



Fair Housing in a Changing Nation

2012 Fair Housing Trends Report

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National Fair Housing Alliance
1101 Vermont Avenue, NW
Suite 710
Washington, DC 20005
(202) 898-1661
www.nationalfairhousing.org

About the National Fair Housing Alliance

Founded in 1988 and headquartered in Washington, DC, the National Fair Housing Alliance is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. Through comprehensive education, advocacy and enforcement programs, NFHA protects and promotes equal access to apartments, houses, mortgage loans and insurance policies for all residents of the nation.

Acknowledgment

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Introduction

In 30 years, people of color will constitute the majority of the United States population. U.S. Census data from 2010 found that almost half of all babies born in the United States today belong to a racial or ethnic “minority” group, i.e. anyone not counted by the Census as non-Hispanic, single-race whites. In many cities, people of color are already in the majority.¹

While residential segregation and housing discrimination have abated since the years of Jim Crow and government-condoned discrimination in housing and lending markets, we still live in an extraordinarily segregated society.² Where we live directly affects our educational and health outcomes and life opportunities. But discriminatory housing policies and practices have restricted opportunities for people of color, who are much more likely than white families to live in impoverished and resource-poor neighborhoods. In fact, three times as many poor African Americans and over twice as many poor Latinos currently live in resource-poor neighborhoods as compared to poor whites.³ African Americans, regardless of income, are likely to live in a poor neighborhood over the course of a decade, while only ten percent of whites are expected to do the same.⁴ Prosperous communities, on the other hand, contain good schools, healthcare, jobs, grocery stores, commercial enterprises, transportation, and financial services, among other benefits. Those who have asserted in recent months that segregation is over have clearly ignored the stark separation that still exists in many places in our society.⁵

Private and public fair housing organizations continue to report an overwhelming incidence of documented fair housing discrimination against people with disabilities. These complaints account for 44 percent of 2011 complaint filings. Nationwide, about 19 percent of the non-institutionalized population has a disability,⁶ and close to one third of households in 2007 had one or more people with a disability.⁷

Eliminating individual and systemic acts of discrimination that affect our life opportunities is paramount to achieving a productive U.S. workforce capable of competing on a global level. The work of private non-profit fair housing organizations is instrumental in achieving a nation in which a competitive and productive citizenry can flourish. As in past years, our annual trends report

¹ Press Release, United States Census Bureau, An Older and More Diverse Nation by Midcentury (Aug. 14, 2008), available at <http://www.census.gov/newsroom/releases/archives/population/cb08-123.html>.

² For example, according to 2010 Census numbers, 65 percent of individuals in large metropolitan areas still live in areas of high segregation between Whites and African-Americans. Gurian, Craig, “New maps show segregation alive and well,” Remapping Debate, April 20, 2011.

³ *Segregation: The Rising Costs for America* 14 (James Carr & Nandinee Kutty eds., 2008).

⁴ Ibid.

⁵ For example, Glaser, Edward and Vigdor, Jacob, *The End of the Segregated Century: Racial Separation in America's Neighborhoods, 1890-2010*. Manhattan Institute, January 2012.

⁶ United States Census Bureau, *Americans With Disabilities: 2005, Household Economic Studies*, December 2008.

⁷ National Council on Disability, *The State of Housing in America in the 21st Century: A Disability Perspective*, January 19, 2010.

documents that private groups continue to investigate almost two-thirds of all fair housing complaints nationwide.

We are happy to report a renewed commitment this year by the U.S. Department of Housing and Urban Development and the U.S. Department of Justice, the two federal agencies responsible for enforcing the Fair Housing Act. They have increased their efforts and announced landmark cases of mortgage lending, zoning, and other issues that get to the heart of the Act: promoting diverse inclusive communities. With the addition of the Consumer Financial Protection Bureau, the federal fair housing and fair lending infrastructure has been reinforced and enhanced to amplify currently recognized federal protections.

Section I of this report contains the 2011 national data on fair housing and Section II describes trends in public and private fair housing enforcement. Section III includes a summary of major housing policy issues and their fair housing implications.

The Fair Housing Act makes it illegal to discriminate based on race, color, national origin, religion, sex, disability or familial status, and applies to housing and housing-related activities, including apartment and home rentals, real estate sales, mortgage lending, and homeowners insurance.

Section I. National Data on Fair Housing

A. Housing Discrimination Complaints for 2011

Each year NFHA collects data from both private fair housing organizations and government entities to present an annual snapshot of fair housing enforcement in America. It is undeniable that housing discrimination still exists and America is still highly segregated. A conservative estimate puts the number of violations of fair housing law at four million *every year*. Many people do not know their rights under the Fair Housing Act, and of those who do, many do not report housing discrimination because they don't know where to go, they believe nothing will be done about it, or they fear the consequences.⁸ Additionally, individual complaints do not tell the whole story for often the resolution of a complaint addresses a larger problem, such as making apartment buildings/complexes accessible to persons with disabilities, opening an entire apartment complex to families with children, or eliminating a city ordinance that excluded affordable multi-family housing.

The following chart lays out the complaint and case filings reported by private and governmental fair housing agencies and organizations since 1999. Fair Housing Assistance Program (FHAP) organizations are state and local government agencies that receive HUD funding to investigate and process fair housing complaints. Under the Fair Housing Act, HUD is required to refer cases to these agencies if the agencies are "substantially equivalent" under the law, i.e. that the state or local law is substantially equivalent to the federal law. NFHA counts as complaints all cases analyzed for fair housing violations. This year, as in others, the numbers have fluctuated somewhat. Fair housing complaints in 2011 have dropped slightly for the second year in a row.

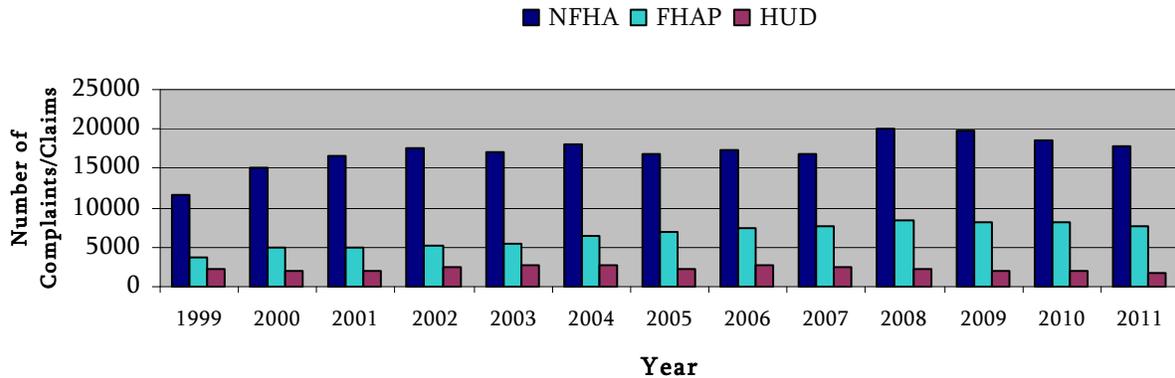
⁸ Martin D. Abrahams & Mary K. Cunningham, Urban Institute, *How Much Do We Know? Public Awareness of the Nation's Fair Housing Laws*, 2002.

| TOTAL FAIR HOUSING COMPLAINTS FILED | | | | | |
|--|-----------------------------------|---|--|-----------------------------|---------------|
| | NFHA Member Complaints | FHAP Claims & Complaints | HUD Claims & Complaints | DOJ Case Filings | Total |
| 1999 | 11,531 | 3,676 | 2,198 | 48 | 17,453 |
| 2000 | 15,131 | 4,971 | 1,988 | 45 | 22,135 |
| 2001 | 16,550 | 5,041 | 1,902 | 53 | 23,546 |
| 2002 | 17,543 | 5,129 | 2,511 | 49 | 25,232 |
| 2003 | 17,022 | 5,352 | 2,745 | 29 | 25,148 |
| 2004 | 18,094 | 6,370 | 2,817 | 38 | 27,319 |
| 2005 | 16,789 | 7,034 | 2,227 | 42 | 26,092 |
| 2006 | 17,347 | 7,498 | 2,830 | 31 | 27,706 |
| 2007 | 16,834 | 7,705 | 2,449 | 35 | 27,023 |
| 2008 | 20,173 | 8,429 | 2,123 | 33 | 30,758 |
| 2009 | 19,924 | 8,153 | 2,091 | 45 | 30,213 |
| 2010 | 18,665 | 8,214 | 1,943 | 29 | 28,851 |
| 2011 | 17,701 | 7,551 | 1,799 | 41 | 27,092 |

* HUD, FHAP and DOJ data are for Fiscal Year 2011. DOJ data represent case filings of HUD Election and Enforcement cases, and Pattern or Practice cases. DOJ's jurisdiction under the Fair Housing Act is limited to pattern or practice cases and cases referred by HUD. HUD, FHAP and NFHA data represent fair housing complaints received and/or investigated.

In 2011, there were 27,092 complaints of housing discrimination. Private fair housing groups continue to investigate the highest number of complaints. In 2011, private fair housing organizations investigated 65 percent of all housing discrimination complaints in the United States.

