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TESTIMONY

OF

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CONNECTICUT CIVIL LIBERTIES UNION

ON

FIGHTING DISCRIMINATION AGAINST THE DISABLED AND MINORITIES
THROUGH FAIR HOUSING ENFORCEMENT

BEFORE

OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE

AND

HOUSING AND COMMUNITY OPPORTUNITY SUBCOMMITTEE

OF THE HOUSE OF REPRESENTATIVES

COMMITTEE ON FINANCIAL SERVICES

JUNE 25, 2002

Good afternoon. My name is Philip Tegeler, and I am the legal director of the Connecticut Civil Liberties Union in Hartford, Connecticut. On behalf of the ACLU, I would like to thank Chairpersons Roukema and Kelly, and Ranking Members Frank and Gutierrez for calling this important hearing on fair housing enforcement. I am also here as an active member of the Housing Justice Network, a coalition of legal services and civil rights groups coordinated by the National Housing Law Project, and I am grateful for the opportunity to testify on an issue that has been a central focus of my work and the work of many of my colleagues.

As an ACLU office, much of our fair housing work in Connecticut has focused on government action, as opposed to private acts of discrimination. We have analyzed the role of state, local, and federal governments in perpetuating patterns of racial and economic segregation, and we have tried to use the civil rights laws to expand housing choices for low income families of color outside of high poverty neighborhoods. We have successfully challenged discriminatory government policies on site selection, tenant relocation, Section 8 administration, tenant selection, and exclusionary suburban housing and zoning policies. As sociologists Massey and Denton have observed, "racial residential segregation is the principal structural feature of American society responsible for the perpetuation of urban poverty and represents a primary cause of racial inequality in the United States."¹ We take this message very seriously in our work, not just in housing but also in education law, voting rights, and criminal justice reform.

In this context, HUD's role as a fair housing enforcement agency is only one aspect of its larger responsibility to promote fair housing in federal housing and community development programs. Few government housing actions are race neutral, and HUD has a choice in every program it operates: whether to passively support continued segregation of our metropolitan areas or to take affirmative steps to support racially and economically diverse communities. HUD also has a special role to play in requiring affirmative fair housing compliance among its grantees - which include local Public Housing Agencies (PHAs), private housing managers, and municipal governments. HUD's internal programmatic goals and policies also have an enormous impact on fair housing.

My testimony today will address some concrete steps HUD can take to provide renewed leadership in the area of fair housing.

The need for a more searching review of the racial impacts of HUD programs

The most basic aspect of HUD's obligation to affirmatively further fair housing is the requirement that HUD consider whether its actions will have a discriminatory or segregative effect, and if so, to take steps to ameliorate such effects. This legal obligation was clarified many years ago, in cases like *Shannon v. HUD*,² which essentially created the site and neighborhood standards that restricted placement of low income public housing projects in racially segregated neighborhoods. In *Shannon*, the Third Circuit held that under national housing policy and the Fair Housing Act the federal agency "must utilize some institutionalized method whereby, in considering site

¹ DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993).

² 436 F.2d 804, 821 (3d Cir. 1970).

selection... it has before it the relevant racial and socio-economic information necessary ... to make an informed decision on the effects of site selection ... on racial concentration.” The principle that federal housing policy makers have a duty to consider the racial, ethnic, and economic segregation impacts of their decisions has been reaffirmed in several decisions since *Shannon*, including *NAACP v. Secretary*,³ which faulted HUD for failing to affirmatively further fair housing in its programs in the Boston area.⁴

In some key program areas, HUD appears to have lost sight of this obligation to analyze and address fair housing impacts. For example, in the HOPE VI program, HUD’s ambitious public housing redevelopment program, there is no formalized fair housing review of the effect of loss of housing on minority families. Because of the deeply segregated pattern of public housing occupancy in this country, and the deterioration that has been permitted to occur in many projects occupied by people of color, most of the projects selected for demolition under HOPE VI will be occupied predominantly by Black and Latino families. From a fair housing perspective, the question facing HUD in such projects is whether the HOPE VI development process will be an opportunity to enhance housing choices and reduce segregation. Can the hardships of relocation be minimized? Will residents be meaningfully involved in the decision making process? Will existing residents be affirmatively assisted in moving to housing outside areas of poverty and outside areas of minority concentration? Will the public housing authority’s plan further racial and economic integration in the city and region, or will it simply resegregate displaced residents in other struggling urban neighborhoods? What steps can be taken to ameliorate these impacts? We raised these concerns with the Clinton administration in 1999, and the problem has only intensified since then.⁵

