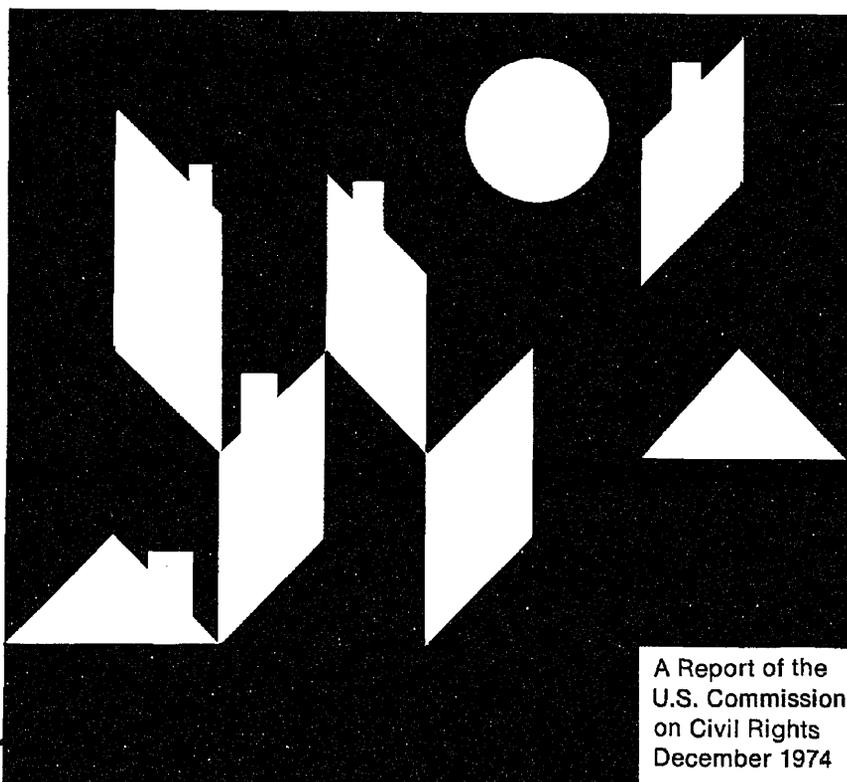


RG453

The Federal Civil Rights Enforcement Act-1974

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT--1974

Volume II
To Provide... For Fair Housing



U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 to:

Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;

Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;

Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and

Submit reports, findings, and recommendations to the President and the Congress.

Members of the Commission:

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.

John A. Buggs, Staff Director

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT--1974

Volume II
To Provide...For Fair Housing

A Report of the
U.S. Commission on
Civil Rights
December 1974

LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C., DECEMBER 1974

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

SIRS:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This report evaluates the civil rights activities of the Federal agencies with fair housing responsibilities: the Department of Housing and Urban Development (HUD); the Federal financial regulatory agencies--the Office of the Comptroller of the Currency (COC), the Federal Deposit Insurance Corporation (FDIC), the Federal Home Loan Bank Board (FHLBB), and the Federal Reserve System (FRS); the Veterans Administration (VA); and the General Services Administration (GSA). It is the second of a series of six reports to be issued by this Commission describing the structure, mechanisms, and procedures utilized by the Federal departments and agencies in their efforts to end discrimination against this Nation's minority and female citizens. This series of publications represents our fourth followup to a September 1970 study of the Federal civil rights enforcement effort.

We have concluded in this report that HUD, the major agency with responsibilities for fair housing, has made a considerable investment of time and resources in dealing with complaints but has failed to conduct sufficient and systematic fair housing reviews of State and local governments, housing authorities, builders and developers, real estate brokers, managers, or lenders. It has not adequately monitored compliance agreements or affirmative marketing plans.

We recommend a Presidential directive that the Secretary of Housing and Urban Development give the enforcement of fair housing provisions a higher departmental priority by establishing as a goal for the next 12 months the conducting of at least 50 comprehensive communitywide compliance reviews of all major institutions in the community which affect the production, sale, and rental of housing; and the adoption of a requirement in connection with all applications for HUD funding, subdivision approval, and mortgage insurance, that affirmative action plans be developed to provide for increased housing opportunities for minorities and women.

We found that a major obstacle to HUD's fair housing program is that under Title VIII of the Civil Rights Act of 1968 HUD has no enforcement authority, and we recommend that Congress amend Title VIII of the Civil Rights Act of 1968 to authorize HUD to issue cease and desist orders to eliminate discriminatory housing practices.

We have also concluded that few significant actions have been taken by the other agencies with fair housing responsibilities to impact on the country's serious problem of housing discrimination. For example, the agencies have not sufficiently informed those who benefit from their programs of the steps they must take to comply with the fair housing law and they have failed to adequately measure compliance with the existing requirements. Further, prior to the 1974 amendment to Title VIII prohibiting sex discrimination in housing, there had been few substantial steps toward combating sex discrimination. We have included specific recommendations in this report concerning each of these agencies.

We urge your consideration of the facts presented and ask for your leadership in ensuring implementation of the recommendations made.

Respectfully,

Arthur S. Fleming, Chairman
 Stephen Horn, Vice Chairman
 Frankie M. Freeman
 Robert S. Rankin
 Manuel Ruiz, Jr.

John A. Buggs, Staff Director

v
PREFACE

In October 1970 the Commission published its first across-the-board evaluation of the Federal Government's effort to end discrimination against American minorities. That report, The Federal Civil Rights Enforcement Effort, was followed by three reports, in May 1971, November 1971, and January 1973, which summarized the civil rights steps taken by the Government since the original report.

At the time we released the last report we indicated that we were conducting another analysis of Federal civil rights programs. This analysis is the Commission's most comprehensive. In order to enable the public to comprehend more fully the diverse parts of our study, we have decided to release each of its six sections independently over the next 7 months. In November 1974, we released Volume I of the Federal Civil Rights Enforcement Effort--1974: To Regulate in the Public Interest. After this second volume on the housing agencies, we will publish reports on Federal civil rights efforts in the areas of education, employment, federally-assisted programs, and policymaking. These reports will cover the activities of not only the most widely known agencies with civil rights responsibilities, such as the Departments of Labor and Health, Education, and Welfare, but also those which have received lesser public attention such as the Office of Management and Budget and the Office of Revenue Sharing of the Department of the Treasury.

This study was begun in November 1972. As we have done with all previous Commission studies of the Federal enforcement effort, detailed questionnaires were sent to agencies, extensive interviewing of

Washington-based civil rights officials took place, and a vast number of documents were reviewed, including laws, regulations, agency handbooks and guidelines, compliance review reports, and books and reports authored by leading civil rights scholars. Volumes of data were also analyzed from sources including the census, agency data banks, complaint investigations, and recipient application forms. For the first time Commission staff also talked to Federal civil rights officials in regional and district offices. Agency representatives were interviewed in Boston, Dallas, New Orleans, San Francisco, Los Angeles, and Chicago.

All of the agencies dealt with at length in our January 1973 report, The Federal Civil Rights Enforcement Effort--A Reassessment, were reviewed in this study with the exception of the Office of Economic Opportunity and the Economic Development Administration of the Department of Commerce. Those agencies had been so reduced in size and authority that we believed our resources could be better utilized by assigning them to monitor other agencies. This study covers some areas not analyzed in the Reassessment report. We will be reporting on the efforts of the White House, the Equal Employment Opportunity Coordinating Council, the Office of Revenue Sharing of the Department of the Treasury, the education program of the Veterans Administration, and the Housing, Education, and Employment Sections of the Civil Rights Division of the Department of Justice.

In addition, this is the first of our studies on Federal enforcement activities to cover the Government's efforts to end discrimination based on sex. The Commission's jurisdiction was expanded to include sex

discrimination in October 1972. Information on sex discrimination is an integral part of each section of this study.

These studies of Federal civil rights enforcement efforts, however, are not exhaustive. Limits necessarily have been placed upon them in terms of the laws, agencies, and programs covered. For example, the Voting Rights Act of 1965, which has been treated in previous Commission reports and which will be the subject of a separate Commission publication, was not covered. Further, in the sections dealing with the various Federal programs, it was not possible to treat more than a representative sample. For example, we have only covered the Department of Transportation's assistance for urban mass transit and highways, although that agency also provides aid to airports, railways, and the St. Lawrence Seaway Corporation. In other instances where all or many agencies have responsibilities but one agency is charged with the duty for overall enforcement, we will report only on the activities of the lead agency. This is true in the case of the Civil Service Commission and the Federal equal employment program, and the Office of Federal Contract Compliance of the Department of Labor, and the Executive orders prohibiting discrimination by Federal contractors. Finally, due to restrictions of time and staff resources, there will be variation in the depth of treatment of the various programs and agencies.

To assure the accuracy of these reports, before final action the Commission forwards copies of them in draft form to departments and agencies whose activities are discussed in detail, to obtain their comments and suggestions. Thus far their responses have been helpful, serving to

correct factual inaccuracies, clarify points which may not have been sufficiently clear, and provide updated information on activities undertaken subsequent to Commission staff investigations. These comments have been incorporated in the report. In cases where agencies expressed disagreement with Commission interpretations of fact or with the views of the Commission on the desirability of particular enforcement or compliance activities, their point of view, as well as that of the Commission, has been noted. In their comments, agencies sometimes provided new information not made available to Commission staff during the course of its interviews and investigations. Sometimes, the information was inconsistent with the information provided earlier. Although it was not always possible to evaluate this new information fully or to reconcile it with what was provided earlier, in the interest of assuring that agency compliance and enforcement activities are reported as comprehensively as possible, the new material has been noted in the report.

In the course of preparing these reports, Commission staff interviewed hundreds of Federal workers in the field of equal opportunity and made a large number of demands upon Federal agencies for data and documents. The assistance received was generally excellent. Without it, we would not have been able to publish our views at this time. We further would like to note our belief that many of the Federal employees assigned to duties and responsibilities within the equal opportunity area should be commended for what they have done, considering the legal and policy limitations within which they have been working.

These reports will not deal primarily with the substantive impact of civil rights laws. The Commission will not attempt here to measure precise gains made by minority group members and women as a result of civil rights actions of the Federal Government. This will be the subject of other Commission studies. Rather, we will attempt to determine how well the Federal Government has done its civil rights enforcement job--to evaluate for the period of time between July 1972 and June 1974 the activities of a number of Federal agencies with important civil rights responsibilities.

The purpose of these reports is to offer, after a careful analysis, recommendations for the improvement of those programs which require change. The Commission's efforts in this regard will not end with this series of reports. We will continue to issue periodic evaluations of Federal enforcement activities designed to end discrimination until such efforts are totally satisfactory.

Acknowledgments

The Commission is indebted to the following staff members and former staff members: Grace M. Buckley, José S. Garza, Peggy Ann Hubble, Karen J. Krueger, Nancy Langworthy, and David M. Strauss, who wrote this report, under the direction of Cynthia Norris Graae, Associate Director, Office of Federal Civil Rights Evaluation.

The report was prepared under the overall supervision of Jeffrey M. Miller, Director, Office of Federal Civil Rights Evaluation. The following staff members and former staff members provided support in the preparation of this report: Raymundo Alemán, Patricia A. Alicea, Randall D. Briggs, Alice R. Burruss, Patricia A. Cheatham, Josie Gonzales, Wallace Greene, Michele A. Macon, Grenda L. Morris, Bruce E. Newman, Penny K. Smith, Patsy L. Washington, Brenda A. Watts, and Rita L. Young.

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Chapter 1

Department of Housing and Urban Development (HUD)

I. Program and Civil Rights Responsibilities

The Department of Housing and Urban Development is the major Federal agency with responsibilities for improving housing conditions in this country. It does so by providing assistance to citizens, developers, and public and private nonprofit housing agencies in the financing and production of new housing, preservation of available housing,¹ leasing of housing, and improvement of substandard housing. In addition, HUD bears the primary responsibility for Federal efforts in the develop-²ment of the Nation's communities. Further, HUD provides planning grant assistance to State and local governments and areawide multi-jurisdictional organizations. The bulk of HUD's assistance can be³ categorized in four major areas: community development and planning,

1. In fiscal year 1973, HUD's appropriation for assisted housing was \$1.8 billion.

2. Its fiscal year 1973 community planning and development appropriation was \$2.47 billion.

3. Under its community development programs HUD provides comprehensive planning assistance to encourage the improvement of effective planning, decisionmaking, and management capability. In fiscal year 1972 over 1,500 State and local governments, areawide multi-jurisdictional organizations, and Indian reservations were recipients or subrecipients of such assistance. HUD also guarantees loans for the development of new communities. By fiscal year 1973, HUD had made commitments for almost \$300 million toward the development of 15 new communities.

housing production and mortgage credit,⁴ housing management,⁵ and policy development and research.⁶ The Housing and Community Development Act of 1974⁷ radically alters the means of providing housing for low- and moderate-income families, providing much greater local discretion as to how funds for housing and community development will be spent.⁸

HUD's most significant duties regarding equal opportunity in housing and urban development are the enforcement of Title VIII of the Civil Rights Act of 1968,⁹ Title VI of the Civil Rights Act of 1964,¹⁰ and

4. Under its housing production and mortgage credit programs, HUD provides subsidies for new and rehabilitated housing for low-income families. This includes supplements for low-income families, mortgage assistance, rental assistance, and subsidized loans for rural borrowers. In addition, HUD operates a large unsubsidized housing program, similar to the guaranteed housing program at the Veterans Administration (See Chapter 3, Veterans Administration, Section IV infra.) Under this unsubsidized program, HUD provides mortgage insurance for the purchase of homes, in general, and for specialized purposes including mobile homes, homes outside urban renewal areas, and homes for disaster victims. As part of the program, HUD provides subdivision approval to builders and developers, and arranges for the appraisal of homes which may be purchased with FHA-insured loans. HUD's approvals and appraisals provide a service to builders and developers, making it easier for them to obtain commercial financing of their construction. In exchange for this assistance, HUD requires builders and developers to submit affirmative marketing plans. See Section IV A, p. 76 *infra*.

5. Under its housing management programs, HUD provides assistance to local housing authorities for management and modernization of low-rent public housing projects. HUD assistance may be used for such purposes as acquiring existing housing from the private market and constructing new facilities. In May 1974, HUD was providing assistance to about 2,500 agencies. Telephone interview with Daniel Day, Public Information Officer, Office of Public Affairs, HUD, May 16, 1974.

6. Under its policy development and research programs HUD provides funds for research relating to such matters as national housing need, evaluation of existing housing and community development programs, and improving the environment. In 1973, 243 contracts and 13 grants were funded.

7. The Housing and Community Development Act of 1974, Pub. L. 93-383 (Aug. 22, 1974).

8. This report covers HUD activities through late May 1974. Therefore, it does not cover the Housing and Community Development Act of 1974, which was passed on August 22.

9. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 *et seq.* (1970).

10. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d. (1970).

Executive Order 11063.¹¹ Title VIII prohibits discrimination in the sale and rental of most housing because of race, color,¹² religion, or national origin. The Housing and Community Development Act of 1974 amended Title VIII to include a prohibition against sex¹³ discrimination. Title VIII makes it unlawful to discriminate

11. 3 C.F.R. § 652 (1962). Other major areas of civil rights responsibility are equal employment opportunity (see U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort - 1974 - Employment), contract compliance, (Id. at ch. 3) and minority entrepreneurship.

12. It is estimated that more than 80 percent of the Nation's housing is covered by Title VIII. Exempted from Title VIII are single family homes sold or rented without the use of a broker and without discriminatory advertising, rooms or units in dwellings containing living quarters for no more than four families provided that the owner lives in one of them and does not advertise or use a broker, and rooms in private clubs not open to the public. Title VIII's prohibition against religious discrimination does not extend to the sale or rental of dwellings owned or operated by a religious organization for a non-commercial purpose.

13. This amendment provides that the word "sex" be inserted after the word "religion" each time it appears in Title VIII. Monies for staff to implement operations based on sex discrimination have been requested by HUD. Speech by Dr. Gloria E.A. Toots, Assistant Secretary for Equal Opportunity, Equal Opportunity Meeting, HUD Central Office, Washington, D.C., Oct. 24, 1974. The amendment does not provide HUD with any enforcement powers for Title VIII, nor does it give HUD additional authority to coordinate the implementation of Title VIII by other Federal agencies. Section 109 of the Housing and Community Development Act of 1974 also prohibits discrimination on the basis of race, color, national origin or sex under community development programs, and gives the Secretary authority to apply sanctions for violations, similar to those provided by Title VI of the Civil Rights Act of 1964. Section 808(a) of the act amends Title V of the National Housing Act to prohibit discrimination on account of sex in the extension of Federal mortgage assistance. It also stated that the combined income of both husband and wife must be considered for the purpose of extending credit to a married couple or either member of the couple. The sex discrimination amendment to Title VIII was supported by the HUD Equal Opportunity Office. HUD also actively supported a bill to amend the Truth in Lending Act (15 U.S.C. 81631 *et seq.*) to prohibit discrimination based on sex or marital status. The bill would make it unlawful for a creditor to discriminate on the basis of sex or marital status when granting credit in connection with any consumer credit sale. Section 1605, 93d Cong., 1st Sess. (1973). Consumer credit sales include such transactions as mortgage loans, automobile loans, department store credit plans, and local and national credit cards. As of October 1, 1974, that bill had not been passed.

4
in advertising the sale or rental of housing, the financing of housing,
or in the provision of real estate brokerage services. HUD is
responsible for overall administration of this title, and it is specifically
charged with investigating complaints of discrimination.

HUD is significantly hampered in its power to require compliance
with Title VIII because if it finds discrimination, it can use only
informal methods of conference, conciliation, and persuasion to
bring about compliance. If these methods fail, it can merely refer the
matter to the Department of Justice; it has no authority to issue cease
and desist orders, nor does it have the power to institute litigation
against parties it has found discriminating.

14. An additional tool in the struggle against housing discrimination
has been provided by the Civil Rights Act of 1866. On September 2,
1965, Joseph Lee Jones, a black, filed a complaint in the District Court
for the Eastern District of Missouri alleging that the Alfred H. Mayer
Company had refused to sell him a home solely because of his race.
Mr. Jones sought injunctive relief by relying in part upon section 1982
of Title 42, United States Code, originally part of the Civil Rights Act
of 1866. This section of the act provides 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 and personal property."

The District Court ruled in favor of the Mayer Company and dismissed the
complaint. The Court of Appeals for the Eight District affirmed the
District Court's ruling, concluding that section 1982 applied only to
State action and did not reach private refusals to sell. The U.S.
Supreme Court granted certiorari and reversed the judgment of the Court
of Appeals. The Court ruled that section 1982 of the act "bars all
racial discrimination, private as well as public, in the sale or rental
of property, and the statute, thus construed, is a valid exercise of the
power of Congress to enforce the Thirteenth Amendment." Jones v. Alfred
H. Mayer Co., 392 U.S. 409 (1968). This ruling did not specifically assign
any responsibilities to HUD. HUD, however, has encouraged private attorneys
to file suits under the 1866 civil rights statute. See Section V A, p. 109
infra.

15. Section 810 of the Civil Rights Act of 1968, 42 U.S.C. § 3610 (1970).

9
Title VIII also requires HUD, as well as other Federal executive depart-
ments and agencies, to administer its programs and activities relating to
housing and urban development in a manner that affirmatively furthers the
purpose of the law. In addition, Title VIII requires HUD to make studies,
publish reports, and cooperate with other governmental and private
organizations to help eliminate discriminatory housing practices.

16. Section 808(e) of Title VIII states:

The Secretary of Housing and Urban Development shall --
(1) make studies with respect to the nature and
extent of discriminatory housing practices in re-
presentative communities, urban, suburban, and rural
throughout the United States; (2) publish and dissemi-
nate reports, recommendations, and information derived
from such studies; (3) cooperate with and render technical
assistance to Federal, State, local, and other public
or private agencies, organizations, and institutions
which are formulating or carrying on programs to prevent
or eliminate discriminatory housing practices; (4) coope-
rate with and render such technical and other assistance
to the Community Relations Service as may be appropriate
to further its activities in preventing or eliminating
discriminatory housing practices; and (5) administer
the programs and activities relating to housing and
urban development in a manner affirmatively to further
the policies of this title.

Section 809 specifies the following:

Immediately after the enactment of this title the
Secretary shall commence such educational and
conciliatory activities as in his judgment will
further the purposes of this title. He shall call
conferences of persons in the housing industry and
other interested parties to acquaint them with the
provisions of this title and his suggested means of
implementing it, and shall endeavor with their advice
to work out programs of voluntary compliance and of
enforcement... He shall consult with State and local
officials and other interested parties to learn the
extent, if any, to which housing discrimination exists in
their State or locality, and whether and how State or
local enforcement programs might be utilized to combat
such discrimination in connection with or in place of,
the Secretary's enforcement of this title. The Sec-
retary shall issue reports on such conferences and
consultations as he deems appropriate.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the grounds of race, color, and national origin by recipients of Federal assistance. HUD has a duty to ensure compliance with Title VI by its recipients and can withhold or withdraw funds from offenders. Executive order, 11063, issued in 1962, requires nondiscrimination in the sale and rental of federally-subsidized and insured housing. Under the Executive order, HUD has the power to defer or retract funds from offenders, or cancel contracts with parties found in noncompliance.

Although the numerous civil rights laws would indicate that this country is dedicated to the concept of equality, segregated housing continues to be a major problem. Beyond the fact that most housing discrimination based on race, ethnic origin, and sex is illegal, there are disastrous consequences for the people who are forced to live under segregated housing conditions. Too often segregation has resulted in overcrowding; concomitantly, it produces unhealthy and unsafe living

17. Title VI requires HUD to ensure nondiscrimination not only in HUD-assisted housing but in all HUD programs including those for community development and comprehensive planning. For example, HUD must make certain that minorities are not excluded from the water and sewer programs it funds. The scope of this report, however, is limited to fair housing.

18. See A. Sprensen, K.E. Tauber, and L.J. Hollingsworth, Jr., Indexes of Racial Residential Segregation for 109 Cities in the United States 1940 to 1970 (1974); E. Grier and G. Grier, "Equality and Beyond: Housing Segregation in the Great Society," in N.R. Yetman and C. Steele, Majority and Minority: the Dynamics of Racial and Ethnic Relations 453 (1971). See also M. Rafferty, Bias in Newspaper and Real Estate Advertising: A Re-Survey (1970).

conditions. Frequently, segregated housing patterns have brought with them substandard education and inadequate public services. Segregation in housing also causes severe humiliation to the people who are segregated and often contributes to physical and psychological illness.

A variety of tools have been used by the white majority to perpetuate residential segregation. Fiscal zoning, used to attract industry and commercial establishments which will provide large property taxes, may also

19. See V. Countryman, Discrimination and the Law (1965) and Maryland State Advisory Committee to U.S. Commission on Civil Rights, A Crisis in Housing on the Upper Eastern Shore (1971). According to the 1970 census, 34.2 percent of overcrowded housing is occupied by minorities, although minorities occupy only 14.4 percent of all housing. Blacks occupy 21.2 percent of overcrowded housing, and only 9.8 percent of all housing; persons of Spanish speaking background occupy 10.7 percent of overcrowded housing, as compared with 3.6 percent of all housing. Native Americans occupy 1.0 percent of overcrowded housing and only 0.6 percent of all housing; Asian Americans occupy 1.3 percent of overcrowded housing and only 0.3 percent of all housing. The 1970 census also shows that minority-occupied housing more frequently than nonminority-occupied households lacks hot water, or baths, or toilets for the exclusive use of the household.

20. Discrimination and the Law, supra note 19.

21. For example, studies have shown that the incidence of illness and disability is markedly reduced when housing conditions are improved. D.M. Wilner and R.P. Walkey, "Effects of Housing on Health and Performance," in L.J. Duhl, The Urban Condition: People and Policy in the Metropolis 244 (1963). Segregated and substandard housing contributes to family disorganization and breakdown, National Advisory Commission on Civil Disorders, "Unemployment, Family Structure, and Social Disorganization" in F.R. Lippes and D. Burrows, Racism: A Casebook 121-141 (1971).

be used to prohibit low- and moderate-income housing. Large lot zoning limits housing construction to single family homes on lots of 1, 2, 3, or even 4 acres, effectively excluding persons, often minorities and female heads of households, who cannot afford to purchase large lots. Minimum house size requirements, too, place a lower limit on the square footage of houses to be constructed, raising the cost of housing which can be built in a particular area, and again excluding the poor who are often minorities and female heads of households.²² Blackbusting is the technique used by real estate speculators which accelerates the sale of housing by circulating rumors that unwelcome minorities have purchased or rented houses in the neighborhood and will soon overwhelm it. The blockbuster's objective is to precipitate a drop in prices which will enable him or her to purchase the properties and resell them to minority families at inflated prices.²³

Redlining, a tool used by the home finance industry to discriminate against minorities, is the refusal to make housing loans to anyone within a certain area of a city, most frequently a minority area. In another variation of redlining, home finance agencies refuse to extend credit

22. See E. M. Bergman, Eliminating Exclusionary Zoning: Reconciling Workplace and Residence in Suburban Areas (1974) and Maryland State Advisory Committee to U.S. Commission on Civil Rights, The Zoning and Planning Process in Baltimore County and its Effect on Minority Group Residents (1971).

23. C. Abrams, The Language of Cities 25 (1971).

to minorities for the purchase of housing outside of segregated areas.

Although persons of Spanish speaking background, Asian Americans, American Indians, and blacks have all been subjected to segregation in housing, the factors which have led to segregation often differ for these groups. For example, poverty, a distinct language, and distinct cultural traits have led to discrimination against and segregation of persons of Spanish speaking background.²⁵ Visible racial characteristics and low incomes have contributed most heavily to the segregation of blacks.²⁶ Cultural traits and racial distinction have contributed to the segregation of Asian Americans. Moreover, Federal, State, and Local anti-Oriental legislation, effectively announcing that Asian Americans were unwelcome in this country,²⁷ has contributed to discrimination against Asian Americans. American Indians are often effectively confined to housing on reservations which is among the poorest housing in the Nation. Moreover, those Native Americans who live in cities live in some of the most squalid urban neighborhoods.²⁸

Neither Title VI nor Executive Order 11063 prohibits housing discrimination based on sex or marital status. Although

24. L. Freedman, Public Housing: The Politics of Poverty 135 (1969) and E. Grier and G. Grier, supra note 18.

25. C.F. Marden and G. Meyer, Minorities in American Society 308-311 (1973). See Pennsylvania State Advisory Committee to U.S. Commission on Civil Rights, In Search of a Better Life (1974) for a discussion of the housing problems facing Puerto Ricans in Philadelphia.

26. D. McEntire, Residence and Race 68-71 (1960).

27. See Minorities in American Society, supra note 25, at 367-376, and 383-384.

28. W.A. Brophy and S.D. Aberle, The Indian: America's Unfinished Business 166-70 (1972).

such discrimination is widespread²⁹ and in some cases inseparable from racial and ethnic discrimination,³⁰ prior to the passage of the Housing and Community Development Act of 1974,³¹ HUD referred housing

29. Some common forms of sex discrimination include refusal to lend to a wife in her own name, refusal to count a working wife's income when the couple applies for a loan, investigation of the wife's birth control practices in connection with a mortgage loan application, the difficulty which widows and divorced women encounter in seeking to obtain mortgages in the absence of a credit record (which such women do not have since they were denied credit in their own names when married), application of different standards to applications of single women than to applications of single men, and requiring cosigners for single women, but not for single men. Additionally, landlords often discriminate against single persons, regardless of sex, preferring married couples as tenants. See testimony on Availability of Credit to Women, at Hearings Before the National Commission on Consumer Finance, Washington, D.C., May 22-23, 1972; Federal Deposit Insurance Corporation, Proposed Fair Housing Lending Practices Regulations, Hearing Before the Federal Deposit Insurance Corporation, Dec. 19 and 20, 1972; District of Columbia Commission on the Status of Women, Report on Mortgage Lending Practices (1973); and William L. Taylor, Director, Center for National Policy Review, Statement on Discriminatory Treatment of Women in Home Mortgage Financing before the Joint Economic Committee of Congress, July 12, 1973.

30. For example, refusal to rent or sell to female heads of families places a great hardship on all women, but has a greater impact on minority women. In 1972 only 9.4 percent of all nonminority families were headed by women. In contrast, 30.1 percent of all minority families were headed by women. U.S. Bureau of the Census, Current Population Reports, Series P-20, Nos. 153 and 218, and unpublished data, reported in U.S. Department of Labor, Statistical Abstract 40 (1973).

Moreover, discrimination on the basis of sex may result in racial or ethnic discrimination, as a larger proportion of minority group families rely on the wife's income to afford housing and other necessities. To illustrate, in 1971, 60.0 percent of all black mothers worked as opposed to only 29.2 percent of all mothers. Id. at 340. (The Bureau of the Census does not publish data on the number of families with incomes from both husband and wife.) This relationship between sex and race or ethnic discrimination is acknowledged by the Federal Home Loan Bank Board in its guidelines prohibiting regulated institutions from discriminating by sex in mortgage lending. 7 C.F.R. § 531.8(c)(1) (1974).

31. As indicated in note 8 supra, this report does not cover HUD's activity after the passage of that act.

complaints based on sex or marital status to organizations which may have been able to provide assistance,³² including State agencies in jurisdictions which prohibit sex-based housing discrimination.³³

The National Housing Act prohibits discrimination against families with children in the rental of Federal Housing Administration (FHA)-insured housing units.³⁴ Thus, if a complaint alleging discrimination based on sex or marital status also involved the related issue of

32. HUD's Office of the Assistant Secretary for Equal Opportunity stated:

Prior to August 22, 1974, the date on which the Housing and Community Development Act was signed by the President, the Office of Equal Opportunity referred housing discrimination complaints based on "sex" to agencies and organizations which may have been able to provide assistance inasmuch as this office did not have the authority to process such complaints. Attachment to a letter from Dr. Gloria E. A. Toote, Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Nov. 6, 1974.

33. The District of Columbia, Maryland, and several other States have passed laws which prohibit discrimination in mortgage lending on the basis of sex or marital status. The District's prohibition is part of a comprehensive law prohibiting discrimination in public accommodations, housing, and credit. The Maryland law is narrow, and is restricted to credit. As of May 1974 neither law had yet been codified.

34. Section 207(b) of the National Housing Act provides:

Notwithstanding any other provisions of this section (Rental Housing Insurance), no mortgage shall be insured hereunder unless the mortgagor certifies under oath in selecting tenants for the property covered by the mortgage he will not discriminate against any family by reason of the fact there are children in the family, and that he will not sell the property while the insurance is in effect unless the purchaser so certifies such certification to be filed with the Secretary. Violations of any such certification shall be a misdemeanor punishable by a fine of not to exceed \$500.

children and federally-subsidized rental units, e.g., the refusal to rent to a person because of the number of children in the family, the complaint is referred to the appropriate HUD area or insuring office.

Basically, however, until the passage of the Housing and Community Development Act of 1974,³⁵ HUD took little action to eliminate housing discrimination based on sex or marital status. It had not conducted studies, held hearings, or gathered any data to assess its type or extent.³⁶ Overall, HUD is one of the Federal agencies which has failed

35. HUD's Office of Assistant Secretary for Equal Opportunity recently stated, "this office has always supported the amendment of a provision to Title VIII, prohibiting discrimination in housing on the basis of sex." November 1974 Toote letter, supra note 32.

36. In May 1974 HUD held an administrative meeting on mortgage finance. The overall purpose of this meeting was to gather information regarding all types of discrimination in the financing of housing, not merely sex discrimination. Nonetheless, some information which came to the attention of HUD dealt with discrimination in the financing of housing on the basis of sex. Id.

to respond to the opportunity to provide leadership in the area of housing discrimination based on sex.³⁷

HUD has appointed a Women's Coordinator with authority to review the impact of HUD programs on women and to assess the need for measures to prevent discrimination in housing based on sex or marital status. This person, however, concentrates almost exclusively upon eliminating sex discrimination in HUD employment.³⁸

37. HUD's inaction contrasts with the actions of many other Federal agencies without explicit authority for prohibiting sex discrimination. For example, the Secretary of Labor issued an order prohibiting discrimination on the basis of sex in programs operated by or financed through the Manpower Administration. Secretary's Order 16-66, Compliance Officer's Handbook, Department of Labor, January 1972, at 17 and 18. The Secretary of Agriculture has prohibited sex discrimination in all of the Department of Agriculture's direct assistance programs 7 C.F.R. § 15.51(b) (1974). In February 1971, the Secretary of Health, Education, and Welfare established a Women's Action Program to conduct a departmental analysis to enable HEW to assure that its programs would operate to minimize discrimination against women and to review HEW employment practices with regard to women. Memorandum from Elliot Richardson, Secretary of Health, Education, and Welfare, to the HEW Undersecretary, Assistant Secretaries and Agency Heads. "Women's Action Program," Feb. 17, 1971. See also Department of Health, Education, and Welfare, Report of the Women's Action Program, January 1972.

38. Interview with Diane Sterenbuch, Acting Women's Coordinator, Office of Equal Opportunity, HUD, Apr. 22, 1974. This person has received no pressure from HUD to expand her efforts beyond HUD employment to an analysis of HUD programs.

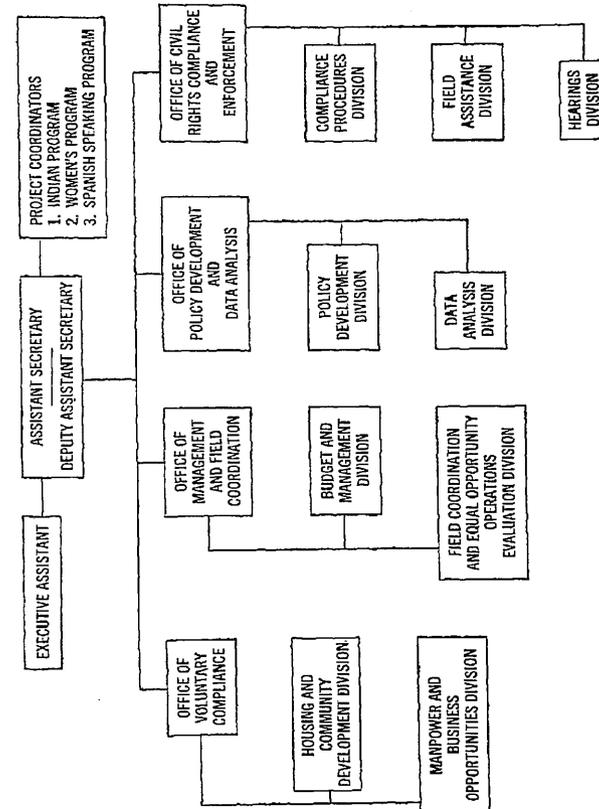
It is the central office of the Assistant Secretary which is responsible for the development of policy, regulations, instructions, and for general oversight of all equal opportunity divisions in the field offices.⁴⁴ The Assistant Secretary's personal staff of 13 includes coordinators of activities related to the needs of women, the Spanish speaking, and American Indians.⁴⁵ In addition, there are four offices within the Office of

43. See Organizational Chart II, on p. 17.

44. Although the policy directives guiding these units are generated by the Washington Equal Opportunity Office, the equal opportunity field staff report to the directors of the field offices.

45. The coordinators act as liaison and troubleshooters for the group they represent. They work to assure that their groups have an opportunity to participate in all applicable HUD programs. HUD requires that the coordinators participate in interagency panel discussions, meetings and conferences to review the objectives of its research programs as they relate to the specific needs of these groups.

ORGANIZATIONAL CHART II
 Department of Housing and Urban Development
 Assistant Secretary for Equal Opportunity



the Assistant Secretary for Equal Opportunity, each responsible to
46
the Assistant Secretary and her personal staff.

The first office, Civil Rights Compliance and Enforcement, has a
47
staff of 21. It is responsible for designing and evaluating HUD's
compliance program. It drafts regulations and provides support and
guidance to regional equal opportunity staff in conducting compliance
reviews and complaint investigations. For example, the Office of
Civil Rights Compliance and Enforcement drafted new regulations for
complaint and compliance activities under Executive Order 11063. In
addition, in the spring of 1973, this office drafted a regulation
assigning responsibility for negotiating with respondents in Title VI
48
cases to the regional equal opportunity staff. Further, in mid-1972
this office initiated action to deal more effectively with Title VI
compliance by establishing priorities for Title VI compliance

46. See Organizational Chart II, p. 17. These four offices were created
by a reorganization of the HUD equal opportunity program in April 1972.
This reorganization was extensively discussed in The Federal Civil Rights
Enforcement Effort--A Reassessment, *supra* note 41.

47. The staffing information in this report is supplied as of August 1973.
HUD Response to the Commission's April 1973 questionnaire contained a
letter from James T. Lynn, Secretary of Housing and Urban Development,
to Stephen Horn, Vice Chairman, U.S. Commission on Civil Rights, Aug. 9,
1973 hereinafter referred to as HUD response.

48. For more information on the regulations see Section III, p. 65 infra.

49
activities in the regions.

The second office, Voluntary Compliance, with a staff of 13, was
created to conduct efforts such as the development of broad scale
affirmative action plans to promote equal housing opportunity activity
by State and local agencies and all sections of the real estate
industry. Most of the activities undertaken by this office had not involved
the field offices until the summer of 1973. At that time, it was
in the process, however, of developing a handbook for field staff on
voluntary compliance. This office has since encouraged and prepared
the field offices to conduct voluntary compliance activities by sending
them a monthly informal memorandum with suggestions for possible voluntary
compliance activities. A further effort to encourage activities by
the field offices has been for Voluntary Compliance staff to participate
in "counterpart meetings," i.e., meetings where area and insuring office

49. For more information see Section III, p. 59 infra. HUD recently
stated:

With respect to the Title VI program, we have an
operating unit, created as a means of improving our
Title VI Enforcement performance. This office will
also be responsible for melding HUD's Title VI
efforts with the enforcement of section 109 of the
Housing and Community Development Act of 1974: the
nondiscrimination section. Section 109 is broader
than Title VI in that it covers sex discrimination
and employment practices of recipients who receive
community development block grants under Title I
of the new Act.

The new office has already advised Regions of goals
for FY 1975 concerning an increase in the number of
compliance reviews initiated (20% above FY 1974) and
a decrease in the number of open Title VI complaints
(20% below 6/30/74 by 6/30/75). November 1974
Toote letter, supra note 32.

equal opportunity staff train and work with program staff in enforcement of equal opportunity program standards. At these meetings, Voluntary Compliance staff explain and stress the importance of working with the private real estate industry to obtain cooperation and compliance with regulations such as affirmative marketing.⁵⁰

The third office, Management and Field Coordination, with a staff of 17, is responsible for providing training and technical assistance to HUD's program and equal opportunity staffs in the field. It also provides training for the Washington equal opportunity staff.⁵¹

The fourth office, Program Standards and Data Analysis, with a staff of 13, was created to develop program standards and for systematizing the collection and use of racial and ethnic data. In implementing its mandate this office in the spring of 1973 worked with program staff so that the regulations and handbooks published by the Assistant Secretary

50. As of June 1973, only the Philadelphia and Atlanta regions had been visited. However, a presentation of industry-wide affirmative marketing plans has been developed by this office and the office staff expected that it would be presented to all regions. Interview with Nat Smith, Director, Office of Voluntary Compliance, HUD, June 12, 1973. As of May 1974, however, it does not appear that such a presentation had been made in all regions. In San Francisco, for example, only the Assistant Regional Administrator for Equal Opportunity had received training on industry-wide affirmative marketing plans from the central office. This training was provided in Las Vegas, Nevada, on January 16, 1974. Telephone interview with Dana Jackson, Equal Opportunity Specialist, HUD Regional Office, San Francisco, Cal., May 2, 1974.

51. This office recently was renamed the Office of Policy Development and Data Analysis.

52. Program standards (See Section IV, pp. 71-106 *infra*) are civil rights requirements which be met by an applicant before receiving HUD funding. HUD elaborates: "They also include requirements during program operation, e.g., a community must conduct its relocation program as to affirmatively further fair housing objective." November 1974 Toote letter, *supra* note 32.

