

**Testimony before the  
House Financial Services Committee  
Subcommittee on Housing and Community Opportunity**

**“H.R. 476, the Housing Fairness Act of 2009”**

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## **“H.R. 476, the Housing Fairness Act of 2009”**

### **Introduction**

Chairwoman Waters, Ranking Member Capito, and members of the Subcommittee, thank you for this opportunity to testify in support of H.R. 476, the Housing Fairness Act of 2009. I would also like to thank Representative Al Green for introducing this important legislation. My name is Shanna Smith and I am the President and CEO of the National Fair Housing Alliance (NFHA). I have spent my entire career combating housing discrimination in its many forms as well as promoting residential integration, beginning in 1975 as the Executive Director of the Toledo Fair Housing Center. I have lead NFHA’s office in Washington, DC since it was established in 1988. I appreciate this opportunity to speak with you today about how this bill would assist the government, non-profit fair housing centers, and the housing and lending industries in creating a more diverse, inclusive America.

The National Fair Housing Alliance is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. Headquartered in Washington, D.C., the National Fair Housing Alliance, through comprehensive education, advocacy and enforcement programs, provides equal access to apartments, houses, mortgage loans and insurance policies for all residents of the nation. NFHA’s “operating members” are those agencies that meet the Department of Housing and Urban Development (HUD) definition of “qualified fair housing organization.”<sup>1</sup>

I am here today in strong support of H.R. 476, the Housing Fairness Act of 2009. H.R. 476 will provide resources necessary to realizing the promises of the federal Fair Housing Act. It will improve both enforcement and education efforts surrounding discrimination in home rental, sales, insurance, and lending, will significantly reduce illegal practices, and will open communities and neighborhoods to all Americans. It will provide sorely needed funding for nationwide enforcement testing – funding that will allow HUD and fair housing advocates to systemically address discrimination in all areas of the housing market. It will authorize an increase in funding for the Fair Housing Initiatives Program, the federal program that enables private fair housing organizations working in your districts to educate your communities and redress the housing discrimination suffered by your constituents. It calls for a national media campaign so that the public is fully aware of its fair housing civil rights. And finally, it creates a grant program so that the fair housing movement can continue to be guided by the latest research on the causes of housing segregation and segregation’s impact on the vitality of communities.

Based upon my years of experience in the fair housing movement, I can attest to the dramatic impact that systemic testing can have on the functioning of the housing market. In part because

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<sup>1</sup> 24 C.F.R. § 125.103. (*Qualified fair housing enforcement organization (QFHO)* means any organization, whether or not it is solely engaged in fair housing enforcement activities, that— (1) Is organized as a private, tax-exempt, nonprofit, charitable organization; (2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and (3) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for FHIP assistance.)

of national and local testing efforts by fair housing agencies, I believe there is less discrimination in the housing market today. Targeted testing of housing service providers has changed the business practices of apartment management complexes, of real estate agencies, of homeowners' insurance providers, of architects and housing developers, and of mortgage lenders and mortgage insurance providers. Through testing and other enforcement activities, NFHA and its members have worked to expand opportunities for everyone. Later in my testimony, I will address specific ways in which NFHA's work has precipitated positive change within the housing industry, such as our enforcement work in the homeowners' insurance industry.

As demonstrated by the foreclosure crisis – which, as we know through anecdotal evidence and empirical study was caused in large part by discrimination – there is still much work to be done. The Housing Fairness Act ensures that the fight to end discrimination in the housing market will continue in a comprehensive way. However, for fair housing organizations to address discrimination fully and completely in the mortgage lending industry, more change is needed. Currently, fair housing organizations are unable to apply the full force of our testing methods to mortgage lending because it is a felony for testers from fair housing organizations to apply for a home loan as part of a discrimination test. In order to identify instances where mortgage lenders steer potential borrowers into different loan terms because of their membership in a federally protected class, qualified fair housing organizations approved by the Department of Justice must have the ability to fully and completely test these lenders' business practices.

### **Segregation and Discrimination Illegally Limit Opportunities**

The Fair Housing Act prohibits housing discrimination on the basis of race, color, national origin, religion, sex, familial status and disability. It also covers all housing transactions and services, including advertising, rentals, sales, lending, and insurance, as well as harassment.