Housing Discrimination Complaints/Claims

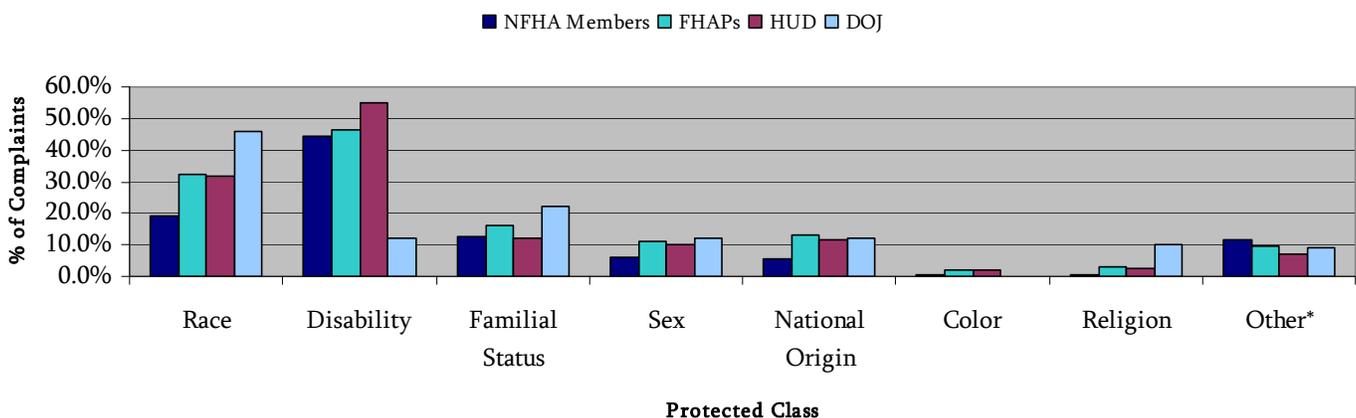


Private fair housing groups have an average staff size of five. While few in number and largely underfunded, year after year they continue to investigate more fair housing complaints, educate more consumers, and train more industry housing providers than all other entities in the nation combined, including local, state and federal agencies charged with enforcing the federal Fair Housing Act. Since 1999, private non-profit fair housing organizations have investigated 223,304, or 66 percent, of the fair housing complaints in the United States, while Fair Housing Assistance Program agencies have processed 85,123 or 25 percent, and HUD 29,623, or 9 percent, of the cases. This year's data are from 88 private fair housing groups, 99 FHAP agencies and 10 HUD regional offices. It should be noted that many cases filed with HUD and FHAP agencies originated with private fair housing organizations.

B. Discrimination by Protected Class

The following charts break out the percentage of claims, complaints, or case filings investigated by each agency by protected class.

Discrimination by Protected Class



| BASIS | NFHA Members | HUD | FHAPs | DOJ |
|------------------------|---------------------|------------|--------------|------------|
| Race | 19.2% | 31.6% | 32.4% | 46% |
| Disability | 44.3% | 54.9% | 46.5% | 12% |
| Familial Status | 12.5% | 12.1% | 16.0% | 22% |
| Sex | 5.8% | 9.8% | 11.3% | 12% |
| National Origin | 5.4% | 11.5% | 13.1% | 12% |
| Color | 0.6% | 1.9% | 2.0% | 0% |
| Religion | 0.7% | 2.6% | 2.9% | 10% |
| Other* | 11.6% | 7.1% | 9.5% | 9% |

* The “other” category for NFHA complaints represents complaints arising from categories protected at the state or local level including sexual orientation, source of income, Section 8 voucher holder, marital status, medical condition, age, victim of domestic violence, or student status. The “other” category for HUD and FHAP complaints represents complaints of retaliation. The “other” category for DOJ represents cases based on military status, source of income, and age. HUD, FHAP, and DOJ data are for Fiscal Year 2011. Totals may exceed 100 percent, because a single complaint may allege multiple bases of discrimination.

Disability complaints remain high overall for several reasons. Many apartment owners make direct comments refusing to make reasonable accommodations or modifications for people with disabilities so discrimination is easier to detect. Additionally, even though HUD has spent millions of dollars on the Fair Housing Accessibility FIRST program attempting to educate architects and builders about their fair housing responsibilities, developers continue to design and construct obviously inaccessible apartment buildings that do not meet the Fair Housing Act’s standards. Finally, HUD has devoted an office solely to disability issues, and states and local municipalities have robust non-profit and public infrastructure to assist people with disabilities in the event that they are the victims of discrimination.

While fair housing organizations primarily receive complaints based on discrimination against federally protected classes, they also receive complaints of discrimination against groups protected only by state and/or local fair housing laws. NFHA members reported receiving fair housing complaints of discrimination against several classes of persons currently not protected by the federal Fair Housing Act. Of the complaints in this category, NFHA members reported 353 complaints based on discrimination based on source of income, 150 based on age discrimination, 101 based on sexual orientation discrimination, and 50 based on marital status discrimination. NFHA members also reported some complaints that involved discrimination based on gender identity, student status, being

a victim of domestic violence, military status, having a criminal record, matriculation, and drug testing requirements.

Recent HUD guidance and regulations have shown HUD's willingness to investigate complaints that fall under some of these categories, to the extent that they may be classified as fitting into federally protected classes. For example, gender identity and sexual orientation may be classified as sex discrimination if an individual is discriminated against because she or he does not meet a landlord's preconceptions about how someone of a certain gender should behave.

It is crucial to amend the federal Fair Housing Act explicitly to include protections against additional classes in order to advance fair housing rights for all and to expand protections to groups known to be the victims of housing discrimination throughout the United States.

C. Discrimination by Transaction/Category – Public & Private Data

Rental Market—Public & Private Groups Report 15,164 Complaints⁹

Of the many categories of complaint data for housing discrimination, rental cases continue to represent the largest number of complaints, primarily because it is easier to recognize this type of discrimination. Private fair housing groups reported 15,164 complaints of housing discrimination in the rental market, compared to 14,782 complaints of housing discrimination in the rental market in 2010, down from 15,624 in 2009. In 2011, FHAP agencies reported 5,478 rental complaints, down from 5,887 in 2010; and HUD reported 1,153 rental complaints, down from 1,358 complaints in 2010.

Home Sales— Public & Private Groups Report 302 Complaints

Private groups reported 302 complaints in the home sales market, down from 441 complaints in 2010, reflecting a continued decline from 649 in 2009. The home sales market continues to be constricted due to the foreclosure crisis and limited access to credit, and such numbers remain unsurprising. FHAP agencies reported 452, compared to 659 in 2010; and HUD reported 117, up only slightly from 110 in 2010.

Mortgage Lending— Public & Private Groups Report 1,243 Complaints

Private groups reported investigating 1,243 complaints of mortgage lending discrimination, down from 1,568 complaints in 2010 and 1,538 complaints in 2009. HUD reported 164 mortgage lending complaints, up from 135 in 2010 and just 89 in 2009. FHAP agencies reported 244 in FY11, down from 332 in 2010 and 253 in 2009.

⁹ Complaint data by type of allegation does not equal the total number of complaints because not all organizations provided this type of information.

Homeowners Insurance— Public & Private Groups Report 28 Complaints

Private fair housing groups reported 28 complaints of discrimination in the insurance market, compared to 35 in 2009, but reflecting a drop from the 68 insurance complaints in 2010; FHAP agencies and HUD reported no complaints in 2011. All insurance complaints investigated by private fair housing groups in 2011 were based on race discrimination. Discrimination related to homeowners insurance can be difficult to identify because it is rarely overt and as such makes it difficult to address discrimination in this transaction category.

Harassment—Private Groups Report 552 Complaints

The Fair Housing Act makes it illegal to direct abusive, foul, threatening, or intimidating language or behavior toward a tenant, resident, or home seeker because of their membership in any of the federally protected classes, or to someone helping a person exercise his or her fair housing rights. Private fair housing groups reported 552 complaints of harassment. Of the complaints investigated, 44.7 percent were based on race; 18.5 percent were based on sex; 15.2 percent were based on disability; and 10.9 percent were based on familial status. Harassment can rise to the level of a criminal violation under the Fair Housing Act. Fair housing advocates have pushed for HUD to release a proposed regulation on harassment under the Fair Housing Act to inform housing providers and the public what constitutes this type of discrimination and how the Department will address it.

Section II. Trends in Public and Private Fair Housing Enforcement

A. U.S. Department of Housing and Urban Development

HUD's Office of Fair Housing and Equal Opportunity (FHEO) has taken significant steps in recent years to improve its staffing, training, and case investigation work, and NFHA is encouraged to see that HUD is beginning to overcome many of the organizational hurdles that have previously stymied productive fair housing enforcement.

HUD is charged with carrying out the Fair Housing Act's mandate to eliminate housing discrimination through effective enforcement. To that end, FHEO is charged with enforcing the Act and other civil rights laws, including Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation 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, and the Architectural Barriers Act of 1968. HUD has the authority to investigate and conciliate housing discrimination complaints filed under the Fair Housing Act. It can also initiate investigations and file complaints on behalf of the Secretary, as authorized under Section 810 of the Fair Housing Act. In addition to enforcement activities, HUD publishes and distributes educational materials that provide information on how to report unlawful discrimination; administers and manages the Fair Housing Assistance Program (FHAP) and the Fair Housing Initiatives Program (FHIP); establishes fair housing and civil rights regulations and policies for HUD programs; publishes guidance on complying with the requirements of fair housing and various civil rights laws; and monitors and reviews HUD programs and activities for compliance with federal nondiscrimination requirements and the requirement to affirmatively further fair housing.

Recently, HUD investigated and filed several important fair housing cases of blatant discrimination against women and people with disabilities. In addition, identifying failures to affirmatively further fair housing by federal funding recipients has become a top priority. For example, HUD has taken steps to address Westchester County's continued failure to abide by a consent decree reached in 2009.

HUD, et al. v. Bank of America, N.A., et al.

In February 2012, HUD issued a charge against Bank of America for discriminating against homebuyers with disabilities. HUD specifically alleged that Bank of America imposed unnecessary and burdensome requirements on borrowers who relied on disability income to qualify for their home loans and even required some borrowers with disabilities to provide doctor statements to qualify for a home mortgage loan. HUD's charge against Bank of America is based on a HUD Secretary-initiated investigation and investigation of three complaints in which individual borrowers claimed that Bank of America required them to provide personal medical information and documentation about their disability, and proof that their Social Security payments would continue in order to qualify for home mortgage loans. The case has been referred to DOJ.

HUD v. Cornerstone Mortgage Company

HUD took several actions against national mortgage lenders and a mortgage insurance company for discriminating against pregnant women in 2011, finding violations of the Fair Housing Act based on sex and familial status. In June 2011, HUD announced a settlement with Cornerstone Mortgage Company after investigating a complaint alleging that an expectant mother was initially denied a mortgage loan even though she was on paid maternity leave and planned to return to work. In addition to individual compensation for the complainant, Cornerstone Mortgage Company was required to create a victims' fund to compensate borrowers who experienced similar discrimination at the time they were applying for a loan.

HUD v. Mortgage Guaranty Insurance Corp.

In a separate matter, HUD issued a charge against Mortgage Guaranty Insurance Corporation (MGIC) for requiring women on paid maternity leave to return to work before it would insure their mortgages. The case was referred to DOJ, which filed suit in July 2011. Based on HUD's investigations, DOJ alleged that Mortgage Guaranty Insurance Corporation's conduct constituted discrimination based on sex and familial status.