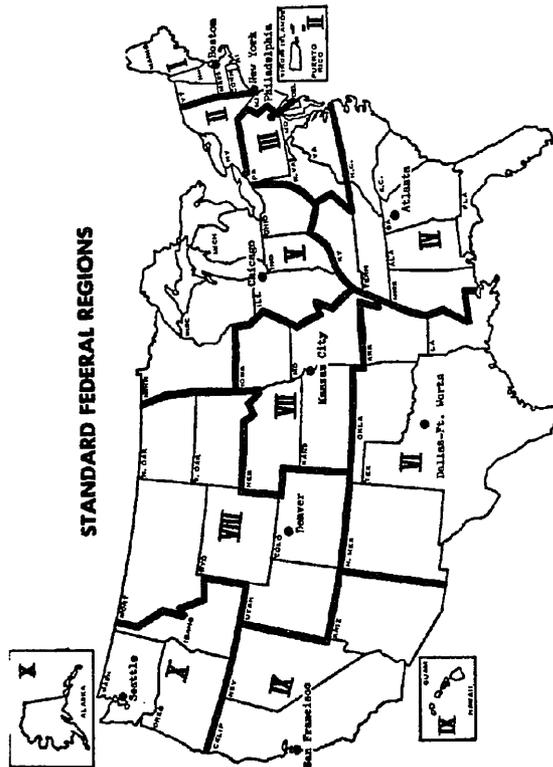
for Community Planning and Development pursuant to Section 701, "Comprehensive Planning Assistance," of the Housing Act of 1954⁵³ would properly represent equal opportunity considerations. It also reviews and comments on the field office evaluations conducted by the Office of Management and Field Coordination. In addition, staff from the Office of Program Standards and Data Analysis have spent considerable time in the field providing technical assistance to area and insuring offices' equal opportunity staff on the implementation of HUD regulations.⁵⁴

HUD increased the civil rights staffing in its Washington office from 72 in fiscal year 1972 to 77 in 1973. Because HUD's April 1972 reorganization created new functions in the central office, it is not possible to indicate which functions in the Washington office received a staffing increase.⁵⁵

53. Housing Act of 1954, 40 U.S.C. § 8461 (1970) as amended, 40 U.S.C. § 461 (Supp. II, 1972). Under Section 701, HUD provides planning assistance grants to State and local governments and areawide multijurisdictional organizations. These regulations are further discussed in Section IV, p. 95 *infra*.

54. For more information on affirmative marketing see Section IV, p. 76 *infra*.

55. In addition to HUD's equal opportunity staff, HUD's program staff in both the Washington and field offices have civil rights responsibilities. For example, they evaluate applications for comprehensive planning assistance which are required to contain equal opportunity elements involving such matters as staffing and work programs. The selective reviews they conduct of HUD-funded programs often contain equal opportunity components. In addition, along with equal opportunity staff, they administer HUD program standards.



B. Regional Offices⁵⁶

The regional office is the highest level field office.⁵⁷ The other field offices, i.e., the area and Federal Housing Administration (FHA) insuring offices, are responsible to the regional office,⁵⁸ which has an overall coordinating responsibility for HUD programs within its geographic area. It disseminates and interprets HUD central office policies to its subordinate field offices. It allocates funds to each of its field offices and evaluates their performance in the administration of their responsibilities.

The overall responsibility for implementation of the equal opportunity program is delegated to the Regional Administrator at the regional office level. This responsibility is, however, handled on a day-to-day basis by the Assistant Regional Administrator for Equal Opportunity and her or his staff.

The Offices of the Assistant Regional Administrators for Equal Opportunity are composed of compliance divisions and field support and

56. HUD regions are the standard Federal regions, see map on p. 22. The 10 regional offices are located in: Region I - Boston, Mass.; II - New York, N.Y.; III - Philadelphia, Pa.; IV - Atlanta, Ga.; V - Chicago, Ill.; VI - Dallas-Fort Worth, Tex.; VII - Kansas City, Mo.; VIII - Denver, Colo.; IX - San Francisco, Cal.; and X - Seattle, Wash.

57. See Organizational Chart III on p. 25.

58. In collecting information for this report, Commission staff visited HUD regional offices in Boston, Fort Worth, San Francisco, and Chicago; area offices in Boston, Dallas, New Orleans, San Francisco, Los Angeles and Chicago; and the insuring office in Fort Worth. On September 10, 1973, the Fort Worth Regional Office was moved to Dallas, Tex.

evaluation divisions.⁵⁹ The compliance divisions are responsible for undertaking all compliance activities such as complaint investigations and compliance reviews under Title VIII, Title VI, and Executive Order 11063.⁶⁰ The field support and evaluation division's primary responsibility is to act as a liaison between the central office in Washington and the area and insuring offices. For example, it interprets policy issuances to field staff in order to assure uniformity in implementation, and it monitors and evaluates the performance of the equal opportunity staff of the area and insuring offices.

In fiscal year 1973, there was a total of 148 equal opportunity staff assigned to the 10 regional offices.⁶¹ This is an increase of 14 positions from fiscal year 1972. Across the Nation, 26 were assigned to the staffs of the Assistant Regional Administrators, 99 to the compliance divisions, and 23 to the evaluation and field support divisions.⁶²

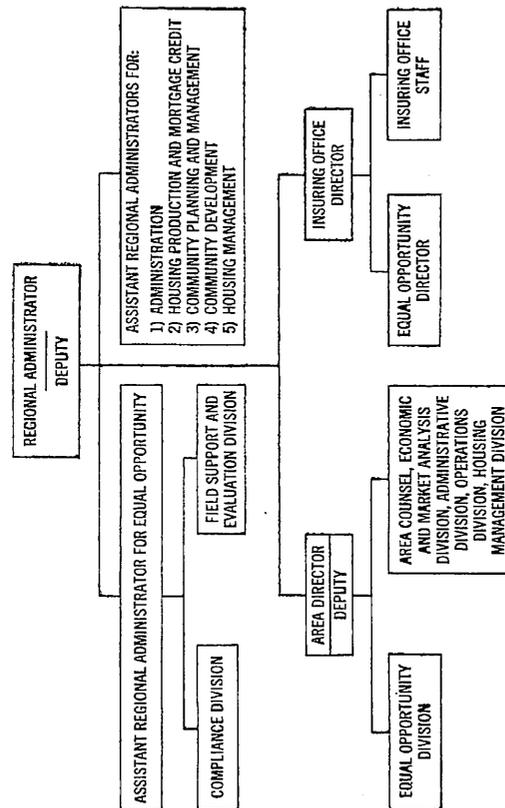
59. These divisions were created in April 1972 as a result of a broad scale reorganization of the HUD equal opportunity program.

60. In addition, these divisions are charged with implementing Executive Order 11246 (3 C.F.R. § 339 (1965)) as amended by Executive Order 11375 (3 C.F.R. § 803 (1969)), HUD's internal equal employment opportunity program, and HUD's minority business enterprise program.

61. HUD response, *supra* note 47.

62. The number assigned varied from region to region. The following was the staffing (excluding the Regional Administrator) of HUD regional offices at the time Commission staff conducted interviews in those offices: Boston - one part-time and three full-time professionals; Fort Worth - 11 full-time professionals; San Francisco - 1 part-time and 11 full-time professionals, and 2 semiprofessionals; Chicago - 1 part-time and 11 full-time professionals.

ORGANIZATIONAL CHART III Department of Housing and Urban Development Field Offices



C. Area and Insuring Offices

HUD has 39 area offices, with direct funding responsibilities for the various housing, planning, and community development programs in their geographic jurisdiction; and 38 insuring offices, all with direct funding responsibilities for Federal Housing Administration (FHA) programs⁶³ within their jurisdictions. The directors of both levels of offices report to the regional administrators. All applications for insurance, loans, and grants under these programs are thus submitted to area and insuring offices, which have the decisionmaking responsibility of approving or disapproving them.

In each area office there is an equal opportunity division⁶⁴ responsible for reviewing affirmative marketing plans⁶⁵ and for overseeing the program staff's implementation of equal opportunity standards.⁶⁶ One hundred and fifty-two persons in the HUD area offices were assigned full-time civil rights responsibilities in fiscal year 1973, an increase of 11 since fiscal year 1972. A total of 50 persons were assigned in

63. The FHA is an organizational unit within HUD which operates insurance programs under the provisions of the National Housing Act. The FHA provides insurance for private lenders against loss on mortgages financing homes, multifamily projects, land development projects, and group practice facilities projects and against loss on loans for property improvements. In addition, it insures investments in rental housing projects. FHA programs are similar to Veterans Administration housing programs. See Chapter 3, Veterans Administration, Section I.

64. These divisions average almost four persons per office.

65. Affirmative marketing plans are discussed further in Section IV, p. 76 infra.

66. Program standards are discussed further in Section IV, p. 71 infra.

fiscal year 1973 to the insuring offices to carry out full-time civil rights responsibilities. For the first time, in fiscal year 1973, there were equal opportunity staff in most of the FHA insuring offices. Most of these persons were equal opportunity specialists and some were equal opportunity directors. As of November 1974 there were eight equal opportunity director positions in insuring offices.⁶⁷ The equal opportunity specialists, generally without additional staff or clerical assistance, and the equal opportunity directors are responsible for oversight of program standards. As of April 1973 nine insuring offices had not been assigned equal opportunity staff.⁶⁸

Equal opportunity staff in both the area and insuring offices provide equal opportunity training and technical assistance for other HUD area and insuring office staff. They also provide such assistance to members of the real estate industry and local offices seeking guidance in meeting HUD requirements.⁶⁹

D. Training

HUD's civil rights training has greatly improved during the past year. In the early summer of 1972, HUD developed the "Star Training Program" which was a special effort to increase job opportunities for HUD staff employed outside the area of equal opportunity.⁷⁰

67. November 1974 Toote letter, supra note 32.

68. As of August 1973, there was no equal opportunity staff assigned in the following insuring offices: Region I - Bangor, Me., and Burlington, Vt.; Region II - Albany, N.Y.; Region VII - Des Moines, Iowa.; Region VIII - Helena, Mont.; Fargo, N.D., Sioux Falls, S.D., Salt Lake City, Ut., and Casper, Wyo.

69. The area and insuring offices' equal opportunity staff provide technical assistance to program staff when necessary with regard to internal employment and minority entrepreneurship.

70. Until fiscal year 1972, HUD's equal opportunity training was largely ad hoc. See The Federal Civil Rights Enforcement Effort--A Reassessment, supra note 41, at 132.

71. It was instituted at the time of the April 1972 reorganization of HUD's equal opportunity office when there were expanded career opportunities at the area and insuring office level. Twenty program staff members received this "Star Training" and were subsequently placed in area and insuring offices as equal opportunity specialists.

This program involved 4 weeks of intensive classroom training conducted in Washington,⁷² followed by 8 weeks of on-the-job training.

From June 5 through June 10, 1972, the central office staff conducted the Equal Opportunity Spring Training Program with the major goal of providing training in all areas of responsibility to the 20 newly appointed directors of compliance and directors of field support and evaluation for the regional offices.⁷⁴ The central office personnel of the Office of Civil Rights Compliance and Enforcement held a HUD National Equal Opportunity Compliance and Enforcement Training Conference in Chicago from December 18, 1972, to December 21, 1972. The central theme of the conference was the effective use of procedures to effect meaningful and timely remedies for complaints under Title VI, Title VIII, and Executive Orders 11063, 11246⁷⁵ as amended, and 11478.⁷⁶ Case studies were used to highlight practical areas of concern and to elicit group participation.

72. The purpose of the classroom training was to familiarize the trainees with HUD's equal opportunity responsibilities. It included about a week of intensive training on conducting complaint investigations and compliance reviews.

73. The 10 Assistant Regional Administrators for Equal Opportunity were also in attendance. Each trainee received approximately 40 hours of training in all areas of HUD's civil rights compliance responsibilities. On June 11, the 77 area and insuring office equal opportunity directors, as well as the 20 Star trainees met for a full day of training devoted exclusively to affirmative marketing.

74. These two positions were created in the April 1972 reorganization and, therefore, required the directors to be trained for their new responsibilities.

75. This Executive order as amended prohibits discrimination because of race, creed, color, national origin, and sex in employment by government contractors and subcontractors, and in federally-assisted construction contracts. The Executive orders also require affirmative action by those covered to overcome any under-utilization of minorities and women.

76. Executive Order 11478, 3 C.F.R. § 803 (1969), prohibits discrimination in Federal employment because of race, color, religion, sex, or national origin and directs each department or agency to establish a continuing affirmative program of equal employment opportunity.

Forty-three equal opportunity specialists working in compliance and enforcement in HUD's 10 regional offices, together with nine regional counsel representatives directly involved in compliance activities, participated in a 5-day session consisting of 35 training hours.⁷⁷

From April 16 through 20, 1973, the HUD Training Conference for Equal Opportunity Specialists was held at the HUD-East Training Center in Rosslyn, Virginia. The conference, conducted by the central office staff of the Office of Compliance and Enforcement, had as its principal subject matters both Title VIII and contract compliance investigative procedures.⁷⁹

In addition to the previously discussed national conferences, the central office, in cooperation with specific regional offices, provided training to central, regional, area, and insuring office staffs in Title VI, Title VIII, and Executive Order 11246 enforcement and implementation of program standards. This training, which lasted 32 hours, was conducted in Regional III, IV, V, VII, VIII, IX, and X.⁸⁰

This brief overview of the organizational structure, staffing, and

77. HUD response, supra note 47.

78. Two training centers called HUD-East and HUD-West (Denver, Colo.) were established by HUD in 1972. These centers are used by HUD to provide training to HUD program staff in their program responsibilities as well as to provide civil rights training to equal opportunity staff.

79. The training attempted to equip each trainee with the necessary skills to successfully investigate housing discrimination cases, including fact-gathering and preparation of the final investigation report. Twenty-seven regional office trainee staff-level personnel, who were newly assigned to equal opportunity or who had received no previous training, were in attendance. Approximately 40 hours were involved in the training, which was followed by a period of on-the-job training.

80. The following are examples of the equal opportunity subjects covered in the training: field office role in Title VIII complaint processing; Executive Order 11246 compliance; Title VI complaints and compliance reviews; use of census data in equal opportunity; program standards; water and sewer and 701 planning programs; workable programs; reviewing and monitoring of affirmative fair housing marketing programs; annual arrangements; and voluntary compliance in housing and community development programs.

training activities in the fair housing area indicates that the Department of Housing and Urban Development has been increasing its investigative energy and resources in the area of fair housing. The remainder of the HUD report will set forth the Commission's reasons for believing that this increased investment has had to date a minimal impact on the elimination, in our Nation, of segregated housing.

III. Compliance Mechanisms

A. Fair Housing Activities--Title VIII

1. Complaints

HUD's fair housing program continues to be oriented toward the investigation of complaints, a largely ad hoc approach to the prevention and elimination of housing discrimination. This is important but must be continued. Nevertheless, HUD needs to focus more strongly on community wide pattern and practice reviews as a means to bring about fair housing to all citizens. HUD reports that approximately 52 percent of equal opportunity regional staff time is spent on the enforcement of

81. HUD notes that this is because of its mandate from the Congress. HUD stated:

The Department of Housing and Urban Development is not authorized to ignore a congressional mandate to process complaints of housing discrimination as required by Title VIII of the Civil Rights Act of 1968, Section 810(a) to process complaints of housing discrimination. November 1974 Toote letter supra note 32.

82. HUD recognizes that a complaint-oriented enforcement system will not in the long run make fair housing a reality. It has expressed hope that it will be getting away from a solely complaint-oriented system through the development of affirmative marketing agreements. Dr. Toote stated:

While we have not yet had sufficient experience in evaluating the impact of these agreements, we believe they can be of great assistance in breaking down dual market operations. Attachment to letter from Dr. Gloria E. Toote, Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development, to John A. Buggs, Staff Director, United States Commission on Civil Rights, Sept. 16, 1974.

These agreements, which are discussed on pp. 76-91 infra have not resulted in significant progress toward fair housing, however.

Title VIII. As in previous years, HUD reported that nearly all of this Title VIII effort is devoted to the processing of complaints. During the first 9 months of fiscal year 1973, HUD regional offices received a total of 2,053 Title VIII complaints, an average of almost 230 complaints per month. This represents an increase of more than 25 percent over Title VIII complaints received by HUD during fiscal year 1972. The largest number of complaints--454--was received by the San Francisco Regional Office, and the smallest number--24--by the Boston Regional Office.

HUD regional offices attribute the number of complaints, nearly double that received in fiscal year 1971, to an advertising and publicity campaign begun in the eastern United States in 1971. The campaign, using the theme "HUD Opens Doors," utilized television, radio, and posters to publicize HUD's "Hot-Line" number for toll-free telephoning of complaints.

83. HUD response, supra note 47. HUD statistics were obtained from a Departmental Time and Cost Reporting System in operation since August 1972. There is wide variation in the amount of time spent on Title VIII compliance. For example, the Chicago office devotes 85-90 percent of its time on Title VIII compliance. Interview with Thomas Higginbotham, Director, Compliance Division, HUD Regional Office, Chicago, Ill., in Chicago, May 5, 1973. The remaining time is spent on Title VI, Executive Order 11063, internal equal employment opportunity, contract compliance, and minority entrepreneurship.

84. Of the complainants who could be identified by race, HUD reports the following: 80.5 percent, black; 8.8 percent, white nonminority; 6.9 percent, Spanish speaking; 1.4 percent, American Indian; 6 percent, Asian American; and 1.8 percent, other.

85. In fiscal year 1972, HUD received 2,159 Title VIII complaints, about 180 per month.

86. The calls are received at HUD's central office in Washington, where the complainant can leave a recorded message stating where she or he can be reached. The complainant is later contacted by HUD to obtain more information on the complaint and the complaint is forwarded to the appropriate regional office for investigation. One regional office staff member stated that many complaints are lost through this procedure because it takes several weeks from the initial call for the complaint to reach the regional office. Interview with Barbara Jones, Compliance Specialist, HUD Regional Office, Chicago, Ill., in Chicago, May 15, 1973.

In June 1972, the advertising campaign was expanded west of the Mississippi, and HUD reports that as a result, regional offices in that area began to receive increased complaints. For example, the Fort Worth Regional Office received 91 complaints in fiscal year 1972 and 272 complaints during the first 7 months of fiscal year 1973. The San Francisco Regional Office received 381 complaints during fiscal year 1972 and 328 complaints during the first 7 months of fiscal year 1973.⁸⁷ Complaints have continued to increase east of the Mississippi as well. The Chicago Regional Office received 206 complaints in fiscal year 1972 and 239 complaints during the first 10 months of fiscal year 1973.⁸⁸

Although HUD's increased efforts to make the public aware of its rights to file housing discrimination complaints should be commended, it should also be noted that these efforts do not extend equally to all segments of the minority community. Although the fair housing advertising campaign includes television and radio announcements and posters and fair housing pamphlets in Spanish, HUD regional office staff expressed the belief that

87. San Francisco's complaint volume was higher than most HUD offices prior to the campaign, in part due to a special publicity campaign "Operation Sentinel" funded by HUD in northern California during 1971. In February 1971, the National Committee Against Discrimination in Housing gave \$6,000 of a HUD grant to "Operation Sentinel," a group staffed by the Mid-peninsula Urban Coalition in Palo Alto, California. "Operation Sentinel" devised a 6 month series of radio and television spot announcements publicizing the Fair Housing Law and HUD's role in responding to complaints. When the first grant expired, "Operation Sentinel" received another \$10,000 grant from HUD to continue the publicity campaign for 6 more months.

88. The largest number of complaints, approximately 20 percent or 54 of 239, came from Ohio. Fair housing groups such as the Housing Opportunities Made Equal of Cincinnati, the Housing Opportunities Center of Cleveland, and its branch in Columbus, are very active and assist persons in filing discrimination complaints as well as informing them of their rights. In addition, the Chicago Regional Office staff believe that the advertising campaign is more visible and aggressive in Ohio than in the other States in the region. Jones interview, supra note 86.

they are not reaching the Spanish speaking community.⁸⁹ HUD has made no special effort to distribute fair housing posters and brochures in Spanish except to its own field offices. Builders, developers, lenders, and real estate brokers are, thus, generally not supplied with materials in Spanish.⁹⁰ There are no materials available in languages other than Spanish or English; for example, Chinese, Japanese, or in Native American languages.

Only 5 percent of the complaints from persons known to be minority received in the Chicago Regional Office during the first 9 months of fiscal year 1973 were from complainants of Spanish speaking background and no complaints were received from Native Americans.⁹¹ Approximately 9 percent of complaints received from persons known to be minorities in the Fort Worth Regional Office during fiscal year 1973 were from complainants of Spanish speaking origin⁹⁴ and 1 percent were from Native Americans.⁹⁵ Very few

89. Interview with Marvin R. Smith, Director, Compliance Division, HUD Regional Office, San Francisco, Cal., in San Francisco, Mar. 19, 1973, and Higginbotham interview, supra note 83. In March 1968, the Fort Worth Regional Office held a conference in El Paso with participants from nearly 300 Spanish speaking community groups and local and national organizations from Texas and New Mexico. At that time, however, the Federal Fair Housing Law was not even in existence. There has been no followup to the conference.

90. Jones interview, supra note 86.

91. HUD does not know the race and ethnic origin of more than 10 percent of its complainants throughout the United States.

92. One hundred and eighty-one of the 210 complaints received in Chicago from July 1972 to March 1973 were from minorities; 172 were from blacks; 1 was from a Puerto Rican, 6 from Mexican Americans, and 2 from Cuban Americans.

93. HUD response, supra note 47. According to the 1970 census, there were 3,914,692 minority persons in the Chicago region. More than 19 percent of the minority population were of Spanish speaking background (757,024). Census also reports that there were 74,206 Native Americans in the Chicago region, approximately 2 percent of the minority population.

94. HUD response, supra note 47. As of the 1970 census, there were 5,611,261 minority persons in the Fort Worth region. Approximately 40.9 percent of that population (2,295,419) were of Spanish speaking background.

95. As of the 1970 census, there were 196,521 Native Americans in the Fort Worth region, which is approximately 3.5 percent of the minority population.

complaints were received from any part of New Mexico, which has large concentrations of Mexican American and Native American families, or from west or south Texas, which are heavily populated by Mexican Americans.

In the San Francisco office, during the first 9 months of fiscal year 1973, only 13 percent of housing discrimination complaints received from persons known to be minority were from families of Spanish speaking back-⁹⁶ground, ⁹⁷2 percent from Asian Americans, and about 2 percent from Native⁹⁸Americans. Very few complaints were from Nevada or Arizona, States with substantial populations of Mexican Americans and Native Americans. The complaints which the San Francisco office did receive from Native Americans⁹⁹ came from southern California and the HUD office believes that this is due to the existence of an Indian organization in Los Angeles which has been assisting Indians who have encountered discrimination to file complaints with¹⁰⁰HUD.

Equal opportunity staff in all the regional offices visited by Commission staff attributed the lack of complaints from people of Spanish

96. As of the 1970 census, there were 5,548,139 minority persons in the San Francisco region. Approximately 48.3 percent of that population (2,679,123) were of Spanish speaking background.

97. As of the 1970 census, there were 895,915 Asian Americans in the San Francisco region, which is approximately 16.1 percent of the minority population.

98. As of the 1970 census, there were 195,889 Native Americans in the San Francisco region, which is approximately 3.5 percent of the minority population.

99. Marvin Smith interview, supra note 89.

100. This organization, the Urban Indian Development Association (UIDA), provides orientation and assistance to Indians coming to the Los Angeles area from reservations.

speaking background, Native Americans, and Asian Americans to a lack of awareness of the law and cynicism regarding remedies for discrimination which can only be overcome by education regarding fair housing rights.¹⁰¹

2. Complaint Backlog

As of March 31, 1973, HUD had on hand 464 uninvestigated complaints, well over 20 percent of the complaints it had received in fiscal year 1973, and 622 complaints (over 30 percent)¹⁰² which it had not resolved. One reason for HUD's sizeable backlog is the lengthy processing time¹⁰³ for Title VIII complaints.

101. Interview with Harold Odom, Chief of Compliance, HUD Regional Office, Fort Worth, Tex., in Fort Worth, Jan. 29, 1973. Marvin Smith interview, supra note 89; Higginbotham interview, supra note 83.

102. HUD response, supra note 47. Boston, which received only 29 complaints in the first 9 months of fiscal year 1973, had only 1 uninvestigated complaint on hand at that time; Chicago, which had received 210 complaints, had 45 (21.4 percent) uninvestigated complaints on hand; Dallas, which had received 335 complaints, had not investigated 133 of them (39.7 percent); San Francisco had received 454 complaints and had not investigated 373 (82.2 percent) of them.

103. In March 1974, HUD established a task force to eliminate the Title VIII complaint backlog. By the end of fiscal year 1974, HUD stated that the task force had closed 921 cases, which was a 255 percent increase over an average equivalent period in fiscal year 1972. September 1974 Toote letter, supra note 82.

In 1972, the average processing time for a Title VIII complaint was 5½ months.¹⁰⁴ In 1973 HUD informed this Commission that the handling time still remains unchanged.¹⁰⁵ This protracted process seems unwarranted. In fact, Commission staff were told by one HUD investigator in Chicago that it takes approximately 80 person-hours to investigate a complaint, prepare a final investigation report, and arrive at a determination for resolution.¹⁰⁶ Similarly, staff in the Fort Worth Regional Office estimate

104. HUD states:

While the average lapsed time for processing a Title VIII complaint was approximately 5 1/2 months in 1972, it is important to indicate that continuous staff time is not generally spent processing any individual for that period of time. Continuous efforts are going forward to reduce this time. Accordingly, it is the opinion of this office that the complaint processing itself is not protracted. November 1974 Tootle letter, supra note 32.

105. HUD response, supra note 47.

106. Jones interview, supra note 86. This investigator had 45 outstanding complaints, 20 of which she was handling personally. The others had been referred to State and local agencies for handling.

that a reasonable workload for a compliance officer would be 36 to 40 complaints per year.¹⁰⁷ San Francisco staff were even more optimistic about HUD's capacity. One regional staff member estimated that a staff of six full-time equal opportunity compliance specialists are able to close approximately 50 to 75 cases per month.¹⁰⁸

In order to expedite complaint processing, a "Short-Form Processing Procedure"¹⁰⁹ for rental discrimination complaints was developed by HUD and tested by the Philadelphia Regional Office in the spring and summer of 1972. All regional offices were required to use this procedure starting in October 1972. HUD reports that this form has now been adopted by all regional offices,¹¹⁰ although not all offices were using this form at the time of Commission interviews.¹¹¹ When it was in use, one regional staff member reported that it did not noticeably decrease their backlog.¹¹²

107. However, one compliance specialist had handled 34 cases in the 6 months prior to the Commission interview and had 20 investigations and five conciliations on hand at the time. Interview with Samuel Hudson, Compliance Specialist, HUD Regional Office, Fort Worth, Tex., in Fort Worth, Jan. 29, 1973.

108. Interview with Ted Simmons, Conciliator, HUD Regional Office, San Francisco, Cal., in San Francisco, Mar. 20, 1973.

109. This form is used to accelerate complaint handling in cases of rental discrimination. Under this accelerated process, cases are assigned on a priority basis for early investigation and a summary of the investigation report is reported by telephone to the regional office. Conciliation meetings are held forthwith and, if possible, an agreement is executed during the conference itself. See Department of Housing and Urban Development, Title VIII Field Operations Handbook EO 8020.1, revised.

110. HUD response, supra note 47.

111. Regions I, VI and IX were not using the "Short-Form Processing Procedure" in November 1972, January 1973, and March 1973, respectively.

112. Higginbotham interview, supra note 83.

Staff in all of the regional offices claim that their primary problem in complaint disposition is insufficient staff to conduct complaint investigations and conciliations.¹¹³ The time-consuming steps in investigating complaints often include ownership research.¹¹⁴ Indeed, HUD's investigation of Title VIII complaints appears generally to have been thorough.

While lack of staff is clearly a serious problem,¹¹⁵ the greatest stumbling block to HUD's efficient and timely processing of complaints lies in the necessity to rely as heavily as it does on the conciliation process itself. As noted in Section II, HUD lacks enforcement authority. Its only weapon against a noncomplying respondent is to refer her or his case to the Department of Justice (DOJ),¹¹⁶ and thus it may take years to remedy a problem, if it can be remedied at all. Consequently, this lack of enforcement authority makes it very difficult for HUD to resolve the complaints it receives.

113. Interview with Irving Horwitz, Assistant Regional Administrator for Equal Opportunity, HUD Regional Office, Chicago, Ill., in Chicago, May 5, 1973; and Cliff Jeffers, Assistant Regional Administrator for Equal Opportunity, HUD Regional Office, San Francisco, Cal., in San Francisco, Mar. 19, 1973; Vera interview, *supra* note 42; and A. Maceo Smith interview, *supra* note 42.

114. Ownership research is always part of any investigation in the Chicago region. If the respondent is found to own other properties, a commitment to fair housing on these properties is included in the conciliation agreement.

115. For example, the Chicago Regional Office has only nine professional staff members to handle Title VIII, Title VI, and Executive Order 11246. In April 1972, HUD underwent a reorganization and the Chicago Regional Equal Opportunity Office lost five professional positions. In San Francisco, the complaints division which handles Title VI, Title VIII, and Executive Order 11063 has six full-time professionals and two assistants.

116. Referrals to DOJ are discussed further in Section VI, B, p. 126 *infra*.

HUD reports that between July 1972 and March 1973 a total of 1,601 Title VIII complaints were closed. HUD itself closed 1,214 cases and the remainder were closed by State agencies to which HUD had referred complaints. Only a few of these closed by HUD brought relief to the complainants, illustrating the point that the processing of individual complaints must be accompanied by a program that will eliminate the root causes of discrimination if there is to be genuine progress in the direction of assuring equal opportunity in housing. In fact only 262, or slightly more than one-fifth, of the 1,214 cases closed by HUD went to conciliation.¹¹⁷ Of these 262 cases, just over one-half (54.2 percent) were conciliated successfully.¹¹⁸ The regional offices visited by Commission staff had similar complaint closure records.¹¹⁹

117. The complaints which were not conciliated were "closed" as follows: withdrawn-14 percent; insufficient information-13.2 percent; "decided not to resolve"-51.2 percent. Those complaints which HUD "decided not to resolve" were generally ones in which no violation of Title VIII could be substantiated. "Decided not to resolve" means that HUD determines not to conciliate, after it has conducted an investigation to see if there appears to be sufficient evidence of discrimination. 1974 Holbert interview, *supra* note 40.

118. The complaints which were not conciliated successfully were as follows: unsuccessful conciliations-39.3 percent; partially successful conciliations-6.5 percent.

119. The regions visited by Commission staff had the following complaint records between July 1972 and March 1973: Boston 24 closed, 6 closed by HUD, no conciliations; Chicago 115 closed, 87 by HUD, 10 percent conciliated, 20 percent successfully; Fort Worth 187 closed, 186 by HUD, 38 percent conciliated, 58 percent successfully; San Francisco 457 closed, 369 by HUD, 12.5 percent conciliated, 43.5 percent successfully. During the summer of 1972, the San Francisco Regional Office funded a task force of seven law students to handle investigations on a part-time basis and seven university professors to conduct conciliations. As a result, more than 100 complaints were closed during August and September 1972.

The backlog found in most regional offices probably accounts to some extent for the large number of complaints "withdrawn" by complainants who did not wait for the end of the complaint process. Regional office staff report that another consequence of the backlog is that conciliations are often rushed. Conciliations may result in individual relief, such as monetary damages for a complainant, over and above obtaining the housing in question and the basic elements of an agreement requiring affirmative action by the respondent.

Even a more serious deficiency than its delayed complaint processing is HUD's treatment of cases once they have been successfully resolved through conciliation. Ironically, once HUD has negotiated a hard-won agreement, it frequently makes no effort to monitor the agreement to

120. In Boston only one complaint was withdrawn between 1972 and March 1973; in Chicago 17 (8.1 percent) were withdrawn; in Fort Worth 17 (5.1 percent) were withdrawn; in San Francisco 63 (13.9 percent) were withdrawn, more than in any other regional office.

121. In Chicago, for example, a compliance officer estimated that the majority of the region's complaints involve rental cases against managers and landlords. Since rental housing is a scarce commodity which is generally needed immediately and HUD's backlog does not permit immediate investigation, the complainants often do not want HUD assistance by the time HUD is ready to investigate their complaints. Jones interview, supra note 86.

122. This would include an agreement by the landlord or broker to advertise affirmatively, to put up HUD fair housing posters, and to report periodically to HUD on racial and ethnic occupancy of units. The Chicago office reports that it always attempts to insert in the conciliation agreement requirements similar to the affirmative marketing requirements and, in addition, it asks for reports on all projects owned by the respondent. Id.

see that it is carried out. HUD reported in July 1972 that compliance reviews of Title VIII conciliation agreements would be instituted on a regular basis, but more than 1 year later, HUD reports that it still has not instituted such regular reviews.

123. In specific instances HUD sometimes has conducted limited monitoring of its conciliation agreements but this practice is not widespread. In April 1972, the San Francisco Regional Office assigned a trainee to the task of monitoring respondent reports and sending out followup letters if the reports were not received. In a one-time effort in January 1973, the Fort Worth office mailed out letters to respondents requesting reports on positive action taken to comply with Title VIII. HUD recently stated:

HUD Regional offices received instructions regarding compliance reviews of respondents who are parties to conciliation agreements consummated pursuant to Title VIII of the Civil Rights Act of 1968. The instructions included a Compliance Review Check List which is to be utilized for the conduct of such compliance reviews which hopefully will increase during fiscal year 1975. November 1974 Toote letter, supra note 32.

124. HUD response to the Commission July 5, 1972, questionnaire contained in letter form from George Romney, Secretary of Housing and Urban Development, to Theodore M. Hesburgh, Chairman, U.S. Commission on Civil Rights, August 18, 1972.

125. HUD response, supra note 47. 24 C.F.R. § 115.1 (1974).

3. Referrals to State and Local Agencies

HUD currently refers Title VIII complaints to 28 States and 16 localities which have been found to have fair housing powers substantially equivalent to those given to HUD by Title VIII of the Civil Rights Act of 1968.¹²⁶ HUD's central office is responsible for reviewing and evaluating State and local laws to determine if they qualify for substantial equivalency status.¹²⁷ If a State or local agency is found qualified, it is sent a letter from the central office notifying it that substantial equivalency status has been granted and that HUD will be referring complaints to it. The regional office is then generally responsible for establishing the affiliation between HUD and the agency and informing it of procedures

126. A State or local agency is determined to be substantially equivalent if the State or locality's fair housing law and its administration provide rights and remedies substantially equivalent to those provided by HUD's administration of Title VIII. In the regions visited by Commission staff, the following States and localities have been granted substantial equivalency status by HUD: Boston Region-Connecticut, Massachusetts, New Hampshire, Rhode Island, Vermont, Chicago Region-Indiana, Illinois, Aurora, Peoria, Springfield and Urbana, Ill.; Michigan; Ann Arbor, Mich.; Minnesota; Ohio; Wisconsin; Fort Worth Region-New Mexico; San Francisco Region-California; Hawaii; Nevada.

127. Interview with Kenneth Holbert, Director, Office of Civil Rights Compliance and Enforcement, HUD, June 19, 1973.

that are to be followed.¹²⁸ In August of 1973 HUD central office staff stated they were developing a model memorandum of understanding to be used by regional offices and State and local agencies because regions differed in the agreements and procedures they had established.¹²⁹ As of November 1974, however, the model memorandum of understanding existed only in draft form.¹³⁰

A total of 790 Title VIII complaints were referred to State and local agencies between July 1972 and March 1973.¹³¹ The agencies closed 384 of these complaint cases and only 75 of these were conciliated. As of March 1973, State and local agencies had a backlog of 406 unresolved complaints, a little over half of the number of complaint cases received by them in the previous 9 months.¹³²

128. Some regional staff members feel that the regional offices should be given a larger voice in the decision to grant substantial equivalency status. They allege that at times a State may not even know that it is under consideration for such status and is not prepared to accept the responsibility. Thompson interview, supra note 42, and Horwitz interview, supra note 113.

129. 1973 Holbert interview, supra note 127. In the San Francisco Regional Office, all Title VIII complaints are referred to State and local agencies with the exception of complaints where the respondent is receiving Federal assistance. The Chicago Regional Office is considering requesting State and local agencies in its area to waive referral rights in order to accelerate rental complaints. The Boston Regional Office has a Memorandum of Understanding with State and local agencies stating that when the agencies receive complaints of discrimination involving HUD recipients, HUD will use its leverage to achieve a resolution of the case. For example, HUD could defer funding of the respondent pending a State resolution of a complaint against the application; however, as of the Commission's interviews in Boston, Mass., in November 1972, it had not done so.

130. November 1974 Tootle letter, supra note 32.

131. The following is a breakdown of complaint referrals to State and local agencies by HUD regional offices: Boston 16; New York 84; Philadelphia 259; Atlanta 7; Chicago 74; Fort Worth 2; Kansas City 15; Denver 7; San Francisco 319; Seattle 7.

132. HUD response, supra note 47

Under Section 801(c) of Title VIII, HUD may take action to recall a complaint if a State or local agency has not commenced proceedings within 30 days or, having done so, has not carried forward such proceedings with reasonable promptness. According to a HUD regional staff member, complaints are rarely recalled.¹³³ Some HUD regional staff may be reluctant to recall complaints because they do not want to add to their own workload and believe that HUD's backlog would only cause further delays.¹³⁴ In addition, HUD may be reluctant to recall complaints because some complainants may benefit from State powers where they are stronger than those afforded by Title VIII.¹³⁵

HUD may rescind a State or local agency's substantial equivalency status if it does not perform adequately in handling Title VIII complaints referred by HUD. According to the HUD central office, the

133. Interview with Lionel Jenkins, Compliance Office, HUD Regional Office, Boston, Mass., in Boston, Nov. 14, 1972. HUD recently reported:

HUD staff have been instructed to recall complaints when they qualify for recall pursuant to Part 115, 37 F.R. 16540, Recognition of Substantially Equivalent Laws. November 1974 Toote letter, *supra* note 32.

134. As of May 2, 1974, the Boston Regional Office has recalled only five complaints since July 1971, even though State agency complaint processing in the region is often backlogged. As of January 1973, the Fort Worth Regional Office had not recalled the one complaint it referred to New Mexico during fiscal year 1973 although nothing has been done on it by the State agency since its referral in August 1972.

An exception is the San Francisco Region. There, one State agency, the California Fair Employment Practices Commission (FEPC), was so overwhelmed with work that it returned 205 complaints referred to it during fiscal year 1972, and HUD had to recall an additional 44 complaints for lack of timely action on the part of the agency. As of January 1973, the FEPC had returned 133 additional complaints and HUD had recalled 50 more, leaving the FEPC with 55 referred Title VIII complaints.

135. For example, the Massachusetts Commission Against Discrimination may hold hearings and subpoena witnesses and material for such hearings. Additional powers of the Massachusetts agency are discussed on P. 46 *infra*.

agencies are given an ongoing evaluation. In some cases, regional offices have recommended that HUD rescind a State agency's substantial equivalency status.¹³⁶ HUD has been able to use its power to rescind a State agency's substantial equivalency status to influence State action and strengthen the power and ability of State agencies to carry out fair housing enforcement.¹³⁸

The percentage of closed complaint cases conciliated by State and local agencies--19.5 percent--approximates the percentage conciliated by HUD--21.6 percent. However, where HUD reports only 54.2 percent of their cases were conciliated successfully, the State and local agencies report that 72 out of 75 or 96 percent of their conciliations were successful. This may be indicative of a difference in standards for "successful" conciliations, or it may reflect superior sanctions available to the agencies where conciliations prove unsuccessful.

136. This means that the agencies are continuously being monitored to ascertain that their laws and powers are equivalent to those of HUD. Holbert interview, *supra* note 127.

137. The San Francisco Regional Office recommended that the California FEPC's status be rescinded. The Fort Worth Regional Office has warned the New Mexico State agency that HUD might rescind its status.

138. In December 1972, HUD sent a letter to the Governor of California regarding the processing of complaints by FEPC. Following the letter, the FEPC was given additional staff and agreed to give housing complaints a greater priority. The Virginia State agency was granted tentative substantial equivalency status and later, after communications with HUD, money and staff were increased by the State and the Virginia fair housing law was amended.

Whereas HUD's only alternative is to refer unsuccessful conciliations to the Department of Justice, States sometimes have the power to obtain a temporary restraining order to prevent a respondent from renting or selling housing or to issue or request cease and desist orders. The Massachusetts Commission Against Discrimination, for example, has both of these powers.

Clearly the State and local agencies have good potential for effecting fair housing across the Nation, and HUD resources, such as technical assistance, might be used effectively to help them develop this potential. HUD, however, does not provide financial assistance to State and local agencies for the enforcement of fair housing laws or even to process the complaints HUD forwards to them.¹³⁹ This is because in 1969, HUD requested the authority and funds to make such grants but Congress rejected the request.

139. 1974 Holbert interview, supra note 40.

