2005 Fair Housing Trends Report

April 5, 2005

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Introduction

The *2005 Fair Housing Trends Report* is based on 2004 housing discrimination complaint data compiled from National Fair Housing Alliance (NFHA) member agencies nationwide, the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Justice (DOJ) and state and local government agencies. NFHA has collected this type of data on an annual basis since 1996. This report contains information about complaints only and does not reflect the full incidence of housing discrimination in rental, sales, lending and insurance marketplaces.

Concurrent with the release of this report, NFHA is filing the first of what will be several complaints against real estate firms throughout the nation. Over the past two years, NFHA conducted extensive testing of real estate companies located in twelve metropolitan areas. NFHA's testing revealed discriminatory behavior and comments that are both striking and pervasive. Given these widespread findings of discrimination in real estate practices, the *2005 Fair Housing Trends Report* also addresses the nature and extent of racial segregation in this nation. It highlights what amounts to a crisis of racial segregation at a time when funding for and commitment to the enforcement of fair housing laws is in a precipitous decline.

This report contains the following sections:

I. The Nature and Extent of Racial Segregation in the United States
II. The Costs Associated with Segregation
III. Housing Discrimination Complaint Data for 2004
IV. Insufficient Funding of Fair Housing Enforcement and Education
V. Recommendations

I. The Nature and Extent of Racial Segregation in the United States

"We are a nation of unlimited opportunity and serious unsolved social ills, and we are all in it together. Racial re-segregation can only lead to social disintegration. Far better to resume the dream of Martin Luther King, Jr.: to build a nation where Whites and Blacks sit side by side at the table of brotherhood." --- Colin Powell.

A. The Extent of Segregation

Even as a growing U.S. population becomes more diverse, our communities remain highly racially segregated, and segregation continues to extract a high price in economic and societal terms.

A recent study of 2000 U.S. census data indicates that of 69 metropolitan areas in which African Americans are a dominant minority, 64.8% of Whites live in neighborhoods that are exclusively White and 52.3% of Blacks live in neighborhoods that are majority Black. That is, in 69 key urban areas, more than two-thirds of Whites live in areas that have less than a 5% Black population. In these same communities, more than half of Blacks live in neighborhoods that are more than 50% Black.

A similar examination of suburban neighborhoods indicates that these neighborhoods are also likely to be exclusively White: 58% of the suburban neighborhoods examined were exclusively White, while only 21% of the urban neighborhoods were exclusively White.

Only about one-third of the neighborhoods studied were considered to be mixed neighborhoods—those with significant populations of both Blacks and Whites.[1]

Douglas Massey, who has conducted extensive research on patterns of racial segregation, has noted that *America's large urban areas remain only slightly less segregated than South Africa during apartheid*. Today, 41% of Black Americans live in neighborhoods that are described as hyper-segregated, that is, in all Black high-density neighborhoods near other all-Black neighborhoods. Another 18% of African Americans also live in conditions of high segregation.

Residential segregation studies document that the most segregated areas of the country are in the Midwest and Northeast, with the West being the least segregated. The most segregated area in the U.S. is the city of Detroit, Michigan.

The average White person in metropolitan America lives in a neighborhood that is 80% White and only 7% Black. Even though some minorities are moving to the suburbs, the typical Black individual lives in a neighborhood that is only 33% White and as much as 51% Black.[2]

Residential segregation studies consistently find that race remains the most telling factor in determining where people will live. At the current pace of the nation's fair housing education and enforcement efforts, it will take generations to undo racial segregation. These facts refute those who state that integration has failed. Despite the fact that residential integration was one of the primary goals of those who enacted the federal Fair Housing Act in 1968, integration has never been realized in the United States.

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[1] Rawlings, L., Harris, L., and Turner, Margery Austin, "Race and Residence: Prospects for Stable Neighborhood Integration," Neighborhood Change in Urban America, Urban Institute, March 2004.

[2] "Ethnic Diversity Grows, Integration Lags Behind," The Lewis Mumford Center, April 3, 2001, http://mumford1.dyndns.org/cen2000/WholePop/WPreport/page1.html

B. Steering by Real Estate Agents Contributes to Segregation

Concurrent with the release of this report, NFHA is filing an administrative complaint against Coldwell Banker, Joe T. Lane Realty, located in the Atlanta metropolitan area. NFHA's complaint against this real estate franchisee illustrates the responsibility that real estate professionals can have in creating and maintaining segregated communities. The testing and investigation NFHA conducted of Coldwell Banker, Joe T. Lane reveals behavior that is a microcosm of the way segregation occurs in this country. This behavior, repeated over and over again throughout the nation, clearly contributes to our segregated living patterns.

