

**Segregation in the Chicago Metropolitan
Area –**

**Some Immediate Measures to Reverse this
Impediment to Fair Housing**

**A Report by The John Marshall Law School Fair Housing
Legal Support Center**

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I. Summary of Recommendations

This report outlines some steps that can be taken to better achieve the goals of fair housing in the Chicago metropolitan area. Some of them are easy; others may meet with more resistance, but the Center believes that all would further the cause of fair housing. The recommendations delineate two types of reforms – legislative and regulatory – and propose education and outreach initiatives. These proposals will be most effective if there is cooperation between federal, state, and local governments in implementing them. The recommendations are based on the findings that follow in this report.

Federal legislative proposals

1. Amend the Fair Housing Act to include “source of income” as a protected class and define source of income to include housing choice (section 8) voucher holders.
2. Amend the Fair Housing Act to provide *limited* protection to ex-offenders and persons with arrest records.
3. Amend the Fair Housing Act to provide protection to immigrants and persons who are not proficient in English, and to require that housing providers and lenders accord immigrants and persons who are not proficient in English reasonable accommodations in rules, practices, or services when such accommodations may be necessary to afford such persons equal opportunity to use and enjoy a dwelling because of their immigration status or lack of proficiency in English.
4. Amend the Fair Housing Act to provide protection on the basis of sexual orientation and gender identity. Although protected under Illinois law, and for HUD-subsidized housing, these bases are not protected under the Fair Housing Act.

5. Amend the Fair Housing Act to provide a private right of action to enforce the duty to affirmatively further fair housing.

6. Amend the Fair Housing Act to impose a duty to affirmatively market their properties on owners of multi-family buildings of four units or more, condominium associations and other homeowner associations, and real estate brokers and management companies. The duty to affirmatively market their mortgage loans and other financial products should also be expanded to all entities that engage in the business of financing housing. Congress should direct that HUD exercise its rule-making powers to promulgate guidelines for private housing providers on how to comply with this affirmative duty.

State and local legislative proposals

1. Amend the Illinois Human Rights Act and local ordinances to include “source of income” as a protected class and define source of income to include housing choice voucher (section 8) holders. The City of Chicago provides protection for housing choice voucher holders. Cook County and the Village of Oak Park made this a priority in their Analyses of Impediments, and Cook County has now enacted this protection.

2. Amend the Illinois Affordable Planning and Appeal Act to require that all local plans specify procedures and substantive standards to demonstrate how they will affirmatively further fair housing.

3. Amend the Illinois Human Rights Act and local ordinances to provide *limited* protection to ex-offenders and persons with arrest records.

4. Amend the Illinois Human Rights Act and local ordinances to provide protection to immigrants and to persons who are not proficient in English. Also, to require that housing providers and lenders accord immigrants and persons who are not proficient in English

reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such persons equal opportunity to use and enjoy a dwelling because of their immigration status or lack of proficiency in English.

5. Expand the protections in 225 ILCS 429/120 and 815 ILCS 505/2N to require that when real estate transactions are conducted through an interpreter, documents be translated into that language as well.

6. Amend the Illinois Human Rights Act and local ordinances to define marital status to make it explicit that it applies to cohabitation by unmarried couples of both the opposite and of the same sex.

7. Amend the Illinois Assisted Living and Shared Housing Act, 210 ILCS 9/1 to make it consistent with the Fair Housing Act and the Illinois Human Rights Act. Make violation of the Fair Housing Act or the Illinois Human Rights Act a ground for suspending or revoking a license and require consideration of reasonable accommodations in determining residency requirements in assisted living and shared housing developments.

8. Amend the Life Care Facilities Act, 210 ILCS 40/1, and the Nursing Home Care Act, 210 ILCS 45/1, to make compliance with the Fair Housing Act and the Illinois Human Rights Act explicit.

9. Enact legislation in Illinois that requires all recipients of state and local funding for housing to show that they are affirmatively furthering fair housing.

Federal regulatory and policy initiatives

1. HUD should require all housing authorities to keep records of any complaints by housing voucher holders against landlords who refuse to rent because the applicant is a housing choice voucher holder.

2. HUD should explicitly require all public housing authorities to extend the time for persons to use their housing choice vouchers when the voucher holders have filed a facially valid complaint against a housing provider for denying them housing because of their status as a voucher holder.

3. HUD should collect data on all complaints that allege discrimination against an existing protected class to determine how many of them are filed by housing choice voucher holders.

4. HUD should collect data on all complaints that involve the denial of housing because of an applicant's arrest or conviction records to determine the extent of discrimination against these classes and especially to track whether the denials implicate other classes protected under current law.

5. HUD should collect data on all complaints that involve the denial of housing involving immigrants and persons who are not proficient in English to determine the extent and basis of discrimination against these classes and especially to track whether the denials implicate other classes protected under current law.

6. HUD should pass regulations or guidelines making it explicit that senior housing, including assisted care facilities and nursing homes, are dwellings under the Fair Housing Act.

7. HUD should clarify its rules and guidelines to require the administrative investigation of all complaints that show merit on their face, and to prohibit administrative dismissal of complaints solely on the basis that the complainant may not have standing before an Article III court.

8. HUD should continue to expand its use of Secretary-initiated complaints in cases of systemic violations and especially in cases involving immigrants and persons with arrest or conviction records and seniors who often do not initiate complaints on their own behalf.

9. HUD should provide by regulation that civil penalties will be awarded to complainants and not to the government, as a means of encouraging victims to initiate fair housing complaints. The Fair Housing Act states that civil penalties are to be imposed to “vindicate the public interest” but does not expressly direct to whom civil penalties shall be paid.

10. HUD should adopt a schedule of presumed damages in fair housing cases to provide a guideline in conciliation and to assist administrative law judges and state and federal judges in imposing damages in fair housing cases. HUD should also set guidelines for the awarding of punitive damages, when applicable.

11. HUD should continue to encourage systemic testing by FHIP and FHAP agencies and HUD should consider whether it should initiate its own testing program to assist it in conducting investigations so that it does not need to rely solely on the tests of private fair housing organizations.

12. HUD should define the requirement “to affirmatively further fair housing.” HUD should require local governments that receive federal funding to specify how they are going to eliminate the impediments to fair housing that are identified in their analyses. These local governments should specify the timeline for implementing change and should be required to implement their recommendations making them not merely aspirational, as appears to be the case at the present time.

13. HUD should require all state and local recipients of federal money to provide a minimum of one year to file administrative complaints under the fair housing laws.

14. ICE should eliminate the discretion given to its agents and state firmly that removal proceedings will not be instituted against immigrants who have filed facially valid fair housing complaints so as to encourage this vulnerable population to report violations of the Fair Housing Act.

State and local regulatory and policy initiatives

1. The Illinois Housing Appeals Board should adopt a regulation and interpret the Illinois Affordable Planning and Appeal Act to require all local plans to affirmatively further fair housing.

2. The Illinois Department of Human Rights should collect data on all complaints that allege discrimination against an existing protected class to determine how many of them are filed by housing choice voucher holders.

3. The Illinois Department of Human Rights and local commissions should collect data on all complaints that involve the denial of housing because of arrest or offense records to determine the extent of discrimination against these classes and especially to track whether the denials implicate other classes protected under current law.

4. The Illinois Department of Human Rights and local commissions should adopt regulations requiring housing providers and lenders to reasonably accommodate persons who are not proficient in English.

5. The Illinois Department of Human Rights and local commissions should adopt regulations to require housing providers to reasonably accommodate immigrants by accepting a co-signer when the lessee does not have sufficient documentation to establish a good credit history.

6. The Illinois Department of Human Rights and local commissions should adopt regulations and guidelines similar to those of HUD to specify that immigrants and persons not proficient in English are protected under existing bases of discrimination and that policies that disparately impact them are illegal.

7. The Illinois Department of Human Rights and local commissions should collect data on all complaints that involve the denial of housing involving immigrants and persons who are not proficient in English to determine the extent of discrimination against these classes and especially to track whether the denials implicate other classes protected under current law.

8. The Illinois Department of Human Rights and local commissions should adopt regulations or guidelines making it explicit that senior housing, including assisted care facilities and nursing homes, are dwellings under their laws and ordinances.

9. The Illinois Department of Human Rights and local commissions should clarify their rules and guidelines to require the administrative investigation of all complaints that show merit on their face, and to prohibit administrative dismissal of complaints solely on the basis that the complainant may not have standing before an Article III court.

10. The Illinois Department of Human Rights and local commissions should initiate complaints in cases of systemic violations and especially in cases involving immigrants, housing choice voucher holders, persons with arrest and conviction records, LGBT youth, and seniors who often do not initiate complaints on their own behalf. If these agencies are uncertain of their legal authority to initiate complaints, they should seek explicit authority from the legislature.

11. The Illinois Department of Human Rights and local commissions should provide by regulation that civil penalties will be awarded to complainants and not to the government as a means of encouraging victims to initiate fair housing complaints.

12. The Illinois Department of Human Rights and the Illinois Human Rights Commission, which adjudicates cases originating at the Illinois Department of Human Rights, and local commissions should adopt a schedule of presumed damages in fair housing cases to provide a guideline in conciliation and to assist administrative law judges and state and federal judges in imposing damages in fair housing cases. They might also set guidelines for the awarding of punitive damages, when applicable.

13. Local commissions should consider initiating their own testing programs or partnering with local FHIP agencies when available to assist them in conducting testing for fair housing violations. The Illinois Department of Human Rights should continue its partnership with The John Marshall Law School or other FHIP testing organizations to test in investigations when warranted and where the FHIP organization is not a party or is not representing one of the parties in the investigation.

14. The City of Chicago should amend its Fair Housing Ordinance to give complainants one year to file an administrative complaint to make the ordinance consistent with federal and state requirements. Other local communities that do not provide a one year limitation period should do the same.

15. The Illinois Department of Human Rights and the City of Chicago should initiate a study about the feasibility of establishing homeless shelters that serve LGBT youth on the south and west sides of Chicago. The operators of homeless shelters should be encouraged to locate facilities on the west and south sides of Chicago that explicitly welcome LGBT youth. The opening of El Rescate-Vida/Sida, which serves Latino LGBT youth in the Humboldt Park neighborhood, demonstrates the need for such facilities and is a positive step in serving this vulnerable population.

Education and outreach initiatives

1. Increase activities to educate the public and housing providers about source of income discrimination. HUD and DOJ should adopt a joint statement similar to what the two agencies prepared to educate the public about reasonable accommodations and modifications. This statement can help educate the public on when discrimination against housing voucher holders may violate existing provisions of the Fair Housing Act. Congress and HUD should increase the funding for education and outreach activities as should the State of Illinois and all local governmental units.

2. Initiate a national and local media campaign to educate the public and housing providers about the benefits of renting to housing choice voucher holders.

3. The CHA and the Chicago Commission on Human Rights should continue their efforts to educate housing providers and housing choice voucher recipients that discrimination on the basis of source of income is illegal in Chicago and encourage voucher holders to file a complaint if they feel that their rights are violated. The CHA should expand its website to include this information and provide a link to the Chicago Commission on Human Relations. The Cook County Housing Authority should initiate similar education and outreach efforts now that discrimination against housing choice voucher holders is illegal in Cook County.

4. Systemic testing should be regularly conducted in the City of Chicago, Cook County, and elsewhere to determine if landlords are violating the prohibition against source of income discrimination.

5. Education and outreach should be conducted for the public and for public officials about the relationship and difference between fair and affordable housing and the duty of municipalities to ensure that all protected classes have access to fair and affordable housing

within their communities. Municipalities should be encouraged to adopt fair housing policy statements and post them prominently on the home pages of their websites.

6. Education and outreach should be conducted for the public about the problems of overbroad restrictions that prevent persons with arrest and conviction records from securing housing. Fund more studies on the effectiveness of restrictions on persons with arrest and conviction records in both public and private housing in preventing crime and recidivism and educate the public about those findings.

7. Systemic testing should be conducted on a regular basis in all communities to determine the nature and extent of the denial of housing against persons with arrest and conviction records, as well as determine if general policies against renting to persons with such records are equally enforced against all persons.

8. Fair housing organizations or governmental agencies should draft model rental policies and lease provisions that provide limited protection to persons with arrest and conviction records and distribute them to housing providers.

9. Education and outreach activities at all levels should be targeted to immigrants and to persons who are not proficient in English. Foreign language and culturally sensitive materials should continue to be developed to inform immigrants and non-English speakers of their fair housing rights. Outreach to undocumented immigrants and their counselors is especially important because of the opportunities for exploitation of this vulnerable subclass of immigrants.

10. Systemic testing should be conducted to detect discrimination against immigrants and persons who are not proficient in English because these individuals are very unlikely to report violations of the fair housing laws that they encounter.

11. Provide education and outreach to LGBT youth to inform them of their rights to fair housing and to assist them in finding resources to fight discrimination.

12. Provide cultural competency training for homeless shelters and agencies that deal with LGBT youth, as well as law enforcement officers, social workers, and health care officials about the legal rights of this vulnerable population to discrimination in housing.

13. Provide education and outreach to seniors, persons who work with seniors, and senior housing providers, including assisted living centers and nursing homes, about their duties under the fair housing laws.

14. Systemic testing of senior facilities should be done on a regular basis to ensure compliance with the fair housing laws.

15. Agencies including HUD, the Illinois Department of Human Rights, local fair housing commissions, and local FHIP organizations should take a greater advantage of the opportunities provided by their participation in the Chicago Area Fair Housing Alliance to regularly meet and discuss fair housing and equal opportunity issues to ensure the exchange of information to effectively further fair housing in the Chicago metropolitan area. Agencies that are not currently members should consider joining.

16. Vigilance needs to be maintained by HUD, the Illinois Department of Human Rights, and FHIP organizations to protect affordable housing developments and homeless shelters from NIMBY-inspired ordinances and land use restrictions.

II. A short history of segregation in Chicago

Ironically Chicago traces its founding to a black man. But since its founding, Chicago has not been free of the racial tensions that have characterized all of American history. The history of Southern migration to Chicago in the 20th century and the segregation it produced has been well documented. See, Speaer, *BLACK CHICAGO: THE MAKING OF A NEGRO GHETTO* (1967); Lemann, *THE PROMISED LAND* (1991); Allen, *PEOPLE WASN'T MADE TO BURN* (2011). Like African Americans, Chicago immigrants often found themselves to be the objects of discrimination and formed their own communities. However once most immigrants acquired economic independence, they were able to assimilate into the general population.

African Americans did not have the same flexibility. Separate areas were carved out for them: sometimes through official municipal action and sometimes through the private actions of financial institutions and real estate interests. Chicago neighborhoods came to have explicit boundaries defined by race and the breach of these boundaries was met with both official and private resistance, and sometimes by violence. See Satter, *FAMILY PROPERTIES* (2009). Between July 1917 and March 1921, fifty-eight Chicago properties rented and owned by African Americans were bombed. By 1940, Chicago was one of the leading cities in the United States in the use of racially restrictive covenants. Brooks & Rose, *SAVING THE NEIGHBORHOOD* (2013). Chicago did not need to create a *de jure* system of racial segregation, as existed in the South. Chicago had its own system of segregation that was defined by the neighborhoods. This separation carried over into segregated businesses and job opportunities, schools, and political representations.

In Chicago and much of the nation, most banks and savings and loans refused to make mortgage loans to African Americans. Some of this can be attributed to the Federal Housing Administration (“FHA”), which was formed by Congress in 1934. FHA offered insurance for mortgages that banks and savings and loan institutions granted to home purchasers. The U.S. Appraisal Industry opposed the mixing of the races, which it believed would cause the decline of both the human race and property values. They ranked properties, blocks and neighborhoods according to a descending scheme of A (Green), B (Blue), C (Yellow), D (Red). To get a rating of A, homogenous areas must not have a single immigrant or African American. Properties located in Jewish areas were considered to be at risk. They were marked down to a B or C. If a neighborhood had black residents, it was marked as D or Red, no matter the social class or small composition of African Americans. These neighborhood properties were appraised as worthless or likely to decline in value. Thus they were “redlined” or marked as undesirable locations for either purchasing or improving properties.

The FHA adopted this system, and since banks and savings and loans relied upon FHA ratings, African Americans were systematically prevented from obtaining most mortgage loans. Sometimes the FHA was willing to grant insurance in all African American areas on the condition that the surrounding neighborhoods were not deteriorating or overcrowded. However since most African American communities were in deteriorating areas, they were normally red-lined. Satter, *FAMILY PROPERTIES* (2009).

In 1966, Martin Luther King, Jr. left the familiar landscape of the South and came to Chicago to lead an open housing campaign. Garrow, *BEARING THE CROSS* (1986); Anderson and Pickering, *CONFRONTING THE COLOR LINE* (1986); Ralph, *NORTHERN PROTEST* (1993); Branch, *AT CANAAN’S EDGE* (2006). He was met with both official and private

resistance. Dr. King remarked that he had never before experienced such manifest racial hatred as he saw in Chicago. Dr. King's assassination in April 1968 marked a number of immediate and long-term consequences for segregation in Chicago. It produced massive violence, particularly on the West Side of the City. The burnings left a scar on the City that is still visible today. The riots demonstrated the hopelessness of many African Americans, but the riots also convinced many white Chicagoans that African Americans did indeed have different values and reinforced the long-held stereotype that the presence of African Americans destroyed the stability of neighborhoods. Cf., Sampson, GREAT AMERICAN CITY: THE ENDURING NEIGHBORHOOD EFFECT (2012).

As a national report, the 1968 "Kerner Report," could have been speaking of Chicago directly when it declared that America was moving into two separate and distinct societies divided by race. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968). Nonetheless, two positive things happened in 1968 to promote open housing. The United States Supreme Court in *Jones v. Alfred H. Meyer Co.*, 392 U.S. 409 (1968), reinterpreted the Civil Rights Act of 1866 and found that it applied to private discrimination through the Thirteenth Amendment and provided a separate remedy for racial discrimination in housing. The United States Congress passed Title VIII of the Civil Rights Act of 1968, the first ever federal Fair Housing Act, which outlawed some forms of discrimination in both private and public housing. 42 U.S.C. §3600 et seq. The original Fair Housing Act lacked teeth and Congress amended the Act in 1988 to provide what are perhaps the broadest remedies in any of the federal civil rights laws.

From 1968 to today, a number of community groups and legal organizations have organized to fight housing discrimination in the Chicago metropolitan area. Some of the

pioneering fair housing cases were initiated in the Chicago metropolitan area. *Clark v. Universal Builders (The Contract Buyers Case)*, 501 F.2d 324 (7th Cir. 1974); *Gautreaux v. Chicago Housing Authority*, 690 F.2d 601 (7th Cir. 1982); *Metropolitan Housing Development Corporation v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977), *cert. denied*, 434 U.S. 1025 (1978); *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979), were broadly based lawsuits that attacked both private and public discrimination. Each of these cases had a substantial effect on the development of fair housing law nationwide. In addition, thousands of complaints were filed in the courts and administrative agencies by individuals who alleged that they had been discriminated against in housing. These individual lawsuits directly benefited the complainants and changed the conduct of officials and the banking and real estate industries.

However, beneath the surface, little has changed. *See*, Wilson, *THE TRULY DISADVANTAGED* (1987); Kotlowitz, *THERE ARE NO CHILDREN HERE* (1991); Wilson, *WHEN WORK DISAPPEARS* (1996); Pattillo, *BLACK ON THE BLOCK* (2007); Sampson, *GREAT AMERICAN CITY: THE ENDURING NEIGHBORHOOD EFFECT* (2012).

Currently, African Americans account for the majority in 32 of Chicago's 77 neighborhoods and whites account for the majority in 31 of these neighborhoods.

The disparities created by official policies, racial hostility, the FHA, and lending institutions continue, and segregation and diminished housing opportunities for African Americans have not disappeared. Segregated neighborhoods still remain. Minorities are not bombed or attacked for attempting to move to "white" neighborhoods, but there is an apprehension that minorities are not welcome in the community. Most residents of Chicago still move to areas where their race already dominates. The long and deeply-rooted hostility between the races that has been fostered by segregation and discrimination is not easily broken.

According to the 2010 census, out of the 2.6 million Chicagoans, 45% were white, 32% were black, 28% were Hispanic, 5.5% were Asian, and less than 1% were Native American. Of these groups, 21% reported that they were foreign born. Chicago has the third largest Mexican population in the United States, the third largest Puerto Rican community outside of Puerto Rico, and the third largest South Asian population in the United States.

Segregation and discrimination is not confined to Chicago's city limits. Suburban areas use their zoning powers and home rule status to keep minorities out by restricting affordable multi-family structures.

The problems resulting from this legacy of segregation and discrimination have been brought home dramatically to Chicagoans in the last two years. The powder keg has erupted again in African American communities with the shootings of more than 100 young persons, who are all too often innocent bystanders. Speculation exists about the causes and remedies for these outbursts of irrational violence. What the killings do illustrate, however, is the lack of any real change since 1968. Despite some integration in certain parts of the City and suburbs, the Chicago metropolitan area is still fundamentally segregated, and the hopelessness and despair experienced by young persons who live in segregated communities may be even greater than it was in 1968. The changed economic environment and the dismantling of many of our social networks makes the situation look even bleaker.

In 1968, there was still room for optimism. The civil rights movement was in full force and the war on poverty was just beginning. There was a real feeling among policymakers that our racial and social problems could be solved, and that America had the will and resources to accomplish this very difficult task.

Forty five years later, we have an African American president and many more African Americans in positions of power in the United States. Chicago has had an African American mayor, although not at the present time. But the gulf between those who have made it and those who have not made it has widened. There is no political will to attack and solve the fundamental problems of racism and poverty as there was in 1968. Whites felt threatened in 1968, and whether because of altruism or selfishness, many whites believed that we were one country and that we had to work together to solve the problems of race and poverty. That consensus does not exist today. See, Hartman & Squires, *THE INTEGRATION DEBATE: COMPETING FUTURES FOR AMERICAN CITIES* (2010); Cashin, *THE FAILURES OF INTEGRATION* (2004). Most of the violence that is occurring today has been confined within the African American community, and whites do not appear to be conscious that it can spread to their communities. If they do harbor such fears, they are more likely to respond by arming themselves with handguns or automatic weapons than to think in terms of solutions to the underlying problems.

Much of this attitude is reflected in recent decisions in the United States Supreme Court. Rather than the bold and majestic pronouncement of such cases as *Brown v. Board of Education*, 347 U.S. 483 (1954), and *Jones v. Alfred H. Meyer Co.*, 392 U.S. 409 (1968), we are more likely to get pronouncements from the Court that remedies to eradicate the effects of segregation are no longer needed and indeed are counter to our constitutional values. See, *Parents Involved in Community Schools v. Seattle School District*, 551 U.S. 701 (2007) and *Northwest Austin Municipal Utility District v. Holder*, 557 U.S. 193 (2009).

This situation has to be reversed and a new consensus formed to attack the root problems of racism and poverty. There are optimistic signs that this is happening in small ways. This

study examines selected problems and proposes some immediate solutions. The proposed solutions may not cure our ills completely, but they will at least ensure that the problems will not become worse. Any long-term solution will require a real commitment of resources to the dual problems of racism and poverty, a commitment that does not appear to be on the immediate horizon.

III. The impact of the foreclosure crisis on segregation in Chicago

The current lending and foreclosure crisis is too broad to treat adequately in this study. Yet it is like a cloud hovering over this entire report and impacts every recommendation that is made in this study. Foreclosure has been a major problem in the City of Chicago.¹ In 2009, there was an average of one foreclosure filing every 22 minutes. Predatory lending practices contributed greatly to Chicago's foreclosure crisis. Minorities who qualified for prime loans as well as those who did not qualify for any loan at all were given subprime loans. When the housing market crashed, this affected minority communities on a larger scale in Chicago. African Americans and Latinos have been especially injured by predatory lending practices and the results of these practices have been magnified by the economic downturn.

Access to prime, conventional mortgage loans has declined in communities of color to a much greater degree than in predominately white communities. Black and Latino communities disproportionately lack access to affordable loans needed to purchase or improve their homes or to refinance their mortgages to secure lower monthly payments. This trend is consistent with the pre-foreclosure crisis in lending. Home Mortgage Disclosure Act (HMDA) data shows that in 2007 and 2008, blacks and Latinos were denied conventional mortgage loans at rates higher than whites. Blacks received higher cost loans at rates higher than whites. Blacks also received higher cost loans at a rate higher than all other racial and ethnic groups. The denial rate for FHA/VA mortgage loans was consistent across race and ethnicity lines. Investigations need to be

¹ This section relies on two important studies: SEVEN WAYS FORECLOSURES IMPACT COMMUNITITES (Neighborhoodworks America, August 2008) and THREE YEAR IMPACT ASSESSMENT – FACT SHEET - Fact Sheet (Lawyer's Committee for Better Housing, 2011). The statistics and data is compiled from the various studies relied on in part iii of this study.

conducted to determine the cause. Is this due to overt racial discrimination or redlining? Is the difference justified by cost or other factors?

Because the City was so segregated, lenders often only approved loans for minorities in minority communities. Most of the loans that minorities received were subprime. When the housing market collapsed, many homes in minority communities were foreclosed. In 2009, bank-owned homes were three times more concentrated in minority neighborhoods than white areas. On the City's South, Southwest, West and Near Northwest sides, where most of the City's black and Latino population resides, there was an average of almost 60 bank-owned properties per square mile. This was more than triple the average rate found in majority white areas which only averaged 18 bank-owned properties per square mile. In minority neighborhoods in 2009, on average one home for every city block became bank owned.

The effects of the crisis are felt in the suburbs where the demand for affordable housing outstrips the supply even as the supply of rental units rises. In 2007, there were 118,794 renter households in Cook County that earned 150% of the federal poverty level and the supply of housing accessible to them was 71,138 units. By 2011, there were only 85,176 units available, but the demand had increased to 145,176 renter households. THE STATE OF RENTAL HOUSING IN COOK COUNTY (DePaul Institute for Housing Studies, 2013). http://www.housingstudies.org/media/filer_public/2013/04/22/ihs_2013_cookcounty_state_of_rental_housing.pdf.

In the Chicago metropolitan area, blacks and Latinos pay more for housing and this drains money from their communities that could be used for other purchases and investments. A recent study shows that in Cook County, blacks pay 5.4% more than whites to buy a home. This means on a median transaction price of \$179,000, blacks will pay \$8,999 more than whites for a

comparable home. Latinos pay 3.9% more than whites. Bayer, Casey, Ferreira & McMillan, ESTIMATING RACIAL PRICE DIFFERENTIALS IN THE HOUSING MARKET (National Bureau of Economic Research 2012) <http://www.nber.org/papers/w18069>. This study does not show whether the differences are due to overt discriminatory policies. One of the authors of the study opined that because blacks and Latinos are more likely to be first-time home buyers, they may be less experienced with real estate than whites and Asians and less likely to bargain. Rodkin, "Blacks, Hispanics Pay More for Homes in Chicago, Study Says," CHICAGO MAG.COM (2013) <http://www.chicagomag.com/Radar/Deal-Estate/May-2013/Blacks-Hispanics-Pay-More-For-Homes-in-Chicago-Study-Says/> The impact of this differential means that blacks and Latinos are more deeply under-water in the current recession and have higher house payments than their white and Asian counterparts and, therefore, are more likely to default and lose their homes and the investment their homes represent.

An additional problem resulting from the foreclosure crisis is that a majority of the City's residents reside in privately owned apartment buildings. Many families have been displaced because housing complexes where they once lived were foreclosed. Many of the City's Southside and Westside residents -- predominately minorities -- have been forced into the depleting market for affordable rental housing. The reduced affordable housing stock has forced many families to live with other families or in shelters. Many displaced renters did not know their rights in the foreclosure process. When representatives of banks or realty companies take control of the foreclosed properties it has an obvious effect upon the segregated neighborhoods in the City.

Foreclosure has had a number of side effects, including a disproportionate loss of wealth in the African American community and an increase in crime. Vacant and abandoned buildings

affect the psychological outlook of persons living in the neighborhood and contribute to the residents' feelings of hopelessness and abandonment. The abandoned buildings draw criminal elements to the neighborhoods. Foreclosures and the resulting boarded up houses decrease the property values of neighboring properties and strip the wealth from impacted communities.² Entire neighborhoods have deteriorated. The City and outsiders write these neighborhoods off, causing further decay of the real estate stock. Property values decrease.

Much of the fault can be laid to the unscrupulous practices of lenders and brokers who targeted entire neighborhoods that were credit-starved and sold the residents mortgages with high interest rates, costly fees, and unfavorable terms. Foreclosures on prime rate loans increased 40% from 2008 to 2009 and accounted for approximately one out of three new foreclosure filings. In lower and moderate income neighborhoods generally where minorities reside, homes were lost to foreclosure and became bank-owned double the rate of homes in wealthier areas.

² “Long Term Social Impacts and Financial Costs of Foreclosure on Families and Communities of Color,” NATIONAL COMMUNITY REINVESTMENT COALITION WHITE PAPER (2012) <http://www.ncrc.org/resources/reports-and-research/item791>.

IV. A review of the City of Chicago's, Cook County's, and selected suburbs' consolidated plans and analyses of impediments to fair housing

A. Analysis of consolidated plan and analysis of impediments to fair housing for the City of Chicago

1. The 2010-2014 Chicago Consolidated Plan

The United States Department of Housing and Urban Development (HUD) requires local jurisdictions to prepare a Five Year Consolidated Housing, Economic and Community Development Plan for federal funds received through the Community Development Block Grant, HOME Investment Partnership, Emergency Shelter Grant and Housing Opportunities for Persons with AIDS programs. Generally HUD looks for the following information in the Consolidated Plan: affordable housing needs for different categories of residents, homeless needs, public housing needs, housing market analysis, barriers to affordable housing, citizen comments relating to fair housing issues, areas of minority concentration, identification of special needs populations or those with a disproportionate need for housing, and identification of housing needs for persons with disabilities.

a. Affordable housing needs for different categories of residents

In its Consolidated Plan, the City of Chicago discussed the need for sustainable and affordable housing. It recognized that there is rising unemployment and that the foreclosure crisis and the conversions of rental units to condos have drastically increased the demand for affordable housing. The City found that 1 out of every 4 Chicago households spends more than half its income on housing. The City identified the problems low income residents face while searching for affordable housing. The Consolidated Plan identifies the need for affordable housing, especially for larger families.

HUD's website shows that the fair market rent in Chicago for efficiency units is \$717, \$815 for a 1-bedroom unit, \$1,231 for a 2 bedroom unit, and \$1,436 for a 4 bedroom unit. These prices do not include the cost of utilities, food, clothing, or transportation. The City points out that the economy is in a recession, which has had a disproportionately negative effect on inner city, low-income residents. There is a shortage of affordable housing in Chicago, which the City attributes to the demolition of Chicago Housing Authority (CHA) public housing and also the reluctance of private owners to participate in federally subsidized housing due to receiving less than market value rent. The City fails to mention that a large number of the housing being rented by private owners is substandard and not accessible to persons with disabilities, and that fair market rent is not affordable. The City and CHA decided to demolish the public housing buildings, which has had a negative impact on minorities. The City did not provide sufficient adequate replacement housing. Thus, the demand for affordable housing has increased while the supply has decreased.

The City lists five solutions to the lack of affordable housing. The City states that it plans in the next five years to develop affordable housing for larger families through rehabilitation programs and new construction, develop viable strategies for rental projects supported by HUD – subsidized mortgages eligible for prepayment, tax credit financing, and expiring section 8 contracts, to be an active partner in planning and implementing the CHA's redevelopment of public housing properties, and include tenant education and information components in its rental housing strategies. While these are fine goals, the plan does not explain **HOW** the City will accomplish these goals, nor does it focus either explicitly or implicitly on segregation in the City or the problems of protected classes in securing housing (with the exception of larger families).

b. Homeless needs

The City found that the following was needed to address the homeless needs: 1,840 permanent supportive housing units for singles, 280 permanent supportive housing units for families, and 840 permanent housing units with short-term goals. The City has also fully implemented the Street to Home Initiative. This program has placed more than 130 unsheltered persons into homes. More than 200 long-term homeless individuals and families were assisted by the Rental Housing Support Permanent Housing Program between 2006 and 2008. The City also provided data broken down by race about the percentage of sheltered and unsheltered homeless persons: African Americans account for 80% unsheltered homeless, whites account for 17%, Latinos account for 12%, and Asian or Pacific Islander account for 1%. It further states that African Americans account for 76% of the sheltered homeless, whites account for 23%, Latinos account for 9%, and Asian or Pacific Islander account for 1%.

The Plan fails to address the reason for such a large number of homeless people, particularly African Americans. Without clarification of the factors that contribute to the homeless population in the City, it is very difficult to address the problem and develop a solution. The City instead lists how to get the unsheltered into temporary homes and the sheltered into permanent homes.

Also, the data in the Consolidated Plan came from research conducted specifically on the homeless population compiled from persons on the streets, the CTA and CHA grounds, and in the parks. The count does not include families living with friends and family members.

c. Public housing needs

The City stated that by 2014, the end of the Plan for Transformation (Plan), CHA will redevelop, rehabilitate, or modernize 7,704 mixed income/mixed finance units, 2,543 scattered

site units, and 4,978 public housing units. The Plan states that by the end of FY2010, 75% of CHA's end of the Plan housing stock will be redeveloped, rehabilitated or modernized. It also mentions CHA's social services program called "FamilyWorks" that assists residents. It states that CHA is enforcing the Criminal Activity Eviction (CAE) Policy to keep its residents safe, but the Plan does not discuss the social costs of this policy and its impact on protected classes or whether its goal could be achieved by less restrictive means. The Plan states that CHA invited more than 8,000 applicants from the Housing Choice Voucher waiting list to be screened for program eligibility.

The Plan does not discuss how CHA and the City plan to increase low income public housing units in the area. Most of the high rise public housing buildings have been demolished. The Consolidated Plan lists the number of units that are being rehabilitated, modernized, redeveloped and newly constructed, but it does not state where this is occurring.

d. Housing market analysis

The Plan for Transformation collects data on the housing market in Chicago. The City of Chicago has 77 community areas. The 2000 census shows the population to be 2,741,455. White residents account for 46.3% of the total population. Black residents account for 35.4% of the total population, and Latino's account for 28.1% of the total population. Forty percent of the 77 community areas are greater than 50% white and 14 are greater than 90% white. By contrast, 31 community areas are predominately African American; 21 of these have a concentration of African Americans exceeding 90%. Moreover, 14 of 31 African American community areas are over 98% black. In five community areas, Latinos are the majority; however, the Latino population does not exceed 90% in any of these areas.

Whites are primarily located on the North, Northwest, Southwest, and far South Sides of Chicago. African Americans are the largest group on the West and South Sides and this has been consistent since the 1980s. Racial composition has been fairly static since the 1960s. Twenty-seven communities can be considered “high poverty” areas with poverty rates exceeding 40%. Of these 27 areas, 21 are primarily African American, 2 are Latino and 1 is white. The remaining 3 community areas do not have a majority population.

In the 77 community areas of the City of Chicago, there are 1.2 million units of housing. Of these units, nearly 500,000 are owner-occupied, more than 525,000 are renter-occupied, and nearly 150,000 are vacant. The homeowner vacancy rate is 3% and the rental vacancy rate is approximately 5%. Substandard units are distributed unevenly across the spectrum of available housing by bedroom size. A higher percentage of larger apartments are substandard. Large families may often be forced into substandard housing because they are unable to afford any other. According to the 2008 American Community Survey, 68.8% of all occupied housing units in the City of Chicago were built before 1940. After 70 years of use, it is estimated that more than 690,000 units are in need of some form of rehabilitation.

For homeowners, landlords, and renters, growing cost burdens mean fewer options for making the improvements and enhancements that can often be made for relatively modest amounts of money, and can preserve Chicago’s housing stock for the future. Instead, many affordable housing units are lost to deterioration, abandonment, foreclosure, or conversion to condos. There are 325,000 single-family homes, one-third of those are bungalows that are 100 years or older and need repair, updating, or enlargement. City programs such as H-RAIL (Housing Repair for Accessible and Independent Living), also known as Small Accessible

Repairs Seniors Program and EHAP (Emergency Housing Assistance Program), have assisted thousands of elderly and low income households to make much needed repairs and upgrades.

As of 2007, there were 807,000 rental units in Cook County with 338,000 deemed “affordable,” i.e., renting less than \$795 per month. The number of affordable rental units dropped by 100,000 between 2000 and 2007 and are projected to drop by an additional 38,000 units by 2020 while demand is estimated to increase by 29,951 units during the same period. There will be a need to invest in rehabilitating and upgrading rental units to meet the demands and wants of the current population. Older housing tends to be smaller and less accessible to persons with physical disabilities and lacks the amenities expected by today’s population. Many of the units affordable to extremely low income households are either substandard or not of the proper size to meet the housing needs of this group.

e. Barriers to affordable housing

The City has found five barriers to affordable housing: gentrification, down payment assistance, discrimination, public housing transformation, and foreclosure.

Gentrification: The negative effects of gentrification are rises in property values, rents, and taxes that place residents at risk of no longer being able to afford or to remain in their neighborhoods. The City states that it has taken steps to alleviate some of the negative effects of gentrification and ensure affordable housing remains in gentrifying neighborhoods. The City has developed a conveyance strategy for City-owned land with a value that exceeds \$20,000. In order to build affordable housing, the difference between the appraised value and the \$20,000 price is placed on the property as an additional obligation which runs for 30 years at 3% interest. The City proposes these four solutions over five years:

1. Continue to market the Chicago Homeowner Purchase Assistance Program,

2. Continue to utilize special financing tools to provide for affordable housing construction in gentrifying neighborhoods,
3. Convene a series of working meetings to develop a needs and opportunity assessment that will identify constructive points of leverage likely to alleviate hardships accompanying redevelopment,
4. Supply information on gentrification and other issues related to fair housing that can be obtained through the City's Fair Housing Plan.

Down Payment Assistance: The City Mortgage Program provides down payment and closing cost assistance to qualified buyers of 1-4 unit residential properties. The City provides 4% of the loan amount at the time of loan closing that can be used to pay closing costs or can be used as a contribution toward the down payment. The City has targeted a minimum of 20% of the program resources for home down payment and a minimum of 20% for home purchases in designated low income neighborhoods. The Tax Smart Mortgage Program is a Federal Income Tax Credit Program for first time homebuyers or buyers of homes in target areas. The program allows those who meet income, purchase price and other requirements to receive credit against their federal income tax liability. The amount of the tax credit is equal to 20% of the mortgage interest paid and the credit can be claimed each year the mortgage loan is paid and the home is the participant's primary residence.

