

**Written Testimony  
of  
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**BEFORE THE HOUSE FINANCIAL SERVICES COMMITTEE  
Subcommittee on Housing and Community Opportunity  
Subcommittee on Oversight and Investigations**

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**I. Introduction:** My name is Shanna Smith, and I am President/CEO of the National Fair Housing Alliance. I want to thank the committee for inviting me to speak about the issue of fair housing enforcement as it relates to the people, neighborhoods, businesses and local governments who are protected under the federal Fair Housing Act. The National Fair Housing Alliance is a membership organization representing virtually all of the private, non-profit fair housing education and enforcement agencies in the United States.

I have been providing for 27 years fair housing education and enforcement services through private nonprofit agencies, and I have utilized the HUD administrative process since 1975. I am very familiar with how the process functioned before the 1988 amendments and since 1989 when HUD implemented new procedures to exercise its authority to enforce the Fair Housing Act. I received scores of comments from the NFHA membership prior to preparing my testimony. The comments detail successes and failures with HUD's administrative case processing and its investigation and resolution of allegations of rental, sales, lending, and homeowners insurance discrimination as well as complaints involving racial and sexual harassment in housing.

My testimony today will focus on the relationship between HUD's Office of Fair Housing and Equal Opportunity (FHEO) and private fair housing agencies and will be limited to:

- (1) The Fair Housing Initiatives Program (FHIP), including the Notice of Funding Availability and terms and conditions of grant contracts under FHIP; and
- (2) Administrative complaint processing at HUD as it relates to enforcement of the law for members of the protected groups, especially African Americans, Hispanics, Asian Americans and Pacific Islanders.

There are seven classes protected under the Fair Housing Act: race, color, religion, national origin, sex, disability and familial status. Subgroups are found within each group. Race covers African Americans but also whites who are victims of discrimination. For example, whites have successfully conciliated and litigated complaints when they were threatened with eviction because they had African American visitors. Whites have successfully litigated mortgage lending discrimination cases when the lender refused to provide a loan because they were purchasing a home in an interracial or predominantly African American neighborhood and when the appraiser purposefully under-appraised a home in an interracial neighborhood, causing the loan to be denied.<sup>1</sup>

**II. Creation and Purpose of FHIP:** In 1987-88, fair housing groups worked closely with HUD, especially FHEO Assistant Secretary Judith Brachman of the Office of Fair Housing and Equal Opportunity, to garner support for a program that would provide direct funding to qualified, private nonprofit fair housing agencies to conduct fair housing education programs and to provide in-take, testing, investigation, conciliation and/or litigation of verified complaints of housing discrimination. With support from the Reagan administration and leadership from the

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<sup>1</sup> *Old West End Association, et al v Buckeye Federal Saving and Loan; Gosses v TrustCorp.*

House and Senate, Congress approved a \$3 million pilot program called the Fair Housing Initiatives Program. A companion program (Fair Housing Assistance Program-FHAP), for state and local governments that have laws and procedures for investigating housing discrimination complaints that are substantially equivalent to the federal Fair Housing Act, was approved at the same time.

Congress envisioned that the agencies funded under these programs would work cooperatively with HUD to increase the number of complaints reported annually and to provide swift investigation and resolution for people who suffered the humiliation of housing discrimination. HUD was overwhelmed with complaints following the passage of the amendments, which also added protections for people with disabilities and families with children. By 1991, HUD had a huge backlog of complaints, and victims of housing discrimination found their cases languishing at HUD for years. Many issues contributed to the backlog. When the law took effect in 1989, HUD did not have an effective process in place to handle the increased volume of complaints, staff still needed training in investigating complaints from people with disabilities and families with children and staff needed guidance on utilizing the "prompt judicial action" promise in the new legislation. HUD had brand new authority to charge a complaint and moved very slowly in deciding when and how to exercise that authority.

HUD was divided into ten regions, and there were differing interpretations of the regulations and Fair Housing Act in different regions. Staff at FHEO and the Office of General Counsel worked diligently to create a smoother operation, and Secretary Kemp made fair housing a Departmental priority for the first time ever. However, hundreds of complaints were held at HUD for more than three years, and "prompt judicial action," a process designed to quickly help secure the apartment or home in question, was anything but prompt. Even today it is rarely utilized by HUD; victims of housing discrimination who want an apartment or home illegally denied them must find a private attorney to obtain a temporary restraining order to take the unit off the market. As a result, HUD may eventually resolve complaints, but complainants rarely get the apartment that was in question.