Similarly, in the Low Income Housing Tax Credit program, which is technically not a HUD program but is currently the largest federal low income housing production program,⁶ there are no civil rights assessment criteria to guide site selection, marketing, or other aspects of the program, in spite of a recent memorandum of understanding between the Departments of Treasury, Justice and HUD. From a civil rights standpoint, this is a standardless program which is being implemented in a segregated geographic pattern.⁷ Nationwide, more than half of tax credit units are in central cities; these units are in census tracts of high minority and poverty concentrations, and even when tax credit units are found in suburban areas, they are frequently sited in census tracts that have a greater than 50% minority population.⁸ As one experienced observer noted, “left to their own devices, most projects tend to be occupied by one ethnic or racial group.”⁹

³ 817 F.2d 149 (1st Cir. 1987).

⁴ See also *Alschuler v. HUD*, 686 F.2d 472 (7th Cir. 1982); *Otero v. NYCHA*, 424 F.2d 1122, 1133-34 (2d Cir. 1973); *Garrett v. City of Hamtramck*, 503 F. 2d 1236, 1247 (6th Cir. 1974).

⁵ For a detailed review of the HOPE VI program, See NATIONAL HOUSING LAW PROJECT, FALSE HOPE: A CRITICAL ASSESSMENT OF THE HOPE VI PUBLIC HOUSING DEVELOPMENT PROGRAM (2002).

⁶ See GENERAL ACCOUNTING OFFICE, TAX CREDITS: OPPORTUNITIES TO IMPROVE OVERSIGHT OF THE LOW INCOME HOUSING PROGRAM Sec. 2 (March 1997).

⁷ See Florence Roisman, *Mandates Unsatisfied: The Low Income Housing Tax Credit Program and the Civil Rights Laws*, 52 U. MIAMI L. REV. 1011, 1012 (July 1998).

⁸ *Id.* at 1019.

⁹ JOSEPH GUGGENHEIM, TAX CREDITS FOR LOW INCOME HOUSING: OPPORTUNITIES FOR DEVELOPERS, NON-PROFITS, AND COMMUNITIES UNDER PERMANENT TAX ACT PROVISIONS 137 (9th ed. 1996).

Finally, the racial impacts of HUD policies and programs cannot be assessed unless HUD continues to maintain current, accessible demographic data. Much of this data is now seriously out of date, and reporting requirements are not being taken seriously by local housing agencies. Without current demographic and geographic data, we have no way of assessing, for example, where relocated tenants from HOPE VI projects are moving, when Low Income Housing Tax Credit projects are excluding voucher holders or minority applicants, and whether a Section 8 program is successfully providing housing choices to families outside of high poverty neighborhoods.¹⁰ Improving civil rights data collection systems for all HUD programs should be a high priority for this Committee in its oversight role.

Enforcing fair housing compliance among HUD grantees

The devolution of authority to local PHAs, housing managers, and municipalities has not been a fair housing success story. Like any civil rights requirement, fair housing is controversial and susceptible to local political pressure and prejudice. Congress needs to help HUD take back control of the civil rights review process and adequately fund and prioritize fair housing enforcement against HUD grantees.

One case in point is HUD's lax enforcement of civil rights requirements in the Consolidated Plan process. In theory, municipalities are now required to prepare a report and fair housing plan entitled "Analysis of Impediments to Fair Housing" (AI) to accompany their Consolidated Plan (the local annual plan for spending federal Community Development Block Grants, HOME funds, and other federal block grants to municipalities). The AI was to be one method for assessing a municipality's progress in pursuing its affirmative duty to further fair housing, and in theory, the Consolidated Plan is required to be consistent with and support the goals of the Analysis of Impediments. But there are no real penalties for non-compliance, and many municipalities treat the document as a paper requirement with no HUD oversight or consequences.¹¹ In October 1998, HUD published a proposed regulation that would have put more teeth in the requirement that jurisdictions had to affirmatively further fair housing. The proposed regulation would have required jurisdictions to show that they were addressing impediments to fair housing within their control and that they were taking measures to assist in improving impediments outside of their control. The proposed regulation met with strong opposition from the League of Cities, and HUD retracted the regulation in early 1999. It has not been reissued.

