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Implementing the 1988 Fair Housing Amendments Act

Pennsylvania Advisory Committee

to the

U.S. Commission on Civil Rights

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Background

In January 1989, while the U.S. Department of Housing and Urban Development (HUD) was completing the writing of new regulations intended to implement the Fair Housing Amendments Act of 1988, the Pennsylvania Advisory Committee discussed possible changes in the offing and decided to hold a forum focussing on the new law and HUD's regulations and procedures. The law was then to take effect on March 12, 1989. In February, the director of HUD's Fair Housing Enforcement/Section 3 Compliance unit agreed to appear at a forum scheduled at his convenience but was later unable to attend.

Instead, during the Advisory Committee's April 6, 1989 forum in Philadelphia¹, HUD'S Region III Director represented HUD. Other participants from the public sector were the heads of the housing units of the Pennsylvania Human Relations Commission (PHRC) and the Philadelphia Commission on Human Relations (PCHR). The nonprofit or private sector was represented by top officials of the Pennsylvania Association of Realtors, the Pennsylvania Low Income Housing Coalition, the Pittsburgh Urban League, and the Harrisburg Fair Housing Council.

Housing: a Key to Access to Various Opportunities

Prior to the review of the new law, Dr. David W. Bartelt, director of the Institute for Public Policy Studies at Temple University, depicted the persistence of segregated housing by using statistics on Philadelphia. He began by stating that the centerpiece of most efforts to provide some degree of equity in American society lies in the question of housing bias. Housing embodies the framework for much of family and personal life, while at the same time it is a tangible symbol of a person's

¹ This summary report is based on the official transcript of the April 6, 1989, forum which is on file in the Eastern Regional Division office of the U.S. Commission on Civil Rights. Other documentation is cited where appropriate.

place in the community. Access to housing opportunities is also linked to other opportunities such as access to education and jobs. The problems of lack of access resulting in segregation, such as occur in Philadelphia, appear to be common to virtually every city where research has been done.

Referring to special maps provided to the Committee,² Dr. Bartelt asserted that, from 1970 and 1980 data on blacks in Philadelphia, "you would have to conclude just graphically that Philadelphia has made precious little, if any, progress in desegregating. In fact, there is an increase, a persistent increase that goes back to the earliest time that we can measure this, starting from 1930 through 1980, with only one small deviation in between." He also showed that there is a "clearly identified Hispanic concentration in Philadelphia that is largely segregated as well," and suggested that Hispanics were more dispersed in 1970 than in 1980.

Racial Isolation in Housing and Schools

Dr. Bartelt expressed alarm that Philadelphia has become a "very racially isolated city with all the kinds of political and social consequences of living itself out as a persistently segregated community," observing that there appears to be a white political position, a black political position, and an Hispanic political position. He added that the residential patterns seem to have an effect on "electoral politics, budgetary discussions, and the like that take place within the city of Philadelphia." Referring to an analysis of Federal Home Mortgage Disclosure Act data, he further noted that, "the conventional and total lending that takes place within Philadelphia's neighborhoods closely follows the racial divisions that are present in the city."

At the same time, said Dr. Bartelt, over the last four to five years there has been deep concern about the pattern of

² See appendix A.

segregation that has shown up in the schools of Philadelphia. His Institute has been working on data on the dimensions of that problem and has seen through a mapping of the data that residential segregation is replicated in school segregation. However, there appears to be "a better record now than five years ago in terms of more students going into desegregated school patterns and into multi-cultural schools which are schools where there is close attention paid to the Hispanic community." But he also added that "when you control for such things as income and education and the amount of housing that is being sold as opposed to rented in the area, race persists as a predicting variable."³

Discrimination Exhibited on Archival Maps

As for other data, Dr. Bartelt mentioned that while doing research in the National Archives in Washington, D.C., he studied documents created under the Home Owners Loan Corporation Act for the Federal Home Loan Bank Board. During the depression, about 230 cities had been appraised, their neighborhoods assessed on the basis of their mortgage worthiness. Color-coded maps were made, green indicating excellent quality neighborhoods; blue, neighborhoods not quite as good; and yellow and red, the less desirable neighborhoods. Dr. Bartelt said that:

The comments that are appended to the maps indicate that appraisals were done consciously and openly on the basis of race and ethnicity. A comment about Oak Lane, a green neighborhood in 1937, is "Beware of the Jewish encroachment." Now that is the legacy that we walk around with in this city. [The map] would be an historical artifact, were it not for the fact that you can predict the movement of minority populations across neighborhoods in this city, pattern that we saw in 1970.

³ A 1988 New York Times article reported no significant progress in desegregating predominantly black schools since the mid-1970s, with some school districts showing more severe racial isolation. Edward B. Fiske, "School Integration Patterns Change," New York Times, June 23, 1988, p. A-16.

