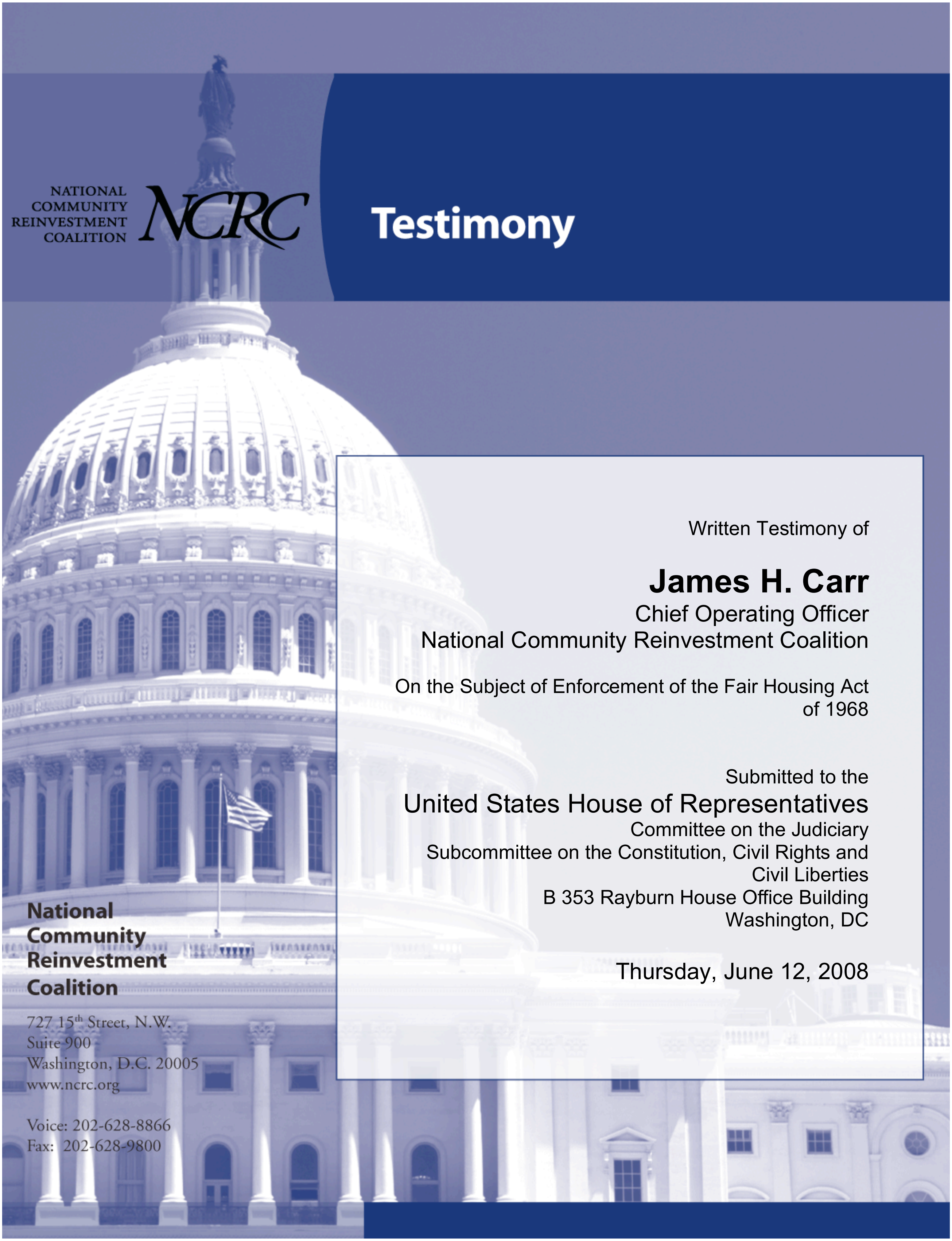

NATIONAL
COMMUNITY
REINVESTMENT
COALITION
NCRC

Testimony

Written Testimony of

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On the Subject of Enforcement of the Fair Housing Act of 1968

Submitted to the

United States House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Civil Liberties
B 353 Rayburn House Office Building
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Introduction

The National Community Reinvestment Coalition (NCRC) is honored to testify today before the United States House of Representatives Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties regarding the enforcement of the Fair Housing Act of 1968.

NCRC is an association of more than 600 community-based organizations that promote access to basic banking services, including credit and savings, to create and sustain affordable housing, job development, and vibrant communities for America's working families.

Along with our members, we are committed to an open housing market free of discrimination. Through our National Neighbors program, NCRC leads fair housing and fair lending best practice initiatives, which promote racial and cultural equality, opportunity and diversity. In particular, National Neighbors efforts are aimed at ensuring that solutions to the current mortgage crisis are fair and equitable and do not place a disproportionate burden on underserved communities, nor restrict access to responsibly underwritten and fairly priced mortgage products for qualified applicant.[1]

Chairman Conyers, and other distinguished members of the Subcommittee, we applaud your efforts to ensure equal housing opportunities for all Americans by convening this hearing.

