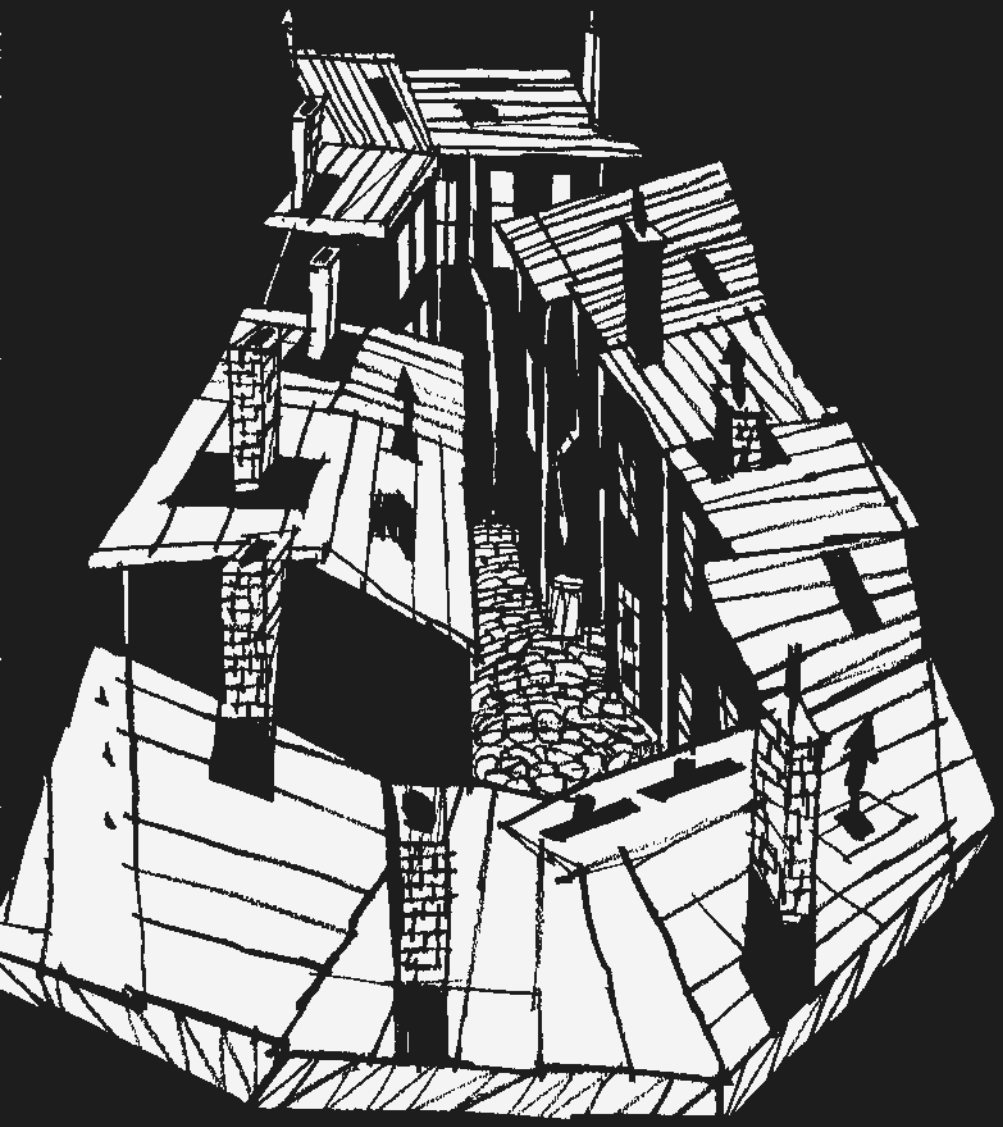
HOUSING

1961 United States Commission on Civil Rights Report 4




UNIVERSITY OF MARYLAND
SCHOOL OF LAW
FEB 13 '84
BALTIMORE, MARYLAND

BOOK 4

HOUSING

1961 Commission on Civil Rights Report

For sale by the Superintendent of Documents, Government Printing Office
Washington 25, D.C.