In this specific case, agents of this company consistently and repeatedly showed to potential White homebuyers homes in White communities and showed to potential African American homebuyers homes in majority African American communities. In addition to illegal racial steering in violation of the Fair Housing Act, a Coldwell Banker agent made numerous negative comments to White homebuyers about African Americans and minority communities. The agent indicated to one White potential homebuyer that Whites wanted to keep things the way they were and were moving further and further south to do so.

Racial steering in real estate is illegal. HUD's regulations implementing the federal Fair Housing Act state that:

> *It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development. (24 CFR Part 14, Section 100.70(a))*

Steering in this case was not limited to homes, but extended to comments about and steering away from schools and school districts. This Coldwell Banker office is located in Jonesboro in Clayton County, Georgia. The Harvard Civil Rights Project has identified Clayton County, Georgia, as having the most rapidly re-segregating school district in the country.[3] Given the words and actions of the Coldwell Banker agents, this comes as no surprise. White testers were consistently told of schools that they should avoid. At the same time, Black testers were told nothing about schools and were shown homes located in the very same school districts Whites were told to avoid. While we would like to believe that this is an isolated incident, the investigations that NFHA has

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[3] Frankenberg, Erica and Lee, Chungmei, *Race in American Public Schools: Rapidly Resegregating School Districts*, The Civil Rights Project, Harvard University, August 2002.

conducted reveal that this is a consistent behavior of many real estate professionals.

The National Association of Realtors has provided a high level of training to its professionals regarding the Fair Housing Act. Evidence of this training is clear from NFHA's testing and investigation. Licensed real estate professionals throughout the country have stated that they know it is illegal for them to steer based on race or to choose homes for Whites based on school districts. Despite these statements indicating a knowledge of the law, real estate professionals have then gone on to state that they will not show particular homes to Whites based on schools or the presence of minorities in the community. In fact, in this case, an agent for Coldwell Banker told a potential White homebuyer that it was illegal to steer and that he could get fined for it. But he later pointed to some African Americans who were walking in a community and stated they were the reason he was steering the White homebuyer away from that community.

II. The Costs Associated With Discrimination

A. Homeownership and Wealth

In the United States, homeownership is the primary source of family asset development and intergenerational wealth accumulation. The entry point into homeownership is, therefore, a significant factor in the build-up of wealth for most families. The size and source of the associated down payment and the appreciation rate of the asset, in this case the value of the property, from generation to generation also affects how much wealth a family builds. The higher property appreciation rates associated with all White neighborhoods as compared to minority neighborhoods feeds the disparate rates at which families accumulate wealth in their homes. Coupled with NFHA's testing, which reveals a consistent pattern of illegal real estate discrimination and steering, it is clear that current real estate practices converge to lock out Black, Hispanic and other minority families from wealth accumulation through homeownership.

B. The Homeownership Gap

A review of U.S. homeownership rates underscores the gap in homeownership between Whites and other racial and ethnic groups. In 2004, the U.S. census bureau reported that the homeownership rate for Whites was 72.8%. If the group of White households that are not Hispanic is considered, the homeownership rate for Whites is even higher – 76%.

In contrast, the homeownership rate for Black Americans was a paltry 49.1%, lower than the rates for Asian or Pacific Islanders or American Indians.[4] The

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[4] Homeownership Rates by Race and Ethnicity of Householder, U.S. Census Bureau, Housing and Household Economic Statistics Division, Febr*uary 17, 2005*

homeownership rate for Hispanics lags even further behind at 48.1%. This huge disparity in homeownership has persisted, despite concentrated efforts by HUD and others to reduce the homeownership gap.[5]

C. The Segregation Tax

To be sure, the homeownership gap accounts for some of the difference in wealth accumulation between White families and Black, Latino and other minority families. Nevertheless, a wealth gap persists despite recent gains across a variety of factors that could account for the wealth gap, such as gains in income among Black families or gains in homeownership across minority groups.[6]

A recent Brookings Institution study comparing home values to homeowner incomes attributes the gap in home values between White and Black families not to differences in family incomes, metropolitan population size, percent minority population or even economic segregation; rather, Brookings' David Rusk finds that *racial segregation* accounts for the gap in home values between Black and White homeowners. Black homeowners receive 30 percent less home value per dollar of income than White homeowners.[7] This disparity is what Rusk refers to as the "segregation tax."

