

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CARMEN THOMPSON, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN
DEVELOPMENT, *et al.*,

Defendants.

Civil Action No. MJG-95-309

**PLAINTIFFS' POST-TRIAL
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I. HUD Participated in the Creation of Segregated Public Housing in Baltimore, and the Vestiges of that Segregation Persist.

A. HUD and its Predecessor Agencies Intentionally Established and Perpetuated Racially Segregated Public Housing in Baltimore, Before and After 1954.

1. Plaintiffs incorporate by reference this Court's prior findings of fact regarding pre-1954 intentional discrimination by HUD in Baltimore public housing. *See Thompson v. HUD*, 348 F. Supp. 2d 398, 405 (D. Md. 2005) (noting the pervasiveness of *de jure* racial segregation in Baltimore prior to 1954); *id.* at 408 ("It is undisputed that prior to the 1954 *Brown I* decision Federal and City administrations had intentionally discriminated against African-American residents of public housing due to their race."); *id.* at 443 ("Plaintiffs have demonstrated past affirmative and purposeful segregatory actions by Defendants in the administration of housing policy . . ."); *id.* at 459 ("Through 1954, Baltimore City was a majority White, *de jure* racially segregated city."); *id.* at 468-69 (describing how the "neighborhood composition rule," a HUD policy that promoted public housing site selection in a way that expressly conformed to existing residential racial patterns, perpetuated *de jure* segregation for decades after 1954 and was itself a form of intentional discrimination); *id.* at 466-68, 472 (citing admissions by HUD officials of HUD's intentional, discriminatory policies that created and perpetuated racial segregation in public housing); *id.* at 470 (finding that from 1940 to 1954, seven public housing projects were opened and operated for black occupancy only, that six were sited in areas of minority concentration, and that the seventh was sited on a vacant site); *id.* at 471-72 (describing intentional discrimination by HUD in insurance underwriting, red-lining, and restrictive covenants); *id.* at 472-78 (detailing the construction and operation, by HABC with HUD support, of *de jure* segregated public housing projects in

Baltimore, with the intent and effect of restricting public housing for African-Americans to minority-concentrated areas within Baltimore City).

2. Plaintiffs incorporate by reference this Court's prior findings of fact that HUD perpetuated racial segregation in public housing in the Baltimore Region over several decades after 1954. *See id.* at 480-86 (describing in detail the development from the 1960s to the 1980s, "with HUD site approval and funding," of family public housing projects in Baltimore; all of which were occupied exclusively or almost exclusively by African-Americans; all but one of which were sited in areas HUD knew to be minority concentrated, in most cases adjacent to "extensions of" existing segregated housing; and of which the final project (Hollander Ridge) was in an "extremely isolated" location); *id.* at 470 (finding that during the same time period, sixteen housing projects were built for the elderly and disabled, and these projects were *not* sited in minority-concentrated or isolated parts of Baltimore City); *id.* at 469 (discussing HUD's tenant selection and assignment policies for public housing, and citing evidence showing that both "freedom of choice" and "first-come, first-served" plans perpetuated – well into the 1980s – the effects of segregatory site selection); *id.* at 471, 487-502 (describing the development of 2,800 units of scattered site housing from 1970 to 1995, the vast majority of which were sited in minority-concentrated areas, often accomplished with HUD waivers of site and neighborhood standards that were intended to prevent the concentration of public housing in segregated areas).

3. HUD's development of public housing almost exclusively in Baltimore City during the period after 1954 contrasts with the Baltimore Region's patterns of housing production and employment growth during the same time period. According to the United States Commission on Civil Rights, from 1948 to 1968 the number of jobs in Baltimore City increased by 11%, while the number of jobs in the surrounding counties increased by 245%. PX-659,

Hearing Before the U.S. Comm’n on Civil Rights in Baltimore, Maryland, at 507 (Aug. 17-19, 1970). According to the same report, nearly all of the growth in the metropolitan housing inventory from 1960 to 1968 occurred in suburban areas of the Region – housing inventory in the Baltimore Metropolitan Area increased by over 80,000 units during this time period, with 98% of new units located in suburban areas. *Id.* at 513.

4. In approving the sites for Baltimore City public housing projects, HUD did not consider whether sites in the suburban counties would be more suitable than the minority-concentrated sites in Baltimore City. *Id.* at 767 (“Site selection, especially with respect to housing of low-income families, is of crucial importance in determining whether racial and economic isolation of low-income families will be perpetuated. [HUD’s] review is limited to the jurisdiction making the application. Thus in the review of an application from Baltimore City for low-income housing for example, consideration is not given to possible preferable sites in Baltimore County.”).

5. Because of the concentration of the Region’s public housing in Baltimore City, it has historically been the case that poor families from the surrounding counties are forced to look for public housing in Baltimore City. *Id.* at 53 (test. of Mary Cardillicchio) (testifying before the United States Civil Rights Commission that as of 1970, six to ten families from the suburban Baltimore counties applied for Baltimore City public housing each week, which amounts to as many as 520 families from the suburban counties applying for Baltimore City public housing each year).

B. The Vestiges of HUD’s Prior Intentional Discrimination Persist to the Present.

6. By 1995, nearly 92% of the Baltimore Region’s family public housing (including public housing projects and scattered site units) was concentrated in Baltimore City, with the

remaining 8% located in the five surrounding counties (Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties). *See* PX-768, *Webster Written Test*. 21 & tbl.10; *see also* Trial Tr. 809-11 (Webster).

7. Only 41% of occupied rental housing units in the Baltimore Region (and about 29% of all housing units) were in Baltimore City as of 2000 Census figures. PX-768, *Webster Written Test*. 22 & tbl.11.

8. Similarly, nearly 94% of family public housing (including projects and scattered site units) was concentrated in census tracts with above-average percentages of African-American residents, compared to just 49% of the Region's occupied rental housing (and 34.5% of all housing units). *Id.* at 22-23 & tbls.12-13.

9. HUD's witnesses agreed at trial that Baltimore's public housing is presently segregated. *See* Trial Tr. 624 (Clark) (agreeing that public housing in Baltimore is objectively segregated); *id.* at 2055-56, 2061 (Halm) (agreeing that public housing in Baltimore is located only in overwhelmingly black and poor neighborhoods and is "de facto segregated" and that it has been so since he began work at HUD in 1980); *id.* at 2207-08 (Walsh) (agreeing that throughout the entire history of the Fair Housing Act public housing in Baltimore City has been segregated).

10. The 1996 Analysis of Impediments to Fair Housing, jointly prepared by the Baltimore Region's local jurisdictions, identifies "[d]e facto racial segregation in public and assisted housing" as a "significant impediment[] to fair housing choice . . . in the Region." PX-268, *Analysis of Impediments to Fair Housing in the Baltimore Metropolitan Area* 84.

C. Public Housing in Baltimore Has Historically Been Located in Areas of Disproportionate African-American Population Concentration.

11. Public housing in the Baltimore Region has always been located in areas of disproportionate African-American concentration and never in disproportionately white neighborhoods.

12. In 1960, the average census tract in Baltimore City was 34% African-American, but the average census tract in which a family public housing project was located was over 60% African-American. *See* PX-768, *Webster Written Test*. 11-13, tbl.6, & figs.12A-12B. This pattern continued in every observation decade from 1960 to the present, such that in 2000 the average census tract in Baltimore City was 63.5% African-American, but the average census tract with family public housing was 88.4% African-American. *See id.* at 11-13, tbl.6, & figs.13A-16B.

13. In 1960, the average census tract in the counties surrounding Baltimore City was 7.4% African-American, but the average census tract in which a family public housing project was located was 22.6% African-American. *Id.* at tbl.6. This pattern continued in every decade from 1960 to the present. In 2000, the average census tract in the suburban counties in the Baltimore Region was 15.1% African-American, but the average census tract with family public housing was 30.5% African-American. *Id.*

14. Charles Halm, the Director of the Community Planning and Development Division in the HUD Baltimore office, testified as follows:

Q. So for African American families in Baltimore City, who need to live in public housing the only places that they've been able to live have been in neighborhoods [that] have been overwhelmingly black and overwhelmingly poor?

A. Generally, that's the case. There is some public housing, senior public housing, I believe, in another more diverse neighborhoods, yes. But that's correct.

Q. My question was about families.

A. Families, okay. Yes, that's true.

Q. And that was true in 1980 when you started at HUD?

A. Yes.

Q. And that's true today, correct?

A. Yes, that's true.

Q. That's been true every year between 1980 and . . . today?

A. As far as I know, yes, sir.

Trial Tr. 2056 (Halm).

15. Pamela Walsh, the Director of the Program Standards Division in HUD's Office of Fair Housing and Equal Opportunity, testified as follows: "Q. And you're aware, throughout the entire history of the Fair Housing Act, public housing in Baltimore City has been segregated housing, right? A. That's what I've been told." *Id.* at 2207-08 (Walsh).

16. HUD's own regulations establishing Fair Market Rent levels define the Baltimore housing market as encompassing the entire Baltimore MSA (which includes Baltimore City plus the six surrounding counties). *See* 70 Fed. Reg. 57,653, 57,659, 57,680 (Oct. 3, 2005). In addition, a number of witnesses testified at trial that housing markets are regional. *See, e.g.*, Trial Tr. 164 (Turner); *id.* at 310 (powell); *id.* at 1026, 1048 (Briggs).

II. HUD's Failure to Affirmatively Further Fair Housing.

A. HUD's Administration of the Section 8 Voucher Program.

1. HUD has Failed to Provide Equal Access to Housing Opportunities.

17. In the Baltimore Region, African-American voucher users are far more likely than white voucher users to live in Baltimore City. According to 2005 data, approximately 63% of all African-American voucher users in the Baltimore Region live in Baltimore City, while only 9% of white voucher users in the Region live in Baltimore City. *See* PX-768, *Webster Written Test*. 2-3, 13-15 & figs.18A-19B; Trial Tr. 804-06 (Webster) (noting that black voucher users are concentrated in Baltimore City but white voucher users are not, and characterizing patterns of

white voucher use as “a mirror image of the pattern of actual use by African Americans, in that there’s not the large concentration of white voucher holders using their vouchers in Baltimore City, but rather using them in the five surrounding counties”).

18. African-American voucher users are more likely than white voucher users to live in high-black census tracts. Over 45% of black voucher users in the entire Baltimore Region live in census tracts with greater than 80% black population concentration, while only 4% of white voucher users live in such tracts. *See* PX-768, *Webster Written Test*. 15, tbls.7B-7C, & figs.18A-19B; Trial Tr. 805-07 (Webster) (noting that African-American voucher users are much more likely than white voucher users to live in high-black census tracts, and characterizing the comparison as “quite dramatic”).

19. African-American voucher users are also far more likely than white voucher users to live in low-income census tracts. Approximately 37% of black voucher users live in very poor census tracts (tracts with less than 50% of the median state income), while about 5% of white voucher users live in such census tracts. *See* PX-768, *Webster Written Test*. tbls.7B-7C.

20. Plaintiffs’ experts Xavier de Souza Briggs and Margery Turner noted: “[V]ouchers do not provide equal access to low-poverty and low-minority neighborhoods for all poor households. Tenant-based assistance produces better locational outcomes . . . for white recipients than for African Americans and Hispanics HUD’s analysis of voucher locations in the 50 largest metro areas nationwide illustrates that minority and central city recipients are not gaining access to the same opportunities as white and suburban residents.” PX-764, *Briggs Written Test*. 24.

21. Ms. Turner testified that “as it currently operates, the voucher program isn’t enabling minority recipients to gain access to the same opportunity-rich communities that white recipients do, and that we know units are located in.” Trial Tr. 169 (Turner).

22. HUD has stated: “One of the advantages [of] tenant-based rental assistance is that it allows the recipient to choose [where to live]. However, many households receiving Section 8 rental assistance are confronted by an array of barriers – market conditions, discrimination, lack of information and/or transportation, among others – that force them to rent housing in neighborhoods of intense poverty.” PX-815, HUD, *Moving to Opportunity for Fair Housing*, at HUDBAL 38186 (Dec. 5, 2000).

23. Tenants’ racial preferences are not a primary reason for the concentration of African-American voucher recipients in predominantly black neighborhoods. *See* SOF ¶¶ 289-92.

2. Administrative Obstacles to Voucher Portability Persist.

24. A person residing in Baltimore City who is issued a voucher by HABC may not directly use that voucher outside the City. If a family with a voucher from Baltimore City found a rental unit in one of the surrounding counties, before leasing the unit the family would first have to initiate an exchange of its HABC voucher for a voucher issued by the county in which the unit is located. The first step in this process, known as portability, is for the family to ask HABC to transfer the voucher paperwork to that county. Trial Tr. 1283-84 (Tamburrino).

25. The receiving administrative agency then has the authority to conduct an additional screening determination of voucher eligibility. *Id.* at 1285. As part of that process, the voucher holder would need to schedule an appointment with the receiving county. *Id.*

26. If during this process the apartment to which the voucher family hoped to move became unavailable, they would have to repeat the process. *Id.* at 1286. Delays in the voucher porting process often result in families with a voucher losing a desired unit to another family that is able to rent without delay. *Id.* at 82-83 (Khadduri).

27. A HUD-commissioned study concluded: “In theory, any certificate- or voucher-holder can move to any place in the country where there is an agency operating a Section 8 program. In practice, people may not be aware of this option, and there are a number of potential obstacles – such as the paperwork required, differences in occupancy standards, and other administrative variations – that can create problems for people trying to move.” PX-681, *State and Metropolitan Administration of Section 8: Current Models and Potential Resources – Final Report*, at 2-12 (Apr. 1997).

28. Dr. Jill Khadduri testified that all of these administrative barriers are significant hurdles to portability:

Vouchers since the mid 1980s have a feature called ‘portability,’ which means that a family that receives a housing voucher in the City of Baltimore can go to any other jurisdiction in the region or indeed the nation and use that voucher.

That’s all very well. But there have been administrative impediments to the effective use of the portability feature of the Housing Choice Voucher program.

For example, it is difficult – if you’re trying to find a housing unit and to rent a housing unit in a good neighborhood, that housing unit is probably pretty easy to rent to somebody other than you, the voucher holder.

The process of portability as it currently exists creates delays in approving the lease and subsidy for the housing unit that easily lead to the family with a voucher losing that unit to somebody who can sign a lease for it right away.

See, this is a problem with the implementation of portability that’s been understood by HUD since the mid 1980s. But HUD has never come up with an effective solution for overcoming the limitations on the portability feature of the Housing Choice Voucher Program.

Trial Tr. 82-83 (Khadduri).

29. HUD's expert witness, Prof. Robert Fishman, stated that "HUD policy makers well understood that merely providing region-wide vouchers was not enough to provide real 'freedom of choice' for those households who wished to use their vouchers to move to a suburban location." FDR-2, *Fishman Written Test.* 6; *see also* Trial Tr. 1366 (Fishman).

30. PHAs have reported numerous administrative obstacles to the portability process, and have noted that agency competency impedes portability; that the process and the volume of paperwork are cumbersome; that "gaps in communication between the initial and receiving agencies are prevalent"; that there are processing problems that occur when voucher families want to move to a different jurisdiction; that the billing process is slow and unduly complicated; that portability involves extra administrative costs; and that different jurisdictions may have different eligibility criteria based on factors such as credit history. PX-681, *State and Metropolitan Administration of Section 8: Current Models and Potential Resources – Final Report*, at 3-8 to 3-11; *see also* Trial Tr. 1287-90 (Tamburrino).

31. These administrative barriers discourage PHAs from promoting portability to voucher holders. A number of PHAs have "explained that, although they comply with program regulations, they do not encourage participant moves – particularly portability – because this creates more work for the agency and may involve less administrative fee income (if the family moves outside the HA's jurisdiction). Some indicated that they believe other HAs in their area might not even fully explain portability to their participants." PX-681, *State and Metropolitan Administration of Section 8: Current Models and Potential Resources – Final Report*, at 3-5 (Apr. 1997); *see also* PX-764, *Briggs Written Test.* 11.

32. HUD established the Section 8 Management Assessment Program (“SEMAP”) in 1998 to measure the performance of Section 8 administering authorities. 63 Fed. Reg. 48,548 (Sept. 10, 1998); 24 C.F.R. § 985.1(a) (“The Section 8 Management Assessment Program (SEMAP) is designed to assess whether the Section 8 tenant-based assistance programs operate to help eligible families afford decent rental units at the correct subsidy cost. SEMAP also establishes a system for HUD to measure PHA performance in key Section 8 program areas and to assign performance ratings.”).

33. SEMAP is “primarily designed to remedy management failures in the most dysfunctional agencies, not to accomplish affirmative objectives in the fair housing area. That is, SEMAP’s main function is to ensure that PHAs meet *basic* program requirements.” PX-764, *Briggs Written Test*. 12 (citation omitted).

34. The “deconcentration” indicator is an optional bonus toward a PHA’s SEMAP score if certain poverty deconcentration standards are met. *See* 24 C.F.R. § 985.3(h)(1), (3)(i); *see also* 63 Fed. Reg. at 48,551.

35. A PHA obtains the deconcentration bonus if half of Section 8 families with vouchers live in low-poverty areas, or if Section 8 movers choose low-poverty neighborhoods at a slightly higher rate than all Section 8 families. *See* 24 C.F.R. § 985.3(h)(1)(i), (ii), (iii).

36. The deconcentration bonus amounts to a possible increment of 5 points toward a PHA’s SEMAP score, out of a total of 280 points. 63 Fed. Reg. at 48,551.

37. This increment is a “very limited number of points and only on a bonus basis,” which in practical terms means that it does not affect whether a housing authority is rated a high- or adequately-performing housing authority. Trial Tr. 138 (Khadduri); *see also id.* at 108 (Khadduri) (“It is a bonus. It is not a fundamental point of the scoring system that determines

whether a housing authority is a highly performing or adequately performing or inadequately performing housing authority.”).

38. William Tamburrino testified at the 2003 liability trial in this action that it would be possible for a housing authority to have a high SEMAP score and be a well-managed housing authority, and still have an overwhelming percentage of voucher holders living in minority concentrated areas. *See* Liability Trial Tr. 1314 (Tamburrino).