**III. FHIP and GAO:** The 1989 initial Notice of Funding Availability (NOFA) for FHIP was welcomed by private fair housing agencies. From 1989 through 1992, HUD followed the mandate of the statute, and FHIP funds were awarded to qualified fair housing agencies. In 1991, Congress asked the General Accounting Office to report on the effectiveness of FHIP. The GAO report applauded the successes of the approximately 30 private fair housing agencies that had received FHIP funds and Congress voted to make FHIP a permanent program. President George H. Bush increased the level of funding to \$10 million, and additional initiatives were added to the program, including establishment of new fair housing organizations in underserved areas and capacity-building to help established groups expand services to people alleging discrimination in real estate, lending and insurance markets. In 1989, there were only about thirty private nonprofit fair housing agencies. Today there are approximately one hundred qualified fair housing agencies, but there is only \$20 million allocated for both education and enforcement activities.

**IV. Public/Private Partnerships:** The partnership between HUD and the private fair

housing groups receiving FHIP funds was evolving. Secretary Kemp was the first to include an allocation of FHIP funds in the Notice of Funding Availability (NOFA) for special investigations under the Private Enforcement Initiative (PEI). Under his leadership, HUD issued a NOFA for mortgage lending testing to be conducted in three cities. He supported the use of FHIP funds to investigate systemic practices of discrimination that hurt home ownership opportunities for African Americans and Hispanics. Secretary Cisneros continued the use of special PEI projects to address redlining and issued NOFAs to investigate practices that were regional or national in scope. HUD and FHIP recipients collaborated under both Secretaries Kemp and Cisneros. Even with its large backlog of cases, HUD was responsive to fair housing groups and met regularly with them to work out issues that prevented timely and effective investigations and resolutions through conciliation or the Administrative Law Judge process. Investigations into redlining by homeowners insurance companies were funded under Secretary Kemp and were successfully resolved through HUD Conciliation Agreements under Secretary Cisneros.<sup>2</sup>

HUD was making some progress in the mid 1990's on the back log of complaints, but consumer confidence in the federal and state administrative processes was quite low. Fair housing remained a priority under Secretary Cisneros who integrated fair housing responsibilities into every division at HUD, i.e., FHA, Public and Indian housing, CDBG. The Housing and Community Development Act was passed in 1974 with a requirement that recipients "affirmatively further fair housing;" however, regulations were NEVER promulgated to provide guidance on what it means to affirmatively further fair housing. As a result, 98% of the more than 1,000 CDBG recipients do absolutely nothing to promote fair housing. Secretary Cisneros drafted regulations to affirmatively further fair housing for CDBG recipients. Secretary Cuomo released the draft for comment but withdrew them almost immediately when small city mayors complained that the regulations might require them to accept group homes for people with disabilities. Unfortunately, there still is no regulation.

**V. Serious Problems in the Partnership:** The partnership between HUD and fair housing agencies receiving FHIP funds began to deteriorate in 1998. These problems continue today and have worsened significantly in the past few years. The restrictions listed below have resulted in a serious reduction in the number of complaints filed annually with HUD. In the early 1990s HUD received approximately 10,000 complaints annually. Last year, HUD received fewer than 2,000 complaints. Private fair housing agencies who have historically filed and settled complaints through the HUD process are refusing to apply for FHIP funds because of the government's attempts to micro-manage local investigations and the emphasis on numbers rather than successful resolutions that promote fair housing in local communities.

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<sup>2</sup> The National Fair Housing Alliance and HUD negotiated conciliation agreements with State Farm (July 1996) and Allstate (March 1997) after testing indicated that some underwriting guidelines prevented qualified home owners from purchasing replacement cost coverage for their homes because of the age, value or racial composition of the neighborhood where the house was located. State Farm and Allstate changed the problematic guidelines and found significant increases in homeowners insurance business in urban communities throughout the United States. NFHA continues to work closely with both companies by providing training for agents and self-testing for the companies.

I will outline in this section only the most egregious issues articulated by private fair housing agencies from throughout the country. The first problems began when Secretary Cuomo mandated the following:

1. Every verified complaint received by a fair housing agency must be filed with HUD and if the complainant does not choose to file with HUD, he or she must state the reason in writing.
2. A fair housing agency must return to the U.S. Treasury all funds recovered in a conciliation or settlement that reimbursed the agency for any of the FHIP funds used in the investigation of the complaint.
3. A fair housing agency must predict how many investigations will result in bona fide complaints.
4. Private Enforcement Initiative (PEI) grants were capped at \$125,000 annually at one point regardless of the size of the community served; current caps are higher but not sufficient for some communities.

Secretary Martinez continues the use of the restrictions listed above<sup>3</sup> and has added additional requirements and even penalties such as:

5. Short term funding cycles that are detrimental to long term success.
6. Applicant loses 5 points if located in a state or city with a FHAP agency.
7. Applicant must show the project will become financially independent.
8. Applicant must show that proposed activities comply with CDBG recipients' Consolidated Plan, Analysis of Impediments to Fair Housing.

