

TESTIMONY OF  
the National Council on Disability

BEFORE THE HOUSE FINANCIAL SERVICES COMMITTEE  
Subcommittee on Housing and Community Opportunity  
Subcommittee on Oversight and Investigations

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The National Council on Disability, or NCD, is an independent Federal agency with fifteen Council members appointed by the President and confirmed by the Senate. The purpose of NCD is to promote policies, programs, practices and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or the severity of the disability, and to empower individuals with disabilities to achieve economic self sufficiency, independent living, and inclusion and integration into all aspects of society.

NCD's mission includes the obligation to conduct studies, evaluate new and emerging disability related policies, and make recommendations to the President, to Congress and to federal officials about ways to promote equal opportunity. "Reconstructing Fair Housing" is one of a series of reports on federal enforcement of civil rights laws. It evaluates the efforts of the United States Department of Housing and Urban Development in enforcing the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. The Executive Summary from this report is attached to this testimony and incorporated into it by reference.

Housing discrimination undermines one of the fundamental premises on which our free society is based because it unfairly, and illegally, denies individuals with disabilities access to the kind of housing that they need to live independent and productive lives.

Federal civil rights laws protect people with a wide range of disabilities, including:

- The woman who uses a wheelchair and who is literally a prisoner in her housing authority apartment because it lacks wide doors, a ramp, and other physical features that would allow her to go in and out of her apartment.
- The deaf older woman who needs a flashing light on the fire alarm signal to tell her she should leave her high rise apartment when there is a fire.
- A young man who is blind needs housing authority staff to read an application or rules to him so he can understand his obligations as a tenant.

- An applicant who has HIV and related conditions and needs a two-bedroom apartment so that the attendant who helps him has a place to stay with him.
- An older gentleman who uses a walker and who cannot get to and from the rental office to pay his rent because there are too many steps—and rent must be paid in person.
- The Section 8 applicant who has severe arthritis and who cannot get into the Housing Authority's Section 8 application office because it has steps.
- The deaf resident who needs interpreter services to understand critical communications with her building manager about housekeeping, rental payment, or property rules.
- The resident with a mental disability who needs extra time from building staff to explain how the appliances work in his new apartment.
- The resident who is on dialysis and needs a transfer to a unit close to the only local hospital that provides dialysis.

While federal laws establish the rights of each of these individuals to be free from disability discrimination, the actual enjoyment of these rights depends upon two factors: (1) The voluntary compliance with these laws by housing authorities, assisted housing providers and private landlords, and (2) The federal government's commitment to enforce these rights when voluntary compliance is not forthcoming.

People with disabilities, like the rest of society, want to be able to choose a place to live without discrimination, to seek and find housing they can live in and afford in convenient locations, to be able to use their home, to live free of stereotypes, and to be treated fairly.

Although Congress has enacted two laws to ensure that these fundamental premises are met—Section 504 and the Fair Housing Act—NCD's report concludes that the promise of these laws has not been met because the key federal agency that enforces these laws—HUD—needs to do more.

Section 504 was enacted in 1973 as part of Rehabilitation Act legislation. It applies to the activities of recipients of federal financial

assistance and it is enforced by the federal agency that provides the funding. HUD, as the primary federal funding source for housing, was the last Cabinet-level agency to adopt regulations implementing Section 504, in 1988. In the same year, Congress passed the Fair Housing Amendments Act, adding disability as a protected class under the landmark 1968 legislation that prohibits discrimination in virtually all housing-related transactions.

While Section 504 applies only to housing programs that receive federal financial assistance, the Fair Housing Act applies to virtually all housing units in the country. Together, the two laws prohibit discrimination, require physical accessibility, and require that “reasonable accommodations” (or changes) in policies and practices be made for people with disabilities.

Governmental enforcement of these laws occurs directly, through investigations of complaints filed with the Department of Housing and Urban Development, and for Section 504, through compliance reviews initiated by HUD. HUD’s Office of Fair Housing and Equal Opportunity (FHEO) conducts the investigations, makes efforts to resolve the complaints, and makes determinations as to whether or not the law has been violated. When HUD determines that there is enough evidence to believe that the law has been violated, the government takes steps to enforce the laws.

Enforcement also occurs indirectly, where disability-specific instructions and guidance are imposed through program requirements administered by HUD. Without strong, timely enforcement of these laws, people with disabilities may be discouraged from pursuing their rights, and discriminators may be emboldened to continued unlawful discrimination.

The nation’s 3300 public housing authorities provide housing for many of the poorest and most disabled populations in the country. They were set up to provide decent and safe housing for low-income people, and they currently house over 1.3 million households. Much of the country’s public housing population is either elderly or disabled, or both. Housing authorities typically provide housing,

either directly through conventional rental public housing, indirectly through Section 8 project based or voucher programs, through the HOPE VI program, and now increasingly through homeownership programs designed to reach the poorest of the poor.

NCD's report finds that HUD's efforts to enforce Section 504 have disproportionately been directed at public housing authorities. While limited progress has been made through the use of voluntary compliance agreements, the report concludes that much more must be done to protect individual rights.

NCD found that HUD has tools to protect the rights of people with disabilities, but that it is not using them effectively. Improved efforts are needed in five areas: enforcement, education and outreach, structural accessibility for people with disabilities, overall program requirements that will improve compliance, and effective support and leadership for compliance with these laws.

## **Enforcement**

HUD has had some occasional major successes in enforcing civil rights laws on behalf of people with disabilities against housing authorities, but HUD does not have an effective, consistent national enforcement program for Section 504 or the Fair Housing Act. The NCD report attributes this failure, in large part, to four factors:

- Inadequate staffing and resources for enforcement and compliance
- A lack of consistent Administration and Congressional support for an effective program
- Competing priorities that pull attention away from an on-going core enforcement program
- A recent lack of effective management of HUD's fair housing enforcement and compliance operations.

