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No doubt throughout the series of hearings that will be conducted across the country, you will hear information about the grave disparities between people of color and whites. I want to impress upon you that at the root of many of these disparities lay myriad forms of systemic housing discrimination which still persist today.

Many systemic discriminatory practices and the disparities and inequities they create are possible because America is so segregated. It is a Catch 22 and perpetual cycle. Segregation helps foster systemic discrimination and exacerbates its ill effects. Systemic discrimination perpetuates residential segregation.

The National Fair Housing Alliance has devoted its enforcement efforts to combating systemic discrimination. One of the most effective and impactful examples of this was the Insurance Partnership founded by the National Fair Housing Alliance and four local private fair housing agencies - Housing Opportunities Made Equal of Richmond, Virginia; Housing Opportunities Made Equal of Cincinnati, Ohio; Metropolitan Milwaukee Fair Housing Council of Milwaukee, Wisconsin; and the Fair Housing Center of Toledo, Ohio. The partnership was aided by grants from the U.S. Department of Housing and Urban Development under the Fair Housing Initiatives Program because HUD, in 1994, introduced a special funding initiative for the investigation and enforcement of systemic violations of the Fair Housing Act.

The Partnership allowed for the collaboration among these fair housing groups in the investigation, testing and research of systemic barriers to fair housing in the homeowners insurance sector. As a result of this unique partnership, the groups were able to develop novel investigative and research methodologies. A number of administrative complaints were filed against insurers as a result of the systemic investigations conducted by these groups. Several lawsuits were brought as well. This resulted in, literally, an over-hauling of the homeowners insurance market. Both the legal and administrative actions culminated in the elimination of discriminatory underwriting policies, the placement and/or expansion of insurance offices and servicing centers in predominately Latino and African-American communities, and the extension of replacement cost insurance in Black and Latino neighborhoods. Before these actions, these communities could not get affordable, quality insurance and were often relegated to FAIR Plans and the residual insurance market.

The investigations also led to a heightening of the issue. Under Assistant Secretary Roberta Achtenberg, HUD hosted a series of hearings across the country and received

testimony from civil rights groups, insurance companies, trade associations and homeowners about the availability and affordability of homeowners insurance.

The slide illustrates two test houses that were used in Richmond, Virginia for a part of the investigation. While the houses are substantially similar, in test after test, the house located in the predominately African-American community could not get insurance or was relegated to the residual market.

While the resolution of the cases brought by these private groups and the broad scale change it brought to the industry was lauded on many levels, barriers existed along the way that, on more than one occasion, might have upended the achievements of private groups. For example, after learning that FHIP funds were used to underwrite some of the investigations, some in the insurance industry successfully lobbied for Congress to impose a moratorium on insurance investigations through HUD. The moratorium effectively barred future “partnerships”. Thus, a proven and effective method of conducting systemic investigations was prohibited by members of Congress who had close alliances with some in the insurance industry.

Barriers existed elsewhere. When the private groups filed administrative complaints with HUD, alleging discrimination by insurance companies, we were able to work with HUD to resolve two of the complaints.

However, companies that were recalcitrant and who did not want to eliminate their restrictive and discriminatory policies balked. The investigations stalled at HUD and the groups were unsuccessful in convincing DOJ to get involved in a meaningful way. Ultimately, the private groups had to seek the legal courts to gain redress. The private groups either successfully litigated or settled each of the remaining complaints by using the private bar and court system.

DOJ did settle a complaint with a major insurer, American Family, in 1995. However, American Family was able to continue to use the market value of a home to limit the amount of property insurance coverage. This had the effect of restricting access to their most favorable Gold Star policies in predominately African-American and Latino communities. Several property owners filed complaints with the Toledo Fair Housing Center about American Family’s practices. The Center initiated an investigation and found that American Family was not fully insuring homes in predominately African-American neighborhoods in Toledo. If there was too much of a differentiation between the market value of a home and the replacement cost of a home, American Family would not allow the homeowner to receive full replacement cost coverage on the home. This practice has been shown to discriminate against African-American and Latino neighborhoods and contributes to the disinvestment of these communities.