He further speculated that, even if equal opportunity in housing and in mortgages were provided, "enough hidden barriers [remain] within the normal way in which the housing process works that we will simply perpetuate the pattern." Nevertheless, fair housing opportunities, fair allocation of credit, changes in real estate procedures, and the like are called for, if a desegregated city is to be achieved, Dr. Bartelt insisted. He acknowledged that there exists a paradox insofar as between 1970 and 1980, blacks and Hispanics have been able to move into neighborhoods previously barred to them while it is also true that there is presently a stronger pattern of segregation because "we are losing a job base in the city, and people are fleeing to other regions and to the suburbs..."

Fair Housing Amendments Act

Raymond J. Solecki, HUD's Region III Director, began by observing that what Dr. Bartelt focused upon are patterns of segregation, which Mr. Solecki described as an effect of something. In his own work, he tends to deal with discrimination, which he explained is related to the cause. He also asserted that discrimination may not have a one-to-one correlation with the effect seen in patterns of segregation. His mission at HUD is to ascertain whether in a specific case there is a connection between racial discrimination and a pattern of segregation. If a connection can be shown in a case, then a legal basis for applying enforcement measures exists.

The Fair Housing Amendments Act of 1988,⁴ explained Mr. Solecki, is an amendment to Title VIII of the Civil Rights Act of 1968,⁵ which barred discrimination on the bases of race, color, religion, sex, and national origin. The new act expands the

⁴ Public Law 100-430.

⁵ Public Law 90-248.

prohibitions to discrimination on the bases of handicap and familial status. The latter is essentially defined as a family or a group that has a child in its custody under the age of 18. Also prohibited as a discriminatory housing practice are acts of coercion, threats, and violence against a person interfering with that person's right in the purchase or procurement of housing or in the enjoyment of the housing; such prohibitions were intended as part of the 1968 Act, but they are more explicitly stated in the new Act.

As to the stronger enforcement mechanism given to HUD, Mr. Solecki reminded the Committee that the 1968 Act was passed just after the assassination of Dr. Martin Luther King, Jr., and in order to pass it quickly, compromises were reached including the omission of a strong enforcement mechanism. After an investigation, all that HUD could do through 1988 was to meet with the complainant and the respondent "to have a conciliation conference and say, 'Please, can we settle this in some way?'" The parties would be able to go through the court system, but, if they chose the Federal enforcement mechanism, HUD could only conciliate.

Options: Administrative Law Judge, U.S. District Court

Now, under the new Act, if HUD has found reasonable cause pointing toward discrimination, HUD may offer the complainant or respondent 20 days in which to exercise an option of either appearing before an administrative law judge at HUD or going through the Federal court system; in either situation, HUD attorneys or U.S. Justice Department attorneys will prosecute the case for the complainant and the Federal government. The options--including going through the Federal court system, if one of the parties elects to do so--emerged out of the compromises reached in the Congress based on the demands of various groups ranging from the National Board of Realtors to the NAACP who were demanding due process measures, Mr. Solecki explained.

He also pointed out that HUD may itself initiate complaints. For example, if a study developed with Dr. Bartelt or with the PCHR revealed a linkage between racial discrimination and segregated residential patterns, then HUD could file a complaint in the case and prosecute it. Mr. Solecki predicted that this ability will prove a very important tool. He noted, too, that a complainant now is given one year in which to file a discrimination case with HUD, whereas only 180 days were previously allotted. Moreover, HUD is required to process the case in 100 days, although during his tenure at HUD, the average amount of time taken was somewhere between 200 and 300 days. To help him meet his obligations, Mr. Solecki's staff has been doubled, and he may now seek preliminary injunctions and temporary restraining orders and also subpoena witnesses; injunctions, restraining orders, and subpoenas had been part of HUD'S arsenal before, but were rarely used.

"Substantially Equivalent Agency"

Despite an augmentation of staff, his office will still need to rely on the resources of other agencies. Under the Fair Housing Assistance Program, HUD contracts with states and localities that have fair housing laws substantially equivalent to the Federal law, Mr. Solecki explained. Paid a certain amount by HUD for each case handled, State and local agencies carry out investigations and enforcement under their laws and procedures. In accordance with the new Act, State and local jurisdictions have 4 years in which to work with their legislatures in order to bring their fair housing agencies up to the new Federal standard.

Thus, if a jurisdiction does not have a fair housing provision for the handicapped or in terms of familial status, or one setting the completion of investigation and conciliation efforts within 100 days, then that jurisdiction would have to gain approval for any provision it lacks. Mr. Solecki noted that his regional office covers 5 States containing 19 agencies considered substantially equivalent; Pennsylvania's state human relations

commission is one such agency, and the municipalities of Philadelphia, Pittsburgh, Allentown, and Reading have similar agencies.