United States v. City of Joliet

In 2009, HUD received a fair housing complaint from a tenant at Evergreen Terrace, an apartment complex made up of 95.6 percent African-American tenants with 336 units of affordable housing subsidized by HUD's Section 8 program in the City of Joliet, Illinois. Only 16 percent of Joliet's population identified themselves as Black or African-American in the 2010 Census. In 2001, the owners of Evergreen Terrace applied to HUD to restructure their mortgage in order to provide affordable housing at the apartment complex for the life of the mortgage; in response the City of Joliet contended that the property was blighted and took actions to condemn it so as not to allow the mortgage restructuring. HUD and independent parties conducted an assessment of the apartments and determined that the City's condemnation lacked merit and that there was a critical need for affordable housing in Joliet.

The City of Joliet requested that HUD delay the restructuring until it could come up with an alternate plan, to which HUD agreed. However, HUD rejected the City's two alternate plans for the relocation of displaced families. HUD approved the mortgage restructuring and allowed the continued operation of the apartment complex in 2005. However, the City of Joliet declared Evergreen Terrace a public nuisance and a blighted area and filed an action to appropriate Evergreen Terrace by eminent domain.

HUD investigated and referred the tenant's complaint to DOJ, and it filed a case against the City of Joliet in August 2011. DOJ alleged that the City of Joliet violated the Fair Housing Act and the Housing and Community Redevelopment Act, when it failed to affirmatively further fair housing by taking actions to condemn Evergreen Terrace. DOJ's complaint further alleges that the City's proposed actions against Evergreen Terrace had the effect of limiting or reducing the number of

African-American residents living within the City of Joliet, thus perpetuating segregation in Joliet. NFHA applauds HUD's investigation into the City of Joliet's failures to affirmatively further fair housing and encourages more of these kinds of investigations of all governmental entities that fail to affirmatively further fair housing.

United States ex rel. Anti-Discrimination Center v. Westchester County

In July 2011, HUD rejected Westchester County's certification that it met its obligation to affirmatively further fair housing and disapproved its Annual Action Plan FY11 to its Consolidated Plan and withheld more than \$7 million in CDBG, HOME, and Emergency Shelter Grant (ESG) funds. Westchester County failed again to incorporate corrective actions demanded by HUD to address policies that promoted residential segregation in its revised Analysis of Impediments to Fair Housing.

HUD specifically took issue with Westchester's failure to provide plans to promote and secure successful passage of source of income protection which was passed by the County Board of Legislators but which was vetoed by the County Executive. HUD also cited the County's failure to promote plans to overcome its exclusionary zoning practices. HUD demanded the County devise a legal strategy to identify specific zoning issues for the County to challenge.

United States v. St. Bernard Parish

After years of litigation against St. Bernard Parish in Louisiana, defiance by the parish of several court orders, and several fair housing complaints submitted by the Greater New Orleans Fair Housing Action Center (GNOFHAC), HUD threatened to strip St. Bernard of \$91 million in housing and community development funding. The funding was to be rescinded unless the parish repealed its discriminatory ordinance that continued to require landlords to obtain permits to rent out homes in single-family communities and a provision in local law that prohibited more than two rental properties from being located within 500 feet of each other. After referring complaints against St. Bernard to the Department of Justice, DOJ filed a case against the parish in January 2012 for repeatedly blocking rental opportunities for African-Americans.

NFHA applauds HUD's actions and encourages it to continue these types of systemic cases. However, despite these successes, the FHEO office needs to be staffed at higher levels and to function more effectively. In order to perform the work the nation needs the office to do and for the staff to be properly trained, FHEO staffing levels should be increased to at least 750 full-time employees (FTEs) at a cost of approximately \$100 million. The number of employees at FHEO has decreased over the years to its current level of about 582. In FY2011, the Administration requested a *decrease* in funding for staff from the FY10 level in spite of its stated intent to increase attention to fair housing, including the potential implementation of a long-awaited regulation on "affirmatively furthering fair housing" and new initiatives to combat discriminatory mortgage lending and loan scams. Fortunately, the Administration increased its budget request for FY2012 and was funded to cover its current level. The FY2013 request would fund FHEO at 587 FTEs, but with the budget as it is, it is unclear what level of funding FHEO will receive.

HUD investigated 1,799 complaints in FY11, a seven percent decline from last year's figure. It is worth noting, however, that HUD has initiated and investigated some significant, systemic cases as described above. As shown in the chart below, the total number of cases that HUD processed in 2011 is the lowest number since 2001 and amounts to 27 percent of its 1992 high of 6,578 complaints. While HUD also processed fewer complaints in 2010 than it did in 2009, some of that decline could be attributed to FHAPs taking on more cases in that same time frame. However, in 2011 the number of cases filed by FHAPs also decreased by 8.1 percent.

| HUD ADMINISTRATIVE COMPLAINTS | |
|-------------------------------|------|
| 1990 | 4286 |
| 1991 | 5836 |
| 1992 | 6578 |
| 1993 | 6214 |
| 1994 | 5006 |
| 1995 | 3134 |
| 1996 | 2054 |
| 1997 | 1808 |
| 1998 | 1973 |
| 1999 | 2198 |
| 2000 | 1988 |
| 2001 | 1902 |
| 2002 | 2511 |
| 2003 | 2745 |
| 2004 | 2817 |
| 2005 | 2227 |
| 2006 | 2830 |
| 2007 | 2449 |
| 2008 | 2123 |
| 2009 | 2091 |
| 2010 | 1943 |
| 2011 | 1799 |

Charged Cases

If an investigation yields a determination by HUD that there is reasonable cause to believe that illegal discrimination has occurred, the agency will issue a charge. The parties to a case can elect to have the case heard in federal district court in a case filed by the Justice Department or, if no election is made, a HUD administrative law judge will hear the case. The majority of complainants and respondents continue to elect to proceed in federal court.

In 2011, HUD issued 55 charges following a determination that there was reasonable cause to believe that unlawful discrimination occurred. This is the largest number of charged cases in ten years. This

is an increase from last year's 45 charged cases; however, it still amounts to only 3.1 percent of HUD's total complaint load.

| FAIR HOUSING ACT CASES IN WHICH HUD ISSUED A CHARGE | | | | | | | | | | |
|---|------|------|------|------|------|------|------|------|------|------|
| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
| 88 | 69 | 23 | 43 | 47 | 34 | 31 | 48 | 54 | 45 | 55 |

Aged Cases

With the exception of complex or systemic cases, the Fair Housing Act regulations require that HUD complete an investigation of a case in 100 days or less. After a complaint is filed, HUD must perform an investigation in order to determine whether there is reasonable cause to believe discrimination has occurred. The result can be that HUD refers a case to a state or local FHAP agency for further investigation, finds cause to believe that discrimination occurred and issues a charge, finds no cause to believe that discrimination occurred, or other alternatives laid out in the chart below.

There are many cases which may merit more than 100 days to investigate, especially cases involving real estate sales steering, mortgage lending, or insurance discrimination. It is important for HUD to take on these cases, especially when considering that several studies have demonstrated continued discrimination in these markets, as well as the damaging effect of this discrimination on the economy and society as a whole. However, the failure to complete a timely investigation leaves the complainant and respondent in limbo—one wondering when they will be helped, the other wondering when they might be exonerated. It is an injustice to both parties to allow a complaint to languish.

HUD routinely carries an “aged” case load; that is, cases that have surpassed the 100 day benchmark without an outcome. In FY11, there were 1,076 cases at HUD that passed the 100 day mark, an increase of 253 from FY10, but a continued improvement from the 1,353 aged cases in FY07. There were 3,694 aged cases at FHAP agencies (HUD's counterparts at the state/local levels), an increase of 25 since FY10.¹⁰

Administrative Closures and No Cause Cases

In FY11, HUD administratively closed 362 cases and found no cause to believe discrimination occurred in 689 cases, totaling 1,051 cases. FHAP agencies administratively closed 943 cases and found no cause in 3,932, totaling 4,875. Together, HUD and its FHAP agencies closed 5,926 cases in FY11. These closed cases may be from previous years' complaints, and do not match the number of

¹⁰ According to a Government Accountability Office 2005 report, only 31 percent of cases met the 100 day deadline; 14 percent take more than 130 days. Government Accountability Office. *Fair Housing, HUD Needs Better Assurance that Intake and Investigation Processes Are Consistently Thorough*. October 2005.

cases filed in a particular year. The chart below lists the number of closed cases by HUD and FHAPs, followed by a breakdown of reasons for administrative closures at HUD and FHAPs.

| 2011 HUD AND FHAP CASES CLOSED NATIONWIDE | | | |
|---|--------------|--------------|--------------|
| | HUD | FHAP | Total |
| Administrative Closure | 362 | 943 | 1,305 |
| Conciliation/Settlement/Withdrawn after Resolution | 701 | 2,650 | 3,351 |
| No Cause | 689 | 3,932 | 4,621 |
| ALJ Consent Order | 11 | n/a | 11 |
| ALJ Finds Discrimination | n/a | n/a | 0 |
| DOJ Dismissal | 14 | n/a | 14 |
| DOJ Election for Court | 25 | n/a | 25 |
| DOJ Filed Suit | n/a | n/a | 0 |
| DOJ Settlement | n/a | n/a | 0 |
| FHAP Judicial Consent Order | n/a | 102 | 102 |
| FHAP Judicial Dismissal | n/a | 77 | 77 |
| Litigation – Discrimination Found | n/a | 7 | 7 |
| Litigation – No Discrimination Found | n/a | 5 | 5 |
| Hearing – Discrimination Found | n/a | 13 | 13 |
| Hearing – No Discrimination Found | n/a | 11 | 11 |
| Total Closures | 1,802 | 7,740 | 9,542 |

| 2011 HUD ADMINISTRATIVE CLOSURES | | |
|---|------------|--------------|
| Reason for Closure | HUD | FHAPs |
| Untimely filed | 4 | 6 |
| Dismissed for lack of jurisdiction | 48 | 131 |
| Unable to locate complainant | 42 | 56 |
| Complainant failed to cooperate | 151 | 413 |
| Unable to identify respondent | 1 | 3 |
| Complaint withdrawn by complainant without resolution | 110 | 313 |
| Unable to locate respondent | 4 | 8 |
| Closed because trial has begun | 2 | 13 |
| Total | 362 | 943 |

Administrative Law Judge Consent Orders

If a case is charged but the parties do not elect to have their case heard in federal district court, it will go before an administrative law judge (ALJ) who will decide the case and in some instances assess a civil penalty and award compensatory damages, affirmative relief, and attorneys' fees. The ALJ cannot award punitive damages according to the law. In 2011, parties entered into 11 ALJ consent orders after issuance of a charge. This is consistent with 2010 and slightly down from 2009's number of 13, but remains an improvement from prior years, when eight ALJ proceedings were heard in 2008, two in 2007, and none in 2005 and 2006.

