



**Lawyers' Committee for  
Civil Rights Under Law**

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RIGHTS UNDER LAW**

**BEFORE THE  
UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON  
FINANCIAL SERVICES, SUBCOMMITTEE ON HOUSING AND  
COMMUNITY DEVELOPMENT REGARDING HUD ENFORCEMENT**

**JUNE 25, 2002**

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") would like to thank Chairman Roukema and Representative Frank for holding these important hearings and for providing the Lawyers' Committee with the opportunity to participate. We appreciate the opportunity to present the House Committee on Financial Services, Subcommittee of Housing and Community Opportunities, with information about matters critically important to the Lawyers' Committee, our affiliates, and our clients across the country.

The Lawyers' Committee for Civil Rights Under Law is a 39 year old nonpartisan, nonprofit civil rights legal organization. It was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law. Among other things, the Lawyers' Committee has been actively engaged in efforts to combat racial discrimination and segregation in the public and private housing markets, the discriminatory distribution and use of federal funds by municipalities and housing authorities, and racial discrimination and disparities in lending. In particular, the Lawyers' Committee has focused on eradicating the continuing and persistent effects of this country's history of enforced racial segregation. This work is ongoing as the problems of both *de facto* and *de jure* segregation continue.

My comments today focus on the Lawyers' Committee's concerns with the Department of Housing and Urban Development's declining efforts at ensuring that principles of fair housing, as set forth in the Constitution and the Title VIII of the Civil Rights Act of 1968, are not only memorialized in words but are also adhered to by deed. Over the past ten years, we have seen the federal government's involvement in the enforcement of fair housing and other civil rights laws decrease dramatically. This trend is alarming at a time when the number of civil rights complaints is rising and thus the need for leadership of agencies enforcing vital civil rights

laws is even greater. The alarm's ring, however, has been met by the deaf ears of HUD and the other federal agencies responsible for enforcing and ensuring equal justice under law.

Today, I will focus on two major areas of concern. First, the Lawyers' Committee has serious concerns about the HUD complaint process. While Congress intended to provide individuals with a simple mechanism to have their housing discrimination complaints reviewed and investigated by HUD, HUD has created a complex maze of procedures and steps, whose purpose has only discouraged the filing of complaints. A problem related to the complaint process is that continuous reduction of budget and staff for the Fair Housing and Equal Opportunity ("FHEO") office, which is responsible for investigating complaints, has happened at the same time that the number of fair housing complaints has steadily increased.

The second area of concern involves HUD's perpetuation and exacerbation of the problems of racial discrimination and segregation in both the public and private housing markets. Specifically, the Lawyers' Committee is concerned that HUD makes no effort to determine the impact that its grants and awards will have on minorities and the communities in which they live. Moreover, even when there has been a finding that a community is violating the civil rights guarantees of the Constitution, HUD has continued to provide millions and millions of dollars in grants, such as funds from the Community Development Block Grant program. This blind eye toward discriminatory behavior is disgraceful and leaves one with the conclusion that it is a purposeful attempt to avoid the federal government's constitutional and statutory responsibility to ensure that the recipients of federal funding do not utilize that funding to discriminate against individuals on the basis of race. Additionally, this conduct violates HUD's affirmative obligation not only to avoid discrimination, but to further the principles enshrined in the Constitution and the Fair Housing Act to address and solve the problems of racial discrimination in our nation.

## **II. HUD's Complaint Process Has Failed to Provide An Effective Mechanism For Individuals to Raise Civil Rights Complaints.**

Under the Fair Housing Act, a victim of housing discrimination can file a complaint with the FHEO office of HUD. Congress intended the complaint process to be a simple, straightforward mechanism for individuals to initiate a federal investigation of potential fair housing act violations. In short, Congress intended to provide an enforcement system that will handle complaints quickly, easily, and inexpensively. Instead, HUD has created a complex set of procedures (some of which are hidden from the public) that makes the process far from the user-friendly system it is intended to be. The complicated nature of this system, along with HUD's poor track record in investigating the complaints filed, creates the impression that HUD's intent is to simply eliminate cases from HUD's system or to discourage their filing altogether. Sadly, HUD has failed to meet Congress's mandate, which was to ensure that the federal government takes an active role in enforcing the law and of "transforming the symbol and dream [of equal housing opportunity] into legal and procedural reality."<sup>1</sup>

