THE CASE FOR FAIR HOUSING

2017 Fair Housing Trends Report

NFHA
National Fair Housing Alliance

Acknowledgments

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NFHA
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About the National Fair Housing Alliance

Founded in 1988 and headquartered in Washington, DC, the National Fair Housing Alliance (NFHA) is the only national organization dedicated solely to ending discrimination in housing. NFHA is the voice of fair housing and works to eliminate housing discrimination and to ensure equal housing opportunity for all people through leadership, education and outreach, membership services, public policy initiatives, community development initiatives, advocacy, and enforcement.

NFHA is a consortium of more than 220 private, nonprofit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. NFHA recognizes the importance of home as a component of the American Dream and aids in the creation of diverse, barrier-free communities throughout the nation.

PROLOGUE

If there is one key thing to be learned from this report, it is that we did not get here by accident. By "here," we mean a nation segregated largely along racial and ethnic lines, with opportunities in abundance in some communities and severely or wholly lacking in others. Children do not go to lower quality schools by choice or eat unhealthy food because that is what they like. Children go to different quality schools and eat different quality food because that is what is available to them. Segregated communities do not exist by accident. Disparities in opportunity do not exist by accident.

This is the story of segregation in the United States. We need to know the story and learn from the story, and do something meaningful to change the arc of the story. The story goes back hundreds of years and its chapters are headlines about governmental policies, industry practices, and individual discrimination. The word racism is not written on any page, but it can be read between the lines. It's a story of racially-restrictive real estate covenants, toxic red lines on mortgage lending maps, blockbusting and racial steering by real estate agents, redlining by homeowners insurance companies, exclusionary zoning by local communities, and community opposition to affordable housing. It goes back to land grants and housing opportunities for White persons that were deliberately and structurally denied to Black people, and it comes forward to the millions of instances of housing discrimination perpetuated today and the deliberate acts of institutions and communities to prevent people of color from living in their neighborhoods. Segregated communities do not exist by accident. Disparities in opportunity do not exist by accident.

And that means we can do something about it.

We have a tool, an incredible tool: The Fair Housing Act. The Fair Housing Act was passed to honor the legacy of Dr. Martin Luther King, Jr. Dr. King had a powerful vision of what our nation could look like. . . what our nation could *be*. The Fair Housing Act could get us there. And we would all be better off for it.

This is **The Case for Fair Housing.**

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EXECUTIVE SUMMARY

We live in a society that is racially and economically divided. In fact, the U.S ranks lowest when compared to other well-to-do countries when it comes to data on poverty, employment, income and wealth inequality, education, health inequality, and residential segregation.[1] The inequalities of today were centuries in the making– resulting from government policy, housing industry practices, individual acts of discrimination, and local zoning and land use barriers. Current policies and practices reinforce and perpetuate segregation and inequality. We simply cannot prosper as a nation with this level of inequality and division. Housing lies at the very center of this phenomenon. What we do about access to housing opportunity and the dismantling of segregation affects the entire fabric of our nation. The achievement of fair housing and dismantling of segregation are essential to creating access to opportunity for everyone. In this **2017 Fair Housing Trends Report,** we make **The Case for Fair Housing.**

Every major metropolitan area in the United States is heavily segregated by race and ethnicity, but we did not come to this deeply divided state by accident (Section I). Decades of government policymaking and rampant housing discrimination shaped the segregated neighborhoods that we see today. Many of these government policies originated in the 1930s and 1940s. The most notable among them related to discrimination in public housing, the Home Owners Loan Corporation (HOLC), and the Federal Housing Administration (FHA). In tandem with these government policies were systemic practices in the private housing market, including racially restrictive covenants, discrimination by the real estate industry, and redlining by lending and homeowners insurance corporations.

Contemporary versions of the same practices continue to this day. Racial and ethnic disparities in access to credit, the compounding effects of the subprime lending and foreclosure crisis, and modern practices of discrimination, racial steering, and redlining have perpetuated racial segregation. As a result, in today's America, approximately half of all Black persons and 40 percent of all Latinos live in neighborhoods without a White presence. The average White person lives in a neighborhood that is nearly 80 percent White. Persons with disabilities are also often segregated or prevented from living in their community of choice, both because a great deal of housing is inaccessible and because they experience high levels of discrimination.

Where one lives determines one's access to an array of opportunities and dictates many life outcomes around education, employment, health, and wealth (Section II). Widespread residential

1 Grusky, David and Clifton B. Parker, "Stanford report shows that U.S. performs poorly on poverty and inequality measures." Stanford News, February 2, 2016. Available online at: http://news.stanford.edu/2016/02/02/poverty-report-grusky-020216/.

segregation has gone hand in hand with mechanisms to limit opportunity and home ownership in neighborhoods of color, leading to significant gaps in racial and ethnic wealth and achievement. These mechanisms include lack of access to quality credit, lack of investment, absence of jobs or transportation to jobs, insufficient fresh food and quality health care, and inadequate public institutions, schools, and services. This is not only harmful for those living in neighborhoods of color: Ensuring that every neighborhood is a place of opportunity is fundamental to America's success in a world that is increasingly interconnected with a global economy that is highly competitive.

Fortunately, there is an infrastructure in place to help us pursue the promise of equal access to opportunity for all. The Fair Housing Act lies at the center of this structure (see Section III for more information about the Fair Housing Act). Private fair housing organizations and several government agencies and programs make up the framework that tackles housing inequality. These organizations, and private fair housing agencies in particular, do tremendous work in educating consumers and the industry about their rights and responsibilities; assisting individuals and families who are victims of housing discrimination; and addressing systemic barriers to housing opportunity that perpetuate segregation. These organizations process significant numbers of complaints, but the number of complaints represents only the tip of the iceberg that is the incidence of housing discrimination. Thousands of cases have been brought to secure the rights of individuals and to eliminate policies and practices that deny housing opportunity.

Despite this work, however, the rates of housing discrimination and segregation that occur in our nation today signify that we need a stronger, better-funded, more effective system for addressing discrimination and segregation.

Every year, the National Fair Housing Alliance (NFHA) compiles data from a comprehensive set of fair housing organizations and government agencies to provide a snapshot of what housing discrimination looks like today (Section IV). Some of the highlights from the 2016 data include the following data points:

- There were 28,181 reported complaints of housing discrimination in 2016. Of these, private fair housing organizations were responsible for addressing 70 percent, the lion's share of all housing discrimination complaints nationwide.
- 55 percent of these complaints involved discrimination on the basis of disability, followed by 19.6 percent based on racial discrimination, and 8.5 percent based on discrimination against families with kids.
- 91.5 percent of all acts of housing discrimination reported in 2016 occurred during rental transactions.

There were also a number of notable fair housing cases in 2016 that highlight the persistence and variability of housing discrimination in this nation (Section V). These include the following

FAIR HOUSING TRENDS IN 2016

Housing discrimination often goes unreported or undetected. It is estimated that there are over

4 MILLION

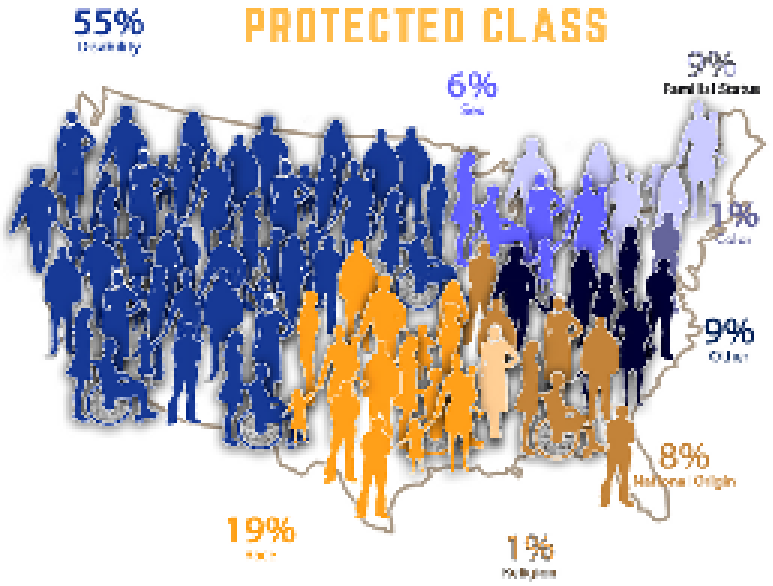
instances of housing discrimination annually in the rental market alone.

In 2016, there were

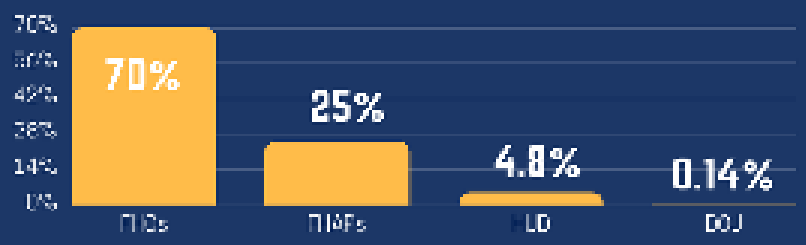
28,181

reported complaints of housing discrimination across the USA.

PERCENT OF COMPLAINTS BY PROTECTED CLASS



PERCENT BY REPORTING AGENCY



Private Fair Housing Organizations (FHOs) processed the overwhelming majority of housing discrimination complaints, followed by Fair Housing Assistance Program (FHAPs) agencies, HUD and DOJ.

allegations:

- widespread sexual harassment by a housing authority's employees;
- racially restrictive bylaws of a homeowners' association;
- a University's practice of denying its students' reasonable accommodation requests;
- discriminatory targeting of lending services away from Black mortgage applicants;
- denial of mobile home rentals to Black applicants;
- discriminatory identification requirements of prospective renters from foreign countries;
- denial of an affordable housing zoning application in response to discriminatory opposition;
- discriminatory concentration of affordable housing;
- refusal to rent to people with mental disabilities;
- discriminatory targeting of predatory loans against borrowers refinancing their mortgages;
- an insurance policy limiting coverage for landlords that rent to Section 8 tenants;
- a city's practice of administering housing programs that are not accessible to people with disabilities;
- failure to design and construct accessible multifamily housing; and
- discriminatory maintenance and marketing of bank-owned, post-foreclosure properties.

A few key issues were additionally

important in 2016. The first, brought to light by recent actions by Facebook and Airbnb, involves fair housing rights in the context of social media platforms and in the shared economy. The second addresses the need to apply fair housing laws in counteracting the recent surge in hate crimes, harassment, and housing-related hate activity. And third, the first round of cities and jurisdictions required to implement HUD's new Affirmatively Furthering Fair Housing rule took their initial steps in 2016, and we are in the process of learning how these requirements will help us fulfill our promise as a nation to dismantle residential segregation and promote opportunity in all neighborhoods.

There are a number of ways we can better tackle housing discrimination, address segregation, and work toward a more inclusive society (Section VI). Among these are the following recommendations:

- **Congress and the federal government must significantly increase the level of funding for private fair housing organizations, HUD, and public enforcement agencies at the state and local level** to launch a large sustained effort to support existing and create additional fair housing organizations, foster systemic approaches to eliminating segregation, and address governmental and institutional barriers at local levels.
- **The philanthropic and corporate community must provide meaningful and substantive support for fair housing** as part of a holistic approach to achieving lasting change.
- **Create an independent Fair Housing Agency or reform HUD's Office of Fair Housing and Equal Opportunity.** A strong, independent fair housing agency could more effectively address discrimination and segregation throughout the United States. In the absence of such an organization, HUD should be restructured so that the Office of Fair Housing and Equal Opportunity plays a more meaningful role and functions effectively in its many important responsibilities.
- **Strengthen the Fair Housing Initiatives Program** to support qualified, full-service nonprofit fair housing centers that provide the bulk of fair housing education and enforcement services to our nation. This includes funding the program at a minimum level of $52 million.
- **Effectively implement the Affirmatively Furthering Fair Housing Rule and hold grantees accountable** to break down barriers to opportunity and ensure that all communities are inclusive and that individuals have access to the opportunities they need to flourish.
- **Improve equal access to credit** so that individuals and communities previously denied quality credit at a fair price may have fair access to good credit that supports home ownership, small businesses, and economic growth.

- **Reestablish the President's Fair Housing Council** to establish a multidisciplinary approach well suited to addressing the policies and systems that have a discriminatory impact, perpetuating entrenched patterns of metropolitan segregation.

The Fair Housing Act was designed to achieve two goals: to eliminate housing discrimination and to take significant action to overcome historic segregation and achieve inclusive and integrated communities. But as Senator Edward Brooke, co-author of the Fair Housing Act, stated in a 2003 speech, "The law is meaningless unless you're able to enforce that law. It starts at the top. The President of the U.S., the Attorney General of the U.S., and the Secretary of HUD have a constitutional obligation to enforce fair housing law."[2] Indeed, our elected leadership has the obligation to work toward making racially, ethnically, and economically integrated neighborhoods a reality, and we as citizens have an obligation to demand that change through policymaking and strong enforcement.

Achieving a more equitable society represents a significant challenge, but it is attainable. As Justice Kennedy stated in the 2015 Texas Department of Housing and Community Affairs v. The Inclusive Communities Project Supreme Court opinion: "Much progress remains to be made in our nation's continuing struggle against racial isolation. In striving to achieve our 'historic commitment to creating an integrated society,' we must remain wary of policies that reduce homeowners to nothing more than their race." He then concludes by saying: "The court acknowledges the Fair Housing Act's role in moving the nation toward a more integrated society."[3]

Though challenges continue to be placed in our way, it is possible for our nation to move toward a society that is integrated and inclusive, and in which everyone has equal access to opportunity. It begins with fair housing.

Note: *In this report, we focus largely on segregation on the basis of race (Black/White). Discrimination and segregation on the basis of race is foundational to the discussion of inequities in this nation and the urban neighborhood construct. We are also well aware of discrimination against and segregation of Latinos, Asian Americans, Native Peoples, and others and the ramifications of this behavior on current practices and strategies for dismantling segregation and addressing discrimination against persons in all protected classes. This report focuses largely, however, on Black/White segregation.*

Note on language in this report: *As a civil rights organization, we are aware that there is not universal agreement on the appropriate race or ethnicity label for the diverse populations in the United States or even on whether or not particular labels should be capitalized. We intend in all cases to be inclusive, rather than exclusive, and in no case to diminish the significance of the viewpoint of any person or to injure a person or group through our terminology. For purposes of this report, we have utilized the following language (except in cases where a particular resource, reference, case or quotation may use alternate terminology): Black, Latino, Asian American, and White. In prior publications, we*

2 Senator Edward Brooke, Remarks at the National Fair Housing Alliance National Conference, June 30, 2003.

3 Decision available online at: https://www.supremecourt.gov/opinions/14pdf/13-1371_m64o.pdf.

have utilized the term "African American," but there are some who argue that this term is exclusive and we intend to be as inclusive as possible. We are also aware than many persons prefer the term "Hispanic." We intend in this report to include those who prefer "Hispanic" in the term "Latino" and intend no disrespect. We refer to "neighborhoods of color" or specify the predominant race(s) of a neighborhood, rather than utilizing the term "minority." We also use the term "disability," rather than "handicap" (the term used in the Fair Housing Act").

THE CASE FOR FUNDING FAIR HOUSING

The importance of increased funding and support of fair housing education and enforcement is far too important to place in the recommendations section at the end of this report. Fair housing and the creation of inclusive, diverse communities are the underpinnings of opportunity, economic and business success, community harmony, and the very fabric of a successful nation. Yet fair housing education and enforcement programs, both public and private, are not a national priority and are severely underfunded. They are not just underfunded by millions of dollars. They are underfunded by hundreds of millions of dollars, perhaps billions. Why is that?

Part of the problem is that many of those who regard themselves as unaffected by inequities do not care that there are inequities. Some may believe they are insulated from inequities because of their wealth, race, religion, family status, or lack of a disability. But all communities do better—all people do better—when others do better. Increased opportunity for all does not mean decreased opportunities for others.

Part of the problem is that many prospective funders of fair housing are hesitant to support fair housing initiatives because they have the misconception that the work being done is somehow in conflict with their mission or corporate agenda, when nothing could be further from the truth. If a corporation supports the efforts of a local fair housing organization to enforce the law against discriminatory real estate companies or lending institutions, the corporation's employees, customers, and communities all benefit. Funders need to understand the benefits of fair housing to the other work they do, the communities they serve, their employees and customers, and their bottom line.

Part of the problem is that the fair housing advocacy community is modest in scale, due to lack of resources and lack of understanding by the public and decision-makers about the critical role housing discrimination plays in the inequities of our entire society. This lack of funding keeps the knowledge level about the importance of fair housing low, which further prevents us from obtaining the substantial funding required to address this critical component of a prosperous, productive, and harmonious nation.

Perhaps the biggest problem is that the discrimination/segregation problem is so big and the consequences so enormous that it can seem as though progress is impossible. As long as we believe that, meaningful progress will be difficult, but it's not impossible. Organizations like NFHA have made tremendous advancements in reducing discrimination and segregation, but have not had access to consistent and sufficient funding to maintain advancements or build momentum when important milestones are achieved. This dynamic needs to change in a dramatic and meaningful way.

Congress and the federal government must significantly increase the level of funding for private fair housing organizations, HUD, and public enforcement agencies at the state and local level. States and localities should provide funding for fair housing as well. There must be a large sustained effort to support existing and create additional fair housing organizations, foster systemic approaches to eliminating segregation, and address governmental and institutional barriers at local levels. This has to include funds for creating a sufficient pool of workers, sustained training, education and outreach, systemic investigations, cooperation with industry, advocacy for better laws and regulations, etc. This has to include funds to educate people about their fair housing rights and responsibilities and the importance of fair housing to every person in this nation.

Congress and the federal government must significantly increase the level of funding for private fair housing organizations, HUD, and public enforcement agencies at the state and local level.

The philanthropic and corporate community must provide meaningful and substantive support for fair housing. These organizations must understand that achieving meaningful and lasting change requires a holistic approach. Every foundation that supports education, health, employment, access to credit, etc. should also be supporting fair housing. Every corporation that donates to community development, public service, job training, and other revitalization strategies should also be supporting fair housing. Housing opportunity affects all those things supported by foundations and corporations: education, health, employment, transportation, quality food and environment, public services…**everything**. Tackling these problems cannot be done piecemeal, and they cannot be ameliorated without addressing the key fair housing issues that helped create these problems in the first place. Instead of seeing the problem of segregation as intractable, it should be seen as foundational. You can pour all the money in the world into inequities in all these other areas, but if you do not address the segregation and discrimination that are the foundation of these inequities, it will be difficult to make any meaningful progress.

Money is never the entire answer to any problem. But if one had to identify a single program to support that would have the greatest positive impact on the health and welfare of this nation, it would be fair housing.

SECTION I. THE POLICIES AND PRACTICES THAT CREATED AND SUSTAIN RESIDENTIAL SEGREGATION

Segregation did not happen by accident. In this chapter, we provide an overview of some of the policies and practices that created and perpetuate the existence of segregation in the United States. Segregation is not by itself, perhaps, inherently bad, although it chafes at the very principles on which our nation was founded. But segregation does not exist in a void. It has been accompanied by actions that have turned many neighborhoods of color into neighborhoods without access to quality credit or investments, good schools, healthy food, safe streets, a healthy environment, affordable and reliable transportation, good jobs, and the other opportunities people need to flourish. Making all of our neighborhoods places of opportunity is fundamental to America's success in a world that is increasingly interconnected and in a global economy that is highly competitive. In order to do so, we must understand how we got here so we can more effectively implement quality solutions.

In this Section...

We cover:

- How a combination of government policymaking and systemic practices in the private market shaped the segregated neighborhoods we see today.
- Discrimination against and segregation of people with disabilities
- How contemporary versions of the same practices continue today, including modern-day redlining, steering, the existance of a dual credit market, and the compoudning effects of subprime, predatory lending and foreclosure crisis.

Although we have made progress over the years, we live in a country that is heavily segregated. This segregation has an impact on each of us individually and on our nation as a whole. Many people assume that the segregated neighborhoods that exist in virtually all American cities result from the aggregated choices of many individuals, each choosing to live near people who "look like them." A review of our history, however, shows other forces at work: For more than a century, achieving and maintaining segregated neighborhoods was inherent in the practices of lending institutions, real estate agents, and neighborhood associations. At the same time, residential segregation was also the explicit policy of the government at the federal, state, and local levels.

The Foundation of Residential Segregation

To fully understand the segregation that exists in our neighborhoods today, we have to look back to

the Colonial Era, when headrights (land grants) were given to new settlers.[4] Created with the establishment of Jamestown, Virginia, and eventually expanded throughout the early colonies, new arrivers, willing to work hard, received free land to establish homes and farms. In much the same way, Land Grants were issued to veterans serving in the American Revolutionary War as payment and compensation for service. Later, the homestead grant system was enacted under President Abraham Lincoln to award land to pioneers willing to build homes, farms, and other businesses in newly established states and territories. The Homestead Act encouraged westward migration and provided settlers with 160 acres of land each to use for their own enterprises. Once the homesteaders fulfilled their obligations, the land and the wealth that came with it belonged to them. By 1900, the U.S. had issued 80 million acres of land to people establishing new residencies;[5] ultimately, 270 million acres were given to U.S. citizens.[6] Headrights, Land Grants, and Homestead Grants enabled millions of people[7] to obtain homeownership status and amass land and wealth for themselves and their families. However, these laws primarily benefited Whites. People of color, and in particular Black people, could not take advantage of these programs.

Headrights were given to slave owners for each slave the petitioner imported into the U.S., receiving 50 acres of land for every imported slave, until the system was changed. Homestead grants were issued to a head of household who was "a citizen of the United States."[8] Of course, Blacks did not wholly obtain citizenship status until the 14th Amendment was passed in 1868.[9] But discrimination against people of color in the Homestead program was prolific, and Congress was compelled during the Reconstruction Era to include language in an amendment to the Homestead Act that made it illegal to make a distinction "on account of race or color"[10] in the issuance of homesteads.

According to housing scholar and historian Douglas Massey, there was a short time after the Civil War when "it seemed that Blacks might actually assume their place as full citizens of the United States."[11] But by the time the Reconstruction Era came to a close in 1877, the tone of the nation, particularly at the federal level, changed dramatically. All of the Black members of Congress were kicked out. The nation's initial attempt to "reconstruct" the South and create a nation where people of color could continually gain equal access to opportunities was stopped cold. Jim Crow laws were passed throughout the country, with many of these laws used to create segregated residential communities, create opportunities for Whites, or prevent people of color from gaining access to the same benefits.

4 See, for example, the First Charter of Virginia, which granted 50 miles of land to certain colonists arriving at the Virginia Colony in 1609. Available at: http://avalon.law.yale.edu.

5 https://www.loc.gov/rr/program/bib/ourdocs/Homestead.html.

6 The government gave away 270 million acres of land or 10% of the country's total land area. The overwhelming majority of this land was given to White citizens. http://www.pbs.org/race/000_About/002_04-background-03-02.htm.

7 Over 1.6 million Homestead grants were granted by the United States government. See https://www.archives.gov/education/lessons/homestead-act.

8 37th Congress, Session II, Chapter 75, 1862. See Homestead Act, available at https://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=012/llsl012.db&recNum=423.

9 The Civil Rights Act of 1866 did confer citizenship status to Black persons; however, there was a great deal of controversy about whether or not Congress had the authority to grant citizenship to people in his manner. When the 14th Amendment was ratified in 1868, that sealed the matter. The bestowment of citizenship status for Black Americans was now a part of the Constitution.

10 See Revised Statutes of the Homestead Act, Section 2302, 424 available at https://babel.hathitrust.org/cgi/ pt?id=hvd.32044103137394;view=1up;seq=444.

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

Racist attitudes became more prevalent and their manifestations, including violence and destruction of property (often with dynamite), became increasingly harmful. Increasingly more common during the 1920s and thereafter, White elected officials, developers, lenders and residents established discriminatory housing and zoning policies and practices designed to insulate "their" neighborhoods from Black residents. Various "neighborhood improvement associations" worked to win zoning restrictions that would fall hardest on Black households, threatened to boycott real estate agents who were willing to work with Black homebuyers, and sought to increase property values so they would only be within the reach of White buyers. Contracts, known as "restrictive covenants," were drawn up among residents of a neighborhood so that White residents were legally prohibited from selling or renting to prospective Black residents and other people of color.[12]

Government Policies that Shaped Segregation

As these practices were ongoing, government agencies followed a similar trajectory. This history set the stage for many of the government policies that were put in place in the 1930s and 40s, between the Great Depression and the immediate aftermath of World War II. Most notable among these were policies related to public housing, the Home Owners Loan Corporation (HOLC), and the Federal Housing Administration (FHA). While these New Deal programs delivered great benefits to many White Americans, they did just the opposite for people of color.

Public Housing

Public housing in the United States has its roots in the New Deal and evolved through and beyond the post-World War II era. The debate over public housing invoked questions of what to do about low-income, inner-city neighborhoods that were seen by some as slums, whether and how the government should provide for the housing needs of its citizens, and whether government action in this arena would compete with the private sector. Embedded in the debate over all of these issues was the question of race and whether or not government policy should address racial segregation.

The United States Housing Act of 1937 established a federal public housing authority to provide financial assistance to local public housing agencies to develop, acquire, and manage public housing projects. The law also required that one unit of slum housing be demolished for every public housing unit built.[13] Under the administration of Harold Ickes, the program had a rule that *public housing could not alter the racial characteristics of the neighborhood in which it was located.*[14] Against a backdrop of policies and practices that created segregated communities, this meant that public housing was also segregated. Only a modest number of units were developed under this program, and it was not until after World War II that Congressional attention returned to the issue of public

12 See NFHA's 2008 Trends Report for more on this topic.

13 von Hoffman, Alexander, "A Study in Contradictions: The Origins and Legacy of the Housing Act of 1949." Housing Policy Debate, Volume 11, Issue 2. Fannie Mae Foundation, 2000.

14 Richard Rothstein, "The Making of Ferguson," The American Prospect, Fall, 2014, available at http://prospect.org/article/making-ferguson-how-decades-hostile-policy-created-powder-keg.

housing, in the Housing Act of 1949. That legislation authorized loans and subsidies for 135,000 low-rent units per year, up to a total of 810,000. [15]

During the debate over the bill, opponents proposed a "poison pill" amendment requiring that public housing be integrated. They knew that Southern Democrats, who otherwise supported public housing, would not support the bill if it contained this provision. As described by Richard Rothstein, "Liberals had to choose either segregated public housing or none at all. Illinois Senator Paul Douglas argued, 'I am ready to appeal to history and to time that it is in the best interests of the Negro race that we carry through the [segregated] housing program as planned, rather than put in the bill an amendment which will inevitably defeat it.'"[16]

In the end, the Housing Act of 1949 did not address the question of segregation in public housing. That was left to local officials. As a result, "…public housing programs were segregated by law in the south and nearly always segregated in the rest of the country in deference to local prejudice, with housing projects for Blacks usually adjoining segregated neighborhoods or built on marginal land near waterfronts, highways, industrial sites, or railroad tracks. As one historian noted, 'The most distinguishing feature of post-World War II ghetto expansion is that it was carried out with government sanction and support.'"[17]

Home Owners Loan Corporation

The Home Owners Loan Corporation (HOLC) was established in 1933, in the wake of the Great Depression, with the mission of stabilizing the housing market and protecting homeownership. At that time, the country was experiencing unprecedented rates of foreclosure. Between 1933 and 1935, the HOLC refinanced more than 1 million mortgages–one in ten mortgages on owner-occupied, non-farm residences in the country–to the tune of $3 billion. [18]

One of the great contributions of the HOLC was the creation of the low down payment, long-term, fixed-rate, fully-amortizing mortgage. Although the 30 year, fixed-rate loan is the most common type of mortgage in the U.S. housing market today, before the HOLC mortgages had very short terms (five to ten years) and were non-amortizing, so that at the end of the five- to ten-year period, borrowers needed to take out a new loan to pay off the remaining principal balance. The HOLC's innovative mortgage product eliminated much of the volatility of the mortgage market and made mortgages (and therefore homeownership) less risky for borrowers.

Because it played such a significant role in the mortgage market, the HOLC was very concerned

15 The Housing Act of 1949 authorized $1 billion for loans and $500 million in grants to help cities acquire, assemble and redevelop slums and blighted property for either public or private redevelopment. For more details, see von Hoffman, op.cit. and Abrams, op. cit.

16 Rothstein, op cit.

17 "The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity," December, 2008. Available at http://www.civilrights.org/publications/reports/fairhousing/historical.html#_ednref36.

18 Kenneth T. Jackson, "Crabgrass Frontier: The Suburbanization of the United States," New York, Oxford University Press, 1985, p. 196.

about understanding and assessing the factors that might contribute to mortgage risk, including the risk that properties would decline in value. Such declines would mean that, if the borrower defaulted, the home could not be sold at a high enough price to pay off the remaining loan balance. Therefore, the HOLC undertook a survey to assess risk in cities all across the country–virtually all of those with populations of 40,000 persons or greater. Through this undertaking, the HOLC standardized and formalized the appraisal process. Its methodology was not new; rather, it codified the typical private sector practices of the time, which reflected a view of neighborhood dynamics and their impact on property values that was blatantly discriminatory against Black people, immigrants from certain countries, and some religious groups.[19] That view held that the presence of these people contributed to neighborhood deterioration and the decline in property values, and that clear lines of racial and social demarcation were necessary to protect property values in the most desirable areas.

The HOLC appraisal methodology divided neighborhoods into four categories: Best, Still Desirable, Definitely Declining, and Hazardous, or A, B, C and D. On the so-called Residential Security maps on which its survey results were recorded, these were color-coded green, blue, yellow, and red, respectively. Neighborhoods could be coded red, or "hazardous," for a number of reasons, one of which was the presence of Blacks or other "inharmonious" racial or social groups. This is the origin of the term "redlining." To view an example of one of these maps, see page 22.

The HOLC itself made loans in all types of neighborhoods, including some in those neighborhoods coded yellow and red on the residential security maps. It had enormous influence over the practices of private lenders, however, and those lenders were more risk-averse. These institutions used the HOLC's neighborhood classification system to severely constrict the flow of mortgages to neighborhoods with the lowest ratings. Further, its methodology influenced another federal housing agency, the Federal Housing Administration (FHA). Thus, the HOLC set the stage for widespread disinvestment in communities of color and the denial of mortgage credit to the residents of those communities. This, in turn, severely constrained the housing choices available to Blacks and other people of color. As noted by Douglas S. Massey and Nancy A. Denton in their book, *American Apartheid,* "[The HOLC] lent the power, prestige and support of the federal government to the systematic practice of racial discrimination in housing."[20]

We know that Latinos are largely segregated from White, non-Hispanic neighborhoods. However, historical housing discrimination specifically against Latinos is not well documented. This may be due in part to the fact that experience varied significantly depending on geographic region and because of the variety of races and national origins that are considered Hispanic or Latino. A range of discriminatory policies and practices did exist and actively separated Latinos from White residential communities. In the Los Angeles region, for example, the 1939 HOLC categorization of neighborhoods characterized Mexicans in one neighborhood as "the right mix of social class,

19 The most extensive set of HOLC maps available, many accompanied by the descriptions that explain the classification assigned to each neighborhood, can be found on the website "Mapping Inequality," at https://dsl.richmond.edu/panorama/redlining/#loc=4/36.71/-96.93&opacity=0.8.

20 Douglas S. Massey and Nancy A. Denton, "American Apartheid: Segregation and the Making of the Underclass," Harvard University Press, Cambridge, MA, 1993. p. 53.

occupation, and skin color to 'climb the ladder of whiteness.'" This neighborhood received a "C" rating. On the other hand, in the nearby San Gabriel Valley Wash neighborhood, one assessor referred to the neighborhood as full of "dark skinned babies" and "peon Mexicans." It comes as no surprise that the neighborhood was assigned a "D" rating – hazardous. [21]

> **"[The HOLC] lent the power, prestige and support of the federal government to the systematic practice of racial discrimination in housing."**

Federal Housing Administration

The Federal Housing Administration was established by the National Housing Act of 1934,[22] one year after the HOLC. FHA was intended to help stabilize the mortgage market, facilitate safe and sound mortgage lending on reasonable terms, and alleviate the unemployment which still plagued the nation in the post-Depression years, particularly in the construction industry.[23] Unemployment was high and the nation was experiencing a severe housing shortage, and FHA was designed to help address both problems. It did this by insuring loans for both the construction and the sale of new homes, thereby putting people to work in the construction trades and creating new units to help meet housing demand. FHA built on the mortgage model developed by the HOLC, adding minimum construction standards and low down payment requirements. Previously, most mortgages required down payments of 30 percent or more, but FHA lowered the down payment requirement to 10 percent, a much more manageable amount for working families. This safer, more sustainable mortgage product resulted in significantly lower default and foreclosure rates, and thereby led to lower interest rates. The combination of a modest down payment and lower interest rates made homeownership possible for many American families of modest means. In fact, FHA loans were so accessible and affordable that it was often cheaper for families to purchase new homes with loans insured by FHA than to rent existing homes of comparable size. Families for whom homeownership had been previously out of reach were now able to build wealth through the equity in their homes and find a path to the middle class.