Contents

Book 4: HOUSING

General Contents: Books 1–5

Foreword

The United States Commission on Civil Rights was created by the Civil Rights Act of 1957 as a bipartisan agency to study civil rights problems and report to the President and Congress. Originally created for a 2-year term, it issued its first comprehensive report on September 8, 1959.

On September 14, 1959, Congress extended the Commission's life for another 2 years. This is the fourth of five volumes of the Commission's second statutory report.

Briefly stated, the Commission's function is to advise the President and Congress on conditions that may deprive American citizens of equal treatment under the law because of their color, race, religion, or national origin. The Commission has no power to enforce laws or correct any individual wrong. Basically, its task is to collect, study, and appraise information relating to civil rights throughout the country, and to make appropriate recommendations to the President and Congress for corrective action. The Supreme Court has described the Commission's statutory duties in this way:

> . . . its function is purely investigative and factfinding. It does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action.

Specifically, the Civil Rights Act of 1957, as amended, directs the Commission to:

- Investigate formal allegations that citizens are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin;
- Study and collect information concerning legal developments which constitute a denial of equal protection of the laws under the Constitution;

- Appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution;
- Prepare and submit interim reports to the President and the Congress and a final and comprehensive report of its activities, findings, and recommendations by September 9, 1961.

The Commission's 1959 Report included 14 specific recommendations for executive or legislative action in the field of civil rights. On January 13, 1961, an interim report, *Equal Protection of the Laws in Public Higher Education,* containing three additional recommendations for executive or legislative action, was presented for the consideration of the new President and Congress. This was a broad study of the problems of segregation in higher education.

The material on which the Commission's reports are based has been obtained in various ways. In addition to its own hearings, conferences, investigations, surveys and related research, the Commission has had the cooperation of numerous Federal, State, and local agencies. Private organizations have also been of immeasurable assistance. Another source of information has been the State Advisory Committees which, under the Civil Rights Act of 1957, the Commission has established in all 50 States. In creating these committees, the Commission recognized the great value of local opinion and advice. About 360 citizens are now serving as committee members without compensation.

The *first statutory duty* of the Commission indicates its major field of study—discrimination with regard to voting. Pursuant to its statutory obligations, the Commission has undertaken field investigations of formal allegations of discrimination at the polls. In addition, the Commission held public hearings on this subject in New Orleans on September 27 and 28, 1960, and May 5 and 6, 1961.

The Commission's *second statutory duty* is to "study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution." This takes in studies of Federal, State, and local action or inaction which the courts may be expected to treat as denials of equal protection. Since the constitutional right to equal protection is not limited to groups identified by color, race, religion, or national origin, the jurisdiction of the Commission is not strictly limited to discrimination on these four grounds. However, the overriding concern of Congress with such discrimination (expressed in congressional debates and in the first subsection of the statute) has underscored the need for concentrated study in this area.

Cases of action or inaction discussed in this report constitute "legal developments" as well as denials of equal protection. Such cases may have been evidenced by statutes, ordinances, regulations, judicial decisions, acts of administrative bodies, or of officials acting under color of law. They may also have been expressed in the discriminatory application of nondiscriminatory statutes, ordinances or regulations.

Inaction of government officials having a duty to act may have been indicated, for example, by the failure of an officer to comply with a court order or the regulation of a governmental body authorized to direct his activities.

In discharging its *third statutory duty* to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution," the Commission evaluates the effectiveness of measures which by their terms or in their application either aid or hinder "equal protection" by Federal, State, or local government. Absence of Federal laws and policies that might prevent discrimination where it exists falls in this area. In appraising laws and policies, the Commission has considered the reasons for their adoption as well as their effectiveness in providing or denying equal protection.