On an ongoing basis, some HUD regional offices have attempted to provide technical assistance to State and local agencies to improve their fair housing enforcement operations.¹⁴⁰ These efforts have not yet been extended to all regional offices which refer complaints to State and local agencies.¹⁴¹

In summary, the Commission investigation leads to the following conclusions: (1) that the complaint backlog has been so high as to produce a lack of confidence in the ability of the Department to obtain timely relief; (2) that HUD could take action to reduce the time span involved in negotiations for compliance; and (3) that HUD often fails to monitor the compliance agreements it does achieve.

140. Equal opportunity staff in various regions have met with State and local agency staff, including some agencies which have not been granted substantial equivalency, to establish a cooperative working relationship with as many agencies as possible. The Chicago office has held conferences in Chicago and Champaign, Ill., and in Detroit, Mich., to discuss techniques in handling discrimination cases. The San Francisco Regional Office has met with both the California FEPC staff and the executive staff of the Hawaii State Regulatory Agency on numerous occasions.

141. Through fiscal year 1973, Region III (Philadelphia) and VI (Fort Worth) had not provided assistance to State and local agencies. HUD reported:

During fiscal year 1974, Region III, (Philadelphia) provided training and technical assistance to states and localities in its regional jurisdiction. States and localities that received such assistance including training are, as follows: Pennsylvania, Delaware, West Virginia, District of Columbia, Maryland, Pittsburgh, Pa., Charleston, West Va., Philadelphia, Pa., Arlington County, Va., and the City of Rockville, Md. November 1974 Toote letter, supra note 32.

B. Other Title VIII Compliance Activities

1. Communitywide Pattern and Practice Reviews

In July 1972, HUD acknowledged the necessity for communitywide investigations¹⁴² to identify patterns of housing discrimination, and stated that it planned to conduct citywide reviews for total equal opportunity compliance with the fair housing law and with the nondiscrimination requirements for HUD housing programs.¹⁴³ HUD's central office has not instructed regional offices to conduct such reviews and the Title VIII Field Operation Handbook does not contain any specific guidelines to be followed.¹⁴⁴ Most HUD regional offices are not making "pattern and practice" reviews, as they believe that the decision to go ahead with plans to conduct them must be made by the central office.¹⁴⁵

142. In communitywide reviews, HUD would examine such things as coverage of State and local fair housing laws, the types and quality of activity conducted by fair housing agencies, zoning ordinances, marketing activities of selected brokers and builders, mortgage financing practices of a sample of lenders, and data showing the racial and ethnic composition of neighborhoods throughout the area.

143. The Federal Civil Rights Enforcement Effort--A Reassessment, supra note 41, at 102.

144. HUD recently stated:

While we can incorporate Title VIII reviews in certain areas along with city-wide reviews, a Title VIII compliance review is hampered because our subpoena power extends only to the investigation of complaints pursuant to Title VIII. November 1974 Toote letter, supra note 32.

145. Vera interview, supra note 42; Odom interview, supra note 101; and Jeffers interview, supra note 113.

HUD's regional offices have sufficient authority from their Title VIII mandate to implement such reviews without instruction from the central office. One regional office, Chicago, has conducted two such reviews without seeking or obtaining permission from Washington. Both reviews were conducted in Ohio, one in Parma, a suburb of Cleveland, which passed an ordinance prohibiting construction of public housing without a referendum,¹⁴⁶ and the other in Moraine, a suburb of Dayton, which opposed a moderate-income rental housing project assigned to it under a regional housing plan.¹⁴⁷

146. The city openly admitted that the ordinance's real purpose was to exclude blacks. Horwitz interview, supra note 113.

147. This suburb was a participant in the Miami Valley Plan whose main goal is the dispersal of low- and moderate-income housing on an equitable basis throughout the region.

The Boston HUD Regional Office also conducted a study which could be called a pattern and practice review. It grew out of hearings which explored blockbusting in the Boston area. HUD staff, in cooperation with the Massachusetts Commission Against Discrimination, investigated practices of real estate brokers in racially changing neighborhoods. The results of the study were never made public. Despite the evidence of Title VIII violations which prompted the study, it resulted in no HUD action against real estate brokers in the Boston area.

HUD, contrary to present practice, should assign a top priority to pattern and practice reviews. If it did, such reviews would have a major impact on discriminatory practices.

148. In addition, the San Francisco Regional Office conducted a "community-wide compliance review" of the city of Vallejo, California, in 1972. This review concentrated on Title VI issues rather than Title VIII. (See note 170 *infra*.)

149. These hearings were held in September 1971 by the Federal Subcommittee on Anti-trust and Monopoly of the Senate Judiciary Committee.

150. Senate hearings revealed widespread racial discrimination in the Boston area. For example, in 1969 a coalition of banks had delineated a narrow area as the only area for making FHA loans to "high risk black families." Hearings on Competition in Real Estate and Mortgage Lending Before the Subcomm. on Anti-trust and Monopoly of the Senate Comm. on the Judiciary, Sept. 13-15, 1971.

151. Interview with Pat Morse, Equal Opportunity Specialist, HUD Regional Office, Boston, Mass., in Boston, Nov. 14, 1972. More information is not available since the HUD report has remained in draft form and its contents were not made available even to this Commission.

2. Administrative Meetings

In November 1972, HUD issued regulations regarding "Fair Housing Administrative Meetings." The purpose of these public meetings, is to identify and publicize discriminatory housing practices within a locality and to "promote and assure" equal housing opportunity. No administrative meetings were held in fiscal year 1973. Two such meetings, however, were held in fiscal year 1974.

These meetings are an important element in HUD's execution of its fair housing responsibilities. Although administrative meetings are informal and do not directly result in negotiations leading to compliance with Title VIII, they can provide impetus for formal HUD investigations, and they would also provide public exposure to discriminatory housing conditions, often an important incentive to local movement for change. It is HUD's responsibility to request the funds that would ensure that it has sufficient staff for the holding of administrative meetings in accordance with its regulations.

152. 24 C.F.R. § 106.1 *et seq.* (1974).

153. The first administrative meeting dealt with military housing problems and was held in Washington, D.C., in February 1974. The second meeting was in Hartford, Conn., May 15-16, 1974, concerning discrimination in home financing. In addition, HUD plans to hold two more meetings which will concern persons of Spanish speaking background and Native Americans. As of June 1974, the meeting concerning persons of Spanish speaking background was postponed indefinitely. 1974 Holbert interview, *supra* note 40. This meeting had been scheduled twice and both times was cancelled with little notice.

C. Equal Opportunity Compliance in HUD Programs--Title VI

The HUD central office personnel estimate that 20 percent of equal opportunity staff time both at the central and regional levels is applied to Title VI compliance activity. This time is divided between complaint investigations and compliance reviews of the operations of HUD program recipients.

1. Complaints

As of the beginning of fiscal year 1973, HUD had approximately 200 Title VI complaints on hand. It received a total of 232 additional Title VI complaints between July 1972 and March 1973. The vast majority of complaints were from blacks and usually alleged discrimination

154. HUD response, supra note 47. Some regional offices estimate, however, that they spend far less of their time on Title VI compliance than 20 percent. The San Francisco office estimated that its staff give between 10 and 15 percent of their time to Title VI. Marvin Smith interview, supra note 89. The Chicago office estimated that only 5 to 10 percent of its staff time was spent on Title VI activity. Higginbotham interview, supra note 83. Regional staff attribute this to the priority placed on the processing of Title VIII complaints.

155. The regional distribution of Title VI complaints received in Fiscal Year 1973 is as follows: Boston 8; New York 21; Philadelphia 7; Atlanta 28; Chicago 40; Fort Worth 40; Kansas City 64; Denver 3; San Francisco 19; Seattle 2. HUD response, supra note 47.

156. The following is a breakdown of complainants by racial and ethnic characteristics for complaints received in fiscal year 1973: black 131 (56.5 percent); Spanish speaking background 18 (7.8 percent); nonminority 7 (3.0 percent); American Indian 1 (0.4 percent); Filipino 1 (0.4 percent); and 74 unknown (31.9 percent.) Id.

157
by a local housing authority.

During the first 9 months of fiscal year 1973, HUD closed 204 Title VI complaints. HUD reports that of those closed, only 27 were cases of noncompliance in which HUD achieved voluntarily compliance. As of the end of March 1973, there was a backlog of more than 200 open cases, that is, a backlog of almost 9 months.

157. A breakdown of Title VI respondents is as follows: local housing authorities 104; local and city government and city organizations and agencies 40; urban renewal and redevelopment agencies 31; model city agencies 23; developers 13; HUD 7; councils of government 2; resort commission 1; United Businessman Association 1; YMCA 1; Farmers Home Administration 1; manpower commission 1; rental cooperative 1; unknown 6. Id.

158. The regional distribution of Title VI complaint closures is as follows: Boston 14; New York 16; Philadelphia 8; Atlanta 55; Chicago 27; Fort Worth 43; Kansas City 9; Denver 2; San Francisco 21; Seattle 9. Id.

159. HUD indicates that the remaining cases were closed for the following reasons: 6 complaints were withdrawn; 77 cases were not valid complaints of discrimination; that is, even if the allegations had been true, they would not have constituted violations of Title VI; in 13 cases HUD found the recipients in compliance and 81 cases were closed for "other" reasons, including cases where HUD "had no jurisdiction," cases which were handled under Title VIII, and other administrative closings. Id.

160. As with Title VIII complaints, HUD's investigation of Title VI complaints appears to have been thorough. HUD central office staff estimate that an average Title VI complaint investigation might involve 40 hours and that an investigation of a complex case might involve 60 to 100 hours. Id. Regional office estimates tended to approach or even exceed the larger figure. The Fort Worth Regional Office estimated that a Title VI complaint takes an average of 3 workweeks for investigation. The San Francisco office estimated 2 workweeks for a Title VI complaint investigation.

Some of these open cases are ones in which HUD has found discrimination but has been unable to achieve voluntary compliance. In these cases HUD has not imposed sanctions but rather continues to rely on protracted negotiations. The Washington office could not provide any information on the number of such complaints.¹⁶¹ HUD reported that its only information on complaint resolution is that tabulated in the regions¹⁶² on the cases closed. Regional offices report data to Washington in the following categories: achievement of voluntary compliance, no discrimination, withdrawals, and sanctions imposed. Although in November 1974 the central office statistics on the instances of noncompliance in which compliance was not achieved voluntarily, such data were apparently not available in 1973 when the Commission requested such data from HUD. On the other hand, at the time of Commission staff interviews, statistics from HUD field offices maintained in the regions but apparently not reported to Washington, indicated that there were a large number of such cases, which were in fact inactive.^{163.}

161. HUD response, supra note 47.

162. Id.

163. The Boston Regional Office records show that as of August 1972, 11 Title VI complaints had been open more than 4 months and 8 for more than 6 months. The Chicago Regional Office had 58 cases open in April 1973. One had been pending for 4 years, 6 for 3 years, 4 for 2 years and 15 for 1 year. The Fort Worth office had 34 Title VI complaints pending as of January 1973, of which 14 had been pending for 8 months. The San Francisco office had 38 Title VI complaints pending as January 1973. Twenty four cases had been open more than 6 months and 6 had been pending for more than a year.

The HUD policy on Title VI complaint investigations encourages compliance reviews, stating that the investigation must address the causative fact which produces the discriminatory act.¹⁶⁴ The extent to which compliance reviews result from complaint investigations is discretionary to the regional offices. All of the regional offices visited by Commission staff sometimes conduct overall compliance reviews of the Title VI recipients at the same time that they investigate individual complaints.

164. See HUD Title VI Handbook 8000.3, Chapter 2, Section 1. For example, HUD noted that a site selection complaint might have implications for the operation of a tenant assignment policy by a local housing authority.

The Fort Worth office always conducts a compliance review of the respondent when investigating a Title VI complaint; the San Francisco office expends 40 percent of its complaint investigations into compliance reviews, depending on the issue and the current workload. The Chicago office makes a decision to conduct a compliance review when there is a complaint in which it appears there is a need to investigate more than one issue, when there is a complaint with a large number of allegations, or when a complaint is referred by an area office.

2. Compliance Reviews

Compliance reviews, because they include all aspects of the operation of a HUD-funded agency program, are a far more effective and systematic way of assuring the nondiscriminatory operation of the programs than complaint investigations, which may address only one aspect. However, many regional equal opportunity offices report that they are so understaffed that they are generally able to conduct Title VI compliance reviews only as a byproduct of Title VI complaint investigations.¹⁶⁵ HUD conducted 80 Title VI compliance reviews between July 1972

¹⁶⁵ The Fort Worth office for example, reported that it rarely conducts Title VI compliance reviews which are not based on complaints. The Boston Office has conducted only seven Title VI compliance reviews since July 1971. Four of the seven resulted from Title VI complaint investigations.

and March 1973.¹⁶⁶ Forty-nine of the reviews originated from Title VI complaints.

HUD reviews have focused principally on local housing authorities,¹⁶⁷ despite evidence of discrimination by other recipients, especially developers of subsidized housing. For example, the Dallas Area Office Equal Opportunity Director stated that the subsidized projects in Dallas are almost totally segregated.¹⁶⁸ Yet few builders and developers of HUD-assisted housing have been the subject of HUD Title VI compliance reviews in Region VI or any other region. The Title VI Handbook contains checklists for compliance reviews of housing authorities, urban renewal and relocation agencies, and community development agencies. It does not include checklists for reviews of developers, builders, and sponsors of subsidized housing.

¹⁶⁶ HUD response, *supra* note 47. HUD reported that the Title VI compliance reviews were distributed between regional offices as follows: Boston 2; New York 16; Philadelphia 15; Atlanta 10; Chicago 18; Fort Worth 5; Kansas City 10; Denver none; San Francisco 4; Seattle none.

¹⁶⁷ Fifty-one of the 80 reviews were of local housing authorities. The distribution of the other 29 program recipients reviewed was as follows: local city government and city agencies 19; urban renewal agencies 4; model city agencies 2; regional planning agencies 2; developers 1; county governments 1.

¹⁶⁸ Interview with Higginio Elizondo, Director, Equal Opportunity Division, HUD Area Office, Dallas, Tex., in Dallas, Jan. 31, 1973.

In fiscal year 1972, HUD determined that it would first focus on local housing authorities and conduct Title VI communitywide compliance reviews¹⁶⁹ during the third and fourth quarters. HUD set no goals for the number of reviews to be conducted. In fact, few offices conducted communitywide reviews because of their heavy workloads and the length of time and size of staff needed to do such a review. The only office visited by Commission staff which did a communitywide Title VI compliance review was San Francisco.¹⁷⁰

169. There is a difference between Title VIII and Title VI communitywide reviews. In Title VIII communitywide reviews, HUD attempts to identify housing discrimination practices and patterns. To do so, it must focus on discrimination in the sale and rental, advertising, and financing of housing, and on the provisions of real estate brokerage services. Thus, this type of review examines things such as coverage of State and local fair housing laws, types and quality of activities conducted by fair housing agencies, zoning ordinances, marketing activities of brokers and builders, mortgage financing practices of lenders, and data showing the racial and ethnic composition of neighborhoods throughout the area. On the other hand, Title VI communitywide reviews are limited only to examining all agencies throughout the area that have programs funded by HUD.

170. The review was done of Vallejo, Cal. in May 1972. The regional office selected Vallejo because several Title VI and Title VIII complaints had been received concerning the housing authority and the redevelopment agency, and because the city has participated in a large number of HUD programs in the last 15 years. Subject to review were the Vallejo Housing Authority, which administers the city's public housing projects; the city redevelopment agency, which administers urban renewal, code enforcement, and neighborhood development programs; the greater Vallejo recreation district, administering HUD's open space and neighborhood facilities grants; the city flood district, which administers HUD's water and sewer grants; and finally, sponsors of five subsidized housing and rent supplement projects. The objective of the review was to examine the administration of all HUD programs in the city and evaluate their impact on increasing housing opportunities for minorities and minority participation in HUD programs. With one exception, HUD found no evidence of discrimination in the various aspects of the programs which it reviewed, e.g., site selection and tenant selection for public and subsidized housing projects; relocation services; services provided to the minority community by water and sewer lines, parks, and neighborhood facilities; dispersal of leased housing units, and city agency employment. The exception was the city government itself, which was severely lacking in the employment of minorities. At the conclusion of the review, HUD made only one recommendation--to increase employment of minorities in city government and increase opportunity for minorities in technical and professional city jobs.

Shortly after the reorganization of the equal opportunity program in April 1972, the central office instructed regional equal opportunity staff to identify Title VI problems with "remedy potential"¹⁷¹ and to use these to establish priority areas for Title VI compliance activities.¹⁷² Regional staff interviewed by the Commission, however, were apparently often unaware of this directive and stated that the central office had not given them any direction.

In January 1974, 6 months into fiscal year 1974, HUD formally established Title VI compliance review goals for that fiscal year.¹⁷³ Up to that time goals had been set only for regional offices to continue to identify "remedy potential" cases. Regional offices themselves did

171. A HUD central office official defined a problem with "remedy potential" as an instance of possible noncompliance by a funded agency which has a strong financial relationship with HUD. HUD can then use the leverage of its funds to bring about compliance. He also added that the problem must not be too complex so that HUD equal opportunity staff could understand and analyze it without investing an inordinate amount of time in it. 1973 Holbert interview, supra note 127.

172. Id.

173. HUD recently stated:

Title VI compliance review goals for fiscal year 1974 were discussed at the Assistant Regional Administrators' meetings held in August and October of 1973. In January 1974, HUD Regional Offices of Equal Opportunity received a formal memorandum which established Title VI compliance review goals for FY 1974. November 1974 Toote letter, supra note 32.

not set rigorous schedules for Title VI compliance reviews. ¹⁷⁴ Regional ¹⁷⁵
 office time, according to the central office, is being used for training.
 The regional offices thus have very little time left for establishing their
 own compliance review goals. HUD's central office, which could issue
 guidelines for the establishment of goals, admits that complaints will ¹⁷⁶
 undoubtedly continue to play the major role in regional office decisions.

174. Examples which illustrate HUD Regional Office schedules for
 conducting compliance reviews follow: As of November 1972, the Boston
 Regional Office had planned only two compliance reviews, both of them
 as a result of complaints. Neither the Fort Worth nor the San Francisco
 Regional Offices successfully drafted and executed an overall plan for
 compliance reviews. There were two reviews initiated by Fort Worth during
 fiscal year 1973, but these were based on ad hoc recommendations, one from
 a former HUD employee, and one from the Dallas Area Office. The San
 Francisco office had planned three reviews but, as of January 1973, had con-
 ducted only one. The Chicago office had planned 20 reviews for fiscal
 year 1973, an ambitious schedule; nonetheless, 12 of these were originally
 scheduled for fiscal year 1972.

175. 1973 Holbert interview, supra note 127.

176. Id.

3. Compliance Agreements

Until March 1, 1973, although the regional equal opportunity offices
 conducted all complaint investigations and compliance reviews, they did
 not participate in the negotiations ¹⁷⁷ to remedy any deficiencies un-
 covered. Rather, they made recommendations to the Area Office Directors,
 who were responsible for negotiating with the respondents. At times the
 Area Directors ignored the recommendations of the equal opportunity
 staff. ¹⁷⁸

177. An instance which illustrates the problem of the equal opportunity
 offices' lack of authority in Title VI cases concerns the Cambridge,
 Mass., Housing Authority (CHA). Equal opportunity staff in the Boston
 Regional Office conducted a compliance review of the CHA in June 1971,
 and found it to be out of compliance. They made two major recommendations
 for bringing the CHA into compliance: that it develop a new plan for
 assigning prospective tenants to units without regard to race, and that
 it develop a plan for dispersing its leased housing units outside of
 existing low-income and minority areas. The Boston Area Director did not
 press the CHA with regard to developing these plans. After several
 months, the regional equal opportunity office, which had sought and received
 the support of the central office equal opportunity office, was able to
 convince the Area Director to defer the CHA's application for modernization
 funds in order to hasten compliance. In the end, however, the deferred
 funds were released due to various pressures on HUD including that from
 the local Congressman. The case was closed, with CHA agreeing to work on
 new plans. As of May 21, 1974, no such plans had been completed and the
 housing authority was still not in compliance with Title VI. Telephone
 interview with Pat Morse, Equal Opportunity Specialist, Compliance Division,
 Boston Regional Office, HUD, May 5, 1974.

178. See Horwitz interview, supra note 113.

In almost one-third (29 of 89) of the compliance reviews conducted by regional office staff between July 1972 and March 1973, HUD program recipients were found to be out of compliance with Title VI requirements.¹⁷⁹ In 13 of the 29 cases, HUD states voluntary compliance was achieved through negotiations between HUD and the program recipient involved.

As with its handling of complaints, HUD sometimes allows noncompliance uncovered in its reviews to continue indefinitely. In the majority of the above cases, voluntary compliance was not achieved and negotiations¹⁸⁰ were still in process months after those interviews were completed. Review of files on some of these cases emphasize that negotiations have been prolonged and point out HUD's lack of action to bring recipients into

179. The noncomplying recipients were 16 local housing authorities, 3 combination redevelopment and housing authorities, 3 redevelopment and urban renewal authorities, 3 city governments, 2 regional planning and governmental agencies, 1 model city agency, and 1 developer.

180. As of August 9, 1973, the following agencies had not been brought into compliance: Capital Region Planning Agency (Hartford, Conn.); Pawtucket (R.I.) Housing Authority; Portland (Me.) Redevelopment Authority; Charleston (W. Va.) Urban Renewal Authority; Newport News (Va.) Redevelopment and Housing Authority; Danville (Va.) Redevelopment and Housing Authority; Roanoke (Va.) Redevelopment and Housing Authority; Hialeah (Fla.) Housing Authority; Macon (Ga.) Housing Authority; Corinth (Miss.) Housing Authority; Parsons (Kan.) Urban Renewal; Housing Authority of the County of Riverside (Cal.); Kern County (Cal.) Housing Authority; Kennewick (Wash.) Housing Authority; King County (Wash.) Housing Authority; and Alaska State Housing Authority. HUD response, supra note 47.

181. As of Aug. 9, 1973, only the Hartford, Conn., agency had been denied HUD funding. See note 194 infra.

compliance. The Riverside County (California) Housing Authority (RHA) compliance review, for example, was initiated in July 1972 and a final investigation report completed in October 1972.¹⁸² The Regional Administrator forwarded recommendations to the Los Angeles Area Office in mid-November. Since that time, there have been at least two sets of negotiations with the housing authority.

The Kern County (California) Housing Authority, another recipient which HUD has reviewed and found to be in noncompliance in fiscal year 1973,¹⁸³ was initially reviewed in August 1971. The file of this case contains correspondence indicating that HUD was attempting to get that housing authority to revise its tenant assignment plan

182. According to HUD's file of this case, it discovered that the RHA's employment and tenant assignment practices were discriminatory. The percentage of its employees who were minority was not representative of the percentage of minorities in the population; minority employees were in the lower pay scale; the RHA had no recruitment procedures and did not post its vacancies. Further, the RHA did not maintain a priority list for unit assignments. Its standards for eligibility were arbitrary; it had no system for transfer; and the RHA's housing panel had no minority members.

183. HUD's review of the Kern County Housing Authority showed a continued segregation of its projects.

as long ago as 1967. In June 1972, the regional office referred the case to the Los Angeles Area Office for negotiations. Thus, the compliance review initiated in August 1972 was part of continuing and seemingly endless efforts by HUD to persuade the housing authority to comply voluntarily. The files indicated that there have been no further negotiations between HUD staff and the housing authority since November 1972.

The HUD file on the housing authority in Milwaukee goes back to April 1969. Additional compliance reviews of tenant selection and assignment and of hiring were conducted in December 1970, October 1971, and May 1972. As of August 1972, HUD and the housing authority were continuing to negotiate. In Lake Charles, Louisiana, HUD's file on the housing authority dates back to 1970, with compliance reviews conducted in April 1971 and June 1972. HUD was negotiating as of January 1973, when it wrote to the local chapter of the NAACP to solicit support and assistance in its negotiation.

184. The Milwaukee Housing Authority (MHA) discriminated against minorities in its hiring practices. All program managers of the MHA were white and harassed minority tenants. In addition, a preferential tenant assignment policy was in existence.

185. In 1970, the Lake Charles Housing Authority (LCHA) worked out a tenant selection plan with the regional and central HUD offices for the purpose of desegregating its housing units over a 5-year period. By 1972, two complaints had been filed against LCHA and HUD conducted a compliance review of LCHA in June 1972. HUD found that the plan was not being implemented. HUD then attempted to get the city government and the local NAACP to work with the authority, but as of January 1973, LCHA was still out of compliance.

As of March 1, 1973, HUD shifted responsibility for conciliation efforts under Title VI from the Area Directors to the Assistant Regional Administrators for Equal Opportunity. Regional staff believe that this change has improved HUD's ability to achieve voluntary compliance under Title VI in a reasonable period of time. One reason may be because equal opportunity staff, having conducted the review, are more knowledgeable than program staff about the Title VI issues.

Where noncompliance cannot be achieved by voluntary agreement, HUD staff in several regional offices stated that HUD is reluctant to use its leverage to defer funds as a means of resolving Title VI cases. The HUD central office also stated that deferrals are rare. In some cases where this has been done, however, it has proved to be at least partially effective.

186. Department of Housing and Urban Development, Handbook 8000.2, Revised Processing Procedures for Title VI Complaints and Compliance Reviews, Mar. 1, 1973.

187. Telephone interviews with Napoleon Dotson, Senior Equal Opportunity Specialist and Assistant to the Director, Division of Compliance and Enforcement, HUD Regional Office, Chicago, Ill., May 2, 1974; Betty Kaufman, Attorney Advisor, General Counsel's Office, HUD Regional Office, Boston, Mass., May 2, 1974; and Harold Odom, Director of Compliance, HUD Regional Office, Dallas, Tex., May 2, 1974.

188. Vera interview, supra note 42; 1973 Odom interview, supra note 101; Jeffers interview, supra note 113; and Horwitz interview, supra note 113.

189. 1973 Holbert interview, supra note 122.

Further, cases in which HUD has deferred funds for noncompliance with Title VI have usually been on a short term basis and funding is frequently resumed before the respondent has agreed to come into compliance.¹⁹⁰ Short term deferrals are not made in all cases, however, and HUD takes no stronger action even where a recipient remains out of compliance after several years of HUD negotiations.¹⁹¹

In some instances noncompliance has been found by agencies which have made no further applications for HUD assistance and HUD has taken no action.¹⁹² There are, however, steps HUD could have taken. For example,

190. See, for example, the discussion of the Cambridge Housing Authority, *supra* note 177. In addition, the Fort Worth Regional Office deferred funds for modernization and expansion from the Texarkana Housing Authority for several months. The funds were released when the city needed new housing units for families displaced by an irrigation project. As of the Commission interviews in Fort Worth in January 1973, the Texarkana Housing Authority was still out of compliance.

191. See, for example, the discussion of the Cambridge Housing Authority, *supra* note 177.

192. As of January 1973, the Equal Opportunity Division in the New Orleans office stated that the housing authorities in Jonesboro, Ponchatoula, and Vivian, La., were being held in noncompliance; but, since these authorities had not made application for HUD assistance, HUD could take no further action.

the case could have been treated as a Title VIII violation, with an attempt at negotiations and a subsequent referral to the Department of Justice if negotiations failed.¹⁹³

HUD has never debarred a recipient for noncompliance with Title VI.¹⁹⁴ Until HUD terminates funds for violations of Title VI, it is likely

193. Title VI of the Civil Rights Act of 1964 provides that Title VI compliance by a noncomplying recipient may be effected by one of two means: a) termination of or refusal to grant or continue assistance or b) any other means authorized by law. The latter alternative has included referral to the Department of Justice for suit to end the discriminatory activity. Federal agencies argue that if all assistance is terminated to a recipient, compliance with Title VI has been achieved. Therefore, in cases in which discrimination continues after the cutoff of funds, unless a complaint against the recipient is received, the agency lacks authority to refer to the Department of Justice. Statements by Peter Holmes, Director, Office for Civil Rights, Department of Health, Education, and Welfare, and Robert Dempsey, Chief, Federal Programs Section, Civil Rights Division, Department of Justice, at meeting on public broadcasting, May 7, 1974. Federal agencies can, however, seek out complaints when discrimination continues after the cutoff of funds.

194. In a 1973 case, the Capital Region Planning Agency of Hartford, Conn., was decertified as an areawide planning agency and denied new HUD funds for planning. Decertified means that a HUD-funded agency did not have its certification renewed. This usually means that the agency does not receive any more HUD funds. Debarment is the termination of funds of an ongoing HUD program. Telephone interview with Joe Vera, Assistant Regional Administrator for Equal Opportunity, HUD Regional Office, Boston, Massachusetts, May 29, 1974.

that it will continue to find many of its program recipients out of compliance when it makes Title VI complaint investigations or reviews. The Commission recognizes that this is a difficult sanction to apply. Nevertheless, it is convinced that a Nationwide application of the sanction would constitute an important weapon in a frontal attack on housing discrimination. When Congress provides a weapon of this kind, the Executive branch has an obligation to use it.

4. Monitoring Agreements

Despite the deficiencies in having area offices negotiate agreements, some regional offices have reported good settlements with HUD recipients. In the Chicago region, for example, as a result of HUD negotiations with the Decatur, Illinois, Housing Authority (DHA), the housing authority agreed ¹⁹⁵ (a) not to undertake a proposed change which would have given high priority to a prospective tenant's ability to pay rent in approving applicants for public housing; ¹⁹⁶ and

195. In Decatur, Ill., HUD found that blacks and other minorities, i.e., persons of Spanish speaking background, were denied full and equal participation in the programs of the DHA.

196. One of the significant deficiencies uncovered by HUD was a proposed change which would make a prospective tenant's financial ability the number two priority for living in public housing; it had been priority number seven.

(b) to give all minority applicants consideration for admission to a previously all-white project as vacancies occurred, as a means of correcting apparent past discrimination. ¹⁹⁷ Similarly, as a result of negotiations with the Steubenville, Ohio, Metropolitan Planning and Redevelopment Commission (SMPRC), in February 1973, SMPRC agreed to encourage and interest sponsors in the development of low- and moderate-income housing in selected census tract sites. ¹⁹⁸

Agreements such as these, however worthwhile, are generally not monitored. In fact, a significant deficiency in HUD's Title VI complaint program is that, as with Title VIII, HUD fails to monitor the voluntary agreements which it negotiates to bring program recipients into compliance. HUD regional office staff report that little if any

197. In addition, DHA agreed to generate interest and recruit possible potential minority applicants; to utilize minority and other news media of the city of Decatur to give adequate publicity to the fair housing policies of the DHA and its public housing opportunities; to use community group contacts and any other additional sources to ensure minority participation in the project; and to increase its minority employment.

198. This agreement was based on HUD's feelings that Steubenville perpetuated concentrations of minority groups; low- and moderate-income housing was not offered in a broad choice of neighborhoods. In addition, SMPRC agreed to seek the cooperation of the Steubenville Metropolitan Housing Authority in identifying areas for the development of low-rent family and elderly housing units and to utilize all Federal categorical and noncategorical grant housing programs to implement this agreement.

followup is being done to assure that Title VI conciliation agreements are being followed. Followup is essential in order to ensure that respondents are complying with Title VI requirements which they have agreed to implement.

199. For example, as of November, 1972 the Boston office did no monitoring and required no periodic reports after Title VI conciliations. The Chicago office required reports and kept a "monitoring file." The Director of Compliance in Chicago, however, informed Commission staff that while the records are maintained properly, no monitoring occurred. Higginbotham interview, supra note 83. The Fort Worth office required periodic reporting but has been lax about reviewing the reports. In January 1973, some 20 letters were sent out to Title VI recipients formerly in noncompliance with Title VI, reminding them of reporting requirements, but office files indicate that followup compliance reviews are conducted only on a haphazard basis. 1973 Odom interview, supra note 101.

IV. Equal Opportunity Standards for HUD Programs

During fiscal year 1972, HUD issued equal opportunity regulations and requirements for reviewing applications for HUD funds. They integrated equal opportunity standards with other standards for distributing assistance. This new approach was aimed at ensuring compliance with Title VI prior to HUD's approval of assistance and for furthering compliance with Title VIII.

On January 5, 1973, the administration declared a moratorium on all federally subsidized housing programs. The moratorium has had a severely detrimental effect on minorities. The supply of housing for low-income families has diminished and public housing authorities now

have long lists of applications which they are unable to fill.

201

Moreover, this radical change in funding has had a significant effect

200. On January 31, 1973, leaders from 22 minority group organizations made known to HUD their belief that the moratorium has hurt disadvantaged persons the most. They called on HUD to begin interim housing assistance programs to alleviate the situation. Among the groups represented were the National Urban League, the National Council of La Raza, the Leadership Conference on Civil Rights, the National Council of Negro Women, the National Puerto Rican Forum, and Chicanos Por La Causa. On the same date the National Committee Against Discrimination in Housing (NCDH) also issued a statement criticizing the moratorium for depriving disadvantaged and minority persons of safe, sanitary, and decent housing in communities of their choice. NCDH statement, "The Administration's Housing Moratorium and Budget Message," Jan. 31, 1973. At its annual convention in July 1973, the National Association for the Advancement of Colored People adopted a resolution opposing the housing freeze and calling for the prompt release of impounded funds. See also letter from John A. Buggs, Staff Director, U.S. Commission on Civil Rights, to William A. Barrett, Chairman, Committee on Banking and Currency, U.S. House of Representatives, Oct. 31, 1973. This letter, concerning the proposed Housing Act of 1973, H.R. 10688, discusses the major negative effect of the moratorium on minorities and the poor.

201. The administration suspended new commitments under many of HUD's programs. Specifically, funds under Section 235 of Title I of the Housing and Urban Development Act of 1968 were cut from \$40 million in 1973 to zero in the 1974 budget, and funds under Section 236 of the act went from \$100 million to zero; rent supplement and new public housing were also suspended; water and sewer facilities grants went from \$130 million to zero; model cities from \$583 million to zero; open space grants programs, from \$47 million to zero; neighborhood facilities grants, from \$26 million to zero; and urban renewal was reduced from 1 billion to \$138 million. HUD stated that under the 1974 act:

No new grants and loans can be made after January 1, 1975 for Model Cities, Urban Renewal, neighborhood facilities, water and sewer facilities, or open space and related programs. The section 235 and 236 programs were extended to June 30, 1976. No new funds were provided for the rent supplement program. The public housing statute (U.S. Housing Act of 1937) was rewritten, and includes a new section 8 concerning leasing, without termination date....Local communities, however, will receive community development block grants to replace the previous CD categorical grants and can use the funds for local priorities, but must give maximum feasible priority to activities which will benefit low and moderate-income families or aid in the prevention or elimination of slums or blight. November 1974 Toote letter, supra note 32.

on HUD's equal opportunity program. Implementation of equal opportunity standards and regulations which HUD previously used as major leverage to obtain compliance with the fair housing laws by its program participants became less time-consuming after the moratorium because programs with equal opportunity requirements were sharply curtailed. The moratorium left the area and insuring office equal opportunity staff with few fair housing duties, since the implementation of these requirements had been a major activity.

202. HUD recently stated:

Although approval of new applications declined after January 1973, approved applications continued to be monitored and programs which were in operation continued to be subject to equal opportunity requirements. Id.

203. HUD recently stated:

Affirmative marketing, training of HUD and funded agency staff, in-house equal employment opportunity, minority business affirmative action plans pursuant to Executive Order 11246 and Section 3 requirements are some of the responsibilities which Area and Insuring office staff could give more time to as a result of a decline of front-end activity on applications. Id.

Therefore, the central office issued a memorandum²⁰⁴ outlining HUD's new priorities for equal opportunity activities in the area and insuring²⁰⁵ offices. The implementation of affirmative marketing plans²⁰⁶ for unsubsidized housing was given top priority, replacing the emphasis which had been given to other administrative program standards; that is, equal opportunity requirements for HUD programs.

204. Memorandum to all Regional Administrators, from Malcolm E. Peabody, Jr., Acting Assistant Secretary for Equal Opportunity, Equal Opportunity Activities in Area and Insuring Offices, Feb. 1, 1973. The memorandum also stated that affirmative marketing plans submitted for unsubsidized units had to be reviewed and that for "plans previously approved, technical assistance to builders and sponsors will be required." In addition, it stressed that monitoring monthly reports to determine progress is important and that the first multifamily project subject to affirmative marketing plans would soon be occupied and would require special attention.

205. Such plans demonstrate how a builder or developer will market properties to all racial and ethnic groups. They include programs for publicizing the availability of units for minorities, for specifically recruiting minority buyers and tenants, for minority hiring, and for educating the builder's, developer's, or sponsor's staff on their fair housing marketing responsibilities.

206. HUD's unsubsidized housing programs (see note 4 supra) were not cut by the moratorium.

Despite the decreased emphasis on HUD program standards since the moratorium, this report includes a review of HUD's implementation of its program standards. This study was begun during the first half of fiscal year 1973 when its subsidized programs were in full operation. It is clear, however, that because of the changing nature of HUD's assistance,²⁰⁷ at the present time HUD cannot rely on program standards as its principal tool for effecting fair housing throughout the country.²⁰⁸

207. The changing nature of HUD assistance is discussed supra note 201.

208. Under the Housing and Community Development Act each application for community development block grants must include a housing assistance plan which assesses the housing assistance needs of lower-income persons (including elderly and handicapped persons, large families, and persons displaced or to be displaced). The plan must also indicate the general location of proposed housing for lower-income persons, with the objective of "...promoting greater choice to housing opportunities and avoiding undue concentration of assisted persons ..." There is no mention of avoiding concentrations of minorities. HUD proposes to require that applicants for community development block grants submit:

...a summary of a three year community development plan which identifies community development needs....In identifying the needs the applicant shall take into consideration any special needs found to exist in any identifiable segment of the total groups of low-income persons in the community....The phrase any identifiable segment of the total low-income community refers to women, and members of a minority group which includes Negroes, Spanish-Americans, Orientals, American Indians, and other groups normally identified by race, color, or national origin. 39 Fed. Reg. 33488 and 334494 (Sept. 17, 1974).

A. Affirmative Fair Housing Marketing Regulations

HUD's affirmative fair housing marketing regulations became effective February 25, 1972. They required builders, developers, and sponsors applying for participation in HUD housing programs²⁰⁹ to submit an affirmative marketing plan before their applications are approved.²¹⁰ The purpose of the plan is for the builder to "carry out an affirmative program to attract buyers or tenants of all minority and majority groups...."²¹¹ Once the applications are approved, monthly reports must be submitted to HUD on racial and ethnic occupancy of the units. Equal opportunity staff in HUD area and insuring offices are responsible for reviewing and approving all plans submitted to their offices, and for monitoring compliance with the plan.²¹²

The regulations' major weakness is that they do not apply to existing FHA-insured or subsidized projects, even though racial and ethnic data collected on existing subsidized multifamily units show extensive segregation. Further, the regulations apply only to HUD-approved housing and not to all housing marketed by builders and developers who submit plans.

209. The applications are for participation in FHA subsidized and unsubsidized housing programs. HUD provides subsidies for the development or rehabilitation of subdivisions, multifamily projects, and mobile home parks.

210. Applicants must submit affirmative marketing plans when they develop five or more dwelling units under the FHA housing program during the year preceding the applications.

211. 24 C.F.R. § 200.600 (1973).

212. In insuring offices which lack equal opportunity staff, program staff members are designated this responsibility. They are trained by equal opportunity staff from other offices.

1. Approval of Affirmative Marketing Plans

Each of the area and FHA insuring offices have developed different methods of administering the affirmative marketing regulations. The Boston Area Office received approximately 80 affirmative marketing plans monthly.²¹³ The area equal opportunity staff spent 3 to 4 hours reviewing each plan and found that the majority did not meet HUD's standards. Generally, applicants did not clearly understand what was required in the plans. For example, they often failed to explain in detail how they would publicize the units to minorities or what methods they would use to evaluate their staff on their execution of affirmative marketing regulations responsibilities.²¹⁴ In October 1972, HUD held a workshop with members of the real estate industry in the Boston area to remedy this problem.²¹⁵

The Chicago Area Office receives an average of 10 to 20 affirmative marketing plans per month.²¹⁶ In February 1972, as soon as the regulations were issued, the Chicago area equal opportunity office held meetings with contractors, developers, and builders in Illinois to explain the HUD affirmative

213. This office was visited by Commission staff prior to the housing moratorium; therefore, the number of affirmative marketing plans have probably dropped drastically. This was the case in other offices reviewed after the moratorium on subsidized housing was declared by the President.