Roles of Justice Department, Regulatory Agencies

Mr. Solecki stated that, before enactment of the new act, the U.S. Justice Department could prosecute pattern and practice cases such as when a major bank is seen as routinely discriminating against customers of a certain race.

Over the 20 years of the Civil Rights Act, very few cases were actually done because it was not a high priority on that sort of thing. But my latest information is that with the new amendments and the ability to go to court-- on an individual case as well as the pattern and practice --the Justice Department will become very active doing that. And, in fact, the day after the regulations took effect, they filed three suits, which was obviously much more than they had done probably in the past year.

He added that the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Bank (FRB), and the Home Loan Bank Board are explicitly called upon to cooperate with HUD in the administration of their equal opportunity programs. Indeed, the week after the Committee's forum, a symposium involving HUD, the FDIC, the FRB, the Home Loan Bank Board, and banks in the region would be taking place. It was to focus on fair housing and fair lending and also on how studies might be initiated on ways to enforce the law.

The new act further requires that HUD resume collecting data by race and ethnicity on the fair housing programs it administers--an activity which HUD had done previously but which it ceased to do over the past 10 or 15 years, according to Mr. Solecki. He also anticipated that the vast amount of information gathered should help HUD in initiating investigations and complaints in the future.

Pennsylvania Statute vis-a-vis 1988 Federal Act

Raymond Cartwright, the State's fair housing director in the PHRC, described the PHRC as 30 years old, one of the earliest operating commissions in the U.S., which since 1967 has possessed one of the strongest fair housing statutes.⁶ The Pennsylvania statute,⁷ he asserted, was stronger than the Federal statute up until 1988, covering protections for the handicapped since 1974 and including "intimidation and coercion" provisions since 1967. From the point of view of implementation, the State statute was also stronger in that the PHRC was "able to take actions beyond conciliation."

However, the PHRC must now seek to adapt its statute to include, for example, familial status and punitive damages. Such changes will also affect each municipal fair housing agency in the State which had previously met the Federal standard as well as 21 others which have some form of a fair housing law but have not yet been deemed by HUD as substantially equivalent. Mr. Cartwright added that the PHRC sought to amend its statute to include a familial status provision two years ago but was unsuccessful. He reported, however, that some of the local agencies have indicated that they expect their local legislatures to pass favorably on the needed amendments of their statutes within months. Yet others fear that "it will be virtually impossible for them to have these changes," judging them to be no more feasible than the "existing statutory shortcomings that already had denied them equivalency under the unamended Title VIII."

New Act Commended but HUD Regulations Called Faulty

Mr. Cartwright stressed his view and the impression he has gotten from other sources around the State that "we think that the law is great and that it is going in the direction we hope

⁶ In addition to the forum transcript, Mr. Cartwright's prepared text was used for this summary record.

⁷ [C I T E S T A T U T E.]

that all of us will go and the Federal government, in this case, is leading. And we hope that we'll be able to join in the race." But additional obstacles appear in the impact of HUD's new regulations. Despite allowing less than 3 weeks for comments on its draft regulations, HUD received extensive comments including 20 pages of comments from the PHRC. Mr. Cartwright applauded HUD for heeding as much as 20 to 30 percent of such comments; however, most of the changes made by HUD "were in the areas of 'examples' which often appeared to provide contradictory information rather than [in] substantive areas."

Even less successful were attempts to get HUD to take into account the experiences of the State and local agencies. One PHRC goal was to help HUD benefit from PHRC's past mistakes by not having to repeat them. For 20 years or more, the PHRC and other agencies had used administrative law judges.

We have had experience with what happens to complaints when they go beyond the informal resolution stage. We have been through court battles and found out which mines blew up in our faces and which of our provisions were safe and court- tested. ... [Now HUD is] basically saying that we are going to have to adopt their procedures... [and] give up time-tested procedures in order to experiment with things we've already learned in some cases will fail.

Reluctance to Abandon Tested Procedures and Format

PHRC, on the other hand, is reluctant to abandon its long-standing investigative procedures and reporting format which it believes to be more effective than those recently prescribed by HUD.⁸ He said that many substantially equivalent agencies "are

⁸ Supplementing the transcript and Mr. Cartwright's prepared text on this subject is "Pennsylvania Human Relations Comments on Proposed Rule 24 CFR Parts 100, 103, 104, 105, 106, 109, 110, 115 and 121, Implementation of Fair Housing Amendments Act of 1988," attached to a letter from Homer C. Floyd, Executive Director, Pennsylvania Human Relations Commission, to HUD's Rules

using the format they are because they have existing court precedents, they have legislative directions and mandates that tell them that this is acceptable to them, and another form may not be."

