

Statement by

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“Stakeholder Perspectives: Fair Housing”

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Good morning, my name is Keenya Robertson and I am President and CEO of Housing Opportunities Project for Excellence (HOPE), Inc. Fair Housing Center. I want to thank Chairman David Price for the opportunity to address the Subcommittee and discuss the growing need to support and strengthen the existing resources available for the implementation and enforcement of the Fair Housing Act. Your stalwart support for full and effective enforcement of the Fair Housing Act has never gone unnoticed and the fair housing movement is grateful that this Subcommittee is putting fair housing issues at the forefront of its agenda. I would also be remiss to not take this opportunity to thank Ranking Member Mario Diaz-Balart for his support for effective and efficient fair housing enforcement. HOPE is proud to provide direct fair housing services to the residents of the 25th Congressional District of Florida.

HOPE is a private fair housing, not-for-profit, 501(c)3 corporation established in 1988, and is dedicated to eliminating housing discrimination and promoting fair housing. HOPE employs a three-tiered system of private enforcement, education outreach and counseling to achieve its mission: to fight housing discrimination in Miami-Dade and Broward counties and to promote equal housing opportunities throughout Florida. Its programs are designed to ensure

that people are offered the right to select housing of their choice without discrimination based on race, religion, color, national origin, sex, disability, marital or familial status, or such other protected classes as may be conferred by federal, state or local laws. HOPE is engaged in testing for fair housing law violations and pursuing enforcement of meritorious claims.

I also serve as Chair of the Board of Directors of the National Fair Housing Alliance (NFHA), the only national organization dedicated solely to ending discrimination in housing. NFHA works to eliminate housing discrimination and to ensure equal housing opportunity for all people through leadership, education and outreach, membership services, public policy initiatives, community development, advocacy and enforcement.

I intend to use this opportunity to share a community-based perspective on the nation's enforcement of the federal Fair Housing Act. Where we live matters deeply. It determines the type of access each of us has to job centers, efficient transportation, high-performing schools, public recreational facilities, healthy food and groceries, and clean air and water – all of which affect the opportunity every individual and family has to achieve success in life. The Fair Housing Act protects equal access to these important community features by prohibiting discrimination in housing and housing-related transactions in rental, real estate sales, mortgage lending, and homeowner insurance on the basis of race, color, national origin, familial status, sex, religion, and disability.¹ The Fair Housing Act also seeks to address the legacy of hundreds of years of residential segregation by requiring that federal housing and community development dollars be used in a way that break down barriers to housing choice in all communities.²

¹ 42 U.S.C. § 4604 et seq.

² 42 U.S.C. § 3608(e)(5).

Enforcement of the Fair Housing Act in the United States is carried out through a combination of efforts by the Department of Housing and Urban Development (HUD), the Department of Justice (DOJ), local and state civil and human rights agencies, and private nonprofit fair housing organizations. Each enforcement entity carries out key roles and the success of all enforcement efforts rely heavily on the efficient and effective implementation of programs that have gone vastly underfunded for years. Effective enforcement also relies upon a well-staffed Office of Fair Housing and Equal Opportunity (FHEO) at HUD, the office which is most directly responsible for implementing the Fair Housing Act as well as administering the programs that most directly support its enforcement. Regrettably, understaffing at FHEO has affected implementation of fair housing programs that a network of highly-skilled private nonprofit fair housing organizations and local and state government agencies heavily rely upon to bring fair housing services to communities across the nation. The impact of disinvestment in FHEO most directly impacts the lives of victims of housing discrimination and, in this testimony, I offer funding and program recommendations to address these concerns.

I. Fair Housing Enforcement in the United States

The goals of the Fair Housing Act are carried out by HUD, DOJ, local and state civil and human rights agencies, and private nonprofit fair housing organization that provide direct services in housing markets across the nation.

A. HUD and DOJ

HUD and DOJ are the federal government agencies with direct authority to administer and enforce the Fair Housing Act. HUD is responsible for conducting complaint intake, investigation, and adjudication of submitted complaints in its administrative complaint process.

HUD is also responsible for ensuring that its own programs comply with the Fair Housing Act and overseeing the compliance of state and local governments in their use of housing and community development dollars. HUD is also responsible for administering the Fair Housing Initiatives Program (FHIP), the only federal grant program that funds private enforcement of the Fair Housing Act, as well as the Fair Housing Assistance Program (FHAP), a program HUD maintains that reimburses state and local civil and human rights agencies that investigate cases involving Fair Housing Act claims.

DOJ plays a more limited, but important, role in enforcement of the Fair Housing Act. DOJ primarily brings suits on behalf of individuals based on referrals it receives from HUD. Once HUD concludes that there is reasonable cause to believe discrimination occurred it will issue a “charge” of discrimination and the case is heard before an administrative law judge, or if either party elects, DOJ may begin an action on behalf of the aggrieved party. DOJ retains sole authority in instances in which a pattern or practice of discrimination emerges, or when HUD receives a complaint concerning zoning issues.

B. Local and State Government Agencies and the Fair Housing Assistance Program (FHAP)

State and local government civil and human rights agencies that enforce laws that are substantially equivalent to the federal Fair Housing Act are responsible for resolving discrimination complaints related to the sale, lease, advertisement, and/or finance of residential property on the basis of race, color, national origin, religion, sex, disability, or familial status. The agencies who have been deemed substantially equivalent by HUD operate under a memorandum of understanding with HUD to process complaints of housing discrimination. This partnership allows federal and state agencies to coordinate investigations and avoid duplication of effort. These agencies receive complaints from the public, initiate investigations,

conciliate agreements and litigate fair housing allegations in their respective jurisdiction. They are allowed to take these actions for complaints received within 180 days of the alleged incident. All complaints that are received outside of the 180-day time limit are referred to HUD for processing. HUD may also refer complaints filed through its own administrative complaint system to FHAP agencies who serve the area from which a complaint is made.

