

## **Leadership Conference on Civil and Human Rights Fair Housing Task Force Priorities for the Second Obama Administration**

Families continue to feel the lingering pains of a severely damaged housing market, and a foreclosure crisis that continues to disproportionately affect neighborhoods of color and our most vulnerable communities. The economy in most markets still suffers from access to affordable mortgage loans, which diminishes the recovery efforts. Foreclosed homes are selling rapidly to investors who are turning formerly owner-occupied neighborhoods into rental communities and stripping the opportunity to build wealth throughout homeownership from thousands of people across America. The Obama Administration must turn its focus toward the housing crisis by demanding meaningful principles of access and affordability to quality and nondiscriminatory housing and mortgage lending. In doing so, the Administration's policies must carry out the Fair Housing Act's mandate to end housing discrimination and residential segregation and to promote diverse, inclusive communities. The following plan we have laid out suggests where the Administration must make efforts to support and expand upon our nation's policy of fair housing for all.

### **First 100 Days**



Disparate Impact Regulation (HUD) – The Administration must immediately issue final regulations reflecting the availability of the disparate impact theory under the Fair Housing Act. This approach has been widely accepted by all of the federal appellate courts since the 1970's, and yet the Department of Housing and Urban Development (HUD) has never issued formal regulations regarding this longstanding unanimous interpretation of the Fair Housing Act. Issuing these regulations will create a uniform national standard on the burden of proof under this model. HUD issued a proposed regulation on November, 16, 2011. It is imperative that the regulations apply to all HUD programs. The Department of Justice (DOJ) should continue to conduct rigorous enforcement against housing providers and lenders whose policies and practices have a disparate impact on protected classes under the Fair Housing Act and Equal Credit Opportunity Act (ECOA).

Affirmatively Furthering Fair Housing Regulation (HUD and DOJ) – The Administration must promulgate regulations describing requirements for all federal programs and activities required to affirmatively further fair housing (AFFH), and finalize these regulations during the first year of the Administration's second term. These regulations should assist recipients of federal dollars in understanding the requirements and ways to further fair housing as well as strengthen HUD's ability to enforce consequences for noncompliance by cities, counties and states. In the first term, the Obama Administration expended a vast amount of resources exploring the most effective way to implement the affirmatively furthering requirement and consulted with municipalities, advocates and other interested parties, so it is positioned to promulgate regulations that promote AFFH. No regulations have not been promulgated since the requirement became effective with the passage of the Fair Housing Act.

The Department of Justice should take a more active role in enforcing the Fair Housing Act's affirmatively furthering fair housing provisions against private and public entities receiving federal dollars and engaging in discriminatory housing and community development activities.

Olmstead Guidance (HUD) – HUD should issue guidance concerning the applicability of Olmstead to HUD-financed housing. *Olmstead v. L.C.* is a landmark Supreme Court decision that prohibits public entities from segregating people with disabilities. HUD drafted a guidance document in early 2012 concerning Olmstead's application to HUD-financed housing, but has yet to issue that guidance. It is imperative that HUD issue this guidance to protect the integrity of the Supreme Court decision, and ensure the coherence of the federal government's efforts to secure Olmstead compliance.

Mortgage Regulations (CFPB) – The Consumer Financial Protection Bureau (CFPB) must meet its Dodd-Frank mandate to “ensure fair, equitable and nondiscriminatory access to credit for all consumers” by making every effort to adopt policies and rules that work toward the elimination of our nation's dual financial market, and not to enable it by continuing to relegate borrowers of color to the fringe market. However, the CFPB's recent mortgage rules fail to adequately ensure that fair and nondiscriminatory access to credit is available to consumers and instead work towards reinforcing the dual credit market in the United States. The CFPB's rule concerning the Qualified Mortgage (QM) has fallen short of this mandate by failing to provide a definition of QM that covers the vast majority of the marketplace and ensures that all borrowers have strong consumer protections. The final QM rule should have offered lenders only a rebuttable presumption of compliance with the Ability to Repay (ATR) requirements that preserves the right to legal recourse for borrowers if a loan is unaffordable, and not a safe harbor from legal liability. The CFPB's mortgage servicing rule does not require that servicers pause a foreclosure proceeding in the event that a borrower requests a modification or other loss-mitigation option. The rule should also require servicers to accept and provide documents in languages other than English and in accessible formats to borrowers with disabilities to ensure that all borrowers have equal access to modification or foreclosure prevention options. The CFPB's rules concerning mortgage loan originator compensation should not allow exceptions to the limit on dual payments to loan originators, and prohibit all known and future kinds of compensation tied to the terms of a loan. Given these systemic shortcomings of the CFPB's mortgage rules, it is critical that the Bureau dedicate resources to conducting thorough fair lending enforcement and supervision of mortgage lending and related institutions.

