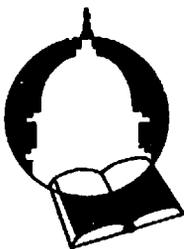


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EQUAL OPPORTUNITY IN HOUSING:  
EXECUTIVE, ADMINISTRATIVE, AND LEGISLATIVE ALTERNATIVES



by

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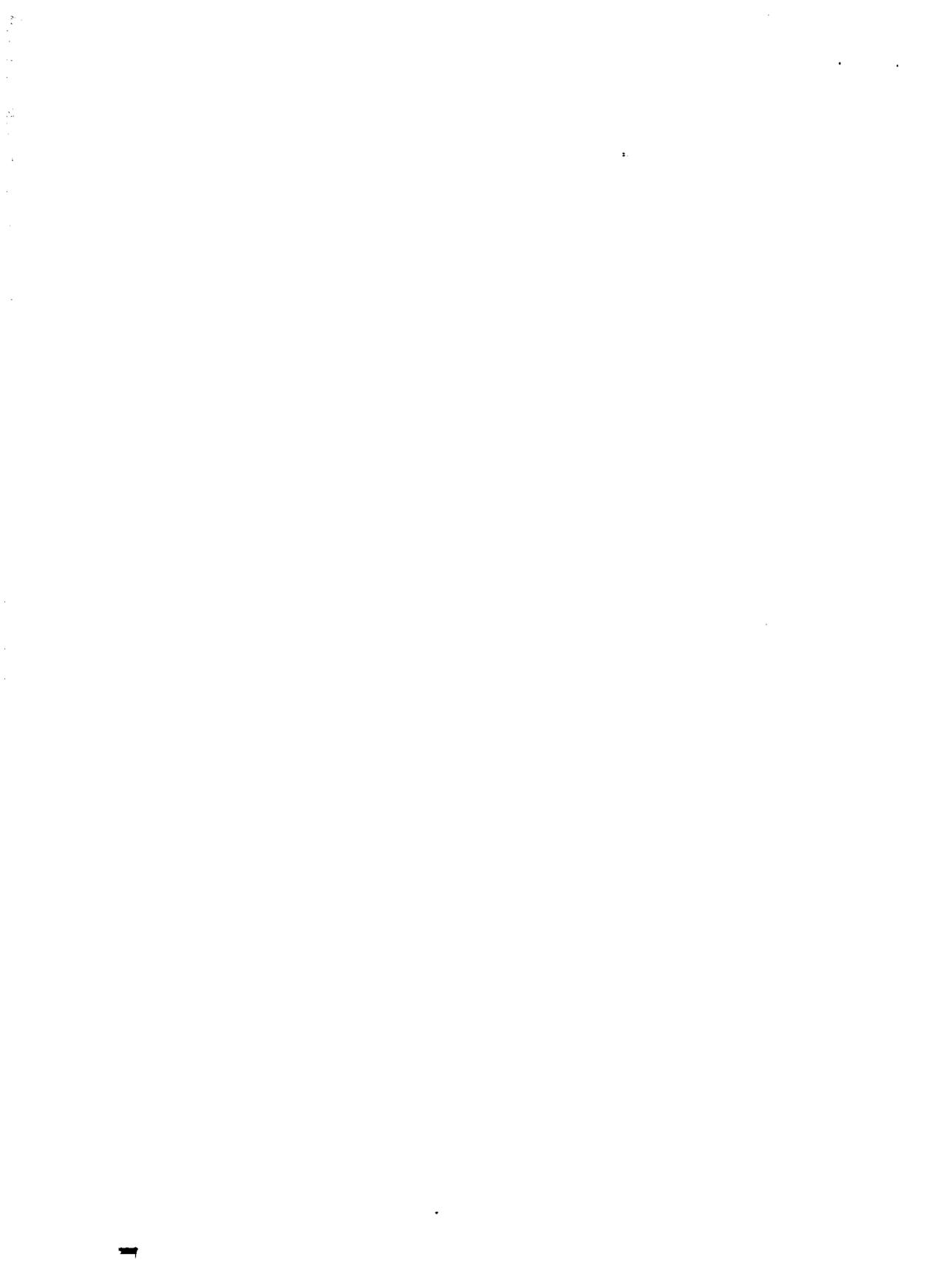
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**EQUAL OPPORTUNITY IN HOUSING;  
EXECUTIVE, ADMINISTRATIVE, AND LEGISLATIVE ALTERNATIVES**

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EQUAL OPPORTUNITY IN HOUSING:  
EXECUTIVE, ADMINISTRATIVE, AND LEGISLATIVE ALTERNATIVES

Introduction

In 1959 the United States Commission on Civil Rights found that "housing...seems to be the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay." Two years later, in 1961, the Commission concluded that "the situation is not noticeably better." <sup>1/</sup>

Since the Commission issued its 1961 Report, the Federal Government has taken several significant steps in an attempt to assure equal opportunity in housing.

First, President John F. Kennedy issued Executive Order 11063 on November 20, 1962. This Order directed all Executive departments and agencies to take necessary and appropriate action to prevent discrimination in Federally owned or assisted housing. The most important agencies affected were the Federal Housing Administration and the Veterans Administration, because of their extensive activity in insuring and guaranteeing loans for the purchase of homes.

The second significant development with respect to equal opportunity was the enactment of the Civil Rights Act of 1964. Section 601

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<sup>1/</sup> See Report of the U. S. Commission on Civil Rights, 1959, p. 534; and Housing: 1961 Report of the U. S. Commission on Civil Rights, p. 1.

of Title VI of that Act states that:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Civil Rights Act of 1964 specifically excluded programs involving "a contract of insurance or guaranty." Therefore, the Act, in contrast to Executive Order 11063, does not apply to FHA, VA, or other Federal agencies which regulate mortgage lending; but it does govern the policy of the urban renewal, public housing, and community facilities programs, and other Federal aid programs which affect housing.

