

Sustaining the Fair Housing Act

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In the spring of 1968, the U.S. Government made a momentous and inspiring contribution to human rights: It passed the Fair Housing Act.¹ This act recognizes that the right to choose a place to live, within one's means, is among the most fundamental human rights and that protecting this right is central to the healthy functioning of our diverse democracy.

This article explores the legacy of this act and asks what we can do to keep it alive. After a few observations concerning its content and origins, the article reviews the evidence about discrimination in housing, both at the time the Act was passed and today; examines the fair housing enforcement system established by the Act; discusses improvements in this system since 1968; and recommends additional changes to make this system even more effective.

The Fair Housing Act of 1968: Content and Origins

The right to choose where to live cannot be protected without placing significant restrictions on people who own property. Thus, the Fair Housing Act had to confront the inherent conflict between the right of all people to choose where to live and the right of owners to dispose of their property as they wish—rights that compose the two sides of the American dream. The Act's resolution of this conflict grew out of this Nation's long, painful history with discrimination in housing. The United States has experienced the corrosive effects of racial zoning, race-restrictive covenants, and the refusal of many property owners and their agents to serve people who are seen as different from the White majority.² It has learned firsthand about the powerful impact of housing discrimination on access to schools and jobs and wealth and about the distrust and stereotyping that goes with residential separation.³ The lesson of this history is clear: It is impossible to ensure fair treatment and equal opportunity or, as stated in the introductory sentence of the Fair Housing Act, to provide "fair housing throughout the United States," if property owners and other participants in housing markets can restrict or deny access to housing on the basis of membership in a so-called protected class, defined by race, color, religion, or national origin.⁴ Thus, in clear and forceful terms the Fair Housing Act declares that, with certain narrow exceptions, the rights of property owners and their agents are secondary to the principle of equal treatment in housing markets—the right to choose takes precedence over the right to exclude. In my view, this declaration is one of the shining moments of American democracy.

This moment almost did not arrive. The Senate passed the legislation on February 11, 1968, but only after a series of compromises had narrowed its scope and weakened its enforcement provisions.⁵ Even then, it appeared unlikely that the House of Representatives would make the same decision. Fate intervened. On April 4, Dr. Martin Luther King, Jr., was assassinated and riots broke out around the country in response. These events changed the minds of many former opponents, and on April 9, the House voted 229 to 195 to accept the Senate bill. It was signed into law by President Lyndon Johnson on April 10—a dramatic addition, one might say, to King’s legacy.

The Fair Housing Act makes it unlawful to take any of the following actions solely on the basis of race, color, religion, or national origin: to deny a dwelling; to declare that a dwelling is not available when, in fact, it is; to offer different terms, conditions, or privileges of sale or rental; to state, in any announcement or advertisement, a group-based restriction or preference on the sale or rental of a dwelling; or to market a dwelling on the basis of the entry or prospective entry of certain groups into its neighborhood. It also outlaws discrimination in access to real estate brokerage services and in mortgage lending, as well as harassment or intimidation of people because they meet their obligations or exercise their rights under the Act.⁶ These are substantive and wide-ranging prohibitions.

The Fair Housing Act applies to most housing market transactions. As part of the compromise necessary for its passage, however, the Act exempts the sale or rental of a single-family house by the owner, so long as the owner receives no assistance from a housing agent, and the rental of units in a building containing no more than four units, one of which is inhabited by the owner. In these two cases, therefore, the Fair Housing Act does not override the right to exclude.⁷ Finally, the Fair Housing Act has been interpreted by the courts to cover both disparate-treatment discrimination, which involves intentional mistreatment of customers in a protected class, and disparate-impact discrimination, which involves the use of business practices that have an unfavorable impact on a protected class and cannot be justified on the basis of “business necessity.”⁸ This interpretation rules out a potential loophole in fair housing law because it prevents a housing agent from disguising its mistreatment of people in a protected class as an apparently neutral policy based on a characteristic that is highly correlated with membership in that class but not necessary for business success.⁹

Housing Discrimination: Then and Now

In 1970, an investigation into housing discrimination in the New York City area concluded that housing agents did not usually refuse to deal with nonwhite customers but instead resorted to discouragement, evasion, misrepresentation, withholding information, and delay (National Committee Against Discrimination in Housing, 1970). This discrimination took many forms. Real estate brokers told Black customers that no housing was available even when it was, neglected to make followup calls to Blacks, set higher income guidelines when advising Blacks about what they could afford, misrepresented the price or other terms to Blacks, neglected to help Black buyers find a mortgage, steered Blacks to largely Black neighborhoods, prevented a property from being inspected, and delayed Black customers until a White buyer could be found or the seller removed the house from the market. All these practices obviously violate the Fair Housing Act.