## **First Year**

### **Department of Housing and Urban Development**

Harassment Regulation – HUD should issue a proposed regulation to be finalized shortly thereafter concerning sexual harassment and other types of harassment covered by the Fair Housing Act. The first lawsuit brought successfully addressing sexual harassment in housing was in 1982 and we still await a HUD regulation more than 30 years later. HUD issued a proposed regulation on this subject in 2000, but it was never finalized. It is imperative that HUD establish a formal position on harassment in housing and to do so with clarity and speed. Such a regulation would be consistent with judicial decisions interpreting the Fair Housing Act to cover sexual harassment and other harassment in housing and would provide victims of harassment discrimination, the housing industry, and the public with clearer information about the type of conduct that is prohibited by the Act.

### **Consumer Financial Protection Bureau**

Collection and Publication of Protected Class Data – The CFPB should explicitly request protected class information from every complainant, not only from consumers who may believe they have been discriminated against, to facilitate thorough review of all consumer lending complaints for potential individual acts of discrimination as well as discriminatory patterns and practices by lending institutions. The CFPB should make these data available in its public complaint database. The CFPB should also work with the Federal Housing Finance Authority (FHFA) to make protected class data publicly available in their joint National Mortgage Database to best understand emerging mortgage and housing trends affecting protected classes.

Regulations – The CFPB should also revise Regulation B to affirm the cognizability of reverse redlining claims under ECOA; update the definition of “adverse action” to require that adverse action notice be provided to loan applicants who receive worse credit than what was originally applied for, regardless of whether they accept a counteroffer; collect protected-class data in auto-financing; and expand the definition of “creditor” to require that anyone who effectively operates in a brokering role and who refers applicants to creditors be subject to ECOA’s record-keeping requirements. The CFPB should also lead interagency efforts to promulgate a rule establishing universal mortgage servicing standards across prudential regulatory agencies.

The CFPB should promulgate and finalize regulations that address the systemic targeting of high-price unsustainable loans to protected classes to mitigate the harm done to their communities. The CFPB should promulgate rules requiring the collection of additional demographic data by lenders to facilitate enforcement of the fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned or small businesses.

### **Department of Justice**

Comprehensive Fair Housing Act Enforcement – Only by aggressively enforcing the Fair Housing Act on behalf of all protected classes across all housing and housing-related

transactions, using both disparate treatment and disparate impact methods of proof, can the full positive force of the Fair Housing Act be implemented. DOJ should expand the range of enforcement activities to ensure that all provisions of the Fair Housing Act are enforced to the maximum extent possible.

Real Estate Owned (REO) Properties – The Department of Justice should vigorously enforce the Fair Housing Act and Equal Credit Opportunity Act against servicers, lenders, brokerages, and other companies engaging in discriminatory practices in the maintenance, marketing, and auctioning of Real Estate Owned (REO) properties. As thousands of foreclosed homes especially in communities of color are being auctioned to investors as packaged rental-back securities, homeownership opportunities in neighborhoods of color are diminishing. DOJ should investigate and take all necessary enforcement actions to abate the disparate impact of these practices. At the same time, banks have been found to maintain and market REO properties in communities of color to a lower standard compared to REOs in predominantly white neighborhoods, causing a disparate reduction in home values for current homeowners in neighborhoods of color, and reducing tax revenue for localities across the United States. This in turn results in an increase in local real estate taxes and a concurrent reduction of resources for services provided to communities. DOJ should evaluate these direct acts of discriminatory maintenance and marketing practices against neighborhoods of color.

Expand Residential Integration – DOJ should expand its rental testing program to collaborate more effectively with local fair housing organizations, and conduct more testing focused on discrimination based on race and national origin in order to promote residential integration in its enforcement activities. In case settlements with private and public entities, DOJ should standardize the acceptance of housing vouchers in order to promote residential diversity in neighborhoods of high opportunities.

