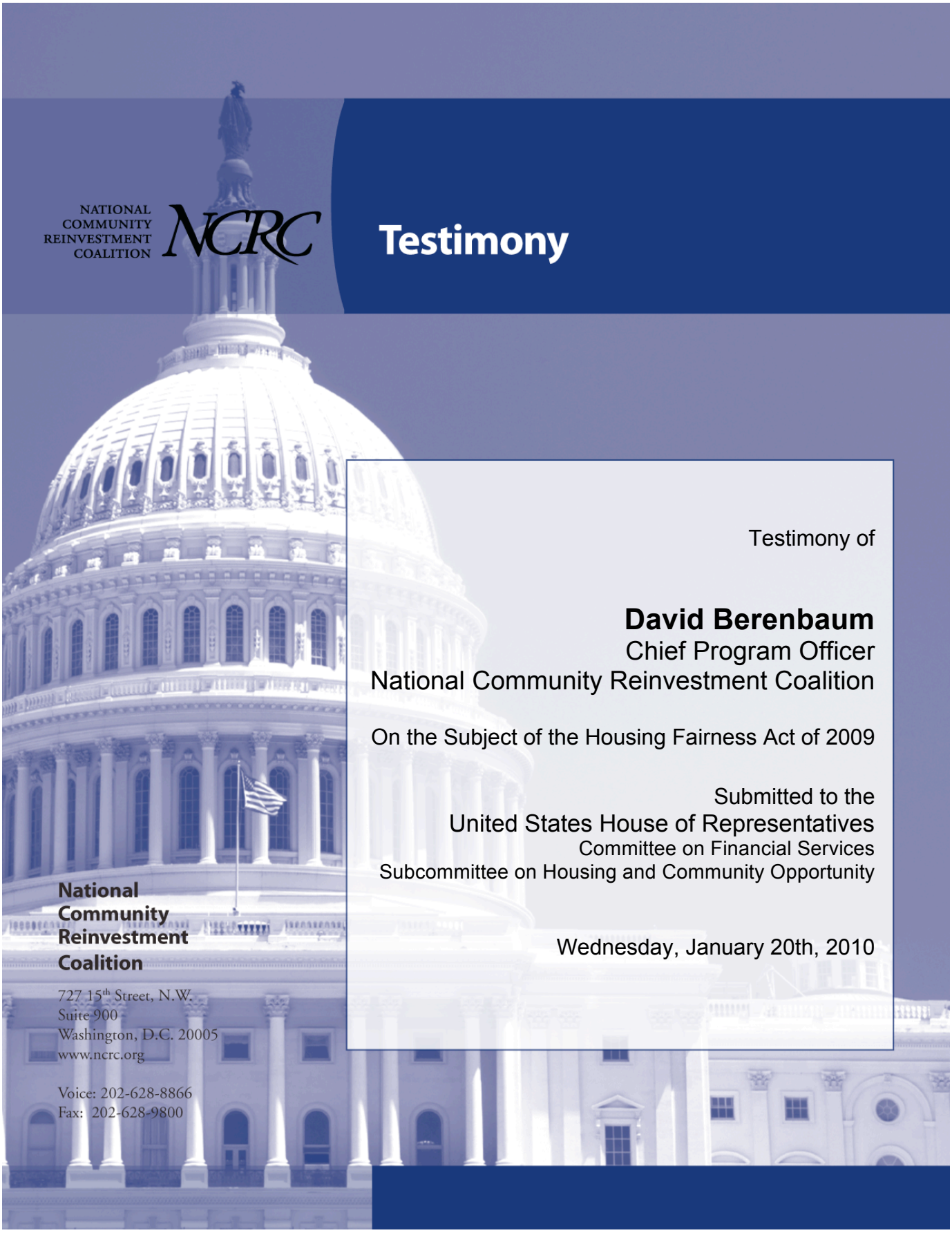


NATIONAL COMMUNITY REINVESTMENT COALITION

NCRC

Testimony

Testimony of

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On the Subject of the Housing Fairness Act of 2009

Submitted to the
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Committee on Financial Services
Subcommittee on Housing and Community Opportunity

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Introduction:

The National Community Reinvestment Coalition (NCRC) is honored to testify before the United States House of Representatives Financial Services Committee Subcommittee on Housing and Community Opportunity today in support of H.R. 476, The Housing Fairness Act of 2009.

NCRC is an association of more than 600 community-based organizations that promote access to basic banking services including credit and savings, to create and sustain affordable housing, job development, and vibrant communities for America's working families.

Through our National Neighbors program, NCRC spearheads fair housing and fair lending best practice initiatives, which promote racial and cultural equality, opportunity, and diversity. National Neighbors and our members are committed to an open housing market free of discrimination. In particular, National Neighbors current efforts are aimed at ensuring that solutions to the current mortgage crisis are fair and equitable. National Neighbors support policies that do not place a disproportionate burden on underserved communities, and do not constrict access of underserved communities or qualified applicants to responsibly underwritten and fairly priced mortgage products.[i]

Chairman Waters, and other distinguished members of the Sub-Committee, we applaud your efforts to ensure equal housing opportunity for all Americans by convening this hearing. In recent months, the FDIC, the Federal Reserve Board, the White House and several Members of Congress have acknowledged that unfair, deceptive, or otherwise poor business practices by lenders and other mortgage finance-related institutions played a critical role in the current housing crisis. Also well known is the reality that a disproportionate share of abusive high cost lending targeted financially vulnerable African-American and Latino households and communities.

In the face of this crisis, it is an unfortunate truth that the National Community Reinvestment Coalition and many of our members have brought more complaints as "private attorney generals" under the Federal Fair Housing Act challenging fair lending violations then the regulatory agencies. These violations include reverse redlining, discriminatory underwriting, discriminatory pricing, problematic sub-prime mortgage servicing, overt redlining of urban and rural neighborhoods, and even the role of Wall Street and rating agencies in the current market crisis and individual Federal regulators charged to enforce the law.[ii] The time has come to change this paradigm and to affirm our nations commitment to equal housing opportunity.

To drive home this point, we note that in 2008, DOJ received only 20 fair lending referrals involving potential Equal Credit Opportunity Act claims from the bank regulatory agencies: 12 from the Federal Deposit Insurance Corporation (FDIC); three from the Federal Reserve Board (FRB); our from the Office of Thrift Supervision (OTS); and one from the Office of the Comptroller of the Currency (OCC).[iii]

The proximate result of this failure to enforce Title VIII is that the foreclosure crisis is having its most financially destructive impact on communities of color where discriminatory loans are

heavily concentrated. Billions of dollars in housing equity have been lost. Billions more will be drained over the next year if meaningful foreclosure intervention and active enforcement of the Federal Fair Housing Act is not forthcoming.

To date, despite repeated calls for greater enforcement of Title VIII over the past decade by the National Community Reinvestment Coalition, not enough has been done by Federal and state regulators to challenge the reverse redlining, discriminatory pricing, and predatory lending targeted at people of color, African-American, and Latino communities across the country.

Further, as we will note in this testimony, despite the substantial progress that has been made to celebrate compliance and equal treatment under Title VIII – including industry best practice initiatives, neighborhood diversity initiatives, and fair housing planning programs – much more work needs to be done until we can realize the Fair Housing Act's legislative authors dream of "one America." In fact, this will require a fresh and coordinated look at how we use the law as a policy tool.

Therefore, the most critical recommendation that we will make today is to call for the creation of a Cabinet level civil rights position that reports directly to the President and ultimately to Congress, to ensure that all Federal agencies work collaboratively with each other, with the public and private sectors, and with the States to realize our nation's long established and accepted policy of equal housing and employment opportunity, equal professional service, and equal treatment under the Americans with Disabilities Act (ADA) through the implementation of a National Fair Housing Plan coupled with the new testing initiatives and fair housing planning activity envisioned in HR 476.

As we draft our testimony for this Hearing, NCRC notes the significant announcement by Thomas Perez, the Department of Justice's Assistant Attorney General for Civil Rights, in a speech last week at the Wall Street Project Economic Summit in New York to create a new fair lending unit. DOJ's new Fair Lending unit will investigate and bring enforcement actions against lenders and brokers that have unfairly denied minorities access to home loans. It will also seek to identify companies that targeted minorities for mortgages with loose underwriting standards or high interest rates that forced them into foreclosure. The DOJ Fair Lending unit reportedly already has 38 investigations pending and will examine discrimination that is occurring as minorities try to refinance or modify mortgages. This is a noteworthy step forward by the Department of Justice to reaffirm it considerable commitment to civil rights enforcement, but much more can and should be done.

The Road to Equal Housing Opportunity and One America

The Fair Housing Act was the last major piece of civil rights legislation from the 1960s. Responding to severe societal pressure, Congress intended the Act to effectively outlaw all discriminatory actions within the housing and lending industry. While the principles behind the American Dream promotes wealth, prosperity, and happiness for those who work hard, African Americans, Latinos, and other groups faced serious barriers to achieving the same benefits for their labor. Even African American & Latino veterans were denied access to homeownership when they returned from service abroad. Racial segregation and related stigmatization impacted

educational and employment opportunity and ultimately created serious unrest in urban communities across the nation.[iv]

As a result of the civil rights movement, President Lyndon Johnson created the Kerner Commission to examine these issues and make policy recommendations. According to the report, "All Americans sought both the material assets of the capitalist system and its subsequent psychological benefits of dignity and peace of mind."[v] However, neither of these two American aspirations was attainable for the majority of black households.[vi] The Report warned of an America "moving toward two societies, one black, one white-separate and unequal." The Report urged anti-discrimination and integration programs to quell the unrest and turmoil that loomed. Released on March 1, 1968, the Senate passed the legislation and it sat in the House with the possibility of amendment. It was on April 4, 1968 when rioting and unrest hit a pinnacle with the assassination of Dr. Martin Luther King, Jr. that the House passed the legislation. The Legislation passed on April 10th 1968 and was signed into law by President Johnson the following day.