FHA support for builders spurred the construction of suburban tract developments all across the country. Perhaps the most famous of these is Levittown, on New York's Long Island, where builders William and Alfred Levitt constructed 17,400 modestly-priced homes on what had been 4,000 acres of potato fields near the Town of Hempstead. The modest homes that families bought

21 Reft, Ryan, "Segregation in the City of Angels: A 1939 Map of Housing Inequality in L.A." KCET Television, January 19, 2017. Available online at: https://www.kcet.org/shows/lost-la/segregation-in-the-city-of-angels-a-1939-map-of-housing-inequality-in-la.

22 Pub.L. 84–345, 48 Stat. 847.

23 Douglas S. Massey and Nancy A. Denton, "American Apartheid: Segregation and the Making of the Underclass," Harvard University Press, Cambridge, MA, 1993. p. 53.

for prices in the $8,000-10,000 range in the 1940s[24] now sell in the $400,000 price range.[25] In other words, the families in Levittown for whom FHA loans made homeownership possible have had the chance to amass significant wealth through the home equity they built up. Unfortunately, in accordance with FHA policy, all of those families were White.

Through its affordable mortgage product and its support for widespread suburban subdivisions, FHA had an enormous impact on the development of American cities and suburbs and on the homeownership rate in this country. FHA adopted the HOLC's approach to the housing market, including its residential security maps, appraisal methodology, and belief that the presence of Black residents and other "undesirable" racial or social groups had a negative impact on neighborhood stability and property values. These principles were enshrined in the FHA Underwriting Manual, which stated, "If a neighborhood is to retain stability, it is necessary that the properties continue to be occupied by the same social and racial classes."[26] The manual advocated the use of deed restrictions, both with respect to the types of structures built and the people who could occupy them: "Sec. 228. Deed restrictions are apt to prove more effective than a zoning ordinance in providing protection from adverse influences. Where the same deed restrictions apply over a broad area and where these restrictions relate to types of structures, use to which improvements may be put, *and racial occupancy,* a favorable condition is apt to exist."[27] (Emphasis added) In Sec. 284, the manual notes that recorded deed restrictions are the most effective and should include, among other things, "(g) Prohibition of the occupancy of properties *except by the race for which they are intended.*"[28] (Emphasis added) These provisions ensured that virtually no FHA-insured loans were made to Black borrowers or other borrowers of color, and very few loans were made in urban neighborhoods. Since most lenders followed FHA guidelines, this policy effectively cut off mainstream mortgage credit in communities of color.

FHA had an equally devastating impact through its support of the construction of suburban subdivisions. Builders seeking FHA insurance for construction loans were required to agree that they would not sell any of those homes to Black buyers.[29] Further, FHA provided model restrictive covenants for those builders to include in the deeds to the homes they built. According to the housing advocate and scholar Charles Abrams, "the FHA framed the very restrictive covenants which developers could and did use. All they had to do was copy the Federal form and fill in the race or religion to be banned."[30] Abrams characterized the role of the FHA this way, "the Federal Housing Administration (FHA) moved forward to become the main bulwark of the racial restrictive covenant. By insuring or refusing to insure mortgages in an area, its administrators

24 Jackson, p. 234-236.

25 Rothstein, Richard, "The Racial Achievement Gap, Segregated Schools, and Segregated Neighborhoods – A Constitutional Insult," Economic Policy Institute, November 12, 2014. Available online at: http://www.epi.org/publication/the-racial-achievement-gap-segregated-schools-and-segregated-neighborhoods-a-constitutional-insult/.

26 Federal Housing Administration Underwriting Manual, 1938, cited in Abrams, Charles, "The Segregation Threat in Housing," in Straus, Nathan, "Two-Thirds of a Nation: A Housing Program," Alfred A. Knopf, New York, 1952.

27 1938 FHA Underwriting Manual, available at http://www.urbanoasis.org/projects/fha/FHAUnderwritingManualPtII.html#301.

28 Ibid.

29 Rothstein, op. cit.

30 Abrams, op. cit. p. 220.

became the sentinels of racial purity of the American neighborhood and the paladins of a new American caste system."[31] FHA facilitated White families' moves to the suburbs and access to homeownership, while at the same time preventing access and mobility for families of color. The Veterans' Administration, which provided mortgages with no down payments and low interest rates to nearly 5 million veterans returning from World War II,[32] adopted the same policies, providing White veterans entry to the middle class but barring access by most Black veterans and other veterans of color.

These New Deal-era policies, in combination with declining housing construction costs, quickly led to vast White suburbanization and the abandonment of urban centers. Urban centers increasingly grew to be predominantly Black communities. During the 1950s and 1960s, federal "redevelopment" and "urban renewal" programs were used to eliminate "urban blight" by razing neighborhoods and Black-owned businesses. Many homeowners were relocated just blocks away in neighborhoods Whites had abandoned, and low-income Black families were relocated to newly constructed public housing that was pushed into the middle of the Black community, thereby impeding encroachment of Black families into White areas.[33]

The cumulative impact of HOLC and FHA coding policies, as well as other government policies, was to limit housing choice for Blacks and other people of color, forcing them into highly segregated neighborhoods. There, they often paid inflated prices for poorly maintained housing and had limited access to good schools, good jobs, affordable and reliable transportation, and many other factors that characterize neighborhoods of opportunity.

This widespread segregation persisted over the following decades, and conditions in many segregated communities deteriorated, due to lack of credit and investment, overcrowding, provision of poor public services, etc. In the 1960s, with the rise of the Civil Rights Movement, residents began to express their frustration and dissatisfaction in very public ways. In the summer of 1967, racial uprisings occurred in more than 150 cities. Some of these were small demonstrations, but others were riots much like those that broke out in Ferguson, Missouri, and Baltimore, Maryland, in 2015. In a number of cases, the local police were unable to restore order and the National Guard was called in. These uprisings forced the nation to confront the realities of life for people living in segregated communities and the harm that segregation caused to those residents and the nation as a whole.

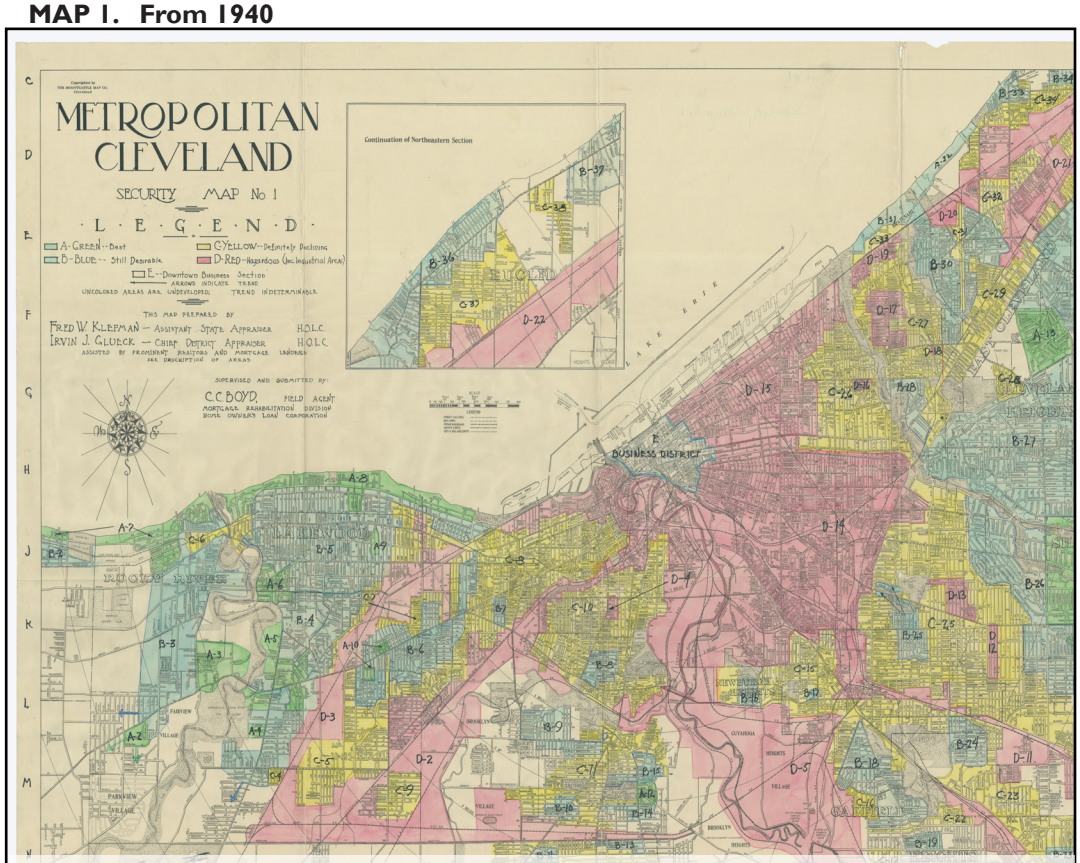
In response to the riots, President Johnson established a commission to investigate what happened, why it happened, and how it might be prevented from happening again. The Kerner Commission (named after its chairman, Illinois governor Otto Kerner) visited a number of the cities where demonstrations had occurred, spoke with many people who had been affected, and delved into the historical policies and practices that created segregation. The Commission concluded that,

31 Ibid., p. 219.

32 Katznelson, Ira, "When Affirmative Action was White: An Untold History of Racial Inequality in Twentieth-Century America," W.W. Norton & Company, New York. 2005.

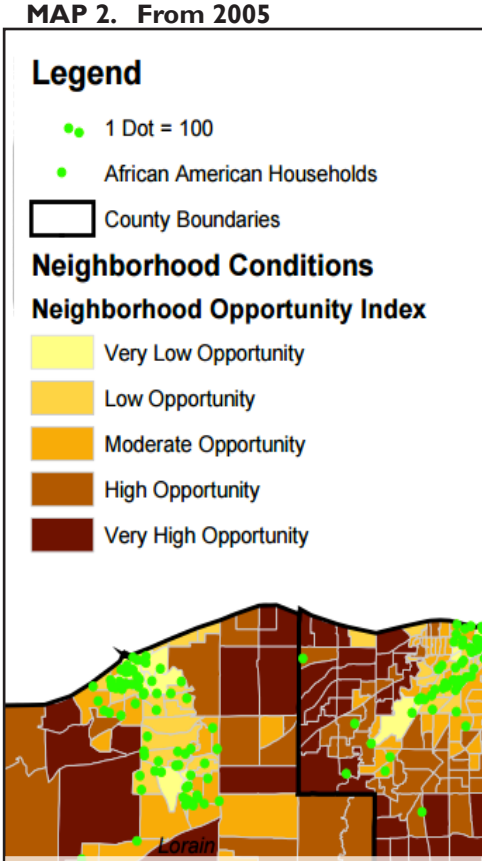
33 Massey, op. cit, P. 56.

MAP 1. From 1940



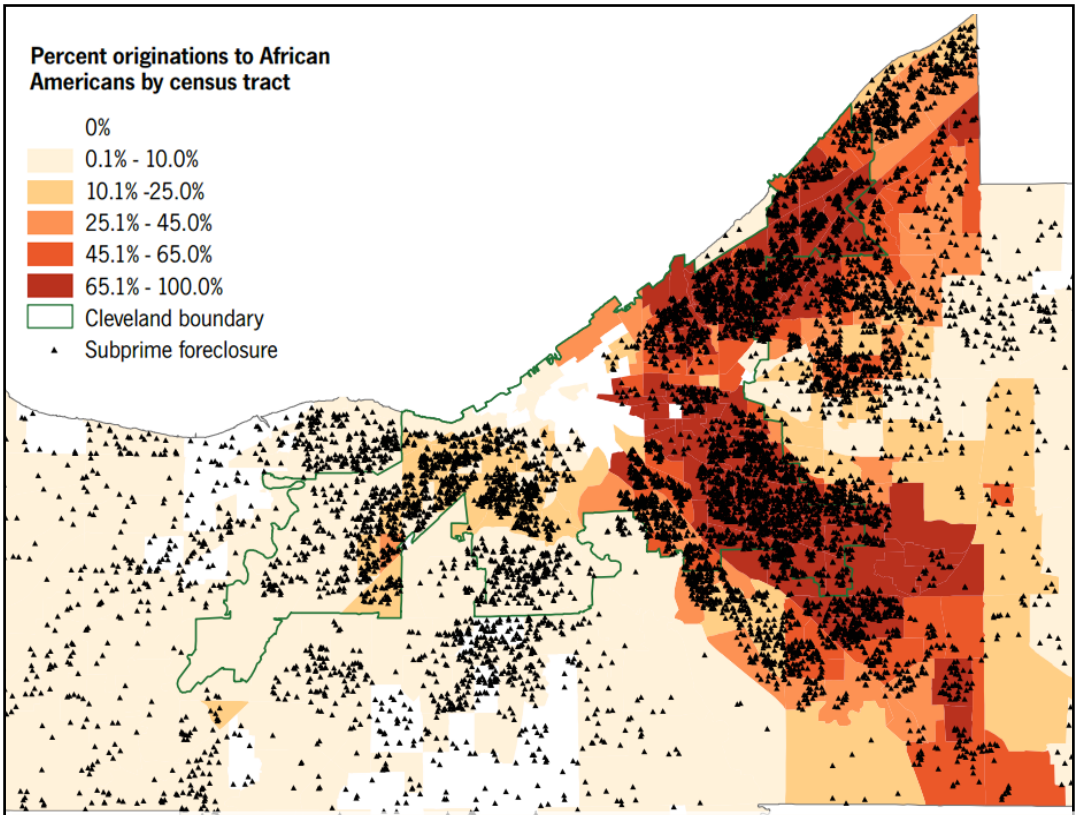
Source: Ohio State University University Libraries, "Redlining Maps". Available online at: http://guides.osu.edu/maps-geospatial-data/maps/redlining/

MAP 2. From 2005



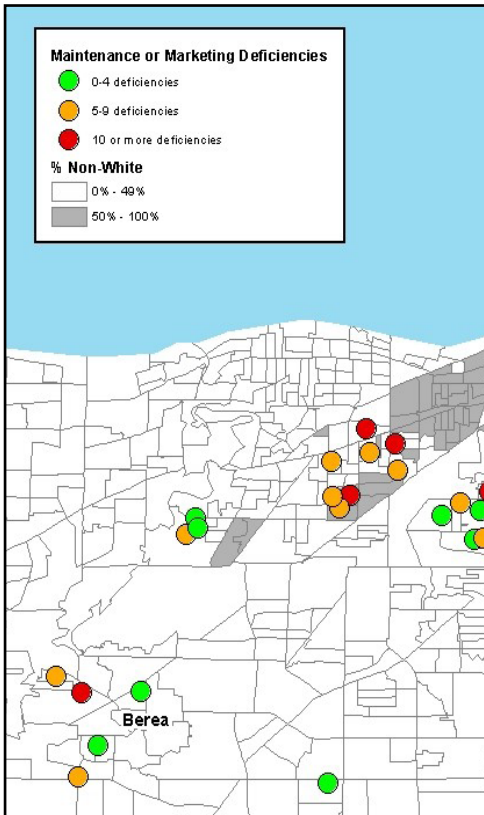
Source: http://www.kirwaninstitute.osu.edu/report

MAP 3. From 2006

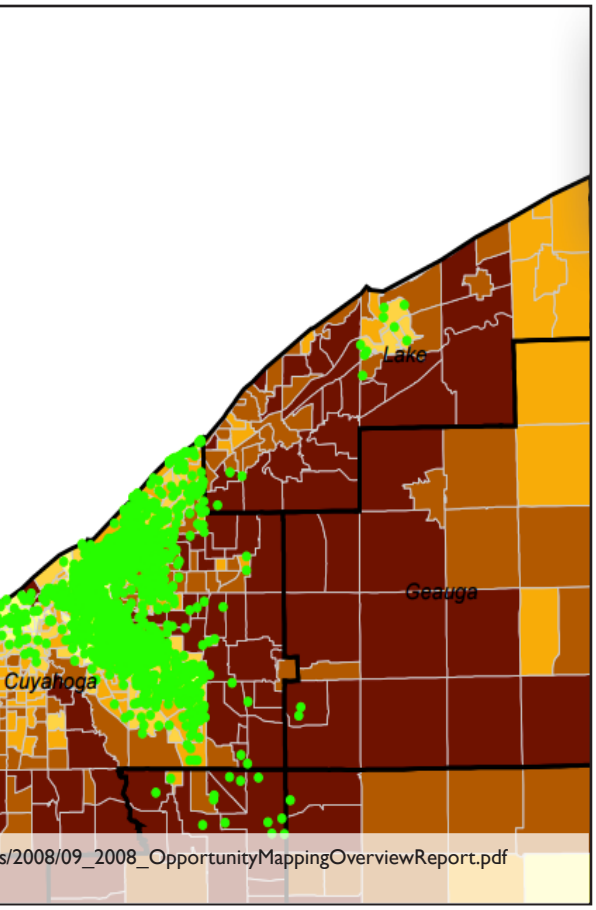


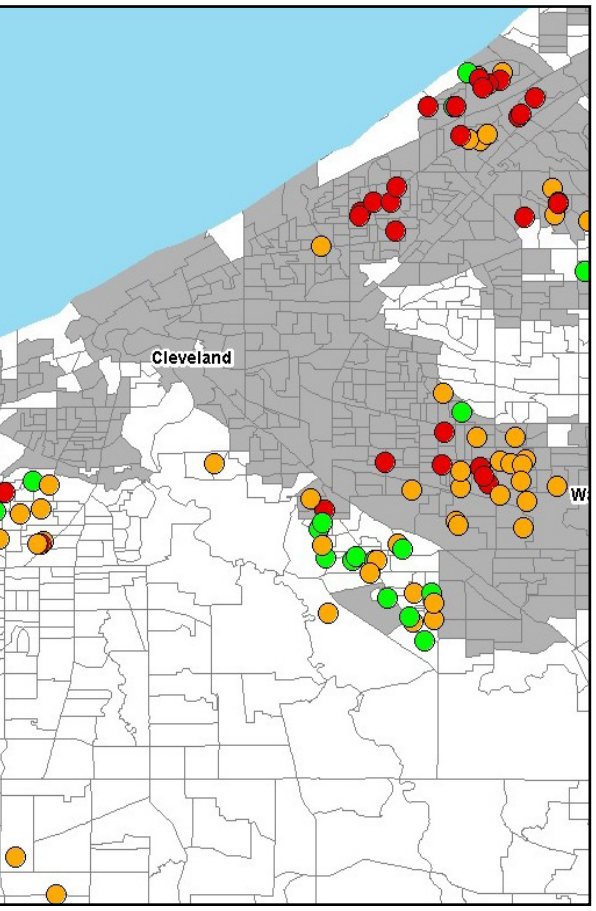
Source: Coulton, Claudia and Kathy Hexter, "Facing the Foreclosure Crisis in Greater Cleveland: What happened and how communities are responding." Federal Reserve Bank of Cleveland, June 2010, available at http://cua6.urban.csuohio.edu/publications/center/center_for_community_planning_and_development/Foreclosure_Report.pdf

MAP 4. From 2015



Source: National Fair Housing Alliance, 2015





CLEVELAND, OHIO

Map 1. This map of metropolitan Cleveland, Ohio, was created in the 1930s for the Home Owners Loan Corporation (HOLC), a New Deal-era federal agency whose mission was to stabilize the housing market by refinancing defaulted mortgages. Between 1933 and 1935, it refinanced more than 1 million loans that were in default and in danger of foreclosure. In some 250 cities across the country, local real estate industry members used the HOLC's methodology to rate neighborhoods as either Best, Still Desirable, Definitely Declining, or Hazardous. These neighborhoods were coded in green, blue, yellow, and red, respectively, on the HOLC's Residential Security maps. Neighborhoods whose residents were Black, immigrants from various Eastern European or other countries, and/or working class were rated as hazardous and coded in red. This is the origin of the term "redlining." The HOLC's ratings and ideology formed the foundation for the work of its successor agency, the Federal Housing Administration (FHA), which adopted formal policies against insuring loans to Black borrowers, in Black neighborhoods, or to developers who would not agree to prohibit the sale of homes in their developments to Black households. FHA policies, in turn, influenced the practices of private lenders, who also denied credit to these borrowers and in these neighborhoods.

Map 2. The negative consequences of these government policies from the New Deal are still being felt. As Map 2 illustrates, Black households are still heavily concentrated in areas that were redlined on the HOLC maps. Those neighborhoods lack many of the opportunities that their residents desire in terms of economic opportunity and mobility, educational opportunity and neighborhood quality.

Map 3. Those same neighborhoods were flooded with subprime loans in the years leading up to the economic crash and experienced extremely high rates of foreclosure. Black homeowners in Cleveland were between 2-4 times more likely to face foreclosure than their White counterparts.

Map 4. Even in post-foreclosure crisis, Cleveland's Black neighborhoods continue to suffer from the negative effects of housing discrimination. A multi-city investigation into bank-owned foreclosure maintenance and marketing found significant racial disparities in the City of Cleveland. Data from 2015, for example, shows that bank-owned properties in communities of color were 6.6 times more likely to have trash or debris on the premises as compared to those properties in predominantly White neighborhoods. This neglect by banks in Cleveland's Black neighborhoods lowers property values and strips neighborhoods of wealth, continuing a long pattern of harmful, discriminatory treatment that leaves people of color with fewer opportunities and poorer life outcomes.

These findings are illustrated in Map 4, with communities of color shaded in gray and REO properties ranked by their maintenance. The red dots indicate properties that were in extremely poor condition; the orange dots indicate properties that were in poor condition; and the green dots indicate properties that were in good condition.

"Our Nation is moving toward two separate societies, one black, one white – separate and unequal."[34] It further found that, "Segregation and poverty have created in the racial ghetto a destructive environment totally unknown to most white Americans. What white Americans have never fully understood – but what the Negro can never forget – is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it."[35]

The Kerner Commission made a number of recommendations to prevent further uprisings and redress the underlying conditions that gave rise to them. Among these were the enactment of a law to prohibit racial discrimination in housing, significant expansion of federal support for affordable rental housing, and redirection of federal housing programs to provide housing choices for families of color in communities from which they had previously been barred. The first and last of these recommendations were embodied in the federal Fair Housing Act, passed by Congress and signed by President Johnson on April 11, 1968, one week after the assassination of the Reverend Dr. Martin Luther King, Jr. In the intervening years, there has been notable progress in enforcing the basic nondiscrimination provisions of the Fair Housing Act, although much more could be done to ensure effective enforcement of these protections. However, there has been little progress over the past half-century in fulfilling the Act's mandate to affirmatively further fair housing ("AFFH" – discussed in more detail later in this report). Federal housing and community development programs often fail to expand access for persons in protected classes to neighborhoods of opportunity. Thus, the mandate that was intended to overcome the harms caused by segregation and to expand housing choice still has not been fulfilled.

The Role of Real Estate Agents and Industry

A central player in the establishment and perpetuation of segregated cities was the real estate industry. Many local real estate boards worked to establish restrictive covenants, while an early incarnation of the national real estate association adopted an article in its code of ethics which held that "a Realtor should never be instrumental in introducing into a neighborhood…members of any race or nationality…whose presence will clearly be detrimental to property values in that neighborhood."[36] In a more financially lucrative tack, many real estate agents engaged in "blockbusting" and "panic peddling," practices designed to scare White homeowners out of a neighborhood with rumors and actions suggesting that the neighborhood was ripe for "racial turnover." The agents would then buy properties cheaply from Whites and sell them for higher prices to incoming Blacks.

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

34 Report of the U.S. National Advisory Commission on Civil Disorders (Kerner Commission), p. 1.

35 Ibid.

36 Massey, Douglas S. "Origins of Economic Disparities: The Historical Role of Housing Segregation," in James H. Carr and Nandinee K. Kutty, eds., Segregation: The Rising Costs for America (New York: Routledge, 2008), p. 56.

consumers. Given the prevalence of race-based standards in appraisals, insurance, and government mortgage lending programs, it comes as no surprise that private banking and savings institutions also refused to offer mortgage loans in communities of color and integrated communities.

Discrimination in the Provision of Homeowners Insurance

A companion culprit to the discriminatory actions of government and the real estate and lending industries is the role of homeowners insurance companies. Throughout much of the twentieth century, homeowners insurance providers maintained policies and practices that denied or limited quality and affordable coverage on homes in Black and Latino communities. Since homeowners insurance is required in order to qualify for a mortgage loan, these policies had a significant impact on homeownership for people of color. These unwarranted and discriminatory practices of homeowners insurance providers included:

- Denying or limiting coverage on homes over a certain age;
- Denying coverage on homes under a certain minimum value; and
- The restriction of guaranteed replacement cost coverage on homes because of the difference in market value and replacement cost.

Insurance companies argued that if they insured someone for the cost to rebuild a home and that cost significantly exceeded the market value of the home, it would represent a "moral hazard," incentivizing persons to burn down their homes. There was never any risk-based research or even anecdotal evidence to support such a contention, and this policy had a significant adverse effect on communities of color as discrimination in real estate and lending markets worked in concert to decrease the value of homes in Black and Latino neighborhoods. All these guidelines had a tremendous effect on the ability of homeowners in middle and working class neighborhoods that were Black, Latino or integrated to obtain quality insurance at an affordable price. That, in turn, affected the ability to purchase homes, as homeowners insurance is required by mortgage lending institutions.

Starting in the early 1990s, fair housing organizations at the national and local level conducted matched pair testing and investigations of numerous major insurance companies. These investigations documented use of the policies outlined above throughout the industry as well as differential treatment of consumers based on their race or national origin. They also identified the improper use of subjective criteria such as "pride of ownership" and "good housekeeping." The investigations documented that insurance companies had few, if any, agencies located in communities of color and that marketing plans were designed to exclude communities of color. The testing revealed that the agent representatives of the insurance companies tested failed to return phone calls, did not follow through on providing quotes for insurance coverage, or offered inferior coverage at higher prices and with fewer options for Black and Latino customers. These policies and practices served to reinforce the redlining by lending institutions and limited the services and opportunities available in these communities.

Based on these investigations, a number of discrimination complaints were filed with the Department of Housing and Urban Development or in federal court. The complaints alleged that the policies outlined above had a discriminatory effect on Black and Latino neighborhoods in metropolitan areas throughout the United States. No company was able to justify risk-based usage of these guidelines, and many companies throughout the industry have eliminated these guidelines and replaced any risk-based concerns with objective criteria, such as age and condition of the roof and systems within the home. Companies also abandoned any explicitly race- or geographically-based marketing plans. Fair housing organizations in the following cities were involved in investigations of and cases against homeowners insurance providers: Toledo, Cincinnati, and Akron (OH); Richmond (VA); Syracuse (NY); Atlanta (GA); Chicago (IL); Milwaukee (WI); Memphis (TN); Hartford (CT); Los Angeles and Orange County (CA); Louisville (KY); and Washington (DC).

The National Fair Housing Alliance and partner fair housing organizations brought the first cases against Allstate, Nationwide, and State Farm. State Farm, the nation's largest insurance provider, entered into a HUD conciliation agreement in 1996. Allstate settled shortly thereafter. Settlements continued throughout the 1990s into the early 2000s. State Farm and Nationwide have become strong supporters of fair housing principles and engage in company-wide efforts to both assess their policies and practices to ensure compliance with fair housing laws and to assess compliance by their agents on the ground. Additional companies against which cases were brought include: Aetna, Allstate, American Family, Farmers, Liberty Mutual, Prudential, and Travelers.

It should be noted that there has been no documentation of "moral hazard"-type arson since companies eliminated the restrictions related to differences between the replacement cost and market value of a property.

In the past few years, additional discrimination cases have been filed against insurance companies that do not write insurance on multifamily apartment complexes if they accept Housing Choice Voucher holders. This practice has a discriminatory effect on persons of color, families with children, and people with disabilities.

Discrimination and Segregation on the Basis of Disability

While this report is focused largely on segregation on the basis of color and ethnicity, we would be remiss if we did not provide information about discrimination against and segregation of persons with disabilities. Persons with disabilities represent nineteen percent of the population in the United States or almost 57 million people, according to the 2010 Census.[37] Until the passage of the Fair Housing Amendments Act in 1988 and the Americans With Disabilities Act in 1990, as well as the Supreme Court decision in Olmstead v. L.C. and E.W. in 1999, many persons

37 Americans With Disabilities, 2010, available at https://www.census.gov/prod/2012pubs/p70-131.pdf.

with disabilities lived in segregated, and often institutional, settings and did not have access to many communities or to public facilities and services. Since then, people with disabilities have increasingly had access to or have been integrated into neighborhoods, employment, public services, and other key components of life; however, discrimination and lack of accessibility continue to limit the housing choice and opportunities of those with disabilities.

In the early 2000s, housing discrimination complaints on the basis of disability became the greatest percentage of all complaints filed in the U.S. Since then, disability complaints have made up the largest percentage of housing discrimination complaints received by both public and private fair housing enforcement organizations. There are many reasons for this: HUD has provided significant funding focused on educating persons with disabilities about their fair housing rights; persons with disabilities represent a significant part of the population as noted above and this population is increasing as the baby boom generation ages; there is a significant amount of discrimination based on disability; and discrimination on the basis of disability is, for the most part, easier to detect than other types of discrimination. Many apartment owners make overt discriminatory comments or refuse outright to make reasonable accommodations or modifications for people with disabilities, as required under the Fair Housing Act. Despite significant investment in training and guidance for architects, builders, and developers, large numbers of multifamily properties continue to be constructed that do not meet the design and construction requirements under the Fair Housing Act that serve to make more housing opportunities accessible to persons with disabilities.

Examples of accessibility barriers include the absence of curb cuts and handicap accessible parking spaces with adjacent access aisles, inaccessible kitchens and bathrooms, narrow door widths and passageways, insurmountable thresholds and inaccessible switches, outlets and environmental controls within units and throughout common use areas. Some builders have steps down to a living room or up to a bedroom. Failure to provide accessible housing or to grant requests for reasonable modifications and accommodations prevents persons with disabilities from having access to all communities and the opportunities those communities provide.

Many private fair housing organizations and the Department of Justice have brought legal action against developers and owners of properties that did not meet the requirements of the Fair Housing Act. NFHA has brought several cases (some of which are currently ongoing), including two key cases that affected a significant number of properties and represent the issues that prevent persons with disabilities from obtaining access to all communities.

Ovation Development Corporation – Las Vegas, NV

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

District Court for the District of Nevada.

The lawsuit was based on an investigation of 11 apartment complexes located in Las Vegas and Henderson, Nevada. Together, the 11 complexes comprised 1,518 ground floor units and 368 buildings. All 11 properties failed to meet the accessibility requirements of the Fair Housing Act. In addition, many of the properties also had violations of the accessibility requirements of the Americans with Disabilities Act.

In 2001 and 2005, the U.S. Department of Justice filed two suits against Pacific Properties and Development Corporation, whose principal is the founder of Ovation. The suit alleged inaccessible features at four multi-family housing complexes built by Pacific Properties. In settlement, the founder of Ovation, in his capacity as an officer of Pacific Properties, was placed under a continuing order of the court that prohibited him from participating in the design and/or building of covered multifamily housing without the accessible features mandated by the Fair Housing Act.

A.G. Spanos Companies – Stockton, CA

On June 21, 2007, NFHA and four of its members filed a housing discrimination lawsuit against A.G. Spanos Companies, a builder and developer of multifamily housing and commercial properties in at least 16 states. The lawsuit alleged that Spanos failed to comply with federal accessibility standards in the design and construction of its properties. NFHA and its members—Fair Housing of Marin, Fair Housing Napa Valley, Metro Fair Housing Services, and the Fair Housing Continuum—investigated 35 apartment complexes in California, Arizona, Nevada, Texas, Kansas, Georgia, and Florida. All of these complexes failed to meet the accessibility requirements of the Fair Housing Act and the Americans with Disabilities Act. These 35 properties, totaling more than 10,000 individual apartment dwelling units, represent only a sample of the at least 82 Spanos properties in existence at that time that were covered by the federal Fair Housing Act.