Where one grows up greatly determines many of life's outcomes. Congress recognized this when it passed the Fair Housing Act just one week after the assassination of Dr. Martin Luther King, Jr. Congress gave this civil rights law a dual purpose: to eliminate housing discrimination and to promote residential integration. Congress reaffirmed its commitment to fair housing when it amended the law in 1988 to give HUD and the Department of Justice (DOJ) considerably more authority to prosecute people and businesses that violate the law. There has always been tremendous bi-partisan support for the Fair Housing Act. The law was sponsored in 1968 by Senator Edward Brooke (R-MA) and Senator Walter Mondale (D-MN). President Reagan signed the 1988 amendments and, along with Congress, established the Fair Housing Initiatives Program for private non-private fair housing agencies and the Fair Housing Assistance Program for state and local governments to enforce the law. Congress saw the need for effective enforcement in 1988, but we have yet to achieve that goal.

There are so many benefits to growing up in a racially, ethnically and economically inclusive neighborhood, but unfortunately not enough families have these opportunities. America continues to be racially segregated. This has complex social and economic impacts on residents—Black, white, Latino, Asian, etc.—who live in segregated communities. Isolation

continues to have a negative economic impact for African Americans and Latinos, in particular. Take, for example, the following evidence from *Segregation: The Rising Costs for America*:

“The quality of schools has for years been, arguably, the single most significant determinant of a quality housing market...[D]iscrimination in housing and residential segregation grievously curtail the access of minority children to good-quality education. [...] Between 1992 and 2002 the number of minority students attending majority-minority schools increased. During the same period, the share of minority students attending public schools with white students declined.”

“Not only are suburban job opportunities distant from minority neighborhoods but they are often distant from transit stations.”

“Housing location has an immediate impact on access to jobs in terms of distance from jobs and commuting costs. In addition, labor-market outcomes are affected by education levels, skills, experience, attitudes, job-related information, referrals, prejudice, and discrimination – all of which are significantly influenced by the neighborhood of residence.”

“Housing location...affects access to good hospitals or other healthcare facilities.”<sup>2</sup>

When housing discrimination goes unchallenged, new barriers to housing choice develop. We still face restrictive or exclusionary zoning by local governments; discrimination by private citizens and businesses that refuse to rent or sell to people of color, families with children or people with disabilities; and real estate agents who subtly steer homebuyers to neighborhoods where their race predominates. Loan officers and mortgage brokers steer borrowers to higher cost products because of their race or the racial composition of the neighborhood where their home is located.<sup>3</sup> All of these types of discrimination have been uncovered through testing and investigations by my organization and our members around the country.

“People learn to live together by living together.” America’s housing market must be free of discrimination and artificial barriers so people can make educated choices about where they live. Since the passage of the Fair Housing Act in 1968, we have made progress towards reducing housing, lending and insurance discrimination and advancing residential integration and equal opportunity. Today, while more Americans than ever are living in diverse communities,

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<sup>2</sup> *Segregation: The Rising Costs for America*, edited by James Carr and Nandinee Kutty. New York: Routledge, 2008, pages 23-27; 169.

<sup>3</sup> A Center for American Progress study analyzed the 2006 Home Mortgage Disclosure Act (HMDA) data of the 14 so-called systemically significant banks and their subsidiaries, and found that out of 87,000 mortgages originated by these institutions, 17.8% of white borrowers received higher-priced mortgages, while 30.9% of Latino borrowers and 41.5% of African-American borrowers received higher-priced loans. The study also examined the data for borrowers whose incomes were more than twice the area median income for their metropolitan area. Among this wealthy group, 10.5% of white borrowers received higher-priced loans while 29.1% of Latino borrowers and 32.1% of African-American borrowers received these loans.<sup>5</sup> The racial disparity is stark. Jakabovics, Andrew and Jeff Chapman, *Unequal Opportunity Lenders? Analyzing Racial Disparities in Big Banks’ Higher-Priced Lending*, (Center for American Progress, September, 2009).

residential segregation remains high, and has at best declined at a snail's pace in some places while worsening in some parts of the country.<sup>4</sup> Moreover, there are an estimated 4 million incidences of housing discrimination each year, helping to sustain residential segregation rather than undo it. Much work remains to be done.