39. The deconcentration bonus is “not an effective policy tool with regard to achieving deconcentration of poverty.” Trial Tr. 138 (Khadduri).

40. HABC has never qualified for the deconcentration bonus. PX-629, Tamburrino Dep. Tr. 103:1-4 (May 16, 2005).

41. A key component of a PHA’s SEMAP score is the PHA’s “utilization” rate, which is essentially a measure of whether the PHA is making use of all available vouchers. *See* Trial Tr. 1232, 1264-65 (Tamburrino); 24 C.F.R. § 985.3(n).

42. In addition to being a component of a PHA’s SEMAP score, utilization rate also determines the PHA’s allocation of funds from year to year. *See* Trial Tr. 1232-34 (Tamburrino); PX-765, *Khadduri Written Test*. 24.

43. Utilization rate is measured in a way that lowers a PHA’s utilization score for voucher users who move to another jurisdiction. A voucher is not counted as utilized for purposes of the Housing Authority’s allocation of vouchers when the voucher is used outside the Housing Authority’s area of jurisdiction. Low utilization rates can lead a Housing Authority to be penalized or even defunded. This creates disincentives to HABC from assisting tenants in moving out of Baltimore City. *See* Trial Tr. 1018-20 (Briggs) (“in the way HUD does its assessment of local housing agency performance and the way it does the rating, there’s a direct

disincentive to enable families to use the vouchers in that way.”); *see also* PX-644, Kramer Dep. Tr. 171:4-8 (Mar. 4, 2003) (HABC official admitting that “my primary interest is compliance with utilization and getting my vouchers utilized within the City. If you move outside of the City, you don’t count towards my utilization”); *id.* at 173:19-20 (“[I]t works to [HABC’s] advantage, [if] more families port in [to Baltimore City] than port out.”); 24 C.F.R. § 982.355(d); *See Thompson*, 398 F. Supp. 2d at 524 (in the 12 month period preceding 2003, 60 voucher holders ported out of Baltimore City while 208 ported in).

44. Voucher users are often not aware of a voucher’s portability. PX-681, *State and Metropolitan Administration of Section 8: Current Models and Potential Resources – Final Report*, at 2-12 (Apr. 1997).

45. HUD argued at trial that it has created and distributed a publication called “The Locator” regarding affordable housing opportunities in Baltimore, resulting in a “significant knowledge transfer.” Trial Tr. 41 (HUD opening statement); *id.* at 1250-51 (Tamburrino); FDR-51, *The Locator* (Oct. 2004).

46. HUD has implemented no plan or strategy to mail or otherwise distribute The Locator to residents of Baltimore City public housing. Trial Tr. 1299 (Tamburrino).

47. HUD does not require HABC to make copies of The Locator available in the management offices of Baltimore City public housing projects. *Id.*

48. HUD does not require that The Locator be provided to families that are issued a voucher. *Id.* at 1300.

49. HUD does not require HABC to have copies of The Locator available in its housing applications office to distribute to applicants for public housing. *Id.*

50. Ms. Richenda Dickey, a former resident of Baltimore City public housing who moved to Towson as a result of the Partial Consent Decree in this case, testified that she has never seen or heard of The Locator. *Id.* at 568 (Dickey).

51. Ms. Michele Robinson, a former resident of Baltimore City public housing who moved to Columbia as a result of the Partial Consent Decree in this case, testified that she has never heard of The Locator. *Id.* at 901 (Robinson).

52. Fair Market Rents (“FMRs”) are determined by the housing market area and are “the rent, including the cost of utilities (except telephone), as established by HUD, pursuant to this subpart, for units of varying sizes (by number of bedrooms), that must be paid in the market area to rent privately owned, existing, decent, safe and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.” 24 C.F.R. §§ 888.111(b), 888.113; see also Trial Tr. 2386-2387 (Riley).

53. The geographic area used by HUD to set FMRs is the Baltimore metropolitan area. PX-641, Benoit Dep. Tr. 42:9 - 43:6. HUD combines census data for the City of Baltimore and surrounding suburban counties to develop a metropolitan-wide FMR. As a result, the FMRs are lower than they would be if the City was excluded and FMRs were based on suburban rent levels. *Id.* at 43:21-44:3.

54. Under the former Section 8 Rental Certificate program participants could not rent units whose rents exceed an area’s FMRs, while FMRs serve as the payment standard used to calculate subsidies under the Voucher program. 24 C.F.R. § 888.113. Generally, a local housing authority may approve a payment standard for Section 8 Housing Assistance between 90 percent and 110 percent of the FMR. 24 C.F.R. § 982.503(b). However, HUD may approve an “Exception Payment Standard” amount from 110 to 120 percent of the FMR if it determines

such “exception payments” are necessary “(A) to help families find housing outside areas of high poverty, or (B) because voucher holders have trouble finding housing for lease under the program within the term of the voucher.” 24 C.F.R. §§ 982.503(c)(2), (4); Trial Tr. 1225 (Tamburrino).

55. Both FMRs and Exception Payment Standards are critical to desegregative opportunities in Baltimore because they facilitate access to housing in neighborhoods with greater opportunities for jobs, good schools, and low crime rates. *See* PX-763, *Basu Written Test.* 34; PX-766, *powell Written Test.* 48-49.

56. FMRs that are set too low can contribute to the concentration of voucher holders in the limited number of areas where housing is affordable for vouchers to be used. Trial Tr. 2413 (Riley).

57. Effective September 14, 1995, HUD lowered the nationwide FMR rent standard from the 45th to 40th percentile rent level. 60 Fed. Reg. 48,278 (Sept. 18, 1995).

58. In October 2000, HUD established 50th percentile FMRs for 39 FMR areas. 65 Fed. Reg. 58,869, 58,870 (Oct. 2, 2000). This aspect of the policy was designed to ensure that families with housing vouchers have access to at least half of all available units in those areas. *Id.* The 39 FMR areas did not include the Baltimore Region. *Id.*

59. Not until October 2005 did HUD raise FMRs in the metropolitan housing market area to the 50th from the 40th percentile. 70 Fed. Reg. 57,653, 57,654-57,714, 57,658 (Oct. 3, 2005).

60. In September 2003, HUD’s PIH assistant secretary instructed HUD’s Baltimore field office director not to approve any additional exception rent payment standards. PX-630, Tamburrino Dep. Tr. 255:13-21 (May 18, 2005).

61. The local field office director's authority to approve exception rents was not reinstated until March 2006. *See* Trial Tr. 1225-26 (Tamburrino).

62. Since at least 2000, HUD's FMRs have not provided adequate funds for a Section 8 family to obtain housing in a significant portion of the counties surrounding Baltimore, which offer the greatest opportunity for employment in low- and very low-wage jobs. *See* Trial Tr. 390-93 (Basu); PX-763, *Basu Written Test.* 24, 26-30; *see also* Trial Tr. 2428-29 (Riley) (testifying that FMRs were set too low in 2002).

63. HUD decreased its Fiscal Year 2005 FMRs for multiple bedroom housing in the Baltimore Region from Fiscal Year 2004, reducing the number of multiple bedroom units renting at prices below FMRs. PX-763, *Basu Written Test.* 31-32.

64. The difficulty in penetrating the private rental market is worsened by the tightening rental housing market in Baltimore. *See Thompson*, 348 F. Supp. 2d at 460 ("the relative expense and lack of affordability of housing outside of Baltimore City may present a significant barrier to Section 8 voucher-holders who might wish to pursue private housing in the Baltimore Region but outside the city."); *see also* Trial Tr. 376-77, 380-82 (Basu); PX-67, HUD, *United States Housing Market Conditions* 34 (May 2001); PX-476, *HUD Baltimore Field Office, The Electronic Dispatch*, (August 2002) 1; PX-478, Michael A. Stegman, Assistant Secretary for Policy Development and Research, Foreword, *Section 8 Rental Voucher and Rental Certificate Utilization Study*, October 1994 at PL 070315 (recognizing that the effectiveness of Section 8 has been constrained by the inability of many enrollees to obtain housing - - housing that is found is typically limited to a 'Section 8 submarket' of units whose landlords are generally familiar with the program and have previously rented to Section 8 tenants); PX-477,

Letter from Paul Graziano to William Tamburrino (Aug. 9, 2001) (in 2001 fewer than 40% of the families who were issued an HABC voucher succeeded in finding and leasing a home).

65. This difficulty is also worsened by the shrinking supply of HUD-assisted housing in the region. *See* PX-763, *Basu Written Test*. 13-15; PX-680, *HUD, Waiting in Vain: An Update on America's Rental Housing Crisis* 16-17 (Mar. 1999); Liability Trial Transcript 2585 (Henderson) (it gets scarier and scarier about whether or not we will find places for people to move.”).

3. HUD's Acquiescence in HABC Mismanagement, and Recapture of Funds.

66. This Court has already found that HUD acquiesced in HABC's gross mismanagement of its Section 8 voucher program throughout the entire decade of the 1990s; that HUD had but did not use oversight authority to compel compliance with program regulations; and that HUD's acquiescence in HABC's mismanagement resulted in tens of millions of dollars of unspent voucher funds that could have been used to provide desegregative housing opportunities. *See Thompson*, 348 F. Supp. 2d at 521-24.

67. In 2001, HUD's Inspector General issued an audit of HABC's Section 8 program. The audit concluded that “[t]he HABC's Section 8 Program is barely functional, and the HABC continues to mismanage and waste scarce resources intended to provide housing opportunities to its low-income residents.” *Thompson*, 348 F. Supp. 2d at 523; *see also* Trial Tr. 637 (Clark).

68. HABC also failed the Section 8 Management Assessment (SEMAP) for the fiscal year ending June 30, 2001, earning a performance rating of “troubled” with a score of fifteen (15) points out of a possible total of 120 points. *Thompson*, 348 F. Supp. 2d at 524.

69. As a result of this failure, HABC was barred from applying for new Section 8 funds under a HUD Notice of Funding Availability. *Thompson*, 348 F. Supp. 2d at 524. In

September 2001, HUD also barred HABC from applying for housing counseling funds to operate a Section 8 mobility program. *Id.* at 511.

70. Because of the problems with HABC's Section 8 voucher program, the Inspector General recommended that HUD take administrative actions against HABC pursuant to Section 15 of the Consolidated Annual Contributions Contract ("ACC") for Section 8 programs. PX-401, OIG Audit Report, Housing Authority of Baltimore City, *Section 8 Certificate and Voucher Programs* (Mar. 28, 2001) 27. Section 15 of the ACC allows HUD to "take possession of all and any [housing authority] property, rights or interests in connection with a program" PX- 684, HUD Annual Contributions Contract §15(a). HUD did not follow this recommendation. Trial Tr. 1258 (Tamburrino).

71. In 2003, HABC's Section 8 director testified that the agency did not plan to seek additional vouchers to replace public housing units lost to the inventory because it had not been able to fully utilize the vouchers it already had. PX-645, Kramer Dep. Tr. 453:9 -20 (Mar.19, 2003). Baltimore was not, in any event, eligible to apply for additional vouchers due to its troubled status and low utilization rates. *Id.*

72. During a follow up audit in 2004, HUD's Inspector General found that HABC was still not properly managing its Section 8 programs and that HABC had not yet fully implemented the key 2001 recommendations. For the 3-year period beginning in fiscal year 2001 and ending in fiscal year 2003, HABC only utilized 80 percent of its available funding, well below the 95 percent HUD expects a housing authority to use. PX-685, OIG Audit Report, HABC, *Corrective Action Verification Review of Housing Authority of Baltimore City, Baltimore, MD, Section 8 Certificate and Voucher Programs* (Dec. 21, 2004) 2, 7; Trial Tr. 1266 - 68 (Tamburrino).

73. In fiscal year 2002, HUD recaptured \$42 million of unused Section 8 funds and between that time and the issuance of the audit report in December 2004, another \$38 million in Section 8 funds had gone unused. PX-685, OIG Audit Report 2-3, 14.

74. As of June 2004, HABC had approximately 14,609 authorized vouchers, for which it was only using 10,373, and over 15,000 people on its Section 8 waiting list. Trial Tr. 1270 - 72 (Tamburrino); PX-685, OIG Audit Report 3, 14; Trial Tr. 1270-72 (Tamburrino). Further, the Inspector General found that HABC had issued only 393 vouchers in fiscal year 2004. PX-685, OIG Audit Report 15.

75. In January 2005, HUD nonetheless permitted HABC to participate in the Moving to Work demonstration program without notifying the Office of Inspector General, or HUD's Office of Public and Indian Housing Field Office staff. PX-888, *HUD Office of Inspector General - Public and Indian Housing Audit Semiannual Results - Corrective Action Verification Review, Baltimore, MD* (Jan. 24, 2006); Trial Tr. 1280-82 (Tamburrino). HUD's approval rendered the IG's findings "in large degree moot" because MTW participants are not required to follow HUD's requirements and regulations. Trial Tr. 1280-82 (Tamburrino).

76. According to HUD, its funding decisions for fiscal year 2005 will probably result in the reduction of the number of vouchers it funds for HABC, PX-683, Tamburrino Dep. Tr. 125:3-14 (May 16, 2005), because local housing authorities' funding to renew Section 8 vouchers was changed to be based, in part, on the number of vouchers a housing authority utilized in May, June, and July 2004. PX-683, HUD, Notice PIH 2005-1 (HA), *Implementation of the Consolidated Appropriations Act (HR 4818 -H Rept 108-792), 2005 Funding Provisions for the Housing Choice Voucher Program* (Dec. 8, 2004); Trial Tr. 1125-1126, 1218 (Tamburrino); *Id.* at 2222 (Vargas).

77. Because HABC failed to utilize a significant number of its vouchers during all of 2004, HUD's 2005 funding decisions have effectively reduced the number of Section 8 vouchers and certificates available to Section 8-eligible families in Baltimore. Trial Tr. 1278-80 (Tamburrino).

4. Regional Opportunities Counseling.

78. The Regional Opportunities Counseling ("ROC") program, implemented in Baltimore as the Baltimore Regional Housing Opportunities Program ("BRHOP"), operated for only five years, from 1997 to 2002. Trial Tr. 1240-41 (Tamburrino).

79. The total ROC program budget in Baltimore for its five-year operation was \$2.1 million. *See* FDR-19, *BRHOP Program Budget Rev.*(Apr. 28, 1997).

80. HUD chose not to extend the ROC program after the original five-year time period was met. *See* FDR-37, Letter from Harold Young to Barbara Mikulski (Mar. 26, 2004) ("Pursuant to guidance that this Office has received from HUD Headquarters, no further extensions of this ROC grant are authorized . . . [W]e have also been informed by HUD Headquarters that on March 26, 2003, all Housing Authorities nationwide were instructed to close out the ROC grants."); FDR-10, Letter from David H. Enzel & William O. Russell III to Richard Doran (Mar. 26, 2003) (direction from HUD closing out the ROC program and advising ROC contractors that they were no longer authorized to expend ROC funds).

81. No additional money was allocated after the budgeted amount was spent. Trial Tr. 1294 (Tamburrino).

82. No substitute program was adopted after ROC was cancelled. *Id.* at 1296 (Tamburrino).

83. Dr. Khadduri testified at trial that “the ROC program was of extremely limited duration, and cannot be considered to be ongoing HUD policy, or even ongoing HUD policy in the Baltimore Region.” *Id.* at 85 (Khadduri).

84. A midpoint review of the BRHOP program, prepared for HUD by Quadel Consulting, reported that in the Baltimore area 362 families received counseling and 167 families moved, with only 89 of those families moving to “opportunity areas” (generally defined by the program to mean areas with poverty rates of less than 10%). *See* FDR-31, *Assessment of Technical Assistance Needs of the Regional Opportunity Counseling (ROC) Program Sites*, at II-1 to II-2 (Apr. 2000).

85. According to the midpoint review of the ROC program, only about half of program participants originated from Baltimore City, with most of the remainder originating from Baltimore County. *See id.* at II-2.

86. The midpoint review reported that “[b]oth the lead PHA and NPO indicated that a greater degree of HUD involvement will be required for any significant regionalization . . . to occur.” *Id.* at II-2.

87. William Tamburrino testified that one benefit from BRHOP was to streamline portability administration across voucher administering agencies in the Baltimore Region. *See* Trial Tr. 1243 (Tamburrino). However, the Quadel midpoint review found that aside from improving consistency in payment standards, the program did little to eliminate administrative barriers to portability. *See* FDR-31, *Assessment of Technical Assistance Needs of the Regional Opportunity Counseling (ROC) Program Sites*, at II-2 (Apr. 2000) (“Progress in regional coordination has been mixed [There has been] more consistency in payment standards across the region. However, other differences in administration of the Section 8 program,

particularly the application of subsidy standards and leasing procedures, continue to be confusing for participants and landlords . . .”).

5. The Moving to Opportunity Demonstration.

88. Congress authorized the Moving to Opportunity (“MTO”) demonstration study in 1992. *See* Housing and Community Development Act of 1992, Pub. L. No. 102-550, § 152, 106 Stat. 3672, 3716-17 (1992), *repealed by* Pub. L. No. 105-276, § 550(f), 112 Stat. 2461, 2610 (1998).

89. MTO was a controlled experiment whose purpose was to generate empirical social science data about the effects of providing families in public housing with vouchers and mobility counseling to enable them to move out of areas of concentrated poverty. Trial Tr. 2108-10 (Shroder); *id.* at 176-77 (Turner); *id.* at 105 (Khadduri); *id.* at 1335-36 (Fishman); FDR-32, HUD, *MTO Current Status and Initial Findings* 1 (Sept. 1999) (stating that the goal of MTO “is to ensure the highest quality of research and policy evidence”); *see also* Trial Tr. 44-45 (HUD opening statement) (describing MTO as “a comprehensive study” whose “data [is] being selected and analyzed so HUD can learn [e]mpirically the results [of] vouchers and mobility counseling and how they [a]ffect the lives of the voucher holders”).

90. The MTO demonstration was conducted in Baltimore, Boston, Chicago, Los Angeles, and New York City. FDR-32, HUD, *MTO Current Status and Initial Findings* 6 (Sept. 1999); Trial Tr. 2115 (Shroder).