In 2010, NFHA and its partners announced a landmark agreement with the A.G. Spanos Companies to increase housing accessibility for people with disabilities. Under the agreement, Spanos agreed to retrofit properties in Arizona, California, Colorado, Georgia, Florida, Kansas, Missouri, Nevada, New York, North Carolina, and Texas at an estimated cost of $7.4 million.
The agreement initiated a productive partnership between the Spanos Companies, NFHA, and its member fair housing agencies to make apartments accessible to individuals who use wheelchairs and people with limited mobility. It covered 123 properties built since March 1991. The agreement also established a $4.2 million national fund to provide grants to people with disabilities across the country. The Spanos Companies became a partner and supporter of NFHA and its member organizations.

We must continue our efforts to ensure that persons with disabilities are not denied housing opportunities based on overt discrimination and the failure to construct accessible housing.

The Engines of Residential Segregation Today

Regrettably, the engines of housing segregation are not mere relics of U.S. history. The housing market continues to operate in powerful and evolving ways that reinforce entrenched patterns of segregation and inequity. The recent foreclosure crisis, which peaked from 2005-2009, served to significantly deepen the U.S. wealth gap along racial lines, erasing incremental advances made through Black and Latino homeownership in the prior decades. In its aftermath, banks refashioned their loan origination criteria and some targeted their services away from communities of color, further limiting Black and Latino borrowers from accessing credit in the mainstream lending markets.

A review of recent housing trends underscores that fair housing enforcement is as much about redressing the lingering vestiges of de jure discrimination's imprint on neighborhoods as it is about addressing both existing housing practices and the housing practices of tomorrow. Even in light of the Fair Housing Act's mandate, today's housing submarkets—lending, insurance, rental, and sales—are imbued with various policies and practices that have an unjustified disparate impact on the basis of race, disability, familial status, sex, or other protected characteristic. These barriers to housing choice frame the need for vigorous fair housing enforcement and robust community engagement under the rearticulated Affirmatively Furthering Fair Housing directive (discussed on page 66).

The fair housing movement has made strides in challenging discriminatory policies—through both enforcement actions and compliance partnerships—and, as a result, housing services have become more inclusive and market policies better tailored to business and public policy needs.[38] However, the breadth and scale of fair housing cases documented in NFHA's annual trends reports, often involving sizable and comprehensive settlements across a range of protected classes, is a consistent reminder of the stubborn prevalence of barriers to choice in today's market and the hazardous economic, sociologic, and physical-psychological impact on neighborhoods and their residents.

Despite the American cultural instinct for mobility, many cities across the country have maintained demographically segregated boundaries. The same boulevards and rail lines that marked the borders of the 1930s redlining maps serve as invisible barriers that too often inform how and where today's housing market functions, both in its mainstream and "fringe" operations. Researchers have linked the unrest of the Black Lives Matter movement in places like Ferguson, Missouri, and Baltimore, Maryland, to policies of racial isolation.[39] The practices operating to perpetuate existing housing segregation are often less explicit than decades ago, but their impact

38 See e.g. Brief of Amicus Curiae National Fair Housing Alliance, et al. in Texas Dept. of Housing & Comm. Affairs v. Inclusive Communities Project (arguing in part that the disparate impact doctrine has promoted sharper thinking about policies and entrepreneurial thinking in the housing market), filed Dec. 23, 2014, www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/13-1371_amicus_resp_NFHA.authcheckdam.pdf.

39 See e.g. Gordon, Colin, "The Making of Ferguson," Dissent, Aug. 16, 2014, https://www.dissentmagazine.org/blog/ferguson-segregation-suburbs-white-flight-mike-brown; Rothstein, Richard, "The Making of Ferguson," The American Prospect, Oct. 13, 2014, http://prospect.org/article/making-ferguson-how-decades-hostile-policy-created-powder-keg.

is just as damaging and segregating. The Fair Housing Act mandate remains as critical today as it did when it was passed amid the turmoil, segregation, and inequity of the 1960s.

The Foreclosure Crisis: A Disaster of Compounding Effects

The foreclosure crisis affected communities of color far beyond the immediate loss of wealth, which was in itself historic in scale. The recent crisis resulted in devastating losses in homeownership and wealth in communities of color, due in large part to the fact that Black and Latino borrowers were far more likely to be steered into subprime mortgages designed for failure. From 2005 to 2009—amid the discriminatory targeting of toxic, high-risk loans—White households lost 16 percent of their net worth, while Black households lost 53 percent and Latino households 66 percent of their net worth. [40]

The cost of the foreclosure crisis to communities of color was not limited to the millions of families that lost their homes. The interrelated and long-term impact of the crisis, compounded by a concentration of foreclosures in particular areas, shook neighborhoods and spread across regions. One assessment of the wealth lost in communities of color—as a result of property depreciation of homes near foreclosures, separate from the losses to the foreclosed-upon homeowners—estimates a staggering $1.1 trillion in home equity lost, as a "spillover" result of neighborhood foreclosures.[41]

This disproportionate targeting of toxic loans toward communities of color is referred to as "reverse redlining,"[42] a practice that has perpetuated inequity within our segregated landscape. In 2011, the U.S. Department of Justice (DOJ) announced a settlement involving $335 million in what was heralded as "the largest residential fair lending settlement in [department] history" to resolve allegations that Countrywide Financial Corporation engaged in a widespread pattern or practice of discrimination against qualified Black and Latino borrowers in their mortgage lending from 2004 through 2008.[43] In 2012, DOJ announced "the second largest fair lending settlement in the department's history" to resolve allegations for $175 million that Wells Fargo Bank, the largest residential home mortgage originator in the country, engaged in a pattern or practice of discrimination against qualified Black and Latino borrowers in its mortgage lending from 2004 through 2009.[44]

In addition to its devastating economic impact, the concentration of toxic loans and foreclosures in communities of color has had and continues to have negative health and safety impacts on

40 Pew Research Center, "Wealth Gaps Rise to Record Highs Between Whites, Blacks and Hispanics," July 26, 2011, http://www.pewsocialtrends.org/files/2011/07/ SDT-Wealth-Report_7-26-11_FINAL.pdf.

41 Center for Responsible Lending, "2013 Update: The Spillover Effects of Foreclosures," Aug. 19, 2013, http://www.responsiblelending.org/mortgage-lending/research-analysis/2013-crl-research-update-foreclosure-spillover-effects-final-aug-19-docx.pdf.

42 Powell, Michael, "Bank Accused of Pushing Mortgage Deals on Blacks," New York Times, June 6, 2009, http://www.nytimes.com/2009/06/07/us/07baltimore.html.

43 Justice News, "Justice Reaches Settlement with Countrywide," Dec. 21, 2011 www.justice.gov/opa/pr/justice-department-reaches-335-million-settlement-resolve-allegations-lending-discrimination.

44 Justice News, "Justice Reaches Settlement with Wells Fargo," July 12, 2012, www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief.

neighborhoods. Research published by the American Heart Association suggests that living near a foreclosure undermines the health of the neighbors themselves, as proximity to a foreclosure increases a person's chance of developing high blood pressure. [45] The study also specifically found that homes that are quickly purchased do not appear to lead to a rise in blood pressure, but homes that become bank-owned foreclosures and remain vacant do contribute to an increase in blood pressure.

High foreclosure rates are also associated with increased public safety concerns. A 2005 study shows that with every 1 percentage point increase in a census tract's foreclosure rate, violent crimes increase by 2.33 percent, with all other things being equal; it also suggests a correlation between foreclosures and increased property crime.[46] The "broken windows theory," which essentially states that one broken window or other sign of abandonment will encourage further disinvestment and signs of abandonment, has long been an explanation for increases in criminal behavior in areas with many vacancies.[47] These health and safety issues compound the historical discrimination wrought on these communities.

Cities and counties—themselves impacted by the discriminatory targeting of toxic loans—are taking action to challenge the injuries they have suffered from the foreclosure crisis. Local jurisdictions have had to bear added code enforcement, policing, or fire service costs in order to maintain foreclosures,[48] and municipalities with concentrations of communities of color are particularly vulnerable.

In 2012, DOJ and the City of Baltimore announced settlement of lending discrimination cases against Wells Fargo Bank, concurrent with a national case, involving $4.5 million to qualifying Baltimore homebuyers in direct down payment assistance and an additional $3 million for the City to use for priority housing and foreclosure-related initiatives.[49] The cases also alleged that during the same time period, approximately 30,000 Black and Latino borrowers paid higher fees and costs for their mortgages than White borrowers because of their race and/or national origin.

The Cities of Chicago, Los Angeles, Miami, Oakland, and other jurisdictions are pursuing federal claims alleging that national lenders engaged in discriminatory lending practices that caused excessive and disproportionately high numbers of foreclosures in communities of color which then resulted in reduced property tax revenues.[50] In September 2015, the Eleventh Circuit ruled

45 ElBoghdady, Dina, "Foreclosures may raise neighbors' blood pressure, study finds," Washington Post, May 12, 2014, http://www.washington-post.com/business/economy/ study-foreclosures-may-raise-neighbors-blood-pressure/2014/05/12/5f519952da03-11e3-bda1-9b46b2066796_story.html.

46 Immergluck, Dan, "The Impact of Single-Family Mortgage Foreclosures on Neighborhood Crime," Vol.21 No.6 in Housing Studies, 851-866, http://www.prism. gatech.edu/~di17/HousingStudies.pdf.

47 U.S. Department of Housing and Urban Development, "Vacant and Abandoned Properties: Turning Liabilities into Assets," April 10, 2014, http://www.huduser.org/portal/ periodicals/em/EM_Newsletter_winter_2014.pdf.

48 Apgar, William, and Mark Duda, "The Municipal Cost of Foreclosures: A Chicago Case Study," in Homeownership Preservation Foundation Housing Finance Policy Research Paper, February 27, 2005, http://www.nw.org/network/neighborworksProgs/ foreclosuresolutionsOLD/documents/2005Apgar-DudaStudy-FullVersion.pdf.

49 Relman, Dane & Colfax PLLC website, "Baltimore Settles Landmark Fair Lending Case Against Wells Fargo," http://www.relmanlaw.com/civil-rights-litigation/cases/Baltimore-v-wells-settlement.php.

50 See e.g. County of Cook v. HSBC North America Holding Inc., No. 14-cv-2031 (N.D.Ill. 2015).

that the lower court erred when it dismissed the City of Miami's claims of lending discrimination in lawsuits brought against Bank of America, Wells Fargo, and Citigroup, upholding the ability of local jurisdictions to pursue these cases. [51]

After a home is foreclosed by a bank, it enters the Real Estate Owned (REO) property market, and the bank or Government Sponsored Enterprise (GSE) owners have a duty to maintain and market those homes for sale. Since 2009, NFHA and fair housing centers across the country investigated marketing and maintenance practices of banks who own large numbers of foreclosed properties, inspecting over 9,000 homes and identifying troubling disparities.[52] Properties in predominantly Latino and Black communities are subject to poor maintenance and neglect much more often than those in White neighborhoods. These discriminatory REO practices serve to severely impact already vulnerable and isolated communities of color.

In 2013, NFHA and Wells Fargo Bank announced a settlement of an REO HUD discrimination complaint, involving payment by Wells Fargo of $27 million to NFHA and local fair housing organizations to assist 19 cities to promote home ownership, neighborhood stabilization, property rehabilitation, and development in communities of color.[53] Such funds serve to buttress communities of color and to build opportunity in neighborhoods shut out of the housing market.[54]

Credit Access: Locked Into Dual Credit Markets

Today's residential credit finance system functions in a variety of ways to disproportionately lock communities of color out of mainstream lending services, just as it did explicitly when the system was established. Much of the discussion about discrimination in the lending market and the dual credit market begins with redlining practices that were reinforced by the federal government. It's important to note that America has always had a dual credit market, from the colonial era onwards. For example, after slavery ended, the U.S. congress established a separate and unequal financial system for people who had been formerly enslaved. The Freedman's Bank was established in 1865 but folded in 1874 due to fraud perpetrated by its Board of Directors. When borrowers of color historically could not access mainstream credit, they turned to fringe lenders–including payday lenders and check cashers–as a source of credit.[55] Later, federal efforts intended to provide access to mortgage credit to Blacks and Latinos, such as extending FHA credit to targeted borrower groups, were at times plagued with high-cost and abusive lending practices by the financial firms. [56]

A dual credit market resulted, generally servicing borrowers along racial and ethnic lines, and this

51 City of Miami v. Bank of America, et al., 2015 US App. LEXIS 15444 (11th Cir 2015).

52 National Fair Housing Alliance, "Zip Code Inequality: Discrimination by Banks in the Maintenance of Homes in Neighborhoods of Color," Aug. 27, 2014, www.mvfairhousing.com/pdfs/2014-08-27_NFHA_REO_report.PDF.

53 Wells Fargo REO conciliation agreement, June 6, 2013, http://nfha.radcampaign.com/fair-housing-info/resources/wells-fargo-reo-conciliation-agreement.

54 For additional information on how these community development funds were utilized in neighborhoods across the country, see NFHA's 2015 report: "Investing in Inclusive Communities," available online at http://www.nationalfairhousing.org/Investing_in_Inclusive_Communities/tabid/4293/Default.aspx.

55 National Fair Housing Alliance, "Discriminatory Effects of Credit Scoring on Communities of Color," June 6, 2012, http://www.nationalfairhousing.org/LinkClick.aspx?fileticket=yg7AvRgwh%2F4%3D&tabid=3917&mid=5418.

56 Rice, Lisa, "An Examination of Civil Rights Issues with Respect to the Mortgage Crisis: The Effects of Predatory Lending on the Mortgage Crisis," Statement of Lisa Rice for the U.S. Commission on Civil Rights Public Briefing. March 20, 2009. http://nationalfairhousing.org/wp-content/uploads/2017/04/US-Commission-on-Civil-Rights-Statement-of-LR-on-Predatory-Lending-Final...-1.pdf. Accessed January 19, 2017.

bifurcated system continues to function to date. High-cost, low-quality credit is readily available in predominantly Black and Latino communities, while low-cost, high-quality credit is readily accessible in predominantly White communities. A 2009 study of fringe lenders in California found that payday lenders were nearly eight times as concentrated in neighborhoods with the largest share of Blacks and Latinos as compared to White neighborhoods, draining nearly $247 million in fees per year from these communities.[57] Widespread segregated residential patterns have actually made it easier to sustain a bifurcated financial system in the United States.

Credit scoring systems currently in use were built upon and continue to rely on the very dual credit market that developed from restricting services to people of color. For example, some scoring mechanisms evaluate a borrower who received a loan from a finance company as a worse credit risk than one who got a loan from a depository institution. This criterion is a poor determinant of risk, and reliance on this premise penalizes the borrower who simply may not have had access to a mainstream lender but had abundant access to fringe lenders.[58] Credit scoring mechanisms too often assess the riskiness of the lending environment, product type, or loan features a consumer uses, rather than the risk profile of the consumer.

For the reasons listed above and because of overreliance on old credit scoring models, Black and Latino consumers on average have lower credit scores than White consumers. The credit scoring systems used most commonly by Fannie Mae, Freddie Mac, FHA and other lenders in mortgage loan underwriting and pricing have a discriminatory and disparate impact on people and communities of color. Moreover, these credit scoring systems disadvantage consumers who use non-traditional credit, which in turn harms borrowers of color disproportionately. Use of these systems means that people of color are unfairly denied loans or pay more for the same loan than otherwise similarly qualified White buyers.

Households of color, persons with disabilities, families with children, and persons in other protected classes are too often met with discriminatory barriers when attempting to obtain loans to purchase or refinance housing. With the tightening of the credit market in the wake of the foreclosure crisis—the finance system shifted to address the unregulated, unreported loan servicing operations that sparked the foreclosure crisis—borrowers of color were further restricted from credit access.[59]

Redlining: New Model, Same Engine of Segregation

In the 1930s, redlining was a federal housing policy that explicitly detailed the practice of denying services to residents of certain areas based on the racial or ethnic demographics of those areas.

57 Center for Responsible Lending, "Predatory Profiling: The Role of Race and Ethnicity in the Location of Pay Day Lenders in California," March 26, 2009, www.responsiblelending.org/research-publication/predatory-profiling-0.

58 Rice, Lisa, "An Examination of Civil Rights Issues with Respect to the Mortgage Crisis: The Effects of Predatory Lending on the Mortgage Crisis," Statement of Lisa Rice for the U.S. Commission on Civil Rights Public Briefing. March 20, 2009. http://nationalfairhousing.org/wp-content/uploads/2017/04/NFHA-credit-scoring-paper-for-Suffolk-NCLC-symposium-submitted-to-Suffolk-Law.pdf Accessed April 18, 2017.

59 Rice, Lisa and Deidre Swesnik, "Discriminatory Effects of Credit Scoring on Communities of Color," Prepared for the Symposium on Credit Scoring and Credit Reporting, Suffolk University Law School and National Consumer Law Center, June 6 & 7, 2012. http://nationalfairhousing.org/wp-content/uploads/2017/04/NFHA-credit-scoring-paper-for-Suffolk-NCLC-symposium-submitted-to-Suffolk-Law.pdf Accessed April 18, 2017.

Today, some lenders structure their loan products, restrict broker services, site branch locations, and/or target their marketing on the basis of race, national origin, sex, familial status, disability, or other protected characteristic. In restricting lending services in a discriminatory manner—whether limiting services in communities of color or denying loans to prospective female borrowers on parental leave—the more subtle contemporary redlining practices have the same practical effect of limiting credit access, often on a geographic basis.

Although modern-day redlining practices are often not publicly charted on regional maps, the availability of Home Mortgage Disclosure Act (HMDA) data allows federal regulators, public and private sector fair housing advocates, and lenders themselves to analyze lending patterns to identify statistical disparities in majority Black and Latino neighborhoods. Analysts can use HMDA data to assess whether a lender has acted to meet the credit needs for home loans in predominantly White areas, while failing to provide similar credit services in majority-Black and/or Latino areas.

In the past several years, DOJ, the Consumer Financial Protection Bureau (CFPB), and other public and private fair housing advocates have successfully resolved a number of contemporary redlining cases against lenders in regions across the country alleging that lenders denied residents in majority-Black and Latino neighborhoods fair access to mortgage loans.[60] These contemporary redlining practices illegally cut off opportunities for consumers in communities of color from getting mortgages, intensifying the historic patterns restricting borrowers of color from accessing the mainstream housing market. Here are summaries of two recently settled redlining cases:

- In May 2015, the U.S. Department of Housing and Urban Development (HUD) entered into a settlement with Associated Bank in a redlining case out of Chicago and Milwaukee, resolving allegations the bank denied mortgage loans to Black and Latino applicants and in underserved communities of color between 2008 and 2010. Under the terms of the agreement, the bank agreed to provide almost $10 million in low-interest rate mortgages to qualified borrowers in targeted majority-minority census tracts; invest almost $200 million in increased mortgage assistance in those areas; and contribute almost $6 million for community reinvestment, affirmative marketing, and training. Associated Bank will have to open new branches in predominantly Black and Latino communities. [61]

- In September 2015, DOJ and the Consumer Financial Protection Bureau (CFPB) announced a settlement with Hudson City Savings Bank after an investigation found that it avoided doing mortgage business with Blacks and Latinos between 2009 and 2013, covering mortgages throughout New Jersey, New York, and Philadelphia. The complaint alleged that the bank limited branch locations in Black and Latino neighborhoods, and as part of the settlement, the bank opened two full-service branches in non-White communities. Under the settlement, the bank also agreed to provide $25 million in a loan subsidy program to increase lending

60 See e.g. US v. Midwest BankCentre, No. 4:11cv1086-FRB (ED Mo 2011); New York v. Evans Bancorp, Inc., No. 1:13-cv-00726 (WDNY 2014); Providence v. Santander Bank, No. 14-244 (DRI 2014); CFPB and US v. Hudson City Savings Bank, No. 2:15-cv-07056 (DNJ 2015).

61 HUD News, "HUD & Associated Bank Reach Historic $200 Million Settlement of 'Redlining' Claim," May 26, 2015, http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-064b.

to borrowers of color; $2.25 million in advertising, financial education, and outreach in the affected neighborhoods; and a $5.5 million civil penalty. [62]

Though less overt, the modern model of redlining has the same effect of restricting communities of color from accessing credit and further perpetuating inequity across divided metro regions. As data analysis capabilities become more accessible, lenders will continue to be held accountable for their restrictive servicing practices.

Continued Discrimination in the Real Estate Industry

Real estate agents continue to play a role in the ongoing patterns of racial and ethnic segregation in the United States. The "steering" of homeseekers to and away from neighborhoods with distinct racial compositions is often uncovered in fair housing tests. In September 2015, NFHA filed a housing discrimination complaint with the Department of Housing and Urban Development against Lorgroup, LLC and real estate agents in the RE/MAX Alliance/Lee Garland and Rita Jensen Team, including Lee Garland, Randy Inman, Lisa Bourgoyne, and Chase Belk, alleging violations of the Fair Housing Act. NFHA conducted a series of fair housing tests of the Lee Garland and Rita Jensen Team of RE/MAX Alliance located in Brandon, Mississippi.

During the roughly year-long investigation, White and Black testers posed as home buyers and contacted the company to view homes in Jackson, Mississippi. The testers were similarly qualified and had similar housing preferences. The testing revealed that agents of the Lee Garland and Rita Jensen Team of RE/MAX Alliance discriminated on the basis of race. The agents steered the White home seekers away from interracial neighborhoods in Jackson, which is majority Black, and into majority White areas such as Pearl, Ridgeland, Richland, Clinton, Madison County, Rankin County, and Palahatchie. Conversely, the Black testers who inquired about properties in the Jackson area were often never called back and were generally provided very limited information.

During one test, both the White and Black testers requested information about the same foreclosed property located in Jackson, Mississippi. The White tester was told that the house was under contract and was offered information about other properties. An agent showed the White tester multiple homes, mostly located in the predominantly White areas of Pearl and Richland, Mississippi. In contrast, the Black tester was not able to speak with an agent after leaving several messages at the agency's primary contact number and ultimately was not afforded the opportunity to see homes in the area.

In 2003, NFHA embarked on a multi-year investigation of real estate markets in 12 cities. The findings showed that in 20 percent of real estate sales tests, Black and Latino testers were denied service by real estate agents or were only provided very limited service. This included refusal to meet with Black or Latino testers, failure to show up for appointments with these testers, meeting

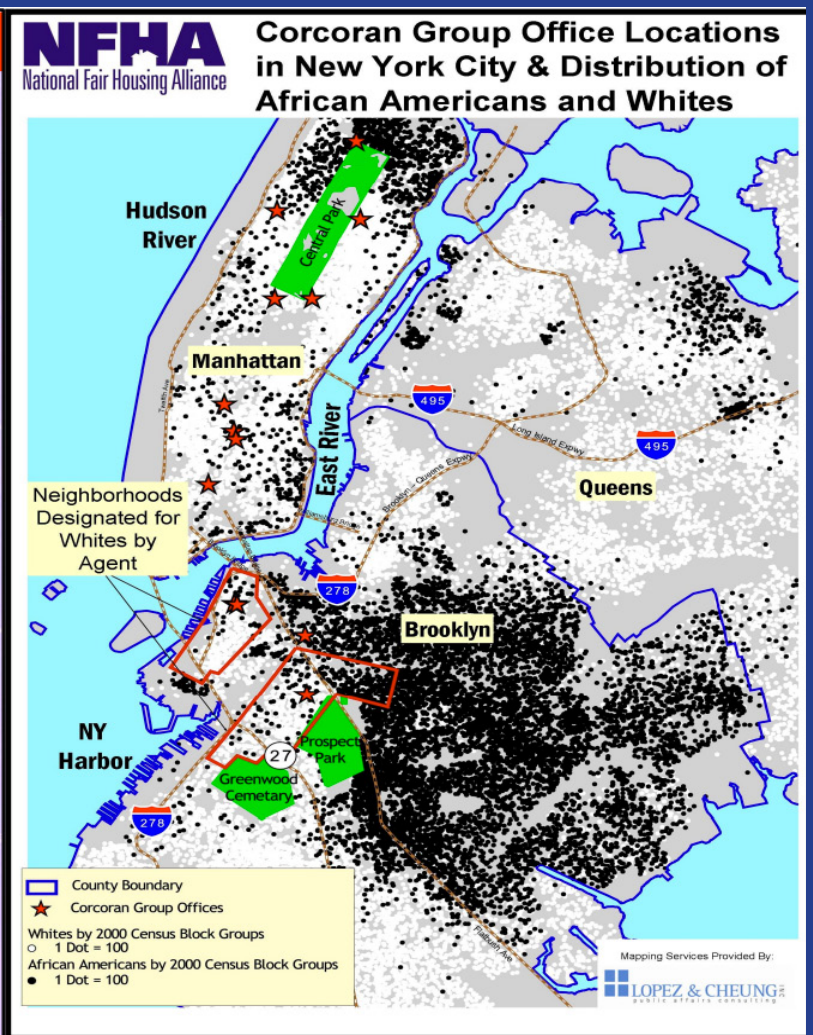
62 Justice News, "DOJ and CFPB Reach Settlement with Hudson City Savings Bank to Resolve Allegations of Mortgage Lending Discrimination," Sept. 24, 2015, https://www.justice.gov/opa/pr/justice-department-and-consumer-financial-protection-bureau-reach-settlement-hudson-city.

with these testers but not showing them any homes, or showing only one or two houses to these testers. Real estate agents met with the White counterpart testers and showed them multiple properties. Agents throughout the nation made inappropriate and illegal comments based on race and national origin, racial composition of neighborhoods, religion, and schools. In addition to perpetuating segregation by limiting the neighborhoods in which homes were shown, in numerous instances real estate agents made blatant comments to Whites, African-Americans and Latinos steering them away from certain communities. ***In the tests where testers were actually shown homes, the rate of racial steering was 87 percent.*** The continued prevalence of real estate sales discrimination must be addressed in the industry and through fair housing enforcement channels. For the current data on real estate sales complaints in 2016, see Section IV.

Local Institutional Impediments to the Achievement of Fair Housing

One method intended to achieve a higher level of integration and inclusion was to require that recipients of federal funds be required to Affirmatively Further Fair Housing (AFFH). NFHA

In this example, a White male agent produced a map of Brooklyn and drew red lines around the areas in which the White homebuyer should look for homes. He drew arrows to identify neighborhoods that were "changing." The agent was intentionally steering the buyer away from interracial and segregated neighborhoods of color.



has written extensively on AFFH and HUD's new rule on AFFH. We also discuss AFFH in this report in the section on Featured Issues. We should mention in the context of the history and current vestiges of discrimination and segregation, however, that one must examine the role of local institutions in the creation and perpetuation of segregation, even today. While there are numerous examples, these from 2016 make clear the need for effective implementation of the requirement to AFFH, as well as the need for continued fair housing enforcement efforts on the local level.

United States v. Housing Authority of Bossier, Louisiana, No. 5:16-CV-01376 (W.D. Louisiana Sept. 30, 2016). The Housing Authority of Bossier, Louisiana, agreed in 2016 to a consent order resolving claims that it discriminated on the basis of race and disability in the assignment of units in public housing complexes.

The Justice Department alleged that the housing authority steered applicants and residents based on race or color to public housing complexes located in racially segregated areas. According to DOJ, elderly Black applicants and residents were assigned or transferred to one of five complexes in majority Black areas, and White applicants and residents were assigned to two housing complexes located in a majority White area. The government also alleged that the housing authority assigned non-elderly residents with disabilities to a single housing complex.

Under the terms of the consent order, the housing authority will implement non-discriminatory policies and procedures to ensure that housing units are assigned based on an applicant's position on the waiting list regardless of race or disability. The housing authority will also pay a total of $120,000 to persons who were harmed by its practices and will allow current tenants to request transfers on a priority basis.

Oviedo Town Center II, L.L.L.P. v. City of Oviedo, Florida, No. 6:16-cv-1005-Orl-37GJK, 2016 U.S. Dist. LEXIS 164773 (M.D. Fla. Nov. 30, 2016). A federal district judge ruled in November that the owners and developers of an affordable housing complex had stated Fair Housing Act claims against the City of Oviedo, Florida. The plaintiffs filed their lawsuit after the city changed the basis for charging for water and sewage usage in a way that the plaintiffs alleged was racially motivated.

Oviedo Town Center II, L.L.L.P. and other entities (OTC) developed, owned, and operated a 12-building, 240-unit affordable housing complex in Oviedo. The majority of the residents in the complex are people of color. Each building contains one water and sewage meter.

The city charges OTC base fees for water and sewage usage. Previously, the city charged the base fee for the single water meter in each building. However, in 2012, the city changed its policy and began to charge OTC the base fee for each apartment unit, a 2,126 % fee increase. Under the agreements with the housing agencies that had provided funding for the construction of the development, OTC was not permitted to pass the fee increase on to the tenants. OTC maintained that it could not afford to continue to operate the housing with the new fees. It applied for an exception to the new policy, but the city denied the request.

OTC sued the city under the Fair Housing Act. It alleged that the city's denial of its request for an exception to the new base fee policy was racially motivated and had a disparate impact on minority households. The city moved to dismiss. It claimed that the plaintiffs did not have standing because no low-income tenants had suffered an injury in fact, and that the plaintiffs had not stated claims.

District Judge Roy B. Dalton denied the motion. He ruled that the plaintiffs had standing under the Fair Housing Act because they had asserted injuries to their own interests by alleging that they would be unable to continue to operate the affordable housing as a result of the city's alleged discriminatory actions. He also ruled that they had set forth sufficient facts in support of their allegation that the city had "thwarted [their] ability to continue its operations due to a racially motivated decision in violation of 42 U.S.C. § 3604(a)."

United States v. Village of Tinley Park, Illinois, No. 1:16-cv-10848 (N.D. Ill. Nov. 23, 2016). The Justice Department filed a lawsuit in November 2016, against the Village of Tinley Park, Illinois, alleging that the village has engaged in a pattern or practice of discrimination on the basis of race by denying approval for a low-income housing development.

The Buckeye Community Hope Foundation proposed to develop a three-story, 47-unit building, known as the Reserve, whose units would be occupied by persons making less than 60 percent of the area median income. According to the complaint, Black households would be more likely to qualify for the program than White households. The development would be financed by the federal Low Income Housing Tax Credit program.

The complaint alleges that the Tinley Park planning department found that the project met all the requirements of the local zoning code; however, in the face of community opposition based on discriminatory attitudes, the village sent the project back to the planning department which tabled consideration of the project.

The Justice Department asked the court to require Tinley Park to approve Buckeye's proposal and to take affirmative steps to comply with the Fair Housing Act. It has also requested monetary damages and a civil penalty.

Fair Housing Justice Center v. Town of Eastchester, No. 7:16-cv-09038 (S.D.N.Y. Nov. 21, 2016). The Fair Housing Justice Center (FHJC) filed a lawsuit in 2016 against the Town of Eastchester, New York, which is located in Westchester County. FHJC alleged that Eastchester discriminates on the basis of race and national origin in its Section 8 housing voucher program and in its zoning code.

According to the complaint, Eastchester uses a system of preferences in the distribution of Section 8 housing vouchers that gives preference to town residents. Eastchester's population is 87 percent White and non-Hispanic. FHJC alleged that as a result of Eastchester's demographics, the residency preference leads to the exclusion of most Black and Hispanic renters. A tester

for FHJC was told that Eastchester residents have from several months to a two-year wait for a voucher, while non-residents must wait for ten to fifteen years. FHJC alleged that by using the residency preferences, Eastchester discourages non-residents, who are more likely to be Black or Hispanic, from applying for vouchers in Eastchester; and charges that Eastchester, by its policies and conduct, suppresses minority participation in the Section 8 program, denies housing opportunities to Blacks and Hispanics, and perpetuates racial segregation.

FHJC also charged that a town zoning ordinance for senior housing developments that incorporates a residency preference discriminates on the basis of race and national origin and perpetuates racial segregation.

FHJC asked the court to order Eastchester to modify its policies and practices to comply with the Fair Housing Act and to remove residency preferences from its housing choice voucher administrative plan and its zoning code. It also requested that the town develop an affirmative marketing plan that prevents future housing discrimination.