C. Private Nonprofit Fair Housing Enforcement Agencies and the Fair Housing Initiatives Program (FHIP)

In 1987, Congress recognized the need to support the development of experienced private nonprofit fair housing organizations to foster compliance with the Fair Housing Act; complement the work of local and state government agencies and the federal government; and assist the public in better understanding its rights and local housing providers in complying with civil rights laws. With broad bipartisan support and the endorsement of Presidents Ronald Reagan and George H. Bush, Congress created HUD's Fair Housing Initiatives Program (FHIP) as a pilot program and shortly thereafter fully authorized the program.

FHIP provides unique and vital services to the public and the housing industry by supporting a network of private-public partnerships with local nonprofit fair housing organizations working in their communities. FHIP is the only federal funding available for organizations like HOPE to carry out fair housing enforcement and education. Private nonprofit fair housing organizations are the only private organizations in the country that educate communities and the housing industry and enforce the laws intended to protect us all from housing discrimination and they form an essential component of the nation's fair housing education and enforcement.

Administered by HUD, FHIP is a competitive, performance-based grant program that supports several different pieces of an effective national fair housing educational and enforcement infrastructure. The program has three main components.

- Fair Housing Organization Initiative (FHOI) – Supports the creation of new private nonprofit fair housing groups and the continued development of existing organizations.
- Education and Outreach Initiative (EOI) – Funds fair housing groups with proven records to inform the public about its fair housing rights, as well as local housing industry professional on how to operate within the bounds of the law.
- Private Enforcement Initiative (PEI) – Funds highly experienced nonprofit fair housing organizations to carry out complaint intake as well as testing and investigation of complaints received from the public. PEI also funds grantees to assist individuals in the formal complaint filing process with HUD or local or state civil rights agencies.

For each initiative, applicants must meet particular requirements intended to make the best use of taxpayer resources. To qualify for FHIP enforcement funding, private nonprofit fair housing organizations must meet time and experience criteria to prove their expertise in complaint intake, testing for fair housing violations, the filing of meritorious cases, and financial management.

Through this network of private-public partnerships, private fair housing groups provide significant advantages in the federal government's effective implementation of educational programs and enforcement of the Fair Housing Act. The FHIP program provides for locally-tailored fair housing education and enforcement strategies designed to meet specific local market

conditions in communities in which a FHIP grantee operates. It saves the federal government taxpayer dollars through the unique services that grantees specialize in and ensures a high standard of relief to victims of discrimination and communities that are harmed by it.

FHIP agencies are uniquely suited to provide a first line of defense against housing discrimination: they are the mostly likely to receive a complaint of housing discrimination from the public given their local presence and effective public education strategies, and they advocate on behalf of victims of discrimination throughout the administrative complaint processes. For every individual conciliation or settlement stemming from an action initiated by a FHIP-grantee, many more housing units that would have otherwise been kept off the market for persons in protected classes are made available through improvements in policies and practices that increase housing choice. Families with children and people with disabilities are among the most likely persons to file complaints of discrimination, and the FHIP program is absolutely vital to protecting their freedom of housing choice. The primary reason these groups file the most complaints is that discrimination against these persons is often obvious or stated by housing providers, such as statements that a housing complex limits occupancy to one person per bedroom or that a request for a reasonable accommodation for a service animal is denied.

FHIP-funded organizations work at the national, regional, and local levels to expand fair housing opportunities for all Americans at all income levels. These organizations:

- Train local housing providers on how to avoid running afoul of the Fair Housing Act;
- Educate consumers about their rights and how to recognize and report situations that appear to violate the law;
- Provide direct assistance to victims of discrimination;

- Work with leaders and public officials at the local level to create and expand the availability of safe, affordable, and decent housing;
- Work with stakeholders at the local level to ensure that every community has access to important opportunities like quality schools, healthcare, jobs, transportation, food, credit, etc.; and
- Engage in efforts to stabilize neighborhoods and strengthen communities.

Fair Housing Organization Initiative (FHOI): The FHOI component of the FHIP program funds the creation of new private nonprofit fair housing organizations and can also be used to build the capacity and expertise of existing organizations. This component of FHIP is critical to the expansion of localized fair housing services in areas where there currently are no full-service fair housing organizations to assist victims of housing discrimination through the complaint process. This program is also critical in helping the development of issue-area expertise among fair housing organizations grappling with challenging or deeply pervasive forms of discrimination.

Education and Outreach Initiative: FHIP's education and outreach component has allowed for the nationwide dissemination of public education and training materials that can be replicated and modified by other FHIP grantees working in communities across the nation. The FHIP statute requires a national media component and this serves to both educate consumers and industry throughout the United States and to create materials that may be customized for use on the local level. In addition, local and regional education campaigns support efforts in communities to provide direct education to units of local government, other service organizations, the corporate community, consumers, and the housing industry. These efforts are tailored to local needs and housing market dynamics. Educational programs are critical in

teaching people how to recognize and report situations that appear to violate the law; they also work to educate the housing industry about its fair housing responsibilities. This education helps weed out frivolous violations and focuses resources on investigation of claims that may truly involve discrimination.

Private Enforcement Initiative (PEI): By funding private fair housing groups that work in local communities, HUD can better tailor its education and enforcement programs to address the specific challenges and housing market features of individual communities. Through the PEI component of the FHIP program, grantees provide informed and rapid-response assistance to victims of discrimination without the red tape associated with the administrative and legal requirements of formal complaints. This allows for tailored and effective investigations and means that only cases supported by independent testing and investigation proceed to the complaint stage.

FHIP enforcement efforts also include systemic investigations to eliminate policies and practices that limit housing choice and perpetuate segregation. Throughout FHIP's existence, fair housing organizations have formed coalitional efforts on the regional and national level to address discrimination among large housing providers, challenge widespread discriminatory practices, develop inaccessible housing units, and even shed light on discriminatory trends in various aspects of the housing industry.