¹⁰ For example, HUD requires Section 8 administrators to report on a monthly basis the addresses where each Section 8 voucher is used, and HUD is capable of providing the number of Section 8 subsidies being used in each census tract in reports called "Section 8 Deconcentration Analysis Reports." These online, computer generated reports would be extremely valuable to municipal planners who are concerned about avoiding the creation of new concentrations of poverty, and to planners reviewing whether Section 8 Housing Choice Vouchers are a feasible substitute for public housing being demolished or for privately owned multifamily developments being converted in the "Mark to Market" program. Unfortunately, that data is not made publicly available and, even worse, over the last year HUD's computer system for generating these reports appears to have become incapable of producing accurate reports even for the agencies who administer the Section 8 program.

¹¹ See Deborah S. Kenn, *Housing Choice Case Studies: The Twin Cities Region in Minnesota and City of Rochester/Monroe County, New York*, 11 JOURNAL OF AFFORDABLE HOUSING, No.3 (Spring 2002).

Similarly, civil rights requirements in the Section 8 program are weak and are often treated as secondary to the goal of housing as many families as quickly and as inexpensively as possible. But there is no inherent conflict here: with higher rents in integrated neighborhoods, and stronger mobility incentives, the Section 8 program can succeed in housing families and providing desegregated housing opportunities at the same time.

Even in HUD programs with extensive fair housing requirements, compliance depends on a strong fair housing division within HUD. Yet the Office of Fair Housing & Equal Opportunity has faced significant loss of staff, and is no longer viewed as a serious oversight presence by local housing agencies.

Missed opportunities in the Section 8 program

Congress should restore funding for Section 8 mobility counselling, to help families find harder-to-rent housing in lower poverty neighborhoods. It is ironic that this funding was terminated at precisely the same time that HUD-funded studies of the Moving to Opportunity demonstration programs were confirming the extraordinary conclusions of the original Gautreaux Section 8 mobility program in Chicago¹². The evidence on the benefits of integration are increasingly hard to ignore: adults moving from high poverty to low poverty neighborhoods experience greater rates of employment and lower rates of long term welfare dependency, and their children often do better in school, and have higher high school graduation, college attendance and college graduation rates than their peers in the poorest city neighborhoods. The Section 8 program is HUD's most significant tool to provide these kinds of opportunities to families -- but without affirmative counselling, many families will not be able to find housing outside of higher poverty neighborhoods.¹³ Mobility counselling needs to be restored, and with it, increased fair market rents (FMRs) and higher Section 8 “payment standards” for housing in lower poverty suburbs.

Protecting innocent tenants and victims of domestic violence

I would also like to take a moment to voice our strong support for Representative Lee’s important proposed amendment to House Bill 3995, which would address the recent Supreme Court decision in *Department of Housing and Urban Development v. Rucker*.¹⁴ In that case, the Court construed the public housing statute to permit eviction of tenants for criminal and drug related activity of household members and guests regardless of the degree of responsibility or knowledge of the tenant herself. This decision essentially takes discretion away from courts to

¹² The Gautreaux program was part of a Consent Order following the U.S. Supreme Court decision in *Hills v. Gautreaux*, 425 U.S. 284 (1976). The program placed thousands of families from Chicago public housing in apartments in lower poverty city and suburban apartments. These families were followed and studied for many years to determine the benefits of their moves. See, e.g., James Rosenbaum, “Black Pioneers: Do Their Moves to the Suburbs Increase Economic Opportunity for Mothers and Children?” 2 HOUSING POLICY DEBATE 1179. The Moving to Opportunity (MTO) Section 8 mobility program was created as a pilot program during the 1990s to study the effectiveness of housing mobility as an anti-poverty strategy in five cities.

¹³ See generally, LOCKED OUT: BARRIERS TO CHOICE FOR HOUSING VOUCHER HOLDERS (published by the Lawyers’ Committee for Better Housing, Chicago, 2001) (www.lcbh.org)

¹⁴ 122 S.Ct 1230 (2002).

protect innocent family members where they bear no reasonable responsibility for the activity taking place. The decision has been widely criticized in the media for ignoring basic principles of due process, but it is also a fair housing issue, in that many of the victims of these eviction policies are women – mothers and grandmothers, often women of color, who are doing their best to provide a safe home environment for their children and grandchildren.