91. Participants were families with at least one child under the age of 18, income-eligible for the Section 8 program, who were living in public and subsidized housing developments located in neighborhoods in which at least 40 percent of the population was poor. FDR-32, HUD, *MTO Current Status and Initial Findings* 7 (Sept. 1999).

92. Study participants were randomly assigned to three groups: (1) the “treatment” or “experimental” group, (2) the comparison or “Section 8” group, and (3) the control group. Trial Tr. 1335-36 (Fishman); *id.* at 2123-24 (Shroder); FDR-33, HUD, *MTO Interim Impacts Evaluation*, at ii (Sept. 2003).

93. The Community Assistance Network (CAN), a Baltimore-area nonprofit, provided mobility counseling to those in the Baltimore treatment group. Trial Tr. 2115-16 (Shroder); *id.* at 1093 (Briggs); FDR-33, HUD, *MTO Interim Impacts Evaluation*, at iv (2003). This intensive counseling began with seven training workshops that the families were required to attend in the first 60 days after assignment to the experimental group, before beginning their housing search. Thereafter, CAN counselors provided individual assistance to each family. CAN took the families to outlying communities in a van, in small groups, averaging over 10 trips per family. Families who had already “leased up” helped orient new MTO participants. FDR-47, *Expanding Housing Choice for HUD-Assisted Families: First Biennial Report to Congress on the Moving to Opportunity for Fair Housing Demonstration*, at HUDBAL 38194 (Apr. 1996).

94. The treatment group received special vouchers that could only be used in low-poverty neighborhoods. Trial Tr. 2120-21 (Shroder). Low-poverty was defined as census tracts with a poverty rate lower than 10%. FDR-26, *Moving to Opportunity: Press Briefing Packet*, at HUD-39714 (Aug. 8, 2000). These participants had to remain in low-poverty neighborhoods for at least one year. FDR-33, HUD, *MTO Interim Impacts Evaluation*, at viii (2003).

95. A comparison group received regular section 8 vouchers that could be used anywhere, and no mobility counseling. The control group received no vouchers or counseling,

but continued to receive project-based assistance. Trial Tr. 1335-36 (Fishman); FDR-33, HUD, *MTO Interim Impacts Evaluation*, at iii (2003).

96. In Baltimore, 252 families were assigned to the MTO treatment group to receive special vouchers and mobility counseling. FDR-32, HUD, *MTO Current Status and Initial Findings* 17 (Sept. 1999).

97. The number of families who signed up to participate in the MTO program was greater than the number of vouchers available in Baltimore. Trial Tr. 2543 (Rohe).

98. Of the 252 families who received the special vouchers and mobility counseling, 146 families actually “leased up,” meaning that they used the voucher to secure housing in a low-poverty area. Trial Tr. 2119 (Shroder); FDR-32, HUD, *MTO Current Status and Initial Findings* 17 (Sept. 1999).

99. HUD documents consistently report that 146 families in the treatment group leased up. *See* FDR-32, HUD, *MTO Current Status and Initial Findings* 17 (Sept. 1999) (146 families leased up); FDR-26, HUD, *Moving to Opportunity, Press Briefing Packet, August 8, 2000*, at HUD 039718 (same); PX-817, *Mark Shroder, Moving to Opportunity: An Experiment in Social and Geographic Mobility* 63 (same); *see also* Trial Tr. 2119 (Shroder) (“They had 146 lease-ups in the treatment group”).

100. Nationwide, the MTO demonstration took place during the period from 1994 to 1999. FDR-32, HUD, *MTO Current Status and Initial Findings* 7 (Sept. 1999).

101. In Baltimore, the demonstration took place during the period from 1994 to 1997. *Id.* at 10; *see also* Trial Tr. 1367-68 (Fishman).

102. Today, MTO exists only as a research project, not as an active program. *Id.* at 1368 (Fishman); *id.* at 189 (Turner). No additional families are being placed as a result of MTO. *Id.* at 177 (Turner); *id.* at 1368 (Fishman).

103. The social science research was intended to extend for ten years after the end of the actual program; research is ongoing. Trial Tr. 1367 (Fishman); *id.* at 189 (Turner); FDR-33, HUD, *MTO Interim Impacts Evaluation*, at vi (2003).

104. MTO was significant only as research, not as policy, because it involved such a small number of families and such a short period of time. Trial Tr. 176-77 (Turner). MTO did not represent a policy shift by HUD. *Id.* at 105 (Khadduri).

105. MTO was designed from the start to consist of a short demonstration period followed by a “long tail” of data collection and research. *Id.* at 190 (Turner).

106. HUD described the MTO demonstration as “a carefully controlled experimental design . . . to evaluate the impacts” of moving from high- to low-opportunity areas. PX-816, HUD, *First Biennial Report to Congress on the MTO Demonstration*, at HUDBAL 38188 (Apr. 1996).

107. The MTO demonstration was conceived because of policymakers’ concerns about the problems associated with concentrated poverty. Trial Tr. 2111-12 (Shroder). The statute authorizing the MTO program states that its was conceived to assist public housing families “to move out of areas with high concentrations of persons living in poverty to areas with low concentrations of such persons.” Housing and Community Development Act of 1992, Pub. L. No. 102-550, § 152(a), 106 Stat. 3672, 3716 (1992).

108. HUD’s MTO press briefing notes that “[p]overty in the United States has become increasingly concentrated in high-poverty areas,” and explains that “MTO is designed to

measure the value” of “enabl[ing] families living in such neighborhoods to move to neighborhoods with low rates of poverty.” FDR-26, *Moving to Opportunity Press Briefing Packet*, at HUD 039713 (Aug. 8, 2000)

109. Racial desegregation was not part of the statute authorizing MTO, and the experiment was not designed to test or address racial desegregation. Trial Tr. 2134-35 (Shroder); PX-764, *Briggs Written Test*. 18; *see* Trial Tr. 1082 (Briggs); *id.* at 1369 (Fishman) (citing “this shift in HUD’s language to emphasize not the racial context, but the context of the rate of poverty”); *see also* FDR-33, HUD, *MTO Interim Impacts Evaluation* (Sept. 2003) 162 (“To the extent that racial integration has a positive influence on any of the outcomes analyzed here, that influence was largely absent in this demonstration.”).

110. The MTO program relied exclusively on poverty thresholds to determine where the special vouchers could be used. Trial Tr. 2134 (Shroder); *id.* at 1082 (Briggs); *id.* at 1369 (Fishman); FDR-33, HUD, *MTO Interim Impacts Evaluation* (2003), at ii.

111. This Court stated, during the trial examination of HUD’s expert witness Prof. William Clark: “If part of this case is for the purpose of racial integration, the kinds of solutions that you [Clark] talk about are solutions to poverty, which are wonderful, but they’re not doing anything for integration.” Trial Tr. 618 (Judge Garbis).

112. In response to this Court’s comment, Prof. Clark responded: “Well, you’re right. In the analysis I did a whole segment whether or not the Section 8 and MTO were helping integration. And in fact MTO is an even bigger failure when you look at its attempts on integration.” *id.* at 618-19 (Clark).

113. Dr. Briggs testified that among the lessons learned from both *Gautreaux* and MTO is that *Gautreaux* was more successful in desegregating African-American voucher

recipients because the purpose of the program was racial desegregation. *See id.* at 1100 (Briggs).

114. Because the MTO demonstration lacked crucial elements such as “post-move counseling, flexibility to help tenants handle rent increases without having to move back to high-risk neighborhoods, and transportation supports for those who enter[ed] the program without access to a car,” the program was not equipped to address the problem of “unstable tenure in ‘better’ neighborhoods.” PX-764, *Briggs Written Test.*, at rebuttal 7.

B. HUD’s Block Grant Funding Programs.

1. The HOME Program.

115. The HOME Investment Partnerships Program (“HOME”) is a block grant program that provides annual grants to participating jurisdictions. 42 U.S.C. §§ 12701 et. seq; 24 C.F.R. § 92; PX-674, *Programs of HUD* 15; *see* Trial Tr. 1524 (Sardone); *see also* FDR-144, *HOME Program: Program Guide* 1-2. Funding under the HOME program first became available in fiscal year 1992. *See* Trial Tr. 1525 (Sardone).

116. The HOME statute provides that HOME funds will be allocated by formula to participating jurisdictions in an amount proportionate to each participating jurisdiction’s share of national housing need. *Id.* at 1543.

117. All of the jurisdictions in the Baltimore Region are participating jurisdictions for HOME funds with the exception of Carroll County. *Id.* at 1549-50.

118. HOME funds must generally be spent for the benefit of low- and very low-income recipients. *Id.* at 1609; *see also* 42 U.S.C. § 12744. Low-income families are defined by the HOME statute as having incomes at or below 80% of the area Median Family Income (“MFI”). 42 U.S.C. § 12704(10). Very low-income families have incomes at or below 50% of

the area MFI. 42 U.S.C. § 12704(9). For fiscal year 2006, the Median Family Income for the Baltimore region area is \$72,800. Trial Tr. 1613 (Sardone).

119. Public housing families in Baltimore have an income at or below 30% of area MFI, falling in a category HUD has defined as “extremely low-income.” Trial Tr. 1609 (Sardone). These families are, by definition, poorer than low- and very low-income families. *Id.*

120. HUD does not require that any particular percentage of HOME funds be used to assist persons in the extremely low-income category. *Id.* at 1614.

121. HOME assistance, targeted at low- and very low-income recipients, therefore does not necessarily assist public housing residents. *Id.* at 1610.

122. Virginia Sardone, the director of the HUD division that administers the HOME program, testified that she did not know if a single African-American family from Baltimore City public housing had ever been assisted by the HOME program. *Id.* at 1523, 1607.

123. The national CPD office does not monitor whether HOME funds are being used to affirmatively further fair housing. *Id.* at 1608.

124. HUD has created an overview document for the HOME program, entitled “HOME Program: Program Guide,” that HUD distributes to participating jurisdictions, community groups, and housing developers. *Id.* at 1590; FDR-144, *HOME Program: Program Guide*. The HOME Program Guide includes no reference to using HOME funds to further fair housing. Trial Tr. 1608-09 (Sardone).

125. HOME funds can be used for a category of affordable housing development that HUD refers to as “Rental Housing Activities,” which includes the acquisition, construction, or rehabilitation of affordable rental housing units that are made available to eligible beneficiaries. *Id.* at 1526, 1616.

126. From 1992 to 2005 (inclusive), HOME funds were used to develop 3,450 occupied rental units in the Baltimore Region. *Id.* at 1621; FDR-152, *Baltimore Area Total Racial Characteristics of Households as of 12/31/2005*.

127. Of the 3,450 rental units developed with HOME funds in the Baltimore Region, 2,660 were initially occupied by African-Americans. Trial Tr. 1621 (Sardone); FDR-152, *Baltimore Area Total Racial Characteristics of Households as of 12/31/2005*.

128. Of the 2,660 rental units originally occupied by African-Americans, 2,538 units (over 95%) were located in Baltimore City, and the remaining 122 units (less than 5%) were located in one of the surrounding counties. Trial Tr. 1622 (Sardone); FDR-155, *Baltimore City Racial Characteristics of Households as of 12/31/2005*.

129. The 122 rental units made available to African-American recipients in the counties outside of Baltimore City, when averaged over the 14-year time period represented by the data (1992 to 2005), amount to fewer than 9 units per year. Trial Tr. 1623 (Sardone).

130. HOME rental units may be occupied by low-income families and also by low-income elderly, disabled, or single individuals. *Id.* at 1609-10, 1616, 1623-24. Some number of the HOME-funded 122 rental units made available to African-Americans outside Baltimore City from 1992 to 2005 were therefore occupied not by families but instead by elderly, disabled, or single individuals. *Id.* HUD is unable to say how many of these 122 rental units were occupied by African-American families as opposed to elderly, disabled, or single recipients. *Id.* at 1623-24.

131. HUD presented no evidence regarding the location of HOME-funded rental units (other than the county of location), and cannot say whether the rental units are in predominantly white or predominantly African-American neighborhoods. *Id.* at 1624-25.

132. Another permissible use for HOME funds is for a category of housing assistance that HUD refers to as “tenant-based rental assistance” (TBRA). Tenant-based rental assistance provides a rental subsidy directly to an eligible tenant, who then uses it to rent a qualifying housing unit. *Id.* at 1526-27, 1616-17; 42 U.S.C. § 12742(a)(1), (3).

133. From 1992 to 2005 (inclusive), HOME funds were used to provide tenant-based rental assistance for 460 recipients in the Baltimore Region. Trial Tr. 1556-57 (Sardone); FDR-152, *Baltimore Area Total Racial Characteristics of Households as of 12/31/2005*. All 460 TBRA units were provided by Baltimore County. Trial Tr. 1618-19 (Sardone); FDR-156, *Baltimore County Racial Characteristics of Households as of 12/31/2005*.

134. Of the 460 TBRA units provided by Baltimore County during this time period, 150 were initially occupied by African-Americans. Trial Tr. 1617 (Sardone); FDR-156, *Baltimore County Racial Characteristics of Households as of 12/31/2005*. As with HOME-funded rental units, these TBRA units were not necessarily all made available to African-American families, but may in addition have been made available to elderly, disabled, or single individuals in addition to families. Trial Tr. 1616-17 (Sardone).

135. When averaged over the 14-year time period represented by the data (1992 to 2005), the 150 TBRA units made available to African-Americans outside of Baltimore City amount to just over 10 units per year. *Id.* at 1617.

136. HUD’s witness, Virginia Sardone, testified that HUD has no data as to where the TBRA units were used, and all could have been used in predominantly African-American neighborhoods. *Id.* at 1619.

137. There is no requirement that any TBRA units be made specifically available to Baltimore City public housing residents. *Id.* at 1620.

138. HUD does not know whether even a single African-American public housing family from Baltimore City benefitted from the provision of tenant-based rental assistance using HOME funds, or was assisted by TBRA funds to move to a community of opportunity in the Baltimore Region. *Id.* at 1620-21.

139. HOME funds can be used for a category of housing assistance that HUD refers to as “homebuyer assistance.” Homebuyer assistance funds the acquisition or new construction of affordable homes. *Id.* at 1529.

140. Because they are not generally in a position to purchase homes, homebuyer assistance does not tend to benefit extremely low-income public housing families. *Id.* at 1617.

141. Participating jurisdictions are required to adopt affirmative marketing procedures for a subset of their HOME-funded housing activities – namely, rental or homebuyer projects containing five or more HOME-assisted housing units. *Id.* at 1600; 24 C.F.R. § 92.351(a)(1).

142. A participating jurisdiction’s affirmative marketing procedures must include practices to be used by developers and owners to inform persons from the housing market area who are “not likely to apply for the housing without special outreach.” 24 C.F.R. § 92.351(a)(2)(iii).

143. HUD has never recommended that outreach be made to public housing residents. Trial Tr. 1629 (Sardone).

144. HUD distributes a periodic policy newsletter called “HOMEfires,” and while a recent newsletter discussed HUD policy regarding affirmative marketing requirements, the newsletter made no mention of or recommendation regarding outreach to public housing residents or voucher recipients. *Id.* at 1598-99, 1626; FDR-165, *HOMEfires vol. 7 no. 1* (Jan. 2006).

145. HUD receives an annual appropriation to be used for “technical assistance grants,” which can be used to transfer skills and knowledge from HUD to HOME program participants. Trial Tr. 1587 (Sardone). HUD headquarters uses technical assistance grant funds to create handbooks, guides, and training courses regarding various aspects of the HOME program. *Id.* at 1588-90. These products are distributed to participating jurisdictions, HUD field offices, and housing developers, in addition to being posted on the HUD website. *Id.* at 1589.

146. Despite receiving millions of dollars in technical assistance grants to create these products, none of the products developed by HUD headquarters has ever recommended to field offices, participating jurisdictions, or developers that there be any outreach to public housing residents to help them access HOME-funded housing opportunities. *Id.* at 1629-30.

147. HUD’s witness testified that a lack of information could be an impediment to Baltimore City public housing families accessing HOME-funded units in the suburbs. *Id.* at 1631-32. HUD has presented no evidence or testimony that HUD has ever done anything aimed at informing public housing residents in Baltimore City about HOME-funded housing opportunities in suburban areas. *Id.* at 1633-38.

2. The CDBG Program.

148. The Community Development Block Grant (“CDBG”) program provides annual grants to “entitlement communities,” which are cities and counties around the country, and also to states (for use in areas other than entitlement communities). Trial Tr. 1656-58 (Kennedy); *see* 42 U.S.C. § 5306. The program began in 1974. Trial Tr. 1656 (Kennedy).

149. CDBG funds are allocated to entitlement communities according to two statutory formulas, which together take into account poverty, population, overcrowding, age of housing, and rates of growth. Trial Tr. 1659 (Kennedy); 42 U.S.C. § 5306(b)(1).

150. All of the jurisdictions in the Baltimore Region other than Carroll County are entitlement communities that receive money under the CDBG program. *See* FDR-93, *Community Planning and Development Spreadsheet: FY 2005 Allocations to Maryland Jurisdictions under CDBG, HOME, ADDI, ESG, and HOPWA Programs*. The state of Maryland also receives money under the CDBG program. *Id.*

151. CDBG funds can be used for three broad purposes: to address the needs of low and moderate income persons, to address slum and blight, or to address a particularly urgent need. 42 U.S.C. §§ 5301-5321; Trial Tr. 1657 (Kennedy); *See generally* Liability Phase Trial Tr. 1341:24-1344:11; (Tamburrino); Trial Tr. 1305:10-22 (Tamburrino).

152. CDBG funds a wide variety of types of activities, from child care services to code enforcement. Trial Tr. 1661, 1748-51 (Kennedy).

153. 70% of CDBG funds must be used “for the support of activities that benefit persons of low and moderate income.” 42 U.S.C. § 5301(c); *see* Trial Tr. 1657 (Kennedy).

154. The CDBG program does not contain any additional requirement that any specific portion of funds must be targeted at persons or families with income below a threshold less than 80% of the area median family income. Trial Tr. 1737 (Kennedy).

155. Richard Kennedy, the director of HUD’s Office of Block Grant Assistance, which administers the CDBG program, testified that he did not know whether any CDBG funds had been used to benefit Baltimore City public housing families. *Id.* at 1775-80.