The third major development regarding housing opportunity is the pending Civil Rights Act of 1966 (S. 3296). On April 28, 1966, President Lyndon B. Johnson recommended that the Congress enact legislation against racial discrimination in the sale or rental of all housing and that it create effective remedies against such discrimination in every part of America.<sup>1/</sup>

This report is intended: (1) to review the housing problems of Negro Americans; (2) to evaluate the impact of President Kennedy's Executive Order on these problems, as well as the potential effect of an expanded Executive Order; (3) to examine the actual and potential

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<sup>1/</sup> Message on "Elimination of Racial Discrimination," April 28, 1966. Congressional Record (daily), pp. 8955-8958.

use of Title VI of the Civil Rights Act of 1964; and (4) to analyze briefly Title IV of the Civil Rights Act of 1966.

I

Negro Housing Problems

A prominent housing expert, Charles Abrams, recently wrote of Negro housing problems:

The housing available to Negroes is inferior in quality compared to the housing of whites; both the housing and neighborhoods in which he lives show signs of greater deterioration; there are fewer amenities; mortgages are more difficult to obtain; there is little or no private investment in new buildings for Negroes; tax arrears are higher in their neighborhoods and public interest in maintenance is lower; real estate values are lower in relation to net income; overcrowding is more intense; schools, hospitals, and recreation are inferior; and the Negro usually gets less housing per dollar he pays.<sup>1/</sup>

A glance at the 1960 Census will graphically verify Mr. Abrams' observations. Forty-four percent of all non-white occupied units were substandard, compared to 13 percent of all white occupied units. 155,000 non-white families had to share single dwelling units with other families. That is 4.8 percent of the total number of non-white families-- only 2.1 percent of the total number of white families lived in such a condition.

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<sup>1/</sup> The City is the Frontier. New York, Harper & Row, 1965. p. 59.

Perhaps the really significant figures are those which illustrate the central city concentration of Negroes. For it is especially within the old, deteriorating inner cities where slums and inferior community facilities abound. The non-white population of central cities increased 63.3 percent between 1950 and 1960--from 6.3 million to 10.3 million persons. At the same time the white population of the central cities was increasing at a rate of 13.3 percent--42.0 million to 47.6 million persons. This influx of 9.6 million persons must be measured against the 3.7 million housing units added in the same period. Herein lies the reason for the crowded slums.

During the same decade the white population in the urban fringe--the suburbs--leaped forward at a rate of 81.8 percent--16.2 million whites moved there--only 700,000 Negroes accompanied them.

The configuration to which these figures point often has been described--America's large cities filled at the center with Negroes occupying run-down housing and surrounded by a suburban ring of middle-class white neighborhoods.

It might be suggested that the configuration thus described is inevitable in light of the low incomes of the Negroes in the central cities. It is true that in 1960 the median family income of Negro families was only \$3,711--63 percent of the median income of \$5,893 for whites. But a 1963 study by the U. S. Housing and Home Finance

Agency<sup>1/</sup> found that there has been a "spectacular rise" in the incomes of Negroes in urban areas and a corresponding growth in the demand for middle-income housing--such as is available in the suburbs. The study collected data on 17 metropolitan areas and compared the home buying patterns of white and non-white families in the \$7,000 to \$10,000 income bracket. If Negroes in this category had bought homes valued at \$15,000 in the same ratio as whites in this same income bracket, there would be an immediate potential market among non-whites in these 17 areas for some 45,000 units. On the basis of the investigation HHFA concluded that:

While the study cites a number of related factors inhibiting home ownership among non-whites, it points particularly to racial restrictions as an important deterrent to the availability of new housing for this group.<sup>2/</sup>

It would appear then that the configuration of black central cities encircled by white suburbs is not a "natural" phenomenon; the coerciveness of discrimination is involved, and the white suburban circle is what former Philadelphia Mayor Richardson Dilworth called a "white noose."

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<sup>1/</sup>Potential Housing Demand of Non-White Population in Selected Metropolitan Areas. April 1963. See Appendix I for table documenting this rise in non-white incomes.

<sup>2/</sup> Ibid.

What are the forces behind this discrimination? The Commission on Civil Rights attempted an answer in its 1961 Report--

They begin with the prejudice of private persons, but they involve large segments of the organized business world. In addition, Government on all levels bears a measure of responsibility--for it supports and indeed to a great extent it created the machinery through which housing discrimination operates. <sup>1/</sup>

First, discrimination is sometimes practiced by the owner of a house who refuses to sell or rent to a person of another race. This attitude has often led to alliances of owners who enter into "covenants" restricting a neighborhood to whites only. In 1948, the Supreme Court in Shelley v. Kraemer<sup>2/</sup> ruled that such covenants are judicially unenforceable, on the grounds that a State would be denying to certain citizens equal protection of the laws. Nevertheless, restrictive covenants prevail in many places even though they are not legally enforceable.

Second, lenders often discriminate against Negroes, using the argument that a homogeneous neighborhood makes a loan economically more sound. The Commission on Civil Rights "found evidence of racially discriminatory practices by mortgage lending institutions throughout the country."<sup>3/</sup> Also some builders join in with these views about

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<sup>1/</sup> Op. cit., p. 2.

(Footnotes continue on following page.)

(Continuation of footnotes on preceding page.)

2/ 334 U. S. 1, 20 (1948).

Also in Hurd v. Hodge, 334 U. S. 25, 30 (1948), the Court held that restrictive covenants were unenforceable in District of Columbia courts because they violated a statute derived from Section 1 of the Civil Rights Act of 1866 [42 U. S. C. 1982 (1964)]. And in Barrows v. Jackson, 346 U. S. 249, 254 (1953), the Court held that the 14th Amendment precluded enforcement of such covenants in an action for damages.

3/ 1961 Commission on Civil Rights Report, p. 29.

"homogeneous" neighborhoods and sell only to white persons. Underlying the view that neighborhood stability will be destroyed is the belief that property values fall when Negroes move into an area. This happens, of course, if there is "panic" selling by whites. But a research study of 10,000 real estate sales over a 12-year period in seven cities contradicts the belief that property values invariably decline.<sup>1/</sup> Forty-one percent of the homes in inter-racial neighborhoods did not change in price; 44 percent increased five to 26 percent; fifteen percent dropped five to nine percent.