Neither this investigation, nor any other source, reveals the frequency with which these discriminatory acts occurred in 1970 or in earlier years. In 1977, however, the U.S. Department of Housing and Urban Development (HUD) conducted the Housing Market Practices Survey, or HMPS, which measured the incidence of discrimination against Blacks in a random sample of urban areas throughout the country (Wienk et al., 1979).

This study employed a research technique called a fair housing audit, in which two identically qualified people, one White and the other a member of one of the groups defined in the Fair Housing Act, called a protected class, successively visit a landlord or real estate broker to inquire about advertised housing.¹⁰ The two teammates then record what they were told and how they were treated. Discrimination can be said to exist if the auditors from the protected class are systematically treated less favorably than the White auditors. As discussed below, this technique is also used for enforcement purposes, in which case it is usually called a *test*, not an *audit*.

HMPS uncovered many discriminatory practices, including several of those found in the New York area 7 years earlier. In the rental market, for example, Whites were significantly more likely than Blacks to be told that an apartment was available, to be told about more apartments than their teammate, or to be placed on an apartment waiting list, and Whites were significantly less likely to be told that an application fee was required. In the sales market, Whites were significantly more likely than Blacks to be told that a house was available, to be told about or to visit more houses than their teammate, and to be invited to call back again. (See Wienk et al., 1979.)

A second national audit study, the Housing Discrimination Study, or HDS, was conducted in 1989. It carried out roughly 4,000 audits and found widespread discrimination against both Blacks and Hispanics. (See Struyk, Turner, and Yinger, 1991; Yinger, 1995, 1998.) In the sales market, for example, HDS found that Blacks and Hispanics were significantly less likely than their White teammates to be shown the advertised unit, to be shown units similar to the advertised unit, to receive a followup call, to receive positive comments on the house, or to be offered assistance in finding financing. In the rental market, Blacks were significantly less likely than their White teammates to be shown the advertised unit, and both Blacks and Hispanics were significantly less likely to be asked to call back, to receive special rental incentives, or to hear positive comments on the apartment. Moreover, Blacks in both the sales and rental markets and Hispanics in the sales market were shown about 25 percent fewer available units than their White counterparts. The comparable figure for Hispanics in the rental market is 11 percent.

One summary index of the HDS results is based on the assumption that an auditor is favored if he is treated more favorably than his audit teammate in at least one way and never treated less favorably. This index covers discriminatory behavior in the provision of information about available housing, agent efforts to help complete a housing transaction, information about financing or credit checks, and steering toward certain types of neighborhoods. (See Struyk, Turner, and Yinger, 1991.) This index indicates that in both the sales and rental markets, Whites are favored over Blacks about 50 percent of the time and over Hispanics about 40 percent of the time—results that reveal continuing, widespread discrimination.¹¹

Although differences in the methodologies of HDS and HMPS preclude a precise comparison of their results, the available evidence does not indicate a trend in discrimination between 1977 and 1989—in either direction. For example, HDS reveals a somewhat higher likelihood that Blacks and Hispanics will inspect fewer units than their White teammates, but HMPS reveals a somewhat higher likelihood of discrimination in the total number of units recommended or inspected (Yinger, 1995).