156. Charles Halm, the director of the Community Planning and Development Division in the Baltimore Office of HUD, testified that “not a penny” of CDBG funds has ever been used to help African American public housing families move from Baltimore City to any white area. Trial Tr. 2086 (Halm).

157. Baltimore City spends significantly less than 1% of its CDBG disbursements on “Fair Housing Activities.” *See* Trial Tr. 1775-77 (Kennedy); FDR-123, *Use of CDBG Funds by Baltimore, MD from 07/01/2001 to 06/30/2002* (showing that Baltimore City spent a total of 0.62% of its CDBG grant on “Fair Housing Activities” in 2001-02); *see also* FDR-124, *Use of CDBG Funds by Baltimore, MD from 07/01/02 to 06/30/03* (showing 0.47% in 2002-03); FDR-125, *Use of CDBG Funds by Baltimore, MD from 07/01/03 to 06/30/04* (showing 0.38% in 2003-04); FDR-126, *Use of CDBG Funds by Baltimore, MD from 07/01/04 to 06/30/05* (showing 0.57% in 2004-05).

3. The AFFH Certification and the Analysis of Impediments.

158. To receive HOME or CDBG grants, a jurisdiction must develop and submit to HUD a planning document and funding application called the Consolidated Plan. *See* Trial Tr. 2196-97 (Walsh); *see also* Trial Tr. 1605-06 (Sardone); 24 C.F.R. § 91.2(a).

159. The Con Plan is submitted at least every five years, with certain components re-submitted annually. *See* 24 C.F.R. §§ 91.5, 91.15(b), 91.200-91.230.

160. One of the annual requirements is a certification that the grantee will affirmatively further fair housing (“AFFH Certification”). *See* Trial Tr. 2197 (Walsh); 24 C.F.R. §§ 91.15(b)(1), 91.225(a)(1).

161. An additional annual requirement is an Action Plan, which is a detailed accounting of how the jurisdiction will use the grant funds during the next year. *See* 24 C.F.R. §§ 91.15(b)(1), 91.220; Trial Tr. 74 (Khadduri).

162. The AFFH Certification is defined by HUD regulation to mean that the grantee “will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that

analysis, and maintain records reflecting the analysis and actions in this regard.” 24 C.F.R. § 91.225(a)(1); *see also* Trial Tr. 2196-97 (Walsh).

163. HUD field staff review Con Plans using a completeness checklist, and do not review the substance of the Plan. *See* PX-765, *Khadduri Written Test*. 18.

164. A grantee’s AFFH Certification is considered presumptively correct and is automatically approved in 45 days. *See* 24 C.F.R. § 91.5 (defining “Certification” as “[a] written assertion . . . [that] shall be deemed accurate unless HUD determines otherwise”); *id.* at § 91.500(a) (“The plan will be deemed approved 45 days after HUD receives the plan”); Trial Tr. 2198-99 (Walsh) (agreeing that “normally, HUD will simply assume that the grant recipient is in compliance with the affirmatively furthering fair housing requirement unless proven otherwise”); PX-765, *Khadduri Written Test*. 18-19.

165. HUD approves the AFFH Certification as long as the grantee has completed an Analysis of Impediments at some point in the past. HUD does not require that the Analysis of Impediments be updated. Trial Tr. 2201 (Walsh); PX-765, *Khadduri Written Test*. 18-19.

166. The Analysis of Impediments that a grantee prepares is not submitted to HUD. Trial Tr. 2198 (Walsh). HUD does not review the Analysis of Impediments when it is prepared. *See id.*; *see also* PX-693, Memorandum from Nelson R. Bregon & Carolyn Peoples (Aug. 4, 2004) (“AIs are not submitted [to] or approved by HUD”).

167. The Con Plan regulations do not provide deadlines for implementing actions to address identified impediments. HUD stated, in the Federal Register notice establishing the Con Plan requirement, that “the requirement that an analysis of impediments be done and that the steps to address the impediments be described” are intended to establish “*minimal* requirements

for compliance with the statutorily required certification that a jurisdiction is affirmatively furthering fair housing.” 60 Fed. Reg. 1878, 1890 (Jan. 5, 1995) (emphasis added).

168. In 1998, HUD published a proposed rule with the stated purposes of “establish[ing] a standard for determining if the jurisdiction’s certification regarding affirmatively furthering fair housing is inaccurate . . . [and] provid[ing] performance review standards for affirmatively furthering fair housing requirements.” 63 Fed. Reg. 57,881, 57,882 (Oct. 28, 1998). The proposed rule was never enacted as a final rule. PX-634, Brooks Dep. Tr. 87:12-15. (July 12, 2005).

169. HUD is “considering a proposed rule . . . [and will solicit comments] on better ways to integrate the Consolidated Plan and the Analysis of Impediments to AFFH. The Department is also considering issuing guidance dealing with AFFH and other fair housing issues.” 71 Fed. Reg. 6949, 6953 (Feb. 9, 2006).

170. In 1996, the City of Annapolis, Anne Arundel County, Baltimore City, Baltimore County, Harford County, and Howard County completed a regional AI. *See* PX-268, *Analysis of Impediments to Fair Housing in the Baltimore Metropolitan Area* (Nov. 1996).

171. There has been no new Analysis of Impediments performed by any of the Baltimore Region grantees since 1996. *See* Trial Tr. 2059 (Halm); *id.* at 2485-86 (Brooks). HUD treats the 1996 document as the current Analysis of Impediments. *See* Trial Tr. 2059 (Halm).

172. As of May 7, 1997, Baltimore County, Anne Arundel County, and the City of Annapolis had not “developed nor documented actions to remove impediments to fair housing choice identified in the Baltimore metro-wide AI.” Trial Tr. 2472-73 (Brooks); FDR-208, *Memorandum Re: Oversight of the Analysis of Impediments to Fair Housing Choice (AIs)*, May

7, 1997, at HUDBAL 38788 (Baltimore County), HUDBAL 38789 (Anne Arundel County), HUDBAL 38790 (Annapolis “has not formulated actions to remove the impediments to fair housing as identified in the Baltimore metrowide AI”); *see also Thompson*, 348 F. Supp. 2d at 508.

173. In 1997 and 1998, Baltimore City, Baltimore County, Anne Arundel County, and Annapolis all certified that they had used block grants to affirmatively further fair housing (AFFH certification), and HUD did not question these certifications despite finding in those years that the jurisdictions had not sufficiently developed or implemented actions to further fair housing. Trial Tr. 2473-76 (Brooks); *see also* PX-629, Tamburrino Dep. Tr. 22:20 - 23:12 (May 16, 2005) (cannot recall HUD ever questioning whether a PHA’s certification regarding affirmatively furthering fair housing was accurate).

174. As of 1998, the City of Baltimore had not identified any actions to eliminate impediments to fair housing and was “not proceeding with a sense of urgency.” *Thompson*, 348 F. Supp. 2d at 508; *see* Trial Tr. 2475 (Brooks); PX-826 Letter From Nathaniel K. Smith to Daniel Henson III (Oct. 30) 1998, at HUDBAL 38842; PX-452, Letter from Joseph J. O'Connor to Daniel Henson III (Sept. 28, 1998) 6.

175. In 2001, The City of Annapolis, Anne Arundel County, Baltimore City, Baltimore County, Harford County, and Howard County implemented “few of the actions identified in the [1996] AI” to address the impediments to fair housing. FDR-517 (liability phase), Baltimore Regional Fair Housing Action Plan 2002 (Nov. 8, 2002) at HUD 38206.

176. In 2002, Annapolis failed to document its commitment to accept the 1996 AI recommendations, or any of its recommended actions. PX-697, Letter from LaVerne Brooks to Jon Arason (Feb. 8, 2002) 3.

177. In 2002, Baltimore City failed to document actions to remove impediments. PX-698, Memorandum from LaVerne Brooks to Joseph O'Connor (Jan. 4, 2002) at HUDBAL 039559.

178. In 2003, Baltimore City's actions regarding the AI were incomplete. PX-699, Memorandum from LaVerne Brooks to Joseph O'Connor (June 12, 2003).

179. In 2003, Baltimore City listed actions to be undertaken during FY 2004 that were the same as actions that were to have been undertaken during the prior period. PX-700, Memorandum from LaVerne Brooks to Joseph O'Connor (July 14, 2003) at HUDBAL 038592.

180. In 2003, HUD's Baltimore office questioned Maryland's commitment to affirmatively further fair housing. PX-701, Memorandum from Rodney Camphor to Joseph O'Connor (Oct. 14, 2003) 3.

181. In 2004, Baltimore City failed to provide documentation of development or implementation of a plan to remove impediments. PX-702, Letter from LaVerne Brooks to Paul Graziano (July 14, 2004) 3.

182. In 2004, Baltimore City's actions regarding the AI were incomplete. PX-703, Letter from Phyllis Weinstein to Charles Halm (Dec. 16, 2004).

183. In 2005, the finding of deficient AI recordkeeping issued against the Baltimore City Department of Housing and Community Development ("DHCD") was still outstanding. PX-704, Letter from LaVerne Brooks to Paul Graziano (Jan. 26, 2005) 3.

184. In 2005, Baltimore DHCD had not provided documentation of actions taken to overcome impediments. PX-705, Letter from LaVerne Brooks to Amy Wilkinson (Apr. 22, 2005) 3.

185. In 2005, Baltimore County failed to provide a description of the actions taken during the past program year to overcome the identified impediments to affordable housing. PX-742, Memorandum from Rodney D. Camphor to Charles Halm (Dec. 1, 2005) 3.

186. LaVerne Brooks testified that the only action that HUD could confirm that any of the Baltimore Regional Group members were taking to reduce regional impediments to fair housing was a symposium, held in 2006, in the middle of the trial in this case, on the elimination of discrimination in underwriting guidelines for homeowners' insurance. Trial Tr. 2481-82 (Brooks).

187. HUD can impose a range of sanctions if grantees do not comply with program requirements like the AFFH Certification, such as failure to take adequate steps to overcome identified impediments to fair housing. *See* 42 U.S.C. § 5311(a), (b); 24 C.F.R. §§ 92.551(c), 92.552(a), 570.913(a), (b); PX-690, HUD, FY 2005 Budget Narrative, Budget Activity 2: Community Planning and Development, at L-3; Trial Tr. 2199-2200 (Walsh) (agreeing that "HUD has the authority to require its grant recipients to comply with their certifications to affirmatively further fair housing"); *id.* at 1605-06 (Sardone); Trial Tr. 1371-72 (Fishman); *id.* at 2064 (Halm); *see also Thompson*, 348 F. Supp. 2d at 506 (HUD has a "wide range of sanctions" it can impose on HABC).

188. Richard Kennedy, the Director of the CDBG Office at HUD headquarters, testified that HUD can hold grantees accountable by disapproving an application for funds, delaying funding, reducing or terminating funding, or making a referral to the Attorney General of the United States. Trial Tr. 1768-69 (Kennedy)

189. HUD has the ability to engage in dialogue with CPD grantees in an effort to bring them into compliance, either before or after other sanctions have been imposed. Trial Tr. 1772, 1784-85 (Kennedy).

190. HUD can also use “written special assurances” to demand compliance from a jurisdiction. *See id.* at 2065 (Halm).

191. HUD has used this leverage to require certain actions by particular jurisdictions in response to court orders. Trial Tr. 1772 (Kennedy).

192. Pamela Walsh, Director of the Program Standards Division in the Office of Fair Housing and Equal Opportunity, testified that HUD has not, to her knowledge, ever used its leverage to convince a jurisdiction to cure an inadequate AI. *See* Trial Tr. 2199-2200 (Walsh).

193. Pamela Walsh testified that to her knowledge, HUD has not sanctioned any jurisdiction for failing to take action to overcome impediments to fair housing. *See id.*

194. HUD could deem an AI incomplete if it did not incorporate actions to address the segregation of the region’s public housing; however, HUD has not done so. *Id.* at 2083 (Halm).

195. HUD repeatedly recommended to the jurisdictions in the Baltimore Region that they should update their 1996 AI. FDR-181, *Memorandum Re: City of Baltimore’s FY 2005 Annual Action Plan*, 1 (finding that “In numerous letters and meetings over the past several years, we have recommended that the City update its AI, which was prepared eight years ago.”); *see* Trial Tr. 2455 (Brooks).

196. HUD specifically recommended that Baltimore City amend its AI in memoranda dated Jan. 4, 2002, June 12, 2003, Feb. 9, 2004, Dec. 16, 2004, and Dec. 14, 2005. Trial Tr. 2484-85 (Brooks); PX-830, Letter from Phyllis E. Weinstein to Charles Halm (Dec. 14, 2005) 8 (listing the memoranda in which HUD recommended that Baltimore update its AI in the FY

2001, 2002, 2003, and 2004 CAPERs; reiterating that recommendation in regard to the 2005 CAPER.)

197. The jurisdictions did not, in fact, update their AI, nor did they provide HUD with any indication that they would do so. FDR-181, *Memorandum Re: City of Baltimore's FY 2005 Annual Action Plan* (Jul. 16, 2004) 1 (“There is nothing indicating that they are developing an updated AI.”)

C. Project-based Section 8 Housing.

198. Through the project-based Section 8 program, HUD “contracts directly with private owners to provide housing at rents set at 30% of the actual incomes of the low-income households the owner promises to select as tenants.” PX-765, *Khadduri Written Test*. 12.

199. Since 1989, HUD has funded approximately 2,630 new project-based Section 8 units in the Baltimore Region. Trial Tr. 2376 (Henderson); *see also id.* at 39 (HUD opening statement); FDR-63, *Listing – “After 1989 Activity – with Baltimore City.”*

200. All of the project-based Section 8 units funded since 1989 are restricted to elderly or disabled occupancy. Trial Tr. 2376-77, 2381 (Henderson); PX-789, *Summary Chart – Project-based Section 8 Properties Created in the Baltimore Region, 1989-Present*.

201. None of these units would accommodate families. Trial Tr. 2381 (Henderson).

202. The project-based Section 8 program is no longer producing new units of assisted housing. PX-765, *Khadduri Written Test*. 12.

203. Rather, the stock of existing project-based Section 8 units is decreasing. *See id.* at 20; PX-519 HUD, *Opting In: Renewing America's Commitment to Affordable Housing* (Apr. 1999). Currently the stock of project-based Section 8 units is diminishing at the rate of approximately 10,000 units nationally per year. PX-765, *Khadduri Written Test*. 16.

204. One process that affects whether project-based Section 8 housing units leave the assisted housing inventory is a process known as “opting out.” *Id.* at 21. The owner of any property with a project-based Section 8 contract may elect to opt out of the program once the original contract expires, meaning the property would no longer be maintained as assisted housing. *See id.*; Trial Tr. 77-78 (Khadduri).

205. A 1999 HUD study concluded that in 1998 alone, “almost 13,000 units [nationally] were lost to opt-outs from the project-based Section 8 program.” PX-680, *HUD, Waiting in Vain: An Update on America’s Rental Housing Crisis* (Mar. 1999) at v.

206. HUD has concluded that “[n]ot only is the number of subsidized units shrinking, but some of the best quality affordable housing is at risk of being lost or replaced with vouchers which are likely to be used in higher poverty neighborhoods.” *Id.* at 17.

207. HUD’s research shows that the loss of project-based Section 8 units is most likely to occur among “higher quality properties in higher income neighborhoods – neighborhoods that usually provide more than good housing.” *Id.* at 17. Opt-out decisions therefore have important fair housing implications. PX-765, *Khadduri Written Test.* 21.

208. HUD has the ability to affect opt-out decisions “by establishing rent levels that are high enough to persuade the owner of that housing to stay in the program.” Trial Tr. 78 (Khadduri).

209. HUD has presented no evidence that its decisions affecting opt outs from project-based Section 8 contracts give consideration to the fair housing impact of those decisions. Plaintiffs’ expert Dr. Khadduri, a long-time former HUD employee, testified that “it is highly unlikely that HUD’s multifamily field staff was given instructions to consider the fair housing

implications of their decision on the market comparable rent for a Section 8 property. PX-765, *Khadduri Written Test*. 21. HUD has presented no evidence contrary to that opinion.

210. The process through which HUD affects whether project-based Section 8 housing units leave the assisted housing inventory is the “Mark-to-Market” Program (“M2M”). *See id.* at 20. The M2M program applies to those Section 8 projects that also have FHA mortgage insurance, and enables HUD to make rental adjustments and mortgage restructurings aimed at preserving Section 8 properties as part of the affordable housing stock. PX-710, *Evaluation of the Mark-to-Market Program* (Aug. 2004), at vi; Trial Tr. 61 (Khadduri); PX-765, *Khadduri Written Test*. 20. The M2M program also includes the authority to grant above-market rents (“exception rents”) in jurisdictions where there is a need for affordable housing and the property is not financially viable at market rent levels. PX-710, *Evaluation of the Mark-to-Market Program* (Aug. 2004), at viii; PX-765, *Khadduri Written Test*. 20.

211. Neither the approval of an M2M deal nor the determination to provide an exception rent includes an assessment of the fair housing implications of preserving the property as affordable housing or retiring it from the housing stock. PX-765, *Khadduri Written Test*. 20; Trial Tr. 77-80 (Khadduri).

212. Dr. Khadduri studied an M2M process in Baltimore County, at a property called Kingsley Park, and concluded that there was “no consideration by HUD or its agents of whether Kingsley Park was providing an opportunity for minorities to live in a predominately non-minority part of the Baltimore Region.” PX-765, *Khadduri Written Test*. 20; *see also* Trial Tr. 111 (Khadduri) (“I noticed the absence of any consideration of affirmatively furthering fair housing in the decisions that were made about Kingsley Park, that in no place during the deliberations over the future of Kingsley Park by HUD field [] staff or the participating

administrative entity . . . was the role that Kingsley Park did or did not play in creating desegregated housing opportunities in the Baltimore region a matter of discussion or consideration.”); PX-714, Letter from Concerned Tenants at Kingsley Park Apartments to Greg Karns (Sept. 1, 2004) 1-2; *see also* PX-710, *Evaluation of the Mark-to-Market Program*, prepared by Abt Associates for HUD (Aug. 2004), at xvii-xviii (HUD's process was ill-suited to address cases in which there is community and political opposition to preservation of a project).