While the simple purpose of the Fair Housing Act was to respond to the immediate needs of African Americans and all Americans to be free from discrimination, many also recognized it as a tool to promote integration. Senator Mondale is widely quoted as stating that the purpose of the Fair Housing Act was to replace the ghetto with "truly integrated and balanced living patterns."[vii] Similarly, Senator Brooke commented that though the legislation was "a giant step in the right direction," is was not a "cure [for] all of the wrongs and the ills in this country."[viii] This law reflected the ongoing tension between the freedom to live in the area of your choice while also striving for a racially and economically diverse and sustainable society that remains to this day.

Over the past forty years, the Fair Housing Act's broad policy mandates and brief legislative history have forced the courts to play an important role in the statute's interpretation. The Fair Housing Act of 1968 made it unlawful to discriminate in the sale, rental or financing of dwellings on the basis of race, color, religion, sex or national origin. The Act gave the United States Department of Housing and Urban Development Office of Fair Housing & Equal Opportunity (FHEO) the power to investigate complaints received. In 1988 Title VIII was strengthened and handicap and familiar status were added to the Act. Additionally, the Act made it unlawful to design non-handicap accessible housing after March 1991. The Amendment of 1988 also gave HUD the ability to initiate complaint proceedings and impose more meaningful remedies.

The Supreme Court has acknowledged that Congress intended the legislation to be construed broadly, so as to root out discrimination within the housing industry.[ix] This has led to a series of landmark decisions in all aspects of the housing market – from inclusive zoning to supporting a municipality's commitment to neighborhood integration – that benefit the entire American public while affording plaintiffs, who often represent municipalities, victims, industry and other aggrieved parties, the opportunity to enforce their rights in a highly dynamic and complex real estate market. Fair Housing Testing, sometimes referred to as "mystery shopping," and dynamic fair housing planning, must be critical components of HUD's agenda in cooperation with its Fair

Housing Initiatives & Assistance Program (FHIP & FHAP) partners to promote open housing on a neighborhood level.

Fair Housing Violations Impact Upon Individuals & Communities

Vividly demonstrating this point, on January 8th 2008, the Mayor and City Council of Baltimore, Maryland, filed a federal lawsuit against a national bank under the Fair Housing Act. According to the City, the bank engaged in a pattern and practice of unfair, deceptive, and discriminatory lending activity since at least 2000.[x] This precedent-making case documents the need for greater regulatory oversight of financial institutions. This case also dramatically captures the impact of regulators' failure to enforce the Federal Fair Housing Act and its subsequent high cost to homeowners, localities and our economy. While this case was dismissed late last month, the City has announced that it plans on filing a new complaint. Similar cases have also pending or soon will be filed across the country. From Main Street to Wall Street, fair housing plays a critical role in nurturing a viable economy.

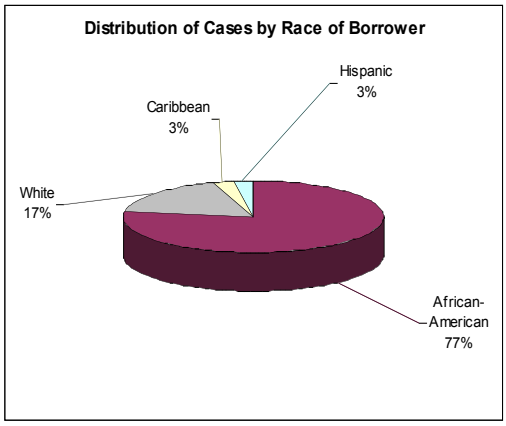
Despite the enactment of the Fair Housing Act, housing discrimination and segregation remain pervasive in the United States. Numerous studies have shown that African-Americans and Latinos often encounter discrimination when they try to rent or buy a home.[xi] Many other groups are also subject to discrimination. People frequently encounter discrimination on the bases of familial status, disability, gender, marital status, source or amount of income, age, military service and sexual orientation.[xii] In fact, many states and localities have expanded the number of groups who are protected under local fair housing ordinances to reflect these issues. NCRC strongly recommends that this Committee in cooperation with the House Judiciary Committee consider expanding the limited number of groups currently protected under the Federal Fair Housing Act.

Forty years after the enactment of the statute, most metropolitan areas in the United States are segregated by race.[xiii] Over two dozen metropolitan areas were identified as "hypersegregated" on the basis of census data from the1980, 1990 and 2000 Census. [xiv] " Hypersegregation" describes Metropolitan Statistical Areas (MSAs) for which census data show high levels of segregation on at least four of five dimensions by which segregation is measured.[xv] Further, virtually all—over 90 percent—of the neighborhoods that were predominantly or exclusively Black in 1990 remain predominantly or exclusively Black in 2000.[xvi]

The consequences of the racial discrimination and segregation are severe, causing personal injury,[xvii] limiting access to good schools and good jobs,[xviii] and making it very difficult for minorities to enjoy appreciating home values and to accumulate net worth.[xix]

For example, A 2006 NCRC review of a sample of our National Homeownership Sustainability Fund (NCRC is a HUD Certified National Housing Counseling Intermediary, providing comprehensive counseling and foreclosure prevention services through the NCRC Housing Counseling Network of partner agencies) program files indicated that abusive lenders targeted minority and low- and moderate-income borrowers and communities with high cost and exotic mortgages.[xx] This was first evidenced in the landmark fair housing case, Hargraves v. Capital City Mortgage Corporation, where the court ruled that the Fair Housing Act prohibited "reverse

redlining. "[xxi] Affirming this point, the chart and graph below reveal that a disproportionate number of our Consumer Rescue Fund (CRF) customers were people of color and people with modest incomes. About 77% of the borrowers in the CRF sample were African-American. Almost half (47%) resided in low- and moderate-income neighborhoods and 83.6% of the borrowers had incomes below $45,000.



Distribution of Cases by Income of Borrower

Income of Borrower	Number	Percent
less than $15,000	6	9.84%
$15,001-25,000	14	22.95%
$25,001-35,000	16	26.23%
$35,001-45,000	15	24.59%
$45,001-55,000	5	8.20%
$55,001-65,000	2	3.28%
$65,001-75,000	1	1.64%
$75,001-85,000	2	3.28%
Total	61	100.00%

The recent studies findings that counseling clients were mostly minority and low- and moderate-income is consistent with NCRC's research and other studies. Taken together, they demonstrate that a disproportionate amount of high cost lending is directed towards minority and working class communities. Traditionally underserved communities suffer from less product choice and consequently are more susceptible to abusive high cost and exotic mortgage lending. This remains a serious fair lending issue.

In the communities of Staten Island and Long Island, New York, NCRC's National Homeownership Sustainability Fund and National Neighbors staff assisted over 100 New York City police officers and fire fighters who purchased homes from an unscrupulous housing

developer and mortgage broker. They were targeted because they were African American and Latino. The broker manipulated the origination system by quickly dumping the fraudulent loans onto the secondary market. For these heroic public employees, the American dream of owning a home became their nightmare. Their State Human Rights Office did not help them. HUD did not help them. DOJ did not help them. Only NCRC and our member organizations stepped up to the plate to work with their civil rights counsel. The Plaintiffs ultimately filed a Title VIII claim in Federal Court.[xxii]

Similarly, NCRC's Housing Counseling Network is intervening in a number of cases where borrowers who are members of protected classes have been victimized by appraisal fraud. A sample of loan files revealed that about one fifth of the homes were overvalued by more than 50% of their true value, and two thirds of the homes were overvalued by 15-50% more than their true value.[xxiii] Inflating appraisals leave borrowers with unaffordable loans that they are then unable to refinance because the loan amounts are higher than the true value of their homes, especially in a cooling housing market. The results are too often loss of homeowner wealth, equity stripping, and/or foreclosure.[xxiv]

Many studies have noted that integrated housing is also the key to integrated schools, which is considered equally important to responsible lending under Title VIII. [xxv] As was the case in the 1960s, whites continue to leave urban neighborhoods for suburban life, which leads to a deterioration of the schools in urban areas.[xxvi] Further, economists for the Federal Reserve Board found that Blacks and Hispanics pay more for home purchases and refinancing than Whites.[xxvii] The National Fair Housing Alliance approximates that annually Blacks and Hispanics experience 3.7 million instances of housing discrimination in rental and housing markets.[xxviii]

For all of these reasons, battling housing discrimination and segregation is one of the most important activities in which we can engage. Enabling a family to move into a neighborhood where employment exists, where there are quality schools, and where there is a vibrant community greatly increases the likelihood that our civil society and economy will flourish.

Fortunately, there are powerful laws against private and public discrimination. Unfortunately, they are not adequately applied or enforced. All civil rights advocates hope the Federal government intensifies the enforcement of Fair Housing laws to protect the housing rights of all Americans.

The Dual Lending Marketplace & Foreclosure

Discriminatory policies and practices that have dominated the mortgage markets in minority communities for nearly a century have predisposed minority communities to declining market values. For example, in the 1930s, the Federal Home Loan Corporation (HOLC) institutionalized redlining and that practice became a hallmark feature of the housing markets for decades after the HOLC closed its doors in 1951. Discriminatory underwriting practices required by housing programs of the Federal Housing Administration and Veterans' Administration further marginalized communities of color. Those policies directly contributed to the current financial vulnerability of minority communities and predisposed them to the worst

behavior of the sub- prime and non-traditional mortgage lending market. Predatory lending is merely the most recent discriminatory practice to undermine the housing markets in African American and Latino communities.

A growing foreclosure crisis confronts America as lending institutions have engaged in new forms of dangerous high-cost and non-traditional lending. As this committee knows, most of the high-cost or sub prime lending made in recent years feature adjustable rate mortgages (ARMs) with low "teaser" rates for the first few years followed by rapidly rising rates. Incredibly, many lenders assessed borrowers' abilities to repay only at the low teaser rates. These loose underwriting standards have created the conditions for a perfect storm as almost 2 million of the ARM loans will re-set or start adjusting upward from their initial rates in 2007 and 2008.[xxix]

We commend the Committee for it's work on HR 4173, and note the importance of the new Consumer Financial Protection Agency working in concert with prudential regulators, the Department of Justice and the Department of Housing & Urban Development's Office of Fair Housing & Equal Opportunity.