Title VIII of the Civil Rights Act of 1968, (Fair Housing Act) prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, or national origin; designating these as protected classes. In 1988, Title VIII was strengthened to include handicap and familial status as protected classes. This act is one of the strongest pieces of legislation to promote equal access to housing in our nation's history. Unfortunately, a lack of enforcement undermines the effectiveness of this law. In fact, in 2007 the Department of Justice (DOJ) received only 27 fair lending referrals involving potential Equal Credit Opportunity Act claims from the bank regulatory agencies; 15 from the Federal Deposit Insurance Corporation (FDIC); nine from the Federal Reserve Board (FRB); and three from the Office of Thrift Supervision (OTS).[2]

NCRC and many of its members have brought more complaints acting as "private attorney generals" under the Fair Housing Act then individual Federal regulators charged to enforce the law. NCRC and its members have challenged violations, including reverse redlining, discriminatory underwriting, discriminatory pricing, problematic sub-prime mortgage servicing, overt redlining of urban and rural neighborhoods, and even the role of Wall Street and rating agencies in the current market crisis.[3]

The failure to properly enforce Title VIII especially affects communities where there are high concentrations of discriminatory loans, and in turn, high levels of foreclosures. We are witnessing a disproportionate share of unethical, high-cost lending targeted specifically at financially vulnerable African American and Latino households and communities. According to a study by the nonprofit research institution United for a Fair Economy, African American and Latino communities together stand to lose between $140 to more than $200 billion of equity as a result of the foreclosure crisis[4]. Billions more will be drained over the next year and into 2009 unless there is meaningful foreclosure intervention and active enforcement of the Fair Housing Act.

NCRC has consistently called for a greater role to be played by Federal and state regulators in challenging reverse redlining, discriminatory pricing and predatory lending that targets minority communities across the country.

Despite substantial progress that has been made to celebrate compliance and equal treatment under Title VIII – including industry best practice initiatives, neighborhood diversity initiatives and fair housing planning programs – much more work needs to be done until the Fair Housing Act's legislative authors dream of "one America" can become a reality.

NCRC highly recommends the creation of a Cabinet-level civil rights position that reports directly to the President and ultimately to Congress. Additionally, a newly developed National Fair Housing Plan would ensure that all Federal and state agencies work collaboratively with each other and the public and private sectors, to realize our nation's long established and accepted policy of equal housing and employment opportunity, equal professional service and equal treatment under the Americans with Disabilities Act (ADA).

The Road to Equal Housing Opportunity and One America

Historically, minority families have experienced less opportunity to obtain housing at a fair and reasonable cost than their white counterparts. Following passage of the Emancipation Proclamation came the court decision in the matter of *Plessy v. Ferguson* and "Separate but Equal", where the Supreme Court ruled that separate did not necessarily mean a denial of equality – the precise purpose of that policy was to ensure inequality.

The early 1900s Jim Crow practice of restrictive covenants became the major tool to enforce the policy of separate and unequal in the housing market by not allowing homes in white neighborhoods to be sold to African Americans. No longer afforded the opportunity to live among whites, African Americans were increasingly isolated from major areas of employment growth, as well as the best-funded schools and other services.

In the 1930s, the Federal Home Loan Mortgage Corporation (HOLC) institutionalized "redlining", the denial of loans and financial services to specific neighborhoods, which became a practice within the housing market for decades to come. Even after WWII, programs established by the Veteran's Administration continued to discriminate against minorities. After returning home from the war, many African Americans found themselves left out of jobs, training and home ownership opportunities that were available to many of the nations veterans. Urban Renewal policies affected entire communities and relocated African Americans into low-income, and often unsafe, concrete towers – physically isolating them from areas of job growth, affordable housing, quality schools or other opportunities that are essential for economic mobility and success.

The cumulative impact of these and many other practices was that by the 1960s segregation experienced among African Americans in both southern and northern cities had reached levels never before achieved by any other racial or ethnic group in American history.

In 1968, President Lyndon Johnson created the Kerner Commission to examine these and other issues affecting African American communities and provide policy recommendations. Quoting to the report, "All Americans sought both the material assets of the capitalist system and its subsequent psychological benefits of dignity and peace of mind."[5] However, neither of these two American aspirations were attainable for the majority of African American households.[6] The Report warned of an America "moving toward two societies, one African American, one white – separate and unequal."

The Fair Housing Act was intended to outlaw all discriminatory actions within the housing and lending industry. The legislation passed on April 10, 1968, only 6 days after the assassination of Dr. Martin Luther King, Jr. and was signed into law by President Johnson the following day. The Act gave the

United States Department of Housing and Urban Development (HUD) Office of Fair Housing & Equal Opportunity (FHEO) the power to investigate complaints received. In 1988, Title VIII was strengthened to include handicap and familial status as protected classes. HUD was also given the ability to initiate complaint proceedings and impose more meaningful remedies. And in March of 1991, it became unlawful to design nonhandicap-accessible housing.