While DOJ did not exert itself as it should have in this case to completely eliminate underwriting guidelines that had a disparate impact against African-American communities, it did learn an extensive amount of information about the homeowners insurance business. It learned even more when it pursued an action against a major

insurer. However, for some reason, DOJ did not continue its examination of the homeowners insurance industry. While private groups brought a number of actions against homeowners insurance companies for redlining and discriminatory practices at great expense and cost to these small, non-profit agencies, DOJ was silent. It did not use its significant resources to buttress the efforts of the private, non-profit fair housing community, nor did it work in tandem with these civil rights agencies to insure that insurance companies across the country were not engaging in discriminatory behavior.

Systemic discrimination is also pervasive in the real estate community. In 2003, NFHA embarked on a multi-year, twelve city enforcement project to test for housing discrimination in real estate markets after entering into a contract with HUD to do follow up testing for the Housing Discrimination Study. HDS 2000 is a research report that measures the extent of housing discrimination in the United States against persons based on race or color. It is worth noting that the study, because it was a research based study, did not fully capture all of the many ways in which discriminatory acts occur. As a result, HDS undercounts and underestimates the level of discrimination against minorities - especially in the home sales markets.

In the twelve metropolitan areas investigated between 2003 and 2005, NFHA's testing revealed discriminatory steering practices and other illegal behaviors. In 20% of the real estate tests, African-American or Latino testers were denied service by real estate agents or provided limited service.

This limited service included refusal to meet with Black or Latino testers, failure to show up for appointments with Black or Latino testers, and showing few homes to Black or Latino testers while showing multiple homes to White testers. In addition, there were numerous instances in which the Black or Latino tester was required to provide a pre-approval letter or other financial information before viewing any homes, while no such requirement was placed on the White tester. Moreover, in several instances, the White tester was offered incentives, such as contributions to closing costs and/or lower interest rates, while no such offers were made to the Black or Latino testers.

More shocking, NFHA uncovered significant racial steering by numerous real estate companies. In the tests where testers were actually shown homes, the rate of racial steering was 87 percent. This significant finding helps explain continued patterns of racial and ethnic residential segregation in America.

Since 2005, NFHA has filed 11 real estate sales discrimination cases with HUD. Only two investigations have been completed by HUD. In one case, which was referred to the Michigan Department of Civil Rights (MDCR), MDCR issued a charge of discrimination against the real estate company involved. NFHA filed this case in federal court and the case is pending.

In this case, as the map illustrates, White testers were steered to predominately White communities. Black testers were mainly steered to Detroit. Even when White testers requested to see homes in Detroit, they were steered away to suburban communities and

told that the schools in Detroit were not good. Black testers who requested to see homes in suburban communities on the other hand, were steered to Detroit and told that homes in Detroit were a better value. This map also depicts the stark segregation in metro Detroit, in part caused by discriminatory practices by some in the real estate sales community.

While HUD has charged one complaint against Re/Max East-West, located in Elmhurst, Illinois, 9 other cases still await a decision. Some of the cases have been pending for over 3 years, including one case in which a real estate agent told a White tester, while tossing away a print-out of home listings, that he had printed out two different sets of listings because he could not tell whether the tester was White or Black over the phone. The one complaint in which HUD has issued a charge involves discrimination and steering based on national origin and race. Agents of this real estate company repeatedly showed and recommended homes and school districts to White homeseekers in predominately White communities and showed and recommended homes and school districts to Latino homeseekers in communities with significant Latino and/or African-American populations.

Other cases pending include complaints involving the largest real estate sales company in the nation, NRT.