The depressed value of homes, and the associated effect on home equity and intergenerational wealth accumulation, is attributable, in a statistically significant measure, to pervasive racial segregation. Yet the statistical exercise merely underscores basic behavior. Housing discrimination, racial steering and other illegal real estate practices act to create lower demand in Black and minority neighborhoods, thereby depreciating home values. White homebuyers seeking housing in White neighborhoods or who are steered to White neighborhoods create greater competition in these neighborhoods and drive up the values of homes in non-Black neighborhoods.[8] And, as Georgetown University law professor Sheryll Cashin has observed, segregation is "pricey."[9] The cost to Whites can be quantified in the significantly higher price they must pay to live in White neighborhoods. "The average cost of a home for a White person is 43 percent more than that of a Black person with the same income."[10]

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[5] The 1940 Census measured a Black-White homeownership rate gap of 23 percentage points. See National Association of Realtors, National Summit on Housing Opportunities, September 25, 2003, footnote 3.

[6] Muhammad, Askia, "Black Wealth Inequality 10-to-One**,"** FinalCall.com, Updated Dec 14, 2004.

[7] Rusk, David, "The Segregation Tax: The Cost of Racial Segregation to Black Homeowners," the Brookings Institution's Center on Urban and Metropolitan Policy, October 2001, p. 2.

[8] Id. at p. 10.

[9] Sheryll Cashin, The Failures of Integration: How Race and Class are Undermining the American Dream, 2004, p 186.

[10] Id. (Cashin at 186.)

Further, Cashin observes that recent bankruptcy trends indicate that the typical middle-class family is caught in an “income trap” because the family must devote the entire salary of one parent to the mortgage payment.[11] Another cost to White individuals and families is the lost opportunity to socialize and interact with members of other racial and ethnic groups.

NFHA’s two-year real estate testing program confirms that illegal real estate practices contribute to racial segregation across the United States. Since segregation accounts for much of the difference in home equity and wealth accumulation across racial categories, these same real estate practices contribute to the persistent gap in wealth accumulation between White and Black, Latino and other minority families. Left largely unchecked, illegal racial discrimination in the real estate market has contributed to the crisis of racial segregation and to the persistent and troubling gap in the accumulation of wealth between different racial groups.

D. The Effect of Segregation on Education

Another major consequence of residential segregation is school segregation. Almost every school district studied by the Harvard Civil Rights Project showed an increase in segregation since 1986 for Black and Latino students. In the fourteen year time period studied, 1986-2000, the decline in exposures to Whites for the average Black and Latino student was dramatic in some school districts. “In particular, Clayton County, Georgia had the highest change in exposure rates for both Black and Latino students. . . .” This represents a decline in White student population by 45% to 58%.[12] As schools become increasingly segregated, students from racial and ethnic minority groups lose enormous educational and social opportunities.

Further, segregated schools result in fewer resources for schools with minority students. “Recent analyses of data prepared for school finance cases in Alabama, California, New Jersey, New York, Louisiana, and Texas have found that on every tangible measure – from qualified teachers to curriculum offerings – schools serving greater numbers of students of color had significantly fewer resources than schools serving mostly White students. … The continuing segregation of neighborhoods and communities intersects with funding formulas and school administration practices that create substantial differences in the educational resources made available in different communities.”[13]

Predominantly White schools also benefit from stability in teaching staff. The *Atlanta-Journal Constitution* recently reported on a study by Georgia State

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[11] Id. (C. at 186)

[12] Footnote: *Race in American Public Schools: Rapidly Resegregating School Districts*, Erica Frankenberg and Chungmei Lee, Harvard Civil Rights Project, August 2002 page 6.

[13] *What Happens to a Dream Deferred? The Continuing Quest for Educational Opportunity*, Linda Darling-Hammond, Stanford University.