## **VI. Brief Explanation of Problems:**

1. ***Every verified complaint received by a fair housing agency must be filed with HUD, and if the complainant does not choose to file with HUD, he or she must state the reason in writing.***

Not every complaint requires federal action in order to be resolved. HUD wanted to increase its number of reported complaints, so fair housing agencies suggested that HUD count every complaint<sup>4</sup> that is reported to a private group when HUD funds (FHIP/CDBG) are used to handle the complaint. It should not matter what method a complainant uses to resolve a complaint, but rather that a satisfactory resolution is secured. HUD rejected this suggestion and instead mandated that every complaint supported by evidence be filed with HUD. This requirement might be more understandable for complaints filed by fair housing agencies based on audit testing and for which there is no individual bona fide complainant; however, the requirement becomes onerous given HUD's tremendous case backlog and poor record of both investigating

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<sup>3</sup> Secretary Martinez eliminated #3 and increased the cap to \$275,000 in #4

<sup>4</sup> Complaints are defined as allegations that are covered under the federal Fair Housing Act.

discrimination cases and finding probable cause of discrimination.

Sometimes a victim of housing discrimination only wants an apartment or a reasonable accommodation/modification and does not want to file a formal complaint with any government agency. After an investigation provides evidence that supports the allegations of discrimination, sometimes the complainant asks the fair housing agency to simply call the landlord/owner to try to secure the apartment Tapping a respondent on the shoulder, rather hitting him/her over the head with a hammer, can be a more effective way of securing the apartment and insuring that a landlord stops engaging in practices that violate the law. Since prompt judicial action is nearly impossible to secure through HUD, a fair housing agency should not be penalized when a complainant chooses an alternative option for resolving a complaint. A complainant should be solely responsible for deciding what method to use to resolve a verified complaint. Fair housing agencies provide the following options to all verified complainants:

- File a complaint with the state or local governmental agency
- File a complaint with HUD
- File a lawsuit in state or federal court
- Have the fair housing agency contact the landlord/seller/lender/insurer
- Do nothing

It can be intimidating to complainants to require them to put in writing the reason(s) they choose not to file with HUD. In fact, Assistant Secretary Eva Plaza understood this and removed the requirement. She understood that Hispanics, Asian Americans and newer immigrants are reluctant to be involved with the government; requiring them to sign a written statement about why they choose not to use the government would further thwart HUD's effort to increase the number of complaints and increase consumer confidence in the system.

However, this requirement has been reinserted in the current NOFA and HUD grant monitors are penalizing fair housing agencies who do not follow this rule.

2. ***A fair housing agency must return to the U.S. Treasury all funds recovered in a conciliation or settlement that reimbursed the agency for any of the FHIP funds used in the investigation of the complaint.***

No other grant program penalizes an agency for doing good work. For example, community development corporations (CDCs) receive federal dollars to build and rehabilitate homes for low and moderate income home buyers. The CDCs sell the homes and plow the profits back into their programs to build or rehab more homes. Every fair housing group that receives reimbursement for costs of an investigation uses those funds to conduct more educational programs or more investigations. The FHIP funds are meager -- just \$20 million to cover fair housing education and enforcement for seven protected groups throughout the whole country! It is cost effective -- and a deterrent to future violations -- to require owners, managers, and corporations who violate the law to reimburse a fair housing agency for its costs in investigating and processing the complaint. Federal judges throughout the country order defendants to reimburse fair housing agencies for their costs. Surely, repeat offenders should be required to

reimburse costs, but HUD will not even consider allowing an agency to keep the reimbursement when a repeat offender is involved. Clearly, the repeat offender knows the law but chooses to continue violating the law. The requirement is burdensome and counter-intuitive to the achievement of fair housing.

**3. *A fair housing agency must predict how many investigations will result in bona fide complaints***

Seventy-six private fair housing agencies processed more than 16,000 complaints in 2001 compared to HUD's 2,000. No one has a crystal ball with the capacity to predict how many allegations of discrimination will be supported by testing or other evidence. Some years a private group will process three hundred complaints and the next year receive six hundred complaints. We cannot predict who will violate the law or frequently they will do so. Defense attorneys use this HUD requirement to argue that fair housing agencies must manufacture discrimination in order to continue to receive FHIP funding. Since fair housing groups are penalized in the evaluation process for failing to file more complaints with HUD, a judge or jury might give weight to this defense point.