Secretary Initiated Complaints

According to HUD, it "files a Secretary-initiated complaint when it has evidence that a discriminatory housing practice has occurred or is about to occur. HUD also may file a Secretary-initiated complaint when it has received an individual complaint, but believes there may be additional victims of the discriminatory act or wants to obtain broader relief in the public interest."¹¹ HUD filed 4 Secretary-initiated complaints in FY11, less than half of FY10, when HUD filed 10 Secretary-initiated complaints.

| FY11 Bases and Issues of Secretary Initiated Complaints | |
|--|--------------------|
| Bases | Filed Cases |
| National Origin | 1 |
| Race and National Origin | 1 |
| Familial Status | 1 |
| Disability | 1 |
| Total Cases | 4 |
| | |
| Issues | |
| Discriminatory terms, conditions, privileges, or services and facilities; discriminatory acts under Section 818 (coercion, etc.); and failure to make reasonable accommodation | 1 |
| Discrimination in terms/conditions/privileges relating to sales | 1 |
| Discriminatory refusal to rent; and discrimination in terms, conditions, privileges, or services and facilities | 1 |
| Discriminatory refusal to rent; discriminatory advertising, statements, and notices; and discriminatory terms, conditions, privileges, or services and facilities | 1 |

¹¹ *The State of Fair Housing FY08 Annual Report on Fair Housing*, US Department of Housing and Urban Development, p.24.

B. U.S. Department of Justice

In 2011, the Housing Section of the Department of Justice (DOJ) achieved a record year of enforcement. The Housing Section obtained consent decrees or favorable judgments in 60 cases compared to 42 in 2010, including 46 pattern or practice cases, compared to 26 in 2010. This is the largest number of both pattern or practice cases filed and pattern or practice cases settled in at least 18 years. The number of new cases filed this year jumped to 41 from 30 in 2010, demonstrating that the Department’s staff increases have coincided with a stronger commitment to fair housing and fair lending. HUD election cases were up to 14 from 13 in 2010, but down for a second year in a row from 24 in FY09.

The Department of Justice filed 41 cases in FY11, a 37 percent increase from the 2010. The breakdown of cases in FY11 by protected class was: 46 percent race, 12 percent disability, 22 percent familial status, 12 percent sex, 12 percent national origin and 10 percent religion.

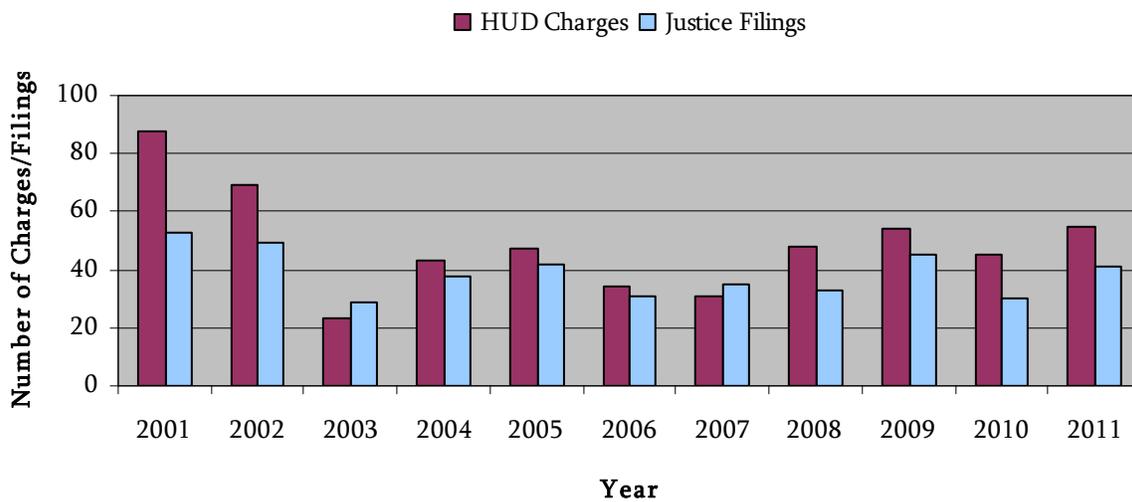
The chart below shows the number of cases filed by DOJ between FY00 and FY11.

| TOTAL DOJ CASES FILED BY YEAR | | | | | | | | | | | |
|-------------------------------|------|------|------|------|------|------|------|------|------|------|------|
| FY00 | FY01 | FY02 | FY03 | FY04 | FY05 | FY06 | FY07 | FY08 | FY09 | FY10 | FY11 |
| 45 | 53 | 49 | 29 | 38 | 42 | 31 | 35 | 33 | 45 | 30 | 41 |

The Justice Department’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 creditors from discriminating against credit applicants on the basis of race, color, national origin, religion, sex, marital status, age or source of income. Under this Act, the Justice Department has the authority to investigate and file a fair lending lawsuit.

The 1968 Fair Housing Act gave DOJ the authority to prosecute 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 and now the Department can bring 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. The chart below compares the numbers of DOJ cases filings and HUD charges.

HUD Charges and DOJ Case Filings



The FHAA also empowered the Justice Department to initiate civil lawsuits in response to matters that involve fair housing violations by any state or local zoning or land-use laws referred by HUD.¹² Finally, the Civil Rights Division of DOJ has the authority to establish fair housing testing programs, which it first did in 1992. The division also subsequently established a fair lending program designed to challenge discriminatory mortgage and other lending practices and to educate lenders about their obligations under the Fair Housing Act.

During FY11, DOJ reviewed and responded to more than 800 written complaints from individuals. While most of them were not in DOJ's jurisdiction (because they did not constitute pattern or practice cases), DOJ opened more than 170 new matters for further inquiry or investigation, most of which involved analysis of whether a pattern or practice of discrimination existed. Otherwise, complainants were given information on how to file a complaint with HUD or contact a local fair housing organization.

DOJ's Recent Record

2011 has been a year of significant milestones for the Department of Justice, especially due to its challenges of discriminatory lenders and local government land use actions. Some of these cases were referred by HUD and deserve a full description here as well.

Under the guidance of its new fair lending unit, the Department of Justice filed and resolved significant fair lending cases in 2011 including three described below.

¹² See Bill Lann Lee, "An Issue of Public Importance," in *Cityscape: A Journal of Policy Development and Research*, v. 4, n. 3 (1999), pp. 35-56, p. 47.

- *United States v. Countrywide Financial Corporation*: In December 2011, the Department of Justice, in its largest ever fair lending case, 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.
- *United States v. Citizens Republic Bancorp*. In June 2011, the Department 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.
- *United States v. Mortgage Guaranty Insurance Corp.*: In its first-ever discrimination case involving sex and familial status discrimination in mortgage insurance, the Department sued Mortgage Guaranty Insurance Corporation, the nation's largest mortgage insurance company, for discriminating against women on maternity leave. The Department sued the mortgage insurer for agreeing to insure the mortgages of women on paid maternity leave only upon their return to work. The case was referred by HUD after it received and investigated an individual complaint from a homeowner. This case is currently in litigation.

During FY11, the Department filed and settled seven fair lending cases, including four brought under both the Fair Housing Act and the Equal Credit Opportunity Act, and another brought solely under the Equal Credit Opportunity Act.

DOJ has also filed two key lawsuits challenging discriminatory land use actions of local governments.

- *United States v. City of New Berlin*: The Department alleged that the City of New Berlin violated the Fair Housing Act by preventing construction of an affordable housing development in response to the racially-motivated opposition of local residents. After the Department filed a motion for a preliminary injunction against New Berlin, the City reversed its prior decisions to block the affordable housing development and allowed construction to go forward.
- *United States v. City of Joliet*: The Department alleges that the City of Joliet's actions to condemn and take by eminent domain a HUD-funded affordable housing complex violated the Fair Housing Act and the Housing and Community Development Act. This litigation is ongoing and trial is set for December 2012.

C. Consumer Financial Protection Bureau: Advancing Fair Lending Enforcement

Since it opened its doors in July 2011, the Consumer Financial Protection Bureau (CFPB) has made considerable efforts to ensure equal access to financial products for all Americans. 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 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. Furthermore, the Office of Fair Lending is currently planning for several rulemakings, including regulations on the collection and reporting of small, minority- and women-owned business loan data under ECOA, and collection of data fields for all companies required to report under HMDA.¹³

The CFPB currently accepts consumer credit card and mortgage complaints. Once a complaint is screened, it is sent to the appropriate lender that then reviews the complaint, communicates with the consumer, and determines what actions may be taken in response to the complaint. The lender then reports back to the consumer and the CFPB for review. Complaints are prioritized for review and investigation when a consumer disputes a lender's response or when a lender fails to respond in a timely manner. The CFPB also accepts complaints by telephone in over 187 languages, mail, email, fax and referral from other agencies.¹⁴

While the CFPB only collected mortgage complaints for the month of December in 2011, a total of 2,326 complaints, we nevertheless have a glimpse of the types of complaints reported by consumers: 38.2 percent reported problems making payments, including loan modification, collection, and/or foreclosure issues; 21.5 percent reported problems making payments, including loan servicing, payment, and/or escrow account issues; 10.1 percent reported problems applying for a loan, including application, loan originator, and/or mortgage broker issues; 4.1 percent reported problems signing a mortgage agreement, including mortgage settlement process and cost issues; and 2.8 percent reported problems receiving a credit offer, including credit decision/underwriting issues.¹⁵

As of December 31, 2011, companies responded to 88.1 percent of all complaints received, including credit card and mortgage complaints. Of those responses to consumers, 18.6 percent were closed with relief; 46.7 percent were closed without relief; and 30.3 percent of responses indicated that the company was still reviewing the complaint.¹⁶

Currently, the CFPB's mortgage complaint portal only collects protected class information if a consumer believes the complaint involves discrimination. As many fair housing and lending

¹³ Consumer Financial Protection Bureau, "Semi-Annual Report of the Consumer Financial Protection Bureau: July 21 – December 31, 2011," January 30, 2012, page 25.