University whose researchers found that "... White teachers – who compose 80 percent of the state's teaching force – are much more likely to leave schools that serve higher proportions of Black students. The study found that 32 percent of White elementary school teachers left predominantly Black schools in 2001. This revolving door leads to less experienced teachers in the classroom at Black schools."[14]

In contrast, the benefits of desegregation are clear. There is strong evidence that students of all races who are exposed to diversity experience greater intellectual and social development. The United States Supreme Court recognized this in the University of Michigan Law School case, stating:

> *In addition to the expert studies and reports entered into evidence at trial, numerous studies show that student body diversity promotes learning outcomes, and "better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals." . . . These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.*[15]

III. The Incidence of Housing Discrimination

The reported incidence of housing discrimination, as measured by the filing of a complaint through a private fair housing organization, a state or local agency, HUD or DOJ, represents only a small fraction of the actual level of housing discrimination that pervades our housing markets. As noted in NFHA's *2004 Fair Housing Trends Report*, it is estimated that at least 3.7 million instances of housing discrimination occur annually.[16] In contrast, NFHA can report that in 2004, the total number of complaints filed was only 27,319.

The disparity between estimates of the incidence of housing discrimination and actual complaints may be attributed to a range of causes. Yet, at the root of the disparity is a continuing decrease in the level of funding and commitment to fair housing enforcement, education, and outreach activities. While examination of other dynamics that suppress complaint levels across protected categories is illuminating, there is no substitute for adequate federal, state, local and private funding of efforts to eliminate discriminatory housing practices.

The 2004 data are comprised of 27,319 claims/complaints and DOJ case filings of housing discrimination made in 2004. NFHA members received 18,094

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[14] *Atlanta Journal-Constitution*, "*Black Schools, White Schools,"* June 22, 2003
[15] *Grutter v. Bollinger*, 123 S.Ct 2325 (2003).
[16] See NFHA's *2004 Fair Housing Trends Report* for the basis of this estimate, April 7, 2004, p. 4. available at www.nationalfairhousing.org.

complaints in 2004 with 80 agencies reporting, compared to 17,022 complaints in 2003 with 85 member agencies reporting. The number of complaints received by HUD in FY 2004 increased by about 2.6 percent, from 2,745 to 2,817 nationwide, while the number of complaints filed with state and local agencies in FY 2004 increased by approximately 19 percent, from 5,352 to 6,370. The Department of Justice filed 38 cases in 2004, compared to 29 in 2003. The Department of Justice Housing Section data reflects cases that were filed in federal court, rather than complaints received or investigated. The total number of cases DOJ files includes both pattern and practices cases and HUD "election" cases. Thus, the total number of cases filed is dependent in part on the number of charges HUD issues pursuant to 42 U.S.C. 3610(g)(2)(A) and the number of those charges for which the parties "elect" to have the matter filed in federal courts pursuant to 42 U.S.C. 3612 (a). One note about how the Department of Justice has changed the manner in which it counts complaints: after the release of NFHA's 2004 Trends Report, DOJ provided NFHA with revised data compiled in a new format designed to eliminate possible errors in reporting due to sometimes overlapping categories. Therefore, the number of filed cases by DOJ in 2003 has been revised to 29 from the 35 originally reported.

Total Complaints				
Agency	**Claims/Complaints**	**2002**	**2003**	**2004**
NFHA	Complaints	17,543	17,022	18,094
FHAP	Claims and Complaints	5,129	5,352	6,370
HUD	Claims and Complaints	2,511	2,745	2,817
DOJ	Case Filings	49	29	38
Totals		**25,232**	**25,148**	**27,319**

A. Discrimination by Protected Class

The federal Fair Housing Act as Amended prohibits discrimination on the basis of race, disability, familial status, national origin, sex, religion and color. In 2004, disability complaints made up 31 percent of the total complaints received, followed by race and familial status complaints at 26 and 13 percent respectively. Together, these three categories of complaints account for 70 percent of all housing discrimination complaints reported.

Discrimination based on national origin remains notably underreported, particularly given the current anti-immigrant sentiment aimed at the established Latino, Asian and Native American communities as well as emerging immigrant communities across the U.S. There are additional barriers that such communities may face in filing fair housing complaints, but as has been conclusively demonstrated by past discrete strategies to serve this population, a concerted effort to provide relevant and culturally responsive education and enforcement strategies, and a commitment to serving diverse populations, has resulted in higher numbers of national origin complaints. Nevertheless, given consistent findings that Latinos and other minority communities face high levels of discrimination in their efforts to obtain housing, it is clear that the national origin complaint data is artificially low.