Representative Lee's proposed amendment would also protect women who are victims of domestic violence by specifying that women (or elderly tenants) who are victims of criminal activity (for example, assault) by a household member would not be automatically evicted from their housing as a result. This basic gender discrimination issue was highlighted in the recent case of *United States and Alvera v. C.B.M. Group, Inc.*¹⁵ (a case in which HUD played a crucial role in finding that a policy of evicting innocent victims of domestic violence violates the Fair Housing Act because of the disproportionate impact upon women). Representative Lee's amendment has received support from a wide spectrum of groups, including the AARP, the NAACP Legal Defense Fund, the National Network to End Domestic Violence, the NOW Legal Defense and Education Fund, and the Bazelon Center for Mental Health Law. We urge members of the Committee to support the amendment.

The need for dialogue on fair housing

HUD also needs to be encouraged to work with the advocacy community on issues of fair housing. Just as HUD regularly reaches out to local PHAs and their trade association, HUD should also solicit the views of the organizations representing the low income families HUD serves. For example, in March of 2001, near the beginning of Secretary Martinez' administration, we submitted a letter to the new administration on behalf of members of the Housing Justice Network and the Leadership Conference on Civil Rights. The purpose of the letter was to identify key civil rights issues facing the new administration and to request an initial meeting to begin a dialogue on some of these issues.

Our letter addressed some of the key civil rights issues facing HUD, including the loss of staff in the Office of Fair Housing & Equal Opportunity (FHOO); the discontinuation of Regional Opportunity Counselling funds in the Section 8 program; the need for enhancing private enforcement through the Fair Housing Initiatives Program (FHIP); the lack of civil rights standards in the HOPE VI and Low Income Housing Tax Credit programs; enforcement of "Section 3" requirements for employment of public housing residents in federal housing and community development projects; the need to reissue the proposed regulation to clarify city and town obligations to affirmatively further fair housing; expansion of enforcement to protect victims of "predatory lending" in minority communities; the need to finalize HUD regulations on gender discrimination in housing; the need for HUD to issue its overdue guidance on assisting clients with limited English proficiency; and the importance of a comprehensive response by HUD to the 1999 U.S. Supreme Court decision in *L.C. v. Olmstead*, to ensure full access to housing and communities for persons with disabilities. The signatories to this letter included the ACLU, the NAACP Legal Defense Fund, the Mexican American Legal Defense Fund, the National Housing Law Project, and a wide range of other civil

¹⁵ No. 01-857-PA (D. Or. filed June 8, 2001)

rights and poverty law advocates (a copy of our letter to Secretary Martinez is attached to this testimony). This would have been -- and still could be -- an excellent basis for beginning a dialogue with HUD on these crucial issues of race and housing. But the Secretary declined to meet. We understand how busy Mr. Martinez and his senior staff have been, but our invitation remains open and we are hopeful that we can begin discussions with this HUD administration on fair housing.

The absence of specific fair housing recommendations in the recent Millennial Housing Commission report

The Millennial Housing Commission was established by Congress in December of 2000 to explore methods “for increasing the role of the private sector in providing affordable housing in the United States,” and to examine “whether the existing programs of [HUD] work in conjunction with one another to provide better housing opportunities for families, neighborhoods, and communities, and how such programs can be improved...”¹⁶ The Commission’s recent Report to Congress opens with the observation that “consistent enforcement of the nation’s fair housing laws is a vital part of making housing a part of the ladder of economic opportunity.”¹⁷ But the report is then largely silent on the details of how to improve enforcement of fair housing laws. To its credit, the Commission recommends that new housing for very low income families be placed in low poverty neighborhoods, but this basic policy goal has been widely acknowledged for over a decade, that unless we provide greater access to desegregated housing, we will continue to deny access to equal educational and employment opportunities. The devil is in the details. How will new rental housing for poor people of color be sited in communities that have traditionally been hostile to lower income housing? How can these civil rights goals be reconciled with the desire to devolve control of housing decisions to the local level? Dr. King found his struggle with fair housing issues in Chicago to be among the most difficult and intractable challenges he had faced. It is perhaps not surprising that the Millennial Housing Commission could not reach final consensus on these issues during its deliberations. But these civil rights issues need to be confronted soon, as the important housing production recommendations of the Commission are considered by Congress. We hope that this Committee will now consider appointment of a similar task force or commission on fair housing to enhance civil rights enforcement at HUD and to ensure that fair housing becomes a more integral part of each housing and community development program administered by HUD.