213. Dr. Khadduri testified that Kingsley Park was not unusual in terms of the absence of fair housing considerations from the M2M decision-making process. Trial Tr. 139 (Khadduri).

D. The FHA Mortgage Insurance Programs.

214. HUD's Office of Housing operates several programs that insure mortgages made by private lenders to help finance the construction, acquisition, or rehabilitation of multifamily housing (that is, properties with more than five units). PX-674, *Programs of HUD* (2005) 62-63, 66, 69; Trial Tr. 2363-64 (Henderson). These are referred to collectively as FHA mortgage insurance programs. *See* Trial Tr. 2363 (Henderson).

215. Since 1989, FHA mortgage insurance has facilitated the development of 8,426 housing units in the Baltimore Region. *Id.* at 2367-69 (Henderson); FDR-65, *Listing – “All FHA Properties after 1989.”*

216. None of these units are affordable to public housing residents, or other extremely low-income families, without a voucher. Trial Tr. 2381-82 (Henderson); *see also* PX-630, Tamburrino Dep. Tr. 248:16 - 249:9 (May 18, 2005) (explaining that FHA multifamily mortgage insurance programs primarily provide housing for moderate-income families and are not affordable for the low- and extremely low-income families served by public housing).

217. HUD does not require landlords in FHA-insured properties to accept vouchers. Trial Tr. 2380 (Henderson). HUD has no data showing how many voucher users, if any, live in FHA-insured properties in the Baltimore Region. *Id.*

218. The location of FHA-insured properties is determined by market demand, without HUD determining where the properties will be developed. Trial Tr. 2366 (Henderson).

219. HUD has not provided the Baltimore field office with any guidance concerning the use of FHA mortgage insurance programs to provide housing opportunities for public housing residents outside areas of minority concentration. PX-640, Henderson Dep. Tr. 42:5-19 (July 11, 2005); *see also* PX-634, Brooks Dep. Tr. 127:16-19 (July 12, 2005) (Director of the Baltimore FHEO Center testifying that she is not aware of any HUD plan or strategy to use FHA-insured housing in the Baltimore Region for the purpose of desegregating public housing projects).

220. The number of FHA-insured units in the Baltimore Region has been declining during the Open Period. For example, as of June 2000, Anne Arundel County (not including the City of Annapolis) had 4,050 units of housing financed through HUD mortgage programs. PX-675, *Anne Arundel County Consolidated Plan, FY 2001 - FY 2005*, at 75-76 & fig.6-3 (June 1, 2000). Five years later, by May 2005, Anne Arundel County had 1,673 units of housing financed through HUD mortgage programs, a decline of approximately 60%. PX-676, *Anne Arundel County Consolidated Plan, FY 2006 - FY 2010*, at 94-95 & tbl.6-1 (May 16, 2005). Of the 1,673 units remaining in 2005, approximately one-third are restricted to elderly or disabled occupancy, leaving only about 1,100 available for family occupancy. *Id.* Anne Arundel County recognizes that many of these remaining units are “in jeopardy of being lost in the future” through continuing opt outs and prepayment of mortgages. *Id.* at 95.

221. An FHA-insured property may default on its mortgage, due to a financial default or a HUD decision to declare a technical default to enforce non-monetary terms of the mortgage and regulatory agreement. In the event of a default, ownership of the mortgage passes to HUD as the mortgage insurer. PX-765, *Khadduri Written Test*. 21. HUD must then make decisions with regard to “disposing” of the property; these disposition decisions can include selling the mortgage to another entity, selling the property at auction with or without low-income use restrictions, transfer of the property to a local government, or taking over ownership of the property itself. *Id.* at 21-22.

222. Disposition decisions can have a fair housing impact, because they affect whether FHA-insured properties will remain part of the assisted-housing stock, or will instead be retired from that stock. *Id.*

223. Within HUD’s Baltimore Field Office, neither the Multifamily Housing Office (which oversees the FHA-insurance programs) nor the FHEO Office (which is responsible for fair housing compliance) considers the fair housing impact of disposition decisions. Mary Ann Henderson, the Director of the Multifamily Housing Office in HUD’s Baltimore Field Office, testified that her office does not consider the impact of disposition decisions on the minority occupants of the property, nor does it consider the impact of decisions on the availability of housing opportunities for minorities in non-minority areas. PX-640, Henderson Dep. Tr. 74:1 - 75:10 (July 11, 2005). And the Baltimore FHEO Office has no role in reviewing or approving HUD disposition decisions. *See* Trial Tr. 2487 (Brooks).

III. Plaintiffs's Proposed Remedy for Constitutional and Statutory Violations.

A. Overview of HUD Program Areas and HUD Decision-Making.

224. HUD administers three different families of programs which affect the availability of assisted and public housing in the Baltimore Region. HUD's major public and assisted housing programs are administered by several sub-cabinet program offices, or "line" offices, including the Office of Public and Indian Housing ("PIH"), the Office of Community Planning and Development ("CPD"), and the Office of Housing. *See generally*, PX-674, *Programs of HUD*; PX-677, HUD Organizational Chart. Each program office has staff at both HUD headquarters and in the field. In implementing the programs, each of these three sets of programs operate through separate sets of grantees and contractors or agents of HUD. Trial Tr. 58-59 (Khadduri).

225. One set of programs – the formula grant programs – is administered by the Assistant Secretary of Community Planning and Development. Those are the programs for which state and local governments are HUD's grantees. *Id.* at 59-60 (Khadduri).

226. Another set of programs—including FHA-insured mortgages and Section 8 projects—is administered by the Assistant Secretary for Housing. These are the programs for which HUD has direct contractual relationships with private owners of assisted housing projects. Trial Tr. 59 (Khadduri); *id.* at 2362-63 (Henderson).

227. The third set of programs – including public housing and the voucher program – is administered by the Assistant Secretary for Public and Indian Housing. These programs are administered through public housing authorities. Trial Tr. 59, 61 (Khadduri).

228. Each of these sets of programs has a different kind of decision-making process because of the different nature of the programs and because of the different agents through which HUD acts to administer the programs. *Id.* at 60 (Khadduri).

Formula Grant Programs

229. Formula funds are allocated to public housing authorities and state and local governments based on formulas that weigh particular indicators to determine the share of funding to which the grantee is entitled. Examples of formula grants include Public Housing Operating Funds, Public Housing Capital Funds, Section 8 project- and tenant-based renewal funds, Community Development Block Grants (CDBG), HOME block grants, Emergency Shelter Grants, and Housing Opportunities for People with AIDS (HOPWA). *See generally*, PX-674, *Programs of HUD*.

230. HUD allocates by predetermined formula certain amounts of funds that are used, particularly in the case of the HOME program, to develop units of rental housing and also to support home ownership activities. The Community Development Block Grant (CDBG) program also supports the development of affordable rental housing. Trial Tr. 60 (Khadduri).

231. The decisions that are made about the HOME and CDBG programs are made through interactions between HUD and the state and local government involved in those programs. *Id.* at 60 (Khadduri). In the case of HOME programs, those state and local government agencies are referred to as “participating jurisdictions,” and for the CDBG program, as “grantees.”

232. Most affordable housing projects rely upon a mix of federal subsidies. The major programs administered by HUD's Office of Community Planning and Development – the HOME program, Community Development Block Grants and Section 108 loan guarantees – can

be used in combination with other programs such as Low Income Housing Tax Credits, Project-based Vouchers and Mixed Finance public housing development to produce affordable housing. These resources are especially useful to supplement public housing development resources because they can be used, if needed, to cover costs that exceed HUD's Total Development Cost (TDC), which otherwise limits the amount of public housing dollars that can be used to develop a unit of public housing. *See Thompson*, 348 F. Supp. 2d at 502; Liability Trial Transcript 1284-86 (Tamburrino).

The HOME Program

233. A wide variety of activities can be undertaken with funds administered through the HOME program (described *supra* at SOF ¶¶ 115-121). Participating jurisdictions use HOME funds for acquisition of standard housing, rehabilitation of housing, or new construction, either for rental or for home ownership. They can also be used to provide tenant-based rental assistance to low and very low- income renters. Trial Tr. 1525 (Sardone); 42 U.S.C. §§ 12701 et. seq; 24 C.F.R. § 92.1; PX-674, *Programs of HUD* at 15.

234. HOME funds are commonly combined with other sources of funding. For example, if HOME funds are being used for development of rental housing projects, other funding sources used might include Low Income Housing Tax Credits, CDBG funds, private foundation funds, private lending, state trust fund money and/or various types of bond financing. Trial Tr. 1534-35 (Sardone).

235. HOME funds can be used as gap financing in the context of rental housing, which means that they are the funds that allow the debt service to be reduced to enable rent levels to be lowered to a point where they are affordable to low- and very low-income tenants. *Id.* at 1535 (Sardone)

236. Project-based vouchers can be attached to HOME and LIHTC funded projects to make them affordable to the families traditionally served by public housing. Trial Tr. 1534-36 (Sardone).

Community Development Block Grants (CDBG)

237. Eligible uses for funds administered through the CDBG programs (described *supra* at SOF ¶¶ 148-154) include comprehensive planning and preparation of an Analysis of Impediments; acquisition of land or property for affordable housing development; relocation and demolition; rehabilitation of rental housing, provision of public water and sewer infrastructure; and a variety of public services, such as education and counseling. *See generally*, 24 C.F.R. §§ 570.201, 202, 205. CDBG funds can be used in combination with public housing development sources.

238. One major use of CDBG funds is to provide funding for multi-family housing, rehabilitation particularly, and in some unusual circumstances, with special limitations, new construction. Trial Tr. 1747 (Kennedy).

239. CDBG funds provided to individual grantees are determined by formula that is established by statute. Trial Tr. 1768 (Kennedy).

FHA-Insured Properties and Section 8 Projects

240. The FHA insured-mortgage programs (described *supra* at SOF ¶ 214) that are related to Section 8 projects in the Baltimore region are administered by the Office of Housing. Many of the decisions with respect to these projects (made by the Assistant Secretary for Housing and his or her staff) are micro-level decisions that go to the future of individual housing developments. Trial Tr. 60-61 (Khadduri).

241. HUD's Single Family Disposition Program is a resource that can be used as part of the remedy in this case. Under this program, HUD sells one to four family properties that have been acquired by the FHA through foreclosure of insured mortgages “in a manner that is designed to expand homeownership opportunities and strengthen neighborhoods and communities, while also striving to maximize the return to the mortgage insurance fund.” PX-674, *Programs of HUD* 39; 24 C.F.R. § 291.1. HUD has broad discretion to make these properties available to non-profit organizations at a discount. 24 C.F.R. §§ 291.90, 291.205.

242. Vacant and foreclosed FHA properties are often a blighting influence on the neighborhoods where they are located, even otherwise healthy neighborhoods. The inventory of foreclosed properties can become an asset to expand housing opportunities for minorities and low-income families. *See* Trial Tr. 77-79 (Khadduri); PX-765, *Khadduri Written Test*. 20-22. For example, HUD could make vacant foreclosed properties in communities of opportunity throughout the Baltimore Region available at a discount to local non-profit and faith-based developers, sponsoring congregations, and self-help homeownership groups (such as Habitat for Humanity) to rehabilitate the homes for rental to low-income families with vouchers. PX-513, *Proposal for 40 Homes for Public for Public Housing Families in Non-Traditional Areas of Baltimore City*, at 2-3.

Public Housing & Voucher Programs

243. The third set of programs are administered by the Assistant Secretary for Public and Indian Housing (“PIH”). PIH’s Office of Public Housing and Voucher Programs develops national policy, and provides funding and program direction for public housing and housing voucher programs. PX-678, HUD, *PIH Offices, Divisions and Centers* (updated June 7, 2005) 2.

244. PIH funds are used for public housing development, modernization of public housing stock, rental assistance, and other programs that provide supportive services and tenant opportunities. *See* PX-674, *Programs of HUD* at 73-89.

245. HUD's Office of Public and Indian Housing exercises substantial control over the activities of Public Housing Authorities ("PHAs") and voucher administrators that receive PIH funds through, *inter alia*, approving the siting of public housing projects, approving development mixed finance development proposals, awards of HOPE VI and other competitive grant funds, approval of annual and five year Public Housing Agency Plans, approval of Moving to Work demonstration authority and specific waivers of HUD regulations, authorizing exceptions to site and neighborhood standards (that seek to minimize new construction in areas of minority concentration), approval of the demolition of public housing, approval of relocation plans, provision of replacement units for demolished public housing; setting regional rent levels for voucher holders, and authorizing exceptions to those rent levels, facilitating (or declining to facilitate) administration of vouchers across the jurisdictional lines of local PHAs, providing (or failing to provide) mobility counseling and other supportive services for voucher users to move from one jurisdiction to another. *See* PX-765, *Khadduri Written Test*. 12-13; PX-674, *Programs of HUD* at 73-89.

246. Through the Housing Choice Voucher program, PIH funds and administers, in coordination with local housing authorities or other eligible entities, rental assistance to low-income families. *See* 42 U.S.C. § 1437f(a).

247. The Housing Choice Voucher program is currently the largest program in the family of assisted housing programs nationally. It has about 2 million units compared to public housing that has only 1.2 million. It is also the most flexible and one that, because it is a

demand-based or tenant-based subsidy program, potentially can be used by a family anywhere within the Baltimore Region, and not just in the physical location where a housing development already exists. Trial Tr. 81 (Khadduri); *see* PX-678, HUD, *PIH Offices, Divisions and Centers* (updated June 7, 2005).

The Low Income Housing Tax Credit Program

248. Created by the Tax Reform Act of 1986, the Low Income Housing Tax Credit (LIHTC) program is now the primary national program supporting the production of new and rehabilitated housing. 26 U.S.C. §42. The program is administered by the Department of the Treasury and Internal Revenue Service rather than HUD. Tax credits are allocated to the states by formula. 26 U.S.C. § 42 (h)(3). The state housing finance agencies then allocate the credits to specific projects pursuant to criteria set forth in a Qualified Allocation Plan (QAP) adopted by the state. 26 C.F.R. § 42(m)(1)(B).

249. The Low Income Housing Tax Credit program is not administered by HUD, because it is a tax credit. The allocations under that program are made by the Department of Treasury, the Internal Revenue Service to the 50 states and to some U.S. territories as well. Trial Tr. 71 (Khadduri).

250. HUD now requires state and local grantees to include LIHTC among the resources discussed in their Consolidated Plans. 71 Fed. Reg. 6,950 (Feb. 9, 2006).

251. HUD is the federal agency charged with primary responsibility for fair housing enforcement and leadership, and coordination of government-wide efforts to affirmatively further fair housing, allowing HUD to influence and oversee the use of the LIHTC program to affirmatively further fair housing. *See* Exec. Order No. 12892, 59 Fed. Reg. 2,939 (Jan. 20, 1994).

252. HUD does not have direct administrative responsibility over the low- income housing tax credit program, but HUD has multiple sources of leverage with the State of Maryland over its use of the LIHTC. *See* Trial Tr. 71 (Khadduri); *id.* at 2692 (Khadduri).

253. The first leverage is that the State is a CDBG grantee and is a participating jurisdiction in the HOME program, and therefore, is required to produce a Consolidated Plan. The Consolidated Plan is a housing planning document, which describes how the State is going to address housing needs in the state, with all its resources, not just with HOME and CDBG. Trial Tr. 2692-93 (Khadduri).

254. HUD's review of the Maryland Consolidated Plan, then, gives HUD leverage as it reviews how Maryland proposes to craft its Qualified Allocation Plan under the tax credit. Trial Tr. 2691-92 (Khadduri).

255. Second, developers frequently come to state agencies with proposals to use the tax credit for rental housing to which a HUD subsidy is attached. That gives HUD the ability to approve or disapprove of the redevelopment of the housing project and the opportunity to further interact with the State regarding using of the LIHTC. *Id.* at 2692-93 (Khadduri).

256. Finally, part of the mission of HUD, and the responsibility of senior HUD officials, is to work with state and local jurisdictions on strategies for addressing housing needs. *Id.* at 2693 (Khadduri).

B. The Creation of a Fixed Number of Desegregative Housing Opportunities.

257. Substantial record evidence and the consensus of experts for both plaintiffs and experts also supports the Court's entry of an Order requiring that HUD provide a fixed number of desegregative opportunities as one of these performance measures. Both Dr. Khadduri and

Prof. William Rohe have stated specific numbers that they propose the Court consider, PX-765, *Khadduri Written Test.*, at rebuttal 1-2; FDR-5, *Rohe Written Test.* 37.

258. Other experts have also endorsed the idea that HUD be ordered to provide a set number of housing opportunities. *See* Trial Tr. 170 (Turner) (testifying that there should be “a clear set of targets about numbers of families placed in target neighborhoods”); *id.* at 1914-15 (Schuck) (testifying that “[o]ther things being equal, one would prefer to assess a program on the basis of outcomes rather than on the basis of processes,” and agreeing that performance measures in this case “might include such measures as a specific number of vouchers or a specific number of housing units or some combination thereof”).

259. Plaintiffs’ proposal that 9,000 desegregative housing opportunities be created as part of the remedy in this case is calculated to restore the plaintiffs to the position they would be in absent the constitutional and statutory violations. That is, public and assisted housing would have been distributed through the region to the same extent that rental housing is distributed. To ensure a conservative estimate, Plaintiffs compared the location of public housing units in the region as of 1995 with the location of modest unassisted rental units in the region (that is, housing available at or below 80% of area median rent), using data from the 2000 census. *See* Trial Tr. 90-91 (Khadduri); PX-765, *Khadduri Written Test.*, at rebuttal 1-2.

260. As of the year 2000, 60% of unassisted renters in the Baltimore Region were living in the suburbs, with 40% living in Baltimore City. If the Baltimore region’s public housing units had been similarly distributed, 60% – or approximately 9,000 additional units – of public housing would have been created in the suburbs in contrast with the 90% that were actually created in the City. Trial Tr. 91 (Khadduri).

C. Vouchers as a Tool for Creating Housing Opportunities.

261. Plaintiffs' Proposed Order provides for the use of vouchers as a means of providing additional housing opportunities for the plaintiff class. Proposed Order § IV.D.

