

MEMORANDUM

TO: National Commission on Fair Housing and Equal Opportunity

FROM: Brian Gilmore, Supervising Attorney & Adjunct Professor, Howard University School of Law – Fair Housing Clinic  
Lois Hanshaw, Student Clinician, Fair Housing Clinic

RE: Written Testimony

Date: October 12, 2008

Please make our written testimony part of your record. We are in full support of the efforts of the commission.

The Howard University School of Law Clinical Law Center is an invaluable component in the School's mission to train social justice advocates who will address the complex social and legal issues that confront the world today and in years to come. In 2004, the Fair Housing Law Clinical Program was established through a grant from the Department of Housing and Urban Development to design, organize, and operate a fair housing legal-clinical program and to develop fair housing legal curricula that will train and educate law students and lawyers about fair housing rights and obligations.

Since the Clinic's establishment, it has sponsored numerous activities, including annually hosting the Peoples' Civil Rights Law School Day which provides community members insightful information on topics such as financial management, fair housing rights, and preventing home foreclosure; offering programming related to home purchase and financing, gentrification, and segregation; holding multiple week-long series of community outreach activities educating the public on fair housing law and their rights under the law; producing a mock trial training video with the use of student and focus

group juries that can be used in a variety of academic and training venues; partnering with local housing groups to conduct community and street outreach; and assisting nearly clients all across the Washington D.C. metropolitan region with legal issues related to fair housing. Our clinical work is also part of a larger national effort to address the dual issues of home ownership and housing discrimination.

This is the primary focus of our submitted testimony.

Despite the gains that have resulted from the passage of the Fair Housing Act and its amendments and relevant case law, problems still exist in these two areas. This is especially so in the last few years as the roots of the subprime/mortgage foreclosure crisis emerged and revealed a racial component. The current housing crisis not only represents a unique example of the intersection between the issues of home ownership and housing discrimination, but also demonstrates that advocacy in this area is even more necessary now.

A combination of factors contributed to the current mortgage crisis in the subprime<sup>1</sup> market, including tax law changes that increased the tax advantage of home equity loans, appreciated housing prices which resulted in substantial home equity, an increase in the companies making subprime loans, and loosened underwriting standards for loans.<sup>2</sup> Additionally, limited disclosures and transparency exists for subprime consumers and regulation of loans made to those borrowers lacks the same stringency as loans made to prime customers because originators of subprime loans, often mortgage and consumer finance companies, banks, and thrifts are outside the scope of federal laws

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<sup>1</sup> The subprime market encompasses borrowers with limited incomes or poor or no credit histories. The prime market consists of “borrowers with credit histories that put them at low risk of default.” U.S. Government Accountability Office. (January 2004). *Federal and State Agencies Face Challenges in Combating Predatory Lending*. (Publication No. GAO-04-280 at 4).

<sup>2</sup> GAO-04-280 at 21.

regulating consumer protection.<sup>3</sup> As a result, consumers have received loans including predatory language with loosened underwriting standards, such as income verification, from originators eager to profit from selling the mortgage on the secondary market.<sup>4</sup> Subsequently, delinquencies and foreclosures have dramatically risen, especially on adjustable-rate subprime mortgages, as consumers struggle to pay loans they cannot afford and lose equity in their home.<sup>5</sup>

For African Americans and Latinos the American dream of homeownership is subject to the reality of housing discrimination. As the home ownership market expanded to individuals not traditionally covered by bank mortgages or those lacking adequate credit to purchase homes, the former regulations that applied to the mortgage market were relaxed as private mortgage lenders and brokers began to offer mortgages to additional customers. This led to many problems.

Too often as African Americans and Latinos increasingly became home owners, they were targeted for predatory subprime mortgages which they could not afford or more expensive than they deserved.<sup>6</sup> Consequently, African American and Latino homeowners were and are more likely to receive subprime mortgages, regardless of income<sup>7</sup> and nearly three times more likely than whites to receive a high-cost loan.<sup>8</sup> Disparities such as these increase the potential for home foreclosures on people of color which in turn increases barriers to homeownership and housing choice, perpetuates racial

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<sup>3</sup> See GAO-04-280 at 4 and 15 U.S.C.A. § 45 (a)(2); Regulation Z, 73 Fed. Reg. 44522, 44524 (July 30, 2008).

<sup>4</sup> The secondary market allows lenders and investors to buy and sell mortgage backed securities. GAO-04-280 at 6.