The *1959 Report* embraced discrimination in public education and housing as well as at the polls. When the Commission's term was extended in 1959, it continued its studies in these areas and added two major fields of inquiry: Government-connected employment and the administration of justice. A preliminary study looked into the civil rights problems of Indians.

In the public education field, the problems of transition from segregation to desegregation continued to command attention. To collect facts and opinion in this area, the Commission's Second Annual Conference on Problems of Schools in Transition was held March 21 and 22, 1960, at Gatlinburg, Tenn. A third annual conference on the same subject was held February 25 and 26, 1961, at Williamsburg, Va.

To supplement its information on housing, education, employment, and administration of justice the Commission conducted public hearings covering all of these subjects in California and Michigan. On January 25 and 26, 1960, such a hearing was held at Los Angeles; and on January 27 and 28, 1960, in San Francisco. A Detroit hearing took place on December 14 and 15, 1960.

Commission membership

Upon the extension of the Commission's life in 1959, and at the request of President Eisenhower, five of the Commissioners consented to remain in office: John A. Hannah, Chairman, president of Michigan State University; Robert G. Storey, Vice Chairman, head of Southwestern Legal Center and former dean of Southern Methodist University Law School; Doyle E. Carlton, former Governor of Florida; Rev. Theodore M. Hesburgh, C.S.C., president of the University of Notre Dame; and George M. Johnson, professor of law and former dean of Howard University School of Law.

John S. Battle, former Governor of Virginia, resigned. To replace him the President nominated Robert S. Rankin, chairman of the depart-

ment of political science, Duke University. This nomination was confirmed by the Senate on July 2, 1960.

On March 16, 1961, President Kennedy accepted the resignations of Doyle E. Carlton and George M. Johnson. A few weeks later he nominated Erwin N. Griswold, dean of Harvard University Law School and Spottswood W. Robinson III, dean of the Howard University School of Law, to fill the two vacancies. The Senate confirmed these nominations on July 27, 1961.

Gordon M. Tiffany, Staff Director for the Commission from its inception, resigned on January 1, 1961. To replace him, President Eisenhower appointed Berl I. Bernhard to be Acting Staff Director on January 7, 1961. He had been Deputy Staff Director since September 25, 1959. On March 15, 1961, President Kennedy nominated him as Staff Director. The Senate confirmed his nomination on July 27, 1961.

Part VI. Housing

1. Introduction

In 1959 the Commission found that "housing . . . seems to be the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay." [1] Today, 2 years later, the situation is not noticeably better.

Throughout the country large groups of American citizens—mainly Negroes, but other minorities too—are denied an equal opportunity to choose where they will live. Much of the housing market is closed to them for reasons unrelated to their personal worth or ability to pay. New housing, by and large, is available only to whites. And in the restricted market that is open to them, Negroes generally must pay more for equivalent housing than do the favored majority. "The dollar in a dark hand" does not "have the same purchasing power as a dollar in a white hand." [2]

As a consequence there is an ever-increasing concentration of nonwhites in racial ghettos, largely in the decaying centers of our cities—while a "white noose" [3] of new suburban housing grows up around them. This racial pattern intensifies the critical problems of our cities: slums whose growth is abetted by the racial ghetto; loss of tax revenue and community leadership through flight to the suburbs of those financially (and racially) able to leave—all this in the face of growing city needs for transportation, welfare, and municipal services.[4]

These problems are not limited to any one region of the country. They are nationwide and their implications are manifold. Attorney General Mosk of California told this Commission: "It is most appropriate in our concern with these [civil rights] problems to concentrate on housing, for here we have . . . what in most instances outside of the South is the root of the evil." [5] Commissioner Hesburgh outlined the difficulty in these terms: [6]

> I think this is the condition that we face . . . —the central city throughout the United States in all of our large metropolitan areas is a rundown, dismal, most depressed and antiquated part of our

> city . . . completely backward in all its facilities, and these include the homes, the schools, the recreational facilities. . . . It is not just a question of houses and bricks and mortar and businesses and loans and all the rest. It is a problem of people, and unless we can find some answers to this problem on all levels we are in real trouble as a Nation. . . .