Unfortunately, HUD staff monitoring FHIP recipients continue to ask why more complaints are not filed with HUD and are stating that the agency may receive a poor program evaluation because it did not file more complaints with HUD. NFHA and its members are careful not to file frivolous claims either with HUD, FHAP agencies or in state or federal courts. We also respect the decisions of a complainant about how to handle the complaint. HUD continues to have a backlog of complaints even when it only receives 2,000 complaints annually. Fair housing is not a numbers game. It is about eliminating discriminatory practices and policies that perpetuate residential segregation, opening up housing opportunities to qualified renters and buyers and promoting integration within Constitutional limitations. Increasing HUD's numbers with complaints that can be resolved quickly at the local level is not the answer. HUD should focus on competent and timely investigation of the complaints it has in the pipeline before requiring FHIP recipients to file more complaints that will surely languish at HUD FHEO or regional counsel offices.

**4. *Private Enforcement Initiative (PEI) grants were capped at \$125,000 annually at one point regardless of the size of the community served; current caps are higher but not sufficient for some communities.***

Capping the PEI allocation is not inherently a problem. Capping the PEI allocation across the board at a particular annual level for every FHIP applicant is shortsighted because it fails to take into consideration:

- **The size of the service area:** At one point, New York, NY, (population 8 million) received \$150,000 to investigate housing discrimination while Napa, California (population 70,000) also received \$150,000. Napa could make a dent in the problem, while NYC's allocation was a drop in the bucket. The current cap for Private

Enforcement Initiative grants is \$275,000. This is sufficient for many communities but still not enough for a cities like New York, Detroit, Atlanta, Chicago, Houston, San Antonio, San Diego, San Francisco, Birmingham, Miami, Dallas, Los Angeles and many other metropolitan areas. Even at \$275,000, the amount barely covers the costs of operating an agency including salaries for the executive director, fair housing specialist, administrative support, accounting costs, tester fees, training, office space, computers, supplies, travel, conciliation or litigation expenses.

■ **National Origin Issues:** There have been significant increases in Hispanic and Asian American populations in cities throughout the country. HUD requires the fair housing agency to use these limited funds to deal with complaints from African Americans, families with children, people with disabilities as well as the newer populations who often need more assistance working through the process. Areas such as Raleigh/Durham, NC, have seen a dramatic increase in the Hispanic population accompanied by increases in acts of housing discrimination against the families. HUD expects a private group to continue to process its normal complaint load and conduct outreach to increase service to under served groups. More local staff is needed to address the special needs of non-English or limited English speaking complainants. More staff is needed to develop a close relationship with the communities that are under served to gain the their trust by understanding their culture and speaking their language. It is unrealistic for HUD mandate expanded outreach without providing the funds to do it.

**5. *Short term funding cycles are detrimental to long term success.***

The FHIP NOFA currently provides for a one year funding cycle. Grant periods have ranged from 12-24 months (and in limited cases for the creation of new organizations, 36 months). Fair housing agencies can not receive both education and enforcement funds during the same grant cycle. Because fair housing agencies are guaranteed not funding from year to year, the benefit of ongoing enforcement activities is diluted. HUD has not been capable of completing the FHIP NOFA and grant decision process within a twelve month period. Therefore, twelve month grant cycles serious hurt fair housing agencies ability to retain experienced staff. When the grant contract ends, the staff is laid off. A longer grant contract reduces the problem. Ideally, the FHIP program should create a long-term (perhaps 3 or 5 years), entitlement-type grant cycle for qualified private nonprofit fair housing organizations. The program should include funding to provide training to agency personnel and to implement programs to improve and enhance agency performance.

**6. *Applicant loses 5 points if located in a state or city with a FHAP agency and geographic based scoring.***

There can be no rational justification for this penalty in the current FHIP NOFA. Congress expressly created FHIP and FHAP to complement each other and to increase enforcement of fair housing laws throughout the country. There are hundreds of excellent examples of cooperation between recipients of FHIP and FHAP funds. Their cooperation is necessary because there are also important differences between the services provided by fair housing agencies and FHAP

agencies. FHAP agencies do not conduct testing. Testing provides definitive evidence of differential treatment because of race, color, religion, national origin, sex, disability of familial status. Testing removes the "he said-she said" issues by providing objective facts for a government investigator, ALJ, state/federal judge or jury. Fair housing agencies cannot subpoena documents. FHAP agencies use information from test reports to review records of the landlord and determine if units were in fact available when the complainant or testers inquired. FHAP agencies stated publicly at the national HUD conference in Orlando, Florida, during the week of June 9, 2002, that evidence provided by fair housing agencies shortens the time for processing the case and helps facilitate conciliation, thereby reducing the case load for the state court system. FHAP agencies also stated that, because testing documents evidence of intentional acts of discrimination, stronger remedies and oversight of violators are negotiated in conciliation agreements.