One important measure of HUD's vigor in enforcing the Fair Housing Act is the number of its investigations that conclude that housing discrimination may have occurred. The annual number of so-called "cause cases" dropped precipitously from 324 in 1994 to 96 in 2000.

Today, more than three quarters of the way through this fiscal year, HUD has only found that the law was violated in 46 cases.

While disability discrimination is now the most common complaint under the Fair Housing Act, NCD found that only one in 40 disability complaints result in a finding that the law has been violated. Overall, there are findings of violations in only 2.4% of all cases.

Another measure of HUD's effectiveness is its compliance with the statutory mandate to conclude Fair Housing Act investigations within 100 days of filing. HUD has not met that target since 1989; in FY 2000, the average age of Fair Housing Act cases closed by HUD was at an all time high of 497 days.

The length of time that it takes HUD to resolve cases, and the lack of effective enforcement efforts, has a direct and chilling effect on public confidence in the process. Without a sense that enforcement will be done promptly, effectively, and fairly, there has already been an erosion of public support for administrative enforcement, increased recourse to the courts, and, unfortunately, a growing reluctance among people who have been victimized by discrimination to file complaints. It is as true today as it ever was that "justice delayed is justice denied."

Key recommendations for improving enforcement and compliance with Section 504 and the Fair Housing Act include:

- HUD should adequately staff and resource its office of fair housing to enable full enforcement of the law and to prevent staff from being diverted from an on-going enforcement and compliance program to meet other priorities.
  - HUD staff has reported that fair housing enforcement initiatives over the past years have resulted in under staffing, and virtual cessation at times, of the Section 504 compliance program. At the same time, fair housing enforcement efforts have not been able to achieve Congressionally imposed case processing time frames. There have not been enough staff to perform either fair housing enforcement or Section 504 compliance functions

effectively, and the work needed by each has drawn staff from the other obligation.

- HUD lacks institutional knowledge and experience in enforcing civil rights laws due to losses of staff throughout the agency; HUD needs to re-establish and deepen its own institutional knowledge base in these areas.
- FHEO in particular needs at least two architects with particular expertise in accessibility to assist in conducting investigations and providing technical assistance. The Department of Justice uses architects routinely to assist in Fair Housing Act compliance; HUD should do no less.
- HUD's commitment to enforcement must be department-wide and directed by the Secretary of HUD. Historically, the most effective work in enforcing Section 504 and the Fair Housing Act against recipients of federal funding when there were joint and consistent efforts between HUD's Office of Fair Housing and HUD's Office of Public Housing, and HUD's Office of Counsel to achieve compliance. A recent example of this very effective work was a compliance review and the resulting Voluntary Compliance Agreement (VCA) between HUD and the District of Columbia Housing Authority. This successful strategy should be replicated in dealing with other recipients and throughout the country at the HUB level. Unless the Secretary directs that these activities be coordinated, they will not be.
- HUD should develop an organized Section 504 compliance program that includes short term and long term enforcement strategies, systems for coordination within HUD's offices and with consumers and recipients, identification of recipients and standards where compliance reviews will be initiated, formal guidance for staff on conducting compliance reviews consistently, and a rational and effective use of the compliance review strategy. Again, the Secretary must direct that this effort occur, or it will not happen.
- HUD's fair housing office, since its receipt of the NCD report draft last year, has committed itself to conducting a large number of compliance reviews. But when HUD simply dictates to its field staff that they must conduct X numbers of

- compliance reviews, there is no strategy, there is no rationale for its actions, and scarce resources may not be used effectively. An effective strategy could include setting standards for civil rights performance that, if not met, would result in a compliance review, and making those standards public, so housing authorities and other recipients will know more about what is required of them, and HUD can use its limited resources effectively to focus on real trouble spots.
- HUD should use its enforcement sanctions more frequently. HUD has incorporated in its Notices of Funding Availability (NOFAs) language that renders recipients ineligible to apply for funding if they have outstanding, uncorrected civil rights violations. This language should be applied consistently to any recipient who has uncorrected violations. The sanctions should be included in regulatory eligibility requirements, and, if necessary, in statutory requirements, until recipients comply with the law. In addition, when HUD identifies multiple or repeated violations of civil rights laws, it should use its sanctioning authority. HUD has authority to terminate or suspend funding and, in the NOFA, the authority to decline to fund, recipients who discriminate. HUD has an effective administrative hearing process and authority to refer cases to the Department of Justice when there is noncompliance with Section 504 and the Fair Housing Act. Where HUD finds persistent violations, it should exercise its sanctioning authority. It should refer cases to the Department of Justice where there is non compliance; it has done so only two or three times in the past ten years, but there are many examples of housing authorities that have repeatedly or consistently been out of compliance. One only needs to examine the agreements in the District of Columbia and in Boston to see a significant history of noncompliance.
  - HUD should expand its Section 504 enforcement and compliance activities beyond housing authorities to other assisted housing providers. HUD's limited compliance program has almost exclusively been focused on housing authorities, but there are many other recipients of HUD funds that are not in compliance with Section 504, including most notably CDBG



- recipients, and assisted housing programs like the 202/811 programs.
- HUD should enforce its settlement agreements (called Voluntary Compliance Agreements) with housing authorities effectively and quickly. There are reports of VCAs that have not been complied with for years, with no effective action taken by HUD to enforce them.
  - As HUD increases its enforcement activities, it should provide information about its activities to the public. Letters that contain findings of discrimination, voluntary settlement agreements, and results of sanctions and hearings should be made public and should be available on the internet.
  - HUD could improve the organization and effectiveness of its Section 504 enforcement and compliance work by expanding an existing Fair Housing Act database, called TEAPOTS, to include templates for Section 504 compliance review and complaint investigations. This system already makes it easier to document investigations and provides an organizational structure for investigatory work in Fair Housing Act cases; it should be immediately expanded to improve timeliness of Section 504 work.