The third discriminatory factor mentioned by the Commission in 1961 was the Government--especially the Federal Government. The major cause for such an indictment is that FHA actively encouraged racial discrimination during the years 1934-1950. Its "Underwriting Manual" of 1938 suggested that properties "continue to be occupied by the same social and racial groups." The Shelley v. Kraemer decision had an effect of FHA policy, however, and it withdrew its support for racially exclusive policies. President Kennedy's Executive Order 11063 of 1962 required FHA and other Federal agencies to pursue affirmative policies with respect to equal opportunity in housing.

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<sup>1/</sup> Laurenti, Luigi. Property Values and Race: Studies in Seven Cities. Commission on Race and Housing. University of California Press. 1960.

But the Civil Rights Commission's criticism of the Government is also based on the fact that most financial institutions are dependent to a great extent on Federal regulation and sponsorship. A large number of savings and loan associations are chartered by the Federal Home Loan Bank Board. Many of them are recipients of the benefits of the Federal Home Loan Bank System. Most commercial banks are regulated by the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. Yet none of these private institutions are covered by the existing Executive Order, and thus, are free to discriminate without Government interference.

Although low-income is an obstacle to many Negroes in acquiring adequate housing, a large number of Negroes have moved up to middle-class levels of income, and many of these Negroes who have the money want to live in a suitable environment. As a Negro wife in Boston put it:

I don't think that too many people start out by saying, "I want to move into a white neighborhood." They want to move to a neighborhood that has modern housing, good schools, that has close shopping centers, that has a plot of grass around it; where people don't go through the street and drop paper; they want something clean. 1/

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1/ The Middle Income Negro Faces Urban Renewal, Department of Commerce and Development, Commonwealth of Massachusetts, 1964, p. 98.

But often the Negro cannot realize this aim because he is surrounded by a pattern of discrimination based on individual prejudice, often institutionalized by business and industry, and government practice.

A persuasive case can be made that lack of housing opportunity lies at the heart of the Negro's other social problems. The discriminatory practices which confine him to the slums of the central city work at the same time to bind him to poor schools and to a generally unhealthy environment. Bad housing breeds ill health--crowding and inadequate heating or ventilation speed the spread of acute respiratory infections and other infectious diseases.<sup>1/</sup> There is a direct connection between deprived living conditions and educational motivation. Children are often unable to study for lack of space and quiet.<sup>2/</sup>

Certainly the provision of good housing will not solve all social and personal problems. Yet the upgrading of housing conditions, as compared for example to the tasks of education and improvement of health, may well be the most immediately practical solution available. Further, the attack of educational inequality, on juvenile delinquency, and on ill health will surely fail without a fundamental attack on the

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<sup>1/</sup> See Wilner, Daniel, et. al., "How Does the Quality of Housing Affect Health and Family Adjustment?" American Journal of Public Health. June 1956, pp. 736-744.

<sup>2/</sup> See Jackson, William S. "Housing and Pupil Growth and Development," The Journal of Educational Sociology, Vol. 28, No. 9, May 1955, pp. 370-380.

slurs. But that attack cannot succeed--indeed it cannot commence--without the obliteration of the discriminatory obstacles which condemn the Negro to certain areas, to substandard housing, and to poverty in general.

The Federal Government has begun to recognize this basic fact and has tried to insure equal opportunity in housing to all Americans. If the national goal set forth by the Congress of a "decent home and a suitable living environment for every American family" is to be realized, equal opportunity is essential.

II

Executive Order 11063

The most effective attempt by the Federal Government thus far to insure equal opportunity in housing was the signing of Executive Order 11063 by President Kennedy on November 20, 1962.<sup>1/</sup>

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<sup>1/</sup> Prior to this time, certain Supreme Court decisions had the effect of furthering non-discrimination. In Buchanan v. Warley, 245 U. S. 60 (1917), the Court outlawed racial zoning. The zoning ordinance of Louisville, Kentucky, was ruled an illegal exercise of the police power of the State, since it was in direct violation of the 14th Amendment guaranteeing equal protection of the laws. As cited above on page 6, Shelley v. Kraemer, 334 U. S. 1, 20 (1948), ruled against restrictive covenants, on the grounds that court enforcement of such covenants would be a denial of equal protection of the laws in violation of the 14th Amendment.

As two legal authorities have pointed out, "The issuance of the Executive Order was hardly a precipitous action. Twenty-eight years had elapsed since passage of the original National Housing Act, before the Federal government took this basic step to assure equal access to the benefit of its housing programs." <sup>1/</sup>

The Executive Order directed all Federal agencies which administer housing programs to prevent discrimination. Section 101, which sanctions this anti-discriminatory activity, relates to housing and other facilities provided by Federal aid agreements executed after November 20, 1962. Therefore, the Order did not touch the millions of FHA- and VA-assisted homes built before 1962.

Section 102 of the Order does apply to all housing ever aided by a Federal program--but this section merely directs Federal agencies to "use their good offices" to promote the abandonment of discriminatory practices.

The Order also established the President's Committee on Equal Opportunity in Housing. Each executive department and agency is directed to cooperate with the Committee by furnishing it with information and assistance and to report to the Committee at certain intervals with respect to its procedures for obtaining compliance.

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<sup>1/</sup> Semer, Milton P. and Martin E. Sloane, "Equal Housing Opportunity and Individual Property Rights." 24 Federal Bar Journal 47.

Implementation of the Order by FHA

The primary agency which the Order affects is the Federal Housing Administration.<sup>1/</sup>

Since the date of the Order, nearly 700,000 housing units have been constructed with FHA loan insurance. As of March 31, 1966, 90 complaints had been received by FHA under Section 101 of the Order. In 30 cases, the complainants prevailed and secured the housing unit sought. In 19 others, the complainant prevailed but did not follow through on securing the housing. Eight cases were decided in favor of the respondent. In 5 cases, the complainant did not meet standard eligibility requirements for FHA insurance. Nine cases were dismissed because FHA did not have jurisdiction. Six cases were closed when the respondent was placed on FHA's ineligible list. Six cases are pending, and 8 were disposed of in "miscellaneous" ways.