214. Interview with Charles Harlesten, Director, HUD Area Equal Opportunity Office, Boston, Mass. in Boston, Nov. 15, 1972.

215. At the time of Commission interviews in Boston (November 1972), only a few plans had been submitted following that workshop, and thus the Commission staff could not evaluate the result of this technical assistance.

216. This was the last office visited by Commission staff and the moratorium on subsidized housing had been in effect for 5 months. The equal opportunity staff stated that there had been a decrease in affirmative marketing plans because of the moratorium.

marketing and affirmative action requirements. In addition, they met with representatives of city governments and other public agencies to familiarize them with all of the HUD equal opportunity requirements. As of May 1973, approximately half of the plans submitted were approved on the first submission. Nonetheless, the area equal opportunity staff stated that they believe that the builders understand what is expected and attempt to have acceptable plans to expedite the processing of their applications.²¹⁷

The New Orleans Area Office had been unable to give affirmative marketing plans the attention necessary. After the regulations were issued, approximately 700 plans were submitted within a 2-month period. Nearly half of the plans were initially unacceptable to HUD, and the office was not prepared in terms of staffing and expertise to give the builders technical assistance in developing adequate plans. Consequently, the equal opportunity director admits that a large number of the plans that were approved did not meet the HUD standards.²¹⁶ He also stated that monitoring was not being conducted by his staff.²¹⁹

217. Thompson interview, *supra* note 42. This was the only area office visited by the Commission staff that believes builders understand the requirements of the affirmative marketing plan.

218. Interview with M.J. Bordelon, Director, HUD Area Equal Opportunity Office, New Orleans, La., in New Orleans, Feb. 5, 1973.

219. *Id.*

Both the San Francisco and Los Angeles Area Offices had been receiving approximately 100 affirmative marketing plans per month.²²⁰ Area equal opportunity staff stated that initially nearly half the builders' plans were unacceptable at first submittal, and some were rejected up to four times before they were adequate.²²¹

In the San Francisco Area Office, affirmative marketing regulations are handled by the program staff, and equal opportunity staff do not generally deal with builders. The equal opportunity staff, however, had developed a checklist to be used by program representatives to determine if a builder needs special assistance in preparing an approvable plan. Program staff are thus responsible for contacting builders, giving them assistance in improving plans, and transmitting the plans to the equal opportunity office for a final review.

When the regulations were first issued, the San Francisco equal opportunity staff held a series of eight seminars to explain the regulations to builders. In addition, 2 hours a week are set aside to give the builders technical assistance followup. In Los Angeles too, equal opportunity staff met with the builders and explained the requirements to them.²²²

220. Staff in both offices stated that this number had dropped considerably since the moratorium on subsidized housing programs.

221. The most common deficiencies were the lack of adequate minority outreach and advertising programs and failure to establish adequate minority occupancy levels for the projects.

222. In Los Angeles, unlike San Francisco, equal opportunity staff handle the affirmative marketing process.

The Dallas Area Office's equal opportunity staff, in conjunction with the HUD equal opportunity staff in Washington, worked with the builders²²³ in the Dallas area to develop an industrywide affirmative marketing plan. Instead of each builder's submitting to the area office a new plan with every application under Federal Housing Administration programs,²²⁴ 35 major Dallas builders²²⁴ agreed in November 1972 to implement one plan which would be applicable to all of them.²²⁵ In theory this would have expedited processing of applications, since all major builders are obligated under the plan to meet all of HUD's requirements and do not have to submit individual plans when they submit applications. Thus, since only one plan must be reviewed the equal opportunity staff has more time to review applications thoroughly and monitor builders to ensure they are complying with HUD requirements. This also provides equal opportunity staff with more time to provide technical assistance to builders.

223. HUD's Equal Opportunity Office began to negotiate voluntary affirmative marketing agreements in an attempt to eliminate the dual housing market. In fiscal year 1974 it had a goal of 30 affirmative marketing agreements, but only 13 were executed due to the inadequate size of control office staff. Dr. Toote further indicated that 9 agreements were in final stages of negotiation. September 1974 Toote letter, supra note 32.

224. These builders account for 90 to 95 percent of new housing production in Dallas, according to the Dallas area equal opportunity director.

225. The Dallas plan covers all residential housing developed by the builders' group in the Dallas metropolitan area, including conventionally-financed housing as well as housing developed or marketed under FHA or Veterans Administration housing programs. The objectives of the plan are: (a) to increase substantially the number of minority families residing in neighborhoods outside areas of predominant minority concentration, through advertising and other methods intended to inform minority families in the Dallas metropolitan area that all housing developed by the builder group is available to them on an equal basis; and (b) to inform the Dallas general public that, in terms of equal housing, the Dallas metropolitan area is an open community.

On paper the Dallas plan is much more far-reaching than what is required by HUD's regulations, thus potentially increasing its effectiveness. For example, the builders' plan covers all housing developed by them, not just housing developed under FHA programs.²²⁶ In addition, the advertising campaign is much stronger than that required by HUD; e.g., it provides for advertising on billboards and displaying the fair housing logotype (see Figure 1)²²⁷ in the industry-sponsored "New Homes" section of the Sunday newspaper. The plan also established a "Community Resource Board" composed of representatives of the minority community to obtain their input in order to accomplish the goals of the plan.²²⁸ Further, the builders' group is responsible for assisting in employee training.

226. Under the Dallas plan each builder is responsible for special outreach efforts to encourage nonminorities to move into any developments located in racially-mixed areas or minority areas. The builder must also maintain a nondiscriminatory policy in company hiring practices as required by Federal laws, affirmatively seek to hire qualified members of minority groups for staff positions engaged in the sale or rental of properties, and designate an official of the company as equal opportunity officer. Finally, the builder must institute informal and formal training programs for all employees, especially employees who will sell to the general public, in order to sensitize the employees to the needs and best method of dealing with prospective minority buyers, and to carefully and positively delineate management's policy of open housing and fair marketing for all people. The builder does not, however, have to develop a plan outlining how these steps will be taken and there is no system for monitoring whether or not they are accomplished.

227. The equal housing opportunity logotype is an often-used symbol, signifying nondiscriminatory housing practices by the displayer.

228. The builders' group is supposed to meet with the resource board on a regular basis for the purpose of informing the board of its efforts to implement the plan and to draw on the experience of the board to assist in accomplishing the goals of the plan and in solving any specific problems that may arise.



Figure 1. The Equal Housing Opportunity Logotype

The plan does not contain any specific requirements to meet the needs of the Spanish speaking community even though more than 40 percent of the minority population in the Dallas area is of Spanish speaking background. It does not require, for example, that advertisements be in Spanish, that persons of Spanish speaking background be on the Community Resource Board, or that Spanish speaking persons be hired for staff positions by companies engaged in the sale or rental of properties.

In August 1973, the central office was evaluating the impact of the Dallas agreement but as of April 1974 had not produced a report or even reached any conclusions. HUD, however, continues to encourage builders and realtors in other areas to adopt such plans.

229: There is one notable exception to HUD's general pattern of encouragement. When the Chicago Area Office attempted to negotiate an industrywide affirmative marketing plan with the Chicago Homebuilders Association, the central office rejected it because it contained contract compliance requirements which it feels fall under the jurisdiction of the Department of Labor's Office of Federal Contract Compliance. Additionally, the central office felt that the moratorium on subsidized housing programs decreased the volume of business with builders to a level where an industrywide affirmative marketing plan was not necessary. HUD response, *supra* note 47. The Building Contractors Association of San Diego, Cal., representing major builders in San Diego, entered into a voluntary affirmative marketing agreement with HUD during April 1973.

2. Monitoring Affirmative Marketing Plans

HUD reports that it has provided the field offices guidance regarding monitoring of the affirmative marketing plans: in January 1973 it published Clarifications of Issues: Statement of Policy,²³⁰ a list of questions and answers concerning the plans. For the most part, however, this new guidance does not directly pertain to fair housing. For example, it gives instruction concerning methodology for drafting industrywide marketing plans, such as the one in Dallas. It also provides instructions for submission of plans when builders request approval for housing one unit at a time, often at scattered locations,²³¹ and for HUD submission of its approval of a plan to the applicants.²³² Clarifications of Issues provides only limited guidance on monitoring techniques. HUD staff are required to check newspapers at the time the housing in question goes on the market. They must compare monthly reports against anticipated results; i.e., the projected racial and ethnic composition of the subdivision once the lots have been sold.²³³

230. 38 Fed. Reg. 1136 (Jan. 9, 1973).

231. The regulations require plans to be submitted when a builder or developer requests approval of five or more houses annually.

232. It suggests that HUD stamp "approved" on the last page of the plan, sign it, date it, and forward a copy to the applicant.

233. Each affirmative marketing plan must contain "anticipated results."

Clearly, the most important determination to be made through monitoring is the extent to which anticipated results have been met. No matter how much advertising has taken place, if racial and ethnic minorities are not purchasing homes in the subdivision, the plan being reviewed is not successful and the marketing and sales techniques being used will warrant careful scrutiny.

HUD, however, has supplied no adequate criteria for how these anticipated results must be set by the builder or developer. HUD field staff, as well as builders, developers, and real estate agents, thus, may not know how to identify realistically the population to which homes should be sold or how to assess the racial and ethnic composition of that population. Clarifications of Issues does not remedy this problem. It states only that anticipated results "must be a number or a percentage" and that "general statements about racial inclusiveness or nondiscrimination are not acceptable."

In addition to the techniques suggested by the central office, field offices have developed their own innovative procedures for evaluation and monitoring of affirmative marketing plans. For example, the San Francisco Area Office, unlike most of the other area and insuring offices visited by Commission staff, has begun to utilize private fair housing groups for monitoring.²³⁴ Since June 1972,

234. These groups include the National Committee Against Discrimination in Housing in San Francisco, the Mid-Peninsula Urban Coalition in Palo Alto, and the Lafayette Council for Civic Unity in the East Bay Area, San Francisco, Cal.

HUD officials in San Francisco have met on several occasions with these groups to explain the requirements and type of monitoring needed.²³⁵

Then in the fall of 1972, each of the groups was assigned 6 to 12 projects to monitor. Equal opportunity staff state that they are in constant contact with the volunteer groups, which are also required to submit monthly progress reports. Since they began monitoring, recommendations have been made for compliance reviews of four developers concerning such matters as failure to display the HUD equal opportunity logo and posters, failure to achieve minority occupancy goals, and failure to familiarize staff with their fair housing responsibilities.²³⁶ The diligent efforts of these groups, however, may be somewhat wasted. HUD conducted only one compliance review in that region.

The Los Angeles Area Office's monitoring program has not been as broad as the one in San Francisco. The equal opportunity staff has only worked with one fair housing group, the Fair Housing Council of the San Fernando Valley, which has closely monitored fair housing advertising and use of

235. Such monitoring includes checking on advertising, contacting the builders' designated community contacts, checking on the minority occupancy level of projects, reviewing the racial and ethnic composition of marketing staffs, evaluating the effectiveness of the builders' affirmative recruitment plan, and evaluating the general "climate" of the project to see if it "reflects a harmonious relationship" between management and occupants.

236. In one instance, in Pittsburg, Cal., the regional compliance staff initiated a compliance review of a builder and, as of April 24, 1973, had progressed to the point of presenting allegations of noncompliance with the plan to the builder.

HUD posters by builders.²³⁷ As of March 1973, the equal opportunity staff had only begun to receive monthly sales and occupancy reports submitted by builders in February and March 1973.

In Chicago, equal opportunity staff monitor compliance by checking newspapers every other week to ensure the use of the logotype and slogans in advertising. They found that compliance has been good in this respect. As of May 1973 the monthly occupancy reports required in the affirmative marketing plans were carefully reviewed, but it was too early to draw any concrete conclusions.

HUD staff are not required to conduct onsite reviews of affirmative marketing plans. As a result, HUD reports that by August 9, 1973, only 17 compliance reviews of affirmative marketing plans of eight builders had been conducted in three HUD regional offices.²³⁸ Six of the reviewed builders and developers were found to be out of compliance with their plans.

237. If inadequacies in advertising or use of posters are found, they are reported to the area equal opportunity director. The director of the fair housing group stated that HUD has been quick to respond to these calls, always contacting the builders, who generally comply. Interview with Cecilia Zager, Director, Fair Housing Council of the San Fernando Valley, Sherman Oaks, Cal., in Sherman Oaks, Mar. 28, 1973.

238. The three HUD regional offices which have conducted compliance reviews are Chicago--Region V, Atlanta--Region IV, and San Francisco--Region IX.

Region IV (Atlanta) has conducted five compliance reviews. Two were initiated following receipt of complaints under Title VII. Three were conducted based on requests made by area office equal opportunity staff. Four instances of noncompliance were found. One case was settled by means of written conciliation, which included additional affirmative marketing requirements and reporting which were not part of the developer's original plan. In another case, the builder had an approved plan but had done no subsequent subdivision development pursuant to the plan. Therefore, HUD closed the case without action.

Region V (Chicago) conducted 10 compliance reviews on projects constructed and/or sponsored by a single builder. In one instance, the builder was found in compliance, and one other case has yet to be determined. An additional review, made in March 1973, in conjunction with a Title VIII case, resulted in a finding of compliance with the affirmative fair housing marketing regulations.

239. The other three cases, which were waiting for conference in which the builders were to show cause why enforcement proceeding should not be initiated, were conciliated. 1974 Holbert interview, *supra* note 40. Mr. Holbert did not have any information as to the stipulations of the agreements.

240. The builder was National Homes. Each review was done by one regional compliance staff person and one equal opportunity staff person from the relevant area or insuring office. A large number of violations were uncovered and used by HUD in conjunction with the Department of Justice to negotiate a nationwide consent decree by National Homes which was filed on May 11, 1973.

241. The other eight cases of noncompliance were conciliated. The HUD central office staff, however, did not know the content of the conciliation agreement. 1974 Holbert interview, *supra* note 40.

242. HUD response, *supra* note 47.

Finally, Region IX conducted a compliance review of a builder-developer who operated under an affirmative fair housing marketing plan. However, the review was limited to one project covered by the affirmative fair housing marketing regulations. The result of the review was a finding of noncompliance. A conference, therefore, "was held to give the builder an opportunity to show cause why enforcement proceedings under the applicable regulations should not be initiated against the company." The builder came into compliance within a designated 30-day period as required by HUD.

It is not effective to obtain affirmative fair housing marketing plans from builders without monitoring the plans to assure that they are actually being carried out. However, HUD has not yet devoted sufficient time and staff to monitoring of affirmative marketing plans. The HUD central office has indicated that most regional offices plan to begin full-scale compliance reviews of affirmative marketing plans. However, the HUD central office places priority on Title VIII complaint investigations and the regional offices believe that they lack compliance staff even to process those complaints. This makes it doubtful that affirmative marketing plan reviews will actually be conducted on a wide scale without specific central office directions and, indeed, as of May 3,

243. *Id.*

244. 1973 Holbert interview, *supra* note 127.

245. See p. 38 *supra*.

246. For example, the Chicago Regional Office has received approximately 50 requests for compliance reviews from the area and insuring office equal opportunity staff since the fall of 1972 which it has not fulfilled.

1974, HUD had not conducted affirmative marketing plan reviews on a large scale.²⁴⁷

Over 2 years have transpired since the issuance of the regulations, and yet HUD has insufficient data available to conduct an evaluation of the impact the regulations have had on racial and ethnic occupancy of HUD-assisted projects nationwide.²⁴⁸ It appears that this is enough time for an evaluation to be conducted in order to obtain an indication of the regulation's success, as in many cases the housing units have already been sold.²⁴⁹

Although the field offices have not conducted any formal evaluation of the plans, the area and insuring office equal opportunity staff have reached some conclusions on the effect of the affirmative fair housing marketing regulations. Based on the receipt of monthly reports and their observations of the utilization of the equal opportunity logotype and other outreach efforts by builders, they have determined that the use of the logotype in advertising is widespread and has been adopted by many non-FHA builders and by many builders for all their housing, FHA and conventional. HUD equal opportunity staff states that there is greater geographic dispersal of minorities buying new housing.²⁵⁰

247 Telephone interviews with Mary Walkerson, Assistant to the Assistant Regional Administrator for Equal Opportunity, HUD Regional Office, Chicago, Ill., May 3, 1974, and Higginio Elizondo, Director, Equal Opportunity Division, HUD Area Office, Dallas, Tex., May 3, 1974.

248. The first monthly occupancy reports were beginning to be received in August 1973 by regional and area offices. Copies of the final reports were subsequently forwarded to the central office for evaluation.

249. HUD has contracted for two different research projects concerning affirmative marketing, both to be conducted during fiscal year 1975. One will examine plans and results in 8 or 9 area offices to determine if any plans are successful, and if so, why and to develop a manual based on its findings. The second project will evaluate the climate in 10 to 15 cities where developers and sponsors have been required to submit affirmative marketing plans. This study will also analyze data on the use of advertising guidelines. September 1974 Tootle letter, supra note 82.

250. HUD response, supra note 47.

HUD interprets these preliminary findings as indicating that minorities have more options from which to choose. Nonetheless, HUD also reports that the total number of minorities moving into nonminority neighborhoods is not great,²⁵¹ thus indicating that there may be a greater number of areas in which minority homes are concentrated but that minority families still do not generally have the option of moving into nonminority neighborhoods. HUD's belief that affirmative marketing plans are already operating to the advantage of minorities appears to be premature. Moreover, HUD has not reflected the commitment to the program which would result in its investigating the possibility of the development of sound alternatives for increasing the housing options of minorities. HUD does not yet know if it must, for example, require stronger affirmative marketing plans, provide increased technical assistance to builders and developers, and/or conduct more systematic and comprehensive onsite reviews.

B. Broker Certification

HUD and the Veterans Administration in March 1973 agreed to require joint certification of management and sales brokers dealing with FHA-acquired properties,²⁵² since in many instances the two agencies deal with the same brokers.²⁵³ As of June 1973, however, HUD's central office had not made some basic decisions about how the certification would be handled; for example, it did not know if its current brokers were required to

251. HUD response, supra note 47.

252. For more information see Chapter 3, Veterans Administration, infra.

253. Under this procedure, management and sales brokers must certify that they will not act in violation of Title VIII of the Civil Rights Acts of 1968 or Executive Order 11063. The broker must further agree that a) his or her staff will be instructed in policies of nondiscrimination; b) the fair housing poster will be prominently displayed; c) the logo will be used in all advertising; d) minority media will be utilized in the sale of any properties; and e) a nondiscriminatory housing policy will be maintained.

sign the new certification or if it would be applied only to new brokers.²⁵⁴
 The certification clearly applies to the sale of FHA-acquired properties,
 but HUD had not determined whether to require brokers to market affirmatively
 all of their properties.²⁵⁵ Further, HUD had not decided to bar brokers from
 participation in HUD programs if they refused to sign the certification. It
 planned to remove the brokers from its rosters but had not made provisions
 for refusing all sales offers from such brokers.²⁵⁶

Further, as of June 1973 there had been no instruction or training
 afforded to the equal opportunity field staff for implementing the certifi-
 cation. As a result, although a requirement of the program is that area
 and insuring offices' equal opportunity staff will monitor compliance,
 many of the field offices had not implemented the program. VA, on the other
 hand, had acted more expeditiously and had provided its field offices with
 full instructions for the implementation of the new certification requirement.
 When VA observed HUD's inaction, however, VA also determined not to implement
 the certification requirement. Brokers who failed to sign the requirement were
 not terminated from participation in VA programs.

254. Interview with Laurence D. Pearl, Director, Office of Program Standards and
 Analysis, and Nancy Chisholm, Chief, Program Standards, Office of Equal Opportunity,
 HUD, June 13, 1973. The VA intended to require this certification of all of its
 brokers. See Chapter 3, Veterans Administration, *infra*.

255. VA on the other hand required that a broker affirmatively market not only VA-
 acquired properties but all properties in order to qualify for participation in VA
 programs.

256. VA had determined that builders who did not sign the certification would be
 ineligible to sell any VA-acquired properties.

C. Other Program Standards

There are four other HUD program standards upon which HUD has placed
 major emphasis: project selection criteria, project selection in community
 development, comprehensive planning assistance, and workable programs.

1. Project Selection Criteria

In January 1972 HUD issued a set of eight project selection criteria
 to be used in rating applications for participation in subsidized housing.
 A major purpose for the development of these criteria was to implement
 Title VIII of the 1968 Civil Rights Act, which requires the Secretary to
 administer the programs relating to housing and urban development in a
 manner affirmatively to further the policies of this title.²⁵⁷ Four of
 these criteria²⁵⁸ concerned the impact of proposed projects on
 minorities and low- and moderate-income families, with the main objective
 being that subsidized and public housing projects will be constructed
 on locations outside areas of existing minority and poverty concentrations.
 The proposed project must: (1) serve urgent unmet needs for low-income
 housing; (2) widen the range of housing locations available to minority
 families;²⁵⁹ (3) not contribute to the concentration of subsidized housing
 in any one section of a metropolitan area; and (4) have potential for creating
 minority employment and business opportunities. For each criterion, a housing
 proposal receives a rating of superior, adequate, or poor. A proposal
 receiving a poor rating on any one criterion is rejected.

257. U.S. Department of Housing and Urban Development, Implementation of
 HUD Project Selection Criteria for Subsidized Housing. An Evaluation (1972).

258. In addition to these equal opportunity considerations, there are four
 other criteria: the environmental impact, the relationship to metropolitan
 planning, the ability of the applicant to perform efficiently, and the pro-
 vision of sound housing management.

259. For a critique of these first two criteria see, D.O. Maxwell, "HUD's
 Project Selection Criteria - A Cure for Impermissible Color Blindness?" 48
Notre Dame Law. 92 (1972).

2. Project Selection For Community Development

260

Applicants for most of HUD's major community development programs are required to demonstrate that they are expanding housing opportunities for minorities and low- and moderate-income families and that they will provide adequate minority employment and entrepreneurship opportunities. Title VI assurances, as well as maps and other materials submitted with the application, must provide proof of the applicant's intended equal opportunity program.

The one program which does not have to meet such criteria is the program for water and sewer grants, which has no fair housing requirement. It is of particular importance that regulations for evaluation of water and sewer applications should also have equal housing opportunity requirements, since many communities which apply for such programs often lack fair housing legislation and often have exclusionary land-use policies.

261

260. These community development programs include HUD's open space, neighborhood facilities, and public facilities programs.

261. See U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974--Federal Programs (in preparation).

3. Comprehensive Planning Assistance (701)

262

There are four basic equal opportunity requirements in the 701 program.²⁶³ First, recipients²⁶⁴ must ensure that there is adequate representation of minorities and women on the staff of the planning body. Second, policy and advisory groups must contain representatives of major areawide citizen interest groups, including minorities and low-income persons. Third, the grantee is encouraged to utilize minority consultants, deposit grant funds in minority owned banks, and assure equal employment and contracting opportunity on the part of third-party contractors. Fourth, a work program is required from each applicant to assure that a suitable supply of housing to meet the present and projected need is provided and marketed on a non-discriminatory basis. The written work program should include a description of:

activities which will contribute to correcting effects of past discrimination and the manner in which they will do so, and describe how those activities will benefit residents of the planning area on a non-discriminatory basis. 265

262. 40 U.S.C. § 8461 (1970), as amended, 40 U.S.C. § 461 (Supp. II, 1972).

263. Section 701, Comprehensive Planning Assistance, is unaffected by HUD's housing moratorium.

264. Recipients of the 701 program include States, cities, regional and/or planning agencies and other applicants, such as interstate regional planning commissions, tribal planning councils, local development districts, and economic development districts. The purposes of the 701 program are to improve executive planning, decisionmaking, and management capabilities; to assist communities in planning for community development and urban and rural growth; and to encourage community planning and management as a continuous process.

265. Memorandum from Samuel C. Jackson, Assistant Secretary for Community Planning and Management, and Malcolm E. Peabody, Assistant Secretary for Equal Opportunity, to all Regional Administrators, Field Office Guidelines, Equal Opportunity in the Comprehensive Planning Assistance Program (701), Jan. 24, 1973.

4. Workable Program

Communities applying for urban renewal and related development grants and loans must first file for a workable program certification. 266
As part of the certification process, before funding can be provided, the locality applying for a grant must demonstrate that it will expand its low- and moderate-income housing and that it will eliminate discriminatory housing practices. 267
The actions which HUD looks at in a workable program submission are the passage or strengthening of a local fair housing ordinance, allocating (or increasing) staff or budget for fair housing enforcement, and dispersal of subsidized housing throughout the locality. In addition, the workable program must show that planning and programming of community facilities and services are equitable in that minority persons benefit from the program in relation to the intensity of their needs. Finally, a locality must submit a program for expanding the supply of low- and moderate-income housing.

266. This is a 2-year certification subject to midterm review. The workable program describes viable plans in that 2-year period for the development of the area, for example, in expanding water and sewer facilities, or building replacement housing.

267. The fair housing requirements for workable programs were added in December 1971.

5. Implementation of Program Standards

In order to implement HUD's various program standards, in January 1973 HUD issued guidelines for the selective review of applications for HUD's assistance. 268
Under these guidelines, area office program staff 269 retain responsibility for reviewing applications for assistance. The area equal opportunity staff are responsible for deciding which applications they will review. 270
They may choose to have equal opportunity staff conduct the reviews or may decide to establish a system through which equal opportunity input will be handled by other program staff.

In all offices, regardless of whether equal opportunity reviews are conducted by the equal opportunity or the program staff, the equal opportunity staff decides which programs are to be selected for review. All applications received by the area or insuring office are routed to the equal opportunity division for such a decision. The central office has instructed the equal opportunity staff to base the decision for

268. U.S. Department of Housing and Urban Development, Selective Review Guidelines to Field Offices, January 1973. These guidelines will be incorporated into one chapter of a consolidated one-piece HUD issuance on equal opportunity responsibilities and operations in field offices.

269. Equal opportunity staff decide which programs and which communities will be selected. November 1974 Toote letter, supra note 32.

270. HUD, Selective Review Guidelines, supra note 268.

selective review "upon considerations of a community's urban, social, racial, employment and housing problems as well as its short-range or long-range goals to which HUD and other Federal programs relate."²⁷¹

HUD also states that other deciding factors which are to be taken into account are requests for review by program staff, past practices of noncompliance with equal opportunity requirements, complaints or lawsuits concerning discrimination, a high degree of local community tension or public controversy on civil rights problems, and indications of equal opportunity problems from local minority groups, citizens, or organizations.

As of mid-1973, the HUD central office had completed only one evaluation of the implementation of program standards. From June to December 1972, the central office in conjunction with the 10 regional offices visited 25 area and insuring offices to analyze field office procedures in administering the project selection criteria.²⁷² One of the issues examined was the involvement of equal opportunity staff.

HUD's evaluation revealed that in 15 of the offices analyzed the equal opportunity staff reviewed the equal opportunity criteria for all proposals. About half of the proposals were reviewed by equal opportunity

271. Id.

272. HUD, Implementation of HUD Project Selection Criteria for Subsidized Housing: An Evaluation, supra note 257. This report does not list the cities reviewed.

staff in two other offices. In four offices, all ratings are made by the chief underwriter who is the program manager, and in two cases by the multifamily housing representative. The absence of equal opportunity staff during the evaluation accounts for the lack of equal opportunity review in one office.²⁷³ Overall, however, the evaluation was uninformative. It showed little about actual implementation of the civil rights criteria.²⁷⁴

Equal opportunity staff in the field offices visited by Commission staff executed their responsibilities in different, and frequently innovative, manners. For example, HUD area offices are allocated funds on a periodic basis and the Boston Area Office staff take advantage of this and "batch" subsidized housing applications in order to make comparisons among them. This is an

273. One other office reviewed was in San Juan, P.R., where the equal opportunity staff is not involved in evaluating project selection criteria because the area office director and staff have determined there are no minorities in Puerto Rico.

274. Many of the findings were descriptive rather than evaluative. For example, the report indicated that of 3,176 proposals, 1,446 were given a superior rating on the minority housing criteria because they provided opportunities for minority housing outside existing areas of minority concentration. The report did not attempt to determine whether the judgment of the staff making these ratings could be independently verified. Further, the report did not attempt to determine whether the funded housing, when occupied, filled minority needs as it promised at the time of application.

275. In the Boston Area Office the equal opportunity staff developed a system whereby it has input into the program standards and reviews, by having one of its members as part of a team which reviews all applications every 3 or 4 months. The team includes program staff, equal opportunity staff, and the area economist.

excellent system, since it provides the equal opportunity staff with the opportunity to recommend only those applications which best meet the program standards.

In Dallas, New Orleans, and Fort Worth²⁷⁶ nearly every review includes an onsite visit.²⁷⁷ Equal opportunity staff initiated this practice because they felt they were not sufficiently well acquainted with most localities in their jurisdiction to approve or disapprove a site without first visiting it.

In some cases, because of the discretion left to area and insuring office staff, HUD fails to implement one or more program standards. For example, staff in the Chicago area office have failed to develop an adequate system for reviewing project selection criteria. As of May 1973 equal opportunity staff had not devised a review system, and program staff had excluded equal opportunity staff from full participation.²⁷⁸ The blame for inaction falls on both the equal opportunity and program staffs. Although due to the housing

276. In this region, VI, equal opportunity staff review all subsidized housing applications, making recommendations to the program staff about which projects should be funded. The Fort Worth office at the time of the Commission's interviews had only received three applications since October 1972. The New Orleans equal opportunity staff estimates they receive 10 to 12 applications monthly and that applications for multifamily projects will often propose two or three possible sites. The Dallas Area Office reviews approximately the same amount of applicants as New Orleans. In all three offices, the applications are automatically forwarded to the equal opportunity staff for their recommendations on the criteria which they are required to review.

277. In the New Orleans Area Office onsite visits are not usually made for sites in New Orleans or Shreveport, unless controversy is involved, because equal opportunity staff believe they are adequately familiar with these cities.

278. Thompson interview, supra note 42.

²⁷⁹ moratorium, housing project selection criteria are no longer a HUD responsibility, such lack of coordination between equal opportunity and program staff can cause significant problems in the execution of fair housing policies.

Similarly, the Boston Area Office does not use HUD's workable program standards in determining whether certification should be awarded. It is the opinion of the operations division, which handles funding of all HUD applications, that the workable program requirements are too general to be effective and that it is better to stress the equal opportunity standards for specific programs.²⁸⁰ The Boston Area Office's equal opportunity staff, therefore, have failed even to establish a system for reviewing workable programs or for discovering localities that are due for recertifications, thus relinquishing an effective lever for encouraging communities to eliminate discriminatory practices.

279. See p. 71 supra.

280. Interview with Marvin Siflinger, Director, Operations Division, HUD Area Office, Boston, Mass., in Boston, Nov. 15, 1972. These include, for example, the project selection criteria for community development.

HUD's implementation of its program standards has also suffered from lack of adequate guidelines. Although the equal opportunity requirements for HUD's comprehensive planning assistance program (701) were set in February 1972, it was not until January 1973 that the central office issued guidelines²⁸¹ to assist the field offices in their implementation of the 701 equal opportunity requirements.

The guidelines suggest that each area office establish and maintain equal opportunity information based on grantee and staff inputs concerning such matters as staffing, policy body composition, and political and social characteristics of each area. Such information would be used by area offices to assist grantees and evaluate their equal opportunity performance. These guidelines are vague, however, and do not require area offices to perform an analysis in major metropolitan areas of the obstacles to equal housing²⁸² opportunity and to the greater dispersal of low- and moderate-income housing. Area offices are not required to collect data on the number and geographic location of the racial and ethnic minorities in major metropolitan areas. There is no requirement for an

281. Jackson and Peabody memorandum, supra note 265.

282. Such an analysis would include, for example, reviews of zoning ordinances to identify any which tend to be exclusionary, of State and local fair housing laws to determine the adequacy of their coverage, and of State and local fair housing agencies to assess their effectiveness.

analysis of the housing market²⁸³ or the collection of any economic data, such as on income or employment patterns. Further, no such analyses are performed by HUD.²⁸⁴

HUD's 701 guidelines instruct the area offices to set up a monitoring system for 701 applications. This monitoring should include onsite visits to review grantee performance. The area offices have failed to establish reliable monitoring systems and only the Director of the New Orleans Area Equal Opportunity Office has made

283. HUD's recently informed this Commission that it:

...currently has under contract with the Washington Center for Metropolitan Studies the development of a minority housing market analysis model that will, when completed, enable HUD field offices to make highly sophisticated estimates, for any given year and market area, of potential housing market demand for Black and Spanish-speaking homeseekers. The contract will also provide this analysis for six large metropolitan areas. November 1974 Toote letter, supra note 32.

284. This equal opportunity information is needed and could be utilized by many agencies, groups, and organizations in carrying out their work programs. The information could be compiled by HUD and made available to applicants, grantees, and any other persons, groups, organizations, or agencies requesting it.

onsite visits.

The equal opportunity staff have the authority to recommend that an applicant remedy its civil rights deficiencies before its application is funded. They may also recommend that an application which does not meet the program standards be rejected. The program representatives can make independent recommendations for approval or rejection, but they cannot overrule equal opportunity staff disapproval of applications for equal opportunity reasons. Where there are disagreements between program and equal opportunity staff the matter is resolved by the area or insuring office director who has the final authority in the funding of HUD's applications. HUD has not taken steps, however, to ensure that all Assistant Regional Administrators for Equal Opportunity are informed of each instance in which an area or insuring office director overrules the recommendation of the equal opportunity staff.

285. It is the general practice of equal opportunity staff to inform the Assistant Regional Administrators for Equal Opportunity of all instances when they are overruled by area and insuring office directors, but this is not spelled out in the selective review guidelines.

On only rare occasions has the use of program standards resulted in the delay of HUD applications until equal opportunity standards are met. On several occasions, 701 applications were held up because applicants in the Dallas region failed to provide adequate equal opportunity assurances.²⁸⁶ In San Francisco, equal opportunity staff stated that the majority of agencies fail to address themselves to equal opportunity requirements, either in program content, employment opportunities, or citizen participation.²⁸⁷ Nonetheless, the San Francisco director recommended deferral of only six applications.²⁸⁸ The Los Angeles equal opportunity staff was reviewing 26 applications which had deficiencies.²⁸⁹ Both the San Francisco and Los Angeles offices proposed a new procedure for handling applications not meeting HUD equal opportunity standards. This procedure provides that an applicant receive only 20 percent of the requested funds, with the remainder

286. 1973 Odom interview, supra note 101.

287. Jeffers interview, supra note 113.

288. In addition, in 1972 the San Francisco Regional Office held up funding for the Association of Bay Area Governments (ABAG) for 6 months until it developed an acceptable housing work program. ABAG has now funded a metropolitan housing group in Alameda County to develop a plan to increase the supply of low- and moderate-income housing and to explore efforts to reduce housing discrimination.

289. Most of these are city planning agencies, but they include the Arizona State Planning Department, the Navajo and Papago Tribes, and several regional planning agencies. The equal opportunity director indicated that the inadequacies varied, but all applications were deficient in the following areas: program content, minority employment and business opportunities, and citizen representation.

contingent upon the applicants' correction of all its equal opportunity deficiencies within a designated time period.²⁹⁰

HUD's 701 guidelines briefly discuss sanctions which may be applied to grantees for noncompliance with 701 equal opportunity requirements: fund cutoffs or failure to renew funds. Sanctions can be initiated by the Assistant Regional Administrator for Equal Opportunity but may only be applied by the Assistant Secretary for Equal Opportunity.

Funds have never been cut off from a grantee for failure to comply with the 701 equal opportunity requirements. HUD staff, however, indicated the belief that grantees sometimes were not complying with equal opportunity requirements after their plans were approved and funding was awarded. For example, in the Dallas region, the North Texas Council of Governments and the City of Fort Worth both continued to receive 701 funds although HUD equal opportunity staff believed that both had extremely minimal "housing work programs" which did not include fair housing provisions.²⁹¹

²⁹⁰This concept contains two features which makes it useful. First, an applicant is given sufficient funds to initiate a project which is beneficial to a large section of the populace. Second, by withholding part of the funds, HUD maintains the leverage necessary to compel the applicant to meet its equal opportunity requirements within a specified period of time.

²⁹¹Interview with Martha Chanley, Fort Worth Human Relations Commission, City of Fort Worth, Tex., in Fort Worth, Jan. 30, 1973.

V. Miscellaneous Activities

A. Voluntary Compliance

Although HUD established an Office of Voluntary Compliance²⁹² within its Washington Equal Opportunity Office in April 1972, by mid-1973 HUD still had not fully outlined a program of responsibility to be carried out by this office. The Office of Voluntary Compliance has developed a visual presentation, explaining the concept of affirmative marketing, to assist field offices in negotiating industrywide plans.²⁹³ The Office of Voluntary Compliance has also developed a draft handbook, in process of revision, and model agreements, to promote the negotiation of voluntary, areawide, affirmative marketing plans.²⁹⁴

Other activities of the office include the preparation of a Code for Equal Opportunity in cooperation with the National Association of Real Estate Boards; the planning of public relation films, one aimed at

²⁹²The purpose of this office is to encourage affirmative action by members of the real estate industry and local communities to achieve voluntary compliance with Title VIII. See Section II, A, p. 12, supra.

²⁹³These plans are discussed in greater detail on pp. 80-83 supra. Industrywide plans have been developed in Dallas, Tex., San Diego, Cal., and Altus, Okla. Preliminary negotiations have started in Chicago, Ill., Houston, Tex., and Oklahoma City, Okla. At one time HUD discussed negotiating nationwide affirmative marketing plans, but it now believes that national plans cannot address the problems, needs, and resources of each separate market area. Nat Smith interview, supra note 50. HUD noted that as of November 1974, plans and agreements have been developed beyond the ones mentioned here. November 1974 Toote letter, supra note 32.

²⁹⁴Id.

295
 the Spanish speaking community and another demonstrating a multi-
 racial community; and the arranging of a meeting with major fair
 housing groups to discuss HUD's equal opportunity goals and the best
 methods of accomplishing them. As a result of this meeting, Voluntary
 Compliance staff traveled to Cleveland for an examination of the
 unusual institutional approach to fair housing underway in Cleveland's
 296
 Operation Equality, a program funded by the Ford Foundation. The
 Washington office has also participated in HUD efforts to encourage
 297
 private attorneys to file Jones v. Mayer housing discrimination suits.

295. This film will be designed to explain in Spanish HUD's fair
 housing role and the protection offered by Title VIII, including the
 process for filing a complaint. It is being produced by an Anglo
 firm which had never previously produced a film. The film has been
 underway for 2 years. Interview with Ignacio Lopez; Spanish Speaking
 Coordinator, Office for Equal Opportunity, HUD, June 18, 1973.

296. This organization directs minority homeseekers to specific real
 estate brokers and then monitors to observe their actions.

297. For more information on Jones v. Mayer, see p. 109 supra.

In 1971, HUD explained to some State bar associations the 298
 various fair housing laws, including the 1866 civil rights statute.
 In 1972, HUD initiated the holding of 1-day conferences on the
 role of the private attorney in fair housing laws. Included in
 these conferences were lawyer's workshops which explained step
 299
 by step the filing of Jones v. Mayer suits. These conferences
 have been continued in 1973 300 and are planned to be continued in-
 301 definitely. Ten were to have been held in 1974. 302

298. The State bar associations addressed in fiscal year 1972 were:
 Alabama, Connecticut, Michigan, Nebraska, New York, and Oklahoma.

299. HUD response, supra note 47.

300. In 1973, six conferences were held in the following cities:
 Champaign-Urbana, Ill.; Portland, Ore.; Silver Spring, Md.; Detroit,
 Mich.; Philadelphia, Pa.; and Boston, Mass.

301. HUD response, supra note 47.

302. In 1974, these conferences were held at the following universities:
 New York University, University of Southern California, Duquesne Univer-
 sity, University of Seattle, University of Mississippi, University of
 Denver, University of Texas, University of Connecticut, and University of
 Missouri. As of June 4, 1974 one more was to have been held before the
 end of fiscal year 1974. 1974 Holbert interview, supra note 40.

B. Fair Housing Grants

HUD makes a number of grants to private organizations ³⁰³ for fair housing activities under Title VIII. Such activities include preparation of fair housing handbooks, demonstration projects on changing institutional real estate structures, and demonstration projects for the analysis of possible methods to eliminate housing discrimination. ³⁰⁴ For example, a

303. HUD reports that it has been using its contract authority to involve fair housing groups in research and demonstrations. In one such project, which HUD refers to as "Fifteen Cities," fair housing groups which HUD believes have a good reputation in their communities will act as subcontractors to carry out tasks for which they are "uniquely equipped." September 1974 Toote letter, *supra* note 82. HUD has also made such a grant to the Massachusetts Commission Against Discrimination, the State human rights agency.