At the same time, Mr. Cartwright acknowledged the difficulties in assessing the impact of HUD's requirement regarding implementation procedures. During a recent week-long conference⁹ held by HUD near Washington, it appeared clear that the situation is not yet finalized. One question related to how identical each agency's procedures must be to those prescribed by HUD. For example, one tool developed for enforcement is called the "Final Investigative Report" (FIR). The PHRC uses a similar analytical tool which it calls "Facts Showing Cause/No Cause, etc."

Before characterizing the two, Mr. Cartwright explained that, in addition to being PHRC's housing director, he also once served as the Title VIII Branch Chief for HUD and thus has supervised staff using both tools. He then stated that:

I know that each have their strengths, each have their weaknesses [sic]. But the bottom line is, if you do a good investigation on either form, you can tell whether there is a basis for the complaint to proceed. Yet now we're told by HUD that anything less than an FIR would not meet Federal requirements or standards for us to continue as a substantially equivalent agency.

Docket Clerk in the HUD Office of the General Counsel, Dec. 6, 1988, pp. 7-8.

⁹ March 12-17, 1989, in Alexandria, Va. In a recent newsletter of the National Association of Human Rights, editor Jim Yates wrote after the conference that "I feel that every enforcement agency supports the new law, regardless of how we might be perceived. But we have some serious differences with HUD and its interpretation of the law." Jim Yates, "HUD, FHAP's & the 1988 Fair Housing Act," NAHRW News, First Quarter 1989, pp. 6-7.

At the Washington conference with HUD, when the question on how closely the procedures of a substantially equivalent agency must be to the procedures of HUD, the responses by HUD officials ranged from "pretty close" to "identical twins" with "cosmetic difference for informed observer [sic]." Mr. Cartwright expressed strong doubt that legislatures in various localities would be willing to tailor the language of their laws that closely.

HUD's 100-Days Requirement

Mr. Cartwright also objected to HUD's requirement that State and local substantially equivalent agencies complete each case within 100 days. He argued that Congress actually requires HUD only to complete investigations within 100 days and not complete each case in that time. And yet HUD will determine whether an agency meets its substantially equivalent standards by whether it completes all of its cases in 100 days and closes all of its cases within one year.

Thus, the PHRC may fail to meet HUD's standard for substantially equivalent agencies. Yet, according to Mr. Cartwright:

Even Congress does not impose such a requirement on HUD! But the regulations say that PHRC and all other agencies will be assessed by that criteria. Again PHRC and local equivalent agencies will be hard pressed to comply and "non-equivalent" agencies appear to have no chance at all.

Irony in Possible Outcome

Were the PHRC ultimately to fail to be judged by HUD as meeting the Federal standard, the irony would be that the PHRC could not continue as a substantially equivalent agency, and yet the PHRC was the first State agency to withstand a challenge in the U.S. Supreme Court to a housing authority desegregation case, said Mr. Cartwright.¹⁰ It was also the first to have a testing program accepted by the State Supreme Court. And it was the

¹⁰ [Citation being sought from PHRC.]

first to have an equal opportunity housing agreement with a real estate board at the State level. Moreover, PHRC's voluntary marketing agreement became the model for the agreement subsequently adopted by the National Association of Realtors.

Repeating his praise of the new act, Mr. Cartwright said that he and others were emotionally touched when top spokespersons of the Leadership Conference on Civil Rights and the National Association of Realtors spoke of how long they had labored to craft acceptable compromises leading to enactment of the law. He added that "what we would like now is to be part of another dialogue and another compromise that would allow our agencies to continue to dual file rather than... duel file and end up like pit bulls fighting over the bones of the case." He asked the Committee to help in reestablishing the dialogue between HUD and the State and local agencies leading towards allowing the PHRC and the other agencies to continue their fair housing functions.

Philadelphia Ordinance--Broader Housing Protection

Rachel S. Lawton, the Housing Unit Supervisor in the Philadelphia Commission on Human Relations, also applauded the new act, citing its need in the face of housing discrimination which "is always changing to take on subtler and subtler disguises." She asserted that for over 35 years the PCHR has investigated discrimination in housing under the Philadelphia Fair Practices Ordinance.¹¹ That ordinance has always offered broader protections than has the law of the Federal government. It prohibits discrimination on the basis of race, color, sex, sexual orientation, religion, national origin, ancestry, physical handicap, which includes having AIDS or being perceived as having AIDS, marital status, age, presence of children, and source of income.

¹¹ [Citation being sought from PCHR.]

According to Ms. Lawton, to date, the PCHR has enjoyed a mutually beneficial relationship with HUD, allowing the PCHR to investigate dual-filed cases. However,

The next 40 months will determine whether the cooperative relationship between HUD and State and local agencies will survive or be so subject to such strict interpretation of the law that few State and local agencies will meet the new certification requirements. ... The preliminary signs from HUD do not look good, particularly from HUD headquarters. ...

