

Good morning and thank you for inviting me to offer my views. The organization that I represent, The Reinvestment Fund, is a community development financial institution with offices in Philadelphia, Washington DC and Baltimore MD. We lend money throughout the mid-Atlantic for the creation and rehabilitation of affordable homeownership and rental housing, charter schools, supermarkets in underserved areas, daycare centers, and other commercial ventures that have the capacity to build up wealth and economic opportunity for people and places where economic opportunity is not abundant. In addition to our lending, we do a variety of statistical, spatial and qualitative (interviews) research and analysis for government at all levels and for philanthropies; we also provide support to federal and state law enforcement agencies and private consumer protection and civil rights lawyers. My personal background includes eight years of service for the US Department of Housing and Urban Development eventually as the Regional Director of FHEO for the Mid-Atlantic Region. And I had the honor and privilege of representing HUD's former Assistant Secretary for FHEO – Roberta Achtenberg – on the federal interagency task force of fair lending. It is from our research at TRF and my personal experiences that I framed these remarks about housing discrimination in general, and discrimination in mortgage lending specifically.

Undoubtedly at prior Commission sessions, others more knowledgeable than I have described the historical context within which many of the most important housing civil rights statutes were created. I would like to focus my remarks, primarily, on the Fair Housing Act and its amendments in 1988. Between the time the Fair Housing Act was passed in 1968 and the 1988 amendments, Congress passed several other important statutes: the Equal Credit Opportunity Act, Community Reinvestment Act, and the Home Mortgage Disclosure Act. These laws both strengthened the legal infrastructure of civil rights in housing finance and set the stage for the public to weigh in on whether lenders were assessing and meeting the credit needs of the communities within which they were chartered (consistent with safety and soundness considerations). Congress also passed a series of other laws, for entirely different purposes, but not irrelevant to the situation in which we now find ourselves. Those are the Depository Institutions Deregulation and Monetary Control Act, Alternative Transaction Parity Act, Tax Reform Act of 1986, and the 1994 Homeownership and Equity Protection Act (HOEPA) Amendments to the Truth in Lending Act. Think of the period between 1968 and 1988 as a period during which Congress gave us a body of laws to protect civil rights in housing.

The Fair Housing Act amendments in 1988 gave the Secretary of HUD some awesome authorities, as well as extending the umbrella of its protections. Notable among the protections were: (1) a true enforcement mechanism within HUD including the authority to investigate and pursue cases HUD believes represent violations of the Fair Housing Act; (2) authority of the Secretary of HUD to pursue discrimination he or she observes without waiting for a complainant to come forward. Congress' insightful inclusion of the Secretary Initiated authority created a particularly useful tool in lending discrimination because borrowers are typically unaware of the discriminatory nature of the treatment they receive.

For decades, the nature of discrimination in mortgage lending was the denial of credit to individuals based on their race (or to communities, based on racial composition). This appears to have been the dominant form of lending discrimination up through the early to middle-1990s. After that, the proliferation of subprime lending, especially to minority group members and communities, changed the nature of discrimination to reflect extensions of credit but under less advantageous terms. Virtually every study, including those done by the Federal Reserve, show that minorities were more likely to get subprime loans even after controlling for legitimate underwriting factors. And although studies of predatory lending (not just subprime lending) are few, our own Ford Foundation funded study of predatory lending in Philadelphia shows that the likelihood of predatory lending was greater in minority areas – although the evidence also shows that predatory lending could be found in some predominantly White areas too. It was the history of discrimination that set the stage for its contemporary forms.

The evidence suggests that after 1988, HUD and Justice built up their enforcement efforts. The watershed case was *USA v. Decatur*. A review of Justice's body of cases shows a pursuit of cases that served some very critical purposes: (1) the cases were a clear sign to the public that lenders that discriminate will face the serious and certain consequences available under the law; (2) the issues raised in Justice's cases evolved with the changing nature of discrimination – from the outright denial of credit based on race to the extension of credit under different and more adverse terms related to pricing, method of lender/broker compensation; (3) millions of dollars were recovered for victims of discrimination. Think of the post-1988 through 2000/2001 years as the ramping up of enforcement period.