304. A \$50,000 grant has been approved for a project in San Leandro, for the San Leandro "Freedom of Choice" project. Local lenders and brokers are cooperating with an integrated real estate board in neighboring Oakland, Cal., to share listings. In the Fort Worth region, the Greater Dallas Housing Opportunities Center had a grant to a New Orleans coalition of discrimination in Dallas, but this project was not refunded. HUD is considering a proposal for a \$150,000 grant to a New Orleans coalition of civil rights groups for an antiblockbusting project. In the Chicago region, the Leadership Council for Metropolitan Open Communities has been funded for \$350,000 by HUD to form community-based fair housing groups, work for the passage of fair housing ordinances, and assist minority families in finding housing out of the ghetto. The Leadership Council has also encouraged complainants to file lawsuits and has held workshops on fair housing lawsuits. It has published a booklet entitled "Guide to Practice Open Housing Under Law" which discusses fair housing laws and background cases. It describes how to develop a fair housing case and how to prepare for court and trial. In the Boston region, HUD has given two planning grants to the Massachusetts Commission Against Discrimination, a State agency. The first grant was for a broad scale study of the relationship between jobs and housing and discriminatory housing practices in the Boston area. The second was for the development of new types of evidence and remedies to be used to detect discrimination in housing.

\$9,000 grant has been approved for Westchester (N.Y.) Residential Opportunities to prepare a handbook for real estate brokers on how to incorporate fair housing into their business operations. Baltimore, Maryland, has a HUD-funded demonstration project to change the institutional structure of Baltimore County and integrate the Baltimore suburbs. In the San Francisco region, the National Committee Against Discrimination in Housing received a 3-year grant of \$300,000 from HUD in 1970. Its research on discrimination in real estate and mortgage lending resulted in the San Leandro Report. It has also funded "Operation Sentinel" to inform persons of their rights under Title VIII and has developed methodology for a "regional applicant pool" centralizing applicant-housing vacancy information on subsidized low- and moderate-income housing in the Bay area. Operation Sentinel's parent group, the Mid-Peninsula Urban Coalition, has applied for a grant to fund a legal revolving fund for litigation under Title VIII and Jones v. Mayer. ³⁰⁵

All regional offices visited by Commission staff were involved in proposing or supervising grants to local organizations. This support has been worthwhile, but insufficient. HUD has not yet generally used its grants to fund local fair housing groups which have agreed to monitor its fair housing requirements, such as affirmative fair housing marketing plans. Further, it is not sufficient for HUD to fund studies which present methods

305. Jones v. Mayer, *supra* note 14.

or alternatives for ending discriminatory practices by brokers, developers, lenders, and realtors. HUD must corroborate any findings of discrimination and make recommendations for their remedy. It must insist that the most feasible findings and recommendations of such studies be implemented. Further, it must design a mechanism for monitoring the implementation of the recommendations of such studies to ensure that they are being carried out.

C. Annual Arrangements

"Annual arrangements"³⁰⁶ are a means for providing municipal governments with a package of categorical grant programs to meet local needs and priorities in exchange for signing a Memorandum of Understanding outlining the relationship between HUD and a city. The annual arrangements' Memorandum of Understanding is the result of negotiations between a HUD field office and a local general purpose government.³⁰⁷ Such governments are given funding priority by HUD area offices in order that they can accomplish certain

306. According to HUD, annual arrangements have three major purposes: to provide localities with experience preparatory to revenue sharing, to allow HUD to work closely with local governments, and to expedite processing of project applications. In addition, HUD states that this effort is to encourage local flexibility and to allow for field office experimentation. There are no formal handbooks or detailed written instructions on the program.

307. HUD response, supra note 47.

requirements established by HUD.³⁰⁸

Among the requirements for annual arrangements is an equal opportunity component. For example, as a part of its annual arrangement, a city might agree to pass or strengthen a fair housing ordinance, establish or strengthen its fair housing commission, hire staff to carry out its enforcement effort, and ensure minority employment.³⁰⁹

The regional offices select the cities which are invited to participate in annual arrangements. The selection is usually based on such criteria as the size and existence of a core city area, population characteristics, and volume of HUD programs. Program staff are in charge of executing the agreement, although equal opportunity staff may be asked to design the equal opportunity goals and requirements for cities.³¹⁰

308. Among the problems which the agreement must address are improving the living environment, insuring proper relocation resources, insuring coordinated planning in areawide development, promoting development of low- and moderate-income housing, and improving citizen participation.

309. As part of its annual arrangement, Rockford, Ill., has agreed to strengthen its fair housing law, to hire staff to enforce the law, and to "improve city and county posture" on both equal employment and fair housing.

310. The Fort Worth Region has six annual arrangement cities for fiscal year 1973: El Paso, Grand Prairie, Olney, Port Arthur, and Waco, Tex., and Albuquerque, N.M. Equal opportunity staff participated in preparing the agreements. Annual arrangement cities in the region will be expected to pass a resolution in support of Title VII and, if possible, develop fair housing ordinances and establish enforcement mechanisms to carry them out.

The annual arrangement process could be used to commit local governments to undertaking widespread affirmative action to open up equal housing opportunities in the participating cities. The operation of the program as of early 1973 was not encouraging.

The quality and comprehensiveness of the equal opportunity component of the arrangements depends very much upon the amount and strength of input by area equal opportunity staff, and HUD equal opportunity staff are not

311. The following had annual arrangements: Region I (7)--Boston, Fall River, New Bedford, and Springfield, Mass.; Pawtucket, R.I.; Bridgeport, Conn.; Portland, Me. Region II (4)--Patterson and Plainfield, N.J.; Syracuse, N.Y.; Virgin Islands. Region III (3)--Wilmington, Del.; Erie, Pa.; Hampton, Va. Region IV (7)--Athens, Ga.; Rock Hill, S.C.; Winston-Salem, N.C.; Biloxi, Miss.; Tampa, Fla.; Morristown, Tenn.; Danville, Ky. Region V (9)--Carbondale and Peoria, Ill.; Youngstown, Ohio.; Grand Rapids, Mich.; Evansville, Fort Wayne, and Gary, Ind.; Milwaukee, Wis. and State of Wisconsin. Region VI (24)--Albuquerque and Tucumcari, N.M.; El Paso, Grand Prairie, Olney, Port Arthur, Waco, Corpus Christi, Eagle Pass, Laredo, and San Antonio, Tex.; Camden, Fort Smith, Newport, and West Memphis, Ark.; Baton Rouge, Lafayette, Monroe, New Orleans, and Shreveport, La.; Lawton, Shawnee, Stillwater, and Tulsa, Okla. Region VII (10)--Topeka, Kan.; Council Bluffs, Davenport, Des Moines, Mason City, and Ottumwa, Iowa; Lincoln and North Platte, Neb.; Charleston and Wallston, Mo. Region VIII (4)--Butte, Mont.; Rapid City and Sioux Falls, S.D.; Standing Rock Indian Reservation, N.D. and State of South Dakota. Region IX (10)--Oxnard, Pasadena, Riverside, San Buenaventura, San Diego, Oakland, Richmond, San Jose, and Stockton, Cal.; Hawaii County, Hawaii, Region X (2)--Portland, Ore., and Seattle, Wash.

always part of the program teams negotiating annual arrangements. ³¹²

In fact, HUD reports that only about two-thirds of the arrangement agreements make reference to activities to further fair housing opportunity. ³¹³

Further, even where fair housing components have been included in annual arrangement agreements, they have been often so weak as to be practically nonexistent. ³¹⁴

Finally, there have been no formal compliance reviews of annual arrangement agreements, although if an annual arrangement is re-negotiated, the equal opportunity commitments of the previous arrangement will be reviewed. Finally, with the moratorium on many HUD programs, there is little incentive for cities to keep their part of the agreements.

312. For example, the equal opportunity division in the Chicago Regional Office does not often get involved in the annual arrangement process. In 1972, the equal opportunity division in the Columbus Area Office complained that it was being excluded from participation in the annual negotiations with Youngstown, Ohio. The Area Director was persuaded by the Assistant Regional Administrator for Equal Opportunity in Chicago to include equal opportunity staff.

313. HUD response, supra note 47.

314. The San Francisco Area Office developed a citywide affirmative action program as the equal opportunity component of the annual arrangement package negotiated with localities. However, it concentrates primarily on minority employment and its fair housing aspect is restricted to a promise that the city will conduct an analysis of its fair housing problems.

D. Racial and Ethnic Data

Racial and ethnic data for most HUD programs are collected on applications and reports, e.g., interim progress reports on affirmative marketing by builders submitted to HUD area and insuring offices. These data can be tabulated for entire HUD regions and for particular counties, Standard Metropolitan Statistical Areas (SMSA's), and even smaller areas. Monthly sales and occupancy reports for individual projects required by affirmative marketing regulations have begun to come into HUD field office but, as of late spring 1974, had to be tabulated by hand. In order to analyze these data, the FHA economic market analysis divisions in the field offices periodically compile demographic data, including racial and ethnic statistics for counties. They have also prepared maps upon request which show racial and ethnic group concentration in geographical areas and an economic breakdown, i.e., income of communities by white

315. The categories often include American Indian, Asian American, black, Spanish speaking, and white, although they are sometimes more limited. For example, in HUD's urban renewal program the following categories are used: "White (Non-Minority), Negro/Black, other minorities and not reported." Letter from Gloria E.A. Toote, Assistant Secretary of Equal Opportunity, Department of Housing and Urban Development, to Jeffrey M. Miller, Director, Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, Sept. 25, 1974.

316. The HUD programs for which data are collected include public housing and some multifamily and single family housing programs. Data on participation in community development programs are not available, with the exception of data on the occupants of dwelling units in residential construction generated through HUD's urban renewal program on employment in model cities programs and on persons relocated because of these programs.

317. The geographical area varies according to requests, i.e., whoever (recipients, HUD staff, or other agencies' staff) makes a request delineates the area(s) for which information is needed. Thompson interview, supra note 42.

and nonwhite categories.

HUD, in August 1972, stated that it planned to develop comprehensive data maps for 145 major metropolitan areas for use by field staff. The maps were contracted out to private concerns for \$500,000. The number of maps that are being developed, however, has been reduced to 40 SMSA's. Unfortunately, the Nation's two major SMSA's, New York and Los Angeles, are not being done. The information on each of the 40 SMSA's will vary depending on the ability of the contractor to gather and/or produce the information requested by HUD.

The maps will contain demographic information from the census displayed on base maps of the metropolitan area, showing street outlines. The maps will also show the location of HUD subsidized housing projects. In addition, occupancy characteristics of HUD's housing projects will be included if the managers of the projects gather and maintain such information. Contractors will not be required to obtain this information if project managers have not collected it. Further information contained in the maps will include the date the housing projects were started, when they were completed, kind of programs they are, and funding information.

318. Examples for which mapping is being done are Chicago, Washington, D.C., Milwaukee, Memphis, Buffalo, Newark, Hartford, San Jose, and Phoenix.

319. Telephone interview with Marilyn Fine, Government Technical Representative, HUD, Washington, D.C., June 14, 1974.

320. This data is broken down into black, Spanish speaking, Asian American, and elderly.

321. Fine interview, supra note 319.

The contract closeout date was May 31, 1974, but as of June 14, 1974, the maps were not completed. They were to have been completed by the third week of June 1974. They were then to be sent to the field offices for a period of evaluation before the information was made available to the public.

It is impossible to determine if HUD programs are reaching minorities and women without data on the race and ethnic origin cross classified by sex of the beneficiaries. Nonetheless, Commission staff found that although equal opportunity staff in the field offices are aware of the availability of such data, they rarely request or use the data. In fact, the Commission found only one example of field office staff making use of racial and ethnic data. Equal opportunity staff have stated that there are already too many demands on their time and that data use is not a priority.

Finally, it is difficult to tell if HUD has corrected many of the major deficiencies in its racial and ethnic data collection system.

For example, in mid-1972, HUD had yet to publish data on single-family housing programs but anticipated that these data would be published by the end of 1972. When HUD was asked if these data had ever been published, the response was that a "table" had been "prepared" on a national

322. Id.

323. The equal opportunity specialists in the Fort Worth FHA Insuring Office tabulated occupancy applications by race for all 236 and rent supplement projects in Fort Worth. The analysis was done because of complaints received by the equal opportunity office. They were planning to use these in recommending possible compliance remedies.

324. These deficiencies were noted in the Reassessment report, supra note 41, at 35, 36.

basis by type of program and by minority group, and that a new minority reporting system was being tested.

HUD does not yet collect data on racial and ethnic composition of neighborhoods in which single-family housing sales are made, and thus it is not possible to assess the extent to which sales made through HUD's single family housing program perpetuated or combated segregated residential patterns. It appears that HUD does not yet collect data on the racial and ethnic composition of the population for which HUD's programs are targeted, and thus it seems that HUD cannot measure the extent to which minorities are proportionately represented in its programs. It also appears that HUD does not collect racial and ethnic data on private housing and does not make systematic use of census data to survey the Nation's racial and ethnic housing patterns.

325. When HUD was asked if such data were collected, HUD's response was:

Eligibility for participation in the so-called subsidized housing programs historically has been based on family income. The objective was to reach the disadvantaged both in the context of race and ethnicity. The current effort in the Direct Cash Assistance experiment should provide some useful information at the neighborhood level, although the experiment is limited to only a few areas throughout the country. Toote letter to Miller, supra note 315.

326. When asked if data on private housing were collected or if such a systematic survey was made, HUD responded:

The Census Bureau collects the basic information on the construction of private housing with some limited HUD funding. Extensive HUD funding is involved in the Annual Housing Survey, a joint undertaking with the Census Bureau which attempts to provide intelligence on the size and condition of housing stock in yearly intervals between the Decennial Censuses....Id.

VI. Interagency Coordination

A. General Services Administration (GSA)

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On June 11, 1971, HUD and GSA signed a Memorandum of Understanding in which they agreed that HUD would investigate and report its findings to GSA on the availability of low- and moderate-income housing on a nondiscriminatory basis in the vicinity of GSA proposed project development investigations, site selections for public buildings, or lease actions.

328

In carrying out its investigations and in making its recommendations to GSA, HUD is to judge a community by its degree of conformance with the following three basic requirements: (1) supply of low- and moderate-income housing on a nondiscriminatory basis; (2) nondiscrimination in the sale and rental of housing on the basis of race, color, religion, or national origin; and (3) availability of transportation from housing to site.

327. Memorandum of Understanding Between the Department of Housing and Urban Development and the General Services Administration Concerning Low- and Moderate-Income Housing, signed by Robert L. Kunzig, Administrator, GSA, June 11, 1971, and George Romney, Secretary, HUD, June 12, 1971 (41 C.F.R. § 101-17, 4801). This agreement was developed as a mechanism for implementation of Executive Order 11512, issued in February 1970. The Executive Order requires that GSA cooperate with other Federal agencies, including HUD, in determining the social and economic impact of proposed sites for Federal installations. For further information on the memorandum and its implementation by HUD and GSA, see Chapter 4, General Services Administration, *infra*. That chapter discusses the memorandum more fully as well as GSA's coordination with HUD and GSA's other activities under the Executive order and the memorandum.

328. A project development investigation is a general survey of a metropolitan area conducted by GSA for the purpose of identifying possible sites for a new Federal facility in that area. A site selection is a review by GSA of a particular site for which construction or purchase of a facility for Federal use is proposed. A lease action entails a review by GSA of a particular structure and the surrounding locality in order to assess the feasibility of a lease of the structure for Federal use.

329. U.S. Department of Housing and Urban Development, Procedure For Implementation of Memorandum of Understanding Between HUD and GSA (May 1973).

In detailed procedures for implementation of the Memorandum of Understanding, HUD outlines specific information which it must obtain for GSA in order to determine the adequacy of the supply of low- and moderate-income housing and the availability of transportation from housing to site. In contrast, in the third area, that of making a

330. HUD must provide GSA with a general area survey which covers the following: 1) a summary on the general types, location, cost, and vacancy rates for all low- and moderate-income housing in the survey area; 2) a listing, by location, of all HUD-subsidized housing in the survey area, including racial occupancy and vacancy rates; 3) an estimate, by general location, of the supply of low- and moderate-income housing in the survey area which would meet the standards for relocation housing; 4) a listing, by location, of all subsidized housing planned to have construction begun within the survey area for the 1-year period following the survey; 5) a listing of competing displacement needs (including source of displacement, estimated number of displacees, and their estimated racial breakdown) for the planned subsidized housing; 6) a delineation of the geographic boundaries of all urban renewal, neighborhood development project, code enforcement, and model cities areas; and 7) a delineation of those subareas within the survey which appear accessible to a supply of low- and moderate-income housing on a nondiscriminatory basis, and those which do not so appear.

331. For public transportation the following information must be reported: 1) estimates of travel time to the site from low- and moderate-income housing and from higher-income housing. Travel time from low- and moderate-income housing should not exceed the estimated travel time from higher-income housing; 2) types of available public transportation and the extent of its routes; 3) frequency of service, especially during the opening and closing of the business day; arrivals and departures must be within 15 minutes before opening and after closing hours of business, respectively; 4) fares must be reported, and the percent of the relocating agency's work force who are anticipated to use the service during rush hours estimated; and 5) a statement as to whether public transportation is operating on a nondiscriminatory basis.

determination of the extent of discrimination in the sale and rental of housing, no steps for making this determination are outlined.

HUD is not required to conduct a communitywide compliance review.³³² It is not directed to determine whether the community has a comprehensive enforceable fair housing law or whether there are no zoning laws in effect. It is not required to review census data showing the geographic dispersal of minorities throughout the community, examine housing discrimination complaints it received or those filed with a State or local agency, assess actions by local government officials and civil rights groups to ensure that all facilities and services in the community are open to minority group families on an equitable and desegregated basis, or report to GSA on the results of previous compliance reviews or on the results of affirmative marketing agreements in that geographic area. There is no requirement that any fair housing information collected be made public.³³³

332. HUD conducts few compliance reviews under Title VIII. See Section III *supra*. The HUD-GSA agreement could be used by HUD as occasion to improve its program of compliance reviews.

333. This information could be particularly helpful to fair housing groups, which may use the occasion of a proposed Federal site as leverage in their demands for fair housing.

If a community, delineated area,³³⁴ or specific site is inadequate in any one or more of the three basic requirements³³⁵ HUD is supposed to give it a negative recommendation in its report to GSA and to outline corrective actions which should be taken to overcome the inadequacies noted. If GSA's final choice is a site unacceptable to HUD, an affirmative action plan must be developed by HUD, GSA, the relocating agency, and the community. Prior to developing the affirmative action plan, HUD must obtain from the agency being relocated the number and names of its present low- and moderate-income employees.³³⁶ HUD must then conduct a survey of these employees in order to determine the minimum amount of housing that will be needed within 6 months of the opening of the facility. HUD staff must also meet with appropriate officials of the moving agency to assist them in planning their counseling services. In addition, HUD staff must meet with officials of the community involved to request corrective actions. At this meeting HUD will inform the officials of the results of the general area survey and the corrective actions HUD has recommended to rectify the problems.³³⁷

334. This is the area in which GSA proposed to locate a Federal facility or lease space for such a facility.

335. These requirements were discussed earlier in this section, see p. 120 *supra*.

336. The survey should have questions on family size and income levels, size of housing units needed, how many employees would rent units, and how many would purchase near the facility.

337. Procedures For Implementation, *supra* note 329.

The affirmative action plan developed by HUD must ensure that an adequate ³³⁸ supply of low- and moderate-income housing is available. HUD's area office can provide funding to the community to increase the supply if it is inadequate. HUD is also responsible for assisting in the development or revision of a local fair housing ordinance or law if discrimination in housing is evident in the community. HUD must also initiate the necessary steps towards gaining recognition for the community's housing law as having substantial equivalency to Title VIII. In the area of transportation, if the need arises, HUD is responsible for involving the local public transportation companies to determine the feasibility of changing routes and/or schedules to increase accessibility. HUD should also encourage GSA to discuss with the community and lessor or building contractors the possibility of additional parking facilities in or near the new facility if private transportation improves accessibility for low- and moderate-income employees. Further, if the community is unable to solve its own transportation problems, it is HUD's responsibility to encourage GSA and the community to contact Federal and State departments of transportation ³³⁹ for assistance.

338. A housing supply is adequate if it will, within 6 months of the opening of the new facility, include sufficient units to accommodate low- and moderate-income employees of the new facility when fully staffed. These units must be in excess of those needed to fill any current deficit in the community.

339. Procedures for Implementation, supra note 329.

HUD has always responded with a report when GSA has consulted it with respect to project development investigations, site investigations, and major lease actions. The quality of HUD's reports, however, has been inadequate. The reports usually only provide the specific information requested by GSA, and GSA has often failed to ask for fair housing information. ³⁴⁰ For example, in 1971 the Boston Regional Office had to provide reports on two project development investigations -- in Springfield and Pittsfield, Massachusetts -- and two site investigations -- in Manchester, New Hampshire, and New Bedford, Massachusetts. In each case, GSA contacted HUD for information on HUD programs in the proposed site area. In only the Pittsfield request, however, did GSA specifically ask for information on open and fair housing. HUD's response to the Pittsfield request was merely that it had not encountered "complaints or other indications" ³⁴¹ that housing discrimination existed.

For the other three cities the HUD reports did not even discuss the subject of housing discrimination, which is one of the main emphases of the agreement. Further, the reports only superficially covered the low- and moderate-income units existing and those under construction, and they often did not provide data on vacancy rates, racial composition, or transportation facilities.

340. See Chapter 4, General Services Administration, infra.

341. Letter from James J. Barry, Regional Administrator, HUD, Boston, Mass., to Albert A. Gammel, Jr., Regional Administrator, GSA, Boston, Nov. 10, 1971.

A further example of the inadequacy of HUD's reports can be found in the Fort Worth Regional Office. The Dallas Public Building Service staff,³⁴² under instructions of the central office, designed and used a form letter to be used in soliciting the HUD information.³⁴³ In essence, in this letter GSA only asks for concurrence with an assumption that there is a sufficient supply of low- and moderate-income housing available on a nondiscriminatory basis and accessible to the proposed site. HUD as of January 1973 had not challenged this approach.

B. Department of Justice (DOJ)

Under Title VIII of the Civil Rights Act of 1968 the Attorney General has the power to bring suit against any person or group of persons believed to be engaged in a pattern or practice of housing discrimination. During fiscal year 1973, a total of 58 suits were filed by the Department of Justice³⁴⁴ to end racial and ethnic housing discrimination. Further, under Executive

342. This is the division within GSA which is responsible for implementing the HUD-GSA agreement.

343. See, for example, letter from Jay Bolton, Regional Administrator, GSA, Fort Worth, Tex., to Richard Morgan, Regional Administrator, HUD, Fort Worth, Tex., Nov. 15, 1972, concerning El Paso, Tex.

344. Suits against apartment owners covered about 33,000 rental units. In addition, two municipalities, Black Jack, Mo., and Parma, Ohio, were charged with using zoning powers to exclude racially integrated housing developments. Court orders requiring the desegregation of public housing were obtained in Albany, Ga., and Gadsden, Ala. A suit was filed to desegregate public housing in Cairo, Ill. In fiscal year 1973, DOJ filed its first suit charging an apartment owner with discrimination against Asian Americans.

Order 11764,³⁴⁵ DOJ is responsible for coordinating the Title VI activities of Federal agencies.

In November 1972, DOJ and HUD signed a Memorandum of Understanding for the exchange of information between the two agencies.³⁴⁶ Additionally, HUD has established a liaison with DOJ's Housing Section, Civil Rights Division, to identify real estate organizations in cities where DOJ activity has prepared the way for voluntary HUD compliance agreements,³⁴⁷ and to coordinate activities with realtor groups throughout the Nation.³⁴⁸

345. Executive Order 11764, (39 Fed. Reg. 136 (Jan. 23, 1974)), was signed on January 21, 1974. It expanded and clarified the Attorney General's role as coordinator of Title VI as set forth in Executive Order 11247. Executive Order 11764 supersedes Executive Order 11247, 3 C.F.R. § 348 (1965). See U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974--Policy Makers (in preparation).

346. According to the agreement, DOJ is to send a biweekly list of recently-initiated investigations to HUD. HUD is supposed to review the list and inform DOJ of pending complaints involving the same respondent and/or complaint. HUD is also to send DOJ a biweekly compilation of new matters, including the name of the complainant and respondent, address of the disputed

review the list and inform HUD if it has a matter involving any of the parties under investigation. In addition DOJ is to send to HUD a copy of its weekly report containing such information as on new suits, consent decrees entered, judgments entered, and compliance reports received. In turn, HUD is to send DOJ a monthly list of conciliation agreements entered into, and if possible identify those matters which DOJ also investigated. Further, DOJ is to send a monthly list to HUD of matters it has brought suit in, sent notice letters in, or in which other negotiations have been commenced, and identify those matters which have also been the subject of HUD investigations.

347. This activity is usually the investigation of discrimination complaints coupled with documentation that discrimination did exist.

348. HUD response, supra note 47.

In an effort to develop better coordination, senior HUD civil rights officials met several times with top Civil Rights Division staff in 1973 to discuss cooperation between the two agencies.³⁴⁹ They explored the possibility of the joint investigation of Title VI and VIII cases, the joint conciliation of Title VI cases where HUD investigators have determined there is "remedy potential," and the referral of more cases which HUD has been unable to conciliate.³⁵⁰ The Justice Department indicated it was interested in handling some Title VI cases referred by HUD.

Formal referral of cases by HUD to DOJ,³⁵¹ however, has not substantially improved. HUD does not refer as many cases as it should,

349. Telephone interview with Alexander Ross, Deputy Chief, Housing Section, Civil Rights Division, Department of Justice, Washington, D.C., May 3, 1974.

350. 1973 Holbert interview, supra note 127.

351. HUD's referral procedure is for the Assistant Regional Administrator for Equal Opportunity to recommend a referral to the Director of the Office of Civil Rights Compliance and Enforcement, who in turn makes the recommendation to the Assistant Secretary for Equal Opportunity. The Assistant Secretary then decides whether or not to refer to the Department of Justice. The DOJ staff, however, believes that a formal referral must be sent from the Assistant Secretary's Office to HUD's General Counsel, who decides if it will be forwarded to DOJ. DOJ staff also feel that HUD's General Counsel takes a more conservative position than the state of the law requires. Interview with Frank Schwelb, Chief, Housing Section, Civil Rights Division, DOJ, Washington, D.C., June 5, 1974, and Alexander Ross, Deputy Chief, Housing Section, Civil Rights Division, DOJ, Washington, D.C., July 1, 1974.

352. Ross interview, supra note 35.

and in some instances it does not refer a case until DOJ is in the middle of proceedings with the respondent.³⁵³ In addition, the formal referral process for Title VIII takes too long. Some HUD staff, however, in order to shorten the process make "informal referrals" by simply bringing a complaint to the attention of DOJ and bypassing the formal structure.³⁵⁴

In 1973, the Department of Justice acted upon approximately 20 referrals from HUD.³⁵⁵ From January to May 1974, 10 cases were referred by HUD to the Department of Justice. Approximately 5 to 10 percent of DOJ's litigation is based on formal referrals. Most litigation is not based on HUD referrals because DOJ is involved in "pattern and practice," while HUD deals mostly with single complaints.³⁵⁶

An illustration of the cooperation between HUD and DOJ occurred in the Chicago region. The Chicago Assistant Regional Administrator for Equal

353. Schwelb interview, supra note 351.

354. Id.

355. The Department of Justice did not keep accurate records of HUD referrals in 1973, since it was only interested in documenting those it had decided to act on. The records show that 20 referrals were received that year, but DOJ estimates that there were more than that. Telephone interview with Celeste Barham, Docket Clerk, Housing Section, Civil Rights Division, DOJ, May 8, 1974.

356. Schwelb interview, supra note 351.

Opportunity requested that assistance from the Justice Department be sought in regard to some discrimination problems with the National Homes Corporation. The case evolved because since 1971 the regional office had received several Title VIII complaints against subsidiaries of National Homes Corporation alleging discrimination in the sale of houses. Therefore, in 1972 the HUD central office began negotiating a voluntary affirmative marketing plan with National Homes to cover all its nationwide business. The effort was dropped because National Homes refused to concede. In the meantime, the Civil Rights Division of the Justice Department filed suit against National Homes. HUD and the Justice Department, however, had not coordinated these activities in order to apply stronger pressure on National Homes. At this point both agencies realized that they were attempting to bring National Homes into compliance with fair housing goals. The coordination between the agencies was only slightly improved, with HUD providing the Department of Justice with the information it had. HUD, however, ceased pursuing its own action against National Homes, and merely assigned a representative to be present at the negotiation meetings between the Justice Department and National Homes. On May 11, 1973, the Justice Department negotiated a nationwide consent decree with National Homes.

C. Federal Financial Regulatory Agencies

Section 808 of the Fair Housing Law requires all Federal agencies to administer their programs and activities relating to housing and urban development affirmatively to further fair housing. It also requires agencies to cooperate with HUD, which is given responsibility for the overall administration of Title VIII.

HUD continues to meet with the Federal financial regulatory agencies as they attempt to determine the extent of their authority for requiring nondiscrimination by their regulatees.³⁵⁷ HUD has not taken the important step of issuing regulations for ensuring nondiscrimination in mortgage financing.³⁵⁸ The Federal financial regulatory agencies, however, on a 6-month experimental basis, are requiring banks to collect racial³⁵⁹ and ethnic data on applicants for mortgage loans.

357. The fair housing activities of these agencies are discussed at length in Chapter 2, the Federal Financial Regulatory Agencies *infra*.

358. Such regulations would also apply to Federal agencies insuring housing and home improvement loans, such as HUD itself, the Farmers Home Administration, and the Veterans Administration. They could require banks making federally-insured loans to take affirmative steps to ensure nondiscrimination in their lending activities. For example, banks might be required to advertise publicly the geographic areas in which they make housing loans; to hold interest rates constant for all customers including the banks' own depositors; and to count both spouses' incomes, and any incomes from a second job in calculating the applicants' capacity for repaying mortgage loans.

359. For more information see Chapter 2, The Federal Financial Regulatory Agencies *infra*.

D. Department of Defense (DOD)

HUD and DOD have infrequently worked together to attempt to eliminate the housing problems of minority service persons. In 1974, HUD held an administrative meeting on equal housing opportunity for the military.³⁶⁰

HUD's central office's only other cooperation with DOD has been to invite military housing coordinators³⁶¹ to attend HUD's training sessions for State civil rights agencies, but the military has rejected all the invitations.³⁶²

Some of the regional offices have been more successful in working with the military than the central office. The Boston Regional Office has contacted the military housing coordinators from several military installations in the Boston area in an attempt to develop an agreement with regard to the investigation and remedy of housing discrimination complaints filed by minority service persons.³⁶³ The Boston office has attempted to persuade the military housing coordinators to refer complaints immediately to HUD.³⁶⁴ The bases have not been receptive. In some instances, however, the housing coordinators have agreed to display HUD equal opportunity posters and place complaint forms prominently to inform

360. See note 153 *supra*.

361. The housing coordinators maintain a list of housing either for sale or rent which is made available to military personnel seeking housing. They also handle discrimination complaints.

362. HUD response, *supra* note 47.

363. The DOD's regulations for handling complaints are weak. For example, a respondent has only to sign a nondiscrimination certification in order to have the case closed and there is no monitoring or followup investigation to ensure that the respondent is complying.

364. Housing coordinators usually attempt to solve their own cases simply by removing from their list agencies or persons who practice housing discrimination.

service persons of their option to file complaints with HUD.³⁶⁵

HUD's Region IX equal opportunity staff have had some contact with personnel from military installations in the region regarding housing discrimination complaints from minority service persons. Top equal opportunity staff in that region have visited a number of military bases, including Hamilton Air Force Base and Alameda Naval Station in the San Francisco, California, area, Mare Island Naval Station in Vallejo, California, and Luke Air Force Base in Phoenix, Arizona. They have provided base housing coordinators with HUD fair housing posters and complaint forms and have encouraged them to refer complaints to HUD if they are unable to resolve them successfully.³⁶⁶ As a result, the regional equal opportunity office has received a number of complaint referrals.³⁶⁷ Review of several such referrals showed that in one case, referred from Luke AFB, the respondent refused to admit discrimination or to conciliate with HUD, and HUD recommended that the complainant file suit.³⁶⁸

365. The Boston HUD office, nonetheless, had not received any complaints from service persons.

366. DOD complaint regulations do not provide for damages for the complainant in the event of a finding of discrimination. Nor do they contain provisions for affirmative action by the respondent. Generally, the only action the military installation may take is to place the housing in question off-limits to service persons in the future. The regulations do provide for referral to HUD's Washington office if a complaint respondent is uncooperative.

367. Equal opportunity staff were unable to supply an exact figure.

368. This complaint case was *Lucas v. Pickard*. As of May 3, 1974, the case had been forwarded to a private attorney and HUD did not know anything about it. Telephone interview with Ted Simmons, Conciliator, HUD Regional Office, San Francisco, Cal., May 3, 1974.

CHAPTER 2

Federal Financial Regulatory Agencies

- The Federal Reserve System
- The Federal Deposit Insurance Corporation
- The Office of the Comptroller of the Currency
- The Federal Home Loan Bank Board

I. Program Responsibilities

A. Federal Reserve System (FRS)

The Federal Reserve System was created pursuant to the Federal Reserve Act of December 23, 1913. ³⁶⁹ The System is composed of the Board of Governors, ³⁷⁰ the Federal Open Market Committee, ³⁷¹ the 12 Federal Reserve

³⁶⁹ 12 U.S.C. § 221 et seq. (1970). The act created a partnership system between bankers and government. The System was created, over the initial opposition of the banking industry, for the purposes of establishing a central banking system and enhancing the safety of the people's bank deposits through regulation of banking practices. L. M. Kohlmeier, Jr., The Regulators 231 (1969).

³⁷⁰ The Board of Governors is the policymaking body of the System. Its seven members are appointed by the President.

³⁷¹ The Open Market Committee sets regulations for the Reserve Banks' purchase and sale of securities in the open market. These purchases and sales supply the banks with reserves for long term economic growth and serve to offset critical financial swings.

³⁷² Banks and their 24 branches situated in different sections of the United States, the Federal Advisory Council, ³⁷³ and the member banks, which include all national banks ³⁷⁴ in the United States and such State banks and trust companies as have voluntarily applied to the Board of Governors for membership and have been admitted to the System. ³⁷⁵

³⁷² The Federal Reserve Banks extend credit to member banks.

³⁷³ The Federal Advisory Council advises the Board of Governors on general business conditions and other matters within the Board's jurisdiction. There are 12 members. The board of directors of each Federal Reserve Bank selects one member annually.

³⁷⁴ National banks are a Federal creation, dating back to 1864. Their status as such carries with it many substantial benefits: they hold the exclusive privilege within the banking community of using the word "national" in their titles; they automatically receive the benefit of Federal Deposit Insurance Corporation deposit insurance; they are members of the Federal Reserve System; and they are protected by Federal statute from certain forms of State taxation. Between 1960 and 1971 the total resources of the national banks increased from \$140 billion to \$376.5 billion.

³⁷⁵ The members are stockholders in the Federal Reserve Banks.

One of the Board's most important tasks is to regulate its member banks. It determines general monetary, credit, and operating policies for the system as a whole. It also sets the requirements for reserves to be maintained by member banks against deposits and limits the interest rates which may be paid by member banks on their savings deposits.

B. Federal Deposit Insurance Corporation (FDIC)

The Federal Deposit Insurance Corporation was originally created on June 16, 1933, as Section 12B of the Federal Reserve Act. The Corporation automatically insures deposits of member banks of the Federal Reserve System. It also insures State-chartered, non-Federal Reserve member commercial banks and mutual savings banks which voluntarily apply for and are granted the benefits of FDIC insurance.

C. Office of the Comptroller of the Currency (COC)

The Office of the Comptroller of the Currency in the Department of the Treasury was created in 1864 by the National Bank Act. COC charters

376. Members of the Federal Reserve System have access to its discount facilities, free currency and coin shipments from Federal Reserve Banks, free examinations, and various financial publications which allow each bank to evaluate its financial status. Interview with John E. Ryan, Supervisory Review Examiner, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System, Feb. 21, 1974.

377. 12 U.S.C. § 1811 *at seq.* (1970). Subsequently, Section 12B, as amended, was withdrawn and made a separate act, the Federal Deposit Insurance Act, on September 21, 1950.

378. The Corporation reimburses depositors of any insured bank which closes without making adequate provision to pay the claims of the depositors.

379. As of December 1972, 98.4 percent of all commercial banks in the United States, and over two-thirds of all mutual savings banks, participated in Federal deposit insurance. Federal Deposit Insurance Corporation, Annual Report, 1972, p. XII.

380. 12 U.S.C. § 1 (1970).

and supervises this country's 4,600 national banks and branches. As administrator of national banks, COC is responsible for the execution of laws relating to these banks and promulgates rules and regulations governing their operations. A principal function of COC is examination and supervision of national banks.

Approval of the Comptroller is required for the organization of new national banks, conversion of State chartered banks into national banks, consolidations or mergers of banks where the surviving institution is a national bank, and the establishment of branches by national banks.

381. The supervision of national banks drew these comments from one of the Nation's foremost administrative law authorities:

Probably the outstanding example in the Federal Government of regulation of an entire industry through methods of supervision, and almost entirely without formal adjudication, is the regulation of national banks. The regulation of banking may be more intensive than the regulation of any other industry, and it is the oldest system of economic regulation. The system may be one of the most successful, if not the most successful. The regulation extends to all major steps in the establishment and development of a national bank, including not only entry into the business, changes in status, consolidations, reorganizations, but also the most intensive supervision of operations through regular examination of banks. K. C. Davis, Administrative Law Treatise, §4.04 (1958).

382. In addition, the Comptroller is authorized to examine each non-national bank and trust company in the District of Columbia (12 U.S.C. § 42). Although examination is an important function of each of the financial regulatory agencies, overall, it is more important to the Office of the Comptroller of the Currency, as COC has fewer other responsibilities.

D. Federal Home Loan Bank Board (FHLBB)

While national and State banks are regulated, insured, and supervised by three separate Federal agencies, building and loan, savings and loan, and homestead associations and cooperative banks are controlled only by the Federal Home Loan Bank Board, which supervises the operation of 12 regional Federal Home Loan Banks (FHLB's), charters Federal savings and loan associations, and insures savings accounts through the Federal Savings and Loan Insurance Corporation (FSLIC).

The Federal Home Loan Bank Board³⁸⁴ was created by the Federal Home Loan Bank Act of 1932.³⁸⁵ The act provides for the establishment of up to 12 Federal Home Loan Banks throughout the country whose function is to lend money to their members. The kinds of financial institutions eligible for membership in the Federal Home Loan Banks include savings and loan associations,

383. Parallel to the Federal Reserve System's Advisory Council (see note 373, supra), the Federal Savings and Loan Advisory Council is an independent, statutory advisory body to the FHLBB in its administration of the FHLB's and the FSLIC.

384. The FHLBB is an independent Federal agency headed by a three-member Board which is appointed by the President for 4-year overlapping terms and is confirmed by the Senate. The Board also serves as the Board of Directors of the Federal Home Loan Mortgage Corporation which was established by the Emergency Home Finance Act of 1970 to operate a secondary market in conventional mortgages.

385. There are three statutes that provide separate and distinct authority for savings and loan association regulation: the Federal Home Loan Bank Act authorizes regulation of the members of the Federal Home Loan Banks (12 U.S.C. § 1421 et seq. (1970)); the National Housing Act (12 U.S.C. § 1725 (1970)) provides for limited regulation of associations insured by FSLIC; and the Home Owners Loan Act of 1933 (12 U.S.C. § 1464 (1970)) provides FHLBB with a broad range of powers over federally-chartered savings and loan associations.

savings banks, and insurance companies.³⁸⁶ In order to qualify for membership, an institution must make long term mortgages, be duly organized under the laws of any State or of the United States, and be subject to inspection and regulation under the banking laws, or similar laws, of any State or of the United States. All federally-chartered savings and loan institutions must be members of their region's Federal Home Loan Bank as well as insured by the Federal Savings and Loan Insurance Corporation (FSLIC).³⁸⁷ State-chartered savings and loan companies may also voluntarily apply for and receive FSLIC insurance. All FSLIC insured institutions are Bank members.

386. Under the Federal Home Loan Bank Act members may also include building and loan associations, homestead associations, and cooperative banks. These are simply other names for savings and loan associations.