### **Testing and Research: How Fair Housing Organizations Address Housing Discrimination**

The National Fair Housing Alliance combats discrimination in the housing rental and sales markets as well as mortgage lending and homeowners insurance markets. We recognize that housing discrimination can come in many forms, and strive to eradicate it in each of those forms. Private non-profit fair housing organizations occupy the front lines in the fight against housing discrimination. Our groups must be flexible enough to handle individual complaints of discrimination and coordinated enough to identify systemic trends in discrimination.

In 2008, when the public filed over 30,758 fair housing complaints, fair housing organizations, with an average staff size of just five, processed 20,173 of these complaints, almost twice as many as all government agencies combined. The Department of Housing and Urban Development and the Department of Justice processed 2,156 complaints and state and local agencies processed 8,429 complaints.<sup>5</sup> Still, the number of processed housing discrimination complaints pales in comparison to the four million incidents of housing discrimination each year. In order to adequately address housing discrimination, the federal government must take a more active role in addressing discrimination and fair housing organizations must be able to build their capacity to investigate and test complex systemic as well as promoting inclusive communities in their service areas.

One of the most effective tools for rooting out discrimination, as recognized by the U.S. Supreme Court, is testing.<sup>6</sup> Fair housing organizations use testing as a way of determining whether or not housing providers discriminate against members of a protected class. In a test, nearly-identically qualified individuals – one of whom is a member of a protected class and the other of whom is not – will simulate a housing transaction for the purpose of comparing the responses given to them by housing providers.

Testing is the process where individuals or couples posing as renters, homebuyers, loan seekers or homeowners looking for insurance contact the industry representative about the unit, home or product. Testers are trained to document the transaction(s) and report accurately what transpires when they make their inquiry. Testing evidence can vindicate or indict. Sometimes the evidence is insufficient to draw a conclusion and either more testing is needed or research-based investigation is required to make a determination.

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<sup>4</sup> National Fair Housing Alliance, The Crisis of Housing Segregation: 2007 Fair Housing Trends Report, April 30, 2007.

<sup>5</sup> National Fair Housing Alliance, Fair Housing Enforcement: Time for a Change, 2009 Fair Housing Trends Report, May 1, 2009.

<sup>6</sup> *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

Testing has been used in thousands of investigations across the country and is accepted by federal and state courts as evidence. Rental testing can determine if a manager is offering available apartments to all people who inquire. Testing in the real estate sales market can illustrate if agents are steering whites away from interracial neighborhoods or steering Blacks or Latinos into neighborhoods where their race/ethnicity predominates. Testing has uncovered discriminatory underwriting guidelines in the homeowners' insurance market and testing also uncovers design and construction violations that can make thousands of rental units inaccessible to people with disabilities. Each of these practices, identified most clearly by testing, is illegal, denies people the right to live in an inclusive community, and contributes to residential segregation in America.

Since the 1950s, the first "open housing" advocates experimented with testing. It used to be easier to identify discrimination because so often the landlord advertised in writing or verbally stating "No Coloreds or Mexicans" or confided to whites that they did not rent to certain people because of their race, national origin or religion. There is substantial case law from the Chicago, Cleveland, Toledo and Washington, DC areas that documents these practices.<sup>7</sup>

**Fair housing organizations have the tools to obtain empirical evidence on housing discrimination – but we need more resources to conduct systemic testing, i.e. beyond simply testing complaints on a case-by-case basis.**

Addressing complaints on a case-by-case basis is neither cost effective nor an effective way to combat discrimination. When a complaint comes into a fair housing agency, staff must react to the complaint by conducting an initial investigation/test based on the specific parameters of the complaint's profile. Systemic testing, rather, allows qualified fair housing agencies to be proactive by incorporating knowledge of emerging negative housing trends into an investigation and developing a plan to determine if discrimination is driving this trend.