Just as the problem of housing inequalities must be considered in deeper terms than blueprints and mortgages, so its effects cannot be understood merely in terms of statistical tables. It is a problem of people and its effects on the human spirit cannot so readily be calculated.

As the Commission noted in 1959: "Some of the effects of the housing inequalities of minorities can be seen with the eye, some can be shown by statistics, some can only be measured in the mind and heart." [7]

THE NATURE OF HOUSING DISCRIMINATION

A number of forces combine to prevent equality of opportunity in housing. They begin with the prejudice of private persons, but they involve large segments of the organized business world. In addition, Government on all levels bears a measure of responsibility—for it supports and indeed to a great extent it created the machinery through which housing discrimination operates.

The most obvious aspect of the problem involves the owner of a house who, from his own prejudice or by reason of outside pressure, refuses to sell or rent to members of particular minority groups. Frequently, such prejudice finds expression in restrictive covenants. These, the Supreme Court has held, are not judicially enforceable,[8] but, being private arrangements, they are not constitutionally invalid. Their use is still widespread. In buying a home in the Nation's capital in February of 1961, Secretary of State Dean Rusk encountered and refused to sign a restrictive covenant barring occupancy of Spring Valley homes "by Negroes or 'any person of the Semitic race, blood or origin,' including 'Jews, Hebrews, Persians, and Syrians.' " [9]

Property owners' prejudices are reflected, magnified, and sometimes even induced by real estate brokers, through whom most housing changes hands. Organized brokers have, with few exceptions, followed the principle that only a "homogeneous" neighborhood assures economic soundness.[10] Their views in some cases are so vigorously expressed as to discourage property owners who would otherwise be concerned only with the color of a purchaser's money, and not with that of his skin.[11] Moreover, these views sometimes find elaborately

systematic expression, as in the well-publicized program in Grosse Pointe, Mich. There, discrimination covered the full ambit of "race, color, religion, and national origin," and it was practiced with mathematical exactitude. Two groups, the Grosse Pointe Brokers Association and the Grosse Pointe Property Owners Association had established and maintained a screening system to winnow out would-be purchasers who were considered "undesirable." As Michigan Corp. and Security Commissioner Lawrence Gubow put it to the Commission: [12]

> A passing grade was 50 points. However, those of Polish descent had to score 55 points; southern Europeans, including those of Italian, Greek, Spanish, or Lebanese origin had to score 65 points, and those of the Jewish faith had to score 85 points. Negroes and orientals were excluded entirely.

Similar exclusions are accomplished in other communities, though usually with less refinement than in Grosse Pointe.[13]

The financial community, upon which mortgage financing—and hence the bulk of home purchasing and home building—depends, also acts to a large extent on the premise that only a homogeneous neighborhood can offer an economically sound investment. For this reason, plus the fear of offending their other clients, many mortgage-lending institutions refuse to provide home financing for houses in a "mixed" neighborhood.[14] The persistent stereotypes of certain minority groups as poor credit risks also block the flow of credit, although these stereotypes have often been proved unjustified.[15]

Finally, private builders often adopt what they believe are the views of those to whom they expect to sell and of the banks upon whose credit their own operations depend.[16] In short, as the Commission on Race and Housing has concluded, "it is the real estate brokers, builders, and mortgage finance institutions, which translate prejudice into discriminatory action." [17] Thus, at every level of the private housing market members of minority groups meet mutually reinforcing and often unbreakable barriers of rejection.