FHA has also received complaints under Section 102 which directs Federal agencies to use their "good offices" to eradicate discrimination. Since these cases apply to housing built before the Order, FHA's authority is limited. As of March 31, 1966, 34 complaints had been received under Section 102. Of significance here is the fact

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<sup>1/</sup> It must be remembered that Title VI of the Civil Rights Act specifically excludes FHA and VA loan insurance. Thus, the authority for attacking discrimination in FHA programs lies solely in the Executive Order.

that in 19 cases negotiations on behalf of the complainant were unsuccessful. In two cases the respondent prevailed. In seven others, the complainant prevailed. Five cases were dismissed for lack of FHA jurisdiction. One case is pending.

The record for the main agency affected by the Executive Order, FHA, shows that no great changes are being wrought in the housing patterns of American neighborhoods. Only 30 instances have been clear-cut cases, as a result of which discrimination was eliminated. And the results of "good offices" have been, as the Secretary of Housing and Urban Development, Robert C. Weaver, said recently, "minimal." He stated that "the larger tract developers and the owners of multifamily projects generally resisted what they considered to be a retroactive reform, applying only to those who had received earlier aid. They insisted that the adoption of an open-occupancy policy was not practical unless competing developers and owners also adopted non-discrimination practices." <sup>1/</sup>

It may be just as important to cite what the Order has not done. Many persons, especially the National Association of Home Builders, <sup>2/</sup> predicted that the Order would cause a severe decline in the housing industry. In 1963, the first year after the Order, non-farm housing

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<sup>1/</sup> Statement before Subcommittee No. 5, House, Judiciary Committee, May 12, 1966.

<sup>2/</sup> See C.E.I.R., Inc., Survey of Home Builders' Opinion of Impact of a Possible Executive Anti-Discrimination Order, 1962.

starts totaled 1,613,400--140,000 over 1962. The non-farm housing starts in 1964 and 1965 have been declining, but not precipitously,<sup>1/</sup> and economic factors such as higher interest rates and labor costs play an important part in this decline.

Furthermore, none of the Federal programs affected by the Order have shrunk in size, either in terms of the expenditure of funds and effort, or in terms of the demand for them by States and localities.

And although few positive signs of breaking down segregated residential patterns can be cited, a general support of the Order by industry representatives suggests that the Order has had an influence on their policy.<sup>2/</sup>

Nevertheless, the salient point regarding the Order is that it is limited in its scope of coverage. The following table shows that FHA and VA assisted housing accounts for only a small portion of the total housing construction picture.

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1/ 1964 - 1,563,700  
1965 - 1,520,400

2/A Wall Street Journal article of July 16, 1964, reported the following:

James F. Reynolds, a Denver Negro and chairman of Colorado's Anti-Discrimination Commission, says the Order changed the attitude of lenders, builders, and real estate men in the State from passive to active. "For the first time," he says, "they are actively working with us to prevent discrimination."

Number of Housing Starts in FHA and VA Programs as a  
Percent of Private Non-farm Starts

<u>Year</u>	<u>Total</u>	<u>FHA</u>	<u>VA</u>
1961	25	19	6
1962	23	18	5
1963	18	14	4
1964	17	13	4
1965	17	13	4

Source: Construction Review. U. S. Department of Commerce.

Since the Order covers only new construction assisted by FHA and VA after November 20, 1962, its effectiveness is limited to about 750,000 housing units. For example in 1965, of the 1.5 million housing starts, FHA- and VA-assisted units totaled about 250,000.

The fact is that conventional loans financed by commercial banks, savings and loan associations, insurance companies, and other private lending institutions now account for over 80 percent of home financing in the United States. None of these are covered by the Order, or by Title VI of the Civil Rights Act of 1964.

Expansion of the Executive Order

The extent of activity of the mortgage lending institutions which are not covered by the Executive Order is an important indicator of the limitation of the Order. In 1964 savings and loan associations held 37 percent of the non-farm mortgage recordings of \$20,000 or less. The amount of the mortgages was \$15.8 billion, of a total of \$57 billion.

Commercial banks were the second largest mortgage lender, accounting for 19 percent of the mortgages of \$20,000 or less recorded in 1964. Individuals, trust funds, credit unions and miscellaneous other sources accounted for 36 percent of such mortgages. Mutual savings banks and insurance companies make up the other significant holders of these mortgages.

Not all these mortgages are free from the Order's authority-- in 1964 eighteen percent of them were insured by FHA or guaranteed by VA, but 82 percent were conventional loans.

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As pointed out in Part I, most of these institutions are supervised and aided to some degree by the Federal Government. The deposits in commercial banks are insured by the Federal Deposit Insurance Corporation. The share accounts in savings and loan associations are insured by the Federal Savings and Loan Insurance Corporation. "These benefits help account for the spectacular growth of these institutions from their relatively small beginnings to their present dominant position in the savings and loan industry." <sup>1/</sup>

Because of these Federal benefits to lending institutions not now covered by the Executive Order, many persons and organizations have argued that the Order should be extended. They point out that the present partial application is a positive hindrance to equal opportunity since builders are provided with an incentive to use conventional financing.<sup>2/</sup> It is interesting to note that many persons expected as a matter of course that the Executive Order would cover the major lending institutions. An editorial in House and Home in October 1962 confidently stated, "Big escape hatches will probably not exist." The editorial went on to describe what many people knew

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<sup>1/</sup> 1961 Commission on Civil Rights Report, p. 34.

<sup>2/</sup> "Most builders are afraid to use FHA and VA financing now," says the manager of a Dallas home mortgage company. "They could suffer considerable losses in the event they have to sell to someone they don't want to sell to, so they're just not using Government financing any more." Wall Street Journal, July 16, 1964.

would occur if there were escape hatches--"such an order would merely erase FHA and VA from the picture, solving none of the discrimination problems." House and Home, along with most other housing organizations and interests, believed that "the order is expected to cover not only S & L's but federally-insured banks."