In FY19 FHIP was funded at \$39.2 million, down from an all-time high of \$42.5 million in FY12. This small figure serves as the entire source of federal funding for direct fair housing services in localities across the entire nation. Despite this small sum, FHIP agencies investigate the lion share of reported complaints of housing discrimination. In 2017, there were 28,843 complaints of housing discrimination filed, and private nonprofit fair housing groups

investigated 71% of these complaints, more than twice as many as all local, state, and federal government agencies combined.³ Virtually all the fair housing organizations that received complaints were funded primarily by FHIP.

This trend has been relatively constant and the savings from and returns on the FHIP program are well-documented. FHIP saves money for the federal government, and for state and local governments. In a 2011 study commissioned by HUD, the FHIP program was found to provide several benefits for the effective and efficient administration and enforcement of the Fair Housing Act. The study found that FHIP grantee organizations weed out cases that are not covered by civil rights statutes, thereby reducing the cost burden of lawsuits and mediations that clog up the nation's judicial and administrative complaint systems. The vetting of complaints by fair housing organizations saves resources for HUD and state agencies that do not have to investigate these complaints, allowing them to focus their resources on other verifiably illegal activities.⁴

As this cost-saving benefit of the program has become clear, HUD has reduced its overall share of complaints that it handles as the number of complaints that FHIP grantees investigate has gone up.

³ See National Fair Housing Alliance, "Making Every Neighborhood a Place of Opportunity: 2018 Fair Housing Trends Report," available at <https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report-4-30-18.pdf>.

⁴ *Study of the Fair Housing Initiatives Program*. Prepared for HUD by DB Consulting Group, Inc., Foreword by Raphael Bostic, Assistant Secretary for Policy Development and Research, US Department of Housing and Urban Development, page iii, May 2011.

Year	Private Fair Housing Organizations	HUD	FHAP Agencies	DOJ	TOTAL
2007	16,834	2,449	7,705	35	27,023
2008	20,173	2,123	8,429	33	30,758
2009	19,924	2,091	8,153	45	30,213
2010	18,665	1,943	8,214	30	28,852
2011	17,701	1,799	7,551	41	27,092
2012	19,680	1,817	6,986	36	28,519
2013	18,932	1,881	6,496	43	27,352
2014	19,026	1,710	6,758	34	27,528
2015	19,645	1,274	6,972	46	27,937
2016	19,754	1,371	7,030	40	28,195
2017	20,595	1,311	6,896	41	28,843
Totals	210,929	19,769	81,190	424	312,312
% of Total	67.54%	6.33%	26.00%	0.14%	

In the same 2011 HUD study, it was noted that FHIP funding is a “critical component of the U.S. civil rights enforcement infrastructure.”⁵ HUD relies on local fair housing organizations to help educate the public about its fair housing rights and the housing industry on its responsibilities, and to investigate complaints of housing discrimination. Seventy-one percent of the cases in which a FHIP organization is a complainant or co-complainant result in conciliation or a cause finding versus 37% of non-FHIP referred cases.⁶ This is in part due to the unique roll and services that FHIP-funded organizations provide. FHIP-funded agencies are the only reliable private groups with the capacity to investigate and test complaints of housing discrimination. Courts, researchers, and practitioners have all recognized testing as the most effective way to detect housing discrimination. HUD, state, and local government agencies, and

⁵ Ibid, page iii,

⁶ Ibid, page 55.

the Department of Justice often rely upon the testing capacity of FHIP-funded organizations to further investigate complaints.⁷

Private nonprofit fair housing organizations that rely on FHIP are also critical to investigating complicated cases of housing discrimination in which state and local government agencies have little expertise. HUD has found that PEI-funded organizations play an important role in investigating complex design and construction cases that involve disability discrimination, and pattern and practice cases that must often be referred to DOJ.

The FHIP program results in stabilizing benefits for individual victims of housing discrimination as well as the communities that are harmed by it. One of the most effective activities performed under any given FHIP grant includes the investigation of complaints that lead to a systemic result.

1. Systemic Investigations Supported by FHIP

The FHIP program has supported comprehensive, systemic investigations that yield industry-wide changes to policies and practices that inhibit the freedom of housing choice for millions of Americans. By coordinating with other FHIP grantees, private nonprofit fair housing organizations' investigations and enforcement actions have the potential to exponentially open up housing options to countless Americans, making the most efficient use of public funds. The following are examples of systemic investigations that have had such an impact.

National Investigation of Rental Discrimination against the Deaf and Hard of Hearing: In 2013, NFHA conducted the only nationwide investigation to date of large apartment complexes to determine how deaf and hard of hearing people are treated when seeking rental property. The investigation and its outcomes were described in a report, "Are You Listening Now?" NFHA

⁷ For more information on fair housing testing, see <https://www.huduser.gov/portal/periodicals/em/spring14/highlight3.html>.

and 11 partner fair housing organizations, through FHIP-funded activities, investigated 117 national or regional rental firms in 98 cities and 25 states.⁸

Of 117 rental firms tested, about one out of four treated deaf callers differently from hearing callers in a manner that appeared to violate the Fair Housing Act. NFHA and its members conducted additional testing of the 25 percent of rental firms that exhibited differential treatment. The 30 rental firms identified for further testing continued the discrimination identified during the initial investigations by engaging in multiple instances of discriminatory treatment. The 30 rental firms identified for further testing own an estimated 545,310 apartment units in approximately 2,079 apartment complexes throughout the United States. The sheer magnitude of this aggregate housing portfolio underscores the impact these corporations have in the rental market and, consequently, the injury they can inflict on people with disabilities seeking housing. Three complaints filed with HUD resulted in more than \$300,000 in relief and required training for management companies. The relief included changes in practices to be non-discriminatory and training of personnel on conducting business with persons who are deaf and hard of hearing.