### **Executive Action**

President's Fair Housing Council – The Administration should implement Executive Order 12892 to reaffirm the Fair Housing Act's mandate that all Federal programs and activities relating to housing and urban development affirmatively further fair housing. The President should reconvene the President's Fair Housing Council consisting of the Secretaries, Directors, and Commissioners of the Federal departments and regulatory agencies, and appoint the Secretary of the Department of Housing and Urban Development as its chair. The purpose of the Council is to review the "design and delivery of Federal programs and activities to ensure that they support a coordinated strategy to affirmatively further fair housing."

Real Estate Owned Properties – Private and public strategies for the disposal of REO properties have reduced homeownership opportunities in communities of color, where the foreclosure crisis has hit hardest. As the Administration continues to formulate its strategy for the disposal of REO properties, it must prioritize owner-occupancy over large-scale sales to investors. The Administration's own programs must offer prospective homebuyers equal access to purchase homes to better stabilize communities and provide opportunities for communities of color to build wealth. The Administration should incorporate fair housing and fair lending goals and requirements into its existing strategy for converting REO properties into rental housing (REO-

to-rental), so as to protect vulnerable neighborhoods and expand regional housing choice. In addition, programs converting REO properties into rental housing should ensure that a significant percentage of the REO stock is affordable to extremely low income households. Data on the REO inventory indicate that while REOs are disproportionately located in communities of color and low and moderate income neighborhoods, a significant number of properties are located in job-rich communities with low poverty rates and high-performing schools. REO-to-rental housing pools should be structured to include a significant number of properties in communities of opportunity where purchasing a home might be out of reach to moderate income families, but subsidized rental homes would create opportunities. The REO-to-rental strategy should also include affirmative marketing requirements, as well as effective mechanisms for monitoring the management practices of the investors who acquire the units to ensure that they are rented, maintained, and ultimately sold in a non-discriminatory manner. Similar principles should apply to HUD's program for selling distressed FHA loans to investors.

## **Congress**

Fair Housing Initiatives Program Funding – The Administration should propose funding for HUD's Fair Housing Initiatives Program (FHIP) for \$52 million for fair housing enforcement and education, as recommended in 2008 by the bipartisan National Commission on Fair Housing and Equal Opportunity which was co-chaired by former HUD Secretaries Henry Cisneros and Jack Kemp.. This is the only federal funding dedicated to support community-based private fair housing organizations which account for investigating more housing discrimination complaints than HUD, Justice and state agencies combined.

Home Opportunities Made Equal Act (HOME Act) – The Administration should support reintroduction and passage of the Home Opportunities Made Equal Act of 2011 (H.R. 3030/S. 1605), which would extend protections of the Fair Housing Act to persons based on their sexual orientation, gender identify, marital status and/or source of income. The bill also strengthens other portions of the Fair Housing Act.

Housing Fairness Act – The Administration should support reintroduction and passage of the Housing Fairness Act (H.R. 284) which would provide a significant boost to testing and enforcement by HUD and fair housing organizations. It is not enough to try to eliminate housing discrimination and promote residential diversity on a case by case basis. The Administration, including the Office of Management and Budget, HUD, DOJ and others, have supported systemic investigations and relief in order to achieve the mandate of the Fair Housing Act.

Protecting Tenants at Foreclosure Act (PTFA) – PTFA is a critical post-foreclosure civil and human rights protection that helps innocent tenants avoid immediate eviction and have sufficient time to move, and will expire at the end of 2014. The Administration should support the passage of the Protecting Tenants at Foreclosure Act introduced by Representative Keith Ellison in the House of Representatives and Senator Richard Blumenthal in the Senate.

## **Throughout the Second Term**

### **Department of Housing and Urban Development**

Anonymous Complaints – HUD should reaffirm its policy of accepting housing discrimination complaints filed by John or Jane Doe complainants. HUD recently revised its employee handbook to say that a complaint can no longer be filed anonymously, although former policy permitted John or Jane Doe complaints with separate confidential information identifying the actual complainant. The new policy limits fair access to the enforcement process for victims of discrimination who need to protect their identities, especially those who are being racially or sexually harassed or who are in the country without authorization. (Persons filing complaints need not be citizens of the United States to be protected by the Fair Housing Act.)

