

# AFFIRMATIVELY FURTHERING FAIR HOUSING

IN THE DISTRICT OF COLUMBIA



DISTRICT OF COLUMBIA ADVISORY COMMITTEE  
TO THE US COMMISSION ON CIVIL RIGHTS

BRIEFING REPORT - JUNE 2011

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# **Affirmatively Furthering Fair Housing in the District of Columbia**

**Briefing Report of the  
District of Columbia Advisory Committee  
to the United States Commission on Civil Rights**

## Letter of Transmittal

District of Columbia Advisory Committee  
to the U.S. Commission on Civil Rights

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The District of Columbia Advisory Committee submits this report, "Affirmatively Furthering Fair Housing in the District of Columbia," as part of its responsibility to advise the Commission on civil rights issues in the District. The Committee approved this report by a vote of 11 to 0. One member recused herself; one member abstained.

On September 16, 2010, the Committee invited a number of city officials, local, and national civil rights agencies, and advocates and real estate professionals to participate in a briefing that examined the efforts of the District to carry out its statutory and regulatory obligation to affirmatively further fair housing. The briefing was particularly timely because the District, as required every five years by the US Department of Housing and Urban Development, is required to submit an Analysis of Impediments to Fair Housing Choice.

Based on the briefing, the DC Advisory Committee offers the enclosed report and findings and recommendations with the aim of assisting the District in its efforts and providing suggestions for other communities as they prepare their Analyses of Impediments.

- The Advisory Committee heard several examples of inadequate oversight, including a failure to assure that new apartment buildings were accessible to the disabled, and insufficient monitoring of banks' Home Mortgage Disclosure Act data to assure that they are not discriminating in loan origination or in foreclosure practices. The District needs to strengthen its coordination and oversight of all city agencies whose activities have an impact on fair housing. These would include at least the Department of Housing and Community Development, the Office of Human Rights, the Office of Disability Rights, the DC Housing Authority, the Department of Consumer and Regulatory Affairs and the Department of Insurance, Securities and Banking.

- The District should establish a baseline reflecting the location of Section 8 Housing Choice Voucher holders so that progress can be measured.
- The best way to measure compliance with fair housing requirements is to conduct random testing, in addition to complaint investigations. The city, in conjunction with an outside contractor such as the Equal Rights Center, should conduct paired testing investigations to assess fair housing compliance with respect to rentals, sales, mortgage lending and insurance.
- There is evidence of widespread discrimination by potential Section 8 landlords in the District. The District should conduct an extensive testing program of landlords and an education and training program for tenants concerning the program, including the legal obligation of landlords not to discriminate based on source of income.
- Many Section 8 eligible tenants are not familiar with the full range of neighborhoods where they can secure section 8 units. The District should conduct a comprehensive mobility counseling program to acquaint them with the full range of available neighborhoods. This should include providing visits to those neighborhoods so renters can have a fuller picture of the neighborhoods with which they might not be familiar.

The Advisory Committee's findings and recommendations are found in more detail in the accompanying report.

The Committee hopes that this report will assist the District of Columbia in fashioning the most effective Analysis of Impediments to Fair Housing Choice.

Sincerely,

Daniel Lips, Chairman

# **District of Columbia Advisory Committee to the U.S. Commission on Civil Rights**

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## **Acknowledgments**

The District of Columbia Advisory Committee expresses its appreciation to the Commission's Eastern Regional Office. The project was directed by Barbara de La Vieu, the Deputy Director of the Eastern Regional Office. Staff expresses appreciation to Larry Pearl and Greg Squires for their assistance in the project. Staff also expresses appreciation to Peter Minarik, Director of the Southern Regional Office, and Malee Craft, Director of the Rocky Mountain Regional Office for their Editorial Review and Christopher Byrnes, Senior Attorney Advisor, Office of the Staff Director, for his Legal Sufficiency Review.

The cover art was designed by Lia Garvin, graphic artist.

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Housing determines a family's location, and because of that, housing is the fulcrum of opportunity, linked to many factors critical to success of adults and children in American society.<sup>1</sup>

## I. Introduction

The principle of fair housing is a basic civil right. The Fair Housing Act (FHA) prohibits discrimination and mandates steps that are designed to lead to more integrated living patterns, imposing restrictions and obligations that affect both private and public housing.<sup>2</sup> The FHA also directs that the Secretary of the Department of Housing and Urban Development (HUD) "shall administer the programs and activities relating to housing and urban development in a manner affirmatively to further" fair housing.<sup>3</sup> The mandate to affirmatively further fair housing is accomplished by ensuring that direct and indirect practices, policies, regulations, laws and other actions by the private or public sector promote equal access to housing. The purpose is not just to address discrimination; it also requires actions to overcome segregation and other effects of past discrimination, prevent future discrimination, and increase the supply of open housing.

Jurisdictions seeking funds from HUD's Community Planning and Development programs are required to complete an Analysis of Impediments to Fair Housing Choice. This analysis serves as the basis for fair housing planning—it provides essential information to urban planners, zoning officials, policy makers, administrative staff, housing providers, lenders, industry, and fair housing advocates; and it assists in building public support for fair housing efforts.