In Marietta, Georgia, as this map illustrates, not one of the African-American testers was shown a home, while White testers saw 24 homes. Moreover, as this map illustrates, in testing involving the Condo Store, as this map illustrates, there were significant differences in the number of homes shown to White testers compared to the number of homes shown to African-American testers. Moreover, White testers were steered to predominately White communities while African-American testers were steered to communities with significant minority population. It is important to note that in these tests, the African-American and Latino testers were better qualified than the White testers.

Additionally, in Brooklyn, New York, NFHA's investigation of The Corcoran Group revealed discriminatory real estate sales practices, including limited service, lack of follow-up and withholding of housing information. Agents provided limited service and information to potential African-American homeseekers. In one test, a White homeseeker saw 13 homes versus only 1 seen by an African-American. Agents further engaged in unequal treatment by providing more detailed financial options and incentives to White homeseekers. One agent presented a White homeseeker with a sales application and offered to negotiate a reduced sales price and research alternative living arrangements. The African-American homeseeker received no such service.

In this investigation's most egregious incident, one agent produced a map of Brooklyn and drew a red outline of the areas in which the White homeseeker should consider living. The first map depicts the agent's markings. The second shows the location of Corcoran Group office locations in New York and the distribution of African-Americans and Whites.

In Chicago, NFHA's testing of Coldwell Banker Residential in its Gold Coast office revealed blatant housing discrimination against African-Americans on the north side of Chicago including the neighborhoods of Lincoln Park, the Loop, Gold Coast, and Lakeview.

As the Gold Coast maps reveal, Real estate agents consistently showed White homeseekers more condominium units than their African-American counterparts. Overall, agents showed White homeseekers 36 units versus showing only 7 units to African-Americans. Against her own economic interest, one real estate agent told a potential African-American homebuyer that he should rent rather than buy, although his financial profile was stronger than his White counterpart's. He was shown no units; the White homeseeker working with the same agent saw 21 units. In another instance, an agent showed a White homeseeker 15 different units; the African-American counterpart saw only three units.

These cases, filed with HUD in 2005 and early 2006, are still pending investigation.

Systemic discrimination also abounds in our financial markets. America has a bifurcated lending system that has negative effects on African-Americans and Latinos. It always has. There has never been a time in our history when African-Americans and Latinos have participated in the financial mainstream markets to the same degree as their White counterparts. Beginning immediately after the Civil War and the passage of the 13th Amendment, Congress established a separate financial system for newly freed slaves. The Freedman's Bank came about initially because African-American soldiers who had risked their lives to save the Union had no place to deposit their savings and no safe place to transact their financial business. Since African-Americans were not welcome, and in some cases forbidden by law, to conduct business in so-called White financial establishments, several Union generals, including General Oliver Howard, for whom Howard University was named, urged Congress to set up a financial institution for Blacks. From the beginning, our financial markets have been separate and unequal. This pattern continues today.

As mortgage lending began to take root in the early 1900s, Black Codes and Jim Crow laws made it difficult for people of color to utilize the financial mainstreams. With the failure of the Freedman's Bank due to fraud and speculation, ironically largely perpetrated by the White Trustees of the Freedman's Bank, people of color had no viable resource. Real estate, lending and appraisal manuals readily embraced the idea that racial homogeneity was key to sustaining home value and that the racial characteristics of the neighborhood affected real estate value and, therefore, loan risk.

Indeed appraisal manuals created by the American Institute of Real Estate Appraisers listed a ranking of races and nationalities to indicate their impact on real estate value. The most favorable groups were listed at the top. The least favorable groups were listed at the bottom. One of the rankings appeared as follows:

1. *English, Germans, Scotch, Irish, Scandinavians*
2. *North Italians*
3. *Bohemians or Czechs*
4. *Poles*
5. *Lithuanians*
6. *Greeks*
7. *Russians, Jews (lower class)*
8. *South Italians*
9. *Negroes*
10. *Mexicans*

This bias created and fostered the separate and unequal financial system that still exists today. Racism is still present in the American marketplace and it is inextricably tied to inequality in our lending and financial markets. We have a systemic problem, as a clear look at our financial landscape reveals.