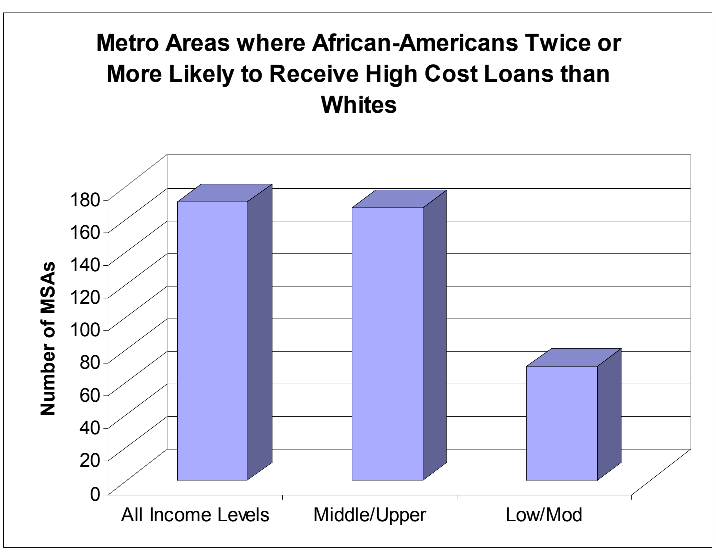
While the primary purpose of the Fair Housing Act was to respond to the immediate need to eradicate housing discrimination, many people also recognized it as a tool to promote integration. Senator Walter F. Mondale is widely quoted as stating that the purpose of the Fair Housing Act was to replace the ghetto with "truly integrated and balanced living patterns."[7] Similarly, Senator Edward Brooke commented that though the legislation was "a giant step in the right direction," is was not a "cure [for] all of the wrongs and the ills in this country."[8]

An inherent tension in the law can be seen between the idea of freedom of housing choice and promoting broader social goals of a racially and economically diverse and sustainable society. This tension has carried over to present day, and throughout the past 40 years the Fair Housing Act's broad policy mandates have forced the courts to play an important role in the Act's interpretation. The Supreme Court has acknowledged that Congress intended the legislation to be construed broadly, so as to root out discrimination within the housing industry. [9] This has led to a series of landmark decisions; ranging from inclusive zoning and supporting a municipality's commitment to neighborhood integration, to affording plaintiffs, who often represent municipalities, homeowners, businesses, and other aggrieved parties, the opportunity to enforce their rights.

High Cost Lending is Unfairly Distributed

The Fair Housing Act includes strong protections for fair lending, including determining unfairly distributed high-cost loans. High-cost first lien loans, as defined by Home Ownership and Equity Protection Act is one in which the annual percentage rate (APR) exceeds by more than eight percentage points the rates on Treasury securities of comparable maturity[10]. Responsible high-cost lending serves legitimate credit needs, including compensating lenders for the added risk of lending to borrowers with credit imperfections. However, wide differences in lending by race, even when accounting for income levels and credit quality, suggests that more minorities are receiving high-cost loans than is justified based on financial criteria.

Chart 1



In 2007, for example, NCRC analyzed the 2005 Home Mortgage Disclosure Act (HMDA) data and observed striking racial disparities in high-cost lending.[11] NCRC's subsequent report, *Income is No Shield Against Racial Differences in Lending*, showed consumers in protected classes, particularly African Americans and Hispanics, are most at risk of receiving a poorly underwritten high-cost loan.

Furthermore, NCRC found that middle-class or upper-class status does not shield minorities from receiving high-cost loans (Chart 1). In fact, NCRC observed that racial differences in lending increase as income levels increase.[12] Hispanics also experienced greater disparities in high-cost lending compared to whites as income levels rose.

NCRC's research has found that even after controlling for creditworthiness and other housing market factors, African Americans are more likely to receive high-cost loans.[13] [14] The Center for Responsible Lending (CRL) also used HMDA data with pricing information to reach the same conclusions - that racial disparities remain, even after controlling for creditworthiness.[15]

Large credit unions, investment banks, rating agencies, insurance providers, and independent mortgage companies do not abide by Community Reinvestment Act (CRA) requirements, but CRA does require banks to serve the credit needs of communities, especially low and moderate-income communities. NCRC and Government Accountability Office (GAO) research concludes that large credit unions lag behind CRA-covered banks in their lending and service to minorities and low- and moderate-income borrowers and communities.[16] The Federal Reserve Board, in its review of HMDA data, found that bank lending exhibited fewer disparities in geographical areas covered by their CRA exams than in areas not covered.[17] These and other unregulated financial institutions have played a major role in the current foreclosure crisis.

National Neighbors Fair Lending Testing Confirms Housing Discrimination

Mortgage brokers serve as the point of entry for most families seeking to buy a home or refinance a mortgage. Brokers facilitate up to 70 % of the loans made in this country, and many honest brokers serve an important role in the marketplace. However, over the past five years, considered to be the height of subprime lending, unscrupulous brokers set up borrowers for failure. NCRC's National Neighbors program regularly engages in fair lending testing, "mystery shopping," and has consistently uncovered disparate pricing and treatment for minorities with the same or better qualifications than whites. NCRC has reached similar findings regardless of the loan being originated by brokers, mortgage companies or other types of financial institutions.