The starting point for the problem with the HUD complaint process is the failure to fully fund FHEO. According to a report by the United States Commission on Civil Rights, since FY 1994, budget requests for FHEO have decreased by 11.4 percent, while appropriations have fallen by 14.4 percent. This trend has continued in the President's request for FY 2003. In FY 1994, for example, the President requested \$51 million. In FY 2003, President Bush's budget request for FHEO is only \$46 million. The reduction in funding is only exaggerated when the President's request is reduced to 1994 dollars, which makes the request only \$38 million. Moreover, the number of FHEO staff has also consistently shrunk in size. Again, from FY 1994 to FY 2000, staffing levels dropped from 750 to 584, a reduction of 22 percent. While there has been a slight increase in the number of staff estimated for FY 2003, these numbers still represent a major reduction since fiscal year 1994, particularly given the steady increase in the number of complaints being filed with HUD. In 1994, HUD received approximately 9,500 complaints.

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<sup>1</sup>134 Cong. Rec. H4605 (1988) (Statement of Rep. Fish, the principal Republican sponsor of the 1988 Amendments to the Fair Housing Act).

HUD itself estimates that it will receive over 11,000 complaints in the current year. As would be expected, the reduction in funding and staff has taken its toll as HUD has been unable to keep up with its increasing workload. By failing to conduct timely and complete investigations of fair housing complaints, HUD prolongs fair housing act violations, and its conduct threatens this country's commitment to ensuring that every American will be free from discrimination in housing.

For example, in March 2001, the North Carolina Fair Housing Center and several African-American female heads of households, who are represented by the Lawyers' Committee, filed a HUD complaint alleging racial and familial status discrimination by a property management company. Despite clear evidence of discrimination, including letters signed by the respondent harassing the complainants and even attempts by the respondent to run over the complainants with a car – more than 15 months after the complaint was filed the investigation has not been concluded and no findings have been issued. In another case, the Lawyers' Committee is representing a community organization in Mebane, North Carolina, which filed a HUD complaint in September 2000 alleging racial discrimination as a result of zoning laws and the discriminatory distribution of community development block grant funding. Again, HUD has not concluded its investigation despite the fact that almost two years has elapsed since the complaint was filed. Unfortunately, the experience of the Lawyers' Committee is not unique, but instead has become commonplace for those in the civil rights community who have come to expect long delays in the HUD complaint process. These delays are unacceptable, for as we all know, justice delayed is justice denied.

What is more troubling than HUD's delay in investigating complaints are HUD's recent efforts to reduce the backlog of complaints. Rather than providing more staff to investigate and respond to the complaints, HUD has taken Congress's clear mandate to operate a straightforward, user-friendly complaint process and created a labyrinth-like system, designed to

administratively dismiss complaints without conducting any investigation to determine the merits of the underlying claim. This reprehensible conduct by HUD seemingly returns us to a day where we had a law that banned discrimination but without “an effective enforcement system to make that promise a reality.”<sup>2</sup>

Through the work of the Lawyers’ Committee and its affiliates across the country, we have seen numerous and repeated failings by the FHEO staff to meet the Congressional goals set forth in the Fair Housing Act. As noted above, to address the shameful number of backlog of fair housing complaints, HUD has turned to administrative gimmicks to dismiss, but not to resolve, complaints. The problems we have seen include:

- Refusal to accept validly-filed complaints;
- Dismissal of cases for failing to meet statute of limitations issues, despite the fact that the complaints were timely filed;
- Misapplication of the continuing violations doctrine;
- Strained analysis of standing laws, particularly with respect to Fair Housing Organizations; and
- Allowing complaints to languish for years without any investigation or action.