No national study has been conducted since 1989, so a recent national incidence measure is not available. However, small audit studies have been conducted in several urban areas during the 1990s, and these studies find levels of discrimination that are roughly comparable to those in HDS.¹² Moreover, HUD, the U.S. Department of Justice (DOJ), and local

fair housing groups have done extensive testing for enforcement purposes during the last 10 years and in the process have discovered innumerable acts of discrimination. Here are some examples:

- A landlord in suburban Chicago refused to rent to an interracial couple. This refusal to rent was confirmed in two tests involving Black and White testers. In June 1998, the landlord agreed to a HUD-brokered \$65,000 settlement (HUD, 1998a).
- A landlord in Akron, Ohio, failed to return phone calls, keep appointments, or offer rental applications to several Black testers who visited his complex in late 1996 and early 1997 but offered all these services to their White teammates. This landlord has been sued by the Ohio Civil Rights Commission (The Plain-Dealer, 1998).
- A landlord in Richmond, Virginia, raised the asking rent from \$500 to \$700 per month when he discovered that a prospective tenant was Black and then refused to keep an appointment when she insisted on seeing the apartment anyway. This tenant's White coworker was offered the apartment at the \$500 rent, and several tests conducted by a local fair housing group confirmed that the landlord quoted higher rents to Blacks than to Whites or simply told Blacks that no apartments were available. In May, 1998, HUD brought charges against this landlord (HUD, 1998b).
- In August 1998 a landlord in Hampden County, Massachusetts, agreed to a \$45,000 settlement in a suit brought by a fair housing group. This landlord set his rent at \$325 for White tenants and \$355 for Black and Hispanic tenants. This policy was confirmed in two tests conducted by the fair housing group (National Fair Housing Advocate Online, 1998a).
- In Pittsburgh in the fall of 1997, a Black couple was told that an apartment had been rented but then saw it advertised again the next week. A friend of theirs was told on the phone that it was still available, so they made an appointment to see it under an assumed name. When they arrived, the landlord claimed that he could not show the apartment because he had left his keys in his office. A local fair housing group then conducted tests. The landlord told two White men that the apartment was available but told a Black woman that it had already been rented. The couple and the fair housing group have sued the landlord (Post-Gazette, 1998).
- A landlord in San Antonio in 1997 was caught, through a test, charging higher monthly rents to Hispanics. An Hispanic woman was quoted a rent of \$670 with a \$200 security deposit, whereas a White woman applying for the same apartment was quoted a special rent of \$616 with a \$100 security deposit (San Antonio Fair Housing Council, 1997).

Most of these examples are based on testing by a local fair housing group. In fact, between 1990 and 1997, such groups filed 1,160 fair housing lawsuits alleging discrimination, 818 of which involved testing evidence and 969 of which were closed by the end of 1997. Moreover, 914 of the closed cases provided some kind of relief for the plaintiff. The total financial recovery by the plaintiffs from all these suits came to more than \$95 million.¹³ In addition, DOJ initiated a rental testing program in 1992. On the basis of this program, the Department has filed 46 lawsuits in 12 States. So far, 34 of these suits have been settled or covered by a court judgment, resulting in the payment of \$6.8 million in damages, civil penalties, and other remedies, including a record payment of \$1,500,000 by a landlord in New Jersey. (See U.S. Department of Justice, 1998.) These cases provide ample evidence that housing discrimination remains a serious problem in the 1990s.

Some types of discrimination are difficult to observe with audits. For example, HDS discovered that minority neighborhoods were underrepresented in a random sample of newspaper advertisements but could not shed much light on the causes of this outcome. Three studies, two completed since HDS, have found evidence that this outcome probably reflects discrimination by real estate brokers in the marketing of housing in Black neighborhoods (Galster, Friedberg, and Houk, 1987; Newberger, 1995; and Turner, 1992). Specifically, houses in White neighborhoods are far more likely than houses in Black neighborhoods to be advertised in a major newspaper or to be marketed with an open house. Moreover, it appears that houses in largely Black neighborhoods are not as well served as other houses by the real estate business. One study finds, for example, that the probability that a customer is given access to the information on a multiple listing service is much higher for houses in largely White than in largely Black or largely Hispanic neighborhoods (Yinger, 1995). This outcome could reflect several different types of behavior, including discrimination in marketing, practices that have no legitimate business purpose and have a disparate impact on Blacks and Hispanics, and practices that have a legitimate business purpose. To the extent that the first two types of behavior are involved, the Fair Housing Act is obviously being violated. However, the third type of behavior, which does not violate the Act, also might occur.