### **Education and outreach** □

HUD must improve its education of housing authorities, assisted housing providers and private landlords and owners, as well as consumers, about their obligations under federal civil rights laws. HUD has issued several guidance notices, including one for public housing authorities, about Section 504 and Fair Housing Act requirements that have begun the process of effective guidance, but much more is needed.

Some of the report's key recommendations:

- HUD should listen to people with disabilities and their advocates. In the wake of the NCD report, HUD invited advocates and consumer to a meeting with the Secretary. After that one listening meeting, there have been no further

- meetings, and no significant indication of responsiveness to any of the issues raised in the NCD report. Advocates are eager to work with this administration on civil rights issues; HUD should give them the opportunity.
- HUD should provide more training and technical assistance that support compliance with Section 504 and the Fair Housing Act.
    - HUD's Office of Fair Housing and Equal Opportunity needs more contract funds to develop technical assistance and training materials that could be used by its field staff to instruct housing authorities, other recipients of federal financial assistance, private landlords and consumers about the laws. Materials should be prepared that will effectively reach a diverse group of consumers. They should be tailored to reach hard-to-reach populations, including people with various types of disabilities, who may not be aware of their rights under the laws. The Department of Justice and HHS got multimillion-dollar grants for technical assistance relating to ADA and Section 504 compliance, funding that HUD never got. But it's not too late. FHEO's contract budget should be increased immediately, to at least \$5.2 million, to accomplish critical work in support of enforcement and compliance.
    - HUD should have a comprehensive, easily administrable program (perhaps offered through a videotape, CD ROM or other self-administrable materials) about compliance requirements that is suitable for smaller housing authorities and assisted housing providers, and a comprehensive package of training materials and information that would be useful for housing authorities facing more complex issues. Contract funds should be made available to fund development and distribution of these materials.
    - HUD should collect and publish its guidance, opinions and interpretations of the civil rights laws in a readily accessible and searchable way. There is no central place even for HUD's own staff to find out what has happened

in other cases, much less resources for housing authorities or advocates.

- FHEO should develop and fund a civil rights training academy that will offer on-going technical and substantive training for its investigatory and compliance staff and for staff of other program areas. Staff turnover has resulted in a loss of institutional knowledge and skill in investigating and prosecuting cases and advancing civil rights protection and knowledge.
- HUD should provide ready access to judicial decisions, findings of discrimination and written dismissals of complaints, as well as settlement agreements in Fair Housing Act and Section 504 cases. Both public housing authorities and consumers need a comprehensive understanding of how these civil rights laws have been applied and what they require.
- HUD should issue a plain English handbook for each type of recipient of its funding, including public housing authorities, that compiles Section 504 and Fair Housing Act requirements and interpretations in one place and that offers sample language for policies, and clear direction for practices. These materials should be comprehensively available on-line, through CD ROM, and in alternative formats so they are usable by people with disabilities.
- HUD's existing materials must be made readily available through its Public Housing and Fair Housing HUBs in alternative formats. The Office of Fair Housing and Equal Opportunity currently does not have funds to make these materials available to the public.
- HUD must enforce existing requirements that housing authorities and other recipients of federal financial assistance communicate effectively with individuals who are disabled, and make their written materials accessible.

Congress funds the Fair Housing Initiatives Program (FHIP) and the Fair Housing Assistance Program (FHAP) to provide a comprehensive national education and enforcement program to combat housing

discrimination. People with disabilities will benefit from more effective operation of these programs.

- HUD's Office of Fair Housing and Equal Opportunity should devise more effective ways to document successes in the FHIP and FHAP programs, particularly those that benefit people with disabilities, and to replicate those successes nationally. Many of these funding programs develop good materials, excellent training and public education packages, effective enforcement strategies, and other information that can benefit compliance, but HUD does not have an effective way to identify these successes, to support and encourage good work, or share the products with others.

### **Accessibility and Reasonable Accommodations**

Two of the key requirements in the Fair Housing Act and Section 504 are their requirements to provide physical accessibility and their requirements that housing providers make "reasonable accommodations" when changes in usual operational rules, policies and practices are needed to effectively house people with disabilities.

There are very significant problems with housing authorities and other housing providers in complying with these requirements that significantly harm people with disabilities. A failure to make housing accessible when it's being built or renovated has negative consequences for people who need accessible housing. It also wastes taxpayer money, because it is more expensive to renovate housing to make it comply with the law than it is to build the housing to be accessible in the first place.

As to physical accessibility, the two laws have slightly different requirements, and there continues to be little compliance with either.

If a housing provider receives federal funding from HUD, it is required by HUD regulation to make 5% of its rental and homeownership units accessible to people with mobility impairments and an additional 2% of its units accessible to people with vision and

hearing impairments, by building the units to comply with the Uniform Federal Accessibility Standards (or UFAS). Housing that is renovated also has accessibility requirements imposed by HUD regulation.

In addition, when housing authorities or any other housing providers build new multifamily rental or sales units of four or more units, they must follow the design and construction requirements found in the Fair Housing Act. These requirements, as demonstrated in the recent HUD agreements with the District of Columbia and with Boston, have been widely ignored by housing providers. This is a particular problem in the HOPE VI program that is generating a high volume of new construction. It is also a problem in the Mod Rehab program. A further issue is the failure of the HOPE VI program to limit the use of two and three story town homes in HOPE VI rental and homeownership developments because these designs limit access dramatically for people with disabilities. The HOPE VI program, and all HUD housing programs, should favor designs that maximize accessibility and visitability for people with disabilities.