Conciliation Agreement between HUD and the City of Ridgeland, Mississippi, FHEO No. 04-16-4066-8. The City of Ridgeland, Mississippi, agreed in 2016 to amend a 2014 zoning ordinance that HUD claimed was motivated by racial animus or would have a disparate impact on African American residents, and would put more than 1,400 units of low-income majority-minority housing at risk of being replaced with mixed use developments. HUD also alleged that other minority housing complexes were subjected to lower density requirements and that this would result in a loss of hundreds of additional apartment units. The city will amend the ordinance to address HUD's concerns and will submit a proposed affordable and fair housing marketing plan to HUD.

Segregation Did Not Happen by Accident

Numerous governmental and private policies and practices contributed to the creation of segregated neighborhoods and continue to perpetuate segregation today. It is fundamentally important to our understanding of this history that we realize that segregation in most cases resulted also in limited access to opportunity. That's what makes segregation at the heart of many other inequities in this nation and that is why we must take stronger steps to dismantle segregation and make all places neighborhoods of opportunity. In Section II, we outline why that matters.

SECTION II. SEGREGATION TODAY AND WHY IT MATTERS

In this Section...

We cover:

- Why residential segregation is so harmful, resulting in negative outcomes around education, health and well-being, and criminal justice
- How residential segregation contributes to our racial and ethnic wealth gap
- Why integrated neighborhoods are better for everyone, regardless of one's race or ethnicity

Because of the historical and contemporary policies and practices outlined in Section 1, approximately half of the Black population and 40 percent of the Latino population in the United States live in neighborhoods without a White presence.[63] The average White person lives in a neighborhood that is 77 percent White, 7 percent Black, 10 percent Latino, and 4 percent Asian.

Asian Americans have also been subject to a history of discriminatory practices, and many Asian American groups live in highly segregated neighborhoods.[64] However, Asian American segregation is not a focus of this report.

We know from looking at our history that the segregated nature of many neighborhoods across our nation is not simply a result of coincidence or choice. Government policies over many decades shaped it, and a combination of housing discrimination and market forces reinforced and perpetuated it. These policies and practices continue to limit the choices one has when considering where to live to this day. They also limit the opportunities available to persons in neighborhoods that have been marginalized by discrimination and segregation.

Think about what matters most when you move to a new home. You may base your decision partly on the house or unit itself—considering the costs, square footage, the building's amenities or the layout of the rooms. But more often than not, you base your decision largely on other features of the surrounding neighborhood. How are the schools? How far is it from where you work or want to work? Is it near a highway or train station? Can you easily access a park or

63 Logan, John R. and Wenquan Zhang, "Global Neighborhoods: New Evidence from Census 2010" Brown University, November 2011. Available online: http://www.s4.brown.edu/us2010/Data/Report/globalfinal2.pdf.

64 Logan, John R. and Weiwei Zhang, "Separate but Equal: Asian Nationalities in the U.S." Brown University, June 2014. Available online: https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report06112013.pdf.

playground to play with your kids or go for a jog? Do you and your family feel safe in and around your home? Are you near family and friends?

We consider these neighborhood qualities because where we live is intimately tied to so many of our life outcomes. Existing research shows that one's zip code can dictate one's educational trajectory, income, and even life expectancy. The opportunity to choose where to live is essential to one's quality of life. Thus, in a country where segregated neighborhoods are a reality in every major metropolitan area, and where many segregated neighborhoods of color have been deprived of the resources, investment, and public services that translate into opportunity, residency in these neighborhoods is strongly correlated with poorer life outcomes.

Of course, there are also White neighborhoods that lack resources and opportunities, particularly in rural areas of America. But the existence of these neighborhoods is not founded in a history of discrimination and segregation based on race or national origin, and they are not the subject of this report.

Educational Attainment

Our schools are even more segregated today than they were in the late 1960s. The average Black student attends a school where only 28 percent of his or her fellow classmates are White (down

from 35 percent in 1991).[65] And while poor families with children are most likely to live near underperforming schools, children in poor Black and Latino households were found to live near schools that had median math and reading scores in the 17th and 27th percentile, respectively. The median test scores for the schools closest to their poor White counterparts were in the 47th percentile.[66]

> **"...when it comes to health and well-being, 'your ZIP code is more important than your genetic code.'"**

Not surprisingly, similar disparities continue through high school graduation rates and through the data on higher education attainment. In 2014, 72.5 percent of African American students and 76 percent of Latino students graduated from high school, compared to 87.2 percent of White students.[67] Among adults age 25 and older, 33 percent of Whites held bachelor's degree, while only 14 percent of Latino adults and 19 percent of Black adults had earned the same degree. [68]

Health and Well-Being

Where you live also dictates a number of factors that affect your health, well-being, and life expectancy. People of color are far more likely to be exposed to substandard housing conditions, including proximity to toxic waste and exposure to lead and unsafe water sources. As Dr. Eldrin Lewis, a cardiologist at Harvard-affiliated Brigham and Woman's hospital puts it, when it comes to health and well-being, "your ZIP code is more important than your genetic code."[69]

Unfortunately, recent headlines offer a number of blatant examples of this reality. A recent report from the Michigan Department of Civil Rights explicitly states that its commission on the Flint Water Crisis found that systemic racism was instrumental in the disparate health outcomes that resulted from the Water Crisis.[70] The Centers for Disease Control reported that Black children were three times more likely to have extremely high lead levels in their blood and 1.6 times more likely to test positive for any lead exposure at all.

Environmental hazards outside the home also play a part in long-term health and well-being outcomes. More than half of the people who live within 2 miles of waste facilities are people of color – a number that is highly disproportionate. Residents of communities of color are also more

65 Rothstein, Richard, "The Racial Achievement Gap, Segregated Schools and Segregated Neighborhoods – A Constitutional Insult." Economic Policy Institute, November 12, 2014. Available online at: http://www.epi.org/publication/the-racial-achievement-gap-segregated-schools-and-segregated-neighborhoods-a-constitutional-insult/.

66 Ellen, Ingrid Gould and Keren Mertens Horn, "do federally assisted households have access to high performing public schools?" Poverty & Race Research Action Council, November 2012. Available online at: http://furmancenter.org/files/publications/PRRACHousingLocationSchools.pdf.

67 https://www.ed.gov/news/press-releases/us-high-school-graduation-rate-hits-new-record-high-0.

68 https://nces.ed.gov/pubs2016/2016007.pdf.

69 http://www.health.harvard.edu/heart-health/race-and-ethnicity-clues-to-your-heart-disease-risk.

70 https://www.michigan.gov/documents/mdcr/MDCR_Flint_Water_Crisis_Report_552190_7.pdf.

likely to have limited access to fresh fruits, vegetables, and meats. Nationwide, predominantly Black neighborhoods house approximately half as many chain supermarkets when compared to predominantly White zip codes, and Latino communities have only one-third as many.[71] Research out of San Francisco shows that Blacks are less likely to live in walkable communities, and a larger analysis of 2010 census data indicates that this is also true in the top 20 most walkable cities in America. It comes as no surprise then that African American and Latino adults' obesity rates are at 47.8 and 42.5 percent respectively, while the rate amongst Whites is 32.6 percent.[72] In addition, nearly half of all African Americans have a cardiovascular disease of some kind, while for White Americans this number is one-third.[73]

Life expectancy, as a result of all of these factors, is intrinsically linked to place. In 2013, The Robert Wood Johnson Foundation's Commission to Build a Healthier America mapped the life expectancy data for a number of cities and found variations based on where individuals lived. In the predominantly White Lakeview neighborhood of New Orleans, residents were expected to live approximately 80 years, while in the Tremé neighborhood of New Orleans which is 87 percent Black, the average life expectancy was only 54.5 years.[74]

These many studies linking race to environmental hazards, life expectancy, and heart disease do not even touch on the significant mental well-being and overall quality-of-life factors. Exposure to violent crime and trauma, for example, is more likely to occur in many urban neighborhoods where residents are primarily people of color. A recent study from Atlanta's Grady Memorial Hospital found that half of the mostly Black[75] patients knew someone who had been murdered, two-thirds had been victims of violent assault, and one-third had been sexually assaulted. As a result, nearly 32 percent of patients suffered from Post Traumatic Stress Disorder (PTSD) symptoms. Similar data was found in 21 cities with high homicide rates, and research shows that a number of zip codes in the United States have higher PTSD rates than the rate among veterans who had fought in Afghanistan and Iraq.[76]

Access to Transportation

Access to transit is an extremely important part of access to opportunity, and the relationship between transportation and segregated neighborhoods is long and deeply intertwined. In fact, the idiom "the other side of the tracks" is embedded in our vocabulary as a way to refer to neighborhoods where conditions are somehow less than desirable or which carry a certain stigma. Indeed, historically, the placement of railroads and highways often displaced, plowed through, or cut off neighborhoods of color from the neighborhoods that benefited from the easy access to transportation channels. These decisions also contributed to "White flight" to

71 "The Grocery Gap: Who Has Access to Healthy Food and Why it Matters," PolicyLink, 2010, available at http://thefoodtrust.org/uploads/media_items/grocerygap.original.pdf.

72 http://stateofobesity.org/disparities/,

73 http://www.health.harvard.edu/heart-health/race-and-ethnicity-clues-to-your-heart-disease-risk,

74 Robert Wood Johnson Foundation, "Metro Map: New Orleans, Louisiana," June 19, 2013. Available online at: http://www.rwjf.org/en/library/infographics/new-orleans-map.html.

75 https://www.gapha.org/wp-content/uploads/2016/12/17s.pdf,

76 https://www.propublica.org/article/the-ptsd-crisis-thats-being-ignored-americans-wounded-in-their-own-neighbor,

the suburbs, which left disinvested communities, often communities of color, in the urban cores. And today, while there is some increased emphasis on community engagement and civil rights considerations in decision-making around placement of transit infrastructure, people of color often live in neighborhoods that lack public transportation and are denied access to capital or loans to purchase their own vehicles.

This isolation has far-reaching implications and is intertwined with access to opportunity. Non-white individuals are four times more likely than Whites to rely on public transportation for their work commute,[77] but are simultaneously often in neighborhoods underserved by public transportation. In some rapidly gentrifying cities, this is becoming even more of a problem. In Washington, DC, for example, while long-time Black residents are being displaced in the city as a whole at a rapid rate, data shows that they are being displaced even more rapidly in the areas that are within a half-mile of a train station.[78]

In the past few decades, there has also been an increase in the number of people of color and low-income people moving to suburban neighborhoods to access homes that are more affordable than gentrifying inner cities. These suburban neighborhoods, however, are notorious for their reliance on cars and for their lack of public transportation infrastructure, which serves to further isolate some residents from job opportunities and public services.

The lack of equal access to transportation options is an isolating factor for people with disabilities as well. Thirty-one percent of people with disabilities report that they have insufficient access to transportation, as compared to 13 percent of the general population. This serves as a barrier to finding employment, health care, and housing, and to achieving self-sufficiency.[79]

77 http://www.protectcivilrights.org/pdf/docs/transportation/52846576-Where-We-Need-to-Go-A-Civil-Rights-Roadmap-for-Transportation-Equity.pdf.

78 https://www.washingtonpost.com/news/wonk/wp/2015/12/18/what-people-who-live-near-metro-stops-increasingly-have-in-common/?utm_term=.3d0a0f4dc579.

79http://www.civilrightsdocs.info/pdf/transportation/final-transportation-equity-disability.pdf

Policing and Criminal Justice

There are countless examples of racially biased police brutality and violence in cities throughout the U.S. From Los Angeles to Baltimore and in every major city in between, police killings of Black men and women have plagued our headlines in recent years and have forced us, as a nation, to take a close look at the staggering racial disparities in police brutality and incarceration rates.

These issues are inexorably linked to residential segregation and racial isolation. It is well documented that neighborhoods of color are largely overpoliced. According to Human Rights Watch, people of color are no more likely to use or sell illegal drugs than Whites, but they have significantly higher rates of arrest for drug-related crimes. Children living in predominantly Black neighborhoods, as Ohio State Professor Michelle Alexander reports, "are more likely to attend schools with zero-tolerance policies, where police officers patrol the hall, where disputes with teachers are treated as criminal infractions, where a schoolyard fight results in [their] first arrest . . . [They] find that even at a very young age, even the smallest infractions are treated as criminal."[80]

The resulting data on criminal backgrounds and incarceration is staggering. Among youth, 70 percent of those involved in school-related arrests or referrals to law enforcement are Black or Latino. Moreover, one in every 15 African American men and one in every 36 Hispanic men are incarcerated, as compared to only 1 in every 106 White men.[81]

The Racial Wealth Gap – Employment, Homeownership, and Wealth Building

Given the educational attainment gap and relationship between racially concentrated areas of poverty and employment, it comes as no surprise that people of color also experience higher unemployment rates than their White peers. This is also due to the fact that people of color often lack access to affordable transportation options that would connect them to hubs of employment. In 2015, 10.1 percent of Black workers and 6.8 percent of Latino workers were unemployed as compared to 4.7 percent of White workers. Recent data from the Economic Policy Institute also shows that in the first quarter of 2017, 14.8 percent of Blacks were underemployed as compared to only 7.5 percent of Whites.[82]

This spills over to outcomes around wealth and homeownership among minority groups. Wealth is defined as the difference between a family's assets and its debts, and it represents the resources available to that family to purchase a home, send a child to college, start or expand a small business, cover medical expenses, fund retirement, or pass along to the next generation. The gap in wealth between White families and families of color in the U.S. is large, long-standing, and increasing. We know that this is due in large part to the dual credit market that has existed in this country since the Colonial Era. Mainstream, more sound access to quality and affordable

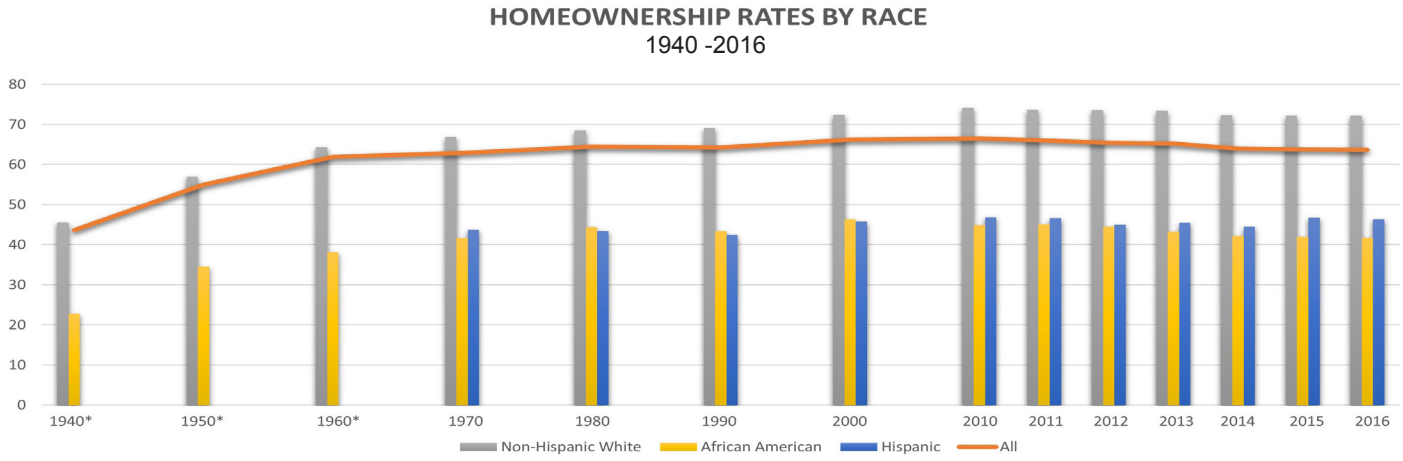
80 https://www.theatlantic.com/health/archive/2015/03/how-incarceration-infects-a-community/385967/.

81 https://www.americanprogress.org/issues/race/news/2012/03/13/11351/the-top-10-most-startling-facts-about-people-of-color-and-criminal-justice-in-the-united-states/.

82 Economic Policy Institute, "All races hurt by recession, racial and ethnic disparities exist," available online at: http://www.stateofworkingamerica.org/charts/underemployment-by-race-and-ethnicity/.

credit and capital has been available to Whites, while fringe and costly financial services, such as payday lenders, pawnshops, and subprime loans, remain the primary source of credit and capital for people of color and in low-income and segregated communities. This deep racial and ethnic divide has existed in various forms over centuries, resulting in a massive wealth gap between racial groups in the U.S. today. In a recent study, the Urban Institute found that, "In 1963, the average wealth of White families was $117,000 higher than the average wealth of non[W]hite families. By 2013, the average wealth of White families ($677,658) was over $500,000 higher than the average wealth of African American families ($95,000) and of Latino families ($112,000). [83]

The racial/ethnic wealth gap is equally apparent when comparing homeownership levels among people of different racial and ethnic backgrounds. Homeownership has long been an important vehicle for building wealth in this country, one that Black and Latino families, in particular, have relied upon. Just as with overall wealth, there is a large and long-standing racial/ethnic gap in the homeownership rate in the U.S.: During the last quarter of 2016, the US Census Bureau reported a homeownership rate of 63.7 percent overall. Among Non-Hispanic Whites, this rate rose to 72.2 percent, while for Blacks it was 41.7 percent, for Latinos it was 46.3 percent, and for Asian Americans it was 56.5 percent.[84]



Data for Hispanic Homeownership not available prior to 1970.
Rice, Lisa and Shanti Abedin from data provided by the U.S. Census Bureau and The Joint Center for Political and Economic Studies' brief, "African Americans and Homeownership: Separate and Unequal, 1940 to 2006."

The Benefits of Diversity

It is clear that the prevalent nature of residential segregation makes our nation a place where not everyone has a fair shot at the opportunity to succeed in life. Creating diverse, integrated neighborhoods is not only beneficial for members of racial and ethnic minority groups. A significant and growing body of research shows that diverse communities create better outcomes for everyone.

83 Urban Institute, "Nine Charts about Wealth Inequality in America," available online at: http://datatools.urban.org/Features/wealth -inequality-charts.
84 https://www.census.gov/housing/hvs/files/currenthvspress.pdf.

Researchers have found that the economic performance of geographic regions with high rates of poverty and high levels of segregation is worse than that of places that are less segregated. They attribute this poor economic performance to the spatial mismatch between where jobs and workers are located, and the isolation experienced by people in segregated communities who lack good access to jobs. This mismatch interferes with the necessary interaction between high- and low-skilled workers, both of whom are needed for maximum productivity. A recent report from the Urban Institute and Metropolitan Planning Council uses the Chicago metropolitan region as a case study and reports that if the metro area's levels of economic and Black-White segregation were brought down to the national median, incomes for Black residents would increase by $2,982 per year, and "…the region as a whole would earn an additional $4.4 billion in income."[85]

The same report also states that more inclusive, or less segregated, neighborhoods have higher average educational attainment rates and lower rates of homicide. Using the Chicago region as a hypothetical example again, 83,000 more people in the metropolitan area would have bachelor's degrees if the Black-White segregation rates were reduced to the national median. It is also estimated that the region's homicide rates would decrease if the same conditions were to exist – a scenario that would have saved 229 lives in 2016 in the Chicago area alone. This would have translated to residential real estate values increasing by at least $6 billion, because, as the report puts it, "…violence has a ripple effect: It removes residents from communities by death and incarceration, unravels families and traumatizes survivors. Each of these factors saps the capacity of students and workers and makes the city and region a less appealing place to live and work."[86]

The Costs of Segregation Mandate Investment in Fair Housing

In this section, we have highlighted some of the key costs of segregation. In order to make progress in changing these adverse outcomes, we must make significant investment in both addressing the policies and practices that perpetuate segregation and in challenging the types of discrimination that inhibit access to housing opportunity. That requires a strong and effective infrastructure for enforcing the Fair Housing Act. In Section 3, we provide an overview of the existing infrastructure—one that demonstrates that fair housing enforcement leads to meaningful results—and what exists now must be significantly strengthened and enhanced.

85 Ibid.

86 http://www.metroplanning.org/uploads/cms/documents/cost-of-segregation.pdf.

SECTION III. THE INFRASTRUCTURE TO COMBAT HOUSING DISCRIMINATION AND DISMANTLE RESIDENTIAL SEGREGATION

In this Section...

We cover:

- The dual purpose of the 1968 Fair Housing Act
- The roles of Private Fair Housing Organizations HUD, DOJ, and the CFPB —agencies which together comprise our national infrastructure to achieve fair housing
- HUD's Affirmatively Furthering Fair Housing obligation

The Fair Housing Act has a dual purpose: to eliminate housing discrimination and to promote integration nationwide. The Fair Housing Act (the "Act") was passed in 1968, one week after the assassination of Dr. Martin Luther King, Jr. The Act's sponsors were Republican Senator Edward Brooke and Democratic Senator Walter Mondale. The Act was amended in 1988, making it an even more powerful and effective tool against discrimination and adding additional classes of protected persons. The Act prohibits discrimination in all housing-related transactions on the basis of race, color, religion, national origin, sex, familial status, and disability. The Act provides for an administrative system for the investigation and prosecution of housing discrimination complaints through the Department of Housing and Urban Development, as well as for systemic pattern and practice cases brought by the Department of Justice. It also provides that complaints of housing discrimination may be brought in federal court. It allows for broad standing of those who may bring complaints, including any entity injured or about to be injured by a discriminatory housing practice. The implementing regulations of the Act are comprehensive. It is one of our nation's best civil rights laws.

Today, the mission of the Fair Housing Act is carried out by both governmental and private enforcement agents. In this section, we provide an overview of the work of various public and private agencies with responsibility for enforcement of the Fair Housing Act, with an emphasis on the role of private, nonprofit fair housing agencies, as they conduct the majority of complaint investigations each year. There is an infrastructure for addressing discrimination and segregation, but it is insufficient to the task at hand, as is explained in more detail throughout this section.

Private nonprofit fair housing organizations conduct investigation and enforcement activities for the purposes of eliminating housing discrimination on individual and systemic levels. Individuals may also file complaints in court separately or with a fair housing organization. Private groups also engage in extensive education of consumers and the housing industry. The Department of Housing and Urban Development (HUD) conducts complaint intake, investigation, and administratively decides cases, in addition to a number of other fair housing responsibilities outlined later in this section. The Department of Justice (DOJ) initiates complaints in federal court when HUD finds reasonable cause to believe that the Fair Housing Act has been violated and either party to an administrative complaint elects to have the case decided in federal court, or when it sees patterns and practices of fair housing violations to be in conflict with the interests of the federal government. State and local government agencies that receive Fair Housing Assistance Program (FHAP) funding through HUD also investigate and process fair housing complaints. The Consumer Financial Protection Bureau (CFPB) has the authority to ensure that no extension of mortgage credit violates the Equal Credit Opportunity Act.

This gives the impression that there are many institutions addressing the problems of discrimination and segregation on a broad scale. That is not accurate.

Private fair housing organizations process the largest number of fair housing complaints; however, these organizations are few and far between, and many parts of the nation are not served by a private organization, which represents the best frontline measure to address discrimination. We not only need more organizations—we need additional and consistent funding of existing organizations. Fair housing staff need to make adequate salaries and receive quality benefits so they can make a profession of fair housing. There needs to be resources for training, supervision, systemic investigations, and cooperation on the regional level. And there needs to be support from local government, private institutions and the philanthropic community. Fair housing needs to be an industry.

The Office of Fair Housing and Equal Opportunity (FHEO) should be the force driving all other programs at HUD; instead, FHEO is not adequately funded and supported, nor is it respected properly by other divisions within HUD. Fair housing should be at the forefront of every HUD program, from public housing to Community Development Block Grants to FHA lending. The work of enforcing the federal Fair Housing Act and ensuring that all government programs and recipients of federal funds affirmatively further fair housing is enormous. The task is so important and so all-encompassing that a Fair Housing Commission convened in 2008 recommended that the Office of Fair Housing become a stand-alone federal entity,[87] similar to the Consumer Financial Protection Bureau today. The best-case scenario is that Congress would establish such an institution; in the absence of that, FHEO must be placed center stage at HUD, receive the appropriate level of support, and have the appropriate level of influence.

87 The National Commission on Fair Housing and Equal Opportunity, The Future of Fair Housing, 2008. Available at www.nationalfairhousing.org.

Much of HUD's case-processing work is handled by Fair Housing Assistance Program (FHAP) agencies that represent jurisdictions with laws substantially similar to the Fair Housing Act. Many of these agencies function at high levels and process discrimination complaints appropriately; others do not. FHAP agencies have the same resource constraints faced by HUD and private groups. There are not enough of them and they are not adequately funded.

The role of DOJ is limited to some extent by the language of the Fair Housing Act; however, the Department could engage in additional, important systemic cases were it to have more resources.

The role of the CFPB is also limited in terms of fair housing, and it is a relatively new organization. It is yet to be determined what resource or structural limitations may affect its work to promote fair mortgage lending.

Let us examine in more depth the role of each of these entities.

The Role of Private Fair Housing Organizations in Fair Housing Enforcement

Private nonprofit fair housing organizations have been instrumental in confronting and eliminating individual and systemic discrimination. They have challenged exclusionary zoning by local communities, restrictive covenants on homebuying, and policies that have a disparate impact on people of color, including minimum loan amounts, and insurance age and value restrictions. They investigate discrimination in all sectors of the housing market and provide remedies to individuals and families that have experienced discrimination. Fair housing organizations have kept the goals of the Fair Housing Act alive by opening up more opportunities to more people. Many of these organizations are funded through the Fair Housing Initiatives Program (FHIP).

In 2016, fair housing organizations investigated 70 percent of the complaints filed nationwide; that is almost twice as much as all federal, state, and local government agencies combined. Having the knowledge of their communities on the ground, fair housing organizations are often the most effective enforcers of the Fair Housing Act, rooting out discrimination and representing victims of discrimination. In a 2011 study commissioned by HUD, it was found that 71 percent of the HUD cases in which a fair housing organization is a complainant or co-complainant result in conciliation or a cause finding, versus 37 percent of cases not referred to HUD by fair housing organizations.[88] The study found that FHIP grantee organizations weed out cases that are not covered by civil rights statutes, thereby reducing the cost burden of lawsuits and mediations that clog up the nation's judicial and administrative systems. The vetting of complaints by fair housing organizations saves resources for HUD and state agencies that do not have to investigate these complaints, allowing them to focus their resources on other verifiably illegal activities.[89]

88 Study of the Fair Housing Initiatives Program. Prepared for HUD by DB Consulting Group, Inc., May 2011.
89 Ibid.

Private fair housing organizations are engaged in important work that also expands affordable and equal housing. Housing has become increasingly unaffordable, and this disproportionately affects families with children, people with disabilities, and households of color. Private fair housing organizations work in tandem with industry groups (and their local affiliates) like the National Association of Real Estate Brokers, Mortgage Bankers Association, Freddie Mac Affordable Housing Advisory Council, National Association of Realtors, National Apartment Association, and others to address fair housing issues in the rental, real estate, lending, and insurance sectors. The work of fair housing organizations at the national and local level is critically important in addressing housing issues that affect millions of Americans.

Fair housing organizations work at the national, regional, and local levels to expand fair housing opportunities for all Americans at all income levels. These organizations:

- Train local housing providers on how to avoid running afoul of the Fair Housing Act;
- Educate consumers about their rights and how to recognize and report situations that appear to violate the law;
- Provide direct assistance to victims of discrimination;
- Address systemic policies and practices that limit opportunity and perpetuate segregation;
- Help hardworking Americans avoid foreclosure;
- Work with leaders and public officials at the local level to create and expand the availability of safe, affordable, and decent housing;
- Work with stakeholders at the local level to ensure that every community has access to important opportunities like quality schools, healthcare, jobs, transportation, food, credit, etc.; and
- Engage in efforts to stabilize neighborhoods and strengthen communities.

Testing: A Powerful Tool for Fair Housing Enforcement

Fair housing organizations often use "testing" to discern whether discrimination is taking place. Fair housing testing is the simulation of housing transactions by persons who pose as homeseekers.[90] Tests are designed to objectively ascertain whether or not policies or practices of discrimination are in place or to determine if a complainant's allegation can be corroborated. Testers are vetted and trained by fair housing organizations, and testing methodology and results are held to legal evidentiary standards when claims of housing discrimination are made in legal or administrative proceedings. Testing is a valuable civil rights enforcement tool that works to protect those in the housing industry who are in compliance with the law and to change the practices of those who are not.

90 As the Supreme Court explained in 1982, "testers" are "individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful . . . practices." Havens Realty Corp. v. Coleman, 455 U.S. 363, 373 (1982).

Fair housing organizations are the only private groups with the capacity and expertise to investigate and test complaints of housing discrimination. Courts, researchers, and practitioners have all recognized testing as the most effective way to detect housing discrimination, in the absence of overt statements or actions. HUD, state and local government agencies, and the Department of Justice often rely upon the testing capacity of fair housing organizations to further investigate complaints.[91]

Testing alone can provide the evidentiary basis of a discrimination claim against a housing provider, and courts have recognized the utility of testing, making it a routine tool for determining the extent of housing discrimination.[92] Courts have long accepted the use of testers to investigate and prove claims of housing discrimination. In 1973, the Tenth Circuit Court of Appeals observed that "[i]t would be difficult . . . to prove discrimination in housing without this means of gathering evidence."[93]

The Supreme Court has additionally affirmed that fair housing testing conducted by organizations may be a basis for standing to bring claims under the Fair Housing Act. Individual testers can make fair housing claims under the Fair Housing Act if they are given inaccurate information as to the availability of housing, and fair housing organizations may be able to bring claims if the incidence of housing discrimination has the effect of diverting organizational resources. [94]

Testing is a proven tool to uncover discrimination, whether it is against individuals or an entire class of people. Fair housing organizations and others are using testing and other investigative tools more and more to uncover systemic discrimination and to make systemic change.

Investigations with Systemic Impact

Private nonprofit fair housing organizations have conducted extensive systemic investigations that yield industry-wide changes to policies and practices that inhibit the freedom of housing choice for millions of Americans. These are often accomplished through the partnership of several organizations to conduct an investigation at the regional or national level. The following are examples of systemic investigations in which the National Fair Housing Alliance (NFHA) has been involved.

National Investigation of Rental Discrimination Against the Deaf and Hard of Hearing

In 2013, NFHA conducted the only nationwide investigation to date of large apartment complexes to determine how deaf and hard-of-hearing people are treated when seeking rental property. The investigation and its outcomes were described in the report, "Are You Listening Now?"[95]

91 For more information on fair housing testing, see https://www.huduser.gov/portal/periodicals/em/spring14/highlight3.html.
92 Robert G. Schwemm, Housing Discrimination Law and Litigation § 32:2.
93 Hamilton v. Miller, 477 F.2d 908, 910 n.1 (10th Cir. 1973).
94 See Havens, 455 U.S. 363.
95 http://www.nationalfairhousing.org/.

NFHA and eleven partner fair housing organizations, through FHIP-funded activities, investigated 117 national or regional rental firms in 98 cities and 25 states. The partners were: Austin Tenants Council in Austin, Texas; the Connecticut Fair Housing Center in Hartford, Connecticut; the Denver Metro Fair Housing Center in Denver, Colorado; the Fair Housing Center of Central Indiana in Indianapolis, Indiana; the Fair Housing Continuum in Melbourne, Florida; Fair Housing of Marin in San Rafael, California; the Fair Housing Partnership of Greater Pittsburgh in Pittsburgh, Pennsylvania; the Fair Housing Resource Center in Painesville, Ohio; the Greater Houston Fair Housing Center in Houston, Texas; the Greater New Orleans Fair Housing Action Center in New Orleans, Louisiana; and Miami Valley Fair Housing Center in Dayton, Ohio.

Of 117 rental firms tested, about one out of four treated deaf callers differently from hearing callers in a manner that appeared to violate the Fair Housing Act. NFHA and its members conducted additional testing of the 25 percent of rental firms that exhibited differential treatment. The 30 rental firms identified for further testing continued the discrimination identified during the initial investigations by engaging in multiple instances of discriminatory treatment. The 30 rental firms identified for further testing own an estimated 545,310 apartment units in approximately 2,079 apartment complexes throughout the United States. The sheer magnitude of this aggregate housing portfolio underscores the impact these corporations have in the rental market and, consequently, the injury they can inflict on people with disabilities seeking housing. Three complaints filed with HUD resulted in more than $300,000 in relief and required training for management companies. The relief included changes in practices to be non-discriminatory and training of personnel on conducting business with persons who are deaf and hard of hearing.