The District of Columbia (the District), as part of its obligation to affirmatively further fair housing, last prepared its required Analysis of Impediments in 2005. The District of Columbia Advisory Committee to the U.S. Commission on Civil Rights (Advisory Committee) decided to explore the topic of affirmatively furthering fair housing for two principal reasons:

- The District of Columbia is currently preparing its five-year (2005-2010) Analysis of Impediments to Fair Housing Choice report in 2011. The Advisory Committee convened a briefing meeting to inform and make recommendations to this forthcoming effort.
- There is renewed national interest in this issue because of a recent lawsuit involving Westchester County, New York. As a result of this litigation, HUD plans to issue an updated regulation on this subject.

The Advisory Committee convened a briefing meeting on September 16, 2010, on "Affirmatively Furthering Fair Housing in the District of Columbia." The purpose of the briefing was for the Advisory Committee to gather information on how effectively the District is meeting its obligation to affirmatively further fair housing and what additional actions should be taken.

The Advisory Committee heard presentations from: Michael Allen of Relman, Dane and Colfax, PLLC; David Berenbaum of the National Community Reinvestment Coalition; Leila Edmonds,

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<sup>1</sup> Gary Orfield and Nancy McArdle, "The Vicious Cycle: Segregated Housing, Schools, and Intergenerational Inequality," prepared by the Civil Rights Project of Harvard University; Published by the Joint Center for Housing Studies, Harvard University, August 2006, p.3.

<sup>2</sup> 42 U.S.C. §§ 3601-3619 (2011). The Fair Housing Act prohibits discrimination in all housing by making it illegal to "make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." *Id.* at § 3604 (a). Amendments in 1988 significantly expanded the scope of the FHA's protections to include persons with disabilities and families with children. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, § 800, 102 Stat. 1619-1620, 1622 (1988).

<sup>3</sup> 42 U.S.C. § 3608(e)(5) (2000).



Director of the District of Columbia Department of Housing and Community Development; Donald Kahl of the Equal Rights Center; Sara Pratt, fair housing advocate and consultant in the DC Metropolitan area; Marjorie Rifkin, of the University Legal Services, The Protection & Advocacy Program; Shanna Smith of the National Fair Housing Alliance; Peter Tatian of the Urban Institute; and Gustavo Velasquez, Director of the District of Columbia Office of Human Rights.<sup>4</sup>

The Advisory Committee hopes the results of its efforts and examination will help enhance the District's 2011 Analysis of Impediments.

## II. Background: From the Fair Housing Act to Westchester County

### *The Fair Housing Act*

When Congress passed the Civil Rights Act of 1968,<sup>5</sup> it addressed one of the last and most difficult problems of discrimination in America. The Civil Rights Act of 1964<sup>6</sup> had addressed discrimination in employment and in federal government programs and encouraged the desegregation of public schools. The Voting Rights Act of 1965<sup>7</sup> was aimed at dismantling barriers to full participation in the political process.

Housing discrimination took many forms. For many years, this country allowed outright racial zoning. When the U.S. Supreme Court struck that down,<sup>8</sup> restrictive covenants based on race, religion, and ethnicity came to the forefront. The Federal Housing Administration encouraged restrictive covenants<sup>9</sup> and would not insure homes in integrated neighborhoods.<sup>10</sup> The real estate, lending, and home insurance industries did their part to limit housing choice based on race.<sup>11</sup> One consequence is that today, as a study of housing discrimination in Washington DC concluded, "the fact of severe and persistent racial segregation of housing patterns in metropolitan areas is not contested."<sup>12</sup>

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<sup>4</sup> Subsequent to the briefing meeting, the Committee also received testimony from Alton Duncanson, a real estate agent who works in the District of Columbia metropolitan area and provides fair housing training to other real estate agents.

<sup>5</sup> 42 U.S.C. §§ 3601-3631 (2000). The Fair Housing Act of 1968 is also known as Title VIII of the Civil Rights Act of 1968. Congress passed the act in an effort to impose a comprehensive solution to the problem of unlawful discrimination in housing based on race, color, sex, national origin, or religion. The passage of the Fair Housing Act came after two earlier and unsuccessful federal initiatives: Executive Order 11063 in 1962, which directed all departments of the Executive Branch to take appropriate action to prevent discrimination in all federally administered housing programs and the Civil Rights Act of 1964, which contained language prohibiting housing discrimination in any program receiving federal financial assistance but was rarely enforced.

<sup>6</sup> Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 2 U.S.C., 28 U.S.C., and 42 U.S.C.).

<sup>7</sup> 42 U.S.C. §§ 1973-1973aa-6 (2004).

<sup>8</sup> See *Buchanan v. Warley*, 245 U.S. 60 (1917). See also *City of Richmond v. Deans*, 281 U.S. 704 (1930).