- Much more enforcement is needed to ensure compliance with accessibility requirements. Public housing authorities, in particular, have been put on notice for several years, through the Comprehensive Grant and CIAP funding programs, through a round of compliance reviews in the mid nineties, and through written guidance from HUD's Office of Public and Indian Housing for several years about these accessibility requirements. HUD should use its enforcement authority strongly to correct access problem in housing authorities because they have received plenty of notice about the need to comply in this area. HUD should expand its enforcement efforts to reach other assisted housing providers, including programs under its offices of Community Planning and Development and Housing.
- HUD should be praised for developing its new training and technical assistance program to provide more information to housing providers, code officials, architects, builders, consumers and others, about accessibility requirements. This

program is badly needed, with national figures indicating 65-70% non-compliance with the Fair Housing Act's design and construction requirements. The training under this program should be made available to public housing authorities and other recipients.

Housing authorities and other housing providers also must make "reasonable accommodations" by adjusting their policies and procedures so people with disabilities can use the housing. When there's federal funding involved, the housing authority must also make structural changes to housing so people with physical disabilities can use it—even if it was built years ago and otherwise doesn't have to be accessible. Housing authorities and other providers are tremendously confused by their obligation to make reasonable accommodations. A failure to make a reasonable accommodation can make a tremendous difference in the life of a person with a disability. Most cases do not turn on whether or not the accommodation is too burdensome for a housing authority to make; most cases still involve simple accommodations where the housing provider just doesn't understand what is required. HUD can make it easier to understand; HUD SHOULD make it easier.

### **Program Involvement**

Because enforcement of civil rights laws requires a departmental-wide commitment, it is critical that civil rights requirements be incorporated into the program operations in all of HUD's program areas. By including more emphasis on serving persons with disabilities in all of HUD's programs as part of the programs' basic requirements, much non-compliance can be avoided or minimized. A fundamental problem in ensuring civil rights enforcement is to focus all of the attention on HUD's Office of Fair Housing and Equal Opportunity. That focus misses the point. FHEO cannot direct the Office of Public and Indian Housing, or any of the other program offices, to adopt and give priority to program requirements that maximize housing opportunities for people with disabilities. Only political leadership from the administration and from the Secretary of

HUD can do that. Civil rights compliance must be woven through all of HUD's program areas and led by program leadership.

- Each of the key program offices at HUD should develop a plan that is coordinated with FHEO to integrate the housing needs of people with disabilities, and compliance with legal requirements, into program requirements. So, for example, the HUD Office of Community Planning and Development should have regulatory requirements, handbooks, and other program guidance that addresses disability-related issues in the programs that it funds, like Shelter Plus Care, HOME and others. Public housing should require HOPE VI recipients to maximize access in HOPE VI rental and homeownership properties, offer funding incentives for higher levels of access, develop prototype programs to encourage homeownership for people with disabilities, and provide sample housing designs that make housing usable by people with disabilities well beyond the 5% and 2% requirements.
- One important crosscutting issue that is frequently overlooked is that there is no baseline source of information about accessible units in communities, even though many of the affordable units are funded by federal funds. One important initiative HUD could encourage with little additional cost is to require all recipients to give HUD a list of the locations, sizes and numbers of their accessible units and for HUD to publish them, so that applicants, advocates, housing authorities and others could readily locate accessible units. Just this coordination process would help many, many home seekers immeasurably.

### **Administrative Support and Leadership for Change**

Leaders in this administration must steer a clear, strong course toward protection of the rights of people with disabilities. It must be leadership toward change, toward firm enforcement, comprehensive education, and continued attention throughout HUD to increasing and improving housing options for people with disabilities. HUD should not continue making its policy decisions in isolation and it cannot continue keeping those decisions to itself. Disability policy and civil

rights enforcement issues must be woven through all of HUD's operations.

One important tool that the Secretary of HUD has is to increase the visibility and activities of the current Office of Disability Policy and use the office to coordinate the work of all of HUD's program areas. The Secretary should establish, and listen to, a national consumer advisory group that will suggest recommendations for improvement in HUD's programs and civil rights work, so HUD decision-making includes consideration and integration of key housing issues confronted by people with disabilities.

And Congress should direct HUD to identify and implement, with adequate funding, management initiatives and structural and staffing improvements that will directly strengthen its enforcement of Section 504 and the Fair Housing Act, while providing better tools to housing providers about what the law requires. This work will enlarge and strengthen President Bush's New Freedom Initiative and comprehensively and consistently provide the leadership and direction that will give people with disabilities the full, fair choices in housing that they need and that the law requires.

Thank you.



# RECONSTRUCTING FAIR HOUSING

## SECTION II

### Executive Summary

The past 12 years of civil rights enforcement by the Department of Housing and Urban Development (HUD) have left America, and in particular people with disabilities, needing more. The late 1980s were characterized by a new commitment to equal housing opportunity: Congress passed the Fair Housing Amendments Act of 1988 (FHAA) and HUD finally promulgated regulations for the enforcement of Section 504 of the 1973 Rehabilitation Act. HUD was empowered to investigate and adjudicate discrimination complaints and to enforce compliance by recipients of federal funds. By the late 1990s, however, HUD had lost control of its own enforcement process, with investigations taking nearly five times as long as Congress mandated and with scarcely 100 cases annually concluding with findings of discrimination during each of the past six fiscal years.

