

**Written Statement**  
**Department of Housing and Urban Development**  
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**Before the United States House of Representatives**  
**Committee on Financial Services**  
**Subcommittee on Housing and Community Opportunity**  
**Hearing on the “H.R. 476 Housing Fairness Act of 2009”**  
**January 20, 2010**

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

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

**Affirmatively Furthering Fair Housing**

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

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

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

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

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

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

### **Lending Discrimination**

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

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

FHEO also undertakes Secretary-initiated investigations based on Home Mortgage Disclosure Act (HMDA) data or other information suggesting that a lender may have discriminated on a prohibited basis, even when no individual borrower has come forward to file a complaint. In 2009, the Department initiated nine of these investigations, up from three in 2008. In addition, my office is working with the Office of Real Estate Settlement and Procedures Act (RESPA) to develop a system to target investigations against those that have perpetrated discriminatory foreclosure rescue scams.

FHEO is also working to educate the public. In October 2009, the Patricia Roberts Harris National Fair Housing Training Academy began its Fair Lending Initiative to combat the effects of the mortgage lending crisis. The courses, entitled “Buyer Beware,” “Preventing Foreclosure,” “Financial Aspects of Lending,” and “Predatory Lending,” are geared toward housing providers, housing counselors and homeowners. In designing the courses, the Department emphasized teaching consumers how to identify and avoid deceptive mortgage lending practices. In the past three months, 689 people have attended these courses. Upcoming courses will be held in Miami, Florida on March 5, 2010, and Columbus, Ohio on March 22, 2010. The Department is planning a future course on loan modifications.

Finally, thanks to additional funding from Congress in FY2009 to address mortgage rescue scams and lending discrimination, FHEO established a \$2 million mortgage rescue component in FHIP for nonprofit groups assisting victims of fraud and lending abuse (for example, through counseling, loan workouts, etc.). This money will allow consumer advocates and legal assistance groups to build their capacity to provide fair lending assistance. This will add many more groups into the FHIP, expanding the Department’s fair lending services.

### **Title VIII Enforcement**

Efforts to affirmatively further fair housing are incomplete without ensuring that the public has a means of redress when their rights are violated. That is why Title VIII complaints are always one of our top priorities. Individual victims of housing discrimination have an immediate need for HUD’s fair housing services. The Department and its state and local fair housing partners in the Fair Housing Assistance Program (FHAP) provide these victims with a fair, objective, and free investigation of complaints and, on the complainant’s behalf, prosecute cases where we have determined that there is reasonable cause to believe that they have suffered unlawful discrimination. Our work makes a huge difference in the lives of the complainants. For example, the Department obtained a \$63,000 settlement for victims of race discrimination in Alabama. The complainant Melissa Jones entered into a lease agreement with owners Wilbur and Julie Williams to rent a home. In June 2008, while Ms. Jones and her fiancé

were talking with African American neighbors in the front yard, the Williamses drove by and saw the couples talking. Later that same day, Ms. Williams called Ms. Jones and allegedly said, "If y'all want to have African Americans to visit, we're going to ask you to move...We're not having those people at our property. We own the property and...that's never happened and we're not going to start today with it happening." Ms. Williams allegedly made similar discriminatory comments on at least two other occasions. Based on these statements, Ms. Jones and her family vacated the property. The Department charged the Williamses with violating the Fair Housing Act and settled the case under a Consent Order that requires the Williamses to pay Ms. Jones and her family \$53,000 for compensatory damages and attorneys' fees, as well as a \$10,000 civil money penalty.

In another case, HUD charged the owners and managers of a 44-unit, project-based Section 8 apartment complex in Missouri for refusing to rent to African Americans and men. In the complaint, HUD alleged that the property manager never rented to an unmarried man or an African American, sexually harassed white female tenants and made racially derogatory statements to women with biracial children or African American boyfriends. HUD issued the charges on behalf of four tenants and applicants.

In December, the Department charged a Massachusetts condominium board and management company with discriminating against families with children. Four families alleged that the condominium board, through its management company, fined the families for their children playing in the common area \$10 a day and \$437.50 for attorney fees, in addition to other fees. However, when adult residents had parties in common area, no fine was issued. To make matters worse, the condominium board, according to the allegations, fined the families \$1,000 for filing a fair housing complaint.