As you deliberate about the state of fair housing and the effectiveness of the Fair Housing Act, we respectfully ask to focus upon the all too troubling recent indicator that the African American homeownership rate has significantly fallen from 2004 to the 2009.

According to a Pew Hispanic Center study released in April of 2009, the rate of homeownership for all Americans peaked at 69 percent in 2004 and then declined to 67.8 percent by 2008. For African-American households, it fell to 47.5 percent in 2008 from 49.4 percent in 2004. Latinos, native and foreign-born together, had a longer period of growth, with homeownership rising until 2006, to 49.8 percent, before falling to 48.9 percent last year. Homeownership for native-born Latinos fell to 53.6 percent from a high of 56.2 percent in 2005. Other studies identify a higher drop in the rate of homeownership among African Americans. If the rate had remained at its 2004 high, there would be between 390,000 to 500,000 more African American homeowners today.[xxx]

In fact, we fully expect the rate of homeownership for African Americans and Latinos to drop even further in light of recent problematic lending practices, foreclosure trends and economic developments, and the limitations of the Home Affordable Modification and Refinance Programs.

Homeownership reflects a far larger share of the assets of minorities than of Whites: home equity constitutes two-thirds of African-American families' assets, as opposed to two-fifths for White families'.[xxxi] For the large part, because black homeownership rates still lag significantly behind homeownership rates for White families, the median net worth of African- American households in 2002 was $5,988, while median net worth for White households was $88,651.47[xxxii] These trends, then, are profoundly troubling, not only from a civil rights perspective, but also as an economic indicators.

This is not an equal opportunity recession. Although the national unemployment rate is an

uncomfortable 10.2% as of October, that rate for African Americans exceeds 15 percent, and for Latinos unemployment is approaching 13 percent. The unemployment rate for non-Hispanic Whites, by comparison, remains substantially lower.

Because African Americans and Latinos have comparatively few savings, they are poorly positioned to survive a lengthy bout of unemployment. As a result, potentially millions of African-Americans and Latino households could find themselves falling out of the middle class by the time the economy recovers.

Moreover, African Americans and Latinos were targeted disproportionately for deceptive high cost loans. According to a study by the U.S. Department of Housing and Urban Development, subprime loans are five times more likely in African American communities than in White neighborhoods, and homeowners in high-income Black areas are twice as likely as borrowers in lower-income White communities to have subprime loans.

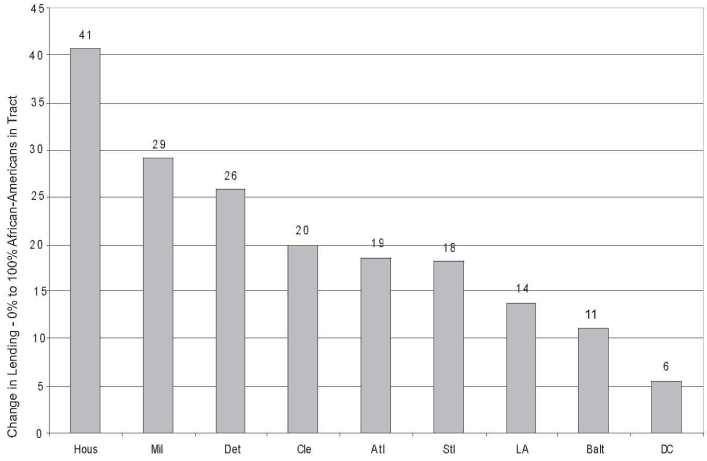
The result is that Blacks and Latinos are over-represented in the foreclosure statistics. African Americans, for example, have experienced a full three-percentage point drop in their homeownership rate since the crisis began.

Research by the National Community Reinvestment Coalition found that predatory lenders aimed their toxic products heavily at women of color. Because African-American children are more likely to reside in female-headed households, black children are also disproportionately harmed as a result of the foreclosure crisis and its attendant stresses.

Finally, in a separate NCRC study, The Broken Credit System, released in 2004, we found that after controlling for risk and housing market conditions, the portion of subprime refinance lending increased when the number of residents over the age of 65 increased in a neighborhood. If a borrower were a person of color, female, and a senior, she was the "perfect catch" for a predatory lender.

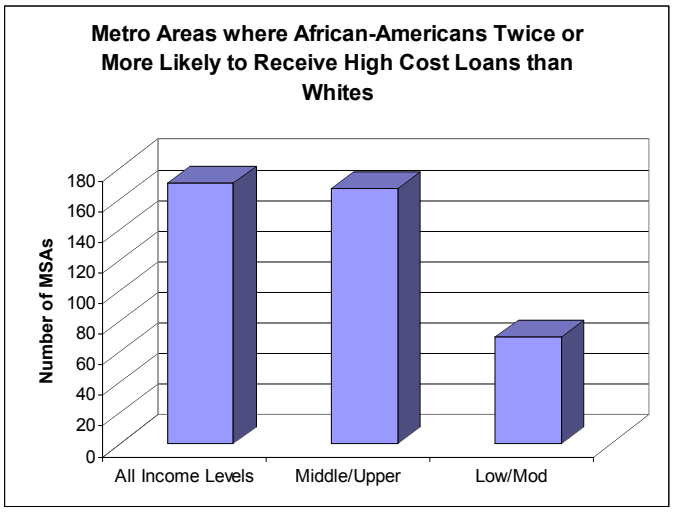
In *The Broken Credit System* report, NCRC obtained creditworthiness data on a one time basis and combined it with 2001 HMDA data.[xxxiii] We found that after controlling for creditworthiness, housing characteristics, and economic conditions, the number of subprime loans increased markedly in minority and elderly neighborhoods in ten large metropolitan areas. Our study revealing pricing disparities was consistent with an analysis conducted by a Federal Reserve economist.[xxxiv]

NCRC selected ten large metropolitan areas for the analysis: Atlanta, Baltimore, Cleveland, Detroit, Houston, Los Angeles, Milwaukee, New York, St. Louis, and Washington DC. After controlling for risk and housing market conditions, however, the chart below indicates the race and age composition of the neighborhood had an independent and strong effect, increasing the amount of high cost sub prime lending.



As expected, the number of subprime loans increased as the amount of neighborhood residents in higher credit risk categories increased. The Center for Responsible Lending also recently used HMDA data with pricing information to reach the same troubling conclusions that racial disparities remain after controlling for creditworthiness.[xxxv]

NCRC, in our 2007 report *Income is No Shield Against Racial Differences in Lending,* analyzed 2005 Home Mortgage Disclosure Act (HMDA) data, and observed striking racial disparities in high-cost lending. If a consumer is a member of a protected class, particularly an African-American or a Hispanic, the consumer is most at risk of receiving a poorly underwritten high-cost loan.



Further, as the above chart indicates, NCRC found that middle-class or upper-class status does not shield minorities from receiving high-cost loans. In fact, NCRC observes that *racial differences in lending increase as income levels increase.*[xxxvi]

Hispanics also experienced greater disparities in high-cost lending compared to Whites as income levels rose. The above chart indicates the five cities were disparities were the greatest. Nationally, LMI MI Hispanics were twice or more likely to receive high-cost loans than LMI whites in 10 MSAs.[xxxvii]

NCRC has consistently maintained that responsible high-cost lending serves legitimate credit needs. Higher-cost loans compensate lenders for the added risk of lending to borrowers with credit imperfections. However, wide differences in lending by race, even when accounting for income levels and credit quality, suggests that more minorities are receiving high-cost loans than is justified based on financial criteria.

Studies undertaken by NCRC and others suggest that minorities are, in fact, receiving a disproportionately large amount of high-cost loans, after controlling for creditworthiness and other housing market factors.

NCRC has also released several other reports documenting the persistence and stubbornness of pricing disparities. For example, our *Homeownership and Wealth Impeded* report uncovered troubling evidence that racial disparities increase when income levels increase,[xxxviii] and similar findings were found in our *2005 report, Fair Lending Disparities: Stubborn and Persistent II*.[xxxix]

In the words of Nobel Prize-winning economist Joseph Stiglitz, the financial system discovered there was money at the bottom of the wealth pyramid and it did everything it could to ensure that it did not remain there. Stated otherwise, the business model for many financial institutions was to strip consumers of their wealth rather than build and improve their financial security.

Ironically, most solutions to date have focused on rewarding the financial firms (and their executives) that created this crisis. But in spite of more than $12.8 trillion of financial support in the form of loans, investment, and guarantees, this approach is not working because consumers continue to struggle in a virtual sea of deceptive mortgage debt and a financial system that is unaccountable to the American public.

The time has come to change the paradigm, and to affirmatively further fair housing. *HR 476 represents a step in the right direction and works to accomplish this national policy priority.*

A particularly disturbing aspect of these lending trends is that they have disproportionately targeted members of protected classes under the Fair Housing Act and negatively impacted our nation's most financially vulnerable households.[xl] In fact, NCRC testing has repeatedly documented and reported on this troubling race line in America.

National Neighbors Fair Lending Testing Confirms Discrimination and HMDA Analysis Findings

Mortgage brokers are the point of entry for most families seeking to buy a home or refinance a mortgage. Prior to the financial crisis at the height of the market, brokers facilitated up to 70% of loans made in this country. While professional and honest brokers serve an important role in the marketplace, unscrupulous brokers, however, set up borrowers for failure the moment they submit applications and sign loan documents. Unfortunately, NCRC has documented through a nationwide testing project or "audit" that too many brokers engage in steering and discriminatory practices.

Housing experts Kathleen C. Engel and Patricia A. McCoy have written that, "When people of color are in the market for home loans, they often do not look beyond sub prime lenders and mortgage brokers." One reason for this, they argue, is a "lingering mistrust of banks" that developed as members of that community experienced past discrimination by banks. [xli] The Joint Center for Housing Studies' William Apgar has characterized the situation especially well:

> *"In a world in which the broker is detached from the lender and the lender is detached from the investor, market feedback loops are broken, or at best are slow to operate. Rather than work to root out abuse, under the current industry structure, some buyers pay more, brokers earn a premium return, and investors are compensated. Yet despite the fact that such high foreclosure rates, if realized, would have potentially devastating consequences for individual borrowers and communities, the [investor] disclosure documents simply state that the pools were priced to compensate investors for bearing the risks. The result is that the impact of foreclosures to borrowers and communities is ignored by the capital markets."*[xlii]

NCRC's National Neighbors initiative regularly engages in fair lending testing, often described as "mystery shopping," and has consistently uncovered disparate pricing and treatment for minorities with the same or better qualifications than whites. NCRC has reached these findings regardless of whether the financial institutions tested are brokers, mortgage companies, or other types of financial institutions.