Discrimination: The City recognizes that there are barriers to affordable housing caused by racial, ethnic, and income segregation despite positive measures taken. To its credit, the City expanded its commitment to fair housing by adding source of income to legislation that prohibits discrimination. The City also continues to fund numerous delegate agencies whose mission is to educate landlords of their fair housing obligations and that provides testers to root out

discriminatory practices. The City states that it will support fair housing initiatives and ensure compliance with fair housing laws. Beyond these modest but important commitments, the Plan is silent.

Public Housing Transformation: The Plan states that since 2001, the Chicago Housing Authority's Plan for Transformation has changed the lives and transformed the neighborhoods by breaking down barriers that separated residents of public housing from the rest of the community. The Plan for Transformation calls for replacing high rise buildings with mixed income developments, integrated physically, economically, and socially with the surrounding communities. As stated above, the transformation plan has created problems for the families who were displaced and has not increased the supply of affordable housing for low and very low income individuals.

Foreclosure: The foreclosure crisis is not limited to single family homes and condos. Over 35% percent of foreclosures on residential properties in Chicago in 2007 were 2-6 unit apartment buildings primarily in minority and low-income communities. This is a critical problem because a foreclosure on one of these buildings can force six times as many families into the rental market as a foreclosure on a single family home. Funding mechanisms must be developed for the acquisition of these buildings to retain them as active rental properties.

f. Areas of minority concentration

The Consolidated Plan does not have a separate section on this issue.

g. Identification of special needs populations

The Consolidated Plan does not include a separate section on this issue.

h. Identification of housing needs for person with disabilities

The Consolidated Plan has a small paragraph that addresses this issue. The paragraph states that the Illinois Department of Human Services Office of Mental Health (OMH) developed a Continuity of Care Agreement in 2005 which outlines the protocol for placement into and discharge from a state mental health facility. The City states that many disabled persons are not homeless but live in substandard conditions. The Plan states that the Mayor's Office for People with Disabilities attempts to assist this group of individuals to stay in their own homes by providing information, advocacy, independent living and referral services.

The Plan gives a very weak assessment of the needs of persons with disabilities in the City. There is neither identification of the barriers persons with disabilities face nor solutions to their problems as they seek housing in the older units in Chicago.

2. Chicago's 2010 Analysis of Impediments

The Housing and Community Development Act of 1974 requires Community Development Block Grant recipients to certify that they will take steps to actively support and encourage fair housing practices in their local jurisdictions. Grantees are required to analyze and eliminate housing discrimination in the jurisdiction, promote fair housing choice for all persons, provide opportunities for inclusive patterns of housing occupancy regardless of race, color, religion, sex, familial status, disability, and national origin, promote housing that is structurally accessible to and usable by all persons, particularly those with disabilities, and foster compliance with the nondiscrimination provisions of the Fair Housing Act.

The City of Chicago's Analysis of Impediments to Fair Housing Choice and Fair Housing Plan of Action was broken down into three parts: Private Sector Compliance Issues,

Public Sector Compliance Issues, and Identification of Impediments (also categorized under Private and Public Sector).

a. Private sector compliance issues

The Chicago Fair Housing Ordinance was originally passed by the City Council on September 11, 1963 and in its original form, only covered real estate brokers who were licensed by the City of Chicago. On August 12, 1968, the ordinance was amended to extend coverage to owners and others having the right to sell or rent housing accommodations. Both the Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance were substantially amended in 1990. The change gives the Commission on Human Relations a broad mandate to investigate, mediate, and adjudicate complaints of discrimination in Chicago. Complaints must be based on at least one of the 14 protected classes: race, sex, color, age, religion, disability, national origin, ancestry, parental status, sexual orientation, gender identity, marital status, military discharge status and source of income. The alleged discrimination must have occurred in Chicago and a complaint must be filed within 180 days of the incident.

From 2000 - 2009, complaints related to rental outnumbered complaints related to sales. Race was the number one complaint; disabilities and familial status were second and third, respectively. Of the 1,091 complaints filed, 432 resulted in a “no cause determination”; 272 were “complaints withdrawn by complainant without resolution”; 246 were closed for “other reasons”; 141 were “conciliation/settlement successful”; [and] 3 were “Department of Justice settlements”.

In communities of color experiencing the foreclosure crisis, access to prime, conventional mortgage loans has declined to a much greater degree than in predominately white communities. Black and Latino communities disproportionately lack access to affordable loans needed to purchase or improve their homes or to refinance their mortgage to secure lower monthly

payments. This trend is consistent with pre-foreclosure crisis lending. The Home Mortgage Disclosure Act (HMDA) data shows that in 2007 and 2008, blacks and Latinos were denied conventional mortgage loans at rates higher than those of whites. Blacks received higher cost loans at rates higher than those of whites. In fact, blacks received higher cost loans at a rate higher than all other racial and ethnic groups.

The denial rate for FHA/VA mortgage loans tended to be consistent across race and ethnicity but again blacks received higher cost loans at a rate higher than all other racial and ethnic groups. HMDA data gives no indication where the unfair loans originated. The sole determining factor in denying a mortgage should be based on an applicant's financial qualifications. HMDA data does not capture information regarding why loans are denied. If however, black and Latino applications were denied loans because of reasons other than being unqualified, the practices of the lending community are an impediment to fair housing choice in the City of Chicago.

b. Public sector compliance issues

Chicago's Zoning Ordinance classifies land uses into five major use groups: residential, public and civic, commercial, industrial and other. Chicago's land area is 227.13 square miles. The greatest percentage of land use in Chicago is residential. The City is committed to creating livable and sustainable communities by encouraging development where there is easy access to public transportation. The City is exploring ways to implement an affordable housing density bonus program near transit centers. Households should keep transportation costs under 15% of household income. Households pay a substantial amount in utilities. Housing can be more affordable by reducing energy costs. Employer assisted housing helps employees reduce

commuting costs, encourages home ownership, strengthens neighborhoods, builds employee loyalty and reduces turnover.

Chicago has an estimated 1.2 million housing units; 56% of properties are 60 years or older; 47% is owner occupied and 53% is rental property. Whites owned and rented a higher percentage of then units than other racial and ethnic groups. In 2009, 14% of the housing units in Chicago were vacant; 29% were single-family dwellings; 70% were multi-unit buildings; less than 0.5%, were mobile homes.

Housing is considered affordable if the household spends no more than 30% of its gross monthly income on housing. Spending more than 30% of income on housing means a household will have less money to spend on other necessities. According to the American Community Survey, in 2009, 48% of homeowners with mortgages and 22% of homeowners without mortgages were paying thirty percent or more of their income for housing. Median household income rose between 1990 and 2009 by 73%, while the reported median value of owner occupied housing units rose by over 200%. In 2000 and 2009, a household with median income could no longer afford median priced housing in Chicago.

The City of Chicago recognizes some of the problems plaguing the City, but it does not recommend sufficiently proactive means to combat the problems.

c. Identification of impediments to fair housing

i. Private sector

Impediment One: Discrimination in Housing. The City states that housing providers continue to discriminate against members of protected classes especially based on race, ethnicity, disability, and source of income.

Impediment Two: Gentrification. The City lists the difficulties for low income families to remain in their neighborhoods when “rebirth” occurs. Housing costs and taxes makes it difficult for low income residents to remain in these neighborhoods. The City fails to mention that the City is allowing CHA to demolish public housing facilities and replace those units with condominiums and townhomes.

Impediment Three: Foreclosures and Unfair Lending Practices. The City acknowledges that foreclosures that lead to property abandonment, often resulting from unfair lending practices, may cause severe blight on communities.

ii. Public Sector

Impediment Four: Availability of Affordable and Suitable Housing. The City states that a high percentage of Chicago residents pay greater than 30% of their income for rent.

Impediment Five: Lack of Fair Housing Knowledge. The City states that an educated public is the best deterrent to fair housing law violations.

The City did not come up with new initiatives to alleviate the impediments beyond what it is currently doing. It does not address the effectiveness of existing measures or why problems continue.

B. Analysis of impediments to fair housing for the County of Cook (2012)

1. Background

Cook County is located in northeastern Illinois and has a population of 5,194,675 people, 41% of Illinois’ entire population. Cook County is the largest county in Illinois and is the second most populous county in the United States. About 54% of Cook County’s population resides in the City of Chicago. The other 46% of the population resides in 129 other municipalities and unincorporated areas.

Population breakdown by race

White	African American	Latino	American Indian	Asian
1,650,692 (68%)	378,748 (15%)	407,586 (16%)	3,602 (0.1%)	158,361 (6.5%)

Land Facts

Geography	#
Land Area in sq. miles (2010)	945.33
Person per sq. miles (2010)	5,495.1

*2010 U.S. Census Quick Facts (<http://quickfacts.census.gov/qfd/states/17/17031.html>)

Housing Quick Facts

Housing Units (2011)	2,175,941
Homeownership rate	59.8%
Multi-Units Structures	53.9%
Per capita money income	\$29,920
Median Household income	\$54,598
Persons below poverty	15.8%

*2010 U.S. Census Quick Facts (<http://quickfacts.census.gov/qfd/states/17/17031.html>)

2. Economic status

The economic recession, the crash of the housing market, and the high levels of unemployment have resulted in a significant decrease in the economic status of all households, particularly minority households in Cook County. High concentrations of poverty are located

primarily in the southern portion of the County. There are also some concentrations in western portions of the County. Minority communities have higher rates of poverty. Also, minority households below the poverty line are concentrated in small geographic areas that have a higher rate of poverty and a lower rate of diversity.

Income breakdown by race/ethnicity

Race	Total	Less Than \$10,000	\$10,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$74,999	\$75,000 to \$124,999
White	593,816	22,672	44,851	47,778	49,114	48,069	110,043	146,150
Black	129,701	11,999	13,246	13,527	13,906	12,710	26,626	27,183
Asian	46,701	2,276	1,843	2,596	3,692	3,401	9,124	13,907
American Indian, Alaskan,	1008	19	127	136	43	146	151	296
Hispanic	100,108	4,662	8,157	10,369	11,943	12,818	23,094	20,917

3. Market analysis

Minorities are concentrated in specific geographic areas of the community and free market analysis shows that Cook County is highly segregated for reasons beyond income. The County has recognized a number of factors that lead to segregation.

a. Zoning regulations

The Analysis recognizes that building and land use regulations can discriminate by preventing minority groups from relocating to or expanding into neighborhoods. Examples include preventing or limiting the development of senior facilities or group homes and not

including zoning for higher density developments, including multi-family dwellings. Other identified concerns were the enactment of crime-free rental property ordinances and nuisance triggers that prompts property owners to initiate the eviction process.

b. Housing affordability

The Analysis recognizes that African American households have the lowest median income, which is nearly half that of whites. A 2010 community survey in the County showed that the median income was \$51,466 and that the maximum monthly housing payment a household could afford based on a 30% standard (not including utilities) was \$1,287. The median household income for whites was \$65,079, with a maximum monthly household payment of \$1,627. The median household income for blacks was \$33,906, with a maximum monthly household payment of \$848. The median household income for Asians was \$61,230, with a maximum monthly household payment of \$1,531. The median household income for Hispanics was \$43,696, with a maximum monthly household payment of \$1,092.

White and Asian households could afford 87% of the rental units in Cook County. Hispanic households could afford 68% of the rental units, followed by African Americans, who could afford only 39% of the rental units. The rate for African Americans is well below the rate of other races and ethnic groups, as well as the overall affordability rate, which is 82%.

c. Home Mortgage Disclosure Act data

The Home Mortgage Disclosure Act (HMDA) requires lending institutions to maintain records on the characteristics of mortgage borrowers, including gender, race and ethnicity. The most recent data available for review was from 2010, which encompassed some counties in addition to Cook County. During 2012, 44,247 applications were submitted for home mortgage loans on properties with one to four units. In general, white households had a higher loan

origination rate of 73% compared to a 61% overall rate for all non-white households. African American households had the highest denial rate (28%) and white households had the lowest (13%).

Researchers found that in Chicago, communities with a high percentage of minorities had a decrease in the number of conventional refinancing during the same time period. HMDA data (see below) does not provide data on prime versus subprime loans by race. Minority households are more likely to receive a subprime loan than a prime loan. The elderly are also at risk for subprime lending. This is due to the higher level of equity in their homes, the strong need for cash because of limited income, and a higher likelihood of cognitive disabilities, among other factors.

Race	Total #	Completed Loans	Approved but not accepted	Denied	Withdrawn	Incomplete
White	32,600	23,635	1,712	4,248	2,408	597
Black	1,745	862	125	489	200	69
Asian	4,362	2,920	281	669	385	107
Hispanic	3,450	1,950	229	870	275	126

d. Foreclosures

In 2011, 11,802 households in Cook County had foreclosure filings. This was a decrease of 5% from 2010. Foreclosure occurred across the county but a majority of minority communities have experienced higher rates of foreclosure. For example: southern Cook County, which is predominantly African American, had the highest number of foreclosures with 3,069 or 26% of the County's total. There are two primary causes:

- 1) Minority and individuals residing in majority minority communities were more likely to receive predatory loans. These loans with unfavorable terms and conditions placed borrowers at greater risk of foreclosure.
- 2) Unemployment rates for minorities were significantly higher than for non-minorities.

The high number of foreclosures created a large inventory of real estate owned by banks (REO). The consequence is that primarily minority communities have seen a substantial increase in REOs. This large number of REOs and vacant properties, especially when they are not well maintained, decreases the curb appeal of a neighborhood which creates or exacerbates negative perceptions.

In addition, the foreclosure crisis has decreased property values. To some extent, the decrease in value is a result of the decreased curb appeal of a community if REOs and unoccupied units are not properly maintained. Further downward pressure is applied when a community has a large number of foreclosures or short sales.

e. Assisted housing (public housing/housing choice voucher)

The Housing Authority of Cook County (HACC) manages suburban voucher holders and public housing in Cook County. It owns 2,066 public housing units and has issued 12,344 vouchers. The 2,066 units are located primarily in the northern and southern portions of the County. There is only one development in the western part of the County. Six family developments are located exclusively in three communities in the southern part of the County. Chicago Heights has three developments, Robbins has two developments, and Ford Heights has one development. HACC has 790 households on the waiting list for units and 15,249 households on the waiting list for vouchers. The concentration of assisted and affordable housing in the State

was formally recognized with the passage of the Affordable Housing Planning and Appeal Act in 2003. The Act intended to encourage municipalities to expand the supply of affordable housing. Communities that have a supply of affordable housing that represents 10% or more of their housing stock are exempt from the Act; communities with less than 10% are non-exempt.

As of 2011, there were 49 nonexempt communities. Of these, 16 are located in Cook County. Nonexempt communities are required to submit an affordable housing plan passed by the elected body that indicates how the community will expand its supply of affordable housing.

f. General employment trends

Cook County continues to suffer from an economic downturn. Between March 2009 and March 2010, the County lost 64,370 jobs or 3.1% of its total employment. In 2000, 51% of the unemployed were African Americans and 21% were Hispanic, but only 17% were white. By 2010, the number had gone to 63% African American, 19% white, 22% Hispanic and 7% Asian.

4. Findings of impediments and recommendations for action

a. Lack of awareness of fair housing laws (public & private)

- i. Affected individuals and families are unaware that their fair housing rights have been violated and unaware of their options for redress.
- ii. Public sector employees are often unaware that they are violating fair housing rights and preventing the furthering of fair housing.
- iii. Private sector housing providers are frequently unaware that they are violating fair housing laws.
- iv. There is widespread confusion about the difference between affordable housing and fair housing.

v. There is a widespread assumption that fair housing laws only apply to lower-income individuals, African Americans, and person with disabilities.

Recommended action:

a. Education and outreach

The County needs to increase its education and outreach efforts related to fair housing to municipalities and especially to County employees, the public at large, and housing professionals.

b. Limited monitoring of funding recipients (public)

The County has stated that its enforcement of fair housing law among funding recipients is affected by home-rule status. However, home-rule status does not allow a pass for not enforcing the fair housing obligation.

Recommended action:

- i. Incorporate into its funding application data requirements proposed by Chicago Area Fair Housing Alliance (CAFHA).
- ii. Incorporate the responsibilities of each funding recipient into the funding agreement.
- iii. Implement a tiered approach for fair housing compliance.

c. Limited activity and enforcement by funding recipients of participating municipalities

- i. Many municipalities do not have fair housing plans, and if they do, the plans are not detailed; do not provide actionable steps for furthering fair housing; and are not up-to-date.
- ii. Many municipalities are not engaged in conducting outreach within their jurisdiction, including providing opportunities for fair housing education.
- iii. Fair housing materials are often only available in English.

iv. In lieu of municipal staff, contractors are often responsible for submitting CDBG applications, thereby disconnecting the municipality from the certification that they are affirmatively furthering fair housing.

v. There is a lack of municipal officials with primary or secondary responsibility for fair housing, including accepting and investigating complaints.

vi. There is a lack of fair housing boards or commissions in most municipalities with responsibility for issuing findings related to complaints. If the entity does exist, often it has not met for a significant amount of time, if at all.

vii. Reduced budgets have limited the enforcement and outreach activities of municipalities.

Recommended Action:

Many of the actions recommended for other impediments will also address this impediment.

d. Land use, zoning laws, and building codes that do not affirmatively further fair housing (public)

- i. They discourage community growth.
- ii. They discourage the development of multi-family housing, in particular housing set aside for seniors or persons with a disability.
- iii. They prevent the development of affordable housing, particularly for moderate and low-income households.
- iv. They are not equally enforced.
- v. They contain excessively expensive building code requirements.

Recommended action:

- i. Develop model regulations or ordinances for communities to consider.
- ii. Request assistance from CAFHA and CMAP in educating municipalities.

iii. Add certification to the funding application that confirms that municipalities do not have laws or regulations that discourage fair housing choice.

e. Home rule and entitlement status being used to self-exclude communities from County fair housing obligations

Many municipalities in the County have used their home rule or entitlement status as an excuse to not support or take part in the County's obligation to further fair housing.

Recommended action:

i. Remind municipalities that if they apply for or receive funding from the County that they are responsible for furthering fair housing, which includes furthering the County's identified fair housing goals.

ii. Encourage entitlement communities and other communities that receive County funding, to review the County Analysis of Impediments to identify impediments that may exist in their area as well as to identify potential actions they can take to further fair housing.

iii. In communities that do not receive funding from the County, the County should support local housing organizations.

f. Certain County policies and procedures do not encourage fair housing (public)

i. The County has a large budget deficit.

ii. The Commission on Human Rights membership is not full or active.

iii. The Commission on Human Rights section of the County website is not up to date.

iv. The 2011 County budget does not assist affirmatively furthering fair housing by providing adequate support to the Commission on Human Rights.

v. The responsibility for affirmatively furthering fair housing is divided between CCCHR and the Bureau of Economic Development.

vi. The County does not have a full understanding of the complaints filed.

Recommended action:

- i. Increase staff dedicated to fair housing.
- ii. Obtain data on complaints from other fair housing organizations.
- iii. Update the Commission on Human Rights website.
- iv. Fill the vacancies on the CCHR and reactivate expired terms.
- v. Leverage existing relationships and other funding sources.
- vi. Conduct additional analyses related to fair housing.

g. Lack of a regional or countrywide approach to fair housing planning (public)

Given that many jurisdictions are often in very close proximity and that problems extend beyond city, town, or village borders, there should be a more regional approach to addressing fair housing problems.

Recommended action:

- i. Foster relationships with CMAP.
- ii. Encourage inter-jurisdictional cooperation for fair housing planning.
- iii. Consider fair housing needs based upon regional and municipal characteristics.

h. A prevalent “fear of others” exists among residents, including NIMBYism (private)

Housing choice is limited for protected classes in part because racism and prejudice still exist. Individuals are stereotyped based upon various socio-economic characteristics, and there is a fear of people, who are dissimilar in some way, living in areas where there has been a large amount of homogeneity.

i. Members of the protected classes are denied mortgages at a higher rate (private)

Members of protected classes are offered subprime loans more often than others. Limited financing options reduce the chance of homeownership and when homeownership is achieved, it may prove over time to be unaffordable.

Recommended action:

The County should continue funding housing counseling agencies with a focus on helping not only those persons at risk for foreclosure but also those persons who are interested in obtaining a mortgage.

j. There is a strong jobs-housing-transit mismatch (public-private)

The majority of major employment centers for the region are located in the north and west. However, most minority communities are located in southern Cook County. As a result, the residents in these communities do not have equal access to jobs because of longer commute times. Furthermore, employment centers are located near highways and not near public transportation. Because minorities have a higher dependence upon public transportation, the lack of easy access to employment centers becomes an impediment.

Recommended action:

i. Continue to provide incentives in funding allocations to develop affordable housing near public transportation centers or employment centers. The CDBG funding application provides bonus points for applicants that propose projects near transit lines.

ii. Award funding to infrastructure or mass transit service projects that support increased transit options.

iii. Support employment growth and economic development in regions of the County that have experienced slow or negative job growth.

k. Housing choice vouchers are explicitly excluded from the sources of income protected class (public)

Pressure from local real estate professionals and landlords resulted in the removal of housing choice voucher holders from the County Human Rights Ordinance when it was originally passed. While housing choice voucher holders are not included as a protected class, a large percentage of voucher holders are members of protected classes. There are indications that area landlords are using the vouchers as a proxy for discriminating against minorities, women, and families.

Recommended action:

Include housing choice vouchers as a protected class. There are indications that parties will lobby against including housing choice vouchers, the County should include housing choice vouchers as a protected class. The City of Chicago includes housing choice vouchers in the definition of “source of income” despite the lack of support among some constituents.

l. The housing crisis and recession have disproportionately impacted members of the protected classes (public-private)

The slowing of the economy following the housing market crash has impacted every group in America. However, research has shown that members of the protected classes, as well as lower-income households, have been impacted most by the crisis. Specifically, the foreclosure crisis has impacted minority and immigrant communities at a disproportionate rate, especially “Mom and Pop” places. One to five unit buildings had high foreclosure rates. The large number of foreclosures has made it difficult for banks to properly maintain their owned real estate, resulting in decreased curb appeal for some communities.

Recommended action:

i. Allocate grant funding to communities with high foreclosure rates to improve infrastructure and encourage economic development.

ii. Encourage municipalities to purchase foreclosed properties.

m. Real estate professionals have little to no training in fair housing (private)

Changes in real estate professional standards in the last few years have resulted in real estate agents and brokers refraining from making any comments or assessment of a neighborhood's quality, socio-economic characteristics, schools, and crime rates, among other factors. As a result, many are "scared" to consider issues related to fair housing. While some local associations discuss fair housing as a topic in training sessions others do not.

Recommended action:

i. Offer fair housing training to local real estate professionals.

ii. Participate in training sessions of professional realtor organizations.

n. There is an insufficient supply of affordable housing in the county (public-private)

The supply of affordable housing in the County is insufficient: this includes both rental and for-sale housing. During the housing market bubble, many units were lost through conversion to homeownership and demolition to accommodate redevelopment. Since the housing market crash, the challenge has increased. There is a higher demand for affordable housing with the decrease in incomes resulting from job loss. Affordable housing is often located in communities with limited services and far from job centers. Affordable housing is often located in communities that have higher concentrations of minorities.

Recommended action:

i. Municipalities that are subject to the Affordable Housing Planning and Appeal Act, 310 ILCS 67/1 et seq., should be required to submit their affordable housing plan with their funding application requests.

ii. The County should work with the State of Illinois to fully implement the Affordable Housing Planning and Appeal Act.

iii. Review the County zoning and land use to plan to identify any amendments needed to support the preservation and expansion of affordable housing in high opportunity areas.

o. There are highly segregated communities in the County (public-private)

There are several communities in the County that have high concentrations of minorities and some also include high concentrations of lower-income populations. Many of these communities have not been provided equal access to municipal services, and some of the services are of an inferior quality. While fair housing laws are designed to prevent illegal discrimination, they are not meeting the larger goal of creating integrated communities with equal access to services.

Recommend action:

i. Conduct trainings on the value of diversity.

ii. Engage community groups.

iii. Encourage municipalities to engage in more affirmative marketing strategies.

C. Analysis of impediments to fair housing for the Village of Oak Park (2010)

1. Background

Oak Park borders on the City of Chicago's Austin neighborhood that is predominately African American. What happens in Oak Park consequently has a direct effect on segregation in

the City of Chicago. Oak Park is a HUD entitlement community and receives annual grants through the Community Development Block Grant (CDBG) Program. The Village identifies a number of problems and suggests solutions.

2. Findings

Oak Park identified a number of factors that impact on fair housing in the Village:

The racial composition of Oak Park has changed dramatically since 1960.

Since 1960, total population has declined 13.2% and the number of white persons living in the Village has decreased almost 41%. Minorities have increased from 217 residents in 1960 to 17,006 in 2007, and now comprise nearly one third of the total Village population. Blacks are integrating all areas of Oak Park. Areas that were predominantly white in 1970 are now more integrated. While the percentage of white residents has fallen in all 12 of the Village's census tracts, there has been a commensurate increase in black residents in eight of the census tracts. Geospatial analysis illustrates the westward migration of black residents out of Chicago from Austin Boulevard and across the thoroughfare corridors of North Boulevard, Madison Street and the Eisenhower Expressway. As a result, Oak Park has become one of the most integrated cities in Illinois.

Members of the protected classes residing in Oak Park have significantly lower incomes.

In 2000, the median household income for black households was equivalent to 66% of the median income for white households. By 2007, this had fallen to 46%. More than 14% of persons with disabilities were living in poverty compared to 4.6% of persons living in poverty without disabilities. Among families living in poverty, female-headed households with children comprised 56% of this segment. Among families living above the level of poverty, female-headed households with children comprised only 11% of this group.

Minorities and females in Oak Park are more likely to be unemployed.

The overall unemployment in 2007 was 5.1% among the civilian labor force. Female workers in the Village had a significantly higher unemployment rate of 5.9% than male workers at 4.3%. The unemployment rate among black workers was more than three times higher than among white workers.

Minorities in Oak Park are less likely to own their homes.

Among blacks, the rate of home ownership in 1990 was less than half the rate among whites and Asians. Although the rate of black home ownership rose significantly from 25.9% to 35.8% during the 1990s, blacks still lagged far behind whites and Hispanics in owning their homes. By 2000, white households had the highest ownership rate at 64.3% and were much more likely to own their homes than Hispanics (at 49.5%), Asians (at 39.6%) and blacks (at 35.8%).

Minority households tend to have larger households and require larger housing units.

Black and Hispanic families were larger than white and Asian families, and therefore, they required larger units. Only 2.3% of the rental housing stock in Oak Park contained three or more bedrooms compared to almost 70% of the owner housing stock.

The Village has lost 3,317 affordable rental units since 2000.

Between 2000 and 2007, the Village lost 3,317 affordable units from its rental housing stock, most through rental rates increases above \$500 and \$700.

Home buying opportunities are severely limited for blacks and Hispanics.

There were fewer than 100 sales housing units that sold in 2000 that would have been affordable to black and Hispanic homebuyers compared to almost 450 units affordable to white and Asian homebuyers. By 2008, black homebuyers earning the median household income for

blacks would have had *fewer than eight homes* from which to choose. This is in contrast to Hispanics whose housing choices improved slightly as their median household income rose.

Minority households are more likely to experience housing problems.

Among home-owners, minority households were much more likely to experience housing problems than white home-owners. The situation was improved among renters with 53.9% of white households experiencing housing problems compared to 50.8% of black households and 48.9% of Hispanic households.

More than half of the housing complaints filed in Oak Park since 1997 involved rental transactions.

Of the 52 cases, 38 involved rental housing transactions. The most often cited bases for alleging discrimination were race (35%) and disability (33%).

The Village does not receive HOME Investment Partnership Program funding.

Minorities are under-represented on appointed citizen boards and commissions.

Advocacy groups have very lengthy waiting lists for clients seeking affordable housing.

The Village zoning ordinance does not clearly state the Village's emphasis on the provision of affordable housing.

Although the zoning ordinance does include development standards that would permit various types of housing units at different densities, clearly stating the goal of providing affordable housing should be included in any future ordinance update.

Public transit is excellent throughout most of Oak Park; however, the Oak Park CTA transit station is not handicapped accessible.

Rental ads in one local newspaper stated "no pets."

Some building owners and management agents may not fully appreciate the need for regular fair housing training.

Minorities were denied home mortgages at higher rates than whites.

The denial rate among black mortgage applicants was 24.4% in 2007 even though blacks represented only 9% of all applicants. The denial rate among Hispanics was 22.8%, even though Hispanics accounted for only 5% of all applicants. More notable was the fact that upper-income minorities were denied mortgages at higher rates than were lower-income whites.

Minorities were more likely to receive high-cost mortgage loans than whites.

Among lower-income applicants, the rate for high-cost loans was 28.6% for Asians and 22.6% for blacks. This is in contrast to the low rate of only 2.7% for white households. For upper income households, the rate of high-cost loans was 26.1% for blacks and 18.5% for Hispanics, but only 5.9% for whites.

The Oak Park Regional Housing Center, as the Village's designated marketing agent, provides the critical link between prospective renters and Oak Park's integration goals.

The Housing Center serves 3,000 households annually. Of these, one-third move to Oak Park and 60% of these are affirmative moves. This level of performance has contributed to the success of the Village's Multi-Family Housing Incentives Program as demonstrated by the increasing rates of minorities residing throughout Oak Park. As a condition of receiving CDBG funding, and general fund revenues, the Housing Center should prepare and submit annual reports on its fair housing accomplishments.

The Oak Park Community Relations Department is also an important link in the Village's efforts to achieve diversity and eliminate housing discrimination.

The Village's Multi-family Incentives Program administered by the Housing Programs Division appears to have successfully contributed to the integration of Oak Park.

Significant shifts in residential segregation patterns have occurred in Oak Park since 1960. Much of this change has resulted from the affirmative marketing strategies implemented by the Oak Park Regional Housing Center. In addition to achieving integration in predominantly white neighborhoods, the program has also financially assisted building owners with making renovations to aging multi-family apartment buildings, thus preserving the Village's rental housing stock.

3. Fair Housing Action Plan

Based on the findings and issues, the following potential impediments to fair housing choice in Oak Park were identified. Recommended actions to eliminate these impediments were also provided.

Public sector

a. Minority households and other members of the protected classes have difficulty securing affordable housing in Oak Park

Proposed Action 1: Include source of income as a protected class to the Village's fair housing ordinance.

Proposed Action 2: Develop an Affordable Housing strategy for the Village which may include actions such as adopting an Inclusionary Zoning Ordinance and Affordable Housing Trust Fund.

b. There is an inadequate supply of handicapped accessible housing in Oak Park

Proposed Action 1: Institute a requirement, by local ordinance that all new multi-family developments are to provide a minimum percentage of accessible rental units.

Proposed Action 2: Create and maintain a list of certified private and public rental units that are accessible to persons with physical disabilities.

Proposed Action 3: Work with the Oak Park Area Association of Realtors to expand their listing form to include accessibility features of available units.

Proposed Action 4 The Village should work with disability advocates to sponsor workshops and other educational opportunities for housing planning staff, developers, architects, builders, Realtors, and other housing professionals to increase knowledge of various accessibility and visibility design features and cost-effective ways of incorporating such features into newly constructed or substantially rehabilitated housing units.

c. Members of the protected classes are under-represented on appointed citizen boards and commissions

Proposed Action: Annually the Village should schedule a recruitment period for new board and commission applicants, with an emphasis on recruiting members of the protected classes.

d. Affordable housing developers are being denied access to local HOME Program funds

Proposed Action: Apply for HOME funds by either joining the Cook County HOME Consortium or pursuing a yearly State application.

e. Prospective developers of any new single-room occupancy (SRO) units will require a parking variance for the project, resulting in the need for a public hearing

Proposed Action: The Village should proactively address this issue to eliminate the potential for not-in-my-back-yard (NIMBY) public opposition to any potential project.

f. More than half of the housing complaints filed in Oak Park involved rental transactions

Proposed Action: Proactively conduct testing of sale and rental properties in Oak Park at a scale commensurate with the Village's financial capacity.

g. Only one of the seven Oak Park CTA transit stations is handicapped accessible

Proposed Action: The Village should continue participating in the long range planning efforts of the Chicago Metropolitan Agency for Planning, the metropolitan planning organization for the Chicago metropolitan urbanized area, which includes the Village of Oak Park.

Private Sector

a. Rental ads in one local newspaper stated “no pets”

Proposed Action: Discussions with the newspaper should be initiated with the recommendation that its policy be modified to require that all future rental real estate ads that state “no pets” (or seek to restrict the type of pet allowed) include the phrase or agree to the following exception: “except companion/service animals permitted under fair housing laws.”

b. Mortgage loan denials and high-cost lending disproportionately affect minority applicants.

Proposed Action 1: Because credit history is a major reason for denial of home mortgage applications in Oak Park, there are opportunities for lenders to focus on the problem and work with applicants to address the concern.

Proposed Action 2: Engage HUD-certified housing counselors to target credit repair education through existing advocacy organizations that work with minority populations on a regular basis.

Proposed Action 3: Encourage the continued efforts of the Housing Center, and consider expansion of new initiatives, to recruit volunteers from local lending institutions to conduct home ownership workshops.

Proposed Action 4: Conduct a more in-depth analysis of HMDA data to determine if discrimination is occurring against minority applicant households.

Proposed Action 5: Engage in a communication campaign that would market homeownership opportunities to all minorities regardless of income including middle and higher income

minorities. The campaign could show the value of living in a diverse community like Oak Park and could encourage homeowner investment. The campaign could also target lenders to show the high denial rates of mortgage applications for all minorities regardless of income.

4. Fair housing complaints

The Village of Oak Park Community Relations Commission was created in 1963 to ensure that all residents receive equal service and treatment. The duties of the Commission, as stated in the Human Rights Ordinance, include initiating, receiving and investigating written complaints charging discrimination; seeking conciliation of such complaints and compliance by violators; holding hearings, making findings of fact, issuing recommendations and publishing its findings of fact and recommendations.

During the period of September 1, 1997 to June 15, 2009, a total of 57 fair housing complaints in Oak Park were filed with HUD, the IDHR and the Oak Park Community Relations Department. Of the 57 complaints, 50 (88%) were closed without settlement for various reasons (e.g., lack of cooperation from the complainant, unable to locate complainant, no probable cause, etc.). A total of seven complaints (filed with HUD) progressed to conciliation and ultimately resulted in a successful settlement. While some information was provided by HUD, the summary did not include sufficient details on the results of particular cases, so it is difficult to determine if any particular type of complaint was more likely to result in settlement. Five of the seven cases that resulted in conciliation and settlement involved rental transactions. In addition, three of the seven cases alleged discrimination on the basis of familial status, two on national origin and one each on race and disability.

5. Evaluation of policies that impact on housing

A substantial proportion of the Village of Oak Park's Community Development Block Grant (CDBG) entitlement funds received from HUD were used for a variety of public services, planning, street improvements, clearance, rehabilitation, code enforcement, and economic development initiatives that benefited persons in protected classes. The Village determined that its investment of these funds demonstrated a commitment to affordable housing assistance for low and moderate income households that are members of the protected classes.

The Village determined that its Comprehensive Plan promoted affordable and fair housing ideals: "to preserve and enhance Oak Park's stable residential environment so persons of all ages, races and income levels can continue to live here in sound, affordable housing." However, nowhere in the Village Zoning Ordinance was found the stated intent or purpose advocating the concept of "affordable housing." While the Village recognized that this omission in and of itself did not constitute an impediment to fair housing, it concluded that clearly stating the Village's intent to provide affordable housing would eliminate the inconsistency.

The Village identified that it assisted immigrants and persons with limited English proficiency by coordinating a Language Bank to ensure that the diverse population of the Village could access all services. The Language Bank provided interpreting assistance in 14 different languages. In addition, the Universal Access Commission was working to have more Village forms translated into languages that are common to a higher percentage of residents.

Oak Park Housing Authority (OPHA) owned and managed one public housing development, Mills Park Tower, a 198-unit complex for persons 62 years of age or older. OPHA also administered 427 section 8 vouchers. The waiting list for vouchers was extremely lengthy

and persons with disabilities were not granted a preference. According to OPHA, one third of the applicants waiting for section 8 vouchers had disabilities.

6. Recommendations that Oak Park made in 1997 and current progress:

In 1997, Oak Park had identified three key impediments to fair housing with corresponding recommendations:

1) Members of the protected classes were under-represented on appointed boards and commissions in 1997.

It was recommended in the 2010 report that progress should continue on this concern.

2) The home ownership rate among minorities was less than the rate among whites in 1997.

It was recommended in the 2010 report that the Village continue to identify and pursue ways to increase minority home ownership. These efforts included: partnering with the Illinois Housing Development Authority to establish a first time homebuyer program which provides reduced interest mortgages, providing limited closing cost and down payment assistance and federal mortgage tax credits; counseling prospective homeowners about pro-integration choices in housing location; continuing to evaluate compliance with the federal Community Reinvestment Act (CRA) by continuing to work with local banks to provide home mortgage loans in conjunction with the Illinois Housing Development Agency; continuing to be vigilant to prevent pockets of disinvestment; continuing to operate the Village's Equity Assurance Program to guarantee the resale value of single family homes in Oak Park.

3) Random real estate testing was not conducted in 1997.

In 2005, the Village partnered with the Leadership Council of Metropolitan Open Communities to conduct limited random testing. The testing did not reveal any instances of

discrimination. However, the Village acknowledged that interviews conducted with other organizations indicated a need for additional random formal real estate testing.