Administrative enforcement of civil rights laws has been hampered by the failure of Congress and HUD to provide the level of resources that effective enforcement requires. Inconsistent and inadequate funding has caused some specific problems for HUD, especially concerning staffing and special enforcement initiatives. The bigger problem has been HUD's failure to provide consistent national leadership and management of the fair housing enforcement process. As a result, the promises of the fair housing laws have been empty for many Americans, with and without disabilities.

The primary focus of this report is the way in which HUD has conducted its administrative enforcement of the Fair Housing Act (FHA) and Section 504 of the 1973 Rehabilitation Act to counter discrimination in housing, and, in particular, HUD's record during the past 12 years in enforcing the rights of people with disabilities under these laws.

#### A. Overview

Housing discrimination undermines one of the fundamental premises on which our free society is based because it unfairly, and illegally, denies access to the accessible, affordable housing that people with disabilities need to live independent lives. Without effective and fair enforcement of civil rights laws, people who are injured by housing discrimination lack recourse to remedies and rights that Congress passed in an express effort to achieve a country free from invidious discrimination. And without effective and fair enforcement of civil rights laws tied to increased education about those laws, people cannot know the ways in which discrimination may occur so they can avoid discriminating, and those that perpetrate discrimination will not be held accountable for their unlawful actions.

The absence of an effective fair housing enforcement system motivated Congress to pass the FHA and to invest HUD with strong authority to combat discrimination. This report concludes that ineffective enforcement has led to a loss of public trust that the protections of the FHAA and Section 504 will be enforced. When these important civil rights laws are not well enforced, individual victims of discrimination suffer, but the entire country also suffers as ignorance of, and disdain for, the laws increases. Nowhere is this more harmful than in the context of housing, where discrimination can have such a devastating impact on a person's ability to work, to attend school, to be involved in the civic life of the community, and to pursue all the variations on the American dream.

People with disabilities encounter illegal housing discrimination in many different ways: (1) inaccessible housing, (2) stereotypes about the ability to live independently, or (3) the inability to get modifications in rules or policies that have historically excluded people with disabilities. Housing discrimination artificially constricts the housing choice of people with disabilities; as a consequence, they may be forced to live in undesirable, dangerous, or unwelcoming neighborhoods. They may encounter harassment, intimidation, or unfair and illegal treatment.

At the same time, many in the housing industry seek answers to their questions about discrimination. Without answers to those questions, even unintentional discrimination may continue. This country still needs the prompt, effective civil rights law enforcement that impelled Congress to pass the FHA and Section 504.

In 1988, Congress, with strong bipartisan support, passed the Fair Housing Amendments Act, adding handicap and familial status (the presence of minor children in a household) as additional prohibited bases for discrimination and strengthening enforcement authority under the law. Rights of people with disabilities to be free from discrimination in housing were considerably expanded because the amendments provided key protections to them and offered them, for the first time, rights to equal treatment and to reasonable accommodations in policies, procedures, and practices, and rights to have newly constructed multifamily housing designed and constructed to be usable by people with physical disabilities.

During the 1990s, people with disabilities increasingly filed discrimination complaints with HUD under the FHA, until they became the single largest group of complaints filed in fiscal years 1999 and 2000, amounting to nearly 42 percent of HUD complaints filed nationally.

During the same period, however, HUD's enforcement activities diminished. The number of complaints filed overall dropped dramatically, with the number of complaints in FY 2000 amounting to only 30 percent of their level in 1992. HUD's adoption of a new "claims" process designed to examine more closely potential complaints has resulted in many fewer complaints being filed and significant increases in the amount of time HUD takes to actually begin a complaint investigation.

The length of time HUD took to investigate cases increased dramatically from 1990 to 2000. The average age of complaints at their closure was 497 days in FY 2000, nearly five times the 100-day period that Congress set as a benchmark for projected case completion. There are significant regional variations in the duration of investigations as well.

HUD made some progress in its efforts to reduce the number of complaints that were "administratively closed" without a disposition during the mid-1990s. By FY 2000, however, that trend was reversing; about 20 percent of filed complaints were administratively closed, up from 15 percent in the mid-1990s. Between its claims process and its overuse of administrative closures, HUD is failing to deal effectively with many potential complaints.

Conciliations or settlements of complaints amount to close to half of the case resolutions. Investigations with findings of discrimination and decisions to pursue enforcement action can take more than a year and have been decreasing in number after reaching a relatively high point during the mid-1990s. The number of such decisions is only a small percentage of the cases HUD investigates. Decisions to dismiss cases with findings of no discrimination increased during the 1990s as well and often took longer than a decision to take enforcement action.

Overall, complaints involving discrimination based on disability are more likely to be settled by HUD, less likely to result in a finding that discrimination has occurred, and less likely to be dismissed after investigation compared with other cases. There are, however, wide and troubling differences in outcomes among HUD's various regional offices, suggesting that the kind of outcome a particular case reaches may be related to where a complaint is handled.

Even more troubling are the significant and serious deficiencies in HUD's overall history of enforcement. This study concludes that the devolution of case-processing responsibility combined with the leadership's attitude toward management and significant shortfalls in staffing and resources have caused these deficiencies. The last Administration's "hot case" and "doubling" enforcement action initiatives exacerbated these systemic flaws and made no discernable improvement in enforcement.

HUD's enforcement of Section 504 has been even more troubled. HUD had difficulties in adopting regulations implementing the law and its enforcement role. Funding has been limited for enforcement activities, and some significant successes in achieving compliance in individual situations have not been replicated.

There are only limited and inconsistent data by which to judge HUD's Section 504 enforcement efforts. The data that are available, however, show that both enforcement and compliance efforts have been marked by long delays resulting from the diversion of limited resources to other activities.

HUD has developed some important guidance, substantive and legal resources, and examples of good enforcement work. However, this information is not widely disseminated to HUD's own enforcement staff or to HUD program areas that could benefit from the information. In addition, this guidance has not been made available to individuals and entities affected by the law.

