

# **RESIDENTIAL SEGREGATION AND HOUSING DISCRIMINATION IN THE UNITED STATES**

## **Violations of the International Convention on the Elimination of All Forms of Racial Discrimination**

**A Response to the 2007 Periodic Report of the United States of America  
Submitted by Housing Scholars and Research and Advocacy Organizations**

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## EXECUTIVE SUMMARY

Residential segregation is an insidious and persistent fact of American life. Discrimination on the basis of race, while on the decline according to some estimates, continues to pervade nearly every aspect of the housing market in the United States. This shadow report evaluates the current state of housing discrimination and segregation and the United States government's failure to fulfill its obligations related to housing under the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD").

Historically, policies and practices of the United States government, as well as state and local governments, have helped to create highly segregated residential patterns across the United States. Today, many of the government's programs and policies continue to perpetuate segregation and concentrate poverty in communities of color, albeit without the explicit design of earlier programs. For example, family public housing is highly segregated and predominantly located in areas of concentrated poverty. Similarly, since 2001, the federal government has implemented policy changes and budget cuts that have restricted affordable housing choice and mobility for participants in the Section 8 Housing Choice Voucher Program. In addition, the Low Income Housing Tax Credit provides an incentive to develop affordable housing primarily in poor and predominately minority neighborhoods, which often perpetuates residential segregation. These federal programs are augmented by state and local government policies that contribute to residential segregation—including exclusionary zoning rules and school attendance boundaries.

Nor has the United States government adequately responded to private acts of housing discrimination. African Americans and Latinos frequently encounter discrimination when attempting to rent or purchase a home, or when attempting to secure funding or insurance for a home purchase. Despite its illegality, the practice of "steering," in which real estate agents direct people toward homes in buildings or neighborhoods in which their presence will not disturb the prevailing racial pattern, is becoming more, rather than less, common. In addition, people of color are more likely than whites with similar borrower characteristics to be victims of predatory lending, to receive higher cost loans, and to lose their homes to foreclosure. Because home equity is the largest pool of wealth for most families in the United States, disparities in homeownership are a major component of persistent racial inequality.

CERD imposes on the United States government an obligation to ensure that all people enjoy the rights to housing and to own property, without distinction as to race. It requires the United States government to cease discriminatory actions, including those that are discriminatory in effect regardless of intent, and to take affirmative steps to remedy past discrimination and eradicate segregation. This report contains a number of recommendations—addressed specifically to the Department of Housing and Urban Development, the Department of Justice, the United States Congress, the Internal Revenue Service, and state and local governments—to assist the United States government in complying with its obligations under CERD.

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## I. Overview

### Obligations Related to Housing Under CERD

1. The United States government's obligations with respect to housing under CERD are similar to its duties under the Fair Housing Act (the "FHA" or "Act"),<sup>1</sup> as well as the closely linked Equal Credit Opportunity Act.<sup>2</sup> The FHA requires the federal government and all agencies and grantees involved in federally funded housing to "affirmatively further" fair housing.<sup>3</sup> It, most centrally, requires that the United States Department of Housing and Urban Development ("HUD") enforce the terms of the FHA as they relate to discrimination in private housing transactions and in credit markets in conjunction with the United States Department of Justice ("DOJ").<sup>4</sup> The Act also directs the federal government to take affirmative steps to remedy private discrimination, to avoid governmental policies that perpetuate segregation, and to reverse historical patterns of segregation and discrimination.<sup>5</sup> Analogously, under CERD, the United States has accepted the following obligations:

- To ensure the compliance of "all public authorities and public institutions, national and local" with the obligation not to engage in racial discrimination.<sup>6</sup>
- To "review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which," regardless of intent, "have the effect of creating or perpetuating racial discrimination wherever it exists."<sup>7</sup>
- To "particularly condemn racial segregation" and "undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."<sup>8</sup> In 1995, the Committee on the Elimination of Racial Discrimination issued a detailed interpretation of Article 3 explaining that the duty to eradicate segregation includes not only the obligation to cease active discrimination, but also the obligation to take affirmative steps to eliminate the lingering effects of past discrimination.<sup>9</sup> It recognized that, although conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an intended or unintended consequence of the actions of private persons.
- To "undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or

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<sup>1</sup> 42 U.S.C. §§ 3601-3631 (2000).

<sup>2</sup> 15 U.S.C. §§ 1691-1691f, § 1691 (1991) (prohibiting discrimination on the basis of race and other characteristics "with respect to any aspect of a credit transaction").

<sup>3</sup> 42 U.S.C. § 3608(d).

<sup>4</sup> Exec. Order No. 12,892, 3 C.F.R. 849 (1995); *see also* 42 U.S.C. § 3608 ("The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development."); 15 U.S.C. § 1691e(k) (providing for notification to HUD of Equal Credit Opportunity Act complaints raising potential FHA violations).

<sup>5</sup> 42 U.S.C. § 3608(d).

<sup>6</sup> International Convention on the Elimination of All Forms of Racial Discrimination art. 2 § (1)(a), Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter CERD].

<sup>7</sup> *Id.* at art. 2 § (1)(c).

<sup>8</sup> *Id.* at art. 3.

<sup>9</sup> U.N. Comm. on the Elimination of Racial Discrimination, Aug. 18, 1995, General Recommendation 19, Racial segregation and apartheid (Forty-seventh session, 1995), ¶ 140, U.N. Doc. A/50/18, *reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 208 (2003), *available at* <http://www1.umn.edu/humanrts/gencomm/genrexix.htm>.

national or ethnic origin, to equality before the law, notably in the enjoyment of” the right to housing, and the right to own property alone as well as in association with others.<sup>10</sup>

### **The Current State of Housing Segregation in the United States**

2. Given the persistence and prevalence of housing segregation throughout the United States, it is evident that, despite this Committee’s expressed concern “about persistent disparities in the enjoyment of, in particular, the right to adequate housing,”<sup>11</sup> the United States has not satisfactorily complied with its obligations under CERD. According to the most recent estimates from the United States Census Bureau, Latinos constitute 14.8% of the United States population, while the non-Latino population is 66.4% white, 13.4% African American, 4.9% Asian, 1.5% American Indian or Alaska Native, and 0.34% Native Hawaiian and other Pacific Islander.<sup>12</sup> However, “[t]he average white person in metropolitan America lives in a neighborhood that is 80% white and only 7% black.”<sup>13</sup> In stark contrast, “[a] typical black individual lives in a neighborhood that is only 33% white and as much as 51% black,”<sup>14</sup> making African Americans the most residentially segregated group in the United States.<sup>15</sup>
3. For African Americans and Latinos, relatively high incomes are no protection against segregation, as “[d]isparities between neighborhoods for blacks and Hispanics with incomes above \$60,000 are almost as large as the overall disparities, and they increased more substantially in the [1990s].”<sup>16</sup>
4. Segregation has a plurality of causes, including private discrimination, historical and current government policies, income differentials, and preference.<sup>17</sup> Although housing

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<sup>10</sup> CERD, *supra* note 6, art. 5 §§ (d)(v), (e)(iii).

<sup>11</sup> U.N. Comm. on the Elimination of Racial Discrimination, Aug. 14, 2001, Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America (Fifty-ninth session, 2001), ¶ 398, U.N. Doc. A/56/18, *available at* <http://www1.umn.edu/humanrts/country/usa2001.html>.

<sup>12</sup> U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE POPULATION BY SEX, RACE, AND HISPANIC OR LATINO ORIGIN FOR THE UNITED STATES: APRIL 1, 2000 TO JULY 1, 2006 (2006), *available at* <http://www.census.gov/popest/national/asrh/NC-EST2006-srh.html>; *see also* Press Release, U.S. Census Bureau, Minority Population Tops 100 Million (May 17, 2007), *available at* <http://www.census.gov/Press-Release/www/releases/archives/population/010048.html>.

<sup>13</sup> JOHN LOGAN, LEWIS MUMFORD CTR. FOR COMPARATIVE URBAN & REG’L RESEARCH, ETHNIC DIVERSITY GROWS, NEIGHBORHOOD INTEGRATION LAGS BEHIND 1 (2001), *available at* <http://www.s4.brown.edu/cen2000/WholePop/WPreport/MumfordReport.pdf>.

<sup>14</sup> *Id.*

<sup>15</sup> JOHN ICELAND ET AL., U.S. CENSUS BUREAU, RACIAL AND ETHNIC RESIDENTIAL SEGREGATION IN THE UNITED STATES: 1980-2000, at 95 (2002).

<sup>16</sup> LOGAN, *supra* note 13, at 1.

<sup>17</sup> Preference is frequently cited as a primary cause of segregation. However, this simplifies the reality of housing choice in the United States. Housing choices are made against the backdrop of a racially and economically segregated market, and many people, whether due to economics, discrimination, or other factors, have little to no meaningful choice in terms of where they live. White people in the United States have often chosen to live in white enclaves for a number of different reasons, some explicitly discriminatory and others not, *see generally* KEVIN M. KRUSE, WHITE FLIGHT: ATLANTA AND THE MAKING OF MODERN CONSERVATISM (2005), and have defended those homogeneous neighborhoods vigorously. *See, e.g.*, THOMAS J. SUGRUE, THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT 210 (1996) (“In reaction to the economic and racial transformation of the city, Detroit’s whites began fashioning a politics of defensive localism that focused on threats to property and neighborhood.”) Even for people of color with the economic means to choose where to live, a decision to live in a neighborhood that is composed predominantly of people of color is often difficult; such a neighborhood “feels familiar, relaxed, and doesn’t require any conscious effort to exist,” but often “bear[s] burdens and costs that

discrimination against African Americans and residential segregation improved slightly between 1980 and 2000,<sup>18</sup> racial steering<sup>19</sup> continues at high levels, and racial isolation within America's cities<sup>20</sup> and schools<sup>21</sup> increased during that same period.

## **II. Government Policies Contribute to and Promote Residential Segregation**

5. Historically, the government's policies and practices have helped to create and perpetuate the highly racially segregated residential patterns that exist today.<sup>22</sup> As the United States admitted in its 2000 Periodic Report, "[f]or many years, the federal government itself was responsible for promoting racial discrimination in housing and residential segregation."<sup>23</sup> Beginning in 1934, the federal government, through the Federal Housing Administration's ("Administration") mortgage insurance programs, transformed the American housing market from one that was effectively inaccessible to people outside the upper-middle and upper classes to a broadbased one—but for whites only.<sup>24</sup> The Administration, in combination with New Deal-era selective credit programs, had a huge impact on the American housing market, functioning to insure private lenders against loss, standardize appraisal practices, and popularize the use of long-term, amortized mortgages.<sup>25</sup> These programs were also explicitly discriminatory and denied benefits in accordance with race-based rules.<sup>26</sup>
6. African Americans were also systematically excluded from GI Bill loan programs, which were administered through the Veterans Administration ("VA") and guaranteed mortgages for five million homes throughout the United States, because banks refused to approve loans for African Americans.<sup>27</sup> Both the VA and the Administration "endorsed the use of race-restrictive covenants until 1950" and explicitly refused to underwrite loans that would

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predominantly white [communities] do not," such as inadequate public schools. SHERYLL CASHIN, *THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* 130, 135 (2004).

<sup>18</sup> See John Iceland, *Racial and Ethnic Segregation and the Role of Socio-economic Status*, in *FRAGILE RIGHTS WITHIN CITIES: GOVERNMENT, HOUSING AND FAIRNESS* 107, 117 (John M. Goering ed., 2007).

<sup>19</sup> Steering is the practice of "directing prospective home buyers interested in equivalent properties to different areas according to their race." *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 94 (1979).

<sup>20</sup> See NANCY MCARDLE & GUY STUART, CIVIL RIGHTS PROJECT, *RACE, PLACE & SEGREGATION: REDRAWING THE COLOR LINE IN OUR NATION'S METROS* (2002) (collection of four housing studies on changing racial demographics in Boston, Massachusetts, Chicago, Illinois, and San Diego, California from 1990 through 2000), available at [http://www.civilrightsproject.ucla.edu/research/metro/three\\_metros.php](http://www.civilrightsproject.ucla.edu/research/metro/three_metros.php).

<sup>21</sup> See ERICA FRANKENBERG ET AL., CIVIL RIGHTS PROJECT, *A MULTIRACIAL SOCIETY WITH SEGREGATED SCHOOLS: ARE WE LOSING THE DREAM* 6 (2003).

<sup>22</sup> See DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 20 (1993).

<sup>23</sup> *Initial Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination*, at 49, delivered to the U.N. Committee on the Elimination of Racial Discrimination (Sept. 2000), available at <http://www.ushrnetwork.org/pubs/CERD.USA.pdf> [hereinafter *Initial Report*].

<sup>24</sup> KENNETH T. JACKSON, *CRABGRASS FRONTIER* 190-218 (1985); IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE* 115-41 (2005).