Design and Construction Investigations: Several fair housing organizations have conducted investigations of housing developers that do not comply with the requirements of the 1988 Fair Housing Amendments Act to construct accessible multi-family housing. Investigations of several large builders and developers has resulted in more than \$26 million in retrofits to 15,000+ units to make them accessible and more than \$5 million in grants to help people with disabilities make their current home or apartment accessible in more than 35 states.

⁸ See National Fair Housing Alliance, “Are You Listening Now? A National Investigation Uncovers Housing Discrimination against the Deaf and Hard of Hearing,” 2013, available at <https://nationalfairhousing.org/wp-content/uploads/2017/04/2013-01-09-Are-You-Listening-Now-Housing-Discrimination-against-the-Deaf.pdf>.

The National Fair Housing Alliance coordinated design and construction testing in 19 states involving the A.G. Spanos Company, the fourth largest builder in the country. A federal lawsuit alleging Spanos built inaccessible properties since 1991 was filed in 2007 by the National Fair Housing Alliance and four local fair housing organizations in Marin and Napa, CA, Atlanta, and Melbourne, FL. The settlement includes more than 13,200 apartments retrofitted; \$750,000 to provide grants for people with a disability to retrofit their home or apartment; and \$4.2 million national retrofit fund to make grants through local disability advocacy groups to renters and homeowners to make their current home accessible.⁹

Additionally, this systemic investigation led to the release of a report on the challenges persons with disabilities face in obtaining housing. The report, “Shut Out, Priced Out and Segregated,” provides recommendations that address affordability and increasing the number of accessible housing units.¹⁰ The report also highlights best practices that should be adopted by local governments.

Insurance Investigations: FHIP-funded organizations have led the nationwide effort to change the unwarranted and discriminatory practices of homeowners insurance providers that have included limiting coverage on older homes and on homes under a certain minimum value; the restriction of guaranteed replacement cost coverage on homes because of the difference in market value and replacement cost; and the improper use of credit scoring in insurance decisions. These guidelines had a tremendous effect on the ability of homeowners in middle- and working-class neighborhoods that are African American, Latino, or integrated to obtain quality insurance

⁹ For more information on the settlement in *National Fair Housing Alliance, et al. v. A.G. Spanos*, see <http://www.relmanlaw.com/civil-rights-litigation/cases/NFHA-Settlement-AG-Spanos.php>.

¹⁰ Metro Fair Housing Services, Inc., “Shut Out, Priced Out and Segregated: The Need for Fair Housing for People with Disabilities,” August 2011, available at <https://www.silcga.org/wp-content/uploads/2015/01/Shut-Out-Priced-Out-and-Segregated-Final-Secure-September-2011.pdf>.

at an affordable price. No company was able to justify usage of these guidelines, and companies throughout the industry have eliminated these guidelines and replaced any risk-based concerns with objective criteria, such as age and condition of the roof and systems within the home. The companies also abandoned any explicitly race- or geographically-based marketing plans. These changes in the underwriting standard resulted in State Farm, Allstate, and Nationwide insurance companies writing more business for good homeowners with lower risks in all neighborhoods across the country. FHIP organizations in the following localities have been involved in investigations of and cases against homeowners insurance providers: Toledo, Cincinnati, and Akron (OH); Richmond (VA); Syracuse (NY); Atlanta (GA); Chicago (IL); Milwaukee (WI); Memphis (TN); Hartford (CT); Los Angeles and Orange County (CA); Louisville (KY); and Washington (DC).

The investigations included matched pair testing, analysis of industry underwriting and its impact on urban neighborhoods in cities throughout the United States, and analysis of marketing practices and location of insurance agent offices. The analysis revealed that virtually no insurance offices were located in African American and Latino neighborhoods in the early 1990s. The companies against which cases were brought include: State Farm, Allstate, Nationwide, Travelers, Prudential, Liberty Mutual, Guide One, Western World, and Erie.

The National Fair Housing Alliance and partner fair housing organizations brought the first FHIP-funded cases against Allstate, Nationwide, and State Farm. State Farm, the nation's largest insurance provider, entered into a HUD conciliation agreement in 1996. Allstate settled shortly thereafter. Settlements continued throughout the 1990s into the early 2000s. Several cases have been brought in recent years, but the industry has changed remarkably due to the

FHIP-funded investigations. The magnitude of this effort cannot be over-estimated. The return on investment has been enormous.¹¹

REO Investigations: For the past six years, the NFHA and 22 fair housing organizations have conducted a wide-scale, nationwide investigation into the marketing and maintenance of bank- and GSE-owned properties. These foreclosed properties, also known as Real Estate Owned (REO) properties, were found to be well-maintained and professionally-marketed in communities where residents were predominantly white. However, REO homes in communities where residents were largely African American or Latino were likely to be unsecured, with boarded windows and overgrown grass and weeds, and usually without signage indicating that they were for sale. Neighborhoods in predominantly communities of color with foreclosures were comparable to working- and middle-class neighborhoods with foreclosures. A portion of this investigation was conducted using FHIP funding. This collaboration provided thousands of photos documenting differences in treatment.¹²

This investigation culminated in a number of housing discrimination complaints against nearly all of the largest owners of REO inventory. In 2012, NFHA and the local fair housing groups filed a HUD administrative complaint against Wells Fargo Bank for its disparate

¹¹ See, e.g., *NAACP v. American Family Mut. Ins. Co.*, 978 F.2d 287, 301 (7th Cir. 1992); *Nationwide Mut. Ins. Co. v. Cisneros*, 52 F.3d 1351, 1360 (6th Cir. 1995); *United Farm Bureau Mut. Ins. Co. v. Metropolitan Human Relations Comm'n*, 24 F.3d 1008, 1016 (7th Cir. 1994); *Lindsey v. Allstate Ins. Co.*, 34 F. Supp. 2d 636, 641-43 (W.D. Tenn. 1999); *Strange v. Nationwide Mut. Ins. Co.*, 867 F. Supp. 1209, 1212, 1214-15 (E.D. Pa. 1994); *National Fair Hous. Alliance v. Prudential Ins. Co. of America*, 208 F. Supp. 2d 46, 55-9 (D.D.C. 2002); *Nevels v. Western World Ins. Co., Inc.*, 359 F. Supp. 2d 1110, 1117-1122 (W.D. Wash. 2004); *Ojo v. Farmers Group Inc.*, 600 F.3d 1205, 1208 (9th Cir. 2010).