A few enforcement facts: (1) HUD's Fair Housing Act charges are down significantly from 2001 to 2007 (the latest period for which I have data); (2) between 2000 and 2007, Justice reports receiving only five pattern and practice lending referrals from HUD; (3) HUD Administrative Law Judge decisions have slowed to a trickle (none were rendered in 2005 or 2006) and they appear not to even have ALJs on staff to hear fair housing cases; (4) Secretary initiated case filings number three since 2002 and none of those were lending discrimination. Congress saw fit to entrust fair housing enforcement to HUD, and they failed to fulfill that public trust. Exacerbating the lack of enforcement was a concomitant move to fundamentally deregulate the lending industry. Think of the post-2001 years as one where fair housing (and especially fair lending) enforcement went dormant.

In short, federal civil rights law enforcement slowed significantly around 2000 leaving the task of civil rights enforcement to the states. Attorneys General around the country were able to achieve some significant settlements with entities such as First Alliance Mortgage Co. (with the cooperation of the FTC), Household Finance, Fremont Mortgage and Ameriquist – to name a few. But state actions have limits in efficacy for a number of reasons including the legal limitations on their jurisdiction (i.e., high court decisions limiting the reach of AGs against national banks and their subsidiaries). Cities are also taking up the mantle: so severe was the foreclosure problem in the minority communities of Baltimore that the City filed a claim under the Fair Housing Act against Wells Fargo.

The result of changes in the mortgage market and a lack of a serious threat of legal consequences for violations of the law resulted in epidemic levels of mortgage foreclosure. TRF has done a number of studies in cities such as Philadelphia, Baltimore, Washington DC, and the states of Pennsylvania, New Jersey, Delaware, and Maryland and found that foreclosures are disproportionately clustered in minority communities. While some cities manifest the problem more severely than others, the differences across cities are a matter of degree and timing.

At this moment of desperate federal action without a clear vision and plan for solving the foreclosure problem, civil rights protections must be put on a par with other considerations. Underlying the SIVs, CDOs, MBSs and other alphabet investment instruments are millions of homeowners. To that end, I recommend the following:

First, we must expect the next administration to immediately and clearly send a message that “fair housing is the law of the land” and that violators will be pursued by the federal government. Clearly there are a lot of problems in the financial markets but every day that the federal fair lending enforcement effort languishes, individual rights are lost as the statutes of limitations expire. The current problem was being felt in minority communities for years and the fair housing rights of these communities must be vindicated.

Second, HUD has access to data and expertise that they can mine in an effort to uncover patterns of discrimination in lending and foreclosure (i.e., making housing unavailable). They need to systematically mine those data and proactively pursue cases under the Secretary Initiated provisions of the Fair housing Act. It appears from public testimony that they have tried to do this over the last few years but have not made tangible progress.

Third, although financial regulatory agencies have been sending cases of potential discrimination to Justice as required by law, the vast majority of those cases are returned to the regulators for administrative action. That does not serve to protect civil rights. Moreover to the extent that the regulators have obviously missed a fair amount of safety and soundness problems as evidenced by the number and size of recent bank failures, they are likely not being fully diligent in uncovering possible ECOA and Fair Housing Act violations. The regulators are a critical part of the federal civil rights enforcement effort and they must be held accountable.

Fourth, we must find a way to insulate civil rights law enforcement from the vagaries of politics. If Fair Housing Act responsibility stays with HUD, or wherever it goes, those charged with enforcement must be given ample resources and authority to operate, and responsibility and accountability should they fail at their mission. Congressman Frank recently called upon GAO to examine the federal fair housing enforcement effort. This examination must be monitored closely to ensure that a meticulous job is done and that where remedial actions are required that they are taken.

I thank you for convening these sessions on this very important matter of public policy and for the opportunity to share my thoughts with you.