The Village agreed that it should continue to evaluate Village housing programs to determine whether additional measures are needed to prevent discrimination. The Oak Park Housing Programs Advisory Committee (HPAC), comprised of appointed residents, evaluated the Village's fair housing programs in 2003 and made the following assessments:

- a. The multi-family incentives program promotes integrated living and fair housing choice in the Village.
- b. The program has two purposes: to upgrade the physical condition of aging multi-family structures and to expand housing choice for renters in the Village by encouraging affirmative moves.
- c. An affirmative move is one in which a white household moves to any location east of Ridgeland Avenue and South of Harvard Street, and a non-white household moves to a location in the remainder of the Village.
- d. There are three program options available to eligible participants. Grant funds up to \$1,000 per unit, or a maximum of \$10,000, may be provided to the building owner, who must match the funds 2:1.
- e. Funds can be invested in common area improvements, security improvements, or individual unit improvements.
- f. In exchange for the financial assistance, the property owner is required to enter into a five-year Marketing Services Agreement to affirmatively market their rental units with the cooperation and assistance of the Village and its designated marketing agent.

- g. The second option provides the building owner with a one-year contract to receive rental reimbursement payments from the Village for vacant units within a building enrolled in the program.
- h. Rental reimbursement payments begin on the 31st day of a vacancy and continue until the 90th day of a vacancy, and are capped at 80% of the rent last paid for the unit. A one-year Marketing Service Agreement is also required.
- i. The third option available is a Marketing Services Agreement only. Building owners may enter into a one-year agreement to make a good faith effort to affirmatively market their units. In exchange for this service, the Village's designated marketing agent will waive all fees to the building owner for their marketing services.
- j. In December 2000, the Village Board revised the program to increase the number of buildings and units. As a result, the number of participating buildings increased from about 35 to more than 80 and the number of units almost doubled from about 800 to more than 1,500.
- k. By August 2006, there were 78 buildings with 1,539 units in the program, representing 20% of the total apartment buildings and 23% of the total rental units in buildings with four or more units in the Village.
- l. In light of the results demonstrated by the Multi-Family Incentives Program, and the level of racial integration revealed through recent Census reports, it would be highly advisable to continue the program. This will ensure that re-segregation does not occur in areas of the Village that have experienced higher influxes of black residents.
- m. If the primary goal of the diversity initiatives implemented in Oak Park is to achieve and preserve integrated neighborhoods throughout the Village, then census blocks

that have experienced higher increases in black residents should be monitored to prevent further white flight and re-segregation, thereby wiping out the gains achieved over the past forty years in integrating Oak Park.

D. Analysis of impediments to fair housing for the Village of Arlington Heights (2005)

1. Background

The Village of Arlington Heights is located in Cook County. It is a suburb of Chicago with a distance approximately 23 miles northwest of the city’s downtown area. According to the 2010 Census, Arlington Heights has a population of 75,460 people. Arlington Heights was once a small village of only 1,400 people but saw a population explosion in the 1950s and 1960s due to white flight and the expansion of the Chicago area economy. The population grew from 27,878 in the 1960s to 64,884 people in the 1970s.

<http://www.encyclopedia.chicagohistory.org/pages/68.html>) Arlington Heights was the defendant in one of the first major cases under the Fair Housing Act involving the granting of a variance to the Village’s zoning regulations to allow the construction of multi-family housing. Its analysis of impediments is summarized in its assessment and vague as to its recommendations.

Population Breakdown by Race

White	African American	America Indian	Hispanic or Latino	Asian
68,854 (90%)	728 (1.0%)	58 (0.1%)	3,393 (4.5%)	4,548 (6.0%)

Income Breakdown of Residents

Income Category	# of Households
Extremely Low	1,536 (5%)
Low	1,997 (6.5%)
Moderate	4,290 (14%)

2. Disproportionate housing needs

Arlington Heights identified the disproportionate housing needs among the following categories of racial and ethnic minorities. Asian owners and Hispanic renters experience disproportionate housing needs in Arlington Heights. When populations are examined by tenure type (owner v. renter) and further broken down by income, the following categories of racial and ethnic minorities are found to have disproportionately greater needs: African American renters have the lowest income; Asians renters are also low income; and Hispanics renters are low to moderate income renters. African American owners have moderate income; Asians owners have low, middle, and above income; Hispanic owners have moderate income.

3. Identified barriers to fair housing

The primary barrier to housing choice in Arlington Heights identified in its analysis is the lack of sufficient affordable housing. There were overall three major problems identified: substandard living conditions, overcrowding, and cost.

4. Actions to alleviate impediments

Arlington Heights proposes the following remedies to alleviate the impediments to fair housing:

- a. Provide social service and housing organization support;
- b. Continue implementing the Village's Single Family Rehab Program and First Time Buyer Program;
- c. Ask the Department of Planning and Community Development and the Housing Commission to identify the needs in the community and promote the availability of housing for all members of the community;
- d. Ask the Housing Commission to continue as the Village's Fair Housing Review Board to investigate fair housing complaints received by the Village;
- e. Address the needs of senior citizens and persons with disabilities;
- f. Continue code enforcement efforts to uncover and remove unsafe, unsanitary and substandard conditions and to enforce applicable and appropriate building codes;
- g. Enhance affordable housing and fair housing outreach efforts by seeking additional fair housing educational materials for staff;
- h. Ask the Housing Commission to convene, at least annually, as the Fair Housing Review Board to discuss matters of concern, progress in alleviating impediments to fair housing, and/or initiatives to be undertaken with respect to fair housing.

The Analysis of Impediments submitted by Arlington Heights is vague and indefinite.

The Village identifies the lack of affordable housing as an impediment but fails to propose concrete workable solutions to the problems of segregation and diversity.

E. Action Plan for the Village of Skokie (2013)

5. Background

The Village of Skokie has a population of 65,785 persons and borders Chicago on Skokie's south side. Skokie is bounded on the east by the suburb of Evanston, which has a large

African American population. Originally Skokie had a large population of Jewish immigrants, particularly Holocaust survivors, but that has diminished in recent years. The Holocaust Museum is located in Skokie, and Skokie was the scene of the notorious march by American Nazis in the 1970s. Skokie has focused primarily on the problems of affordable housing and its remedies are directed at affordable housing rather than to fair housing priorities. The Skokie Action Plan is submitted as part of its application for Community Development Block Grants. It does not contain a housing market analysis, citizen comments (although they were solicited), or an identification of special needs populations.

6. Minority Concentrations

In 2000, Asians accounted for more than 21.3% of the Skokie population. Asians are less concentrated in the northeastern section of Skokie. African Americans accounted for 4.5% of the Skokie population and are living in the northeast portion of the Village closest to Evanston, which has a large African American population. Hispanics accounted for 5.7% of the Skokie population. Hispanics are widespread across Skokie with a slight concentration in the southwest, central and east-central portions of the Village. Except for Asians, Skokie has a very low percentage of minorities, which is evident from the percentages cited.

In 2000, Skokie had 710 persons or 4.2% of the population living below the poverty level.

7. Affordable Housing

a. Public housing

The only public housing in Skokie is a designated senior building, the Armond D. King Apartments, 127 unit apartment building operated by the Housing Authority of Cook County (HACC).

Skokie has 417 housing choice voucher holders, representing a gradual decrease in recent years.

b. Homeless needs, including homeless youth

Skokie does not have any homeless shelters. The Village states that a survey of homeless people was conducted on a specific night and found no visible homeless people. Due to this observation, Skokie decided that there was no need to put any resources into homeless shelters. Skokie does not take into account that a large number of homeless people do not sleep on the streets but sleep on the couches and floors of friends and families. Skokie states that it will continue to help any homeless person. It states that Evanston has a homeless shelter and that the Village will refer people who need assistance there.

The Skokie Action Plan states that The Harbor, Inc. provides shelter to homeless girls and young women ages 12 – 21 in the north and northwest suburbs. The Harbor, Inc. has a facility in Skokie. No services are provided for males.

c. Housing for persons with disabilities, including those with HIV/AIDS and with alcohol/drug addiction

The Plan announces that the Center for Enriched Living and the Maine-Niles Association of Special Recreation provides services to persons with disabilities. No other information is included. Skokie does not provide direct services to persons with HIV/AIDS or with alcohol/drug addiction, but the Action Plan states that persons needing help can go to Evanston.

d. Barriers to affordable housing

Removing Barriers to Affordable Housing

1. Availability of Land: There is no land available for new housing developments.

2. Cost of Housing: Many low-income residents are paying rent or mortgages in excess of what is considered affordable for their income.

3. Vacancy Rate: There is an extremely low vacancy rate for all housing in Skokie, which leads to very limited housing choices for low income residents. The result of the low vacancy rates is that landlords can increase housing prices.

4. Zoning Restrictions: The Village Zoning Ordinance offers density bonuses of 20% for the creation of low-income housing units for Planned Unit Developments; however, the bonus has not been used.

Fostering and Maintaining Affordable Housing

Skokie claims to be the most diverse community in the suburban Chicago area. Skokie further claims a long history of providing housing that serves a broad spectrum of household incomes. However, it lists as a barrier to affordable housing the lack of affordable housing. Skokie claims that it is one of the few northern suburbs in Chicago that does not have a middle-income affordability problem.

Skokie offers no analysis whether low income persons who depend upon housing choice vouchers experience problems in finding housing in Skokie. There is a section 8 new construction project for the elderly, but the report is silent on the needs of voucher holders who are not elderly. Based on the 2000 Census, Skokie had 4.2% of its population living below the poverty level.

The Village proposed to accomplish the following to increase low income housing opportunities: continue to seek additional housing resources for very low income people; provide emergency assistance to very low income people and other assistance to needy families through the Village's Human Services Division; provide free health services through the

Village's Health Department to people who meet the poverty guidelines; utilize programs and services from CEDA Neighbors at Work to provide people living in poverty with information and referral services, case management, low-income home strategy assistance, housing counseling, emergency housing assistance, and federal food commodities and offer publications, such as the *Skokie Resources Guide* and the *Directory of Services for the Disabled*, that provide valuable information on the nature and location of various services.

V. **Identification of the issues to be reviewed**

The issues reviewed in this report fall into three major areas: protected classes, procedural impediments, and enforcement of the duty to affirmatively further fair housing.

First, the Fair Housing Legal Support Center suggests expanding emphasis on five classes that are imperfectly covered by the fair housing laws. These protected classes should include persons discriminated against because of wealth by, for example, expanding protection to poor persons on the basis of source of income. Other classes that should be given expanded clarification include persons with arrest and conviction records, LGBT youth of color, immigrants, persons who are not proficient in English, and seniors. This report does not discuss the special issues faced by veterans, who are protected under state but not federal fair housing law. Veterans are often persons of color and many have physical or mental disabilities. The United States has a special obligation to veterans to see that their housing needs are satisfied. Further, the report does not discuss the special problems of persons with disabilities.

Second, the Center suggests that the fair housing laws and rules and regulations be amended to provide a private right of action to affirmatively further fair housing. Clearer guidance should be given to courts and administrative bodies in awarding relief, including awarding statutory penalties directly to complainants. Furthermore, the laws and rules should clarify standing requirements in administrative investigations. Other remedies that should be considered but are not outlined in this report but are nonetheless crucial are: defining with greater precision what violations may be continuing for statutes of limitations purposes, and providing for greater local implementation and enforcement of design and construction requirements.

Third, the Center suggests that HUD and the State of Illinois place greater emphasis on enforcing the affirmative duty of federal or state financial recipients to affirmatively further fair housing. HUD should define the meaning of “affirmatively furthering fair housing.” Those political entities that have filed a consolidated plan and identified the impediments to fair housing should be monitored on how successfully they implement the goals that they themselves have identified. In addition, those political entities that have identified impediments in only a cursory manner should be required to identify with specificity those problems that exist in their communities and outline concrete steps to alleviate the problem. Federal funding should be withheld from any entity that fails to comply. The Center recommends that all state and local entities that receive federal funding should be required, whether or not they are in the Fair Housing Initiative Program, to provide a uniform one-year minimum period for persons to file administrative complaints alleging violations of the fair housing laws.

The Center also recommends that the duty to affirmatively further fair housing be extended to condominium and homeowner associations, multi-family dwellings with four units or more, and real estate brokers and management companies. The duty should also be expanded to all entities that engage in the business of financing housing.

The report stays away from proposing changes that would come with a large price tag. Consequently, the Center does not propose the construction of new affordable housing, whether public or private, although a massive building program is long overdue, even if it is not on the agenda of anyone in power. Programs need to be expanded to help the homeless, but here again there is no indication that resources will be made available, especially in the present economic and political environment.

Perhaps the most cost efficient way to further fair housing is through greater support of education and outreach initiatives. Efforts should be taken by the federal, state, and local governments directly, and more funding should be provided to local fair housing organizations to engage in this never ending process. New problems require new ways of thinking and the public needs to be sensitized about fair lending issues so that fair housing is on everyone's agenda.

The Center proposes that initiatives be taken nationally and locally that can strengthen the fair housing laws and enforcement and to increase education and outreach to affected individuals and communities. The proposals do not have high price tags, but they do require a political commitment to attack segregation head on. Such a commitment has yet to be made on a comprehensive scale. The existing fair housing laws are strong, but they have not been enforced to their full potential. A commitment to enforce and strengthen these laws is a first step toward solving the scourge of discrimination. As was stated in a recent study about restrictive covenants, "concrete moves toward housing integration have been very slow, not to say glacial." Brooks and Rose, *SAVING THE NEIGHBORHOOD* (2013), p. 213. Many believe we are in a period of global warming; perhaps the housing glacier will start to move faster.

VI. Discrimination on the basis of wealth and against housing voucher holders

Discrimination in housing against persons based on one of the protected classes under the Fair Housing Act is closely tied to discrimination on the basis of wealth. Persons in the protected classes frequently have fewer opportunities for job advancement and often have less overall wealth than other members of the general population. This impacts on their ability to obtain decent housing in an integrated environment. *See*, Lipsitz, HOW RACISM TAKES PLACE (2011); Sampson, GREAT AMERICAN CITY: THE ENDURING NEIGHBORHOOD EFFECT (2012). Nonetheless, wealth discrimination itself is not a suspect classification under Equal Protection and is not a protected classification under the Fair Housing Act, the Illinois Human Rights Act, or local ordinances in the Chicago metropolitan area. Some disparities in housing available to low-income persons can simply be explained by differences in economic power in the marketplace. But some disparities are based on stereotypes and prejudice and cannot be justified by any good reason. Efforts should be made to identify those areas where wealth distinctions in housing cannot be justified, and measures should be enacted to eradicate the causes of these impediments.

With the shrinkage of the middle class in the United States, there is some evidence that residential segregation by income has increased in the last few years in some of the nation's major metropolitan areas. Research by the Pew Research Center shows that 28% of lower-income households in 2010 were located in a majority lower-income census tract, which was up from 23% in 1980. By contrast, 18% of upper-income households were located in a majority upper-income census tract, up from 9% in 1980. *See*: THE RISE OF RESIDENTIAL SEGREGATION BY INCOME (Pew Research Center 2012), p. 1. Despite this rise in residential segregation by income, it is still less pervasive than residential segregation by race

and varies significantly among the nation's most populous metropolitan areas. In Chicago, the percentage of upper-income households in majority upper-income tracts is 12 %. *Id.*, at p. 2. Chicago has one of the lowest residential income segregation index scores among the nation's 10 largest metropolitan areas. *Id.*, at p. 3.

Nonetheless, there is a lack of affordable housing for low and moderate income families in the Chicago metropolitan area, and this increases when the family is extremely low-income (defined as those households with incomes at or below the 30% area median income). A recent study by Housing Action Illinois shows that only 28 units are available for every 100 extremely low income renters in Illinois, and that 3 out of 4 extremely low-income renters end up spending more than half of their income on rent and utility costs. Most affected are persons who fall within one of the classes protected by the Fair Housing Act. Extremely Low Income: 31% are elderly households; 41% have a member with a disability; 28% are female head of household with children; 26% are African American. Overall renters: 19% are African American; 28% single female (not children; 13% married couples. HOUSING SPOTLIGHT: AMERICA'S AFFORDABLE HOUSING SHORTAGE, AND HOW TO END IT (Housing Action Illinois, Feb. 28, 2013).

The housing choice voucher program, which is the federal government's primary method of supplying housing to low-income individuals, is grossly inadequate. Individuals must wait years before a voucher becomes available and the problem has been aggravated by the current foreclosure crisis. SOUTHTOWNSTAR (March 18, 2013) p. 28. Once individuals finally acquire a voucher, they are then met by the fact that many landlords refuse to rent to persons with vouchers. *See*, Freeman, THE IMPACT OF SOURCE OF INCOME LAWS ON

VOUCHER UTILIZATION AND LOCATIONAL OUTCOMES (HUD Assisted Housing Research Cadre Report, 2011).

The goal of the Housing Choice Voucher Program is to increase housing availability for low income individuals and families. HOUSING CHOICE VOUCHERS FACT SHEET (HUD), http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/about/fact_sheet. The program is administered in the City by the Chicago Housing Authority (CHA). To qualify for the voucher program, an individual must be at or below 50% of the median income for the area; however approximately 75% of the vouchers issued are reserved for eligible applicants whose incomes are at or below 30% of the median income. *Id.* During the 2007-2011 timeframe, the median income in Chicago was \$47,371. *See:* “Chicago/Illinois,” (U.S. Census Bureau) <http://quickfacts.census.gov/qfd/states/17/1714000.html>. The voucher allows the housing owner to receive a payment directly from the government, which is the difference between the tenant’s contribution and the payment standard—*the amount needed to rent a moderately priced unit in the area*. HOUSING CHOICE VOUCHERS FACT SHEET (HUD). If the rent is more than this payment standard, then tenants are responsible to pay the amount of overage, but not more than 40% of their adjusted monthly income for rent. *Id.*

In 2008, the CHA established a lottery to alleviate some of the problems with its waiting list. Computers generated a method of selection of 40,000 individuals, randomly assigning them a position on the waiting list (wait list ranges from 0-10 years).³ CHICAGO HOUSING AUTHORITY. www.thecha.org.

³ THE CHA has initiated an education program for landlords and tenants about the requirements of the Chicago “Source of Income” ordinance, which prohibits discrimination against housing voucher holders. The CHA has also published brochures to assist in these education efforts. It works closely with the Chicago Commission on Human Relations to educate the Commission about the requirements of the voucher program and how it works differently in different parts of

Demographics published by the Chicago Housing Authority of Current Administered HCV Participants As of 12/31/2008 (www.thecha.org)

Number of Program Participants

Heads of Households	35,153
Other Household Members	61,691
Total Participants	96,844

Age (All Participants)

0-18 years old	16,950
18 years or older	44,629
Unknown/Under Reported/Over Reported	112

Race (All Participants)

White	10,401
Black	85,652
Native/Alaskan	72
Asian	112
Hawaiian/Pacific Islander	23
Multiple Races selected	17
Unknown Race	567

Ethnicity (All Participants)

Hispanic	9,263
Non-Hispanic	86,152
Unknown Ethnicity	1,429

Annual Income Range (All Participants)

0.00 - .99	52,973
1.00 - 9,999	30,405
10,000 - 19,999	8,881
20,000 - 29,999	3,378
30,000 - 39,999	1,005
40,000 +	202
Unknown/Pending	0

**Demographics of HCV Program General Wait List
12/31/2008**

Disabled Population

Disabled HOH	8,789
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the City. This enables the Commission to better determine if a particular tenant qualifies for the housing unit in question.

In 2009, HUD released a report, “2009 Worst Case Housing Needs of People with Disabilities.” The report noted that households with people with disabilities continue to face more economic barriers than the general population. In the 2009 American Housing Survey, the data revealed that:

- a. One in three very low-income renter households were non-elderly with a disability;
- b. Two out of three renter households with a person with a disability were very low-income;
- c. Very low-income renter households with a person with a disability were more likely to spend over half of their incomes on rent; and
- d. Very low-income renter households with a person with a disability were two times more likely to receive housing assistance.

2009 AMERICAN HOUSING SURVEY (HUD). <http://www.census.gov/prod/2011pubs/h150-09.pdf>.

In Chicago, the number of homeless persons has increased by 4.7% from 2011 to 2012. HUNGER AND HOMELESS SURVEY: A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICAN CITIES – A 25 CITY SURVEY (United States Conference of Mayors, December 2012). Among the homeless in Chicago, 26% were severely mentally ill, and only 13% were employed. *Id.* at 48. According to the “Hunger and Homelessness Survey,” the total number of single adults, persons in families, and unaccompanied youth living on the streets of Chicago in 2012 was unreported. The survey reported on those individuals who were living in emergency shelters and transitional housing. As of December 2012, there were a reported 2,955 single adults living in emergency shelters (the number of persons in families and unaccompanied youth was unreported). *Id.* at 77. In transitional housing, there were 3,720 single

adults and 6,092 persons in families (again, the number of unaccompanied youth was unreported). *Id.* Homeless adults were reported in various categories: percent employed (13), percent veterans (8), percent physically disabled (unreported), percent HIV positive (6), percent severely mentally ill (26), and percent domestic violence victims (33). *Id.* at 79. Racial demographics are no longer included in the survey; however, the Chicago Coalition for the Homeless stated that Chicago Public Schools reported that 98.4% of its homeless students were children of color in the 2011-2012 school years. THE FACTS BEHIND THE FACES (Chicago Coalition for the Homeless), <http://www.chicagohomeless.org/faq-studies/>. The Coalition also noted that, according to a 2007 point-in-time count by the City of Chicago, the racial demographic of the homeless population was as follows: 75% African American, 16% white, 6% Latino, and 3% “other.” *Id.*

The City of Chicago and Cook County, unlike the Federal government, the State of Illinois, and many Chicago suburbs, prohibit discrimination because of “source of income.” “Source of income” in Chicago and Cook County includes discrimination against housing voucher holders. The City and County are among the most progressive jurisdictions in Illinois, and indeed in the country, on this issue. Research shows that source of income laws make a substantial difference in voucher utilization rates and a modest difference in locational outcomes. *See*, Freeman, THE IMPACT OF SOURCE OF INCOME LAWS ON VOUCHER UTILIZATION AND LOCATIONAL OUTCOMES (HUD Assisted Housing Research Cadre Report, 2011). Nonetheless, the impact of the City’s and the County’s ordinances would be more effective if landlords outside these jurisdictions were not left free to reject housing voucher holders solely on that basis alone. Thus, the rest of the state needs to join Chicago and Cook County in removing this major impediment to voucher holders securing safe, affordable, and

integrated housing. Oak Park specifically identifies its lack of a source of income protection as an impediment to fair housing and lists enacting an amendment in its proposed solutions. Neither Arlington Heights nor Skokie lists discrimination against housing choice voucher holders as an impediment to fair housing, although they do not explain why it is not a factor that contributes to the lack of affordable housing identified in those communities. Also, education and outreach and enforcement in Chicago and Cook County needs to be increased so that both landlords and tenants know the law and follow it.

Wealth discrimination and discrimination against housing voucher holders is closely aligned with the problems of persons who are homeless. Homeless persons are not a protected class and the problem of homelessness is more frequently discussed in relationship to affordable rather than fair housing. Nonetheless, those who are homeless are frequently persons in one or more of the protected classes and their plight directly effects segregation and the racial makeup of our communities. Veterans are overrepresented in the homeless population. They represent just 9% of the total U.S. population, but 13% of the total homeless population. HOUSING SPOTLIGHT: AMERICA'S AFFORDABLE HOUSING SHORTAGE, AND HOW TO END IT (Feb. 28, 2013).

A. Wealth is not a suspect class under Equal Protection

Discrimination based on wealth and class is everywhere in the United States. A society that prides itself as being founded on the principle that “all men are created equal” and “that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness,” seems all too often to be oblivious that poverty and class keep men unequal and render them unable to exercise their “unalienable rights.” Our political rhetoric is focused on equality of opportunity while failing to recognize that poverty cuts off that

opportunity to countless children born in the United States. As a result, we are becoming a nation ever more divided by wealth and class.

The famous footnote 4 in *United States v. Carolene Products Co.*, 304 U.S. 144 (1938), raised the question “whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities” requires special judicial protection. The United States Supreme Court has generally answered that question in the affirmative when distinctions are made on the basis of race, *Loving v. Virginia*, 388 U.S. 1 (1967), national origin, *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), sex, *Craig v. Boren*, 429 U.S. 190 (1976), citizenship, *Graham v. Richardson*, 403 U.S. 365 (1971), or illegitimacy. *Clark v. Jeter*, 486 U.S. (1988). On the other hand, the Court has determined that age distinctions are not presumptively unconstitutional, *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307 (1976), and that distinctions based on physical or mental disability are not suspect because persons with disabilities are not easily definable and are not without political power. *City of Cleburne v. Cleburne Living Center*, 473 U.S. (1985) (nonetheless the Court found that discrimination against a group home for the mentally retarded was irrational and violated equal protection).

In determining what classifications are subject to special judicial scrutiny the courts will generally ask if the class is saddled with disabilities, or has been subjected to a history of purposeful discrimination, or is relegated to a position of political powerlessness. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). Wealth and class would seem to fit within the stated criteria, but the Supreme Court has held to the contrary in a number of cases. *Dandridge v. Williams*, 397 U.S. 471 (1970) (welfare benefits); *Harris v. McRae*, 448 U.S. 297 (1980) (funding for abortions); *San Antonio Independent School District v. Rodriguez*, 411

U.S. 1 (1973) (education). Where the wealth classification affects a poor person's equal access to the right to vote, *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966), or to the courts, *Douglas v. California*, 372 U.S. 353 (1973), or to travel, *Shapiro v. Thompson*, 394 U.S. 618 (1969), the Supreme Court has struck down the restriction on the ground that the case implicates a "fundamental right."

The Supreme Court has not been generous in recognizing a fundamental right to housing. In *James v. Valtierra*, 402 U.S. 137, 142-43 (1971), a California constitutional provision requiring a local referendum prior to the construction of any low income housing in a municipality was upheld by the Supreme Court. The Court found that the referendum requirement drew no distinctions based on race or other protected status:

The people of California have decided by their own vote to require referendum approval of low-rent housing projects. This procedure ensures that all the people of a community will have a voice in a decision which may lead to large expenditures of local government funds for increased public services and to lower tax revenues. It gives them a voice in decisions that will affect the future development of their own community. This procedure for democratic decision-making does not violate the constitutional command that no State shall deny to any person 'the equal protection of the laws.'

Justices Marshall, Brennan, and Blackmun dissented on the ground that the California amendment created a "classification on the basis of poverty – a suspect classification which demands exacting judicial scrutiny." 402 U.S. at 145.

Similarly, in *Lindsey v. Normet*, 405 U.S. 56, 70 (1972), month-to-month tenants sought a declaratory judgment that the Oregon Forcible Entry and Wrongful Detainer Statute was unconstitutional on its face under due process and that its double-bond prerequisite for appeals

violated equal protection. The Supreme Court held broadly that: “The statute potentially applies to all tenants, rich and poor, commercial and noncommercial; it cannot be faulted for over-exclusiveness or under-exclusiveness.”

The Court stated that:

“We do not denigrate the importance of decent, safe, and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality, or any recognition of the right of a tenant to occupy the real property of his landlord beyond the term of his lease without the payment of rent or otherwise contrary to the terms of the relevant agreement. Absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships are legislative, not judicial, functions. Nor should we forget that the Constitution expressly protects against confiscation of private property or the income therefrom. (405 U.S. at 74).

The Court held that the law did not violate due process but did find that the double bond prerequisite violated equal protection because it arbitrarily discriminated against tenants seeking access to an appeal.

Thus, a law that is purposely targeted at poor persons or directly impacts upon poor persons is not unconstitutional. An advantage of not recognizing poor persons as a suspect class is that affirmative action programs can be directly crafted to benefit poor persons without incurring the rigid scrutiny reserved for those based on race or sex, under the Court’s current jurisprudence. But this approach has a price. Laws that either explicitly or by impact keep poor or moderate income persons out of a particular neighborhood are not deemed to be suspect under

an equal protection analysis. *Warth v. Seldin*, 422 U.S. 490 (1975); *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977), and *City of Cuyahoga Falls v. Buckeye Community Hope Foundation*, 538 U.S. 188 (2003). Consequently, the Supreme Court has empowered municipal officials to enact laws and regulations that exclude low and moderate income housing and has implicitly sanctioned NIMBY (not in my backyard) attitudes.

B. Although discrimination on the basis of wealth may impact one of the protected classes in the Fair Housing Act, few cases that have raised this issue have been successful

The Fair Housing Act itself does not make wealth a protected class; nonetheless, discrimination based on wealth may have a discriminatory impact upon one of the protected classes in the Fair Housing Act. Most of the cases raising this issue have been municipal zoning decisions that have been found to exclude protected classes from living in the community. *See, Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977), *cert. denied*, 98 S.Ct. 754 (1978); *Southend Neighborhood Improvement Association v. County of St. Clair*, 743 F.2d 1207 (7th Cir. 1990).

The courts have not generally been aggressive in finding a violation on this theory in cases of private discrimination. For example in *Boyd v. Lefrak Organization*, 509 F.2d 1110 (2d Cir.), *cert. denied*, 96 S. Ct. 197 (1975), the Court of Appeals upheld a landlord's rule that required tenants to have a weekly net income equal to at least 90 percent of their monthly rent or to furnish a cosigner or guarantor who met even stricter standards. The plaintiffs had argued that the rule had a disparate impact on welfare recipients, of whom 77 percent were either black or Puerto Rican.

The Court of Appeals for the Seventh Circuit has been very restrictive in interpreting the Fair Housing Act's reasonable accommodations provisions for persons with disabilities and has

held that a reasonable accommodation does not have to be given if the accommodation is based on the fact that the person could not afford the unit. In *Hemisphere Building Co., v. Village of Richton Park*, 171 F.3d 437 (7th Cir. 1999), the Court refused a builder's request to waive its density requirements to accommodate multifamily housing for persons with disabilities. The Court rejected an argument that the waiver would make the housing more affordable for persons with disabilities. The Court held that persons with disabilities were not injured because of their handicap but because they had limited money to spend on housing.

Similarly, in *United States v. Chicago Heights*, 161 F. Supp.2d 819, 835 (N.D.Ill. 2001), the Court of Appeals for the Second Circuit held that the duty of reasonable accommodation is limited to rules, policies, practices, or services that hurt handicapped persons *by reason of their handicap*, rather than by virtue of what they have in common with other people, such as a limited amount of money to spend on housing. In this case, the Court found that the City's spacing ordinance hurt persons by reason of their handicap. *See also, Riggs v. Howard*, 234 F.3d 1273 (7th Cir. 2000); *Wisconsin Community Services Inc. v. City of Milwaukee*, 465 F.3d 737, 754 (7th Cir. 2006).

In *Salute v. Stratford Greens Gardens Apartments*, 136 F.3d 293 (2d Cir. 1998), the Court of Appeals for the Second Circuit held that a landlord's refusal to accept section 8 vouchers did not violate federal law and did not have an illegal disparate impact on persons with disabilities. However, in *Graoch Associates #33, L.P. v. Louisville/Jefferson County Metro Human Relations Commission*, 508 F.3d 366 (6th Cir. 2007), a landlord brought a declaratory judgment action alleging that withdrawal from the section 8 program did not in and of itself establish a *prima facie* case of racial discrimination under the Fair Housing Act. The Court of

Appeals held that the landlord could be liable under a disparate impact standard and rejected the categorical exemption adopted in *Salute*.

The Court of Appeals for the Ninth Circuit has held that a housing provider may be required to accommodate a person with a disability by allowing a financially qualified co-signer on a lease when the disabled tenant had insufficient income to qualify for the unit. *Giebeler v. M&B Associates*, 343 F.3d 1143 (9th Cir. 2003). Similarly, it has been held that a housing provider must waive a guest fee for a health care worker to stay in the unit. *United States v. California Mobile Home Park Management Co.*, 29 F.3d 1413 (9th Cir. 1994).

C. The United States Housing Act specifically permits discrimination based on wealth

The United States Housing Act allows housing authorities to take wealth into consideration in applying an income-mix standard. The Act provides:

Every contract for contributions shall provide that –

....

(4) the public housing agency shall comply with such procedures and requirements as the Secretary may prescribe to assure that sound management practices will be followed in the operation of the project, including requirements pertaining to –

(A) the establishment, after public notice and an opportunity for public comment, of a written system of preferences for admission to public housing, if any, that is not inconsistent with comprehensive housing affordability strategy under title I of the Cranston-Gonzalez National Affordable Housing Act. 42 U.S.C. § 12701 et seq.

In *Paris v. Department of HUD*, 843 F.2d 561,563 (1st Cir. 1988), the Court of Appeals upheld a tenant selection that allowed higher-income families to skip ahead of “very low-income” families on a public housing waiting list. In *Price v. Pierce*, 823 F.2d 1114 (7th Cir. 1987), *cert. denied*, 108 S.Ct. 1222 (1988), the Court of Appeals for the Seventh Circuit held that the rights of prospective low-income tenants in section 8 housing were not violated when a private developer and the Illinois Housing Development Authority reduced the percentage of apartments that would be available to low-income tenants in a rent-subsidized project.

D. Wealth or income discrimination protections in state and local fair housing ordinance

The Illinois Housing Authorities Act authorized local communities to create housing authorities to “engage in low-rent housing and slum clearance projects.” 310 ILCS 10/2. The housing authority is required to rent to persons “only at rentals within the financial reach of persons who lack the amount of income which it determines . . . to be necessary in order to obtain safe, sanitary and uncongested dwelling accommodations within the area of operation of the Authority and to provide an adequate standard of living.” 310 ILCS 10-/25(b). This section has been held not to create a private right of action. *Cabrini-Green Local Advisory Council v. Chicago Housing Authority*, 1997 WL 31002 (N.D. Ill. 1997).

E. The *Gautreaux* case and the demolition of public housing in Chicago and their effect on segregation

The *Gautreaux* litigation and the subsequent demolition of many public housing projects in Chicago have had a profound effect on segregation in the City. The *Gautreaux* litigation was commenced to remedy the site-selection and tenant-placement policies pursued for many years by the Chicago Housing Authority with the acquiescence of HUD that concentrated public

housing along racial lines in the City. The *Gautreaux* litigation was extensive and showed a history of purposeful segregation. See, e.g., *Gatreaux v. Chicago Housing Authority*, 265 F. Supp. 582 (N.D. Ill. 1967); *Gautreaux v. Chicago Housing Authority*, 296 F. Supp. 907 (N.D. Ill. 1969); *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736 (N.D. Ill. 1969); *Gautreaux v. Chicago Housing Authority*, 436 F.2d 306 (7th Cir. 1970) *cert. denied*, 91 S.Ct. 1378 (1971); *Gautreaux v. Romney*, 448 F.2d 731 (7th Cir. 1971). After finding a violation, the Court struggled over imposing a remedy. See, *Gautreaux v. Pierce*, 690 F.2d 616 (7th Cir. 1982).

The eventual consent decree in *Gautreaux* provided for new construction in areas of higher white populations. See, *Gautreaux v. Landrieu*, 523 F. Supp. 665, 672-683 (N.D. Ill. 1981). However, new construction was never accomplished because Washington, D.C's and the CHA's funding priorities changed. Instead, a consent decree with HUD provided that minority residents of public housing would be moved to available private housing in white areas of the City and suburbs. See, Rubinowitz, *Metropolitan Public Housing Desegregation Remedies: Chicago's Privatization Program*, 12 N.ILL.U.L.REV. 589 (1992). This program became the model for the housing choice voucher program.

Later when the Chicago Housing Authority decided that many of its high rise projects were no longer habitable, the *Gautreaux* program provided the model to resettle thousands of public housing tenants in the City and suburbs. The effect of the *Gautreaux* program was generally successful. James Rosenbaum studied the *Gautreaux* Project, which led to the federal Moving to Opportunity program, where 7,000 black families on welfare in the 1990s were given a chance to move to either suburban or urban locations. Rosenbaum, "Changing the Geography of Opportunity by Expanding Residential Choice: Lessons from the Gautreaux Program," HOUSING POLICY DEBATE (Fannie Mae 1996), p. 231. His study showed that the families

who moved to the suburbs improved greatly. Many were able to become financially independent and their children were more likely to graduate from high school and go on to college. Their urban counterparts were more likely to remain on welfare and their children become dropouts. Placement in the program was random and only a small number of public housing residents were able to move to the suburbs, largely to prevent white flight and panic.

The effects of the teardown program are more difficult to measure and the anecdotal evidence does not look positive. Some public housing tenants were able to emulate the residents who moved under the *Gautreaux* program, but many were given housing choice vouchers and were required to find their own housing. The only housing they could find was in overcrowded, segregated areas of the City. ARE WE HOME YET? CREATING REAL CHOICE FOR HOUSING CHOICE VOUCHER FAMILIES IN CHICAGO (IHARP Report 2010). <http://www.uic.edu-cupp/voorheesctr/>. The City itself recognizes the negative effect the teardown program had on residents. The City links the increase of Source of Income complaint filings with the Chicago Commission on Human Relations to the teardown program.

“This increase in filings is reflective of the decrease in the level of project-based subsidized housing available. As voucher holders increasingly turn to new communities in search of safe and quality housing, many are turned away by landlords who will not accept the vouchers. As a result, more voucher holders are seeking redress through the Commission. Fair Housing advocates also remain concerned about the level of ongoing discrimination against voucher holders, defeating the goals of the voucher program to offer housing opportunities to low income people in all parts of Chicago. This too results in more complaints being referred to the Commission.”

2012 COMPREHENSIVE ANNUAL PERFORMANCE AND EVALUATION REPORT (City of Chicago 2012), p. 6.

Some of the reasons for this failure lie in the housing choice voucher program itself. The long waiting lists, the limited time one is given to search for a unit that will take a voucher, and the limited knowledge low-poverty persons have about the nature of the housing market contribute to lack of mobility of housing voucher holders. *See*, DeLuca, Garboden, & Roseblatt, “Why Don’t Vouchers Do a Better Job of Deconcentrating Poverty? Insights from Fieldwork with Poor Families,” 21 *POVERTY & RACE* 1 (September/October 2012). Also, important in deterring long-distance moves is “[t]he time and effort required to build new social networks and [to] gain access to existing social resources in far-flung destinations.” Sampson, *GREAT AMERICAN CITY – CHICAGO AND THE ENDURING NEIGHBORHOOD EFFECT* (2012), p. 326.

One is left to speculate about how much of the violence being experienced in Chicago’s south and west side neighborhoods today is attributable to the teardown program and the lack of counseling and assistance displaced public housing tenants have received.