From 2004 to 2006, with support from the HUD's Fair Housing Initiatives Program Private Enforcement Initiative, NCRC conducted mystery shopping of mortgage brokers of varying asset size. Posing as loan seekers, both white testers (the control group) and African American or Hispanic testers (the protected group) met with and called local brokers to inquire about their loan options. The protected-class testers were actually given more attractive loan profiles in terms of their amount of equity, credit standing and employment tenure, and should have logically received better treatment. Instead, NCRC's fair lending testing of mortgage brokers uncovered a 46 % rate of disparate treatment based on race and national origin.[18]

Our results documented the following patterns:

- African Americans and Latinos were discouraged 25% of the time concerning their efforts to meet with a broker, while white testers were discouraged only 12% of the time.

- African Americans and Latinos were questioned about their credit over 32% of the time, compared to white shoppers who were only questioned about credit 13% of the time. While responsible lenders may ask about credit, this finding highlights differential treatment for African Americans.

- White mortgage seekers had specific products discussed with them 91% of the time, while African Americans and Latinos had specific products discussed with them 76% of the time. Furthermore, white testers received two rate quotes for every one quoted to African American and Latino testers.

- NCRC documented pricing discrimination in 25% of the fair lending tests and noted that fees were discussed 62% of the time with white testers, but only 35% of the time with "protected testers."

- Fixed rate loans were discussed 77% of the time with white testers, but only 50% of the time with African American and Latino testers.

These results clearly document the fact that even when controlling for credit and individual applicant qualification factors, African Americans and Latinos are discriminated against in the marketplace and are paying high rates for loans. The results also affirmed a 2004 NCRC fair lending audit of financial service providers, conducted with support from the HUD Fair Housing Initiatives Program Private Enforcement Initiative, which found that African Americans and Latinos were treated differently than their white counterparts more then 40% of the time when seeking financial services.

The Impact of Fair Housing Violations On Individuals & Communities

Failure to purge discrimination from the housing markets has created a self-reinforcing system of disadvantage that feeds on itself and in which discrimination continues -- but often in forms that are much more subtle and difficult to detect and address. One example is the exponential growth in recent years of alternative or non-regulated institutions concentrated in distressed urban minority communities.

Segregation enables the alternative lending industry to target racial and ethnic minorities by creating the scale economies necessary for them to operate. Without the ability to concentrate in areas that lack competition for financial services, many, if not the majority, of these institutions could not exist. Moreover, fringe lenders provide the breeding ground for institutions such as predatory mortgage lenders that specialize in removing the home equity from financially challenged households.

Forty years after the enactment of the Fair Housing Act, many of the metropolitan areas in the United States are still segregated.[19] In analyzing the last three decades of census data, over two dozen metropolitan areas were identified as "hypersegregated", or highly segregated areas. [20] And nearly all—more than 90 percent—of the neighborhoods that were predominantly or exclusively African American in 1990 remained predominantly or exclusively African American a decade later. [21]

The National Fair Housing Alliance (NHFA) approximates that African Americans and Hispanics experience 3.7 million instances of housing discrimination every year.[22] The Federal Reserve estimates that African Americans and Hispanics pay more for home purchases and refinancing than their white counterparts.[23] The effect of housing discrimination disproportionately affects African Americans, since home equity represents a greater share of total assets as compared to whites. [24]

NCRC's National Homeownership Sustainability Fund (NHSF) illustrates how minorities are disproportionately affected by unfair lending terms or conditions that cause financial damage and harm their ability to build wealth. Most NHSF clients are facing foreclosure due to unfair predatory loans. A recent survey of NHSF loans shows that African American borrowers make up 77% of the total program caseload. Nearly half (47%) resided in low- and moderate-income neighborhoods and 83.6% of the borrowers had incomes below $45,000. The study also found that unscrupulous lenders targeted minority and low- and moderate-income borrowers and communities with high-cost mortgages.[25]

NCRC's NHSF is intervening in a number of cases where borrowers who are members of protected classes have experienced appraisal fraud. Inflated appraisals leave borrowers with unaffordable loans that they are then unable to refinance because the loan amounts are higher than the true value of their homes, especially in a cooling housing market. A separate sample of loans revealed that about one-fifth of the homes were over-valued by more than 50% of their true value, and two-thirds of the homes were over-valued by 15-50% more than their true value.[26]

Recent Declining Markets Policies Raise Significant Fair Lending Issues

Facing an ongoing foreclosure crisis, combined with falling house prices, many financial institutions have or are considering pricing decisions that could disfavor communities that have already been disproportionately harmed by unfair and deceptive lending practices. Declining market policies would utilize zip codes to determine down payment requirements for borrowers. Zip code and related local demographic or census tract data have long been used as a proxy for race in lending and insurance discrimination. Using that data could reduce access to credit in communities of color, stifle access to loans provided by responsible lenders, and cause lenders to further steer borrowers toward higher cost alternatives in the sub prime market.

Fair lending requires that mortgage originations must be based on the individual qualifications of a borrower, rather than the location of or type of housing that a consumer is purchasing. To apply any other standard, regardless of any apparent business justification, will reestablish an institutional and historic bias to limit mortgage credit in minority communities. Responsible underwriting, along with meaningful valuation and related underwriting practices, remains a proven methodology in assuring sound underwriting, equal access to credit, and healthy and sustainable communities. The role of securitizers, rating agencies, loan issuers, bundlers, and insurers must be closely monitored from a fair lending perspective due to changes in the financial markets.