Systemic testing is much more than sending out a two-person team of testers. It requires investigative research and follow-up. For example in just testing an apartment complex, we must gather fundamental information that will allow us to structure the appropriate test(s)—the cost for rent, whether there are income guidelines, the credit score requirements, whether deposits are required, whether a tester must leave a driver's license before seeing a unit, etc. If we are investigating a lender, we must conduct research that helps us understand how the lender operates. We get underwriting guidelines, learn about the policies and practices of making loans, refinancing, branch locations and hours of operation, on-line services and applications. We determine if the lender uses brokers or employees or both to sell the products. We read corporate reports. We will also do additional testing to see if the alleged discriminatory practice is an isolated incident or a pattern of discrimination. These tests require substantial research.

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<sup>7</sup> *City of Evanston v. Baird Warner, Inc.*, No. 89 C 1098 (ND IL 10-23-89); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979); *Heights Community Congress v. Hilltop Realty, Inc.*, 744 F.2d 135 (1985); *Green, Saunders v. Century 21 Briarcrest Realty*, F.2d 460 (1984); *Pinchback v. Armistead Homes Corp.*, No. 89-2117; *City of Chicago et al. v. Matchmaker Real Estate Center, Inc.*, Nos. 91-2494 & 91-3861 (1992); *Alice Payne v. Coldwell Banker Residential Real Estate Inc.*, No. 89-0668 (1990).

Existing Fair Housing Initiatives Program (FHIP) monies as well as a nationwide enforcement testing program authorized under in the Housing Fairness Act will go a long way to providing fair housing advocates with the ability to conduct the necessary investigative research to implement systemic investigations.

However, we believe that an increase to the authorization is warranted. \$52 million would fund the existing fair housing organizations – but there are many states and large metropolitan areas with no fair housing agency at all, and many with only one. In fact, due to inadequate funding over the past fifteen years, nearly a quarter of all private fair housing organizations have been forced to close their doors or make significant staffing cuts. By authorizing FHIP funding at a higher level, Congress would enable the creation of more fair housing organizations and better address national discrimination issues.

This funding will allow fair housing organizations to continue their successful work and develop innovative ways to fight emerging discrimination. Testing methodologies for systemic investigations have been honed by private fair housing centers and the National Fair Housing Alliance. However, it is critically important to understand that there is no “cookie cutter” formula for conducting testing. Fair housing organizations must be nimble and adjust to changes in housing providers’ business practices. For example, fair housing organizations are currently addressing discrimination in the loan modification industry. Many foreclosure rescue scam artists ask borrowers for money upfront to allegedly modify their loans. These scam artists promise to aid homeowners over the telephone at exorbitant costs to borrowers, and then do not deliver. In order to catch these scam artists and the company for whom they work in the act, fair housing organizations must be able to complete a monetary transaction with them. Additional funds will allow us to tape record these transactions, transcribe the events and file suit in federal court to put them out of business. NFHA intends to refer cases to the appropriate federal agency as well, but they can often be overwhelmed with cases.

Fair housing organizations need the resources to follow through on the discrimination we uncover to take legal action and pay for litigation costs. We can often recover a portion of these costs and then recycle the money back into our testing programs. Private fair housing agencies are also in the unique position to monitor compliance when there is litigation or a settlement. Because we are local, at the grassroots level, NFHA and its members can continue to monitor the lender, mortgage broker and advertising to make sure they businesses not go right back to their illegal practices. We can make sure they don’t just change their name and go back into business. The federal government doesn’t have fair housing practitioners at this level to measure compliance.

Indeed, it is the early lending litigation by private fair housing agencies that encouraged Congress to force lenders to make appraisal reports available to borrowers and to add “loan withdrawn” to the HMDA report. When we discovered how appraisals were used to devalue homes in Black neighborhoods, we asked Congress to make the appraisal available to the borrower because, after all, they paid for it. Once Congress made this possible, we had access to the appraisal and could see if the lender was undervaluing homes in Black or Latino neighborhoods by commissioning another appraisal report and comparing the results or researching whether or not appropriate comparables were used in the original appraisal.