¹⁴ Consumer Financial Protection Bureau, "Consumer Response Annual Report: July 21 – December 31, 2011," March 31, 2012, page 5.

¹⁵ *Ibid.*, page 7.

¹⁶ *Ibid.*, page 8.

practitioners know, lending discrimination is rarely overt and is difficult to detect. The CFPB should change its mortgage complaint portal – and all future complaint intake mechanisms and review processes – to gather protected class data from *all* complainants. The Bureau should also ensure a sufficient review of *all* complaints for possible fair lending violations.

As the CFPB continues to refine its fair lending activities and procedures, we expect to see the Office of Fair Lending and Equal Opportunity fully integrated across the CFPB's divisions to ensure equal access to quality financial consumer products. This would include a commitment by the Director of the CFPB to assure the public that the Office of Fair Lending and Equal Opportunity will have a seat at *every* table to advise about the fair lending implications of business conducted by all parts of the Bureau. Every examination of an institution within the CFPB's jurisdiction must include a fair lending component.

In April 2012, the CFPB recognized that “[w]ithout nondiscriminatory access to credit, consumers face obstacles in obtaining equal access to housing”¹⁷ and reaffirmed that it will apply disparate impact theory as it exercises its supervision and enforcement authority to enforce compliance with ECOA and Regulation B (ECOA's implementing regulation). We encourage the CFPB, to conduct disparate impact analyses of credit scoring and credit reporting companies, and also encourage the CFPB to the maximum extent possible to include the repair of consumer credit scores in any settlements of complaints where evidence of discrimination is found. We applaud the CFPB for its statement and guidance about compliance with the fair lending requirements of ECOA and its implementing regulation and specific commitment to utilizing the disparate impact theory in all activities of the CFPB.

We look forward to the CFPB's demonstration of fair lending enforcement in all future investigations and rulemakings and to an in depth analysis of fair lending mortgage complaints received in Fiscal Year 2012 with a high rate of relief provided by companies to consumers when fair lending violations are found.

D. Private, Non-Profit Fair Housing Efforts

Private fair housing organizations operate at the forefront of the housing crisis by educating the community and the housing industry and by enforcing the laws intended to protect all of us against housing discrimination. In 2011, private fair housing organizations investigated 17,701 complaints, 65 percent of the total 27,092 complaints. There are fewer private fair housing organizations than federal, state and local government agencies, yet these private fair housing organizations continue to investigate nearly twice as many complaints. During the past several years, one-fifth of private fair housing centers have closed, or were forced to significantly curtail or eliminate their enforcement activities.

¹⁷ CFPB Bulletin 2012-04 (Fair Lending), Lending Discrimination, Consumer Financial Protection Bureau, April 18, 2012, page 1.

When adequately funded, fair housing organizations are well situated to provide assistance to victims of housing discrimination in their geographic service areas and to utilize their knowledge of community patterns and origins of discrimination to combat systemic housing discrimination. Fair housing groups enforce federal, state and local laws and also educate the public and the industry on their fair housing rights and responsibilities.

These organizations are the only private groups with the capacity 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. HUD, state and local government agencies, and the Department of Justice often rely upon the testing capacity of FHIP-funded organizations to further investigate complaints.

Many fair housing organizations are funded in large part by the Fair Housing Initiatives Program (FHIP). FHIP is a competitive grant program administered by HUD that provides funding to fair housing organizations to combat discrimination in the housing, rental, sales, lending and insurance markets. FHIP is authorized under Section 561 of the Housing and Community Development Act of 1987 and is the primary federal program that funds private fair housing groups throughout the country. FHIP provides funding to groups to assist people who believe they have been victims of housing discrimination, to conduct investigations, and to promote awareness of fair housing laws. Components of the program include the Private Enforcement Initiative (PEI) that enables private fair housing groups to carry out testing and other enforcement activities; the Education and Outreach Initiative (EOI) that funds groups to educate the general public about fair housing rights, responsibilities and compliance with the law; and the Fair Housing Organizations Initiative (FHOI) that builds the capacity and effectiveness of fair housing groups and funds the creation of new organizations.

In 2009, the President and Congress agreed that FHIP needed a significant increase and raised the FY10 FHIP budget to \$42.5 million. It was funded again at this level in the FY11 and FY12 budgets. Still, the demand by fair housing groups for FHIP funds far outweighs the available funds: in FY09, for example, when \$27.5 million in funding was available, eligible and qualified organizations applied for a total of \$75.4 million. Many more groups would apply if more funding were available. In the longer term, FHIP should expand to full funding of qualified private fair housing organizations to conduct enforcement activity in each of the 363 Metropolitan Statistical Areas, at a cost of approximately \$109 million per year.

| Fair Housing Initiatives Budget in Recent Years | |
|--|---------------------|
| Fiscal Year | FHIP Funding |
| 2003 | \$ 20.25 million |
| 2004 | \$ 20.25 million |
| 2005 | \$ 20 million |
| 2006 | \$ 20 million |
| 2007 | \$ 20 million |
| 2008 | \$ 23.5 million |
| 2009 | \$ 27.5 million |
| 2010 | \$ 42.5 million |
| 2011 | \$42 million |
| 2012 | \$42.5 million |

In addition, fair housing organizations need the support and funding to address systemic discrimination. Addressing systemic policies, practices and barriers is the key to changing our neighborhoods and eliminating the damaging discrimination that plagues our communities. HUD should provide additional funding to support systemic investigations, some of which could be joint investigations among fair housing organizations.

Fair housing organizations know their communities best and are well-positioned to determine what is most needed at the local level. So, FHIP funding should be flexible without set-asides for specific projects. Foreclosures have destabilized entire communities and brought about a number of issues, some of which are lending related, but others which deal with rental housing, real estate sales, and even insurance. For example, fair housing organizations address fair lending issues by identifying servicers that provide unfair loan modifications to members of protected classes; assist clients who are denied a home mortgage because of their race, national origin, or gender; address rental housing issues by protecting former homeowners from discrimination in the rental market following foreclosure; and work in the real estate sales market by assessing the maintenance, marketing and sales of real estate-owned (REO) properties to ensure that banks are fairly selling their stock of foreclosed houses.

Several notable fair housing cases brought by private fair housing organizations had significant impact in 2011. These include cases that addressed systemic and individual acts of housing discrimination against people of color and people with disabilities.

Greater New Orleans Fair Housing Action Center, et al. v. United States Department of Housing and Urban Development, et al.

In the aftermath of Hurricanes Katrina and Rita, the Road Home Program was created by Louisiana with HUD funds to provide compensation to Louisiana homeowners for storm damage to their

homes. As originally carried out, the program's compensation allocation formula had a discriminatory impact on African-American homeowners. The Road Home allocation formula was approved by HUD to provide up to \$150,000 for repairs and rebuilding based on either the pre-storm value or the cost to rebuild the home, whichever value was lower. Program data showed that African-Americans were much more likely to receive compensation based on the much lower market value of their homes before the storms, instead of the estimated cost to repair the damage. One African-American plaintiff received only \$1,400 to rebuild her home, but she would have received \$150,000 if her grant had been based on the actual cost of damage done to her home. This kind of disparate allocation was commonly administered by the State of Louisiana under the Road Home Program, the single largest housing development program in U.S. history.

In July 2011, NFHA, the Greater New Orleans Fair Housing Action Center, and five African-American homeowners filed suit against HUD and the State of Louisiana for perpetuating discrimination and segregation in the administration of the Road Home Program. The plaintiffs were represented by the NAACP Legal Defense and Educational Fund and Cohen Milstein Sellers & Toll PLLC. Plaintiffs were able to reach a settlement in which HUD and the State of Louisiana directed additional funds to individuals in heavily affected parishes whose grants were affected by pre-storm home values. The case settled for approximately \$473 million, providing full relief for 13,000 homeowners.

National Fair Housing Alliance, et al. v. Cornerstone Group Development Corporation, et al.

In June 2011, NFHA and the West Palm Beach Coalition for Independent Living Options (CILO) filed a case against Cornerstone Group Development Corporation, one of the largest multifamily housing developers in the State of Florida and the United States, for discriminating against people with disabilities. NFHA and CILO investigated 28 Cornerstone Group properties throughout Florida and found each to be in violation of the design and construction standards and accessibility requirements of the Fair Housing Act. The lawsuit alleges that since 1993, Cornerstone Group and its affiliates have engaged in a continuous pattern or practice of discrimination against people with disabilities by designing and/or constructing multifamily dwellings and common-and public-use areas without the required accessibility features.

Of additional concern was the fact that there were several million state and federal dollars in housing financing and subsidies that Cornerstone Group used for its developments. These federal and state funding sources include the Neighborhood Stabilization Program, HOME Program, Community Development Block Grant program, and subsidies through the Florida Housing Finance Corporation. *National Fair Housing Alliance, et al. v. Cornerstone Group Development Corporation, et al.* is ongoing, and parties to the case are currently in mediation discussions.

Greater New Orleans Fair Housing Action Center, et al. v. St. Bernard Parish, et al.

St. Bernard Parish in Louisiana, a parish just outside of New Orleans, has been challenged for several civil rights violations over the course of five years where racial discrimination has been the motivating factor. In January 2012, building on previous challenges to St. Bernard's two previous

multi-family construction moratoria and rental ordinances restricting the rental of single-family residences to those related by blood to the owner of a property, the Greater New Orleans Fair Housing Action Center (GNOFHAC), along with several individual St. Bernard Parish property owners, filed a lawsuit against the parish alleging that the permissive use permit process (PUP process) it adopted in 2006 is racially discriminatory. GNOFHAC's complaint specifically alleges that parish officials: enacted and enforced the PUP ordinance to discourage homeowners from submitting applications; refused to accept applications; issued cease and desist orders; and threatened significant monetary penalties and judicial enforcement actions.