¹² See National Fair Housing Alliance, “Here Comes the Bank, There Goes Our Neighborhood: How Lenders Discriminate in the Treatment of Foreclosed Homes,” April 11, 2011, available at <https://nationalfairhousing.org/wp-content/uploads/2017/04/There-Goes-Our-Neighborhood-REO-report-2011-for-website.pdf>; National Fair Housing Alliance, “The Banks Are Back – Our Neighborhoods Are Not: Discrimination in the Maintenance and Marketing of REO Properties,” April 4, 2012, available at <https://nationalfairhousing.org/wp-content/uploads/2017/04/Banks-are-Back-Final-12.3.2012.pdf>; National Fair Housing Alliance, “Zip Code Inequality: Discrimination by Banks in the Maintenance of Homes in Neighborhoods of Color,” August 27, 2014, available at <https://nationalfairhousing.org/wp-content/uploads/2017/04/2014-08-27-NFHA-REO-report.pdf>.

treatment of REO properties. Shortly thereafter, Wells Fargo took a leadership role and entered into an agreement with NFHA and HUD to provide \$42.05 million to NFHA, HUD, and the fair housing organization partners. Of these settlement funds, \$39.05 million that was set aside to provide grants to conduct education and outreach around REO best practices and to foster homeownership, assist with rebuilding neighborhoods of color impacted by the foreclosure crisis, and to promote diverse, inclusive communities. Of these funds, \$550,000 was allocated to education and outreach, and \$27 million was provided to NFHA and local non-profit organizations for direct grants to homebuyers for assistance in the purchase of a home to help current homeowners keep their homes. The remaining \$11.5 million was provided to HUD and Neighborhood Housing Services to support an additional 25 cities through direct neighborhood grant programs.

With the \$27 million in community relief that was awarded to the fair housing centers, the organizations were able to generate an additional \$17.3 million in leveraged funds for communities of color. The grant funds allowed over 700 families to access homeownership for the first time, for over 800 families to remain in their homes because of foreclosure prevention or home repair grants, and for 685 abandoned or blighted properties to be rehabilitated. Additionally, 182 homes were made accessible for persons with disabilities, and over 10,000 individuals completed financial literacy or homeownership training workshops directly because of these grants.¹³

The conciliation agreement with Wells Fargo also resulted in wide-scale improvements in its practices around REO maintenance and marketing. By adopting a number of best practices,

¹³ See National Fair Housing Alliance, “Investing in Inclusive Communities: How Fair Housing Organizations Foster Diverse and Stable Neighborhoods Using the Federal Fair Housing Act,” 2016, available at <https://nationalfairhousing.org/wp-content/uploads/2017/04/Investing-in-Inclusive-Communities-FINAL-8-26-2016.pdf>.

including providing a “First Look” program to incentivize owner-occupant purchase rather than investor purchase, improving the marketing information on their website, and agreeing to provide better quality control measures on their REO properties, thousands of foreclosures in communities of color are no longer dangerous eyesores and no longer drag down property values in African American and Latino neighborhoods.

Discriminatory Advertising Investigations: From 2007-09, thirty-five FHIP-funded fair housing organizations conducted an investigation of rental advertising on the Internet, targeting craigslist rental ads. The investigation documented more than 7,500 discriminatory ads, and 1,000 complaints were filed with HUD to document the scope of discriminatory advertising on the Internet. The report, “For Rent: NO KIDS! How Internet Housing Advertisements Perpetuate Discrimination,” was released in August 2009 calling for an amendment to the Communications Decency Act (which courts have interpreted to trump the Fair Housing Act’s provision against discriminatory advertising). Craigslist now posts fair housing information for landlords to review.¹⁴

II. Challenges with the Administration of the Fair Housing Initiatives Program

Over the past several years, FHIP-grantees have observed a deterioration in the management and implementation of the Fair Housing Initiatives Program. Constant delays in Notices of Funding Availability, award decisions, and timing of payments to grantees has resulted in serious damage to long-established fair housing organizations that often are the only

¹⁴ See National Fair Housing Alliance, “For Rent: No Kids! How Internet Housing Advertisements Perpetuate Discrimination,” August 11, 2009, available at http://www.familyoakland.org/uploads/8/4/9/2/84921384/for_rent_no_kids.pdf.

agency serving their housing market, or even state. Additionally, FHIP-grantees have observed challenges in the use of excess funds unused after the completion of stated grant goals, and grant payment protocols vary widely among HUD regions.

With each new fiscal year, HUD pushes out the FHIP grant process, leaving private nonprofit fair housing organizations that deliver critical direct services at risk of closure. For example, in 2016, many three-year PEI grants were scheduled to begin their second or third year on November 1. However, grant recipients were not informed until October 31 that the second or third years of their three-year grants would not commence on November 1 but instead would commence later. FY17 awards were not officially announced until March 2018, well over five months after the end of the fiscal year for which the awards were intended. For FY18, HUD opened the FHIP NOFA on October 29, 2018 with an application deadline of December 19, 2018. HUD has yet to award new grants for FY18, leaving several private fair housing organizations with funding gaps that again will affect their ability to provide direct fair housing services in their housing markets. In each of these instances, similarly-situated organizations had different start dates for grants that began or were to continue during the same fiscal year, and each FHIP agency has had to spend considerable time and energy to secure reasonable grant start dates. This has been especially harmful to the work of agencies that experienced delays while in the middle of existing three-year grants, which have work planned for each year.