<sup>9</sup> See, e.g., FEDERAL HOUSING ADMINISTRATION, UNDERWRITING MANUAL: UNDERWRITING AND VALUATION PROCEDURE UNDER TITLE II OF THE NATIONAL HOUSING ACT WITH REVISIONS TO FEBRUARY 1938 (1938) (hereinafter "UNDERWRITING MANUAL") at 980(3):

Recorded restrictive covenants should strengthen and supplement zoning ordinances and to be really effective should include the provisions listed below. The restrictions should be recorded with the plat, or imposed as a blanket encumbrance against all lots in the subdivision, and should run for a period of at least twenty-five to thirty years. Recommended restrictions should include provision for the following: ... (g) Prohibition of the occupancy of properties except by the race for which they are intended.

See also U.S. COMMISSION ON CIVIL RIGHTS, HOUSING 16 (1961).

<sup>10</sup> See, e.g., U.S. COMMISSION ON CIVIL RIGHTS, REPORT 463-464 (1959).

<sup>11</sup> Ibid. See generally Camille Zubrinsky Charles, "Won't You Be My Neighbor? Race, Class, and Residence in Los Angeles," New York, Russell Sage, 2009; James Loewen, "Sundown Towns," New York, The New Press, 2005; James H. Carr and Nandinee K. Kutty (eds.) "Segregation: The Rising Costs for America," New York, Routledge, 2008; Douglas S. Massey and Nancy A. Denton, "American Apartheid: Segregation and the Making of the Underclass," Harvard University Press, 1993; Kenneth T. Jackson, "Crabgrass Frontier: The Suburbanization of the United States," Oxford University Press, 1985.

<sup>12</sup> Gregory D. Squires, Samantha Friedman, and Catherine E. Saidat, EXPERIENCING RESIDENTIAL SEGREGATION, A CONTEMPORARY STUDY OF WASHINGTON, D.C., Urban Affairs Rev., Vol. 38, No. 2, November 2002, 155-183, 155.

This tangled web was the target of Title VIII of the Civil Rights Act of 1968, the Fair Housing Act. The legislation not only prohibited a variety of discriminatory acts but did something more—it mandated the affirmative furthering of fair housing. Section 808(e)(5) of the FHA reads: “The Secretary of Housing and Urban Development shall administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter.”<sup>13</sup>

When the Community Development Block Grant program was enacted in 1974,<sup>14</sup> the law contained a then-standard provision that the recipients (grantees) were prohibited from discriminating on the basis of race, color, religion, sex, or national origin. However, in 1983 an amendment to the Act required that the grantee certify that “the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 and the Fair Housing Act [42 U.S.C. 3601 et seq.], and the grantee will affirmatively further fair housing.”

Subsequently, HUD adopted the following regulation:

In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore ... for each community receiving a grant under subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard.<sup>15</sup>

The regulation certainly resulted in increased paperwork for the more than 1,000 jurisdictions receiving Community Development funds, but HUD’s enforcement of the regulation was sporadic. HUD subsequently provided more guidance to its grantees in a Fair Housing Planning Guide issued in 1994. Nevertheless, a December 2008 Report of the National Commission on Fair Housing and Equal Opportunity co-chaired by former HUD Secretaries Henry Cisneros and Jack Kemp concluded:

The current federal system for ensuring fair housing compliance by state and local recipients of housing assistance has failed. . . . HUD only requires that communities receiving federal funds “certify” to their funding agency that a jurisdiction is affirmatively furthering fair housing. HUD requires no evidence that anything is actually being done as a condition of funding and it does not take adverse action if jurisdictions are directly involved in discriminatory actions or fail to affirmatively further fair housing.<sup>16</sup>

It would remain for a private lawsuit to address this problem.

### *The Westchester County Litigation*

In April 2006, a New York fair housing group filed a lawsuit in the Federal District Court for the

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<sup>13</sup> 42 U.S.C. § 3608(e)(5) (2000).

<sup>14</sup> Housing and Community Development Act of 1974, Pub. L. No. 93-383, as amended (codified in 42 U.S.C. §§ 5301-5321).

<sup>15</sup> 24 C.F.R. § 570.601 (a)(2) (2010).

<sup>16</sup> “The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity,” p. 5, Dec. 2008 <http://www.nationalfairhousing.org/LinkClick.aspx?fileticket=C8pll%2Bo5BYo%3D&tabid=3917&mid=8614> (last accessed May 4, 2011).



Southern District under the Federal False Claims Act. The suit alleged that Westchester County's numerous certifications to HUD that it was affirmatively furthering fair housing were false. This was so, stated the plaintiffs, because Westchester's Analysis of Impediments did not address racial or any other form of discrimination. It focused exclusively on expanding affordable housing and reflected a hands-off attitude in requiring the County sub-recipients to affirmatively further fair housing with the result that new affordable housing was concentrated in areas of the County that were largely African-American.