State and local FHAP agencies that have excellent working relationships with fair housing agencies will be adversely affected by this punitive scoring requirement in the current NOFA. States that will be adversely affected include Arizona, California, Texas, Ohio, Pennsylvania, Florida, North Carolina, Washington, Massachusetts, New York, and Nebraska.

For example, Nebraska has only one private fair housing agency that serves the state. The FHAP agency has contracted with the fair housing agency to conduct testing and investigations, and the agency uses FHIP dollars to enlarge its scope of investigations to monitor illegal sales, lending and insurance practices. The agency will lose five points and be penalized financially simply because Nebraska passed a fair housing law that is substantially equivalent to the federal law.

In Ohio, private fair housing agencies worked with the state legislature to pass a fair housing law substantially equivalent to the federal law. By doing this, Ohio earned the right become a FHAP agency and receive funds from HUD to investigate complaints of housing discrimination. Last year, the Ohio state attorney general, working from a complaint filed by the Toledo Fair Housing Center, settled an insurance redlining complaint for more than four million dollars. The Ohio Civil Rights Commission (OCRC) does not have the testing capability to investigate insurance and lending complaints and, without the cooperation of the private groups in Toledo, Cleveland, Dayton, Cincinnati, and Akron, the OCRC would be hard pressed to investigate cases in a timely manner and would see its number of complaints dwindle. Prior to the establishment of the private groups in Ohio during the 1970s, the OCRC received and processed fewer than 10 housing discrimination complaints annually. Now OCRC processes hundreds of complaints annually – most filed through private fair housing agencies.

The competition for FHIP funds is very keen and often there is just one point separating applicants. The loss of five points because a fair housing group is located in a state or city with a FHAP agency guarantees a lower score and an increased likelihood that the very groups Congress intended to support through FHIP will be de-funded.

HUD may claim that this penalty is in place to support groups where no FHAP agency exists, such as Alabama, Mississippi and Virginia, but this is backwards thinking. Instead HUD should require the more than 1000 CDBG recipients to use their funds to affirmatively further fair

housing.

HUD reserves the right to deviate from the ranked scoring system. This is patently unfair to every applicant. For instance, HUD can decide that only one grant will be awarded per state even though states such as Illinois, California, New York, Florida, Texas, Washington, Massachusetts, Pennsylvania and Ohio have multiple private fair housing agencies operating throughout the state. For example, if the six groups in New York, seventeen groups in California and eight group in Ohio are ranked in the top thirty five eligible applicants, HUD can decide to fund just one applicant in each state and move down the ranking list to fund a group that ranked substantially lower. The rules state that all of the remaining groups in New York, California and Ohio must now go to the bottom of the ranking order. Because of this rule and penalties for being in FHAP state, many fair housing groups did not even bother to apply for FHIP funding. HUD received fewer applications under this NOFA.

#### **7. *Applicant must show the project will become financially independent***

The only sources of funding for fair housing enforcement are FHIP and CDBG. Rarely will a foundation support enforcement activities. If a private group receives foundation support, it is for seminars, conferences or educational efforts. However, what good is it to educate people about their fair housing rights and responsibilities if follow up enforcement services are unavailable?

Congress established FHIP in 1989 in part because HUD's research estimated that at least two million African Americans<sup>5</sup> experience discrimination in rental housing annually. The research indicated that three out of four times an African American inquires about rental housing, s/he will face discrimination. HUD's 1989<sup>6</sup> research also demonstrated that Hispanics will experience illegal discrimination approximately 50% of the time when seeking to rent or buy a home. Rental audits conducted by fair housing groups in San Antonio, Houston and Fresno between 1996 and 2000 indicate that Hispanics face discrimination 70% of the time they inquire about rental units.

There were only about thirty fair housing groups in existence before FHIP. They were relatively small, three or four person, operations that investigated rental complaints. A few agencies, such as Leadership Council for Metropolitan Open Communities (Chicago), HOME of Cincinnati, Toledo Fair Housing Center, Heights Community Congress (Cleveland), Fair Housing Council of Northern New Jersey, and the Open Housing Center (NYC), investigated real estate sales steering practices. They were able to do this because their CDBG communities supported their programs. There is no full service fair housing group operating any where in the United States without the support of FHIP and/or CDBG funds. Congress established FHIP because it knew there was little or no support at the local level for enforcement of the fair housing laws. That

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<sup>5</sup> HUD's 1979 Housing Marketing Practices Survey.

<sup>6</sup> HUD's 1989 Housing Discrimination Study

remains the case today. Congress determined that it is important to eliminate illegal practices that segregate people and deny housing to people because of their race, religion, color, national origin, sex, disability or because they have children. HUD should recognize the congressional commitment to fair housing and remove all the barriers in the NOFA that undermine continued financial support for private fair housing groups.