F. *Mount Laurel* and the Illinois Affordable Housing Planning and Appeal Act

There is a strong connection between the duty to affirmatively further fair housing and the requirement that municipalities not exclude affordable housing. However, unless there is purposeful discrimination or an unjustifiable disparate impact on a protected class, actions by local governments to exclude affordable housing do not violate the Fair Housing Act or similar state and local laws.

Beginning in 1975, New Jersey has experimented with requiring local governments to assume their fair share of affordable housing. The New Jersey experience counsels caution when

courts attempt a long-range plan without strong local support. In *South Burlington County NAACP v. Township of Mount Laurel*, 67 N.J. 151, 179, 336 A.2d 713, 728 (1975), the Supreme Court of New Jersey held that a municipality could not enact restrictive land use policies that make it physically or economically impossible for low income housing to be built within its limits. The Court held such restrictions to violate the New Jersey Constitution regardless of the intent of the municipality. In so holding, the Court recognized that “there cannot be the slightest doubt that shelter along with food, are the most basic human needs.” 336 A.2d at 727.

Little progress was made under the initial decision. In 1983, the New Jersey Supreme Court reframed and expanded the holding. In *South Burlington County NAACP v. Township of Mount Laurel*, 92 N.J. 158, 456 A.2d 390 (1983), the Court held that all municipalities have a positive duty to provide a realistic opportunity for the construction of their numerical fair share of the region’s lower income housing need as determined by the state development guide plan. The opinion specified precisely how this objective is to be accomplished and the role the courts should play in effecting this objective.

The Fair Housing Code, passed in 1985, established a Council on Affordable Housing (COAH). §52:27D-301-20. The Act allowed suburban areas to transfer half of their housing obligation to a city, which would receive payment to help it build low-income housing there rather than in the suburbs. The Act instituted comprehensive state-wide planning and charged the Council with determining the need for lower-income housing, the regional proportion of that need, and the standards for allocating to each community its fair share. The Act transferred the determination of whether the *Mount Laurel* standards were satisfied from the courts to the Council. The constitutionality of the Act was upheld by the New Jersey Supreme Court in *Hills Development Co., v. Bernards*, 103 N.J. 1, 510 A.2d 621 (1986).

The legislation was not entirely successful in transferring enforcement from the courts to the Council. For instance, in *Southport Development Inc. v. Township of Wall*, 709 A.2d 226 (1998), local builders challenged the amount that they were assessed by the Township because they did not meet the requirement to provide for low and moderate income housing. In *Holmdel Builders Ass'n v. Township of Holmdel*, 583 A.2d 277 (1990), the Supreme Court had held that a municipality could enact mandatory development fee ordinances but that such ordinances had to be approved by the COAH. The builders in Wall Township argued that the local ordinance required a \$10,000-15,000 payment for each unit not built, which to their estimation amounted to approximately \$60,000 to 90,000. However, Wall Township argued that the proper interpretation of the ordinance required builders not meeting the requirement to pay \$10,000 per unit in any “project” that did not include an adequate number of units for low to moderate income applicants, which in this case totaled \$480,000. The Court held that the Township had the authority to require the larger payment

Also, the Builder’s remedy created in *Mt. Laurel* allowed builders who wanted to provide substantial affordable housing (20%) to bypass the local government if there was no clear plan and ask the court to approve building plans. “While few builders’ remedies were ever actually awarded by the courts, the threat was more widely used by builders to compel towns to grant approvals and make unwanted zoning changes for a variety of projects, with or without affordable housing.” Mallach, “The Betrayal of Mt. Laurel,” National Housing Institute, March/April 2004 (<http://www.shelterforce.com/online/issues/134/mtlaurel.html>). Developers have used this remedy as a way to force municipalities without plans certified by the COAH into approving projects with few affordable housing units to avoid legal action. Leone, “Promoting the General Welfare: After Nearly Thirty Years of Influence, Has the Mount Laurel Doctrine

Changed the Way New Jersey Citizens Live?” 3 GEO. J.L. & PUBLIC POLICY 295, 306 (2005).

In 2002, three cases were decided that continued to work through the application of new polices and enforcing ordinances in the face of community opposition. In *Toll Brothers v. Township of West Windsor*, 803 A.2d 53 (N.J. 2002), the New Jersey Supreme Court reinforced the importance of the *Mt. Laurel* goals. A developer had brought a case against the Township challenging zoning provisions that promoted multi-family housing in a community where studies showed that there was a market demand for small, affordable single-family units. The developer claimed that in addition to the zoning regulations, there were unnecessary costs associated with development that created obstacles to the development of affordable housing. The Court found that the township’s zoning schemes did not create a “realistic opportunity” for building affordable housing and gave the plaintiff a builder’s remedy, which resulted in approval of construction plans for a 15% set aside out of 400 single family units, 635 multi-family units and 130 townhouses.

In *Bi-County Dev., Inc. v. Borough of High Bridge*, 805 A.2d 433 (N.J. 2002), a developer paid the development fees imposed in lieu of building affordable housing units. The developer then requested access to a neighboring municipality’s sewer for the development’s use to avoid costs estimated at \$600,000, claiming he should get the same benefits as buildings of affordable housing. The municipality refused the access. The Supreme Court ruled in favor of the municipality. The Court concluded that access to another town’s infrastructure was a privilege reserved for those developers actively addressing the affordable housing problem and could be denied this developer who bypassed the affordable housing requirement.

The third case, *Fair Share Housing Center v. Township of Cherry Hill*, 802 A.2d 512 (N.J. 2002), was initiated while the township was already in the midst of heavy litigation involving affordable housing issues. The issue concerned fees paid in place of providing affordable housing in a township without a COAH certified housing plan. The state Supreme Court looked at the lack of an affordable housing plan and decided that fees could not be collected where no plan was in place. The Court also decided that the proposed building site be including in the township's zoning plan for fair share numbers, i.e., the number of affordable housing units required based on the zoning plan. The fact that township had not met the Mt. Laurel obligations in the years prior (1987 – 1999) to the litigation supported the court's decision to disallow the builders' payment to the municipality in place of providing affordable housing.

The Council on Affordable Housing itself has been subject to political pressure, and progress under *Mt. Laurel* has been spotty largely because of political and community opposition or foot-dragging. 3 GEORGETOWN J.LAW & PUBLIC POLICY, *supra*, at 306-7. As a result, some have cautioned that “The history of judicial segregation remedies in the housing context gives reason to be suspicious of a court's ability to have a positive impact in this area.” Weiss, “*Grutter*, Community, and Democracy: The Case for Race-Conscious Remedies in Residential Segregation Suits,” 107 COLUMBIA. L. REV. 1195, 1220-21 (2007). Furthermore, *Mt. Laurel* was focused on socio-economic segregation, rather than race. 3 GEORGETOWN J. LAW & PUBLIC POLICY, *infra* at 308. While *Mount Laurel* resulted in more affordable housing units constructed, its impact on segregation is more questionable. One critic has stated that “The vast remedy the cases produced was based on principles of fair share housing; while it still continues to affect communities today, the remedy has brought about little racial integration with

subsidized housing benefits going mainly to whites meeting the income requirements.” 107
COLUMBIA L. REV., *supra*, at. 1221.

The *Mount Laurel* experience shows that despite the best of intentions, courts working alone accomplish little without community support. In addition, because of changes in judicial personnel, the commitment to provide a long-term remedy ebbs. Today, given the reluctance of courts to engage in such wide-spread relief, narrowly defined remedies with immediate goals may in the long-run prove more beneficial than long-term remedies to restructure society.

The Illinois Affordable Planning and Appeal Act (AHPAA), 310 ILCS 67/1 et seq., adopted in 2003, borrows from New Jersey and encourages local governments to incorporate affordable housing into their communities. It has not had a significant impact on segregation. The Act contains specific legislative findings that there is a shortage of affordable housing that is accessible, safe, and sanitary in the State. 310 ILCS 67/5(1). The Act further allows affordable housing developers, who believe that they have been unfairly treated, to seek relief from local ordinances and regulations. The Act also inhibits the construction of affordable housing through an appeal process to a newly established Housing Appeals Board.

Local governments are exempt from the Act if at least 10% of their total year-round housing units are affordable. A list of both exempt and non-exempt local governments is published annually by the Illinois Housing Development Authority. The 2012 report of non-exempt local governments lists 49 municipalities with most of them in Cook, Lake, and DuPage Counties; 3 in Kane County, and 1 in Will County. Non-exempt local governments must adopt an affordable housing plan. Local governments may individually or jointly create or participate in a “housing trust fund” for the purpose of supporting affordable housing.

The AHPAA is structurally weak, and its effectiveness is untested. The economic crisis has diminished the number of developments since the Act became effective. Like the New Jersey plan, its only focus is affordable housing and not fair housing. If the municipalities covered by the Act are not required to affirmatively market to protected groups – even if low income housing is built, the results will inevitably be similar to those experienced in New Jersey with most of the housing going to whites who meet the income requirements.

In addition to its failure to address race and national origin discrimination, the AHPAA does not further the development of housing for low income persons with disabilities. Indeed as demonstrated by the hostility recently exhibited against housing for persons with disabilities in such communities as Arlington Heights and Wheeling, housing developments for low income persons with disabilities face formidable obstacles, including NIMBY attitudes. Compare *Nikolich v. Village of Arlington Heights*, 870 F.Supp.2d 556 (N.D.Ill. 2012), with *Daveri Development Co. v. Village of Wheeling*, 2013 WL 1182847 (N.D.Ill. 2013). See, “Rejected housing project still divides Wheeling,” CHICAGO TRIBUNE (April 18, 2013) (There is speculation that the village president was unseated in the November 2012 elections in part by residents’ opposition to the proposed housing development for people with mental disabilities that she supported).

Furthermore, attacking the denial of housing for low income persons with disabilities as a failure to accommodate will face difficulties in the federal courts in Illinois because the plaintiffs must show that the denial hurt them “*by reason of their handicap*, rather than . . . by virtue of what they have in common with other people, such as a limited amount of money to spend on housing.” *Nikolich v. Arlington Heights*, 870 F.Supp.2d 556, 564 (N.D.Ill. 2012).

G. The City of Chicago's and Cook County's source of income ordinances

The major federal program that assists low income persons with their housing needs is the housing choice voucher program. The federal law does not make it mandatory for housing providers to participate in this program and the federal and state fair housing laws do not make discrimination against housing choice voucher holders itself illegal. Housing vouchers were the primary assistance given to public housing tenants displaced by the teardown of public housing in the City. Many of these former CHA residents have ended up clustered in poor and/or segregated communities elsewhere in the City. ARE WE HOME YET? CREATING REAL CHOICE FOR HOUSING CHOICE VOUCHER FAMILIES IN CHICAGO (IHARP Report 2010). <http://www.uic.edu-cupp/voorheesctr/>. This has only added to the problem of segregation in Chicago.

In conducting this study, the Center was unable to uncover any firm statistics on how many landlords turn persons down in the Chicago metropolitan area because they are housing choice voucher holders. The City of Chicago protects “source of income,” which includes housing choice vouchers, and complaints for “source of income” make up the greatest part of the Human Rights Commission’s caseload. Discrimination by landlords against housing choice voucher holders was consistently voiced as a major concern when segregation was discussed with residents of the Chicago metropolitan area during the course of this study.

Complaint-based testing conducted by The John Marshall Law School Fair Housing Legal Clinic also supports the supposition that discrimination against housing choice voucher holders is widespread and blatant. In one of the few reported systemic testing programs undertaken in 2009 to determine the extent of voucher discrimination, the Greater New Orleans Fair Housing Center found that out of 100 telephone tests, landlords in New Orleans denied

housing voucher holder the opportunity to rent 82% of the time. HOUSING CHOICE IN CRISIS: AN AUDIT REPORT ON DISCRIMINATION AGAINST HOUSING CHOICE VOUCHER HOLDERS IN THE GREATER NEW ORLEANS RENTAL HOUSING MARKET. A contract was signed between the CHA and the Chicago Lawyer's Committee for Civil Rights under Law, Inc. (the "Committee") in 2010 for the Committee to conduct testing to disclose if discrimination against housing choice voucher holders exists, but the results of that study have not been published. *See* CHICAGO'S PARTNERSHIP FOR EQUAL JUSTICE (Chicago Lawyers' Committee for Civil Rights Under Law 2010-2011).

The City of Chicago's Fair Housing Ordinance prohibits discrimination on "source of income." Chicago Municipal Code, §5-08-030 (1999). The City Code describes "source of income" as "the lawful manner by which an individual supports himself and his or her dependents." §2-160-020. The ordinance does not specifically refer to housing choice vouchers. However, the Chicago Commission on Human Relations has consistently interpreted "source of income" to include housing choice vouchers.

In *Godinez v. Chicago Commission on Human Relations*, 815 N.E.2d 822 (Ill. App. 2003), the Commission's interpretation of the ordinance was upheld by the Illinois Appellate Court. The Court found that it is logical and reasonable to consider section 8 vouchers part of the lawful manner for one's support. The Court approved the Commission's distinction between landlords who object to section 8 tenants and those who object to the burdens of compliance with section 8 requirements. The Court agreed that landlords may be excused from compliance with the section 8 program if they can show that accepting section 8 tenants would impose a substantial, as opposed to a *de minimis*, burden.

The *Godinez* decision is in accordance with the precedent-setting decisions in *Commission on Human Rights & Opportunities v. Sullivan Associates*, 739 A.2d 238 (Conn. 1999) and *Franklin Tower One, LLC v. N.M.*, 157 N.J. 602, 725 A.2d 1104 (1999). Other leading cases that have upheld source of income laws prohibiting discrimination against voucher holders include: *DiLiddo v. Oxford Street Realty*, 876 N.E.2d 421 (Mass. 2007) and *Montgomery County v. Glenmont Hills Association*, 936 A.2d 325 (Md. 2007). A survey conducted in April 2001 by the Equal Rights Center in Washington, D.C. found that 13 states and 30 jurisdictions outlaw discrimination against housing voucher recipients. Federal regulations expressly state that these laws are not preempted by federal law. 24 CFR §982.53(d).

Today, source of income complaints constitute the largest number of fair housing cases filed before the City of Chicago Human Relations Commission. Out of 97 housing complaints filed before the Commission in 2012, 70, or 72%, alleged discrimination based on source of income. The next highest category was race at 27%.⁴ In its annual report, the Commission reported that:

“Discrimination against low income households who receive these federal subsidies (administered in Chicago through the Chicago Housing Authority) thus continues as a significant fair housing issue. The Fair Housing Ordinance offers the only available legal remedy for this type of discrimination in Chicago.”

2012 ACTIVITY CONCERNING DISCRIMINATION CASES p. 7 (City of Chicago Commission on Human Relations, Adjudication Division).

⁴ Part of the reason for the relatively high number of source of income complaints as opposed to racial discrimination complaints is no doubt because the Chicago Commission is the only forum available to persons who want to complain on the basis of source of income. Persons who have racial complaints have a wide variety of forums to pursue complaints, include HUD, the Illinois Department of Human Rights and civil actions in state or federal court.

A survey of the cases handled in the last three years by The John Marshall Law School Fair Housing Legal Clinic, which represents clients throughout the Chicago metropolitan area in fair housing cases involving all protected classes, shows that 30% of its clients allege source of income discrimination. All but one of these cases involved an African American or Latino.

According to the Illinois Assisted Housing Action Research Project, approximately 75% of voucher holders are African American and 6% are Latino, and 7 out of 10 voucher holder families in Illinois are extremely low-income. Nearly half of the voucher households include a household member with a disability (49%). MOVING OR MOVING UP? UNDERSTANDING RESIDENTIAL MOBILITY FOR HOUSING CHOICE VOUCHER FAMILIES IN ILLINOIS (2012). http://www.housingactionil.org/downloads/IHARP_State_report_JS_Final_4-6-11.pdf.

The Chicago Housing Authority has begun several programs to assist housing choice voucher holders assert their rights against housing providers that discriminate on the basis of source of income in violation of the Chicago ordinance:

- The Chicago Housing Authority is developing a program to train leasing agents on how the housing choice voucher Program works. The intent of the program is to remove barriers to owner participation and expedite the process for owners in designated Opportunity Areas. Training material will include, but is not limited to; inspections, CHA's tenant screening, rent determination and exception rents.
- The CHA includes information about the Chicago ordinance when it briefs new housing voucher holders about the program.
- The CHA may extend the time voucher holders can exercise a voucher if the holders can provide documentation that they have not been able to find a unit because of their voucher status.

- The CHA also has assisted the Chicago Commission on Human Rights in evaluating whether the rent charged by a landlord met the criteria of the voucher program in order to prevent the dismissal of complaints on the ground that the rents charged by the landlord were in excess of what could be rented with a housing choice voucher.

On May 8, 2013, the Cook County Board of Commissioners passed an ordinance to include housing choice voucher holders in its definition of “source of income” in the County’s fair housing ordinance. Formerly, the County ordinance prohibited source of income discrimination but expressly excluded housing choice vouchers from the definition. This was recognized by the County as a serious impediment to fair housing in its most recent Analysis of Impediments. The Analysis stated that it will be politically unpopular for the County to amend its ordinance, but that it should be done. To its credit, the County acted as recommended in its impediments plan. Now the County faces the formidable task of educating housing providers and consumers about the law and seeing that the law is vigorously enforced.

The Village of Oak Park has also identified the enactment of a source of income ordinance as a remedy to fair housing impediments in that community, but it has not acted on the recommendation.

H. Chicago’s recent attempts to close cubicle hotels and the impact on homeless persons

The shortage of affordable housing that is decent, safe and sanitary is a problem for every community. Many of today’s homeless are members of protected classes whether based on racial or national origin or handicap, often persons with a mental disability, or LGBT youth of color. More and more one is struck by the number of homeless individuals who are part of our urban landscape, which makes our cities look like they belong in a third world country. NIMBYism plays a role whenever housing for the homeless is proposed. But sometimes even

the most well intentioned advocates who claim to be improving housing standards contribute to the problem. This has been demonstrated in Chicago when members of the City Council moved this year to pass a city ordinance to close what have been known as cubicle hotels.

Cubicle hotels would appear to be something out of the past. They consist literally of small cubicles that contain a bed and perhaps some sort of chest or cabinet to place personal possessions. They are individually occupied, but the walls do not extend to the ceiling and most cubicles do not have windows. Rather light and air is circulated through the air above the partitions between units. The residents share bathroom facilities. Generally the cubicles are rented out on a monthly basis at rents far below the prevailing standard for individual apartment units. Most often they are occupied by men, the majority of whom are African American, and persons with disabilities. Cubicle hotels would not be the housing of first choice for most persons, but for those who cannot afford anything better they are the last link between housing and homelessness. Some of the residents of these hotels have lived there for decades and have nowhere else to move.

In 2012, a number of Chicago aldermen proposed an ordinance to close these hotels, citing the fact that they lack privacy and do not meet modern living standards. These aldermen may be correct that these living facilities are not ideal and would not be the housing of first choice for anyone. However, the ordinance did not propose to increase the living or safety standards in these buildings, rather it sought on its face to outlaw these hotels, leaving almost 100 persons homeless.

The ordinance was opposed by the occupants of these hotels and by advocates for the homeless. Their objection was that before the City moves to close these facilities, it must provide other facilities at an affordable price. Also, because some of the occupants of these cubicles hold

minimum wage jobs within walking distance of the hotels, the replacement housing must also be accessible. The ordinance never made it to committee hearings, but other measures to limit or close homeless shelters in the City are being discussed. These measures show that constant vigilance is required to protect this vulnerable segment of our population, especially when the shelters are located in or near prime real estate or in areas that are hoping to “gentrify.”

I. Proposal for Action

1. Legislative changes

The City of Chicago has led the way in Illinois in prohibiting discrimination against housing choice voucher holders. Now it is joined by Cook County.

It is shameful that the federal government, which established the housing choice voucher program and funds it, does not prohibit landlords from discriminating against housing choice voucher holders. By its inaction, the federal government is countenancing and furthering discrimination and segregation against the voucher holders as such, but also discrimination against all the classes protected by the Fair Housing Act as persons in these classes are most impacted by discrimination against housing voucher holders. Congress should immediately amend the Fair Housing Act to prohibit discrimination on source of income and explicitly include housing choice voucher holders in the definition of source of income.

Illinois should likewise amend the Illinois Human Relations Act to prohibit source of income discrimination and define source of income to include housing choice voucher holders. Other municipalities, including the Village of Oak Park, should add source of income to their local human rights ordinances.

Discrimination against housing choice voucher holders prevents persons, many of whom are racial or ethnic minorities or disabled, from living in the communities of their choice and

instead has the effect of clustering them in communities that are already poor and segregated, thus defeating the formal description of “housing choice” in the voucher itself.

Illinois should amend the Illinois Affordable Planning and Appeal Act by specifically requiring that any plan specify procedures and substantive standards to demonstrate how it will affirmatively further fair housing in that community. It should be explicit that local communities accommodate housing for low income persons with disabilities. Without this protection, it is unlikely that persons in protected classes that often need low income housing the most will benefit from its construction.

2. Regulatory and policy changes

The Housing Appeals Board, established by the Illinois Affordable Planning and Appeal Act (AHPAA), 310 ILCS 67/1 et seq., adopted in 2003, should interpret the Act consistently with the Fair Housing Act to require that any plan adopted by a community should state how it will affirmatively further fair housing. Developers should be required to adopt affirmative marketing plans whenever they seek to build affordable housing in communities that lack diversity, and the Board should inquire if the development plans of local communities accommodate low income persons with disabilities. This interpretation of the Act would advance Illinois beyond the narrow focus followed by New Jersey in implementing *Mount Laurel*.

HUD should require all housing authorities to collect records of complaints by housing choice voucher holders when they are denied housing due to their status as voucher holders and to extend the time for persons to use their vouchers when they have filed a facially valid complaint against a housing provider for denying them housing because of their status as a voucher holder.

Similarly, HUD and all FHAP agencies should thoroughly review all complaints that come in alleging discrimination on an existing protected class to see if the discrimination involved a housing choice voucher. This should be noted in the allegation summary in each file. This will allow HUD, and state and local agencies, to collect and compile data on the incidents of source of income discrimination and will be useful information to support legislative and administrative changes in the program. HUD is already requiring a similar data collection procedure for cases involving sexual orientation, gender identity and gender expression, which are not presently explicitly protected under the federal Fair Housing Act. *See* MEMORANDUM FOR FHEO REGIONAL DIRECTORS from John Trasviña, Assistant Secretary for Fair Housing and Equal Opportunity (June 15, 2010).

3. Education and outreach

Education and outreach is especially important when focusing upon remedying wealth discrimination. Wealth discrimination is closely associated with NIMBYism. There is a deep fear that if poor persons, like persons who belong to racial or ethnic minorities, move into a community, it will adversely affect the property values of everyone else. Massive education efforts are needed to show that poor persons and housing voucher holders are good neighbors. Landlords must be dissuaded from embracing the stereotype that the housing choice voucher program is a burden and that tenants under that program are not as desirable as those who pay their rent out of their own earnings. Indeed, the obvious answer is that persons who depend upon their earnings may lose their income while housing vouchers are guaranteed by the government.

Chicago has led the way in prohibiting discrimination against housing choice voucher holders. The CHA has begun working with the Chicago Commission on Human Rights to effectively enforce the ordinance. The CHA is educating the Commission about the flexibility

available to landlords in setting rents in different parts of the City based on prevailing market conditions. This has assisted investigators who formerly had dismissed complaints on the ground that the rents charged by certain landlords exceeded the rent available under the voucher program.

Even though source of income makes up the largest group of complaints filed before the Chicago Commission on Human Relations, the 70 complaints filed in 2012 is only a small percentage of voucher holders who cannot find housing because of their status. In making the neighborhood presentations under this project, very few housing providers or consumers were aware that discrimination against source of income, including housing vouchers, was illegal in the City.

The Chicago Housing Authority has initiated a program of educating housing providers and voucher holders about the source of income ordinance in the City of Chicago. CHA should consider partnering with fair housing organizations to inform voucher holders of their rights. After waiting for years for a voucher, voucher holders have a limited period to find housing and it is almost impossible for them to do so in an integrated environment when they do not know their rights and are met with ready hostility from housing providers. Consequently every opportunity should be taken to inform both housing providers and consumers about the City ordinance. It is helpful that the CHA will extend the time for persons to exercise their vouchers if they provide documentation to the CHA that they have not been able to find a unit because of their status as voucher holders. HUD should make this consideration mandatory for all housing authorities.

The CHA should redesign its website to reflect that it operates in Chicago where source of income discrimination, including discrimination against housing choice voucher holders, is

illegal. The CHA website nowhere mentions the Chicago ordinance or the Chicago Commission on Human Relations. The CHA website provides information on what constitutes a program violation and how to report program non-compliance. It discusses CHA investigations and enforcement. It states what the requirements of the program are for both voucher holders and property owners. But it does not state that in the City of Chicago it is illegal for a property owner to discriminate against housing voucher holders. As part of the City's duty to further fair housing, CHA should provide a link to the Chicago Human Rights Commission and notify recipients of their right to be free from discrimination. CHA should also inform voucher holders about the other forms of discrimination protected by the federal, state, and local laws and provide links so that they can file complaints if they think their rights have been violated.

Cook County and the Cook County Housing Authority should act similarly now that the County's fair housing ordinance prohibits source of income discrimination against housing choice voucher holders.

Because poor persons are often reluctant to complain, for a variety of reasons, systemic testing should be undertaken to detect source of income discrimination and the Chicago and Cook County Commissions should recognize the standing of testers and testing organizations to bring complaints or should initiate complaints in their own names.

It would be interesting to see if landlords in predominately white communities reject housing choice voucher holders at a higher rate than landlords in more diversified or predominantly minority communities. Therefore, systemic testing should be undertaken to see if there is any correlation between the extent of racial segregation in communities and the extent to which landlords in those communities refuse to accept housing choice voucher holders.

Now that the Cook County has prohibited discrimination against housing choice voucher holders, the County, the Cook County Housing Authority, and the Cook County Commission on Human Rights must adopt a massive education and outreach program to educate housing providers and consumers about their rights and duties under the law. The Cook County Commission on Human Relations must vigorously enforce the ordinance to send a message to all housing providers in the County that this type of discrimination is unlawful and will not be tolerated.

Education and outreach should be conducted for builders, developers, and municipal officials on the relationship between fair housing and the Illinois Affordable Planning and Appeal Act (AHPAA), 310 ILCS 67/1 et seq. Similarly, education and outreach needs to be conducted for the public and for public officials about the relationship between fair housing and housing for the homeless. This is particularly important when affordable housing already exists and municipal officials want to demolish or outlaw it, as is currently the case with the cubicle hotel controversy in Chicago. Public officials need to be reminded of their duty to affirmatively further fair housing and not aggravate the problems of homelessness even when pursuing the goal of providing safe and sanitary housing for everyone.

VII. Discrimination against persons with arrest and criminal records

A significant factor contributing to the perpetuation of racial segregation in the City of Chicago is the impact of discrimination against persons with arrest and criminal records in the housing market. These may include persons with arrest records and conviction records for both misdemeanors and felonies of varying degrees. Housing has been identified as one of the “big three” barriers to the reintegration of ex-offenders in the community, the other two being jobs and health care, including treatment for substance abuse and mental health issues. Gudrais, “The Prison Problem,” HARVARD MAGAZINE (March/April 2013). Sheriff Tom Dart has identified the lack of housing outside the Cook County Jail as a primary reason why persons who are arrested for non-violent crimes are not released on electronic monitors pending trial. The Sheriff cannot release them when they have nowhere to go. <http://chicagotonight.wttw.com/2013/04/02/cook-county-jail-near-capacity>. Public housing rules exclude arrestees from subsidized housing, and private housing providers do not want them.

The federal, state and local governments should adopt limited legislation to protect arrestees and persons with criminal records who have not committed a recent or serious offense, from discrimination that cannot be substantiated by a legitimate justification. In the alternative, HUD, IDHR and local human rights agencies should adopt rules and regulations that address the impact of this discrimination on existing protected classes.

A. The impact of discrimination against persons with arrest and conviction records on segregation in the City of Chicago

One of the greatest issues facing Chicago’s capacity to properly house people recently released from incarceration is the sheer increase in Illinois’ prison population. The number of people being released in Illinois has multiplied six times from the 1970s and currently holds

steady at about 30,000 to 40,000 inmates each

year. <http://news.medill.northwestern.edu/chicago/news.aspx?id=115239>. In 2004 alone, Illinois released 39,293 state prisoners, a number that was not only the fourth highest volume in the United States, but one that represented almost a 34% increase from 2000. BUREAU OF JUSTICE STATISTICS BULLETIN: PRISON AND JAIL INMATES AT MIDYEAR 2005.

In 2012, Anthony Lowery on behalf of the “Safer Foundation,” estimated that 33,000 people were released from prison. He further estimated that of those 33,000, 50%, or 16,500, inmates came to Chicago. Another source estimates that more than 60% of the 39,293 state prisoners released in 2004 returned to Chicago. 2006 CRIME AND JUSTICE INDEX (Chicago Metropolis 2020, 2006), p. 37. Based on Anthony Lowery’s estimates, 317 prisoners per week return.

While these numbers are high, they still do not convey the totality of people who are excluded from housing because of the classification of “ex-offender.” For instance, the Housing Authority of Cook County (“HACC”) excludes families where any household member currently is engaged in, or who has engaged in certain criminal activities, within the past 10 years, or, where household members were convicted, within 10 years of release. HACC will also consider drug use or possession if it takes place within the past 5 years. **See Appendix A to this section.** The Chicago Housing Authority has similar restrictions that affect households. **See Appendix B to this section.**

There are even greater numbers of people who may be rejected by private landlords, who increasingly screen applicants through criminal background searches. The most common criminal background checks will rely on aggregating databases that mine their information from databases, often at the most affordable costs. Almost all of these searches will reveal a person’s

arrest record. While public housing agencies may take a closer look at whether an arrest resulted in a conviction, many private landlords do not. For perspective, 167,541 arrests were made in Chicago in 2010 alone. CHICAGO POLICE DEPARTMENT ANNUAL REPORT, A YEAR IN REVIEW (Bureau of Administrative Services, Research and Development Division 2010), p. 34. <https://portal.chicagopolice.org/portal/page/portal/ClearPath/News/Statistical%20Reports/Annual%20Reports/10AR.pdf>. Given the fact that most of the databases are not regularly updated, an arrest may continue to show up for years, potentially disqualifying an ever-expanding group of “ex-offenders.”

Anthony Lowery referred to ex-offender status as being “a lifelong barrier and stigma that creates a feeling of hopelessness ‘that I can never get legitimate employment.’”

Ex-offender status is also a stigma that keeps men separated from their families and from their communities. Up to about 45% of men return to different communities than the one they left prior to incarceration due to fear of recidivism or disqualifying a family member’s ability to receive public housing. LaVigne, Visher and Castro CHICAGO PRISONER’S EXPERIENCE RETURNING HOME (The Urban Institute 2004).

The complex mix of issues facing an ex-offender who seeks housing was addressed in the findings of the Urban Institute:

Landlords increasingly conduct background checks for prospective renters and avoid renting to former prisoners. However, the landlords are not worried about crime as much as they are about the person’s reliability in paying the rent, and they view ex-prisoners as a high risk. Another restriction on housing is the not-in-my-back-yard (NIMBY) mentality. Communities will sometimes actively oppose the creation of group homes or transitional housing centers out of concern for safety or property values.

http://www.icjia.state.il.us/public/pdf/Bulletins/chicago_communities.pdf.

The most dramatic description of the impact of criminal enforcement on African Americans is contained in Michele Alexander's book, *THE NEW JIM CROW* (2010).

Alexander's thesis is well summarized in her introduction:

“What is completely missed in the rare public debates today about the plight of African Americans is that a huge percentage of them are not free to move up at all. It is not just that they lack opportunity, attend poor schools, or are plagued by poverty. They are barred by law from doing so. And the major institutions with which they come into contact are designed to prevent their mobility. To put the matter starkly: The current system of control permanently locks a huge percentage of the African American community out of the mainstream society and economy. The system operates through our criminal justice institutions, but it functions more like a caste system than a system of crime control. Viewed from this perspective, the so-called underclass is better understood as an *undercaste* – a lower caste of individuals who are permanently barred by law and custom from mainstream society. Although this new system of racialized social control purports to be colorblind, it creates and maintains racial hierarchy much as earlier systems of control did. Like Jim Crow (and slavery), mass incarceration operates as a tightly networked system of laws, policies, customs, and institutions that operate collectively to ensure the subordinate status of a group defined largely by race.”

(Alexander at 13).

Alexander describes the effect of this tightly networked system of laws, policies, customs and institutions on housing:

“Housing discrimination against former felons (as well as *suspected* ‘criminals’) is perfectly legal. During Jim Crow, it was legal to deny housing on the basis of race, through restrictive covenants and other exclusionary practices. Today, discrimination against felons, criminal suspects, and their families is routine among public and private landlords alike. Rather than racially restrictive covenants, we have restrictive lease agreements, barring the new ‘undesirables.’” (Alexander at 141-2).

These policies and practices are applied not only to the ex-offenders but also to family members and persons associated with them:

“In the abstract, policies barring or evicting people who are somehow associated with criminal activity may seem like a reasonable approach to dealing with crime in public housing, particularly when crime has gotten out of control. Desperate times call for desperate measures, it is often said. The problem, however, is twofold: These vulnerable families have nowhere to go and the impact is inevitably discriminatory. People who are not poor and who are not dependent upon public assistance for housing need not fear that, if their son, daughter, caregiver, or relative is caught with some marijuana at school or shoplifts from a drugstore, they will find themselves suddenly evicted – homeless. But for countless poor people – particularly racial minorities who disproportionately rely on public assistance – that possibility looms large. As a result, many families are reluctant to allow their relatives particularly those who are recently released from prison – to stay with them, even temporarily.” (Alexander at 144).

A recent study using “testers,” examined the impact of the rise of mass incarceration on the ability of young men to secure employment in Milwaukee. Devah Pager, *MARKED* (2007). Pager concludes that:

“The results of the study provide clear evidence for the significant effect of a criminal record, with employers using the information as a screening mechanism, weeding out ex-offenders at the very start of the hiring process. As a result, ex-offenders are one-half to one-third as likely to receive initial consideration from employers as applicants without criminal records. Mere contact with the criminal justice system—in the absence of any transformative or selective effects—severely limits subsequent job prospects. The mark of a criminal record indeed represents a powerful barrier to employment.” (Pager at 144-5).

In addition to the impact on African Americans who have been involved in the criminal justice system, Pager found that racism itself defined the future of black job applicants. “Even a Black applicant *with no criminal background* fared worse [in the tests] than a white applicant with a criminal conviction.” (Pager at 146) But the impact does not stop there:

“Beyond the main effects of race, there is also some indication that Blacks with criminal records face an added disadvantage, a finding that becomes stronger and statistically significant when analyzed separately among suburban employers or those with whom testers had extensive personal contact. These results are suggestive of a ‘two strikes and you’re out’ mentality among employers, who appear to view the combination of blackness and criminal record as an indicator of serious trouble. Black men already appear to be risky prospects for employment; those with known criminal pasts, however, are officially certified bad news. Where for whites a criminal background represents one serious strike against them, for Blacks it appears to represent almost total disqualification.” (Pager at 146-7).

Pager did not conduct testing on the housing opportunities of ex-offenders – rather she focused on employment opportunities. One would expect the impact to be even greater in housing where individual prejudice is often more pronounced than in employment.

While the exact number of ex-offenders affected by policies and practices excluding them from housing is elusive, it is unmistakably large. The problem of identifying the number of ex-offenders affected is furthermore magnified by the amorphous policies used to exclude ex-offenders from both public and private housing. This amorphous class is also populated by a disproportionate number of males.

In Illinois, the composition of the prison population in 2011 was 56.7% black, 13.3% Hispanic, and 94.1% male. ILLINOIS DEPARTMENT OF CORRECTIONS, ANNUAL REPORT FY 2011, FRAMEWORK FOR THE FUTURE (Illinois Department of Corrections 2011), p.

20. <http://www2illinois.gov/idoc/reportsandstatistics/Documents/FY2011%20Annual%Report.pdf>. The percentage of persons of color and males affected by public and private housing policies excluding ex-offenders would be at-least this high.

The impact on segregation in Chicago’s South and West sides

The Chicago communities that receive the “highest impact” of reentry by recently released prisoners are concentrated on the south and west side neighborhoods of Auburn Gresham, Austin, Englewood, North Lawndale, Roseland, and Humboldt Park. Frankel & Schwarz, REENTRY MAPPING NETWORK: CHICAGO (Metro Chicago Information Center, The Urban Institute, April 2008). Anthony Lowery estimated that in the last year, about 80%, or 13,200, of the 16,500 recently released people returning to Chicago returned to these six communities.

Michael Peoples, a Housing Specialist at St. Leonard's House, which provides housing for ex-offenders, believes from his experience working with many of these men that they return to those particular communities because the landlords there are more willing to hear out the applicants' stories and consider mitigating circumstances. Peoples believes that the experience is different with third party realtors or organizations, "which have their policies set in stone with strict qualifications." He continued, "impoverished neighborhoods, like the south and west sides where the property values are down and crime is on the rise, are the areas that property owners typically have nobody to rent to and are more inclined to hear someone out and give them a chance."

Essentially, these six communities do not have the economic luxury of the more robust markets of Chicago to reject housing to people that have a criminal background. The result is the isolation of ex-offenders to neighborhoods with landlords willing to take them in. Since the ex-offenders, as a group, are disproportionately comprised of black and Hispanic males, the status of being an ex-offender begins to have a recognizable impact on the problem of racial segregation. One of the biggest factors perpetuating this effect is "blanket" ex-offender policies that tend to forbid all criminal backgrounds without providing the denied applicant an opportunity to demonstrate mitigating circumstances such as certificates of rehabilitation.

Melissa Williams, Director of the Wiley Resource Center, agreed that "blanket" lease requirements with unnecessarily long conviction restrictions (rendering housing unavailable to people who have had a conviction during a set number of years) have the "effect of isolating certain ex-offenders to areas that will take them, often leaving them no chance to get out."

Williams also believes that the number of ex-offenders who cannot expunge or seal their records in order to qualify under these blanket policies further compounds the issue of segregation.⁵

Another issue facing men returning to these communities is their inability to return to their families if their families are living in public housing, to do so would risk the eviction of their family.⁶ These men also face a waitlist for public housing, which according to Anthony Lowery is currently up to 10 years. However, even if there were no waitlist, many more would not be eligible for public housing until three years after their last conviction or justice supervision.