Regulations' Effects on Philadelphia

Citing the problems described by Mr. Cartwright, Ms. Lawton went on to outline their effect on Philadelphia. First, in 1973, the Commonwealth Court of Pennsylvania determined that the State human relations agency did not have the authority to award compensatory damages to complainants for mental anguish and humiliation, and the Philadelphia human relations agency presently does not have the authority to assess punitive damages up to \$50,000 for civil penalties, as is provided in Title VIII. Consequently, the 1973 court "ruling would have to be overturned and/or more specific language added to current laws authorizing relief on the State and local level similar to that provided for in Title VIII," she said.

Second, the provisions of the new act calls for a complaint to be filed within 100 days of the alleged discriminatory incident and places an undue burden on the complainant, Ms. Lawton stated. She added that the PCHR currently has a 90-day statute of limitations on the filing of complaints, and, therefore, City Council approval must be obtained to extend the time period to at least 100 days. Third, the Philadelphia Fair Practices Ordinance¹² does prohibit discrimination on the basis of physical handicap, but the PCHR may be required to petition the City Council to modify the ordinance to specifically include protection for those with mental handicap.

¹² [Citation being sought from the PCHR.]

Fourth, while Title VIII does indicate that the actions of a State or local fair housing unit should be subject to judicial review, HUD's rule takes it one step further by requiring that the State or local law "must provide for civil enforcement of the law or ordinance by an aggrieved person by the commencement of an action in an appropriate court not less than one year after the occurrence of an alleged discriminatory housing practice," according to Ms. Lawton. She added that complainants and respondents have always had the right to a judicial appeal to contest a PCHR finding after a PCHR public hearing, but the PCHR does not "have a bifurcated system whereby a complainant has a choice between PCHR's administrative process and a court of competent jurisdiction."

Fifth and last:

Building permits submitted after January 1, 1991 must include plans that buildings will be readily accessible to the handicapped in a number of different specific provisions. It remains unclear as to whether PCHR will be responsible for monitoring the approval of such plans or whether another city agency will be acceptable to handle that aspect of Title VIII law and/or who will be responsible for investigating discrimination complaints with regard to building code violations.

Ms. Lawton concluded that State and local fair housing agencies everywhere "are puzzling over HUD's motivation with regard to the strict interpretation of the law" and at the same time

one thing appears clear: many of us will not be able to make all of the changes in our various laws that are now necessary for certification. It remains to be seen whether HUD reassesses its requirements or whether the cooperative relationship will dissolve.

Negotiations and Washington "Hara-Liners"

Advisory Committee member Joseph Fisher asked the public sector panelists whether these problems have been communicated to HUD and whether negotiations on the differences might still be possible. Mr. Cartwright replied that most of the substantially equivalent agencies belong to the International Association of Human Rights Organizations (IAHRO) which met separately with

individuals in HUD and that many agencies have lobbied through their Congressional delegations, having also previously gone through HUD channels in terms of comments on the regulations. Mr. Solecki said that he could not speak for HUD headquarters but speculated that the changeover in the White House administration has left some confusion. In as much as HUD Secretary Jack Kemp has not yet "really taken hold at this point" and in the absence of an Assistant Secretary in charge of fair housing, the situation could be "characterized as hard-line staff people imposing policy. . . ." At the same time, based on Secretary Kemp's comments, Mr. Solecki believed that fair housing is number two--after homelessness--on Secretary Kemp's list of seven priorities. For this reason, Mr. Solecki expressed optimism that the Secretary will nominate an Assistant Secretary who "will be cooperative and will take these kinds of arguments into account" and that "this initial confusion that we have will not persist. . . . It is just that we are in this hiatus right now where a lot of things are being talked about and said, and really nobody has the authority to say some of those things."

In the same vein, Ms. Lawton agreed that ways might be worked out for "alternatives that could... maintain a... substantially equivalent relationship that might not involve having to change laws on State and local levels if it proves to be imprudent to do that or impossible to do that." She noted that cases are always dual filed under Title VIII and that, after a finding of probable cause, a complainant may go through the Federal process with the HUD administrative law judge or go into Federal court and retain the same access to the same remedies that are now on the Federal level, while still having State or local agencies investigate the complaint for the Federal government. However, whether such ever does happen, "remains to be seen," said Ms. Lawton.

Forfeiture of Grandfather Clause and Other Losses

On the "hard-lining" which Mr. Solecki mentioned, Mr. Cartwright recalled that some substantially equivalent agencies asked HUD if they might submit the proposed legislative changes to HUD for its evaluation "so that we will know that what we are asking for would be acceptable" before the proposals go to their legislatures. HUD responded in the negative, and Mr. Cartwright went on to say that, if any legislatures did adopt unreviewed proposals but such new legislation was then judged by HUD as deficient, "we would lose our grandfather clause immediately rather than four years from now. And... we could only make this request for certification once a year. Now none of that is statutory; that is somebody's hard-nosed push."