In addition, research conducted over the last two decades has improved our understanding of the causes of housing discrimination (Ondrich, Stricker, and Yinger, 1998; Page, 1995; Roychoudhury and Goodman, 1992, 1996; Yinger, 1986, 1995). According to these studies, discrimination does not have a single cause, nor does it have the same causes for all types of housing agent behavior. Instead, discrimination sometimes appears to be driven by a housing agent's prejudice and sometimes by a housing agent's search for profits. In some cases, for example, Black or Hispanic housing agents have been found to discriminate less than White housing agents, a sign that prejudice is probably at work. In other cases, scholars have discovered that housing agents are particularly likely to discriminate in integrated areas, where they have an interest in preventing rapid racial or ethnic change to protect their established business with prejudiced White clients.

Finally, some recent research has explored the costs of housing discrimination. Scholars have long recognized that housing discrimination limits access to schools and to jobs.¹⁴ Another approach is to estimate the value Black and Hispanic families place on the housing opportunities they lose because of discrimination or, to put it another way, to estimate what they would be willing to pay to avoid discrimination. I implemented this approach (Yinger, 1997) using the levels of current discrimination observed in HDS and in recent studies of mortgage lending along with a representative national sample of households that moved. The base-case results reveal that when an event, such as a new child or an increase in income, induces a Black or Hispanic household to search for a house to buy, it must pay, on average, a discrimination "tax" of roughly \$3,700. A cost of this magnitude implies that the total cost of current discrimination amounts to about \$3 billion per year for all Black households, owners and renters, and to almost \$2 billion per year for Hispanic households. Although these results are based on several strong assumptions and should be regarded as exploratory, they provide additional support to the view that housing discrimination continues to extract a high cost from this Nation's Black and Hispanic citizens.

The Fair Housing Enforcement System

As noted earlier, the Fair Housing Act would not have passed without several compromises, particularly compromises in its enforcement system. The Act allows individuals to sue housing agents for discrimination, but the Federal role in this enforcement role system was almost ludicrous. To quote from Section 810:

If the Secretary [of HUD] decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this title without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

Thus the Act permitted the Housing Secretary to act as a conciliator in discrimination complaints, but it did not give him any power to force the parties to negotiate, to levy penalties, or to conduct investigations that are not tied to a complaint. Ironically, the penalties imposed on HUD employees for leaking information were more severe than the penalties imposed on people who discriminate! The Act also allowed DOJ to bring a civil suit against housing agents who engaged in a “pattern or practice” of discrimination or whose discriminatory actions raise “an issue of general public importance.” However, the Act did not authorize fines on people found guilty of discriminating; instead, it simply allowed DOJ to ask for injunctions or restraining orders.

The limitations in the original enforcement system were widely recognized and two major steps have been taken to make this system more effective. First, the Federal Government has worked to make State and local agencies its partners in the fair housing enforcement business. The impetus for this effort comes from the Fair Housing Act itself, which requires complainants to deal with a State or local agency first if that location has a fair housing law that is “substantially equivalent” to the Federal law. The Federal Government, therefore, supports State and local government agencies through the Fair Housing Assistance Program, or FHAP, which was implemented in 1984.¹⁵ More importantly, the Federal Government has enlisted the help of public and private fair housing groups by supporting testing and other programs through the Fair Housing Initiatives Program, or FHIP, which was first established in 1986 and made permanent in 1992. Indeed, a large share of the lawsuits filed by fair housing groups during the 1990s were based on FHIP-funded activities.

Second, the Fair Housing Act was amended in 1988 to give stronger enforcement powers to both the Housing Secretary and the Attorney General. These amendments, which were supported by a broad, bipartisan coalition and signed by President Ronald Reagan, established a system of administrative law judges with the power to levy fines to hear cases brought to HUD, allowed HUD to initiate investigations independent of complaints, and authorized damages and civil penalties in cases brought by Justice.¹⁶ The examples given earlier demonstrate that HUD and DOJ, with the cooperation of local fair housing groups, are learning to use their new enforcement powers.