Perhaps the prediction was extreme, but in substance it has proved to be correct, as has been shown above. Legal scholars were quick to point out that the same decisions and arguments which could be used to justify non-discrimination in FHA and VA programs applied to other Federal activities with respect to lending operations.<sup>1/</sup> First, the Supreme Court and the Congress have declared a policy supporting equal housing opportunity.<sup>2/</sup> Now it has been shown that this goal cannot be achieved without equal access to the sources of home financing. And since Federally supervised lending institutions are the major source of mortgage funds, these institutions should be expected to follow non-discriminatory practices. The Federal Deposit Insurance Corporation

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<sup>1/</sup> See Sloane and Freedman, *The Executive Order on Housing: The Constitutional Basis for What It Fails to Do*. 9 *Howard Law Journal* 1 (1963). Also Sloane, Martin E., "One Year's Experience: Current and Potential Impact of the Housing Order." 32 *George Washington Law Review* 457.

<sup>2/</sup> See note 1 *Supra.* on Supreme Court decisions. Congress declared in the Housing Act of 1949 the goal of a "decent home and a suitable living environment for every American family." [Underlining added.] In 1866 the Congress stated that "All citizens of the United States shall have the same right in every State and Territory as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real... property."

and the Federal Home Loan Bank Board were created to facilitate community credit in general and housing credit in particular. Both of these agencies of the Executive branch are empowered to set regulations to carry out the purposes of the enabling Acts. They, therefore, are in the position to, and many feel should, use these powers to further the national policy of equal opportunity stated by the Court, the Congress, and the President.

If the Order were extended to cover Federally insured banks and savings and loan associations, perhaps 65 to 85 percent of the mortgages recorded each year would be covered.<sup>1/</sup> The important point is not the precise percentage, as long as a majority of the total mortgages is covered. In such a situation, other institutions would be under pressure to conform.

If the Executive Order, for example, in 1964 had covered Federally-insured banks and savings and loan associations alone, 60 percent of the total amount of mortgage funds would have been affected. FHA insurance and VA guarantees of other types of loans would have

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<sup>1/</sup> The National Committee Against Discrimination in Housing has predicted that 83 percent of the market would be covered. (New York Times, May 7, 1965.) Secretary Weaver recently suggested that such an order would not legally reach more than 60 percent of private dwellings. (Washington Post, May 13, 1966.) No really certain figure can be ascertained on this point due to fluctuations in the lending industry. Mr. Weaver's estimate is based on the increasing activity in the mortgage market of trust funds, credit unions, and individuals.

brought the percentage up further. In such a situation, the housing market would be substantially free from the effects of overt discrimination.<sup>1/</sup>

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<sup>1/</sup> Many national groups and organizations have publicly urged the President to expand Executive Order 11063. The National Committee Against Discrimination in Housing, an affiliation of 41 major religious, civil rights, labor and civic organizations has repeatedly stated its support for the expanded Executive Order. In May 1965 it asked that the order "include everything touched directly or indirectly by the Government" (Washington Post, May 16, 1965). In January of 1966, the NCDH said expansion "is clearly within the President's authority and responsibility and should be taken now" (New York Times, January 24, 1966).

The National League of Cities, in its 1966 National Municipal Policy statements,

"calls upon the President of the United States to expand Executive Order 11063 to cover homes financed by lenders whose operations are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Corporation as well as insurance companies, mutual savings banks and/or other institutions engaged in mortgage lending on an interstate basis...."

The National Association of Real Estate Boards is opposed to an expansion of the Order, but some local boards have differed from this policy. For example, the Real Estate Board of Greater Baltimore called for an extension to cover conventional mortgage lending. They insisted that the present Order is being "widely evaded" (See New York Times, February 18, 1965).

Most civil rights organizations have urged an expansion of the Order. A preliminary housing report from delegates to the Planning Session for the White House Conference "To Fulfill These Rights" recommended that the Order be extended (Washington Post, December 6, 1965).

Finally, the President's Committee on Equal Opportunity in Housing, headed by former Governor David L. Lawrence of Pennsylvania, has itself suggested an expansion of the Executive Order. A New York Times Article on January 24, 1966, reported that "Early this winter, however, the Justice Department circulated a memo within the Administration expressing objection to broadening the order on the ground that it would present certain legal and procedural difficulties."

(continued)

1/ (continued)

This memorandum has not been made public. But from testimony by the Attorney General on the Civil Rights Act of 1966 (see note 1/ p. 32, infra), it may be presumed that the major thrust of the Attorney General's view is that legislation based on the authority of the 14th Amendment and the Interstate Commerce Clause is to be preferred to an expanded Executive Order.

The legal justification for an expanded Executive Order, as discussed above, would be based on the idea that an agency administering a Federal program may impose reasonable conditions upon the granting or continuation of such benefits. In this case, the conditions, as expressed in Congressional action and by Supreme Court decisions, would be equal opportunity to buy or rent housing.

Three U. S. Senators, Jacob K. Javits (R.-N. Y.), Clifford P. Case (R.-N. J.), and Hugh Scott (R.-Pa.) recently released the following statement:

We are deeply concerned about the recent published reports that Attorney General Katzenbach has recommended to the President that he should not issue an Executive Order expanding the coverage of the 1962 Executive Order..., and that the Administration is now considering instead sending a bill to Congress for this purpose. In our view, such legislation is wholly unnecessary since the President has Constitutional power to amend the Executive Order already in effect. A request to Congress for such legislation would needlessly delay the development of an effective Federal policy against racial discrimination in housing. [Congressional Record (daily) May 3, 1966. p. 9056]

III

Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination under any program or activity receiving Federal assistance. Section 602 provides the means of enforcement by authorizing a termination of Federal financial aid to any program or recipient which practices discrimination.

Title VI is, then, broader in its application than Executive Order 11063, for its authority is not limited to programs which were agreed to after a certain date. That is, its authority touches all programs which are now receiving Federal funds. Thus, while the Executive Order affects public housing and urban renewal projects contracted after November 20, 1962, Title VI affects all projects which receive Federal money. Over 600,000 units of public housing are thus affected by Title VI, as well as all units on urban renewal land not disposed of by local agencies by January 3, 1965.

In another sense, however, Title VI is limited. Section 602 explicitly excludes a "contract of insurance or guaranty." FHA- and VA-assisted projects are, therefore, not covered by Title VI.