**8. *Applicant must show that proposed activities comply with CDBG recipients' Consolidated Plan, Analysis of Impediments to Fair Housing***

While every CDBG recipient is supposed to prepare an Analysis of Impediments (AI) to Fair Housing that identifies barriers to fair housing AND recommends and implements programs to eliminate these barriers, only about 20 cities have developed AI reports that actually identify the problems, make recommendations and fund programs to eliminate the barriers. In the past few years, NFHA has reviewed approximately 650 AI reports. The majority fail to correctly identify what housing discrimination involves. Most believe landlord-tenant housing problems involving evictions, non-payment of rents, and housing code violations are fair housing concerns. Many AI reports are just two or three pages long and do not include information on the nature, extent or type of barriers members of protected groups experience in their communities. Some cities believe only low or moderate income people are affected by discriminatory housing practices and ignore the illegal discriminatory housing practices that middle and upper income people of color, women, and families with children face.

Since the overwhelming majority of CDBG recipients fail to identify housing discrimination as a problem in their community, then the activities proposed by applicants for FHIP funding cannot comply with the activities listed in a CDBG recipient's Consolidated Plan or AI. Again, a fair housing agency applying for FHIP funds is unfairly penalized because its CDBG recipient fails to meet HUD requirements.

However, those handful of CDBG recipients who correctly identify and define barriers to fair housing in their Consolidated Plan and AI are also the same recipients who tend to financially support their private nonprofit fair housing agency.

HUD should simply make CDBG recipients follow the rules and not penalize a fair housing agency for a locality's failure to affirmatively further fair housing. For years, the private fair housing movement has been begging HUD to issue regulations defining "affirmatively furthering fair housing" requirements so fair housing groups can seek funding from their CDBG recipients; however, rather than issue long overdue regulations, HUD is penalizing the very agencies that assist victims of illegal housing discrimination.

**VII. Successes and Failures in HUD Enforcement**

When the partnership between private fair housing agencies and HUD is working, there has been significant expansion of housing, lending, and insurance opportunities for people of color, persons with disabilities and families with children. HUD has worked with fair housing groups across the country to conciliate complaints. Resolutions have included significant payments of

compensatory damages to victims of housing discrimination and concrete relief that includes monitoring future practices of a company and employee training.

However, the number of complaints processed by HUD and successful resolution of complaints filed continues to dwindle. There has been a dramatic reduction in the number of "cause findings" since 1994. Secretary Cisneros caused 324 cases in 1994. Caused cases dropped significantly under Secretary Cuomo to 96 in 2000 and, so far in this fiscal year, only 46 cause findings have been issued.

**Drop In Cause Findings:** In the past three years, many experienced staff at FHEO headquarters resigned or took early retirement. During the downsizing at HUD, FHEO was decimated nationwide. FHEO is still seriously understaffed, and the staff needs more training. Investigators report that they are unable to travel to cities to investigate complaints, interview witnesses face to face, identify and interview past or current tenants, or review all appropriate documents. The statute requires early attempts at conciliation, but when an investigator cannot provide evidence of a violation because s/he cannot conduct an on-site interview or investigation, the respondent has no motivation to engage in conciliation. Attempting conciliation prior to some investigation makes the respondent feel like the process is designed to favor the complainant and it makes the complainant feel that HUD is not taking their allegation seriously. The goal of early settlement is to reduce the pain and suffering of the victim by securing the housing and relief that promises to terminate the discriminatory housing practice. The benefit to the respondent is reduced costs to defend himself.

**Micro-Managing Grantees:** For the past thirty years, fair housing agencies have managed to successfully bring both administrative and legal cases without HUD staff micro-managing their day to day work. However, in the past three years, HUD has tried to insert its bureaucratic process in the daily work of private, non-profit fair housing agencies. For example, HUD staff are now trying to critique testing methodologies, read case files and recommend filing of complaints. HUD FHEO headquarters and other staff have never structured complaint-based testing that must withstand the scrutiny of a federal or state court judge, never trained or debriefed testers, or conducted a full in-take of a complainant in order to develop a testing methodology. Yet, HUD wants to dictate which cases should be filed and when. HUD grant monitors are asking fair housing agencies to complete all cases within 100 days. While most complaints handled by fair housing agencies can, and indeed are, completed within 100 days, there are complaints that require long term testing to demonstrate a pattern or practice. IN addition, some complaints cannot be tested within the 100 days because there is no apartment available. In these situations, fair housing agencies keep the case open and periodically check for vacant units in order to conduct a test. The irony of this new FHIP requirement is that HUD is required by law to complete its investigation within 100 days, and HUD has never even come close to meeting that statutory requirement. Fair housing agencies must respond to complainants in a timely fashion because we can held liable if a complainant is not advised about his/her rights under state and federal laws. HUD, however, has complaints that are three, four and even five years old still waiting for an investigation.