Good data collection systems and investigative management technology have been developed for FHA cases. Immediate expansion of these systems to support Section 504 enforcement and compliance work is an important priority for HUD.

The Fair Housing Initiatives Program (FHIP) was established by federal statute to fund private fair housing groups, state and local agencies, and advocates. FHIPs provide important services to and products for people with disabilities. Unfortunately, because of poor record keeping and limited financial resources, FHIPs have been unable to produce or replicate these efforts.

FHIPs have raised concerns that HUD's management of the program has resulted in significant delays in providing funding to qualified recipients and a lack of focus on supporting the enforcement and education activities external to HUD that are a critical component of successful law enforcement.

Congress funds the Fair Housing Assistance Program (FHAP) to handle cases at state and local enforcement agencies. While regional differences exist, when compared to HUD, the 86 FHAP agencies have lower percentages of cases administratively closed and a higher percentage of complaints resulting in findings that the law has been violated. They are able to process complaints (including disability complaints) considerably more quickly than HUD. Despite reports of gaps in activity in cases and other performance issues, more effective HUD monitoring of FHAP could reasonably be expected to improve performance even more. Unfortunately, HUD has no sustained process for identifying and disseminating important lessons from the success of the FHAP operations.

This study found startling inadequacies in HUD's management operations and resources supporting enforcement over the past years. HUD's Strategic Plan, Annual Performance Plan, and Business and Operating Plan, all of which direct the priorities and activities of the Office of Fair Housing and Equal Opportunity (FHEO), have been seriously deficient in addressing enforcement and compliance activities, FHIP and FHAP performance, and efforts to improve the civil rights of people with disabilities. Significant work in improving the focus and content of HUD's planning is needed to drive the enforcement and compliance improvements recommended in this study.

Congress has failed to give HUD adequate appropriations to fund its enforcement and compliance activities. FHEO was staffed at lower levels in FY 2000 than it was in 1989, and increases in staff-to-manager ratios have impaired effective day-to-day management activity. The lack of financial resources has impaired staff training, travel, the ability to

support education for the housing industry and the public, and funding for contracts and new initiatives.

This report concludes that HUD has a major challenge ahead of it to fulfill the promise of civil rights enforcement. Without staffing and funding resources, progress cannot and will not be made. Without strong and effective management of compliance and enforcement activities, combined with monitoring, training, technical assistance, and, if necessary, sanctions, progress cannot and will not be made. Without an organized, focused program, progress will not be made. The law is not the problem; the siting of enforcement activities at HUD is not the fundamental problem. The way in which the law is implemented is the problem confronting HUD and this country, and it is this problem that must be addressed now.

## **B. Summary of Key Recommendations**

This report makes a number of recommendations for improvement of HUD's administrative enforcement and compliance activities. These recommendations can be loosely grouped under five major categories:

- **The Administration, HUD, and Congress must improve the enforcement of disability rights guaranteed by the FHA and Section 504 of the Rehabilitation Act; ensure compliance by federal grantees; and make enforcement of disability rights laws a priority.**
- The Administration, HUD, and Congress must ensure that current and future HUD budgets are increased so that adequate resources are provided for the enforcement of housing-related civil rights laws and for ensuring compliance by federal grantees.
- HUD must provide better guidance on the meaning of housing-related disability civil rights laws, including the FHA and Section 504, and must dramatically improve its collection of data about enforcement and compliance activities.
- HUD must improve its identification and dissemination of best practices concerning education, enforcement, and compliance activities.
- The Administration, Congress, and HUD (including its Office of Disability Policy and a National Consumer Advisory Committee) must work together to regain public trust in governmental enforcement and compliance activities.

Detailed recommendations are summarized in Appendix I at the end of this report. But it is clear that prioritization among the many recommendations made for improvement requires, first and foremost, increased attention to and support of enforcement activities by our country's leadership. The degree of the deficiencies in many, if not most, aspects of the government's enforcement of these civil rights laws is so startling and so significant that change must be led from the very top levels of the Federal Government.

The next most significant group of recommendations focuses on addressing the lack of resources for HUD's civil rights enforcement activities. Without adequate resources, laws will not be effectively enforced. The absence of adequate numbers of staff, reliable

funding streams for two statutorily created programs designed to advance enforcement, training and support funds, and data and technology funds have demonstrably hampered enforcement efforts in the past years.

HUD must gather, organize, and make available more information about the provisions of these laws and their interpretations and applications. Increased resources and funding could allow development of education, outreach, training, and technical assistance programs that would serve people protected against discrimination and particularly people with disabilities, housing providers, and others covered by the laws; HUD's own staff and program operations; and the general public. Increased education can both prevent discriminatory practices and reach victims of discrimination to advise them about their rights. Old and new cases, decisions, and interpretations can enable more effective enforcement as well as reducing or preventing discrimination.

HUD has undertaken positive enforcement and compliance activities during the period studied in this report, as have private fair housing groups and state and local enforcement agencies. The absence of effective systems to identify and replicate these best practices remains a major barrier to ongoing improvements in enforcement and compliance.

While following the recommendations described above should dramatically improve HUD's enforcement and compliance work, HUD must finally undertake specific actions that will help regain public trust in its work. The deficiencies that this report identifies have increased the reluctance of many to seek assistance from HUD and has helped create barriers to effective use of enforcement and compliance tools available to the government. The perception that HUD does not do its job efficiently or reliably must be dispelled, first by improved performance and then by affirmative steps to tell the Administration, Congress, advocates, and the public about its good work.