The Government Sponsored Enterprises (GSE) Fannie Mae and Freddie Mac have abandoned these declining market policies and replaced them with industry leading best practices. Many institutions have not followed their lead and continue to use potentially discriminating factors.

The State of Fair Housing Enforcement

Currently, our Federal fair housing enforcement efforts are failing to protect the interests of America's working families and minority homebuyers.

In September 2005, the Federal Reserve Board referred about 200 lending institutions to their primary federal regulatory agency for further investigations based upon the Board's identification of significant pricing disparities in HMDA data, accounting for almost 50 percent of loans reported under HMDA.[27] [28] One year later, the Board referred 270 more lenders to their primary regulatory agencies for further investigation.[29] Inconceivably, not a single case of discrimination or civil rights violations has arisen from the roughly 470 Federal Reserve Board referrals. While HMDA data analysis by itself cannot conclude which financial institutions were discriminating, federal investigators have a far greater opportunity then they are currently using in making assessments about possible violations of fair lending laws. In the 1990s, with less detailed HMDA data available than today, the Department of Justice settled nearly a dozen cases alleging discrimination against major lenders, such as Long Beach Mortgage and Huntington.[30] These settlements have had a lasting impact on the entire lending industry and should be resumed today.

Recent reports from GAO and other sources document that the federal government is filing fewer housing discrimination charges despite rising consumer complaints against landlords, real estate agents and mortgage brokers. Many renters and buyers who seek help from HUD are unlikely to get relief for their complaints, which can include alleged discrimination by landlords and sellers based on race, religion, sex or disability. [31] An April 2004 GAO[32] study measured key elements, particularly timeliness and effectiveness, in the fair housing enforcement process. Although the Fair Housing Act mandates HUD to complete its investigation within 100 days, only 41% of FHEO investigators and 33% of Fair Housing Assistance Program investigators complied with the 100 day processing requirement[33]. Additionally, the report noted that between 1996 and 2003, the most frequent outcome of investigations was a "no reasonable cause" finding. The study also showed that of the approximately 7,500 FHEO inquiries filed each year, 39% to 95% of the inquiries are deemed non-jurisdictional, and thus are never filed as formal complaints.

Several high profile cases have highlighted the lack of enforcement on fair housing laws. As a result, local groups and municipalities are taking on the role of enforcement. The City of Baltimore is currently suing Wells Fargo, one of the nation's largest lenders, arguing that their subprime lending rate to African Americans in that city was fully 5 times the rate of lending to non-Hispanic white households. The suit claims that fully 65 percent of loans made by Wells Fargo to African American households were high -cost loans, compared to only 13 percent of loans to non-Hispanic white families[34]. In 2007, a civil rights group filed a suit against Westchester County, claiming the county not only failed to promote fair housing, but they failed to desegregate the county. The Anti-Discrimination Center of New York argued the county should give back $45 million dollars it had received from community development grants from 2000-2005. [35]

NCRC's NHSF and National Neighbors staff assisted over 100 African American and Latino officers of the New York Police and Fire Departments who purchased homes from a dishonest housing developer and mortgage broker. The broker manipulated the origination system by quickly selling the fraudulent loans onto the secondary market. After being passed up by the New York State Human Rights office, HUD and the DOJ, NCRC helped them file a Title VIII claim in Federal Court, which is currently pending. [36]

HUD recently announced that it has implemented several measures to improve the fair housing enforcement process, including revising written material, streamlining inquiry processes and training investigators and attorneys. Additionally, HUD established a Fair Housing Training Academy to teach effective investigation techniques to Fair Housing Assistance Program (FHAP) investigators throughout the country, creating a systemic unit to investigate pattern and practice issues and a greater consistency in fair housing enforcement, while launching a national fair lending education and outreach campaign to educate consumers about their rights as well as available resources. These are all crucial moves forward, but additional steps are necessary. Fair housing goals should be consistent for all federal agencies. Detailed description of the types of fair lending tests conducted and the results of those tests would provide a level of public confidence in fair lending enforcement that is currently lacking.

NCRC Recommendations

1. Create a Cabinet Level Civil Rights Position to Coordinate National Civil Rights Policy

Equal opportunity in housing, employment and public accommodations are the core of our nation's democratic values. NCRC recommends the establishment of a new cabinet level agency focused on Civil Rights Enforcement. This agency would report directly to the President of the United States and would be responsible for measuring, monitoring and eliminating discrimination from our society. Enforcing the law would immediately open the door for millions of households that are prepared to access opportunities today and for whom their only impediment is an illegal denial of access. The creation of a Cabinet level civil rights position will affirm our nation's commitment to an open society while ensuring that we effectively leverage and coordinate all Federal resources to affirmatively further fair housing. Coordinating all federal agencies – from HUD to the United States Department of Commerce – will produce sustainable communities that celebrate our nations diversity.

2. Establish a Federal Interagency Fair Housing Planning Policy For All Federal Programs and Recipients of Federal Funds

Currently, all states and localities that receive funding from the Community Development Block Grant must have Fair Housing Planning activities that are updated every five years. These plans should act as a model for a national plan, be aggressively enforced and be updated every three years to reflect changes in the market. All Federal agencies should ensure that their public and private sector partners are working to affirmatively further fair housing. This plan would be created by the new cabinet level position.