**VIII. Status of Complaints Nationally:** The 2002 NFHA Fair Housing Trends Report is

based on 2001 complaint data compiled from National Fair Housing Alliance (NFHA) member agencies nationwide, the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Justice (DOJ) and more than 70 state and local government agencies. Summarizing the report, we find the following:

**Housing discrimination persists nationwide and is severely underreported.** The recent data indicate that housing discrimination continues unabated and that the number of complaints filed with both public and private fair housing enforcement agencies represents only about one percent of the annual estimated incidence of housing discrimination in the United States.

**Complaint volumes are highest among African Americans, people with disabilities, and families with children.** Together, these complaints comprise the majority (71 percent) of all reported housing discrimination complaints.

**Housing discrimination is least reported among Hispanics, Asians and women who are sexually harassed in housing.** While studies conducted in California and Texas reveal that Hispanics are discriminated against as much as 70 percent of the time in their search for housing, this is not reflected in the level of reported complaints. Anecdotal evidence from NFHA member agencies reveals that women are extremely fearful of the ramifications of reporting sexual harassment by those responsible for providing, managing and maintaining their housing.

**Lending discrimination continued to rise in 2001.** As stories of predatory lending abound in the newspapers, detailing complex marketing schemes by unscrupulous lenders to strip wealth from low income and minority communities, complaints alleging lending discrimination increased in 2001.

**Private fair housing organizations processed the overwhelming majority of all reported complaints of housing discrimination.** In fact, private fair housing groups in 2001 received more than twice as many complaints as government agencies combined. Yet, as complaints to fair housing groups have risen, funding for these organizations, under the Fair Housing Initiatives Program (FHIP) administered by HUD, remains flat.

### Housing Discrimination Complaint Data

The data are comprised of more than 23,500 claims/complaints of housing discrimination made in 2001. NFHA members received 15,131 complaints in 2000 (76 agencies reporting) and 16,500 complaints in 2001 (79 agencies reporting). The number of complaints received by HUD has decreased, while the number of complaints to state and local agencies has increased slightly. The complaints handled by DOJ from 2000 to 2001 have increased by 15 cases nationwide, from 49 to 64.

Total Complaints			
Agency	Claims/Complaints	2000	2001

<b>NFHA</b>	Complaints	15,131	16,550
<b>HUD</b>	Claims and Complaints	1,988	1,902
<b>FHAP<sup>7</sup></b>	Claims and Complaints	4,971	5,041
<b>DOJ</b>	Claims and Complaints	49	64
<b>Totals</b>		<b>22,139</b>	<b>23,557</b>

**A. Discrimination by Protected Class**

The federal Fair Housing Act prohibits discrimination on the basis of race, disability, familial status, national origin, sex, religion and color. In 2000, race was the most commonly reported discrimination basis, followed by disability and familial status. In 2001, this trend continued with race complaints making up 32 percent of the total complaints received, followed by disability and familial status complaints at 24 percent and 15 percent respectively. Together, these three categories account for 71 percent of all housing discrimination complaints. The chart below provides the breakdown by type of reporting agency and protected class.

<b>Percent of Claims by Protected Group in 2001</b>					
	<b>NFHA</b>	<b>HUD</b>	<b>FHAP</b>	<b>DOJ</b>	<b>ALL</b>
<b>Race</b>	32%	33%	32%	30%	32%
<b>Disability</b>	22%	32%	27%	37%	24%
<b>Family Status</b>	15%	13%	15%	22%	15%
<b>National Origin</b>	10%	9%	11%	8%	10%
<b>Sex</b>	7%	9%	9%	3%	8%
<b>Religion</b>	1%	1%	2%	n/a	1%
<b>Color</b>	2%	3%	4%	n/a	3%
<b>Other</b>	11%	n/a	n/a	n/a	7%
<b>TOTAL</b>	100%	100%	100%	100%	100%

**IX. Recommendations**

The National Fair Housing Alliances makes the following recommendations that would move our nation towards the achievement of equal housing opportunity.

**Fair Housing Initiatives Program (FHIP) Funding**

<sup>7</sup> Fair Housing Assistance Program (FHAP) agencies are state and local government jurisdictions with fair housing laws deemed by HUD to be substantially equivalent to the federal Fair Housing Act.

FHIP funding should be dramatically increased to address the fair housing needs of the nation. One of the reasons housing discrimination is chronic is that so few resources have been allocated to both educate people about fair housing and enforce fair housing laws. Despite the fact that there are an estimated two million instances of housing discrimination each year, the amount allocated by Congress to the FHIP program has never exceeded \$25 million and in recent years has been as low as \$15 million. For 2003 fiscal year Congress allocated \$20,250,000 -- an amount still woefully short of what it will take to provide fair housing for our nation. FHIP is the primary source of funding for private nonprofit fair housing organizations throughout the country. The inadequate and inconsistent nature of the funding means that no agency has sufficient funds in any community to educate consumers, work with housing providers on compliance, and conduct investigative and enforcement activities.