- African-American and Latino homebuyers “face a statistically significant risk of receiving less favorable treatment than comparable Whites when they ask mortgage lending institutions about financing options.”¹
- African-Americans are much more likely than their White counterparts to receive a loan denial.²
- African-Americans and Latinos are more likely to receive payment-option and/or interest-only mortgages than their White counterparts.³
- African-Americans and Latinos are much more likely to receive a subprime loan than their White counterparts according to HMDA data. Roughly 54% of African-Americans and 47% of Latinos received subprime loans compared to approximately 17% of Whites.
- Even higher income African-Americans and Latinos receive a disproportionate share of subprime loans. According to one study that analyzed more than 177,000 subprime loans, borrowers of color are more than 30 percent more likely to receive a higher-rate loan than white borrowers, even after accounting for differences in creditworthiness.⁴
- An analysis by the Center for Responsible Lending shows that borrowers residing in zip codes whose population is at least 50 percent minority are 35 percent more likely to receive loans with prepayment penalties than financially similar borrowers in zip codes where minorities make up less than 10 percent of the population.⁵

¹ Turner, et al. *All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions*. The Urban Institute, 2002.

² Carr and Megboulugbe. “The Federal Reserve Bank of Boston Study on Mortgage Lending Revisited.” *Journal of Housing Research*, Volume 4, Issue 2, Fannie Mae, 1993.

³ *Exotic or Toxic? An Examination of the Non-Traditional Mortgage Market for Consumers and Lenders*. Consumer Federation of America, May, 2006.

⁴ See Bocian, D. G., K. S. Ernst, and W. Li, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages*, Center for Responsible Lending, May 2006, p. 3.

⁵ Bocian, D.G. and R. Zhai, *Borrowers In Higher Minority Areas More Likely to Receive Prepayment Penalties on Subprime Loans*, Center for Responsible Lending, January 2005.

- Moreover, an ACORN study revealed that high income African-Americans in predominantly minority neighborhoods are three times more likely to receive subprime loans than low-income whites.⁶
- *A study of payday lending in Illinois revealed that payday lenders are much more concentrated in zip codes with high African-American and Latino populations⁷. Yet another study conducted in North Carolina revealed that payday lenders were disproportionately concentrated in African-American neighborhoods⁸. Slide #9 depicts the disproportionate concentration of payday lenders in Latino and African-American neighborhoods in Washington, D.C.*
- According to a HUD study analyzing homeownership sustainability patterns among first-time homebuyers, it takes African-Americans and Latinos longer to become homeowners. However, once homeownership status is attained, these groups lose their status the quickest. The study reveals that the average homeownership stay for Whites, Latinos and Blacks is 16.1 years, 12.5 years and 9.5 years respectively.
- After foreclosure, the duration of renting or living with relatives is 10.7 years for Whites, 14.4 years for African-Americans and 14.3 years for Latinos.⁹

Subprime lenders assert that the higher fees they charge are required due to the added risk that their borrowers present. However, both Fannie Mae and Freddie Mac have reported that a significant number of borrowers who received subprime loans would have qualified for a prime loan. Moreover, Federal Reserve Governor Edward Gramlich noted that half of subprime borrowers had credit scores of 620 or higher. (At the time of his statement, a score of 620 would qualify a borrower for a prime loan.) Even the subprime industry itself boasted to its investors that a substantial portion of its borrowers were prime borrowers. According to a study conducted by the Wall Street Journal, this number may be as high as 61 percent.¹⁰

Latinos and African-Americans are also discriminated against when they seek loans at mainstream financial institutions. In the mid-1990s, NFHA conducted fair lending investigations that revealed discrimination based on race or national origin in two-thirds of almost 600 tests conducted in eight cities, including Boston. In two-thirds of the tests, whites were favored over African Americans and Latinos; in only 3 percent of the tests, African American and Latino testers were favored over white testers. In all cases, the African American and Latino testers were better qualified for the loans than their white counterparts.