262. Housing choice vouchers can be a very powerful tool for creating additional regional housing opportunities in high quality neighborhoods. Trial Tr. 81 (Khadduri); *see also id.* at 1017 (Briggs) (recommending a "voucher- based component of the remedy, specifically designed and managed to promote access, and ensure access over time for families needing public housing [in] opportunity-rich communities"); *id.* at 154 (Turner) (research on vouchers showed that "many families wanted to move, wanted to take advantage of mobility opportunity, and were able to take advantage [] of a mobility opportunity when they had a combination of targeted voucher and mobility assistance."); *id.* at 1802 (Olsen) (while not recommending a remedy for this case, testifying that he favors, as a matter of national housing policy, a voucher based system of assistance).

1. The Critical Need for Mobility Counseling.

263. Under Plaintiffs' Proposed Remedial Order, mobility counseling would be made available by HUD to persons seeking to use vouchers in Communities of Opportunity in the Baltimore Housing Market. Proposed Order § IV.E.

264. Low-income African-American families eligible for tenant-based assistance tend to have very limited information and experience looking for housing in the private market. Trial Tr. 1023 (Briggs); PX-65, *Regional Housing Opportunities for Lower Income Households*, at vi (Mar. 1994) (voucher users are often unaware of the availability of affordable housing); *see also* Trial Tr. 1365-66 (Fishman) (agreeing that potential Section 8 renters from central cities often

knew little about the suburbs and were inexperienced with the basic procedures of searching for rental housing and securing a decent apartment in a competitive market).

265. HUD has recognized that “[i]ntensive counseling is critical in enabling inner-city families to pursue housing opportunities outside their own neighborhoods. Many are particularly reluctant to consider suburban locations, due in part to fears of racial discrimination, attachment to existing social networks, and lack of information and transportation. The constant involvement of a counselor can help ease these concerns. On the other hand, programs such as Section 8 that allow mobility but do not feature counseling services have consistently yielded disappointing results, with most families confining their housing search to a small area and many failing to find appropriate units beyond a fairly narrow Section 8 ‘submarket.’” PX-62, HUD, *Residential Mobility Programs* (Sept. 1994) 4; *see also* PX-59, *Hope VI: Best Practices and Lessons Learned 1992-2002* (June 14, 2002) 66 (“clustering in high poverty neighborhoods declines with mobility counseling”); PX-681, HUD, Office of Policy Development and Research, *State and Metropolitan Administration of Section 8: Current Models and Potential Resources*, Final Report (April 1997) at 4-1 to 4-15 (suggesting the provision of counseling to encourage low-poverty moves).

266. Indeed, it has been shown that without special mobility counseling efforts, most voucher users find housing in the same types of neighborhoods as other low-income families and often live in neighborhoods with moderate levels of poverty (10-30 percent). PX-765, *Khadduri Written Test*. 22; *see also* PX-764, *Briggs Written Test*. 25; Trial Tr. 98 (Khadduri); *id.* at 2687 (Khadduri) (testifying that without mobility counseling, “the usual administration of the voucher system tends to result in families taking, and in housing authorities taking, the line of least resistance as far as where people go and use their vouchers.”); *id.* at 1102 (Briggs) (testifying

that people living in high poverty neighborhoods tend to look for housing “where they think there’s going to be some point in looking. And that leads them to communities that tend to be segregated and higher in poverty.”); *id.* at 680 (Abayomi) (“invariably people who are just given a voucher wind up not taking full advantage of it, because they don’t even know how to take full advantage of it.”).

267. Evidence from other efforts, notably the *Gautreaux* program and Moving to Opportunity experiment demonstrate that counseling and search assistance are “crucial.” Trial Tr. 1102 (Briggs); PX-764, *Briggs Written Test.* 22-24 (explaining how mobility counseling “can significantly improve locational outcomes for voucher recipients”).

268. For example, the results from the MTO experiment “highlight quite dramatic differences in neighborhood outcomes for comparable voucher recipients with and without mobility assistance.” The families in the MTO treatment group, who received mobility counseling, “moved to neighborhoods with significantly lower poverty rates, greater safety, and larger shares of college-educated neighbors” than the Section 8 group who received no mobility assistance. PX-764, *Briggs Written Test* 22; *see also* FDR-2, *Fishman Written Test.* 36-37 (finding that the MTO treatment group, who received mobility counseling, “wound up in neighborhoods with lower poverty rates and crime rates compared to” the comparison and control groups).

269. Class member Mr. Isaac Neal testified that when he first received a Section 8 certificate, he was not given any information about where he could use it, and that he found a rental unit by walking up Fayette Street East until he found an available apartment on Montford Avenue. *See* Trial Tr. 2664-65 (Neal). Asked to describe what living on Montford Avenue was

like, Mr. Neal answered: “Hell. It was a lot of drugs. There were shootings in front of my house Drugs, prostitution, fights.” *Id.* at 2655.

270. Ms. Mary Leighton, a class member who testified at the liability trial in 2003, explained how it felt to search for housing on a voucher by saying: “It was, I was like homeless with a voucher. I had a voucher but I couldn’t find a place to go.” Liability Trial Tr. 640 (Leighton).

271. A number of experts for both plaintiffs and defendants testified regarding the value of mobility counseling. Dr. Khadduri testified that mobility counseling programs can be “extremely effective in helping families know what their opportunities are for renting housing in good neighborhoods, and to make those opportunities effective by actually persuading owners of rental housing in good neighborhoods to rent to them.” Trial Tr. 86, *see id.* at 2687 (Khadduri).

272. HUD’s expert, Dr. Edgar Olsen, has testified that the provision of counseling would allow African Americans to “look more broadly.” Trial Tr. 1849 (Olsen). Prof. Schuck argued that “effective mobility counseling is a good thing,” and testified that there are a variety of ways to conduct mobility counseling and often private organizations may be better at it than government agencies. Trial Tr. 1915, 1929 (Schuck). Prof. Rohe has agreed that “families need counseling in order to help them find units,” that mobility counseling “should educate and expose families to the available housing options while helping families realize where they want to live,” and that “the quality of the counseling has a big impact on families’ ability to move.” Trial Tr. 2542-43 (Rohe).

273. Voucher recipient witnesses testified to the benefits of mobility counseling programs. For example, Mr. Neal testified that he had never heard of the Mt. Washington neighborhood until taken there by his mobility counselor. Trial Tr. 2657 (Neal). Ms. Doreen

Brooks testified that she had not planned to move out of Baltimore City until the idea was suggested by a mobility counselor. *Id.* at 444 (D. Brooks). Ms. Michelle Robinson testified that she had searched on her own for several months and had been unable to find an apartment with her voucher. After securing mobility counseling she was provided with assistance that included a tour of the counties surrounding Baltimore City, booklets describing apartment complexes, and assistance convincing landlords that she would be a good tenant. *Id.* at 893-95 (Robinson). The counseling assistance enabled Ms. Robinson to find an apartment in four weeks. *Id.* Reverend Abayomi testified that members of the Unity United Methodist Church who received mobility counseling were better prepared to move – “morally and mentally” – because they’ve been provided some up front assistance with what they should expect in their new environment and how to deal with it. *Id.* at 682 (Abayomi).

2. The Effectiveness of Locational Targets.

274. Neighborhood conditions play an important role in the well-being and life chances of both adults and children. PX-764, *Briggs Written Test.* 4-10. Living in profoundly poor or distressed neighborhoods can undermine people’s well-being and longer-term life chances. *Id.* at 7-10. People who live in concentrated poverty are isolated from good jobs, good schools and safe neighborhoods. Trial Tr. 293 (powell). For example, in Baltimore, studies have found that only 13% of entry level jobs are in the central city of Baltimore. *Id.* at 308 (powell).

275. HUD has stated, that “[o]ne rationale behind encouraging families to rent in lower-poverty neighborhoods is that such neighborhoods are supposed to be better environments for those attempting to move to self-sufficiency. Lower-poverty neighborhoods appear to be associated with greater job opportunities, better schools, lower-crime rates, etc.” PX-60, HUD,

Housing Choice Voucher Location Patterns: Implications for Participant and Neighborhood Welfare 43, 53 (Aug. 2002); *see also* FDR-33, HUD, *MTO Interim Impacts Evaluation*, at xv (2003) (noting that moves from highly concentrated areas of poverty “had real effects on the lives of [MTO] participating families in the domain of housing conditions and assistance and on the characteristics of the schools attended by their children.”); Trial Tr. 2130-34 (Shroder).

276. Witnesses who are recipients of a Partial Consent Decree voucher in this case testified to the positive impact of moving from poor and distressed neighborhoods in inner-city Baltimore to suburban communities. Witnesses experienced greater access to jobs, better schools for their children, increased access to stores, and safer neighborhoods. *See* Trial Tr. 559, 561-64 (Dickey); *id.* at 895-96 (Robinson); *id.* at 445-46 (D. Brooks); *see also id.* at 2656-57, 2661 (Neal, who experienced all such benefits other than better schools upon moving to Mount Washington, in northern Baltimore City).

277. Witnesses testified that these factors contributed to a greater sense of well being. *See, e.g.,* Trial Tr. 450 (D. Brooks) (“I love what’s going on in, where I live. It’s opportunities there. It’s a wonderful place . . . I feel good about myself. I feel good about the community I call home.”); *id.* at 902 (Robinson) (“I feel more freer and more relaxed here in Columbia. It’s given me a whole different way of looking at life . . . [I]t gives me a sign of hope.”); *id.* at 566 (Dickey) (“It’s just a whole another experience, the neighbors, living in the nice apartment, I mean, I have – I love my apartment, compared to where I was living. . . I’m currently working, I have two jobs, and I have a car. It’s like things is just working out. It make me want more, it motivates me to want more.”); *id.* at 2656 (Neal) (“It’s just an environment where you want to raise your children. You leave your doors unlocked. I mean just a beautiful place.”).

278. To assure moves to neighborhoods with greater opportunities and to avoid reclusterings, the proposed remedy requires that remedial vouchers be targeted to 246 census tracts that score high or very high on a variety of indicators of economic and education opportunity and neighborhood quality. Placements would be monitored to assure that an undue concentration of remedial vouchers does not emerge in any particular census tract, particularly in minority neighborhoods. Proposed Order, at § IV(D)(6); *see also* PX-766, *powell Written Test.* 3, 27-35, 50-52; *see also* Trial Tr. 301-02, 310 (powell); *id.* at 1024 (Briggs).

279. Without locational targets, African American recipients of Section 8 vouchers will be steered and/or take the path of least resistance moving to locations with higher rates of poverty and higher minority concentration. Trial Tr. 1069 (Briggs); *see also id.* at 2135 (Shroder) (discussing MTO results and noting that “the path of least resistance” was for participants to rent in “highly-segregated neighborhoods”).

280. HUD expert Prof. Rohe testified that the use of vouchers under the current system, without locational targets and without mobility counseling, has resulted in the clustering of voucher holders in low-income, high-minority census tracts in Baltimore. Trial Tr. 2545 (Rohe). HUD expert Prof. Olsen testified that the voucher program, as currently configured, “do[es] not greatly desegregate.” *Id.* at 1804 (Olsen). Their conclusions are confirmed by Dr. Webster's analysis of the location the location of voucher holders in the region as of 2005. *See supra* SOF ¶¶ 18-19.

281. HUD-sponsored research conducted in Baltimore County and Denver shows that vouchers and scattered-site units have a negative effect on property values when highly clustered in minority neighborhoods or in neighborhoods already experiencing low or declining property values. Trial Tr. 161 (Turner); *id.* at 2548 (Rohe). On the other hand, dispersed use of vouchers

and scattered-site units in predominantly white, stable, higher-value neighborhoods did not undermine property values, and in some instances had a positive impact on the values of surrounding properties. PX-764, *Briggs Written Test.*, at rebuttal 3; PX-839, *id.* at 161 (Turner); *id.* at 2548 (Rohe); HUD, *Assessing Property Value Impacts of Dispersed Housing Subsidy Programs: Final Report* (May 1999), at I-7 to I-8.

282. Thus, to achieve desegregation in a manner that is beneficial both for the moving families and the receiving communities, the remedy should ensure that vouchers are not clustered. Trial Tr. 1025-26 (Briggs).

283. HUD expert Prof. Rohe agreed that strict dispersal requirements can prevent clustering. Trial Tr. 2545 (Rohe). Prof. Olsen testified that if the remedy provided African Americans with vouchers conditional on living in low minority areas, the result would “without question” be more African Americans living in low minority areas. Trial Tr. 1850 (Olsen); *see also id.* at 1100 (Briggs) (*Gautreaux* and MTO have shown that “the outcomes are different when you have locational targets, when you’re deliberate about seeking to desegregate . . .”).

284. Locational targets enable families to exercise choices in a meaningful way that actually deliver opportunity-rich communities, not just the promise of those opportunities. Trial Tr. 1024 (Briggs). Dr. Briggs testified that the locational targets proposed by plaintiffs “should be understood as expanding people’s choices . . . enabling them . . . to exercise the choices in meaningful ways that actually delivers opportunity-rich communities, not just the promise of those opportunities.” *Id.* Further, “even with several locational guidelines or targeting features focused on maximizing access to opportunity communities, one could have dozens of choices, depending on how large a pool of landlords is developed . . . if you’re talking about a regional approach.” *Id.*

285. Prof. powell also testified in favor of locational targets, describing them as “structured choice. . . . [B]y structured choice, I mean you don’t give people the voucher and say good luck. . . . [S]tructured choice would do a number of things. It would help make those opportunities available. It would do that by identifying landlords, by identifying communities, and then it would engage the movers with that information.” Trial Tr. 314-15 (powell).

286. The demand for vouchers available for use in locationally targeted neighborhoods, as was the case in *Gautreaux*, MTO and the Partial Consent Decree in this case, has exceeded the number of vouchers available. *See* Trial Tr. 1070 (Briggs).

287. Dr. Briggs testified that “Even where we have these locational targets, the demand is around the block. It’s extraordinary. It exceeds the number of vouchers that we have to give. That was clear in Moving to Opportunity. It was clear in *Gautreaux*.” Trial Tr. 1070 (Briggs). Prof. powell testified that [t]he other thing is to just look at how these programs are subscribed. Once they’re opened up, people actually embrace them, very strongly, especially if it’s what I call structured choice.” Trial Tr. 314.

288. HUD expert Prof. Rohe agreed that “the number of families who signed up to participate in the MTO program was greater than the number of vouchers available in Baltimore.” *Id.* at 2543. And Dr. Mark Shroder acknowledged that more people signed up or were interested in *Gautreaux* and MTO programs than there were vouchers. Trial Tr. 2140-41.

289. African-Americans generally prefer more integrated neighborhoods than the ones in which they reside. *See generally id.* at 1471-73, 1482-83, 1517-18 (Charles); PX-769, *Charles Written Test.* 8, 15-16.

290. Several African-American witnesses in this case have testified that they are willing, and have, moved to overwhelmingly white neighborhoods. Reverend Abayomi testified

that when he chose a neighborhood in which to live, he was primarily looking for a neighborhood that offered an opportunity for better things than were available in his Harlem Park neighborhood, and that members of his Unity United Methodist Church have been willing to make similar moves. Trial Tr. 673-78 (Abayomi). Reverend Golden testified that in his experience, public housing residents and members of the New Unity Church ministries in downtown Baltimore have expressed or demonstrated a willingness to move outside of the city. *Id.* at 701 (Golden).

291. Voucher recipient witnesses in this case have similarly testified that safety and a better neighborhood, rather than its racial composition, have motivated their moves to predominantly white neighborhoods. Those witnesses testified that they have met and befriended white residents in their new communities. For example, Ms. Robinson testified that upon moving to Howard County, her son has made friendships with children from diverse backgrounds. In Baltimore City this was not the case. Trial Tr. 897 (Robinson). Ms. Dickey has had a positive experience meeting friends of diverse races at her job, and stated “[Before moving] I never had the opportunity to meet friends. . . [of a] different race.” *Id.* at 562-63 (Dickey). Ms. Robinson attends the Church of Christ in Columbia and has found the predominantly white congregation to be comprised of “very loving people.” *Id.* at 898-99 (Robinson). Mr. Neal testified that he was looking for “safer, cleaner, more decent surroundings. Better schools” and that the racial composition was “not really” an important factor in choosing his new, mostly white, neighborhood, other than his desire to avoid an all-black neighborhood; he further testified that the “neighbors are very wonderful people” who loan the Neals tools, bake them bread, and invite their sons over to play, visit, eat, and swim. *Id.* at 2657-60, 2663-64 (Neal).

292. This testimony is consistent with expert testimony on the residential preferences of African Americans. The racial composition of a neighborhood is not necessarily at the top of the list of priorities for low-income African Americans if provided a choice of where to reside. Trial Tr. 1517-18 (Charles). For example, Prof. powell has testified that when looking for housing, the primary preference for low-income African Americans is to live in a safe neighborhood. *Id.* at 313 (powell); *see also* PX-770, *DeLuca Written Test.* 20-21 (racial preferences did not drive subsequent moves of MTO participants); PX-764, *Briggs Written Test.* 21 (MTO, and related housing voucher studies, have shown “that voucher users who subsequently move[d] into more segregated, higher poverty neighborhoods after the initial move [were] often doing so involuntarily. . . .”; PX-766, *powell Written Test.*, at rebuttal 19.

293. While evidence shows that, as many as one of five African-Americans in the housing market experienced racial discrimination, as of 2000, the tolerance of whites for racial integration has increased significantly over the past thirty years. Trial Tr. 1470 (Charles); PX-769, *Charles Written Test.* 6, 15.

294. The increased tolerance of racial integration has lessened the risk of “white flight” upon the occurrence of small numbers of African-Americans moving into a previously all-white neighborhood. Trial Tr. 1470-71, 1512 (Charles); *id.* at 2528-29 (Rohe) (siting of public and project-based assisted housing in 1980s did not cause neighborhood racial transition).

3. The Value of Regional Administration.

295. The proposed remedy requires HUD to select an entity to administer on a regional basis the vouchers used to provide fair housing opportunities under the order. Proposed Order § IV(D); Trial Tr. 82-83 (Khadduri).

296. HUD recognizes that regional administration of Section 8 voucher programs would eliminate many of the obstacles to portability. PX-681, *HUD, Office of Policy Development and Research, State and Metropolitan Admin. of Section 8, Final Report* (April 1997) at 3-5, 6-3.