## **1. Improving Enforcement of Disability Rights and Ensuring Compliance by Grantees**

The new Administration and Congress should take positive action to address the deficiencies that this report identifies. Leadership and attention to enhancing civil rights enforcement from the Administration and Congress are critical to improvements in enforcing the laws that are designed to correct discriminatory practices.

Key elements to congressional and Administrative involvement include supporting--by funding, staffing, and management oversight--the efforts of the FHEO to enforce the laws. The office that has the sole responsibility for administrative enforcement of the FHA has fewer staff now than it did in 1989, when the FHAA was passed. It has less than half the staff dedicated to compliance activities that it did in 1989. The following are key recommendations in this area:

- Congress and the Administration should provide enhanced oversight to assess major deficiencies in enforcement and compliance, including evaluating the reasons the absolute number of cause findings, especially those in disability cases,

have declined so precipitously; why there are wide variations on these indicators among the regional offices; why so many cases have been allowed to remain so much longer than the 100 days Congress set as a benchmark for case conclusion; and the ways in which screening of complaints before they are investigated may deter the pursuit of valid complaints.

- The Administration should request and Congress should allocate sufficient funding to ensure that there are adequate and qualified staff available to perform the tasks necessary for efficient enforcement.
- Congress and the Administration should support management initiatives that will focus--through HUD's Strategic Plan, Annual Performance Plan, Business and Operating Plan, and other management tools--on improvements in day-to-day oversight and management of enforcement and compliance activities.
- The Secretary of HUD should act expeditiously to support each of these recommendations and should support expanding and strengthening the existing Office of Disability Policy (and include a National Consumer Advisory Committee) to provide input, guidance, and direction to the Secretary and to all of HUD's program offices.
- FHEO should develop a comprehensive and organized Section 504 compliance program that should include, at a minimum, short- and long-term strategies for enforcing Section 504, a review of the successful ways that FHEO has worked with other HUD program offices to accomplish Section 504 compliance goals, establishment of systems for communication within HUD and with consumers and recipients, and coordination of the work of technical assistance, enforcement, and compliance and development of a systematic plan for improving responses to Section 504 complaints.

## **2. Dedicating Adequate Resources to Enforcement and Compliance Activities**

This report concludes that the lack of sustained, consistent resource support has seriously and adversely affected HUD's ability to enforce civil rights laws. Inadequate numbers of intake, investigative, and mid-managerial staff, judged by standards identified in an independent study of Title VIII of the Civil Rights Act of 1968 (the FHA) enforcement, have contributed to ineffective enforcement and serious lapses in compliance activities. Lack of funds and staff for effective management of the Fair Housing Initiatives Program and the Fair Housing Assistance Program have caused shortfalls in their intended roles. Lack of contract funds has had serious effects on HUD's ability to train its own staff, to develop new enforcement initiatives, and to support even minimal education and outreach activities.

The following are key recommendations:

- At a minimum, HUD should staff its Office of Fair Housing and Equal Opportunity with enough staff to ensure that each investigator carries no more

than 15 cases at any one time. In addition, HUD should significantly increase its staff with persons knowledgeable about Section 504 investigations and compliance to ensure that it can maintain an effective Section 504 program without doing harm to its FHA enforcement and vice versa.

- HUD's Office of Counsel should evaluate its staffing of the fair housing and Section 504 function and ensure that there are adequate numbers of staff attorneys to support those functions.
- As part of its comprehensive effort to more effectively enforce the FHA, HUD should make much more extensive use of Secretary-initiated complaints.
- HUD should provide staff and other supportive resources that will enable FHEO to engage in monitoring of conciliation agreements and Voluntary Compliance Agreements. HUD should refer cases of noncompliance to the Department of Justice (DOJ) when compliance cannot readily be achieved.

### **3. Improving Policy Guidance and Data Collection**

A thorough understanding of civil rights laws is a basic requirement for fair enforcement. Those working to improve compliance must understand the nuances of the law, be up-to-date with new judicial and policy developments, and be able to apply the law consistent with its interpretations. This report describes serious shortfalls in HUD's provision of guidance for its own staff, the absence of systematized sources for policy and legal information about interpreting the laws, and even the lack of basic information about when the law applies.

In addition, HUD's current inability to provide even basic data about the products of its funded programs and about its enforcement and compliance outcomes allows differing and inconsistent interpretations and thereby can adversely affect the public and its own operations.

The following are key recommendations:

- FHEO's Title VIII enforcement handbook should be completed, updated, and treated as binding guidance for enforcement of the FHA for HUD as well as for state and local agencies enforcing laws that are equivalent to the FHA.
- FHEO should develop a similar comprehensive manual that addresses Section 504 enforcement and compliance.
- FHEO should develop an ongoing system to gather and make generally available its interpretations of the FHA and Section 504. The Office of Counsel should undertake, in conjunction with this effort, a similar project to compile legal opinions, interpretative documents such as letters and memoranda, and key court decisions. Such a system should permit ready access to ensure consistent



application of the law, and FHEO and the Office of Counsel should consider establishing a method to make these interpretive decisions available publicly.

- Congress and HUD should fund a Civil Rights Training Academy that will provide basic and advanced skills training and substantive, legal, and technical training first for HUD staff, then for FHAP and FHIP.
- HUD's Secretary should strengthen the existing Office of Disability Policy and provide it with adequate staff and access to review program operations throughout HUD for compliance with the FHA and Section 504 and to advise the Secretary about corrective actions.
- FHEO should reinstate its process for issuing staff and interpretative guidance through memos, notices, and other mechanisms about new and important civil rights enforcement and compliance issues and make its guidance available to the public.

#### **4. Improving Identification and Dissemination of Best Practices**

As earlier recommendations are implemented, FHEO is expected to be able to collect and provide to others information about best practices in enforcement and compliance. Existing strategies that accomplish outstanding results should be recognized and honored.