The Lawyers’ Committee has grave concerns about the imposition of additional requirements on complainants that are neither required, nor permitted under the Fair Housing Act or HUD’s implementing regulations. An example of this practice includes cases the Lawyers’ Committee has worked on where HUD has refused to accept validly-filed complaints. A quick trip to HUD’s internet web site informs victims of housing discrimination that a complaint can be filed with HUD in any number of ways. An individual can send a letter, call the FHEO office, or complete the form provided on the web site. These instructions could not be clearer. Nevertheless, HUD has consistently refused to accept complaints filed pursuant to these requirements. Moreover, because individuals have only one year from the date of the incident to file a complaint with HUD, any refusal to accept a complaint can result in the case being dismissed without any investigation, because of statute of limitations issues.

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<sup>2</sup>U.S. House of Representatives, Committee on the Judiciary, Report 100-711: The Fair Housing Amendments Act of 1988, 100<sup>th</sup> Cong., 2d Sess. 13 (1988).

For example, in 2001, we represented an individual from Portsmouth, Virginia, who alleged that he was denied an apartment because he is African-American. Using the form provided on HUD's own website, our client submitted his complaint to HUD. HUD, however, refused to accept that complaint and told client that it had the authority to require him to use any form HUD desired and that the form on the internet was not good enough. Accordingly, HUD administratively dismissed his complaint. When our client attempted to re-file his complaint, the one-year statute of limitations had already passed.

Similarly, in 2002, the Lawyers' Committee represented a Fair Housing organization in Charleston, West Virginia. Again, just as with our other client, a discrimination complaint was filed using the form listed on the website. Again, HUD refused to accept the complaint as filed, but instead indicated that the organization had to re-submit the complaint on a separate form provided by HUD.

In addition to imposing requirements not authorized by the Fair Housing Act or its regulations, HUD has also adopted strained analyses of relevant legal principles, again with the seeming intent to avoid its obligation to investigate complaints of discrimination. First, HUD has dismissed complaints by ignoring clear and well-settled precedent regarding the fact that fair housing organizations have judicial standing to sue as an aggrieved person under the Fair Housing Act. FHEO has ignored these principles for the purpose of reducing their backlog of cases. For example, the Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association, our Boston affiliate, received a Fair Housing Initiatives Program ("FHIP") grant to conduct testing to investigate instances of redlining in the homeowners insurance industry. After conducting a testing program, which was funded and approved by FHIP, and finding evidence of discrimination, the Boston Lawyers' Committee filed a complaint with HUD. After waiting years for a decision, HUD found that the testers lacked standing to challenge the discriminatory pricing of homeowners insurance policies in minority neighborhoods because the testers did not

actually reside in the neighborhoods. In addition, HUD found that at least one of the testers had a financial stake in the outcome of the case, which is not permitted under HUD's regulations regarding testing programs. Yet, the financial stake HUD was concerned with was that the tester could recover damages for the discrimination he faced. Clearly, HUD's regulations were never intended to be so restrictive.<sup>3</sup> Even more disturbing are examples across the country where HUD has found that fair housing organizations lack standing because the fact that they have received FHIP grants – grants provided to nonprofit fair housing organizations to carry out testing and enforcement activities to prevent or eliminate discriminatory housing practices – means that the organization cannot establish any diversion of resources, a prerequisite for organizational standing under the Fair Housing Act. This is so even though the organization may receive the majority of its funding from sources other than HUD. This tortured analysis of the law on standing threatens not only the success of these cases, but also potentially undermines the legitimacy of testing programs generally. These programs are essential to aid in the investigation of violations of fair housing and fair lending practices.

That HUD attempts to reduce its backlog through administrative gimmicks rather than through investigation and resolution of cases is troubling and clearly goes against Congress's intent when it passed the Fair Housing Act Amendments in 1988. Using administrative schemes to avoid HUD's investigative responsibilities is shameful and fails to fulfill HUD's duties to investigate and eradicate housing discrimination. It is clear that further oversight and guidance from Congress is needed more now than ever.

### **III. HUD Fails to Evaluate Or Consider the Impact That The Programs It Funds Will Have on Minorities and Minority Community.**

The Lawyers' Committee is not only concerned about HUD's failure to investigate complaints filed with the agency, but even more significantly, we are concerned with HUD's failure to meet its obligation under the fair housing act to affirmatively further fair housing in the administration of its programs, particularly with respect to the HOPE VI program, the Low-

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<sup>3</sup>See 24 C.F.R. § 125.107(c)(1) (providing that testers may not "have an economic interest in the outcome of the test, *without prejudice to the right of any person or entity to recover damages for any cognizable right*" (emphasis added)).