297. Such regional administration would increase portability by eliminating many of the obstacles related to administering the program across the jurisdictional boundaries of multiple local housing authorities. *Id.* at 3-17; Trial Tr. 84 (Khadduri); *id.* at 164- 65 (Turner); *id.* at 1020, 1026-1027 (Briggs).

298. HUD could facilitate the regional administration of vouchers by establishing incentives such as allocating incremental funding units. PX-680, *HUD, Waiting in Vain: An Update on America's Rental Housing Crisis* (March 1999) 6-3.

299. Experts called both by plaintiffs and defendants have testified that a housing voucher program that is administered regionally can be more effective in helping families move to opportunity-rich neighborhoods given the barriers to portability outlined supra. *See e.g.* Trial Tr. 164 (Turner); PX-764, *Briggs Written Test.* 27-29.

300. HUD's witness Prof. Rohe has testified in support of regional administration (agreeing that "the remedy should be administered by a regional agency.") Trial Tr. 2542. He has specifically testified that HABC should not administer the voucher program under the decree. *Id.* Dr. Shroder also has testified that the HABC's history with respect to voucher management would make selection of a regional administrator reasonable. *Id.* at 2164, 2166.

301. Regional administration of a vouchers is not unprecedented. *Id.* at 165 -66 (Turner). Portland, Oregon and Jacksonville, Florida offer examples of metropolitan areas where the jurisdiction of the central city public housing authority has expanded to encompass all

or much of the metropolitan region and where other public housing authorities are not operating. PX-764, *Briggs Written Test*. 28-29.

302. The housing authority of Rochester, New York and the private firm that runs Hartford, Connecticut's program both administer Section 8 assistance anywhere in their metropolitan areas, although other local housing authorities also operate in some parts of the region. PX-764, *Briggs Written Test*. 29.

303. The Metropolitan Boston Housing Partnership is one of nine regional subcontractors administering the statewide Massachusetts Section 8 program. Many local agencies, including the Boston Housing Authority, also operate Section 8 programs in the region. *See id.*

304. The regional voucher program implemented in *Gautreaux* was administered by the nonprofit Leadership Council for Metropolitan Open Communities in Chicago. PX-770, *DeLuca Written Test*. 7.

305. In Baltimore, Metropolitan Baltimore Quadel, the contractor hired to operate the mobility program under the partial consent decree, is administering the *Thompson* decree vouchers region-wide. PX-764, *Briggs Written Test*. 29.

D. The Gautreaux and MTO Experiences.

306. The first and best known attempt to facilitate the movement of low-income African Americans from inner-city neighborhoods to predominantly white suburbs was the *Gautreaux* Assisted Housing Program. *Gautreaux v. Landrieu*, 523 F. Supp. 665 (N.D. Ill. 1981). The *Gautreaux* program was created in settlement of a lawsuit brought against the Chicago Housing Authority and HUD. *Id.* The *Gautreaux* program provided vouchers to inner city public housing residents who were placed, with the help of counseling, in designated

suburbs or revitalizing city neighborhoods. Under the plan, administered by the nonprofit Leadership Council for Metropolitan Open Communities, up to 7,100 residents of and applicants for Chicago public housing were to be offered Section 8 certificates to rent market-rate housing in Chicago area neighborhoods where no more than 30% of the population was black. *Id.*

307. Administrative data on *Gautreaux* participants indicates the majority of families who were placed in the suburban, low poverty, low crime and majority white neighborhoods through *Gautreaux* placements were still living in such communities an average of 14 or more years later. Trial Tr. 842-843, 847 (DeLuca); PX-770, *DeLuca Written Test.* 16-20. And, on average, families were residing in neighborhoods even more affluent than the neighborhoods of initial placement through the *Gautreaux* program. Trial Tr. 844 (DeLuca); *see also* PX-770, *DeLuca Written Test.* 10-11. Children of families that had moved through the *Gautreaux* program were also more likely to live in less segregated neighborhoods upon reaching adulthood. Trial Tr. 858-859 (DeLuca); PX-770, *DeLuca Written Test.* 12-13. Female participants in the *Gautreaux* program who moved to more affluent, less segregated neighborhoods, experienced increased employment, wages, and transitions off welfare as compared to families who were not in such neighborhoods. Trial Tr. 839, 841, 851-854 (DeLuca); *see* PX-770, *DeLuca Written Test.* 11-12. Ms. Turner testified that “[e]vidence from the *Gautreaux* demonstration, where families moved to suburban communities, with better performing schools, provided very dramatic evidence of gains in school performance for young people, higher rates of completing school, going on and getting a job or going on to college.” Trial Tr. 155 (Turner). Dr. Stefanie DeLuca testified that “[i]f you’d like to find a way to improve the life outcomes for the low-income minority families in Baltimore City, one way you

can do that [is to] relocate them to better neighborhoods . . . [T]he *Gautreaux* program research . . . shows this works.” Trial Tr. 828.

308. Defendants’ experts also testified regarding the successes of the *Gautreaux* remedy. Prof. Schuck characterized the *Gautreaux* remedy as a “voucher-based choice enhancing mobility remedy” that “succeeded in moving a significant number of blacks to previously white suburbs.” *Id.* at 1908-09 (Schuck). Prof. Schuck has further written that *Gautreaux* “improved housing opportunities for thousands of low-income families . . . who now enjoy some of the hoped-for social, economic and educational benefits of integration,” *Id.* at 1926. Prof. Rohe relied upon *Gautreaux* as a successful model for movement of families out of segregated public housing. FDR-5, *Rohe Written Test.* 4-5.

309. Research on neighborhood outcomes for the MTO program, as with the *Gautreaux* program, shows that families in the treatment group reported “markedly improved neighborhood conditions” on a variety of measures, as well as substantial improvements in safety. FDR-33, HUD, *MTO Interim Impacts Evaluation*, at ix (2003).

310. Moving with a regular voucher – generally to intermediate-poverty neighborhoods – increased families’ perceptions of safety by 15.6 percentage points, while moving with an MTO voucher (to low-poverty neighborhoods) produced a 30.3 percentage point increase. PX-764, *Briggs Written Test.* 19-20.

311. Improvements in schools were small but significant on a variety of measures for MTO. FDR-33, HUD, *MTO Interim Impacts Evaluation*, at xii (2003). These significant but relatively modest results may reflect the fact that “many MTO experimental-mover families (70%), unlike their *Gautreaux* counterparts, did not leave their central-city school district or even change schools when they moved to low poverty neighborhoods.” PX-764, *Briggs Written*

Test., at rebuttal 6; *see* PX-766, *powell Written Test.*, at rebuttal 17 (noting that the education results were probably understated because “people were not moving far enough away to escape dismal public services,” particularly schools).

312. Families in the treatment group improved both their physical health and their mental health, including a large reduction in the incidence of obesity. FDR-33, HUD, *MTO Interim Impacts Evaluation*, at x (2003); *see also* Trial Tr. 1336 (Fishman); FDR-2, *Fishman Written Test.* 37 (“The most striking improvement for the MTO experimental households over the Section 8 comparison group and in-place control group is for mental health, almost certainly due to their departure from stressful high-crime areas.”).

313. There is some evidence that the impacts of the demonstration are increasing over time, so that long-term effects will be larger than the short-term effects that have currently been measured. FDR-33, HUD, *MTO Interim Impacts Evaluation*, at xv (2003); *see* PX-766, *powell Written Test.*, at rebuttal 17. In addition, “the control group was not static: the employment rate among sample adults more than doubled, and welfare receipts declined by more than half in the strong economy of the 1990s. Therefore, ‘these powerful external forces could make it less likely that MTO would show significant impacts on employment and earnings relative to the control group.’” PX-766, *powell Written Test.*, at rebuttal 17 (quoting FDR-33, HUD, *MTO Interim Impacts Evaluation* (2003)).

E. Hard Units.

314. Plaintiffs have also proposed that a fixed number of hard units in communities of opportunity because it is relatively harder for some kinds of households, particularly families with more than one child, to find rental units with owners willing to rent to voucher holders. Plaintiffs propose that one third of the desegregative housing opportunities, 300 per year, be

provided through the creation of hard units. Proposed Order, § IVB; Trial Tr. 97 (Khadduri). Some examples of supply side strategies that could be used as part of the remedy include: (1) acquiring units that already exist; (2) constructing new units; (3) renovating existing units; and (4) creating mixed income housing. Trial Tr. 1031-34 (Briggs). Whatever the method used, all units would be created within a mixed income housing complex and/or neighborhood. Proposed Order § IV(B)(3); *see also* Trial Tr. 1031-34 (Briggs); *id.* at 93-96 (Khadduri).

315. Because of the tight rental market in the Baltimore area, *see supra* SOF ¶ 64, vouchers alone will not create adequate opportunities for low-income families to move from the city to the surrounding counties. *See Thompson*, 348 F. Supp. 2d at 460 (stating “HUD itself recognized that one of the ‘lessons learned’ from its HOPE VI program is that housing vouchers are not viable replacement housing options in tight housing markets like Baltimore” and noting Section 8 vouchers alone are inadequate to advance desegregation); *see also* 63 Fed. Reg. 46,103 (Aug. 28, 1998) (stating “[w]ith respect to the creation of ‘hard replacement units’ as opposed to tenant based assistance, [HUD] believes both approaches should be used”); PX-764, *Briggs Written Test.* 33-39 (explaining why “[a]n effective remedy must include a supply-side strategy as well as vouchers”); PX-765, *Khadduri Written Test.*, at rebuttal 3 (stating that hard units are an important part of a fair housing remedy because they provide access to areas where vouchers are ineffective due to “high rents, lack of rental housing, or discrimination”); Prof. Powell testified that in “some of the high opportunity areas, especially in terms of three and four bedroom houses that are at fair market rent, there are very few houses.” Trial Tr. 317-18; PX-763, *Basu Written Test.* 37 (“The market will not provide larger affordable units in communities of opportunity”).

316. HUD's research has shown that "more than half of the . . . extremely-low-income families who needed three or more bedrooms had fewer bedrooms than they needed. And even fewer of the extremely-low-income families needing large units had ones that were both affordable and large enough." PX-898, HUD, Trends in Worst-Case Needs for Housing, 1978-1999 (Dec. 2003) (53); Trial Tr. 2147-48 (Shroder); *see* 69 Fed. Reg. 48040,48042 (Aug. 6, 2004) (families who need 3 bedroom and larger units have the hardest time leasing).

317. One way to alleviate these market pressures is to create hard units by using HUD's various housing production programs. HUD concedes that Federal programs to assist low-income renters have helped to concentrate low-income minority renters into low-income minority neighborhoods. *See* 65 Fed. Reg. 20,685 (Apr. 17, 2000). Program funds for development of hard units, however, if used strategically and thoughtfully, can create housing opportunities where "the supply of existing rental housing limits the choices available to persons with vouchers or certificates." PX-630, Tamburrino Dep. Tr. 302:21 - 303:7 (May 18, 2005) (describing the advantages of using "project-based vouchers" for this purpose).

318. HUD's expert, Prof. Rohe, testified that based on his research findings, assisted housing developments have the potential to promote racial and economic integration. Trial Tr. 2529-30 (Rohe). Further, Dr. Rohe agreed that it is possible to develop well-designed housing on a scale appropriate for the surrounding neighborhoods. *Id.*

319. The difference in unit cost between hard units and vouchers is not large. The GAO study relied upon by defendant's expert Dr. Shroder concluded that for two-bedroom units in a metropolitan area, the life cycle cost of a hard unit is about 14 percent more than the life cycle cost of a voucher. For three-bedroom units, the difference drops to only a four percent difference. Trial Tr. 2676-77 (Khadduri).

320. Dr. Briggs testified that production of hard units in communities of opportunity will not necessarily be more expensive than development in high poverty areas. Trial Tr. 1036-37 (Briggs). The production of hard units in high poverty neighborhoods in central city neighborhoods often costs more than it costs to build hard units in other kinds of neighborhoods. Trial Tr. 2680 (Khadduri); PX-897, *GAO Report*; *see also* Trial Tr. 1838 (Olsen) (testifying that HOPE VI production program is the most expensive HUD program); Trial Tr. 2170-71 (Shroder) (agreeing that higher costs are incurred when tearing down and rebuilding in urban areas, than in underdeveloped areas in the suburbs); *id.* at 2680- 81 (Khadduri) (it often costs more to build hard units in high poverty central city neighborhoods than in other neighborhoods); PX-430, Letter from Paul Graziano to Unabyrd Ervin-Jones (May 8, 2002) (acknowledging the difficulties of urban development, and that the cost of urban “redevelopment might exceed the cost of building at the periphery.”).

F. Funding.

321. For the foreseeable future, Congress will appropriate and HUD will administer funds for demand-side and supply-side housing strategies. PX-764, *Briggs Written Test.*, at rebuttal 1.

322. A number of experts for both plaintiffs and defendants testified that hard units are being created under the HOME and LIHTC programs, and will likely continue to be created in the future. *See e.g.* Trial Tr. 96 (Khadduri). For example, HUD’s expert Prof. Olsen testified that the overwhelming majority of the newly built subsidized projects are generated by the HOME and LIHTC programs, and, because Congress has allocated this money, new units will be built in the Baltimore Region in the future. *Id.* at 1809, 1846-47 (Olsen).

323. The Low Income Housing Tax Credit program also can be used to create hard units in the Baltimore region accessible to voucher holders. *Id.* at 66 (Khadduri). HUD data shows that 3 and 4-bedroom units have been constructed under the LIHTC program in communities of opportunity in the Baltimore Region. While the numbers of 3 and 4-bedroom units created has been relatively low, the fact that some projects have been constructed even without HUD's encouragement shows that such construction is feasible. *Id.* at 2688-89 (Khadduri); *see also id.* at 317-18 (Powell).

324. The HOME program is a major potential resource to expand regional opportunities through the creation of hard units. It is funded with ongoing congressional support at almost \$2 billion a year. Formulas determine the amount of that \$2 billion that goes to the State of Maryland and to the local jurisdictions that comprise the Baltimore region. *Id.* at 70 (Khadduri).

325. HUD's site and neighborhood standards require that HOME funds be used to promote greater choice of housing opportunities. Under existing HUD regulations, newly constructed HOME and project-based units should generally be built outside areas of minority and low-income concentration. *See* 24 C.F.R. §§ 92.202 (HOME), 983.6(b) (project-based vouchers).

326. Both the HOME and LIHTC programs, therefore, are major potential resources to expand regional housing opportunities through the creation of hard units.

327. Replacement Housing Factor (RHF) funds are also a significant source of funding for development of hard units in communities of opportunity. HUD provides RHF funds specifically for the purpose of developing hard units to replace demolished public housing. 24 C.F.R. 905.10(I). HUD established RHF funds recognizing that "replacement vouchers do not

meet some local needs as well as hard replacement units do.” 62 Fed. Reg. 47,739, 47,740 (Sept. 10, 1997); 63 Fed. Reg. 46,103, 46,104 (Aug. 28, 1998).

328. HABC is eligible to receive RHF funds for the approximately 2,600 units demolished after 1998 that were not otherwise replaced with a hard unit. PX-725, *Development Breakdown Report* (Sept. 18, 2005) 15. HUD witness William Tamburrino estimates RHF funds are sufficient to replace about 20-25% of the eligible demolished units, more if leveraged with other funds. Liability Trial Transcript at 1343.

329. HABC is currently receiving about \$5 million per year in RHF funds, and has received nearly \$26 million in fiscal years 2000-2005. PX-726, *Replacement Housing Factor Multi Tier Report* (Sept. 27, 2005). To the extent that public housing units continue to be demolished, those demolished units will similarly become eligible for additional RHF funds. Trial Tr. 2097 (Shroder); *see generally* Liability Phase Trial Tr. 1341:24-1344:11(Tamburrino); Trial Tr. 1305:10-22 (Tamburrino).

330. Use of RHF funds to develop housing in communities of opportunity is consistent with HUD's site and neighborhood standards that apply to public housing development. Those standards require selection of sites consistent with Title VI and Title VIII, and generally prohibit the construction of new units in areas of minority and low-income concentration. 24 C.F.R. § 941.202.

331. Additional hard units can be generated by attaching vouchers to new or existing units under the project-based voucher program. 42 U.S.C. § 1437f(o)(13); 70 Fed. Reg. 59,891 (Oct. 13, 2005).

332. Project-based voucher units must also be sited in compliance with HUD's site and neighborhood standards, and “must be consistent with the goal of deconcentrating poverty and

expanding housing and economic opportunities.” 24 C.F.R. § 983.57. Project-based units may not be located in an area of minority concentration unless “sufficient, comparable opportunities” exist for housing minority families outside areas of minority concentration or if the project is necessary “to meet overriding housing needs” (i.e. it is a demonstrably “revitalizing area.”). 24 C.F.R. § 983.57.

333. HUD programs also continue to provide potential sources of funding for vouchers in the Baltimore region that could become a part of the remedy. For example, when public and assisted housing is demolished and disposed of, HUD’s policy is to offer voucher funding on a one-for-one basis to make up for the loss of public and assisted housing units. PX-686, *HUD, Notice PIH 2004-4*, (Issued Mar. 29, 2004, Reinstated by Notice PIH 2005-15) 3; PX-728, *Section 8 Tenant Based Assistance (Enhanced and Regular Vouchers) for Housing Conversion Actions - Policy and Processing Guidance* (Nov. 14, 2001).

334. There is no separate competitive process for a public housing authority to obtain relocation or replacement vouchers. The allocation of vouchers is negotiated as part of a demolition plan or a settlement of a court order. PX 730, *HUD, Section 8 Assistance for Public Housing Relocation/Replacement* (updated Dec. 5, 2000). Applications are funded on a first-come, first-served basis, provided relocation/replacement voucher funding is available during the fiscal year. PX-686 *HUD, Notice PIH 2004-4* (Issued Mar. 29, 2004, Reinstated by Notice PIH 2005-15) 7. Approvable applications which remain unfunded, due to a lack of funding availability in a particular fiscal year, will be funded in the subsequent fiscal year contingent upon congressional appropriations for relocation/replacement vouchers. *Id.* at 8.