In February 2009, a federal district judge held that Westchester County had made false certifications on seven annual affirmatively furthering fair housing certifications of compliance and on more than a thousand implied certifications when it requested a drawdown of HUD funds.<sup>17</sup> The judge concluded that the certification was not a mere boilerplate formality, but rather a substantive requirement, which was rooted in the history and purpose of the fair housing laws and regulations. The judge ruled that the law required the County to conduct an analysis of impediments to fair housing choice, take appropriate actions in response, and document its analysis and actions.<sup>18</sup> The judge noted that HUD's Fair Housing Planning Guide provided extensive guidance on how to conduct affirmatively furthering fair housing activities.<sup>19</sup>

After the judge's ruling, the Obama administration decided to intervene for the purpose of assisting the parties in negotiating a settlement that was embodied in a consent decree entered into in August 2009. In addition to the \$52 million in funds that Westchester County must spend to develop new affordable housing in largely white parts of the County, the agreement requires the County to pay \$7.5 million to the fair housing group that brought the false claims case, and \$2.5 million in attorneys' fees.<sup>20</sup> (According to the 2000 census, over half of the municipalities in the Consortium had African-American populations of 3 percent or less.<sup>21</sup>)

### **III. The District's 2005 Analysis of Impediments to Fair Housing Choice**

The District's most recent federally-required Analysis of Impediments is a comprehensive 149-page report conducted by the Urban Institute in 2005. Four major impediments to affirmatively furthering fair housing were identified:

1. Lack of compliance with fair housing laws by the real estate and housing industry (real estate, lending/mortgaging, insurance/appraisals, etc.);
2. Decreasing numbers of affordable housing units for low- and moderate-income households and special-needs residents in target neighborhoods already experiencing a shrinking market;
3. Information on the full range of available, affordable housing across many District neighborhoods is not made accessible to individuals and families seeking homes, due to segregated residential patterns; and

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<sup>17</sup> See *U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County*, 668 F. Supp. 2d 548 (S.D.N.Y. 2009).

<sup>18</sup> See *id.* at 569.

<sup>19</sup> See *id.* at 554-556 and 563-564.

<sup>20</sup> A copy of the settlement agreement may be found at <http://www.antibiaslaw.com/sites/default/files/files/SettlementFullText.pdf>.

<sup>21</sup> Westchester County is comprised of 45 municipal entities; all of the municipalities are part of the Westchester Urban County Consortium, except for the municipalities of Mount Pleasant, Mount Vernon, New Rochelle, White Plains, and Yonkers.



4. Low levels of home-buying literacy among particular protected classes and a high percentage of home seekers with no or blemished credit history.<sup>22</sup>

#### **IV. Actions by the District of Columbia Since 2005 to Remove Impediments to Fair Housing**

In February 2010, the District issued its most recent *Consolidated Annual Performance Evaluation Report*<sup>23</sup> to HUD, in which it discusses a number of actions taken to affirmatively further fair housing. It is not the role of the Advisory Committee to conduct a compliance review of the District's affirmatively furthering fair housing performance. That is HUD's job, and HUD appears to be stepping up its efforts nationally in that regard as it plans to issue a new affirmatively furthering fair housing regulation in the near future. Nonetheless, the Advisory Committee believes that an exploratory study of the District's progress might identify: (1) positive actions taken by the District, and (2) other actions that could have been taken, or could be taken in the future that would be helpful to the District and other jurisdictions.

At a briefing on fair housing by the Advisory Committee, two officials from the District government participated—Leila Edmonds, Director of the District of Columbia's Department of Housing and Community Development (DHCD) and Gustavo Velasquez, director of the District of Columbia Office of Human Rights (OHR). Ms. Edmonds cited numerous affirmatively furthering fair housing activities undertaken by the District to AFFH. These included:

- DHCD undertook fair housing educational efforts through brochures, conferences and community-based organization workshops and conducted an annual fair housing symposium during Fair Housing Month (April). Brochures are available in English, Spanish, Vietnamese, and Chinese, with Amharic to follow.
- All projects funded through DHCD are subject to accessibility and affirmative marketing certifications.
- The DC Housing Authority provides Section 8 Housing Choice Voucher holders with information on possible sources of income discrimination to be aware of in their search for housing.
- DHCD holds quarterly interagency meetings on foreclosure prevention involving nine DC agencies.
- DHCD and other agencies held a second annual homeowner and foreclosure prevention fair in 2010 with more than 1,000 attendees, which included one-on-one counseling and credit repair.
- Between Fiscal Year 2006 and September 2010, almost 10,000 affordable units have been created or preserved.
- In 2008 and 2009, the District's Office of Human Rights (OHR) partnered with the Equal Rights Center to conduct a mass media fair housing education campaign together with testing compliance with the Fair Housing Act and DC Human Rights Act.