The result of these delays has been devastating for many organizations. Many private fair housing organizations have been forced to take out lines of credit to complete existing work, continue paying employees, and maintain basic operations. Some have been forced to shut their doors for a period of time, impacting existing investigations that potential victims of discrimination were relying on. Without consistent and timely release of the FHIP NOFA and

awards, organizations that can weather funding gaps are forced to use reserve funding that is intended serve as a last resort, jeopardizing the overall health of their organization.

FHIP-funded agencies are the first line of defense for victims of discrimination for entire housing markets, states, and sometimes regions. Each time the FHIP NOFA and awards are delayed HUD runs the risk of jeopardizing the key services that private fair housing organizations provide to victims; the localized expertise they can employ to examine or address persistent housing discrimination or the impacts of residential segregation; and the testing and vetting of complaints that FHAP agencies and HUD receive as cases. Additionally, local housing providers, real estate agents, lenders, and insurers rely on training and education from private nonprofit fair housing organizations which is interrupted by lapses in FHIP funding. As of this testimony, HUD has yet to make new FY18 awards or issue a FY19 FHIP NOFA.

III. FHIP Work on the Ground

HOPE has been able to weather previous funding gaps caused by unnecessary delays from HUD, but it has been at the organization's expense and at the expense of the clients we serve. In fiscal year 2017, HOPE was awarded a three-year enforcement grant to serve Miami-Dade and Broward Counties. We serve two major metropolitan areas, with approximately 4.8 million people, at the same funding level as another agency would be awarded to serve one with less than half the population. HOPE successfully negotiated the terms of its enforcement grant in December 2017 but was not awarded until March 1, 2018; a date, we had to conduct intense negotiations over to secure. The agency had to maintain personnel, their benefits, and all operations for two months utilizing precious cash reserves in order to be able to hit the ground running with project activities.

During the funding gap, we received a complaint from Ms. Davis, an expectant mother. She lived in a low-income tax credit property. Her lease was not being renewed for failure to provide truthful information on her rental application. She inquired further and was told she failed to disclose her pregnancy and to provide an ultrasound picture of her unborn child as well as a letter from her doctor confirming the pregnancy and indicating the estimated date of birth. Ms. Davis was unaware of any such requirement and was visibly pregnant at the time of her application but offered to provide whatever information they needed. Her offer was rejected. A housing provider is not allowed to require disclosure of the pregnancy, but in the case of tax-credit properties, an applicant can be provided the opportunity to self-certify in order to qualify for the affordable housing opportunity.

Ms. Davis shared her predicament with her unborn baby's grandmother. The grandmother had previously attended a homebuyer education course where we provided fair housing education in partnership with a local housing counseling agency. She learned about fair housing law, fair housing rights, and where to go for help. She told Ms. Davis to reach out to HOPE with her complaint.

Ms. Davis' complaint may have been lost had HOPE been forced to lay off its intake or investigations coordinators. We were able to maintain our staff, but the investigation was delayed. Once our funding was in place we were able to obtain the necessary evidence to substantiate Ms. Davis' claims. When presented with her enforcement options, Ms. Davis chose to be referred to one of our cooperating attorneys. A federal lawsuit was filed. News coverage of the case received international media attention. As a result, other residents of the property began to reach out to HOPE with similar complaints. Three additional families joined the

lawsuit. Two of those families had already lost their housing. The third came from a sister property managed by the same company.

We also received a complaint from a gentleman who had recently moved from the subject property. Mr. Parker has significant medical issues, requiring varying levels of assistance for independent living. After suffering a heart attack and open-heart surgery, he required a sterile environment in his home in which to recuperate. He also required a live-in aid. His niece was available to provide care he needed. While in the hospital, he received communication from the assistant property manager about his niece being in his unit while he was away. When he returned from the hospital, he went straight to the leasing office to address the issue and to provide the necessary substantiation for the need to have her as a live-in aid from his doctors. Despite providing documentation and being asked to show his surgical scar to the assistant property manager while in the office, he was still denied the live-in aid.

The aforementioned cases have all settled. In resolving the claims, we were able to eliminate discriminatory policies and practices pertaining to children, establish appropriate procedures for residents with disabilities needing accommodations, and establish a five-year training program for management staff and other property employees. We were also able to address other housing rights that were being violated, such as multiple impromptu unit inspections and lease violations for simple housekeeping matters.

HOPE also has experience in which discrimination against families with children exacerbates existing housing unaffordability or creates housing insecurity. One way in which this has occurred has been through the enforcement of occupancy limits that restrict access to affordable housing units by families with children. A policy limiting occupancy of units to less than two persons per bedroom has a discriminatory impact on families with children. For

example, a mother and father with three children would not be able to access an affordable unit if a housing provider only allowed four people to occupy a three-bedroom unit. A policy that does not allow more than three persons in a two-bedroom unit would force a family of four to rent a larger, more expensive unit. FHIP enforcement grant funds allowed us to undo restrictive policies such as these with an affordable housing provider that owned and managed over 7,500 units throughout the state of Florida, and another owning and operating over a dozen properties between Miami-Dade and Broward Counties.

The role of private fair housing groups in the enforcement of fair housing rights is different from that of local and state governments. Fair housing groups are able to advocate for reasonable accommodations for persons who have disabilities without the filing of any enforcement action. We are able to educate the public about their rights and guide them through the process of requesting accommodations and providing only the necessary documentation to substantiate the need for the accommodation. Advocating on behalf of people needing accommodations and modifications, we are able to educate housing providers about their rights and responsibilities under the law. We are able to provide information and referrals to individuals calling our housing discrimination hotline regarding other housing related matters, such as landlord-tenant issues, homebuyer education, and foreclosure assistance.