<sup>25</sup> See JACKSON, *supra* note 24, at 204; David M.P. Freund, *Marketing the Free Market: State Intervention and the Politics of Prosperity in Metropolitan America*, in *THE NEW SUBURBAN HISTORY* 11, 16 (Kevin M. Kruse & Thomas J. Sugrue eds., 2006).

<sup>26</sup> See JACKSON, *supra* note 24, at 207-09. For example, the Administration's Underwriting Manual described the "risks posed by the commingling of 'inharmonious racial groups.'" Arnold R. Hirsch, "Containment" on the Home Front: *Race and Federal Housing Policy from the New Deal to the Cold War*, 26 J. URB. HIST. 158, 162 (2000); CASHIN, *supra* note 17, at 111 (noting underwriting manual "maintained that it was 'necessary that properties shall continue to be occupied by the same social and racial classes'" and "instructed appraisers to predict 'the probability of the location being invaded by . . . incompatible racial and social groups'").

<sup>27</sup> See KATZNELSON, *supra* note 24, at 115, 139-40.

“introduc[e] ‘incompatible’ racial groups into white residential enclaves.”<sup>28</sup> Financing almost half of all suburban homes in the 1950s and 1960s, the Administration and VA employed racially discriminatory programs to facilitate the development of the suburbs.<sup>29</sup>

7. The failure of the federal government to take seriously its obligation to affirmatively further fair housing has meant that inaction and limited enforcement of Title VI and Section 109 statutory obligations<sup>30</sup> result in static patterns of racial segregation. Women of color are disproportionately harmed<sup>31</sup> by segregation in government-subsidized housing because, across all HUD programs, 79% of households are headed by women, 42% are headed by women with children, and 58% of residents are people of color.<sup>32</sup> The following are examples of programs and practices that continue to perpetuate residential segregation.

### **Public Housing**

8. Public housing policies have contributed significantly to the establishment and entrenchment of residential segregation and concentrated poverty throughout the United States. Most public housing built from the 1950s to the 1970s was comprised of large, densely populated “projects,” often consisting of high-rise buildings located in poor, racially segregated communities.<sup>33</sup> Housing authorities often yielded to public and political pressure not to locate public housing or its tenants in white neighborhoods.<sup>34</sup> In addition, the demographics of cities and public housing have changed, with fewer whites and more African Americans living in public housing.<sup>35</sup>
9. The federal government and individual housing authorities played an active and deliberate role in concentrating poverty in racially segregated public housing. Many cities established separate public housing for African American and white residents, whether explicitly or not.<sup>36</sup> In 1989, a court found the “primary purpose of [Dallas’s] public housing program was to prevent blacks from moving into white areas of th[e] city,” and that the city deliberately

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<sup>28</sup> Freund, *supra* note 25, at 16.

<sup>29</sup> JACKSON, *supra* note 24, at 215.

<sup>30</sup> Title VI of the Civil Rights Act of 1964 and Section 109 of title I of the Housing and Community Development Act of 1974 both prohibit discrimination in any program or activity funded in whole or in part with federal financial assistance. See 42 U.S.C. § 2000d; 42 U.S.C. § 5309(a). The statutes also provide the government with authority to review and require compliance. See 42 U.S.C. § 2000d-1; 42 U.S.C. §§ 5309(b), (c).

<sup>31</sup> See U.N. Comm. on the Elimination of Racial Discrimination, Mar. 20, 2000, General Recommendation 25, Gender Related Dimensions of Racial Discrimination (Fifty-sixth session, 2000), U.N. Doc. A/55/18, reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 214 (2003), available at <http://www1.umn.edu/humanrts/gencomm/genrexxv.htm>.

<sup>32</sup> See Office of Policy Dev. & Research, U.S. Dep’t of Hous. & Urban Dev., Dataset: A Picture of Subsidized Households–2000, available at <http://www.huduser.org/picture2000/index.html>.

<sup>33</sup> ROD SOLOMON, BROOKINGS INST., PUBLIC HOUSING REFORM AND VOUCHER SUCCESS: PROGRESS AND CHALLENGES 2 (2005). See generally Robert Gray & Steven Tursky, *Location and Racial/Ethnic Occupancy Patterns for HUD-Subsidized Family Housing in Ten Metropolitan Areas*, in HOUSING DESEGREGATION AND FEDERAL POLICY 235 (John M. Goering ed., 1986).

<sup>34</sup> See, e.g., Walker v. HUD, 734 F. Supp. 1289, 1294 (N.D. Tex. 1989); Gautreaux v. Chicago Hous. Auth., 296 F. Supp. 907, 913-14 (N.D. Ill. 1969).

<sup>35</sup> See, e.g., Thompson v. HUD, 348 F. Supp. 2d 398, 406 (D. Md. 2005); Walker, 734 F. Supp. at 1296; Gautreaux, 296 F. Supp. at 909.

<sup>36</sup> See, e.g., NAACP v. HUD, 817 F.2d 149, 151 (1st Cir. 1987) (Boston); Thompson, 348 F. Supp. 2d at 406 (Baltimore); Walker, 734 F. Supp. at 1294, 1296 (Dallas); Gautreaux, 296 F. Supp. at 909 (Chicago). For a discussion of the development of segregated public housing in Chicago as an example, see generally ARNOLD R. HIRSCH, MAKING THE SECOND GHETTO: RACE AND HOUSING IN CHICAGO 1940-1960 (1983).

took actions designed to create and maintain segregation through its public housing.<sup>37</sup> Similarly, Chicago public housing officials admitted to a policy of racial segregation and the imposition of racial quotas in its housing projects.<sup>38</sup> Not until 1985 were “[e]fforts to desegregate the nation’s public housing stock . . . extended to the entire nation.”<sup>39</sup>

10. HUD has admitted to constructing public housing in already segregated neighborhoods, and to being “part of the problem” and “complicit in creating isolated, segregated, large-scale public housing.”<sup>40</sup> The agency had long employed a deliberate policy of locating public housing residents in neighborhoods where their presence would not disturb the prevailing racial pattern.<sup>41</sup> Indeed, HUD, along with a number of individual local housing authorities, persistently resisted integration, and their policies regarding site selection, tenant selection, and tenant assignment ensured the continuation of racially identifiable public housing in racially concentrated neighborhoods.<sup>42</sup>
11. Today, public housing remains highly segregated and is located largely in areas of concentrated poverty. People of color constitute 69% of public housing residents; 46% are African American and 20% are Hispanic.<sup>43</sup> Public housing projects are located in census tracts in which, on average, people of color constitute 58% of the population and 29% of the population is below the poverty level.<sup>44</sup> Only 8% of households living in public housing have yearly incomes above \$20,000.<sup>45</sup> The levels of segregation for African Americans are even worse in family public housing; in 1990, 55% of the African American households in family projects were in census tracts with populations that were more than 70% African American.<sup>46</sup>
12. Racial discrimination and segregation in public housing affects women to a greater degree than men. According to HUD data from 2000, 77% of households living in public housing are headed by women, and 40% are headed by women with children.<sup>47</sup> Girls living in public housing also face specific risks because of their sex that are often more prevalent in areas of high poverty concentration, including harassment, domestic violence, sexual assault, pressure to become sexually active at a young age, and fear of victimization and exploitation.<sup>48</sup>

### **The Section 8 Housing Choice Voucher Program**

13. The Section 8 Housing Choice Voucher Program is a tenant-based rental voucher program administered by HUD, under which local public housing authorities (“PHAs”) issue more than 1.4 million housing vouchers nationwide to income-qualified households, who then find

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<sup>37</sup> *Walker*, 734 F. Supp. at 1293.

<sup>38</sup> *Gautreaux*, 296 F. Supp. at 909.

<sup>39</sup> John M. Goering, *Introduction*, in HOUSING DESEGREGATION AND FEDERAL POLICY, *supra* note 33, at 198.

<sup>40</sup> *See, e.g., Thompson*, 348 F. Supp. 2d at 467.

<sup>41</sup> *Id.* at 468.

<sup>42</sup> *Id.* at 469 (quoting HUD official’s admission); *Walker*, 734 F. Supp. at 1299-1300 (noting Dallas’ thirty-year illegal assignment of tenants); *Gautreaux*, 296 F. Supp. at 909, 912-13 (noting discriminatory racial quotas and site selection procedures).

<sup>43</sup> Office of Policy Dev. & Research, *supra* note 32.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> JOHN GOERING ET AL., U.S. DEP’T OF HOUS. & URBAN DEV., THE LOCATION AND RACIAL COMPOSITION OF PUBLIC HOUSING IN THE UNITED STATES 20, 21 tbl.7 (1994).

<sup>47</sup> Office of Policy Dev. & Research, *supra* note 32.

<sup>48</sup> Susan J. Popkin et al., *Girls in the ‘Hood: Evidence on the Impact of Safety, POVERTY & RACE*, Sept.-Oct. 2006.

privately-owned housing units to rent.<sup>49</sup> Large numbers of Section 8 program participants, as well as those eligible for Section 8 assistance, are people of color. In 2000, 61% of Section 8 voucher holders were people of color; 41% of voucher holders were African American and 16% were Hispanic.<sup>50</sup> Although intended to increase mobility and affordable housing choices for very low-income households, the Section 8 program, as administered, does not affirmatively promote the mobility of program participants.

14. Voucher holders frequently encounter difficulty moving to more affluent neighborhoods, where landlords often refuse to rent to Section 8 voucher-holders.<sup>51</sup> Discrimination against Section 8 recipients is illegal in many states and cities,<sup>52</sup> but landlords need not accept any particular individual rental applicant, and a study of Section 8 voucher-holders' experiences in Chicago found that "discrimination against Section 8 holders appears to be disturbingly common."<sup>53</sup> This discrimination disproportionately harms women of color, because 84% of households using Section 8 vouchers are headed by women, and 56% are headed by women with children.<sup>54</sup>
15. The Section 8 program has the potential to help ameliorate residential segregation.<sup>55</sup> However, recent policy changes have prevented Section 8 from achieving this potential and have set back gains attributable to the program. In 2002, the federal government eliminated funding for housing mobility programs, which provided counseling to voucher recipients

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<sup>49</sup> U.S. Dep't of Hous. & Urban Dev., About the Housing Choice Vouchers Program, <http://www.hud.gov/offices/pih/programs/hcv/about/index.cfm>; see also DEBORAH J. DEVINE ET AL., U.S. DEP'T OF HOUS. & URBAN DEV., HOUSING CHOICE VOUCHER LOCATION PATTERNS: IMPLICATIONS FOR PARTICIPANTS AND NEIGHBORHOOD WELFARE 90, 120 n.65 (2003), available at [http://www.huduser.org/Publications/pdf/Location\\_Paper.pdf](http://www.huduser.org/Publications/pdf/Location_Paper.pdf).

<sup>50</sup> Office of Policy Dev. & Research, *supra* note 32.

<sup>51</sup> SUSAN J. POPKIN & MARY K. CUNNINGHAM, URBAN INST., CHAC SECTION 8 PROGRAM: BARRIERS TO SUCCESSFUL LEASING UP 4-5 (1999) (citing STEPHEN D. KENNEDY & MERYL FINKEL, U.S. DEP'T OF HOUS. & URBAN DEV., SECTION 8 RENTAL VOUCHER AND RENTAL CERTIFICATE UTILIZATION STUDY: FINAL REPORT (1994)).

<sup>52</sup> Examples of jurisdictions that prohibit discrimination against Section 8 voucher recipients include: Connecticut, CONN. GEN. STAT. ANN. § 46a-64c, Massachusetts, MASS. GEN. LAWS ANN. ch. 151B, § 4(10), New Jersey, see *Franklin Tower One v. N.M.*, 725 A.2d 1104, 1114 (N.J. 1999), Washington, D.C., D.C. Code Ann. § 1-2502, and Chicago, Illinois, CHI., ILL., FAIR HOUS. ORDINANCE § 5-08-030. Despite having the country's largest Section 8 program, New York City does not prohibit discrimination against Section 8 voucher holders. See Manny Hernandez, *Bias Is Seen as Landlords Bar Vouchers*, N.Y. TIMES, Oct. 30, 2007.

<sup>53</sup> POPKIN & CUNNINGHAM, *supra* note 51, at 23; see also Fernandez, *supra* note 52 (describing discrimination against voucher recipients in New York City).

<sup>54</sup> Office of Policy Dev. & Research, *supra* note 32.