In February 2012, DOJ also filed suit against the parish alleging that it violated the Fair Housing Act by engaging in a multi-year campaign to limit rental housing opportunities for African-Americans in the parish. In 2008, St. Bernard agreed to enter into a consent decree but the Parish Council has been held in contempt by a federal judge several times for failure to comply with the 2008 consent order. *Greater New Orleans Fair Housing Action Center, et al. v. St. Bernard Parish, et al.* is currently being negotiated with the involvement of DOJ.

United States ex rel. Anti-Discrimination Center v. Westchester County

For several years, NFHA and other civil rights advocates have been tracking the status of *United States ex rel. Anti-Discrimination Center v. Westchester County*, the landmark False Claims Act case against Westchester County, New York for making fraudulent claims that it was affirmatively furthering fair housing in order to accept federal Community Development Block Grant funding. Since the parties entered into a consent decree in summer 2009, Westchester County has consistently been unwilling to comply with the terms of the consent decree. Westchester has yet to submit a revised Analysis of Impediments to Fair Housing Choice that HUD has approved. It has failed to adopt a compliant implementation plan, and it continues to deny the reality that the County is residentially segregated. Westchester's leadership has also lacked the political will to challenge municipal barriers to fair housing choice, and its County Executive has publicly stated that he intends to ignore the County's obligation to challenge local exclusionary zoning ordinances that prevent the development of affordable housing in areas of high opportunity.

Westchester County should change course and take steps to use its housing policies and programs to end segregation in the County. DOJ, HUD, and the case monitor must take meaningful steps to hold Westchester County accountable to the consent decree. More specifically, DOJ must intervene in the matter to ensure the presence of a party that will seek vigorous enforcement of the consent decree.

Gunn v. Hein

In 2011, NFHA member Home Opportunities Made Equal (HOME) in Cincinnati, Ohio, was contacted by a distressed father after his landlord put up a sign that read "PUBLIC SWIMMING POOL – WHITE ONLY" on a fence around the building's pool after his bi-racial daughter visited him and used the pool. The father, Michael Gunn, moved from the apartment complex, but HOME helped the father file a race discrimination complaint with the Ohio Civil Rights Commission

(OCRC) against the landlord, Jamie Hein. In January 2012, OCRC found probable cause against the landlord and ruled that the sign she posted violated state housing discrimination laws.

While overall complaint numbers have remained relatively steady, private fair housing organizations and their government partners have clearly made a real difference in communities because of their enforcement efforts. We hope that moving forward, and with the additional work expected by the CFPB, all of these agencies can work closely together to make the real change we need to see to prepare for our nation's diverse future.

Section III. Current Fair Housing Policy Issues

In addition to landmark fair housing enforcement by private and public entities over the past year, policy discussions with regard to the future of our housing market have been at the top of the news. HUD and other agencies have been making key fair housing policy changes, and the nation as a whole has been puzzling over how to make the mortgage market safer for everyone.

Most recently, civil rights organizations have been urging HUD to finalize three critical Fair Housing Act regulations: disparate impact, affirmatively furthering fair housing, and sexual harassment. On November 13, 2000, HUD published a proposed regulation outlining the application of the Fair Housing Act to acts of sexual harassment in the housing context. However, HUD never issued final regulations. Sexual harassment in housing repeatedly has been the subject of complaints and litigation, and court decisions have established the contours of the law.¹⁸ The need for HUD regulations to establish HUD's position with clarity was identified in a 1996 court decision. The Department of Justice has successfully litigated several such cases, and firm administrative guidance should be provided to housing providers and enforcers about the application of the law to sexual harassment. A final regulation on sexual harassment under the Fair Housing Act is long overdue and we hope to see one before the end of 2012.

The two other regulations that we hope to see issued by the end of 2012 are described in detail below, along with additional important policy issues over the past year.

A. Disparate Impact and the Need for a Robust HUD Regulation

The federal Fair Housing Act created a framework to root out both explicitly intentional discriminatory acts and seemingly "neutral" policies that have a disadvantageous impact on members of one or more protected classes. Being able to address and root out systemic housing discrimination and segregation in the United States is vital to the functioning of efficient and open financial and housing markets, free from discrimination, in which all people can have access to better life opportunities. HUD should promptly release robust standards for determining when a housing practice with a discriminatory effect violates the federal Fair Housing Act.

Often under dispute in disparate impact cases under the Fair Housing Act is whether there is a less discriminatory alternative to actions or policies being challenged, and onto whom the burden of showing such alternatives is placed. Whether this burden is placed on plaintiffs/complainants or on defendants/respondents has the potential to affect the outcome of Fair Housing Act cases and

¹⁸ See, e.g., *Shellhammer v. Llewellyn*, Fair Housing Fair Lending Report., para 15742 (W.D. Ohio 1983), *aff'd* 770 F. 2nd 167 (6th Cir. 1985) (unpublished); *Krueger v. Cuomo*, 115 F. 3rd 487 (7th Cir. 1997); *Honce v. Vigil*, 1 F.3d 1085 (10th Cir. 1993); *Henson v. City of Dundee*, 682 F. 2d 897(11th Cir. 1982); *HUD v. Kogut*, HUDALJ 09-93-1245-1 (April 17, 1995); *Beliveau v. Caras*, 873 F. Supp. 1393, 1397 (C.D. Cal. 1995); *Williams v. Poretsky Mgmt.*, 955 F. Supp. 490 (D. Md. 1996); *New York ex rel. Abrams v. Merlino*, 694 F. Supp 1101 (S.D.N.Y. 1988); *Reeves v. Carrollsburg Condominiums*, 1997 U.S. Dist. LEXIS 21762 (Dec. 18, 1997); *United States v. Koch*, 352 F. Supp. 2d 970 (D. Neb. 2004).

comprehensive enforcement of the Fair Housing Act and state and local fair housing laws. Any final rule from HUD on disparate impact must require that the burden of proof be placed on a defendant/respondent to demonstrate a legitimate business justification that cannot be served by a different practice with less discriminatory consequences.

Disparate impact theory has been recognized by all 11 Circuit Courts that have ruled on it as a legally acceptable means by which parties can make claims under the Fair Housing Act; however, there is no universal agreement about which party should bear the burden of proof. Many courts have agreed that it should fall to the defendant/respondent, who is in a far superior place to bear such a burden due to the qualitative and quantitative nature of less discriminatory alternatives in Fair Housing Act cases. Furthermore, a defendant/respondent party almost always has superior knowledge of the less discriminatory alternatives available and whether the alternatives meet its own business objectives and do not impose an undue hardship under circumstances specific to a case. This is true for zoning cases, in which a plaintiff is rarely in a position to identify a less discriminatory alternative because the plaintiff will most likely lack information necessary to identify such an alternative, and by virtue of being outside of the political decision-making process. This is also especially true for cases involving insurance or lending, where private companies protect proprietary information such as credit scores, actuarial data, and risk assessment.

For many years, civil rights organizations have encouraged HUD to adopt regulations implementing disparate impact standards. Any rule finalized by HUD should effectuate the broad remedial result intended by Congress of providing for fair housing throughout the United States. Additionally, by shifting the burden of identifying a less discriminatory alternative onto a defendant/respondent, HUD has the potential to cause a sea change by requiring industry to find and implement fewer discriminatory approaches that are equally or more predictive of business risk that would otherwise be left unexplored. By ensuring that this burden shifts to defendants/respondents, we can increase the likelihood that all Americans have a fair shot at better life opportunities, many of which are derived from equal access to housing choice. This is especially important for people of color, who will comprise the majority of the American population in less than 30 years.

B. Defining and Enforcing Affirmatively Furthering Fair Housing

One of the civil rights community's top priorities for the Obama Administration was for HUD to issue new regulations to implement the "affirmatively furthering fair housing" provisions of the Fair Housing Act. These provisions require recipients of federal housing and community development funds to take steps to "affirmatively further" fair housing, i.e. promote diverse inclusive communities and end residential segregation. After much internal deliberation and consultation with a range of stakeholders, HUD has drafted a proposed rule. It is currently under review by OMB, and is expected to be published for comment later this spring.

While the proposed rule has yet to be released, HUD has given indications about how it will be structured. Among other changes, HUD plans to eliminate the current requirement for jurisdictions to prepare periodic Analyses of Impediments to Fair Housing Choice (AIs), and replace this with a new form of analysis known as the Assessment of Fair Housing, or AFH. According to HUD, there

are strong similarities between the Fair Housing Equity Assessment required for grantees of HUD's Sustainable Communities Initiative and the new AFH. The AFH will consist of at least five components: an analysis of the housing needs of protected classes; an assessment of patterns of integration or segregation in the community; identification of racially or ethnically concentrated areas of poverty; an analysis of disparities in access to opportunity for members of protected classes; and an examination of the local fair housing infrastructure, both public and private. The goal is to direct jurisdictions to spend their funds in ways that expand access to opportunity for all local residents.

To reduce the burden on jurisdictions, HUD is building a new data analysis and mapping system that will make it easier for grantees to do the necessary background work for the AFHs. The system, which will be available to the public as well as to grantees, will provide access to data about local demographics, housing, education, transportation, jobs and other factors affecting access to opportunity.

Grantees will be required to submit to HUD an AFH in advance of, but on the same cycle as, the submission of their Consolidated Plans (Con Plans). Failure to submit an acceptable AFH will delay the jurisdiction's receipt of HUD funding. HUD intends to review each AFH submitted, and unless it takes action within 45 days to deem the AFH inadequate or incomplete, the AFH will be considered approved. According to HUD, jurisdictions' Con Plans and Public Housing Authority Plans will have to be consistent with their AFHs, indicating how they are addressing the goals and priorities described in the AFH. Annual action plans will have to describe any significant changes in local conditions and update the goals and priorities accordingly.

Based on what we know so far, there are several aspects of this new approach to affirmatively furthering fair housing that are of particular concern. One is whether HUD has the capacity to review all of the AFHs it will receive, both in terms of the level of staffing available for those reviews and the training the staff have received. This is critical since AFHs will be deemed approved in the absence of action to the contrary by HUD. HUD could potentially phase in the new AFH requirement to alleviate some of the capacity concern.