Rental Assistance Demonstration (RAD) – The Rental Assistance Demonstration was established in 2012 to test, in part, whether shifting financial support for public housing from annual capital and operating subsidies to project-based rental assistance could be a way to ensure long-term preservation of these properties by leveraging private financing. Fair housing advocates supported the RAD program because HUD included an innovative provision in the demonstration that allowed public housing residents (who if currently in RAD developments would subsequently hold project-based vouchers) the option of moving with their vouchers after 1-2 years. Unfortunately, while the final notice implementing the demonstration still includes this option, there is no affirmative support or incentives for Public Housing Authorities (PHA(s)) to help families move to areas of lower poverty or racial concentration. During its implementation, the RAD program should be monitored to ensure that fair housing standards are met and to assess its impact on tenant mobility. Program guidance should also be revised so that the “Ranking Factors” incentivize strong housing mobility efforts by giving substantial additional ranking points for efforts to enhance mobility (for example, mobility counseling programs, landlord outreach and enhanced rents in high opportunity areas, evidence of cooperative agreements among PHAs to streamline or eliminate portability barriers, or financial assistance to remove barriers to relocation in higher opportunity communities). Likewise, additional points should be awarded to PHAs that commit a percentage of choice-mobility vouchers above the annual cap or above the project cap. Residents should also be able to enforce their mobility rights.

Moving to Work (MTW) – The Moving to Work Demonstration, established in 1996, permits participating PHAs flexibility to manage their programs and budgets without strict adherence to HUD rules. The goals of the demonstration were to reduce cost and increase efficiency, encourage work, and “increase housing choices for low income families.” A recent review of the agencies participating in the demonstration found that PHAs have failed to expand family housing choices in any meaningful way. Before HUD considers expanding this program, it should more fully define the statutory goal of “increasing housing choice,” consistent with HUD’s AFFH obligations and implement a system for assessing public housing authority activities and program outcomes related to choice. In addressing this statutory goal, HUD’s MTW guidance should emphasize mobility strategies. HUD should also revise its guidance to make clear that MTW participation does not authorize waivers of site and neighborhood standards.

Housing Choice Vouchers – HUD should expand the use of small-area Fair Market Rents to increase the range of neighborhoods available to voucher holders. HUD should also revise the Section 8 Management Assessment Program (SEMAP) to strongly reward PHAs for improved opportunity outcomes for families, including moves across jurisdictional lines. Additionally, the voucher portability process should be revised to minimize unnecessary hurdles and eliminate information barriers for families seeking to move—for example, HUD should clarify that PHAs may not rescreen families who “port,” PHAs should be required to brief families **about** high opportunity neighborhoods (including neighborhoods outside the PHAs jurisdiction), PHAs should not use landlord lists that effectively steer families to segregated neighborhoods. In the long term, HUD should provide funding for housing mobility programs in the thirty most segregated metropolitan areas and establish a special voucher program targeted to families with children for moves to low poverty, non-racially concentrated communities.

Of course, all of the programs that encourage mobility should also provide fair housing counseling and instruction to both people using the vouchers and PHA staff in order to teach them to recognize and report barriers to housing choice. PHAs should contract with qualified fair housing organizations to provide this training. Discrimination in the rental market is so subtle that without training it is unlikely home seekers will recognize tactics that limit or deny them housing.

HOPE VI and Choice Neighborhoods Initiative (CNI) – For units lost in developments assisted with future HOPE VI and CNI funding or similar programs, the Administration should: establish and/or reinforce one-for-one replacement of lost units with hard units affordable to extremely low income people paying no more than 30% of their income for rent and utilities; minimize displacement of families in the affected development and neighborhood; ensure residents both a right to return to the redeveloped site and assistance in moving to low poverty, non-racially concentrated communities; and include a substantial number of replacement housing units in low poverty, non-racially concentrated communities throughout the metropolitan area. Guidance should include specific requirements for mobility counseling in the relocation process and higher standards for the location of off-site replacement units in high-opportunity neighborhoods.

### **Department of the Treasury/Department of Housing and Urban Development**

Immigration – HUD’s Office of Fair Housing and Equal Opportunity (FHOO) should create a Memorandum of Understanding with Immigration and Customs Enforcement (ICE) that ICE will not take immigration enforcement actions against complainants who have filed administrative complaints under the Fair Housing Act.