<sup>55</sup> For example, the Section 8 program offers the possibility of implementing a nationwide, comprehensive mobility program. Alex Polikoff, *A Vision for the Future: Bringing Gautreaux to Scale*, in KEEPING THE PROMISE: PRESERVING AND ENHANCING HOUSING MOBILITY IN THE SECTION 8 HOUSING CHOICE RESEARCH PROGRAM 137, 141 (Philip Tegeler et al. eds., 2005) (proposing a nationwide "Gautreaux-type" program). The Gautreaux Assisted Housing Program, a judicially mandated program that resulted from the United States Supreme Court's *Gautreaux* decision, *Hills v. Gautreaux*, 425 U.S. 284 (1976), provided public housing-eligible families with Section 8 vouchers to pay for private rental apartments in neighborhoods in which no more than 30 percent of the residents were African American. See *Gautreaux v. Landrieu*, 523 F. Supp. 665 (N.D. Ill. 1981) (HUD consent decree). Participants received assistance finding housing and counseling. *Id.* Between 1976 and 1998, the Gautreaux Assisted Housing Program helped more than 25,000 voluntary participants move to more than 100 communities throughout the Chicago metropolitan area that offered them improved life opportunities. Polikoff, *supra*, at 144. The Gautreaux Program came to an end in 1998, after HUD satisfied its court-ordered obligation to provide desegregated housing opportunities to 7,100 families. Business and Professional People for the Public Interest, Public Housing Transformation: What is *Gautreaux*?, <http://www.bpichicago.org/pht/gautreaux.html>.

seeking to move into lower-poverty areas.<sup>56</sup> In 2003, HUD began to restrict housing choice by limiting the standards that permitted families to use Section 8 vouchers to move into lower-poverty areas with higher rents.<sup>57</sup> In 2004, HUD retroactively cut voucher funding, which encouraged some PHAs to adopt policies that further prevented families from moving to higher-rent areas.<sup>58</sup> At the same time, it limited the mobility of Section 8 voucher recipients by permitting PHAs to restrict the portability of vouchers across jurisdictions if that portability would result in financial harm to the PHA.<sup>59</sup>

### **The Low Income Housing Tax Credit**

16. The implementation of the Low Income Housing Tax Credit (“LIHTC”)<sup>60</sup> is another example of an important government program that perpetuates existing patterns of residential segregation. The LIHTC provides federal tax credits to investors who acquire, rehabilitate, or construct affordable rental property targeted to low-income tenants.<sup>61</sup> Indeed, the LIHTC has been the “principal mechanism for supporting the production of new and rehabilitated rental housing for low-income households” since it began in 1987.<sup>62</sup> Since 1999, the LIHTC has supported the development of 100,000 units of affordable housing per year.<sup>63</sup>
17. LIHTC developments must comply with federal rules, but no explicit fair housing standards govern the administration of the tax credit.<sup>64</sup> Generally, HUD site and neighborhood guidelines prohibit building new low-income housing in racially and economically isolated neighborhoods.<sup>65</sup> Yet, these rules, which were created to prevent racial segregation in HUD-administered programs, have not been formally applied in the administration of the LIHTC.<sup>66</sup> Instead, the LIHTC actually provides an incentive to develop affordable housing in “qualified census tracts,” which are often the poorest census tracts in a jurisdiction.<sup>67</sup> Accordingly, the LIHTC is not being implemented to “affirmatively further” fair housing.<sup>68</sup>

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<sup>56</sup> Philip Tegeler, *New Directions for U.S. Housing Policy: The Unmet Potential of Two Large Housing Programs*, in *THE EROSION OF RIGHTS: DECLINING CIVIL RIGHTS ENFORCEMENT UNDER THE BUSH ADMINISTRATION* 98 (William L. Taylor et al. eds., 2007), available at [http://www.cccr.org/downloads/civil\\_rights2.pdf](http://www.cccr.org/downloads/civil_rights2.pdf).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> 26 U.S.C. § 42 (2005). The LIHTC was created by the Tax Reform Act of 1986, P.L. No. 99-514, 100 Stat. 2085 (1986).

<sup>61</sup> CARISSA CLIMACO ET AL., *ABT ASSOCS., UPDATING THE LOW-INCOME HOUSING TAX CREDIT (LIHTC) DATABASE: PROJECTS PLACED IN SERVICE THROUGH 2003*, at 2 (2006) (hereinafter *ABT REPORT 2003*). The LIHTC produced an estimated 1.5 rental housing units between the start of the program in 1987 and 2005, surpassing the size of the public housing program. *Id.*

<sup>62</sup> *Id.* at 1.

<sup>63</sup> *Id.* at ii.

<sup>64</sup> *Id.* at 2.

<sup>65</sup> See 24 C.F.R. §§ 983.6(b)(3)(iii), (iv).

<sup>66</sup> Philip D. Tegeler, *The Persistence of Segregation in Government Housing Programs*, in *THE GEOGRAPHY OF OPPORTUNITY: RACE AND HOUSING CHOICE IN METROPOLITAN AMERICA* 197, 198 (Xavier de Souza Briggs ed., 2005).

<sup>67</sup> 26 U.S.C. § 42(d)(5)(c)(ii)(I) (2005). The LIHTC provides incentives for developments proposed in neighborhoods where at least 50% of the households have incomes below 60% of the area’s median family incomes, which are the neighborhoods most likely to have a high concentration of low-income people of color. LANCE FREEMAN, *CTR. ON URBAN & METRO. POLICY, SITING AFFORDABLE HOUSING: LOCATION AND NEIGHBORHOOD TRENDS OF LOW INCOME HOUSING TAX CREDIT DEVELOPMENTS IN THE 1990S*, at 4 (2004), available at [http://www.brookings.edu/urban/pubs/20040405\\_Freeman.pdf](http://www.brookings.edu/urban/pubs/20040405_Freeman.pdf); see, e.g., Greater Milwaukee Human Rights Coalition, *Shadow Report of the Greater Milwaukee Human Rights Coalition Concerning Compliance with the*

18. The LIHTC has replicated the public housing trend of concentrating developments in highly segregated, poor neighborhoods throughout the United States.<sup>69</sup> A recent report indicates that “[o]nly a few states place more than half their LIHTC family housing in census tracts with minority population rates less than half the rate for the metropolitan area.”<sup>70</sup> In addition, 33.1% of LIHTC units in central city locations are in neighborhoods of concentrated poverty, compared with only 20.8% of rental units overall.<sup>71</sup>

### Zoning

19. Zoning is another government practice that impacts many jurisdictions and neighborhoods in the United States. Zoning power delegated by state governments gives local governments indirect control over who may live within their boundaries<sup>72</sup> and has often been used to exclude people of color and the poor and to perpetuate segregation.<sup>73</sup> There is a “long-known connection between low-density-only zoning and racial exclusion,”<sup>74</sup> and many municipalities have low-density-only zoning that tends to exclude African Americans and Latinos from either certain neighborhoods or entire municipalities by effectively reducing the rental housing available.<sup>75</sup>
20. In other contexts, particularly in Southern states, as small towns expand their borders, they frequently exclude long-standing communities of color at the towns’ fringes.<sup>76</sup> Such exclusion creates minority enclaves with inferior or no access to basic public services such as

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*International Convention on the Elimination of all forms of Racial Discrimination*, at ¶ 52, delivered to the U.N. Committee on the Elimination of Racial Discrimination (2007) [hereinafter *Greater Milwaukee Human Rights Coalition Shadow Report*] (noting that criteria for awarding tax credits of “local support” put forth by the agency which administers the LIHTC program in Wisconsin serves to encourage community discrimination against minority and low-income populations).

<sup>68</sup> Florence Roisman, *Mandates Unsatisfied: The Low Income Housing Tax Credit and the Civil Rights Laws*, 52 U. MIAAMI L. REV. 1011, 1029 (1998).

<sup>69</sup> See Myron Orfield, *Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit*, 59 VAND. L. REV. 1747, 1781 (2005) (noting LIHTC units are “more likely than other rental units to be located in census tracts where more than 60 percent of households would qualify to live in a tax credit unit”).

<sup>70</sup> JILL KHADDURI ET AL., ABT ASSOCS., ARE STATES USING THE LOW INCOME HOUSING TAX CREDIT TO ENABLE FAMILIES WITH CHILDREN TO LIVE IN LOW POVERTY AND RACIALLY INTEGRATED NEIGHBORHOODS? 22 (2006). The LIHTC statute requires that each state’s plan give preference to “projects serving the lowest income tenants . . . for the longest period of time.” 26 U.S.C. § 42(m)(1)(B)(ii) (2002).

<sup>71</sup> ABT REPORT 2003, *supra* note 61, at 2.

<sup>72</sup> Rolf Pendall, *Local Land Use Regulation and the Chain of Exclusion*, 66 J. AM. PLANNING ASS’N 125, 140 (2000).

<sup>73</sup> ROLF PENDALL ET AL., FROM TRADITIONAL TO REFORMED: A REVIEW OF THE LAND USE REGULATIONS IN THE NATION’S 50 LARGEST METROPOLITAN AREAS 3 (2006) (noting that zoning has long been used to separate people by race and by class); see, e.g., *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977) (upholding zoning ordinance that barred construction of multi-family housing, effectively barring African American families from moving to neighborhood); *Buchanan v. Warley*, 245 U.S. 60 (1917) (striking down ordinance that barred sale of lot to person of color if majority of residences on lot’s block were occupied by whites).

<sup>74</sup> Pendall, *supra* note 72, at 135.

<sup>75</sup> PENDALL ET AL., *supra* note 73, at 6, 12-14; Pendall, *supra* note 72.

<sup>76</sup> Charles S. Aiken, *Race as a Factor in Municipal Underbounding*, 77 ANNALS ASS’N AM. GEOGRAPHERS 564, 564-79 (1987) (first use of term “municipal underbounding” to describe pattern of African American communities left outside of borders of small Southern towns); Daniel T. Lichter et al., *Municipal Underbounding? Annexation and Racial Exclusion in Southern Small Towns*, RURAL SOC. 72 (forthcoming 2007) (finding white communities are less likely to annex African American communities, regardless of size).

water, sewer, or police protection that are enjoyed by white residents.<sup>77</sup> In more egregious cases, even when towns exercise regulatory power over these enclaves, residents frequently are not town citizens and cannot vote in municipal elections.<sup>78</sup> In a similar effort to exclude immigrants, many municipalities have recently enacted zoning ordinances that prohibit members of extended families from living together.<sup>79</sup>

21. The Fair Housing Act has long prohibited zoning rules that have the effect of discriminating on the basis of race without a legitimate nondiscriminatory justification.<sup>80</sup> However, court challenges to exclusionary zoning practices are restricted because individuals have standing to challenge the practices only if there is a substantial probability they could live in the municipality if not for the challenged practice.<sup>81</sup>
22. Inclusionary zoning has been an important tool for creating more affordable housing opportunities in many jurisdictions.<sup>82</sup> The opposite of exclusionary zoning, inclusionary zoning ordinances go “beyond voluntary incentives and require[] that a small percentage of units (typically 10 percent) in every market rate housing development be kept affordable to moderate-income families.”<sup>83</sup>
23. Some state governments have successfully required municipalities to provide more fair housing opportunities than they otherwise would. For example, in New Jersey, each municipality must provide for its “fair share of the present and prospective regional need” for low-income housing.<sup>84</sup> Nevertheless, segregation persists, partly because New Jersey’s wealthy suburbs are allowed to evade the low-income housing requirement by paying poorer urban areas to build or rehabilitate that housing through regional contribution agreements.<sup>85</sup>

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<sup>77</sup> See, e.g., James Dao, *Ohio Town's Water at Last Runs Past a Color Line*, N.Y. TIMES, Feb. 17, 2004, at A2 (describing Zanesville, Ohio’s denial of water to an African American community for more than fifty years, even though community existed less than one mile from public water lines and city provided water to surrounding neighborhoods); Lee Romney, *Poor Neighborhoods Left Behind*, L.A. TIMES, Sept. 18, 2005, at B1 (describing exclusion of four Latino neighborhoods from the city of Modesto, California).

<sup>78</sup> See U.N.C. CTR. FOR CIVIL RIGHTS, *INVISIBLE FENCES: MUNICIPAL UNDERBOUNDING IN SOUTHERN MOORE COUNTY* (2006), available at <http://www.law.unc.edu/documents/civilrights/briefs/invisiblefencesreport.pdf> (documenting history of three African American communities outside city limits but within extraterritorial jurisdiction of three cities in Moore County, North Carolina); Shaila Dewan, *In County Made Rich by Golf, Some Enclaves Are Left Behind*, N.Y. TIMES, June 7, 2005, at A1.

<sup>79</sup> See, e.g., Nick Miroff, *Culpeper Officials Targeting Illegal Immigrants*, WASH. POST, Sept. 21, 2006.

<sup>80</sup> See 42 U.S.C. § 3604(a); see also *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir.), *aff’d*, 488 U.S. 15 (1988) (per curiam); *Resident Advisory Bd. v. Rizzo*, 564 F.2d 126 (3d Cir. 1977); *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974).