3. Make Fair Housing & Fair Lending Enforcement More Transparent and Effective

Enforcement activity should be coordinated on an interagency basis and focus on issues identified by Federal, state and local fair housing analysis of impediments and plans. Federal agencies should annually report to Congress the number of fair housing and lending investigations, types of investigations, and outcomes of these investigations. Annual reporting should include information on fair lending compliance exams conducted in conjunction with CRA exams and HUD's processing of fair lending complaints.

HUD, the Department of Justice and State Fair Housing Assistance Program agencies must investigate, mediate and charge more complaints, including pattern and practice, architectural accessibility and fair lending matters. Regulatory capacity to investigate national fair lending systemic investigations must be also increased including investing in training, staff resources, and interagency collaboration. Congress should also act to ensure that claims that present ongoing acts of discrimination are permitted. This is particularly important in design and construction and fair lending matters.

4. Support a Fair Housing Agenda

HUD's Fair Housing Assistance Program (FHAP) and the Fair Housing Initiatives Program (FHIP) provide funds for state agencies and nonprofit organizations, respectively, to engage in anti-discrimination enforcement, complaint processing, education, and outreach activities. For fiscal year 2008, HUD requested $55 million for these programs. NCRC believes a more appropriate way of determining funding for fair housing programs would be to allocate a proportional commitment indexed to the percentage to real estate and financial services market.

5. **Expand the Number of Groups Who Are Identified as "Protected Classes" under Title VIII**

   People frequently encounter discrimination on the bases of familial status, disability, gender, marital status, source or amount of income, age, military service and sexual orientation.[37] In fact, many states and localities have expanded the number of groups who are protected under local fair housing ordinances to reflect these issues. NCRC strongly recommends that this subcommittee consider expanding the limited number of groups currently and also consider others as appropriate. protected under the Fair Housing Act.

6. **Support Public & Private Partnerships that Celebrate Fair Housing**

   Many private sector groups have committed to ensuring fair housing through testing and other techniques. Congress should support these innovative programs and partnerships among communities, real estate providers, financial institutions and other market participants while encouraging expanded partnership. Particularly, Congress should focus on partnerships that celebrate neighborhood diversity, smart growth and environmentally significant programs, and those that empower open housing and strong tax bases utilizing a comprehensive fair housing plan. Congress should also consider investment tax benefits or similar public sector incentive support, i.e., community development finds, CDFI, etc. to overcome identified fair housing impediments.

7. **Expand The Community Reinvestment Act to Non-Bank Lending Institution**

   To address the fair lending issues presented in this testimony, NCRC also suggests that the subcommittee enhance the CRA Modernization Act of 2007 (HR 1289), co-sponsored by U.S. Representative Eddie Bernice Johnson and U.S. Representative Luis Gutierrez, and apply and adapt CRA to mortgage companies, insurance companies, securities firms, and non-depository affiliates of banks, as well as mainstream credit unions.

   The subcommittee may also wish to consider the number of geographical areas on CRA exams to include areas where banks make loans through brokers and other non-branch channels. CRA's mandate of affirmatively meeting credit needs should include minority communities as well as low- and moderate-income neighborhoods.

8. **Enhance the Quality of HMDA Data**

   Congress and the Federal Reserve Board (which implements the HMDA regulations) should enhance HMDA data so that regular and comprehensive studies can scrutinize fairness in lending. Data should include information on minorities, the elderly, women, and low- and moderate-income borrowers.

   Fee and pricing information should be included for all loans, not just high-cost loans. Specific loan terms such as whether the loan was fixed and/or adjustable rate, information on the length of time in which the initial rate was in effect, age of the borrower, price of the loan, type of financial institution used to receive the loan is needed to make information more precise. HMDA data must contain credit score information[38] loan-to-value and debt-to-income ratios.

   Additionally, homeowners' insurance is essential to acquiring and maintaining housing. Currently, there is a limited amount of publicly accessible data available about where homeowners' insurance policies are being written, the types of policies being written, how much coverage is being provided and what is the cost of each individual homeowners' own insurance policy. Creating and applying Federal legislation similar to HMDA to homeowner's insurance would allow government agencies and community groups to understand the overall amount of coverage offered to consumers by homeowner's insurance providers and identify any disparities that may exist among those protected by the Fair Housing Act.

Conclusion

NCRC's 600 member organizations strongly support the creation of a Cabinet level civil rights position to coordinate our nation's historic commitment to open housing. We also respectfully request that this subcommittee act to ensure that all of the Federal regulators that are charged with enforcing the Fair Housing Act do so with transparency and in a coordinated and effective manner to ensure that the United States remains economically competitive and retains a strong tax base.

A renewed commitment to national, state and local fair housing planning is required, coupled with a meaningful policy commitment that recognizes the critical role that an open housing market represents to a viable economy.

Despite the enactment of the Fair Housing Act over forty years ago, the dual lending marketplace continues to flourish and reinforce housing discrimination and segregated housing patterns that preclude racial diversity and inclusiveness. This not only affects our communities, but also affects our entire society. To quote Dr. Martin Luther King Jr., "We may have all come on different ships, but we're in the same boat now."