Advisory Committee member Sam Hwang referred back to Mr. Solecki's mentioning that his staff has been doubled in size, and Mr. Wang then asked whether that increase was made in anticipation of Mr. Solecki's staff taking over the functions previously handled by the State and local agencies. Mr. Solecki replied that his staff is actually increasing to 17 from its previous size of 10. He added that the increase was aimed at his staff's handling the new responsibilities for handicap and familial status; the grandfather clause only allows the substantially equivalent agencies to work on the previously approved jurisdictions, not the two new ones. At the same time, he acknowledged that supplementary budgets had been proposed in Congress. These budgets had been intended to increase HUD staffs "in the event that this other agreement does not work, "but right now, that was not the point of this initial [staff increase] ."

Coordination More Critical Than Revenue

Mr. Hwang inquired whether the \$650 which is paid to the agencies by HUD for each complaint they process is sufficient and what the impact would be on the agencies if they were to lose this revenue. Mr. Cartwright replied that losing the revenue is not a key factor in terms of the loss of their substantially equivalent status. The monies would support the equivalent of

one-and-a-half positions at most, and one position does nothing but process paper work. Fair housing enforcement is a function which the PHRC would have to do in any event, and the greater loss is the loss of coordination of the effort with HUD. For example, over the years, the PHRC has told the real estate industry that it only had to deal with one agency, whereas it would have to deal with two if the PHRC were to lose its substantially equivalent status--the PHRC and HUD.

Ms. Lawton added that the revenue earned for cases processed by her agency in Philadelphia goes into the city's general fund; no specific staff position is dependent on that revenue, and, thus, an agency worker would not necessarily be lost. However, agencies throughout Pennsylvania would lose the opportunity to network with State and local agencies from around the U.S. during the national policy conferences sponsored by HUD several times a year. The PCHR would also lose opportunities to undertake HUD-supported projects with community organizations and universities on mortgage lending practices and the like.

Fair Housing Efforts of Realtors

Robert Tyler, chairman of the Pennsylvania Association of Realtors (PAR), described his organization as having 28,000 members in the Commonwealth who are well informed about the new act, its rules, and regulations; most of them display posters in their offices about the latest requirements on fair housing. He also expressed his opinion that "realtors try to be a little more professional than the real estate agents." As to the Fair Housing Amendments Act of 1988, the National Association of Realtors worked with HUD and came to an agreement on the regulations at the national level, cost resulting from the new protections for the handicapped and questions on how many people may occupy a residence resulting from the new protections based on familial status.

Much before then, at the State level, the PAR had a memorandum of understanding with the PHRC regarding how to proceed in marketing, rental, and sales.¹³ Effective for a five-year period which began on June 10, 1987, the memorandum also encourages the recruitment of minorities into the real estate industry. Furthermore, the PRA is attempting to gain the signatures of all realtors on this fair marketing agreement. Article 10 of PAR's rules and regulations proscribes discrimination, and individuals who believe that they have been discriminated against by a realtor or realtor associate may process a complaint through the PAR. Thus, for the purpose of compliance, there are the new Federal act, the State's enforcement activities, and PAR's mechanism.

Shortage of Affordable Housing for Families

Mary Ann Holloway, the executive director of the Pennsylvania Low Income Housing Coalition (PLIHC), described the PLIHC as existing since 1985 and as primarily composed of non-profit organizations across the Commonwealth which are engaged in housing development, housing rehabilitation, and housing counseling. The PLIHC also serves the homeless in shelters or transitional housing and those who are seeking permanent housing.

She began by asserting that "there is a vast shortage of rental housing that is affordable for families" and asserted that "in our arts and our culture, we love children, but in our real estate, we are scared of them."¹⁴ The PLIHC membership in Delaware County, Lancaster, York, and Scranton has repeatedly

¹³ The PAR and the PHRC also published the 8-page "Fair Housing Guidelines," adopted by both agencies on Apr. 8, 1987.

¹⁴ For the latest national data on housing, see F. John Devaney, Housing in America 1985/86, Current Housing Reports, Series H-121, No. 19, Bureau of the Census, U.S. Department of Commerce, and also "Is U.S. Housing Still Affordable?," Census and You, Vol. 24, No. 5, Bureau of the Census, May 1989, p. 1.

told her that more education is needed so that the rights and obligations of tenants and landlords are universally understood.