<sup>81</sup> See *Arlington Heights*, 429 U.S. at 252; *Simon v. E. Ky. Welfare Rights Org. (EKWRO)*, 426 U.S. 26 (1976); *Warth v. Seldin*, 422 U.S. 490 (1975).

<sup>82</sup> See Nat’l Hous. Conference, *Inclusionary Zoning: Lessons Learned in Massachusetts*, NHC AFFORDABLE HOUS. POL’Y REV., Jan. 2002, at 26-28 (describing inclusionary development policy in Boston, Massachusetts); Robert W. Burchell & Catherine C. Galley, *Inclusionary Zoning: Pros and Cons*, NHC AFFORDABLE HOUS. POL’Y REV., Oct. 2000, at 3, 4 (discussing successful inclusionary zoning programs in numerous localities, including Montgomery County, Maryland).

<sup>83</sup> Nat’l Hous. Conference, *supra* note 82, at 1-2.

<sup>84</sup> *S. Burlington County NAACP v. Mt. Laurel*, 33 A.2d 713, 724 (N.J. 1975).

<sup>85</sup> DAVID L. KIRP ET AL., *OUR TOWN: RACE, HOUSING, AND THE SOUL OF SUBURBIA* 161 (1995). See generally *id.* at 112-64. Regional contribution agreements are governed by statute. N.J. Stat. Ann. § 52:27D-312.

## The Link Between School Segregation and Residential Segregation

24. Just as segregated housing patterns often lead to segregated schools, integration in schools can, in turn, lead to greater residential integration. As a result, integrated schools are an important tool for mitigating residential segregation.<sup>86</sup> Unfortunately, a recent decision of the United States Supreme Court which struck down two modest voluntary school integration plans<sup>87</sup> limits the ability of local school boards to take race into account in assigning individual students in an attempt to integrate public schools.
25. School desegregation programs have had a positive impact on residential integration.<sup>88</sup> During the 1970s, cities that had undergone metropolitan school desegregation experienced “markedly greater rates” of housing desegregation than did other cities.<sup>89</sup> Between 1970 and 1990, residential integration occurred at twice the national average in communities with metropolitan school desegregation programs.<sup>90</sup> A recent study of fifteen metropolitan regions shows that comprehensive school desegregation programs are strongly correlated with stable residential integration.<sup>91</sup> Even the United States Supreme Court has noted that the location of schools may influence patterns of residential development in metropolitan areas and have an important impact on the composition of inner-city neighborhoods.<sup>92</sup>
26. However, levels of school segregation are severe in the United States, particularly for low-income African Americans. In 2002-2003, only 28% of all white public school students (K-12) attended high-poverty schools (defined as schools where 40% or more of the students were eligible for free or reduced price lunches—a proxy for poverty).<sup>93</sup> In contrast, 71% of all African American public school students and 73% of all Latino public school students attended high-poverty schools during the same period.<sup>94</sup> Meanwhile, 1.4 million African

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<sup>86</sup> Gary Orfield, *Metropolitan School Desegregation: Impacts on Metropolitan Society*, in IN PURSUIT OF A DREAM DEFERRED: LINKING HOUSING AND EDUCATION POLICY 135 (John A. Powell et al. eds., 2001); see also Erica Frankenberg, *The Impact of School Segregation on Residential Housing Patterns: Mobile, Alabama, and Charlotte, North Carolina*, in SCHOOL RESEGREGATION: MUST THE SOUTH TURN BACK? 164, 180 (John Charles Boger & Gary Orfield eds., 2005).

<sup>87</sup> *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. \_\_\_, 127 S. Ct. 2738 (2007). In his dissent, Justice Breyer notes the correlation between school segregation and residential segregation. He maintains that there is an “interest in continuing to combat the remnants of segregation caused in whole or in part by these school-related policies” where such policies “have often affected not only schools, but also housing patterns, employment practices, economic conditions, and social attitudes.” *Id.* at 2920 (Breyer, J., dissenting).

<sup>88</sup> See DIANA PEARCE, CTR. FOR NAT’L POL’Y REV., *BREAKING DOWN BARRIERS: NEW EVIDENCE ON THE IMPACT OF METROPOLITAN SCHOOL DESEGREGATION ON HOUSING PATTERNS* 3 (1980) (citing evidence of increased housing integration in places with metropolitan desegregation programs).

<sup>89</sup> *Id.* at 26-27.

<sup>90</sup> Frankenberg, *supra* note 86, at 180; G. Orfield, *Metropolitan School Desegregation*, *supra* note 86, at 135.

<sup>91</sup> INST. ON RACE & POVERTY, *MINORITY SUBURBANIZATION, STABLE INTEGRATION, AND ECONOMIC OPPORTUNITY IN FIFTEEN METROPOLITAN REGIONS* 27-29 (2006), available at [http://www.irpumn.org/uls/resources/projects/Minority\\_Suburbanization\\_full\\_report\\_032406.pdf](http://www.irpumn.org/uls/resources/projects/Minority_Suburbanization_full_report_032406.pdf); see also PEARCE, *supra* note 88, at 51-52 (finding school desegregation supports stable, integrated communities by increasing available housing opportunities and associating benefits with integrated neighborhoods).

<sup>92</sup> See *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 20-21 (1971).

<sup>93</sup> GARY ORFIELD & CHUNGMEI LEE, CIVIL RIGHTS PROJECT, *WHY SEGREGATION MATTERS: POVERTY AND EDUCATIONAL INEQUALITY* 19, tbl.7 (2005).

<sup>94</sup> *Id.* We also note that these figures exclude millions of private school students, who are disproportionately white. The most recent data from the U.S. Department of Education shows that, of 5,122,772 private school students nationwide, 76.2% are non-Hispanic whites, even though non-Hispanic whites comprise only 59% of children in the United States. See U.S. DEP’T OF EDUC., *CHARACTERISTICS OF PRIVATE SCHOOLS IN THE UNITED STATES: RESULTS*

American students (1 of every 6) and nearly 1 million Latino students (1 of every 9) attend schools where 99% to 100% of the students are people of color.<sup>95</sup>

27. Meaningful school integration, where all children in a school district attend integrated schools no matter where they live, eliminates an incentive for whites to move to white enclaves.<sup>96</sup> Fully integrated schools open all areas of a community to parents, who can live anywhere in the district and know that their children will not be racially isolated in any school they attend.<sup>97</sup>
28. Recognizing the importance of schools in many real estate decisions, advertisements for homes in districts with segregated schools list the names of schools, if they are predominantly white, from two to ten times more frequently than do advertisements for homes in districts with integrated schools.<sup>98</sup> In districts with truly integrated schools, home advertisements mention schools much less often and focus instead on things like the distance to offices, stores, and recreational facilities.<sup>99</sup> By including white school names in advertisements, real estate agents subtly reinforce the notion that the ability to attend segregated schools is an important—and desirable—feature of property.<sup>100</sup> The separate administration of school and housing desegregation and enforcement decisions severely limits the ability of national, state, and local officials to address this conjoined problem.

### **III. The United States Government Has Not Responded Adequately to Private Acts of Discrimination**

29. The United States government's response to racial discrimination by private actors has been severely inadequate. Studies, including those performed by and on behalf of HUD, show that African Americans and Latinos frequently encounter discrimination when searching for housing at all stages: upon entering a realtor's office they receive inferior service, they are told fewer homes are available, and they are shown fewer homes than whites are.<sup>101</sup> HUD's Housing Discrimination Study 2000 ("HDS 2000"),<sup>102</sup> which is referenced in the United States' Report,<sup>103</sup> is the most recent comprehensive study of housing discrimination in the

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FROM THE 2003-2004 PRIVATE SCHOOL UNIVERSE STUDY 13 tbl.7, 19 tbl.13 (2006); CHILD TRENDS DATABANK, RACIAL AND ETHNIC COMPOSITION OF THE CHILD POPULATION 5 (2006).

<sup>95</sup> ORFIELD & LEE, *supra* note 93, at 12-13.

<sup>96</sup> Frankenberg, *supra* note 86, at 180; PEARCE, *supra* note 88, at 41; *see also* CASHIN, *supra* note 17, at 169 ("Parenthood contributes to white separatism. . . . The most risk-free alternative in a society that is not fundamentally committed to bringing every child or every person along is to opt for those neighborhoods and schools that offer the best opportunities one can afford. Unfortunately those places tend to be the most homogeneous—indeed, the whitest and wealthiest of places.")

<sup>97</sup> Frankenberg, *supra* note 86, at 180; PEARCE, *supra* note 88, at 4, 40-41.

<sup>98</sup> G. Orfield, *Metropolitan School Desegregation*, *supra* note 86, at 135; PEARCE, *supra* note 88, at 9, 14-18.

<sup>99</sup> G. Orfield, *Metropolitan School Desegregation*, *supra* note 86, at 135; PEARCE, *supra* note 88, at 12, 14.

<sup>100</sup> PEARCE, *supra* note 88, at 18.

<sup>101</sup> *See generally* JOHN YINGER, CLOSED DOORS, OPPORTUNITIES LOST 19-49 (1995).

<sup>102</sup> HDS 2000 was conducted in three phases, measuring discrimination against African Americans and Latinos, Asians and Pacific Islanders, and Native Americans. *See* MARGERY AUSTIN TURNER ET AL., URBAN INST., DISCRIMINATION IN METROPOLITAN HOUSING MARKETS: NATIONAL RESULTS FROM PHASE I HDS 2000 (2002) (African Americans and Latinos); MARGERY AUSTIN TURNER ET AL., URBAN INST., DISCRIMINATION IN METROPOLITAN HOUSING MARKETS: NATIONAL RESULTS FROM PHASE II HDS 2000 (2002) (Asians and Pacific Islanders); MARGERY AUSTIN TURNER ET AL., URBAN INST., DISCRIMINATION IN METROPOLITAN HOUSING MARKETS: NATIONAL RESULTS FROM PHASE III HDS 2000 (2003) (Native Americans).

<sup>103</sup> *Periodic Report of the United States of America to the U.N. Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination*,

United States. It indicates that housing discrimination remains a serious problem for people of color, with some illegal discriminatory practices actually on the upswing. Despite some evidence of declines for African Americans, the levels of unequal treatment remain high.

### Steering

30. Steering by real estate agents is a common discriminatory practice, impacting both whites and people of color at all income levels.<sup>104</sup> The United States Supreme Court has defined steering as a “practice by which real estate brokers and agents preserve and encourage patterns of racial segregation in available housing by steering members of racial and ethnic groups to buildings occupied primarily by members of such racial and ethnic groups and away from buildings and neighborhoods inhabited primarily by members of other races or groups.”<sup>105</sup> Even though steering violates the Fair Housing Act,<sup>106</sup> it continues to be a major form of unfair, unequal treatment that training of realtors has not eliminated.<sup>107</sup> As a result of steering, people of color buying homes are directed to disproportionately African American and/or Latino neighborhoods, and white homebuyers are directed to disproportionately white neighborhoods, thus reinforcing segregation.<sup>108</sup>
31. Steering remains a stubbornly persistent practice—evidenced in 12% to 15% of tests<sup>109</sup>—that has increased since 1989.<sup>110</sup> HDS 2000 concluded that, overall, “[w]hite homebuyers were significantly more likely than comparable blacks to be recommended and shown homes in more predominantly white neighborhoods.”<sup>111</sup> Even the interactions of real estate agents with people of color and whites tend to be very different. As some scholars have explained, “agents typically accept the initial request as an accurate portrayal of a white’s preferences but adjust the initial request made by a black to conform to their preconceptions. In the case of houses with visible problems, agents refuse to accept the initial request as a sign that whites want such a house, but have no trouble making this inference for blacks.”<sup>112</sup>

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¶ 65, delivered to the U.N. Committee on the Elimination of Racial Discrimination (Apr. 2007), available at <http://www1.umn.edu/humanrts/CERD2007.html> [hereinafter *Periodic Report*].

<sup>104</sup> See, e.g., NAT’L FAIR HOUS. ALLIANCE, HOUSING SEGREGATION BACKGROUND REPORT: LONG ISLAND, NEW YORK (2006); NAT’L FAIR HOUS. ALLIANCE, HOUSING SEGREGATION BACKGROUND REPORT: WESTCHESTER, NEW YORK (2006), available at <http://www.nationalfairhousing.org>; George Galster & Erin Godfrey, *By Words and Deeds: Racial Steering by Real Estate Agents in the U.S. in 2000*, 71 J. AM. PLAN. ASS’N 251, 260 (2005). For example, in 2007, the Metropolitan Milwaukee Fair Housing Council, Inc. filed a housing discrimination lawsuit against a local owner of apartment buildings after African American testers were consistently told that there were no apartments available and white testers were informed that there were available units. *Greater Milwaukee Human Rights Coalition Shadow Report*, *supra* note 67, at ¶ 57.