Bob Dougherty, the Executive Director of St. Leonard's House, said that in situations where ex-offenders are trying to avoid jeopardizing their family's public housing qualification, "they stay at St. Leonard's without moving in." While this remains a viable option for a portion of men who do not seek to jeopardize their family's housing, or who do not qualify themselves, there are still many more that cannot find housing. Dougherty also noted that of the 30,000 to 40,000 people being released each year in Illinois, the 100-125 men they take in at St. Leonard's, "is just a drop in the bucket."

Not finding housing leads to a host of other problems including homelessness and recidivism. There is a high rate of recidivism among ex-offenders who end up homeless or inadequately housed, and this only perpetuates social problems in those communities, which are

⁵ Convictions cannot be expunged, only sealed. *See*, 20 ILCS 2630/5.2/. Sealing can only be done with non-violent misdemeanors and 3, class-four felonies (such as prostitution, possession of cannabis, or possession of controlled substances). ILCS 2630/5.2(b) and (c). If a person does not fit into these categories, expungement and sealing are not an option. ILCS 2630/5.2(a)(3)(A).

⁶ The "Admissions Screening Criteria," para. 14, sets forth a list of past offenses of an applicant or household member which may disqualify an applicant from qualifying for public housing with the CHA typically requiring that no listed offenses have occurred in the prior three-years. [http://www.thecha.org/filebin/FY2011_ACOP - Final Approved - 07 19 11 - Revised 11 08 11.pdf](http://www.thecha.org/filebin/FY2011_ACOP_-_Final_Approved_-_07_19_11_-_Revised_11_08_11.pdf).

already segregated, willing to take a chance on housing them. The rate of recidivism among ex-offenders that do not find adequate housing is 66% compared to the 50% rate typical of all ex-offenders. INSIDE OUT: A PLAN TO REDUCE RECIDIVISM AND IMPROVE PUBLIC SAFETY (The Illinois State Community Safety and Reentry Working Group 2008).

Because many ex-offenders are left without adequate housing options, it makes it impossible for them to avoid the lifestyle that got them into trouble in the first place. Thus, “blanket” ex-offender restrictions – barring all ex-offenders, as a class, regardless of their individual circumstances – helps ensure that even those who are trying to stay clean will have difficulty doing so. Blanket exclusion policies also result in a disproportionate number of black and Hispanic males being segregated to a few neighborhoods on the South and West sides. But it is not clear that the blanket exclusion produces any tangible benefit for the community at large or for tenants and building safety. Rather it seems to concentrate problems in low income minority communities perpetuating the social problems in those communities.

A recent study demonstrates that clustering ex-offenders is a social disadvantage and that resources are allocated by racial status in American society. These factors are credible causes of violence in our cities. Sampson, GREAT AMERICAN CITY – CHICAGO AND THE ENDURING NEIGHBORHOOD EFFECT (2012), p. 248. The study urges focus on both the physical infrastructure and housing and the social infrastructure of communities and states that “[c]ommunity reentry programs for ex-prisoners should be added to the safety agenda, given the severe neighborhood concentration of incarceration and the known vulnerabilities of ex-prisoners, especially in the job market.” *Id.*, at 421-22.

B. Case law affecting discrimination against persons with arrest and criminal records

A violation of the Fair Housing Act can be established by showing disparate treatment or that a policy or practice is either facially discriminatory or has a disparate impact on a protected class. Ex-offenders are not a separate protected class under the Act. Therefore, a policy expressly excluding some or all ex-offenders will not be illegal under existing law unless it is unequally applied on the basis of an existing protected status. However, one can make an argument based on the disparate impact that such a policy has on existing protected classes. See, *Huntington Branch, NAACP v. Town of Huntington*, 668 F. Supp. 762 (2d Cir. 1988); *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 262, 265-66 (1977).

The Supreme Court's opinion in *HUD v. Rucker*, 535 U.S. 125 (2002), is not dispositive of the disparate impact issue under the Fair Housing Act. In *Rucker*, the Court upheld the authority of a public housing authority to evict a tenant based on the tenants' household members' or guests' use of illegal drugs in the unit, even if the tenant had no knowledge of the activity. The Court simply held that the public housing landlord was acting no differently than a private landlord who invokes a clause in a lease to which both parties have agreed and to which Congress has expressly required. The parties did not raise, and the Court did not address, any argument that the impact of this policy would violate the Fair Housing Act.

HUD has adopted the disparate impact theory in its regulations, and this regulation offers powerful support for finding that a rule or policy of either a public housing authority or of a private landlord is illegal because of its disparate impact on a protected class. 24 CFR Part 100, subpart G, §100.500.

The question is whether the policy or restriction prohibiting ex-offenders can be supported by a legally sufficient justification that is supported by evidence and is not hypothetical or speculative. §100.500 (b). An overbroad rule or policy that excludes all ex-

offenders and is not carefully tailored to include only those that pose a danger to the safety of other residents or of the building should be found to be in violation of the Act.

An arrest alone is insufficient to deny someone housing. This is clearly established in the employment context under Title VII of the Civil Rights Act of 1964 and under the Illinois Human Rights Act. *See, e.g., City of Cairo v. Fair Employment Practices Comm'n*, 21 Ill. App.3d 358, (5th Dist. 1974). However, the factors that led to the arrest may be relevant.

Similarly, because a person could not be found criminally guilty beyond a reasonable doubt does not mean that there is no evidence to establish by the civil standard of a preponderance of the evidence that the person committed the act. Nonetheless, the housing provider must investigate beyond the mere arrest itself. *See, Landers v. Chicago Housing Authority*, 404 Ill App. 3d 568 (1st. Dist. 2010).

In *Landers*, the Illinois Appellate Court held that a housing authority could inquire about a tenant's arrest record, but that the record must be considered in context. The Court found that the applicant's arrests in this case did not establish a history of criminal behavior and did not support the housing authority's decision to reject his application. The applicant had been arrested for four felony offenses and nine misdemeanor offenses, as well as for four civil ordinance violations. Despite these arrests, the applicant had no convictions. He claimed that he had not committed the acts and that the police had arrested him because he was homeless. He also claimed some of the arrests were attributed to his brother. The Court noted that these facts were un rebutted by the housing authority. The Court did not dispute the housing authority's ability to reject an applicant based on a criminal record that includes convictions and substantiated arrests; however, in this case there was no evidence that the applicant had engaged in criminal activity. The Court concluded that:

“Simply stated, there was no evidence that petitioner was a potential threat to the health, safety, and welfare of the public housing community. The sheer number of petitioner’s arrests does not establish a history of criminal activity. While we agree that the CHA need not demonstrate a history of convictions to establish a history of criminal activity, the CHA, by its own standards, was required to determine that the “outcome” of petitioner’s arrests demonstrated a history of criminal activity that could potentially threaten the health, safety, and welfare of the premises. We conclude that the CHA failed to support its rejection of petitioner’s application. The CHA’s decision was, therefore, clearly erroneous.”

The Court did not discuss the Fair Housing Act.

Conviction records that do not involve crimes relevant to one’s tenancy are also vulnerable to attack. The Fair Housing Act permits housing providers to exclude persons with disabilities whose tenancy would pose a threat to the health or safety of others or whose tenancy would result in substantial physical damage to the property of others. 42 U.S.C. §3604(f)(9). The case law requires that the decision on dangerousness be made in each individual case and not on the basis of broad stereotypes. *Wirtz Realty Corp. v. Freund*, FH/FL ¶18,262 (Ill. App. 1999); *Boston Housing Authority v. Bridgewaters*, 452 Mass. 833, 898 N.E.2d 848 (2009). Similarly, HUD Administrative Law Judges have approved denying occupancy to families with children where there is a rental history that shows a pattern of disorderly conduct. See, *HUD v. Denton*, FH/FL ¶25,014 (1991). These cases reject broad stereotypes in favor of factual proof in each case. Cf., *Landers v. Chicago Housing Authority*, *supra*.

The use of conviction records without taking into account an ex-offender’s rehabilitation may also have a discriminatory impact. Cf., *Doe v. Alaska*, 189 P. 3d 999 (Alaska 2008).

In *Smith v. Doe*, 538 U.S. 84 (2003), the United States Supreme Court upheld the Alaska Sex Offender Registration Act, which required sex offenders to register with the state and report back every three months for the remainder of their lives. The information was kept on a central registry and non-confidential information was made available to the public. This statute, which applied to crimes and convictions that occurred prior to the passage of the Act, was found not to be punitive and its retroactive application was held not to be an *ex post facto* law.

Earlier, the Court of Appeals had held that the law was punitive, in part, because it made the person virtually unemployable or unable to obtain housing. However, Chief Justice William Rehnquist rejected this argument, stating:

“This is conjecture. Landlords and employers could conduct background checks on the criminal records of prospective employees or tenants even with the Act not in force. The record in this case contains no evidence that the Act has led to substantial occupational or housing disadvantages for former sex offenders that would not have otherwise occurred through the use of routine background checks by employers and landlords...” 538 U.S. at 100.

In a separate concurring opinion, Justice David Souter agreed that the intent of the Act was not punitive; nonetheless, he did recognize that being on the registry carried the consequence of possible exclusion from jobs or housing, and could suffer harassment, and even physical harm:

It is true that the Act imposes no formal proscription against any particular employment, but there is significant evidence of onerous practical effects of being listed on a sex offender registry. See, e.g., *Doe v. Pataki*, 120 F.3d 1263, 1279 (C.A.2 1997) (noting “numerous instances in which sex offenders have suffered harm in the aftermath of

notification—ranging from public shunning, picketing, press vigils, ostracism, loss of employment, and eviction, to threats of violence, physical attacks, and arson”); *E.B. v. Verniero*, 119 F.3d 1077 1102 (C.A.3 1997) (“The record documents that registrants and their families have experienced profound humiliation and isolation as a result of the reaction of those notified. Employment and employment opportunities have been jeopardized or lost. Housing and housing opportunities have suffered a similar fate. Family and other personal relationships have been destroyed or severely strained. Retribution has been visited by private, unlawful violence and threats and, while such incidents of ‘vigilante justice’ are not common, they happen with sufficient frequency and publicity that registrants justifiably live in fear of them”); 538 U.S. at 109 n. 1.

Justice Ruth Bader Ginsburg and Steven Breyer dissented. Justice Ginsburg stated that the statute “calls to mind shaming punishments once used to mark an offender as someone to be shunned.” 538 U.S. at 116. She also cited the duration of the reporting requirement and found that it did not take into consideration the fact that a sex offender did not currently pose any threat of recidivism. 538 U.S. at 117.

The Supreme Court decision did not involve any consideration of the impact of this policy on a class protected by the Fair Housing Act, but the Souter and Ginsburg opinions support an argument that a general prohibition may have an impact unrelated to any legitimate end.

Subsequently in *Doe v. Alaska*, 189 P. 3d 999 (Alaska 2008), the Alaska Supreme Court, relying solely on the Constitution of the State of Alaska, found that the Alaska Sex Offender Registration Act to be punitive and held the law unconstitutional under the *ex post facto*

provisions of the Alaska Constitution. The Alaska Supreme Court specifically disagreed with the United States Supreme Court about the practical effects of the law:

[W]e agree with the conclusion of Justice Ginsburg, also dissenting in *Smith*, that ASORA “exposes registrants, through aggressive public notification of their crimes, to profound humiliation and community-wide ostracism.” In the decision reversed in *Smith*, the Ninth Circuit observed that “[b]y posting [registrants’] names, addresses, and employer addresses on the internet, the Act subjects [registrants] to community obloquy and scorn that damage them personally and professionally.” The Ninth Circuit observed that the practical effect of this dissemination is that it leaves open the possibility that the registrant will be denied employment and housing opportunities as a result of community hostility. As Justice Souter noted in concurring in *Smith*, “there is significant evidence of onerous practical effects of being listed on a sex offender registry.” Outside Alaska, there have been reports of incidents of suicide and vigilantism against offenders on state registries. 189 P.3d at 1009-1010 (footnotes omitted).

The Alaska Supreme Court did not address the Fair Housing Act, but its opinion does provide powerful support for an argument that these laws have a disparate impact on classes protected by the Act that is not supported by a legally sufficient justification.

Finally, the age of the conviction may be relevant to whether the restriction is legally justifiable under the disparate impact theory. See, *Doe v. Alaska, supra*.

C. The problem of proving discrimination against persons with arrest and conviction records because of its impact on existing protected classes

A policy excluding persons with arrest and conviction records as a class is not facially illegal under most fair housing statutes. An intention to exclude persons with arrest and conviction records, or the disparate treatment of persons with arrest and conviction records in

itself, does not violate the federal Fair Housing Act. Therefore, in most cases under existing law one is left with the argument that excluding persons with arrest and conviction records must have a disparate impact on one of the existing protected classes: race, color, religion, national origin, sex, handicap or familial status.

The difficulty in identifying the basis of discrimination against an ex-offender derives from the wide mix of otherwise protected classes represented in the ex-offender population. When examining the demographic composition of ex-offenders, the disproportionate number of black and Hispanic male ex-offenders makes this the largest protected status. However, handicap status may also be relevant because many ex-offenders have either been convicted of or have a history of drug or alcohol abuse. The Fair Housing Act disability definition excludes “current illegal use of or addiction to controlled substances (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802)). Yet, those who are not current users but have a criminal history of drug abuse will fall within the definition of a person who has or is perceived to have a “handicap.” 42 U.S.C §3602 (h)(3). Thus, one can make a credible argument that prohibiting housing to ex-offenders recovering from alcohol and substance abusers and are not current users is really a proxy for discrimination against persons with disabilities.

Because of the demographic data, much of the focus on disparate impact has been on race. Direct evidence of racial discrimination (“the smoking gun”) is not needed under a disparate impact analysis; rather the impact is shown by a statistical correlation between a plaintiff’s arrests or convictions and their protected status of race, color, national origin, disability, or source of income.

D. Case law requiring housing providers to provide reasonable accommodations for persons with disabilities

Many ex-offenders have physical or mental disabilities and some have a history of substance or alcohol abuse. While disability, as defined by the Fair Housing Act, excludes “current illegal use of or addiction to a controlled substances (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802), those who have a criminal history of drug abuse but are not current users fall within the definition of a person who has, or is perceived to have, a “handicap.” 42 U.S.C §3602 (h)(3).

The fair housing laws require landlords to provide reasonable accommodations for persons with disabilities when such accommodation is necessary for the person to enjoy their units. 42 U.S.C. §3604(f)(3)(B). However, some courts have been reluctant to require landlords to disallow a criminal conviction as a reasonable accommodation for persons with a disability. *See Evans v. UDR*, 644 F. Supp.2d 675 (E.D. N.C. 2009); *Stoick v. McCornvey*, 2011 WL 3410030 (D. Minn. 2011).

A recent example in Chicago illustrates the problem. The plaintiff in *Churney v. Chicago Housing Authority*, 2013 WL 5895999 (N.D.Ill. 2013), was a woman who was diagnosed with bipolar disorder with psychotic effects. She was taking medication under a doctor’s supervision and had no problems as long as she was medicated. However, during a time when she was switching doctors and not taking the proper medication, she suffered from delusions and feared being alone. She spent the night at a friend’s home and entered the room of her friend’s teenage son. He made sexual advances toward her, which she did not return. But she was charged with aggravated sexual abuse and pleaded guilty. She was placed on a sex offender registration list and was later notified by the CHA that she was terminated from participating in the housing choice voucher program. She requested that her agreement to submit written confirmation of ongoing treatment be used as a reasonable accommodation to grant an exception to the rule

disqualifying sex offenders. CHA denied her appeal. The district judge dismissed her complaint on the ground that she had not properly alleged that the accommodation would ameliorate the safety concerns created by her conviction. He observed that she was already receiving treatment before the incident, and distinguished her case from *Super v. J.D'Amelia & Associates*, 2010 W.L. 3926887 (D. Conn. 2010), where the Court did accept as a reasonable accommodation medical treatment that was not already being received under a court order. However, the Court did allow the plaintiff time to amend her complaint to allege an effective accommodation.

Nonetheless, requests for such an accommodation should be made. In most cases, landlords will argue that they have a duty to protect other residents and to protect their property. In many cases either because of the nature of the offense or the length of time since the offense occurred, a nexus between the offense and a real threat to others will not be able to be established.

E. In many cases, providing housing to an ex-offender will not pose a significant threat to others

Blanket rules, policies or practices – that exclude all ex-offenders regardless of their offense or the time elapsed since the offense – are overbroad and cannot be justified under any reasonable theory.

A study reported in PSYCHIATRIC SERVICES (February 2009), concluded that there was no clear connection between ex-offender status and a tenant's likelihood of success as a renter:

“A link between criminal history and housing failure has been assumed in the establishment of screening criteria for a long time, but empirical evidence of the link has not been studied and reported. The fact that this study found no link should help establish the need for larger, multisite studies to be done to establish stronger conclusions about

the predictive utility of criminal background information. The findings of this study supported initiatives to alter housing policies and practices should be altered to ensure that criminal history does not remain the barrier to housing acquisition it is now.”

A recent study casts doubt upon the efficacy of sex offender registries. Agan, “Sex Offender Registries: Fear without Function?” JOURNAL OF LAW AND ECONOMICS (February 2011). Three separate data sets and designs were analyzed and the results demonstrated that sex offender registries are not effective in increasing public safety. Data on the subsequent arrests of sex offenders was used to determine recidivism rates of offenders who were required to register and those who were not. The study combined data on locations of crimes with data on locations of registered sex offenders to determine whether knowing the locations of sex offenders helps predict the locations of sexual abuse. The author of the study concluded that the data did not strongly support the effectiveness of sex offender registries in increasing public safety and lowering recidivism rates.

A similar study, published by the United States Department of Justice in 2008, casts doubt on the practical and monetary efficacy of laws, like Megan’s Law in New Jersey, that require community notification and registration by sex offenders. Zgoba, Witt, Dalessandro, Veysey, “Megan’s Law: Assessing the Practical and Monetary Efficacy,” DOJ Doc. # 225370 (December 2008), www.ncjrs.gov/pdffiles1/nij/grants/225370.pdf. The study looked at sex offenses in New Jersey’s counties and in the state over a 10 year period prior to and a 10 year period after Megan’s Law was implemented in 1994. Among other things, the report concluded that:

.....

- Megan’s Law showed no demonstrable effect in reducing sexual re-offenses.

- Megan’s Law has no effect on the type of sexual re-offense or first time sexual offense (still largely child molestation/incest).
- Megan’s Law has no effect in reducing the number of victims involved in sexual offenses.
-
- Costs associated with the initial implementation as well as ongoing expenditures continue to grow over time. Startup costs (in 1994) totaled \$555,565 and current costs (in 2007) totaled approximately \$3.9 million for the responding counties.
- Given the lack of demonstrated effect of Megan’s Law on sexual offenses, the growing costs may not be justifiable.

Because sex offender registries serve as a precedent for other types of registries, the validity of other types of registries can also be questioned.

A study done by the Knoxville Community Development Corporation, a not-for-profit agency, of the restrictions imposed by the Knoxville Public Housing Authority to reduce crime found that the new restrictions did not affect the number of criminal incidents. The Authority had implemented a one-strike policy, police patrolling, a new residency applicant screening policy and had demolished problematic buildings. Looking at a five year time frame, the study showed no significant decrease in crime during the period the policy was in effect. Barbery, “Measuring the Effectiveness of Crime Control Policies in Knoxville’s Public Housing,” 20 JOURNAL CONTEMPORARY CRIMINAL JUSTICE 6 (2004).

F. A history and survey of ordinances around the country that provide specific protection for ex-offenders and persons with criminal records

Only two cities have attempted legislation to prohibit housing discrimination against persons with arrest or conviction records. Employment-focused laws which prohibit blanket

discrimination against ex-offenders by employers has been easier to legislate due to less resistance from the public as well as the federal EEOC guidelines which encourage local compliance with federal anti-discrimination employment laws. While HUD also encourages states and local governments to use policies that do not unjustly discriminate, wide discretion is given to housing administrations. When legislation is presented to protect persons with arrest or conviction records against blanket and arbitrary housing discrimination, housing providers and other community members “push back” against the attempts. This was the case in Seattle where a proposed anti-discrimination ordinance was rejected and in Madison, Wisconsin, where due to political pressure a longstanding civil rights ordinance was voted out in 2011. A copy of the original Madison ordinance is attached to this section as **Appendix C**.

The Madison ordinance addressed the issue of discrimination against persons with arrest or conviction records in a city which was reported as having one of the highest black/white incarceration disparities in the nation. According to Eric Kestin of the Madison Department of Civil Rights, the ordinance had for more than 20 years served to protect individuals with an arrest or conviction record from housing discrimination. It was revoked because the state stated that a municipality could not regulate housing differently than the state; to do so was not fair to the housing providers who were economic contributors of the state.

In Seattle, an ordinance proposed in 2010 would have prohibited discrimination against individuals with arrest and conviction records in housing. It was defeated due to community fears. As a result, rather than legislation, a long term comprehensive approach is now being tried. Seattle has established an oversight committee to address discriminatory practices in housing supported by public funds. Brenda Anibarro of the Seattle Civil Rights Office states that efforts are being made to support limited legislative or administrative protection for ex-offenders.

The one city that has enacted an ordinance protecting ex-offenders that is still operative is Champaign, Illinois. The Champaign Human Rights Ordinance provides that records older than 5 years cannot be considered by a housing provider. A copy of the Champaign Ordinance is attached to this section as **Appendix D**. Jason Hood, an employee of the City of Champaign Community Relations Office, stated that although he was not sure whether ex-offender discrimination complaints were pervasive before the ordinance, he had no knowledge of any recent complaints.

Where there are no specific anti-discrimination laws in place, some cities have found other ways of making the case for persons with arrest or conviction records. In Kansas City, Mickey Dean, a compliance officer in the civil rights division of the Kansas City Human Relations Department, stated that there were complaints against certain private apartment complexes that were discriminating against individuals with arrest or conviction records. The City has filed complaints on behalf of residents who say they are being discriminated against due to their previous convictions and that they are disparately impacted by this discrimination under federal fair housing law because they are members of minority groups with a higher likelihood of arrest and conviction, a protected class. The City's objective is to remove total bans and to propose to the courts that the records not be used to make a decision on housing if the conviction is older than 7 years. According to Dean, the restriction against older records is based on research that shows that after 7 years the risk that ex-offenders will re-offend is almost indistinguishable from those who have never offended. The City argues that once an ex-offender becomes low-risk, the landlord no longer has any justification to deny housing to ex-offenders.

While each local government must assess its own particular circumstances, the issue for all local governments attempting to address ex-offender housing discrimination without clear

legislation or a protected class designation is whether “blanket” prohibitions strike too broadly. Laws or regulations should require housing providers to determine whether the record is in fact accurate, how long ago the offense occurred, and whether the crime is in any way related to residency. Also relevant is whether the individual has been rehabilitated and is reintegrated into society by using such indicia as whether the ex-offender has obtained secure employment or has a stable family environment.

G. Crime-free ordinances only exacerbate the problem

The trend in many states and local communities is exactly the opposite of protecting ex-offenders. Since the 1970s it has been easier for politicians to propose laws that expand restrictions on those with criminal offenses and sentences than to attack the root causes of crime that lead to an increase in incarceration. Consequently, a de-emphasis on rehabilitation and restoration has been the result. Although we now know the costs, both financial and social, of such measures, politicians find it easier to adhere to established paths rather than to try to educate the public about new solutions that may be more effective in the future.

Illinois is not immune from these influences. Many communities near Chicago have adopted some form of crime free ordinances, including Elgin, Mount Prospect, Park Forest, and Naperville. An example that demonstrates the breath and overreach of these crime free ordinances is the ordinance of Tinley Park. The Tinley Park ordinance requires an addendum to every lease that provides as follows:

“In addition to all other terms of the lease, Landlord and Tenant agree as follows:

1. The Tenant, any member of the Tenant’s household, any guest or any other person associated with the Tenant on or near the leased premises:

- a) Shall not engage in criminal activity, including drug-related criminal activity, on or near the leased premises. “Drug related criminal activity” means the illegal manufacture, sale, distribution, use, or possession of any illegal or controlled substance as defined in 21 U.S.C. 802.
- b) Shall not engage in any act intended to facilitate criminal activity.
- c) Shall not permit the dwelling unit to be used for or to facilitate any criminal activity.
- d) Shall not engage in any act intended to facilitate any violation of local municipal ordinances or codes or any other violation as defined by local, state, or federal law and/or obstruction or resistance of law enforcement efforts against criminal activity on or near the rental unit, common areas, or appurtenances.
- e) Shall not permit on or near the rental unit, common areas, or appurtenances to be used for or to facilitate any violations of local municipal ordinances or codes or any other violations of local, state or federal law.

2. ANY ACTIVITY PROHIBITED BY THIS AGREEMENT SHALL CONSTITUTE A SUBSTANTIAL VIOLATION OF THE LEASE, MATERIAL NONCOMPLIANCE WITH THE LEASE, AND GROUNDS FOR TERMINATION OF TENANCY AND EVICTION.”

The ordinance requires landlords to be licensed and provides for the revocation of licenses if a landlord violates the ordinance. The ordinance is vulnerable under the Fair Housing Act because of its impact on protected classes. The provision on its face mandates the

termination of a lease of tenants who are victims of domestic violence. It thus violates HUD's interpretation of the Fair Housing Act, which prevents the eviction of the victim of sex abuse. HUD Guidance, "Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act (Feb. 9, 2011). It also violates the Illinois Human Rights Act, which makes it illegal to discriminate against persons under an order of protection issued pursuant to the Illinois Domestic Violence Act or an order of protection issued by a court of another state. 775 ILCS 5/1-103 (K-5) and (Q).

The downstate City of Belleville, Illinois is currently considering a similar crime free ordinance.

Bills proposed in the Illinois legislature in 2013 would only exacerbate the problem. These bills would have affected the opposite changes advocated in this report. SB1155 would have authorized non-home rule communities in Illinois to adopt crime free rental housing ordinances. HB 2437 would have authorized non-home rule municipalities to license and regulate landlords, and therefore to adopt crime free rental housing ordinances. These bills appealed to prejudice and would have furthered segregation and discrimination in Illinois. They were not justified by any sound policy reason and would not have resulted in less crime. Rather they would have likely contributed to the further destabilization of those communities that accept ex-offenders.

These bills did not make it out of committee, but they show that some legislators continue to react to crime and similar social pressures by hard-on-crime measures rather than by balanced measures that seek the stable integrated communities. They caution housing advocates to be eternally vigilant at the legislative level, as well as at the administrative level, of government.

H. A proposal for action

1. Legislative changes

The best way to limit the racial segregation perpetuated by the exclusion of persons with arrest and conviction records from the greater housing market is to extend *limited* legislative protections to persons with arrest records or who are ex-offenders. The word *limited* is emphasized in recognition of the legitimate need for landlords and property owners/managers to protect the safety of other tenants and their property. The ordinance of Champaign, Illinois, and the former ordinance of Madison, Wisconsin provide good drafting models for ordinances providing *limited* protections.

“Blanket” policies excluding all ex-offenders should be made illegal. The key is to link legitimate concerns for the safety of tenants and property to the applicant’s criminal record. Requiring such an identifiable link will result in excluding only those persons who poses a legitimate risk to safety.

Practically, it is important to consider that there is no clear way to identify who will or will not pose a future risk to safety, especially given the fifty percent recidivism rate among ex-offenders. Offenses should be limited to those that show some threat to the safety of others or to their property. Also, one of the most commonly accepted ways of anticipating future risk is the length of time since the ex-offender’s last criminal offense. While the determination of an appropriate amount of time to prohibit consideration of an ex-offender’s status varies among jurisdictions, the mean amount of time is about five years.

There should also be *limited* protections afforded to persons with arrest and conviction records who: (1) have clear evidence that the criminal background search performed is flawed (i.e., a dated search, not updated to reflect a sealed or expunged record); (2) were arrested, but not convicted or where there is no credible evidence showing their guilt; and (3) have already been screened and approved for public housing by an official housing agency.

The goal of proposing *limited* protection to ex-offenders is to ensure that restrictive policies without a legitimate basis be subject to legal attack. The intended effect is to limit denials of ex-offenders to those that pose a legitimate safety concern. This would remove a significant barrier to effective racial integration by increasing the housing options of ex-offenders, who under current unrestricted policies are segregated in impoverished, high-crime neighborhoods.

Opposition to even *limited* protection for ex-offenders will focus on the additional or “undue” burden placed upon landlords and property owners/managers to determine whether the basis of their denial is “legitimate.” However, imposing a limited, protected status for ex-offenders will alleviate, through guidance, the current burden of determining whether a legitimate basis of denial exists. Landlords and property owners appear to adopt “blanket” policies as a way of “hedging their bets” against possible liability by denying all ex-offenders flat out. Doing so, not only helps perpetuate segregation by isolating ex-offenders to the neighborhoods that will accept them, but also leaves them vulnerable to litigation by the denied applicants.

Legislative guidance would circumvent both of these problems by giving landlords and property owners a general standard from which to determine an ex-offender applicant’s risk of

recidivism without imposing a blanket ban. This would be a superior model to the current tendency to just deny all ex-offenders on the off chance that the gamble is not worth the risk.

With clear legislative guidance, landlords and property owners would also have a rubric to insulate themselves from potential litigants. By relying on the legislatively adopted risk assessment (i.e., ex-offender X does not pose a risk of recidivism after Y number of years), they have complied with appropriate guidance and thereby relieved a portion of the liability they may face in the event the ex-offender does create a problem.

Persons with arrest and conviction records who are seeking housing may also be assisted by expanding state laws allowing certain criminal records to be sealed or expunged after a limited period of time. Many laws allow a record to be sealed if the candidate has only committed non-violent misdemeanors and no more than three, class-four felonies (such as prostitution, possession of cannabis, or possession of controlled substances). Their records can only be sealed four years after a sentence is served. (<http://expungeillinois.net/definitions.html>). An offender can have a record expunged only if the candidate has never been convicted of a crime in Illinois or any other state. *Id.* Fair housing advocates should lobby for broader statutes allowing records to be sealed or expunged.⁷

Stigmatizing family members should also be prohibited when the family members did not know of the offense or had no control over the offender. Rules that evict innocent family members who are not at fault look too much like the forfeiture of blood provisions in English legal history that our Founding Fathers did not want to emulate in the United States.

⁷ For many ex-offenders, whose records are too long or who have committed un-sealable offenses, they still have the opportunity to mitigate their circumstances with legitimate efforts of rehabilitation. These include seeking out transitional housing where they can develop skills to prepare them to reenter the job market, actually securing employment, receiving certificates of rehabilitation, avoiding drug use and/or seeking rehabilitative assistance with their addictions, relocating to different communities, and generally avoid engaging in criminal activity.

2. Regulatory and policy changes

If it is not feasible to enact statutory changes to provide *limited* protection for persons with arrest and conviction records, HUD along with state and local fair housing agencies should enact regulations that specify that ex-offenders are protected against blanket rules and policies that have a disparate impact on one of the existing protected classes or that are unevenly applied.

The new HUD rule on disparate impact will provide the framework for a disparate impact argument, but it would be helpful for HUD and state and local agencies to give specific examples of when discrimination against ex-offenders will be considered to raise a *prima facie* case and what defenses will not be accepted as a sufficient justification to overcome the presumption of illegality. Agencies and fair housing organizations should be aggressive in enforcing existing laws when housing providers do not enforce their rules equally because of race, national origin, or other protected basis.

It would also be extremely helpful if HUD and state and local agencies would give examples of when a reasonable accommodation should be allowed to permit ex-offenders with such disabilities as a history of drug or alcohol abuse to occupy a dwelling.

HUD and all FHAP agencies should thoroughly review all complaints that come in alleging discrimination on an existing protected class to see if the discrimination was based at all on the person's arrest or conviction record and, if so, the nature of the offense alleged. This should be noted in the allegation summary in each file. This will allow HUD and state and local agencies to collect and compile data on the incidents of discrimination against persons with arrest and conviction records, and will be useful information to support legislative and administrative changes. HUD is already requiring a similar data collection procedure for cases involving sexual orientation, gender identity and gender expression, which are not presently

explicitly protected under the federal Fair Housing Act. *See* MEMORANDUM FOR FHEO REGIONAL DIRECTORS from John Trasviña, Assistant Secretary for Fair Housing and Equal Opportunity (June 15, 2010).

3. Education and outreach

Research funds should be expended to further study recidivism and whether restricting housing for ex-offenders has any effect on crime. Studies should also concentrate on what crimes pose a real danger to other residents of the area and the time limits that justify restrictions based on recidivism rates for particular crimes.

Systemic testing should be undertaken by private fair housing organizations to determine the nature and extent of discrimination against persons with arrest and conviction records, and whether general policies are enforced equally based on existing protected classes. For instance, systemic testing should be undertaken to determine if existing rules against ex-offenders are evenly enforced between black and white applicants and tenants.

Even without statutory or rule changes, both public agencies and private fair housing organizations should introduce broad education and outreach activities to inform government officials, real estate agents, managers or brokers, property owners and landlords, and community residents about the harms caused by rules and policies limiting the housing opportunities of persons with arrest and conviction records, and the ineffectiveness of these policies in eliminating crime against neighboring residents. They should draft model rules and regulations that specify the crimes and the period when both private and public housing providers can exclude ex-offenders that pose a real threat to other residents or to the property. Kansas City provides a model for using existing law to educate and enforce protections for persons with arrest or conviction records who are members of existing protected classes.

Appendix A to Part VI

Policy of Housing Authority of Cook County on criminal or drug related activities

Public Housing Program Admissions and Continued Occupancy Policy

3-III.B. REQUIRED DENIAL OF ADMISSION [24 CFR 960.204]

HACC abides by its mission to provide safe housing to its residents. For that reason, HACC adopts a policy that prohibits admission or tenancy into any public housing program if an applicant or resident has been convicted or even engaged in certain criminal activity or if HACC has reasonable cause to believe that a household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. Where the statute requires that HACC prohibit admission for a prescribed period of time after some disqualifying behavior or event, HACC may choose to continue the prohibition for a longer period of time [24 CFR 960.203 (c) (3) (ii)].

HUD requires HACC to deny assistance in the following cases:

- Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity. HUD permits but does not require HACC to admit an otherwise-eligible family if the household member has completed an HACC-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g. the person involved in the criminal activity no longer lives in the household).

HACC Policy

HACC will admit an otherwise eligible family who was evicted from federally-assisted housing within the past 10 years for drug-related criminal activity (5 years for drug use or possession), if HACC is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by HACC, or the person who committed the crime is no longer living in the household.

- HACC determines that any household member is currently engaged in the use of illegal drugs. '*Drug*' means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802] '*Illegal drug*' in the State of Illinois also means any (i) substance as defined and included in the Schedules of Article II of the Illinois Controlled Substances Act, (ii) any cannabis as defined in Section 3 of the Cannabis Control Act, or (iii) any drug as defined in paragraph (b) of Section 3 of the Pharmacy Practice Act which is obtained without a prescription or otherwise in violation of the law.(740 ILCS 120/12) '*Currently engaged in the illegal use of a drug*' means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)].

HACC Policy

Currently engaged in is defined as any use of illegal drugs during the previous 12 months.

- HACC has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

HACC Policy

In determining reasonable cause, HACC will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol.

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing.

HACC Policy

If any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine in any location, not just federally assisted housing, the family will be denied assistance.

- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.

HACC Policy

If any household member is currently registered or is subject to registration as a sex offender under a state registration requirement, such as the State of Illinois 10 year registration requirement, regardless of whether it is a lifetime registration requirement, the family will be denied assistance.

3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION

HUD permits, but does not require HACC to deny admission for the reasons discussed in this section.

Criminal Activity [24 CFR 960.203 (b) and (c)]

Under the Public Housing Assessment System (PHAS), public housing authorities that have adopted policies, implemented procedures and can document that they successfully screen out and deny admission to certain applicants with unfavorable criminal histories, receive points.

HACC is responsible for screening family behavior and suitability for tenancy. In doing so, HACC may consider an applicant's history of criminal activity involving crimes of physical violence to persons or property and other criminal acts, which would adversely affect the health, safety or welfare of other tenants.

HACC POLICY

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past 10 years (for individuals convicted of any criminal activities, within the 10 years of release), the family will be denied admissions

Drug-related criminal activity, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].

Violent criminal activity, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].

Criminal activity that may threaten the health, safety, or welfare of other tenants [24 CFR 960.203(c)(3)].

Criminal activity that may threaten the health or safety of HACC staff, contractors, subcontractors, or agents.

Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse.

Evidence of such criminal activity includes, but is not limited to any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members within the past 10 years.

In making its decision to deny assistance, HACC will consider the factors discussed in Section 3-III.E, and will consider drug use or possession within the past 5 years. Upon consideration of such factors, HACC may, on a case-by-case basis, decide not to deny assistance.