387. The Federal Savings and Loan Insurance Corporation was created in 1934 by the National Housing Act. 12 U.S.C. § 1725.

The FHLBB assures the safety and soundness of member associations by checking appraisals and accounting practices. Other duties of the Board include regulating the interest that can be paid on savings accounts, approving applications for bank mergers, and regulating the accuracy of member institutions' advertising. Benefits of membership in the system include access to data processing of mortgage and saving accounts, time deposit and securities safekeeping facilities, economic research and investment management services, and most importantly, advances of funds from Federal Home Loan Banks and the transferral of funds by these banks from one regional Federal Home Loan Bank to another.

The FHLBB is probably second only to the Department of Housing and Urban Development (HUD) in number and importance of activities relating to housing and community development. The majority of home mortgages are made by savings and loan associations, most of which come under the supervision of FHLBB.³⁸⁸

E. Distribution of Responsibilities Among the Regulatory Agencies

The banking responsibilities of the COC, FRS, and FDIC are summarized in Figure 1: the Comptroller of the Currency supervises national banks; the Federal Reserve System provides membership to all national banks and regulates those State banks which have voluntarily joined the system as members; the Federal Deposit Insurance Corporation insures national banks, State member banks of the Federal Reserve System, and State non-member, FDIC-insured banks.

³⁸⁸ The savings and home financing industry--the country's major source of private funds to finance construction and purchase of housing--over which FHLBB has supervisory responsibility, is a \$216 billion industry. FSLIC insures the funds of over 53 million savers in 4,178 member institutions up to \$20,000. These funds represent in excess of \$209 billion in savings capital. In 1973, all operating savings and loan associations closed \$51.4 billion in loans. Federal Home Loan Bank Board, News (June 22, 1973).

Although the banking functions of the three agencies are overlapping, their examination responsibilities, which are prescribed by law, are limited to groups of banks fitting into the following categories: national banks, which are examined by the Comptroller of the Currency; State member banks, which are examined by the Federal Reserve System; and State nonmember banks, which are examined by the Federal Deposit Insurance Corporation.

389, Authorization for COC examination of national banks is outlined in 12 U.S.C. § 481. Authorization for Federal Reserve Banks' examination of State member banks in their districts is outlined in 12 U.S.C. § 483. Both sections are derived from the National Bank Act of June 3, 1864, ch. 106 § 5, 13 Stat. 100 (codified in scattered sections of 12, 18 U.S.C. (1970)). The Federal Deposit Insurance Corporation receives authorization for examination of State nonmember banks of the System in 12 U.S.C. § 1820. It is given the authority to examine other insured banks only in special instances and only for insurance purposes.

390, The distribution of examination responsibilities of the Federal financial regulatory agencies is shown by circles in Figure 1, p. 143 infra.

391, The examination reports on any given bank are often shared among the Federal agencies having regulatory authority over that bank. There is some doubt as to the efficiency of the division of the supervisory authority among the COC, FRS, and FDIC because of these agencies' failure to share, in a timely manner, information on suspected problems arising in the examination process. Kohlmeier, supra note 369.

Figure 1

Distribution of Responsibilities of Bank Regulation of the Federal Financial Regulatory Agencies

	<u>Supervision</u>	<u>Membership</u>	<u>Insurance</u>
National Banks	COC*	FRS	FDIC
State Member Banks FRS		FRS*	FDIC
State Nonmember Banks FDIC Insured			FDIC*

*In addition, the regulatory agency has examination responsibility.

The three regulatory functions of providing supervision, membership, and insurance to savings and loan associations are all concentrated in the Federal Home Loan Bank Board, which consists of the Federal Home Loan Bank Board, the Federal Home Loan Banks, and the Federal Savings and Loan Insurance Corporation. The three types of savings and loan associations³⁹² which receive these services and the component parts of the FHLBB which provide them are summarized in Figure 2. The Federal Home Loan Bank Board³⁹³ examines all of these savings and loan associations.

392. These are: federally-chartered; State-chartered, FSLIC-insured, and State-chartered, uninsured by FSLIC.

393. The Federal Home Loan Bank Board's examination responsibilities are shown by circles in Figure 2, p. 145 *infra*.

Figure 2

Distribution of Responsibilities for Savings and Loan Association Regulation of the Federal Home Loan Bank System

	<u>Supervision</u> FHLBB	<u>Membership</u> FHLB	<u>Insurance</u> FSLIC
Federally chartered savings and loan associations	⊗	X	X
State chartered FSLIC-insured	○	X	X
State chartered uninsured by FSLIC	○*	X	

X = regulatory responsibility

○ = examination responsibility

* = Only for FHLB members

II. Civil Rights Responsibilities

A. Nondiscrimination in Mortgage Lending to Minorities

1. General

The Federal financial regulatory agencies are responsible for ensuring that the institutions they oversee are in compliance with applicable laws and regulations. One of the laws applying to banks and savings and loan associations, and which the regulatory agencies are thus responsible for overseeing, is Title VIII of the Civil Rights Act of 1968.³⁹⁴

Section 805 of the Civil Rights Act of 1968 provides that it is unlawful for any bank or building and loan association to deny a loan or other financial assistance for purchasing, constructing, repairing, or maintaining a dwelling because of the applicant's race, color, religion,³⁹⁵ or national origin.³⁹⁶ That section also makes it unlawful for such institu-

394. Overall responsibility for administering Title VIII is assigned to the Department of Housing and Urban Development. See Chapter I, Department of Housing and Urban Development, Section VIC supra.

395. In August 1974, the Housing and Community Development Act of 1974 amended Section 805 of the 1968 act to include a prohibition against discrimination based on sex.

396. Section 805 also applies to insurance companies and any other corporation or enterprise whose business consists in whole or in part of making real estate loans.

tions to discriminate against borrowers on the grounds of race, color, religion, or national origin in fixing the amount, interest rate, duration, or other terms and conditions of such a loan. Additionally, the Federal financial regulatory agencies are charged with administering their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of fair housing.³⁹⁷

Pursuant to these responsibilities, each of the four Federal financial regulatory agencies has published requirements applicable to regulated financial institutions which engage in extending real estate loans. These institutions must display prominently an equal housing lender poster. The poster must be designed in accordance with published regulations of the agencies, which have been approved by the Department of Housing and Urban Development.³⁹⁸ It must attest to the institution's policy of compliance with the nondiscrimination requirements of Title VIII. It must include also the address of HUD as the agency to be notified concerning any complaint alleging a violation of the nondiscrimination requirements of Title VIII.

397. Section 808(d) of the Civil Rights Act of 1968 so charges all Federal departments and agencies. Recently FDIC wrote to this Commission's Staff Director:

You will note that the statute relates to "programs and activities relating to housing." It is our position that this Corporation has no programs and activities relating to housing within the meaning of that statute. We do, however, recognize that affirmative action programs may be encouraged absent specific statutory authority through such means as policy statements and guidelines. Letter from Reford J. Wedel, Deputy General Council, FDIC, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Oct. 24, 1974.

398. HUD's regulations for the lobby notice of nondiscrimination were first published on February 16, 1972. (See 24 C.F.R. § 110.) A sample poster appears on p. 149 infra. In addition to the information provided on that poster, the FHLBB poster informs persons who believe they have been discriminated against that they may discuss the matter with the management of the offending institution.

Moreover, any regulated institution which directly or through third parties engages in any form of advertising of real estate lending services must prominently indicate in the advertisement that it makes loans without regard to race, color, religion, or national origin. The regulated institutions are also prohibited from using in advertising any words, phrases, or symbols which express or imply a discriminatory preference or policy in violation of Title VIII. Additionally, written advertisements must include a facsimile of the "Equal Housing Lender" ³⁹⁹ logotype in order to increase public recognition of the nondiscrimination requirements and guarantees of Title VIII. For COC, FDIC, and FRS, the poster and advertising provisions are the only requirements placed on their regulatees. ⁴⁰⁰ These requirements were published in the form of policy statements,

³⁹⁹. The logotype is the equal housing symbol shown in the sample poster on P. 149 *infra*.

⁴⁰⁰. The policy statements were first issued in December of 1971. After HUD's regulations on the design of the advertisement and lobby notices were issued (see note 398 *supra*), the regulatory agencies redesigned their requirements to conform to HUD's standards. COC's requirements are published at 37 *Fed. Reg.* 10518 (May 24, 1972). FDIC's requirements are published at 37 *Fed. Reg.* 8908 (May 2, 1972). FRS's requirements are published at 36 *Fed. Reg.* 25168 (Dec. 29, 1971) as amended by 37 *Fed. Reg.* 8578 (Apr. 28, 1972).



**We Do Business in Accordance With the
Federal Fair Housing Law**

**IT IS ILLEGAL, BECAUSE OF RACE, COLOR,
RELIGION, OR NATIONAL ORIGIN, TO:**

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or
- Discriminate in fixing of the amount, interest rate, duration, application procedures or other terms or conditions of such a loan.

**IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED
AGAINST, YOU MAY SEND A COMPLAINT TO:**

Assistant Secretary for Equal Opportunity,
Department of Housing and Urban Development,
Washington, D.C. 20410.

or call your local HUD or FHA office.

thereby limiting the sanctions which may be used if the requirements are violated.⁴⁰¹ FHLBB, on the other hand, issued the lobby poster and advertising requirement as part of more extensive nondiscrimination regulations⁴⁰² which are fully enforceable.

2. Affirmative Requirements

Although the lobby and advertisement notices of nondiscrimination are useful tools to inform the public of the prohibition against discrimination in mortgage finance, they are not sufficient for ensuring against such discrimination. Much of the discrimination against minorities which occurs in mortgage financing is deeply ingrained in the practices which are followed by banks and savings and loan associations.⁴⁰³ The types of discrimination which occur vary and may include, for example, outright refusal to make loans to minorities,⁴⁰⁴ the refusal to extend credit to minorities for homes in residential areas occupied by nonminorities, the refusal to make loans to nonminorities in areas occupied by minorities, the refusal to make any loans in certain geographic areas (redlining), and the designation of certain areas as the only ones in which loans will be made to minorities.

401. When the policy of a Federal financial regulatory agency which is not included in a regulation is violated, cease and desist powers cannot be used. In contrast, if a regulation is violated, the agency may use the full range of sanctions available. See Section V infra, for a further discussion of those sanctions.

402. These regulations are discussed further in Section IIA3a infra, and are published at 37 Fed. Reg. 8436 (Apr. 27, 1972) as amended at 37 Fed. Reg. 8865 (May 2, 1972).

403. See D.A. Searing, "Discrimination in Home Finance" 48 Notre Dame Law. 1113 (1973).

404. Id. Searing comments that this type of outright discrimination is seldom practiced today.

Some of the discriminatory practices are more subtle.⁴⁰⁵ For example, in order to determine a client's ability to repay a loan, the institution may rely on credit checks by credit bureaus which make discriminatory judgments in assigning credit ratings.⁴⁰⁶ Similarly, arbitrary refusal by a bank to consider stable income from a second source such as overtime or spouse's employment often discriminates against minorities.

Nonetheless, the Federal financial regulatory agencies have not yet required the institutions they oversee to analyze their own activities in order to assess the extent of discrimination in their mortgage finance transactions.⁴⁰⁷ FHLBB, however, in a codified statement of policy,⁴⁰⁸ has advised FHL Bank member institutions to examine their underwriting policies to insure that they are not unintentionally discriminatory in effect. None of the agencies has required the institutions to take positive action to overcome any deficiencies.⁴⁰⁹ Thus, the institutions are not required to develop a written affirmative action program which would include such steps as the advertisement of available money in the minority press, the provision of bilingual services, and the appointment of a fair housing officer.⁴¹⁰

405. Id. and U.S. Commission on Civil Rights, Mortgage Money: Who Gets It? A Case Study in Mortgage Lending Discrimination in Hartford, Connecticut (1974) [hereinafter cited as Hartford report].

406. Discrimination in credit checks is discussed in S.N. Sesser, "Big Brother Keeps Tabs on Insurance Buyers," New Republic (Apr. 27, 1968).

407. Such an assessment necessitates the collection and analysis of racial and ethnic data, including data on the number of loans made to minorities and on the racial-ethnic composition of the neighborhoods for which the loans are made. Even without such data, however, banks should be required to make and analyze estimates on the racial-ethnic composition of its borrowers. Racial and ethnic data collection is discussed further on pp. 188-190 infra.

408. This policy is discussed further on p. 154 infra.

409. The Federal Home Loan Bank reviews any written policies of nondiscrimination developed by its member institutions. Since FHLBB does not set standards for these policies, and in fact does not hold the existence of such policies as mandatory, FHLBB's actions are no substitute for an affirmative action requirement.

410. In a large bank, this might be a full-time position with program and support staff. In smaller banks, it might be only a part time position.

3. Regulations

The Federal Home Loan Bank Board is the only financial regulatory agency which has extended the fair housing requirements it places on regulated institutions beyond the mere advertising and poster requirements concurrently agreed upon by the four Federal financial regulatory agencies. In fact, it is the only regulatory agency to have issued any requirements in regulation form. The Federal Deposit Insurance Corporation proposed regulations which were never adopted. Neither the Federal Reserve System nor the Comptroller of the Currency has issued or even proposed fair housing regulations or any other policy statements to supplement the poster and advertising requirements.

A. Federal Home Loan Bank Board Regulations

On April 27, 1972, the Federal Home Loan Bank Board published regulations⁴¹¹ which contained two important fair housing innovations: (1) a prohibition against discrimination based on the racial, ethnic, or religious composition of the neighborhood for which the loan was being

411. 37 Fed. Reg. 8436 (Apr. 27, 1972). These regulations are also published at 12 C.F.R. § 528 et seq. The regulations also contain a provision for non-discrimination in employment by member institutions. See pp. 164-165 infra. The regulations were published in proposed form on January 19, 1972. The proposed regulations were essentially the same as those published in final form, except that the proposed regulations included requirements for racial and ethnic data collection which were not published in the final regulations. The FHLBB postponed the publication of that section of the regulation pending further study. See Section IV infra.

sought,⁴¹² and (2) a prohibition against discrimination in the preapplication phase of the mortgage-lending process on the grounds of race, color, religion, or national origin.⁴¹³ In addition, the regulations contain a

412. This provision prohibits redlining. In early February 1974, the Board's Office of General Counsel stated that this provision prohibited appraisers, when assessing property values, from taking into account information about the ethnic composition of the neighborhood or its changing character. The Office of General Counsel ruled that any lender which utilized appraisal forms calling for such information would be in violation of this provision. The General Counsel issued this ruling after the National People's Action on Housing, the Citizen's Action Program, and the Southwest Community Congress (three coalitions of white ethnic community groups in Chicago) complained about the use of such forms, asserting that the forms assisted in discrimination against members of their groups. In late March 1974, the General Counsel issued another important legal opinion which dealt with the application of the Board's nondiscrimination regulations to the practice of redlining. The General Counsel concluded:

...that the practice by member institutions of refusing to extend credit, and the practice of extending credit on terms which are less favorable than those usually offered, to borrowers whose security property is located within a pre-determined geographic area or areas, because of the location of the property, violate section 528.2(d) if such practices have discriminatory effect against members of racial, ethnic or religious groups. Attachment to letter from Richard Platt, Director, Office of Housing and Urban Affairs, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Oct. 24, 1974.

413. This prohibition is an attempt to prevent the discriminatory discouragement of potential minority applicants from filing a written application. The regulations state:

No member institution shall refuse or decline to...consider any application, request, or inquiry with respect to [a mortgage or home improvement loan or other service]... because of the race, color, religion, or national origin of any...person who

- (a) Makes application for any such loan...
- (b) Requests forms or papers to be used to make application for any such loan...
- (c) Inquires about the availability of such loan....[12 C.F.R. § 528.3 (1974)]

prohibition against racial, ethnic, and religious discrimination in lending services other than mortgage financing.

On December 17, 1973, FHLBB published guidelines to assist savings and loan institutions in implementing these regulations. The guidelines encourage careful monitoring of loan underwriting standards to ensure that they are not discriminatory. They state that each applicant's creditworthiness should be evaluated on an individual basis without reference to presumed characteristics of a group. They specifically warn that, "The use of lending standards which have no economic basis and which are discriminatory in effect is a violation of law even in the absence of an actual intent to discriminate."

The guidelines outline what the Board considers improper emphasis on an applicant's past borrowing history. For example, an isolated experience in the distant past is not accepted as ground for denial of a loan if subsequent experience and present circumstances indicate stability. The Board indicates, too, that a policy favoring applicants who have previously owned homes may perpetuate prior discrimination. Moreover, the guidelines state that the denial of a loan in a neighborhood solely because of its age, income level, or racial composition is also recognized as being potentially discriminatory, since minority group persons

414. 38 Fed. Reg. 34653 (Dec. 17, 1973). These regulations are also published at 12 C.F.R. § 531.

415. Underwriting standards are the criteria used by lending institutions to determine whether or not to issue a loan to an applicant.

416. 12. C.F.R. § 531.8(b).

are more likely to purchase used housing and to live in low-income neighborhoods.

The guidelines further call for the savings and loan associations to consider the applicant's supplementary income in ascertaining his or her ability to repay a loan. They state that statistics show that minority group members and low- and moderate-income families rely more often than others on such supplemental income. Finally, the guidelines contain a prohibition against sex discrimination in all lending activities of regulatees. The Federal Home Loan Bank Board regulations and pursuant guidelines are an important step toward the development of a fair housing program. Neither the guidelines nor the regulations, however, go far enough, as they lack requirements for affirmative action; racial, ethnic, and sex data collection; compliance reviews; and enforcement.

417. 12 C.F.R. § 531.8(c)(4) (1974).

418. Supplementary income includes income from overtime, a second job, or an investment.

419. See pp. 159-162 *infra* for a broader discussion of the section of the guidelines dealing with sex discrimination.

420. The need for affirmative action is discussed in Section IIA2. *supra*; the need for racial and ethnic data collection is discussed in Section IV *infra*; FHLBB review of the fair housing practices of financial institutions is discussed in Section III *infra*.

b. Federal Deposit Insurance Corporation Proposed Regulations

In September 1972, the Federal Deposit Insurance Corporation published proposed regulations to supersede its 1971 fair housing policy statement. They incorporated the elements of that statement and were stronger than the FHLBB-adopted regulations to the extent that they included a requirement for regulatees to collect racial and ethnic data, a requirement that regulatees appoint fair housing officers, and provisions for enforcement. The proposed regulations, however, were inadequate. In December 1972, FDIC held a 2-day hearing on

421. 37 Fed. Reg. 19385 (Sept. 20, 1972). This proposal was entitled Fair Housing Lending Practices. This is similar to the FHLBB's original proposal for regulations. See note 411 *supra*. FDIC, however, added provisions for a fair housing officer and for enforcement.

422. Section 338.8 of the proposed rulemaking stated that violations of Title VII and of any provision of the proposals constitute violations of law within the meaning of Section 8 of the Federal Deposit Insurance Act. Section 8 of this act permits cease and desist orders to be issued by the Board in the event of violations of the law and provides for termination of deposit insurance sanctions when there is noncompliance with the cease and desist order.

423. Like FHLBB's regulations and guidelines, they lacked a requirement for affirmative action and compliance reviews. See note 420 *supra*. They also lacked provisions for the prohibition of sex discrimination and nondiscrimination in regulatees' hiring practices.

424. The testimony from the hearing is contained in the FDIC publication, Proposed Fair Housing Lending Practices Regulations, Hearing Before the Federal Deposit Insurance Corporation Dec. 19 and 20, 1972.

its proposed regulations. This hearing was held in part because of a petition filed by the Center for National Policy Review on behalf of 13 public interest groups. Witnesses included representatives of the petitioning organizations; other civil rights, public interest and women's rights organizations; Federal and State agencies; and banks

425. The petitioners requested each agency to invoke its rulemaking authority "for the purpose of establishing a fair and effective system of preventing racial discrimination in home mortgage finance." The petitioners urged the collection of racial and ethnic data (see Section IV, pp. 188-190 *infra*). The petitioners also recommended that the financial regulatory agencies provide for the documentation of all applications which were made in person but had not taken the form of a written request. Further, they requested that each builder or developer to whom a short term construction or long term mortgage loan is made be required to file with the lender a written assurance providing that the dwellings financed will be sold or leased without discrimination. The petitioning organizations were: The American Friends Service Committee, the Housing Association of Delaware Valley, the Housing Opportunities Council of Metropolitan Washington, the Leadership Council for Metropolitan Open Communities, Metropolitan Washington Planning and Housing Association, Inc., National Association for the Advancement of Colored People, National Association of Real Estate Brokers, the National Committee Against Discrimination in Housing, Inc., National Urban Coalition, National Urban League, Inc., the Rural Housing Alliance, the Washington Center for Metropolitan Studies, and the League of Women Voters of the United States. The Center for National Policy Review is a nonprofit organization for research and review of national policies having urban and racial implications. It is affiliated with the law school at the Catholic University of America in Washington, D.C.

426. The representative for the American Bankers Association stated that he was speaking on behalf of the association's more than 13,000 member banks. The representative acknowledged that "there may be some isolated instances of discrimination in real estate lending by banks, but our Association is unaware of any, as none have been brought to our attention." Therefore, the representative concluded that it was unnecessary to saddle the banking industry with the requirements of the proposed regulation in the absence of a showing of discrimination by banks. FDIC, Proposed Fair Housing Lending Practices, Hearing before the Federal Deposit Insurance Corporation, Dec. 19 and 20, 1972, at 77. The representative speaking for the National Association of Mutual Savings Banks approved the adoption of the proposals, on the condition that similar proposals be adopted by the other three Federal financial regulatory agencies *id.* at 108. The representative for the New York State Bankers Association disapproved the racial and ethnic data collection requirement, stating that it would place too great a burden on bank personnel. *Id.* at 116.

and savings and loan associations. Their testimony provided FDIC with ample information to make its final decision concerning the proposed regulations. However, over 22 months later FDIC was still attempting to determine what form the regulations would take.

427. Following the hearings, FDIC reviewed the arguments presented and recorded its conclusions as to whether there were sufficient legislative bases for having issued the proposed regulations. Interview with Roger A. Hood, Assistant General Counsel; Paul M. Horvitz, Director of Research; F. D. Birdzell, Attorney; Edward Roddy, Director, Division of Bank Supervision; Joe S. Arnold, Acting Assistant Director, Administration; and John Stathos, Deputy Director, Division of Bank Supervision, FDIC, Dec. 19, 1973. The Corporation refused to provide the Commission with copies of memoranda of its conclusions, stating that "these are internal staff memoranda" and it did not feel it was appropriate to release them. Letter to Cynthia N. Graae, Associate Director, Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, from Roger A. Hood, Assistant General Counsel, FDIC, Jan. 8, 1974. In a recent communication, FDIC informed this Commission:

We believe that we have basic authority to promulgate regulations generally aimed at implementing those provisions of Title VIII and particularly section 805 thereof (42 U.S.C. § 3605) prohibiting discrimination by banks and other financial institutions in the financing of housing.

Our principal concern goes to the type of regulation which would be most useful in achieving the desired ends. Specifically, as a result of the December 1972 hearings... analysis of public comment, and extensive staff consideration both internally and inter-agency, on the proposed regulations, it became clear that such regulations may not achieve the end desired, principally because of deficiencies in the portion thereof dealing with recordkeeping. Hence, in cooperation with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Home Loan Bank Board, we instituted [a pilot project for racial, ethnic, and sex data collection] with the primary objective of testing various types of data collection systems with a view to determining the one or combination of several systems that might, if incorporated in a regulation, be most useful in monitoring compliance by regulated institutions. Wedel letter, *supra* note 397.

The pilot project is discussed in detail on pp. 188-190 *infra*.

B. Nondiscrimination in Mortgage Lending to Women

Discrimination against women in mortgage finance is widely prevalent. For example, the arbitrary refusal of many savings and loan associations to count the full amount of a working wife's income in assessing a couple's ability to repay a mortgage loan was documented by a survey conducted by the Federal Home Loan Bank Board in 1971⁴²⁸ regarding practices of savings and loan associations in all lending services. The survey revealed that 25 percent of the respondents would not count any of a 25-year-old married woman's income if she has two school-age children and holds a full-time secretarial position.⁴²⁹ More than half of the mortgage lending institutions would limit

428, Federal Home Loan Bank Board, Results of 74 Questionnaires Returned, undated internal report.

429. The FHLBB also inquired about the effect of marital status on a loan applicant's eligibility but did not tabulate the results of that question.

credit to 50 percent or less of her salary. ⁴³⁰ Other forms of sex discrimination include refusal to lend to a married woman in her own name, investigation of a wife's birth control practice in connection with a mortgage loan application, reluctance or refusal to make loans to widows and divorced women who have no credit record in their own name, ⁴³¹ use of different standards for credit applications of single women than for applications of single men, and requiring cosigners for single women but not for single men. ⁴³²

430. On the basis of a mortgage finance study conducted in Hartford, Conn., this Commission found that sex discrimination was more blatant than racial and ethnic discrimination. The study revealed that traditional mortgage lending policies followed by Hartford mortgage lenders require sex discrimination. For example, as a matter of policy, the lenders often refuse to use a woman's income as a basis for making a loan. The lenders operate on the assumption that women are greater credit risks than men of comparable income and employment status. The survey disclosed that varying degrees of discrimination were practiced by different institutions and even by loan officers within the same institutions. Hartford report, supra note 405.

431. Divorced or widowed women often will not have credit records in their own names, since they were likely to have been denied credit in their own names when they were married.

432. For example, the results of a questionnaire distributed by the District of Columbia Commission on the Status of Women to 107 mortgage lending institutions revealed that policies relating to sex and marital status of applicants vary among the institutions in the Washington metropolitan area. Among the findings of the survey, based on the answers of 50 respondents, were that:

1. Frequently sex and marital status determine whether or not mortgage applications will be acted upon favorably.
2. Alimony and child support are often discounted as valid sources of income, regardless of their reliability.
3. Working wives' salaries are often not fully counted as part of a family income.
4. Some institutions ask applicants about their parental plans and birth control practices.

Government of the District of Columbia, Commission on the Status of Women, Sixth Annual Report, 1973.

Discrimination against women in mortgage finance is also serious because of its relationship to discrimination against racial and ethnic minorities. For example, a higher proportion of minority than nonminority families rely on the wife's salary for part of the family's income and thus would need to rely on the wife's income in purchasing a home. ⁴³³

Prior to the passage of the Housing and Community Development Act in August 1974, which amended Title VIII of the Civil Rights Act of 1968 to include a prohibition against sex discrimination, the only agency which acknowledged that it had responsibility for ensuring against sex discrimination in mortgage finance was the Federal Home Loan Bank Board. FHLBB's guidelines included a statement that discrimination based on sex or marital status impedes the achievement of "the objectives of Federal laws intended to promote sound, economical home financing," ⁴³⁴ and noted that such discrimination, "may violate

433. Data from the Bureau of Labor Statistics show that in 1973 the labor force participation rate for minority wives is 54.0 percent as contrasted with a 41.2 percent rate for nonminority wives. Department of Labor, Marital and Family Characteristics of the Labor Force, March 1973, in press.

434. 12 C.F.R. § 531.

constitutional provisions which guarantee equal protection of the law for all persons." ⁴³⁵ These statements concerning sex discrimination, however, were only advisory and, unlike FHLBB's regulations, could not be enforced. The Board's regulations did not include any reference to sex discrimination but were limited to the Civil Rights Act of 1968 before it was amended to prohibit discrimination on the basis of sex.

The other three Federal financial regulatory agencies have been less progressive. They have indicated merely that they would support a Federal law prohibiting sex discrimination in mortgage financing but state that without a law they have had no authority to enforce such a prohibition upon their regulatees. ⁴³⁶

435. Id.

436. Interview with C. Westbrook Murphy, Deputy Chief Counsel, COC, Dec. 12, 1973; Hood interview, supra note 427; and interview with John E. Ryan, Supervisory Review Examiner, Division of Supervision and Regulation, FRS, Feb. 21, 1974. Wedel letter, supra note 397. In that letter, FDIC stated:

...we felt that in view of the fact that the Civil Rights Act of 1968 nowhere mentioned discrimination based upon sex, we lacked the authority to issue regulations concerning such practices. This question has now been resolved by enactment of the Housing and Community Development Act of 1974. Section 808 thereof prohibited sex discrimination including the discounting of a wife's income by lenders and the Act also amended Title VIII of the Civil Rights Act of 1968 to prohibit sex discrimination in real estate lending.

Therefore, any regulation, which may eventually be issued by the Corporation to implement Title VIII, would contain provisions relating to sex discrimination. Id.

C. Nondiscrimination by Builders and Developers

Section 804 of the Civil Rights Act of 1968 makes it unlawful to discriminate in the sale or leasing of housing. This section applies, of course, to builders and developers who market the dwellings they construct. Nevertheless, FRS, FDIC, and COC continue to maintain that they do not have the statutory authority to require banks under their supervision to impose nondiscrimination requirements on builders and developers to whom they lend money for housing construction. ⁴³⁷ FHLBB alone does not make such a statement, but it still has not issued rules or regulations directing its regulatees to impose nondiscrimination requirements on builders and developers to which they make loans. One reason given for such inaction is that the problems of monitoring its regulatees to ensure their policing of builders and developers would be tremendous. ⁴³⁸

Indeed, such monitoring would be a difficult task, although with cooperation from the other Federal financial regulatory agencies, HUD, the Veterans Administration, and the Farmers Home Administration (FmHA) ⁴³⁹ at the Department of Agriculture, this task could be less onerous. As of April 1974, however, none of the financial regulatory agencies had required banks to insert customer nondiscrimination requirements in their loan agreements with builders and developers.

437. Ryan interview, supra note 436; FDIC response to U.S. Commission on Civil Rights April 1973 questionnaire, contained in letter from Frank Wille, Chairman, FDIC, to Stephen Horn, Vice Chairman, U.S. Commission on Civil Rights, May 25, 1973, and Murphy interview, supra note 436.

438. Telephone interview with Robert Warwick, Deputy Director of the Office of Housing and Urban Affairs, FHLBB, Mar. 7, 1974.

439. HUD requires the builders and developers it assists to develop written affirmative marketing plans. See Chapter I, Department of Housing and Urban Development, Section IVA supra. The Veterans Administration has proposed affirmative marketing plans but has never adopted them. See Chapter III, Veterans Administration, Section IVA infra. The Farmers Home Administration requires builders and developers to market FmHA-approved and assisted Properties affirmatively but does not require written affirmative action plans, 7 C.F.R. § 1822.381 et. seq. (1972).

D. Equal Employment Opportunity by Regulatees

It is important that banks and savings and loan institutions provide equal employment opportunities for minorities and women. Employment discrimination is prohibited by Title VII of the Civil Rights Act of 1964⁴⁴⁰ and Executive Order 11246, as amended.⁴⁴¹ In addition, equal employment opportunity in banks and savings and loan associations is related to the need for furthering the fair housing practices of these institutions. Banking traditionally has been a profession dominated by white males. High level banking officials have been white males and they have tended to establish policies geared to facilitate credit for white males.⁴⁴²

The Federal Home Loan Bank Board is the only one of the four financial regulatory agencies to adopt regulations prohibiting discrimination in

440. The responsibility for enforcing Title VII is vested in the Equal Employment Opportunity Commission. (See U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort -- 1974 -- Employment, Ch. 3 (in preparation).

441. Executive Order 11246, as amended, prohibits discrimination on the basis of race, national origin, sex, and religion by Federal contractors. This order applies to banks and savings and loan associations. The responsibility for enforcing Executive Order 11246 is vested in the Office of Federal Contract Compliance in the Department of Labor. (See U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort -- 1974 -- Employment, Ch. 2 (in preparation)), which in turn, has delegated the responsibility for the enforcement of this order as it applies to banks and savings and loan associations, to the Department of Treasury. On Feb. 25, 1971, the Under Secretary of the Treasury, Charles E. Walker, asked in writing for cooperation from the four Federal financial regulatory agencies by having the agencies check to see if banks and savings and loan associations have on file affirmative action plans. All the agencies agreed to fulfill this function. Telephone interview with David Sawyer, Director, Office of Equal Opportunity, U.S. Department of the Treasury, Apr. 12, 1974.

442. Hartford report, supra note 405.

employment practices.⁴⁴³ All four agencies inquire from those member institutions they examine whether each institution has an affirmative action plan for equal opportunity in employment. If the institution is required to have a written affirmative action plan,⁴⁴⁴ the agencies ask to see it. The agencies forward to the Equal Opportunity Office at the Department of the Treasury⁴⁴⁵ information as to whether the institutions have such a plan on file. They do not evaluate the plans.

443. 12 C.F.R. § 528.7 and § 563.36. These regulations prohibit discrimination on the grounds of race, color, religion, sex, or national origin in hiring, promotion; or conditions of employment. They also prohibit discrimination against anyone because she or he has filed a complaint of discrimination. Telephone interview with William Nachbaur, Associate General Counsel, Office of General Counsel, FHLBB, May 1, 1974.

444. Although Executive Order 11246 applies to all banks and savings and loan associations, only institutions with 50 or more employees must have a written affirmative action plan.

445. See note 441 supra.

IV. The Examination Process

A. General

The purposes of the Federal financial regulatory examinations include insuring safety and stability in loans and investments, upholding competition in the banking community, and making certain that no applicable laws or statutes are violated. Examiners from each of the regulatory agencies review such matters as the condition and performance of regulated institutions, the quality of their operations, and the capacity of management to enforce compliance with Federal laws.⁴⁴⁶ The appraisal of an institution's loans and lending policies, its investments and investment policies, and the ability of its management constitute the most exacting phase of the examination process.⁴⁴⁷

In the course of the examination, the examiners make a physical verification of the institution's assets and appraise their quality. They also review the institution's capital adequacy and liquidity and assess its internal system of credit and controls.⁴⁴⁸

⁴⁴⁶. See Department of the Treasury, Office of the Comptroller of the Currency, Comptroller's Handbook of Examination Procedure, September - March 1973; Ryan interview, supra note 436. Cecilia M. Gerloff, Acting Director, Office of International Home Finance, Federal Home Loan Bank Board, Editor, The Federal Home Loan Bank System 53 (1971). Ms. Gerloff has since become a senior financial analyst in the Board's Office of Finance.

⁴⁴⁷. See, for example, Comptroller of the Currency, 1971 Annual Report, and Federal Deposit Insurance Corporation, Annual Report 1972.

⁴⁴⁸. Id. and Gerloff, supra note 446; Board of Governors of the Federal Reserve System, 59th Annual Report 1972.

With the exception of FHLBB, the established pattern for bank and savings and loan association examinations by the Federal financial regulatory agencies is that they be conducted onsite and at least annually⁴⁴⁹ on an unannounced basis.⁴⁵⁰ The number of examiners needed to examine an institution varies with the size of the institution. For example, a large bank, such as the Riggs National Bank in Washington, D.C., or the Chase Manhattan Bank in New York City, may necessitate the use of as many as 200 examiners over a time span of several weeks. In contrast, three examiners can examine a small rural bank in about 1 week.⁴⁵¹

⁴⁴⁹. For example, the National Bank Act requires that all national banks be examined twice in each calendar year by the Comptroller who may waive one such examination in a 2-year period or may have such examinations made more frequently, if necessary. COC, Annual Report (1971) supra note 447. The Federal Reserve Board conducts at least one regular examination during each calendar year with additional examinations if necessary. Board of Governors of the Federal Reserve System, supra note 448 at 208.

⁴⁵⁰. Interview with Tom O'Neill, Head, Unit of Consumer Affairs, Division of Bank Supervision, FDIC, Jan. 14, 1974, and Ryan interview, supra note 436. The Director of HUD's Office of Civil Rights Compliance and Enforcement expressed doubt as to whether actual "surprise" examinations were conducted by any of the agencies. Interview with Kenneth Holbert, Director, Office of Civil Rights Compliance and Enforcement, Department of Housing and Urban Development, Feb. 12, 1974. FHLBB examinations are not made on an unannounced basis. Platt letter, supra note 412.

⁴⁵¹. Ryan interview, supra note 436.

B. Fair Housing Examination

1. Office of the Comptroller of the Currency

Although Title VIII of the Civil Rights Act of 1968 is applicable to the banks COC supervises, the Office of the Comptroller of the Currency has included no civil rights review in the examination process. Its examiner's manual, contrary to the obligation placed on COC under Title VIII, contains no mention of the examiner's fair housing responsibilities,⁴⁵² nor does it instruct the examiners to check for the equal opportunity lender poster or to monitor the banks' advertising as required by COC's policy statement of May 1972.⁴⁵³

2. Federal Deposit Insurance Corporation

The FDIC examiners' fair housing activity is largely limited to determining if the bank has made proper use of advertising and lobby notices of nondiscrimination, although examiners are instructed

⁴⁵²The manual used by the national bank examiners outlines what is to be examined and the methods of examination. The manual informs the examiners that all national banks with 50 or more employees are required to file an Equal Employment Opportunity (EEO) Report with the Treasury Department and the Equal Employment Opportunity Commission, and that these banks are also responsible for preparing a written affirmative action program. The examiner must record in the examination whether or not the bank has filed the EEO Report and whether the bank has such an affirmative action plan. Office of the Comptroller of the Currency, U.S. Treasury, Comptroller's Handbook of Examination Procedure, Sept.- March 1973.

453. Murphy interview, supra note 436.

to report any violations of Title VIII which they observe. While the requirements for these notices have been in effect since December 1971,⁴⁵⁴ it was not until 1973 that FDIC included reference to these requirements in its Examiner's Manual.⁴⁵⁶

3. Federal Reserve System and Federal Home Loan Bank Board

Both the FRS and the FHLEB confine their examination of

454. FDIC stated:

Our examiners have been instructed, initially in connection with a letter addressed to the Chief Executive Officers of all insured nonmember banks dated April 25, 1969, to determine, if possible, whether banks under our jurisdiction are violating section 805 of Title VIII of the Civil Rights Act of 1968. To quote in pertinent part from the above cited April 25, 1969 letter:

"Although primary authority and responsibility for administering the Act is placed in the Secretary of Housing and Urban Development (Section 808(a)), the Federal Deposit Insurance Corporation under the statute also has a responsibility to require compliance with the applicable provisions of the Act by those financial institutions under its jurisdiction. Accordingly, it is expected that all State nonmember insured banks will comply with the letter and spirit of this Federal law. The Corporation's examiners have been instructed to include in their reports any apparent violations of the Act disclosed during the course of any examination." Wedel letter, supra note 397.

455. See FDIC Policy Statement, supra note 400.

456. FDIC recently noted that:

...the Statement of Policy under consideration here was first issued in December of 1971 and was amended and superseded effective in May of 1972. Copies of both statements were forwarded to all regional offices immediately following their issuance so that examiners might monitor compliance with their provisions. Our examiners are instructed to seek out apparent violations immediately after a regulation or policy statement becomes effective. Wedel letter, supra note 397.

enforcement of Title VIII to the use of fair housing questionnaires ⁴⁵⁷

which were modeled after a questionnaire created in conjunction with HUD. ⁴⁵⁸

The questionnaire is completed by the examiner, both from her

457. The FHLBB questionnaire is slightly more inclusive than that used by the FRS. It is reproduced on p. 171. The questions which are also used by FRS are marked with an asterisk. Additional FRS fair housing questions are included at the bottom of p. 172.

458. In 1971, HUD developed a questionnaire for savings and loan associations and banks to determine the policies and practices lenders use in making residential loans and to ascertain the degree to which discrimination in lending exists. The results were computed in 1972 for FHLBB-examined institutions (savings and loan associations). The results for COC-examined banks (national banks) and FDIC-examined banks (State nonmember banks) were never computed. FRS computed the results for its examined banks (State member banks). HUD's analysis of the responses from 582 savings and loan associations in the 50 cities with the largest minority populations indicated that 39 percent had never provided notice to customers that loan applications are considered without regard to race; 18 percent refused to make residential loans in one or more areas of high concentrations of minority citizens. Seventeen percent of the savings and loan associations admitted to considering the racial and ethnic characteristics of neighborhoods and 15 percent considered the proximity of low-rent or public housing projects. Twenty-nine percent of the associations were making fewer than 5 percent of their loans to minorities, although doing business in cities having from 16-74 percent minority population. Statistics on savings and loan management were also illustrative: 87 percent had no minority board or loan committee members. Data from individual cities were even more telling: In Washington, D.C., blacks and persons of Spanish speaking background were 61.7 percent of all homeowners (data for other minority homeowners are not published by city by the Bureau of the Census) but only two of the savings and loan associations responding stated that they made more than 25 percent of their loans to minorities. In Detroit, where blacks and persons of Spanish speaking background were 34 percent of all homeowners, no savings and loan association reported making more than 25 percent of its loans to minorities and only 2 exceeded 15 percent. U.S. Department of Housing and Urban Development, Office of Equal Opportunity, Private Lending Institution Questionnaire, Initial Report on Returns for 1972.