¹⁶ P.L. 106-74, Sec. 206(b)

¹⁷ MILLENNIAL HOUSING COMMISSION, MEETING OUR NATION’S HOUSING CHALLENGES: REPORT OF THE BIPARTISAN MILLENNIAL HOUSING COMMISSION APPOINTED BY THE CONGRESS OF THE UNITED STATES, 2 (May 30, 2002).

Conclusion and Summary of Recommendations

The duty to affirmatively further fair housing was included in the Fair Housing Act in 1968 because Congress recognized the crucial role of federal government agencies and grantees in contributing to, and potentially combating, serious patterns of racial segregation and discrimination in housing. The importance of this mission has not abated, and fair housing goals will need to be continually integrated in all HUD programs and enforced as to all housing agencies and other grantees that HUD works with on the local level. Some of the specific recommendations we have put forward to address this goal are summarized again below:

Updating and improving access to HUD data systems to analyze racial impacts of its programs;

Instituting formal assessments of the racial impacts and segregative effects of siting and redevelopment decisions in the HOPE VI program and the Low Income Housing Tax Credit Program;

Enforcing meaningful local compliance with the Analysis of Impediments to Fair Housing requirement of the Consolidated Plan process, and issuing regulations to clarify HUD monitoring and enforcement responsibilities;

Strengthening civil rights requirements in the Section 8 voucher program, and increasing fair market rents and payment standards in lower poverty areas to expand opportunities for Section 8 voucher families;

Restoring funding for the Regional Opportunity Counselling program, to provide housing mobility counseling for Section 8 voucher holders;

Passage of the Representative Lee's proposed amendment to House Bill 3995, to moderate the harsh effect of the recent *Rucker* decision;

Encourage HUD to meet with fair housing advocates to work together to improve fair housing enforcement;

Appointment of a new commission or task force to follow up on the unfinished work of the Millennial Housing Commission with a review and analysis of needed changes to federal housing programs to comply with the duty to affirmatively further fair housing.

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March 15, 2001

Honorable Mel Martinez
Secretary of Housing & Urban Development
451 7th Street S.W.
Washington, DC 20410

Re: Key Civil Rights Issues in the New HUD Administration

Dear Secretary Martinez,

On behalf of the undersigned civil rights and housing advocacy organizations, we are writing to congratulate you on your confirmation and to request a meeting at which we can discuss important civil rights issues facing the agency.

As organizations which have fought to ensure fair housing in private and subsidized housing for decades, we write to you as the head of the federal agency which, under the Fair Housing Act, has been given the lead responsibility to combat housing discrimination and residential segregation in all federal housing and community development programs. This responsibility to “affirmatively further” fair housing in not only HUD programs but those of other federal agencies has not been consistently upheld. You arrive at HUD at a particularly critical time given the fundamental changes in the way public and subsidized housing will be provided and the manner in which HUD itself is structured to process fair housing complaints and ensure that its programs are run in a non-discriminatory manner.

Our comments deal primarily with the need to strengthen HUD’s fair housing enforcement responsibilities, and to ensure fair housing compliance throughout HUD and other agencies’ housing and community development programs. We are also concerned with discriminatory practices that particularly face women, non-English speaking minorities, and persons with disabilities. This list of issues is not intended to be exhaustive. Rather, we wish to highlight the most important civil rights issues facing HUD, where we feel important progress can be made in the next few years.

• Reaffirming Civil Rights Enforcement Priorities

One critical element of the new Administration's civil rights agenda should be ensuring appropriate resources and policies at the federal civil rights agencies. Among these agencies, the ones with responsibility over fair housing issues include: HUD's Office of Fair Housing and Equal Opportunity; the Department of Agriculture's Office of Civil Rights (particularly as it relates to the Rural Housing Service); and the Department of Justice's Civil Rights Division, particularly the Housing and Civil Enforcement Section.

As reflected in a recent report from the U.S. Commission of Civil Rights, the staffing levels in most federal civil rights agencies have decreased in real terms over the past six years. At HUD's Office of Fair Housing and Equal Opportunity (FHEO), for example, staff levels have decreased by 22% between FY 94 and FY 2000 and appropriations have fallen by 14.4%, despite a 15% increase in its Title VIII complaint workload. To remedy this problem, the Administration should increase staffing levels to an appropriate level that, at a minimum, are equivalent to that of FY 94 and correspond to the complaint level at each agency. In addition, HUD's Office of Fair Housing and Equal Opportunity should have its own line item for staffing and support resources in the HUD budget so that the public can evaluate the level of resources provided in each budget. We also strongly urge the Administration to expand the fair lending and land use initiatives of the Justice Department's Housing and Civil Enforcement Section, as well as its more traditional focus on discrimination in rental housing. These efforts have significantly expanded access to homeownership and other quality housing opportunities for minorities and other groups protected under the Fair Housing Act.

