequate housing. More than one million rural renter households are "worst case needs" households, which the Department of Housing and Urban Development defines as

having an income below 50 percent of the area median household income, being extremely cost-burdened or inadequately housed, and receiving no Federal housing assistance. Of those rural renters with worst case needs, 92 percent pay more than one-half of their income, about $6,000, for housing.

Together, the RHS Section 515 Rural Rental Housing program and the Section 521 rental Assistance program provide decent, safe, and affordable housing to those families who need it most. The Section 515 program provides loans at an interest rate of 1 percent to build affordable housing, while the Rental Assistance program ensures that tenants pay no more than 30 percent of their income for rent.

We have been working diligently to enhance the integrity of our Rural Rental Housing program. For example, we instituted a partnership with the Office of Inspector General to identify and correct any fraud or abuse. This partnership ensures that the most vulnerable rural Americans in our society are protected. However, we have not limited our efforts to this partnership. We have implemented a new internal tracking system to better monitor and manage our $11.9 billion rental portfolio. We are also working to improve coordination with other agencies and departments that are involved in the fraud, waste, and abuse detection and enforcement process.

Recently, the United States Supreme Court issued a decision that may have a significant impact on our Section 515Rural Rental Housing portfolio. Their decision related to the Section 515 loan prepayment claims. The Plaintiff, Franconia Associates, was a Section 515 borrower, and asserted that the loan contract guaranteed an absolute right to prepay the loan. The Supreme Court heard oral arguments on April 15, 2002, and issued its decision on June 10, 2002. The case determined which Section 515 borrowers would be allowed to remain in those cases

currently pending in the Federal Court of Claims. These cases allege that the Federal Government repudiated its contractual obligation to accept prepayment from borrowers, and, as a result, the Government owes damages to those borrowers for the taking of their right to prepay. The Supreme Court case determined that a borrower had 6 years from the date the borrower elected to prepay to file a suit for damages. The Government had contended that the borrowers had 6 years from the date of enactment of the legislation to repudiate the Government's contractual obligation to accept prepayment. Had the Supreme Court upheld the Government's position, the number of potential claimants would have been significantly reduced.

I have just discussed some of the major RHS programs. Now, let me take a moment to explain how RHS enforces and complies with fair housing laws, civil rights laws, and Executive Orders that impact our programs.

Fair Housing Laws Enforcement

RHS programs must be in compliance with several laws, including: the Equal Credit Opportunity Act; Title VI of the Civil Rights Act of 1964; Title VIII of the Fair Housing Act, as amended; Title IX of the Education Act of 1972; Section 504 of Rehabilitation Act of 1973; and the Age Discrimination Act of 1975. We must also comply with numerous Executive Orders.

RHS has taken a strong proactive approach in order to carry out this responsibility. Civil rights staff positions have been established throughout the nation. Along with a national office staff, there are 22 full-time State Civil Rights Managers and 23 State Civil Rights Coordinators who are responsible for coordinating the equal opportunity and compliance efforts. They perform compliance reviews on national and state levels, national and state management internal reviews, conduct departmental investigations, and are subject matter experts with the Housing and Urban Development (HUD) Department and other agencies. They also monitor, enforce, and approve

regulations in accordance with applicable civil rights laws and legal opinions and conduct Civil Rights Impact Analysis. With their help, RHS has been able to enforce the compliance of both loans to individuals and multi-family housing loan programs

The Department of Agriculture implemented Section 504 of the Rehabilitation Act of 1973 by issuing regulations that prohibit discrimination for people with disabilities from being excluded from participation in, or denied benefits of, or otherwise be subjected to discrimination under any program or activity receiving assistance from the department. To enforce these guidelines, RHS requires assurances from all applicants applying for and receiving Federal financial assistance. These applicants, current borrowers, and RHS must follow the compliance standards.