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<sup>22</sup> Urban Institute, "Analysis of Impediments to Fair Housing Choice in the District of Columbia, 2005," [http://www.urban.org/UploadedPDF/411393\\_Fair\\_Housing\\_Impediments.pdf](http://www.urban.org/UploadedPDF/411393_Fair_Housing_Impediments.pdf) (last access June 9, 2011). The Urban Institute is an organization that "gathers data, conducts research, evaluates programs and educates Americans on social and economic issues—to foster sound public policy and effective government." <http://www.urban.org/about/> (last accessed June 9, 2011).

<sup>23</sup> [http://dhcd.dc.gov/dhcd/frames.asp?doc=/dhcd/lib/dhcd/info/pdf/final\\_fy10\\_caper\\_12-30-10.pdf](http://dhcd.dc.gov/dhcd/frames.asp?doc=/dhcd/lib/dhcd/info/pdf/final_fy10_caper_12-30-10.pdf) (last accessed June 10, 2011).

- Beginning in 2007, DHCD adopted Mixed Income as a policy objective, putting the focus on the de-concentration of poverty.
- In 2005 the District created the Office of the Tenant Advocate that provides education on tenants' rights and legal assistance.
- DHCD partnered with the Urban Institute to develop data on foreclosures, then did targeted outreach in most-affected neighborhoods to include foreclosures that affected renters as well as homeowners.
- DHCD worked closely with the District's Department of Insurance, Securities and Banking (ISB) to protect against financial fraud and abuse. ISB developed a foreclosure mitigation kit to be distributed.
- DHCD absorbed the dual functions of the Housing Regulation Administration to protect tenants subject to rent control from rising costs, oversee conversions from rental to cooperative or condominium, and provide incentives for new construction and improvements.
- DHCD established a one-stop Housing Resource Center to provide housing counseling and housing search assistance, as well as landlord services.
- DHCD launched a new website: <http://www.dchousingsearch.org>, which lists rental and sales housing available by affordable range, including properties managed by the District of Columbia Housing Authority under the Section 8 Housing Choice Voucher Program.
- The District implemented the Inclusionary Zoning Program in August 2009, providing private development companies the right to add additional density if they make 8 percent of their units affordable.
- DHCD was awarded a Neighborhood Stabilization Grant of \$9.5 million that focused on three Wards: Five, Seven and Eight.<sup>24</sup>

Gustavo Velasquez, director of OHR, was the second District official to present. He noted that the District has 18 protected classes, making the District of Columbia's Human Rights Act one of the most comprehensive laws in the country. Mr. Velasquez also noted that, from 2002 to 2010, 397 housing discrimination cases were filed with the OHR and, with the exception of 2010, housing discrimination cases increased each year.<sup>25</sup> The office implemented online filing of complaints in 2008, and now half of all complaints are filed online.

The bases for housing complaints to OHR are as follows (some complaints contain more than one basis):

1. Disability – 48 percent
2. Race – 27 percent
3. National Origin – 12 percent
4. Sex – 11 percent
5. Source of Income – 11 percent

Disability and race are also the number 1 and 2 bases nationwide.<sup>26</sup>

<sup>24</sup> Leila Edmonds, testimony before the District of Columbia Advisory Committee to the U.S. Commission on Civil Rights, briefing, Washington, D.C., Sept. 16, 2011, transcript, pp. 44-64.

<sup>25</sup> Velasquez testimony, District of Columbia briefing, pp. 67. Mr. Velasquez stated, "Overall, housing discrimination cases filed with the office is roughly ten percent of all the cases that [OHR] investigates." Ibid.

<sup>26</sup> See U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, "The State of Fair Housing: Annual Report on Fair Housing FY 2009," [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/library#Publications](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/library#Publications) (last accessed June 10, 2011).



Mr. Velasquez told the Advisory Committee that the issues raised by housing complaints filed in the District of Columbia occurred in the following order:

1. Discriminatory terms, conditions, services or facilities;
2. Failure to make a reasonable accommodation;
3. Discriminatory refusal to rent;
4. Hostile living environment;
5. Terms and conditions of a rental;
6. Failure to rent;
7. Retaliation because of a previous charge; and
8. Discriminatory appraisal

Mr. Velasquez summarized other activities of OHR:

- OHR has found reasonable cause to believe that a violation occurred in cases involving discriminatory advertisements, failure to accommodate a disability, discriminatory terms and conditions, and discriminatory statements.
- OHR works closely with the new Office of Disability Rights. Their expertise, including a staff architect, is helpful to OHR in its many cases involving disability and reasonable accommodation.
- OHR has contracted in the past with the Equal Rights Center (ERC) to conduct testing both for specific respondents and to test for potential discriminatory behavior. Budget constraints have prevented contracting with ERC this year.
- OHR conducts extensive training for property managers, disability groups and others, and sponsors the annual housing symposium in conjunction with DHCD, ERC, and other nonprofit groups. They also conduct a media campaign and develop brochures in a number of languages.
- OHR has met repeatedly with the Department of Consumer and Regulatory Affairs because the latter has, on occasion, provided construction or occupancy permits without assuring that the projects met accessibility requirements.<sup>27</sup>