• Enhancing Regional Housing Mobility in the Section 8 Voucher Program

Section 8 has been proven to be an effective program for helping low income minority families move to more integrated, lower-poverty neighborhoods, but results could be even better than they have been. The long term educational and employment benefits of mobility have been studied in the Chicago Gautreaux program and in HUD's Moving To Opportunity program. But enormous barriers to mobility continue to thwart Section 8 clients in their search for housing outside of high-poverty neighborhoods. HUD could undertake a number of enhancements to make Section 8 mobility a reality for more families. In HUD's fiscal year 1999 budget, Congress appropriated \$10 million for Regional Opportunity Counseling (ROC) funds that have never been expended. HUD also has authority to increase the administrative fees that Public Housing Agencies (PHAs) receive to help families move to areas of low poverty. HUD could also empower its grantees under the Fair Housing Initiatives Program to test for discrimination against Section 8 voucher holders. Opportunities for regional mobility also are enhanced by HUD's recent interim rule that increases fair market rents in metropolitan areas where voucher holders are overly concentrated in certain neighborhoods. Making that rule final, with certain improvements, should encourage and empower housing agencies to promote opportunities throughout their regions.

• Incorporating Fair Housing Requirements into the Low Income Housing Tax Credit Program

The Low Income Housing Tax Credit Program is now the major housing production program in the United States. Until recently, the program was operated with little fair housing oversight. HUD should work with the Treasury Department, pursuant to Executive Order 12892, to enhance fair housing guidelines in the program -- particularly with respect to affirmative marketing requirements, siting of new developments, and access to suburban LIHTC developments by Section 8 participants.

- **Enforcing Fair Housing Requirements in the Hope VI Program**

The HOPE VI Program generally provides for demolition of severely distressed public housing, and creation of higher income communities on the site of the former public housing development. Fair housing advocates have pointed out that Hope VI should be administered to encourage fair housing goals and to provide adequate safeguards for existing residents in the relocation process. We have proposed that a fair housing impact assessment be incorporated into the HOPE VI program selection process, and that the February 26, 2001 NOFA and all future NOFAs for Hope VI be amended to encourage creation of integrated housing opportunities for public housing residents.

- **Continuing To Prioritize Preservation of At-Risk 'Expiring Use' and Expiring Section 8 Contract Housing**

Developments with expiring use restrictions and/or expiring project-based Section 8 contracts are a critically important fair housing resource. These developments are often some of the best housing available to low and moderate-income families. They are generally relatively well-built and well-maintained multifamily developments in gentrifying urban or suburban areas, accessible to good schools and jobs, and frequently in communities with very little public housing or rental housing. Once gone, given the rising expense of new construction and rehabilitation and the shrinking availability of sites, most of these developments will likely never be replaced. We applaud HUD for recognizing the critical importance of preserving this housing in developing preservation tools such as the "Mark-Up-To-Market" program. We urge you to continue to make preservation one of HUD's highest priorities by requesting necessary capital and operating funds from Congress and by developing responsive administrative policies to maximize preservation of this crucial fair housing resource.

- **Enforcement of Section 3 Employment Requirements**

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u, 24 C.F.R. Part 135) provides that training and work opportunities generated by federal housing and community development projects in low income neighborhoods go, to the maximum extent possible, to residents of these communities. The law covers public housing authorities, other HUD grantees, and their contractors. The training and hiring requirement is applicable to the construction, maintenance, and operation of public housing, as well as to construction in other community development programs.

Despite the far-reaching potential of this requirement, Section 3 remains underutilized. Through stronger monitoring and enforcement activities, HUD can use existing resources to improve the long term employment prospects of low income people and strengthen the economic vitality of low income communities. HUD can increase local compliance with Section 3 by transferring enforcement responsibility from the Office of Fair Housing and Equal Opportunity to the Offices of Public and Indian Housing or Community Planning and Development, and also by including Section 3 in regularly required rating systems that PHAs use to report to HUD.

