

# HOWARD UNIVERSITY

School of Law  
Fair Housing Legal Clinical Program

## Testimony

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RE: Housing Fairness Act – H.R. 476

The Howard University School of Law Fair Housing Clinic is a unique educational and advocacy clinic founded on the campus of the Howard University School of Law through a grant from the U.S. Department of Housing and Urban Development in 2004. It is the only law school clinic in the country devoted to educating the public on housing discrimination and topical housing issues through the use of law students matriculating at a historically black college or university.

Since 2005, law students, future lawyers, have designed and implemented programs on housing and housing discrimination that educate and inform the public on very important housing issues including housing discrimination, predatory lending, and loan modifications as a result of foreclosures. Students have organized and participated in events in and around the Washington D.C. area in libraries, community centers, public schools, and even at subway stations. The effort is to



take the information on housing and housing discrimination directly to those who might need it most.

In addition, and specifically for purposes of this hearing on the Housing Fairness Act, the law students have trained to become testers in actual fair housing testing efforts by a local non-profit program (The Equal Rights Center) in the District of Columbia. These individual experiences, and our intensive study of fair housing and housing issues, has convinced our clinic that H.R. 476, the Housing Fairness Act is a law that is long overdue. There is nothing more important in the investigative process of a fair housing case than testing at the present time.

United States Appeals Court Judge Damon Keith referred to testing as the only competent evidence available to prove unlawful testing. In addition, many others describe testing as "frequently valuable" and an important tool not only in identifying those who discriminate but is also beneficial to landlords who do not discriminate. Considering that the task is to aggressively fight housing discrimination, a real commitment to testing could be crucial to reversing recent trends that point towards discrimination.

In a recent ongoing survey of consumers in the Washington D.C. area conducted by the law students at the Howard University School of Law, over 46 percent of the respondents indicated that they believed they had been or had been discriminated in seeking housing. In addition, nearly 50 percent stated that they believed that when they had been denied housing, housing had been available where they had applied for that housing. This is very troubling considering that this area is generally considered to be diverse and very open to diversity.

The recent survey, conducted in Washington D.C., and Montgomery County, Maryland, is ongoing, and just a tiny snippet of the potential level of discrimination in existence in housing in one area in the United States. However, additional evidence of discrimination exists in the Washington D.C. area in Prince George's County.

According to a report in 2005 as reported in the Washington Post, African-Americans were much more likely to be sold a more high priced default prone mortgage loan than their white counterparts. This included African-Americans with very good credit scores and substantial income levels. Similar reports have surfaced in other parts of the country where African-Americans with high income and high credit scores were sold an inferior mortgage product usually reserved for those with poor credit.

At the Howard University School of Law Fair Housing Clinic on a weekly basis, approximately half of the inquiries from members of the public seeking assistance with or questions about their housing problems involve local residents who have legal problems with their mortgages. Almost all of the callers to the clinic are African-Americans. The callers that are not African-American are Hispanic or a member of another minority group.

For the last 18 months, individuals seeking assistance with potential foreclosures is steady and high in volume. Nearly all of them now own a home that is worth less than they owe on the mortgage. In addition, nearly all of them were sold a adjustable rate mortgage with a "teaser" rate that they were advised they could modify at a later date easy. However, most of these clients now cannot modify their

loans (except through administration programs) and many of them cannot locate their original mortgage broker.

In addition to these housing problems, if there are areas of concern regarding fair housing work, it is the rise of source of income discrimination or denial of housing because the applicant is seeking to secure housing using a voucher from the federal government. More and more our clinic is receiving calls from individuals who are being denied housing because of source of income discrimination.

However, because source of income (voucher) is not a protected class under the Federal Fair Housing Act, it is an area that offers fewer options for resolution than individuals discriminated against on the basis of race or national origin. But, it is our belief that the source of income's overall effect is to discriminate on the basis of race considering that many of the complaints we receive alleging this form of discrimination are from minority voucher holders. The nature of the voucher system prevents the individual from spending a great deal of time on complaining about housing denials.

Nevertheless, a nationwide testing program of the nature described in H.R. 476 - the Housing Fairness Act - is an important step in addressing discrimination in the country, and most importantly preventing future discrimination. Testing is an essential tool of fair housing enforcement and was an important tool (though not necessarily formalized) in combating housing discrimination even prior to the passage of the Fair Housing Act of 1968.

Additional funding is certainly necessary to expand enforcement of fair housing laws. For so long, funding levels simply seemed inadequate and prevented various programs from pursuing testing efforts that would have greater impact.

Two very important observations from our work over the years must be stressed. Despite the efforts of so many lawmakers, and housing advocates, the Fair Housing Act has not had the impact that many hoped it would have when passed in 1968. In addition, despite the fact that it is believed that there are perhaps millions of discriminatory acts that occur in housing each year, only a small number of these incidents get reported.

The reasons for this discrepancy: housing providers are not fearful that they will get caught engaging in discriminatory conduct and those seeking housing have lost faith in the government's ability to address discriminatory housing practices. One way to raise the level of trust the public has in the enforcement capability of the federal government is through increased testing. Testing will lead to the discovery of more violations. It will also make housing providers aware that there is a price to pay in discriminating.

It is also likely that technology has proven to create more problems for fair housing organizations engaged in anti-discrimination efforts. The digital marketplace in which we all now reside is having an impact, as it is on most other institutions in society. Newspapers are electronic. Privacy and information transfer is different and oftentimes anonymous. E-mails, text messaging, social networking sites are all new areas of communication where discriminatory housing practices could be taking root in subtle ways. Individuals can operate in secrecy.

It is our belief that an examination of how the digital marketplace has impacted fair housing enforcement is in order. It is likely much more severe than we realize and this should be examined to determine if there is a need to strike a better balance between privacy and the free exchange of ideas and promoting a society free of housing discrimination. The various cases involving housing discrimination that have come to light since the digital marketplace has become more influential is clear evidence that there is a need to re-examine these new areas of communication in the public sphere.

Finally, it is the belief at Howard University that the past effects of discrimination in housing must be addressed as well in order to forge a future in the U.S. of improved relations. These effects include segregated neighborhoods across the country that came to be segregated because of the actions of the federal government through the Federal Housing Administration between 1934-1968.

While the discriminatory conduct of FHA is the subject of discussion in many books, there has never been any discussion as to how those discriminatory neighborhood patterns across the country can be reversed and real diversity promoted in these communities. Our suggestion: commission a study on how to turn FHA's legacy of segregation into a future of racially and economically diverse neighborhoods and communities. To prevent future discrimination is great; to fix the mistakes of the past, however, is very important as well.