An Enforcement System for the Next Century

Three decades after the passage of the Fair Housing Act, this Nation finally has in place an effective enforcement system, in which private fair housing groups, State and local fair housing agencies, HUD, and DOJ work together to support freedom of choice in housing.

It should be possible, at last, to back up the promise of the Act with concerted, effective governmental action. Nevertheless, some challenges remain. Not only will it take some effort to maintain the fair housing enforcement system that is now in place, but several new enforcement issues also need to be addressed.

Despite the broad, bipartisan support for the 1988 amendments to the Fair Housing Act, the fair housing enforcement system has come under attack in the last few years from some congressional Republicans, particularly in the House of Representatives. One proposal called for the elimination of FHIP, despite its remarkable record of achievement, as documented by the \$95 million in relief it has provided to the victims of discrimination over the last decade.¹⁷ Attempts also have been made to exempt some industries or activities from the Act's provisions. One particularly chilling proposal, which almost passed, would have prohibited the use of HUD funds for any activity concerning redlining or discrimination in home insurance, including the continued prosecution of ongoing cases. This type of prohibition would be a serious threat to the integrity of the Act. The top fair-housing priority must be to preserve the current enforcement system. In addition, the fair housing enforcement system still needs further enhancement and, indeed, still has some gaps that need to be closed.¹⁸

First, the Federal Government should continue to develop its own investigative skills. The 1988 amendments to the Fair Housing Act give the Housing Secretary the authority to initiate fair housing investigations. This change is important because it helps to take the burden of enforcement off the victims of discrimination and enables HUD to uncover discrimination even when it does not lead to a complaint. In many cases, for example, Black or Hispanic customers do not know that available units have been withheld from them, so they will not suspect discrimination—let alone file a complaint. Moreover, some actors in housing markets, including mortgage bankers, are not well covered by the existing fair housing enforcement system, and this new authority gives HUD the opportunity to expand the scrutiny these actors receive.

HUD has begun to use this new power (see HUD, 1995), but its efforts have so far been limited by another provision in the 1988 amendments. In particular, these amendments defined new protected classes based on familial status and disability, which were not covered by existing State and local fair housing laws. Once these amendments were passed, therefore, the State and local laws were no longer “substantially equivalent” to the Federal law and complainants were no longer required to file their complaints with a State or local agency. The result was a dramatic increase in volume of complaints filed with HUD, and a concomitant increase in HUD's responsibility for complaint processing. This situation has been gradually turning around since 1988 as State and local governments bring their fair housing laws into conformance with the amended Fair Housing Act. By FY1996, 75 State and local jurisdictions were judged to have “substantially equivalent” laws and received funding under FHAP (HUD, 1998c). As this process continues, HUD must continue to expand its own investigative role—that is, to identify housing market activities that are not covered by State and local fair housing agencies or private fair housing groups or DOJ and to develop tools to search for discrimination in those activities.

Second, the Federal Government needs to expand its coverage of discrimination in the sales market. Both the Justice Department and the FHIP-sponsored fair housing groups have concentrated on rental housing. This was certainly a reasonable place to start because more than one-half of Black and Hispanic households are renters.¹⁹ However, HDS found levels of discrimination that were as high for Blacks and higher for Hispanics

in the sales market than in the rental market. Moreover, discrimination in the sales market prevents Blacks and Hispanics from becoming owners and from enjoying the access to wealth and desirable communities that often comes with homeownership. As a result, it makes no sense for the fair housing enforcement system to continue such a heavy emphasis on the rental market.

Third, Federal enforcement officials should build on research concerning the causes of discrimination to help identify situations in which discrimination is particularly likely to occur.²⁰ As noted earlier, for example, real estate brokers appear to have, and to act upon, a strong economic incentive to discriminate in neighborhoods that are threatened by racial or ethnic tipping. Identifying such neighborhoods and focusing enforcement investigations in them therefore appears to be a cost-effective enforcement strategy.