FHLBB QUESTIONNAIRE

CIRCLE FOR APPROPRIATE ANSWER WHERE INDICATED; OTHERWISE, SUPPLY DATA REQUESTED.

Name of Officer(s) interviewed _____
Title(s) _____

In the opinion of the officer interviewed:

- | | | |
|---|-------|-------|
| *1. Are Loan Personnel and Executive Management familiar with the relevant provisions of Title VIII of the Civil Rights Act of 1968? | YES | NO |
| 2. Are Loan Personnel and Executive Management familiar with Part 528 of the Bank System Regulations? | YES | NO |
| *3. Is a proper Equal Housing Lender poster located in a conspicuous place in each of the association's offices? | YES | NO |
| *4. Does association advertising comply with Section 528.4 of the Bank System Regulations and with Memorandum R-30? | YES | NO |
| 5. Does the association have an established written policy concerning non-discrimination in lending? If so, attach a copy to this questionnaire. | YES | NO |
| *6. What is management's estimate of the population in the association's primary loan service area? If the association management believes it operates in more than one primary loan service area, due to the location of its offices, or for other reasons, then this question as well as questions 7, 8, 9, 10 and 11 should be answered separately for each such area in a separate attached memorandum. | _____ | _____ |
| *7. What is the estimated minority group population of such primary loan service area, or areas if more than one? | _____ | _____ |
| *8. What is the estimated number of real estate loans made by the association during the past calendar year? | _____ | _____ |
| *9. What is the estimated number of real estate loans made to minority group borrowers during the past calendar year? | _____ | _____ |
| *10. What is the estimated number of real estate loan applications received during the past calendar year? | _____ | _____ |

* Federal Reserve System Questionnaire contains comparable questions concerning banks.

FHLBB QUESTIONNAIRE (continued)

- | | |
|--|--------|
| *11. What is the estimated number of real estate loan applications received from minority group members during the past calendar year? | _____ |
| 12. Within management's knowledge, have any complaints of alleged discrimination been filed against the association? (If the answer is YES, obtain from the attorney a letter setting forth all pertinent facts and the potential liability to the association.) | YES NO |
| *13. Are there neighborhood or other areas where minority group members are concentrated, in such primary loan service areas, in which the association does not make real estate loans? If so, specify the areas and reasons for such inactivity. | YES NO |
| *14. Does the association refuse to make loans to members of minority groups seeking to purchase property in areas where there are no or few minority group residents? If so, specify area and reasons for such refusal. | YES NO |
| *15. Does the association administer loan rates, terms, fees, modifications, late charges, etc., without bias toward minority groups? | YES NO |
| 16. Does the association have an established formal policy concerning non-discrimination in employment? | YES NO |
| *17. If it is required to do so, has it developed an Equal Opportunity Affirmative Action Compliance Program? | YES NO |
| 18. Are employees recruited, hired, placed, trained, transferred, discharged, recalled, and offered advancement opportunities without regard to race, color, creed, national origin or sex? | YES NO |
| 19. Do the employees of the association generally reflect the minority composition of the areas in which the association's offices are located? | YES NO |

Additional FRS Questions:

Are there neighborhoods or other areas of high concentrations of minority group members in which the bank refuses to make real estate loans? If so, specify the area and reasons for such refusal.

Are there any residential areas with no or few minority group members within the bank's primary service area where the bank has no, or relatively few, residential real estate loans? If so, specify areas and reasons for such.

*Federal Reserve System Questionnaire contains comparable questions concerning banks.

or his personal observations of the bank and its records and from information supplied by bank and savings and loan management. Many of the questions may be answered with a simple "yes" or "no." Thus, for example, the examiner has merely to record whether or not the bank's loan officers and executive management are aware of the provisions of Title VIII of the Civil Rights Act of 1968. The examiner does not have to determine how sophisticated this knowledge is, nor does he or she have to indicate what evidence was used to show the bank staff's awareness or lack of it.

The questionnaires seek information as to whether the Title VIII poster is prominently displayed and whether the bank includes a statement as to its nondiscriminatory practices in all advertising of real estate loans. There is no instruction that the examiner must review a sampling of advertisements, however, and thus it is possible that the examiner will determine if such statements are used in advertising merely by asking one of the bank's officials.

459. A bank official may know that Title VIII prohibits discrimination in the sale or rental of housing without being aware that race, ethnic origin, and religion are the prohibited bases for discrimination; similarly, the bank official may be unaware of what constitutes discrimination in mortgage finance or what steps are necessary for effective implementation of Title VIII. For example, the official may be unaware that the absence of any Spanish speaking bank officials in a bank in areas such as San Antonio, Los Angeles, or New York, with large numbers of persons of Spanish speaking background, may act as a deterrent to those persons of Spanish speaking background who might wish to apply for a loan. The official might not realize the necessity for taking affirmative steps to encourage loan applications from minorities, who have frequently been discouraged by banks from making such applications because of discriminatory mortgage lending policies and practices.

The Federal Home Loan Bank Board, but not the Federal Reserve Board, asks if the institution being examined has an established written policy concerning nondiscrimination in lending and asks the examiner to obtain a copy if such a policy exists.⁴⁶⁰ Both questionnaires ask whether there are neighborhoods or other areas of high concentrations of minority group members in which the bank either refuses to make or in fact has made no or few real estate loans; if the bank refuses to make loans to members of minority groups seeking to purchase property where no or few minorities reside; and if loan terms⁴⁶¹ are set without regard to the borrower's race, color, religion, or national origin. The FRS also asks if there are areas with no or few minority group members where the bank has no or few loans. Again, these questions require only "yes" or "no" responses, although explanatory material is solicited where the response might indicate a violation of Title VIII. Bank officials often know the "appropriate" responses to these questions⁴⁶² and without racial and ethnic data it is difficult to determine if loans to nonminorities are made on the same basis and in the same areas as to minorities.

⁴⁶⁰. In addition, the questionnaire solicits information about the employment practices of the savings and loan association being examined. The equal employment responsibilities of the financial regulatory agencies are discussed at pp. 164-165 *supra*.

⁴⁶¹. Loan terms include amount, interest rate, and duration of loan.

⁴⁶². Comments made by examiners at FRS Training School for Assistant Examiners, in Washington, D.C., Sept. 27, 1973.

The questionnaires ask for estimates, both for minorities⁴⁶³ and for all persons, of the population residing in the bank's primary service area,⁴⁶⁴ of the number of applications received for residential real estate loan applications, and of the number of residential real estate loans made. The primary service area is defined by the regulatory agencies as the principal geographic area in which the bank makes loans. It is possible that a bank or savings and loan association would define its primary service area to exclude those areas with a high proportion of minority residents. If so, failure to make loans to minorities might not be uncovered by the FRS and FHLBB questionnaires. If the institution failed to make loans to minorities, the examiner would be likely to excuse that fact on the grounds that there were no minorities in the service area. Purposefully defining the primary service area to exclude minority areas would of course be discriminatory. If minorities reside within the same proximity to the institution or its branch offices as do nonminorities, the regulatory agencies should insist that the primary service area be defined to include them.

The utility of the questionnaires is limited because they rely on estimates, which are no substitute for the collection, maintenance, and analysis of hard data on the race, ethnic origin, and sex of

⁴⁶³. The FRS and the FHLBB define minority group as "Negro/Black, American Indian, Spanish American, Oriental or other minorities (such as Eskimo)."

⁴⁶⁴. The Federal Home Loan Bank Board makes provision for obtaining data on all service areas where the bank officials believe that the bank operates in more than one primary loan service area.

the population, loan applicants, and loan recipients.⁴⁶⁵ Nonetheless, even in the absence of racial and ethnic data, there is some information which could be obtained by examiners to assess the bank's nondiscrimination posture. For example, the examination could be used to obtain the following types of information:

-- The criteria used by the institution's loan committee in evaluating applications, including any criteria based on information which is not on the application form. The examiner should ensure that each criterion used is nondiscriminatory. Such criteria as the appearance of the applicant, the character of her or his job (beyond the salary), or whether the applicant is a woman, are not relevant to the ability to repay a loan but might result in the disproportionate rejection of minorities or women. Similarly, excluding income from a part-time job or a wife's income in assessing a loan application tends to discriminate more severely against minorities, since the percentage of minorities with income from two salaries is greater than for nonminorities.⁴⁶⁶ An understanding of these procedures is necessary in order to determine if minorities or women are being screened from the mortgage finance process prior to the submission of a written application.

⁴⁶⁵. The need for racial and ethnic data is discussed further at Section IV infra.

⁴⁶⁶. Searing, supra note 403.

-- The extent to which previously established credit by minorities or women is taken into consideration in making a loan. Many minorities and women may have had difficulty in obtaining satisfactory ratings because of discriminatory credit practices.⁴⁶⁷ Moreover, some institutions may refuse to make loans to persons who have never previously purchased a home. Since many minorities applying for loans for the purpose of purchasing a home are first-time home buyers, this practice may be discriminatory.

-- A description of the manner in which the bank handles any fair housing complaints it receives and data on their volume and nature. Examiners should also obtain information on the number and nature of any fair housing complaints against the bank or against builders and developers it finances which have been filed with public agencies charged with furthering or enforcing State and local civil rights laws.

⁴⁶⁷. See S.N. Sesser, supra note 406.

-- A list of any affirmative steps taken by banks to ensure fair housing, such as the collection and use of racial and ethnic data and the refusal to deal with builders and developers who discriminate. If such steps have been taken, they will provide evidence of a bank's commitment to equal opportunity in housing.

The questionnaires have been of little use in uncovering discriminatory mortgage finance practices. In fact, neither the Federal Reserve Board nor the Federal Home Loan Bank Board has ever interpreted the findings of the questionnaire as revealing discrimination, even though the agencies indicated that some responses required further questioning.⁴⁶⁸ For example, some banks acknowledged that they refuse to make loans in areas of high minority group concentration. However, further responses

468. Warwick interview, supra note 438 and Ryan interview, supra note 436,

in justification of refusing these loans were accepted by FRS as sound reasons for denial. Two examples of reasons given were (1) that insurance for the dwelling to be purchased was unavailable from private insurance companies⁴⁶⁹ and (2) that the area was due for urban renewal.

Such excuses for refusal to make loans to minorities or in minority areas are often viewed by examiners as being supported by sound economic principles. They are, however, too often tools for maintaining the residential segregation which is characteristic of this Nation. It has been asserted that insurance companies have discriminated against minorities and inner city residents in determining whether or not to provide insurance and in setting the conditions for insurance.⁴⁷⁰ Banks frequently provide significant benefit to insurance companies,⁴⁷¹ and banks should use this leverage to refuse to deal with insurance companies which discriminate. To do anything

469. Banks and savings and loan associations require that the borrower obtain fire insurance on the dwelling to be purchased with the loan. Thus, the institution's investment will be protected in the event that fire damage so diminishes the value of the dwelling that the borrower ceases mortgage payments.

470. See Sesser, supra note 406, for evidence that racial and ethnic factors have been considered by insurance companies in their decisions to provide insurance. Major insurance companies have considered such factors as crowded living conditions, sanitation of the applicants' residences, and personal reputation. The consideration of these factors may work to the detriment of minority loan applicants since through stereotyping they are often attributed to minorities. See also President's National Advisory Panel on Insurance in Riot-Affected Areas, Meeting the Insurance Crisis of Our Cities (January 1968). Meeting the Insurance Crisis of Our Cities discusses the reluctance of insurance companies to accept applications for insurance in the inner cities.

471. For example, banks often secure insurance for borrowers to cover the mortgaged property and thus perform the function of obtaining customers for insurance companies.

less is to pass on the insurance companies' discrimination to the banks' customers and thus to act in violation of Title VIII.

Similarly, an examiner should not accept without further investigation a blanket statement by a bank or savings and loan association that no loans will be made in the minority residential area because that area is scheduled for urban renewal. Although a financial institution would understandably not want to provide a mortgage for a home that was going to be razed, the examiner should, for example, determine if all homes in the minority area are scheduled to be razed and what effect the urban renewal will have on property values of homes which will be left standing. The bank should then be required to give full consideration to any requests for mortgages on homes within the minority area which will remain the same or increase in value during the course of the urban renewal project.

C. Examiner Training

1. Office of the Comptroller of the Currency

The COC conducts formal training courses for its examiners several times yearly.⁴⁷² Since COC examiners have been assigned no fair housing responsibility, no fair housing training is afforded the national bank examiners. The responsibilities of the national banks under Title VIII are not mentioned at any point in the course.⁴⁷³

2. Federal Deposit Insurance Corporation

The FDIC examiner training program includes three different courses: for newly hired assistant examiners, senior assistant examiners, and recently appointed examiners. In 1973, one course, for newly hired assistant examiners, lasted 3 weeks.⁴⁷⁴ A second course, conducted for senior assistant examiners, lasted 2 weeks.⁴⁷⁵ A third course, for recently appointed examiners,⁴⁷⁶ lasted 3 weeks in 1973.⁴⁷⁷

472. Murphy interview, supra note 436.

473. Id. See also, Comptroller's Handbook of Examination Procedure, supra note 446.

474. This course was repeated five times during the year. The new examiners often receive on-the-job training prior to participation in these programs.

475. This course was repeated five times during the year.

476. This course was repeated 10 times during the year.

477. There is no assurance that the three courses given in 1973 will be repeated on the same schedule in 1974. Telephone interview with Tom O'Neil, Head, Unit of Consumer Affairs, Division of Bank Supervision, FDIC, Mar. 12, 1974. FDIC recently noted:

Actually the examiner training program is far more extensive, continuing for a minimum three-year period before a candidate achieves the rank of commissioned examiner. The courses mentioned account for only a small part of an examiner's training.

Further, there are numerous provisions made available by the Corporation for the continuing education of commissioned examiners, including training and information in areas such as fair housing. Wedel letter, supra note 397.

All examiners and assistant examiners are trained to check the quality of a bank's assets, the effectiveness of its internal management controls, and the bank's compliance with pertinent banking laws and regulations.⁴⁷⁸ The examiners are trained first to examine thoroughly the bank's records and then to conduct followup questioning with the bank's management.

There is no civil rights presentation in the course for assistant examiners. Title VIII is noted briefly in the course for newly hired examiners and in the course for those with full examiner status. The presentation, which takes 10 to 15 minutes, consists of a discussion of what would constitute a violation of law or a circumvention of the Corporation's policy statement.⁴⁷⁹ It covers both fair housing and equal employment opportunity.⁴⁸⁰ The publication Equal Opportunity in Housing, an exhaustive compilation of laws, regulations, and decisions in the area of fair housing published by Prentice-Hall, Inc.,⁴⁸¹ is distributed to all examiners. There is no review of its contents in the training program.

478. FDIC Annual Report 17 (1973).

479. The policy statement is discussed on pp. 147-148 supra.

480. Telephone interview with Tom O'Neill, Head, Unit of Consumer Affairs, Division of Bank Supervision, FDIC, Apr. 18, 1974.

481. Hood interview, supra note 427.

3. Federal Reserve System

Thrice yearly, the Board conducts a course for newly hired assistant examiners. This course, which has a maximum enrollment of 40, meets for 3 weeks and focuses on methods and procedures employed in operating a commercial bank. A course for examiners with 3 or 4 years of practice is offered twice yearly and lasts 4 weeks. The examiners are instructed in credit procedures, loan portfolio examination, and the determination of soundness of loans.⁴⁸²

Although fair housing is a regular part of the Board's bank examiner training program, only an hour of each training session is devoted to such issues. The examiners are presented with a copy of Section 805 of the Civil Rights Act of 1968. There is a brief presentation on the act by a member of the FRS legal staff and a lecture on three different types of discrimination in real estate lending: (1) the outright refusal to make loans to minorities; (2) redlining; and (3) the refusal to make loans to minorities in areas which have a low concentration of minorities. The examiners in each course discuss these types of discrimination as well as possible remedies. The examiners also discuss the Civil Rights Questionnaire. In the fall of 1973, the examiners were informed by their instructors that if racial data keeping is adopted by FRS, they will be responsible for its implementation.⁴⁸³

Overall, the course is superficial,⁴⁸⁴ as it is limited to a discussion

482. Two hundred and twenty-five examiners and assistant examiners have been trained since the course was started in 1971.

483. As of the spring of 1974, a pilot racial and ethnic data collection program has been instituted. See Section IV infra.

484. The Commission made recommendations concerning FRS's training program in a letter from John Hope, III, Director, Office of Program and Policy Review, U.S. Commission on Civil Rights, to Jack M. Egerton, Assistant Director, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System. Feb. 14, 1974.

of overt discrimination. The examiners could be trained not only to uncover both overt and subtle discrimination, but also to evaluate possible justifications given by banks for potentially discriminatory actions.⁴⁸⁵

Exposure to additional fair housing material during the training program would also be beneficial to the examiners. Trainees could be provided literature on judicial and administrative interpretations of Title VIII. For example, copies of Equal Opportunity in Housing would be helpful.⁴⁸⁶ Further, speakers could be invited from such Federal agencies as the Departments of Justice and Housing and Urban Development. These sources would familiarize the examiners with the requirements of Title VIII and inform them of the many traditional bank practices which can operate to exclude minorities from obtaining mortgages.

485. For example, see pp. 178-179 supra, for a discussion of the spurious justifications provided by banks for failure to make loans in minority residential areas.

486. This was provided to FDIC examiners along with a copy of the transcript of the hearing before the Federal Deposit Insurance Corporation on proposed fair housing lending practices regulations held December 19 and 20, 1972. See pp. 156-158 supra.

The examiners could also be informed that it is appropriate to obtain information not only from interviews with the bank's management, but also from the loan officers. The training session could make clear to examiners that most banks are not likely to receive a perfect score on a thorough examination. In some cases, clearly identifiable deficiencies will be easily resolved on a voluntary basis. In other cases, it will be necessary for FRS to put pressure on the banks to come into compliance with Title VIII.

4. Federal Home Loan Bank Board

The 8-day training programs for new examiner staff which the Board conducts are held several times yearly.⁴⁸⁷ The civil rights component in these programs is only 30 minutes in duration. It is presented by field examiners or assistant chief examiners and its contents vary from time to time. Mostly, the time is spent in keeping the examiners apprised of new FHLBB rules and regulations in this area. A discussion of FHLBB's non-discrimination questionnaire also takes place.⁴⁸⁸

487. These programs are conducted by the Board's Office of Examination and Supervision.

488. Telenhone interview with Kenneth Butler, Employee Development Specialist, Office of Examination and Supervision, FHLBB, Mar. 6, 1974. The new examiners spend approximately 2 months in the field before participating in these training programs, so much of the training they receive is on-the-job. Id.

In addition to these cursory training programs for new examiners in May and June of 1972, FHLBB conducted a one-time, indepth training program in discriminatory lending and employment practices in which 400 of its 600-member examiner staff participated. The objectives of the program were to educate the examiners as to the legal powers the Board has to effect compliance with its rules, regulations, and policies, and as to the position, tactics, and responsibilities of other agencies such as the Department of Housing and Urban Development, the Department of the Treasury, and the Department of Justice regarding discrimination in lending and employment.

The training was conducted in two phases, the first being six 2-day seminars throughout the country providing the examiners with information on the legal framework of FHLBB's regulatory structure, the Board's position with regard to discrimination, and the means of detecting and preventing discrimination. This phase utilized speakers and discussion from savings and loan associations, several offices within the Board, and other Federal agencies including HUD and the Departments of Justice and

489. These seminars were conducted in Atlanta, Boston, Dallas, Chicago (twice), and San Francisco.

490. These included the Office of Examination and Supervision, Office of General Counsel, and Office of Housing and Urban Affairs.

491. HUD assisted in designing this training course. It instructed FHLBB examiners as to HUD's investigation and conciliation regulations. HUD also distributed its field operations handbook on how to conduct investigations. (See HUD Title VIII Field Operations Handbook, (1971)). Interview with Kenneth Holbert, Director, Office of Civil Rights Compliance and Enforcement, HUD, Feb. 12, 1974.

Treasury. The second phase consisted of twelve 2-day work sessions which incorporated the techniques of particular case studies and role playing in order to enable the examiners to better understand the dynamics of discrimination and ways in which to effectively enforce compliance with equal opportunity laws in employment and lending.

It is necessary that all of the financial regulatory agencies conduct this type of program for their examiners. Although in the summer of 1972 FHLBB indicated that it would provide this training to the remaining 200 examiners, the program has not been repeated.

492. Federal Home Loan Bank Board, Office of Examination and Supervision, Discrimination Training Plan, "Plan, Objectives, Agenda, Speakers, Logistics," May 1972. A pilot session was held in Washington, D.C., on May 4-5 for the first phase of the program for a small audience of examiners. These examiners served as moderators in the second phase. Id.

493. FHLBB felt that the examiners who had participated in the program could train other examiners as to what they had learned in these sessions. Telephone interview with Francis Passarelli, Assistant Deputy Director of the Office of Examination and Supervision, FHLBB, Mar. 8, 1974.

IV. Racial, Ethnic, Sex, and Property Location Data

The most significant step the four Federal financial regulatory agencies have taken during fiscal years 1973 and 1974 has been their establishment of a 6-month trial program of racial, ethnic, and sex data collection in selected areas throughout the country. This trial program utilizes three procedures for data collection, each to be employed in six Standard Statistical Metropolitan Areas (SMSA's). Under the first procedure, data are to be obtained on sex, marital status, and race or ethnic origin of the applicant and spouse. Under the second procedure data are obtained only on the race or ethnic origin of the applicant. Under the third procedure, financial information

494. This program began on June 1, 1974. The Federal Home Loan Bank Board published notice of the program, 39 Fed. Reg. 12110 (Apr. 3, 1974). The Office of the Comptroller of the Currency published notice of this program at 39 Fed. Reg. 12363 (Apr. 5, 1974). As of April 17, 1974, the FRS and the FDIC had not published notice of the program in the Federal Register. Both issued press releases on April 1, 1974, on the program. Federal Reserve Press Release, Apr. 1, 1974, untitled, and FDIC News Release, "FDIC Joins Other Agencies in Test Program Using Racial and Ethnic Questionnaires to Defeat Unlawful Discrimination in Mortgage Lending," Apr. 1, 1974.

495. The first procedure is being used in Atlanta, Ga., Buffalo, N.Y., Chicago, Ill., San Antonio, Tex., San Diego, Cal., and Washington, D.C.

496. The categories in this and the third procedure are single, married, divorced, and widowed.

497. The categories for this and the other two procedures are American Indian, Asian, Black/Negro, Spanish Descent, White, and Other.

498. The second procedure is being used in Baltimore, Md., Galveston-Texas City, Tex., Jackson, Miss., Jersey City, N.J., Tampa-St. Petersburg, Fla., and Vallejo-Fairfield-Napa, Cal.

499. The third procedure is being used in Bridgeport, Conn., Cleveland, Ohio, Memphis, Tenn., Montgomery, Ala., Topeka, Kan., and Tucson, Ariz.

is requested, such as the combined income of the applicants, the amount of their debts and assets, and the size of loan requested, as well as data on race or ethnic origin, marital status, and sex. In all cases, this information is to be obtained from the loan applicant. The applicants are informed that the information on race and ethnic origin is requested as part of a program to assure equal treatment under the Civil Rights Act of 1968.

In addition, the census tract in which the property to be purchased is located must be recorded by the lending institutions using the first and third procedures, and the zip code of the subject property is required in the other procedure. This will enable the Federal financial regulatory agencies to determine from census data the racial and ethnic composition of the area in which the home is to be purchased and thus ascertain if the regulatees are continuing to make loans to minorities only in minority areas and to non-minorities only in nonminority areas. Moreover, all information is required to be stated in such a way that it could be later correlated with whether or not the loan application was approved, thus enabling an objective determination of whether or not the lending institutions' acceptance or rejection of loan applications has been discriminatory.

500. A census tract is a division of a city or surrounding area for statistical purposes. The average census tract has about 4,000 residents.

501. The forms used in the first and second procedures must be placed in the applicant's loan file if the application is approved, or retained for 3 years along with the application and supporting materials if the application is rejected. The form used in the third procedure contains a space for a notation to indicate whether the application was rejected.

This trial program, which is only a beginning, has been much delayed
502

in its development. As early as 1970 this Commission recommended that

the financial regulatory agencies collect racial and ethnic data on loan
503

applications. In March 1971, the Center for National Policy Review, on

behalf of 13 public interest organizations, filed petitions requesting

each agency to institute racial and ethnic data collection by its regulatees.
504

502. From December 1972 until March 1974, all of the regulatory agencies have been involved in reviewing the need for racial and ethnic data collection. The FDIC hearing addressed this issue. (See note 425 *supra*.) Members of FRS's staff also participated in the 1972 FDIC hearing, and subsequently initiated discussions with the other financial regulatory agencies concerning collection of racial, ethnic, and property location data. The Federal Reserve System, as well as the other agencies, has attempted to identify various methods that could be used to make civil rights monitoring more effective. For this purpose, the System obtained census tract data to study the feasibility of analyzing loan data to detect discriminatory lending patterns. The System's examiners have been extremely critical of a data collection requirement, contending that they are already overextended without such a requirement, that they have too many statutes to enforce, that they are not sociologists, and that they have insufficient time for their equal opportunity duties. Interview with Mr. John McClintock, Assistant Director, Division of Supervision and Regulation, FRS, Aug. 22, 1973. The Office of the Comptroller of the Currency, too, has been critical of racial and ethnic data collection but has studied various methods of collecting such data.

The FHLBB originally proposed racial-ethnic data collection in its regulations. In reaction to the proposed regulations FHLBB received about 200 letters of protest from Federal Home Loan Bank member institutions. Although FHLBB never completely discarded the possibility of collecting these data, it was resistant to requiring their collection without corresponding requirements by the other Federal financial regulatory agencies, since it did not want to place savings and loan associations at a competitive disadvantage. Warwick interview, *supra* note 438.

503. U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort 360 (1970).

504. See note 425 *supra* for a discussion of the petitioners' requests.

V. Complaints

Pursuant to an agreement with the Department of Housing and

Urban Development, the equal housing lender poster which is required

to be on display in the lobby of Federal and State banks and savings

and loan associations directs that complaints of housing discrimination

be made directly to HUD. HUD does not routinely notify any of

the Federal financial regulatory agencies of the number of complaints
505

it has received against their member institutions. Some complaints

have been forwarded directly by complainants to the regulatory agencies

rather than to HUD, and HUD sometimes refers complaints to the regulatory

agencies. These are generally processed promptly by the regulatory

agencies themselves.

A. Office of the Comptroller of the Currency and Federal Reserve System

As of early 1974 neither the Federal Reserve Board nor the Office of

the Comptroller of the Currency had received any complaints against

505. Holbert interview, *supra* note 491. HUD does, however, occasionally inform regulatory agencies of an isolated mortgage finance complaint.

their regulatees alleging racial, ethnic, or religious discrimination⁵⁰⁶ in lending for residential purposes. Neither of these agencies had checked with HUD to determine if any housing complaints had been filed against the institutions they regulate. Neither of the regulatory agencies had any agreement with HUD under which HUD would notify them of any complaints of discrimination. Nonetheless, COC's Deputy Chief Counsel stated that he was under the impression that HUD would automatically notify COC if any complaints against national banks were⁵⁰⁷ filed with HUD.

B. Federal Deposit Insurance Corporation

Investigations of complaints are normally handled by FDIC's regional⁵⁰⁸ offices with assistance from the Legal Division. Complaints are also sometimes forwarded to the Unit of Consumer Affairs in the Division of Bank Supervision in the central office, which may then coordinate the handling of the complaint. If, after reviewing a complaint, the unit finds it worthy of administrative proceedings, it is sent to the General Counsel for⁵⁰⁹ action.

506. Telephone interview with C. Westbrook Murphy, Deputy Chief Counsel, COC, Mar. 8, 1974; and Ryan interview, supra note 436. FRS routinely contacts the 12 Federal Reserve Banks to inquire if they have received any fair housing complaints, but up to February 14, 1974, they had received none.

507. 1973 Murphy interview, supra note 436.

508. Wedel letter, supra note 397.

509. O'Neill interview, supra note 550.

The unit has on file six civil rights complaints dating from 1969 through 1973.⁵¹⁰ Two of the six complaints were referred directly to it by regional offices. One complaint, dated June 7, 1973, was initially lodged with the Texas Department of Banking and was then forwarded to the unit. The complainant, a black, alleged that he was refused refinancing of some land he owned and stated that he saw no justifiable reason for being denied that loan.

This complaint was reviewed by the General Counsel. The General Counsel concluded that it was "beyond purview of this Department to order a State bank to fund any loan application." Moreover, since there was no dwelling on this land, the Office of General Counsel determined that this complaint was not within the jurisdiction of Title VIII.

FDIC's view of this complaint was unjustifiably narrow. Admittedly, this case demonstrates the fact that no Federal statute sufficiently prohibits discrimination in lending. Nonetheless, if the discrimination which was alleged did in fact occur, it would have been a violation of the Constitution. Further, the Civil Rights Act of 1866 provides that "all citizens of the United States shall have the same right, in every State and Territory, as is enjoyed

510. Until January 1974, the unit had not filed these civil rights complaints separately from their other complaints. The unit did not trace patterns of discrimination which called for affirmative action in any insured banks, individually or as a whole. This Commission was informed that as of January 14, 1974, the civil rights complaints would be filed separately. O'Neill interview, supra note 450. In October 1974, this Commission was informed that:

The Consumer Affairs Unit has separated the complaints received by it from other correspondence into a single file. However, even under the old filing method the Consumer Affairs Unit had ready access to specific complaints received by it and also knew both the number and content of the civil rights complaints. Wedel letter, supra note 397.

by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." It is in the interest⁵¹¹ of FDIC to determine whether or not the alleged illegal action occurred, and the Federal Deposit Insurance Act, which created the Corporation,⁵¹² provides that drastic measures are available to it if a bank engages in "an unsafe or unsound practice." If such complaints as this are generally left uninvestigated, then it is impossible for FDIC to judge whether banks are engaging in the unsound practice of failing to make loans to persons solely on the basis of race. Moreover, FDIC should have informed the complainant of the right to bring a private suit, rather than merely indicating that it could be of no assistance.⁵¹³

A second complaint which demonstrates the laxity of the Corporation in arresting discriminatory practices is that of a couple from Columbus, Ohio, dated April 23, 1973, which alleged racial discrimination in home finance. A copy of the couple's complaint was forwarded to the unit by the Housing Opportunity Center of Metropolitan Columbus which expressed the opinion that the loan was being denied because it was for a home in

511. 42 U.S.C. § 1982 (1971). Although the language of this act was available for many decades, it was not applied for the fullest protection of the rights of minorities until Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968). FDIC does not concur in this Commission's conclusion that the decision in Jones v. Mayer may have applicability to this situation. Wedel letter, supra note 397.

512. FDIC sanctions are discussed further in Section VI.

513. In contrast to the actions taken by FDIC in this case, HUD staff are instructed to inform complainants of their right to sue in Federal district court and of organizations which may assist them in this effort. HUD, Title VIII Field Operations Handbook (1971). FDIC stated:

...as a matter of practice, the Corporation frequently advises persons who complain to it of various problems encountered with insured banks or banks under its direct supervision that they seek the advice of private counsel, assuming that the Corporation has no jurisdiction in the area. However, in this particular case, we would have deemed such advice inadvisable since the complainant's right of action was questionable...Wedel letter, supra note 397.

an area in which no other minorities lived. The complaint which the center forwarded did not include the name of the bank which had allegedly denied the loan. The executive director of the center stated that he had directed the couple to write to the central office of FDIC in order to provide them with the name of the bank. No letter to FDIC was forthcoming, so the name of the bank which had allegedly discriminated remained unknown to FDIC. The subject was, therefore, dropped. No followup attempt was made by FDIC to contact the couple even though the center had forwarded their address to FDIC.⁵¹⁴

514. FDIC stated that "The complainant specifically requested that no action be taken while the individuals were in the process of obtaining a loan." Wedel letter, supra note 397.

FDIC's failure to conduct an investigation was repeated in another case, in which the complainant alleged discrimination by one of two banks in Henryetta, Oklahoma, without specifying the name of the bank. The FDIC has supervisory authority over only one of the two banks, and hence wrote the complainant to inquire the name of the bank involved. The complainant did not respond to this inquiry so the case was dropped. Since an investigation of this complaint would have involved the review of only one bank, it would have been appropriate for FDIC to review this bank to determine whether or not its practices were generally discriminatory.

A third complaint was an anonymous one dated October 6, 1972, against a bank in Florida which is under the jurisdiction of FDIC. The complaint was a brief, general allegation that the bank makes no loans to blacks. FDIC made no investigation of this complaint but merely stated that an investigation of the allegation was scheduled to take place during the next annual examination of the bank.

515. O'Neill interview, supra note 450. It is uncertain when the annual examination was scheduled, since the different regional offices conduct examinations at different times and the date of the last examination in this bank's particular region was not available. Id. In October 1974, FDIC wrote to this Commission:

While we appreciate your view that the Corporation should take an active stance in following up complaints, given the demands placed on our examination staff, we feel that it is not unreasonable to require that a complaint be sufficiently specific to provide us with a basis on which to proceed. Notwithstanding the vagueness of [this] complaint, it was investigated at a regular examination in late 1972 and no evidence of racial discrimination in real estate lending was discovered. Wedel letter, supra note 397.

Another complaint was received by FDIC from a white owner of a mobile home park who alleged that a bank had refused to make loans to blacks for purchasing his mobile homes although that bank was making such loans to whites. The complainant supplied names of persons who had allegedly been discriminated against, and these persons were interviewed by the examiner and asked to supply proof of the discrimination. The examiner reported that they were unable to do so. On the basis of these interviews and the examiner's observation that blacks were in the lobby of the bank, the examiner concluded that no discrimination had taken place.

While FDIC files did not indicate what the examiner would have regarded as proof of discrimination, it would appear that he or she should have assumed some responsibility for determining whether the bank had refused to make loans to applicants because of their race. In fact, FDIC did not review the bank's files to determine whether or not the bank ever received and referred applications from the minorities named in the complaint or if it had made any loans for mobile homes.

C. Federal Home Loan Bank Board

It is FHLBB's policy to investigate any complaint of lending discrimination by one of its member institutions if the complaint was not initially sent to HUD or the Department of Justice. Although the FHLBB

516. The complainant argued that these refusals were hindering him in paying off a loan he owed to the same bank.

517. FDIC stated, "We understand that the FBI also investigated this matter and arrived at the same conclusion." Wedel letter, supra note 397.

One other complaint of racial discrimination in mortgage financing was lodged on December 30, 1969, with HUD. HUD requested FDIC's assistance in its investigation. An FDIC examiner, in conjunction with a HUD investigator, concluded that there was no racial discrimination. Since incomplete data were contained in FDIC's files about the complaint, it was impossible to assess whether the examiner's decision to close the subject was justifiable.

has offered assistance to HUD in handling complaints which have initially been lodged with HUD, FHLBB and HUD do not yet exchange information on complaints on a regular basis.

The Federal Home Loan Bank Board has had no standard procedures for handling civil rights complaints or any other complaints which it might receive. Until recently, all complaints initially received in the central office were handled by one of three offices: the Office of Housing and Urban Affairs, the Office of Examination and Supervision, or the Office of the General Counsel. In October 1974, the Board's internal procedures were clarified to provide that all discrimination inquiries or complaints should be referred initially to the Office of Housing and Urban Affairs. A specific complaint against a named institution is then forwarded to the Office of Examination and Supervision and is then generally sent to the supervisory agent⁵¹⁹ at the Federal Home Loan Bank in the region of the institution against which the complaint was filed. The supervisory agent communicates with the institution to determine if it can justify its actions or, if not, whether it is willing to take corrective action.⁵²¹

Sometimes the complainant is also contacted. For example, the complainant is required to provide the name of the institution the complaint concerns if she or he has not already done so. However, there are no established guidelines as to when contacting a complainant is

518. The bulk of complaints received by FHLBB involve allegations of illegal actions in such matters as setting interest rates or terms for repayment.

519. A supervisory agent is an officer of one of the 12 Federal Home Loan Banks who is designated by the Board to act on behalf of the Board and the FSLIC for the purpose of handling problems which arise in the enforcement of regulations.

520. The supervisory agent would take this step for any complaint, whether or not it involved discrimination.

521. Platt letter, supra note 412.

522
necessary.

If the supervisory agent does not receive what she or he considers a satisfactory justification for an institution's behavior, or if the institution does not voluntarily achieve compliance, an examiner is sent in to make an investigation. The examiner in turn makes a report to the chief examiner in the regional office. The report is sent to Washington where a decision on the complaint's status is made.

Most complaints, however, are settled in the field without ever having been brought to the attention of the central office. The examiners are often not accountable to anyone for the judgments they make on complaints. Thus, there is no consistent overseeing of complaints to ensure that the same standards of evaluation are being applied by individual examiners.⁵²³

While FHLBB has not found that the absence of more uniform procedures for handling its complaints creates a problem, this system is inadequate for dealing with civil rights complaints. Few examiners have the expertise to handle fair housing complaints, as is shown by the disposition of the few fair housing complaints FHLBB has received.

522. This contrasts sharply with procedures outlined for HUD staff in HUD's Title VIII Field Operations Handbook of March 1971. The Handbook instructs that both the complainant and the respondent be personally interviewed. This applies to complaints made by telephone, in writing, or in person and to complaints received by an investigator in the field. The investigator is instructed to obtain further information from the complainant if that provided by the respondent does not substantiate that provided in the complaint or in the initial interview with the complainant.

523. Examiners must file reports on all discrimination complaints investigated by them. The appropriate chief examiner, supervisory agent, and regional director of the Office of Examination and Supervision review the findings of fact and conclusions of each such report. Platt letter, supra note 412.

Five discrimination complaints were brought to the attention of the FHLBB's central office between July 1972 and January 1974.⁵²⁴ One complaint, alleging racial and sex discrimination, was from a black woman in Arkansas who received a loan for well under the amount for which she had applied.⁵²⁵ The association maintained that the house was in an area which was old and deteriorating and that the loan finally made was well over the value of the homes in the area.⁵²⁶

524. These complaints, however, cannot be accepted as the total number of complaints against FHLBB-supervised institutions, since complaints received by the FHLB's or by FHLBB's regional offices would not necessarily be brought to the attention of the central offices.

525. The association made the woman a loan for \$22,000 rather than \$30,000.

526. The records did not indicate whether or not the home was in a black neighborhood. The association maintains that the value of the houses in the area ranged from \$6,000 to \$20,000.

The director of the regional FHLB asked the chief examiner to make an investigation. In the course of that investigation, the manager of the association informed the examiner that 20 to 25 percent of all loans made by the association were to blacks and that 60 percent of all home improvement loans were to blacks. Although this information should not be taken as the only determinant of the merits of the complaint in question, the examiner concluded solely on the basis of the manager's statements that no discrimination had taken place.⁵²⁷

A complaint dated June 12, 1972, was sent to FHLBB by three Congressmen. The central office sent the complaint to the supervisory agent in the region. The complainant, who was white,⁵²⁸ had applied for and been denied a mortgage loan of \$30,000.

527. Moreover, the examiner never sought verification of any of the association's statements, including those about the value of the house or other homes in the neighborhood. This complaint demonstrates the need for racial-ethnic and property location data collection so that examiners will be able to rely on records for assessing loan-making policies rather than depend on estimates by bank personnel.

528. The loan was requested for 90 percent of the purchase price of the house.

The complainant alleged that the savings and loan official had said that the reason for the denial was that another home in the subdivision had been sold to a black, and thus the value of the subdivision would be declining. The savings and loan official denied having made the statement and stated that the reason for denying the loan was that the house had a substandard frame and was generally of inferior construction.

FHLBB staff decided that there was no way to substantiate either of the two statements and, therefore, took no action. Although there was clearly no way to verify either the complainant's or the bank official's statement, there are a number of things FHLBB could have done to determine whether the denial of the loan was justified. For instance, the examiner could have determined if other loans were being made by the association in the neighborhood, whether they were to whites or blacks, and what kind of terms the loans were being made on and on what type of property. The examiner could also have attempted to discover whether similar loans had been made prior to the black family's moving into

529. In the absence of racial and ethnic data, this information might be obtained by interviewing local minority interest groups and residents and purchasers of subdivision homes.

530
the neighborhood if, in fact, this had taken place.