Design and Construction Investigations

Several fair housing organizations have conducted investigations of housing developers that do not comply with the requirements of the 1988 Fair Housing Amendments Act to construct accessible multifamily housing. Investigations of several large builders and developers have resulted in more than $26 million in retrofits to 15,000+ units to make them accessible and more than $5 million in grants to help people with disabilities make their current home or apartment accessible in more than 35 states.

The National Fair Housing Alliance coordinated design and construction testing in 19 states involving the A.G. Spanos Company, the fourth largest builder in the country. A federal lawsuit alleging Spanos built inaccessible properties since 1991was filed in 2007 by NFHA and four local fair housing organizations in Marin and Napa, Calif.; Atlanta, Ga.; and Melbourne, Fla. The settlement includes more than 13,200 apartments retrofitted; $750,000 to provide grants for people to retrofit their home or apartment; $4.2 million national retrofit fund to make grants through local disability advocacy groups to renters and homeowners to make their current home accessible; and $40,000 for a white paper identifying future needs for visitability ordinances.

Additionally, this systemic investigation led to the release of a public policy report on the challenges persons with disabilities face in obtaining housing. The report, "Shut Out, Priced Out and Segregated," provides recommendations that address affordability and increasing the number of accessible housing units. The report also highlights best practices that should be adopted by local governments.

This case resulted in an ongoing partnership with the President of A.G. Spanos Companies, and NFHA helped the company secure approval from zoning boards for new projects because Mr. Spanos put in place guarantees that all buildings would be barrier-free.

NFHA has conducted design and construction investigations in 35 states, has filed five federal lawsuits, and settled three lawsuits. In several of these cases, NFHA created joint investigative partnerships with local FHIP-funded organizations in order to expand the systemic investigations and local plaintiffs.

Insurance Investigations

Fair housing organizations have led the nationwide effort to change the unwarranted and discriminatory practices of homeowners insurance providers that included limiting coverage on older homes and on homes under a certain minimum value; the restriction of guaranteed replacement cost coverage on homes because of the difference in market value and replacement cost; and the improper use of credit scoring in insurance decisions. These guidelines had a tremendous effect on the ability of homeowners in middle and working class neighborhoods that are Black, Latino or integrated to obtain quality insurance at an affordable price. No company was able to justify usage of these guidelines, and companies throughout the industry have eliminated these guidelines and replaced any risk-based concerns with objective criteria, such as age and condition of the roof and systems within the home. The companies also abandoned any explicitly race- or geographically-based marketing plans. These changes in the underwriting standard resulted in State Farm, Allstate, and Nationwide insurance companies writing more business for good homeowners with lower risks in all neighborhoods across the country. FHIP organizations in the following cities have been involved in investigations of and cases against homeowners insurance providers: Toledo, Cincinnati, and Akron (OH); Richmond (VA); Syracuse (NY); Atlanta (GA); Chicago (IL); Milwaukee (WI); Memphis (TN); Hartford (CT); Los Angeles and Orange County (CA); Louisville (KY); and Washington (DC).

The investigations included matched pair testing, analysis of industry underwriting and its impact on urban neighborhoods in cities throughout the United States, and analysis of marketing practices and location of insurance agent offices. The analysis revealed that virtually no insurance offices were located in Black and Latino neighborhoods in the early 1990s. The companies against which cases were brought include: Aetna, Allstate, American Family, Farmers, Liberty Mutual, Nationwide, Prudential, State Farm, and Travelers.

The National Fair Housing Alliance and partner fair housing organizations brought the first FHIP-funded cases against Allstate, Nationwide, and State Farm. State Farm, the nation's largest insurance provider, entered into a HUD conciliation agreement in 1996. Allstate settled shortly thereafter. Settlements continued throughout the 1990s into the early 2000s. A few cases have been brought in recent years, but the industry has changed remarkably due to the FHIP-funded investigations. The magnitude of this effort cannot be overestimated. The return on investment has been enormous. State Farm and Nationwide have become strong supporters of fair housing principles and engage in company-wide efforts to both assess their policies and practices to ensure compliance with fair housing laws and to assess compliance by their agents on the ground.

REO Investigations

Since 2009, NFHA and 22 fair housing organizations have conducted a wide-scale, nationwide investigation into the marketing and maintenance of bank- and GSE-owned properties. These foreclosed properties, also known as Real Estate Owned (REO) properties, were found to be well maintained and professionally marketed in communities where residents were predominantly White. However, REO homes in comparable communities where residents were largely Black or Latino were likely to be unsecured, with boarded windows and overgrown grass and weeds, and usually without signage indicating that they were for sale. A portion of this investigation was supported by FHIP funding. This collaboration produced thousands of photos documenting differences in treatment.

This investigation culminated in a number of housing discrimination complaints against nearly all of the largest owners of REO inventory. In 2012, NFHA and the local fair housing groups filed a HUD administrative complaint against Wells Fargo Bank for its disparate treatment of REO properties. Shortly thereafter, Wells Fargo took a leadership role and entered into an agreement with NFHA and HUD to provide $42.05 million to NFHA, HUD, and the fair housing organization partners. The agreement included:

- $39.05 million that was set aside to provide grants to conduct education and outreach around REO best practices and to foster homeownership, assist with rebuilding neighborhoods of color impacted by the foreclosure crisis, and to promote diverse, inclusive communities. $550,000 was allocated to education and outreach, and $27 million was provided to NFHA and the 13 local nonprofit organizations for direct grants to homebuyers and homeowners to keep their homes. The remaining $11.5 million was provided to HUD and Neighborhood Housing Services to support an additional 25 cities through direct neighborhood grant programs.
- $3 million that went to the fair housing organizations for attorneys' fees, costs, and diversion of resources.

With the $27 million in community relief that was awarded to the fair housing organizations, the organizations were able to generate an additional $17.3 million in leveraged funds for communities of color. The grant funds allowed over 700 families to access homeownership for the first time,

supported over 800 families to remain in their homes because of foreclosure prevention or home repair grants, and allowed for 685 abandoned or blighted properties to be rehabilitated. Additionally, 182 homes were made accessible for persons with disabilities, and over 10,000 individuals completed financial literacy or homeownership training workshops directly because of these grants.

The conciliation agreement with Wells Fargo also resulted in wide-scale improvements in its practices around REO maintenance and marketing. By adopting a number of best practices, including providing a "First Look" program to incentivize owner-occupant purchase rather than investor purchase, improving the marketing information on their website, and agreeing to provide better quality control measures on their REO properties, thousands of foreclosures in communities of color are no longer dangerous eyesores and no longer drag down property values in Black and Latino neighborhoods.

Discriminatory Advertising Investigations

From 2007-09, 35 FHIP-funded fair housing organizations conducted an investigation of rental advertising on the Internet, targeting craigslist rental ads. The investigation documented more than 7,500 discriminatory ads, and 1,000 complaints were filed with HUD to document the scope of discriminatory advertising on the Internet. The report, "For Rent: NO KIDS! How Internet Housing Advertisements Perpetuate Discrimination," was released in August 2009 calling for an amendment to the Communications Decency Act (which courts have interpreted to trump the Fair Housing Act's provision against discriminatory advertising). Craigslist now posts fair housing information for landlords to review.

Post-Hurricane Katrina Rental Investigations

In the weeks following Hurricane Katrina, NFHA implemented a systemic rental testing investigation in 17 cities to determine if Black persons relocating from the hurricane-affected areas experienced discrimination in securing rental housing. NFHA's report, "No Home for Holidays," released in December 2005, documented a 66% rate of discrimination. NFHA completed 65 paired tests in 17 cities in 3 months and filed HUD complaints on properties in Florida, Texas, and Alabama. The largest property management company in the southeast, Mid-America, settled a HUD complaint for $50,000 and agreed to have all employees go through a 3-hour fair housing training.

Impact on the Lives of Individuals

Fair housing organizations play a critical role in helping victims of housing discrimination exercise their rights to housing choice free from discrimination. The following are examples of cases at the local level that changed the lives of individuals and families through enforcement of their fair housing rights. One of the important things to note about these cases is that they most often result in systemic change to a policy or practice the affects many more persons than the

complainant, and they open up housing opportunities to large numbers of persons in protected classes.

Florida (Miami) – Familial Status, Disability, Sex (Rental)

Residents of 183/187 Street Apartments in Miami Gardens, Fla. and the 22nd Avenue Apartments in Opa-Locka, Fla. contacted HOPE, Inc. with complaints regarding "House Rules" issued at the property. The rules required residents with assistance animals and live-in aides, already approved, to reapply and sign a medical release granting access to medical records and direct communication with treating physicians. The rules also contained discriminatory policies affecting families with children. Toys and personal items of children were to be disposed of without prior notice. Children were not allowed to play in any of the common areas and all persons under 18 had to be accompanied by an adult at all times, even on the playground. Children were only allowed to use the pool during pool hours which were scheduled only when children were in school. All persons under 18 had to be in their apartment by dark or 9:00 pm—no exceptions. Additionally, no Violence Against Women Act protections were in place, as required, and tenants were evicted for any action that threatened other tenants, crimes committed in the tenant's apartment, crimes of violence, and other criminal infractions—no exceptions.

A site visit revealed there was not a single wheelchair-accessible unit among the 150 ground floor units of the Miami Gardens property. No reserved parking spaces for residents with disabilities existed, and requests were denied. Other reasonable accommodations were denied outright or met extended delays and/or demands for full medical releases. In some cases, tenants died awaiting reasonable accommodation requests.

Over 30 residents joined a HUD complaint filed against Charter Realty Group, Miami Property Group, and their property manager for discrimination on the basis of disability, familial status, and sex.

A $645,000 settlement agreement was reached in April 2015 and included major injunctive relief: changes to Charter's policies and procedures related to persons with disabilities, victims of domestic violence, and families with children; physical modification to units providing accessibility (ramped entrances, roll-in showers, bathroom grab bars, etc.); new playground equipment and play areas for children; evening and weekend pool hours; training for property staff; and other relief. Education, advocacy, and enforcement were key elements in achieving compliance and change impacting over 500 units.

Denver – Familial Status and Disability (Rental)

In 2015 Katchen Management was a defendant in a Fair Housing Case after denying two residents who are disabled the ability to have service animals. A few months later Denver Metro Fair Housing Center (DMFHC) received a call from a man who was trying to find a home for his family and had called a property managed by Katchen where he was told he could not rent because he

had a child.

DMFHC conducted testing on Katchen Management, and through a series of tests it was discovered that not only had Katchen Management refused to rent to families with children but that it continued to employ discriminatory practices and policies by denying residency to applicants with disabilities who have service animals. One tester who was deaf was even told by the on-site manager that if she was deaf it may not be a good place for her.

DMFHC filed an Administrative Complaint with HUD on behalf of the bona fide complainant who was denied housing because he and his wife had a child, and also an organizational Administrative Complaint based on disability and familial status fair housing violations. HUD responded quickly and facilitated a conciliation meeting with both parties present. Through the work of the HUD investigator, DMFHC, and local counsel, the case was settled.

In addition to a monetary settlement, the Respondents have begun to affirmatively advertise fair housing practices and attend fair housing training. The on-site manager who made the discriminatory statements is no longer responsible for leasing units. The family that was denied housing because they had a child had lost almost all their personal belongings because they had to move into a shelter after not finding housing. However, due to the settlement, the family was able to move out of the shelter, rent a home, and replace the furniture they had lost. This settlement was also released to the media and was covered locally as well as nationally in the "Rental Housing Journal," which provides housing providers and consumers with education about Fair Housing Law.

Without the actions of DMFHC, the family that was illegally turned away would never have had justice and wouldn't have been able to recover from its loss; future residents would have continued to be discriminated against based on familial status and disability; and the general public would not have had the opportunity to be educated on Fair Housing Law to know its fair housing rights.

New York (Long Island) – National Origin (Real Estate)

Long Island Housing Services (LIHS); Phil and Patricia Kneer v. German-American Settlement League. On January 15, 2016, Federal Judge Joan Azrack approved a Settlement Agreement ("the Agreement") resolving claims charging discrimination by the German-American Settlement League ("GASL"). The complaint, filed in October 2015, alleged that the GASL's continued restrictions on membership, leasing, and resale of homes served as a barrier to prospective home buyers who are not White people of German ancestry or background, and discriminated on the basis of race and national origin in violation of federal, state, and local fair housing laws.

LIHS first became aware of the GASL's policies after being contacted by Philip Kneer and Patricia Flynn-Kneer, owners of a home in Siegfried Park. Prior to contacting LIHS, the Kneer family had

been attempting to sell its home for approximately six years, but had been unable to do so as a result of the racially/ethnically restrictive membership and advertising policies regarding the sale of homes. The Kneers sought assistance from LIHS to change the GASL's rules to allow them to sell their home in an open and fair manner. The GASL purchased the Yaphank property from the American Bund party in the late 1930s, when it was used as a camp and gathering place for German-Americans who supported Nazism. According to the [former] bylaws of the GASL, one of the primary purposes of the organization was to "introduce, cultivate, and propagate in every direction true Germanic culture and to cultivate the German language, customs and ideals." The cornerstone of this historic settlement is the reformation of the GASL's bylaws to make the residential community open to the public in compliance with federal, state, and local fair housing laws, and bars GASL from discriminating on the basis of race or national origin, resolving claims under Section 1982 of the Civil Rights Act of 1866, the federal Fair Housing Act, the New York State Human Rights Law, and the Suffolk County Human Rights Law. In addition, it requires the GASL to amend its bylaws to include a non-discrimination provision, allow advertising of homes for sale in the community, and to remove the requirement that prospective home buyers are sponsored by current GASL residents, as well as remove any vestiges of the Nazi or Hitler era, among other things. The GASL's Board of Directors will be required to undergo Fair Housing training and provide notice of the revisions to the GASL's bylaws to the Long Island Board of Realtors, the Town of Brookhaven, and Suffolk County's Human Rights Commission. This settlement will open affordable housing options for many that would have previously been ineligible for homeownership at GASL.

New York (Fair Housing Justice Center) – Race (Rental)

Ms. P., an African American woman, applied for an apartment at a 216-unit rental complex located in a Westchester County suburb to move closer to her elderly father. For over a year, she was told no apartments were available. The Fair Housing Justice Center received a complaint from her alleging that she was not being rented to because of her race. When the FHJC sent African American and White testers to the complex as part of an investigation, only the White testers were told about available apartments. Ms. P., the FHJC, and two African American testers filed a federal lawsuit alleging racial discrimination. As a result of the litigation, the case settled in 2015 for extensive injunctive relief that required fair housing training, adoption of a fair housing policy, compliance monitoring for a period of four years, and a total monetary recovery of $150,000. Ms. P. obtained an apartment in the complex, two years of free rent, and $70,000 in damages.

Florida – Race (Insurance)

The Fair Housing Continuum handled a Disparate Impact case that was mediated through HUD. A low-income housing provider in a historically African American neighborhood received its annual habitational insurance inspection in July 2013 and was asked, "How many of your residents are Section 8 recipients?" Ten days later the housing provider received a cancellation of insurance coverage due to more than 10% of its residents being Section 8 recipients. The complex only

had 17 units, with only two residents receiving Section 8 vouchers. The law firm of Relman, Dane & Colfax helped identify the demographics of Section 8 recipients in the city, the county, and the state, which documented the disparate impact of this policy. It also represented the organizations in a HUD mediation a week before the Supreme Court decision on disparate impact. The insurance company agreed to a policy change of not asking about Section 8 recipients regardless of the outcome. The company offered $80,000 if the Court ruled against Disparate Impact and $150,000 if it ruled in favor. The Court ruled in favor.

Montana – Sexual Harassment (Rental)

In August 2013, Montana Fair Housing and an individual complainant reached agreement on a sexual harassment case filed earlier that year with HUD against a private landlord. The complaint alleged the respondent sexually harassed a female tenant by making unwelcome sexual comments ,creating a hostile living environment. The agreement provided for $15,000 for the complainant and $7,500 for MFH, and affirmative relief requiring the housing provider to refrain from contact with tenants and/or applicants and to hire a management company to rent and maintain the units.

California – Sexual Harassment (Rental)

In 2013, Fair Housing Advocates of Northern California (FHANC) received a complaint from a client alleging sexual harassment and gender discrimination by the maintenance man at her property. After representing this client in an administrative complaint and settling with a confidential agreement (after the administrative agency found cause to support her claims), FHANC continued to investigate this property and discovered other tenants who had experienced similar treatment. As a result, FHANC, along with Brancart & Brancart, filed a lawsuit in federal court on behalf of two female tenants and the agency in late 2015. The lawsuit settled in April 2016 for a total of $125,000, which included damages and attorneys' fees and costs. Perhaps the most powerful outcome was that both tenants felt empowered and supported throughout the complaint process, helping shine the light on the issue of sexual harassment, particularly for the most vulnerable—in this case, monolingual Spanish speakers and survivors of domestic violence.

West Michigan/Indiana/Ohio – Familial Status (Rental)

The Fair Housing Center of West Michigan (FHCWM), the Fair Housing Center of Central Indiana (FHCCI), the Fair Housing Center of Southeast & Mid Michigan (FHCSMM), the Fair Housing Center of Southwest Michigan (FHCSWM), and the Central Ohio Fair Housing Association (COFHA) settled a fair housing complaint against AMP Residential, an Indianapolis-based property management company that owns and operates over 8,000 apartment units throughout the United States. The complaint originated from a call to the FHCWM by a mother with three children who alleged that she had been denied a two-bedroom apartment at an AMP apartment complex solely due to the number of people in her household. After investigating that initial call, the FHCWM coordinated with the FHCCI, FHCSMM, FHCSWM, and COFHA to conduct a joint systemic

investigation. In a complaint filed with HUD in July 2016, the fair housing groups alleged that AMP had engaged in systemic discrimination against families with children across 20 properties in three states by enforcing an occupancy policy of no more than two people per bedroom in each apartment, regardless of the unit's square footage or whether that unit has a den, office, loft, or other feature that could provide an additional bedroom or living area for a child.

Admitting no liability, AMP agreed to settle the claims by entering into a Conciliation Agreement with HUD and the private fair housing groups. AMP agreed to change its occupancy policy to provide equal housing opportunity to families with children and to train its employees and managers across the nation on fair housing each year for the next three years, among other terms. As a result, over 8,000 apartments units within AMP properties now offer increased access to housing for families with children, and apartment management companies across the nation took note of the case and the need to review and revise occupancy policies in accordance with fair housing laws. The eradication of overly restrictive occupancy standards significantly enhances the ability of families with children to find affordable, safe housing in neighborhoods of their choice.

North Dakota – Disability (Rental)

High Plains Fair Housing Center worked with a veteran with PTSD. Before he moved to North Dakota, he told the property management company that he had an emotional support animal. He provided the necessary paperwork and he moved into the apartment with his wife, baby, and emotional support dog. Shortly after they moved into the unit, the property manager started to fine the family daily for the presence of an "unauthorized pet" because he did not pay a pet fee and pay for DNA analysis. High Plains advocated on behalf of the complainant. High Plains worked with the management company and the tenant to get a reasonable accommodation for the veteran. This resulted in a change of policy so that the company no longer requires persons with disabilities to pay pet fees or other pet requirements. After assisting him, the agency assisted two other veterans with PTSD who needed reasonable accommodations for their disability. One was for an emotional support animal in a different apartment complex (with a different property management company) and another reasonable accommodation was that the complainant needed more notice when the property management needed to come into his unit.

California (San Jose) – Disability (Design and Construction)

Project Sentinel proactively audited Skyway Terrace for compliance with the Fair Housing Act accessibility guidelines. Noncompliance was found and HUD negotiated a settlement of $705,000 which was used to correct existing deficiencies at the property and to set aside $200,000 for use by low-income households needing retrofits. This fund has been used to assist over 100 households, owner and renter occupied, to secure needed modifications. This was the only fund in Santa Clara County that was available for renter households.

Texas (Houston) – Disability (Rental)

Mrs. P. made repeated requests for maintenance and an accessible parking space, but nothing was ever done. The Greater Houston Fair Housing Center (GHFHC) made a formal Request for Reasonable Accommodations, which was denied. A Housing Discrimination Administrative Complaint was filed with HUD for Mrs. P., and a Design and Construction Complaint was filed by GHFHC against the apartment complex. Because of the enormous amount of evidence against it, the housing provider agreed to conciliate the bona fide complaint with an award of $7,000 to Mrs. P. The conciliation of the complaint allowed the family to move into a new, accessible, four-bedroom single-family dwelling. The Design and Construction complaint was conciliated with the Respondent agreeing to correct all noncompliant issues and with an award of $7,753 to GHFHC.

The Necessity of the Fair Housing Initiatives Program in Supporting the Work of Private Fair Housing Organizations

The primary source of funding for private fair housing organizations is HUD's Fair Housing Initiatives Program (FHIP). FHIP is instrumental in providing unique and vital services to the public and the housing industry by supporting a network of private-public partnerships with local nonprofit fair housing organizations working in their communities. FHIP is the only federal funding available for private nonprofit fair housing organizations to carry out fair housing enforcement and education nationwide. Private nonprofit fair housing organizations are the only private organizations in the country that educate communities and the housing industry, and enforce the laws intended to protect us all from housing discrimination.

The FHIP program is a critical tool in combating housing discrimination and segregation. In this section, we outline the role of FHIP in the enforcement infrastructure. In Section VI - Recommendations, however, we outline serious flaws in the administration of the program and make several recommendations for improvement.

In 1987, Congress recognized the need to support the development of experienced private nonprofit fair housing organizations to foster compliance with the Fair Housing Act, complement the work of local and state government agencies and the federal government, and assist the public in better understanding its rights and local housing providers in complying with civil rights laws. With broad bipartisan support and the endorsement of Presidents Ronald Reagan and George H. Bush, Congress created FHIP as a pilot program, and shortly thereafter fully authorized the program. President Reagan's statement on the passage of the Housing and Community Development Act in 1987referenced the importance of fighting housing discrimination: "I'm also gratified by another provision of this bill which authorizes HUD to fund local, private organizations that are working to end housing discrimination. Too often—one case is too many—families and individuals seeking to buy or rent homes still confront bigotry and discrimination. Well, the fair housing initiative program section of this bill will help ensure that such racism will not be tolerated." Subsequent Government Accountability Office reporting noted HUD's satisfaction with grantee performance in the early

years of the program, and HUD and Congress have subsequently continued to strengthen and rely on the program.[96]

FHIP is a competitive, performance-based grant program that supports several different pieces of an effective national fair housing and educational infrastructure that involves the public and housing providers.

- Fair Housing Organization Initiative (FHOI) – Supports the creation of new private nonprofit fair housing groups and the continued development of existing organizations.
- Education and Outreach Initiative (EOI) – Funds fair housing groups with proven records to inform the public about its fair housing rights, as well as local housing industry professionals on how to operate within the bounds of the law.
- Private Enforcement Initiative (PEI) – Funds highly experienced nonprofit fair housing organizations to carry out complaint intake and the testing and investigation of complaints received from the public. PEI also funds grantees to assist individuals in the formal complaint-filing process with HUD or local or state civil rights agencies.

Educational programs are critical in teaching people how to recognize and report situations that appear to violate the law; they also work to educate the industry about its fair housing responsibilities. This education helps weed out frivolous violations and focus resources on investigation of claims that may truly involve discrimination.

For each initiative, applicants must meet particular requirements intended to make the best use of taxpayer resources. To qualify for FHIP enforcement funding, private nonprofit fair housing organizations must meet time and experience criteria to prove their expertise in complaint intake, testing for fair housing violations, the filing of meritorious cases, and financial management.

Private fair housing groups provide significant advantages in the federal government's effective implementation of educational programs and enforcement of the Fair Housing Act throughout the nation. The FHIP program provides for locally tailored fair housing education and enforcement strategies designed to meet specific local market conditions in communities in which a FHIP grantee operates. FHIP saves the federal government taxpayer dollars through the unique services that grantees specialize in, and ensures a high standard of relief to victims of discrimination and communities that are harmed by it.

FHIP is a highly efficient program that saves taxpayer dollars. The FY16 FHIP funding level is $39.2 million, down from $42.5 million in FY14. This small amount is for fair housing services for the entire nation. Without FHIP funding, individuals and families who experience housing discrimination would have few options to redress these wrongs. More important, systemic policies and practices that limit housing choice for people of color, families with children, persons with disabilities, and others would go unchecked. The FHIP program allows HUD to efficiently and

96 See GAO Report "Fair Housing Funding Activities under the Fair Housing Initiatives Program, March 1997" available at http://www.gao.gov/assets/230/223808.pdf.

effectively provide enforcement of fair housing laws that far outstrips HUD's own capacity to enforce the law. In addition, broad-based **education and outreach** services about fair housing rights and responsibilities are provided.

Enforcement: FHIP-funded groups compete for FHIP grants by designing education and enforcement programs that are responsive to their local housing market dynamics. Through the PEI component of the FHIP program, grantees provide informed and rapid-response assistance to victims of discrimination without the red tape associated with the administrative and legal requirements of formal complaints. This allows for tailored and effective investigations and means that only cases supported by independent testing and investigation proceed to the complaint stage.

FHIP enforcement efforts also include systemic investigations to eliminate policies and practices that limit housing choice and perpetuate segregation. Throughout its existence, fair housing organizations have engaged in coalitions on the regional and national level to address large discriminatory housing providers, widespread discriminatory practices, the development of inaccessible housing units, and even the redlining practices of an entire industry. Most of the systemic and individual cases reviewed previously in this section were supported in large part by FHIP dollars.

Education and Outreach: FHIP's education and outreach component has allowed for implementation of local fair housing educational programs as well as the nationwide dissemination of public education and training materials that can be replicated and modified by local organizations across the nation. Education and outreach serves an important role in fair housing enforcement: It both informs consumers about their rights and how to recognize and report possible discrimination, and it also teaches housing providers how to comply with fair housing laws to avoid the fair housing enforcement process.

The FHIP statute requires a national media component (NFHA has been the recipient of 7 of the last 8 national campaign grants), and this serves to both educate consumers and industry throughout the United States and to create materials that may be customized for use on the local level. In addition, local and regional education campaigns support efforts in communities to provide direct education to units of local government, other service organizations, the corporate community, consumers, and the housing industry. These efforts are tailored to local needs and housing market dynamics.

National media campaign materials include print products (for magazines and newspapers) and out-of-home posters (for transit, malls, airports, movie theaters, etc.), as well as television and radio PSAs and social media marketing. These creative assets are marketed to and distributed to media outlets and organizations throughout the United States. Many of the campaigns have also included educational materials in the form of videos, brochures, and PowerPoint training presentations that include the trainer text and references.

Technology advances have significantly enhanced the ability to customize these products for use on the local level. This reduces the need to reinvent the wheel locally or to invest unnecessary resources in creating duplicative products. NFHA has created and produced an incredibly comprehensive and robust set of materials available to serve the public and housing industry.

These materials also reflect state-of-the-art marketing industry professionalism and standards. The national media campaigns have generated an enormous return on investment. FHIP dollars utilized to create these multiple campaigns total just under $7 million in investment. Not all of this amount was utilized to create media-generating support; much of it was used to create the videos and other educational materials. The media component has led to more than **$98 million in donated media,** which significantly undervalues the work, as much of it remains placed or continues to run long beyond the time during which we track and report such data. The return on investment for the NFHA campaigns since FY2008 is more than 1200 percent. The result of this exceptional ROI is that a more educated and engaged citizenry has been created. The campaigns have generated more than **4 billion audience impressions.**

The Role of HUD, DOJ, and the CFPB in Combating Housing Discrimination

Fair Housing at the Department of Housing and Urban Development

The Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity (FHEO) has the primary authority to enforce the Fair Housing Act and to carry out its mandate to eliminate housing discrimination through enforcement actions. It also enforces civil rights laws that affect housing transactions, including Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments Act of 1972, the Architectural Barriers Act of 1968, and housing provisions under the Violence Against Women Act.

FHEO also publishes and distributes educational materials that provide information on how victims of housing discrimination can identify and report unlawful activity. It also manages and administers the Fair Housing Assistance Program (FHAP) and the Fair Housing Initiatives Program (FHIP). FHEO is also responsible for establishing fair housing and civil rights regulations and policies for HUD programs, and it issues guidance on complying with the requirements of fair housing and related civil rights laws. Additionally, it is responsible for the monitoring and review of HUD housing and community development programs for compliance with federal nondiscrimination requirements and the requirement to affirmatively further fair housing.

FHEO Case Processing

Generally, the enforcement process begins when an individual files a discrimination complaint with either HUD or a state or local FHAP agency. Many of these complaints are referrals by private nonprofit fair housing organizations that conduct testing and investigation of housing

discrimination allegations. The administrative enforcement process is intended to provide an impartial investigation of claims filed with HUD and FHAP agencies. The Fair Housing Act requires that complaints be investigated within 100 days, if feasible, and that the parties be provided a written statement of reasons when an investigation is not concluded within 100 days. There is also a statutory obligation to engage in conciliation efforts to attempt to resolve complaints. At the close of the investigation, the investigating agency makes a determination as to whether or not there is reasonable cause to believe that discrimination has occurred. If a determination of reasonable cause is made, the government brings a complaint on behalf of the complainant in an administrative hearing before a HUD administrative law judge or in a judicial proceeding.

There is significant information in Section IV about HUD's complaint activity in 2016 that is consistent with its activities over the past several years. Therefore, we will not discuss that in additional detail in this section.

FHEO Education and Outreach Division

The FHEO Education and Outreach division is responsible for raising awareness of fair housing policies and laws through language services, publication of annual reports to Congress, strengthening external partnerships with civil rights organizations, and coordination of national fair housing activities such as Fair Housing Month. Additionally, the education division is responsible for amplifying and managing the national fair housing messaging on the HUD.gov website.

Many education and outreach activities are conducted by private nonprofit fair housing organizations through funding in part from HUD's Fair Housing Initiatives Program. See above under Private Fair Housing Organizations for additional information.

HUD's Mandate to Affirmatively Further Fair Housing

HUD released its long-awaited "affirmatively furthering fair housing" (AFFH) rule in July 2015. The rule provides improved regulation aimed at promoting healthy, prosperous, inclusive communities. It will help jurisdictions that receive federal funding from the U.S. Department of Housing and Urban Development comply with the long-standing mandate with better data tools and an enhanced emphasis on community involvement to tackle barriers to fair housing. In 2016, implementation of the rule commenced. Implementation of the AFFH rule falls to HUD's Office of Community Planning and Development, in cooperation with the Office of Fair Housing and Equal Opportunity.

This is essentially what the AFFH component of the Fair Housing Act is intended to achieve: (1) that discriminatory policies and practices do not impede housing choice or perpetuate segregation; (2) that all neighborhoods are places of opportunity with good schools and jobs, quality foods and healthcare, and safe and affordable housing; and (3) that the people that all thriving communities need–including police officers, firefighters, teachers, nurses, business executives, and retail clerks–are able to live in the communities in which they work.

The successful implementation of the AFFH rule will be a significant determinant of what our neighborhoods and communities will look like in the future and which persons have access to quality opportunities. It is too early to assess the implementation of the rule, but we expect to do so in future years. Additional information about the AFFH rule is available in the section of this report entitled "Featured Issues."

HUD Secretary-Initiated Cases

HUD has the authority to initiate its own investigations and bring Secretary-Initiated cases. The following cases were settled in FY2016.

Assistant Secretary for FHEO v. First Citizens Bank and Trust Company, Inc. (00-12-0002-8) (Settled 06/03/16)

HUD asserted that First Citizens Bank & Trust Company denied mortgage loans to African American, Latino and Asian American mortgage applicants at a disproportionately higher rate than White applicants. HUD's investigation concerned retail loans originated by the bank's predecessor, First Citizens Bank and Trust Co., in 2010 and 2011.

As part of the settlement, First Citizens agreed to take several steps to ensure and protect equal access to credit, including refraining from unlawful consideration of race or national origin when selecting sites for branch offices and services offered, conducting marketing, and defining Community Reinvestment Act assessment areas. In addition, First Citizens will:

- Make $140,000 available to nonprofit organizations that provide credit and housing counseling, financial literacy training, and related programs to first-time homebuyers in South Carolina;
- Adopt a new standardized and objective set of guidelines for a second review of retail channel residential loan applications initially denied by the automated underwriting system;
- Require all of its employees and agents who have substantial involvement in manual underwriting of mortgages in their retail channel to attend fair housing training;
- Hire three mortgage banker market specialists that will focus on diverse lending in the Charleston-North Charleston-Summerville, Columbia, and Greenville-Anderson-Mauldin metro areas;
- Spend $20,000 for affirmative marketing, advertising and outreach to residents in majority-minority census tracts in South Carolina; and
- Partner with nonprofit or community groups to conduct at least 24 financial education programs in South Carolina for individuals and small business owners.