Finally, the Federal Government needs to follow up on the problem of discrimination in the marketing of housing in minority neighborhoods. As noted earlier, several studies have found large differences in the way houses in different types of neighborhoods are marketed, but the nature of this problem and its causes are not well understood. Moreover, testing does not appear to be very useful in this case, so HUD needs to develop new investigative techniques that will help it identify real estate firms that discriminate in the marketing of housing.²¹ It needs to learn more about the types of decisions by real estate firms that influence the extent to which it serves different types of neighborhoods and also to determine which of these decisions are consistent with business necessity. For example, how do real estate brokers decide where to place their offices and where to advertise their services? Do these decisions result in poorer service for people in minority neighborhoods without any business necessity? If so, then these decisions involve discrimination by the disparate-impact standard.

Enforcement activities are not the only way for the Federal Government to combat discrimination. After all, discrimination grows out of a complex system in which the social and economic disparities that are the legacy of past discrimination result in stereotypes and prejudice, which, in turn, give landlords and real estate brokers an incentive to discriminate. Moreover, residential segregation, which is a product of current and past discrimination, limits the access of protected classes to good schools and jobs, thereby perpetuating social and economic disparities, and creates an environment in which intergroup distrust and hostility can thrive.²² A comprehensive program to combat housing discrimination should therefore include not only enforcement activities, but also programs to help eliminate intergroup economic disparities and programs to promote residential integration.²³ For example, Federal programs to promote homeownership and to expand the range of options for housing subsidy recipients both contribute to the fight against housing discrimination.

Conclusion

The Fair Housing Act made a major contribution to human rights and equal opportunity and is a shining example of American democracy at its best. Largely because the enforcement provisions in the original Fair Housing Act were so weak, however, discrimination in housing was still widespread in 1989, the date of the last national audit study. Many incidents of discrimination have been uncovered in the 1990s, but the available evidence does not reveal whether the level of discrimination has changed since 1989. It is tempting to conclude that discrimination must have declined since 1989; after all, the 1988 amendments to the Fair Housing Act greatly strengthened the enforcement system, and the 1990s have witnessed unprecedented levels of relief for the victims of housing discrimination. This conclusion is not warranted, however: The new enforcement system has only been in place a few years and enforcement officials are still learning how to use it

effectively. Moreover, fair housing enforcement activities still touch only a small fraction of the housing transactions in the country, and the available evidence suggests that discrimination is still widespread. It would be premature, to say the least, to assume that the battle against discrimination in housing has been won.

Thus, to maintain freedom of choice for all Americans in search of a home and to combat the continuing high costs of housing discrimination, this Nation needs to preserve and strengthen its fair housing enforcement system. The Federal Government should continue to provide adequate funding to the fair housing offices in HUD and DOJ and to support State and local fair housing organizations, both public and private. As complaint-processing activities shift back to the State and local agencies, HUD should develop its new investigatory powers. All parties in the enforcement system should expand their activities in the sales market and focus some of their efforts on situations in which discrimination is most likely to occur. HUD also should explore the important topic of discrimination in the marketing of houses and should develop new tools for identifying this type of discrimination.

The Fair Housing Act sets high and laudable standards for fair treatment and equal opportunity in housing markets. Now, 30 years after the passage of this act, is a good time for this Nation to recommit itself to the achievement of these standards—to consolidate the recent improvements in the fair housing enforcement system and to broaden the coverage of this system to all parts of the housing market.

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Notes

1. Actually, the U.S. Government made this contribution earlier—in the Civil Rights Act of 1966, which outlawed racial discrimination in all forms of contracting. However, this act was virtually unknown until it was resurrected by the *Jones vs. Mayer* decision by the U.S. Supreme Court only 2 months after the passage of the Fair Housing Act. See Metcalf (1988).
2. For more on this history, see Leigh (1992), U.S. Commission on Civil Rights (1973), Vose (1959), and Yinger (1995).
3. For reviews of the literature on the consequences of discrimination in housing, see Galster (1986, 1991), Kain (1992), Orfield and Eaton (1996), and Yinger (1995).
4. This is the list of protected classes from the original Fair Housing Act. The Act has since been amended to cover discrimination based on sex (1974) and on handicapped status or familial status (1988). The contents of the amended Fair Housing Act can be found in National Fair Housing Advocate Online (1998b).
5. The passage in the Senate also may have been aided by the release of the Kerner Commission report, which focused on racial divisions in the United States. See Massey and Denton (1993), which is also the source for the information in the rest of this paragraph.