Public housing is the most important program affected by Title VI, and its procedures to enforce Title VI are illustrative of the Federal Government's attempt to prevent discrimination in the programs which it aids.

The Public Housing Administration requires each local housing authority to submit a statement of assurance attesting to its compliance with the provisions of Title VI. This form must be submitted with the local authority's request for funds.

As of March 31, 1966, PHA had received 1,563 assurances; 29 were still due. PHA had accepted 1,452 of these. Twenty-three were not acceptable and are being re-negotiated. Eighty-eight have not been reviewed. One local authority has refused to send in an assurance.

For all the other programs of the Department of Housing and Urban Development (urban renewal, community facilities, senior citizens housing, etc.) 9,023 assurances have been received; 139 are yet to be sent in. All but one of those submitted have been accepted; it is being negotiated.

The Department of Housing and Urban Development has received 42 complaints from persons alleging discrimination in programs it assists. Thirty-four have been in public housing projects. So far, 26 of the complaints have been investigated; 16 have been satisfactorily resolved.

Since Title VI excludes FHA and VA from its jurisdiction, it would appear that it has no application to the sale or rental of private housing. But it must be noted that the Title is directed to all Federal departments and agencies which dispense funds for the many different programs which have a significant impact on private housing. For example,

the Federal Government assists in the construction of basic water and sewer facilities, community and health centers, parks, and streets and roads.

On the basis of this type of Federal involvement in providing a "suitable living environment," some persons think that Title VI provides adequate authority to the Federal Government to require equal opportunity in housing on the part of those communities which benefit from Federal programs.

The Potomac Institute, a private research organization in Washington, D. C., is one of the proponents of the view that such authority already inheres in Title VI. It has recently completed a study of the extent of Federal benefits to American communities and set forth reasons for a broader interpretation of Title VI.<sup>1/</sup> The Institute argues that more than a passive Federal position of requiring non-discrimination in Federally aided programs is necessary to implement the goals espoused by the President and the Congress. The "Congressional mandate can be fulfilled only by government taking positive steps to eliminate and prevent community patterns of racial segregation."<sup>2/</sup>

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<sup>1/</sup> See Metropolitan Housing Desegregation, Washington, D. C., January 1966.

<sup>2/</sup> Ibid., p. 2.

The Potomac Institute's conclusion is arrived at after an examination of the strong impact of Federal programs on the living conditions of private citizens and on the private housing market. First, Federal programs such as urban renewal, interstate highways, and regular public building construction displace thousands of citizens every year. The following table shows the projections for this displacement:

Families and Individuals Displaced by Federal and Federally Aided Programs: Average Yearly Number of Displacements in Past and Estimated for Future

<u>Agency</u>	<u>AVERAGE DISPLACEMENT PER YEAR</u>	
	<u>Past</u>	<u>Future (Est.)</u>
<b>Direct Federal Programs</b>		
Agriculture Department.....	5	2
Defense Department.....	1,646	3,243
General Services Administration.....	278	533
Interior Department.....	140	583
International Boundary and Water Commission.....	19	237
Post Office Department.....	199	149
Tennessee Valley Authority.....	64	124
<b>Federally Assisted Programs</b>		
Bureau of Public Roads.....	32,395	36,770
Housing and Home Finance Agency Public Housing Administration.....	4,155	3,166
Urban Renewal Administration.....	34,033	66,250
Interior Department.....	19	10
<b>Total (rounded)</b>		
Direct Federal.....	2,350	4,880
Federally Assisted.....	<u>70,570</u>	<u>106,200</u>
	72,920	111,080

SOURCE: U. S., Congress, House, Study of Compensation and Assistance for Persons Affected by Real Property Acquisition in Federal and Federally Assisted Programs, printed for use of Committee on Public Works, 88th Cong., 2nd Sess., 1964, p. 272.

In localities where segregation exists, those persons displaced by Federal programs can expect to be subjected to discrimination. For this reason the Institute concludes:

...despite the mandatory Title VI guarantee that no one shall "be subjected to discrimination under any program or activity receiving Federal financial assistance," under presently prevailing conditions most of the one and a half million Negro citizens estimated to be displaced by federally financed construction and acquisition activities in the eight years following the 1964 Civil Rights Act will be forced to relocate in racial ghettos. 1/

On the basis of this Federal involvement in the displacement of persons who must then find new homes, it is argued that Title VI can and should guarantee to each displaced family a free choice of housing.

Second, the Institute points out the Federal involvement in helping communities provide necessary public works and community facilities. The housing market is directly dependent on the adequacy of such services and facilities. A builder does not normally initiate work unless he knows there will be adequate community facilities. A potential home-owner considers the sufficiency of neighborhood centers, schools, sewers, electricity, etc. And all the residents of a locality directly benefit from these services.

To implement its conclusions that Federal assistance has a direct bearing on private housing and, therefore, such housing should

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1/ Ibid., p. 7.

be available to all, the Institute suggests the following administrative requirements, which it labels an "Affirmative Program for Housing Desegregation." <sup>1/</sup>

First, all comprehensive plans such as the Workable Program for Community Improvement or an "area plan" required by many Federal programs should include positive steps which will be taken to eliminate and prevent community patterns of racial segregation.

Second, such a comprehensive plan should be required by every Federally assisted program.

Third, all Federal agencies should coordinate their programs with respect to eliminating housing segregation. To this end, a responsible authority should coordinate overall enforcement of a comprehensive plan.

Fourth, any comprehensive plan for Federally assisted urban development should provide for a citizens advisory committee, with appropriate minority representation.

The Potomac Institute has presented specific proposals to make more effective use of Title VI. Other organizations and individuals have also advocated stronger use of the authority they feel is present in Title VI. They point out that even if Title VI were applied assiduously to Federal programs providing basic community facilities,

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<sup>1/</sup> See Ibid., p. 20-22.

the true intent of the law might fail to be realized since constructing better facilities might serve to cement segregated housing patterns in a locality. Thus, it is argued that housing must be open to all if the enforcement of equal opportunity under Title VI is to have any meaning.