But these investigations take staff time, expertise and money. Most fair housing agencies do not have a lending expert on staff. Most fair housing agencies have five staff including the executive director, education coordinator, test coordinator, administrative assistant and bookkeeper/accountant. If we are to realize the dual goal of the Fair Housing Act – eliminating housing discrimination and promoting residential integration – we have to conduct systemic testing and investigation.

### **How H.R. 476 Would Work to Address Housing Discrimination and Segregation**

During the last administration, we met with staff from the Office of Management and Budget and discussed how to most effectively achieve the goals of the Fair Housing Act—recognizing the two goals: to eliminate housing discrimination and promote residential integration. We both agreed that approaching fair housing on a case by case level would never achieve the results intended when Congress passed the Fair Housing Act in 1968. We agreed that neither HUD, DOJ nor the private fair housing agencies currently had the resources to examine the millions of incidents of housing discrimination occurring annually in the United States.

**More testing will uncover more discrimination, will act as a deterrent for future bad acts, and will encouraging companies to formulate programs and products to promote inclusive communities.**

Just taking a quick look at the systemic cases brought by NFHA and its members can illustrate how we can make substantial progress to achieving the goals of the Fair Housing Act.

In 1995, HUD targeted FHIP funds to investigate how homeowners' insurance companies were operating in neighborhoods of colors versus white neighborhoods. These funds were allocated after initial testing by NFHA in 1992 uncovered evidence of discrimination which was shared at a Senate Banking hearing. NFHA also filed HUD 903 complaints against the nation's largest insurance companies. NFHA's insurance investigation showed high rates of discrimination based on race or national origin of the homeowner as well as based on the racial composition of neighborhoods. Discrimination against African-Americans and Latinos included: failure to return calls; refusal to provide insurance coverage; providing inferior coverage; charging a higher price for similar coverage; not offering discounts and special types of coverage; holding customers to more stringent underwriting standards; and discouraging customers from doing business with the company.

State Farm and Allstate resolved the complaints and changed their underwriting guidelines to provide replacement cost coverage to all homes regardless of their age or value. These underwriting changes brought more good business into the companies and opened new markets for all of their products. State Farm took the lead in changing its practices and continues to monitor its business practices by working closely with NFHA.

Subsequently, Nationwide Insurance Company resolved complaints with Justice and litigation brought by fair housing agencies in Richmond, VA, Toledo and Cincinnati, OH and Louisville,

KY. Nationwide then asked NFHA to engage in agent training and monitoring that its agents were following the law. Nationwide also developed new, good business in formerly underserved neighborhoods.

After NFHA and many of its members developed productive relationships with State Farm and Nationwide, both companies contributed to the first nationwide media campaign designed to promote the benefits of living in integrated neighborhoods. State Farm was the major corporate sponsor for the Richer Life media campaign, a campaign designed to increase awareness in White communities about the value of living with people who come from different racial, ethnic and religious backgrounds. [www.ARicherLife.org](http://www.ARicherLife.org)

Nationwide embarked on a media and web campaign with NFHA to help teach homeowners how to reduce the risk of loss on their homes and maintain stable neighborhoods. [www.LovingYourHome.org](http://www.LovingYourHome.org)

The systemic testing and investigation that NFHA engaged in could have ended with a hostile environment towards fair housing, but NFHA and these companies saw the benefits of working together to increase business opportunities and at the same time comply with the Fair Housing Act and promote the goals of the law.

Individual complaints can bring systemic results. Sometimes just thoroughly investigating a policy or practice of a company can result in national change. There has only been one fair housing lawsuit filed against a private mortgage insurance company, however its settlement changed industry-norms throughout the country. In 1988, a Latino couple trying to buy a home in an integrated neighborhood, the white sellers of the home and the Toledo Fair Housing Center uncovered underwriting policies that denied mortgage insurance coverage because of the age or value of a home. The Bricenos were approved by a bank to purchase a \$35,000 three bedroom home located in an interracial neighborhood. Their loan was denied when the mortgage insurer stated it would not insure the property under any condition because of its age and value. This was a lovely home in a lovely neighborhood. It appraised for the sales price, the couple met all the underwriting criteria and was financially qualified, but they could not be approved for the loan. The mortgage insurers underwriting policies did not have a basis in business and denying mortgage insurance coverage for mortgages under \$30,000 would have denied coverage to almost 70% of the homes in Toledo's interracial, Black and Latino neighborhoods. Rather than engaging in lengthy litigation, the president of the company met the Toledo Fair Housing Center and agreed to change the underwriting policy—but initially only for Toledo. After more discussion, he agreed to eliminate the policy nationwide. Following the settlement, all of the other mortgage insurers eliminated similar underwriting policies.<sup>8</sup>