Income Housing Tax Credit Program, and the Community Development Block Grant program. What it takes to meet this obligation is clear. HUD must both gather and make use of racial and ethnic data to prevent discrimination and ensure expanded opportunities when programmatic and funding decisions are made. Unfortunately, the data is not collected, nor is it clear that if it were available that HUD would consider it when decisions are made. This is troubling on many levels. First, the federal government has an obligation to ensure that its funds are not used for discriminatory purposes. Second, given the federal government's well-documented role in creating and maintaining segregation in the public housing market, HUD has a constitutional obligation to take steps to disestablish and cure the discrimination it was so instrumental in helping to create.

Of particular concern is HUD's implementation of the HOPE VI program, which provides for the demolition and redevelopment of severely distressed public housing. The implementation of the HOPE VI program has resulted in the loss of tens of thousands of public housing units, a housing source upon which communities of color disproportionately rely. HUD, however, continues to approve and fund these demolition applications with little or no understanding of the effect that these programs will have on the housing situation of minorities and minority communities. In this respect, HOPE VI bears a striking resemblance to the Urban Renewal efforts of the past. Urban Renewal, referred to by many as "Negro Removal," uprooted entire minority communities with little to no consideration or concern with the impact on the existing residents. Similarly, through HOPE VI, the federal government is again knocking down minority communities, asserting that it knows the best and most efficient use for those sites. This time, though, there is nowhere for these residents to go. The Lawyers' Committee has seen HOPE VI projects where families whose homes were taken in urban renewal and were relocated into public housing are now being victimized yet again - as HUD has approved the demolition of the public housing they were relocated to. Sadly, HUD makes no effort to ensure that the families who have lost their homes are able to find replacement housing, let alone replacement housing in non-segregated parts of cities. Thus, because fair housing principles are essentially ignored in the HOPE VI review process, the federal government has created yet another program that continues and maintains the deplorable conditions of segregation and isolation that the

federal government helped to create. Unless HUD squarely addresses the past and present conditions of racial segregation in the public housing system by taking steps, through the consideration of racial and ethnic data, to reduce, rather than cement, conditions of racial segregation, another chapter in the federal government's perpetuation of segregation will be written, while developers get rich and municipalities increase their tax base, all on the backs of minorities and minority communities.

For these reasons, the Lawyers' Committee calls on Congress to require HUD to enhance fair housing requirements in all of its programs, to collect racial and socio-economic data, and to ensure that this data is utilized to determine what impact its programs will have on minorities and minority communities *before* grants are awarded. And, if the analysis of the program and the data shows a discriminatory impact, HUD must either not award the grant or require the grantee to amend the program to eliminate any discriminatory effect of the program.

Finally, when discrimination is uncovered, HUD must act. As described above, HUD has failed to investigate complaints of discrimination. In addition, HUD has continued to fund programs that it knows have a discriminatory effect. This is just such the case in Huntington, New York, where the Lawyers' Committee is representing a number of African-American residents and a fair housing organization. Huntington, New York, as many of you may know, has had a judicially-recognized history of racial segregation. As the Second Circuit Court of Appeals noted in 1988, Huntington's practices have "reinforced racial segregation in housing," "impede[d] integration," and "significantly perpetuated segregation in the Town." HUD has blindly continued to provide funding to Huntington, despite the Second Circuit's findings, recent complaints filed with HUD, and HUD's own determination that Huntington continues to engage in discriminatory housing practices, which prompted HUD to refer the matter to the Department of Justice. This short-sightedness is unacceptable and is a violation of HUD's affirmative obligations under the fair housing act.

### **III. Conclusion**

In sum, HUD's record on ensuring fair housing is far from meeting Congress's mandate to the agency. HUD, along with each of the federal agencies responsible for enforcement of the nation's civil rights laws, must not only avoid putting stumbling blocks in the path of those

asserting violations of their rights under the Fair Housing Act. HUD must also take steps to affirmatively further fair housing by ensuring that its programs and grants do not continue to have a discriminatory impact on minorities and the communities in which they live. Only then will the promise of equal justice under the law become a reality for all.