The work that FHIP supports directly affects the lives of the residents of Miami-Dade and Broward Counties, but other communities are not so fortunate to have a full-service fair housing organization there to accept their intake, investigate their complaint, or advocate of them throughout the complaint process. There are states in which no qualified private fair housing organization exists, such as Kansas and Wyoming, and much like HOPE, many FHIP agencies are the only organization that provide fair housing services in multiple housing markets, and

sometimes seven states. For example, High Plains Fair Housing Center in Grand Forks, North Dakota, is the only full-service fair housing organization that provides services in both North and South Dakota. Despite being stretched thinly among multiple metropolitan areas, FHIP-funded organizations have deep impact in their service areas. Lapses in FHIP funding compound the existing challenges that FHIP recipients already face due to limited funding availability.

IV. Shortages of HUD FHEO Staffing

FHEO is experiencing a shortage of staffing that affects all aspects of its work, but most importantly its ability to timely investigate complaints it receives and administer the FHIP program. As a reminder, FHEO is responsible for administering FHIP, which supports private fair housing enforcement and education in local communities, including advocacy on behalf of victims in the complaint process; reimbursing state and local government agencies for complaints they investigate that include Fair Housing Act claims through the FHAP program; an administrative complaint process through which victims of housing discrimination can access justice without having to seek expensive legal counsel; and it oversees the compliance of HUD's own programs with the Fair Housing Act itself.

Yet over the past decade and a half, we have observed a decline in the number of FHEO staff. As the Washington Post has reported, since 2003 HUD's FHEO staffing has decreased by 40 percent, and this has further decreased under the current administration.¹⁵ According to HUD's Congressional Justification for FY19, FHEO had an annualized level of Full Time

¹⁵ Tracy Jan, *The Washington Post*, "Ben Carson's HUD dials back investigations into housing discrimination," December 24, 2018, available at https://www.washingtonpost.com/business/economy/ben-carsons-hud-dials-back-investigations-into-housing-discrimination/2018/12/21/65510cea-f743-11e8-863c-9e2f864d47e7_story.html?noredirect=on&utm_term=.9698c6501189.

Equivalent (FTE) staff of 491.¹⁶ However, this number is dubious at best, as the Post has reported that FHEO has experienced significant losses in staff due to normal attrition and retirements that is compounded by a slow pace of hiring within the agency. We have similar concerns and see the FHEO workforce diminishing under this administration.

Ultimately, chronic understaffing at FHEO has consequences for the quality of services and justice that victims of housing discrimination can achieve. According to HUD regulation, filed complaints must be investigated within 100 days.¹⁷ When a case investigation goes past 100 days it is considered an “aged” case. The longer a case ages, the longer it takes for victims of discrimination to be made whole and for housing providers in violation of the Fair Housing Act to correct any discriminatory behavior. In 2017, HUD had 895 cases that became aged during that same year, and it had 941 cases that were already considered aged at the beginning of the fiscal year. During the same time periods, FHAP agencies had 3,994 cases that became aged and 1,393 cases that were already considered aged at the beginning of the fiscal year.¹⁸

As FHEO’s staffing has decreased, it has become increasingly reliant on FHAP agencies to process filed cases, placing the burden of its understaffing on state and local agencies as funding for the FHAP program has decreased.

Additionally, FHEO requires increased funding to assist in the development of expertise in the areas of data science, discrimination based on bias in algorithms that used to assess risk in mortgage lending as well as in online marketing of housing opportunities which may result in

¹⁶ Department of Housing and Urban Development, Program Office Salaries and Expenses, Office of Fair Housing and Urban Development, FY2019, pp. 49-1, available at <https://www.hud.gov/sites/dfiles/CFO/documents/52%20-%20FY19CJ%20-%20S%26E%20-%20FHEO.pdf>.

¹⁷ See 42 U.S.C. 3610(a)(1)(B)(iv); 24 C.F.R. 103.225 (1991).

¹⁸ National Fair Housing Alliance, “Making Every Neighborhood a Place of Opportunity: 2018 Fair Housing Trends Report,” page 58, available at https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report_4-30-18.pdf.

steering, and other emerging complexities in an increasingly automated and digitally based housing market.

Finally, HUD has the sole responsibility for ensuring that recipients of housing and community development dollars use their funds in such a way as to affirmatively further fair housing. Every state, city, county, public housing authority, and unincorporated area in receipt of HUD housing and community development dollars is responsible for certifying that they are complying with the Fair Housing Act by “Affirmatively Furthering Fair Housing” in the communities they serve. However, it was not until after the release of HUD’s Affirmatively Furthering Fair Housing (AFFH) rule that jurisdictions were held accountable to this requirement. HUD’s rule, which was released in 2015, provided tools, mapping systems, and a template to help government entities conduct an analysis of barriers to opportunity in their service areas and put together a plan for implementing proposed policy changes or efforts in an Assessment of Fair Housing (AFH). In January 2018 HUD effectively suspended the AFFH rule¹⁹ and instructed jurisdictions to revert back to the previous Analysis of Impediments system, a process that the Government Accountability Office found to be utterly lacking as a compliance mechanism.²⁰ HUD must reinstate the AFFH rule and commence review of AFHs. Congress must support this work by requiring additional FHEO staff to assist in the successful implementation of the AFFH rule.

¹⁹ See <https://www.federalregister.gov/documents/2018/01/05/2018-00106/affirmatively-furthering-fair-housing-extension-of-deadline-for-submission-of-assessment-of-fair>.

²⁰ Government Accountability Office, “GAO-10-905: Housing and Community Grants; HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions’ Fair Housing Plans,” September 2010, available at <https://www.gao.gov/assets/320/311065.pdf>.