<sup>105</sup> *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 366 n.1 (1982).

<sup>106</sup> See 42 U.S.C. § 3604(a) (prohibiting practices that “otherwise make unavailable” housing on basis of race); see also *Havens Realty Corp.*, 455 U.S. at 370; *Gladstone*, 441 U.S. at 115 n.32; ROBERT G. SCHWEMM, HOUSING DISCRIMINATION LAW AND LITIGATION § 13:5 (2006).

<sup>107</sup> See TURNER ET AL., HDS 2000 PHASE I, *supra* note 102, at 6-16; Galster & Godfrey, *supra* note 104, at 260.

<sup>108</sup> YINGER, *supra* note 101, at 51-61.

<sup>109</sup> “Testing” is a process in which two applicants, generally one white and one a person of color, with similar qualifications apply for the same residence in order to determine whether either applicant receives differential treatment. Memorandum from Carolyn Y. Peoples, Assistant Secretary for Fair Housing and Equal Opportunity to All FHEO Field Office Staff and Office of Enforcement and Programs Staff (Apr. 10, 2003), available at <http://www.hud.gov/offices/fheo/library/testing.pdf>.

<sup>110</sup> TURNER ET AL., HDS 2000 PHASE I, *supra* note 102, at 6-16.

<sup>111</sup> *Id.* at 3-11.

<sup>112</sup> Jan Ondrich et al., *Now You See It, Now You Don’t: Why Do Real Estate Agents Withhold Available Houses from Black Customers?*, 85 REV. OF ECON. & STAT. 854, 872 (2003); see also Bo Zhao et al., *Why Do Real Estate*

32. Some examples of steering by real estate agents reported in HDS 2000 include the following statements, which also demonstrate the agents' awareness that their actions are illegal:

- “[Area] has a questionable ethnic mix that you might not like. I could probably lose my license for saying this!”
- “[The area] is different from here; it’s multicultural. . . . I’m not allowed to steer you, but there are some areas that you wouldn’t want to live in.”
- “There are a lot of Latinos living there. . . . I’m not supposed to be telling you that, but you have a daughter and I like you.”
- “It’s against the law for me to be saying so, but I could steer you toward some neighborhoods and away from some others.”
- “I would not send you to this area. I’m not supposed to say this but I’m probably old enough to be your father.” When tester asked why, the agent said tentatively, “Because it’s primarily an ethnic neighborhood and I wouldn’t send you there.”<sup>113</sup>

33. HDS 2000 indicated that in home sales markets, whites consistently received favored treatment over African Americans 17% of the time, and over Latinos approximately 20% of the time.<sup>114</sup> Non-racial explanations for these patterns of differential treatment were explored and rejected.<sup>115</sup> In addition, HDS 2000 found that discrimination against Latinos seeking rentals had increased since 1989.<sup>116</sup>

### **Discriminatory and Predatory Lending in the Mortgage Industry**

34. African Americans and Latinos have the lowest homeownership rates in the United States—less than 50%, as compared to 76% for whites.<sup>117</sup> Home equity is the largest pool of wealth for most American families, so disparities in homeownership are a major component of persistent racial inequality.<sup>118</sup> These discrepancies are due in large measure to the significant problem of mortgage lending discrimination, with private lenders denying mortgages to potential African American and Latino homebuyers at disproportionate rates.<sup>119</sup> Some studies indicate that large differences in mortgage rejection rates based on race occur because

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*Brokers Continue to Discriminate? Evidence from the 2000 Housing Discrimination Study*, 59 J. URB. ECON. 394 (2006).

<sup>113</sup> See Galster & Godfrey, *supra* note 104, at 262. Similar forms of discrimination occur in the rental market. See Seok Joon Choi et al., *Do Rental Agents Discriminate Against Minority Customers? Evidence from the 2000 Housing Discrimination Study*, 14 J. HOUSING ECON. 1 (2005).

<sup>114</sup> TURNER ET AL., HDS 2000 PHASE I, *supra* note 102, at 4-7, 4-12.

<sup>115</sup> *Id.* at 5-1 to 5-16.

<sup>116</sup> *Id.* at iii-iv.

<sup>117</sup> Delvin Davis, *Here Today, Gone Tomorrow: The Impact of Subprime Foreclosures on African-American and Latino Communities*, POVERTY & RACE, May-June 2007, at 1, 12.

<sup>118</sup> Despite some narrowing of income disparities in recent years, large disparities in wealth remain between whites and African Americans. See generally THOMAS SHAPIRO, *THE HIDDEN COST OF BEING AFRICAN AMERICAN: HOW WEALTH PERPETUATES INEQUALITY* (2003).

<sup>119</sup> STEPHEN ROSS & JOHN YINGER, *THE COLOR OF CREDIT* 5-8 (2003); see, e.g., *Greater Milwaukee Human Rights Coalition Shadow Report*, *supra* note 67, at ¶ 59 (noting that Milwaukee has the largest mortgage loan denial rate disparity of the 50 largest metropolitan areas in the United States, non-Hispanic whites in Milwaukee County experienced a 36.3% loan denial rate in 2006, while non-Hispanic blacks experienced a 58.1% loan denial rate).

“[I]loan officers were far more likely to overlook flaws in the credit scores of white applicants or to arrange creative financing for them than they were in the case of black applicants.”<sup>120</sup>

35. More pointedly, a HUD study that used testers posing as first-time homebuyers in Chicago and Los Angeles indicated that African American and Latino homebuyers faced “a significant risk of receiving less favorable treatment than comparable whites” when visiting mainstream mortgage lending institutions to make pre-application inquiries.<sup>121</sup> Among the most serious forms of discrimination discerned by the study were differential estimates of home price and total loan amount based on race.<sup>122</sup>
36. Furthermore, disparities in the homeowners insurance available to people of color contribute to more declinations of coverage among homebuyers of color and limit opportunities for integration. Neighborhoods composed predominantly of people of color are often excluded from the best homeowners insurance coverage.<sup>123</sup> As a federal appellate court explained, procuring insurance is critical to the home purchasing process: “No insurance, no loan; no loan, no house; lack of insurance thus makes housing unavailable.”<sup>124</sup> Examples of insurance discrimination include providing inattentive service to customers of color, offering policies with different terms to members of different racial groups, requiring inspections only in non-white neighborhoods, and requiring credit checks only from people of color.<sup>125</sup>
37. When people of color obtain loans, they are more likely than whites to receive higher cost loans and subprime loans.<sup>126</sup> In 2006, 53.7% of African Americans, 46.6% of Latinos, and only 17.7% of whites received high-priced loans.<sup>127</sup> In areas where the population is no more than 20% white, 46.6% of borrowers received high-priced loans, compared to only 21.7% of borrowers in communities where whites made up at least 90% of the population.<sup>128</sup> After controlling for various borrower characteristics, such as income and loan amount, these racial gaps are reduced but still statistically significant,<sup>129</sup> with people of color tending to receive

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<sup>120</sup> MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH* 139 (1995).

<sup>121</sup> MARGERY AUSTIN TURNER ET AL., *URBAN INST., ALL OTHER THINGS BEING EQUAL: A PAIRED TESTING STUDY OF MORTGAGE LENDING INSTITUTIONS* iii (2002).

<sup>122</sup> *Id.* at 37.

<sup>123</sup> See Shanna L. Smith & Cathy Cloud, *Documenting Discrimination by Homeowners Insurance Companies Through Testing*, in *INSURANCE REDLINING* 97-117 (Gregory D. Squires ed., 1997).

<sup>124</sup> *NAACP v. Am. Family Mut. Ins. Co.*, 978 F.2d 287, 297 (7th Cir. 1992).

<sup>125</sup> See Gregory D. Squires, *Racial Profiling, Insurance Style: Insurance Redlining and the Uneven Development of Metropolitan Areas*, 26 J. URB. AFF. 391, 398 (2003).

<sup>126</sup> Subprime lending is the practice of making loans to borrowers who do not qualify for market interest rates because of their credit history; such loans are made on less favorable terms than are standard for prime loans. Allen Fishbein & Harold Bunce, *Subprime Market Growth and Predatory Lending*, in *HOUSING POLICY IN THE NEW MILLENNIUM: CONFERENCE PROCEEDINGS* 273 (U.S. Dep’t of Hous. & Urban Dev. ed., 2001), available at <http://www.huduser.org/Publications/pdf/brd/13Fishbein.pdf>.

<sup>127</sup> Robert B. Avery et al., *The 2006 HMDA Data*, FED. RES. BULL. (forthcoming 2007) (manuscript at 1, 39, 68 tbl.11), available at <http://www.federalreserve.gov/pubs/bulletin/2007/pdf/hmda06draft.pdf>.

<sup>128</sup> *Id.* at 39, 72 tbl.14.

<sup>129</sup> Avery et al., *supra* note 127, at 39; see also WILLIAM C. APGAR, JR. & CHRISTOPHER E. HERBERT, *ABT ASSOCS., SUBPRIME LENDING AND ALTERNATIVE FINANCIAL SERVICES PROVIDERS: A LITERATURE REVIEW AND EMPIRICAL ANALYSIS* vi, 113-16 (2005), available at [http://www.abtassociates.com/reports/final\\_abt\\_subprime\\_Feb\\_17.pdf](http://www.abtassociates.com/reports/final_abt_subprime_Feb_17.pdf) (citing multiple studies showing higher incidence of subprime lending in minority neighborhoods, even after controlling for neighborhood credit scores); Vikas Bajaj & Ford Fessenden, *What’s Behind the Race Gap?*, N.Y. TIMES, Nov. 4, 2007 (reporting that, in 2006, African Americans were 2.3 times more likely, and Hispanics twice as likely, to receive high-cost loans than whites, even after adjusting for loan amount and borrower income).

the most expensive subprime loans.<sup>130</sup> These disparities are actually worse at higher income levels.<sup>131</sup>

38. Predatory lenders are particularly active in communities of color,<sup>132</sup> and intentionally seek out borrowers who cannot meet the terms of their loans, leading to default and foreclosure.<sup>133</sup> Predatory lenders also steer borrowers who could qualify for standard loans towards subprime loans with less favorable terms, sometimes by applying pricing criteria and discretionary charges inconsistently across racial lines.<sup>134</sup> Since 2005, more than half of all borrowers issued subprime loans could have qualified for lower-cost mortgages on more favorable terms.<sup>135</sup> These practices persist even though the targeting of neighborhoods of color with loans featuring unfair terms constitutes a violation of the Fair Housing Act.<sup>136</sup>
39. Beyond the substantial impact on individual borrowers,<sup>137</sup> predatory subprime lending results in significant costs to communities of color. Subprime loans are more likely than prime loans to end in foreclosure, and subprime foreclosures have been disproportionately concentrated in low-income and predominantly African American neighborhoods.<sup>138</sup> Foreclosures depress property values<sup>139</sup> and can result in vacancies, which attract crime,<sup>140</sup>

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<sup>130</sup> Overall, people of color are over 30% more likely to receive a higher-rate subprime loan than are similarly-situated white borrowers. DEBBIE GRUENSTEIN BOCIAN ET AL., CTR. FOR RESPONSIBLE LENDING, UNFAIR LENDING: THE EFFECT OF RACE AND ETHNICITY ON THE PRICE OF SUBPRIME MORTGAGES 3, 8-9, 19 (2006), available at [http://www.responsiblelending.org/pdfs/rr011-Unfair\\_Lending-0506.pdf](http://www.responsiblelending.org/pdfs/rr011-Unfair_Lending-0506.pdf) (examining more than 177,000 subprime loans); see also ANTHONY PENNINGTON-CROSS ET AL., RESEARCH INST. FOR HOUS. AM., CREDIT RISK AND MORTGAGE LENDING: WHO USES SUBPRIME AND WHY? 13, 16 (2000), available at [http://www.housingamerica.org/Publications/48519\\_RIHA00-03.pdf](http://www.housingamerica.org/Publications/48519_RIHA00-03.pdf).

<sup>131</sup> ASS'N OF CMTY. ORGS. FOR REFORM NOW (ACORN), FORECLOSURE EXPOSURE: A STUDY OF RACIAL AND INCOME DISPARITIES IN HOME MORTGAGE LENDING IN 172 AMERICAN CITIES 1 (2007), available at <http://acorn.org/fileadmin/HMDA/2007/HMDAreport2007.pdf>; see also Fishbein & Bunce, *supra* note 126, at 275; CALVIN BRADFORD, CTR. FOR CMTY. CHANGE, RISK OR RACE? RACIAL DISPARITIES IN THE SUBPRIME REFINANCE MARKET 3-8 (May 2002), available at [http://www.knowledgeplex.org/kp/report/report/refiles/cc00729\\_risk.pdf](http://www.knowledgeplex.org/kp/report/report/refiles/cc00729_risk.pdf) (finding that racial disparities within subprime refinance market increase with borrower income).