Appendix B to Part VI

Policies of the Chicago Housing Authority on criminal or drug related activities

FY2011 ADMISSIONS AND CONTINUED OCCUPANCY POLICY (ACOP)

13. The CHA is required to deny applications based on certain criminal activities or drug-related criminal activities by household members:
- a. The CHA is required to deny any applicant, for three years from the date of eviction, if any household member has been evicted from any federally-assisted housing for drug-related criminal activity. However, the CHA may admit the household if the CHA determines that: **24 CFR § 960.204(a)**.
 - i. The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the CHA;
 - ii. The circumstances leading to the eviction no longer exist (e.g. the household member involved in the drug-related criminal activity is imprisoned); or
 - ii. The applicant household will not include the household member involved in the drug-related criminal activity. **24 CFR § 960.203(c)(3)(i)**.
 - b. The CHA is required to deny the application of a household if the CHA determines that:
 - i. Any household member is currently engaging in illegal use of a drug; **24 CFR § 960.204 (a)(2)13**
 - ii. There is reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; **24 CFR § 960.204 (a)(2)(ii)**.
 - iii. Any household member has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of any federally-assisted housing; **24 CFR § 960.204 (a)(3)**.
 - iv. Any member of the household is subject to a lifetime or any registration requirement under a state sex offender registration program, including the ten-year Illinois State Sex Offender Registration Act; or **24 CFR § 960.204(a)(4)**

- v. Any member of the household's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. **14 24 CFR § 960.204(b).**

14. In addition to the federally-required rejections for criminal activity, the CHA will deny applicants if the CHA can document via police arrest and/or conviction documentation that:

- a. An applicant or household member has ever been convicted of arson or child molestation. **24 CFR § 960 203 (c)(3).**
- b. An applicant or household member has ever been convicted of a crime that requires them to be registered under a state sex offender registration program including the ten-year Illinois State Sex Offender Registration Act.
- c. An applicant or household member has ever been convicted of the manufacture or production of methamphetamine on any premises.
- d. An applicant or household member has a criminal history in the past three years that involves crimes of violence to persons or property as documented by police arrest and/or conviction documentation. **24 CFR § 960.203(c)(3).**
- e. Crimes of violence to persons or property include, but are not be limited to, homicide or murder; destruction of property or vandalism; burglary; armed robbery; theft; trafficking, manufacture, use, or possession of an illegal drug or controlled substance; threats or harassment; assault with a deadly weapon; domestic violence; sexual violence, dating violence, or stalking; weapons offenses; criminal sexual assault; home invasion; kidnapping; terrorism; and manufacture, possession, transporting or receiving explosives. **24 CFR § 960.203(c)(3).**
- f. Any applicant or household member evicted from any housing for drug-related criminal activity is barred for three years from the date of eviction.
- g. Any applicant or household member has been paroled or released from a facility within the last three years for violence to persons or property.
- h. Any applicant or household member has a pattern of criminal history that involves crimes of violence to person or property or drug-related criminal activity as documented by police arrests and/or conviction documentation.

Appendix C to Part VI

City of Madison, Wisconsin Civil Rights Ordinance (repealed 2011)

Sec. 39.03

(2) Definitions.

(c) Arrest record includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

(f) Conviction record includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority. In addition, “conviction record” as used in Sec. 39.03(4)(d), relating to discrimination in housing, shall also include information indicating that a person has been convicted of a civil ordinance violation (forfeiture). (Am. by Ord. 12,501, 11-19-99; Reconsidered & Adopted by Ord. 12,561, 4-7-00)

(4) Housing. It shall be an unfair discrimination practice and unlawful and hereby prohibited for any person having the right of ownership or possession or the right of transfer, sale, rental or lease of any housing, or the agent of any such person:

(a) To refuse to transfer, sell, rent or lease, to refuse to negotiate for the sale, lease, or rental or otherwise to make unavailable, deny or withhold from any person such housing because of sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, including receipt of rental assistance under 24 Code of Federal Regulations Subtitle B, Chapter VIII [the "Section 8" housing program], arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, familial status, political beliefs, or the fact that such person is a student as defined herein, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law; or the fact that such a person is a member of a domestic partnership as defined herein; or (Am. by Ord. 13,708, 10-12-04; ORD-07-00016, 2-22-07; ORD-07-00029, 3-15-07)

(c) To falsely represent that a dwelling is not available for inspection, sale, or rental because of discrimination because of sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, political beliefs, physical appearance, sexual orientation, familial status, or the fact that a person is a student as defined herein; the fact that such a person is a member of a

domestic partnership as defined herein; or other tenants in such a manner as to diminish their enjoyment of the premises by adversely affecting their health, safety and welfare. A person who has received written notice from the Madison Police Department that a drug nuisance under Wis. Stat. § 823.113, exists on property for which the person is responsible as owner may take action to eliminate the nuisance, including but not limited to, eviction of residents, provided such action is not a subterfuge to evade the provisions of this ordinance. (Am. by ORD-07-00029, 3-15-07)

(d) To discriminate against any person because of sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, political beliefs, physical appearance, sexual orientation, familial status, or the fact that such person is a student as defined herein, or the fact that such a person is a member of a domestic partnership as defined herein, in the terms, conditions or privileges pertaining to the transfer, sale, rental or lease of any housing, or in the furnishing of facilities or services in connection therewith, or in any other manner. (Am. by ORD-07-00029, 3-15-07)

1. Exclusions for Certain Convictions. This ordinance does not prohibit eviction or refusal to rent or lease residential property because of the conviction record of the tenant or applicant or a member of the tenant's or applicant's household, if the circumstances of the offense bear a substantial relationship to tenancy. The phrase "circumstances of any offense(s) bear a substantial relationship to tenancy" means the offense is such that, given the nature of the housing, a reasonable person would have a justifiable fear for the safety of landlord or tenant property or for the safety of other residents or employees. Provided that the circumstances of the offense bear a substantial relationship to tenancy, such offenses may include but are not limited to the following:
 - a. disorderly conduct involving disturbance of neighbors,
 - b. disorderly conduct involving destruction of property,
 - c. at least two or more misdemeanor drug-related convictions related to the manufacture, delivery or sale of a controlled substance or any drug related felonious criminal activity,
 - d. criminal activity involving violence to persons such as murder, child abuse, sexual assault, battery, aggravated assault, assault with a deadly weapon;
 - e. criminal activity involving violence to or destruction of property, such as arson, vandalism, theft, burglary, criminal trespass to a dwelling;
 - f. at least two or more civil ordinance violation (forfeiture) convictions within a twelve (12) month period for violations relating to disturbance of neighbors or injury to persons or property.

A person who has received written notice from the Madison Police Department that a drug nuisance under Wis. Stat. § 823.113, exists on property for which the person is responsible as owner may take action to eliminate the nuisance, including but not limited to, eviction of residents, provided such action is not a subterfuge to evade the provisions of this ordinance.

2. Time Limits on Exclusions. The exclusion for certain convictions shall not apply if more than two (2) years have elapsed since the applicant or member of the tenant's or applicant's household was placed on probation, paroled, released from incarceration or paid a fine for offenses set forth in Paragraph 1. unless the offense is one which must be reported under the Sex Offender Reporting Requirement of Wis. Stat. § 973.048.

3. Discrimination Against Victims of Domestic Abuse Prohibited. Notwithstanding the provisions contained in Paragraph 1., a person may not evict a tenant or refuse to rent or lease residential property based on the fact that a tenant or prospective tenant or a member of the tenant's or prospective tenant's household has been or may be the victim of domestic abuse, as defined in Wis. Stat. § 813.12(1)(am), or has been a victim of a crime prohibited by Wis. Stat. ch. 948. (Am. by Ord. 12,074, 3-27-98)

4. Mandatory Recordkeeping Procedures. Notwithstanding the provisions contained in Paragraph 1. above, a person may not refuse to rent or lease residential property because of the conviction record of the applicant or a member of the applicant's household unless the person complies with all of the following:

- a. uses a written, uniform inquiry process established for legitimate nondiscriminatory business reasons,
- b. applies such process uniformly
- c. advises applicants in writing at the time of application that the screening process may include a conviction record check,
- d. advises an applicant in writing at the time of denial, if refusal to rent is based in whole or in part on the conviction record of the applicant or a member of the applicant's household,
- e. keeps all applications, whether accepted or rejected, for at least two (2) years, along with a record of reasons for rejection, recorded in a uniform manner.

In order to be considered uniform, a written inquiry process must be applied by a person to all properties under her/his ownership or control; except that where a person controls several properties on behalf of two or more different owners that person shall use the same written inquiry process for all such properties unless an individual owner has established a separate uniform process for her/his own properties and requires its use.

f. In the event a formal complaint of discrimination is made to the EOC, the landlord shall make available for inspection and permit the Equal Opportunities Division Head or his/her designee to inspect during normal business hours all documents identified in Subparagraphs a. through e. above. The Equal Opportunities Division Head or his/her designee shall promptly conduct such inspection for the sole purpose of determining compliance with this subsection on conviction records. Any person who fails or refuses to allow such inspection(s) or who fails to maintain or retain required records shall be in violation of this ordinance and, upon conviction, shall be subject to a forfeiture as provided in Section 39.03(15) of the Madison General Ordinances. (Am. by ORD-06-00078, 6-30-06)

g. This paragraph is not intended to prohibit or restrict a current or new owner of property from instituting a conviction record screening policy at any time during his/her ownership of a property so long as it is applied uniformly to all similarly situated individuals and otherwise complies with this subsection.

h. This paragraph is not intended to impose liability on a new owner of a property for actions or omissions of the former owner related to this paragraph, except to the extent the new owner continues the practice under his/her ownership.

5. No private cause of action. Except for claims by or on behalf of individuals protected from prohibited discrimination hereunder, the Common Council does not intend this Subdivision, 39.03(4)(d), to create a private right of action based upon a claim of personal injury or property damage arising from a landlord's good faith compliance with this Subdivision. This provision is not intended either to expand or to limit rights provided by local, state or federal equal opportunities laws. (Am. by Ord. 12,637, 7-7-00) (Sec. 3.23(4)(d) Am. by Ord. 11,224, 4-13-95; Ord. 12,501, 11-19-99; Reconsidered & Adopted by Ord. 12,561, 4-7-00)

(f) For any bank, credit union, finance company, savings and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in lending or purchasing of loans, to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing, or maintaining any housing, to discriminate against such person in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, or to refuse to purchase or to discriminate in the purchase of such loan,

1. Because of the sex, race, religion, color, national origin or ancestry, disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, familial status, or political beliefs of such person or of any person associated with him or her in connection with such loan or other financial assistance, or because of the fact that such person is a student as defined herein, or the fact that such a person is a member of a domestic partnership as defined herein; or

2. Because of the sex, race, religion, color, national origin or ancestry, age, disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, familial status, or political beliefs of the present or prospective owners, lessees, tenants, or occupants of the housing for which such loan or other financial assistance is to be made or given, or because such present or prospective owner, lessee, tenant or occupant is a student as defined herein, or the fact that such a person is a member of a domestic partnership as defined herein.

3. Notwithstanding the provisions of Subdivision (4)(b) and the above provisions, inquiries concerning source of income may be made if they are reasonably directed toward determining solvency, reliability, credit record, or ability to pay, and are not a subterfuge to evade the purposes of this section.

(Sec. 3.23(4)(f) Am. by Ord. 12,039, Adopted 2-17-98; ORD-07-00029, 3-15-07)

(g) For any person to post, print, broadcast or publish or cause to be posted, printed, broadcast or published, any notice or advertisement relating to the transfer, sale, rental or lease of any housing which expresses preference, limitation, specifications or discrimination as to sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status or the fact that a person is a student as defined herein, or the fact that such

a person is a member of a domestic partnership as defined herein. (Am. by ORD-07-00029, 3-15-07)

(h) For any person, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, status as students, or the fact that such a person is a member of a domestic partnership as defined herein..

In establishing a discriminatory housing practice under this section it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.

(Sec. 3.23(4)(h) R. and (i) Renumbered to (h) by Ord. 12,039, Adopted 2-17-98; Am. by ORD-07-00029, 3-15-07)

(i) For any person to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service organization or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation on account of sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, or the fact that such person is a student as defined herein, or the fact that such a person is a member of a domestic partnership as defined herein.. (Renumbered by Ord. 12,039, Adopted 2-17-98; Am. by ORD-07-00029, 3-15-07)

(j) For any person or other entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, or the fact that such person is a student as defined herein, or the fact that such a person is a member of a domestic partnership as defined herein. As used in this subdivision the term “residential real estate related transaction” means any of the following:

1. The making or purchasing of loans or providing other financial assistance
 - a. For purchasing, constructing, improving, repairing, or maintaining a dwelling;
or
 - b. Secured by residential real estate.
2. The selling, brokering, or appraising of residential real property.

Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, the fact that a person is a student as defined herein, or the fact that such a person is a member of a domestic partnership as defined herein. (Renumbered by Ord. 12,039, Adopted 2-17-98; Am. by ORD-07-00029, 3-15-07)

(k) In this subsection, prohibited discrimination includes discrimination because of the sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, student status, or the fact that such a person is a member of a domestic partnership as defined herein of:

1. The buyer, renter, or applicant; or
 2. A person residing in or intending to reside in a dwelling after it is sold, rented, or made available.
- (Am. and Renumbered by Ord. 12,039, Adopted 2-17-98; ORD-07-00029, 3-15-07)

Appendix D to Part VI

City of Champaign, Illinois Human Rights Ordinance

Sec. 17-3. Definitions.

Discrimination; unlawful; illegal means any practice or act which is based wholly or partially on or the perception of an individual based on race, color, creed, national origin, religion, sex, age, marital status, physical or mental disability, personal appearance, sexual preference, family responsibilities, matriculation, political affiliation, prior arrest or conviction record or source of income unless such practice or act is permitted as an exception in this Chapter of any individual.

Forcible felony means treason, first degree murder, second degree murder, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, arson, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual.

Sec. 17-4. Exception —Business Necessity.

Any practice or act of discrimination which would otherwise be prohibited by this chapter shall not be deemed unlawful if it can be established that such practice or act can be justified on the basis of being reasonably necessary to the normal operation of the business or enterprise. However, a "business necessity" exception shall not apply when based in whole or in part on the comparative of stereotypical characteristics of one group as opposed to another or the preferences of co-workers, employers' customers or any other person.

Sec. 17-4.5. Same—Same—Conviction.

Nothing in this chapter shall prohibit discrimination in the leasing of residential property based upon a person's record of convictions for a forcible felony or a felony drug conviction or the conviction of the sale, manufacture or distribution of illegal drugs or convictions which are based upon factors which would constitute one of the categories of convictions listed above under Illinois law; provided, that the conviction shall not be allowed to be the basis of discrimination if the person convicted has resided outside of prison at least the last five (5) consecutive years without being convicted of an offense involving the use of force or violence or the illegal use, possession, distribution, sale or manufacture of drugs. This exception is not a restriction on the use of conviction information for other necessary business reasons.

This exception shall not be construed to authorize the use of conviction information to achieve racial or ethnic discrimination or discrimination on the basis of a disability or any other protected basis other than conviction and landlords are encouraged to consider the rehabilitative efforts of individuals and the period since the conviction and circumstances of the conviction when deciding to discriminate on the basis of conviction information. The landlord is not relieved of any obligation of making a reasonable accommodation for persons with disabilities by this exception.

Sec. 17-71. Discrimination in general.

It shall be unlawful to do any of the following acts based on unlawful discrimination:

1. To refuse to engage in a real estate transaction or otherwise make unavailable or deny a dwelling to a person including the making of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making of loans or the provision of other financial assistance secured by residential real estate;

Etc.

Sec. 17-75. Exceptions.

(e) Nothing in this chapter shall prohibit discrimination in the leasing of residential property based upon a person's record of convictions for a forcible felony or a felony drug conviction or the conviction of the sale, manufacture or distribution of illegal drugs or convictions which are based upon factors which would constitute one of the categories of convictions listed above under Illinois law; provided, that the conviction shall not be allowed to be the basis of discrimination if the person convicted has resided outside of prison at least the last five (5) consecutive years without being convicted of an offense involving the use of force or violence or the illegal use, possession, distribution, sale or manufacture of drugs.

VIII. Discrimination against immigrants and persons with limited English proficiency

Another significant factor contributing to the perpetuation of racial segregation in the City of Chicago is the impact of discrimination against immigrants and persons who are not proficient in English. Immigrants and non-English speakers are not protected as separate classes under the Fair Housing Act, the Illinois Human Rights Act, or local laws in the Chicago metropolitan area. The Center proposes that the federal, state and local governments adopt legislation to protect immigrants and persons who are not proficient in English from discrimination that cannot be substantiated by a legally sufficient justification. In the alternative, the Center recommends that HUD, IDHR and local human rights agencies adopt rules and regulations that address the impact of this discrimination on existing protected classes.

A. The impact of discrimination against immigrants and persons with limited English proficiency

Just as the United States is a nation of immigrants,⁸ Chicago and the Chicago metropolitan area have been crossroads of immigration since the early 19th century. Immigrants settled in their own ethnic neighborhoods where they were comfortable in their language and cultural. Their psychological and sociological needs were met by being with persons who shared a common interest. Today, most Chicago neighborhoods can be associated with one or more ethnic groups. Periodically these neighborhoods change and another ethnic or racial group succeeds the previous ethnic group. *See, e.g.*, Rosenthal, “This was North Lawndale: The Transplantation of a Jewish Community,” XXII JEWISH SOCIAL STUDIES 67 (1960).

⁸ One of every eight Americans is an immigrant, and in Illinois it is nearly one of every seven. Nearly a third of all immigrants to the United States arrived in 2000 or after. Illinois generally ranks among the top six receiving states for new immigrants. <http://icirr.org/content/us-and-illinois-immigrants-numbers>.

Chicago's neighborhoods traditionally have been distinguished as Irish, German, Italian, Lithuanian, Bohemian, Greek, Swedish, Polish, or Chinese. In recent years, many of these groups have been supplanted by Mexicans, Haitians, Nigerians, Ethiopians, Vietnamese, Thai, Middle Easterners, Indians, Pakistanis, or residents of the former Soviet Union and its satellite countries. Experiences similar to those of ethnic groups were present at the migration of African Americans from the southern states to Chicago in the 20th century. Immigrant groups have enriched Chicago and its suburbs through their culture, cuisine, and work ethic. However, when these groups establish ethnic enclaves that exclude others, the results are long-standing anti-immigrant prejudice and fear that have negatively affected the City and its immediate environment.

Many of the racial and ethnic clashes in Chicago have occurred because of fear that African Americans or newer immigrant groups were encroaching into traditional ethnic enclaves in the city. Instead of harmony, these clashes have produced ethnic and racial discord and division, sometimes lasting generations.

Discrimination and prejudice against and among immigrants is not based solely on race or ethnicity.

For purposes of this study, we will generally refer to non-citizens as immigrants inclusively. This group is often referred to as aliens in federal statutes and regulations. The term "immigrants" includes new immigrants as well as long-term residents who have green cards and who are here with the blessings of the federal government. They may be persons who have chosen not to become naturalized citizens, but are otherwise indistinguishable from their fellow citizens.

A subgroup of immigrants is undocumented immigrants. Undocumented immigrants in general seek a better life in the United States but have found it expedient not to enter or stay by using proper channels. Some may have family or friends who are in the United States legally. Undocumented immigrants are most likely to experience prejudice or discrimination and are particularly vulnerable to exploitation and exclusion from health care and other social benefits. Discrimination against undocumented immigrants may flow over into discrimination against other immigrants and ethnic minorities. They are stereotyped as not really belonging here and not being as worthy as persons who have a long-standing relationship to the United States.

Another subgroup of immigrants is refugees or asylum seekers fleeing persecution in their home countries and seeking a safe haven in the United States. Refugees often face unique problems. Many have suffered severe trauma and need specialized counseling and assistance. They may be particularly reluctant to assert their rights in a country where they have newly sought refuge. Some may have larger families and thus encounter familial status discrimination in addition to racial or national origin discrimination. Refugees will often lack the documentation that makes it easier to rent or secure housing.

Persons who are not proficient in English, who may or may not be citizens, are also a group needing special protection. They may experience discrimination because of their inability to communicate well in English. Some of the discrimination against non-English speakers may be covered by prohibitions on national origin or ethnic discrimination but some is not as focused.

Non-citizens and non-English speakers today face a host of challenges in the United States and in Chicago, especially in housing. Many of the victims of predatory and fraudulent lending practices that resulted in the foreclosure crisis that began in 2007 were targeted because they were non-citizens or non-English speakers.

Stereotypes about immigrants are reinforced by laws that restrict newer immigrants from government subsidized housing and other social benefits. The government's message to persons in the private sector makes it acceptable to treat newer residents differently from established United States citizens. The tone set in Washington, D.C., about who is acceptable filters down to the neighborhood.

Immigration continues to be a major factor affecting the population of Illinois and Chicago. In 1990, immigrants represented 8% of the population of Illinois. By 2000, it was 12%, and in 2010, it was 14%. Chicago has a 21.7% foreign born population. In Chicago, 65.7% of the residents speak English at home; 23.2% speak Spanish at home; and 11% speak another language at home. Of those who speak Spanish at home, 53% speak English well and of those who speak another language than English or Spanish at home, 57% speak English very well. Another fact that bears on housing is that 46% of foreign-born workers earn "family-sustaining wages," compared to 59% for native-born workers. However, Illinois can be proud that it has the lowest percentage of foreign-born living below the poverty level compared to the other Midwestern states. Also, Illinois is one of the least restrictive states in the Midwest regarding laws and policies that adversely affect immigrants. *See*, <http://www.city-data.com/races/races-Chicago-Illinois.html>; <http://midwestimmigration.org/in-your-state/overview/state/illinois>.

While the City of Chicago was traditionally the point of entry for immigrants into the Chicago metropolitan area and still is, Chicago's suburbs have increasingly become the first point of entry for many immigrants. Between 2000 and 2008, there was a 19% increase in the number of immigrants in the north suburbs. It is estimated that approximately 35,000 immigrants moved to the suburbs north of the City between 2000 and 2008, the greatest number coming from Romania, Iraq and Mexico. However, no one identifiable type of immigrant settled in the

suburbs and diversity within the immigrant community was one of its most notable features. Mexican immigrants were the most likely to be renters, and 48% of these paid more than one-third of their income on housing expenses – a greater proportion than all other foreign-born renter households. This move to the north suburbs was largely prompted by accessibility to good schools, quality neighborhoods and access to employment. Many of these immigrants were the first hit by the economic downturn that began in 2007. OPEN TO ALL? DIFFERENT CULTURES, SAME COMMUNITIES (Interfaith Housing Center for the Northern Suburbs 2011).

B. Federal restrictions on housing for immigrants

1. The Housing & Community Development Act of 1980

Over the years, Congress has passed a number of statutes providing for public or publicly assisted housing for low or moderate-income persons in the United States. The federal government first entered the area of public housing with the passage of the United States Housing Act of 1937. This Act created a federal public housing program administered at the state or local governmental level through federal subsidies. The Housing Act of 1949 further expanded the public housing program by creating an urban renewal program and a rural housing program. Most significantly, the Housing Act of 1949 proclaimed that it was the national goal to provide “a decent home and a suitable living environment for every American family.” 42 USC §1441.

Congress substantially revised the federal housing program when it passed the Housing and Community Development Act of 1974. This statute modified many priorities in public housing and created the section 8 (housing choice voucher) program, which, as it stands today, gives low-income persons a voucher that enables them to rent approved units in the private

housing market. Developments since 1974 have, in effect, made the section 8 program the preferred method of providing housing to low-income persons in the United States. In particular, the Housing & Community Development Act of 1987 established resident management and ownership programs to provide more private control over traditional public housing units, and the Housing & Community Development Act of 1990 had as one of its principle goals, helping residents move out of public housing projects.

Today the public housing stock in the United States is aging and is often badly maintained. Almost no new public housing units, especially for families with children, have been built in the last 30 years. The policy of the United States has been to move residents out of public housing, and in many communities this has been accompanied by the massive demolition of public housing units. Consequently, there are frequently long waiting lists for the available habitable public housing units preferred by some low-income persons because of the services and community atmosphere available in the traditional public housing projects that are not available in the housing choice voucher program, where residents are forced to deal with private landlords in the open housing market.

Congress substantially restricted access by aliens to federally subsidized housing in the United States in the Housing & Community Development Act of 1980. 42 USC §1436a. This statute provides that federal financial assistance is available only to an alien that is a resident of the United States and meets at least one other specified requirement. The other specified requirements include having been admitted as a permanent resident; having been in the United States continuously since 1948; having been granted asylum; being in the United States for other emergent reasons or strictly in the public interest as determined through the discretion of the Attorney General; where the Attorney General has withheld deportation; or where the Attorney

General has adjusted that person's status under section 1255 of the Immigration and Nationality Act. §1436a (a). "Financial assistance," as defined by the statute, means both traditional public housing units and units secured under the section 8 program. §1436a (b).

Unqualified aliens receiving housing assistance as of February 5, 1988 were given an orderly transition period of up to 18 months to find other affordable housing. §1436a(c)(1). If the alien is a resident of a foreign country that he or she has no intention of abandoning, or if the alien is a bona fide student temporarily admitted to the United States to study, the alien is not eligible for any housing assistance, notwithstanding any other provision of the law. §1436a(c)(2). If a public housing resident or members of their household knowingly permit an alien who is not eligible for housing assistance to reside with them in public or assisted housing, their financial eligibility can be terminated for a period of not less than 24 months. §1436a(d)(6).

2. The Welfare Reform Act of 1996

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act, more popularly known as the Welfare Reform Act. Pub.L. No. 104-193, 110 Stat. 2105 (1996). The Act disqualifies a large number of aliens from a number of "Federal public benefit" programs. "Federal public benefit" is defined to include "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit or any other similar benefit for which payments or assistance are provided to an individual household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States." 8 USC §1611(c)(B).

Congress described the national policy behind the Welfare Reform Act to be the encouragement of self-sufficiency with respect to welfare and immigration. 8 USC §1601 (1). Congress stated that there was a compelling government interest to assure that aliens are self-

reliant and to remove the incentive for illegal immigration provided by the availability of public benefits. 8 USC §§1601 (5) and (6).

The Act is expressly not applicable to “programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949 . . . , or any assistance under section 1926C of Title 7, to the extent that the alien was receiving such a benefit on August 22, 1996.” 8 USC §1611 (b) (1) (E).

“Qualified aliens,” as defined by the Welfare Reform Act are those who entered the United States on or after August 22, 1996. They may be eligible for certain means-tested benefits after they have resided in the United States for five years. 8 USC §1613. The Welfare Reform Act defines “qualified aliens” as those having been admitted as a permanent resident; having been granted asylum or refugee status; having been paroled into the United States for a period of at least one year; whose deportation is being withheld, or who have been granted conditional entry, or who are Cuban or Haitian entrants, and certain “battered” aliens. 8 USC §§1641 (b) and (c). Non-citizens who are on active duty in the United States military service, or who qualify as United States veterans who received an honorable discharge, or who are spouses or unmarried dependent children of a veteran are qualified without waiting five years for a “Federal means-tested public benefit.” 8 USC §1613 (b) (2).

3. Constitutional restrictions on federal power to discriminate against immigrants

The Equal Protection Clause of the Fourteenth Amendment has been interpreted to prohibit discrimination by the states against immigrants lawfully admitted by Congress into the United States. State laws that discriminate against immigrants will be given strict scrutiny, which means that they will, in most instances, be found unconstitutional because they are not

“necessary” to achieve a “compelling” governmental interest. *Graham v. Richardson*, 403 U.S. 365 (1971).

Although the Equal Protection Clause of the Fourteenth Amendment is binding only against the states and not against the federal government, the Supreme Court has interpreted the Due Process Clause of the Fifth Amendment to prohibit the federal government from acts of discrimination that would be illegal if done at the state level. *Bolling v. Sharpe*, 347 S. Ct. 497 (1954); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995). However, because Congress has plenary power under the Constitution to regulate immigration and naturalization, the Supreme Court has upheld the power of Congress to exclude immigrants from welfare and social service programs. *Mathews v. Diaz*, 426 U.S. 67 (1976).

The courts will strictly scrutinize legislation that infringes upon a fundamental right. However, the United States Supreme Court has held that housing and welfare are not fundamental rights in the United States. Consequently, legislation that restricts access to housing or social welfare programs will generally be given minimal scrutiny and, in most instances, be found rational and, therefore, constitutional. *James v. Valtierra*, 402 U.S. 137 (1971) (housing); *Dandridge v. Williams*, 397 U.S. (1970) (welfare); *but see Plyler v. Doe*, 457 U.S. 202 (1982) (denial of education to the children of illegal aliens given “heightened” scrutiny).

A judicial challenge based on the unconstitutionality of excluding immigrants from federal or federally subsidized housing programs would probably not succeed. In *City of Chicago v. Shalala*, 189 F.3d 598 (7th Cir. 1999), city officials and a class of legal permanent residents brought suit against federal officers claiming that the Welfare Reform Act of 1996 was unconstitutional because it excluded immigrants from the food stamp and Supplement Security

Income (SSI) programs. The Court of Appeals relied upon *Mathews v. Diaz*, *supra*, applying the minimal scrutiny standard the courts use to review social and economic legislation.

In *Chicago v. Shalala*, the government argued that the purpose of the Welfare Reform Act of 1996 was to make immigrants self-reliant, but the plaintiffs argued that it was irrational to remove a safety-net from aliens who are elderly, disabled, or children because they cannot help themselves to become self-reliant. The Court of Appeals concluded that “the provisions of the Welfare Reform Act are rationally related to the legitimate governmental goal of discouraging immigration that is motivated by the availability of welfare benefits.” 189 F.3d at 607. The Court also credited the justification offered by the Executive Branch that the Act was rationally related to the legitimate governmental purpose of encouraging naturalization because it gave immigrants strong incentives to becoming naturalized citizens. 189 F.3d at 608. The Court further held that the several exceptions in the Act were rational because they extended benefits to immigrants who had made special contributions to the United States or who had come to United States because of especially difficult conditions in their home countries. 189 F.3d at 609.

Decisions by other courts have reached similar results. *Rodriguez v. United States*, 169 F.3d 1342 (11th Cir. 1999) (legal aliens’ challenge to the Welfare Reform Act unsuccessful); *Abreu v. Callahan*, 971 F. Supp. 799 (S.D.N.Y. 1997) (same); *Kiev v. Glickman*, 991 F. Supp. 1090 (D. Minn. 1998) (same).

C. Constitutional limitations on state and local restrictions

On their own, states have less latitude than the federal government to restrict immigrants.⁹ The Equal Protection clause requires them to show that any law that singles out

⁹ States are restricted from interfering with federal power in regulating immigrants under the doctrine of preemption. Recent cases, while supporting some state restrictions on undocumented

immigrants for disparate treatment be “necessary” to achieve a “compelling” governmental purpose. *Graham v. Richardson*, 403 U.S. 365 (1971). States cannot discriminate against immigrants if the program receives state but not federal funding or if the state purports to go beyond the minimum uniform standard articulated by the federal government.

Even if the program receives federal funding that is administered by the states, it is doubtful if a state can justify discrimination against immigrants based on Congressional authorization. *See Shapiro v. Thompson*, 394 U.S. 618 (1969). Congress purported to give states power to disqualify immigrants from public benefits in the Welfare Reform Act of 1996. The Act provides that “if a State chooses to follow the Federal classification in determining the eligibility of such aliens for public assistance,” the State shall be deemed “to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy.” 8 USC §1601 (7).

If Congress can exclude immigrants from federal programs funded by federal money, it could be argued that it is reasonable for Congress to be able to exclude them from state programs funded out of federal money. Congress can normally attach conditions to the receipt of federal moneys and specify who it intends to benefit from federal subsidy programs offered to the states.

However, case law establishes that Congress cannot authorize or require states to exclude immigrants from programs funded by federal money. In *Graham v. Richardson*, 403 U.S. 365 (1971), the Supreme Court held that a state cannot deny welfare benefits to immigrants or to aliens who have not resided in the United States for a specified period of years. The state argued that federal law had impliedly authorized the limitation, but the Supreme Court held that a federal statute authorizing “discriminatory treatment of aliens at the option of the States” would

immigrants, continue to support federal preemption. *See, Arizona v. United States*, 132 S. Ct. 2492 (2012).

present “serious constitutional questions.” 403 U.S. at 382. The Court further stated that “Congress does not have power to authorize the individual States to violate the Equal Protection Clause.” 403 U.S. at 382.

The Court of Appeals of New York, relying on *Graham, supra*, invalidated a New York law that limited state Medicaid benefits funded solely by the state to persons based on their status as legal immigrants. *Aliessa v. Novello*, 2001 WL 605188 (N.Y. 2001). The state argued that Congress had authorized the limitations in the Welfare Reform Act of 1996. The Court acknowledged that the Constitution allows Congress to distinguish between immigrants and citizens when allocating federal welfare benefits or when federal welfare programs are jointly administered with the states. There the “Federal Government has by *uniform* rule prescribed what it believes to be appropriate standards for the treatment of an alien subclass.” (quoting *Plyler v. Doe*, 457 U.S. at 219 n.19). However, the Court held that Congress cannot constitutionally authorize a state to determine for itself the extent to which it will discriminate against legal aliens for state Medicaid eligibility. This destroys the constitutional requirement for uniformity in immigration policy.

The Court of Appeals emphasized that the restriction should thus be judged by the strict standard of whether it furthers a compelling governmental interest by the least restrictive means and not the more lenient rationality standard applied to the federal government when it restricts the rights of immigrants.

Consequently, any constitutional challenge will turn upon whether the restriction on housing is coming from the federal government or from the states. The restriction will probably be illegal if it is being imposed solely by the state with no federal authorization. Also, even if there is federal authorization, the restriction will be illegal if the state is allowed to go beyond the

uniform federal norm, at least under the precedent established by the Court of Appeals of New York.

While the equal protection clause protects aliens as a class from discrimination, just as it protects discrimination based on race and national origin, it is more questionable to what extent equal protection protects undocumented immigrants as a class from discrimination.

In *Plyler v. Doe*, 457 U.S. 202, 218-219 (1982), a case about the exclusion of children of undocumented immigrants from the Texas school system, Justice Brennan stated that:

“This situation raises the specter of a permanent caste of undocumented resident aliens, encouraged by some to remain here as a source of cheap labor, but nevertheless denied the benefits that our society makes available to citizens and lawful residents. The existence of such an underclass presents most difficult problems for a Nation that prides itself on adherence to principles of equality under law.”

What Justice Brennan said in *Plyler* about the exclusion of the children of undocumented immigrants from public schools can equally be said about undocumented immigrants who are denied the right to live in decent housing in the United States. Justice Brennan stated that in determining the rationality of a law excluding undocumented immigrants from an education, “we may appropriately take into account its costs to the Nation and to the innocent children who are its victims.” 457 U.S. at 224. It could be argued that applying the same balancing test to the exclusion of undocumented immigrants from housing equally prompts an answer that the exclusion is illegal.

There is no Supreme Court authority that discrimination against non-English speakers raises strict scrutiny under equal protection.¹⁰ If the discrimination is against particular non-English speakers and is a proxy for racial or national origin discrimination, the courts should require the government to justify the classification through a strict scrutiny analysis.

D. Discrimination in private housing against immigrants and persons with limited English proficiency in the Chicago metropolitan area

There are few statistics that document the extent of discrimination against immigrants and non-English speakers in the Chicago metropolitan area. Therefore, interviews were conducted with government agency personnel, private advocates, and private persons. Government personnel included employees of the Cook County Board of Commissioners. Private advocacy groups included: the Director of The Young Center for Immigrant Children's Rights, the Legal Assistance Foundation of Metropolitan Chicago, Open Communities Housing Center, The Spanish Coalition for Housing, the Albany Park Community Center, RefugeeOne, the Ethiopian Community Association of Chicago, World Relief, The John Marshall Law School Fair Housing Legal Clinic, and the Illinois Coalition for Immigration and Refugee Rights.

All the advocates emphasized that housing discrimination is a problem for immigrants and that immigrants would benefit from increased protection under the laws.

Specifically, they mentioned the following areas: discrimination based on race, national origin, familial status, and wealth; discrimination against housing choice voucher holders; discrimination against ex-offenders; problems with identification numbers and credit reports; harassment by neighbors; discrimination in services; and failure to understand English.

¹⁰ The only Supreme Court case relating to discrimination against non-English speakers is *Lau v. Nichols*, 414 U.S. 563 (1974). The Court found that a school district had violated Title VI of the Civil Rights Act of 1964 for failing to provide English language instruction and to prepare students to participate in learning because of their English language deficiency

Discrimination based on race, national origin, familial status, and wealth.

Many new immigrants belong to racial or ethnic groups that have themselves been objects of discrimination in the United States. Thus immigrants experience a double disadvantage: they are non-citizens and they are often members of a racial or ethnic minority. Many immigrant organizations complained that landlords frequently have stereotypes about certain nationalities and, if they have problems with one tenant, they assume that all tenants who share that nationality will have the same undesirable traits. Many immigrant families have children and, especially if they have larger families, they will likely suffer familial status discrimination. Landlords may also fear that immigrants will harbor extended family members who themselves have difficulty finding rental housing. Brendan Saunders, staff attorney for Open Communities Fair Housing Center, identified traditional race and national origin discrimination as the biggest hurdle faced by immigrants in finding housing.

Laura Lonneman, the Housing and Compliance Manager of RefugeeOne, described one case in which she went to view an apartment for one of her refugee clients. The leasing agent showed her two units: one that was upgraded, and one that was not, and both were the same price. However, when she called the landlord to tell him she would like to rent the upgraded unit for her client, he blatantly told her that the leasing agent was not supposed to show her because it was likely the tenant would “trash it.”

Corrie Wallace, the Director of the Niles Township English Language Learning Center, stated that she knew of cases where immigrants went to view an apartment and were told that the rent was much higher than advertised. They did not question authority, and they did not complain. She also stated that she knew of cases where landlords did not want to rent to

immigrants because they were fearful that the food they prepared was different from what was considered to be normal.

Admittedly, in some cases new immigrants are not familiar with American standards of housekeeping, but they can be taught new habits. Landlords, when it is not administratively or financially burdensome, or counselors may have to explain how to use appliances or other amenities that the new immigrant has no experience using.

New immigrants often feel the need to concentrate in areas or in buildings with persons of their own nationality. This can be both good and bad. It makes the new residents feel comfortable, especially if they do not speak English. But it may also provide landlords with an opportunity to exploit these individuals and, in the long run, may turn buildings or entire neighborhoods into ethnic ghettos. This is especially true when the new immigrants themselves look unfavorably upon outsiders entering their closed circle.

Many immigrants are poor and thus lack the financial resources to live in many Chicago neighborhoods and suburbs. Wealth alone is not a suspect classification for Equal Protection analysis or a protected classification under federal or state civil rights laws. Brendan Saunders stated that while towns like Evanston and Skokie are diverse, many other communities are much less so. Mr. Saunders pointed to Winnetka as an example where it is difficult for immigrants to feel welcome.

Laura Lonneman, from RefugeeOne, stated that refugees sometimes cannot find safe, sanitary, and affordable housing because they lack the paperwork required by housing providers. She also related that in some cases, landlords may not want large families in units that are in the second (or higher) floors of their buildings because they are fearful that they will bother tenants below them.

Discrimination against housing choice voucher holders. Persons without proper status are excluded from applying for housing choice vouchers and this greatly affects the ability of immigrants to secure private housing. Even when immigrants qualify for a housing voucher, the waiting list and bureaucracy can be daunting. Immigrants do not understand the different bureaucracies that provide housing. Often they do not understand that they must notify each separate bureaucracy of an address change in order to be notified when housing is available. Voucher problems are addressed more specifically in a separate section of this study.