From 2004 to 2006, with support from the United States Department of Housing & Urban Development Fair Housing Initiatives Program Private Enforcement Initiative, NCRC conducted mystery shopping of financial service corporations, mortgage bankers and brokers, both large and small. Posing as loan seekers, both White testers (the control group) and Black or Hispanic testers (the protected group) met with and called local originators to inquire about their loan options. The protected-class testers were actually given more attractive profiles in terms of their amount of equity, credit standing and employment tenure, and should have logically received better treatment. Instead, NCRC's fair lending testing of mortgage brokers uncovered a 46% rate of disparate treatment based on race and national origin.[xliii]

Our results documented the following patterns:

- African Americans and Latinos were discouraged 25% of the time concerning their efforts to meet with a broker, while white testers were discouraged only 12% of the time in their efforts to obtain credit.

- African Americans and Latinos were questioned about their credit over 32% of the time. White shoppers were only questioned about credit 13% of the time.

- White mortgage seekers had specific products discussed with them 91% of the time, while African Americans and Latinos had specific products discussed with them 76% of the time. Further, White testers received two rate quotes for every one quoted to African American and Latino testers.

- NCRC documented pricing discrimination in 25% of the fair lending tests, and noted that fees were discussed 62% of the time with white testers but only 35% of the time with "protected testers."

- Fixed rate loans were discussed 77% of the time with white testers but only 50% of the time with African American and Latino testers.

These results are troubling and document the fact that even when controlling for credit and individual applicant qualification factors, African Americans and Latinos are being discriminated against in the marketplace and being forced to pay a "race tax" due to unequal access to credit.

The results also affirmed an earlier 2004 NCRC fair lending audit of financial service providers also conducted with support from the HUD Fair Housing Initiatives Program Private Enforcement Initiative, which also found that African Americans and Latinos were treated differently more then 40% of the time.

Testing Vignettes:

Some striking but not uncommon examples or *vignettes* of the testers experiences include the following:

> *At the suburban Baltimore branch of a major sub-prime lender, the White tester was told of a 5.75%, 30 year fixed interest rate, while the Black tester was told the 30 year rate was 8.85%. The White tester was told the 2 year adjustable rate was 4.99% and the Black tester was told the rate for that product was 7.6%. The Black tester was told that since her husband made more money (just slightly more), the lender would rely on the husband's income and credit. The White female tester was not asked about income, nor told about this policy.*
>
> *At the Atlanta office of a major sub-prime lender, the White tester was asked more questions and given far more information. The White tester was given printouts, had options run based on an application, and the loan officer later faxed the White tester a letter outlining options along with a detailed computer printout of the options. The White tester's visit lasted 20 minutes longer during which the loan officer tried to sell the White tester on the company and provided substantive information about loan products. The loan officer did not try to ascertain any information about the Black tester's credit.*

The testers visited the Chicago branch of the sub-prime subsidiary of a major national lender. The White tester was given extensive information about loan products, rates, and monthly payments. The loan officer recommended the White tester refinanced and said a 30 year fixed rate would be 5.5% and cost $715.41 a month, with an interest only "ARM" the payment would be $451 a month, a15 year fixed would be at a 4.3% rate with a payment of $980. The White tester was told of $1,400 in fees. Conversely, the Black tester was treated rudely, made to wait 20 minutes and then told they don't do home equity loans. The Black tester was not given any substantive information, and was given a referral to other lenders.

At the Los Angeles branch of a sub-prime subsidiary of a major national Financial Service Company, the White tester received basic rates and loan information based on the loan officer's review of a computer program. The Black tester did not receive this type of information. While the loan officer acknowledged that the Black tester was qualified based upon the information given, the Black tester was told she could not get rate information without a credit check. The White tester got far more information about loans and the lending process than the Black tester, and the White tester's interview was longer and more thorough.

In 2005 and 2006 NCRC conducted over 100 fair lending tests of more than 60 brokers in six major metropolitan areas throughout the United States including Atlanta, Baltimore, Chicago, The District of Columbia, Los Angeles, and St. Louis. The testing was conducted on the basis of race and national origin.

The testing uncovered a 46% rate of disparate treatment based on race. The findings of this fair lending testing initiative also revealed pervasive discriminatory and "predatory" practices by mortgage brokers in several metropolitan areas across the country. The findings of these tests were quite significant as they illustrated racially discriminatory lending practices, and significant differences in treatment in nearly half of the tests including: charging different interest rates for equally qualified borrowers based on race, steering minority borrowers to non- prime products providing substandard service and treating African-American mystery shoppers with less courtesy than their white counterparts.

The testing also uncovered several practices that may have a disparate impact upon African-American and Latino consumers, and predominately African American or Latino communities. The testing revealed a need for enforcement action to combat discriminatory conduct. Finally, the testing uncovered the need for changes in the policies and practices of many of these brokers in order to make loans more accessible to all consumers on an equal basis.

The types of differences in treatment detected were consistent with earlier testing of the retail subprime marketplace and included differences in: interest rates quoted; information given regarding qualification standards; fees required, acceptable ratios, interest rates, loan programs, and terms of loans; levels of courtesy and service; materials and literature given; number and types of questions asked of the testers. Additionally, the White testers were more often "referred up" to the lender's prime lending division, or to a bank; quoted lower interest rates; were given more detailed information. The White testers were often assumed to be qualified, and given

recommendations based upon assumed qualifications. The Brokers spent more time with the White testers and gave them more advice and recommendations, and the White testers received more follow-up. Some examples of the experiences of testers during this round of testing include:

In a Los Angeles broker test, both the Black and the White testers were able to meet in person with the same broker. The White tester was asked if she would like something to drink, had five different loans discussed with her, and was given information on what the monthly payments would be for four of them. These options included loans with and without her paying points. The Black tester received a quote for only one loan product, and while the loan was described as fixed the product description appeared to be adjustable.

In a Los Angeles test of a broker, both the Black and the White tester met with the same broker. The broker discussed first mortgages with the White tester, but not with the Black tester. She stated to the Black tester that the tester's husband could call and receive more information. No such statement was made to the White tester.

In a Metropolitan Washington D.C. test, the Black tester met with a broker who told him that rates were increasing by a quarter of a point each day, the broker gave him a list of items that would be needed if they decided to go with the company. At no time did the broker provide any rate or product information. The White tester was given a price quote for 6.375% with no points. The broker calculated the monthly payment for him, gave an estimate of fees ($3000 to $4000, with $318 upfront for the appraisal and credit check) and advised a 3 to 4 week turnaround time. The White tester was not given a list of items needed, only a business card. The White testers interview lasted 22 minutes, while the protected tester's lasted 12 minutes.

In a test of a Baltimore broker, testers were given different recommendations and levels of service. The White tester was told that her current rate of 7.75% could be reduced to 5.75% and she could get cash out in a first mortgage transaction. The Black tester was told that her rate of 8% was high, but the broker did not give her a first mortgage scenario in which she could reduce the rate. Instead, he recommended the Black tester get a 8.75% HELOC. The broker told the Black tester that she was getting less competitive pricing because she was getting a loan for less than $70,000.

At an Atlanta mortgage broker, the Black tester asked for a $25,000 loan for home improvement. The broker told the Black tester that he did not do loans less than $75,000 and he referred the Black tester to a local bank loan officer. The test lasted only five minutes. When the White tester visited the same the broker the White tester was also referred out for a second mortgage loan, but the broker also met with the White tester for thirty five minutes and gave the White Tester information on three different first mortgage loans options with cash out. The broker stated to the White tester that he knew of an appraiser who could ensure that the loan would be within 80% LTV because he "knew how to get value out of homes."

FORECLOSURE PREVENTION SCAMS

Foreclosure prevention and mortgage rescue modification scams present a growing concern for the consumer protection community. Numerous consumer complaints and NCRC's mystery shopping investigation confirm that companies that pose as rescuers are a pervasive threat to community stability and sustainable homeownership. In order to address this concern, NCRC proposes that strong federal consumer protection legislation be enacted and that HUD funding for "FHIP's" and "FHAP's" be increased. While HUD has launched a program in cooperation with NeighborWorks, the FTC, and the civil rights community, more still needs to be done.

Responding to an increased number of rescue scam complaints, and concerns from regulators, NCRC undertook a testing initiative to learn more about this emergent industry and its operators. Our methodology involved replicating the behavior of a troubled borrower who is on the cusp of foreclosure, is seeking help, and is a viable candidate for assistance.

Through this investigation NCRC examined the practices of over 100 foreclosure prevention service providers. Though this audit documented many reputable foreclosure prevention providers, it also uncovered numerous suspicious practices including: Advertisements that led consumers to falsely believe that the service was affiliated with a government agency, charging high upfront fees of several thousand dollars, guarantees of success to draw the consumer in, consumers being told not to pay their mortgage and to send the money to the service provider instead, consumers being told that they could turn over their deed to the service provider and stay in their home. It was particularly noteworthy that in most instances the exorbitant fees being charged to consumers were for the same services that are offered by non-profit housing counseling agencies free of charge.

In addition to the misleading advertisements, a great number of service providers had other suspicious practices. Many had numbers that were rerouted to service provider in California or in Florida. Many providers seem to operate the same service under different names. Many of the service providers disappeared during the pendency of the testing project, which is consistent with the "fly by night" nature of this emergent industry.

Testing of foreclosure prevention service providers reveals that consumers experience a wide range of treatment. In the best-case scenario, consumers receive fair advice, and cost-effective strategies for preserving homeownership, though these same services can be obtained at no charge from nonprofit or public organizations. However, many companies are revealed to be sources of misinformation. Further testing is needed to fully assess the nature of the problem, but many avenues for consumer-protection enforcement are already apparent.