<sup>132</sup> ACORN, *supra* note 131, at 22-23; BRADFORD, *supra* note 131, at 77.

<sup>133</sup> Fishbein & Bunce, *supra* note 126, at 273, 278-81.

<sup>134</sup> BOCIAN ET AL., *supra* note 130, at 20-22.

<sup>135</sup> Rick Brooks & Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy*, WALL ST. J., Dec. 3, 2007 (citing recent analysis showing that 55% of subprime loans issued in 2005 went to borrowers with credit scores high enough to qualify for conventional loans with far better terms; this figure rose to 61% by the end of 2006); see also BOCIAN ET AL., *supra* note 130, at 7 (citing FANNIE MAE FOUND., FINANCIAL SERVICES IN DISTRESSED COMMUNITIES (2001); FREDDIE MAC, AUTOMATED UNDERWRITING (1996)) (discussing estimates by Federal National Mortgage Association and Federal Home Mortgage Corporation). These estimates are confirmed by the leading national secondary mortgage market institutions. See KEN ZIMMERMAN ET AL., N.J. INST. FOR SOC. JUSTICE, PREDATORY LENDING IN NEW JERSEY: THE RISING THREAT TO LOW-INCOME HOMEOWNERS i (2002), available at [http://www.njisj.org/reports/predatory\\_lending.pdf](http://www.njisj.org/reports/predatory_lending.pdf).

<sup>136</sup> See 42 U.S.C.S. § 3604(b); see also *Hargraves v. Capital City Mortgage Corp.*, 140 F. Supp. 2d 7, 20 (D.D.C. 2000); *Honorable v. Easy Life Real Estate Sys.*, 100 F. Supp. 2d 885, 887 (N.D. Ill. 2000).

<sup>137</sup> Predatory mortgage lending costs families in the United States about \$9.1 billion each year. WEI LI & KEITH S. ERNST, CTR. FOR RESPONSIBLE LENDING, THE BEST VALUE IN THE SUBPRIME MARKET: STATE PREDATORY LENDING REFORMS 2 (2006), available at [http://www.responsiblelending.org/pdfs/rr010-State\\_Effects-0206.pdf](http://www.responsiblelending.org/pdfs/rr010-State_Effects-0206.pdf).

<sup>138</sup> See Fishbein & Bunce, *supra* note 126, at 277; BRADFORD, *supra* note 131, at 78.

<sup>139</sup> A single foreclosure results in an estimated .9% decline in nearby property values. See ALMAS SAYEED, CTR. FOR AM. PROGRESS, FROM BOOM TO BUST: HELPING FAMILIES PREPARE FOR THE RISE IN SUBPRIME MORTGAGE FORECLOSURES 6 (2007), available at [http://www.americanprogress.org/issues/2007/03/pdf/foreclosure\\_paper.pdf](http://www.americanprogress.org/issues/2007/03/pdf/foreclosure_paper.pdf).

<sup>140</sup> A recent study found that a 3% increase in the foreclosure rate corresponds to an increase of neighborhood violent crime of nearly 7%. See Jay Bookman, *Foreclosure Damage Spreads Out*, TIMES HERALD-RECORD, Sept. 8,

drive up insurance rates, and further depress the value of other homes in the neighborhood, reducing local tax revenue for funding essential services such as roads and schools.<sup>141</sup>

40. These lending issues are particularly pertinent given the recent explosion in subprime lending in the United States. Between 1994 and 2005, the annual dollar volume of subprime lending grew from \$35 billion to more than \$600 billion, representing an increase from 5% to 20% of home-loan originations.<sup>142</sup> Subprime loans account for an estimated 13% of all mortgages currently outstanding, representing approximately \$1.28 trillion.<sup>143</sup>
41. The number of foreclosures in the United States has also been rising during the last few years. In 2006, there were 1.2 million foreclosures nationwide, an increase of 42% from 2005.<sup>144</sup> It has been predicted that the number of foreclosures in 2007 may reach 2 million, or roughly 1 in every 62 American households, a rate not seen since the Great Depression.<sup>145</sup> In July 2007 alone, 179,599 foreclosure notices were sent to property owners.<sup>146</sup> A high percentage of recent foreclosures are in the subprime market,<sup>147</sup> and communities of color have been hit particularly hard.<sup>148</sup> With 10% of African Americans and 8% of Latinos currently at risk of losing their homes, the current foreclosure crisis “could mean the largest loss of wealth for African American and Latino families in the nation’s history.”<sup>149</sup>
42. Much of the excessive growth in subprime lending over the past ten years can be traced to the federal government’s deregulation of the mortgage industry.<sup>150</sup> Many institutions making subprime loans, including mortgage companies and subsidiaries of national banks, are largely unregulated by federal authorities.<sup>151</sup> At present, the federal government has not established uniform standards for regulating mortgage lending institutions.<sup>152</sup> Moreover, the federal government’s failure to regulate the secondary mortgage market “lies at the heart of today’s

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2007; see also Dan Immergluck & Geoff Smith, *The Impact of Single-Family Mortgage Foreclosures on Neighborhood Crime*, 16 HOUS. STUDIES 851, 851-66 (2006).

<sup>141</sup> ACORN, *supra* note 131, at 6-7.

<sup>142</sup> Robert B. Avery et al., *Higher-Priced Home Lending and the 2005 HMDA Data*, 84 FED. RES. BULL. 123, 125 (2006).

<sup>143</sup> Justin Larhart, *Why Investors Still Get Caught in Subprime Trap*, WALL ST. J., Feb. 22, 2007.

<sup>144</sup> Andrew Rosenthal, *Can the Mortgage Crisis Swallow a Town?*, N.Y. TIMES, Sept. 2, 2007.

<sup>145</sup> *Id.*

<sup>146</sup> Patricia Kuo, *Pimco's Gross Urges Bush to Bail Out U.S. Homeowners*, BLOOMBERG NEWS, Aug. 23, 2007, available at <http://www.bloomberg.com/apps/news?pid=20601087&sid=amVRExsd80cA&refer=home>.

<sup>147</sup> For example, subprime mortgages accounted for more than half of the of the roughly 310,000 foreclosure proceedings initiated in the fourth quarter of 2006. See Ben S. Bernanke, Speech at the Federal Reserve Bank of Chicago’s 43rd Annual Conference on Bank Structure and Competition, Chicago, Illinois (May 17, 2007), available at <http://www.federalreserve.gov/newsevents/speech/bernanke20070517a.htm>. The Center for Responsible Lending estimates that 2.2 million families have lost or will lose their homes as a result of abusive subprime loans, constituting one in every five subprime loans made in 2005 and 2006. See *Legislative Proposals on Reforming Mortgage Practices, Hearing Before the H. Financial Servs. Comm.*, 110th Cong. (2007) (statement of Michael Calhoun, President, Center for Responsible Lending), available at [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/htcalhoun102407.pdf](http://www.house.gov/apps/list/hearing/financialsvcs_dem/htcalhoun102407.pdf) [hereinafter Statement of Michael Calhoun]. New foreclosures on subprime adjustable rate loans in the second quarter of 2007 were 90% higher than in the previous year. *Id.*

<sup>148</sup> APGAR & HERBERT, *supra* note 129, at vii.

<sup>149</sup> Davis, *supra* note 117.

<sup>150</sup> Robert Kuttner, *What’s Behind the Sub-Prime Disaster*, AM. PROSPECT, Aug. 29, 2007.

<sup>151</sup> *Id.*

<sup>152</sup> NAT’L ASS’N OF MORTGAGE BROKERS, *WATTERS V. WACHOVIA BANK: BANK MORTGAGE LENDERS REMAIN EXEMPT FROM STATE REGULATION* (2007), available at [http://www.namb.org/Images/namb/GovernmentAffairs/Word\\_From\\_Washington/WFW%202007-06%20\(Watters%20v.%20%20Wachovia%20Bank\).pdf](http://www.namb.org/Images/namb/GovernmentAffairs/Word_From_Washington/WFW%202007-06%20(Watters%20v.%20%20Wachovia%20Bank).pdf).

mortgage meltdown.”<sup>153</sup> Traditionally, the interests of borrowers and lenders have been aligned: if borrowers are unable to repay their debts, lenders generally do not make any money. However, the growth of the secondary mortgage market has enabled mortgage lenders to bundle their loans with other mortgages into securities, which are then sold on a secondary market shortly after the loans are initially made. This securitization of mortgage lending has de-coupled the interests of borrowers and lenders, reducing the incentive for lenders to ensure that borrowers are capable of repaying their loans.<sup>154</sup>

43. The federal government has made a modest effort to expand access to mortgage refinancing through the Federal Housing Administration,<sup>155</sup> but these efforts are relatively minor. Moreover, beyond holding congressional hearings, the federal government has taken no new efforts to curb predatory lending or to combat the targeting of communities of color by predatory lenders. Despite the current financial crisis, the market is not self-correcting, as “future abuses are inevitable” without government reforms.<sup>156</sup>

### **Ineffective and Slow Enforcement Fails to Address Discrimination Comprehensively**

44. Based on HUD’s own data, it is estimated that the United States has approximately 3.7 million fair housing violations annually, and that approximately 2 million involve race discrimination.<sup>157</sup> But in 2006, HUD processed fewer than 11,000 total complaints, encompassing those based on family status, disability, religion, color, race, sex, and national origin discrimination.<sup>158</sup> Thus, less than one-half of 1% of the estimated fair housing violations that occur in the United States result in formal complaints processed by HUD. Of the fair housing complaints received each year, approximately 40% allege race discrimination.<sup>159</sup>
45. A study by the Government Accounting Office (“GAO”) evaluated how HUD and state and local enforcement agencies that investigate fair housing complaints treated callers with potential complaints and found much evidence of poor performance.<sup>160</sup> For example, approximately thirty percent of complainants “noted that it was either somewhat or very difficult to reach a live person the first time they contacted a fair housing agency.”<sup>161</sup> In addition, more than one-third said they “had difficulty contacting staff after the initial contact.”<sup>162</sup> Staff at half of the agencies required complainants to fill out an intake form prior

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<sup>153</sup> Statement of Michael Calhoun, *supra* note 147, at 6.

<sup>154</sup> *Id.*

<sup>155</sup> Steven R. Weisman, *Bush Offers Relief for Some on Home Loans*, N.Y. TIMES, Aug. 31, 2007. Proposed changes to the federal mortgage insurance program will offer relief to approximately 80,000 more homeowners, a very small number considering the current wave of foreclosures. Additionally, although recent legislation approved by a Committee of the United States House of Representatives will provide some relief by reducing tax burdens imposed on victims of foreclosure, such legislation will obviously not do anything to help homeowners who are trying to avoid foreclosure. *U.S. House Panel Backs Tax Relief on Mortgage Debt*, REUTERS, Sept. 26, 2007.

<sup>156</sup> Statement of Michael Calhoun, *supra* note 147, at 9.

<sup>157</sup> NAT’L FAIR HOUS. ALLIANCE, THE CRISIS OF HOUSING SEGREGATION: 2007 FAIR HOUSING TRENDS REPORT 26 (2006) (citing 2004 Fair Housing Trends Report which reported findings from HDS 2000 study).

<sup>158</sup> News Release, U.S. Dep’t of Hous. & Urban Dev., Housing Discrimination Complaints at an All-time High (Apr. 3, 2007), available at <http://www.hud.gov/news/release.cfm?content=pr07-032.cfm>.

<sup>159</sup> U.S. GAO, FAIR HOUSING: OPPORTUNITIES TO IMPROVE HUD’S OVERSIGHT AND MANAGEMENT OF THE ENFORCEMENT PROCESS, GAO-04-463, at 73 tbl.7 (2004) [hereinafter GAO 2004].

<sup>160</sup> See generally U.S. GAO, FAIR HOUSING: HUD NEEDS BETTER ASSURANCE THAT INTAKE AND INVESTIGATION PROCESSES ARE CONSISTENTLY THOROUGH, GAO-06-79 (2005) [hereinafter GAO 2005].

<sup>161</sup> *Id.* at 16.