The presentations by District officials indicate that the District has taken many actions that they view as affirmatively furthering fair housing. Substantially all of the actions describe processes and not results. One barometer of an effective program to affirmatively further fair housing is whether the actions change patterns of segregation and limited choice. Supreme Court Justice Breyer, when a judge on the First Circuit Court of Appeals, pointed out that HUD must use its grant programs “to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.”<sup>28</sup> As stated in HUD’s Fair Housing Planning Guide:

The jurisdiction should define a clear set of objectives with measurable results that it intends to achieve. The sole measure of success for FHP [fair housing planning] is the achievement of

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<sup>27</sup> Velasquez testimony, District of Columbia briefing, pp. 64-76. The U.S. Commission on Civil Rights has an “affected agency” review policy. The response of the District of Columbia Department of Consumer and Regulatory Affairs to this statement is attached in Appendix A.

<sup>28</sup> NAACP v. Sec’y of Housing and Urban Development, 817 F.2d 149, 155 (1st Cir. 1987).



results. These objectives should be directly related to the conclusions and recommendations contained in the [Analysis of Impediments].<sup>29</sup>

This approach also seems to make logical sense. Impediments to fair housing choice are based on data analysis. The success of actions to overcome the impediments should be reflected in a positive change in the data. If such a change does not occur, then it may be necessary to consider alternative actions.

Thus, the District needs to establish a baseline by comparing the 2010 Census data with the 2000 data. Then, by tracking changes from the baseline, it can report to HUD and the public on the effectiveness of its actions.

In addition, some of the District's actions assume that increasing the supply of affordable housing will further fair housing. Increasing the supply is certainly a positive objective, but does not necessarily contribute to fair housing. The location of the housing and its marketing are likely to be key elements in determining whether it contributes to affirmatively furthering. And a reduction in segregated patterns is one measure of the effectiveness of these steps.

Finally, the establishment of the website: <http://www.dchousingsearch.org> also seems to be a positive step. Ms. Edmonds said that the website "gave residents a centralized location in which to find affordable housing,"<sup>30</sup> both rental and sales. The site contains properties "for all of the landlords that we touch through the housing regulation administration."<sup>31</sup> As of December 6, 2010, the site contained 544 rental listings. At that time, the most expensive property was listed at \$3,500 a month (which seems to be at the high end of "affordable"). Examining the listing of properties renting for \$2,000 or more a month gives the following spread by sector:<sup>32</sup>

- Southeast – 29
- Northeast – 19
- Northwest – 9
- Southwest – 2

Given the range of rentals in the city, the listing is not surprising. However, what is striking is that there is not a single listing on the website located west of Rock Creek Park, which is affluent and predominantly white.<sup>33</sup> This suggests that landlords may be withholding listings in that section of the District or that further outreach is needed to recruit landlords in that area.

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<sup>29</sup> See "Fair Housing Planning Guide," U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, p. 2-22, <http://www.hud.gov/offices/fheo/images/fhpg.pdf>, (last accessed May 2, 2011).

<sup>30</sup> Edmonds testimony, District of Columbia briefing, p. 61.

<sup>31</sup> *Id.*

<sup>32</sup> For the reader unfamiliar with the demographics of the District, Southeast and Northeast (with the exception of Capitol Hill) are largely communities of color with high participation in food stamps; Northwest and Southwest are largely white with relatively few residents participating in food stamps. See Peter A. Tatian, G. Thomas Kingsley, Margery Austin Turner, Jennifer Comey, and Randy Rosso, "State of Washington, D.C.'s Neighborhoods," September 30, 2008, p.22, [http://www.neighborhoodinfodc.org/pdfs/neighborhoodindicators\\_2008\\_09\\_30.pdf](http://www.neighborhoodinfodc.org/pdfs/neighborhoodindicators_2008_09_30.pdf) (last accessed June 10, 2011)

<sup>33</sup> *Ibid.* See also Noah Saw-yer and Peter A. Tatian, "Segregation Patterns in the District of Columbia 1980 to 2000," <http://www.neighborhoodinfodc.org/pdfs/DC-Segregation-data.pdf> (last accessed June 10, 2011).

## V. Activities to Strengthen Affirmatively Furthering Fair Housing Program

Testimony to the Advisory Committee from non-government witnesses suggested a number of specific actions the District could take to improve its Affirmatively Furthering Fair Housing program. These included:

- Provide mobility counseling that would enable holders of Section 8 Housing Choice Vouchers to consider a full range of neighborhoods.<sup>34</sup>
- Undertake routine testing to identify discrimination in rental, sales, homeowners' insurance, steering of potential renters and purchasers to, or away from, certain neighborhoods, and access to Section 8 Housing Choice Vouchers. (Such testing was done in the past by the Equal Rights Center, but budgetary constraints have prevented conducting such testing this year.)<sup>35</sup>
- Increase oversight of lenders by examining location of branches and services offered and analyzing Home Mortgage Disclosure Act and other available data to examine lenders' portfolios for evidence of discrimination.<sup>36</sup>
- Convene regular meetings between District agencies with direct and indirect fair housing responsibilities and private fair housing groups to share information and coordinate education and outreach, monitoring, and enforcement.<sup>37</sup>
- Conduct accessibility surveys of new multifamily housing covered by the Fair Housing Act or Section 504 of the Rehabilitation Act of 1973.
- Secure an increased payment standard (also called exception rents) for higher-cost neighborhoods to increase housing options for Section 8 Housing Choice Voucher holders.<sup>38</sup>
- Consider adopting a local Community Reinvestment Act (CRA) that would make CRA and fair lending performance a factor in deciding which institutions should serve as depository institutions for the District funds.<sup>39</sup>