V. Funding and Program Recommendations

As I have noted, the key programs for enforcing the Fair Housing Act throughout the nation are vastly underfunded and suffering from programmatic challenges that, if addressed, could make programs more effective. Below you will find funding and program recommendations for staffing and salaries and expenses for the Office of Fair Housing and Equal Credit Opportunity, the Fair Housing Initiatives Program, and the Fair Housing Assistance Program. Several of these recommendations stem from the final report from the 2008 National Commission on Fair Housing and Equal Credit Opportunity, a bipartisan commission that was convened for the 40th anniversary of the Fair Housing Act that examined challenges in the enforcement and implementation of the Fair Housing Act.²¹

Account	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
FHIP	\$42.50	\$40.30	\$40.10	\$40.10	\$39.20	\$39.20	\$39.60	\$39.60
FHAP	\$28.30	\$27	\$25.60	\$23.30	\$24.30	\$24.30	\$23.90	\$23.40
FHEO Salaries /Expenses	\$71	\$73	\$68.20	\$68	\$72	\$72	\$69.80	\$72

A. Fair Housing Initiatives Program

It is critical that Congress work to stabilize the implementation of the Fair Housing Initiatives Program and increase its funding. In line with the 2008 Fair Housing Commission Report, HOPE recommends funding FHIP at \$52 million for FY20. This funding level will

²¹ The National Commission on Fair Housing and Equal Opportunity, "The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity," December, 2008, available at https://nationalfairhousing.org/wp-content/uploads/2017/04/Future_of_Fair_Housing.pdf.

assist in providing consistent support for existing fair housing organization to preserve their expertise and keep experienced staff as well as to begin establishing new full-service fair housing organizations in states and large housing markets that currently are not served by such an agency.

Additionally, due to HUD's constant delays in releasing the FHIP NOFA and awarding grants, we have several recommendations regarding improvements that HUD can make to the overall process. HOPE recommends that Congress instruct HUD to:

- Announce the FY19 FHIP NOFA as soon as possible;
- Announce the FY20 FHIP NOFA at least six months before the end of the FY for which funds are appropriated;
- Establish a permanent calendar for the release of each subsequent FHIP NOFA and awards;
- Form and convene Technical Evaluation Panels prior to the FHIP NOFA application is due to ensure the panel is familiar with the FHIP program and NOFA requirements and can conduct an informed selection process immediately after the application deadline;
- Announce awards within 30 days of the NOFA application due date;
- Create a grant management timetable to ensure grant payments are timely made after a grant work cycle begins and report on its compliance with said grant management timetable;
- Maintain a list of FHIP agencies that are at risk of experiencing funding gaps due to previous or expected FHIP delays;
- Reallocate any FHIP FY17-19 funds that have been returned to provide gap funding for high performing and qualified nonprofit fair housing organizations that are at severe risk of closure; and

- Ensure sufficient staff and subcontractor staff are prepared to adequately administer the NOFA process in a timely manner.

B. Fair Housing Assistance Program

At this time, HUD reimburses FHAP agencies anywhere between \$2,800 and \$3,100 per case depending on the final recommendation a FHAP provides once it concludes its investigation. However, this reimbursement range is significantly lower than what agencies spend on case investigations, and FHAP agencies are unfairly penalized if a case is withdrawn without a charge and may receive as little reimbursement as \$1,400 per case. Currently state and local agencies file 84% of all fair housing cases in the country and account for 78% of the resolutions of cases handled by HUD or FHAP agencies, according to HUD's FY17 Annual Report.²² The average appropriations for the FHAP program for the last three years has been \$24.3 million which includes case resolutions, continuing education, administrative costs, partnership funds for public education and enhanced enforcement funds (SEE).²³

HOPE proposes funding for FHAP agencies at \$35.2 million based on the following:

- Case Resolution: Increase in reimbursement for each case from \$2,800 to \$4,000. This increase is based on multiplying the average number of FHAP case resolutions for the last five years, resulting in \$27.3 million.
- Maintain Training Funds at \$4400 per Full-Time Equivalent (FTE) staff: This is consistent with HUD's memo of July 28, 2015, that strongly encourages FHAP agencies to vigorously pursue continuing education for staff to ensure thorough and professional

²² See Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, "Annual Report to Congress, FY 2017," available at https://www.hud.gov/sites/dfiles/FHEO/images/FHEO_Annual_Report_2017-508c.pdf. Note: this figure is not reflective of complaints investigated by FHAP agencies and concerns formal complaint filings.

²³ See 24 CFR § 115.305.

complaint investigations. Based on the average training appropriations for the last three years of \$2.2 million, this would support the continuing education of more than 1700 fair housing professionals at the state and local level.

- **Administrative Costs:** Increase funding for these expenses from the average of \$4.5 million over the last 3 years to \$5 million.
- **Partnership Funds:** Increase partnership funds from the last two years average of \$100,000 to \$500,000 to enhance public education on fair housing at the state and local level in partnership with other fair housing organizations.
- **SEE Funds:** The average for SEE funds over the last 2 years is \$100,000. Increase to \$200,000 to promote litigation at the state and local level.

C. FHEO Salaries and Expenses

In line with the recommendations from the 2008 National Fair Housing Commission we recommend Congress consistently provide at least \$102 million for 750 FTE staff at FHEO.

It is also critical that HUD expeditiously hire FTE staff in FHEO to combat fatigue that may be due to chronic understaffing and avoid further erosion of existing staff levels. HOPE recommends that Congress instruct HUD to develop a recruitment and hiring plan within 30 days of enactment of FY20 HUD appropriations and submit said plan to Congress for review.

VI. Conclusion

The United States has a formidable set of civil rights that protect the rights of people to live freely and choose the housing options that best serve their needs, regardless of the color of their skin or because they may have a child under the age of 18. However, the promise of the Fair Housing Act and other important civil rights laws suffer from program administration

failures and their chronic underfunding. It is absolutely essential that Congress commit to addressing these issues which stand in the way of full and effective enforcement of the Fair Housing Act by providing additional funding for the FHIP and FHAP programs and investing in talented personnel at FHEO that can carry out HUD's fair housing responsibilities. On behalf of the fair housing movement, I appreciate the opportunity to submit this testimony and offer HOPE Inc. as a resource concerning all fair housing matters.