Low Income Housing Tax Credit (LIHTC) – The Administration should incorporate explicit fair housing and civil rights requirements in the LIHTC program, implementing the Fair Housing Act (including its AFFH provision) and those federal laws governing the use of federal, state and local funds, such as Title VI of the 1964 Civil Rights Act, Section 504, the Age Discrimination Act, and the Americans with Disabilities Act. This guidance should include site selection standards that will direct a significant portion of family units to low-poverty, non-racially concentrated communities, while preserving existing units that are affordable to the lowest

income families. This should include a revision of the criteria used to designate difficult to develop areas eligible for tax basis boosts. Guidance should also strengthen affirmative marketing requirements in all HUD and LIHTC programs to ensure that developments in low poverty areas are actively marketed to families throughout the region who reside in high poverty, racially concentrated communities. In addition, without further delay, HUD should make publicly available data regarding all LIHTC households as required by the Housing and Economic Recovery Act of 2008.

### **Department of the Treasury**

“Home Mortgage Disclosure Act” Data for Insurance – Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act established the Federal Insurance Office at the Department of Treasury and authorized it to “monitor the extent to which traditionally underserved communities and consumers, minorities..., and low- and moderate-income persons have access to affordable insurance products.” In order to increase transparency in the home insurance industry and reduce unfair discrimination in the marketplace, all home insurers should be required by the Federal Insurance Office to disclose annually information similar to that which mortgage lenders are required to disclose under the Home Mortgage Disclosure Act. These data should include, for each application received for home insurance: race, national origin, gender, and income of applicants; type of policy applied for (e.g. homeowners guaranteed full replacement, actual cash value/market value, fire); disposition of application (e.g. policy written, application denied); census tract in which the property is located; characteristics of the property (e.g. square feet, type of construction, number of rooms, market value and replacement cost); annual premium; and other information utilized by insurers in the underwriting and pricing of insurance applications and policies. The FIO should produce an annual report examining the availability of home insurance policies in traditionally underserved (e.g. low-income and minority) communities along with analyses of the nation's major home insurance companies.

### **Consumer Financial Protection Bureau**

Prohibition on Mortgage Steering – The CFPB should promulgate and finalize regulations prohibiting mortgage originators from steering applicants to unaffordable or predatory loans consistent with the prohibitions laid out in Title XIV, Section 1403 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

### **Executive Agencies and Prudential Regulators**

Credit Scoring – The foreclosure crisis has had a disparate impact on communities of color, and as a result we expect these communities to have disproportionately damaged credit scores, even as they apply for and receive loan modifications. Credit scoring mechanisms and their widespread use have discriminatory impacts on communities of color. The CFPB and other prudential regulators should set standards through enforcement and rulemakings to reform the credit scoring industry. These standards should: broaden the scope of financial data utilized in underwriting and credit scoring models; improve the quality of data collected and reported; require more transparency in the industry; reduce over-reliance on credit scoring mechanisms and create approaches that objectively consider other elements that impact risk; develop and

widely promote mechanisms that evaluate and score financial products themselves; require uniformity in the way that data concerning product and transaction types are reported and weighed; and require the reparation of credit scores for victims of discrimination.

### **Executive Action**

Immigration – The Administration should ensure that HUD, the Department of Justice, the CFPB and other federal agencies accepting consumer complaints related to housing or financial services adopt formal policies stating that the agency will not inquire about a complainant’s immigration status and that the agencies will investigate threats to report or the reporting of undocumented status to ICE as a retaliation.

### **Congress**

Communications Decency Act – The Administration/HUD/DOJ should support legislation to amend the Communications Decency Act to state clearly that it does not apply to discriminatory ads that violate the Fair Housing Act, i.e. making it clear that the Fair Housing Act is not overridden by the CDA.

CRA Modernization Act Bills – The Administration should support the Community Reinvestment Act (CRA) Modernization bills, which have been designed to ensure that institutions remain committed to investing in the communities in which they do business. The bills seek to enhance the existing CRA statute by expanding the types of financial institutions held accountable by placing a continuing affirmative obligation on mortgage banks, insurance companies, and securities firms to meet the financial service needs in their service areas including low- and moderate-income and minority neighborhoods. The bills also seek to strengthen regulators’ ability to enforce CRA requirements by empowering financial service regulatory agencies to downgrade CRA ratings for predatory and discriminatory practices and high foreclosure rates, provide for disclosure of insurance and investment activity of insurance companies, and take other steps to enhance the availability of capital and credit for all citizens and communities. In addition to legislation, the regulatory agencies should expand the geographical scope on CRA exams to heighten the scrutiny of lending and investing in rural communities and small metropolitan areas. CRA exam consistency should be improved, including information on examination tables on lending and investing. Finally, the agencies should better solicit input from the public on exams and merger applications.

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