Assistant Secretary for FHEO v. Delvista Towers COA, et al. (04-14-0609-8) (Settled 08/02/16)

HUD initiated a discrimination complaint in April 2014 after receiving several reports from residents of Delvista Towers claiming their rights were being violated because of their disability. One resident alleged her request for a service animal for her son had been denied. Specifically, the woman said that when she contacted the property manager about her son's need for the reasonable accommodation, she was told that the request would not be approved and that the condominium was "currently involved in very expensive lawsuits with other residents regarding service animals." The woman further alleged that she was denied the opportunity to renew her lease because she mentioned her son's need for a service animal.

HUD's investigation indicated that other residents with disabilities were also denied their requests for assistance animals or refrained from requesting an accommodation for fear of being evicted. Under the Conciliation Agreement, Delvista and its property management company, AKAM On-Site of Dania Beach, Fla., agreed to compensate one of the aggrieved persons and to donate to a nonprofit disability rights organization. They also agreed to develop a reasonable accommodation policy that will be reviewed and approved by HUD, and to provide for training of board members and property managers on the new policy and the Fair Housing Act.

Assistant Secretary for FHEO v. City of Ridgeland, MS (04-16-4066-8) (Settled 09/09/16)

In December of 2015, HUD filed a fair housing complaint against the City of Ridgeland, MS, after receiving reports that a number of apartment complexes faced possible demolition after the city instituted a new zoning requirement that lowered the allowable density. Specifically, HUD complained the city's new zoning ordinance called for several of the apartment complexes with the highest minority populations to be amortized, putting more than 1,400 units at risk of being replaced with mixed-use developments. HUD also alleged that other majority-minority complexes were subjected to lower density restrictions, which could have resulted in a loss of hundreds of additional apartment units.

Under the Conciliation Agreement, the City of Ridgeland agreed to amend the 2014 Ordinance so that multifamily properties are treated as they were prior to the Ordinance when it comes to use and density; provide notice to property managers and/or owners of multifamily properties in advance of any public hearings contemplating changes to existing zoning, land use, and occupancy policies; and process all zoning, land use, building and occupancy approvals and permits in good faith and in a timely manner. The city also agreed to submit to HUD a proposed Affordable and Fair Housing Marketing Plan that encourages the development of mixed-income communities and provides tangible steps for conducting outreach and engaging the residents of Southeastern Ridgeland in the community planning process.

HUD Guidances

HUD periodically issues Guidance on various issues, including these in 2016:

Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions

The Criminal Records Guidance outlines how the Fair Housing Act applies to potential claims of housing discrimination because of a person's record of arrest, conviction or incarceration. African Americans and Latinos are arrested, convicted, and incarcerated at rates disproportionate to their share of the general population. Differential application of a criminal records policy by housing providers could constitute intentional discrimination under the Fair Housing Act, while uniform application of a criminal records policy by housing providers would most likely result in an unjustified discriminatory effect. The Guidance may be found at: https://portal.hud.gov/hudportal/documents/huddoc?id=hud_ogcguidappfhastandcr.pdf.

Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services

In recent years, many local communities have adopted "nuisance" ordinances that require landlords to abate "nuisance behavior," which often includes "excessive" calls to local emergency services. The 2016 HUD Guidance outlines how the Fair Housing Act applies to potential claims of housing discrimination brought by persons who are victims of domestic violence. Women are by far the largest class of persons affected by domestic violence and are covered by the Fair Housing Act's prohibition against discrimination based on sex (gender). Enforcement of components of some ordinances would have an unwarranted discriminatory effect on women. The Guidance may be found at: https://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf.

HUD Rules

HUD periodically issues rules, including these in 2016:

<u>HUD Harassment Rule, September 2016</u>
HUD's Harassment Rule formalizes standards for use in investigations and adjudications involving allegations of harassment on the basis of race, color, religion, national origin, sex, familial status or disability. The rule specifies how HUD will evaluate complaints of quid pro quo ("this for that") harassment and hostile environment harassment under the Fair Housing Act, and it also provides for uniform treatment of Fair Housing Act claims raising allegations of quid pro quo and hostile environment harassment in judicial and administrative forums. In addition, this rule clarifies the

operation of traditional principles of direct and vicarious liability in the Fair Housing Act context. The rule can be found at: https://www.gpo.gov/fdsys/pkg/FR-2016-09-14/pdf/2016-21868.pdf.

HUD Gender Identity Rule, September 2016
HUD's Gender Identity Rule ensures equal access for individuals in accordance with their gender identity in programs and shelter funded under programs administered by HUD's Office of Community Planning and Development. This rule ensures that recipients and sub-recipients of HUD shelter funding—as well as owners, operators, and managers of shelters and other buildings and facilities, and providers of services funded by HUD—grant equal access to such facilities and services to individuals in accordance with an individual's gender identity. The rule can be found at: http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2016/HUDNo_16-137.

Fair Housing Act's Discriminatory Effects Standard Application to Insurance, October 2016
HUD's 2016 action in reconsideration of public comment pertaining to HUD's Discriminatory Effects Standard serves to supplement its responses to certain insurance industry comments. After careful reconsideration of the insurance industry comments in accordance with the court's decision in *Property Casualty Insurers Association of America v. HUD*, HUD has determined that categorical exemptions for insurance practices are unworkable and inconsistent with the broad fair housing objectives and obligations embodied in the Act. HUD continues to believe that application of the discriminatory effects standard to insurance practices can and should be addressed on a case-by-case basis. The rule action can be found at:
https://www.gpo.gov/fdsys/pkg/FR-2016-10-05/pdf/2016-23858.pdf.

HUD & DOJ Guidance Memorandums

HUD and DOJ periodically issue joint guidance memorandums, including the following in 2016:

Limited English Proficiency (LEP) Guidance
HUD's LEP Guidance outlines how the Fair Housing Act applies to potential claims of housing discrimination brought by persons who are not proficient in English. Although limited English proficiency is not a protected class, most persons with limited facility in English would be protected under the category of national origin. The Guidance explains that housing providers should not utilize limited English proficiency in a manner that intentionally limits housing choice or that causes an unjustified discriminatory effect. The Guidance may be found at: https://portal.hud.gov/hudportal/documents/huddoc?id=lepmemo091516.pdf

HUD & DOJ issued an excellent and important guidance memorandum in 2016, as follows:

DOJ & HUD updated the Joint Statement on Group Homes, Local Land Use, and Fair Housing
Since the federal Fair Housing Act was amended by Congress in 1988 to add protections for persons with disabilities and families with children, there has been a great deal of litigation concerning the

Act's effect on the ability of local governments to exercise control over group living arrangements, particularly for persons with disabilities. This joint statement specifies that the Act does not pre-empt local zoning laws. However, the Act applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities. The Guidance may be found at:
https://www.justice.gov/crt/joint-statement-department-justice-and-department-housing-and-urban-development-1.

HUD's Enforcement Mechanism Requires Improvement

HUD's Office of Fair Housing and Equal Opportunity (FHEO) has tremendous obligations to enforce fair housing in the United States. We have outlined above some examples of the excellent work HUD has done in some areas. However, NFHA has written extensively about systemic failures of FHEO to effectively meet its obligations, and we cannot fail to make reference to some of these issues in this report. We are quite aware that some of these problems result from insufficient staff levels and lack of resources to provide training and oversight. We have advocated for decades that the federal government fund both HUD and private nonprofit fair housing organizations at significantly higher levels so FHEO may more effectively conduct fair housing education and enforcement activities. The requested funds have not been provided.

The biggest systemic problems at FHEO fall into the following categories:

(1) Many housing discrimination complaints are not processed in a timely manner. This has been an ongoing problem for years. It means that justice is not only delayed, but often denied entirely. In some cases, HUD cannot find the complainants, respondents have new ownership or the employee responsible for the discrimination has moved on, or files and other evidence are lost. These types of challenges serve to make a quality investigation impossible. We understand HUD is attempting to address the large backlog of aged cases in a more serious manner. We urge FHEO to seek quality resolution of these cases, rather than closing them administratively with no meaningful outcome for victims of housing discrimination.

(2) Complaint investigations often do not meet quality standards. HUD has ten regional offices, and there are wide variances in the quality and quantity of investigations among regions. While HUD has an investigation Handbook, too few investigators are actually familiar with the Handbook or follow the Handbook. FHEO has some excellent investigators, but it has many others whose quality and quantity of work is insufficient. Some of this is related to the absence of consistent training, but for some persons, it reflects a lack of work ethic and/or proper supervision. Those not doing the work should be held accountable, and stronger performance measures should become part of the annual evaluation.

(3) FHEO often fails to charge meritorious cases. FHEO charges few cases of discrimination. Certainly, not all cases filed with HUD can be substantiated as acts of discrimination. On the other hand, our experience is that staff at FHEO often do not have a good understanding of fair housing case law or legal precedent. In other cases, the investigations are not conducted properly, an injustice to victims of discrimination. We also know that the unreasonably conservative standards utilized by the Office of General Counsel have at times undermined the charging of many quality cases, and that these standards have trickled down to the regional counsel offices. Many OGC and FHEO staff need a much better understanding of fair housing case law.

(4) There is not enough comprehensive, quality training of FHEO staff. FHEO does provide occasional training to its staff, but there is no system in place to ensure that all staff receive consistent, comprehensive training and refreshers on intake, investigation, and conciliation. Instructors should include experts from the private sector, including successful fair housing plaintiffs' counsel, test coordinators, and negotiators with successful experience in HUD conciliation matters.

(5) There is insufficient supervision and oversight of some staff, and nonperforming employees are not held accountable for their actions. NFHA has brought to HUD's attention many examples of improper investigations, deception and outright lies by investigators or conciliators, and other evidence of insufficient performance by FHEO staff.

These problems have been ongoing at FHEO for years, and NFHA has had numerous conversations with FHEO leadership and submitted lengthy comments and suggestions for improvements in writing over the years. There are times when FHEO makes progress in some areas, but overall FHEO needs significantly more resources to effectively address and remedy these impediments to quality fair housing investigations and the achievement of justice for victims of housing discrimination.

Fair Housing Enforcement at the Department of Justice

The Housing and Civil Enforcement Section of the Department of Justice is responsible for enforcing the Fair Housing Act, the Equal Credit Opportunity Act (ECOA), and Title II of the Civil Rights Act of 1964, which prohibits discrimination in public accommodations. ECOA prohibits lending institutions from discriminating against credit applicants on the basis of race, color, national origin, religion, sex, marital status, age, or source of income. Under ECOA, the Justice Department has the authority to investigate and file a fair lending lawsuit.

The 1968 Federal Fair Housing Act also gave DOJ the authority to investigate cases involving a "pattern or practice" of housing discrimination, as well as cases involving acts of discrimination that raise an issue of general public importance. The 1988 Fair Housing Amendments Act (FHAA) increased the Department's authority to include cases in which a housing discrimination complaint has been investigated and charged by the Department of Housing and Urban Development and one of the parties has elected to go to federal court. DOJ is also able to initiate civil lawsuits in response to fair housing violations by any state or local zoning or land-use laws referred by HUD.

Finally, the Civil Rights Division of DOJ also has the authority to establish fair housing testing programs.

While DOJ brings relatively few cases each year, it brings cases that have significant impact on discriminatory policies and practices, and that affect consumers throughout the nation. The following are a few examples of recent cases brought by the Department of Justice:

U.S. v. County of Los Angeles
In July 2015, the Justice Department, the Housing Authority of the County of Los Angeles, and the Cities of Lancaster and Palmdale, California, agreed to a settlement of claims that the Housing Authority and the cities targeted African American renters with discriminatory enforcement of the Section 8 program. The case alleged that the housing authority and cities, in coordination with the Los Angeles County Sheriff's Department, attempted to discourage African Americans from living in the region in response to racially-based public opposition to African American voucher holders by targeting police actions at Section 8 tenants. Under the terms of a settlement agreement, the Housing Authority will pay $1,975,000 in damages on behalf of itself and the two cities and a $25,000 civil penalty; institute nondiscriminatory policies; and participate in fair housing training. https://www.justice.gov/opa/pr/housing-authority-los-angeles-county-and-cities-lancaster-california-and-palmdale-california

U.S. v. Housing Authority of the City of Ruston
In May 2015, the City of Ruston, Louisiana, agreed to pay a total of $175,000 in compensatory damages and to implement nondiscriminatory policies and procedures as part of a consent decree resolving a race discrimination lawsuit filed by the Justice Department. The government charged that the Ruston Housing Authority assigned vacancies in its five public housing developments based on the race of the applicants, rather than their place on the waiting list, such that White applicants tended to be assigned to housing in White neighborhoods while Black applicants were assigned to sites in predominantly Black neighborhoods. This alleged steering practice corresponds with the explicit Ruston Housing Authority policy in the 1950s and early 1960s that designated the specific housing developments in question for "White" persons and "colored" persons, respectively. Although this stated policy was no longer on the books, the Justice Department alleged that the housing authority administrators maintained the segregationist practices in assigning applicants to units. https://www.justice.gov/usao-wdla/pr/ruston-housing-authority-agrees-pay-175000-and-stop-assigning-vacancies-based-race

United States v. VanderVennen
In September 2013, DOJ took on a case alleging that a property manager of a large apartment complex in Grand Rapids, Michigan, engaged in a pattern or practice of sexually harassing female tenants, prospective tenants, and guests. DOJ gathered evidence that the property manager would enter residences of female tenants without permission or notice and took adverse actions against female tenants or prospective tenants who refused to provide sexual favors. A consent degree was filed with the court and is pending approval by the judge assigned to the case.
https://www.justice.gov/opa/pr/justice-department-files-sexual-harassment-lawsuit-michigan-against-owners-and-property.

United States v. Richardson
In May 2012, the parties entered into a settlement agreement in which the defendants agreed to pay damages to Shania Patrick and Rex Tall and the Toledo Fair Housing Center; to not contact or come within 100 feet of the plaintiffs; and to attend fair housing training. Shortly after Shania Patrick, Rex Tall, and their four children moved into their home in Toledo, Ohio, two neighbors immediately began a harassment campaign against them because they were African American. Immediately after moving in, Patrick and Tall's White neighbors, Ryan Richardson and Ryan Smith, made numerous unfounded complaints to their landlord, the police, and child protective services, and they distributed a forged letter purportedly from Patrick and Tall that made it appear the two were trafficking drugs, committing other illegal activities, and abusing their children. As a result of these unfounded complaints, Patrick and Tall lost their lease and had to move their family from their home. The family contacted the Toledo Fair Housing Center, and after documenting the harassment, Patrick Tall, and the Fair Housing Center filed complaints with the HUD. After investigating, HUD issued a charge of discrimination and the complainants elected to have the case heard in federal district court. The DOJ filed a federal lawsuit on behalf of HUD, the family and the Toledo Fair Housing Center. http://www.justice.gov/crt/about/hce/documents/richardsoncomp.pdf.

United States v. Countrywide Financial Corporation
In December 2011, the Department of Justice, in its largest fair lending case to date, reached a settlement with Countrywide Financial Corporation and its subsidiaries for $335 million in monetary relief for more than 200,000 victims of lending discrimination. The Department alleged that Countrywide steered Latino and African-American borrowers who qualified for prime-rate mortgages into subprime loans, while also placing similarly situated non-Hispanic White borrowers into prime-rate loans in 2004-2008. Countrywide also charged extra points and fees to people of color. https://www.justice.gov/opa/pr/justice-department-reaches-335-million-settlement-resolve-allegations-lending-discrimination.

United States v. Citizens Republic Bancorp
In June 2011, the Department of Justice reached a settlement agreement with Citizens Republic Bancorp in a case alleging that the defendants failed to provide equal mortgage lending services in African American neighborhoods in the Detroit metro area. Under the settlement agreement, the defendants must invest more than $3.5 million in those areas discriminated against by opening a loan origination office; providing discounted residential loans to qualified applicants; conducting outreach and education; and partnering with the City of Detroit to provide home improvement grants to homeowners. https://www.justice.gov/opa/pr/justice-department-reaches-settlement-citizens-republic-bancorp-inc-and-citizens-bank.

Fair Housing Enforcement at the Consumer Financial Protection Bureau

The Consumer Financial Protection Bureau (CFPB) has the authority to ensure that no extension of credit, including in the mortgage market, violates the Equal Credit Opportunity Act. The CFPB's Office of Fair Lending and Equal Opportunity provides guidance to the CFPB's supervision staff as

they assess fair lending compliance by financial companies regulated by the CFPB, and it coordinates with other prudential regulators regarding analysis and examination of supervised institutions. In addition, the Office of Fair Lending works with the CFPB's Office of Enforcement to conduct research and investigations in anticipation of filing public enforcement actions against institutions, and provides legal and analytical support in the investigation of discrimination complaints.

The CFPB currently accepts complaints alleging unlawful abuses in mortgages, debt collection, credit reporting, bank accounts, consumer credit cards, money transfers, and payday, student, and auto loans. The following are the two most recent mortgage lending discrimination cases filed by the CFPB, in conjunction with the Department of Justice.

In 2016, the CFPB and DOJ announced settlement of a joint action against BancorpSouth Bank for discriminatory mortgage lending practices that harmed African Americans and other persons of color. The complaint filed by the CFPB and DOJ alleged that BancorpSouth engaged in numerous discriminatory practices, including illegally redlining in Memphis; denying certain African American applicants mortgage loans more often than similarly situated non-Hispanic White applicants; charging African American customers for certain mortgage loans more than non-Hispanic White borrowers with similar loan qualifications; and implementing an explicitly discriminatory loan denial policy. Under the terms of the consent order, BancorpSouth will pay $4 million in direct loan subsidies in neighborhoods of color in Memphis; at least $800,000 for community programs, advertising, outreach, and credit repair; $2.78 million to African-American consumers who were unlawfully denied or overcharged for loans; and a $3 million penalty.

In 2015, the CFPB and DOJ announced settlement of a joint action against Hudson City Savings Bank for discriminatory redlining practices that denied residents in majority-Black-and-Hispanic neighborhoods fair access to mortgage loans. The complaint filed by the CFPB and DOJ alleged that Hudson City illegally provided unequal access to credit to neighborhoods in New York, New Jersey, Connecticut, and Pennsylvania. The bank located branches and loan officers, selected mortgage brokers, and marketed products to avoid and thereby discourage prospective borrowers in predominantly Black and Hispanic communities. The consent order requires that Hudson City pay $25 million in direct loan subsidies to qualified borrowers in the affected communities, $2.25 million in community programs and outreach, and a $5.5 million penalty.

The Case for Fair Housing Makes Clear the Need for Additional Support

It is important to acknowledge that constructive, meaningful actions are taken to address acts of discrimination against individuals and families; systemic policies and practices that work to exclude persons in protected classes; and policies and practices that perpetuate segregation. Significant quality fair housing work is done by governmental and private agencies, and it is important to recognize that something *can* be done about housing discrimination and segregation. But the problem is that this work receives neither the support nor respect it deserves. The scale of these activities is entirely inadequate to the task at hand. The case for fair housing demands that we shift our priorities to properly support these efforts.

SECTION IV. OVERVIEW OF HOUSING DISCRIMINATION REPORTED IN 2016

The case for fair housing cannot be made without evidence that significant housing discrimination still exists. It does. Every year, to provide an annual picture of fair housing enforcement across the country, NFHA collects data from private nonprofit fair housing organizations and government agencies that receive and address fair housing complaints. These government agencies include the state and local Fair Housing Assistance Program (FHAP) agencies, as well as the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Justice (DOJ).[97] Together, these organizations and government agencies serve as the national infrastructure to address housing discrimination complaints.[98]

In this Section...

- The latest data on reported cases of housing discrimination from private fair housing organizations, HUD, and DOJ in 2016
- A breakdown of these complaints by what types of housing discrimination occurred
- A deeper look at the data reported by HUD and DOJ

As has been the case year after year, private fair housing organizations are responsible for addressing the vast majority of housing discrimination complaints. This year, private nonprofit organizations processed 70.05 percent of complaints (as compared to 4.86 percent by HUD, 24.95 percent by FHAP agencies, and 0.14 percent by DOJ.)

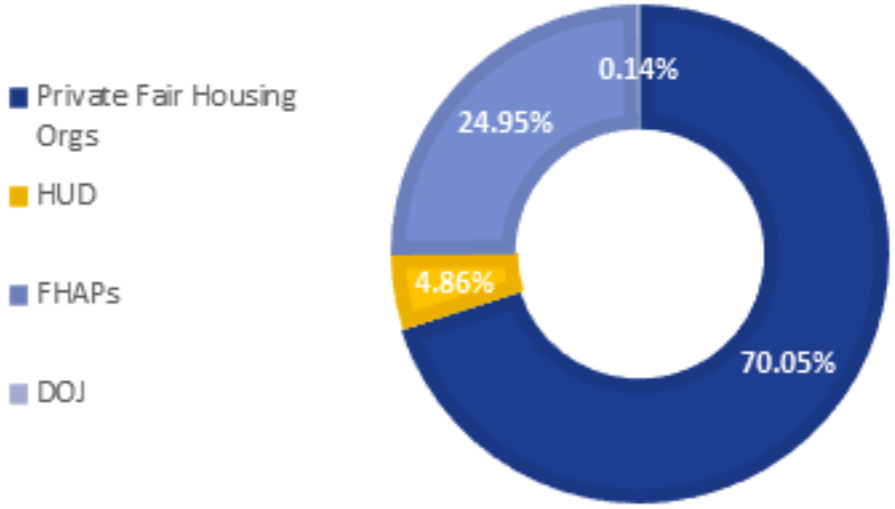
Housing discrimination comes in many forms and has been uncovered in a number of different types of housing transactions. For the purpose of this report, data is collected on all of the federally protected classes (race, color, national origin, disability, familial status, sex, and religion), ,as well as classes protected under state and local laws.

Data is also collected on several different housing transaction types, including rental, sales, lending, and homeowners insurance, as well as complaints related to advertising, harassment, homeowners and condo associations, zoning, and homeless shelters. While the data reported here represents the number of complaints filed in the United States as a whole, this is only a

97 Private fair housing agencies report their data based on the calendar year, while DOJ and HUD data is reported based on the federal fiscal year (October-September).

98 This does not include complaints from the Consumer Financial Protection Bureau which are not collected in a manner that provides the level of detail needed for this report.

Housing Discrimination Complaints in 2016 by Reporting Agency



small fraction of the incidence of discrimination that actually occurs in the housing market. It is estimated that 4 million acts of housing discrimination occur per year in the rental market alone.[99] The numbers reported here are much smaller because housing discrimination often goes undetected and unreported. It is common for victims of discrimination not to report discrimination because it goes undetected and is difficult to identify even if the suspicion is there. Victims of housing discrimination also often think nothing can or will be done about the discrimination they experience, or they fear retaliation from their landlord or housing provider.

This year's *Trends Report* provides a summary of complaint data gathered from 97 private nonprofit organizations (including both fair housing organizations and legal aid agencies), DOJ, and HUD. It also provides data from 85 agencies that participate in HUD's FHAP program and thus receive annual funding to support a variety of fair housing administrative and enforcement activities, including complaint investigation, conciliation, administrative and/or judicial enforcement; training; implementation of data and information systems; and education and outreach. The table on the following page lays out the yearly complaint data for the past decade, including the most recent data from 2016.

In 2016, there were a total of 28,181 reported complaints of housing discrimination across the country. Of these, 19,740, or approximately 70 percent, were addressed by fair housing organizations as compared to 1,371 by HUD, 7,030 by the FHAP agencies, and 40 by DOJ.

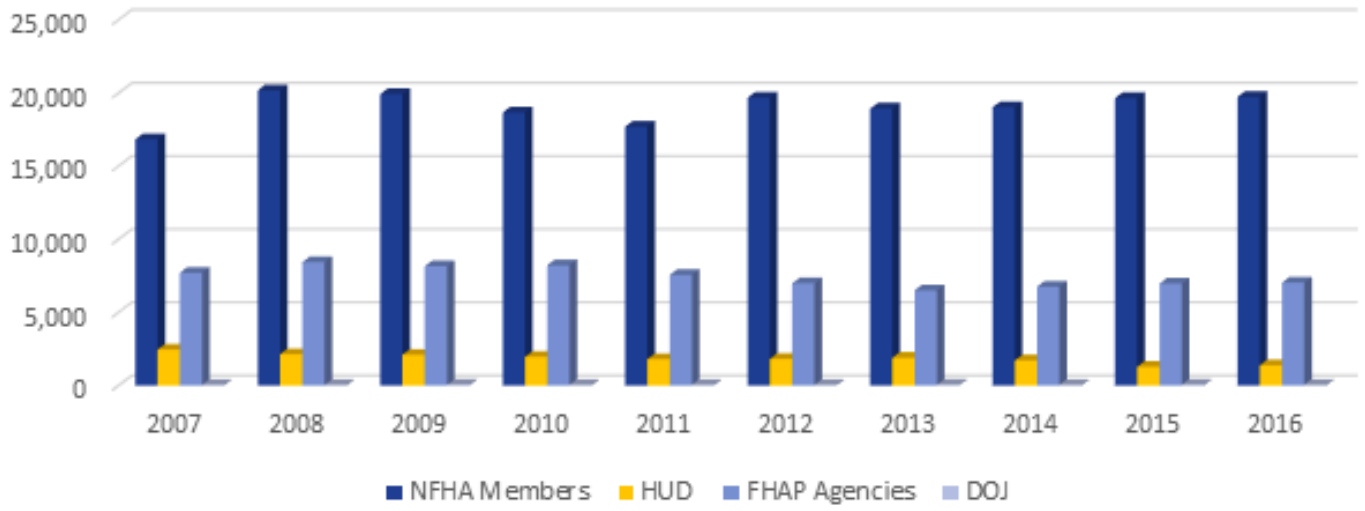
As shown in the graph on the following page, private fair housing organizations have consistently addressed the vast majority of fair housing cases during the past decade. Even at the lowest

99 "The State of Fair Housing: FY2006 Annual Report on Fair Housing," U.S. Department of Housing and Urban Development.

Year	NFHA Members	HUD	FHAP Agencies	DOJ	Total;
2007	16,834	2,449	7,705	35	27,023
2008	20,173	2,123	8,429	33	30,758
2009	19,924	2,091	8,153	45	30,213
2010	18,665	1,943	8,214	30	28,852
2011	17,701	1,799	7,551	41	27,092
2012	19,680	1,817	6,986	36	28,519
2013	18,932	1,881	6,496	43	27,352
2014	19,026	1,710	6,758	34	27,528
2015	19,645	1,274	6,972	46	27,937
2016	19,740	1,371	7,030	40	28,181

point in the decade in 2007, NFHA members addressed twice the number processed by the FHAPs and HUD. This year's complaint data shows that fair housing organizations processed a total of 19,740 complaints, up from 19,645 in 2015 and 19,026 in 2014. FHAP agencies also saw an increase in complaints in the past year, with a total of 7,030 complaints in FY2016, up from 6,972 in the previous year. While the number of complaints addressed by HUD increased from 1,274 to 1,371 in the past year, the overall number of HUD complaints is significantly lower than in 2014, when HUD addressed a total of 1,710 complaints.

Housing Discrimination Complaints in 2016 by Reporting Agency



National Data by Basis of Discrimination

The following section breaks out the national data described previously by protected class. Housing discrimination against persons with disabilities made up the majority of complaints investigated in 2016. There were a total of 15,455 cases of discrimination against persons with disabilities reported, which amounts to 54.84 percent of all reported cases. This large number can be partially attributed to the fact that disability cases are often more overt or more easily detected than other types of housing discrimination.

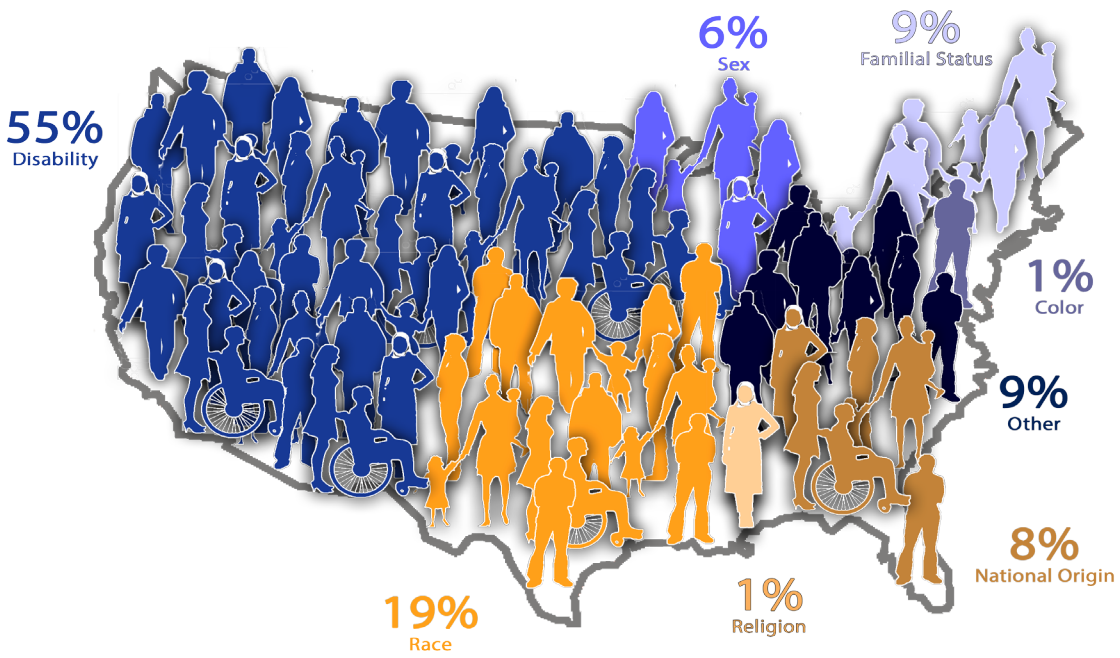
As has been the case over the past several years, discrimination on the basis of race was the second most reported type of housing discrimination in 2016. There were 5,519 cases of racial discrimination in housing transactions, or approximately 19.6 percent of all reported cases. The third most frequent basis of discrimination was discrimination because of one's familial status, with 2,406 cases reported (approximately 8.6 percent). This number fell in 2016 by 470 complaints, or a 2.3 percent decline. There were 2,150 complaints on the basis of national origin in 2016, representing 7.7 percent of all complaints. The next most frequent type of housing discrimination complaints was sex-based, with 1,788 complaints (6.4 percent). This was followed by discrimination complaints due to one's color or religion, with 394 complaints (1.4 percent) and 367 complaints (1.3 percent), respectively.

Basis	NFHA Members	HUD	FHAP	DOJ
Race	17.0%	25.6%	25.7%	15.0%
Disability	53.3%	58.9%	58.5%	35.0%
Familial Status	7.7%	10.1%	10.6%	20.0%
Sex	5.0%	8.8%	9.7%	12.5%
National Origin	6.2%	15.0%	10.2%	12.5%
Color	1.3%	0.8%	1.9%	0.0%
Religion	0.8%	2.3%	2.5%	5.0%
Other*	8.8%	4.7%	10.4%	12.5%

*A number of complaints fell under the category of "other," which for NFHA members includes:

- Source of income (696 complaints)
- Age (220 complaints)
- Sexual orientation (150 complaints)
- Gender identity (44 complaints)
- Arbitrary, in California rentals only (43 complaints)

For HUD, the "other" category only includes retaliatory claims; and for DOJ, it only includes military status. There were a total of 2,531 complaints in the other category, representing approximately 9 percent of all complaints.



Note: Some reported complaints included more than one basis of discrimination.

Housing Discrimination Complaint Data by Transaction Type

Housing discrimination occurs in a number of different types of transactions and housing-related scenarios. Increasingly, acts of discrimination are taking on more subtle forms, and while overt housing discrimination still occurs, more often than not, it is masked by housing providers offering false information, quoting different prices, providing an inferior product or amenities, or applying different standards or qualification criteria. It would be virtually impossible, for example, for those being quoted an interest rate or security deposit amount to know that they are being offered higher rates because they are members of a protected class. As this trend of subtle discrimination continues, private fair housing organizations increasingly rely on testing as a tool to identify and prove fair housing violations. This testing has to be customized to simulate a number of different transaction types. Complaints reported by private fair housing organizations include discrimination occurring during rental transactions, home sales, mortgage lending, with regard to obtaining homeowners insurance, and in several other forms.