The testing results underscore the need for an effective legislative solution. Modification and/or refinance companies are often operating in a regulatory vacuum, without any accountability. Left unchecked, these re-invented industry players will create problems for the most financially vulnerable consumers. Given the current economic environment, appropriate legislation is needed, and soon. NCRC recommends that the Foreclosure Rescue Fraud Act of 2009 be strengthened and passed with all due speed.

NCRC is now proposing to conduct further testing under the FHIP program to document racial disparities in this exploding marketplace.

The Impact of Steering, Equity Stripping & Discriminatory Loans

Price discrimination is not often discussed in the context of predatory lending, but we believe that it is a central element of both predatory lending and fair lending violations. When a borrower is steered towards a loan with an Annual Percentage Rate (APR) two or three percentage points higher than the loan for which she qualifies, the borrower will pay tens or hundreds of thousand of dollars more in mortgage costs due to the discrimination. This represents a substantial loss of wealth, which could have been used to send a child to college or start a small business. When several residents of a minority or working class neighborhood suffer price discrimination, the neighborhood loses millions of dollars that could have been reinvested in neighborhood businesses and other institutions to build wealth.

The effects of the housing crisis on neighborhoods will be significant. According to the Center for Responsible Lending, foreclosures in 2005 and 2006 alone led to the devaluation of 44.5 million homes. *The total decline in house values and tax base from nearby foreclosures was estimated to be $223 billion*.[xliv]

Additional research by Dan Immergluck of the Georgia Institute of Technology shows that for "every foreclosure within one-eighth of a mile of a single-family home, property values are expected to decline by approximately 1 percent. For neighborhoods with multiple foreclosures, property values are impacted even more. In Chicago, we estimated the cumulative impact of two years of foreclosures on property values to exceed $598 million, for an average of $159,000 per foreclosure."[xlv]

When houses are foreclosed and then abandoned, as they often are, cities must often absorb the cost of demolishing or otherwise dealing with them. According to Engel and McCoy, "Studies calculating the costs to cities of resolving abandoned and foreclosed residential properties find that they range from $430 to $40,000 per home."[xlvi]

And when neighborhoods deteriorate through foreclosures that lead to demolition, crime often increases. A separate study by Immergluck and Geoff Smith of the Woodstock Institute in Chicago estimates that for every one percent in a city's foreclosure rate, crime increases 2.33 percent.[xlvii]

Of course, declining property values and increasing foreclosures are associated with reduced property tax revenue and increased government costs such as fire and police services. On one estimate, state and local governments will lose more than $917 million in property tax revenues as a result of lower housing values stemming from subprime foreclosures.[xlviii] This has a tremendous effect on funding for schools and provision of municipal services of all types.

Credit Rating Agencies

Credit rating agencies reaped millions of dollars in fees for providing inflated ratings to residential MBS and collateralized debt obligations. These practices contributed to the funding of hundreds of billions of dollars of loans that were not underwritten for long-term sustainable homeownership. The President's Working Group on Financial Markets in March 2008 cited "the erosion of market discipline" by credit ratings agencies and "flaws in credit rating agencies' assessments" as being among the underlying cause of financial market collapse. More recently, the Congressional Oversight Panel asserted that credit rating agencies perhaps played the "decisive" role in endangering the financial system.[1]

NCRC has filed fair lending complaints with the United States Department of Housing & Urban Development Office of Fair Housing & Equal Opportunity against Fitch, Inc., Moody's Investors Service, and Standard and Poor's. NCRC alleges that these agencies substantially contributed to the housing and foreclosure crisis in African-American and Latino communities by making public misrepresentations about the soundness and reliability of subprime securities' ratings. The rating agencies fueled imprudent high-cost mortgage lending disproportionately targeted to minority communities, which contributed to high-default and foreclosure rates in violation of the *Fair Housing Act*.

The State of Fair Housing Enforcement

Strong evidence suggests that the lending market is not working in an efficient or equitable manner for working families and that the state of fair lending and consumer protection regulatory infrastructure is not at the point where it can effectively combat the enormous barriers in the marketplace for traditionally underserved populations.

Current federal fair lending efforts are inadequate to protect the interests of working families and minority consumers. In September of 2005, the Federal Reserve Board stated that it referred about 200 lending institutions to their primary federal regulatory agency for further investigations based upon the Federal Reserve's identification of significant pricing disparities in HMDA data.[xlix] An industry publication subsequently quoted a Federal Reserve official as stating that these lenders accounted for almost 50 percent of the HMDA-reportable loans issued in 2004.[1] In September of 2006, the Federal Reserve Board referred a larger number of lenders, 270, to their primary regulatory agencies for further investigations.[li]

Unbelievably and inconceivably, not a single case of discrimination or civil rights violations has arisen from the roughly 470 Federal Reserve referrals. While the HMDA data analysis by itself cannot conclude which financial institutions were discriminating, it is beyond credulity to

[1] Congressional Oversight Panel, Special Report on Regulatory Reform: Modernizing the American Financial Regulatory System – Recommendations for Improving Oversight, Protecting Consumers, and Ensuring Stability, January 2009, p. 40. http://cop.senate.gov/documents/cop-012909-report-regulatoryreform.pdf

conclude that Federal Reserve investigators could be so consistently inaccurate in their assessments about possible violations of fair lending laws. When the HMDA data was not as detailed, the Department of Justice in the 1990s settled about a dozen cases alleging discrimination with major lenders including Long Beach Mortgage and Huntington.[lii] These settlements had industry-wide impacts, as lending institutions knew that the Department of Justice was serious about enforcing the nation's civil rights laws. A resumption of these settlements by the Department of Justice would send a clear signal to the bad actors in the lending industry.

HUD recently announced that it has implemented several measures, which include (1) revising its Title VIII Investigator's Handbook; (2) implementing new processes to improve the timely completion of inquiries; (3) joint training between FHEO investigators and attorneys from HUD's Office of General Counsel (OGC) to promote collaborative investigations; and (4) FHAP attorney training to facilitate idea sharing and consistency of enforcement. Additionally, HUD established a Fair Housing Training Academy to teach effective investigation techniques to FHAP investigators throughout the country, created a systemic unit to investigate pattern and practice issues and to create greater consistency in fair housing enforcement, and launched a national fair lending education and outreach campaign to educate consumers about their rights and resources that are available. HUD's FHEO is also implementing systemic testing and investigations. These are important steps forward, but additional steps are required as demonstrated by a recent U.S. General Accounting Office (GAO) Report.

In April 2004, the GAO[liii] conducted a study that reviewed several aspects of the fair housing enforcement process. Both timeliness and effectiveness of the enforcement process were listed as being continuous concerns. According to the study, although the Fair Housing Act mandates HUD to complete its investigation within 100 days, unless it is impractical to do so, only 41% of FHEO investigators and 33% of Fair Housing Assistance Program (Local government agencies who have laws that are substantially equivalent with the Federal law and have been authorized to investigate complaints by HUD FHEO) investigators complied with the 100 day processing requirement. Additionally, the report noted that between 1996 and 2003, the most frequent outcome of investigations received a no reasonable cause finding. The Statement of Work for this procurement concluded that of the approximately 7500 FHEO inquiries filed each year, as few as 39% to as many as 95% of the inquiries are deemed non-jurisdictional, and thus never become filed complaints.

In the broader real estate market, recent reports document that the Federal government is filing fewer housing discrimination charges even as consumer complaints against landlords, real estate agents and mortgage brokers have risen steadily. Many renters and buyers who seek help from the U.S. Department of Housing and Urban Development are unlikely to get relief for their complaints, which can include alleged discrimination by landlords and sellers based on race, religion, sex or disability.[liv] Unfortunately, it has also been our experience in several of the fair lending complaints that NCRC has filed, that we have found a lack of expertise and capacity for processing the complaints among the HUD staff in the field offices or local Fair Housing Assistance Programs. This is primarily due to limited resources, but has prompted NCRC and many civil rights groups to rely on the HUD Conciliation process, or in the alternative, direct negotiation with respondents or Federal litigation.

If HUD is to implement the testing included in HR 476, it will require additional resources and funding to establish the necessary capacity to successfully administer the national testing program. Ironically, the private sector has embraced the utility of "testing" or mystery shopping. The time has come for HUD and other regulators to augment their testing program for research, enforcement, and to ensure equal access to housing, financial products and a safe and sound housing market free from discrimination. Of course, enforcement based testing need not be statistically relevant, but ongoing audit based testing will prove helpful to policy makers in the fair housing planning and legislative process. HUD Secretary Cuomo, for example, applauded the work of the Fair Housing Council of Greater Washington, now the Equal Rights Center, which conducted testing over a period of four years, each year probing a different industry, which led to new public and private sector best practices, enforcement, fair housing planning activities, dialogue and served as a model for the last HUD National Housing Discrimination Study. The HUD study documented that the greatest share of discrimination faced by African American and Hispanic home seekers was being told that units were unavailable when they were being actively shown to non-Hispanic whites.[lv] Asian and Pacific Islander Americans faced similar levels of discrimination, both as renters and prospective home buyers. It has been almost a decade since HUD published these national studies, and further studies are needed to develop understand the extent and scope of housing discrimination across the country.

Fair Housing Planning & Affirmatively Furthering Fair Housing

HUD administers the Housing and Community Development Act of 1974, as amended, which is the dominant statute for the Community Development Block Grant (CDBG) program. HUD, through the program, requires that each federal grantee certify to HUD's satisfaction that (1) the awarded grant will be carried out and administered according to the Fair Housing Act, and (2) the grantee will work diligently to affirmatively further fair housing. This certification to HUD was used much more effectively in the past decade and NCRC strongly recommends that this oversight panel examine the Consolidated Plan process not only for what can be accomplished through local, regional or state fair housing planning and partnerships, but also as a model for national fair housing policy implementation.

The Anti-Discrimination Center of Metro New York with assistance from the United States Department of Housing & Urban Development recently settled a civil case against Westchester, County in New York State[lvi] alleging that the county should have pushed communities to desegregate, and if they failed to do so, deny them a share of the $45 million in community development grants the county received from the federal government from 2000 to 2005. The lawsuit also alleged that the county made a false claim when it certified that the communities had met the demands of the Fair Housing Act, which include a requirement to "affirmatively further" fair housing.