Another complaint was from a black male who had applied for a \$20,000 construction loan to build a home in North Carolina. The savings and loan association informed the complainant that before he could file an application for the loan, he would have to submit a set of plans and specifications for the home. Although the complainant did produce a picture and a floor plan of the house, these were not considered extensive enough.⁵³¹ The complainant was instructed to submit specifications for the home and a construction contract with a builder before the application could be filed. When the complainant provided new plans for his proposed home, he was again instructed to submit specifications and a contract with the builder. The complainant never filed a written application and the savings and

530. Another complaint which demonstrates the examiners' dependence on the bank personnel's statements rather than objective observations was from a black who wished to purchase a 30-unit apartment building in a black neighborhood for \$300,000. The complainant asked for and was denied a \$225,000 loan. He stated that the building was less than 8 years old and that the purchase price was \$60,000 less than the market value. He also alleged that it would cost \$400,000 to replace the apartment building. The savings and loan association reported that the building was deteriorated. It told the complainant that if he acquired the property and brought it into good physical condition the association would consider making him a loan. The complaint files did not indicate whether the examiner had looked at the building or required an appraiser to do so in order to concur with bank personnel's statements regarding deterioration.

531. The association also conducted a credit check on the complainant which they found troubling. The complainant answered that the problems which showed up in the credit check were caused by his son rather than himself. Accordingly, the association wrote to the complainant and reportedly informed him how he could straighten out his credit report.

loan association cited the complainant's failure to do so
 as the primary reason for not making the loan. ⁵³² It appears,
 however, that the association had come up with so many con-
 ditions pending the acceptance of a written application that the
 complainant may well have given up hope of obtaining the loan from
 the particular association. ⁵³³

532. The FHLBB wrote back to the complainant, restating the loan
 association's reasons for denial of the loan and inviting a response.
 The complainant never wrote back to FHLBB.

533. The complainant may have believed that he could not enter into a
 construction contract until the savings and loan association had given
 him a promise of financing. According to Federal Home Loan Bank Board
 officials, a promise of financing from the association would not be a
 requirement for signing a construction contract, as one of the pro-
 visions of the contract could provide that the contract is subject to the
 buyer's obtaining adequate financing.

In addition to the complaints of discrimination FHLBB received
 during fiscal year 1973, ⁵³⁴ it received a number of complaints
 alleging omission of a nondiscrimination statement in advertising.
 FHLBB officials, too, had noted such omissions. ⁵³⁵ FHLBB could not
 state the number of such violations which were uncovered. ⁵³⁶ According to
 FHLBB, appropriate corrections were made in each instance. ⁵³⁷

534. A complaint which was received by the FHLBB from HUD in January
 1973, but which was not covered by Title VIII of the Civil Rights
 Act of 1968, demonstrates initiative by the FHLBB in undertaking an
 investigation. The complainant wished to receive refinancing for a
 loan on a small shopping center he owned in a black community in
 California. He had attempted to get financing through his broker
 from nine savings and loan associations and some mortgage companies
 and commercial banks. The complainant alleged that although he was
 denied the loan, owners of shopping centers in nonblack neighborhoods
 had received such loans. Although the loan being sought did not involve
 financing a dwelling, the FHLBB ordered an investigation of the
 situation, arguing that the denial of the loan could constitute a
 violation of the Civil Rights Act of 1866. Therefore, an examiner was
 sent in and instructed to interview both the complainant and his
 broker. It was deemed impractical to interview representatives from
 all nine savings and loan institutions. From that point onward, FHLBB's
 handling of the complaint was deficient. Through conversations with
 the broker, the examiner concluded that all of the broker's inquiries
 for loans had been conducted over the telephone. The broker stated
 that most of the replies indicated that the associations were not
 making commercial loans or were not making loans in that "particular area."
 Further discussion with the broker disclosed that he had not made further
 attempts to acquire a loan and that an appraiser had not been called in
 to estimate the value of the property. The examiner concluded that,
 because there was a lack of persistence in acquiring the loan, further
 action was not warranted. This raises the question of how many times
 and in what manner a discriminatory denial of a loan would have to be made
 before it would be considered a violation of law by the FHLBB
 examiners. Although discriminatory action by banks was also alleged to
 have taken place, FHLBB did not forward the letter to any of the other
 regulatory agencies.

535. During that year, several FHLBB officials frequently reviewed newspapers
 looking for mortgage finance advertisements by savings and loan associations.

536. Interview with Robert Warwick, Deputy Director, Office of Housing and
 Urban Affairs, and Francis Passarelli, Assistant Deputy Director, Office
 of Examination and Supervision, Apr. 4, 1974.

537. Id.

VI . Sanctions

All four Federal financial regulatory agencies prefer to use informal methods to bring about compliance with laws and regulations to which their regulatees are subject. For example, FHLBB regional offices send letters⁵³⁸ to errant institutions and to the Board's central office if unsound patterns are discovered by examiners. Similarly, the Federal Reserve System uses what it calls "moral suasion"--for example, writing letters to urge banks to correct unsatisfactory conditions or practices and holding meetings with the bank's management. If necessary, the FRS will contact the appropriate regional Reserve Bank to urge it to put pressure on the bank in question. According⁵³⁹ to FRS, this method usually proves successful.

If voluntary efforts fail, the agencies may invoke more drastic measures such as cease and desist orders, termination of a charter or insurance, removal of directors or officers, or suspension from the use

⁵³⁸. These letters are referred to by FHLBB as "comment letters."

⁵³⁹. Ryan interview, supra note 436.

⁵⁴⁰ of credit facilities, but these stringent methods are rarely used. For example, the Federal Home Loan Bank Board has never terminated a charter.⁵⁴¹ Since no fair housing violations have been uncovered by any of the

⁵⁴⁰. For example, the National Housing Act provides the FSLIC with the authority to issue cease and desist orders to FSLIC-insured institutions, and the FHLBB has similar cease and desist authority with respect to Federal savings and loan associations under section 5(d) of the Home Owner's Loan Act of 1933. Section 5(d) also empowers the FHLBB to appoint a conservator or receiver for a Federal savings and loan association upon the ground, among other things, of willful violation of a cease and desist order which has become final. The FDIC is authorized by Section 8(a) of the Federal Deposit Insurance Act to terminate the deposit insurance of insured banks which are in violation of applicable laws. The Financial Institution Advisory Act of 1966 (12 U.S.C. § 1464(d) (1970)) empowers the Federal Reserve System to issue cease and desist orders.

⁵⁴¹. Warwick and Passarelli interview, supra note 536. In 1972 the Federal Deposit Insurance Corporation issued cease and desist orders to 10 banks. As of December 31 of that year the cease and desist orders outstanding numbered 13. Cease and desist orders were discontinued against two banks. Formal written agreements outstanding December 31, 1972, numbered three. During that same year, five new termination of deposit insurance proceedings were initiated. Action was discontinued against one bank when it took the necessary corrective action. At the end of 1972, action against the remaining four banks awaited either the completion of the corrective period and subsequent re-examination, or the analysis of the examination report. Most of these proceedings were initiated against banks which had engaged in risky financial transactions.

regulatory agencies, these sanctions have never been used against regulated institutions which fail to comply with Title VIII.⁵⁴²

542. The Federal Home Loan Bank Board's regulation has been criticized by the Center for National Policy Review for its lack of emphasis on providing for the use of the sanction of termination of a member institution's charter as a penalty for violation of the Board's fair housing regulation. According to FHLBB officials, these cease and desist orders can also be used as sanctions against associations in violation of Title VIII of the Civil Rights Act of 1968, although the Board's regulations concerning Title VIII fail to mention the use of available sanctions. Telephone interview with Rebecca Laird, Attorney, Office of General Counsel, Federal Home Loan Bank Board, Mar. 8, 1974. In a recent letter to this Commission FHLBB wrote that it:

does not repeat the sanctions available to it to enforce its regulations in each separate regulation, because the same sanctions are available for enforcing all of its regulations. Platt letter, supra note 412.

VII. Social Action Programs

A. The Federal Home Loan Bank Board

During calendar year 1972, the Board began assisting savings and loan associations in several cities⁵⁴³ to establish neighborhood housing service agencies. This effort is modeled after the Neighborhood Housing Service (NHS) program begun in Pittsburgh, Pennsylvania, in 1968. The Pittsburgh program was designed to arrest the decline of urban neighborhoods which were in basically good condition but which showed signs of deterioration. It is not a program to rehabilitate hardcore ghettos.

Three groups are involved in the program: (1) financial institutions, principally savings and loan associations; (2) community residents of the particular neighborhood; and (3) the local government. The FHLBB's role is primarily to help set up the plan rather than to see that it is implemented. FHLBB reports that it uses its position to convene lenders and to encourage their participation in a program which makes loans in areas which are not usually considered to qualify by ordinary standards.⁵⁴⁴

543. Programs have been initiated in Oakland, Cal., Cincinnati, Ohio, Dallas, Tex., and Washington, D.C. They have been planned for Plainfield, N.J., Boston, Mass., and Jamaica, N.Y. Telephone interview with Elizabeth Burnett, Support Staff, Office of Housing and Urban Affairs, FHLBB, Apr. 26, 1974.

544. Warwick interview, supra note 438.

In order that this program not be misconstrued as redlining by various community groups, the FHLBB has urged savings and loan institutions under its regulation to keep up their usual loan-making level in other areas as well, rather than let their participation in the program serve as their sole effort to lend in a declining area. They are told to "supplement" usual loan-making by the program rather than "supplant" it.⁵⁴⁵

In addition to participating in the NHS program, the FHLBB has implemented a program of assistance to minority-owned or minority-controlled savings and loan associations. The Board offers on-the-job training and technical assistance for employees of these associations.

⁵⁴⁵ Id. Under the NHS program, a homeowner who is interested in rehabilitating her or his home receives an analysis of the need of rehabilitation and financing. Those homeowners whom the NHS staff feel would qualify for a conventional or FHA loan are referred to a participating financial institution. Those who do not qualify are considered by the NHS loan committee, which is controlled by community persons but which also has lender representation, for loans from the high-risk revolving loan fund, which is financed by large private donors. The repayment terms are designed to fit the borrower's ability to pay, including extending the term of the loan, reducing its interest rate, or dropping the interest rate to zero. The program does not preclude new buying in the particular neighborhood. However, loans made to new home buyers are ordinarily set at standards involving the usual level of risk. The number of default experiences the program had encountered were reported to be encouragingly low. Id.

B. Federal Reserve System

Although the System has no social action program of its own, it realizes that it is important that its bank examiners do not inhibit banks from making loans which are substandard in quality under their own social action programs.⁵⁴⁶ Therefore, it makes exception to its financial soundness requirement and endorses the extension of credit for the purpose of providing funds to minority-owned or small businesses, the financing of low-income housing, and the funding of enterprises whose objectives and purposes are of a civic or community nature. It has urged its examiners to report separately all marginal loans under a particular bank's social action program. The examiners were informed of the Federal Reserve Board's view that a bank which has a stated policy of making social action loans should not have that program criticized if its overall financial condition permits the taking of higher than normal level risk.

⁵⁴⁶ The FRS does not collect information on which State member banks have such programs. Telephone interview with John E. Ryan, Supervisory Bank Examiner, FRS, Apr. 26, 1974.

C. Federal Deposit Insurance Corporation

On August 11, 1972, FDIC put into effect the Leeway Investment Program, which was designed to encourage banks under the Corporation's supervision to invest in organizations engaged in socially-oriented programs. To be eligible for support under the Leeway Investment Program, an organization must have socially desirable goals which are community oriented. For example, an organization engaged in minority business enterprises or in financing low-income housing might be assisted under the program. FDIC permits the institutions it supervises to take greater than normal investment risks in their assistance to such organizations.

The Corporation does not have any statistics available as to how many banks are making this kind of investment. It also does not have any information on the type of investments being made or their results. Thus, it has no mechanism to evaluate the Leeway Program.

D. Office of the Comptroller of the Currency

COC is the only Federal financial regulatory agency which, by law, is instructed to allow national banks to invest in community funds or such charitable or philanthropic organizations as are judged to be in the bank's interest. ⁵⁴⁷ COC has issued interpretive rulings on this law which prescribe that the following conditions must be met for making such investments: (a) the project must be of a predominantly ⁵⁴⁸ civic, community, or public nature and not merely private or entrepreneurial; and (b) the bank's investment in any one project does not exceed 2 percent of its capital and surplus and its aggregate investment in any one project does not exceed 5 percent of its capital and surplus.

The rulings also state that such investments may be charged off on taxes as a contribution if they are not paid back. ⁵⁴⁹ If the bank wishes to require repayment and thereby carry the investment as an asset, the examiners are instructed to treat it as permissible even though it may be a high-risk loan.

547. 12 U.S.C. § 24 (1970).

548. Thus, an organization engaged in producing low-income housing might qualify.

549. Department of the Treasury, Office of the Comptroller of the Currency, Comptroller's Manual for National Banks, Interpretive Rulings, 87.7480 "Investments in Community Development Projects" 3-33 (undated).

VIII. Organization and Staffing

In order for the Federal financial regulatory agencies to have an adequate fair housing program, each agency would need a full-time fair housing director assisted by at least two professionals. This staff would write guidelines for regulated institutions, develop a fair housing manual and training program for examiners, review selected examination reports with respect to fair housing, participate in the examination of selected banks and savings and loan associations, and review complaint investigations made by their agencies, including their regional offices. ⁵⁵⁰ They would also review a sample of affirmative fair housing programs maintained by the regulated institutions. ⁵⁵¹ Moreover, for the regulatory agencies to operate successful fair housing units, the directors would need a policymaking role within the respective agencies. It is thus imperative that the director report directly to the agency head and have rank equal to the general counsel.

550. In the case of the Federal Home Loan Bank Board and the Federal Reserve System, this staff would also review on a sample basis any complaints received by the Federal Home Loan Banks and the Federal Reserve Banks, respectively.

551. While no requirement currently exists for regulated institutions to have affirmative fair housing programs, there is a great need for such programs. See pp. 150-151 supra.

In addition, certain examiners should be assigned permanent fair housing responsibilities. These examiners would assist in the fair housing training and supervision of other examiners, so that, as a rule, a review of the fair housing policies and practices of each regulated institution could continue to be incorporated in the regular examination. ⁵⁵² None of the regulatory agencies, however, has an adequate fair housing program.

552. In the case of small banks, however, when a fair housing review might add proportionately more time to the time necessary for bank examination, the special fair housing examiners might make the fair housing reviews themselves.

A. Federal Home Loan Bank Board

The Board's civil rights efforts are carried out jointly by the Director of the Office of Housing and Urban Affairs (OHUA), the staff of the Office of Housing and Urban Affairs, the Legislation Division of the Office of the General Counsel, and the Office of Examination and Supervision. The Director of Housing and Urban Affairs, who is also Director of FSLIC, spends approximately 25 percent of his time on civil rights matters. The Deputy Director of OHUA, who is primarily in charge of civil rights matters in that office, spends 75 percent of his time in this regard.⁵⁵³ In addition, all savings and loan examiners also have fair housing responsibilities in that they are expected to administer the fair housing questionnaire in conjunction with their savings and loan examinations.

553. The duties of the Deputy Director include designing and refining FHLLB's policy positions, assessing the feasibility of collecting racial and ethnic data, working on the Board's nondiscrimination guidelines to clarify its regulations in this area, corresponding with complainants, analyzing problems of discrimination in both lending and employment and more specific issues such as redlining, designing programs to assist minority savings and loan associations, and working in conjunction with the Office of General Counsel in developing legal positions. Warwick interview, supra note 438.

B. Federal Reserve System

The Program Director for Banking Structure is the official responsible for overall implementation of Federal Reserve System policy under Title VIII of the Civil Rights Act of 1968. Fair housing, however, is but one of this person's major duties. The Program Director for Banking Structure also holds the position of Deputy Director⁵⁵⁴ of the Division of Supervision and Regulation.

Due to this official's busy schedule, many fair housing responsibilities have been unofficially delegated to one of the staff members in the Division of Supervision and Regulation. This person estimates that he spends 15 to 20 percent of his time fulfilling his fair housing role. His duties in this area include teaching in the examiner training school, attending meetings with persons seeking information on the Board's fair housing program,⁵⁵⁵ responding to letters from interested organizations, drafting poster requirements for fair lending, and, primarily, working on possible improvements of the Board's fair housing program, which includes obtaining advice from members of FRS staff.⁵⁵⁶

554. As Deputy Director, this person has responsibility for such matters as oversight of bank examinations and supervision of foreign banking activities.

555. The primary responsibility of the Program Director is the approval of applications from banks for changes in their structure, such as mergers between banks or the opening and closing of branch offices.

556. Ryan interview, supra note 436.

In addition, all examiners are responsible for including the fair housing questionnaire in their bank examinations. A staff attorney in the Board's Office of General Counsel is primarily responsible for providing the legal advice concerning all the Board's proposals to further fair housing objectives.

C. Federal Deposit Insurance Corporation

FDIC regional offices and the Office of Bank Supervision carry out such civil rights responsibilities as the agency presently acknowledges. There are no specific fair housing assignments in any of these offices. Fair housing assignments are made on an ad hoc basis by the Director of the Office of Bank Supervision or by regional directors. Assistance on legal issues such as is needed in drafting fair housing requirements is also ad hoc and is provided by the General Counsel. ⁵⁵⁷

D. Office of the Comptroller of the Currency

There are no specific fair housing assignments at COC. Complaints regarding fair housing violations would be handled by the Office of Chief Counsel in the same fashion as any other complaint. The Deputy Chief Counsel estimates that he spends about 10 percent of his time, and that COC as a whole averages about one full-time person, on fair housing duties. Most of that time has been devoted to drafting fair housing requirements. ⁵⁵⁸

557. Murphy telephone interview, supra note 506.

558. FDIC responded;

...given the volume of complaints received by this Corporation, at this time we find the staffing devoted to civil rights compliance efforts to be adequate. It may well be, however, that expanded staff will be indicated for this purpose in the future. Wedel letter, supra note 397.

Veterans Administration (VA)

I. Program and Civil Rights Responsibilities

The Loan Guaranty Service (LGS) in the Department of Veterans Benefits administers the programs set up to assist veterans in buying a home. VA assistance is provided through a guaranty or insurance of the veteran's mortgage, or in rural areas where mortgage funds are unavailable, through a direct loan program. The VA program is designed not only to assist the veteran in becoming a homeowner, but to assure that he or she remains one. The VA frequently counsels veterans on the management of their home payments. Further, in the event that a lender moves to foreclose on a veteran's loan, it is not unusual for the VA to intervene and persuade the lender to delay foreclosure. ⁵⁵⁹ ⁵⁶⁰ ⁵⁶¹

In carrying out its function to provide housing assistance to veterans, VA engenders benefits for builders, developers, individual home sellers, appraisers,

559. Since its inception in 1944 through June 1974, the VA guaranteed 8,817,238 loans totaling approximately \$106.4 billion. The number of loan applications received per month varied from region to region. For example, in fiscal year 1974 the Los Angeles, Cal., region received on the average 3,500 applications monthly; San Francisco, Cal. - 1,800; Waco, Tex. - 1,200; Boston, Mass. - 400; Chicago, Ill. - 700; and New Orleans, La. - 500. Attachment to letter from Odell W. Vaughn, Chief Benefits Director, Veterans Administration, to John A. Bugge, Staff Director, U.S. Commission on Civil Rights, Oct. 24, 1974.

560. Direct loans comprise a very small part of the VA's overall loan program. From 1950 through June 1974, approximately 320,000 direct loans were made. For example, the Waco, Texas, VA regional office makes 8 to 10 such loans monthly; the New Orleans, Louisiana, office makes two to three. California and Nevada have not had the direct loan program since 1969 because of the availability of private lender financing in those States. Id.

561. VA guaranteed loans can be guaranteed for up to 60 percent of the loan amount or \$12,500, whichever is the lesser. Seventy-three percent of all loans guaranteed in fiscal year 1974 were for 100 percent of the loan amount, i.e., no downpayment. Legislation pending in Congress as of October 1974 would increase maximum guaranty to either \$15,000 or \$17,500. Id.

and management and sales real estate brokers. Builders and developers may
 562
 563 apply for VA subdivision feasibility letters, which can then be used in
 obtaining construction financing. In addition, builders and individual
 sellers may obtain a VA appraisal at a set fee to determine the maximum loan
 amount that VA will guarantee, an amount VA considers to be the current market
 value of their houses. Since the Loan Guaranty Service is also responsible
 564
 for handling the sale of properties acquired by the VA through foreclosure
 565 proceedings, it offers this business to private real estate brokers
 566 who manage the properties and sell them on the open market.

The VA is charged by law and Executive order 567 to administer its housing
 programs for veterans without discrimination on the basis of race, color,

562. The VA deals with approximately 3,000 management brokers, 45,000 sales
 brokers, and 5,000 fee appraisers annually.

563. Issuance of a subdivision feasibility letter by the VA means that the VA has
 determined that there is a need for such housing and that construction plans are
 feasible. In its review, VA examines such matters as the existence of water and
 sewer facilities. The number of applications made each month for feasibility
 letters varies from region to region. For example, the Los Angeles Loan Guaranty
 Office receives an average of 15 applications per month.

564. VA appoints a roster of qualified appraisers and regional loan guaranty offices
 designate an approved appraiser to make each appraisal for a set fee. Appraisers
 are paid by the person requesting the appraisal. Vaughn letter, supra note 559.

565. The VA acquired 17,221 properties in fiscal year 1973.

566. VA utilizes the services of real estate brokers on a fee basis to manage VA-
 acquired properties and identify and oversee necessary repairs. Such management
 brokers are paid a monthly fee of \$10 per assigned property. The acquired
 properties are offered for sale on the open market. All real estate brokers in
 the area have an opportunity to show and sell the properties. The real estate
 broker who submits the purchase offer accepted by VA for a property receives a
 5 percent commission. Vaughn letter, supra note 559.

567. Title VIII of the Civil Rights Act of 1968 requires the VA to administer its
 programs and activities affirmatively to further fair housing. Executive Order
 11063, issued in 1962, requires the VA to "take all action necessary and appro-
 priate to prevent discrimination because of race, color, creed, or national
 origin," in the sale of housing assisted or guaranteed through its programs.

568
 568 creed, or national origin. In addition, it is responsible for
 assuring that minority veterans are given an equal opportunity to
 purchase homes with VA assistance and that all parties concerned with
 VA housing programs--builders, developers, home sellers, appraisers,
 and brokers--deal with minority buyers on a nondiscriminatory basis.

Sex Discrimination

The VA stated that it did not, and had not in the past, made a
 distinction between male and female veterans in its legislation and
 569 regulations relating to its housing program. The VA maintained that in

568. In August 1974, Title VIII of the Civil Rights Act was amended to include
 the prohibition of discrimination based on sex.

569. Interview with Edward A. Echols, Director, Loan Guaranty Service, and
 Eleanor Harmon, Leon Cox, and Bruce Smith of his staff, Veterans Administra-
 tion, June 20, 1973. Where the use of pronouns has been necessary, VA
 regulations and manuals sometimes use masculine pronouns to include the
 feminine gender as well. On April 4, 1974, VA issued a regulation stating
 that any VA publication and any communication, within the agency, to
 beneficiaries, or to the public, must avoid any appearance of seeming
 to preclude benefits for female veterans, dependents, or beneficiaries.
 Use of terms such as "his or her" or "the veteran" was directed to
 avoid ground for misconceptions which might arise from the term "his,"
 when in fact both sexes are eligible for the benefits under consideration.
 39 Fed. Reg. 12248 (Apr. 4, 1974). As of the spring of 1974, the Loan
 Guaranty Service has been rewriting a portion of its manual (Loan Guaranty
 Operations for Regional Offices, Guaranteed and Insured Loan Processing
 Procedures, M 26-1) on veteran eligibility in an attempt to implement
 this regulation.

the review of applications from veterans for guaranteed loans the same criteria are applied to both males and females. It has never, however, measured the extent to which field stations provide equal treatment of the sexes.

Until July 1973, VA did not require local field stations to include the full amount of the working wife's income when calculating a veteran's capacity to repay a mortgage loan.⁵⁷⁰ This practice meant that some field stations ignored the wife's income altogether, and others used the wife's income only to offset regular family expenses such as car or credit payments. The result of this policy was that often veterans, many of whom were minorities, were denied VA assistance in purchasing a home if they were part of a two-income family.⁵⁷¹

In July 1973, a Department of Veterans Benefits Circular was issued⁵⁷² requiring VA field stations to provide for full recognition of the income and expenses of both veteran and spouse in determining the ability to repay a loan obligation. Not only does this policy aid the minority veteran who is a member

570. VA permits veteran's spouses to share in the ownership of homes purchased with loans to veterans which have been guaranteed by the VA. VA stated that:

It should be understood that the Loan Guaranty program is for the benefit of "veterans", not their spouses, parents, etc. The word "veteran" is defined by law as one who has served a specified period of time on active duty in the armed forces of the United States and who was discharged under conditions other than dishonorable. In recognition of the concept that the family unit is the basis for our society, VA permitted, by VAR 4307, acquisition of a portion of the ownership (title) of the home by the spouse of the veterans. Vaughn letter, supra note 559.

571. From March 1953 until April 1968, VA permitted but did not require a spouse's income to be taken into account in determining whether the veteran could be eligible for a loan when the veteran's income by itself was not sufficient. In March 1953 VA provided for consideration of spouses' income but stated that "No hard and fast rule" could govern such consideration. Each case was to be considered individually by the reviewing official. Veterans Administration, Technical Bulletin 135, March 1953, cited in Vaughn letter, supra note 559. In October 1959 VA included take-home income of spouses in a checklist for field office use in analyzing the veteran's ability to repay a mortgage. Veterans Administration, Form 26-6393, Oct. 1959, cited in Vaughn letter, supra note 559. To clarify further VA's policy with regard to spouses' income, in April 1968 VA "directed that a wife's income be considered providing her employment was stable and could reasonably be expected to continue in the foreseeable future." Vaughn letter, supra note 559.

572. Department of Veterans Benefits Circular 26-73-24, issued by Donald E. Johnson, Administrator of Veterans Affairs, July 19, 1973.

573 of a two-income family, but this policy is an especially important step in prohibiting discrimination on the ground of sex, protecting married female veterans and wives of veterans. If the VA is to assure that its new policy regarding spouse's income is being carried out, it will be necessary to measure the number of mortgage loans which were approved on the basis of both the husband's and wife's income. In this regard, VA has begun to collect the necessary data. Nonetheless, as of April 1974, there continued to be a lack of data on spouse income in VA loan programs.⁵⁷⁴

In any event, the VA needs to extend its policy of nondiscrimination on the basis of sex to protect all women applying for VA-guaranteed loans or purchasing VA-acquired property.⁵⁷⁵ For instance, single women frequently encounter difficulties in seeking to obtain mortgages; often different standards are applied to applications of single women than to those of single men, and cosigners are more often required for single women than for single men. Also, many banks simply refuse to make loans to women, considering them to be a

573. The relationship between racial-ethnic discrimination and sex discrimination is discussed in Chapter 1, Department of Housing and Urban Development, p. supra.

574. In an April 1974 interview, VA staff reported that as of fall 1973, data on spouses' income, collected on loan application forms, had been included in VA's reporting system. As of April 1974, the VA had only 6 months of data on spouses' income and stated that it was too early to tell whether field stations were complying with the new requirement to treat the spouses' income equally. The Director of the Loan Guaranty Service personally reviewed a sample of the approved application forms on a regular basis and had not uncovered any instance in which the spouses' income was not considered. Interview with Edward A. Echols, Director, Loan Guaranty Service, and Eleanor Harmon, Special Assistant to the Director, Veterans Administration, Apr. 30, 1974.

575. Females constitute 1.9 percent of the eligible veteran population. Vaughn letter, supra note 559.

576
poor credit risk. Single female veterans need protection against such discrimination by lenders.

It is too early to assess the extent to which this policy is being adhered to by the regional offices. Unfortunately, the attitude of the VA central office is that it is not important to monitor adequately the actions of the regional offices with regard to sex discrimination. Although there are limitations to the effective monitoring which could be accomplished, given VA's present data collection system, 578 except for the regular evaluation of approved loans and of rejected applications, the VA does not have any special means by which to measure the extent to which field stations provide equal treatment of the sexes.

The VA's policy prohibiting sex discrimination, while praiseworthy, is only a beginning. It applies only to VA's field stations. It has not been imposed by the VA on builders, developers, brokers, lenders, or other participants in VA's programs. 579 Since these participants in VA's programs, rather than the VA field stations themselves, make the majority of decisions to

576. Refusal by banks to make loans to women is discussed in Chapter 2, The Federal Financial Regulatory Agencies, Section II B supra.

577. In considering the loan application of an eligible unmarried surviving spouse of a veteran, the widow or widower is classified by law as a veteran and as such is treated the same as any veteran. VA reports that if the veteran's income is determined to be stable, all of it would be taken into account. Vaughn letter, supra note 559.

578. The VA has no way of knowing about the income and sex of prospective applicants who are discouraged from making a written loan application by bank officials or VA personnel.

579. In defense of its position, VA recently stated that:

...until the passage of P.L. 83-383 on August 22, 1974, there was no Federal prohibition against sex discrimination in transactions relating to housing, consequently VA had no statutory mandate nor enforcement authority. It should also be understood that the VA has no authority to force a seller to sell a property to a particular veteran, nor a lender to make a loan to a particular veteran. Vaughn letter, supra note 559.

issue loans, this policy probably will not have a far-reaching effect on the elimination of sex discrimination in VA programs.

II. Organization and Staffing

The VA central office LGS has a small, but dedicated and diligent, equal opportunity staff which reports directly to the Director of the Loan Guaranty Service. (See organization chart on page 227.) This staff has responsibility for formulating equal opportunity policy. 581 It has recently been increased from two to four full-time professional employees but continues to lack a full-time director with sufficient authority to ensure execution of VA housing procedures. 582

Responsibility for implementing equal opportunity policy lies with the regular program staff in the Loan Guaranty Divisions of the 50 VA regional

580. For example, VA has set no requirements or prohibitions on sex discrimination when builders and developers with VA subdivision approval market and finance properties themselves. In the same sense, if a lender does not determine that a potential borrower is creditworthy, the loan application most likely will never reach the VA for approval or disapproval.

581. The areas in which the equal opportunity staff is currently working are: minority entrepreneurship opportunities and counseling programs; racial and ethnic data collection, tabulation, and correlation; and compilation of minority media directories. In addition, the staff has developed a summary of State fair housing laws for use by the field offices.

582. The Director of LGS has overall responsibility for execution of the VA's fair housing program, but because the primary function of this position is the general administration of VA housing programs, the Director continues to devote no more than 10 percent of his time to equal opportunity duties. The Director is responsible for the supervision of the program divisions in the Loan Guaranty Service, as shown in the organization chart on page 227 infra.

583
 offices, also referred to as field stations. The location of these
 584
 divisions is shown on the map on page 228. They administer the loan
 guaranty and direct loan programs and handle the sale of properties
 repossessed by the VA through mortgage foreclosure.

Each regional Loan Guaranty Division is headed by a Loan Guaranty
 585
 Officer (LGO) who is responsible to the Regional Director for the
 day-to-day activities of the office, including fair housing. As of
 April 1974, however, there were no full- or even part-time equal opportunity
 586
 staff in any of these field stations.

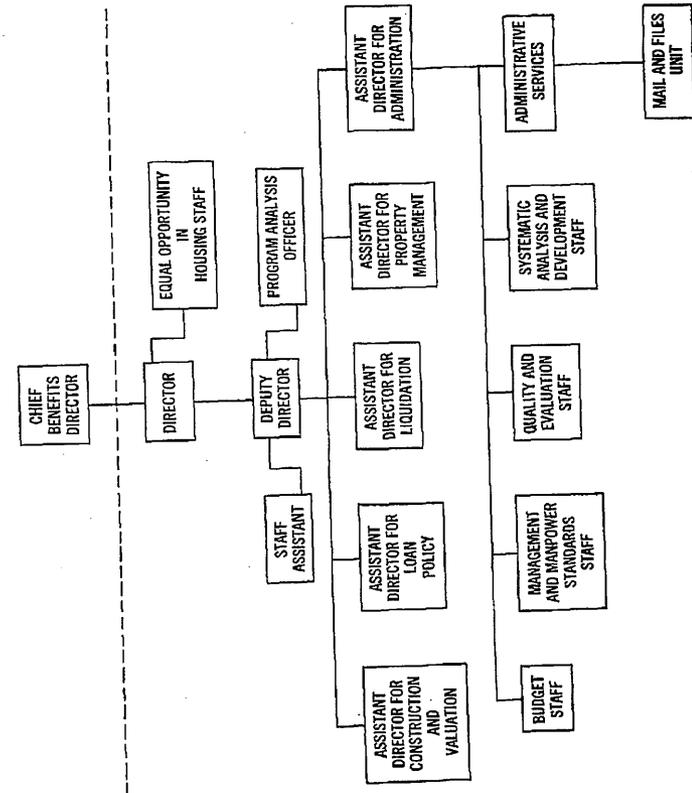
583. VA field stations are any VA installation located outside the
 central office. They include regional offices, hospitals, outpatient
 clinics, and insurance centers.

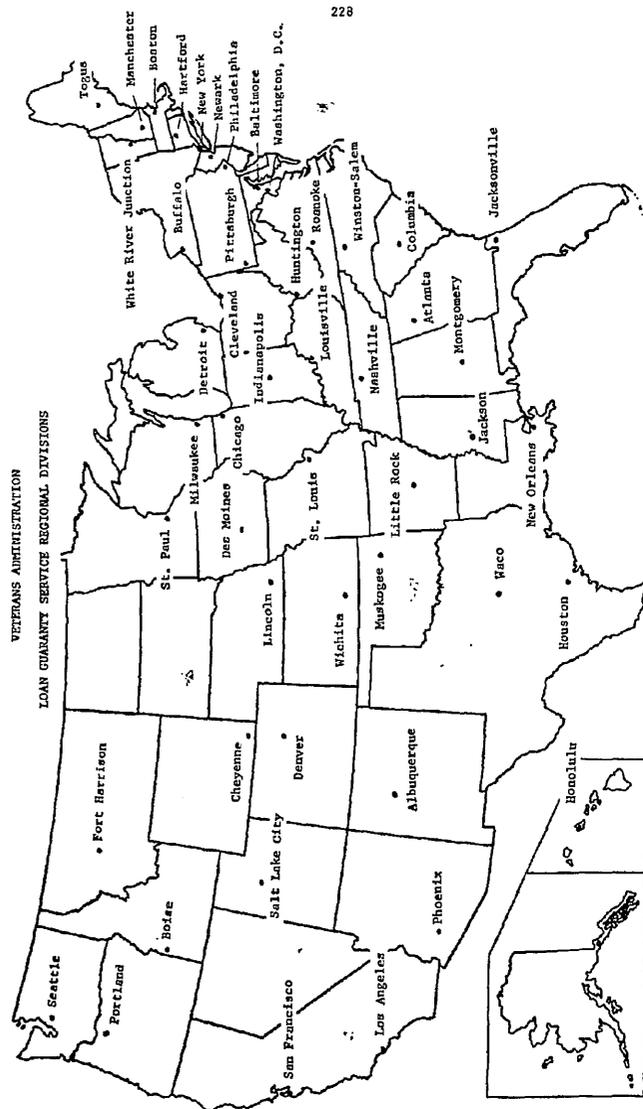
584. The Commission's staff visited Loan Guaranty Offices in Waco, Tex.;
 Los Angeles and San Francisco, Cal.; Denver, Colo.; Boston, Mass.;
 New Orleans, La.; and Chicago, Ill.

585. In addition, the Chief Attorney and the heads of the Adjudication
 Division, the Veterans Assistance Division, the Administrative Division,
 and the Finance and Data Processing Division all report to the Directors
 of VA regional offices.

586. Echols and Harmon interview, supra note 574.

Organization of Loan Guaranty Service
 in Central Office





(A Regional Office is located in San Juan, Puerto Rico.)

The VA central office claims that there are many positions in the field stations which have significant equal opportunity components.⁵⁸⁷

This assertion, however, is overstated. In fact, the field staff do not appear to feel a unique responsibility for the equal opportunity stance of the VA. For example, the Office of the VA Administrator conducted a survey in the spring of 1973 of loan guaranty staff and field directors to determine those duties which could be eliminated without detriment to the loan guaranty program. It appears that the LGO's responded that they would recommend reducing the equal housing opportunity reporting requirements,⁵⁸⁸ which are among the principal equal opportunity duties of these staff.

Program staff in Washington also have equal opportunity responsibilities.⁵⁸⁹ For example, the Quality and Evaluation Division of the Loan Guaranty Service incorporates a review of each field station's execution of fair housing responsibilities in the review of that station which is scheduled every 16 months. It does not, however, conduct reviews devoted

587. Response to the Commission's April 1973 questionnaire hereinafter referred to as VA response/ contained in a letter from Donald E. Johnson, Administrator of Veterans Affairs, Veterans Administration, to Stephen Horn, Vice Chairman, United States Commission on Civil Rights, June 8, 1973. These positions include, for example, regional staff responsible for handling nondiscrimination certifications and for processing discrimination complaints.

588. In August 1973, Commission staff asked the Director of the Loan Guaranty Service for a summary of the recommendations made by the loan guaranty staff and field directors in this survey. Letter from Jeffrey M. Miller, Director, Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, to Edward A. Echols, Director, Loan Guaranty Service, Veterans Administration, Aug. 1, 1973. The Director of the Loan Guaranty Service did not indicate what recommendations were made but stated that although 15 of the 60 recommendations were accepted or approved, none of the recommendations accepted had any "substantive impact on equal housing opportunity." Letter from Edward A. Echols, Director, Loan Guaranty Service, Veterans Administration, to Jeffrey M. Miller, Director, Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, Sept. 7, 1973. In describing the identification of nonproductive work made by this survey, VA later stated that recommendations were made which "related to the frequency of field station reports on several aspects of our equal housing opportunity program." Vaughn letter, *supra* note 559.

589. This staff consists of six white male professionals.

590
exclusively to civil rights operations.

While the VA Loan Guaranty Service depends almost entirely on program personnel, both in the central office and in the field, to carry out its equal opportunity responsibilities, as of April 1974 no specific equal opportunity training had ever been given on a formal basis to any of the program staff.⁵⁹¹ This lack of training was clearly reflected in Commission interviews with VA field station personnel who were often unfamiliar with the proper procedures for processing discrimination complaints,⁵⁹² who frequently had no idea how to utilize racial program data,⁵⁹³ and who generally had designed no plans for monitoring the equal opportunity requirements.

A further deficiency is that the loan guaranty divisions of the regional offices continue to lack minority staff,⁵⁹⁴ who would be sensitive to the nuances of housing discrimination which they are required to prevent. For example, in fiscal year 1973 the Waco Loan Guaranty Office, with a total staff of 96, employed three persons of Spanish speaking

590. The evaluation staff are not accompanied by a member of the Director's equal opportunity staff when they make the field office visits. The evaluation staff does, however, consult with equal opportunity staff regarding possible problems which may exist at a field station, but such consultations are carried out on an ad hoc and informal basis.

591. Echols and Harmon interview, supra note 574.

592. The processing of discrimination complaints is discussed further in Section III B infra.

593. Racial-ethnic and sex data collection are discussed further in Section III C infra.

594. VA staff stated that, as of October 1974, no data had been collected regarding female staff, as to either the proportion of women in all grade levels or the numbers of women in upper level positions. Telephone interview with Bruce Smith, Equal Opportunity Specialist, Loan Guaranty Service, Veterans Administration, Oct. 1, 1974.

background, of whom two were professionals, one full-time and one part-time, and two blacks, neither of whom were in professional positions.⁵⁹⁵ The New Orleans Loan Guaranty Office, with a total of 50 employees, had only two minority employees, both black, and only one of whom was a professional.⁵⁹⁶ The Boston office had 33 employees, only one of whom was a black and was in a professional position.⁵⁹⁷

595. As of the 1970 census the Waco Standard Metropolitan Statistical Area (SMSA) had a total population of 147,533. There were 9,900 persons of Spanish speaking background (6.7 percent) and 23,799 blacks (16.1 percent) in the SMSA.

596. As of the 1970 census, the New Orleans SMSA had a total population of 1,045,089, including 37,284 persons of Spanish speaking background (3.6 percent) and 323,776 blacks (31.0 percent).

597. As of the 1970 census, the Boston SMSA had a total population of 2,753,750, including 35,063 persons of Spanish speaking background (1.3 percent) and 127,035 blacks (4.6 percent).