Over the last decade, the Department has become more adept at investigating housing discrimination. The number of cases completed by the Department and its state and local partners has increased by 65% in the past 10 years, from 6,503 in FY2000 to 10,700 in FY2009. At the same time, the time spent processing cases has gone down. In FY2000, FHAP agencies completed 27% of their cases within 100 days and just 52% in 200 days. Last year FHAP agencies completed 53% of their cases in 100 days and 81% within 200 days. The Department has made an even more significant improvement. In FY2000, HUD completed only 14% of its cases within 100 days and 27% within 200 days. Last year, HUD completed 58% of its cases within 100 days and 75% within 200 days.

Speed must not come at the expense of accuracy. Discrimination victims are not served by a piece of paper saying they have a case filed with the federal government. They want action. At the same time, complainants and respondents want and deserve the right outcome, not simply a quick one. Thirty-eight percent of complaints closed last year by the Department and FHAP agencies resulted in relief. This includes \$8.155 million in relief for the complainant as

well as public interest provisions such as mandatory fair housing training, affirmative marketing, or policy modifications.

We have taken a number of steps to improve our efficiency: bringing more state agencies into FHAP, providing better training for investigators, establishing better incentives for efficient investigations, and streamlining administrative tasks.

Since FY2000, the Department has brought four state agencies into the Fair Housing Assistance Program: Arkansas, Illinois, New Jersey, and Oregon. While the number of complaints handled by FHEO in those states has decreased significantly, complaints of housing discrimination have risen in these states as a result of the FHAP presence. That means we are reaching discriminatory acts we might have previously missed.

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The Department has improved both the timeliness and quality of investigations through more training for investigators working in FHAP agencies. The Department requires that fair housing investigators in FHAP agencies satisfactorily complete 200 hours of advanced training in theory and techniques at the Patricia Roberts Harris National Fair Housing Training Academy. Since the Academy opened, 282 fair housing professionals have successfully completed this course work. A recent review of the Academy showed that completion of a course leads to increased competence on the job and improved timeliness and quality of case work. To further encourage FHAP agencies to investigate cases in a timely manner, the Department reduces its reimbursement to FHAP agencies when the investigation takes more than 100 days to complete and the complaint is not complex. FHEO regularly monitors and works with FHAP agencies to assist them with lengthy investigations.

But changes to processing can only get us so far. Some enhancement to enforcement may require larger changes. The Fair Housing Act has had few significant amendments since 1988. Without announcing any legislative initiative today, you can be assured we are reviewing coverage under the Act, the way the Act establishes processes for discrimination complaints and guides our partnerships with FHIP grantees and FHAP agencies, and how to be the strongest agency in the second decade of the 21<sup>st</sup> century to combat remaining systemic obstacles to fair housing and equal opportunity.

### **Fair Housing Initiatives Program (FHIP)**

As you know, the Fair Housing Act was enacted as the nation's response to Dr. King's assassination in Memphis, in April 1968. President Johnson consulted with Congress and community leaders and concluded that a singular national commitment to end housing discrimination would both bring the nation together and move us forward. Today, the scourge of housing discrimination continues, sometimes in its old forms, and sometimes in new forms. All must act together against housing discrimination, not just government agencies. That is why the Fair Housing Initiatives Program is so vital to this effort.

Through FHIP, 93 fair housing organizations assist the Department in combating housing discrimination. Private enforcement by fair housing agencies in FHIP is critical to the mission of HUD. These organizations investigate and resolve allegations brought to them by victims of housing discrimination, but they do so in a way that is different and complementary to the work of HUD. When an individual does not want to go through the formal process of a full investigation or wants to speak with advocates right in his or her community, private fair housing groups provide on-the-spot assistance without the administrative and legal requirements of a formal legal complaint. As a result, they are often the first line of assistance for victims of discrimination.