It is the opinion of the Advisory Committee that these actions—like those already taken by the District—will be effective only if they change the existing patterns and truly result in more diverse communities.

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<sup>34</sup> Pratt testimony, District of Columbia briefing, p. 149.

<sup>35</sup> Smith testimony, District of Columbia briefing, p. 217.

<sup>36</sup> Berenbaum testimony, District of Columbia briefing, p. 128.

<sup>37</sup> Kahl testimony, District of Columbia briefing, p. 179.

<sup>38</sup> Tatian testimony, District of Columbia briefing, pp. 112-113.

<sup>39</sup> Berenbaum testimony, District of Columbia briefing, pp. 116-118.



## VI. Advisory Committee Recommendations

To affirmatively further fair housing in the District of Columbia, the Department of Housing and Community Development may need additional coordinating authority or a higher-level official to exercise such authority. The Advisory Committee recommends that two impediments be added to those cited in the 2005 study:

1. Special problems faced by persons with disabilities in achieving access to affordable housing: these include failure to accommodate disabilities, discrimination by Section 8 Housing Choice Voucher landlords, and limited or expensive transit options. Disability is the largest category of complaints filed with the DC Office of Human Rights.<sup>40</sup>
2. Lack of coordination of District resources. Two examples that arose between 2005 and 2010: Some new multifamily dwellings are not accessible to the disabled because the Department of Consumer and Regulatory Affairs is awarding permits without assuring that accessibility is provided as required by law.<sup>41</sup>

There is no indication that the District of Columbia Department of Insurance, Securities and Banking is monitoring lenders to determine whether they provided subprime loans, foreclosed on loans, or maintained the grounds and buildings of foreclosed properties in a discriminatory manner.<sup>42</sup>

In addition, the Advisory Committee recommends the following actions to further fair housing:

- The District, or a contractor, should routinely test fair housing compliance with respect to sales, rentals, mortgage lending, and insurance. This is a high priority and it should not be allowed to lapse, as is the case this year.
- The District should conduct regular examinations of residential patterns of occupancy in both conventional and assisted housing to determine progress towards achieving truly open communities.
- The District should assure that any entity found to have discriminated be required to adopt a results-oriented compliance agreement.

The Advisory Committee is hopeful that this brief analysis of the District of Columbia's efforts to affirmatively further fair housing will help to guide the contractor updating the Analysis of Impediments to Fair Housing Choice and improve the District's performance of this important responsibility.

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<sup>40</sup> The presentation by Marjorie Rifkin of University Legal Services at the September 16, 2010, Advisory Committee briefing meeting indicates that this problem has become more acute since 2005 and is deserving of special attention in its own right.

<sup>41</sup> The U.S. Commission on Civil Rights has an "affected agency" review policy. The response of the District of Columbia Department of Consumer and Regulatory Affairs to this statement is attached in Appendix A.

<sup>42</sup> Ibid. The District of Columbia Department of Insurance, Securities, and Banking was invited to participate at the Advisory Committee's briefing meeting but declined. Its response to this paragraph is attached in Appendix B.



# Appendices

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**



Office of the Director

May 31, 2011

Ivy Davis  
Director, Eastern Regional Office  
U.S. Commission on Civil Rights  
624 Ninth Street, N.W.  
Washington, D.C. 20425

Dear Ms. Davis:

This is in response to your letter dated May 9, 2011, requesting comments to the briefing you conducted on September 16, 2010, entitled "*Affirmatively Furthering Fair Housing in the District of Columbia*." The Department of Consumer and Regulatory Affairs (DCRA) is strongly committed to fully complying with the requirements of the Fair Housing Act. Through the D.C. Construction Codes and a rigorous building permit plans review and inspection process, we believe the agency is complying with both the letter and spirit of the law.

Below are comments to the two issues raised regarding DCRA.

***Comment #1: "OHR has met repeatedly with the Department of Consumer and Regulatory Affairs because the latter has, on occasion, provided construction or occupancy permits without assuring that the projects met accessibility requirements."***

DCRA is charged with carrying out the Fair Housing Act provisions of Title 14 of the District of Columbia Municipal Regulations (DCMR). As part of that process, DCRA provides building permit applicants with information on reasonable accommodations and modifications for persons with disabilities. DCRA also conducts annual Fair Housing Act training sessions for all employees. The agency also has a Fair Housing Act coordinator who maintains records of all building permits issued pursuant to Fair Housing Act requests.