Rental Market Transactions – Private Groups Reported 17,728 Complaints

Consistently, housing discrimination is most likely to occur in the rental market. Year after year, NFHA members, HUD, and the FHAPs have reported more rental complaints than any other type of complaint. This is in part because of the sheer volume of rental transactions that occur every year, as well as the fact that rental discrimination is easier to detect than other types of housing discrimination due to its simplicity. Essentially, testing for rental discrimination is considerably less complex than other types of testing. In 2016, there were 17,728 rental complaints reported by private fair housing organizations. This represents 91.5 percent of all housing discrimination reported this past year. This is consistent with last year, where 91.4 percent of complaints were rental complaints, but represents a huge increase from pre-foreclosure crisis data; in 2005, only 77.2 percent of reported complaints occurred in rental transactions.

HUD reported that 838 of its cases (approximately 61 percent) were identified as rental transactions. Among the 7,030 filed cases reported by FHAP agencies, 5,070 or 72 percent were rental cases.

Real Estate Sales – Private Groups Reported 406 Complaints

Complaints occurring within real estate sales transactions increased in 2016, with 406 reported complaints. This was a significant increase from 2015, which saw 317 instances of sales-related housing discrimination. Real estate sales complaints comprised 2.1 percent of the total number of complaints in 2016.

Among cases filed with HUD, 159 were related to a home purchase; and among those filed with FHAPs, 369 were related to a home purchase.

Mortgage Lending — Private Groups Reported 333 Complaints

Private fair housing organizations reported 333 instances of lending discrimination in 2016, down significantly from the past few years. In fact, this is nearly half the number reported in 2015 (649 instances). This continuing decline in lending complaints may be reflective of the additional barriers that have been added to the process of obtaining a mortgage loan following the foreclosure crisis.

HUD reported 136 lending cases and the FHAPs reported 81 cases of mortgage lending discrimination. These included discriminatory financing cases, cases that involved discrimination in the making of loans, discrimination in the purchasing of loans, and discrimination in the terms and conditions for making loans, as well as mortgage redlining.

Homeowners Insurance Transactions – Private Groups Reported 19 Complaints

In 2016, there were 19 complaints of discrimination in the provision of homeowners insurance. This number is up by two complaints from 2015, but down significantly from the year prior, when 46 complaints were reported. This past year, HUD reported two insurance cases, and FHAP agencies reported three.

Harassment – Private Groups Reported 640 Complaints

Harassment based on protected class in the form of coercion, intimidation, threats or interference in the provision of housing is illegal under the Fair Housing Act. Unfortunately, such abusive behavior toward tenants, residents, and prospective occupants because of their membership in federally protected classes has remained a major issue in our housing market. In 2016, there were 640 harassment complaints filed with private fair housing organizations, up significantly from 591 in 2015, and 379 in 2014. Perhaps more so than other types of fair housing violations, although easily recognizable, harassment often goes unreported because it tends to victimize persons with elevated housing insecurity. Thus, poor individuals and tenants of public housing, for example, may not report harassment due to fear of eviction or retribution.

The Fair Housing Act also covers racially-motivated harassment by neighborhoods and hate activity that occurs at or on one's property, including, for example racist or anti-Semitic graffiti or harassing voicemails or threatening letters left at one's front door. See Section V of this report for more information on this topic.

Other Housing-Related Transactions – Private Groups Reported 298 Complaints

Because it is illegal under the Fair Housing Act to discriminate during any housing-related transaction, NFHA is continuing to track how often housing discrimination is reported involving homeowners or condominium associations, zoning, advertising, shelters, cooperatives, and retaliation. In 2016,

there were 20 complaints against homeowners or condominium associations, 33 because of zoning or land use, 23 for retaliatory acts, and 14 for discriminatory advertising.

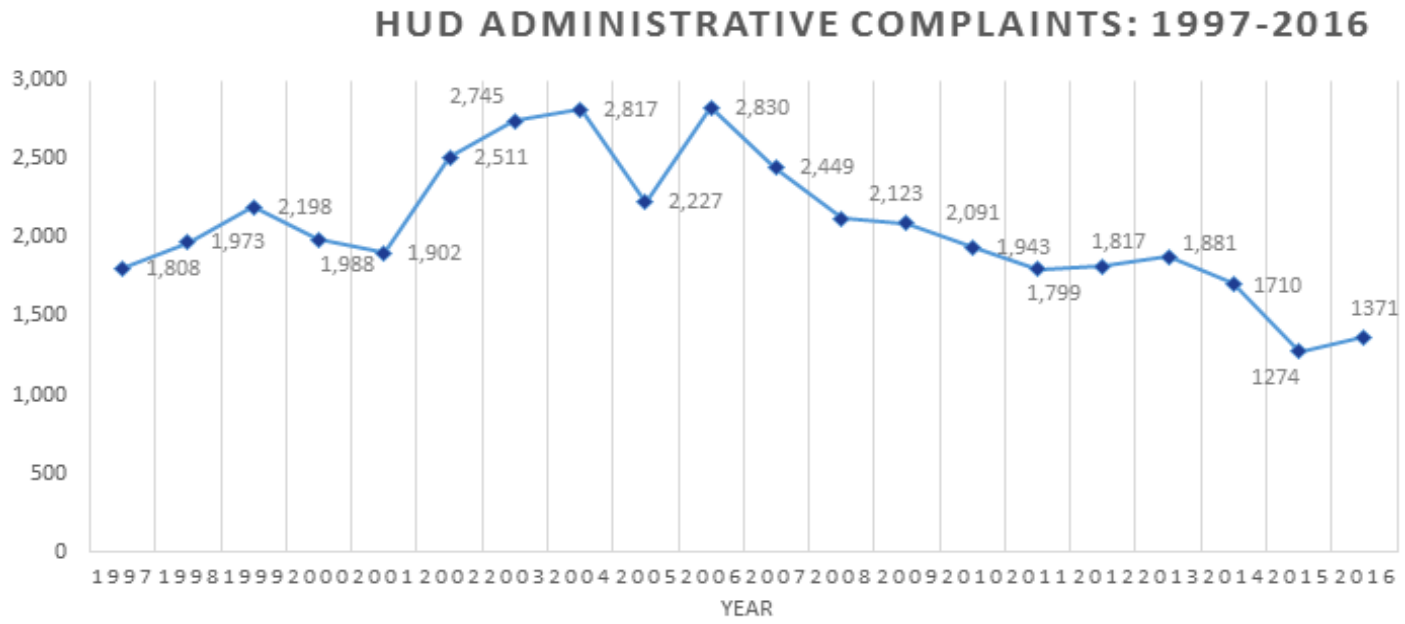
Complaint Data Reported by HUD and FHAP Agencies

The Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity (FHEO) has the primary authority to enforce the Fair Housing Act and to carry out its mandate to eliminate housing discrimination through enforcement actions. It also enforces civil rights laws that affect housing transactions, including Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments Act of 1972, the Architectural Barriers Act of 1968, and housing provisions under the Violence Against Women Act.

Additionally, FHEO publishes and distributes education and outreach information, and administers both the FHAP and FHIP programs. FHEO is also responsible for establishing fair housing and civil rights regulations and policies for HUD programs, issuing guidance on complying with the requirements of fair housing and related civil rights laws, and assuring compliance with federal nondiscrimination regulations and the requirement to affirmatively further fair housing in HUD's housing and community development programs. For additional information on FHEO's role, refer to Section III of this report.

a. HUD Administrative Complaints

HUD received 1,371 complaints of discrimination in housing during 2016, an increase of 93 complaints from 2015. This increase is a reversal of the downward trend seen over the past decade – as can be seen in the graph below. Though this year saw an increase from last year, the overall downward trend in administrative complaints stems partly from HUD's increased reliance



on local and state civil rights agencies funded through the FHAP program.

b. Secretary-Initiated Complaints

The Fair Housing Act allows HUD to initiate complaints when (1) the agency obtains sufficient evidence to believe that a Fair Housing Act violation has occurred or is about to occur or (2) when it has received an individual complaint but believes there may be additional victims of discrimination or wants to obtain relief in the public interest. In 2016, there were only 16 Secretary-Initiated Complaints, less than half of the number for 2015 (33 complaints). These cases involved, most frequently, discrimination on the basis of disability, followed by race and national origin and familial status. Several of these cases featured a combination of more than one protected class, as can be seen in the table to the right.

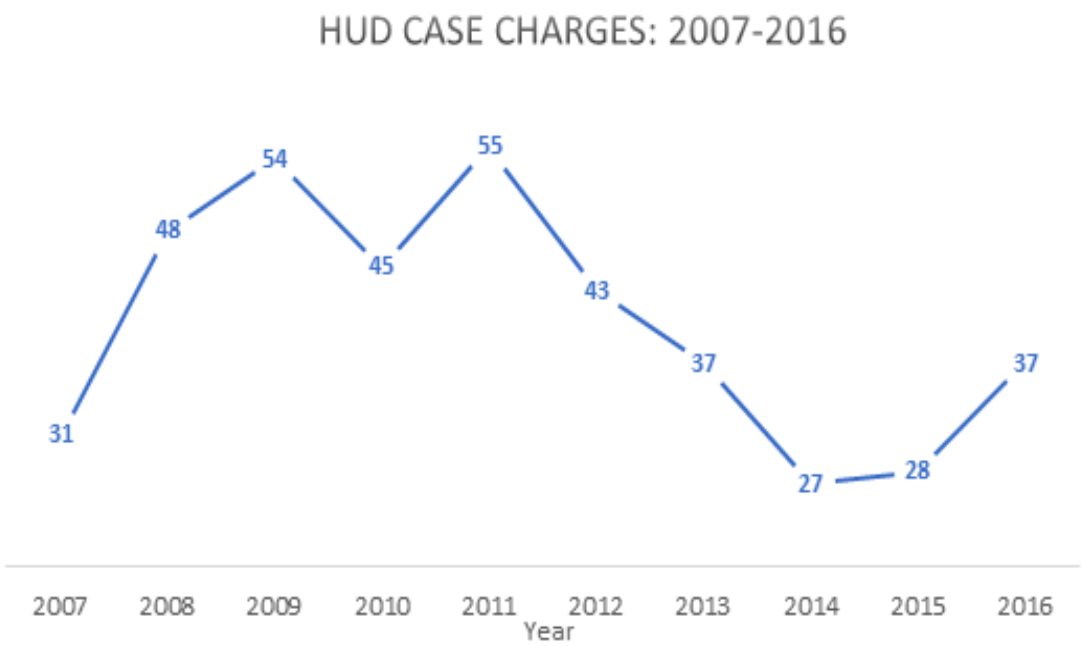
Basis of Discrimination	Number of Cases
Disability	6
Familial Status	2
National Origin	1
Race	2
Race, Disability, Familial Status	1
Race, National Origin	4
Total	**16**

c. Charged Cases

HUD cases are sometimes resolved through conciliation or are closed for administrative reasons, including untimely filing, lack of jurisdiction, withdrawal by the complainant without resolution, and inability to locate the respondent. Based on its investigation, HUD may also issue a charge of discrimination when there is reasonable cause to believe a violation has occurred. In 2016, HUD charged 37 cases (approximately 2.5 percent of all completed cases for the year). This represents an increase from the past two years (there were 28 charged cases in 2015, and 27 in 2014). The table below shows the completed cases from HUD and the FHAP agencies from FY2016.

FHAP agencies also play an important role in the charging of cases. HUD refers complaints that originate in areas where a local government agency is a part of the FHAP program to that

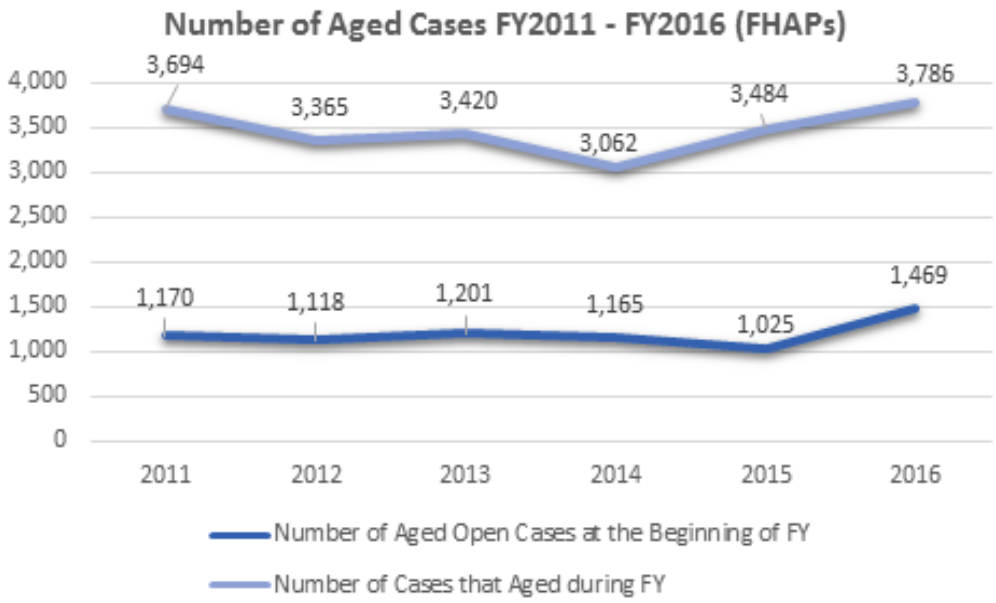
Case Completion Type	HUD	FHAP	**Total**
Administrative Closure	220	568	**788**
Charged or FHAP Caused	37	368	**405**
Conciliation/ Settlement	533	1,994	**2,527**
DOJ Closure	12		**12**
No Cause	560	3,510	**4,070**
Withdrawn after Resolution	123	493	**616**
Total	**1,485**	**6,933**	**8,418**

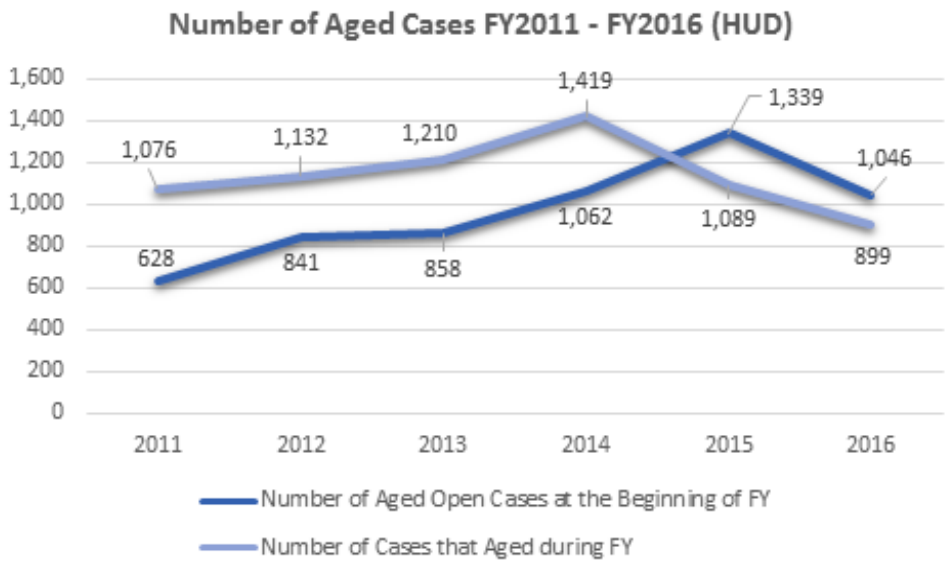


participating agency. FHAP agencies may issue a "cause" determination if probable discrimination is found. In 2015, there were 434 cause determinations from the FHAP agencies, up slightly from 421 in 2014.

d. Aged Cases

HUD's Fair Housing Act regulations require that HUD and FHAPs complete their investigations within 100 days from the initial receipt of a complaint, with exceptions for more complex cases





such as those involving real estate, mortgage lending, or insurance discrimination. If a case exceeds the 100-day statutory period, the case becomes "aged."

As in past years, both HUD and FHAP agencies have a significant number of "aged" cases that have exceeded the 100-day statutory period, the large majority of which are not complex cases. Many of these aged cases have been stalled in the process for several years, and the number of aged cases has persisted for several years. The graphs above show the trends in aged cases at both HUD and the FHAP agencies.

HUD held 1,046 aged cases at the beginning of 2016, down from 1,339 at the start of 2015. FHAP agencies held 1,469 aged cases at the beginning of the year, a significant increase from the previous year, when they held 1,025 aged cases. FHAPs saw 3,786 cases become aged during 2016, meaning that they exceeded the 100-day processing benchmark. At HUD, 899 cases became aged during the year. While there was a decline in the overall number of aged cases at HUD, the FY2016 data on completed cases does not account for this decline. The numbers on case completions in 2016 are comparable to those that occurred in past years: In FY2015, HUD closed 1,713 cases; in 2014, it closed 1,526; and in FY2013, it closed 1,566. Even when broken out by closure reason, the numbers from this past year are very close to those seen in recent years. Even with the decline in both cases that became aged and the total number of aged cases at the start of the fiscal year, the numbers of aged cases are still significant for both FHEO and the FHAP agencies.

Complaint Data Reported by the Department of Justice

DOJ's Housing and Civil Enforcement Section is responsible for enforcing the Fair Housing Act, the Equal Credit Opportunity Act (ECOA), and Title II of the Civil Rights Act of 1964, which

prohibits discrimination in public accommodations. ECOA prohibits lending institutions from discriminating against credit applicants on the basis of race, color, national origin, religion, sex, marital status, age or source of income. Under ECOA, the Justice Department has the authority to investigate and file a fair lending lawsuit. The 1968 Federal Fair Housing Act also gave DOJ the authority to investigate cases involving a "pattern or practice" of housing discrimination, as well as cases involving acts of discrimination that raise an issue of general public importance. The 1988 Fair Housing Amendments Act (FHAA) increased DOJ's authority to include cases in which a housing discrimination complaint has been investigated and charged by HUD and one of the parties has elected to go to federal court. DOJ is also able to initiate civil lawsuits in response to fair housing violations by any state or local zoning or land-use laws referred by HUD. Finally, the Civil Rights Division of DOJ also has the authority to establish fair housing testing programs.

DOJ filed 40 cases in 2016 - 6 fewer than in 2015. Of these, 31 involved pattern-or-practice claims, the highest number of pattern-or-practice complaints filed in several decades. The Housing and Civil Enforcement Section obtained settlements totaling over $90 million in monetary relief in 2016. Every year, DOJ reviews and responds to hundreds of written complaints from individuals, but the jurisdiction of DOJ is limited under the Fair Housing Act to pattern-and-practice cases and cases referred by HUD. Thus, DOJ's standard response is to advise individual complainants to file a complaint with HUD or to contact a local, private fair housing center for additional assistance.

SECTION V. FAIR HOUSING CASE HIGHLIGHTS & FEATURED ISSUES FROM 2016

Each year, fair housing and other nonprofit organizations, HUD, and DOJ investigate and file cases of housing discrimination in the federal court and HUD/FHAP administrative complaint systems. In 2016, several notable cases highlighted the persistence and variability of housing discrimination in this nation. These cases demonstrate that the types of policies and practices referenced in earlier sections continue in the current marketplace and underscore the need for stronger support of fair housing in this nation.

In the second part of Section V, we highlight three featured issues in 2016: (1) fair housing in the shared economy and in social media; (2) using fair housing laws to fight escalating hate activity; and (3) dismantling segregation with HUD's new Affirmatively Furthering Fair Housing rule.

In this Section...

- Summaries of a number of notable cases from 2016
- Addressing fair housing in the shared economy and in social media
- Fighting escalating hate activity using fair housing laws
- Dismantling segregation with HUD's new Affirmatively Furthering Fair Housing rule, the directives of which were implemented for the first time in 2016.

2016 Case Highlights

The representative cases highlighted in this section include allegations of widespread sexual harassment by a housing authority's employees; racially restrictive bylaws of a homeowners' association; a university's practice of denying its students' reasonable accommodation requests; the discriminatory targeting of lending services away from Black mortgage applicants; the denial of mobile home rentals to Black applicants; the denial of foreign country identification of prospective renters; the denial of an affordable housing zoning application in response to discriminatory opposition; the discriminatory concentration of affordable housing; the refusal to rent to people with mental disabilities; the discriminatory targeting of predatory loans against borrowers refinancing their mortgages; an insurance policy limiting coverage for landlords that rent to Section 8 tenants; a city's practice of administering housing programs that are not accessible to people with disabilities; the failure to design and construct accessible multi-family

housing; and the discriminatory maintenance and marketing of bank-owned, post-foreclosure properties.

Long Island Housing Services Inc. v. German-American Settlement League, Inc.
In January 2016, the German-American Settlement League in New York agreed to revise its bylaws to ensure that they comply with federal, state, and local fair housing laws and to pay $175,000 in a settlement of a race discrimination complaint filed by Long Island Housing Services, Inc. and individual plaintiffs. The lawsuit alleged that the league discriminated on the basis of race in connection with property that was the site of a Nazi youth summer camp in the 1930s. Under the bylaws that were in effect until the suit, homeownership was restricted to members of the league who must be primarily of German descent, and membership could only be extended to "other national elements" if new members were sponsored by current members. The bylaws also prohibited advertising homes for sale. [100]

Smith v. City of Baltimore
In January 2016, the City of Baltimore, Maryland, agreed to pay at least $6,000,000 to settle a class action lawsuit in which the plaintiffs alleged that Baltimore City Housing Authority maintenance employees routinely demanded sex from female residents as a condition of making repairs to their apartments. Under the settlement, if the class size exceeds sixty members, the city will make additional payments per additional class member up to a total of $1,950,000. The lawsuit was filed by female residents who alleged that city employees refused to perform repairs without sexual quid pro quo. The plaintiffs charged that "[t]he practice of demanding sex for repairs is so widespread that it is a pattern and practice by the City of Baltimore, whose housing officials repeatedly turned their backs on the most vulnerable city residents."[101]

United States v. Kent State University
In January 2016, DOJ and Kent State University agreed to a consent decree resolving claims that Kent State violated the Fair Housing Act by refusing to allow a student with a disability to keep an assistance animal in university-owned student housing as a reasonable accommodation for the student's disability. The government also alleged that Kent State engaged in a pattern or practice of discrimination on the basis of disability. Under the terms of the consent decree, the university will implement an agreed-upon policy on reasonable accommodations and assistance animals in university housing. Kent State employees and agents will receive fair housing training. The university will pay the student, her husband, and Fair Housing Advocates Association a total of $130,000. It will also pay a $15,000 civil penalty.[102]

MHANY Management, Inc. v. County of Nassau (2nd Circuit)
In March 2016, the Second Circuit affirmed, in part, a district court judgment in which the court ruled that Garden City, Long Island, had intentionally discriminated on the basis of race by rezoning a tract of land to restrict the construction of affordable multifamily housing. The plaintiffs alleged

100 https://nonprofitquarterly.org/2016/01/14/private-fair-housing-agency-leads-to-settlement-in-long-island-nazi-town-case/.
101 http://www.baltimoresun.com/news/maryland/baltimore-city/bs-ci-housing-settlement-20160104-story.html.
102 https://www.justice.gov/crt/case/united-states-v-kent-state-university-nd-ohio-0.

that Garden City rezoned 25 acres of land owned by Nassau County that the county planned to sell to prevent the construction of affordable housing because the housing was likely to have predominantly minority residents. The appeals court remanded the disparate impact claim for consideration of whether the plaintiffs had met their burden of proving that a less discriminatory alternative would serve the defendant's legitimate interests. The panel remanded the claim against Nassau County for consideration of the plaintiffs' claims that the county had engaged in unlawful racial steering. [103]

Metropolitan St. Louis Equal Housing and Opportunity Council, et al. v. First Federal Bank

In February 2016, HUD announced that First Federal Bank of Kansas City agreed to a conciliation agreement resolving claims that it engaged in redlining against African American mortgage applicants. The Metropolitan St. Louis Equal Housing and Opportunity Council and Legal Aid of Western Missouri filed a complaint with HUD, alleging that First Federal made residential real estate products less available to African Americans in Kansas City based on race, and that the bank designated its service areas in a way that excluded areas with high African American concentrations. Under the terms of the conciliation agreement, First Federal will provide a $75,000 subsidy fund for assistance for low-income home buyers and homeowners who wish to make repairs. It will originate $2.5 million in mortgage loans in predominantly African American neighborhoods over a three-year period. It will also contribute $105,000 to a loan pool for the rehabilitation of vacant, blighted homes; $50,000 for affirmative marketing and outreach in African American communities in Kansas City; and $30,000 for financial education. It will pay $25,000 each to the complainant organizations. [104]

Avenue 6E Investments, LLC v. City of Yuma, Arizona (9th Circuit)

In March 2016, a Ninth Circuit panel reversed a district court's order dismissing claims of discrimination against Hispanics in a lawsuit filed against the City of Yuma, Arizona, by two affordable housing developers. The suit alleges that the city had denied their affordable housing zoning application "in order to appease its constituents, despite knowing that opposition to the application was based largely on racial animus" against prospective Hispanic residents and that the denial of the rezoning request had a disparate impact on Hispanics. The district court had granted the city's motion to dismiss claims that the city intentionally discriminated by refusing to rezone in 2010 and the court entered summary judgment for the city on the plaintiffs' claims that the city's denial of the rezoning application had a disparate impact on Hispanics in 2014. The plaintiffs appealed both rulings. [105]

Baltimore County Branch of the NAACP, et al. v. Baltimore County

In March 2016, Baltimore County, Maryland, agree to resolve a pending HUD complaint filed by the Baltimore County Branch of the NAACP, Baltimore Neighborhoods, Inc., and three individuals by investing $30 million over ten years to develop 1,000 affordable housing units in the county. The

103 https://lawyerscommittee.org/press-release/appeals-court-upholds-ruling-village-garden-city-intentionally-discriminated-zoning-affordable-housing-nassau-county-must-now-stand-trial-affordable-housing-steering-policy.

104 https://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2016/HUDNo_16-028.

105 http://caselaw.findlaw.com/us-9th-circuit/1729951.html.

complainants alleged that Baltimore County developed affordable housing only in high minority and poverty neighborhoods; focused on providing housing for older persons and not families; did not provide an adequate number of accessible units for people with disabilities; and did not comply with its obligation to affirmatively further fair housing. In addition, the county agreed to provide housing choice vouchers to at least 2,000 families and to provide mobility counseling to these families; to ensure that all of its units comply with the accessibility requirements of the Fair Housing Act; to provide an additional $300,000 annually for ten years to finance structural modifications to make other affordable units in the county accessible; and to proactively market units to potential tenants who are least likely to apply, including African American families and tenants with disabled family members. The county executive will also submit legislation prohibiting source of income discrimination to the county council and will promote the legislation. The county will pay the three individual complainants a total of $150,000. [106]

United States v. Mere

In February 2016, the DOJ announced that the owner and operator of a Florida mobile home park agreed to pay $40,000 to settle claims of race discrimination. DOJ sued the owner of a mobile home park, alleging that he discriminated against African Americans, telling potential African American residents that no mobile homes, recreational vehicles or lots were available ,while he told White potential renters that homes and lots were available. Under the terms of the consent order, the owner of the mobile home park agreed to establish a settlement fund of $30,000 and to pay a $10,000 civil penalty. He will implement nondiscriminatory rental policies and procedures and will participate in fair housing training. [107]

Project Sentinel v. Associated Capital Consultants Inc., et al.

In March 2016, the owners of a Santa Clara, California, apartment complex agreed to a conciliation agreement resolving claims that they discriminated against applicants for housing on the basis of national origin by refusing to accept Mexican forms of identification and otherwise discriminating against applicants for the housing of Mexican national origin. The conciliation agreement resolves a complaint filed by Project Sentinel against the owners and managers of the complex. The owners and management agreed to implement a HUD-approved procedure for accepting government-issued forms of identification and to implement a non-discrimination policy. Management of the property will attend fair housing training, and the respondents will also pay Project Sentinel $10,000. [108]

National Fair Housing Alliance v. Travelers Indemnity Company

In May 2016, NFHA filed a lawsuit against Travelers Indemnity Company and Travelers Casualty Insurance Company of America. The lawsuit charges that Travelers violated the Fair Housing Act and the District of Columbia Human Rights Act by imposing different terms and conditions for commercial habitational insurance on landlords who lease units to tenants who use housing

106 https://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2016/HUDNo_16-032.

107 https://www.justice.gov/crt/case/united-states-v-mere-md-fla.

108 https://portal.hud.gov/hudportal/documents/huddoc?id=16PSVASSPCOATEDCAPITAL.PDF.

choice vouchers. NFHA charges that the use of discriminatory underwriting and eligibility criteria discriminates on the basis of source of income in violation of District of Columbia law. NFHA also alleges that the underwriting criteria have a disparate impact on African Americans and female-headed households. NFHA seeks declaratory and injunctive relief, compensatory damages, and attorneys' fees. [109]

HOPE Fair Housing Center v. Eden Management, LLC

In May 2016, Eden Management, LLC and several Illinois property owners agreed to pay a total of $630,000 to resolve claims that they refused to rent to several individuals because they had mental disabilities. Testing conducted by HOPE Fair Housing Center supported the claims of the prospective tenants that they were denied residency at the property managed by Eden Management, LLC, due to their disabilities. The respondents will pay the complainants $630,000 in damages, attorneys' fees, and costs. They will also provide fair housing training to their employees and will revise their handbooks and policies to ensure that they are not discriminatory. [110]

Saint-Jean v. Emigrant Mortgage Company

In June 2016, a federal jury entered a verdict for the plaintiffs in a lending discrimination case against Emigrant Savings Bank and Emigrant Mortgage Company and awarded the six plaintiffs a total of $950,000. Six homeowners or former homeowners who refinanced mortgages, received financing, or had related financial dealings with Emigrant filed a lawsuit alleging that Emigrant had engaged in predatory lending by aggressively marketing and originating high-cost mortgage refinance products to African American and Latino homeowners in majority-minority census tracts in New York City between 2004 and 2009. They alleged that Emigrant engaged in "equity stripping" by marketing high-cost products to minority borrowers who had substantial equity in their homes. The plaintiffs alleged that as a result of Emigrant's practices, many borrowers were forced to sell their homes or face foreclosure. [111]

Independent Living Center of Southern California v. City of Los Angeles

In August 2016, the City of Los Angeles agreed to ensure that at least 4,000 affordable housing units comply with the Uniform Federal Accessibility Standards within the next ten years, under the terms of a settlement agreement resolving a disability discrimination case. The lawsuit was filed by the Independent Living Center of Southern California, Fair Housing Council of San Fernando Valley, and Communities Actively Living Independent and Free. The plaintiffs alleged that the city's housing programs were not accessible to people with disabilities. The city will spend at least $200 million to provide the required accessibility. It also agreed to ensure that the units that meet the standards are provided to tenants who need accessibility features. The city will pay a total of $4.5 million to the three plaintiff organizations. [112]

109 http://www.nationalfairhousing.org.

110 https://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2016/HUDNo_16-076.

111 https://www.nytimes.com/2016/06/28/nyregion/emigrant-savings-bank-discriminated-against-minorities-brooklyn-jury-says.html.

112 http://www.relmanlaw.com/civil-rights-litigation/cases/Section504Settlement.php.

HUD v. City of Ridgeland
In September 2016, the City of Ridgeland, Mississippi, agreed to amend a 2014 zoning ordinance that HUD claimed was motivated by racial animus or would have a disparate impact on African American residents, and would put more than 1,400 units of low-income majority-minority housing at risk of being replaced with mixed-use developments. HUD also alleged that other minority housing complexes were subjected to lower density requirements and that this would result in a loss of hundreds of additional apartment units. The city will amend the ordinance to address HUD's concerns and will submit a proposed affordable and fair housing marketing plan to HUD. [113]

United States v. Dawn Properties, Inc.
In December 2016, DOJ announced that the developers of six housing complexes in Mississippi agreed to a consent order resolving claims that they had not complied with the accessibility requirements of the Fair Housing Act and the Americans with Disabilities Act. According to the complaint, Dawn Properties and the other developers violated the laws in the design and construction of the multifamily housing complexes. Under the terms of the settlement, the defendants will pay to retrofit the complexes to bring them into compliance with the law. They will also pay a total of $250,000 to compensate four individuals harmed by their actions and a total of $100,000 in civil penalties. [114]

National Fair Housing Alliance, et al. v. Federal National Mortgage Association
In December 2016, NFHA and 20 local fair housing organizations filed a lawsuit against the Federal National Mortgage Association (Fannie Mae), alleging race and national origin discrimination in Fannie Mae's failure to maintain its real estate owned properties (REOs) in communities of color at the same level of quality as it maintains REOs in predominantly White neighborhoods. The lawsuit is a result of a four-year investigation of over 2,300 Fannie Mae REO properties in 38 metropolitan areas. The plaintiffs found, for example, that Fannie Mae-owned properties in predominantly White neighborhoods are more likely to have the lawns mowed, windows and doors secured, trash removed, and graffiti erased, while properties in Black and Latino neighborhoods are more likely to be neglected. The plaintiffs charge that as a result, home values for neighboring properties decline in Black and Latino neighborhoods in which Fannie Mae-owned REOs are located. The plaintiffs seek compensatory and punitive damages, as well as declaratory and injunctive relief. [115]

Featured Issues in Fair Housing

There are many fair housing issues referenced in this report that urgently need to be addressed, including creating equal access to credit, ensuring that builders design and construct housing that is accessible for people with disabilities, and dismantling the pervasive segregation in our neighborhoods to create equal opportunities for all. Highlighted in this section are three additional issues that gained attention in 2016: (1) addressing fair housing in the shared economy and in social

113 https://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2016/HUDNo_16-140.
114 https://www.justice.gov/crt/case/united-states-v-dawn-properties-inc-sd-miss.
115 http://www.nationalfairhousing.org/.