<sup>162</sup> *Id.*

to initiation of any investigation, a process that “could take a week or more—during which the caller could lose a housing opportunity.”<sup>163</sup> One test caller who stressed that her situation was urgent was nevertheless told that “filing a complaint was a ‘slow process’ and that her complaint would not be acted on for some time” regardless of how the intake information was received.<sup>164</sup> The GAO informed HUD that “[t]he time it takes to receive the form can delay the enforcement process, potentially resulting not only in the loss of a housing opportunity but also in complainants becoming frustrated with the process and deciding not to pursue their complaint.”<sup>165</sup>

46. Large numbers of complaints that are received by HUD are closed without an investigation to determine whether discrimination has occurred. The GAO could find no explanation as to why, out of a sample of 2,000 complaints that appeared at intake to involve a potential fair housing violation, only 306 became filed or “perfected” complaints.<sup>166</sup> Of the total number of complaints filed with HUD, more than 14% of investigations are closed “administratively,” and thus without resolution.<sup>167</sup>
47. In recent years, HUD has found discrimination in remarkably few cases. In nearly half of all cases that are investigated, the agency decides there is no reasonable cause to believe that discrimination has occurred.<sup>168</sup> HUD found reasonable cause to proceed in only 34 cases in fiscal year 2006, down from 88 cases in fiscal year 2001.<sup>169</sup> Only 3.3 percent of all cases filed between 1989 and 2003 resulted in a reasonable cause determination being issued.<sup>170</sup> There are, then, only a minuscule number of cases where HUD has investigated and found that discrimination occurred.<sup>171</sup> State and local agencies have a somewhat better track record than HUD and have found discrimination, or reasonable cause, in seven percent of their cases.<sup>172</sup>
48. Another measure of effectiveness in enforcing the law is whether agencies investigate cases promptly. Although Congress instructed HUD to investigate cases within 100 days unless it is infeasible to do so,<sup>173</sup> in 2001, only 17% of cases were investigated on time by HUD.<sup>174</sup> HUD’s Report to Congress for 2006 reported that 1,172 complaints took more than 100 days for HUD to investigate and that 3,940 complaints being handled by state and local agencies took more than 100 days.<sup>175</sup> HUD has taken, on average, over 470 days to close cases.<sup>176</sup>

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<sup>163</sup> *Id.* at 17.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 21-22.

<sup>166</sup> *Id.* at 25.

<sup>167</sup> GAO 2004, *supra* note 159, at 75 tbl.10.

<sup>168</sup> *Id.* at 33.

<sup>169</sup> NAT’L FAIR HOUS. ALLIANCE, THE CRISIS OF HOUSING SEGREGATION, *supra* note 157, at 32.

<sup>170</sup> Michael H. Schill, *Implementing the Federal Fair Housing Act: The Adjudication of Complaints*, in FRAGILE RIGHTS WITHIN CITIES, *supra* note 18, at 143, 154, 156 tbl.7.3.

<sup>171</sup> See GAO 2004, *supra* note 159, at 34 (“A determination of reasonable cause accounted for the smallest share of outcomes, around 5 percent of all completed investigations.”).

<sup>172</sup> *Id.* at 36.

<sup>173</sup> 42 U.S.C. § 3610(a)(1)(B)(iv).

<sup>174</sup> GAO 2004, *supra* note 159, at 37-38. This proportion rose to roughly 50% of the cases in 2003 after a major but temporary initiative. *Id.* at 38.

<sup>175</sup> U.S. DEP’T OF HOUS. & URBAN DEV., THE STATE OF FAIR HOUSING: FY2006 ANNUAL REPORT ON FAIR HOUSING 33, 55 (2007).

<sup>176</sup> John Goering, *The Effectiveness of Fair Housing Programs and Policy Options*, in FRAGILE RIGHTS WITHIN CITIES, *supra* note 18, at 253, 261-62.

49. HUD has failed to educate and inform United States residents about their rights and opportunities for redress under the Fair Housing Act. Based on data from HUD-commissioned studies, public knowledge of fair housing law did not improve between 2000 and 2005 despite some efforts by HUD to increase public awareness.<sup>177</sup> More importantly, more than 80% of people who thought that they were the victims of housing discrimination did nothing about it.<sup>178</sup> However, those with more knowledge of federal fair housing law were over two-and-one-half times more likely than those with little awareness to do something about perceived discrimination.<sup>179</sup>
50. HUD provides virtually no educational materials for the general public about fair housing issues, and materials prepared by its grantees are not distributed nationally or made available by HUD to be replicated by other groups. Contrary to the Fair Housing Act,<sup>180</sup> HUD failed to fund a national fair housing media campaign in fiscal years 2005 or 2006 and failed to provide funding to underwrite previous successful media campaigns.<sup>181</sup>
51. Key partners in fair housing enforcement activities are private fair housing groups, which are not government agencies but may be funded by HUD to conduct enforcement and education activities throughout the country. Such groups routinely process at least two-thirds of the nation's fair housing complaints<sup>182</sup> but HUD's Fair Housing Initiatives Program ("FHIP") is woefully underfunded. Although pending legislation calls for appropriating \$52 million per year for FHIP,<sup>183</sup> Congressional appropriations for the FHIP program have dropped from a high in 1995 of \$25 million to \$18.1 million in 2007.<sup>184</sup> HUD's fiscal year 2007 budget lacked funding to create new groups, continue a national media campaign to increase public awareness of fair housing rights and responsibilities, or sustain existing groups, even well-qualified, previously funded groups.<sup>185</sup>
52. HUD's Office of Fair Housing and Equal Opportunity ("FHEO"), the department that is responsible for processing fair housing complaints, has been particularly susceptible to shifting goals and fluctuating funding following partisan changes in Congress and the White House.<sup>186</sup> The level of resources allocated to FHEO, adjusted for inflation, has steadily declined from an all-time high of \$49.38 million in 1994, and although Congress has

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<sup>177</sup> MARTIN D. ABRAVANEL, URBAN INST., DO WE KNOW MORE NOW? TRENDS IN PUBLIC KNOWLEDGE, SUPPORT AND USE OF FAIR HOUSING LAW 19 (2006); *see also* Martin D. Abravanel, *Paradoxes in the Fair Housing Attitudes of the American Public, 2001-2005*, in FRAGILE RIGHTS WITHIN CITIES, *supra* note 18, at 81, 95-97.

<sup>178</sup> Abravanel, *supra* note 177, at 88 & tbl. 4.2; MARTIN D. ABRAVANEL & MARY K. CUNNINGHAM, URBAN INST., HOW MUCH DO WE KNOW? PUBLIC AWARENESS OF THE NATION'S FAIR HOUSING LAWS 25 (2002); *accord* ABRAVANEL, *supra* note 177, at 35-36. Further, "[a]lmost two of every five people in this situation believed there was no point to responding, that it would not have solved the problem or, in some instances, that it could have made the problem worse." ABRAVANEL & CUNNINGHAM, *supra*, at 27; *accord* ABRAVANEL, *supra* note 177, at 36-37.

<sup>179</sup> ABRAVANEL & CUNNINGHAM, *supra* note 178, at 26-27.

<sup>180</sup> *See* 42 U.S.C. § 3616a(d) (requiring HUD to "establish a national education and outreach program" that includes "public service announcements, both audio and video" and "television, radio and print advertisements").

<sup>181</sup> *See, e.g.*, U.S. Dep't of Hous. & Urban Dev., Fair Housing Ad Campaign, <http://www.hud.gov/offices/fheo/adcampaign.cfm>.

<sup>182</sup> GAO 2004, *supra* note 159, at 75 tbl.10.

<sup>183</sup> Housing Fairness Act of 2007, S. 1733, 110th Cong. (2007).

<sup>184</sup> U.S. DEP'T OF HOUS. & URBAN DEV., THE STATE OF FAIR HOUSING, *supra* note 175, at 2.

<sup>185</sup> *See* NAT'L FAIR HOUS. ALLIANCE, FHIP FACT SHEET 1-3, <http://www.nationalfairhousing.org/resources/publicPolicy/articles/NFHA%20policy%20agenda.pdf>.

<sup>186</sup> *See* Mara S. Sidney, *National Fair Housing Policy and Its (Perverse) Effects on Local Advocacy*, in FRAGILE RIGHTS WITHIN CITIES, *supra* note 18, at 203, 224-25.

increased FHEO appropriations since 2000, these increases have not kept pace with inflation.<sup>187</sup> The number of full-time staff positions has also declined, from a high of 750 in 1994<sup>188</sup> to 598 in 2006.<sup>189</sup> Understaffing and underfunding in FHEO are significant problems, because fair housing enforcement is a staff-based activity involving investigations, interviews, data collection, and analysis.<sup>190</sup> As FHEO's staff levels have fluctuated and well-qualified staff have left or retired, fewer complaints have been processed, delays in resolving cases has increased, and fewer reasonable cause determinations have been made, while new staff has lacked the skills necessary to conduct thorough investigations, and settlement amounts have declined.<sup>191</sup>

53. The DOJ has the authority to initiate enforcement actions based on its own investigations. Despite the long history of housing discrimination in the United States, the DOJ did not implement a Fair Housing Testing Program until 1992,<sup>192</sup> and it still brings relatively few cases based on the results of testing.<sup>193</sup> Although the DOJ filed a total of 15 cases during 1999 and 2000 based on the results of its testing program, the DOJ has filed only 16 such cases from 2001 through 2006.<sup>194</sup> The United States' Periodic Report states that the Civil Rights Division of the DOJ "increased the number of fair housing tests conducted by 38 percent compared to fiscal year 2005,"<sup>195</sup> but it does not state the total number of fair housing tests conducted, where those tests occurred, the current and proposed levels of funding, the number of housing complaints alleging racial discrimination the DOJ received, or what forms and level of discrimination have been found in those cases investigated.
54. The DOJ brought only 31 housing and civil enforcement cases in fiscal year 2006,<sup>196</sup> of which a mere eight involved claims of race discrimination, down from 53 cases in fiscal year 2001<sup>197</sup> and a peak of 194 in 1994.<sup>198</sup> These numbers are clearly insufficient in light of HUD's estimate that over 2 million fair housing violations involving race occur annually.<sup>199</sup>

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<sup>187</sup> U.S. COMM'N ON CIVIL RIGHTS, FUNDING FEDERAL CIVIL RIGHTS ENFORCEMENT: 2005, at 39 (Sept. 2004), available at <http://www.law.umaryland.edu/marshall/usccr/documents/cr12f962005draft.pdf>.

<sup>188</sup> NAT'L COUNCIL ON DISABILITY, RECONSTRUCTING FAIR HOUSING 207-08 (2001), available at <http://www.ncd.gov/newsroom/publications/2001/pdf/fairhousing.pdf>.

<sup>189</sup> U.S. DEP'T OF HOUS. & URBAN DEV., THE STATE OF FAIR HOUSING, *supra* note 175, at 15.

<sup>190</sup> NAT'L COUNCIL ON DISABILITY, *supra* note 188, at 206. Experts estimate that a minimum of 750 full-time staff at FHEO are necessary to deal with the current level of complaints received by HUD. See *Fighting Discrimination Against the Disabled and Minorities Through Fair Housing Enforcement, Hearing Before the H. Subcomm. on Oversight and Investigations, and Subcomm. on Housing and Community Opportunity*, 107th Cong. 63, 73 (2002) (statement of Sara Pratt, Nat'l Council on Disability), available at [http://commdocs.house.gov/committees/bank/hba82683.000/hba82683\\_0f.htm](http://commdocs.house.gov/committees/bank/hba82683.000/hba82683_0f.htm).

<sup>191</sup> NAT'L COUNCIL ON DISABILITY, *supra* note 188, at 210; see also Schill, *supra* note 170, at 147-49 (discussing reports concluding HUD enforcement was "plagued by delay and relatively low rates of reasonable-cause findings").

<sup>192</sup> U.S. Dep't of Justice, Hous. & Civil Enforcement Section, Testing Program, [http://www.usdoj.gov/crt/housing/housing\\_testing.htm](http://www.usdoj.gov/crt/housing/housing_testing.htm).

<sup>193</sup> Michael Selmi, *Public vs. Private Enforcement of Civil Rights: The Case of Housing and Employment*, 45 UCLA L. REV. 1401, 1426 (1998).

<sup>194</sup> *Civil Rights Division Oversight, Hearing Before the S. Judiciary Comm.*, 110th Cong. (2007) (statement of Wade Henderson, President and CEO, Leadership Conference on Civil Rights), available at [http://judiciary.senate.gov/testimony.cfm?id=2837&wit\\_id=6546](http://judiciary.senate.gov/testimony.cfm?id=2837&wit_id=6546).

<sup>195</sup> *Periodic Report*, *supra* note 103, at ¶ 67.

<sup>196</sup> *Id.*

<sup>197</sup> *Civil Rights Division Oversight, Hearing Before the S. Judiciary Comm.*, *supra* note 194.

#### **IV. Recommendations to Facilitate the United States Government's Compliance with CERD**

##### **Recommendations for the Department of Housing and Urban Development**

55. HUD is required to administer its public housing programs in ways that affirmatively further fair housing and encourage greater residential integration. We recommend that HUD:

- Encourage and support the development of public and assisted housing outside of areas currently occupied predominantly by people of color. To ensure that new government assisted housing is not concentrated in segregated areas, HUD should adopt guidelines to encourage applications for developing low income housing in integrated areas, and reject plans for the redevelopment of public and assisted housing in integrated areas that would reduce the total number of existing affordable housing units in integrated areas.<sup>200</sup> Other viable public and assisted housing should also be preserved, in light of the severe housing shortages facing low income families in the United States.<sup>201</sup>
- Right to return. At the same time, HUD should support the right of all tenants who wish to return to the site of a redeveloped public housing community.