She urged the Advisory Committee to encourage HUD to ensure that funds allocated to local jurisdictions under both HUD's Community Development Block Grant program¹⁵ and its Rental Rehabilitation Program¹⁶ help to benefit the handicapped. To do so would require that assistance be given to the owners of rental housing who need to make their properties accessible. Ms. Holloway said that "the regulations, as they are written [now] presuppose that a tenant would have all of the funds available to them in order to make whatever reasonable adaptations would be necessary." She pointed out that not all handicapped persons are of low or moderate income but, on the other hand, not all of them have sufficient credit to be able to make the necessary alterations. She added that there are provisions to make certain percentages of the housing which HUD finances or insures be accessible, but those provisions may be waived, and waivers undercut the original goals.

Ms. Holloway also said that attention should be paid to the State Housing Finance Agency, the State Department of Community Affairs, the State Commerce Department and the State Department of Industry and Labor. These agencies must cooperate insofar as State-level regulations, laws, and policies are affected. She noted that the State Housing Finance Agency directly funds profit and non-profit agencies. However, to her knowledge, "they have not aggressively and affirmatively stated that funding is available for providing accessible units."

Housing Discrimination in Greater Pittsburgh

James Frazier, housing director of the Pittsburgh Urban League, described the Pittsburgh chapter as 76 years old, and one of the

15 [Citation being sought from the PLIHC.]

16 [Citation being sought from the PLIHC.]

oldest and the third largest in the U.S. Mr. Frazier expressed frustrations over the last 20 years of the original Fair Housing Act but also hoped that the new Fair Housing Amendments Act will improve matters. His League chapter serves both Allegheny County and Pittsburgh, where, according to Mr. Frazier, segregation is increasing as in Philadelphia and other cities. Citing 1977 data appearing in a 40-city study undertaken for HUD by the National Committee Against Discrimination in Housing,¹⁷ he asserted that a black seeking to buy a dwelling unit runs a 50 percent chance of encountering discrimination and a black seeking to rent one runs a 75 percent chance.

He also said that the recent Atlanta Constitution expose revealed that Pittsburgh has the second worst "minority turndown" rate in the lending market; a black stands a 31 percent chance of being denied a loan, whereas a white stands only a 10 percent chance.

To deal with this, the League will be increasing its activity in pre-purchase housing counseling. The objective would be to create a pool of prequalified minority home seekers in Allegheny County.

Though the city of Pittsburgh has not agreed to do so, the County has agreed to provide funding to develop prequalified minority home seekers, said Mr. Frazier, "so that the excuses used by the banks of credit and work histories and all the other business that they keep throwing up at us will not be relevant. . . ." He added that Pittsburgh's lending institutions have been embarrassed by the recent findings and consequently, he expected them to be "a lot more cooperative." He ended his presentation with the observation that "We know a lot more than we did 20

¹⁷ U.S. Department of Housing and Urban Development, Measuring Racial Discrimination in American Housing Markets: the Housing Market Practices Survey, prepared by R.E. Wienk, C.E. Reid, J.C. Simonson, and F.J. Eggers for the Division of Evaluation (Washington, D.C. 1979).

years ago, and the tools are now at our disposal, and it is time that we put them to work."

Discriminatory Lending in Harrisburg

Melvin Johnson, chairman of the Harrisburg Fair Housing Council (HFHC), said that in 1979-80, his 15-year-old agency became aware of the financial redlining taking place in Harrisburg. Then, in 1980, using the 1977 Community Reinvestment Act--which calls upon banks to make loans in lower income neighborhoods and which also demands public disclosure on how a bank meets community needs (see attachment C)--the HFHC became the second agency in the U.S. "to have a citation upheld based on a protest before the FDIC [Federal Deposit Insurance Incorporation]."

According to Mr. Johnson, the forms of discrimination which the HFHC identified included credit criteria applied differently in different neighborhoods, lack of FHA or Veterans Administration (VA) programs in any of the lending institutions within the city, lack of loan officers in their branches in the inner city, and no publicity aimed at the inner city. He also charged that customers were discouraged in discriminatory ways from even applying for a loan.

After the HFHC shared its information with the FDIC, one lending institution negotiated with the HFHC and to date has provided \$13 million in mortgage write-downs in Harrisburg's inner city; for example, if the rate is 11.5 percent elsewhere, it is 10.5 percent in the inner city in low and moderate income neighborhoods. Also, institutions have begun supporting credit counseling and lowering home improvement loan levels; previously they would not lend below several thousand dollars, and some loan seekers found it difficult to meet the credit criteria for that amount. He reported, too, that there are now three community review councils which monitor the number of loans made, the dollar value of those loans, and the characteristics of the census tracts targeted for the loans.