In another positive outcome, in 2005, NFHA filed a HUD complaint and subsequently a lawsuit against the largest Century 21 franchise in Michigan alleging that 9 of 14 agents tested engaged in racial steering and other discriminatory conduct by discouraging or denying homes to people based on their race. The complaint alleged that whites were discouraged from looking at homes in Detroit's East English Village and Blacks were steered away from homes in the Grosse Pointes. The Michigan Association of Realtors (MAR) contacted NFHA and asked to speak at

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<sup>8</sup>*Briceno v. United Guaranty Residential Insurance Co.*, No. 3:89 CV 7325 (N.D. Ohio).

the news conference announcing the filing of the complaint. NFHA agreed and the Realtors made it clear that they did not condone any violations of the Fair Housing Act. And they took their commitment to fair housing one step further and contracted with NFHA and worked through our members in Grand Rapids, Detroit, Kalamazoo and Ann Arbor to create a training program for agents and they are funding a self-testing program. MAR reviewed and approved the testing methodologies used by NFHA and is using it to monitor its members. This is a positive outcome from a lawsuit from the state of Michigan. The initial lawsuit is still pending.

**As addressed in H.R. 476, education, including a national media campaign, has a key role to play in reducing discrimination.** We need TWO strong, provocative, sustained multi-media campaigns to promote both goals of the Fair Housing Act. FHIP funding should be available under one grant to coordinate and compliment two messages. The first message is that housing discrimination in rental, sales, lending or insurance is illegal and how to spot it and report it. The second and complimentary message tells people about the benefits of living in multi-cultural, multi-racial neighborhood. This national campaign needs FHIP money at the local level so the messages are local and appear on busses, billboards, movie theaters, mass transit, airport dioramas, magazines, Internet ads, TV and radio public service spots as well as buy time. The campaign should also include t-shirts and bumper stickers designed to promote inclusive communities and a cable show discussing the benefits of inclusive communities in this global economy.

### **Fair Lending and the Foreclosure Crisis: The Need to Improve Mortgage Lending Testing**

Lending discrimination in the prime and subprime markets played a significant role in the foreclosure crisis and massive loss of homeownership and wealth for the African American, Latino and Asian American communities. Wall Street investors provided financial incentives to lenders to make Adjustable Rate Mortgages (ARMS). ARMs, Interest Option ARMs and other exotic loan products were created for a niche market—people with incomes that dramatically increase annually and live in neighborhoods with escalating housing prices. These loan products were never intended for the average homebuyer or homeowner to refinance. Yet lenders, investors and federal and state bank regulators allowed the market to be saturated with these products and loan originators and real estate agents pushed these loans onto unsuspecting consumers by stating that the homeowner could simply refinance when the ARM became due, completely failing to remind the homeowner that he/she would have to have a good credit score, money to refinance and an appraisal that fit the market value. Predatory and subprime lenders practiced marketing these products in the Black communities and closed their eyes to inflated appraisals so they could sell this “B” paper to Wall Street investors—always motivated by making more money.

During this time, we were trying to get the attention of the federal regulators, rating agencies and the DOJ because we saw the impact inflated appraisals were having in the Black community well before these schemes were introduced in the suburbs.<sup>9</sup> We saw families and senior citizens

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<sup>9</sup> NFHA raised the problem of inflated appraisals at Fannie Mae’s annual Fair Lending conferences and especially the year the rating agencies attended. Regulators and Justice Department staff attended these conferences. NFHA

refinancing homes for home improvements and being charged extraordinary fees and credit life insurance premiums upfront that stripped the equity from homes and left the families with a mortgage loan higher than the real value of the home. We told directors of states and local Community Development Block Grant (CDBG) programs that the federal funds since 1975 used to build homes in urban renewal areas would be lost to predatory lenders if they did not work with fair housing agencies to challenge the targeting of Black homeowners. We understood that these practices were focused on neighborhoods of color where homeowners had built equity, but could not get loans from prime lenders because they were not serving the neighborhoods or because the prime lenders were steering Black homeowners to their subprime companies.