A second red flag for fair housing is the lack of an appeals process. While HUD says that the public will have ample opportunity to provide input and comment on their jurisdiction's AFH, the specifics of the public participation provisions are not yet clear. Nor is it clear how jurisdictions will respond to concerns raised by members of the community. If inadequate AFHs are approved, there will be no mechanism for the public to appeal HUD's decision and force a jurisdiction to make necessary revisions, short of filing a fair housing complaint.

Finally, it remains to be seen how effective the enforcement mechanism will be. The ultimate tool that HUD has to ensure that jurisdictions address their obligations to affirmatively further fair housing is to delay or deny their funding. HUD has this authority currently, but has exercised it only on rare occasions.

When the rule is published, it will be important for fair housing advocates to review it carefully and submit comments about any flaws or weaknesses and ways the final rule can be strengthened. HUD's goal is to have a final rule in place before the end of 2012.

C. Greater Protections for the Lesbian, Gay, Bisexual and Transgender Community

Under the leadership of Secretary Shaun Donovan, HUD has shown an unprecedented dedication to fair housing for the nation's Lesbian, Gay, Bisexual and Transgender (LGBT) community. New regulations are now in effect offering federal protections for the LGBT community in HUD-assisted and HUD-insured housing.¹⁹ Eligibility requirements for such housing cannot take into account actual or perceived sexual orientation or gender identity.²⁰ Language forbidding discrimination was strengthened and made explicit at the request of the National Fair Housing Alliance and several allied organizations, including the National Center for Lesbian Rights, Human Rights Campaign, National Gay and Lesbian Taskforce, National Center for Transgender Equality and National Black Justice Coalition.²¹ An education and outreach program by HUD is underway to make sure the public understands the new protections for the LGBT community. This measure was also strongly endorsed by NFHA and other organizations.

Not all of the recommendations offered by advocacy groups were accepted by HUD - notably HUD will continue to allow inquiries about the sex of an individual seeking temporary emergency housing at HUD-assisted shelters. The inquiry into the sex of individuals presents a real challenge for transgendered people who report encountering record levels of homelessness, severe harassment at shelters and physical and sexual assault when seeking housing.²² HUD officials acknowledge the difficulties of transgender residents seeking housing and say they began the rulemaking in part because of concerns in this area. NFHA will continue its dialogue on this matter with HUD and has asked that shelter operators ask for an individual's gender and not their birth sex to make placements in emergency shelters.

The provision of additional protections for the LGBT community in HUD-assisted and HUD-insured housing is an important step forward in affirmatively furthering fair housing in communities throughout the United States. LGBT protections are not currently part of the federal Fair Housing Act, but there are more than 20 states, the District of Columbia and at least 200 localities with laws prohibiting discrimination on the basis of sexual orientation or gender identity. HUD in its guidance on affirmatively furthering fair housing has as part of its community development programs strongly encouraged the adoption and enforcement of state and local fair housing laws.²³ There is recognition

¹⁹ *HUD Secretary Donovan Announces New Regulations to Ensure Equal Access to Housing For All Americans Regardless of Sexual Orientation or Gender Identity*, HUD, January 30, 2012.

²⁰ *Equal Access to Housing in HUD Programs - Regardless of Sexual Orientation or Gender Identity*, HUD, January 27, 2012, p. 5.

²¹ Letter to the Office of General Counsel at the U.S. Department of Housing and Urban Development, March 25, 2011.

²² Grant, Jamie M. et al. "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey." February 3, 2011.

²³ *Fair Housing Planning Guide*. HUD Office of Fair Housing and Equal Opportunity. Volume 1, p. 1-2.

at HUD that expanded protections under the Fair Housing Act mirror many of our great movements – African-American civil rights, Latino rights, women’s rights, disability rights and other advancements for equality.²⁴ So it should come as no surprise that the nation’s growing awareness of the plight of the LGBT community will eventually lead to expanded protections under the Fair Housing Act. HUD should be applauded for being at the forefront of this historic movement.

Some supporters on Capitol Hill have been equally forceful in advocating for fair housing protections for the LGBT community. Senator John Kerry and Representative Jerrold Nadler introduced the Housing Opportunities Made Equal (HOME) Act of 2011 in their respective legislative bodies to extend protections of the federal Fair Housing Act to individuals regardless of sexual orientation, gender identity, marital status or source of income.²⁵ The bills have received strong backing from 17 national civil rights organizations, including the Human Rights Campaign, NAACP, Leadership Conference on Civil and Human Rights, National Council of La Raza and National Urban League.²⁶

D. Putting a Stop to Anti-Immigrant Laws

In recent years, several anti-immigrant state laws and municipal ordinances have almost explicitly encouraged housing discrimination against undocumented people and immigrants based on national origin.²⁷ Fair housing organizations in 2011 were at the forefront of challenges to some of the most outright discriminatory laws passed in any state in recent memory in challenging sections of Alabama’s anti-immigrant HB 56.

In November 2011, NFHA members, including the Central Alabama Fair Housing Center in Montgomery, the Fair Housing Center of Northern Alabama in Birmingham, and the Center for Fair Housing, Inc. in Mobile, along with two residents on behalf of a class, filed a lawsuit under the federal Fair Housing Act and the Supremacy and Due Process Clauses of the U.S. Constitution. The plaintiffs were represented by Relman, Dane & Colfax PLLC, Southern Poverty Law Center, National Immigration Law Center, ACLU Immigrants’ Rights Project, and LatinoJustice. The plaintiffs specifically challenged the enforcement of Section 30 of HB 56, which charges criminal penalties against any person attempting to enter into any “business transaction” with the state without proof of U.S. citizenship or lawful immigration status. Mobile home residents who could not provide documentation would face the risk of felony charges or civil and criminal penalties if they attempted to renew their homes’ tags as required under Alabama’s mobile homes statute or if they let tags expire after the November 30th renewal deadline.

²⁴ Simon, Harold. Interview: Assistant Secretary for Fair Housing and Equal Opportunity John Trasvina. Shelterforce: The Journal of Affordable Housing and Community Building. Spring 2011. March 29, 2011.

²⁵ Kerry Legislation Would Outlaw LGBT Discrimination in Housing, Credit. Press Release with Office of U.S. Senator John Kerry, Sept. 22, 2011.

²⁶ Letter to Senator John Kerry and Rep. Jerrold Nadler, Sept. 21, 2011. Available at <http://www.nationalfairhousing.org/Portals/33/HOME%20Act%20Endorsement%20Letter%20-%20Civil%20Rights%20Groups%20Sept.%202011.pdf>.

²⁷ Soto, Jorge Andres and Swesnik, Deidre, *The Promise of the Fair Housing Act and the Role of Fair Housing Organizations*, American Constitution Society, January 2012.

By challenging enforcement of Section 30 of HB 56, which put individuals in danger of being driven from their homes if they attempted to comply with state mobile home registration laws, NFHA members put a stop to the application of this blatantly discriminatory law. On December 12, 2011, United States District Judge Myron Thompson of the U.S. District Court for the Middle District of Alabama blocked the Revenue Commissioners for Alabama and Montgomery County from requiring persons attempting to pay the annual mobile-home registration renewal fee to provide proof of U.S. citizenship or lawful immigration status; and from refusing to issue mobile-home tags to any person who cannot prove such documentation.²⁸ Furthermore, the Court declared it not a criminal act to fail to apply for and obtain a registration decal without providing proof of citizenship or lawful immigration status. *Central Alabama Fair Housing Center, et al. v. Julie Magee, et al.* remains in litigation.

E. Making Mortgage Lending Safe for Borrowers

Since the collapse of the mortgage market and the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was intended to address many of the problems that led to the collapse, there has been considerable discussion in public policy circles about what features or characteristics make a mortgage safe. The answer to this question will inform policymaking in a number of areas. One of these is the steps lenders will be required to take and the standards they will have to use in making mortgage loans in order to demonstrate that they have adequately considered the borrower's ability to repay the loan. The current Qualified Mortgage (QM) rulemaking effort, for which the Consumer Financial Protection Bureau (CFPB) is responsible, will set those rules. The QM rule is part of a larger set of standards relating to a borrower's ability to repay. Lenders who make QM loans will gain a measure of protection from liability in lawsuits brought by borrowers challenging a foreclosure.

The QM rule will, to a very large degree, determine which borrowers have access to mortgage credit in the future and on what terms. In crafting the rule, the CFPB must strike a balance between eliminating risky loans from the marketplace and maintaining credit availability for qualified borrowers. How this balance is struck is of critical importance for civil rights, because borrowers of color have suffered when the balance tips too far in either direction. They have borne the brunt of abusive mortgage practices, and have also been denied access to credit and homeownership when credit conditions are tight, as is the case now. (A paper to be released by NFHA in summer 2012 addresses in detail this issue of access to credit, including credit scoring.)

NFHA and other civil rights organizations are asking the CFPB to be guided by past experience with mortgage lending programs that have flexible underwriting standards but are fully documented, fully verified, and do not have such risky loan features as prepayment penalties, negative amortization or payment shock. Loans made under these conditions have performed extremely well, even under adverse economic conditions.

²⁸ *Central Alabama Fair Housing Center, et al. v. Julie Magee, et al.*, (C.D. Ala.), Case 2:11-cv-00982-MHT-CSC, Doc. 88, Prelim. Injunction.

Other recommendations to the CFPB from civil rights organizations include:

- **Make sure the QM standard covers the vast majority of the mortgage market.** Some argue that a narrow QM standard will create more competition for non-QM loans, resulting in better terms and prices for borrowers who fail to meet the QM standards. However, history demonstrates that this theory does not work in communities of color, which have long been denied access to mainstream credit. While there was considerable competition from subprime lenders to make loans in these communities, that competition focused on maximizing profits for lenders and investors. The subprime and other toxic loans that were made were very profitable, but did not benefit borrowers. It is critical for the QM standard to be written in a way that provides broad access to mortgage credit for underserved groups.
- **Strengthen protections for Adjustable Rate Mortgages (ARMs).** The rule addresses the problem of loans with low teaser rates that become unaffordable when the teaser rate expires by requiring lenders to underwrite the borrower based on the “fully indexed rate,” or the interest rate that would be in effect if there were no teaser rate. This is an important protection, but it does not cover the situation in which an adjustable rate mortgage goes up by as much as 2% on the regularly scheduled adjustment date. Such a big increase, which the rule would allow, would cause a huge payment shock for many borrowers. Civil rights groups have recommended that lenders be required to underwrite the borrower based on the highest interest rate that could be in effect during the first seven years of the loan.
- **Do not provide lenders with a safe harbor under the QM rule.** Such a safe harbor would make it nearly impossible for borrowers who believe their lender violated the QM standard and made a loan that was not affordable to defend in court against a foreclosure. This is not the outcome that Congress intended. Rather, Congress intended to offer lenders the protection that QM loans would be presumed to provide, while at the same time giving borrowers the opportunity to provide evidence rebutting that presumption. This “rebuttable presumption” is an important backstop to ensure that lenders do not evade the requirement to consider a borrower’s ability to repay a loan.