335. Relocation or replacement voucher funding is available for all units, whether or not occupied, and whether or not a family occupying a unit wishes to use a voucher. PX-686 (Issued Mar. 29, 2004, Reinstated by Notice PIH 2005-15) 2-3.

336. In 2006 alone, HABC intends to seek HUD approval to demolish 805 additional units at Cherry Hill 12, Claremont Homes, and O'Donnell Heights and to dispose of 1,372 scattered site units. PX-865, HABC, *Moving to Work Annual Plan, Vol. III* (proposed) (Submitted to HUD Oct. 28, 2005) (PLR007258 - 007396)¹12-13. HABC is also planning for "density reduction" and other "demolition activities" at Somerset Courts, Gilmore Homes, Mt. Winans, and Westport Extension. *Id.* at 13. A substantial number of relocation and replacement vouchers will become available in the future if HUD approves these demolition and disposition applications.

337. Under HUD policy, HABC would be able to apply for funding for relocation or replacement vouchers for those units. PX-686 *HUD, Notice PIH 2004-4* (Issued Mar. 29, 2004, Reinstated by Notice PIH 2005-15) at PLR008820; PX-728, *Section 8 Tenant Based Assistance (Enhanced and Regular Vouchers) for Housing Conversion Actions - Policy and Processing Guidance* (Nov. 14, 2001).

338. HUD policy also provides voucher funding on a one-for-one basis, when HUD takes an action that results in the loss of HUD-assisted multifamily units. PX-728, *Section 8 Tenant Based Assistance (Enhanced and Regular Vouchers) for Housing Conversion Actions - Policy and Processing Guidance* (Nov. 14, 2001) at PLR 000401- 402. These actions include HUD decisions regarding foreclosure on an FHA-insured mortgage, enforcement action, and

¹PX-865 is mislabeled and should be titled "*HABC, Moving to Work Annual Plan, Vol. I* (proposed) (Submitted to HUD Oct. 28, 2005)". The titles for PX-865 and PX-732 were inadvertently transposed.

refusal to renew a project-based Section 8 contract, as well as an owner's decision to "opt-out" of a project-based Section 8 contract. *Id.* at PLR 000401.

339. Funding for the specific purpose of providing relocation and replacement voucher, termed "tenant protection vouchers" is provided each year in HUD Appropriation Acts. HUD awarded a total of \$202,680,883 in such funding in 2005. *See* 70 Fed. Reg. 71,547, 71,554 (Nov. 29, 2005).

340. Congress appropriated \$178 million for tenant protection in 2006. *See* Transportation, Treasury, Housing and Urban Development, The Judiciary, The District Of Columbia, and Independent Agencies Appropriations Act of 2006, Pub. L. No. 109-115, Title III, 119 Stat. 2396, 2441. HUD has requested \$149 million for 2007. PX-729, *HUD FY 2007 Budget Summary* (Feb. 6, 2006) 13.

341. Finally, HUD has the authority to make budget requests to implement court orders and specific projects. Trial Tr. 1052 (Briggs); *id.* at 2349-51 (Vargas).

342. HUD has in the past requested, and Congress has appropriated, additional funds when necessary to meet the objectives of a Court-ordered remedy. Trial Tr. 84-85 (Khadduri); *id.* at 2349-51 (Vargas). *See, e.g.,* PX-731, *HUD, Public and Indian Housing, Tenant-Based Rental Assistance, 2006 Summary Statement and Initiatives*, at C-15 (HUD 2006 budget submission to Congress and narrative proposing that an unspecified portion of \$354,081,218 requested for tenant protection vouchers to be used for "vouchers necessary to complete the consent decree requirements in *Walker v. HUD*").

343. The 2006 Appropriations Act includes a special set-aside of up to \$12 million voucher funds to be used in connection with court orders. *See* Transportation, Treasury, Housing and Urban Development, The Judiciary, The District Of Columbia, and Independent

Agencies Appropriations Act of 2006, Pub. L. No. 109-115, Title III, 119 Stat. 2396, 2441; Trial Tr. 2350-51 (Vargas).

344. In the past, HUD has also provided a competitive bonus to funding applications seeking funds to support a desegregation remedy. The FY 2000 SuperNOFA provided:

“[A]ny application submitted by the City of Dallas, Texas for funds under this SuperNOFA for which the City of Dallas is eligible to apply, HUD will consider to the extent to which the strategies in the City's application or applications will be used to eradicate the vestiges of segregation in the Dallas Housing Authority's low-income housing programs. The City of Dallas should address the effect, if any, that vestiges of racial segregation in Dallas Housing Authority's low-income housing programs have on potential participants in the programs covered by this NOFA, and identify proposed actions for remedying those vestiges. HUD may add up to 2 points to the score based on this consideration. This special consideration results from an Order of the United States District Court for the Northern District of Texas, Dallas Division.” 65 Fed. Reg. 9,321, 9,338 (Feb. 24, 2000).

G. The Affordable Housing Desegregation Plan.

345. Plaintiffs propose that the remedy should require that the full array of HUD's production programs be marshaled and coordinated across HUD departments to achieve remedial objectives. Trial Tr. 1039 (Briggs).

346. Plaintiffs' proposed order includes a requirement that HUD develop an Affordable Housing Desegregation Plan (“Plan”) for the Baltimore Region. In the Plan, HUD must set out its goals for increasing the supply of open housing in the Region, the points in its decision-making processes when these goals will be considered, the actions HUD will take to achieve these goals, and the performance standards that will be used to track its progress. Proposed Order § II.A; Trial Tr. 62-63, 68 (Khadduri).

347. To date, HUD has not endeavored to create a broad comprehensive strategy to utilize all of HUD's resources and programs to carry out a regional plan for housing desegregation in the Baltimore Region. *See* PX-629, Tamburrino Dep. Tr. 60:13 - 61:20, 67:20 -

69:13 (May 16, 2005); *see also* PX-631, Walsh Dep. Tr. 130:18 - 131:5 (May 27, 2005) (stating that HUD does not have a process for reviewing the impact of its laws, regulations, policies, and procedures on fair housing and desegregation in the Baltimore Region). HUD staff, however, is aware that coordination of its programs “can contribute to the solution of some of [these] problems.” PX-629, Tamburrino Dep. Tr. 61:6-20 (May 16, 2005).

348. The affordable housing desegregation plan proposed by plaintiffs would describe how each of the particular programs of the department would be used in support of the objectives of the remedy, and would lay out in some detail the way in which the decision-making processes that are taken by these three separate offices at HUD would provide opportunities for consideration of fair housing and for the creation of desegregated housing opportunities in the Baltimore region. *See* Proposed Order § II.A.

349. Updates of the plan annually, for example would track progress in meeting both the explicit numeric objectives of the remedy and the broader picture of how housing opportunities for members of the plaintiff class in the Baltimore region were changing over time as the decree is implemented. Trial Tr. 62-63, 68-69 (Khadduri).

350. The plan would serve as a “road map” that would help guide HUD’s decision-making to ensure that fair housing issues are considered when significant HUD decisions, such as those described below, are made. *Id.* at 67 (Khadduri).

Examples of Significant HUD Decisions

351. As described, HUD engages in a series of decisions relating to the funding, siting, acquisition, demolition, sale, disposition, mandatory and voluntary conversion of public housing, and the sale, financing, restructuring, foreclosure, disposition and demolition of Section 8 projects in the Baltimore region. *See* SOF ¶¶ 198-213.

352. HABC estimates the “potential loss of up to 6,000 additional public housing and FHA units over the next few years.” PX-801, Letter from Paul Graziano to Michael Liu (Aug. 12, 2003) at HUDBAL 042860.

353. Housing subsidy contracts are expiring on thousands of privately owned multifamily properties with federally insured mortgages, permitting landlords to "opt-out" of the project-based Section 8 subsidy program. The properties at highest risk for opting out and converting to market rate are those in low-poverty areas with strong market conditions. PX-680, HUD, *Waiting in Vain: An Update on America's Rental Housing Crisis* (Mar. 1999) 16-17.

354. In March 1999, HUD acknowledged that "[n]ot only is the number of subsidized units shrinking, but some of the best quality affordable housing is at risk of being lost or replaced with vouchers which are likely to be used in higher poverty neighborhoods." *Id.* at 16.

355. There is a danger that, even as additional housing is being created in communities of opportunity, an equal or even greater number of units may be lost, as Section 8 projects that are already located in communities of opportunity leave the assisted housing stock by being demolished or converted to market rate housing. Trial Tr. 77 (Khadduri); PX-765, *Khadduri Written Test.* 20.

356. HUD makes decisions about public housing units, under HUD's mandatory conversion regulations, as to whether the units will continue to exist or be demolished and redeveloped in the same locations or elsewhere. PX-801, Letter from Paul Graziano to Michael Liu (Aug. 12, 2003) at HUDBAL 042860; Trial Tr. 87 (Khadduri). HABC's proposed Moving to Work Plan for 2006 indicates that HABC plans to demolish more than 800 units in 2006 alone. PX-732, *HABC, Moving to Work Annual Plan, Vol. I.*

357. Plaintiffs have proposed that HUD decision-makers be required to determine that any decision that affects public or assisted housing properties in communities of opportunity be made in the context of understanding what impact that decision would have on meeting the objectives of the Thompson remedy. Proposed Order §§ IG, II(E)(8); Trial Tr. 80 (Khadduri).

358. Plaintiffs' proposed order also requires HUD to consider regional desegregation in making decisions regarding the Section 8 voucher program. The proposed remedy requires HUD to maintain Fair Market Rents for the Baltimore housing market at the 50th percentile, to approve requests for exception payment standards for the Baltimore housing market unless good cause exists for denial, and to review the effect of local residency preferences on desegregative housing opportunities. Requiring HUD to consider desegregation in the operation of the Section 8 program has been a part of other housing desegregation remedies. *See, e.g., Young*, 685 F. Supp. at 990 (requiring HUD to consider the effect of rent levels on desegregative housing opportunities for class members); *Walker* 1996 Remedial Order 18-19 (requiring HUD to authorize exception payment standards to promote desegregative housing opportunities unless inconsistent with statutory requirements). These requirements are consistent with HUD's statutory and regulatory authority. HUD controls FMRs and may set FMRs at the 50th percentile where warranted. *See* 24 C.F.R. § 888.113(c). HUD also has authority to approve exception payment standards where supported by data. *See id.* at § 982.503(c).

359. The proposed order also requires HUD to review local preferences for selecting voucher families, and to determine their effect on regional housing opportunities. *See* Proposed Order § IV.G.7. Such local restrictions are often barriers to the use of vouchers by minorities hoping to make desegregative moves. *See* PX-764, *Briggs Written Test.* 28 (noting "[s]uburban

communities often oppose the arrival of voucher families from nearby cities, because of their race, their poverty, or both”).

360. The Plaintiffs’ proposed remedy requires HUD to examine whether local preferences contribute to this problem and determine whether such restrictions on voucher use are consistent with PHAs’ duty to affirmatively further fair housing and HUD’s duty to ensure equal opportunity and non-discrimination in housing. *See e.g.* 24 C.F.R. § 982.207(b).

H. HUD’s Review of Regional Actions to Affirmatively Further Fair Housing.

361. Plaintiffs’ proposed order requires HUD to consider regional desegregation in its evaluation of applications for federal funding and other significant decisions. Proposed Order § III. Plaintiffs’ proposed remedy requires HUD to consider whether local jurisdictions and PHAs use federal resources to further open regional housing as part of HUD’s assessment of grantees’ Con Plan and Action Plans, as well as PHAs’ Five-Year and Annual Plans, Moving to Work, relocation, demolition or redevelopment plans. HUD is required to develop guidelines for the use of federal housing development funds that will encourage the increase in supply of open housing and will safeguard against the use of federal funds in ways that reduce the supply of open housing through demolition and redevelopment. Proposed Order, § III; Trial Tr. 88- 89 (Khadduri).

362. HUD’s Consolidated Plan approval process is a significant decision-making point which plaintiffs propose should be altered for the Baltimore Region as part of the remedy. The Consolidated Plan is a jurisdiction’s comprehensive planning document and application for funding and covers all of the formula grant programs that are administered by the Community Planning and Development (“CPD”) Office of HUD. The two that are most relevant to housing

opportunities in the Baltimore Region are the HOME and CDBG programs. Trial Tr. 69 (Khadduri).

363. As described *supra*, through the Consolidated Plan process, HUD can hold grantees accountable for how they spend CDBG and HOME funds. SOF ¶¶ 187-190.

364. HUD recognizes that the leverage it exerts through this process, including the ability to reject the AI certification, provides it with a “powerful tool for fair housing.” PX-691, 2005 Budget Submission for CPD 3 (“The failure . . . to develop an analysis of impediments to fair housing or to take reasonable action to address such impediments may result in the denial or loss of . . . formula funds until compliance is secured. This is a powerful tool for fair housing.”); *see also* Trial Tr. 1653, 1769 (Kennedy).

365. HUD has stated in publications that it will hold participating jurisdictions accountable for the actions they undertake to lessen or eliminate the effects of impediments to fair housing. Trial Tr. 1604-06 (Sardone); FDR-168, *Affirmatively Furthering Fair Housing*.

366. HOME funds have the potential to provide opportunities for African American families in Baltimore City public housing to move to housing the predominantly white neighborhoods throughout the Baltimore Region. Trial Tr. 1603 (Sardone).

367. Defendants’ expert Prof. Olsen has testified that he agrees with Dr. Khadduri that HUD has the leverage to influence the siting of HOME projects in low minority areas. *Id.* at 1808-09, 1849 (Olsen).

I. Advisory Group.

368. Plaintiffs proposed remedy includes an Advisory Group that will present to HUD suggestions and observations regarding regional approaches to fair housing. Proposed Order § V.

369. Many communities feel that housing for lower income minorities and other protected groups should be provided, but "not in my backyard"(NIMBY). According to HUD, this attitude seriously affects the availability of housing for these groups. FDR 171, *Fair Housing Planning Guide*, at 5-6.

370. Dr. Briggs, who has studied successful democratic processes, has testified that opportunities for constructive community participation can be designed to bring community viewpoints into the remedial stage of this litigation.. He recommended a participatory design framework in which, an advisory group comprised of key stakeholders would provide information to improve the implementation process rather than being a decision making body with veto power. Trial Tr. 1040, 1043-46 (Briggs); PX-764, *Briggs Written Test.*, at rebuttal 9; *see also id.* at 1002 (Queale).

371. Example of key stakeholders include tenants, landlords, affordable housing developers, representatives of community groups, advocacy groups, and service providers to low-income people. Trial Tr. 1040-41 (Briggs).

372. The advisory group would also function to build support for the remedy within the community and allay undue suspicions. *Id.* at 1045-46 (Briggs).

373. Community groups exist within the Baltimore Region which support the creation of expanded housing opportunities for Baltimore City public housing residents. *See e.g. id.* at 990-1001 (Queale); PX-514, Letter from Paul Graziano to Caroline Queale (Aug. 21, 2001).

374. For the past year, a number of Baltimore community organizations have joined to create an informal coalition seeking to work on a range of initiatives trying to address housing patterns and the way that housing options link to opportunity throughout the region. Trial Tr. 456-57 (Sarbanes).

375. The coalition, called the Baltimore Regional Housing Campaign, consists of the Citizens Planning and Housing Association (a 65-year-old organization devoted to improving quality of life and how government operates in the Baltimore Region), BRIDGE (a coalition of approximately 25 religious congregations in the Baltimore Region, the Greater Baltimore Urban League, the Faith Fund (a community development finance institution), the Poverty and Race Research Action Council (a national organization that studies questions of housing mobility and segregation of opportunity), the Innovative Housing Institute (a national group with expertise on inclusionary housing policies) and the Maryland ACLU. *Id.* at 454, 456-57 (Sarbanes).

376. The Greater Baltimore Committee is an association representing the Baltimore Region's business community. Its membership includes large and small businesses and other institutions. Trial Tr. 1563 (Joseph).

377. The Greater Baltimore Committee has endorsed a policy for developing affordable housing throughout the metropolitan area with a key goal of that policy being to avoid the creation of concentrations of people living in poverty. *Id.* at 1569, 1580 (Joseph)

378. The Greater Baltimore Committee has adopted a position that the concentration of low-income citizens is not good for the interests of the region as a whole; that no region does well when its urban center is not thriving and that one of the important elements to an urban center's thriving is to making sure that there are not concentrations of citizens by race and economic status. *Id.* at 1568 (Joseph).

379. The Greater Baltimore Committee has also recommended an area-wide housing agency for the purpose of breaking down jurisdictional barriers to facilitate the use of Section 8 vouchers by low-income citizens throughout the Baltimore Region. *Id.* at 1573-74, 1578-79 (Joseph).

J. Performance Measures.

380. Plaintiffs have proposed that the Remedial Order in this case include clear performance measures, particularly outcome measures. *See e.g.* Proposed Order § IV.

381. A number of experts, including Dr. Briggs and Ms. Turner, have recommended the use of performance measures. Ms. Turner testified that “a set of clear performance standards . . . create[s] accountability . . . [S]o that it’s clear that the goals of the strategy are being achieved step-by-step along the way.” Trial Tr. 170 (Turner). Dr. Briggs testified that performance measures are necessary to ensure that the outcomes do not “fall far short of what the remedy actually intends.” Trial Tr. 1028-29 (Briggs).

382. Defendants’ expert, Prof. Peter Schuck has stated that “[t]he Court can reduce [the problematics of remedial design] by prescribing clear performance goals for the defendant.” FDR-6, *Schuck Written Test*. 16.

383. The concept of performance measures is not new to HUD. Under the Government Performance and Results Act, HUD is obligated to use a performance management framework, and develop performance plans, for all of its programs. Trial Tr. 1029 (Briggs); Government Performance and Results Act of 1993, Pub.L. 103-62, 107 Stat 285 (codified as amended in scattered sections of 31 U.S.C. and 39 U.S.C.); *see also* PX-785, HUD, *FY 2002 Annual Performance Plan* (May 2001).

384. HUD’s Community Planning and Development office has been working nationally to develop an outcome performance measurement system that could be applied across the board to all of the formula grantees. Trial Tr. 2035 (Halm).

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Respectfully submitted,

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