Community groups and the general public would have much more assurance that fair housing and fair lending reviews were rigorous if the federal agencies subscribed to similar fair housing planning goals. For example, based on the risk factors identified in HMDA and CRA data screening-- Did the agencies probe for race or gender discrimination? Did they scrutinize loans

for evidence of flipping or steering? A detailed description of the types of fair lending tests conducted and the results of those tests would provide a level of public confidence in fair lending enforcement that is currently lacking. Through Federal Fair Housing Planning, with a cabinet level appointment coordinating the effort, all Federal departments could more effectively celebrate and work for open housing.

HR 476 is critically needed to support a comprehensive national fair housing planning effort to document ongoing discriminatory housing and mortgage lending practices and understand the depth of the problem. NCRC will continue to work at all levels, through litigation, enforcement services, testing investigations, training and research to further our coalition's goals of identifying and eradicating fair housing and lending violations. Further, NCRC and our members recommend that 3% of Federal Block Grants go to affirmatively further fair housing and fair housing planning on at the state, regional and local level.

For years the federal government utilized a guideline that 3% of Community Development Block grants be dedicated towards fair housing planning. These guidelines were de-emphasized during the late Clinton years, and were wholly disregarded under the Bush Administration.

Channeling these funds towards fair housing planning would ensure that all Federal and state agencies work collaboratively with each other and the public and private sectors, to realize our nation's long established and accepted policy of equal housing and employment opportunity, equal professional service and equal treatment under the Americans with Disabilities Act (ADA). Currently, all states and localities that receive funding from the Community Development Block Grant must have Analysis of Impediments to Fair Housing plans that are updated every five years. These plans should act as guides for municipalities, be aggressively enforced and be updated every three years to reflect changes in the market. All Federal agencies should ensure that their public and private sector partners are working to affirmatively further fair housing, and re-establishing the 3% guideline will steer state and local governments in the right direction.

Increase HUD Funding for office of Fair Housing and Equal Opportunity (FHEO)

The United States Department of Housing and Urban Development (HUD) is dedicated to ensuring that every American has access to safe, decent, affordable housing. Within HUD, the office of Fair Housing and Equal Opportunity (FHEO) is one of largest civil rights agencies in the country, with a staff of over 600 in 54 offices around the United States.

Under the leadership of the Obama Administration and Assistant Secretary of FHEO John Trasvina, the Office has expanded its efforts to enforce fair housing laws via state and local agency partners, both public and private.

For FY 2010, HUD requested and received $72 million in funding for the Fair Housing and Equal Opportunity programs the Fair Housing Initiatives Program (FHIP) and the Fair Housing Assistance Program (FHAP).[2] While this represented an $18.5 million increase over the

[2] See H.R. 3288: Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010.

previous year, substantially more resources need to be dedicated to these key programs if we want to take the necessary steps to adequately assess the scope and depth of housing discrimination nationwide. NCRC recommends increasing appropriated funding for these programs.

To effectively administer and enforce America's fair housing and fair lending laws, the FHEO staff needs additional personnel and training. By more adequately supporting and staffing its offices across the country, FHEO can better serve and protect the civil rights of all persons covered by the law. Further, HUD can help build the capacity of FHIP and FHAP partners, by providing additional funding, coordinating systemic investigations, and providing technical assistance and conducting workshops.[3] These workshops can provide valuable tools to help local and statewide organization to respond challenging or emerging fair housing issues within their jurisdictions. They also can act as forums where HUD officials can receive feedback directly from those on the front lines of combating housing discrimination.

Prudential Regulators Need to Conduct In-House Supervisory Testing

The House of Representatives recently passed legislation to create a new Consumer Financial Protection Agency. In the interim before the Senate passes similar legislation to create the Agency, the current government regulators charged with enforcing fair housing laws must be fully supported to that end.

The Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), the Office of the Comptroller of Currency (OCC) and the Federal Reserve Board (the Fed), all contain civil rights divisions dedicated to enforcing fair lending and fair housing law. NCRC has worked and will continue to work with these agencies, as well as the Justice Department, to help design and implement testing "mystery shopper" programs as described above. Such testing has proven critical in detecting and prosecuting those who violate fair housing and fair lending laws. However, as mentioned above, the task of comprehensively addressing ongoing discrimination would be most effectively addressed through a cabinet level position. A Secretary of Civil Rights would be able to coordinate among the various agencies while leveraging the strength of the many thousands of federal employees dedicated to ensuring compliance with civil rights laws.

IV. Recommendations

Pass HR 476 to Bolster Fair Housing Law Enforcement

Enforcement activity should be coordinated on an interagency basis and focus on issues identified by Federal, state and local fair housing analysis of impediments and plans. Federal agencies should annually report to Congress the number of fair housing and lending

[3] Typically, a 1-2 day workshop can cover the following topics: 1. Organizational development (board development, tax status, etc.) 2. Financial management. 3. Grant applications. 4. Performance measurement and evaluation. 5. Strategic planning.

investigations, types of investigations, and outcomes of these investigations. National testing audits should be coupled with state and local enforcement based follow-up by qualified FHIP and FHAP agencies.

HUD, the Department of Justice and State Fair Housing Assistance Program agencies must investigate, mediate and charge more complaints, including pattern and practice, architectural accessibility and fair lending matters. Regulatory capacity to investigate national fair lending systemic investigations must be also increased including investing in training, staff resources, and interagency collaboration. Congress should also act to ensure that claims that present ongoing acts of discrimination are permitted. This is particularly important in design and construction and fair lending matters.

Create a Cabinet Level Civil Rights Position to Coordinate National Civil Rights Policy

Equal opportunity in housing, employment and public accommodations are core to our nation's democratic values. The Creation of a Cabinet level civil rights position will affirm our nation's commitment to an open society while ensuring that we effectively leverage and coordinate all Federal resources to affirmatively further fair housing. Only a holistic approach, coordinating all Federal agencies – from the HUD to the Commerce Department to Education – will produce sustainable communities that celebrate our nation's diversity.

Establish a Federal Interagency Fair Housing Planning Policy For All Federal Programs and Recipients of Federal Funds

Modeled on HUD's state requirement, all Federal agencies would have to ensure to Congress' satisfaction that all agencies administer their programs and ensure that their public and private sector partners work to affirmatively further fair housing. When a Cabinet level position is created, this would become a component of that office. Regarding to state, regional and local consolidated plan fair housing planning activities, HUD should issue stronger regulations that ensure meaningful analysis of impediments documents that are updated every three years and ensure progress by localities in overcoming the issues in identified. Further, re-establish the rule of thumb that entitlement communities need to apply three percent of CDBG support to programs that affirmatively further fair housing with meaningful oversight by the HUD Secretary.

Fair Housing & Fair Lending Enforcement Must be More Transparent and Effective

In order to make this process more transparent and thereby increase public confidence in the process, the federal agencies should annually report to Congress how many fair housing and lending investigations they have conducted, the types of investigations, and the outcomes of these investigations. This annual reporting should also include information on fair lending compliance exams conducted in conjunction with CRA exams and HUD's processing of fair lending complaints. Enforcement activity should be coordinated on an interagency basis and

focus on issues identified by Federal, State and Local Fair Housing Analysis of Impediments and Plans. Coordination, by definition, should include Federal, State and Local agencies and Fair Housing Assistance Program and Fair Housing Initiatives Program organizations coordinating effective fair housing programs. Implicit in this recommendation is that both HUD, the Department of Justice and State Fair Housing Assistance Program agencies must investigate, mediate and charge more complaints, including pattern and practice, architectural accessibility and fair lending matters. Regulatory capacity to investigate national fair lending systemic investigations must be also increased. This will require an investment in training, staff resources, and interagency collaboration. Congress should also act to ensure that claims that present ongoing acts of discrimination are permitted. This is particularly important in design and construction and fair lending matters.

Support for Fair Housing Agenda and a Financially Inclusive Society

HUD's Fair Housing Initiatives Program (FHIP) and the Fair Housing Assistance Program (FHAP) provide funds for nonprofit organizations, local and state agencies, respectively, to engage in fair housing and fair lending enforcement, complaint processing, education, and outreach activities. For the next fiscal year, HUD requested $72 million for these programs. While this request was substantively met, it is critical that these funds be allocated in an equitable way that does not leave entire communities stranded. NCRC believes an appropriate way of determining funding for fair housing programs would be to allocate a proportional commitment indexed to indicators such as levels of segregation, racial disparity in lending, foreclosure rates, and other measurements of inequality.

Expand the Number of Groups Who Are Identified as "Protected Classes" under Title VIII

NCRC strongly recommends that this Committee consider expanding the limited number of groups currently protected under the Federal Fair Housing Act. Many States and localities have added Age, Source of Income, Military Service and Sexual Orientation, as protected classes due to reports and complaints that have documented discrimination in housing against members of these groups.

California, Connecticut, the District of Columbia, Hawaii, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont, and Wisconsin have laws prohibiting discrimination against gays or lesbians. California, Connecticut, Minnesota, New Mexico, Rhode Island and New York City also protect transgender individuals. In addition, many cities have passed laws that make discrimination on the basis of sexual orientation illegal, including Atlanta, Chicago, Detroit, Miami, New York, Pittsburgh, St. Louis, and Seattle.

Source of Income Laws to protect consumers who receive public assistance or HUD Section Eight Vouchers have been enacted in California, Connecticut, Minnesota, North Dakota, Wisconsin, the District of Columbia, Chicago, New York City. Examples of source of income discrimination complaints include, "We don't take people on SSI." "Two years steady employment required." "Each roommate has to make three times the rent." "I've found that

people on public assistance don't fit in well here." "We don't give home loans unless you are employed full-time." "Even if you have Section 8, you must make three times the full rent." "Don't bother applying if you don't have a job."

New York, the District of Columbia, Illinois, & Massachusetts have passed laws against housing discrimination against those in military service, which includes protection for active military members and veterans.

We recommend that the House Judiciary Committee amend Title VIII to include these groups, and also consider others as appropriate.