- **Issuance of the Final Regulation on Affirmatively Furthering Fair Housing in the Community Development Block Grant Program**

The Fair Housing Act requires HUD to administer its programs in a manner to affirmatively further fair housing. 42 U.S.C. § 3608(e)(5). Current regulations require Community Development Block Grant recipients to certify that they will conduct an Analysis of Impediments to Fair Housing Choice and will take action to overcome the effects of any such impediments. The Analysis of Impediments is a review of public and private conditions affecting equal opportunity in housing in a particular community. It is a valuable tool for comprehensively examining and addressing the many institutional forces that continue to keep our cities and suburbs racially segregated as well as practices that affect the location, availability and accessibility of housing. In 1998, HUD proposed regulations which strengthened this requirement by including performance standards to measure a grantee's compliance. These regulations were generally supported by civil rights organizations and housing advocates. The regulation was never finalized.

- **Gender Discrimination in Housing**

HUD has issued proposed fair housing regulations on sexual harassment. We welcome this effort, as the case law has demonstrated the need for specific guidance from HUD to participants in the housing market and in civil rights enforcement proceedings. We hope that HUD will continue to support these regulations and that they will be issued soon. However, we also share the concerns expressed by some advocates that the new regulations should mirror current fair housing law, and not unnecessarily raise the burden of proof. In particular, some of the complex legal rules that have developed in employment cases do not necessarily need to be imported into the housing context. The unequal nature of the landlord-tenant relationship and the critical importance of the home as the center of family life also supports the need for strong unequivocal protections from sexual harassment in housing.

- **Expand Efforts to Combat Predatory Lending**

“Predatory lending” refers to a set of unscrupulous practices that result in homeowners paying far more in fees and rates when they refinance or purchase a home, thereby stripping equity from their homes and wealth from their communities. As reflected in a number of recent studies, those who are victimized by these practices are disproportionately elderly and persons of color. HUD should continue to make combating predatory lending a priority by increasing enforcement activity against predatory and discriminatory lending, including use of the Fair Housing Act, RESPA, and GSE oversight authorities as appropriate. HUD can also expand reliable collection of information and data regarding lending institutions by promoting recent proposals regarding the Home Mortgage Disclosure Act (HMDA).

• People with Limited English Proficiency

Department of Justice regulations have long required recipients of federal financial assistance to make sure that federally funded programs are accessible to people with limited English-speaking proficiency (LEP). In recent months many federal agencies, including the Department of Health and Human Services, have adopted guidance that for the first time provides meaningful, practical, program-related direction for federal grantees. The guidance clarifies what steps an agency should take to make its programs and activities accessible to limited English-speaking proficient persons and to be in compliance with Title VI. HUD also prepared a LEP guidance that essentially mirrored the guidance issued by HHS; however, HUD's LEP guidance has not yet been issued. We request that HUD publish and implement the LEP guidance. This will clarify for HUD-funded entities what types of services are needed to make programs and activities accessible to persons with limited proficiency in English.

• Disability Issues

Millions of people with disabilities are living in inappropriate settings, including restrictive congregate facilities, substandard or overcrowded housing, homeless shelters, or at home with aging parents who do not know what will happen to their adult children when they can no longer provide housing for them. The 1999 Supreme Court decision in *L.C. v. Olmstead* calls upon state and local governments to help integrate these people into the American mainstream. To that end, the Department should review programmatic barriers to full participation of people with disabilities in all of its programs, and not focus on a handful of disability "boutique" programs that are underfunded and will never address the full need. The Department and all recipients of its funding must be held accountable for compliance with the Fair Housing Act Amendments of 1988 and Section 504 of the Rehabilitation Act of 1973, including completion of the Department's own Section 504 self-evaluation. Further, the Department should adopt strong measures to ensure that people with disabilities are not being discriminated against when public housing agencies and private owners of assisted housing seek to restrict occupancy to households age 62 and older. Finally, more HUD leadership is needed to ensure the full compliance and enforcement of the accessibility provisions of the Fair Housing Act Amendments of 1988 in the private housing market.

Thank you for your consideration of our concerns. Perhaps more than any other agency, HUD is a bellwether of our nation's commitment to civil rights. We hope we can work with you to continue to improve HUD's civil rights record, and we look forward to meeting with you to discuss these issues. We will contact your office in the near future to request a meeting time.

Sincerely,

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