However, we were unable to enforce the Fair Housing Act against lenders as effectively as we have been able to enforce the Fair Housing Act against other housing service providers because of current law. As mentioned above, it becomes a felony to conduct full application mortgage lending testing. Mortgage pre-application testing may identify systemic discrimination if lenders are steering women, seniors, or people of color into high-cost subprime loans or to high prices loan products in a prime bank. However, pre-application testing cannot catch the lender who inflates or deflates the appraisal or increases the interest rate or fees at closing or changes the APR or down payment requirement post-application. In order to fully address lending discrimination, the following must happen:

- **Fair housing organizations approved by the Department of Justice must be able to complete full Application loan testing.** We would like to conduct testing to document the illegal loan practices and policies, but traditional full loan application lending testing is currently illegal. It is a felony to provide false information on loan application—even for an organization using a tester with no intention of accepting the loan. Fair housing advocates have been asking the DOJ since 1990 to work with us to assure that legitimate testing be conducted. We have suggested that they establish lender tester profiles in the credit bureau system so that we may test and investigate lending practices all the way through the loan process. We also asked for immunity from prosecution to conduct full application lending testing. In the past, the DOJ replied that it would be up to the local US Attorney to decide whether or not to prosecute the tester. Currently, we have asked the Department to revisit this request; however, I believe the best approach would be narrowly construed legislation that provides an exemption from prosecution for full application lending testing conducted by qualified fair housing agencies approved by the DOJ. Credit reporting companies must also be given the legal authority to work with qualified fair housing organizations approved by DOJ so that they can assist the fair housing agencies in creating credit reports for fair lending testers.
- **Fair housing organizations must have adequate resources to hire fully trained and qualified staff and lending testers, and conduct complicated lending and foreclosure scam tests.** The immediate barrier most fair housing agencies face in investigating and testing scammers is having staff dedicated

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met with the president of Hansen Quality Loan Services prior to its purchase by Fidelity to advise him his system was incorporating inflated appraisals in Black communities and should be changed.

solely to conducting investigations and testing. The next barrier is having the money needed to complete a test. For example, NFHA is testing potential scammers and we need to have funds available to give money to a scammer who guarantees a loan modification if we give them \$2,000 or \$5,000. While we can forward a complaint to the Federal Trade Commission when someone makes a promise like guaranteeing a loan modification, the evidence for a violation exists when they take money and do nothing. But most organizations do not have money to lose in this transaction.

- **Federal regulators must use their authority to conduct loan testing.** We have also pressed the federal regulators to use their authority to conduct lending testing; however, we were essentially told that economists and researchers believe that lending discrimination does not make economic sense stating it is irrational behavior. The regulators concluded that discrimination would only happen at the initial loan application or pre-application stage by the loan officer or originator. These same researchers upon whom the federal regulators relied upon said that there could be no discrimination down the line in the loan application process because it just didn't make economic sense to deny someone who could afford the loan. They maintained that discrimination would be irrational in spite of successful fair lending litigation beginning in 1974 indentifying discrimination in credit and collateral underwriting guidelines, appraisal practices, and even the underwriting guidelines of private mortgage insurers.<sup>10</sup>

### **Improving Fair Housing Programs at HUD and Elsewhere to Promote Livable, Inclusive Communities**

Overall, HUD's Office of Fair Housing and Equal Opportunity (FHEO) needs to do more to promote fair housing – and this means that FHEO needs to be empowered to do so by being given the resources, staff, better database system and political weight to do so.