Discrimination against ex-offenders. HUD's one strike policy that excludes persons with a criminal history from public housing has an impact on immigrants who are often vulnerable to arrest and guilty pleas. This problem similarly affects many immigrants in private housing. The director of the Spanish Coalition believes that criminal problems are a primary reason why immigrants cannot obtain private housing.

Crime-free ordinances and regulations may provide a pretext for landlords to check into a person's immigration status in the interest of not rewarding illegal conduct, but such inquiries can equally provide a pretext for discrimination. The problems experienced by ex-offenders are discussed more specifically in a separate section of this study.

The perception that immigrants will bring crime to a neighborhood is divorced from reality. A recent study concludes that neighborhoods with higher concentrations of immigrants are less plagued with violence. Sampson, GREAT AMERICAN CITY – CHICAGO AND THE ENDURING NEIGHBORHOOD EFFECT (2012), p. 249. In fact, first generation immigrants are 45% less likely to commit violence than third-generation Americans, and second generation immigrants are 22% less likely to commit violence than the third generation. This holds true for non-Hispanic whites and blacks. *Id.* at 252.

Problems with identification numbers and credit reports. Undocumented immigrants often have credit problems because they do not have social security numbers. This can affect both their ability to find rental units and to buy property. Many immigrants borrow someone else's identification number to work and then do not have proper credit when they apply for housing. The problem particularly affects persons who are seeking loan modifications and refinancing. In the past, mortgage brokers and lenders sometimes gave loans based on an ITIN in lieu of the SSN. Dan Lindsay of the Legal Assistance Foundation's Home Preservation Project stated that lenders have stopped giving loans based on ITIN's, and this makes it difficult for borrowers to refinance or modify existing loans. A new Illinois law allows undocumented immigrants to secure driver's licenses. This law may alleviate some of the problems associated with identifications; however, it will probably not assist immigrants in establishing a good credit history.

Michael Van Zalingen, Fair Lending Compliance Attorney for the South Suburban Housing Counsel, reaffirmed Mr. Lindsay's comments, and specifically reiterated the problems undocumented immigrants have in securing loan modifications. Mr. Van Zalingen suggested that fair housing regulations should draw a distinction between protecting the rights of undocumented immigrants in home ownership versus home rental situations. Undocumented immigrants experience the same problems in renting property as United States citizens and other immigrants. However, undocumented immigrants stand on a different footing when it comes to home ownership. The special problems undocumented immigrants experience when buying or refinancing a home requires special protections that could be undercut by a requirement that all buyers be treated equally. For instance, undocumented immigrants buying a home may need

special counseling about problems that they will experience in homeownership solely because of their undocumented status.

Many private landlords refuse to rent units to persons who cannot produce proper identification. The Spanish Coalition for Housing has developed relationships with local area landlords who, in turn, have developed a trusting relationship with the organization. The coalition refers tenants who have no credit history to certain landlords. That organization helps landlords deal with issues that may arise in the future with tenants that the organization has referred to the landlord. In some cases, the Spanish Coalition will provide a landlord with a one month security deposit in order for their client to secure an apartment. The Coalition's director describes the demand for this kind of assistance as "huge".

Lack of proper identification makes it difficult to do a criminal background check, mostly in the case of undocumented immigrants. Even legal immigrants will find it difficult to rent if the landlord requires verification of a long-term rental or credit history.

Harassment by neighbors. The Spanish Coalition identifies harassment from neighbors to be a major impediment for housing by immigrants. It is not unusual for neighbors of immigrants to take advantage of them and to cause them trouble. For example, immigrant families with children often are told by their neighbors that if their children do not behave, "I'll call immigration on you." Even if the family is "legal," they may feel vulnerable, especially if they have close family members who are undocumented. Immigrant counseling groups identified this type of harassment to be more common than harassment by landlords who often just want tenants to keep the apartment in good condition and to pay rent on time. Sometimes the Spanish Coalition attempts to mediate these disputes between neighbors. Because many immigrants do not know their rights, they are particularly susceptible to threats and bullying by others.

Discrimination in services. Immigrants are often required to put up with unequal services. This may be due to an inability to communicate well, but more often it is because the housing provider believes that immigrants will not complain, which is often the case.

Failure to understand English. Failure of new residents to properly understand English can create miscommunication that is detrimental to immigrants.

Corrie Wallace, the Director of the Niles Township English Language Learning Center, commented that Skokie has one of the highest immigrant populations outside the City of Chicago and that more than half of the children in the Learning Center did not speak English. She stated that both language and culture were factors in immigrants not bringing housing discrimination complaints. She commented that many immigrants came from cultures where one does not question authority and therefore they take the word of housing providers who tell them that a unit is not available.

Mortgage brokers and lenders targeted borrowers whose primary language was Spanish for unfair loans. In some cases, borrowers signed away title to the property because they did not understand what they were signing. Certain lenders and brokers targeted Spanish-speaking neighborhoods especially because it was easy to sell people on predatory loans. Now these same Spanish-speakers are finding it harder to navigate the loan modifications process due to both their language handicap and stereotypes about Latinos.

Chicago attorney Kelli Dudley relates that to secure a loan modification some lenders require applicants to submit a hardship letter in English. This discourages non-English speakers who sometimes do not even know how to go about getting an English translation. Also, many groups complain that lenders have a special telephone service for non-English speakers, but they

get less prompt and more evasive service when they dial the non-English number than if they dial the English-speaking number.

Similarly, even if the person understands English, terms may have a different meaning in English. One example is the civil law definition of a Notary, who is a lawyer specially designated to facilitate official transactions such as the transfer of real estate. Notaries perform a very different role in the United States and, unless the consumer understands the difference, she may be confused about the knowledge and assistance that can be provided by an American notary in buying or selling a home.

Often the language barrier prevents immigrants from seeing discrimination even when it is blatant. Brendan Sounders from Open Communities relates the story of a lady from El Salvador who was told that she could not live in a particular community. She did not know that she was being discriminated against because of her poor English and lack of knowledge of American law.

Illinois statutory law offers very little protection for persons with limited English proficiency. 225 ILCS 429/120 provides that persons who are in the business of debt settlement and who communicate with a client in a language other than English must provide documents translated in that language. However, the definition of debt settlement generally excludes banks and their agents, collection agencies, and real estate licensees; however, it may include some of the persons who are involved in “rescue fraud” operations. 225 ILCS 429/10.

815 ILCS 505/2N provides that if a retail transaction is conducted through an interpreter, there must be a document signed saying so. The document is different if the translation was done by the retailer or by someone employed by the buyer. However, this section only covers

retail transactions of merchandise. It covers real estate transactions if the property is out of state, but does not apply to Illinois real estate transactions.

E. Immigrants, and especially undocumented immigrants, and persons with limited English proficiency are unlikely to complain

There is no precise data on the number of fair housing complaints that are filed by immigrants, only on race, national origin, and other protected classifications. However, interviews of persons who work with immigrants show that immigrants are reluctant to file complaints. This may be due to a number of reasons:

1. Immigrants may come from a culture or a society where there is no tradition of filing official complaints when their rights are violated. In some countries, contacting the police or a government agency may result in even more problems for the complainant. Fear of corrupt government officials may also play a part.

Chicago attorney Andrew Sidea stated that he sees many immigrants who fear the local police and believe that if they complain, the police will see that they are removed from housing and report them to federal authorities. Even if these fears are groundless, they understandably influence the actions of immigrants.

2. Immigrants may fear retaliation, especially if their status is in question. Even if their status is not in question, they may fear that a complaint could lead to the detection of other family members who are undocumented. If they are cheated or defrauded, they may see it as their own failing and not the bad conduct of someone else. Thus, they may be reluctant to report fraud, thinking that the police or others will see them as the perpetrator of the fraud.

Gisele Hennings, Housing Resource Coordinator for the Albany Park Community Center stated that she often hears about landlords that verbally threaten tenants that they will report them to immigration authorities if they complain about housing conditions or withhold rent in order to secure repairs. She describes this as blackmail pure and simple.

Many immigrants may not be aware of the HUD and ICE policies that purport to protect them from deportation if they complain about fair housing violations. *See* MEMORANDUM FOR ALL FIELD OFFICE DIRECTORS ON PROSECUTORIAL DISCRETION INVOLVING CERTAIN VICTIMS, WITNESSES, AND PLAINTIFFS from John Molton, Director, U.S. Immigration and Customs Enforcement (June 17, 2011); IMMIGRATION STATUS AND HOUSING DISCRIMINATION FREQUENTLY ASKED QUESTIONS (HUD FHEO 2012). They may also not realize that the threat itself may violate 42 U.S.C. §3617.

3. Immigrants may not be conversant with their rights under American law or be knowledgeable about the remedies that are available when their rights are violated. For instance, many landlords will refuse to return a security deposit when the tenant moves out knowing that an immigrant is unlikely to know their rights or to complain if they do.

Also, many immigrants may actually fear the law and not believe that it can be used to assist them. Immigrants may not understand that there are statutes of limitations that require them to act promptly

4. Immigrants may be so concerned about simple day-to-day existence that they feel they have little time to pursue a lawsuit or an administrative complaint.
5. Immigrants may lack access to attorneys and counselors who speak their language and know their culture and traditions.
6. Undocumented immigrants especially may not be available for the period of time that it takes to investigate and process a fair housing complaint.
7. Persons who are not proficient in English may feel uncomfortable in filing a complaint. They may also lack materials in their native language that informs them of their right to be free from discrimination and how to file a complaint.

F. Protection afforded by the federal Fair Housing Act, the Illinois Human Rights Act, and local ordinances

Immigrants are protected against racial discrimination in housing under at least one of the provisions of the Civil Rights Act of 1866. 42 U.S.C. §§1981 and 1982.

Section 1982 of the 1866 Act appears on its face to protect only citizens from discrimination in real estate-related transactions:

“All **citizens** of the United States shall have the right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.” (Emphasis supplied.)

However, section 1981 states that all **persons** within the jurisdiction of the United States have the same right to make and enforce contracts as white citizens. (Emphasis supplied.) The rental or sale of housing is done through a contract. The statute broadly prohibits any type of racial discrimination, and the Supreme Court has interpreted section 1981 to prohibit certain kinds of national origin discrimination also. *Saint Francis College v. Al-Khazraji*, 481 U.S. 604

(1987); *Shaare Tefila Congregation v. Cobb*, 481 U.S. (1987). The 1866 Civil Rights Act can be enforced by a private civil suit filed in state or federal court.

An argument can be made that discrimination against immigrants in general regardless of their race or ethnicity by private landlords violates section 1981. *See Duane v. Geico*, 37 F.3d 1036 (4th Cir. 1994), *cert. dismissed*, 515 U.S. 1101 (1995); *Espinoza v. Hillwood Square Mut. Ass'n*, *supra* at 561–564. The Welfare Reform Act of 1996 and the Housing and Community Development Act of 1980 on their face would, of course, preclude an argument that section 1981 prohibits discrimination against immigrants in general in federal or federally subsidized housing, but the statute may be available in other situations.

The Fair Housing Act of 1968, substantially amended in 1988, prohibits discrimination in both public and most private housing on the basis of race, color, national origin, religion, sex, handicap (physical or mental), or familial status (a child under eighteen residing in the family). 42 USC sections 3601ff. Therefore, any challenge that either public or private housing providers or lenders discriminate against aliens because of their race, national origin, religion, sex, handicap or familial status in the rental or sale of housing, or in any services associated with housing including lending, can be brought under the Fair Housing Act. A claim for disparate treatment or impact can be made under the Fair Housing Act or under a similar state or local human rights law or ordinance. Similarly, while the Fair Housing Act does not protect persons based on their language, if the claim is that language is a proxy for national origin discrimination, the Fair Housing Act may provide a remedy.

However, immigration status or language, as such, is not protected classes under the Fair Housing Act. *Espinoza v. Hillwood Square Mut. Ass'n*, 522 F. Supp. 559, 567-568 (E.D.Va. 1981). Hence, discrimination that is not tied to an existing protected class is not prohibited.

Also, important to immigrants is the fact that 42 U.S.C. §3617 makes it unlawful to coerce, intimidate, threaten or interfere with any person's fair housing rights or in their enforcement. A treat by a housing provider to report an immigrant to law enforcement officers may well be threatening and intimidating and violate section 2617.

The Fair Housing Act can be enforced either through a private law suit or through an administrative complaint filed with HUD or with a state or local human rights agency. No provision of the Fair Housing Act distinguishes between documented and undocumented immigrants, so undocumented as well as documented immigrants could maintain a cause of action under the Fair Housing Act for disparate treatment or disparate impact based on one of the protected classifications.

The United States Immigration and Customs Enforcement Division (ICE) of the Department of Homeland Security has instructed its field office directors and agents to exercise prosecutorial discretion in removal cases involving the victims and witnesses of crimes, including domestic violence, and individuals involved in non-frivolous efforts to protect their civil rights and liberties. The Director has said it is against ICE policy to initiate removal proceedings against these individuals. MEMORANDUM FOR ALL FIELD OFFICE DIRECTORS ON PROSECUTORIAL DISCRETION INVOLVING CERTAIN VICTIMS, WITNESSES, AND PLAINTIFFS from John Molton, Director, U.S. Immigration and Customs Enforcement (June 17, 2011); and *see* IMMIGRATION STATUS AND HOUSING DISCRIMINATION FREQUENTLY ASKED QUESTIONS (HUD FHEO 2012). The discretion is exercised on a case by case basis and it is questionable if victims of housing discrimination will have enough faith in federal or state enforcement officials to be willing to stand up and initiate and prosecute a fair housing complaint. Likewise, even if undocumented

immigrants seek the advice of an attorney, a cautious attorney will likely not recommend over-reliance on the discretion of officials who can initiate removal.

The Illinois Human Rights Act and the City of Chicago Fair Housing Ordinance provide similar protection at the state level as the Fair Housing Act.

G. A proposal for action

1. Legislative changes

Legislation should be considered at both the federal and state levels to protect immigrants from housing discrimination. While some discrimination against non-citizens may be because of race or national origin, this is not always the case. Adding immigrants as a class will provide very important protection to this group that has historically suffered much discrimination.

The biggest argument against adding immigrants as a protected class is that it will be politically unpopular to do so. Several persons interviewed who favored such protection were doubtful that it could pass at either the federal or state level of government. Also, such a change would be inconsistent with policies in the Housing and Community Development Act of 1980 or the Welfare Reform Act of 1996. Nonetheless, legislation is worth a try.

If it is impossible to legislate a total ban on this form of discrimination, it might be possible to provide protection on a more limited basis to documented immigrants or to long-term residents who are “qualified” as defined in the Welfare Reform Act.

The down-side of limiting the definition of immigrants is that it can be perceived to expressly authorize housing providers and lenders to discriminate against those immigrants not specifically protected especially non-documented immigrants who have been specifically targeted by mortgage brokers or lenders for predatory or fraudulent loans. Therefore, specific

provisions should be included to protect uncovered immigrants from being targeted for inferior products and services, especially when they are involved in lending transactions.

Language should be added as a separate protected class. Discrimination against persons who are not proficient in English frequently goes beyond mere national origin or racial discrimination and is not limited only to non-citizens. Housing providers and lenders may argue that there are instances when communication with a non-English speaker is essential. But if there are cases when this is true, it is covered by the business necessity defense.

Statutes and regulations should require housing providers and lenders to reasonably accommodate immigrants and persons who are not proficient in English. Otherwise they are vulnerable to exploitation. The reasonable accommodations provision in the Fair Housing Act are drafted to apply solely to persons with disabilities, *Bloch, v. Frischholz*, 587 F.3d 771, 783 (7th Cir. 2009), but requirements that landlords provide information in a foreign language or that lending institutions accept applications in a foreign language when it is not financially or administratively burdensome would greatly assist immigrants and non-English speakers.

Illinois statutes should be amended to provide that when real estate transactions are conducted through an interpreter, documents should be translated into the language used in the transaction. 225 ILCS 129/120; 815 ILCS 505/2N.

Further examples of reasonable accommodations for immigrants would be that landlords be required to accept a co-signer for a refugee who does not possess the documentation to establish a good credit history. Especially in lending transactions, it should not satisfy the law that all applicants are treated equally. Immigrants and non-English speakers may need special counseling so that they understand the terms of the transaction and how they may be vulnerable if things go bad. It should not be a defense that non-citizens and non-English speakers are being

put through special hoops because of their status, because in these instances they really are not equal to regular borrowers who speak English and are more likely to be at least minimally familiar with American financial transactions.

2. Regulatory and policy changes

If it is not politically feasible to create new protected classes to protect immigrants and non-English speakers, HUD and state and local human rights agencies should enact regulations and guidelines similar to those adopted by HUD specifying that immigrants and persons who are not proficient in English are protected from the existing bases of discrimination under the law and that policies or practices that have a disparate impact against immigrants and persons who are not proficient in English based on one of the existing protected classes is illegal. Examples of policies that may have a disparate impact are requirements that refugees produce unnecessary documentation to establish credit when they cannot do so because they had to flee the country.

Because immigrants are unlikely to come forward, even when they are informed of their rights, systemic testing initiatives should be undertaken to find if discrimination is occurring on the basis of citizenship or language. Also, fair housing enforcement agencies should expand their standing requirements to allow more third party complaints. Secretary and agency initiated complaints should be undertaken when discrimination is discovered but when no bona fide complainant is willing or able to step forward.

HUD and all FHAP agencies should continue to thoroughly review all complaints that come in alleging discrimination on an existing protected class to see if the discrimination involved immigrants or persons with low proficiency in the English language. This should be noted in the allegation summary in each file. This information will allow HUD and state and local agencies to collect and compile data on the incidents of discrimination against immigrants

and persons who are not proficient in English and will be useful information to support legislative and administrative changes in the program. HUD is already requiring a similar data collection procedure for cases involving sexual orientation, gender identity and gender expression, which are not presently explicitly protected under the federal Fair Housing Act.

3. Education and outreach

Even without any statutory and rule changes, education and outreach activities should be targeted to immigrants and persons who are not proficient in English to inform them of their rights and to encourage them to file complaints when they experience any type of illegal discrimination. It is especially important that those persons who counsel immigrants and persons who are not proficient in English be trained in fair housing law so they can spot problems. These trainings will be especially effective if they are conducted by persons who speak the same language as their audience and are culturally aware of the impediments that may keep non-citizens and non-English speakers from complaining. Foreign language and culturally sensitive materials should also be prepared to appeal to immigrants and non-English speakers.

Immigrants need specific training on the protections afforded them if they file a fair housing complaint either with federal or state authorities. Many immigrants and persons who assist them are not aware of regulations accord whistleblower protection to any immigrant or non-English speaking person who files a complaint in a case involving discrimination based on language or alienage. 42 U.S.C. §3617. They are unaware that the Department of Homeland Security will not automatically deport or detain non-documented immigrants who complain of housing discrimination. *See* MEMORANDUM FOR ALL FIELD OFFICE DIRECTORS ON PROSECUTORIAL DISCRETION INVOLVING CERTAIN VICTIMS, WITNESSES, AND PLAINTIFFS from John Molton, Director, U.S. Immigration and Customs Enforcement (June

17, 2011); IMMIGRATION STATUS AND HOUSING DISCRIMINATION FREQUENTLY ASKED QUESTIONS (HUD FHEO 2012). Brochures informing immigrants of their rights written in their native languages need to be distributed broadly to ensure that immigrants do not live in unwarranted fear of unscrupulous landlords or neighbors.

However even if there is broad education and outreach, all persons interviewed agreed that immigrants are particularly unwilling to file complaints when they or those near to them suffer discrimination. Thus, affirmative steps should be taken by government agencies and private fair housing organizations to ensure that discrimination does not occur.

Systemic testing should be undertaken even under existing law to determine the extent and nature of discrimination against immigrants and non-English speakers on the basis of race, national origin, and language. This testing will be useful in enforcement actions and in advocating for changes in the law.

IX. Discrimination against LGBT (Lesbian, Gay, Bisexual, Transgendered) populations, particularly youth of color and seniors, and against persons because of marital status

A. The impact of discrimination against LGBT and the resulting difficulties in finding housing in the City of Chicago

Both the State of Illinois and the City of Chicago include sexual orientation as a protected class. Sexual orientation includes discrimination against lesbian, gay, bisexual, and transgendered persons. The federal Fair Housing Act does not include similar protection. However, HUD in its regulations goes as far as it can without specific legislative authorization in protecting LGBT persons from discrimination particularly in federally subsidized housing. 24 CFR §5.100 et seq. 77 Fed. Reg. 5662 (February 3, 2012). Given the fact that the military now bans discrimination against LGBT populations, it is very likely that it will not be long before Congress provides similar protection in the Fair Housing Act. The military is not likely to appreciate it if service men and women and veterans cannot secure housing in the private market.

To date, there have not been a large number of cases filed under the sexual orientation provisions of either the State or the City acts. For instance in 2012, the City of Chicago Human Relations Commission had only one complaint involving sexual orientation in housing. This does not mean that discrimination is not occurring, but even without complaints, the provisions of the law are likely to deter some incidents of discrimination

Two LGBT groups that are protected by the law are particularly vulnerable to discrimination: youths, and particularly youths of color, and the elderly. These two populations are vulnerable because of a lack of income and a lack of available housing options. Many LGBT youth are displaced from their parental homes. Estimates state that about 26% of young people who come out to their parents leave their homes. Finding available shelter is difficult for these young people due to a combination of their sexual orientation, lack of income, and age. LGBT

youth are sometimes not allowed in homeless shelters, and there is a lack of shelters that are available for youth in general. Beth Cunningham, Staff Attorney for the Chicago Coalition for the Homeless, described safety issues and victimization as primary issues for LGBT homeless youth in Chicago.

For seniors, the difficulty lies in obtaining cost-efficient housing. Many seniors who live alone do not have the means to support or care for themselves. Some LGBT seniors who had partners find their income diminished once their partner dies. Unless found to be unconstitutional by the Supreme Court, the Defense of Marriage Act (DOMA) does not allow unmarried LGBT couples to collect on social security, pension, or veteran's benefits.

B. The difficulties faced by LGBT youth in finding housing in the City of Chicago

According to the LGBT Needs Assessment Data Summary, the top issues that concern LGBT youth are: lack of support services for homeless youth (housing, employment, health, and education), access to services outside of Boystown, particularly on the South and West sides of Chicago, and discrimination against youth of color, particularly regarding law enforcement and safety.” LGBT NEEDS ASSESSMENT DATA SUMMARY (2012), page 36. There is a large homeless population of LGBT individuals, and a large percentile of that is made up of youth.

“One of the biggest issues is homelessness. Homelessness is an issue because many of my friends have no job or can't find one or keep one so there is always someone looking for a place to stay.” LGBT NEEDS ASSESSMENT DATA SUMMARY, page 37.

According to the 2013 statistics of the Chicago Coalition for the Homeless (<http://www.chicagohomeless.org/faq-studies/>), of the 105,000 identified homeless in Illinois, 55,000 are in Chicago. 33% of the 55,000 are youth, and of that number, 30% (a little under 5,500) identify as LGBT. For those 55,000 homeless in Chicago, there are only 1,329 emergency shelter beds per night.

Besides a lack of places to sleep, the homeless LGBT youth of Chicago face a multitude of issues. According to the LGBT NEEDS DATA SUMMARY, these issues range from finding a job to having a place they can call their own. Youth complain that the organizations really do not understand their problems, that they have no place to go, and that they cannot return to their families. They complain about lack of access to employment, health care, and education. Many are concerned about safety issues. Some are forced to prostitute themselves to survive. LGBT NEEDS DATA SUMMARY, pages 37-38.

Rayna Moore, the Youth Advocacy Manager at the Center on Halsted, described the needs of the LGBT youth of Chicago and how the Center supplements those needs. The Center on Halsted provides homeless LGBT youth with hot meals following a therapy session during the week. The hot meals are donated or cooked by volunteers in the Center's kitchen. The Center also provides free CTA transit cards so that the youth can travel to interviews and appointments. The Center's activities are limited, however, because it is not a homeless shelter and closes at 9:00 p.m. each evening. The staff at the Center conducts one-on-one needs assessments and provides the youth with placement referrals. Although the Center on Halsted does its best to provide homeless youth with resources, beds are limited to such nearby shelters as La Casa Norte, Chicago House, Open Door Shelter, and The Crib.

The Crib, located at The Lakeview Lutheran Church, 835 W. Addison, was founded by The Night Ministry in 2011. Beth Cunningham, staff attorney for the Chicago Coalition for the Homeless, praises the Crib as the only gender free space available to homeless youth in Chicago. LGBT youth have responded favorably to this policy and about 30% of the Crib's clients identify themselves as transgendered. The Crib is open from 9:00 p.m. to 9:00 a.m. seven days a week and has about 20 open beds. These beds operate on a first come, first serve basis and provide an

option for those needing immediate shelter. The Crib also provides hot meals, discussion groups, and group activities for homeless youth. According to the Night Ministry website, “there are only about 230 other shelter beds for youth in the City while an estimated 2,000 young people experience homelessness every night.” (<http://www.thenightministry.org>).

The Night Ministry refers a few fortunate youth between the ages of 14 to 20 to its Open Door Shelter for a 120-day Interim Housing Program that assists them to become self-sufficient. The 120-day Interim Housing Program is located at the Open Door Youth Shelter in West Town. There is also a Transitional Living Program at the same location. There are eight beds at this shelter and the youth can stay there up to 36 months.

Ruth Cunningham commented that staff in LGBT-friendly shelters are well-trained to address the needs of homeless youth. However, the numbers of LGBT friendly shelters are limited and are only located on the North side of Chicago. LGBT friendly shelters are necessary because sexual orientation presents an issue in traditional shelters. For many transgendered individuals, LGBT shelters are the only choice for homeless shelters because these individuals are threatened, assaulted, or even raped at male shelters, and are not allowed at female shelters. Many of these youths are estranged from their families and, like all teenagers, may be uncertain about their identity. The experience on the streets may well lock them into identities that they later regret. Their plight is highlighted in several recent articles. Fishman, “Pariahs amid the rainbow,” CHICAGO READER (April 18, 2011); Huppke, "Gender-Identity Clinic Opens for Children." CHICAGO TRIBUNE (Mar. 22, 2013).

Rayna Moore states that one of the biggest barriers that homeless LGBT youth face is discrimination in the workplace and discrimination in job interviews. “The difficulty of finding employment is keeping them in the cycle of homelessness”, says Moore. She suggests that the

best way to combat the discrimination is through “cultural competency training, where individuals at agencies, health centers, and those working with people who do identify as LGBT are educated about these issues.” She stated that education and outreach is imperative to reduce the discrimination and provides a step towards finding solutions for homeless LGBT youth who are in crucial need of a place to stay.

LGBT youth of color face double discrimination. Facilities for LGBT youth are generally not available in Chicago’s minority communities on the south and west sides. Youth from these communities are particularly vulnerable when they come to the north side of Chicago where they are more likely to encounter discrimination on grounds additional to their sexual orientation.

A bright spot in the City is a new facility, El Rescate-Vida/Sida, for LGBT homeless youth in Humboldt Park, a predominantly Puerto Rican and Latino neighborhood. The facility opened on March 3, 2012 and is the first Latino homeless youth shelter in the Midwest. The facility can accommodate up to 10 homeless LGBT youth between the ages of 18 and 24, some of whom are HIV positive. Many of the youth who take part in the program come from a cycle of exploitation from the sex trade and are consequently very wary of placing any trust in adults states Lourdes Lugo, one of the workers at the Center. El Rescate offers a one-year program to provide them with education and job skills. Already funding is an issue, and finding a steady stream of funding to support the program is a challenge.

LGBT youth form a population that is not likely to know their rights and even less likely to assert those rights. The LBGT COMMUNITY NEEDS ASSESSMENT DATA SMMARY, page 36, states that many LBGT youth are not aware of the services available to them or how to access these services. If this is true of their needs to health, education, and employment, it is

even more likely also that this community does not know about its right to be free of discrimination in housing and how to assert that right.

C. The difficulties of LGBT senior citizens finding housing in the City of Chicago

Britta Larson, the Director of Senior Programs at the Center on Halsted, the largest LGBT community center in the Midwest, discussed many issues that LGBT senior citizens face in obtaining housing. A large part of the problem of seniors is economics.

U.S. v. Windsor, 133 S. Ct. 786 (2012), currently pending before the United States Supreme Court, challenges the definition of “marriage” in section 3 of the Defense of Marriage Act as the legal union between a man and a woman. The Defense of Marriage Act plays a huge role in the elderly LGBT population. Since most do not qualify as married couples, partners do not qualify for social security benefits, veteran’s benefits, pension, and other joint sources of income that married heterosexual couples enjoy. This inequality results in many seniors having to live on a single income after their partner dies. The sole income forces many seniors out of their homes because they are unable to afford the same housing or maintain the same lifestyle that they did with a double income.

As a result of the large number of seniors that are aging alone, the Center on Halsted has worked with Heartland Alliance, the leading anti-poverty organization in the Midwest, to build a housing complex of studios and one bedroom apartments next to the Center on Halsted for seniors who need affordable housing. The housing complex will have 80 units that are targeted to those 55 and over. Anyone can apply, and the Center encourages a mix of LGBT and their allies. The construction is set for spring 2013 and the housing complex is set to open in 2014.

Although the housing complex is not yet open, there are currently solutions being offered at the Center. One is a “home sharing program” where an older adult who has a spare room can

benefit with help around the house as well as companionship from a younger renter. This program is the first of its kind in the Midwest.

The program began in 2010 and the first 6 months included lots of researching and putting together documents and selecting individuals who were willing to share their homes. The participants are in the “driver’s seat” so they have the autonomy to select who they want to share their home. Many factors are considered including smoking, pets, and handicap accessibility. The rent in the program is \$500.00/month, depending on location and type of housing. A lease-like agreement is signed by the two parties and any disputes are handled through mediation.

As of March of 2013, there have been fourteen matches, a total of 28 people who have successfully utilized this program. The average age of the renters have been in the mid-40s as the program lends itself to middle-aged adults who are renting for a variety of reasons. Some rent because of their financial situations, and others are new to Chicago and want an easy way to transition into the community. The program includes a vigorous screening process that includes multiple interviews, personality assessments, references, and background checks. There is no cost to apply since the Center on Halsted absorbs all of the fees related to the background checks. The Center also conducts a follow up as an extra layer of security.

Larson applauds the City of Chicago for being supportive of LBGT senior housing but suggests that with the growth of baby boomers, there will be many LGBT seniors who do not want to “go back into the closet” and there will be a greater need in the City for senior housing. She estimates that there are 40,000 older LGBT adults in the City of Chicago who are in need of housing. “A lot of seniors that I know have to go back into the closet when they go into the nursing facility. Many people really regret that. A LGBT place for assisted living doesn’t really

exist- there isn't any. Housing does not exist for us." LGBT COMMUNITY NEEDS ASSESSMENT DATA SUMMARY, page 32.

D. Refocusing marital status discrimination

Both the City of Chicago and the State of Illinois prohibit discrimination on the basis of marital status. Marital status is not a protected class under the federal Fair Housing Act. While the protection given to marital status in Illinois is important, it is narrowly defined.

Although the federal Fair Housing Act does not specifically apply to marital status, the Act may come into play if the discriminatory practice involves another protected class as well. For instance, in *Morehead v. Lewis*, 432 F. Supp. 674 (N.D. Ill. 1977), *aff'd without opinion*, 594 F.2d 867 (7th Cir. 1979), a landlord had a policy against renting to unmarried females although she would rent to single males or families with children. This policy violated the Fair Housing Act. *See also, Marable v. H. Walker & Associates, Inc.*, 605 F.2d 390 (5th Cir. 1981). *Cf., Markham v. Colonial Mortgage Service Company Associates, Inc.*, 605 F.2d 566 (D.C. Cir. 1976) (ECOA).

Marital status is defined by the Illinois Human Rights Act as "the legal status of being married, single, separated, divorced or widowed." 775 ILCS 5/1-103(J). This definition has been interpreted to exclude couples who are not married but are cohabitating. In *Mister v. A.R.K. Partnership*, 197 Ill.App.3d 105 (1990), *appeal denied*, 133 Ill.2d 559 (1990), the applicants had secured a temporary restraining order against a rental policy that prohibited the rental of apartments to unmarried couples of the opposite sex. It was agreed that the landlord would have rented to couples who were married or to two persons of the same sex. The Court agreed that the language of the statute was ambiguous, but the Court found that public policies embodied in the Illinois Criminal Code against fornication and in the statutory renouncement of common law

marriage to be dispositive and held that the statute did not protect open and notorious nonmarital cohabitation. The Court acknowledged that the prohibition of fornication had fallen into disuse but, nonetheless, represented Illinois public policy.

The *Mister* decision raises troubling problems not only for couples of the opposite sex but also for same sex couples. Does the amendment of the Illinois Human Rights Act to include sexual orientation protect LGBT couples who cohabit? If it does, does the Act then favor LGBT couples over heterosexual couples who are unmarried? Does the Act as construed by the Appellate Court violate the constitutional right of privacy or equal protection of both LGBT and heterosexual couples? *See, Lawrence v. Texas*, 539 U.S. 558 (2003) (holding the Texas Sodomy law unconstitutional because it involved an unlawful government intrusion into a dwelling or a private place); *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) (holding an occupancy ordinance unconstitutional that unduly restricted “family” members who could live together.) *Cf., Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974) (upholding an occupancy ordinance preventing unrelated persons from living in the same household).

E. Proposal for action

1. Legislative changes

The LGBT community is protected under Illinois law and through the Chicago fair housing ordinance. No amendment to these provisions is proposed. The federal Fair Housing Act lags behind Illinois in its protection of LGBT individuals. An amendment by Congress to add sexual orientation as a protected class would send a powerful message that discrimination on the basis of sexual orientation will not be tolerated in the United States. Such an amendment should be inevitable now that LGBT restrictions have been lifted on those serving in the military. It is

unlikely that the federal government will tolerate discrimination in housing involving service members or veterans.

If the Supreme Court declares the Defense of Marriage Act unconstitutional, this will remove a major impediment for senior members of the LGBT community to housing. If the Supreme Court does not remove this impediment, advocacy groups should lobby Congress for its repeal. The change in public thinking generated in part by the arguments in the Supreme Court may provide incentive for Congress to take this action.

Illinois and the City of Chicago should amend the definition of “marital status” to make it explicit that it applies to cohabitation by unmarried couples of both the opposite and of the same sex. Such an amendment would be in accordance with current social mores and would eliminate the ambiguities and possible constitutional problems raised by the current interpretation of the provision that limits protection to unmarried couples of the opposite sex.

2. Regulatory and policy changes

HUD has gone to the extent of its regulatory power in protecting LGBT individuals from discrimination, largely removing this type of discrimination in federally subsidized programs and in trying to reach this discrimination whenever possible by use of one of the existing protected classes. 24 CFR §5.100 et seq., 77 Fed. Reg. 5662 (Feb. 3, 2012). HUD’s regulation demonstrates why an amendment to the federal law is desirable. Especially now that the military has ceased its discriminatory practices against LGBT individuals, it will be a matter of embarrassment for the government if LGBT service members and veterans cannot secure housing in the private market.

HUD is already requiring a data collection procedure for cases involving sexual orientation, gender identity and gender expression, which are not presently explicitly protected

under the federal Fair Housing Act. *See* MEMORANDUM FOR FHEO REGIONAL DIRECTORS from John Trasviña, Assistant Secretary for Fair Housing and Equal Opportunity (June 15, 2010). This will be useful information for promoting further legislative and regulatory actions. Similarly, HUD and all FHAP agencies should continue to thoroughly review all complaints that come in alleging discrimination on an existing protected class or on sexual orientation to see if the discrimination involved a young person or the elderly. This should be noted in the allegation summary in each file. This will also provide helpful data on the incidents of discrimination against LGBT youth and seniors and will be useful information to support legislative and administrative changes in the program.

Homeless shelters that serve LGBT youth of color should be located on the south and west sides of Chicago. The lack of homeless shelters for LGBT youth in minority communities may give rise to a violation of the Fair Housing Act. The opening of El Rescate-Vida/Sida to serve Latino LGBT youth in the Humboldt Park neighborhood demonstrates the need for such facilities. A survey should be conducted to determine if similar facilities would be useful to LGBT youth on the south and west sides of Chicago.

3. Education and outreach

Extending federal protection alone will not solve the problem of LGBT youth, and particularly youth of color. Such discrimination is already illegal in Illinois and in Chicago but LGBT youth still face major hurdles in finding housing. A large part of the problem is due to their age and economic condition. There are not enough beds available for the homeless population, let alone the specific group of homeless people that identify as LGBT. There should be more safe spaces throughout the community, especially in the minority community, for individuals who identify as LGBT. Similarly, the federal, state, and local governments, along

with private organizations, need to launch a multifaceted effort to provide LGBT youth help not only with housing, but also with education, employment and health care.

Many times discrimination comes from a lack of education and the seminars are a way to educate individuals. We recommend that there should be required cultural competency training for homeless shelters and agencies that deal with LGBT issues. It is also important that law enforcement officers, social workers, health care officials, and others who work with this population be informed of their rights and remedies under the law. The Center on Halsted conducts training seminars at agencies, schools, with the state/government, and health centers to educate individuals on how to work with clients who identify as LGBT. The Center reports that staff at the various agencies has been very receptive to learning about different ways of combatting discrimination against LGBT individuals.

Educating LGBT youth about their fair housing rights is also important. Fair housing organizations should conduct trainings at shelters that house youth and prepare brochures and other educational materials that specifically inform them of their rights and remedies under the fair housing laws. Fair housing advocates should work with homeless and LGBT advocates to advance the agenda of this neglected class that is already protected under the law, although only ineffectually at the present time. As in other areas of fair housing law, fair housing organizations should undertake systemic testing to determine the frequency and extent to which LGBT youth are victimized by housing discrimination.

Similarly, education and outreach efforts should be targeted to LGBT seniors who likewise may not be aware of their rights.