6. This paper does not explore discrimination by lenders, insurers, appraisers, and various other participants in housing markets. For reviews of recent evidence on discrimination by these other parties, see Yinger (1995) and Ladd (1998).
7. The Civil Rights Act of 1866 does not recognize these exceptions, so race-based discrimination is illegal in any housing market transaction. See Schwemm (1992). The Fair Housing Act also exempts housing transactions by nonprofit religious or private associations.
8. In legal terms, the issue is whether a plaintiff must prove discriminatory intent, which is a very demanding standard, or simply discriminatory effect. If the so-called *effects test* or *effects theory* is applicable, establishing discriminatory effect shifts the burden of proof to the defendant, who must then show that his practices were driven by “business necessity” and that comparable nondiscriminatory practices were not available. See Schwemm (1992). The Civil Rights Act of 1866 is based solely on the more demanding discriminatory-intent standard.
9. Moreover, the disparate-impact standard requires housing agents to go beyond equal treatment by eliminating out-moded rules of thumb and other unnecessary business practices that have a disproportionate impact on a protected class.
10. For a discussion of the audit method and its history, see Yinger (1995).
11. There is no easy way to measure the incidence of discrimination. For a discussion of this topic, see Yinger (1998).
12. Recent studies include Fair Housing Council of Fresno County (1995), Central Alabama Fair Housing Center (1996), Fair Housing Action Center (1996), The Fair Housing Council of Greater Washington (1997), and San Antonio Fair Housing Council (1997). These audit studies have not yet been evaluated by scholars, but they use well-established audit procedures.
13. The alleged discrimination was based on race or ethnicity in 53 percent of the 1,160 cases, on familial status in 26 percent, and on disability in 11 percent. In addition, 82 percent of the cases involved rental housing, 7 percent involved houses for sale, and 1 percent involved mortgages. See Fair Housing Center of Metropolitan Detroit (1998).
14. See the references in endnote 3.
15. Even with this provision, many complaints still come to HUD either because they originate in a jurisdiction without a “substantially equivalent” law or because they are appealed from a State or local agency to HUD.
16. For a more complete discussion of these amendments, see Schwemm (1992), Kushner (1992), or Yinger (1995).
17. Another recent proposal called for shifting HUD’s fair housing enforcement functions (centered in the Office of Fair Housing and Equal Opportunity or FHEO) to the Justice Department. This step would be a serious mistake. Justice plays a crucial role in the enforcement system and deserves great credit for the steps it has taken in recent years. Indeed, its rental testing program is a model of effective enforcement. However, DOJ has no experience with the activities that are at the heart of FHEO’s

mission, namely responding to individual complaints and assisting public and private fair housing organizations at the State and local level, and the mandate, history, and culture of the Justice Department do not appear to be well suited to these other tasks. Moreover, moving these activities from HUD to DOJ would distract Justice from its vital prosecutorial mission, and the complex, costly transition would undoubtedly set fair housing enforcement back for a long, long time.

18. For a more detailed discussion of gaps in the enforcement system, see Yinger (1995). Another perspective on fair housing enforcement is offered in Galster (1990).
19. In 1997 the homeownership rate was 71.1 percent for Whites, 46.0 percent for Blacks, and 43.1 percent for Hispanics. See Council of Economic Advisers (1998).
20. For a more detailed discussion of this recommendation, see Yinger (1995).
21. A more dramatic proposal can be found in Yinger (1995). I point out that the Community Reinvestment Act gives lenders the responsibility for ensuring adequate credit flows to all neighborhoods in their service area even if they do not discriminate and recommend a comparable Community Brokerage Act to require real estate brokers to serve all neighborhoods.
22. The impact of discrimination on segregation is both direct, in that it limits the access of people in some protected classes to White neighborhoods, and indirect, in that it helps perpetuate intergroup differences in attitudes and in incomes, which sort groups into different neighborhoods. See Galster (1986, 1991) and Yinger (1995).
23. For a detailed discussion of Federal policies to combat discrimination, see Yinger (1995).

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