NFHA's lending testing uncovered multiple ways in which Latinos and African-Americans were denied lending opportunities in the financial mainstream markets

⁶ *The Impending Rate Shock: A Study of Home Mortgages in 130 American Cities*. ACORN 2006.

⁷ The Woodstock Institute. Reinvestment Alert No. 25, Chicago, IL. (April, 2004).
http://woodstockinst.org/document/alert_25.pdf

⁸ Davis, D., et al. *Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods*. Center for Responsible Lending, Durham, NC., 2005

⁹ Donald R. Haurin and Stuart S. Rosenthal, *The Sustainability of Homeownership: Factors Affecting the Duration of Homeownership and Rental Spells*. U.S. Department of Housing and Urban Development Office of Policy Development and Research, December, 2004.

¹⁰ "Subprime Debacle Traps Even Very Creditworthy," *Wall Street Journal*, December 3, 2007.

including: 1) differences in the qualitative and quantitative information provided to African-American and White loan seekers with African-Americans receiving inferior treatment; 2) lenders' urging African-American customers but not white customers to go to another lender for service; 3) lenders' indicating to African-American but not White customers that loan procedures would be long and complicated; 4) African-Americans' being more likely than their equally qualified white counterparts that they would not qualify for a loan; and 5) White customers' being much more likely to be coached on how to handle the lending process and deal with problems in their financial profiles. A study and analysis of NFHA's testing concluded that NFHA's testing provided "convincing evidence of significant differential treatment discrimination at the pre-application stage."¹¹

The Justice Department began investigating the prime and subprime markets in the 1990s and entered into important consent decree with Decatur Federal Bank, Long Beach Bank and later filed an amicus brief in the Capitol City Mortgage Corporation complaint. Justice gained important insights into subprime lending, but failed to use this information to initiate in-depth investigations into the largest subprime lenders such as Countrywide Home Loans, The Associates and others. Neither did DOJ share its knowledge of how these lending markets functioned with HUD, FHAP agencies or private fair housing centers that could have initiated local investigations. As a result, we saw the subprime market expand from less than 50 companies in the early 1990s to more than 400 companies capable of exploiting and flipping the homes of seniors with equity, refinancing homeowners of color into exploding ARM mortgages and finally targeting middle income homeowners and pushing exotic and unsustainable loan products. Federal regulatory agencies made few referrals to Justice yet Justice did not use its knowledge of how the subprime market operated to teach bank examiners how to identify fair lending violations. America might still be facing a foreclosure problem today, but it would not be a crisis if HUD and Justice had vigorously investigated fair lending complaints.

Indeed, DOJ has not used its powers to address systemic discrimination in the lending markets. DOJ learned about the structure and machinations of the lending market when it pursued the Long Beach and Capital City cases. However, the Department did not use that knowledge to teach HUD, regulatory agencies or private fair housing groups how to best investigate issues in the subprime market. Nor did it use this expertise it had gained to continue pursuing issues in the subprime market even though the Department knew problems were persisting.

Sadly, government entities do not work in a coordinated effort to address systemic discrimination housing issues. This country desperately needs an entity with the authority, resources, knowledge and mandate to conduct and direct coordinated systemic investigations utilizing both the private and public sectors in enforcing this nation's fair housing laws. It is imperative that we fix this problem and we must do it now. Many of our society's ills, whether it be environmental discrimination, predatory lending,

¹¹ Turner and Skidmore. *Mortgage Lending Discrimination: A Review of Existing Evidence*. The Urban Institute, 1999.

educational and health disparities or neighborhood disinvestment, can be directly and inextricably linked to residential segregation.

If we do not take seriously both of the purposes of the Fair Housing Act, the elimination of housing discrimination and the achievement of residential integration, this country will be doomed to repeating multiple cycles of discrimination, segregation and the disinvestment and stifling of racially isolated communities.