- FHEO should develop systems that will permit it to identify outcomes and best practices among its regional offices, state and local enforcement agencies, and private fair housing groups and make those materials and products accessible to its own staff, to other organizations, and to the public, where appropriate. In particular, FHEO should identify working strategies for community outreach (particularly to people with disabilities), intake, case processing, investigative strategies, and management techniques among its own staff and replicate them in other offices. A similar system should be developed to highlight products of state and local agencies and grantees. FHEO should memorialize unique enforcement and technical assistance efforts, compliance strategies, and other products through distribution of materials, training, and development of national initiatives.
- FHEO should identify the successful approaches it has used to address issues of Section 504 noncompliance and identify the resources and support necessary to apply those approaches to a national compliance strategy. FHEO should make its strategies public and use them to encourage general compliance as well as conduct compliance reviews.
- HUD should continue to explore ways in which it can use FHIP and contract funds to support collaborative work between full service fair housing agencies and organizations representing persons with disabilities.
- HUD should review and incorporate as many of the recommendations made by the Occupancy Task Force mandated by congressional action as are applicable to

HUD's current programs and activities. It should determine whether the recommendations should be applied to programs and initiatives that did not exist when the recommendations were made in 1994 and the most effective ways of applying them.

## **5. Regaining Public Trust in HUD's Enforcement and Compliance Activities**

Without implementation of the leadership, resource, communication, and best practices initiatives that this report recommends, HUD will not be able to regain the trust of the public. With tools that can be developed to focus attention on the many significant accomplishments of FHEO, however, HUD will be able to highlight its contributions to ending discrimination. If Congress provides adequate funding, HUD performs its enforcement and compliance functions effectively, and the systems are in place to identify successful work, HUD's achievements will speak for themselves.

- HUD should develop and implement a system to make its interpretations of civil rights laws generally available. HUD should provide adequate staffing and funding to support this effort.
- HUD should focus its resources on securing resolution of (and compensation in) a broad range of fair housing complaints rather than focusing on settlement of cases designed primarily to garner the most publicity for the agency.
- HUD should maximize the use of its World Wide Web site to inform the public that HUD's funding programs require recipients to comply with the FHA and Section 504.
- FHIP should move expeditiously to develop a comprehensive, organized system to identify outcomes, information, and materials developed as a result of the program and to make them available to the public, especially to organizations and individuals who deal with fair housing issues.

## **C. Future Prospects**

The Administration has taken some actions, and HUD has initiated some disability-related changes since October 1, 2000, the end date for the information covered in this report, that suggest support for future improvements in fair housing enforcement.

President George W. Bush, Vice President Richard Cheney, and Attorney General John Ashcroft have indicated support for fair housing enforcement and, in particular, for increased emphasis on disability rights. While it is too early to say whether this renewed support will make a significant difference in improving enforcement, it is a promising start.

HUD Secretary Mel Martinez has demonstrated his recognition of the importance of disability rights early in his tenure by meeting with several major disability rights organizations. He has also taken steps to implement several key aspects of President

Bush's New Freedom Initiative, designed to assist Americans with disabilities by increasing access to assistive technologies and promoting increased access to community life. Among the President's initiatives are implementation of the American Homeownership and Economic Opportunity Act of 2000, which provides opportunities for Section 8 voucher holders, including people with disabilities, to use those funds for down payment assistance in the purchase of a home.

The lack of management focus and limited staffing and resources remain critical problems in fair housing enforcement. Secretary Martinez's expressed commitments to staffing realignments and increases in management oversight and the use of technology to improve HUD's activities show promise for future enhancements of fair housing work because they have the potential to address problems identified in this report.

HUD has reported that it has engaged in a variety of initiatives to enforce the FHA's design and construction requirements, including completing a review of model building codes and developing, with others, changes to the International Building Code to develop a stand-alone document that publishes access standards for housing. HUD has let a \$1 million contract to develop a new training curriculum to provide national training on the FHA's accessibility requirements to a wide audience of builders, developers, architects, and advocates consistent with congressional direction in the FY 2001 budget report language. If Congress approves funding, this project is anticipated to provide accessibility training and technical assistance in an organized way. HUD's Office of Fair Housing and Equal Opportunity also reported that it has conducted six new training activities on a variety of accessibility issues, including a session for the National Association of Attorneys General on access issues and one for BANC One on tax credit housing, with particular emphasis on accessibility and Section 504, as well as more general sessions in Honolulu, Hawaii; Providence, Rhode Island; Pinellas County and Clearwater, Florida; and Maryland. In addition, HUD has announced that it plans to conduct a self-evaluation, as required by Section 504, in FY 2001.

FHEO has advised NCD that it intends to revise the HUD Strategic Plan to include the following language: "Enhance Section 504 enforcement efforts through increased guidance and technical assistance to field staff; increase compliance/monitoring activities; and coordinate such efforts within HUD and other Federal agencies." FHEO has also advised NCD that it intends to revise its FY 2002 Annual Performance Plan (APP) to provide specific measures and indicators to reduce housing discrimination against people with disabilities and that it will "incorporate compliance strategies to specifically address Title VI/Section 504 compliance reviews for people with disabilities in the FY 2003 APP."

These are worthy activities. As detailed in this report, however, much more needs to be done. HUD needs to work continuously with its various stakeholders to ensure that management and program reforms recommended in this report are implemented. HUD needs to work alongside NCD as part of this process. HUD also needs to ensure that its work in this regard incorporates the knowledge generated by the Interagency Council on Community Living, as well as the groundbreaking work being conducted around the

Olmstead Initiative by the Department of Health and Human Services. It is time to restructure fair housing.

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