On the other hand, Mr. Johnson stated that the HFHC has not gained full cooperation from the FDIC, the Federal Home Loan Bank Board, the Federal Reserve Bank, and the Comptroller of the Currency. He acknowledged that unofficial meetings with members of regulatory agencies have taken place, but "they promised us they were going to do this or... that, and really were saying to us, back off, because you are not really going to get anything... ." He also said that one major savings and loan bank in Greater Harrisburg has only one branch in the city and implied that the location of the branches of other banks reveals a negative pattern. Despite such difficulties, the HFHC was scheduled to announce on April 25, 1989 a no-downpayment home mortgage program for low and moderate income Harrisburg residents.

Empowering Communities Through the CRA

Dan Welliver, the HFHC researcher/statistician, then referred to mortgage disclosure data gathered from lending institutions which, he emphasized, are required to furnish such data on demand. (See attachment D.) Though the data do not conclusively distinguish to what extent race or income are the determinants, he said that 38 percent of the homes in Harrisburg are in low and moderate income tracts, but that only 29 percent of the loans and only 17 percent of the loan dollars go there. At the same time, though 45 percent of the homes are located in minority tracts, only 37 percent of the loans and only 22 percent of the loan dollars go there.

Acknowledging the rudimentary nature of such data, Mr. Welliver repeated that even this level of analysis puts information in the hands of community residents, empowering them to use the CRA to confront lending institutions with whatever patterns appear. He repeated the necessity of admitting the limitations of the data, but urged that residents point to what the data seem to show and then go beyond the confrontational stage; a partnership or other positive relationship should eventually be negotiated with the

institutions. Referring to the no-down payment mortgage program mentioned by Mr. Johnson, Mr. Welliver noted that it came about as the result of confronting bank with a poor record.

Pro-Integrative Housing Programs

Advisory Committee member Morris Milgram asked whether the monies allocated by such institutions are used for pro-integration moves or for moves into segregated neighborhoods. He stated that it has been easy to obtain money to increase segregation. On the other hand, he reported that, through the leadership of Charles Brownlee of National Neighbors several years ago, \$6 million was obtained from the State of Ohio for pro-integration moves in Cleveland, and more recently, another \$10 million was obtained for loans at 8.6 percent with 1.5 or 2 points. To his knowledge, no State housing finance agency except the Ohio agency is providing such funding.¹⁸

Mr. Johnson responded that he has heard that similar funds are to be received by the city of Harrisburg. Though the funds are meant for low income residents, Harrisburg's population mix is such that low income areas are minority areas, he explained.

Dr. Bartelt observed that in some CRA challenges neighborhood-based agencies

are content to take a Plessey v. Ferguson kind of approach to the problem of segregation. ... They would be satisfied with separate but equal treatment. .. and... do not push to the point of insisting on support for [integration]... of housing but are satisfied to go after a larger slice of the bank's pie to keep their neighborhood essentially stable.

¹⁸ Ohio Governor Richard Celeste set up "pro-integrative" housing fund in 1983 presently allowing black homebuyers in Cleveland and Cincinnati to purchase in white neighborhoods and whites to buy in black neighborhoods with 30-year mortgages fixed at 8.6 percent and with as little as 3 percent down payments. See Gwen Ifill, Staff Writer, "In Ohio, Using Mortgages to Boost Integration," Washington Post, Apr. 17, 1989, p. A-3.

Mr. Frazier added that the Pennsylvania Housing Finance Agency used to support a minority home ownership program. Although now defunct, the program helped minorities to buy in depressed areas and was thus somewhat along the lines mentioned by Dr. Bartfelt.

Conclusion: Committee Urges Commission to Contact HUD

The Advisory Committee heard Federal, State, and local officials who discussed the 1988 fair housing amendments--including the new provisions covering familial status and the disabled--and the new act's impact on HUD's current relationship to HUD's "substantially equivalent agencies" in the field. A research head from Temple University also illustrated how segregation in housing persists in Philadelphia. Specialists from non-profit agencies in Pittsburgh and Harrisburg agreed that segregation exists in their localities, too; they went on to outline ways of empowering organized residents to negotiate with banks and other lending institutions and of better preparing potential home buyers.

The director of a statewide low-income housing agency urged that funding be allocated to render rental housing accessible to the handicapped, who are now covered by the new Federal act. At the same time, the chairman of the statewide realtors association said that his members are aware of the requirements of the new act and for some time have implemented fair marketing guidelines approved by the State human relations agency. He noted that complaints of discrimination can be registered with his association which will also process them.

Alarmed by what was asserted by the State and Philadelphia human relations commissions regarding possible threats to their status as substantially equivalent agencies, the Advisory Committee voted to have its chairperson, Susan M. Wachter, write to the Commission even before the summary report of the forum is completed. She was asked to urge the Commission to encourage HUD

to strengthen or reopen communications with the substantially equivalent agencies and work out whatever feasible compromises are necessary to allow the State and local agencies to maintain their status and continue to enforce fair housing in conjunction HUD.