NCRC firmly believes that effective fair housing policy combined with the enactment of the CRA Modernization Act of 2007 will help to restore our financial markets address the stop the epidemic of discriminatory lending. Every day our member organizations struggle to assist families whose American dream of owning their own homes has been jeopardized by financial distress and discriminatory lending.

Thank you and we look forward to working with you in the future.

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[1] National Neighbors, a program of the National Community Reinvestment Coalition, is
dedicated to creating public and private sector partnerships and programs that promote racial and cultural equality, opportunity and diversity. It does this by increasing multi-cultural dialogue and access, influencing public policy, and developing national models that support healthy and sustainable communities through the realization of our nation's civil rights laws. Through the National Neighbors initiative, NCRC convenes, supports and pursues workshops, conferences, investigations of civil rights complaints, systemic "testing," education and outreach, fair

housing planning and "best practice" compliance initiatives. National Neighbors provides technical assistance to NCRC's members in urban, suburban and rural communities to promote economic mobility and ensure fair housing for working families throughout our nation. National Neighbors advances fair lending and fair housing through multifaceted programs, including: private enforcement; education and outreach; fair housing planning; comprehensive voluntary compliance services; and testing and building partnerships among communities, real estate providers, financial institutions and other market players.

[2] The Attorney General's 2007 Annual Report To Congress Pursuant To The Equal Credit Opportunity Act Amendments Of 1976 Submitted By Grace Chung Becker Acting Assistant Attorney General , April 2, 2008

[3] See for example, NCRC v. Southstar, NCRC v. Wilmington Finance, NCRC v. Novastar Financial, NCRC v. Accredited Mortgage, NCRC v. Allied Mortgage, NCRC letter to SEC concerning role of Rating Agencies in sub-prime market failure (2008), and other enforcement actions cited at www.NCRC.org.

[4] Rivera Amaad et al. Foreclosed: State of the Dream 2008, United for a Fair Economy, January 15, 2008.

[5] National Advisory Council on Civil Disorders, Report on of the Commission on Civil Disorders vi at 92. (1968) (hereinafter Kerner Report)

[6] Id.

[7] See Trafficante v. Metro Life Insurance Company, 409 U.S. 205, 211 (1972), quoting Senator Mondale

[8] 114 Cong. Rec. 6000 Statement of Senator Brooke.

[9] Trafficante, at 409-412 (applying generous construction of standing to Fair Housing Claims)

[10] http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea19.shtm

[11] NCRC income is no Shield

[12] The lending disparities for African-Americans were large and increased significantly as income levels increased. In the *Income is No Shield* report, NCRC found that African-Americans of all income levels were twice as likely or more than twice as likely to receive high-cost loans as whites in 171 metropolitan statistical areas (MSAs) during 2005. MUI African-Americans were twice as likely or more than twice as likely to receive high-cost loans as MUI whites in 167 MSAs. In contrast, LMI African-Americans were twice as likely or more than twice as likely to receive high-cost loans as LMI whites in 70 MSAs. Moreover, MUI African-Americans receive a large percentage of high-cost loans. In 159 metropolitan areas, more than 40% of the loans received by MUI African-American were high-cost loans.

[13] 2004 Credit NCRC Study

[14] Paul S. Calem, Kevin Gillen, and Susan Wachter, *The Neighborhood Distribution of Subprime Mortgage Lending*, October 30, 2002. See also Paul S. Calem, Jonathan E. Hershaff, and Susan M. Wachter,*Neighborhood Patterns of Subprime Lending: Evidence from Disparate Cities*, in Fannie Mae Foundation's Housing Policy Debate, Volume 15, Issue 3, 2004 pp. 603-622.

[15] Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages,* see http://www.responsiblelending.org/issues/mortgage/reports/page.jsp?itemID=29371010

[16] NCRC, *Credit Unions: True to their Mission?*, 2005, http://www.ncrc.org; and Government Accountability Office, *Credit Unions: Greater Transparency Needed on Who Credit Unions Serve and on Senior Executive Compensation Arrangements*, November, 2006

[17] Avery, Robert B., Glenn B. Canner, and Robert E. Cook, "New Information Reported under HMDA and Its Application in Fair Lending Enforcement." *Federal Reserve Bulletin*, Summer 2005. Avery, Robert B., Kenneth P. Brevoot, and Glenn B. Canner, "Higher-Priced Home Lending and the 2005 HMDA Data," *Federal Reserve Bulletin*, September 2006.

[18] NCRC's broker testing yielded 106 total complete, matched-pair tests. Individuals located in the metropolitan areas of Atlanta, Baltimore, Chicago, the District of Columbia, Houston, Los Angeles and Saint Louis tested brokers that were local, established businesses. In conducting the broker testing, NCRC found several companies with particularly egregious initial results. In these cases, testers were again dispatched for follow up testing to confirm and further investigate the practices of these companies. Of the 106 total tests, 84 separate companies were tested, the difference being as a result of 22 follow up tests.

[19] See Douglas S. Massey and Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass 61-78, 221-223 (Harvard U. Press 1993).

[20] Massey and Denton, supra note 3 at 74-75; Nancy A. Denton, "Are African Americans Still Hypersegregated?," in Residential Apartheid: The American Legacy 63 (Robert D. Bullard et al. eds., UCLA Press 1994).