<sup>5</sup> 73 Fed. Reg. 44,526 (July 30, 2008).

<sup>6</sup> Carol Lloyd, *Minorities are the emerging face of the subprime crisis*, SFGate.com, April 13, 2007.

<sup>7</sup> Sue Kirchoff and Judy Keen, *Minorities hit hard by rising costs of subprime loans*, USA Today, April 27, 2007.

<sup>8</sup> Acorn Fair Housing, *"The Impending Rate Shock: A Study of Home Mortgages in 130 American Cities"* August 15, 2006 at 4.  
<[http://www.acorn.org/fileadmin/HMDA/2006/Rate\\_Shock\\_Report.pdf](http://www.acorn.org/fileadmin/HMDA/2006/Rate_Shock_Report.pdf)>

and ethnic segregation,<sup>9</sup> and deepens the homeownership gap between people of color and whites. Our clinic believes this issue will perpetuate racial division in the future if it is not addressed.

Our clinic also contends that discrimination also extends beyond just mortgages. Housing complaints, related to alleged discrimination in the terms and conditions of the sale or rental of housing or the refusal to rent, mainly based on disability or race, are at an all time high.<sup>10</sup> This trend is especially true in metropolitan areas.<sup>11</sup>

Though discrimination has improved since the early 1990s, African Americans and Latinos are still disproportionately discriminated against in the housing market.<sup>12</sup> Discrimination tends to exist in areas lacking racial and ethnic diversity.<sup>13</sup> Yet, housing will continue to be segregated as discriminatory practices limit racial diversity within a particular area. These facts only support our concerns as they relate to home ownership.

Though blame is still being assigned in this current housing debacle, examining the history of homeownership for people of color, especially African Americans reveals that the U.S. government has been complicit in preventing the dream of homeownership from becoming a reality for all Americans. Racially discriminatory policies, like those enforced by the Federal Housing Administration, a federal agency designed to promote homeownership opportunities, openly discriminated against African-Americans for

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<sup>9</sup> U.S. Department of Housing and Urban Development, “Discrimination in Metropolitan Housing Markets: National Results from Phase I of HDS 2000,” at i. Hereinafter HDS 2000.

<[http://www.huduser.org/publications/hsgfin/hds\\_phase1.html](http://www.huduser.org/publications/hsgfin/hds_phase1.html)>

<sup>10</sup> U.S. Department of Housing and Urban Development, FY 2006 Annual Report of Fair Housing at 1. In HUD’s FY 2006 Annual Report of Fair Housing, HUD and the Fair Housing Assistance Program (FHAP) received 10,328 complaints

<sup>11</sup> HDS 2000 at iii. After conducting 4,600 paired tests in 23 metropolitan areas, in which a minority individual and a white individual posed as otherwise identical home seekers, HUD released this report in November 2002 which found that discrimination has decreased since 1989, but African Americans and Latinos still face discrimination in national metropolitan markets.

<sup>12</sup> *Id.*

<sup>13</sup> Deborah Barfield Berry and Robert Benincasa, A growing number allege unfair treatment in housing market, USA Today, September 29, 2007.

nearly 30 years, thus limiting their homeownership opportunities, while simultaneously promoting such opportunities for whites.

Jim Crow laws, which effectively prevented African-Americans from gaining access to generational wealth, significantly contributed to the creation of a homeownership gap between African-Americans and whites. While these historic policies represent a shameful chapter in our history, we have the ability to correct the past.

The Fair Housing Law Clinical Program believes that government support must be provided to all fair housing laws and organizations working on this effort. It can be addressed in a variety of ways – through education, increased funding, more advocacy, and government intervention and coordination. Fair housing and affordable housing must become more cohesive in order to address historical and current issues, such as the homeownership gap and home foreclosures.

However, the real key will be the creation of a new government agency or some federal supported entity, separate from HUD, which focuses on discrimination in housing and affordable housing while devoted to narrowing the homeownership gap between whites and African-Americans. With so much work HUD has to perform in the housing arena, it would be best if addressing the homeownership gap (affordability and fair housing policies) were the responsibility of another specific agency. HUD would then be free to address other issues such as fair housing enforcement, public housing development, and community economic development.

However, it is imperative that any efforts to address African-American home ownership be subject to regulation to prevent a repeat of the recent housing crisis which

has perpetuated the homeownership gap. If this country is to move towards equality, this gap must be reduced. Failure to do so will only result in more racial division and hostility as equity and wealth disparities between the races are further exacerbated.