	NFHA	HUD	FHAP	DOJ	TOTAL
Race	24%	40%	37%	21%	26%
Disability	30%	40%	37%	61%	31%
Family Status	14%	14%	15%	11%	13%
National Origin	12%	10%	16%	11%	12%
Sex	5%	11%	11%	3%	6%
Religion	1%	7%	3%	0%	2%
Color	1%	2%	2%	0%	1%
Other	13%	4%	5%	0%	9%

*The "other" category for NFHA complaints consists of state-level protected categories such as source of income, sexual orientation, marital status, criminal history. The "other" category for HUD and FHAP percentages includes retaliation. Many complaints are filed on multiple bases so totals do not add up to 100%.

B. Discrimination by Housing Market Sector

1. Rental Market Discrimination— Private Groups Report 13,804 Complaints[17]

Of the many categories of complaint data for housing discrimination, *rental* complaints continue to represent the largest category. That is, most housing discrimination complaints are against apartment owners and managers for discriminating against renters on the basis of race, disability, family status and national origin. In 2004, private fair housing groups reported 13,804 complaints of housing discrimination in the rental market.

Within the rental market, discrimination operates in a variety of ways, including the denial of available rental units; refusal to make a reasonable accommodation for a disabled individual; higher rents or security deposits for minorities and individuals in other protected classes; segregation of African Americans, Latinos, Asian Americans, or families with children to certain parts of a building or complex; restriction of access to rental

[17] Complaint data by type of allegation does not equal the total number of complaints because not all organizations provided this type of information, and some complaints fall in other categories such as harassment.

property amenities such as swimming pools or community rooms; or the initiation of eviction proceedings against White tenants who have visitors who are African American, Latino or Asian American.

2. Home Sales Discrimination—Private Groups Report 1,061 Complaints

Through complaints and NFHA's testing and investigation program, NFHA has identified a broad range of discriminatory sales behavior. These patterns of behavior include real estate professionals who deny appointments to African Americans or require them, but not their White counterparts, to provide proof of financing prior to viewing homes. In addition, real estate professionals routinely steer Whites to White neighborhoods and minorities to minority neighborhoods. NFHA has also found that real estate professionals in metropolitan areas around the country have made discriminatory comments to Whites, including derogatory comments about African Americans and Latinos. NFHA has also documented that real estate professionals routinely tell Whites that they are selecting homes for them based on schools and what school districts to avoid. At the same time, schools are not mentioned to African Americans and they are shown homes in the very school districts Whites are told to avoid. In addition to discriminatory behavior by real estate professionals, some sellers refuse to negotiate the price of the home when offers are made by African Americans, Latinos, or Asian Americans but are willing to negotiate when a White buyer makes a similar or less favorable offer. Other sellers take their homes off the market or use delaying tactics in order to avoid a sale to people of color.

3. Mortgage Lending Discrimination— Private Groups Report 467 Complaints

Distinct from predatory lending practices, mortgage lenders may also discriminate against homebuyers in one of several ways: through product steering to sub-prime or FHA loans; stricter qualification standards; higher interest rates, points, fees, and other terms of financing; less assistance in meeting qualification standards; inferior customer service; more costly and lengthier application processes; and inaccurately low appraisals in African American, Latino and integrated neighborhoods.

4. Homeowners Insurance Discrimination—Private Groups Report 195 Complaints

Discrimination related to homeowners insurance can be difficult to identify since its implementation is rarely overt. For example, when Blacks and Latinos call agents and leave messages requesting insurance quotes and other information, they often find that their calls are not returned. Such "linguistic profiling" – whereby a person is treated differently based on a racially- or ethnically-identifiable voice – is a significant and documented phenomenon in many types of housing transactions. Some agents promise to provide insurance quotes but never do so.

Also, insurance discrimination is often reflected in the underwriting policies of the company and not in the direct behavior of the agent. For example, urban homes for the most part are insured, but many homes are under-insured because underwriting guidelines will not allow replacement or guaranteed replacement cost coverage on homes built before 1950 and/or which are valued below a minimum dollar value.

IV. Insufficient Funding of Fair Housing Enforcement and Education

Private non-profit fair housing organizations processed about 66% of the nation's fair housing complaints in 2004. These organizations rely primarily on two federal funding streams, both of which are in jeopardy.