Support Public & Private Partnerships that Celebrate Fair Housing

Congress should support innovative programs and partnerships among communities, real estate providers, financial institutions and other market participants designed to focus the fair housing movement on the importance of realizing racial and economic integration. Particularly, partnerships that celebrate neighborhood diversity, smart growth & environmentally significant programs, and those that empower open housing and strong tax bases utilizing a comprehensive fair housing plan should be funded. Congress should also consider investment tax benefits or similar public sector incentive support, i.e., community development finds, CDFI, etc. to overcome identified fair housing impediments.

Expand The Community Reinvestment Act to Non-Bank Lending Institutions

Large credit unions, investment banks, rating agencies, insurance providers and independent mortgage companies do not abide by CRA requirements. NCRC and Government Accountability Office (GAO) research concludes that large credit unions lag behind CRA-covered banks in their lending and service to minorities and low- and moderate-income borrowers and communities.[lvii] In reviewing the role of Title VIII, we ask that you collaborate with the House Financial Services Committee and consider *the Community Reinvestment Modernization Act of 2009* or HR 1479, co-sponsored by Rep. Eddie Bernice Johnson and Luis Gutierrez.

HR 1479 will expand the CRA to cover mortgage companies, insurance companies, securities firms, and non-depository affiliates of banks, as well as mainstream credit unions. It also increases the number of geographical areas on CRA exams to include areas where banks make loans through brokers and other non-branch channels. Unlike their counterparts, The Federal Reserve Board, in its review of HMDA data, found that bank lending exhibited fewer disparities in geographical areas covered by their CRA exams than in areas not covered by their exams.[lviii] Lastly, HR 1479 requires that CRA exams consider lending, investment, and services to monority communities in determining a regulated institution's score. CRA's mandate of affirmatively meeting credit needs is currently incomplete as it is now applied only to low- and moderate-income neighborhoods, not minority communities.

Enhance the Quality of HMDA Data

NCRC believes that Congress and the Federal Reserve Board (which implements the HMDA regulations) must enhance HMDA data so that regular and comprehensive studies can scrutinize fairness in lending. More information in HMDA data is critical to fully explore the intersection of price, race, gender, age, and income.

The first area in which HMDA data must be enhanced is pricing information for *all* loans, not just high-cost loans. The interest rate movements in 2005 demonstrate the confusion associated with classifying the loans that currently have price information reported. Economists as well as the general public do not know whether to call the loans with price reporting, "subprime," "high-cost," or something else. If price were reported for all loans, the classification problems would be reduced. All stakeholders could review the number and percentages of loans in all the price-spread categories. The most significant areas of pricing disparities could be identified with greater precision.

HMDA data must contain credit score information similar to the data used in NCRC's "Broken Credit System" report released in the winter of 2003. For each HMDA reportable loan, a financial institution must indicate whether it used a credit score system and whether the system was their own or one of the widely used systems such as the Fair Isaac Corporation (a new data field in HMDA could contain 3 to 5 categories with the names of widely used systems). The HMDA data also would contain an additional field indicating in which quintile of risk the credit score system placed the borrower.

Another option is to attach credit score information in the form of quintiles to each census tract in the nation. That way, enhanced analyses can be done on a census tract level to illustrate whether pricing disparities still remain after controlling for creditworthiness. This was the approach adopted in NCRC's "Broken Credit System" and in studies conducted by Federal Reserve economists.

Finally, HMDA data must contain information on other key underwriting variables including the loan-to-value and debt-to-income ratios as proposed by the *Community Reinvestment Modernization Act of 2009 (H.R. 1479)*, mentioned above. H.R. 1479 would also create a database on foreclosures and delinquencies that would be linked with HMDA data. This would be an important data enhancement resource that would help policymakers understand which loan terms and conditions (such as specific loan-to-value ratios and fixed or ARM loans) are more likely to be associated with delinquencies and foreclosures.

Additionally, homeowner's insurance is essential to acquiring and maintaining housing. Currently, there is a limited amount of publicly accessible data available about where homeowner's insurance policies are being written, the types of policies being written, how much coverage is being provided and what is the cost of each individual homeowner's insurance policy. HR 1479 would require data similar to the Home Mortgage Disclosure Act (HMDA) to homeowner's insurance and would allow government agencies and advocacy groups to understand the overall amount of coverage offered to consumers by homeowner's insurance

providers and identify any disparities that may exist among those protected by the Fair Housing Act.

Conclusion

NCRC's 600 member organizations strongly support the creation of a Cabinet level civil rights position to coordinate our nation's historic commitment to open housing. We also respectfully request that this Committee act to ensure that all of the Federal regulators that are charged with enforcing the Fair Housing Act do so with transparency, and in a coordinated and effective manner to ensure that the United States remains economically competitive and retains a strong tax base.

Further, a renewed commitment to national, state and local fair housing planning and testing is required, coupled with a meaningful policy commitment that recognizes the critical role that an open housing market represents to a viable economy.

Despite the enactment of the Federal Fair Housing Act over forty years ago, the dual lending marketplace continues to flourish and reinforce housing discrimination and segregated housing patterns that preclude racial diversity and inclusiveness. This not only affects our communities, but also affects our entire society. To quote Dr. Martin Luther King Jr., "We may have all come on different ships, but we're in the same boat now."

Thank you and we look forward to working with you in the future.

[ii] National Neighbors, a program of the National Community Reinvestment Coalition, is dedicated to creating public and private sector partnerships and programs that promote racial and cultural equality, opportunity and diversity. It does this by increasing multi-cultural dialogue and access, influencing public policy, and developing national models that support healthy and sustainable communities through the realization of our nation's civil rights laws. Through the National Neighbors initiative, NCRC convenes, supports and pursues workshops, conferences, investigations of civil rights complaints, systemic "testing," education and outreach, fair housing planning and "best practice" compliance initiatives. National Neighbors provides technical assistance to NCRC's members in urban, suburban and rural communities to promote economic mobility and ensure fair housing for working families throughout our nation. National Neighbors advances fair lending and fair housing through multifaceted programs, including: private enforcement; education and outreach; fair housing planning; comprehensive voluntary compliance services; and testing and building partnerships among communities, real estate providers, financial institutions and other market players.

[ii] See for example, NCRC v. Southstar, NCRC v. Wilmington Finance, NCRC v. Novastar Financial, NCRC v. Accredited Mortgage, NCRC v. Allied Mortgage, NCRC letter to SEC concerning role of Rating Agencies in sub-prime market failure (2008), and other enforcement actions cited at www.NCRC.org.

[iii] The Attorney General's 2008 Annual Report To Congress Pursuant To The Equal Credit Opportunity Act Amendments Of 1976 Submitted By Grace Chung Becker Acting Assistant Attorney General, April 24, 2009

[iv] See *Segregation: The Rising Costs for America* – which documents how discriminatory practices in the housing markets through most of the past century have produced extreme levels of residential segregation that result in significant disparities in access to good jobs, quality education, homeownership attainment and asset accumulation between minority and non-minority households. Edited by James H. Carr and Nandinee K. Kutty.

[v] National Advisory Council on Civil Disorders, Report on of the Commission on Civil Disorders vi at 92. (1968) (hereinafter Kerner Report)

[vi] Id.

[vii] See Trafficante v. Metro Life Insurance Company, 409 U.S. 205, 211 (1972), quoting Senator Mondale

[viii] 114 Cong. Rec. 6000 Statement of Senator Brooke.

[ix] Trafficante, at 409-412 (applying generous construction of standing to Fair Housing Claims)

[x] Mayor and City Council of Baltimore v. Wells Fargo Bank, Complaint for Declaratory and Injunctive Relief and Damages, Page 2. Baltimore has been hit especially hard by foreclosures in recent years. Foreclosure activity increased fivefold from the first to second quarter of 2007, and there have been more than 33,000 foreclosure filings since 2000. But this wave of foreclosures has fallen disproportionately on Baltimore's African-American communities. In 2005 and 2006, two thirds of the banks foreclosures were in census tracts that are more than 60 percent African-American, whereas just 15.6 percent were in tracts that are less than 20% African-American

[xi] See HUD National Housing Discrimination Study (HDS) 2000; See also John Yinger, Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination 33-35 (Russell Sage 1995); See also John Yinger, Access Denied, Access Constrained: Results and Implications of the 1989 Housing Discrimination Study 80-85, in Clear and Convincing Evidence: Measurement of Discrimination in America (Michael Fox and Raymond J. Struyk, eds., Urban Institute Press 1993).

[xii] See U.S. Dept. of Housing and Urban Development, 1995 Annual Report to Congress: The State of Fair Housing in America 5-10 (describing discrimination on the bases of sex, disability, and familial status); id. at 47 (listing numbers of complaints filed). See also Michael H. Schill and Samantha Friedman, The Fair Housing Amendments Act of 1998: The First Decade, 4 Cityscape 57, 61-64 (1999) (providing more recent information about the numbers of complaints on these bases).

[xiii] See Douglas S. Massey and Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass 61-78, 221-223 (Harvard U. Press 1993).

[xiv] Massey and Denton, supra note 3 at 74-75; Nancy A. Denton, "Are African Americans Still Hypersegregated?," in Residential Apartheid: The American Legacy 63 (Robert D. Bullard et al. eds., UCLA Press 1994).

[xv] See Massey and Denton, supra note 3, at 74-75.

[xvi] Rawlings, L., et. al., "Race and Residence: Prospects for Stable Neighborhood Integration," in Neighborhood Change in Urban America, n. 3 (March 2004), p. 2.

[xvii] See Gwendolyn Brooks, "The Ballad of Rudolph Reed," in Blacks (Third World Press 1991).

[xviii] See Massey and Denton, supra note 3, at 149-153, 160-162; Gary Orfield, Segregated Housing and School Resegregation, in Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education 291-330 (Gary Orfield et al. eds. New Press 1996).

[xix] See William A. Darity, Jr., and Samuel L. Myers, Jr., Persistent Disparity: Race and Economic Inequality in the United States Since 1945, at 149-154 (Edward Elgar 1998); Melvin L. Oliver and Thomas M. Shapiro, Black Wealth/White Wealth: A New Perspective on Racial Inequality (Routledge 1995); John Yinger, Closed Doors, Opportunities Lost, supra note 1.