Since 1983, RHS and its recipents have also had to meet the requirements outlined in the Uniform Federal Accessibility Standards (UFAS). For all Multi-Family Housing projects that are ready for occupancy after June 10, 1982, borrowers are required to have five percent of the housing units fully accessible, thereby following UFAS in achieving compliance. These issues are documented during the compliance review process.

We also require all Multi-Family Housing projects that were ready for occupancy after March 13, 1991, abide by the HUD's Fair Housing Act and Accessibilty Guidelines and require that all first-floor grounds units in buildings with four or more dwellings units be designed and constructed in a manner that is adaptable to individuals with disabilities. If there is an elevator, all units must be adaptable. In enforcement of these laws, we require these recipients to have an accessible entrance on an accessible route, to install usable doors, to develop accessible routes into and through the dwelling unit, accessible light switches, electrical outlets, and environmental controls. We also require that the unit be built with reinforced bathroom walls

and usable kitchens and bathrooms.

Because RHS has a large housing portfolio, State personnel are required to conduct regular compliance reviews to ensure borrowers comply with all civil rights laws, especially fair housing laws. As a matter of record, RHS field staff and State Civil Rights Coordinators conduct approximately 6,000 compliance reviews annually, about or almost one-third of the portfolio that require compliance reviews. This person, designated by our State Directors, determines a borrower's compliance.

Additionally, we have a Memorandum of Understanding with HUD that requires coordination and cooperation between our two Executive Agencies in the resolution of housing discrimination complaints. The most effective method RHS has to enforce the civil rights laws, especially fair housing and disability requirements, is our Self-Evaluation and Transition Plan process. This process requires that all existing borrowers and recipients prior to June 1982 to examine their facility and or operations to determine if it is in compliance with disability requirements. If compliance issues are found, a transition plan is established, with remedial time frames, to resolve the issue.

Although RHS has mechanisms in place to strongly enforce fair housing laws, we continue to struggle in processing these cases in a reasonable period of time. The impact of this challenge is increasingly affecting the lives of many people with disabilities who are awaiting a decision.

Presently, the Rural Development Civil Rights Staff is only authorized to gather pertinent preliminary information in their investigation and develop an analysis with a recommended finding. These cases are then forwarded to the Department's Office of Civil Rights for a final

decision. We are trying to resolve this challenge by re-evaluating the manner in which these cases are processed.

Civil Rights staff has recently proposed that they be allowed to process and complete the entire program discrimination case, including the issuance of the final decision, and allow an appeal to the Department's Office of Civil Rights. This proposal was made as a result of the significant number of cases filed in FY 2000. At the end of FY 2000, there were 37 pending disability cases with an average processing time of 655 days. This was a concern for RHS because, under the Fair Housing Act and our Memorandum of Understanding with HUD, we are required to process cases within 100 days. This is an impossible time line to meet because of the process in place at the Department. By end of FY 2001, there were 61 disability cases pending, with an average processing time already running into 359 days.

We are looking at other viable options in reducing our processing time by emphasizing mediation and resolution of these matters. We will continue to work with the Department to address the issues we have concerning case processing procedures.

We read with interest the National Council on Disability study R*econstructing Fair Housing*. HUD has had a difficult challenge during the past five years in their effort to combat discrimination in the area of disability. We understand that they have attempted to meet this challenge in a number of ways. For example, in 1996, HUD reorganized their intake process in hopes of reducing their processing time. Additionally, HUD's investigative process has been streamlined to complete such investigations in shorter time period. As HUD's partner in the fight to enforce the rights of the disabled, we commend their efforts in meeting this challenge.

We at the RHS recognize that civil rights compliance and enforcement must be a priority. We will continue to strive to improve our enforcement and compliance activities, and seek to

partner with other State and Federal agencies in meeting these goals.

Members of the Committee, thank you for allowing me to provide you with written testimony. RHS looks forward to a continued working relationship with this Committee and Congress in meeting our goals in promoting fair housing to rural America and in providing continued enforcement of fair housing laws.