During its review of building permits applications, DCRA evaluates whether the application is in compliance with the requirements of the District of Columbia Construction Codes, which includes the 2006 International Building Code, the 2006 International Codes Council ICC/ANSI A117.1 (Accessible and Usable Building and Facilities), and the 2006 International Existing Building Code.

1100 Fourth Street, S.W.  
Washington D.C. 20024  
Phone (202) 442-8947 Fax (202) 442-9445

To ensure that each building permit application complies with accessibility requirements, DCRA performs structural and nonstructural plans examinations for all new construction, renovations, and alterations, as well as on-site inspections for code compliance. Although new buildings must be completely accessible, renovations of existing buildings are exempt because of either incapability or technical infeasibility in meeting specific accessibility requirements. Additionally, DCRA will not issue a certificate of occupancy without verification that the property meets accessibility requirements.

DCRA is not aware of any building permits that were issued without meeting accessibility requirements.

**Comment #2:** *"Some new multifamily dwellings are not accessible to the disabled because the Department of Consumer and Regulatory Affairs is awarding permits without assuring that accessibility is provided as required by law."*


Since this comment is substantively similar to Comment #1, we incorporate by reference the response to Comment #1.

Additionally, new multifamily residential projects are reviewed and inspected to ensure that proposed units have the minimum 15% accessible Type A units, as required by the D.C. Construction Codes, specifically, 12 DCMR A § 1107.6.2.1.1. Title 12A, section 1107A of the D.C. Construction Codes also requires accessible routes, properly located fire alarm devices, and compliant restroom facilities. Additionally, parking must comply with 2006 ICC/ANSI A117.1.

It is worth noting that in many multifamily construction projects, developers utilize private building plans review and inspection companies, rather than using DCRA inspectors. However, we are not aware of any such third party companies certified by DCRA that have been negligent in ensuring accessibility compliance.

Thank you for providing DCRA with the opportunity to submit comments. If you have any further questions or concerns, please contact the DCRA Chief Building Official, Mr. Rabbiah Sabbakhan, at (202) 442-4542.

Respectfully,

  
Nicholas A. Majett  
Director



**Government of the District of Columbia**  
**Department of Insurance, Securities and Banking**



William P. White  
Acting Commissioner

May 31, 2011

Ivy Davis  
Director, Eastern Regional Office  
U.S. Commission on Civil Rights  
624 Ninth Street, NW  
Washington, DC 20425

Dear Ms. Davis:

On May 9, 2011, the United States Commission on Civil Rights submitted a letter to the D.C. Department of Insurance Securities and Banking (the "Department") with an inquiry about our regulation of subprime loans and foreclosures. In that letter the Commission referred to a draft report entitled "Affirmatively Furthering Fair Housing in the District of Columbia" which states:

*"There is no indication that the Department of Insurance Securities and Banking is monitoring lenders to determine whether they provided subprime loan, foreclosed on loans, or maintained the grounds and buildings of foreclosed properties in a discriminatory manner."*

The D.C. Department of Insurance, Securities and Banking is the regulatory authority for lending institutions licensed or chartered in the District of Columbia. The Department regulates mortgage lenders, brokers, loan originators and banks through licensing, examination and consumer complaint processing. In cases where the Department finds violations of our consumer protection laws, the Department will issue orders and assess fines.

Historically, the states and the District have been preempted from exercising regulatory authority over federally chartered banks and their subsidiaries. However, the Department continues to monitor the activities of lenders in the District of Columbia by making use of the following data:

- The Mortgage Banker's Quarterly Delinquency Survey, which analyzes the volume and types of loan products that fall into delinquency and ultimately into foreclosure, and compares District experience with that of neighboring states and the nation;
- Monthly Foreclosure Reports prepared by the Urban Institute, which identify monthly foreclosure numbers by ward;
- Data from Compliance Technologies, whose database enables the analysis of home mortgage activity by lender, borrower characteristics, area demographics, geography, and loan characteristics;
- Trends from consumer complaints and investigations;

- Participation in multi-state examinations through the Conference of State Bank Supervisors; and
- Participation in the Nationwide Mortgage Licensing System (NMLS).

Currently, the Department is preparing to implement a new Foreclosure Mediation Program, which will require District lenders to attend mediation sessions with homeowners before starting foreclosure process. It is our hope that this will reduce the number of foreclosures in the District.

As for whether lenders are maintaining the grounds of foreclosed properties in a discriminatory manner, the Department does not have a program that monitors this type of activity.

If the Department can be of any further assistance in preparing your report please feel free to contact us at 202-727-8000.

Sincerely,

A handwritten signature in black ink, appearing to read "William P. White". The signature is fluid and cursive, with the first name "William" being the most prominent.

William P. White  
Acting Commissioner



U.S. COMMISSION ON CIVIL RIGHTS  
EASTERN REGIONAL OFFICE  
624 9TH STREET, NW  
WASHINGTON DC 20425

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