[21] Rawlings, L., et. al., "Race and Residence: Prospects for Stable Neighborhood Integration," in Neighborhood Change in Urban America, n. 3 (March 2004), p. 2.
[22] NFHA 2006. "Unequal Opportunity: Perpetuating Housing Segregation in America, Fair Housing Trends Report." Washington, DC NFHA.
[23] Robert B Avery, Kenneth P. Brevoot and Glenn B. Canner, "Higher-Priced Home Lending and the 2005 HMDA Data." Federal Reserve Bulletin (2006) A 123-166.
[24]NFHA Fair Housing Trends Report, Dr. Kings Dream Denied, National Fair Housing Alliance, April 2008, pg21.
[25] For more detail about the CRF fund, see the report by NCRC and the Woodstock Institute, *Asset Preservation: Trends and Interventions in Asset Stripping Services and Products*, September 2006, at http://www.ncrc.org/policy/analysis/policy/2006/2006-09_LifetimeOfAssets_NCRC-WoodstockPaper.pdf
[26] See NCRC's report*, Predatory Appraisals: Stealing the American Dream*, June 2005, http://www.ncrc.org/responsible-appraisal/pdfs/AppraisalReport.pdf
[27] Robert B. Avery, Glenn B. Canner, and Robert E. Cook, *New Information Reported under HMDA and Its Application in Fair Lending Enforcement*, Federal Reserve Bulletin, Summer 2005, http://www.federalreserve.gov/pubs/bulletin/2005/05summerbulletin.htm
[28] Inside Regulatory Strategies, November 14, 2005, p.2.
[29] Joe Adler, *Big Increase in Lenders with Suspect HMDA Data*, American Banker, September 11, 2006.
[30] There were a couple of cases in 2002 and 2004, but these cases were before the new HMDA pricing information was available. The cases involved the Department of Justice versus Decatur Federal Savings and Loan, September 1992; Shawmut Mortgage Company, December 1993; African AmericanPipe State Bank, December 1993; Chevy Chase, FSB, August 1994; Huntington Mortgage Company, October 1995; Security State Bank of Pecos, October 1995; Northern Trust Company, 1995; First National Bank of Gordon, April 1996; Long Beach Mortgage Company, September 1996; First National Bank of Dona Ana County, January 1997; Albank, August 1997; Deposit Guaranty National Bank, September 1999; Mid America Bank, FSB, 2002; Fidelity Federal Bank, FSB, July 2002; First American Bank, July 2004.
[31] HUD, as the agency responsible for investigating and prosecuting cases under the Fair Housing Act, filed thirty on discrimination charges in 2007 and thrity six in 2006. Charges for the same two year period dropped 65% from the last two years of the previous administration. One hundred and eleven charges were filed in 1999 and eighty two in 2000. Complaints during the same period rose from fewer than 7,100 in both 1999 and 2000 to more than 10,000 in both 2006 and 2007. Notably, settles most of its discrimination complaints out of court, but the agency is settling more cases overall than during the previous administration, while the percentage of settled cases has declined. In 1999, HUD settled 778 cases, 42% of the total investigated. In 2007, it settled 948 cases — 36.5% of the total investigated. HUD dismissed nearly two-thirds of the 2,595 investigated complaints filed last year. The majority of the remaining 7,000 complaints go to HUD-certified and funded local and state agencies. Housing cases at the civil rights division of the Justice Department, which prosecutes cases in which investigators find patterns of discrimination, also have dropped. The department filed 35 civil lawsuits in 2007, marking a steady decrease since 1999.
[32] Fair Housing: Opportunities to Improve HUD's Oversight and Management of the Enforcement Process. Washington, DC: United States General Accounting Office, April 2004.
[33] FHAP are local government agencies who have laws that are substantially equivalent with the Federal law and have been authorized to investigate complaints by HUD FHEO
[34] Mayor and City Council of Baltimore v. Wells Fargo, 2008
[35] See http://www.nytimes.com/2007/02/04/nyregion/nyregionspecial2/04wemain.html?pagewanted=1
[36] See www.consumeraffairs.com/news/housing_scam.html
[37] See U.S. Dept. of Housing and Urban Development, 1995 Annual Report to Congress: The State of Fair Housing in America 5-10 (describing discrimination on the bases of sex, disability, and familial status); id. at 47 (listing numbers of complaints filed). See also Michael H. Schill and Samantha Friedman, The Fair Housing Amendments Act of 1998: The First Decade, 4 Cityscape 57, 61-64 (1999) (providing more recent information about the numbers of complaints on these bases).
[38] For example similar to the data used in NCRC's Broken Credit System report released in the winter of 2003. For each HMDA reportable loan, a financial institution should indicate whether it used a credit score system and if the system was its own or one of the widely used systems such as FICO (a new data field in HMDA could contain 3 to 5 categories with the

names of widely-used systems). The HMDA data should contain one more field indicating which quintile of risk the credit score system placed the borrower. Another option is to attach credit score information in the form of quintiles to each census tract in the nation. That way, enhanced analyses can be done on a census tract level to see if pricing disparities still remain after controlling for creditworthiness. This was the approach adopted in NCRC's Broken Credit System and in studies conducted by Federal Reserve economists.