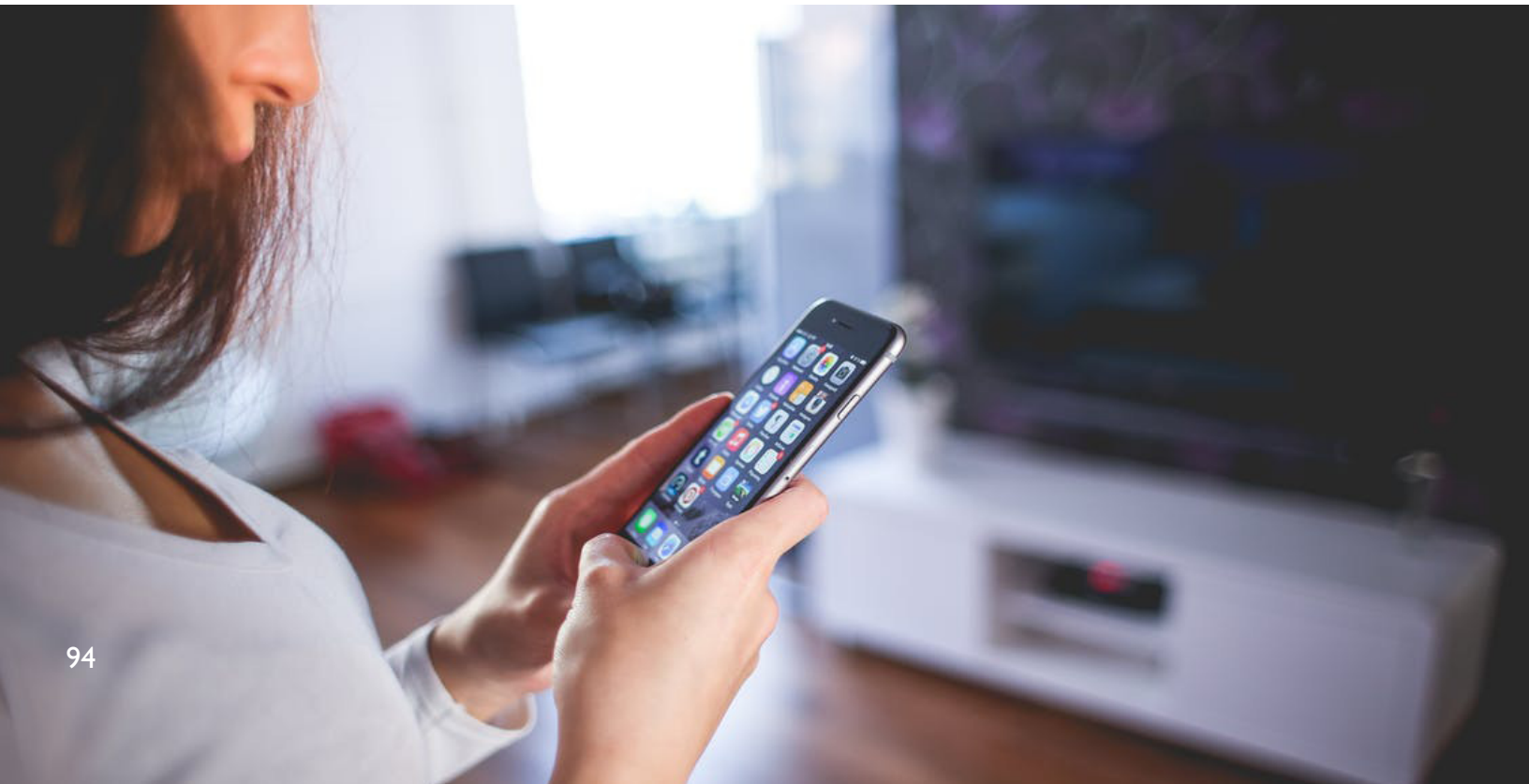
media; (2) using fair housing laws to fight escalating hate activity; and (3) dismantling segregation with HUD's new Affirmatively Furthering Fair Housing rule, the directives of which were implemented for the first time in 2016.

Addressing Fair Housing Issues Online: The Shared Economy & Social Media

Constant innovations are being made to the ways in which housing providers sell, rent, and advertise. The digital age has brought with it changes in every corner of the housing market, reshaping how providers market opportunities and select potential tenants and purchasers. In 2016, these innovations brought several new issues to the forefront for fair housing advocates: targeted yet exclusionary advertising using social media platforms and addressing pervasive housing-related discrimination in the shared economy.

While internet-based advertising has been utilized in the housing market for over a decade, social media platforms have allowed internet advertising to be targeted in a whole new way and on an unprecedented scale. Facebook, an online platform with more than 1.8 billion users, has led the industry since 2009 with targeted ads that allow advertisers to customize their marketing audience based on their documented interests, age, gender, and geographic location. Never before has there been a platform that can so precisely target individuals with tailored advertising or connect with so many viewers.

Unfortunately, until recently, this also meant that housing providers have been able to use Facebook to create exclusionary ads by allowing providers to choose their target audience's "ethnic affinity," a practice that violates the federal Fair Housing Act and other civil rights laws because it limits housing



choice on the basis of race, national origin, and other protected classes.[116] Facebook also includes marketing features that allow advertisers to target their ads in a manner that may implicate other protected classes such as sex and religion, target ads to viewers who resemble the advertisers' existing clientele, or target ads to viewers on the basis of interests.

Facebook, in coordination with NFHA and other civil rights organizations, proactively changed components of its advertising platform to prevent housing, employment, and credit ads from targeting or excluding groups based on their "ethnic affinity." It now requires all advertisers to certify compliance with Facebook's nondiscrimination policies and with laws that prohibit such discriminatory targeting.[117] Still, questions remain about the scope of Facebook's potential liability on these issues, as a lawsuit remains pending in the Northern District of California that challenges the other advertising features on Facebook's platform that could be used to target discriminatory ads.[118]

Airbnb, another online marketplace that has gained popularity in recent years, allows users to lease and rent short-term housing in more than 65,000 cities and 191 countries.[119] Following a study by Harvard Business School researchers, however, Airbnb came under scrutiny because the platform allows its hosts to potentially reject renters based on race, gender, and other factors that are protected under the Fair Housing Act. In fact, the 2015 study, which examined a sample of properties in the United States, found that Airbnb users with distinctly African American names were 16 percent less likely to be accepted relative to users with distinctly White names.[120] Users also shared their stories of discrimination on social media using the tag #AirbnbWhiteBlack, generating attention to the prevalence of the discriminatory practices of many Airbnb hosts.

As a result of this research and advocacy, Airbnb has adopted a number of changes and rules to combat discrimination by its hosts. These measures include requiring all rental hosts to agree to a "community commitment" and nondiscrimination policy as of November 2016. Airbnb also released a report outlining its plans to address discrimination.[121] Accompanying the release of the report, Airbnb's CEO Brian Chesky stated: "Bias and discrimination have no place on Airbnb, and we have zero tolerance for them."

As this report went to press in mid-2017, however, an Asian American citizen was told this by one Airbnb host: "I wouldn't rent to u if you were the last person on earth. One word says it all. Asian."

Fighting Hate with Fair Housing Laws

Since the fall of 2016, there has been a notable increase in the number of hate- or bias-related incidents occurring across the country. In March 2017, in Connecticut, for example, an interracial

116 https://www.propublica.org/article/facebook-lets-advertisers-exclude-users-by-race.
117 http://newsroom.fb.com/news/2017/02/improving-enforcement-and-promoting-diversity-updates-to-ads-policies-and-tools/.
118 https://www.clearinghouse.net/chDocs/public/FH-CA-0026-0002.pdf.
119 https://www.airbnb.com/about/about-us.
120 http://www.benedelman.org/publications/airbnb-guest-discrimination-2016-09-16.pdf.
121 http://blog.airbnb.com/wp-content/uploads/2016/09/REPORT_Airbnbs-Work-to-Fight-Discrimination-and-Build-Inclusion.pdf.

couple awoke to find their garage spray painted with the n-word. A family in Silver Spring, Maryland, found a swastika and a hateful note on their doorstep after displaying a "Black Lives Matter" sign on their front lawn. The Fair Housing Advocates of Northern California reported a 90-year old disabled client who alleged that her housing provider called her "a filthy, dirty Muslim woman who wished this country harm," before receiving a notice to terminate her tenancy.

There are hundreds of documented examples of this type of vandalism, harassment, and hate-motivated activity in the months since the 2016 presidential election alone. The Southern Poverty Law Center, in the first month following the election, received 1,094 reports of bias-related crimes; 134 of these were reported at private residences, raising housing discrimination concerns. [122]

In addition to its prohibitions against housing discrimination, the federal Fair Housing Act also makes it unlawful to injure, intimidate, or interfere with any person in the exercise or enjoyment of his or her fair housing rights (42 U.S.C. § 3631). We refer to such behavior as "housing-related hate activity." This term encompasses all activity that may coerce, intimidate, threaten, injure or interfere with persons attempting to exercise and enjoy their fair housing rights. Such activity includes hate crimes, even if the behavior is not ultimately prosecuted as a hate crime. Civil remedies in housing-related hate activity cases include injunctive relief, compensation for financial loss, and monetary compensation for injury, including emotional distress.

While the Fair Housing Act is a civil law, a separate provision of the U.S. Code imposes criminal penalties for housing-related hate activity. 42 U.S.C. § 3631 provides criminal penalties, including fines and prison time, for housing-related hate activity. Injunctive relief may also be awarded.

Housing-related hate activity includes acts of violence, threats, property damage or other conduct directed against people because of their race, color, ethnicity, religion, gender, disability, or because they have children. Housing-related hate activity can be expressed against an individual, family or entire group of people in or near their home or at a neighborhood-based institution, such as a school or religious facility. Examples of hate activity include persistent bullying and name-calling, racist or other bias-motivated graffiti or literature, vandalism, and other personal and property violence.

While fair housing organizations have always dealt with housing-related hate and harassment, it is more imperative than ever that the fair housing community proactively educate communities about how fair housing laws protect those who have become increasingly vulnerable to this type of treatment.

NFHA recently partnered with the American-Arab Anti-Discrimination Committee (ADC) to gain a deeper understanding of housing-related hate experienced specifically by the Muslim, Arab, Middle-Eastern, and South Asian community. The ADC national office alone received 19 complaints of housing discrimination – the majority of which were referred to local law enforcement. The

122 https://www.splcenter.org/hatewatch/2016/12/16/update-1094-bias-related-incidents-month-following-election.

following are just a few examples of the types of cases that were brought to ADC's attention:

June 17, 2016, in Dearborn Heights, Michigan: Z.M. parked her car in front of her house near Crestwood School. A school employee verbally attacked Z.M. and grabbed Z.M.'s head scarf off her head. The attack was reported to the police, who opened an investigation and filed charges.

March 20, 2016, in California: For the last few months, W.M. has had several issues with discriminatory harassment by his neighbors. Neighbors have thrown their trash on his front lawn and have made derogatory statements to him in front of his home while driving past in their car, including calling him a terrorist, telling him to go home and get out of their country, and baselessly threatening to report him to the FBI. On the basis of this harassment, W.M. has filed a complaint with the Department of Housing & Urban Development (HUD).

*September 13, 2016, in Washington, D.C.: When B.H. parked her car in front of her house, another driver aiming for the same parking spot became angry. The other driver got out of his car and approached B.H.'s vehicle. The other driver banged on B.H.'s door, opened B.H.'s vehicle door on the driver's side, and called B.H. a "black b***h." The other driver also yelled "I'm sick of you people," at B.H., who wears a hijab. The attack was reported to the FBI and Metropolitan Police Department, who documented it as a hate bias incident and sought a protective order.*

In 2016, approximately 23 percent of private fair housing organizations reported complaints of harassment or housing-related hate activity on the basis of national origin, religion, race or sexual orientation. That number would be much higher except that many cases that could have been treated as violations for the Fair Housing Act, such as those captured by the ADC, are typically referred only to local or federal law enforcement channels, not to fair housing agencies. Fair housing organizations have the opportunity now to expand their education and outreach efforts, and liaise with civil rights groups such as ADC and their local affiliates to better meet the needs of communities vulnerable to housing-related hate and harassment.

Why is it important to address hate with fair housing laws?

Under the Fair Housing Act, victims of hate activity have the opportunity to obtain additional relief from extremely stressful and harmful situations. For example, in August 2016, the Chicago Lawyers' Committee for Civil Rights announced the settlement of *Howe v. Calliari,* a discrimination case filed in the Circuit Court of Cook County. The case alleged that a neighbor harassed and stalked two African-American teenagers and their mother and repeatedly called them the n-word in suburban Mt. Prospect. The terms provide for a confidential but substantial sum of momentary relief and an in-court apology. Fair housing organizations can also provide support to victims and help them pursue their rights. They can help advocate for the victim by generating media attention and public support, coordinating with law enforcement, and in pursuing enforcement of their rights under the law.

The vast majority of housing discrimination acts go undetected and unreported and, while housing-related hate activity is more blatant and obvious than most other types of housing discrimination, many victims only report it to law enforcement, if they take any action at all. However, there are other mechanisms in place to stop housing-related hate and harassment and to bring justice to those afflicted. It is imperative that fair housing organizations continue to advocate, educate, and take actions using fair housing laws to meet the increasing need across the country to address housing-related hate.

Dismantling Segregation by Affirmatively Furthering Fair Housing

In 2016, another major milestone was reached in the effort to fulfill the Fair Housing Act's goal of breaking down segregation: the implementation of HUD's new affirmatively furthering fair housing rule began in a first round of cities and jurisdictions. The new provision requires recipients of federal funds–cities, counties, states and insular areas that receive funding under the CDBG, HOME, HOPWA and ESG programs and also public housing authorities—to conduct a periodic "Assessment of Fair Housing," or AFH, as a requirement of receiving funds. The AFH replaces the old requirement to conduct an Analysis of Impediments to Fair Housing Choice (AI), and has some notably different features. For example, the AFH must be submitted to and accepted by HUD. It requires a more robust community engagement process. It encourages grantees to consider not only the range of housing options available in their communities but also guides them to consider how the location of affordable housing affects residents' access to jobs, transportation, and high-quality schools, as well as their exposure to areas of concentrated poverty and environmental hazards. All of this is examined through a fair housing lens, helping grantees and the public understand the intersection between access to community resources and race, national origin, familial status, and disability.

Grantees and the public will both benefit from the online data and mapping tool that HUD created to help grantees conduct their Assessments of Fair Housing. This tool gathers a wide range of census and other relevant data in one place. The tool's mapping feature allows data to be displayed geographically, so that it is possible to see how various housing and other patterns play out across neighborhoods, and to compare conditions within a single jurisdiction to those in the broader region. The tool also provides access to the underlying data, which can be exported in table form.

Unlike the old AI, the AFH promises to be much more than just a report on a shelf. It could have a real impact on the way grantees use their housing and community resources. The fair housing goals and priorities identified in the AFH must be carried over to the jurisdiction's Consolidated Plan (or for PHAs, the PHA plan), which is its blueprint for allocating its housing and community development resources over the subsequent five years. This linkage will help ensure that key fair housing issues are addressed in grantees' decisions about how to allocate their housing and community development dollars. We hope that a significant outcome of implementation of the AFFH regulation will be a decrease in the types of policies and practices that perpetuate segregation as, for example, those discussed in Sections I and V.

We feature below an AFFH case example from New Orleans that demonstrates the importance of the role of fair housing organizations and input from a wide range of actors in the community. Unfortunately, anecdotal evidence from many other first-round submitter communities is not as positive about the role of the broader community and genuine efforts to identify barriers to fair housing. We are at a critical juncture in which the bar will be set for expectations and requirements to affirmatively further fair housing.

New Orleans, one of the cities included in the first round of AFHs, provides a good example of how the robust community engagement process that the AFFH rule spells out enables the community to have an influential voice in decision-making. New Orleans collaborated with its public housing authority, the Housing Authority of New Orleans, and submitted a joint AFH to HUD in October 2016. NFHA's local member, the Greater New Orleans Fair Housing Action Center (GNOFHAC), played an active role in the process. Working closely with the city staff, GNOFHAC took the lead on pulling together a wide range of community organizations, including housing advocacy groups, public housing residents, tenants' rights organizations, disability rights groups, transportation groups, cultural organizations, groups representing the Hispanic and Vietnamese communities, and groups working on issues affecting people who were formerly incarcerated or had other contact with the criminal justice system. GNOFHAC provided training so the groups could understand the AFH process and how it intersected with their work, and helped them formulate a set of priority issues and strategies to recommend for inclusion in the AFH.

The issues that community residents identified as top priorities to expand access to opportunity for people in New Orleans often brought together different strands of work. Many focused on the needs of renters, who outnumber homeowners in New Orleans, and one-quarter of whom are voucher holders. They need more affordable housing, with more of it located in high opportunity areas, and more effort to address the poor quality of many rental units. The needs of people with disabilities were also highlighted, both for more affordable rental units and for affordable homeownership options. Similarly, participants identified the special needs of people who are not proficient English speakers and for whom language can be a barrier to critical information about housing options. Neighborhoods that are vulnerable to gentrification were another priority, with groups identifying the need to preserve affordable units as a bulwark against displacement. Underserved neighborhoods were also highlighted, with recommendations for the kinds of targeted investments in transit, schools, housing, access to healthy food, parks and other amenities currently lacking. Environmental issues were another important priority, including the need to address lead in housing and water, as well as other environmental hazards. Community groups also raised concerns about the barriers faced by people with criminal records that too often unfairly and unnecessarily eliminate them from consideration for housing, both publicly supported housing and that in the private market. Finally, groups voiced their support for a more robust effort to educate people about their fair housing rights and strengthen the institutions that assist people whose rights may have been violated.

The AFH creates a structure for accountability going forward. It spells out strategies to address each of the fair housing priorities identified, along with time frames, metrics, and the agencies

responsible for carrying them out. These will then be incorporated into the city's Consolidated Plan and the Housing Authority's Public Housing Plan, and each year the grantees will report on their progress and update their activities in the reports submitted to HUD. That process is now underway, and will help lay the foundation for an ongoing effort to expand access to opportunity for all residents of New Orleans.

The 2016 Case for Fair Housing

Case examples and featured issues from 2016 highlight the current need for fair housing education and enforcement on a much larger and broader scale. They document that institutional, governmental, industry, and individual actors continue to commit acts of discrimination and perpetuate segregation. The Case for Fair Housing does not exist only in the past—it exists today, this hour, this minute.

SECTION VI. RECOMMENDATIONS

Housing discrimination and segregation are serious problems in this nation, and they merit serious attention. While the housing discrimination and segregation we see across the country today are widespread and deeply entrenched, there a number of ways we can strengthen the arsenal of tools we have in place to fight discrimination and dismantle segregation. There are hundreds of recommendations that would be useful, but in this report we focus on those we believe are the important and practical first steps. Our first recommendation is that our nation and leaders recognize that these problems must be addressed in a comprehensive, coordinated, well-funded manner—funding that could amount to hundreds of millions of dollars over several years. This requires that we increase federal, philanthropic, and corporate support for fair housing. Please see The Case for Funding Fair Housing section of this report.

We are aware that we may never see the level of funding and resources required to adequately address these issues; however, we vigorously endorse several recommendations that require significantly fewer resources, as follows:

- Create an Independent Fair Housing Agency or Reform HUD's Office of Fair Housing and Equal Opportunity.
- Strengthen the Fair Housing Initiatives Program.
- Effectively Implement the Affirmatively Furthering Fair Housing Rule and Hold Grantees Accountable.
- Improve Equal Access to Credit.
- Reestablish the President's Fair Housing Council.

Create an Independent Fair Housing Agency or Reform HUD's Office of Fair Housing and Equal Opportunity

HUD has the primary responsibility for administering the Fair Housing Act, and it does so through its Office of Fair Housing and Equal Opportunity (FHEO). The division is also responsible for ensuring that HUD itself and its programs, as well as the Government-Sponsored Enterprises, Fannie Mae and Freddie Mac, comply with the Fair Housing Act. FHEO is also responsible for implementing the Fair Housing Act's Affirmatively Furthering Fair Housing provision. FHEO has long faced many challenges to realizing and expanding the goals of the Fair Housing Act, many of which are systemic in nature and have impacted our nation's progress. In addition, there are internal conflicts between HUD's program offices and FHEO that have undermined strong enforcement efforts and have resulted in the failure to adequately ensure that federal housing investments increase housing choice, rather than contribute to further racial and economic segregation.

FHEO has also seen a consistent decline in dedicated staff to investigate housing discrimination complaints, contributing to a growing backlog of complaints and delays in resolution for victims of discrimination. FHEO's long list of other responsibilities, including enforcing several other civil rights statutes and executive orders, has made dedicating adequate staff and resources to complaint investigation challenging, given its other competing priorities.

Recommendations

- Congress must establish an independent fair housing enforcement agency that would include:
  - Career staff with fair housing experience;
  - An advisory commission appointed by the President with the advice and consent of the Senate made up of industry, advocacy, and enforcement representatives; and
  - Resources necessary to conduct high-level investigations of the nation's housing discrimination complaints and public policy implementation concerning all federal agencies' roles and duties to affirmatively further fair housing.
- In the absence of Congressional action to establish an independent fair housing enforcement agency, HUD must divide the current Office of Fair Housing and Equal Opportunity into two separate offices staffed by two separate Assistant Secretaries and dedicated attorneys:
  - One office with sole authority over all fair housing enforcement, education, FHIP and FHAP, with an Assistant Secretary who reports directly to the HUD Secretary; and
  - One office to monitor and administer HUD's other statutory responsibilities housed under the current FHEO and to monitor HUD's own programs and grantees for compliance with the Fair Housing Act.

- In the absence of an independent agency, the role of the office of FHEO must be pre-eminent at HUD, guiding and informing the actions in all other program areas.
- In the absence of an independent agency, Congress must increase funding for salaries and expenses at HUD's Office of Fair Housing and Equal Opportunity to support at least 750 full-time equivalent staff for the sole purpose of implementing and enforcing the Fair Housing Act, separate and apart from FHEO's other responsibilities.
- In the absence of an independent agency, Congress should provide HUD with $5 million to provide extensive training for existing and qualified fair housing enforcement staff to better investigate complaints according to current court interpretations of the law.
- In the absence of an independent agency, HUD must also:
  - Provide ongoing, comprehensive training to its staff;
  - Hold staff accountable to performance standards;
  - Conduct internal audits of intake specialists and complaint investigators to ensure quality control;
  - Re-examine the standards of proof applied to housing discrimination cases;
  - Ensure FHAP agencies are, in fact, substantially equivalent and acting in compliance with HUD requirements.
  - Increase funding for systemic housing investigations and ensure robust enforcement of the disparate impact standard, particularly related to policies and practices that perpetuate segregation.

Strengthen the Fair Housing Initiatives Program

The Fair Housing Initiatives Program was established to provide direct funding to private, nonprofit, full-service fair housing organizations serving people throughout the United States, and to establish new fair housing organizations in underserved areas. The program is meant to fund the fair housing education and enforcement activities of qualified full-service fair housing organizations that serve persons in all protected classes and at all income levels. Additionally, the program is intended to fund organizations whose primary purpose and mission are to eliminate housing discrimination and promote residential integration, the dual goals of the Fair Housing Act. Unfortunately, the administration of FHIP has evolved over the years in a way that deviates significantly from the original Congressional and programmatic intent.

Within the past 10 years, the Office of Fair Housing and Equal Opportunity (FHEO) has frequently diverted FHIP funding to organizations that have little or no fair housing expertise, organizations whose primary purpose and mission are not related to fair housing, organizations that deny services to persons in some protected classes, or organizations that only or primarily serve low-income persons, leaving working-class, middle-class and higher-income people who experience discrimination without assistance.

HUD has also redesigned and at times eliminated funding sources under the different components of the FHIP program in a way that has undermined the purpose of supporting private fair housing organizations with longevity, and instead has designed grant components that support one-off organizations or project efforts with no eye toward sustaining fair housing education and enforcement in several housing markets.

Recommendations

- Congress must do all it can to increase funding for the Fair Housing Initiatives Program. In 2008, the bipartisan National Fair Housing Commission recommended funding of the FHIP program at a minimum of $52 million to address housing discrimination, but funding continues at around $40 million per year. Congress must also allow HUD to determine how to allocate funds to each component.
- HUD must increase FHOI funding to include the creation of fair housing organizations in states and large MSAs where no organization exists; however, new organizations should not be created if it affects the continued funding of existing organizations.
- HUD must return its administration of FHIP to the program's original purpose of supporting the development of a network of experienced, full-service nonprofit fair housing organizations throughout the country that serve persons at all income levels and in all protected classes. To do so, HUD must prioritize funding of education and enforcement efforts performed by private, full-service nonprofit fair housing organizations whose mission is to eliminate housing discrimination against persons in all protected classes and to assist people at all income levels.
- HUD should execute the many prior recommendations NFHA has made to it about the effective and meaningful implementation of FHIP.

Effectively Implement the Affirmatively Furthering Fair Housing Rule and Hold Grantees Accountable

The AFFH regulation is a critical tool for breaking down barriers to opportunity and ensuring that all people, regardless of their race, national origin, religion, family status or disability, have access to the opportunities they need to flourish. Implementation of the regulation is a work in progress, and HUD should move forward with the implementation process.

Recommendations.

HUD should:

- **Move quickly to finalize the remaining components of the rule,** including the Assessment Tool for states and insular areas, the Assessment Tool for Qualified Public Housing Agencies (QPHAs, those with fewer than 550 units under their control), and the necessary

changes to the data and mapping tool to support those assessments. Once these components are in place, the phase-in of the AFFH regulation will begin for all relevant HUD grantees.

- **Step up its training and technical assistance for grantees subject to the AFFH regulation**, to ensure that they have the support needed to gain maximum benefit from the AFH process. Among other things, HUD should be proactive in having its technical assistance providers reach out to grantees to offer assistance on issues for which it can anticipate grantees may need help, rather than expecting grantees to be able to identify that need in a process with which they are not yet familiar. In addition, HUD should continue to provide written guidance to help grantees understand the AFH process more fully.
- **Establish a requirement that grantees must make public the version of the AFH that is submitted to HUD, and if HUD requires any changes, the final, accepted version of the AFH.** The best way for most grantees to do this is by posting the various versions of the AFH on their websites. This is an important mechanism for creating both transparency and accountability, allowing members of the community to determine whether and how any knowledge or data they have proffered and any comments they have made were described by the grantee, and whether they were accepted, and if not, why not. Such explanations are required under the regulation, but as the regulation is currently structured, the public has access only to the draft version of the AFH, not to the version submitted for HUD acceptance. Nor does the regulation currently require grantees to make public the HUD-accepted version of the AFH. Public access to these later versions of the document is critical for ensuring that community stakeholders can flag any omissions or mischaracterizations for HUD during its 60-day review period, and for the community to understand what changes, if any, were made as the result of the HUD review.
- **Create a mechanism by which members of the public can flag for HUD significant shortcomings in either the community engagement process or the draft Assessment of Fair Housing**, so that HUD can consider them during its review of the AFH. Currently, there is no formal process by which the public can make sure that HUD is aware of a jurisdiction's failure to follow proper community engagement procedures, such as making documents available in languages other than English when called for, or providing accessible locations for public hearings. Similarly, the current system lacks a mechanism through which the public can flag for HUD substantive shortcomings in the Assessment, such as priorities or goals that are not consistent with the data. HUD may not accept AFHs with such inconsistencies. Its determination about any inconsistencies should be informed by local feedback, but no mechanism exists through which the public can provide this kind of feedback to HUD.
- **Monitor grantees' ConPlans, PHA plans, annual action plans, and annual performance reports** to ensure that the goals and priorities identified in their AFHs are reflected in these other plans and that grantees are actually implementing them. This may be the most critical part of the implementation process, for communities will experience real change in access to opportunity if grantees carry through on the goals they set in the AFHs.

- **Where grantees fail to effectively implement the goals and strategies outlined in their AFHs, ConPlans, and PHA plans, HUD should take enforcement action to ensure that grantees follow through.** This might take different forms, beginning with an attempt to work with a jurisdiction to remedy a problem. For grantees that fail to take the necessary steps, HUD should be prepared to withhold funding until the grantee comes into compliance.

Improve Equal Access to Credit

Communities that are unable to access credit are unable to tap into investment and opportunity. Unfortunately, communities of color have long been denied access to loans and capital, a reality that limits the ability of whole neighborhoods from accessing new housing, creating businesses, and maintaining economic growth. We must dismantle the dual and unfair credit market in the U.S. and expand access to quality, sustainable credit to all qualified individuals and communities.

Recommendations

- **Use Alternative Credit Scoring Models:** GSEs and FHA must accept the use of alternative credit scoring mechanisms, such as VantageScore, that include a wider set of credit data, such as nontraditional credit, and more accurately assess the risk of credit-invisible consumers.
- **Expand Creative Lending Programs:** The financial industry must expand the development of creative lending programs that increase access to credit in underserved areas and for underserved consumers. This could involve partnering with Community Development Financial Institutions (CDFIs) and other nonprofit organizations.
- **GSEs Must Evaluate Lending Rates in Communities of Color:** Fannie Mae and Freddie Mac must continue to evaluate their market penetration levels in communities of color to ensure that they are adequately providing credit in these markets.
- **GSEs Must Appropriately Price Underserved Borrowers:** Fannie Mae and Freddie Mac must take steps to ensure they are adequately pricing consumers who utilize non-traditional credit to qualify for mortgage loans. For example, borrowers who use rental payment information and will not experience a housing payment shock with their new loan should be priced at a level commensurate with their true risk.
- **Develop Additional Tools and Resources to Evaluate Risk:** Overreliance on the credit score as an assessment of risk has been detrimental to equal access to credit. There is a need to develop new tools and resources to better gauge all of the components that affect loan performance in addition to, or instead of, a credit score alone.

Reestablish the President's Fair Housing Council

The chief executive should reestablish the President's Fair Housing Council (Reinstitute Executive Order 12892) or another comparable interagency body. The multidisciplinary approach of the Council is well suited to addressing the policies and systems that have a discriminatory impact, perpetuating entrenched patterns of metropolitan segregation. The Council is tasked with reviewing and designing the delivery of federal programs and activities to ensure that they support a coordinated strategy to affirmatively further fair housing. It is critical to coordinate and implement AFFH requirements across federal departments and financial regulatory agencies, as called for in the Executive Order. The failure to coordinate AFFH efforts across all federal agencies since the order was issued in 1994 has resulted in the limitation and denial of opportunities and equity for persons protected by the Fair Housing Act throughout the United States. The U.S. Environmental Protection Agency and the U.S. Departments of the Treasury, Education, and Transportation have made decisions over the last two decades that have delayed progress toward fair housing and residential integration, and that have contributed to economic and racial/ethnic residential segregation. Further, the effectiveness of HUD's 2015 regulation on AFFH will be significantly impaired if federal agencies do not also ensure that their programs and activities affirmatively further fair housing.

Through this Council or otherwise, HUD should take immediate steps to coordinate with other federal agencies to facilitate analyses and planning procedures relating to the AFFH regulation; to enable program participants to set and achieve goals that entail interagency coordination; and to ensure accountability and oversight for civil rights performance, including in areas related to fair housing (for example, environmental justice).

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