A. Fair Housing Initiatives Program (FHIP)

The first federal funding stream is the Fair Housing Initiatives Program (FHIP) which is administered by HUD. FHIP funds fair housing organizations and other non-profit groups to provide vital services to their communities. Grants typically range from $75,000 to $250,000 (varying from 12 to 24 months) for education and enforcement programs. FHIP also funds the creation of two new fair housing organizations per year, with grants of $1 million each (over three years). FHIP was officially funded at $20 million in FY2005, its lowest level since 1998. FHIP is authorized at $26 million. Unfortunately, even this low dollar figure of $20 million to provide education and enforcement services for the entire country is not the true amount allocated for use by non-profit organizations; $2 million has been earmarked for other purposes – not funding of local fair housing organizations.

In addition, in order to fund more groups during the past two years, education and outreach initiative (EOI) grants were funded at 75 percent and private enforcement initiative (PEI) grants at 80 percent of their typical size. In FY2003, this meant that EOI grants ranged from $40,000 to $100,000 (65 groups) for 12 months and PEI grants ranged from $113,000 to $206,000 (52 groups) for 18 months. In FY2004, this meant that EOI grants ranged from $40,000 to $100,000 (65 groups) and PEI grants ranged from $65,000 to $220,000 (57 groups) for 18 months.

There are approximately 100 full-service fair housing organizations nationwide. A full-service fair housing organization is one that conducts education and outreach in conjunction with enforcement. It serves all protected classes and can assist people with problems in all sectors of the market – rental, real estate, lending, and homeowners insurance. It also provides education to the industry about compliance with fair housing laws. With education and outreach, community members become increasingly aware of their rights. Without the capacity to conduct investigations and enforcement, community members have no outlet for their complaints and are therefore not able to exercise their rights.

Unfortunately, since the mid 1990s, fair housing organizations have not been able to receive both education and enforcement funds during the same grant cycle. With fully-authorized funding of $26 million, it would be possible for many organizations to receive both types of grants simultaneously. <u>Even with full funding of $26 million, only about 60 percent of organizations would receive enforcement funding, and only 80 percent would receive education funding.</u>

<u>Fair Housing Initiatives Program Funding History</u>

Fiscal Year	FHIP Funding
1994	$ 20.48 million
1995	$ 26.00 million
1996	$ 17.00 million
1997	$ 15.00 million
1998	$ 15.00 million
1999	$ 16.00 million *
2000	$ 18.00 million *
2001	$ 16.50 million *
2002	$ 18.75 million *
2003	$ 18.25 million *
2004	$ 17.75 million *
2005	$ 17.50 million *
2006	$ 13.60 million *

**actual funding level available for general FHIP activities, excluding other set-asides*

This year, like so many other housing and community development programs, fair housing is subject to a proposed cut by the Administration. In his FY2006 budget, President Bush has proposed cutting funding for FHIP by 20 percent to its lowest level ever. The official budget number is $16.1 million, but once the earmarks and set-asides are removed, fair housing organizations are left with $13.6 million.

B. Community Development Block Grant (CDBG) Program

The second federal funding stream vital to fair housing is the Community Development Block Grant (CDBG) program. Fair housing centers nationwide rely on CDBG funding to assist in their education and outreach programs. Fair housing centers are also active in assisting jurisdictions in formulating and compiling their Analyses of Impediments to Fair Housing Choice, a requirement under the Comprehensive Plan.

There are 1,075 CDBG entitlement jurisdictions in the country, all of which are required to "affirmatively further fair housing." (It is difficult to enforce this requirement, however, because HUD has not promulgated regulations for the implementation of this requirement, although the law was passed in 1974.) NFHA estimates that only 40 to 50 of these recipients actually have programs to address fair housing concerns in their communities. Even fewer provide funding to private fair housing organizations serving their jurisdiction.

With the elimination or substantial reduction of the CDBG program, our communities are at an even greater risk of limited fair housing education and enforcement. Without these funds, the crisis of segregation in this country cannot be addressed.

V. Recommendations

A. Increase Fair Housing Initiatives Program Funding

<u>NFHA calls on Congress to increase appropriations for the Fair Housing Initiatives Program (FHIP) to at least $26 million in fiscal year 2006.</u> In light of the new and continuing evidence of housing discrimination outlined in this report, NFHA also petitions the Administration to reinstate the $4 million it has proposed cutting from FHIP. In fact, by our estimates, a number closer to $50 million would be in line with the immediate need to begin addressing, in a serious and organized way, the level of housing discrimination today.[18]

Increased and reliable funding would enhance assistance to victims of discrimination and the housing industry. FHIP is the only source of federal funding for private organizations dedicated to the elimination of housing discrimination. The survival and effectiveness of these organizations is central to the fight for fair housing in this nation. These funds would provide additional resources for: education and outreach; assistance to the fair housing industry; counseling; testing to gather evidence about whether discrimination has occurred; and assistance to individuals who wish to file complaints.