In order to promote integration, the Fair Housing Act requires that government agencies spend funds dedicated to housing and community development in a manner that “affirmatively furthers fair housing.” This obligation begins with the Department of Housing and Urban Development, but does not end there; rather it applies broadly and means that government agencies spending housing and community development funds – and recipients of government grants – must use those funds in way that helps create integrated, healthy neighborhoods.

First and foremost, as is included in H.R. 476, HUD must promulgate a regulation describing what it means to “affirmatively further fair housing.” This regulation will assist jurisdictions in creating their local and state programs, and assist advocates in assuring that every jurisdiction is meeting its responsibilities under the law to promote fair housing.

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<sup>10</sup> *Loftman v. Oakley Saving and Loan; Harrison v. Heinzerth, McMillan v. Huntington National Bank, Gosses v. Trust Corp, Briceno v. United Guaranty Residential Insurance Co.; Old West End Association, et al. v. Buckeye Federal Savings and Loan;* and a host of cases brought by the Justice Department under the Clinton administration.

HUD has put forth a laudable program to address healthy communities: the Sustainable Communities Initiative. This program, to be conducted with the EPA and the Department of Transportation, could go a long way to promoting fair, integrated communities. The program must incorporate fair housing explicitly into its goals, however, in order to make that work.

In addition, HUD Secretary Donovan should immediately revitalize the President's Fair Housing Council. As laid out by the National Commission on Fair Housing and Equal Opportunity:

“The President's Fair Housing Council, created by Executive Order 12892, should be reconvened and staffed to coordinate cross-agency collaborations to support fair housing. The Council should also undertake a fair housing review of key federal health, education, health, transportation and employment programs to ensure that they support, rather than undermine, fair housing.

HUD's fair housing regulations should be replicated at other federal agencies through coordination by the President's Fair Housing Council. The Commission also recommends that the federal agencies participating in the Council expressly require collaboration between their grantees at the metropolitan and regional level to support fair housing goals. The collaborative cross-agency work of the Council should be mirrored in every metropolitan area.”<sup>11</sup>

As the other government agency responsible for enforcing the Fair Housing Act, the Department of Justice needs to expand its testing program and to bring cases regarding real estate sales and mortgage lending. Rather than testing cases where discriminatory statements are made or someone is blatantly denied an apartment, the Department's program should explore the nuances of discriminatory practices and policies. In our current sales market, Justice should investigate how Real Estate Owned Properties (REO) are being sold. Many communities of color alleged that lenders/servicers are packaging homes in their neighborhoods to investors rather than finding homebuyers to repopulate the neighborhood. They allege that homes in middle class white neighborhoods are being fixed up and marketed to single family buyers. And as mentioned above, predatory and discriminatory lending remain an enormous problem.

### **Research Needed to Address Housing Discrimination and Segregation**

We appreciate the inclusion of funding for research in H.R. 476. The National Commission on Fair Housing and Equal Opportunity recommended various research activities that will help inform us about why discrimination still happens. The following are their recommendations, which the National Fair Housing Alliance fully supports:

“Data collection and assessment should be expanded to enable assessment of patterns of residential segregation; data should be collected that ties housing-

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<sup>11</sup> The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity. December 2008. The Commission was sponsored by NFHA, the Leadership Conference on Civil Rights Education Fund, the Lawyers' Committee on Civil Rights Under Law, and the NAACP Legal Defense Fund.

related activities such as lending and foreclosures, siting of new housing, school composition and performance, and racial, ethnic and disability data.

Substantive fair housing research should be expanded at HUD to address the persistence of housing market discrimination and efforts to combat it; the availability and assets of diverse neighborhoods and strategies for educating Americans about them; the dynamics of neighborhood racial change and strategies for nurturing stable residential diversity; the housing needs of families with children and families of people with disabilities in subsidized and Low Income Housing Tax Credit housing as well as market rate housing.; and the effect of occupancy standards in limiting occupancy based on familial statute, race and ethnicity.

Input should be sought from industry and fair housing organizations to identify the types of research and data that will be most useful in assessing the current status of communities and the research and data necessary to support the development of diverse communities.”<sup>12</sup>

Thank you once again for the invitation to testify before you today. I look forward to working with you to promote fair housing and inclusive communities throughout our nation.

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<sup>12</sup> Ibid.