IV

Title IV of the Civil Rights Act of 1966

In his State of the Union Message on January 12, 1966, President Johnson asked the Congress for "legislation, resting on the fullest Constitutional authority of the Federal Government, to prohibit racial discrimination in the sale or rental of housing."

On April 28, President Johnson delivered his message on Civil Rights. Along with this message, he recommended a bill, S. 3296, the Civil Rights Act of 1966, which includes Title IV, to prohibit discrimination in the sale or rental of housing. The President specifically mentioned the limitations of Executive Order 11063 as well as a possible expanded Order. Rather than rely on this approach, the President said, "Our responsibility is to deal with discrimination directly at the point of sale or refusal, as well as indirectly through financing. Our need is to reach discrimination practiced by financial institutions operating outside the FHA and VA insurance programs, and not otherwise regulated by the Government."

Title IV of S. 3296 is intended to eliminate discrimination in residential housing and to grant judicial remedy to any person denied equal opportunity in the buying or renting of a home.

Section 403 delineates the categories of persons to be affected by the law. They include: (1) owners, lessees, sublessees, assignees, or managers of dwellings; (2) persons having authority to sell, rent, lease, or manage dwellings; and (3) real estate brokers or salesmen or employees or agents of real estate brokers or salesmen.

Section 403 also describes the various acts of discrimination which are declared to be unlawful, including discrimination with regard to the sale, rental, or leasing of a residential dwelling; with regard to terms, conditions, or privileges of such sale, rental, or lease, or to the provision of services or facilities connected with these; with regard to the printing or publishing of any notice, statement, or advertisement; with regard to misrepresenting the availability of a dwelling for inspection; and with regard to access to or participation in any multiple listing service or other service or facilities related to the business of selling or renting housing.

Section 404 of the bill deals with the financing of housing. Banks, savings and loan associations, credit unions, insurance companies, or other persons who make mortgages or other loans for the purchase, construction, improvement, or repair or maintenance of residential buildings are covered by this Section. These lending bodies are not

permitted to discriminate by denying loans, fixing downpayments, interest rates, or setting conditions of loans on the basis of race, color, religion, or national origin.

Section 405 prohibits coercion, intimidation or interference with the right of a person to obtain housing and its financing or to aid others in exercising such right.

Enforcement provisions are set forth in Section 406. A private person discriminated against may institute a proceeding for civil relief in either the appropriate Federal district court or local court. The Section contains the proviso that the Federal courts shall disregard the normal requirement (28 U.S.C. 1331) that the matter in controversy exceed \$10,000. The aggrieved party must institute the action within six months of the alleged violation.

The Federal court, if petitioned by the complainant, may provide appointed counsel and allow him to commence his action without payment of fees, costs, or security. State and local courts are authorized to do likewise where consistent with applicable law and procedures.

The court may grant appropriate relief, such as an injunction or restraining order and may award damages to the plaintiff, including damages for humiliation and mental pain and suffering, and up to \$500 punitive damages. The court may also allow a prevailing plaintiff a reasonable attorney's fee as part of the costs.

Section 407 authorizes the Attorney General to institute civil action when he has reason to believe that any person or group of persons are subject to a "pattern or practice" of discrimination.

The Title also includes instructions to the Secretary of Housing and Urban Development to make studies with respect to the nature and extent of discrimination, to publish reports, recommendations, and information derived from such studies, to render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are planning or implementing programs to prevent or eliminate discriminatory housing practices, to cooperate with and render assistance to the Community Relations Service, set up by the Civil Rights Act of 1964, and to administer the programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of the law.

An analysis of the Civil Rights Act shows clearly that its main feature is comprehensiveness. Administration officials have followed the President in arguing that Congressional action on such a comprehensive measure is superior to an expanded Executive Order. Secretary of Housing and Urban Development Robert C. Weaver told a House Subcommittee that enforcement would be more effective under the new legislation than under an expanded Order.<sup>1/</sup>

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<sup>1/</sup> Washington Post, May 13, 1966.

Attorney General Nicholas Katzenbach stated that "the limited authority now available to the executive branch is not enough." <sup>1/</sup> Mr. Katzenbach went on to say that "The time has now surely come for decisive action by the legislative branch of the federal government."

The Administration believes that the Civil Rights Act of 1966 will best achieve the aims of comprehensive coverage and effective enforcement. They also feel that such an important matter as equal opportunity in housing deserves the debate and enactment of the law by the representatives of the American people.

V

Conclusion

Although the Federal Government has taken several significant steps in the last few years to prevent discrimination in housing, most observers agree that past measures have been insufficient to overcome segregation in many of America's neighborhoods. Executive Order 11063 and Title VI of the Civil Rights Act of 1964 have begun a process of opening opportunity in housing for all Americans, but no dramatic changes have occurred in the nation's housing patterns.

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<sup>1/</sup> Statement before Subcommittee No. 5, House Judiciary Committee, May 4, 1966.

Further measures appear to be necessary--but proponents of equal opportunity in housing differ on which measures would be the most effective. The three methods which now appear to have most support are those considered in this report: (1) expansion of the Executive Order; (2) administrative strengthening of Title VI; and (3) passage of Title IV of the Civil Rights Act of 1966.

The enactment of a national fair housing law can be expected to be the strongest measure. As the Civil Rights Bill of 1966 now reads, there is no exclusion of persons or housing units--all sales and rentals are covered. Thus, as far as scope of coverage is concerned, the enactment of Title IV would be expected to accomplish the most.

To its supporters, this is the strongest point about Title IV. They argue that if there are "loop-holes," certain builders and real estate agents will labor under the fear of economic loss if they support open-occupancy housing.

The advocates of a more assiduous enforcement of Title VI of the Civil Rights Act of 1964, however, do not grant that the mere scope of the proposed law guarantees enforcement. The Potomac Institute, for example, thinks that if enforcement procedure is left to the individual, as under Title IV, the law will not in fact accomplish as much as administrative strengthening of Title VI. "For if the experience under state and local laws on housing nondiscrimination is any guide, reliance on the individual complaint procedure has negligible impact

on existing ghettos, which are at the heart of the nation's segregation problems." <sup>1/</sup> The advocates of a strengthened Title VI hold that more effective enforcement will be assured by placing the responsibility for enforcement on the Federal agencies which grant assistance. The withholding of funds appears to these persons as a stronger incentive to nondiscrimination than does individual enforcement.