The final QM rule is expected out later this summer.

F. Enforcement Efforts to Provide Help for Struggling Homeowners

Over the past year, state and federal authorities signed agreements with a number of major mortgage lenders and servicers to address the problems caused by “robo-signing” and other abuses in the mortgage market. Millions of homeowners may benefit as a result, through direct financial compensation or modifications to their mortgage loans, including, in some cases, reduction of the principal balance of the mortgage. The agreements establish new standards for servicing mortgages, in an effort to prevent future crises.

Two federal banking regulators, the Office of the Comptroller of the Currency and the Federal Reserve Board, after investigating allegations of robo-signing and other improper mortgage servicing practices, entered into consent orders with 14 large mortgage servicers. The consent orders require the servicers to make a number of changes to their mortgage servicing practices, including providing struggling borrowers a single point of contact for questions about their loan and for information about the status of any request for a loan modification or other option to avoid foreclosure. The consent orders also require each servicer to hire an independent consultant to review the loan files of borrowers who may have suffered financial harm because of improper actions by the servicer. This process has been dubbed the “Independent File Review (IFR),” and the regulators estimate that 4.3 million borrowers may be eligible. Like the Countrywide/DOJ settlement mentioned earlier, the IFR process is intended to redress past harms.

Unfortunately, the IFR process is rife with problems. From a civil rights standpoint, the first problem is the timeframe the regulators chose to review, 2009 and 2010. Many borrowers of color received unsustainable subprime mortgages much earlier, and may have gone all the way through the foreclosure process before 2009, making them ineligible for review or compensation. Other problems include the way that outreach is being conducted, the lack of resources to enable housing counselors and legal services attorneys to help borrowers through the process, and the fact that the regulators have not yet determined just what will be considered financial harm, what compensation will be given to borrowers who were harmed, or whether borrowers will be required to waive any rights in exchange for taking that compensation, to name a few. In addition, there is a complete lack of transparency in the IFR process, with no plans in place to give the public any information about how it is working or what the outcomes are. Unless the agencies address these and other problems and re-launch the program, there is every likelihood that hundreds of millions of dollars will be spent for consultants to review these files while borrowers get very little actual help.

Another significant development for borrowers is the \$25 billion settlement reached in the investigation into robo-signing and other mortgage servicing abuses that was undertaken by the 50 state attorneys general (AGs). Forty-nine of the AGs signed agreements with five major mortgage servicers: Bank of America, Wells Fargo, Citibank, JP Morgan Chase, and Ally/GMAC. The State of Oklahoma did not sign on to the agreements.

The provisions of the agreements are complex, but in broad terms they include changes to mortgage servicing practices, direct payments to the states and federal government, token payments to borrowers who were foreclosed upon, and various forms of relief for existing borrowers. Details about this settlement are at www.nationalmortgagesettlement.com. The settlement provides \$20 billion targeted to borrowers who are currently in default or at imminent risk of default. At least \$10 billion of this relief must be in the form of principal reduction, or lowering the balance that borrowers owe on their loans. Another \$3 billion is intended to help borrowers who are current on their mortgages but who owe more than their homes are worth refinance at lower interest rates. Another \$1.5 billion has been set aside for an estimated 750,000 borrowers (or approximately \$2,000 apiece) who were foreclosed upon between 2008 and 2011. Those borrowers will not have to prove any claim or waive any rights to receive these payments, although they will have to return a claim

form by July 31, 2012. For each of these actions taken, the servicers will receive credit toward their share of the \$25 billion total. If they have not reached their targets by the end of three years, any remaining amount must be paid directly to the states. The settlement also includes \$2.75 billion that will go directly to the 49 states. These funds are intended for a variety of foreclosure prevention or community relief efforts. However, each state will determine how to spend its share of those funds, and there are indications that some states will divert some or all of the funding to cover budget shortfalls.

An independent monitor will oversee the servicers' compliance with the terms of the settlement agreement. Joseph Smith, former North Carolina banking commissioner, was hired for this role and is currently assembling a small staff and outside consultants to carry out the monitoring function. The servicers will be required to report regularly to the monitor, who can intervene if he finds a pattern and practice of non-compliance by any of the servicers.

Advocates are hopeful that the AG settlement will help many borrowers who are struggling to make their mortgage payments and prevent future unnecessary foreclosures. Many groups are working with their state AGs to make sure that they use the funds over which they have direct control for their intended purpose of foreclosure prevention and deploy those funds most effectively. A major concern is that the decision about whether to offer, and what type of relief to offer borrowers is left entirely to the servicers. Borrowers who have complaints will have to go back to their servicer or to their state AG. Many AG offices are not set up to handle complaints of this type or at any large volume. It will also be important for the states and their counterparts in the federal government to work in coordination, so that they get a unified message out to consumers and don't duplicate each other's efforts.

G. Unequal Treatment Continues in the REO Market

NFHA is continuing its two-year investigation into differential treatment in the Real Estate Owned (REO) market and recently released the report, *The Banks Are Back – Our Neighborhoods Are Not: Discrimination in the Maintenance and Marketing of REO Properties*.²⁹ REO properties are those owned by a lender after foreclosure. The report documents troubling disparities in maintenance and marketing practices with banks caring for their REO properties in predominantly White neighborhoods substantially better than their properties in communities of color.

More than a 1,000 properties were evaluated in and around Atlanta, GA; Baltimore, MD; Dallas TX; Dayton, OH; Miami/Fort Lauderdale, FL; Oakland/Richmond/Concord, CA; Philadelphia, PA; Phoenix, AZ and Washington, D.C. Four NFHA member organizations – Housing Opportunities Project for Excellence in Miami, FL; Metro Fair Housing Services in Atlanta, GA; Miami Valley Fair Housing Center in Dayton, OH and North Texas Fair Housing Center in Dallas, TX – were part of the national investigation.

²⁹ *The Banks Are Back – Our Neighborhoods Are Not: Discrimination in the Maintenance and Marketing of REO Properties*, National Fair Housing Alliance, April 4, 2012.

The organizations evaluated the maintenance and marketing of REO properties on a 100-point scale, subtracting points for broken windows and doors, water damage, overgrown lawns, no “for sale” sign, trash on the property, and other deficits. The evaluations took into account 39 different aspects of the maintenance and marketing of each property. Overall, REO properties in communities of color were 42 percent more likely to have more than 15 maintenance problems than properties in White neighborhoods.

Some trends the investigation revealed include:

- REO properties in communities of color were 82 percent more likely than REO properties in White communities to have broken or boarded windows;
- Trash and debris were 34 percent more likely to be found on REO properties located in communities of color than on REO properties in White neighborhoods;
- REO properties in White neighborhoods were 32 percent more likely to be marketed with the proper signage than in African-American neighborhoods and 38 percent more likely than in Latino neighborhoods; and
- Newer homes generally scored higher than older homes, but racial and ethnic disparities persisted with non-structural factors such as curb appeal and signage.

The findings of the investigation were the basis for two federal housing discrimination complaints filed with HUD against Wells Fargo and U.S. Bancorp. NFHA and its member agencies offered the following recommendations to correct the problems of all banks:

- Banks should provide detailed expectations and oversight of all vendors in the REO disposition process;
- Vendors for REO upkeep should have local expertise and a local presence;
- REO properties must be advertised broadly and priced correctly;
- Each bank should have an on-line publicly-accessible, regularly-updated database of its REO listings, including the name of the asset manager or vendor(s) responsible for listing, maintaining and selling the property;
- Federal bank regulators, including the Consumer Financial Protection Bureau, should conduct a major nationwide investigation of bank and servicer policies and practices with regard to REO properties;
- Banks should ensure that owner-occupants and non-profit community organizations are given greater opportunities to purchase foreclosed homes;
- Banks should use REO properties to expand housing opportunities and to affirmatively further fair housing; and
- Banks should use REO properties to create a path back to homeownership for millions of families that have lost their home to foreclosure.

Conclusion

In 2011, the foreclosure crisis continued to be the top housing issue for our country. Only four years ago, we thought that it would be devastating to see two million foreclosures.³⁰ Today, the Federal Reserve estimates that Americans have already experienced more than four million foreclosures and lost \$7 trillion in home equity since 2006.³¹ Experts project eight to ten million more loans could default if things don't change.³²

But there has been good news and we hope more to come by the end of 2012. Banks are finally beginning to be held accountable for their malfeasance and disregard for civil rights laws in the run up to the crisis. Private fair housing organizations and public agencies are enforcing the law and bringing some remedies to our damaged families and neighborhoods.

The past year also saw the official opening of the Consumer Financial Protection Bureau. This new kid on the block has already demonstrated that it will not be cowed by bullies and plans to stand its ground. In doing so, it has shown that sound, clear regulation of the industry really is the best thing for the market. We are especially happy to see that the Bureau has a well-functioning office dedicated to fair lending and equal opportunity.

Civil rights organizations await final regulations from HUD on three critical issues in 2012: disparate impact, affirmatively furthering fair housing, and sexual harassment. These regulations will go a long way to iterate the importance of these issues and demonstrate to the public that HUD intends to keep the promises of the federal Fair Housing Act. Private fair housing organizations are at the ready to help in any way they can.

³⁰ Numerous references including "Projected Foreclosures by Congressional District," Center for Responsible Lending, January 27, 2008. <http://www.responsiblelending.org/mortgage-lending/tools-resources/crl-state-projected-foreclosures.pdf>.

³¹ "The U.S. Housing Market: Current Conditions and Policy Considerations," Federal Reserve, January 4, 2012.

³² Testimony of Laurie S. Goodman, Amherst Securities Group to the Subcommittee on Housing, Transportation and Community Development of the Senate Committee on Banking, Housing, and Urban Affairs, September 20, 2011.