HUD's management of the FHIP program has been inconsistent, deleterious and has strayed from the original intent of the FHIP legislation. HUD should adhere to the original purpose of the program, which was to allocate FHIP funds to qualified fair housing agencies with proven track records in both education and enforcement and to establish new fair housing groups. HUD keeps trying to increase the number of agencies that apply for FHIP funds without considering that fair housing enforcement is a specialize profession. Would the government offer funds to cure cancer to an advertising agency? Of course not. So why does HUD think the skills to investigate violations of federal laws can be left up to any group claiming to have experience? Housing discrimination is serious, complex problem. Qualified professionals should be used to address to challenge. The quality of the applicant and not the quantity of applications should be the yard stick used to measure who receives FHIP funding.

Ideally, the FHIP program should create a long-term, entitlement-type grant cycle for private nonprofit fair housing organizations. The program should include funding to provide training to agency personnel and to implement programs to improve and enhance agency performance. In addition, HUD should explore ways to reach persons who have traditionally been reluctant to file housing discrimination complaints – Hispanics, Asian Americans, Native Americans, and women who have been victims of sexual harassment in housing.

### **Community Development Block Grant (CDBG) Program**

HUD should immediately promulgate and enforce meaningful regulations that require, without exception, all CDBG entitlement communities to address housing discrimination in all its forms.

There are 1,075 CDBG entitlement jurisdictions in the country, all of which are required to “affirmatively further fair housing.” It is difficult to enforce this requirement, however, because HUD has failed to promulgate regulations for the implementation of this requirement, although the law was passed in 1974. Only a handful of these recipients

of significant federal funds actually have programs to address fair housing concerns in their communities. Even fewer provide funding to private fair housing organizations serving their jurisdiction. If every CDBG recipient promoted education and offered enforcement of the federal Fair Housing Act, more than 1,000 communities would be actively working to eliminate residential segregation and open communities to members of protected groups.

### **Funding for and Commitment to HUD's Office of Fair Housing and Equal Opportunity**

Congress should allocate additional funds to HUD's Office of Fair Housing and Equal Opportunity in an amount sufficient to process all housing discrimination complaints in a timely (100 days or less, in accordance with the Fair Housing Act), and effective manner.

The Office of Fair Housing and Equal Opportunity has been gradually depleted of resources and staff. It has been under-staffed in recent years of the *minimum* needed to meet its fair housing enforcement obligations. The amount of staff has never even been adequate to process complaints in the time period mandated by the statute. Additional funding should be allocated to HUD's complaint intake, investigation and administrative enforcement process.

Under the prior administration, control of fair housing functions was "devolved" from the D.C. headquarters office to ten HUD regional offices (HUBs). Unfortunately, there is inconsistency between the HUB offices in the interpretation and application of the law, case processing standards, types and amounts of remedies and relief, and other functions such as conciliation procedures. Control of HUD's fair housing enforcement program and responsibility for quality control and review should be housed in the headquarters office to ensure that all victims of housing discrimination and all respondents are treated with consistent policies and practices under the law.

Fair housing has long had bi-partisan support. It is time for Congress to re-commit itself to the fundamental principles of justice that formed this country and to its goal of ending housing discrimination and segregation in this nation.

### **X. Rural Housing Services/USDA**

Approximately two years ago USDA approached NFHA to conduct testing of elderly and family projects that it funds. Initial tests showed high rates of discrimination against Hispanics and African Americans. USDA released an RFP to conduct testing in several states. NFHA was the successful bidder.

The National Fair Housing Alliance is under contract to the US Department of Agriculture to conduct tests of rental housing complexes funded through USDA housing programs. The tests will cover a number of protected classes, including race, ethnicity, disability, and familial status. These complexes are all located in rural communities. Testing will be conducted in several regions throughout the United States. NFHA will also develop and provide a training program

for USDA property managers that can be used as guidance in complying with civil rights laws.

NFHA is working with existing fair housing agencies to conduct the testing. Problems in rural housing program have been ignored for years, but NFHA commends the USDA for implementing a testing program, participating in the tester training program to learn, first hand, how testing is conducted and to provide adequate funds to do a thorough job.

#### **XI. Recommendations for USDA**

NFHA recommends that USDA establish a grant program to fund fair housing education and enforcement activities in rural communities, especially in communities where federal dollars are used to support rental housing and new construction and rehabilitation.