Private fair housing groups have played a key role in many of the cases in which HUD has been willing to take enforcement action by issuing a charge. In fiscal years 2001 and 2002, FHIP-funded agencies were involved in more than 50 percent of the cases charged by HUD.[19]

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[18] See "A Reformed Fair Housing Initiative Program: the Private Enforcement Initiative", NFHA 2005.

[19] HUD has not provided information for subsequent fiscal years from which NFHA can make similar calculations.

B. Restructure the Fair Housing Initiatives Program

We applaud HUD for following NFHA's suggestion of creating a three-year grant cycle for qualified full-service private nonprofit fair housing organizations in its 2005 SuperNOFA (Notice of Funding Availability). Unfortunately, because of the low level of funding, only approximately six organizations will be able to be funded at that level. This longer-term funding for just a few organizations also severely constrains the funds available to other qualified organizations.

As outlined in NFHA's proposal to HUD,[20] FHIP should include funding to provide training to agency personnel and to implement programs to improve and enhance agency performance. The minimum grant award should be $300,000 annually and increase to $1 million annually depending upon the population size, number of investigations handled, demographics and other performance measures.

In addition, *fair housing organizations should be able to receive education and enforcement funding simultaneously*. When FHIP was initiated in 1990, fair housing agencies could receive both education and enforcement grants during the same funding cycle. The ability to receive both grants was removed around 1996. A full-service fair housing organization is one that conducts education and outreach in conjunction with enforcement. With education and outreach, community members and housing providers become increasingly aware of their rights and responsibilities under the Fair Housing Act.

C. Community Development Block Grant Funding Must Remain Intact

As mentioned in Section IV, Community Development Block Grant (CDBG) funding is the only other federal funding source available for fair housing activities. Eliminating CDBG, as proposed by the Administration, and transferring a severely limited amount of funding to the Department of Commerce will essentially kill the funds available for fair housing. The Department of Commerce does not have the experience or the capacity to handle housing, let alone fair housing, programs. With the level of housing discrimination that NFHA has documented annually in its *Fair Housing Trends Report*, combined with the strong new evidence of sales discrimination leading to the continued stark segregation nationwide, NFHA asks the Administration to rescind its proposal to eliminate the CDBG program.

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[20] See "A Reformed Fair Housing Initiative Program: the Private Enforcement Initiative", NFHA 2005.

In addition, NFHA urges HUD to promulgate enforceable regulations that would require local jurisdictions to include fair housing in their comprehensive plans and their funding decisions.

D. Designate the Office of Fair Housing and Equal Opportunity as an Independent Agency

HUD's Office of Fair Housing and Equal Opportunity (FHEO) should be designated an independent agency in order to be a truly objective institution. Currently, when a complaint is filed against a HUD program, or a HUD-funded agency or organization (public housing authorities, for example), HUD's FHEO is responsible for investigating the complaint. This puts FHEO in the position of investigating its own agency. FHEO is fully intertwined in the HUD system, and it must coordinate its efforts with many other offices at HUD. In addition, in some regions of the country, HUD employees have threatened fair housing organizations with the loss of current or future funding when these organizations have not agreed to settlement proposals from HUD. These policies and behaviors compromise what should be independent, objective investigations, putting them through the litmus test of public policy considerations and the very real issue of being ranked lower than other HUD priorities. The director of this independent agency must be a career position and not a political appointment.

E. U.S. Department of Justice Should File Disparate Impact Cases

The U.S. Department of Justice (DOJ) publicly stated in 2003 that it would not litigate disparate impact cases involving housing discrimination. This announcement was a sharp break from DOJ's aggressive litigation of disparate impact cases for decades. Disparate impact cases are crucial in the fight against housing discrimination. Many rental, sales, insurance, and related policies are not discriminatory on their face, but have a disparate impact on members of protected classes. Among those that are more subtly discriminatory, some have a discriminatory *intent* and others have a discriminatory *impact.* Even though there may not be any intent in the policy, it can have just as detrimental an effect on individuals and families trying to find housing.