56. As the only federally-administered program that provides directly for housing mobility, Section 8 has the potential to encourage racial integration. HUD should support voluntary choices by families to move from high-poverty areas to lower-poverty areas; it should also facilitate movement to more integrated communities. We recommend that HUD:

- Strengthen the portability of vouchers. HUD should eliminate financial penalties imposed on public housing authorities when families move from one jurisdiction to another. HUD should also abandon rules adopted in 2003 and 2004 that limit Section 8 moves into lower-poverty, higher-rent areas.<sup>202</sup> Finally, HUD should direct public housing authorities in less segregated jurisdictions to absorb into their own voucher programs any voucher recipients seeking to move into such jurisdictions from neighboring areas with higher levels of segregation.<sup>203</sup>
- Implement and fund a nationwide mobility and counseling program based on the successful Gautreaux Assisted Housing Program in Chicago. Such a program should provide voluntary participants with assistance finding housing, as well as carefully designed counseling programs. For example, HUD could reinstate front-end mobility counseling, abandoned in 2002, which advises families how they might use their vouchers to move into low-poverty areas. Second, HUD should combine front-end

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<sup>198</sup> *Initial Report, supra* note 23, at 50 (“After the amended Act went into effect, the number of civil fair housing cases brought by DOJ increased from approximately 15 to 20 in the years prior to the 1988 amendments to a peak of 194 cases in 1994.”).

<sup>199</sup> NAT’L FAIR HOUS. ALLIANCE, THE CRISIS OF HOUSING SEGREGATION, *supra* note 157, at 26.

<sup>200</sup> INCLUSIVE COMMUNITIES PROJECT, STATEMENT OF FAIR HOUSING AND CIVIL RIGHTS ADVOCATES ON HOPE VI REAUTHORIZATION 2 (2007); *see also* Testimony of Dr. Jill Khadduri at 36-38, Thompson v U.S. Dep’t of Hous. & Urban Dev., No. 95 Civ. 00309 (MJG) (D. Md. Mar. 10, 2006) [hereinafter Khadduri Report].

<sup>201</sup> *See generally* A Report to the Committee on the Elimination of Racial Discrimination on Racial Discrimination in Homelessness and Affordable Housing in the United States, delivered to the U.N. Committee on the Elimination of Racial Discrimination (2007), which is consistent with the principles set out in the present report.

<sup>202</sup> Tegeler, *New Directions for U.S. Housing Policy, supra* note 56, at 99.

<sup>203</sup> *See* INCLUSIVE COMMUNITIES PROJECT, *supra* note 200, at 2; Khadduri Report, *supra* note 200, at 34-35.

mobility counseling with additional post-move counseling to assist relocating families in accessing opportunities in their new neighborhoods.<sup>204</sup> Such counseling should be connected to essential services that have been successful in helping individuals find and retain jobs: job-placement programs, foundation and church-supported transportation assistance programs, and childcare assistance.<sup>205</sup>

57. We recommend that HUD substantially improve its system for dealing with complaints of housing discrimination. In particular, we recommend that Congress and HUD:

- Increase the funding and staffing levels for HUD's Office of Fair Housing and Equal Opportunity. Funding for FHEO has not kept pace with inflation, and staff levels within the office are well below the minimum level recommended by experts. Funding and staff levels for FHEO must be increased so that it can investigate and resolve complaints efficiently and effectively.
- Redesign education and outreach programs to address systemic shortcomings in all prior education programs and implement national fair housing media campaigns. HUD must redesign its efforts to make citizens aware of their rights and opportunities for redress under the FHA if HUD's complaint system is to function effectively.
- Increase funding for its Fair Housing Initiatives Program to at least \$52 million annually. Fair housing enforcement groups are currently processing more complaints and conducting more investigations than HUD is, but inadequate funding is available for them to process so many complaints. Funding for FHIP should be increased significantly, to at least the \$52 million appropriation in pending legislation.<sup>206</sup>
- Consider establishing a new, independent agency to conduct fair housing enforcement activities, including the operation of the FHIP program, the development of new national education and outreach materials, and the investigation of individual and systemic complaints. Given the poor performance of HUD in accepting and investigating complaints, creation of a new enforcement agency should be part of the public policy agenda of the United States.

### **Recommendations for the Department of Justice**

58. As the principal legal authority tasked with enforcing federal fair housing laws, the DOJ should do more to combat illegal discrimination by private actors in the housing market. We recommend that the DOJ:

- Increase resources dedicated to investigating and prosecuting steering. The United States' Periodic Report highlights its efforts to increase testing for discrimination, but such enhanced efforts must result in concerted action. The DOJ must greatly increase the number of race-based housing and civil enforcement cases it files to ensure that the violations discovered through the testing program are remedied.

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<sup>204</sup> PHILIP TEGELER, CONNECTING FAMILIES TO OPPORTUNITY: THE NEXT GENERATION OF HOUSING MOBILITY POLICY (citing Xavier de Souza Briggs & Margery Austin Turner, *Assisted Housing Mobility and the Success of Low-Income Minority Families: Lessons for Policy, Practice, and Future Research*, 1 NW J.L. & SOC. POL'Y 25, 40 (2006)), in ALL THINGS BEING EQUAL: INSTIGATING OPPORTUNITY IN AN INEQUITABLE TIME 3-5 (Brian Smedley & Alan Jenkins eds., 2007).

<sup>205</sup> *Id.*

<sup>206</sup> Housing Fairness Act of 2007, S. 1733, 110th Cong. (2007).

- Investigate and prosecute cases of lending discrimination. The DOJ should prosecute cases against mortgage lenders who engage in discriminatory practices. The federal government is better situated than are private individuals to litigate discriminatory lending cases, which are typically class actions that require complicated statistical analyses to account for the many variables used in making loan determinations.<sup>207</sup>

### **Recommendations for the United States Congress**

59. As currently administered, the Low Income Housing Tax Credit is not expressly required to comply with federal fair housing policy, and it perpetuates residential segregation. Thus, we recommend that Congress:

- Incorporate explicit fair housing standards into the LIHTC statute. Congress should encourage project siting that furthers fair housing goals and create incentives that promote economic and racial diversity. Examples include the prioritization of developments in areas with low crime rates and well-resourced, low-poverty schools, and the establishment of set-asides for voucher recipients in new LIHTC developments in high-opportunity neighborhoods.<sup>208</sup>
- Direct the Internal Revenue Service and HUD to collect data regarding the race and economic status of applicants and residents in LIHTC developments. Such mandates should include the collection and reporting of racial and economic data about project residents and applicants.<sup>209</sup>

60. The federal government must address the targeting of communities of color by predatory lenders. To that end, we recommend that the United States Congress:

- Enact robust anti-predatory lending legislation. Congress should adopt several reforms to curtail discrimination in the mortgage market and prevent predatory lending, including but not limited to: uniform pricing standards for all mortgage lending institutions,<sup>210</sup> licensing and registration requirements for mortgage brokers; a prohibition on financial incentives for brokers to steer borrowers towards subprime loans; the establishment of a duty of care owed by mortgage originators to borrowers; a requirement that creditors make a determination based on verifiable documentation that applicants have an ability to repay their loans; the elimination of prepayment penalties for subprime loans;<sup>211</sup> and a requirement that subprime lenders recommend

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<sup>207</sup> See Selmi, *supra* note 193, at 1425. An example of a successful mortgage discrimination case brought by the federal government is *United States v. Decatur Federal Savings & Loan Association*, No. 92 Civ. 2198 (N.D. Ga. Sept. 17, 1992). In *Decatur Federal*, the DOJ determined that, although the defendant bank had operated since 1927 in Atlanta, a city with a large African American population, 97% of its mortgage loans were made in majority white census tracts; after conducting a market-share analysis, DOJ determined that these severe racial imbalances were statistically significant and could not be explained by socioeconomic differences between white and African American neighborhoods. See Richard Ritter, *The Decatur Federal Case: A Summary Report*, in MORTGAGE LENDING, RACIAL DISCRIMINATION, AND FEDERAL POLICY 447-48 (John Goering & Ron Wienk eds., 1996). The complex analyses that were involved in bringing this action demonstrate the need for federal resources to prosecute lending discrimination cases successfully.

<sup>208</sup> Tegeler, *New Directions for U.S. Housing Policy*, *supra* note 56, at 100-01.

<sup>209</sup> Such recordkeeping is routine for HUD-administered projects but is not yet followed in the LIHTC program. See ABT REPORT 2003, *supra* note 61; see also Tegeler, *New Directions for U.S. Housing Policy*, *supra* note 56, at 100.

<sup>210</sup> BOCIAN ET AL., *supra* note 130, at 24.

<sup>211</sup> See Statement of Michael Calhoun, *supra* note 147, at 10-17.

that applicants avail themselves of mortgage counseling.<sup>212</sup> However, Congressional remedies should not preempt more stringent state government regulations.<sup>213</sup> Furthermore, Congress should strengthen proposed legislation by establishing more potent remedies for violations of the duty of care and the prohibition on steering, and by creating assignee liability for mortgages sold on the secondary market, to realign the interests of borrowers and debt holders.<sup>214</sup>

### Recommendations for State and Local Governments

61. Integrated schools lead to more integrated neighborhoods. To that end, we recommend that state and local governments:

- Pursue alternative means to promote school integration. “[R]esearch . . . strongly shows that graduates of desegregated high schools are more likely to live in integrated communities than those who do not, and are more likely to have cross-race friendships later in life.”<sup>215</sup> The United States Supreme Court’s recent decision regarding school integration restricted, but did not prohibit, school districts from using voluntary integration plans or other narrowly-tailored, race conscious measures to create racially diverse schools. Therefore, districts should find creative ways to maintain integrated schools, including strategic site selection of new schools and the drawing of attendance zones with consideration of neighborhood demographics.<sup>216</sup>

62. Exclusionary zoning creates and maintains patterns of residential segregation. Therefore, we recommend that state and local governments:

- Curb exclusionary zoning. State governments should impose state-wide limits on local land use laws that exclude affordable housing, and encourage local governments to prohibit the use of zoning laws to exclude traditional victims of discrimination and people who are not United States citizens.<sup>217</sup>
- Adopt inclusionary zoning ordinances. States should mandate that municipalities adopt zoning ordinances that require a certain amount of affordable housing in new developments to provide more racially and economically integrated affordable housing opportunities.

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<sup>212</sup> Programs that advise borrowers as they choose between mortgages have been “the most effective tool for helping minority and lower-income families become successful homeowners.” ACORN, *supra* note 131, at 12.

<sup>213</sup> *Id.*

<sup>214</sup> See Statement of Michael Calhoun, *supra* note 147, at 7-8, 17.

<sup>215</sup> *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 426 F.3d 1162, 1175 (9th Cir. 2005) (emphasis added), *rev’d*, 551 U.S. \_\_\_, 127 S. Ct. 2738 (2007); see also Amy Stuart Wells & Robert L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64 REV. EDUC. RES. 531, 551-52 (1994) (reviewing studies finding students in integrated schools more likely to have cross-racial social relationships later in life and concluding “interracial contact in elementary or secondary school can help blacks overcome perpetual segregation”).

<sup>216</sup> See *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. at 2791-92 (Kennedy, J., concurring in part and concurring in the judgment).

<sup>217</sup> See U.N. Comm. on the Elimination of Racial Discrimination, Jan. 10, 2004, General Recommendation 30, Discrimination against non citizens (Sixty-fourth session, 2004), ¶ 32, U.N. Doc. CERD/C/64/Misc.11/rev.3, available at <http://www1.umn.edu/humanrts/gencomm/genrec30.html> (“Guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices.”).

## **V. Conclusion**

63. Residential segregation in the United States today is not merely the product of private action or consumer “choice.” Rather, it was created in large measure as a result of explicitly exclusionary government programs, policies, and practices. The high level of residential segregation is perpetuated by acts of private discrimination and by governmental policies that discourage mobility and develop low-income housing primarily in higher poverty areas and communities with little opportunity for integration.
64. The United States’ Periodic Report fails to account for the United States government’s history of contributing to residential segregation, the manifold ways that United States policy maintains racial isolation today, and the many failures of the government to take adequate measures to combat private acts of racial discrimination in the housing market. Given the extremely high levels of residential segregation that still exist in America, the estimated 2 million fair housing violations on the basis of race that occur annually, and the ongoing crisis in predatory and subprime lending that puts millions of homeowners at risk of foreclosure, the need for the United States to fulfill its obligations under CERD is more pressing than ever.