It may be argued, however, that the effects of a strengthened Title VI would be long in being realized. Certainly many American communities would forswear funds if they had to pass fair housing laws or plan an attack on segregation before receiving any Federal money. Thus, the effectiveness of Title VI may be as limited by non-compliance as Title IV would be by individual responsibility for enforcement.

Proponents of an expanded Executive Order likewise argue that effectiveness is greater if the burden for enforcement is on a governmental agency. This would be the case under an extension of the Order.

It is clear also that those in favor of an expanded Order feel it is more feasible than passage of a national fair housing law. Senator Jacob K. Javits (R.-N.Y.) said at the introduction of the Civil Rights Act of 1966, "...controversy could have been avoided and much time could have been saved and infinitely faster relief granted in regard to housing discrimination by an Executive Order to follow up

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<sup>1/</sup> Metropolitan Housing Desegregation, p. 1.

and expand on the Executive Order which was originally issued by President Kennedy." <sup>1/</sup>

Another argument for an expanded Order is that the Constitutionality of the measure seems clearer than that of Title IV. Precedent and legislative intent seem to support an Order applying to all Federal agencies involved in mortgage lending. The use of the interstate commerce clause to justify Title IV seems more tenuous and open to attack by opponents of open housing.

And, finally, proponents of the expanded Order deny that its scope would be so limited as to nullify its effects. The large majority of mortgage loans would be covered by the Order. As compared to Title VI, an expanded Order would not depend on the stated compliance of political units of government. Rather, its enforcement would be immediate and direct, since it would govern banks, savings and loan associations, and other lending institutions. In short, its supporters feel that an expanded Order would meet the tests of scope and effective enforcement.

Proponents of equal opportunity in housing may agree on their goal of a decent home for every American family. But the executive, administrative, and legislative tools to achieve the goal are evaluated differently. The chosen approach depends on one's judgment of the practical impact, the legal authority, and the political feasibility of each alternative measure. It remains to be seen what proposals will be accepted as best fitted to accomplish the goal of equal opportunity in housing.

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<sup>1/</sup> Congressional Record (daily), April 28, 1966, p. 8964.

APPENDIX I

Income of Nonwhite Persons, 1949 and 1959, for Selected Standard Metropolitan Statistical Areas

<u>North East Region</u>	<u>Boston</u>		<u>Buffalo</u>		<u>New York</u>		<u>Philadelphia</u>		<u>Pittsburgh</u>	
	1949	1959	1949	1959	1949	1959	1949	1959	1949	1959
Total with income	26,865	47,367	19,370	40,003	481,310	844,718	201,835	332,924	55,140	75,629
Under \$3000	24,340	30,183	16,035	23,568	430,245	481,616	182,690	205,303	49,310	48,705
\$3000-3999	1,865	7,507	2,770	5,138	40,070	164,197	15,320	53,109	4,525	10,038
4000-4999	390	4,255	320	5,716	6,535	101,879	2,265	40,737	810	8,822
5000-5999	120	2,753	75	3,354	2,170	55,811	725	20,774	220	4,720
6000+	150	2,669	60	2,227	2,290	41,195	825	13,056	275	3,224

<u>North Central Region</u>	<u>Chicago</u>		<u>Cincinnati</u>		<u>Cleveland</u>		<u>Detroit</u>		<u>Minneapolis-St. Paul</u>		<u>St. Louis</u>	
	1949	1959	1949	1959	1949	1959	1949	1959	1949	1959	1949	1959
Total with income	226,025	470,815	42,180	62,840	69,075	122,812	153,030	233,497	6,340	13,799	87,090	133,021
Under \$3000	238,650	250,710	38,640	40,374	58,235	68,632	110,480	132,837	5,325	8,030	80,475	88,818
\$3000-3999	37,330	72,691	2,790	9,222	8,800	15,779	35,180	25,678	515	2,059	5,315	16,935
4000-4999	6,220	67,412	490	7,023	1,350	16,355	4,990	35,215	145	1,669	740	14,678
5000-5999	1,845	45,862	115	3,849	385	12,818	1,205	27,033	25	1,033	215	7,817
6000+	1,920	34,140	145	2,372	305	9,228	1,105	17,682	30	993	345	4,773

<u>Southern Region</u>	<u>Atlanta</u>		<u>Baltimore</u>		<u>Dallas</u>		<u>Houston</u>		<u>New Orleans</u>		<u>Washington</u>	
	1949	1959	1949	1959	1949	1959	1949	1959	1949	1959	1949	1959
Total with income	78,415	110,363	115,590	175,472	44,265	78,304	70,360	115,747	91,545	119,132	160,725	251,852
Under \$3000	76,395	90,407	106,535	112,173	42,690	64,234	65,995	83,197	88,155	93,282	143,040	159,876
\$3000-3999	1,385	10,413	6,775	26,048	1,115	8,184	3,280	15,278	2,645	12,620	13,685	42,878
4000-4999	305	5,295	1,370	20,103	245	3,594	520	9,479	455	7,026	2,315	40,253
5000-5999	100	2,604	390	9,546	75	1,368	240	4,675	140	3,828	765	15,958
6000+	230	1,644	520	6,677	160	924	285	3,118	150	2,316	920	12,877

<u>Western Region</u>	<u>Denver</u>		<u>Los Angeles</u>		<u>Portland</u>		<u>San Francisco</u>	
	1949	1959	1949	1959	1949	1959	1949	1959
Total with income	8,035	19,645	140,985	300,329	8,275	12,124	68,305	168,633
Under \$3000	7,060	11,352	119,335	155,625	7,175	7,276	81,265	87,075
\$3000-3999	725	2,781	15,420	44,787	795	1,817	13,055	24,046
4000-4999	135	2,601	3,485	40,633	160	1,459	2,325	23,002
5000-5999	40	1,426	1,365	27,485	60	826	740	17,327
6000+	55	1,426	1,380	31,599	85	746	890	17,183

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Source: U. S. Bureau of the Census, Census of Population 1950, Census of Population 1960