X. Discrimination against seniors

Seniors are frequently denied access to the housing of their choice. Age discrimination is not protected under the federal Fair Housing Act, although it is under Illinois law. But often the discrimination is not based on age as such because much of the discrimination occurs in facilities built specifically for seniors. This study did not specifically research the housing problems of seniors because discrimination against seniors was a subject of a report by the Center for the Retirement Research Foundation in 2007. The findings and recommendations from that study are published at <http://www.jmls.edu/fairhousing/pdf/commentary/senior-housing-final-report.pdf>.

Seniors have many housing problems. Many seniors are handicapped, but their disabilities may not be acknowledged beyond the dismissive comment that one has to expect to have problems as one becomes older. Many seniors lack financial resources or have a criminal or conviction record dating from their youth. Seniors have problems finding accessible housing. Seniors with disabilities are sometimes not welcome in independent living centers or encounter problems in assisted living centers. Many times the only option available to them is a nursing home, if they can afford it. Not surprisingly, testing conducted for the 2007 report disclosed racial discrimination in senior facilities.

Seniors are particularly vulnerable because they are frequently dependent upon others. Like many of the other groups discussed in this report, seniors may not be aware of their rights, or even if they are aware of their rights, they are not willing to assert them through any governmental process

After The John Marshall Law School senior report was published in 2007, a number of fair housing groups in Illinois began a concerted effort to amend the Illinois Assisted Living and Shared Housing Act, 210 ILCS 9/1, to make it compatible with the Fair Housing Act. The

amendments encountered substantial industry opposition and the Act remains without amendment.

Proposal for action

1. Legislative changes

The Center again recommends that the Illinois legislature amend the Assisted Living and Shared Housing Act, 210 ILCS 9/1. Compliance with the Fair Housing Laws should be a specific condition for licensing under the Act and a substantial violation of the federal Fair Housing Act or the Illinois Human Rights Act should be a ground for suspending or revoking a license. Specifically, provisions of section 75, which sets the requirements for residency, does not allow for consideration of any reasonable accommodation and in some cases requires termination of residency in cases where a reasonable accommodation could possibly relieve the problem.

Consideration should also be given to amending the Life Care Facilities Act, 210 ILCS 40/1, and the Nursing Home Care Act, 210 ILCS 45/1, to make compliance with the Fair Housing Act and the Illinois Human Rights Act a specific ground for denial or revocation of a license.

2. Regulatory and policy changes

HUD and Illinois regulations should make it explicit that senior facilities, including independent living centers, assisted living centers, and nursing homes are covered by the Fair Housing Act and the Illinois Human Rights Act. Even without such a regulation they are covered by these Acts, but making it explicit would remove any question that these housing providers might harbor.

3. Education and outreach

Education and outreach in fair housing should be addressed specifically to seniors and to aids who work with seniors. Specific fair housing training should also be regularly made available to senior housing providers. Surveys conducted for the 2007 study showed that many seniors, senior advocates and senior housing providers were unfamiliar with the requirements of the law.

HUD and the Justice Department should publish a joint statement on the right of seniors to be free from discrimination. The Joint Statements published by HUD and DOJ for reasonable modifications and for reasonable accommodations have been very helpful both to consumers, advocates, and housing providers and would be helpful in the area of senior housing.

Seniors like many other classes protected by the fair housing laws are not likely to complain even if they are aware that discrimination is occurring. Therefore, testing of senior facilities should be done on an on-going basis. HUD and state and local fair housing agencies should be open to file government-initiated complaints against senior housing providers that violate the law and should, as in other cases, allow broad standing for those private fair housing organizations that act as private attorneys general.

XI. Procedural and administrative changes that could further enforcement of the fair housing laws and encourage the filing of complaints

Despite the fact that the Civil Rights Act of 1866, the first civil rights act ever passed by Congress, made it illegal for anyone to discriminate on the basis of race in real estate transactions, which included housing, 42 U.S.C. §1982, and the Fourteenth Amendment, adopted in 1868, prohibited states from violating equal protection of the laws, housing segregation was openly fostered by both governmental and private policies prior to 1968. Although the Supreme Court held in 1917, that government could not segregate housing by race, *Buchanan v. Warley*, 245 U.S. 60 (1917), both the states and the federal government were actively engaged in discriminatory housing practices. See, Lipsitz, HOW RACISM TAKES PLACE (2011); Satter FAMILY PROPERTIES (2009).

Private discrimination was considered to be beyond the regulatory reach of the federal government. See, *The Civil Rights Cases*, 109 U.S. 3 (1883). However, in 1948, the Supreme Court took the revolutionary stand that state judicial enforcement of restrictive covenants was illegal state action under the Fourteenth Amendment. *Shelley v. Kraemer*, 387 U.S. 369 (1948). *Shelley* had been preceded by *Hansberry v. Lee*, 311 U.S. 32 (1940), which involved the struggle against restrictive covenants in Chicago. *Hansberry* won in the Supreme Court, but the Court's decision did not address the legal validity of the restrictive covenants. The case rather turned on the binding effect of a prior class action judgment. See, Kamp, "The History Behind *Hansberry v. Lee*", 20 U. of CAL. DAVIS L.REV. 481 (1987); Brooks & Rose, SAVING THE NEIGHBORHOOD (2013). In 1967, the Supreme Court found that California by giving homeowners a right under the California Constitution to discriminate brought private acts of discrimination under the Fourteenth Amendment. *Reitman v. Mulkey*, 387 U.S. 369 (1967). Both *Shelley* and *Reitman* paved the way for the revolutionary changes to come in 1968.

This situation changed dramatically in 1968 when federal enforcement of the right to be free from racial discrimination in housing began in earnest. The Supreme Court held in *Jones v. Alfred H. Meyer Co.*, 392 U.S. 409 (1968), that the Civil Rights Act of 1866 reached private conduct and was constitutional under the Thirteenth Amendment. Also, Congress passed the Fair Housing Act, 42 U.S.C. §3600 et seq., which was extensively amended by the Fair Housing Amendments Act of 1988. Federal fair housing law has remained substantially unchanged since 1988.

Locally, Illinois enacted a new Constitution in 1970 that provided that all persons have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the sale of rental or property. The Constitution provides that this right is enforceable even without action by the General Assembly. Article 1, §17 of the Illinois Constitution of 1970. *Walinski v. Morrison & Morrison*, 60 Ill. App.3d 616, 377 N.E.2d 242 (1st Dist. 1978). However, the Illinois Human Rights Act, 775, ILCS 5/1-101, et seq., which became law on July 1, 1980, became the exclusive mechanism to enforce the right to be free from housing discrimination guaranteed under section 17 of the 1970 Constitution. In 1989, the Human Rights Act was amended to make it compatible with the 1988 Amendments to the federal Fair Housing Act and complainants alleging housing discrimination were allowed to pursue alternative private enforcement actions in state court. Because the Illinois Fair Housing Act mirrors the federal law, Illinois courts often use federal law to construe Illinois fair housing law. *E.g., Hsu v. Human Rights Commission*, 180 Ill. App.3d 949, 536 N.E.2d 732 (1st Dist. 1989).

The City of Chicago passed an open housing ordinance in 1963, five years before Congress passed the Fair Housing Act. The original City ordinance covered only real estate brokers, but it was expanded in 1968 to cover sellers and landlords as well. The Chicago

ordinance includes classes not protected by the federal Fair Housing Act. Cook County also passed a fair housing ordinance in 1993, which includes protected classes not found in federal law.

Almost 50 years later, the problem of segregated housing in Chicago is still with us. This does not mean that there has not been progress, but one look at the demographics of the Chicago metropolitan area shows that the same patterns that existed 50 years ago are still visible today. When one looks at the violence and hopelessness that characterizes many of our communities, one could well question whether the region has indeed regressed.

One would like to suggest that the future will be brighter, but history tells us that patterns of segregation have persisted for years and will likely continue to do so, absent new strategies to combat it. The Chicago metropolitan area is thus left with two choices: leave everything to existing market forces with interventions only when individuals come forward with complaints; or, actively intervene and develop proactive remedies.

The Fair Housing Act has some of the broadest remedial provisions of any of the federal civil rights laws. The 1988 Fair Housing Amendments Act completely changed the nature of fair housing enforcement. As the Supreme Court had correctly recognized in *Trafficante v. Metropolitan Life Insurance Co.* 409 U.S. 205 (1972), the 1968 Act relied primarily upon private enforcement actions in the federal courts. The only exceptions were the voluntary settlement procedures that could be initiated by plaintiffs at HUD. However, if the defendant was not willing to negotiate or if the parties' expectations were too far apart, a private lawsuit in the federal court was the only avenue open to them under the Act. The United States Department of Justice could enforce the Fair Housing Act, but as recognized by the Supreme Court, only in pattern and practice cases. 42 U.S.C. §813(a).

Under the 1988 Amendments Act, aggrieved parties could still file private fair housing actions in both the state and federal courts, and these judicial enforcement actions were facilitated by the Act's extension of the statute of limitations to two years. 42 U.S.C. §3613. The Justice Department could continue to initiate pattern and practice cases. 42 U.S.C. §3614. But in addition, enforcement actions could be initiated through a complaint with HUD or a substantially equivalent state agency.

To initiate the administrative process, an "aggrieved person" can file a complaint within one year after an alleged discriminatory housing practice with the HUD Secretary. 42 U.S.C. §3610(a)(1)(A)(1). An "aggrieved person" is defined as "any person who – (1) claims to have been injured by a discriminatory housing practice; or believes that such person will be injured by a discriminatory housing practice that is about to occur." 42 U.S.C. §3602(i). In addition, Congress further expanded the Act to provide that the Secretary could initiate a complaint and that the Secretary could investigate housing practices to determine whether a complaint should be brought. 42 U.S.C. §3610(a). Where there is a substantially equivalent state or local agency, HUD must refer the matter to it. 42 U.S.C. §3610(f).

HUD is required to conduct an investigation of the complaint within 100 days, which can be extended. 42 U.S.C. §3610 (a)(1)(B)(iv). Failure to meet the 100 day requirement is not jurisdictional. *Baumgardner, v. HUD*, 960 F.2d 572 (6th Cir. 1992). During that period, HUD is required to attempt to conciliate the complaint. 42 U.S.C. §3610(b). The failure of HUD to attempt any conciliation can result in the vacation of a later award and a remand to renew conciliation efforts. *HUD v. Kelly*, 3 F.3d 951 (6th Cir. 1993). However, if the case is not conciliated and if HUD determines that there is reasonable cause to believe that a discriminatory housing practice has occurred, HUD must issue a finding of cause. 42 U.S.C. §3610(g).

At this stage the parties have a choice. They can elect to have the matter heard by a HUD Administrative Law Judge (ALJ), 42 U.S.C. §3612(b), or they can elect to take the matter to federal court. 42 U.S.C. §3612(a8). If the matter proceeds before a HUD ALJ, action is taken in the name of the Secretary and the matter is pursued on the government's behalf through the office of HUD's General Counsel. The complainant has the option to intervene in the proceeding, but the matter proceeds regardless of whether the complainant intervenes or is represented by private counsel. If either party elects to go to federal court, the matter is pursued in the name of the United States by the Department of Justice. The complainant may intervene and be represented by private counsel. 42 U.S.C. §3612(c). Whether before the ALJ or in the district court, it is the obligation of the government to vindicate the plaintiff's rights and to collect compensation and redress on the complainant's behalf.

The Illinois act is substantially equivalent to the federal act. The City of Chicago's Human Rights ordinance is not substantially equivalent and provides only for administrative enforcement. It has only a 180-day statute of limitations, as does the Cook County fair housing ordinance.

Relatively few class action or systemic cases have been filed under the Fair Housing Act. The attack on segregated housing has proceeded for the most part by the filing of individual law suits or administrative complaints where persons seek redress for their own individualized injuries. Enforcement therefore very much depends upon whether the victims of housing discrimination know their rights and are willing to come forward to file a complaint and invest the time and effort in pursuing it to the end. Despite repeated education and outreach efforts, there has never been more than a trickle of fair housing complaints filed in court or in the administrative process, whether state or federal.

Nationally HUD investigated 1,817 complaints in 2012. In Region V, in which Illinois is located, HUD investigated 21 complaints from Illinois in 2010. <http://portal.hud.gov/hudportal/documents/huddoc?id=ANNUALREPORT2010.PDF>. The Illinois Department of Human Rights reports that it investigated 313 complaints related to housing in 2012. http://www2.illinois.gov/dhr/Publications/Documents/Annual_Report_FY_2012.pdf. The Chicago Commission on Human Rights received 97 fair housing complaints in 2012 filings. Most of these cases reflect individual filings and few raised issues of systemic segregation in the Chicago metropolitan area.

Even if the majority of these complaints are successfully prosecuted, there is a question about their deterrence value. Are individual housing providers, lenders and public officials likely to be deterred from pursuing discriminatory actions by the threat of a lawsuit or administrative action? On a cost/benefit basis, does the cost of being discovered and prosecuted outweigh the benefits of ignoring the law and doing business as usual? No empirical study exists to answer these questions. But whether the filing of individual complaints and seeking individual relief really provides an effective remedy for systemic residential discrimination seems to be answered by looking at the continuing prevalence of segregation and discrimination in our society.

Why so few complaints are filed is not known. But one can intuit that it is because many persons do not recognize that the law is being broken, and even if they do, they feel uncomfortable stepping forward or that it is not worth their time to complain. In addressing the deficiencies under the original 1968 Fair Housing Act, Senator Robert Dole speculated on why more complaints had not been filed under that earlier version of the statute. Despite the fact that

the 1988 broadened the enforcement mechanism, many of Senator Dole's concerns may be relevant today:

“The Department of Housing and Urban Development which administers the fair housing law, estimates that more than 2 million acts of housing discrimination occur every year – 2 million. Yet HUD receives only 4,000 to 5,000 complaints each year. Something is wrong here.

“Here are some possible reasons for the low number of complaints; Some victims may not even know they have been discriminated against because information about the availability of housing is withheld.

“Another reason for the low number of complaints may be frustration. Frustration due to the even lower number of housing units actually obtained for the victims of discrimination.

“It is a simple fact of life that if you do not deliver the goods, sooner or later, people simply stop coming to you for help.”

134 Cong. Rec. S10467 (Aug. 1, 1988).

A major reason may be that today, civil rights are not a central agenda either of the government or to most citizens. Pursuing a civil rights action for the broader benefit of society is not something that most people today would undertake without serious reflection. Even though the 1988 Amendments Act provided a new enforcement mechanism, the results of this mechanism have not produced the results its proponents expressed. What has become clear is that seeking new remedies is an evolving process.

Many of the proposals recommended in this section were first set forth in the chapter, Seng & Caruso, “Achieving Integration through Private Litigation,” THE INTEGRATION

DEBATE – COMPETING FUTURES FOR AMERICAN CITIES (Hartman & Squires, editors, 2010).

A. Add a private right of action for the enforcement of the affirmative duty to further fair housing and impose the duty on certain housing providers as well as government officials.

The Fair Housing Act has a unique provision – the affirmative duty of federal officials to further fair housing. 42 U.S.C. §3608(d). In addition to HUD, this provision applies to every federal agency that administers a housing program including the Department of Defense, the Department of Agriculture, the Department of the Interior, the Federal Reserve, the Federal Trade Commission, the Internal Revenue Service, and the Department of the Treasury. *Jorman v. Veterans Administration*, 579 F. Supp. 1407 (N.D.Ill. 1984).

However, the provision does not contain a private right of action. *NAACP v. Secretary of HUD*, 817 F.2d 149 (1st Cir. 1987).¹¹ Federal officials can be sued only under the Administrative Procedure Act, 5 U.S.C. §702, for administrative review. *Ibid.* Such suits have been successful when federal funding decisions promote existing segregated neighborhood patterns. *Otero v. New York Housing Authority*, 484 F.2d 1122 (2d Cir. 1972); *King v. Harris*, 464 F. Supp. 827 (E.D.N.Y. 1979); *Darst-Webb Tenant Ass’n Board v. St. Louis Housing Authority*, 339 F.3d 702 (8th Cir. 2003); *Dean v. Martinez*, 336 F. Supp.2d 477 (D. Md. 2004); *Thompson v. HUD*, 348 F. Supp. 398 (D.Md. 2005). A suit under the Administrative Procedure Act requires one to exhaust all available administrative remedies before proceeding under an administrative review and does not allow for damage or other legal relief, only administrative review, which is a lesser deterrent.

A private right of action should be accompanied by an explicit waiver of sovereign immunity. Without an explicit waiver, damages cannot be recovered directly from the federal or

¹¹ See *Young v. Pierce*, 544 F. Supp. 1010 (E.D. Tex. 1982).

state treasuries. *See, e.g., Lane v. Pena*, 518 U.S. 187 (1996); *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976). It is the exceptional situation when states themselves are involved in fair housing disputes. Local governments control zoning, building permits, and other regulatory measures that directly impact on housing policies, and they are often sued for housing violations. Local governments, like the City of Chicago, are not protected by sovereign immunity under the 11th Amendment. *Mount Healthy Board of Education v. Doyle*, 429 U.S. 274 (1977). However, they may try to claim that they are only liable when the violation has occurred as a result of their “official policies and practices,” and not under regular agency principles. *See, Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978) (42 U.S.C. §1983). Any amendment to the Fair Housing Act or to a state or local ordinance should be explicit that the standard is that of vicarious liability as the Supreme Court has recognized is generally applicable in actions under the Fair Housing Act. *See, Meyer v. Holley*, 537 U.S. 280 (2003).

More recently the courts have recognized a cause of action under the False Claims Act when a state or local government has falsely certified that it has complied with the affirmative duty to further fair housing when applying for federal funds. *United States ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County*, 495 F. Supp.2d 375 (S.D.N.Y. 2007).

A more direct route would be for Congress to provide expressly for enforcement of the duty through a private right of action. It could further rely on Section 5 of the Fourteenth Amendment and the Spending Power in Article 1, Section 8 to expand the provision to apply to all state action where federal funds are used. The Supreme Court has recognized that Congress’ powers are at their zenith under Section 5 when it seeks to eliminate racial discrimination. *City of*

Boerne v. Flores, 521 U.S. 507, 526 (1997); *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356, 373 (2001).

In *Jones v. Alfred E. Meyer*, 392 U.S. 409 (1968), the Supreme Court recognized that Congress can regulate racial discrimination by private housing providers because dismantling our nation's racial ghettos is justified under Congress' power to eliminate the badges and incidents of slavery under Section 2 of the Thirteenth Amendment. In order to dismantle persistent patterns of segregation, Congress should place a duty on owners of multi-family buildings of four units or more, condominium associations and other homeowner associations, and real estate brokers and management companies to affirmatively market their properties.¹² Congress should also place the duty to affirmatively market loans and other financial products on those involved in financing housing.

Congress could direct that HUD exercise its rule-making powers to promulgate guidelines for private housing providers on how to comply with this affirmative duty.

Imposing an affirmative duty to further fair housing is not in conflict with the United States Supreme Court's decisions on affirmative action.¹³ The affirmative action remedy that triggers strict scrutiny under the Fourteenth Amendment operates to exclude persons because of their race or color. Affirmative marketing efforts do not operate to exclude anyone and are fully consistent with equal protection requirements. *South Suburban Housing Center v. Greater South Suburban Board of Realtors*, 935 F.2d 868 (7th Cir. 1992). Furthermore, by emphasizing that the roots of housing discrimination go back to slavery, Congress will be returning to the core reason

¹² If Congress is concerned about overreach of such a provision, it could narrow the requirements to only those housing providers that are of sufficient size to warrant imposing this expanded obligation such as it has done in enforcing the accessibility requirements for new multi-family housing. 42 U.S.C. §3604(f)(3)(C).

¹³ E.g., *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995); *Gutter v. Bollinger*, 539 U.S. 306 (2003).

behind the adoption of the post-civil war amendments and the majestic power that those amendments gave to Congress. *Jones v. Alfred E. Meyer*, 392 U.S. 409 (1968); *The Civil Rights Cases*, 109 U.S. 3 (1883) (Harlan dissenting). The advantages of stressing an affirmative duty to further fair housing is that it takes much of the burden off the home seeker and places it where it belongs – on the housing provider and on policy makers who have created the dual housing market we have today. *See, Green v. Board of Education*, 391 U.S. 430 (1968), (holding that the burden of desegregating schools should be placed on the offending school boards and not on the parents and the children who were the victims of discrimination).

Similar obligations should be imposed by the State of Illinois and the City of Chicago. Although states and local governments are responsible for affirmatively furthering fair housing when they are administering federal funding, they should recognize that it is in their best interests if policies are administered to end segregation and foster a truly integrated society. The obligation should further be extended to all private parties who are receiving federal or state funding to ensure that they are taking affirmative steps to eliminate housing segregation and promote integration.

By placing such a responsibility on governmental entities and explicitly recognizing the right of private parties to enforce this obligation, new incentives would be given to governmental officials and persons receiving government money to address the stark segregation in the Chicago metropolitan area.

Government entities should not themselves wait for the legislature to demand this duty. In appropriate circumstances, state and local government entities should pass administrative rules that require their employees, contractors, and recipients of governmental funds to act

affirmatively to further fair housing. Compliance with this mandate should be part of the compliance review for every employee, contractor, and recipient of governmental funding.

B. Expand existing standing to file administrative complaints

The United States Supreme Court has accorded broad standing to those who have been injured by discriminatory housing practices to sue in the federal courts. *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979); *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

The Supreme Court has read standing under the Fair Housing Act to extend as far as the Constitution allows. All of the cases decided by the Supreme Court have involved private rights of action in the federal courts. Federal court standing is limited by Article III of the Constitution. Article III requires at a minimum that a plaintiff suffer some injury in fact. The federal courts have on occasion imposed additional prudential standing requirements to prevent plaintiffs from asserting the rights of third parties or asserting only generalized injuries. But these can be waived by the courts or by Congress. In interpreting the Fair Housing Act, the Supreme Court stated that Congress intended that only the minimum Article III requirements be considered. In *Bellwood*, the Court held that Congress had expanded the jurisdiction of the federal courts to the Article III limit, but cautioned:

“Congress may, by legislation expand standing to the full extent permitted by Art. III, thus permitting litigation by one ‘who otherwise would be barred by prudential standing rules.’ . . . In no event, however, may Congress abrogate the Art. III minima: A plaintiff must always have suffered ‘a distinct and palpable injury to himself,’ . . . that is likely to be redressed if the requested relief is granted.” 441 U.S. at 100.

The same limitations do not apply to suits in the state courts or to administrative actions and administrative complaints. Illinois courts impose similar standing requirements as the federal courts. However, the administrative process has no similar limitations. Therefore, when extending standing to its constitutional limits, Congress did not intend that standing should be invoked as an impediment to any citizen filing an administrative complaint for a fair housing violation.

In *Trafficante*, the Supreme Court quoted Senator Jacob Javits' statements in support of the Act that "the person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is . . . 'the whole community.'" 409 U.S. at 211.

Once a HUD or an equivalent agency finds that a fair housing violation has occurred, any subsequent civil action is processed in the Secretary's name or in the name of the United States of America, although aggrieved parties may request to intervene in HUD ALJ proceedings. As stated by Senator Javits and by the Court in *Trafficante*, an aggrieved party can be any member of the community. A similar procedure applies under state law. Consequently standing is no longer an issue because the government has standing to see that the law is enforced against a housing provider who has engaged in a discriminatory housing practice. Whether the complainant has suffered any injury to justify an award of damages is, of course, a separate question from whether the complainant had standing and does not affect the jurisdiction of the court.

Nonetheless under current practice, HUD and most other human rights agencies dismiss complaints if they find that the complainant did not meet Article III standing requirements, even though the Article III requirements are not applicable outside the federal court system. When we discuss administrative standing we start with the statute and not with Article III of the United

States Constitution. *Ritchie v. Simpson*, 170 F.3d 1092, 1095 (Fed. Cir. 1999). Petitioners may be “interested part[ies]” under the statute and therefore able to petition the agency and yet not have Article III standing to bring an action in federal Court. *Brazoria County v. Equal Employment Opportunity Commission*, 391 F.3d 685, 691 (5th Cir. 2004); *Gettman v. Drug Enforcement Administration*, 290 F.3d 430, 433 (D.C.Cir. 2002); *Wilcox Electric, Inc. v. FAA*, 119 F.3d 724, 727 (8th Cir. 1997).

Clearly fair housing organizations and advocates acting as private attorneys general have a special interest in seeing that the fair housing laws are enforced. There is no reason to do an administrative investigation to determine if complainants have themselves suffered the type of individualized injury required when someone sues in the federal courts. An allegation that the complainant is a member of the community is sufficient to qualify the complainant as an “aggrieved party.” HUD and state agencies should train their investigators so that they do not divert investigations by focusing on the standing of the complainant.

C. Increase the use of government-initiated complaints to enforce fair housing

The number of complaints filed in court and administratively are low compared to the estimated discrimination that experts claim is present. Systemic testing uncovers discrimination in situations where no complaint has been filed. HUD has authority to initiate complaints on its own initiative and the same authority is given to substantially equivalent state and local agencies. However, the number of government-initiated complaints has always been low and in some agencies non-existent. In 2012, HUD filed 16 secretary-initiated complaints nationwide. While this is a substantial increase for HUD, it is pitifully low given the extent of discrimination and the reluctance of consumers to complain. The State of Illinois initiated no complaints on its own, and neither did the City of Chicago. As discussed above, ex-offenders and immigrants are even

more unlikely to file complaints than members of other protected groups and the City of Chicago should be overwhelmed with source of income complaints, which comprise the greatest part of its investigatory load, but do not reflect the extent of the problem in the City.

There is no reason for the government to sit and wait for complaints to be filed. The government itself can undertake systemic testing or rely on local fair housing groups to test and initiate a complaint. When local governments exercise their zoning or permit powers to perpetuate discrimination or when developers ignore the law, the government needs to step in. Lack of resources is always a problem in government. But lack of resources is also a problem, and a growing problem, with private fair housing organizations. In the long run, it is cheaper for government to step in and raise a fair housing allegation early on, rather than to allow segregation to continue with the inevitable costs to individuals and society that segregation perpetuates through the years.

D. Allow statutory penalties to be awarded to the victims of discrimination and establish a schedule of presumed damages

While the amount of damage awards has steadily increased in fair housing cases, they are nowhere near those awarded in other types of personal injury actions. One of the problems is valuing the harm caused by housing discrimination in an individual case. There are several things that could be done to ease the burden of complainants in establishing damages.

First, award statutory penalties that are paid to the government should be awarded directly to the complainant. Statutory penalties are not large, but they are certain and the award would ensure that if the complainant establishes the respondent's liability, the complainant would receive some monetary relief. It is hardly encouraging to a complainant to see attorneys' fees and statutory penalties being imposed on the respondent that are greater than the award to the complainant.

Second, HUD and fair housing agencies should establish a schedule of presumed damages for loss of housing, humiliation and mental suffering. This would ensure that a complainant would receive some compensation and would remove some of the roulette-like awards in housing discrimination cases. Such a schedule would provide an incentive for plaintiffs to file fair housing complaints. Complainants could recover damages without subjecting themselves to extensive psychological questioning. They would then be allowed to prove additional damage in cases involving exceptional injury. Presumed damages are set by scale under most workmen's compensation schemes. Awarding presumed damages would be within the discretion of the judge and the amount could be raised or lowered depending upon the case. They should not trigger a serious due process or judicial independence challenge. They would also be very useful in conciliation proceedings, both by discouraging unrealistic expectations in complainants and by educating defendants about the costs of housing discrimination.

HUD and state and local fair housing agencies could set up these schedules through their regulatory power and should not have to wait for legislative authorization.

Attorneys that litigate fair housing cases in court and in tribunals that award punitive damages should concentrate on this very important deterrent to housing providers and incentive to victims to initiate complaints. Setting up a scale to assist attorneys when they request punitive damages and courts when they award them or review the award made by juries may be very helpful.

E. Encourage more testing by governmental agencies, private fair housing organizations, and self-testing by housing providers and lenders

Testing is perhaps the single most effective way to detect and prove a case of housing discrimination. While sometimes landlords state explicitly that they will not rent to someone

because of their disability or because they have children or a housing choice voucher, except in the rarest of cases, landlords are more likely to discriminate with a smiling face and a facially believable excuse. In many cases, the only way to know if there is discrimination is to test.

Most fair housing organizations have some capacity to do complaint-based testing. However, broad-based systemic testing takes resources and time that most organizations do not have. If a systemic test is positive, the organization is faced with determining who has standing to complain.

HUD should consider whether it should adopt its own testing program similar to that operated by the Department of Justice. This would enable HUD to conduct systemic investigations without partnering with private fair housing groups. Some FHAP agencies have their own testing programs, especially if they are in a jurisdiction where there is no FHIP agency that conducts tests.

In jurisdictions where there are both FHAP and FHIP agencies, partnerships should be developed so that when the FHAP needs a test conducted to complete an investigation, it can refer the matter over to a FHIP agency if the FHIP agency is not otherwise involved in the case. Fair housing organizations cannot conduct testing without financial assistance and therefore it should be worked out in advance how the organization will be compensated for its efforts. Such an understanding will lessen the agency's suspicion of the organization's motives, and will assure the organizations that they will be compensated.

Congress amended the Fair Housing Act to encourage self-testing by housing providers and lenders. Such testing should be part of the standard practice of every housing provider and lender. It should be included as an element in every settlement agreement and judicial or administrative order. More education and outreach needs to be made to housing providers and

lenders to educate them on the benefits of testing and to train them how to test. Housing providers may wish to partner with fair housing organizations or other experts to conduct self-test programs. A certification program for entities that conduct self-tests may prove to have value in the marketplace in terms of expanding the demand for such housing and financial products.

F. Require local governments to specify how they are going to remove impediments to fair housing and the timelines for doing so and require them to implement their recommendations so that they are not merely aspirational as at the present time

In the first part of this report, the various plans of the City of Chicago, Cook County, the City of Oak Park, the Village of Arlington Heights, and the Village of Skokie were summarized to identify impediments and remove barriers to integration. Virtually all of these plans focus on the problem of affordable housing and not directly on fair housing, its protected classes and how fair housing can be implemented in these communities. The only plan that hits the issue head on is the Cook County Analysis of Impediments. That study is the most recent and no doubt reflects the increased emphasis that HUD has placed on affirmatively furthering fair housing. However as of this writing, HUD has still not issued a regulation on affirmatively furthering fair housing, and has offered little guidance or direction over the last 40 years on the obligation of local governments in meeting this statutory requirement. At a minimum, HUD should define what is meant by the duty to affirmatively further fair housing.

The City of Chicago, which ranks as the fifth most segregated city in the United States, and whose neighborhoods have been racked with all the negative effects of segregation, barely mentions protected classes in its Analysis of Impediments. Its emphasis on affordable housing and homelessness is commendable, but whether the encouragement of affordable housing will further integration or cement segregation in this divided city is not addressed directly. Chicago's

Consolidated Plan focuses on the need for affordable housing for large families and this is helpful in alleviating some aspects of familial status discrimination. Chicago uniformly neglects the problems of persons with disabilities, and only briefly acknowledges the challenges persons with disabilities face in the City's older housing market. Chicago does acknowledge in its impediments study that there is a serious housing problem because of race and national origin, but it is imprecise in how this problem is to be remedied.

The City talks about vigorous enforcement of the fair housing laws, which is commendable, but it does not go beyond the enforcement of existing laws and discuss other discrimination in the private market and it does not identify how City policies are furthering discrimination. Chicago has led the way in making source of income, including holders of housing choice vouchers, a protected class. This provides a model for the rest of the State and for the nation. However, as the City acknowledges, more needs to be done to educate the public and landlords that this common form of discrimination is illegal.

Chicago's complaint process is inconsistent with federal and state law by requiring complainants to file a complaint with the Chicago Human Rights Commission within 180 after a violation of the Chicago fair housing ordinance has occurred, rather than one year. Chicago should extend its statute of limitations to make it consistent with federal and state standards and as a means to affirmatively further fair housing. While it is not currently required, the federal government should require all recipients of federal monies to provide a minimum statute of limitations of one year to file a fair housing complaint to affirmatively further fair housing.

Chicago mentions the lending and foreclosure crisis but it does not analyze the effect that the crisis is having and will have on segregation in the City and whether the crisis may be an

opportunity for the City to move forward to remove barriers that stand in the way of integrated neighborhoods.

In its latest Analysis of Impediments, Cook County more directly confronts fair housing deficiencies. It talks about the lack of fair housing enforcement in many communities in the County and restrictive zoning requirements that impede the building of affordable multi-family housing for a diverse population. It further discusses the impact of crime-free ordinances. It discusses the need for more education and outreach. The plan also emphasizes the need to include discrimination against housing choice voucher holders within its definition of source of income in the County fair housing ordinance, which it now has done despite great opposition from the housing industry. Most importantly it discusses the need for more monitoring of funding recipients.

The major weakness in the County's plan is that it lacks a timetable to implement its well-outlined goals. The other weakness is a failure to discuss how its goals will be accomplished during this period when the County is facing a severe fiscal challenge and possible cutbacks in all services and programs. Where does housing stand in relationship and priority to all the other projects that the County is responsible for implementing and funding?

The local government plans discussed in this report, by Oak Park, Arlington Heights, and Skokie, have the same strengths and defects as the plans discussed above. The Village of Oak Park does an excellent job of identifying problems and suggesting solutions. It recognizes the need for source of income protection and focuses on the needs of persons with disabilities in more detail than many other area analyses. It directly confronts the NIMBY problem. An important remedy discussed by the Village is the appointment of more minority representatives on local boards and commissions. It also outlines the recommendations made in its 1997 report

and discusses the progress it has made in implementing those goals, which should be part of every community's Analysis of Impediments report.

The Arlington Heights plan, although it addresses problems of affordable housing, critically fails to identify diversity problems and goals and to outline steps necessary to achieve those goals. Skokie lies between Arlington Heights and Oak Park in identifying problems and remedies. It is a more diverse community than Arlington Heights, but its African American population is concentrated in one small sector of the Village. Like the other plans singled out for study in this report, Arlington Heights and Skokie would benefit by providing a timetable for implementation of their goals.

HUD needs to monitor the writing of the Analyses of Impediments and Action Plans for governmental entities receiving federal money. In fairness to governmental entities that receive federal funding, HUD needs to make clear what is required. In the past, these plans were prepared, a copy sent to HUD, and another copy placed in a drawer and there things remained until it was time to write the next report. Every report should contain precise action plans, together with a timetable and steps that will be taken to accomplish those goals. HUD needs to monitor the communities to be certain that the plans are implemented.

Each local community must take the initiative in identifying impediments to fair housing and outlining how it will affirmatively further fair housing and make these efforts part of its official agenda. Realistically local governments are influenced by local pressures that often reflect the NIMBY sentiments of property owners and neighbors. It is often helpful to local officials, especially non-elected civil servants who know the law and know the problems, to be able to rely on HUD or state agencies to back them up when local residents place what they think is in their own immediate best interest ahead of good public policy. For this reason, it is essential

to have strong partnerships between HUD, the Illinois Department of Human Rights and local officials.

XII. Conclusion

This report is not complete. It does not address in depth the problems faced by persons with disabilities, which merits a whole separate study. Nor does it address the special problems faced by veterans. It does not tackle local development plans, zoning ordinances, or building codes to see how they impact on fair housing. How property is taxed is also an area that impacts on fair housing. Instead we have focused on discreet issues that we think can be remedied, not without political controversy, but at least by some simple amendments to existing laws and without the expenditure of large amounts of money.

Other amendments to the laws and regulations could also have been suggested such as HUD giving consideration to providing guidance on what constitutes a continuing violation. It would also be helpful if Congress amended the Fair Housing Act specifically to require or at least encourage states and local governments to enforce the new construction requirements for multi-family housing. Recent Supreme Court decisions would appear to require that Congress make funds available to the states to do this, but the condition could be attached to the receipt of federal housing subsidies. *See, New York v. United States, 505 U.S. 144 (1992); Printz v. United States, 521 U.S. 898 (1997)*. However, these recommendations are beyond the scope of this study.

In reaching its recommendations, the Center has studied the Consolidated Plans and the Analyses of Impediments to Fair Housing completed by the City of Chicago, Cook County, and several suburban communities. The Center has also conducted a number of interviews on its own, particularly with community residents and their advocates.

As discussed throughout this report, most of the plans submitted by local governments fail to identify the root causes of segregation and propose concrete solutions. Those problems

and solutions that are identified lack the concreteness or specificity necessary to address them properly. In addition to the impediments to fair housing identified in these studies and to which these political entities have obligated themselves to remedy, the Center recommends that the federal, state, and relevant local governmental entities implement the proposals outlined in this report as a first step to removing the impediments to fair housing in the Chicago metropolitan area.

One of the problems with consolidated plans, analyses of impediments, and action plans is that they lack passion. At their best, they cite statistics, identify problems, and propose solutions. They fail to show how failed or misguided policies, both private and public, have impacted the daily lives of individuals. Segregation is pernicious. It affects housing as well as jobs, education, and the quality of life of every individual in the Chicago metropolitan area. Most importantly, it inflicts deep pain and trauma. This is why existing remedies often fail. When we speak of remedies, we talk about new developments, new laws, and better fair housing enforcement. What we do not talk about is mending the lives of persons who have been affected by segregation and discrimination. The experience of the children who have suffered and died because of the violence in Chicago's neighborhoods speaks to the trauma segregation causes. The great potential of our people is being destroyed because of the cancer of segregation. It must be taken seriously. Now is the time to act.

While this report might appear to be critical of local efforts to remove segregation in the Chicago metropolitan area, it cannot be overstated what a great achievement has been accomplished by the City of Chicago and now Cook County in protecting housing choice voucher holders under the "source of income" provisions of their fair housing laws. Effective enforcement is needed to make these provisions real. Chicago's and Cook County's enforcement

efforts would be enhanced if these governmental entities were not alone in making ‘source of income’ illegal. The federal government, the State of Illinois, and other local governments should follow the progressive lead of Chicago and Cook County. Also, it cannot be overemphasized that the entire history of fair housing demonstrates that legislative change is only a first step. It must be followed by vigorous education and outreach activities and by vigorous enforcement measures.

New forms of housing discrimination arise continuously, and the law and public policy must keep pace. Substantial amendments to the federal Fair Housing Act have not occurred since 1988, a generation ago. The State of Illinois has done better but the process is on-going. The steps proposed here will not end the problem of segregation, but they will at least further us on our journey to a just and fair society.