Fair housing enforcement organizations also conduct fair housing testing for the Department, FHAP agencies, and individuals to substantiate allegations of housing discrimination. For example, these organizations test real estate agents and rental managers to ascertain whether they offer the same rent, discounts, and services to all applicants. This becomes key evidence in cases filed with the Department and FHAP agencies. For example, in 2008, Project Sentinel, a FHIP grantee for several years, began receiving complaints from Hispanic families at an apartment complex in Campbell, California. The allegations of the five families were similar in nature: that the resident manager Leticia Descalzi had been rude to them because they “couldn’t speak English”; that Descalzi issued them rent increases not imposed on non-Hispanic households; that they had been subject to different rules than white tenants; and that Descalzi had threatened to “call INS” when the complainants had requested maintenance. In response to these allegations, Project Sentinel undertook two separate rounds of testing at the property. During these tests, Descalzi failed to return phone calls to the Hispanic testers and when the Hispanic testers reached Descalzi, she made disparaging comments that she did not make to the white tester. For example, she told one Hispanic testers she “didn’t want to have to rent to him only to have later to evict him because of noise complaints.” The five families and Project Sentinel filed complaints with FHEO, which we then referred to the California Department of Fair Employment and Housing (DFEH), a FHAP Agency. Immediately upon referral from HUD, DFEH contacted the parties, who confirmed their interest in participating in the early-stage mediation program. Through the mediation agreement, the five families and Project Sentinel received a total of \$45,000 and letters of apology. In addition, the agreement contained significant public interest provisions requiring the respondents to develop and distribute to residents a written fair housing policy, standardize its procedures for notifying residents of prospective rules violations, eliminate restrictions on the number of visitors, and standardize documentation requirements from prospective applicants.

The investigation and assistance that FHIP agencies provide to the public is outstanding. FHIP grantees often work directly with the individuals to remedy the situation. Fair housing organizations also screen, investigate, and/or test complaints before bringing them to the Department. As a result of these efforts, complaints filed with the Department by FHIP grantees

are 20% more likely to result in a settlement, conciliation, or a finding that discrimination occurred, than complaints that are not referred by a FHIP agency.

In addition, these organizations have played a major role to raise national consciousness about fair housing. Each year the Department awards a national fair housing education and outreach grant through FHIP. Under the current national education initiative, the National Fair Housing Alliance in partnership with the Leadership Conference on Civil Rights Education Fund launched with HUD a multilingual national campaign in mainstream and community newspapers, magazines, radio/TV, buses, movie theaters, and other places. This media campaign is enabling consumers to avoid becoming victimized by predatory lending and foreclosure prevention scams and is assisting consumers who are reentering the rental market in understanding their full range of housing choices. In 2009, the campaign received almost \$8.3 million in donated media and resulted in more than 580 million audience “impressions.”

### **Housing Fairness Act of 2009**

You have invited me here today to discuss not only the Department’s current fair housing strategy, but also H.R. 476-*The Housing Fairness Act of 2009*. H.R. 476 is consistent with the priority the Department places on fair housing enforcement and enables us to do more than we can today. If enacted, H.R. 476 would provide a great deal of support for fair housing efforts across the country through increased testing for violations, enforcement against those who have violated fair housing laws, and study of the causes and effects of discrimination.

The first section of the bill requires HUD to conduct a nationwide testing program to detect, document, and measure housing discrimination across the country. We fully support this proposal. Now, more than ever, testing is an indispensable part of fair housing enforcement. Housing discrimination today is often much more subtle, and a consumer is not well positioned to make meaningful comparisons of treatment. Paired testing, however, is ideally suited to uncover such abuses.

Testing is widely accepted by courts, and many courts have found the testimony of testers to be decisive in housing discrimination cases. As early as 1973, the U.S. Court of Appeals for the 10<sup>th</sup> Circuit noted in Miller v. Hampton, 477 F.2d 908, 910 n. 1 (10<sup>th</sup> Cir. 1973), that “it would be difficult indeed to prove discrimination in housing without this means of gathering evidence.” The 7<sup>th</sup> Circuit supported this and observed in Richardson v. Howard, 712 F.2d 319, 321 (7<sup>th</sup> Cir. 1983) that testing evidence is “frequently valuable if not indispensable.”