[xx] For more detail about the CRF fund, see the report by NCRC and the Woodstock Institute, *Asset Preservation: Trends and Interventions in Asset Stripping Services and Products*, September 2006, at

http://www.ncrc.org/policy/analysis/policy/2006/2006-09_LifetimeOfAssets_NCRC-WoodstockPaper.pdf

[xxi] Hargraves v. Capital City Mortgage Corp**.** C.A. No. 98-1021 (U.S. District Court, D. D.C.)

[xxii] See www.consumeraffairs.com/news/housing_scam.html

[xxiii] See NCRC's report*, Predatory Appraisals: Stealing the American Dream*, June 2005, http://www.ncrc.org/responsible-appraisal/pdfs/AppraisalReport.pdf

[xxv] See Gary Orfield, Unexpected Costs and Uncertain Gains of Dismantling Desegregation, in Dismantling Desegregation, supra note 8, at 73, 105; Gary Orfield, Metropolitan School Desegregation Impacts on Metropolitan Society, 80 Minn. L.Rev. 825 (1996); William L. Taylor, The Continuing Struggle for Equal Education Opportunity, 71 N.C. L.Rev. 1693 (1993); Institute of Race and Poverty, Examining the Relationship between Housing, Education, and Persistent Segregation (U. Mn.1998); Myron Orfield, Metropolitics: A Regional Agenda for Community and Stability 90 (Brookings Institution/Lincoln Institute of Land Policy 1997); Florence Wagman Roisman, Sustainable Development in Suburbs and Their Cities: The Environmental and Financial Imperatives of Racial, Ethnic, and Economic Inclusion, 3 Widener L.Symp.J. 87, 106 (1998).

[xxvi] American Metropolitics: The New Suburban Reality. Myron Orfield, 2002.

[xxvii] Robert B Avery, Kenneth P. Brevoot and Glenn B. Canner, "Higher-Priced Home Lending and the 2005 HMDA Data." Federal Reserve Bulletin (2006) A 123-166.

[xxviii] NFHA 2006. "Unequal Opportunity: Perpetuating Housing Segregation in America, Fair Housing Trends Report." Washington, DC NFHA.

[xxix] "Regulators are Pressed to Take Tougher Stand on Mortgages," by Gregg Hitt and James R. Hagerty, Wall Street Journal, March 23, 2007

[xxx] Housing Vacancy Study, U.S. Census Bureau, U.S. Department of Commerce, 2007

[xxxi] Gregory D. Squires, 'The New Redlining," in Squires ed., Why the Poor Pay More (Westport, Ct., Praeger, 2004), pp. 1-23, p. 5.

[xxxii] Miriam Jordan, "Wealth Gap Widens in U.S. Between Minorities, Whites," Wall Street Journal (October 18th, 2004), Page A2.

[xxxiii] *Broken Credit System: Discrimination & Unequal Access to Affordable Loans by Race & Age*, November 2003.

[xxxiv] Paul S. Calem, Kevin Gillen, and Susan Wachter, *The Neighborhood Distribution of Subprime Mortgage*
Lending, October 30, 2002. See also Paul S. Calem, Jonathan E. Hershaff, and Susan M. Wachter,*Neighborhood Patterns of Subprime Lending: Evidence from Disparate Cities*, in Fannie Mae Foundation's Housing Policy Debate, Volume 15, Issue 3, 2004 pp. 603-622.

[xxxv] Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages,* see http://www.responsiblelending.org/issues/mortgage/reports/page.jsp?itemID=29371010

[xxxvi] The lending disparities for African-Americans were large and increased significantly as income levels increased. In the *Income is No Shield* report, NCRC found that African-Americans of all income levels were twice as likely or more than twice as likely to receive high-cost loans as whites in 171 metropolitan statistical areas (MSAs) during 2005. MUI African-Americans were twice as likely or more than twice as likely to receive high-cost loans as MUI whites in 167 MSAs. In contrast, LMI African-Americans were twice as likely or more than twice as likely to receive high-cost loans as LMI whites in 70 MSAs. Moreover, MUI African-Americans receive a large percentage of high-cost loans. In 159 metropolitan areas, more than 40% of the loans received by MUI African-American were high-cost loans**.**

[xxxvii] Income Is No Shield, NCRC 2007 - MUI Hispanics were twice or more likely to receive high-cost loans than MUI whites in 75 MSAs. In addition, the percentage of high-cost loans received by MUI Hispanics was high. For MUI Hispanics, more than 40% of the loans received were high-cost in 71 MSAs and more than 30% of the loans received were high-cost in 137 MSAs.

[xxxviii] To access NCRC's report, *Homeownership and Wealth Building Impeded*, please go to http://www.ncrc.org/policy/analysis/policy/2006/2006-04-20_NCRC-OA-PRRACReport.pdf
[xxxix] *2005 Fair Lending Disparities: Stubborn and Persistent II*, May 2006.
[xl] *Income is No Shield Against Racial Differences in Lending. National Community Reinvestment Coalition, 2007.* Using HMDA data from 2005 (the most recent year available for industry-wide data), NCRC observes striking racial disparities in high-cost lending. If a consumer is a minority, particularly an African-American or a Hispanic, the consumer is most at risk of receiving a poorly underwritten high-cost loan.
[xli] Kathleen C. Engel and Patricia A. McCoy, "From Credit Denial to Predatory Lending," in Segregation: The Rising Costs for America, op. cit., p. 93.
[xlii] William Apgar, et. al., "Credit, Capital and Communities: The Implications of the Changing Mortgage Banking Industry for Community Based Organizations," Joint Center for Housing Studies, Harvard University, March 9, 2004, page 44.
[xliii] NCRC's broker testing yielded 106 total complete, matched-pair tests. Individuals located in the metropolitan areas of Atlanta, Baltimore, Chicago, the District of Columbia, Houston, Los Angeles and Saint Louis tested brokers that were local, established businesses. In conducting the broker testing, NCRC found several companies with particularly egregious initial results. In these cases, testers were again dispatched for follow up testing to confirm and further investigate the practices of these companies. Of the 106 total tests, 84 separate companies were tested, the difference being as a result of 22 follow up tests.
[xliv] See Sub-Prime Lending: Net Drain on Homeownership" CRL Issue Paper No. 14, Center for Responsible Lending, March 27th, 2007.
[xlv] Testimony of Dan Immergluck, PH.D., before the Committee on Oversight and Government Reform, Sub-Committee on Domestic Policy, March 21st, 2007.
[xlvi] Engel and McCoy, "From Credit to Predatory Lending," p. 101
[xlvii] "After Foreclosures, Crime Moves In," Boston Globe, November 18th, 2007.
[xlviii] Joint Economic Committee Report, Page One.
[xlix] Robert B. Avery, Glenn B. Canner, and Robert E. Cook, *New Information Reported under HMDA and Its Application in Fair Lending Enforcement*, Federal Reserve Bulletin, Summer 2005, http://www.federalreserve.gov/pubs/bulletin/2005/05summerbulletin.htm
[l] Inside Regulatory Strategies, November 14, 2005, p.2.
[li] Joe Adler, *Big Increase in Lenders with Suspect HMDA Data*, American Banker, September 11, 2006.
[lii] There were a couple of cases in 2002 and 2004, but these cases were before the new HMDA pricing information was available. The cases involved the Department of Justice versus Decatur Federal Savings and Loan, September 1992; Shawmut Mortgage Company, December 1993; BlackPipe State Bank, December 1993; Chevy Chase, FSB, August 1994; Huntington Mortgage Company, October 1995; Security State Bank of Pecos, October 1995; Northern Trust Company, 1995; First National Bank of Gordon, April 1996; Long Beach Mortgage Company, September 1996; First National Bank of Dona Ana County, January 1997; Albank, August 1997; Deposit Guaranty National Bank, September 1999; Mid America Bank, FSB, 2002; Fidelity Federal Bank, FSB, July 2002; First American Bank, July 2004.
[liii] Fair Housing: Opportunities to Improve HUD's Oversight and Management of the Enforcement Process. Washington, DC: United States General Accounting Office, April 2004.
[liv] HUD, as the agency responsible for investigating and prosecuting cases under the Federal Fair Housing Act, filed thirty on discrimination charges in 2007 and thrity six in 2006. Charges for the same two year period dropped 65% from the last two years of the previous administration. One hundred and eleven charges were filed in 1999 and eighty two in 2000. Complaints during the same period rose from fewer than 7,100 in both 1999 and 2000 to more than 10,000 in both 2006 and 2007. Notably, settles most of its discrimination complaints out of court, but the agency is settling more cases overall than during the previous administration, while the percentage of settled cases has declined. In 1999, HUD settled 778 cases, 42% of the total investigated. In 2007, it settled 948 cases — 36.5% of the total investigated. HUD

dismissed nearly two-thirds of the 2,595 investigated complaints filed last year. The majority of the remaining 7,000 complaints go to HUD-certified and funded local and state agencies. Housing cases at the civil rights division of the Justice Department, which prosecutes cases in which investigators find patterns of discrimination, also have dropped. The department filed 35 civil lawsuits in 2007, marking a steady decrease since 1999.

[lv] See http://www.huduser.org/portal/publications/hsgfin/hds/html

[lvi] See http://www.nytimes.com/2007/02/04/nyregion/nyregionspecial2/04wemain.html?pagewanted=1

[lvii] NCRC, *Credit Unions: True to their Mission?*, 2005, http://www.ncrc.org; and Government Accountability Office, *Credit Unions: Greater Transparency Needed on Who Credit Unions Serve and on Senior Executive Compensation Arrangements*, November, 2006

[lviii] Avery, Robert B., Glenn B. Canner, and Robert E. Cook, "New Information Reported under HMDA and Its Application in Fair Lending Enforcement." *Federal Reserve Bulletin*, Summer 2005. Avery, Robert B., Kenneth P. Brevoot, and Glenn B. Canner, "Higher-Priced Home Lending and the 2005 HMDA Data," *Federal Reserve Bulletin*, September 2006.