We too have found testing to be indispensable in many of our investigations. When the Department learned that an apartment complex in Scranton, Pennsylvania, was advertising itself as “21 and older,” we initiated an investigation and contracted with the Fair Housing Council of Montgomery County, a fair housing organization, to conduct on-site and telephone tests of the property. The testing evidence was critical to the case. The property manager told one tester, “I

just want to let you know that if you decide to move in, your daughter will be the only child in here.” Another tester was given a brochure that contained the statement, “The Mill is an apartment community catering to young professionals and all occupants must be twenty-one years or older.” The Department charged this case; the complex has been found liable; and the penalty phase is now pending in federal court.

Fair housing testing was vital again in establishing a case of racial discrimination that the Department charged in 2009. In the summer of 2008, two different African American renters sought to live in a 64-unit townhouse property in Sagamore Hills, Ohio. The manager and part-owner of the property informed them that nothing was available. One of the applicants contacted Fair Housing Advocates Association, a fair housing organization in Ohio, to report suspected discrimination. Fair Housing Advocates Association sent testers to the property. The manager informed the white tester on four different occasions that a unit was available and twice invited the white tester to tour the unit. In contrast, the manager informed the African American tester that nothing was available. On September 28, 2009, HUD charged the owners and managers with violating the Fair Housing Act.

The \$20 million nationwide testing program envisioned by H.R. 476 would lead not only to greater enforcement efforts, like the cases described above, but would also deter discrimination. H.R. 476 would authorize more than double the amount currently spent on testing, giving landlords and real estate agents a much greater likelihood of being tested. And as we have seen in numerous other contexts, an increased risk of being caught leads to greater compliance with the law. Moreover, this testing program will build on the Department’s decennial housing discrimination study. Through this program, the Department will be able to conduct follow up tests of housing providers that showed evidence of disparate treatment during the study. In addition, fair housing organizations will be able to target testing to those areas of the country that showed high levels of discrimination in the study. We support expansion of testing and we hope the committee will state in the bill or enter into the record its intention that this authorization would build on the Department’s decennial housing discrimination study rather than substitute for it.

I fully support the direction of this initiative and note that an effective program to properly administer it is essential to its success. As the former executive director of the Discrimination Research Center and through our own experience here at HUD, I appreciate the effectiveness of testing as a law enforcement tool, and recognize the training, planning, and monitoring essential for it to be admissible in court. In order for testing to have the greatest effectiveness as a civil rights law enforcement tool, the Department should be provided the requisite staffing and technology, such as a database to track testing and training for grantees and staff. In addition, the Department of Justice is an important partner in the fight for fair housing, and the provisions of HR 476 providing for use of the national testing program results should be

clarified to ensure that DOJ, as well as state and local agencies, can bring enforcement actions based on those results.

H.R. 476 would also require annual reports from the Department on its enforcement testing activities. We would like to work with you on the parameters of reporting to ensure accountability while protecting the methodology and individual content of the tests as any law enforcement agency would do with its investigatory tools.

In addition, as we expand fair housing enforcement and testing across the country, it may be harmful to cap the amount funding for education and outreach to the public and housing providers or to limit the amount that can be dedicated to establishing new fair housing organizations. In order to expand fair housing to underserved areas and underserved groups, we need to support development of new fair housing organizations. Further, as new challenges arise, we may need to dedicate funding in ways we cannot anticipate at this time. For example, in HUD's FY2010 budget, the Department responded to the economic crisis by dedicating funding to educate homeowners about discriminatory housing and refinancing schemes. In addition, the Department allocated funding to allow consumer groups to acquire the skills and capacity to handle the discrimination aspects evident in so many of their complaints. This need could not have been fully anticipated five years ago. For those reasons, I ask that you provide the Department with maximum flexibility to respond to the circumstances at hand and not limit the amount of funding per initiative.

On the whole H.R. 476 corresponds to the Department's fair housing priorities. For example, the request in the Act that the Department promulgate regulations regarding affirmatively furthering fair housing is fully consistent with the work already undertaken to develop a rule.

The tools provided by H.R. 476 will advance the Department's enforcement of the nation's fair housing laws in the 21<sup>st</sup> Century.

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