This discrimination is not entirely a manifestation of personal prejudice. It rests also on the belief that property values necessarily go down and neighborhoods deteriorate when their racial composition changes. Indeed, this sometimes happens. But as the Commission pointed out in its *1959 Report:* [18]

> [T]here is considerable evidence that the standards of a neighborhood and the property values need not be depreciated by the presence of Negroes, [but] these fears by their own force can become self-fulfilling prophecies. The fear produces panic-selling, which in turn results in the very depreciation in the housing market and chaos in the community that is feared. In a real sense, the only thing people in this situation have to fear is fear itself.

While the housing industry is basically private, government at all levels is involved in varying degrees. A substantial amount of housing for low-income families, for example, is built, owned, and controlled by local public agencies. Another kind of public involvement lies in the exercise of eminent domain to facilitate both public and private projects.

The Federal Government, of course, is deeply involved. It is a principal supporter and regulator of the financial community. Its programs of mortgage insurance and mortgage guarantees have been a bulwark to the private housing industry, stimulating the great expansion of that industry and revolutionizing its practices. In a more direct way, the Federal Government has initiated and supported the great bulk of low-rent public housing, slum clearance and urban renewal programs. Indeed, it has been said of housing, "there is no nondefense segment of American economic life so dependent on the Federal Government." [19] As of June 30, 1959, $105 billion of public credit and money had been used in Federal housing and related programs.[20] Federal funds and influence, in sum, pervade the private housing market, but they have not been used extensively to restrain the discrimination that flourishes there. Seventeen States and numerous cities have enacted laws and ordinances prohibiting discrimination in housing.[21] Congress has remained silent.

THE LAW AND HOUSING DISCRIMINATION

The 14th amendment signified the Nation's resolve that no State should deny "the equal protection of the laws" to any person, regardless of race. And the Supreme Court has said: [22]

> It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own, and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential pre-condition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee.

It is clear that no State or city may practice discrimination in housing. The Supreme Court has held that State agencies are prohibited from applying regulations that prescribe on racial grounds where people may live.[23] And it has held that the 14th amendment prohibits the courts, as instrumentalities of the States, from enforcing private racially restrictive covenants.[24] Similar prohibitions apply to the Federal Gov-

ernment and its courts, as well.[25] Racial discrimination by the Federal Government, the Supreme Court has said, is "unthinkable." [26] But the Constitution does not reach purely private discrimination. It is only when government acts that the Constitution commands equal treatment.

A provision of the Civil Rights Act of 1866,[27] still in effect, proclaims that: [28]

> 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. BUT SEE 88 S.Ct 2186 (1968)

This language suggests a clear governmental policy of equal opportunity, but the extent and scope of its application as law has not, to this day, been fully defined. NOW (1968) SEE ABS

It is clear, then, that government may not itself discriminate. But with respect to the use of Federal credit in support of private discrimination, the constitutional mandate is yet unclear.[29] This, however, does not end the matter. Rather, it poses the question whether, as a matter of national policy, the Federal Government can permit itself to be involved in the denial of equal opportunity; whether the Federal Government, which has established national housing programs to achieve a national purpose, should not take affirmative steps to move toward the achievement of equal opportunity in housing for all Americans. The Supreme Court has recognized that "Equality in the enjoyment of property rights" is "an essential pre-condition to the realization of other basic civil rights." [30] If the achievement of this "essential pre-condition" is not here the explicit command of the Constitution, it is nonetheless its promise.

THE PLEDGE OF THE FEDERAL GOVERNMENT

The Housing Act of 1949 opened a new era in housing. There, Congress set for itself and the Nation the goal of "a decent home and a suitable living environment *for every American family*." [31] This goal which Congress announced is more than a vague expression of hope. It is a pledge of the Federal Government that its resources will be utilized and the goal achieved. Insofar as it is a pledge to assist in the achievement of a decent home for all Americans, both the legislative and executive branches of the Federal Government have affirmed a policy of equal opportunity in housing which may be used as a standard against which

to measure the Government's practices. Some measures, mainly administrative, have been taken toward achieving this goal of equal opportunity, but the practice cannot yet be said to have matched the promise. To the extent that discrimination is practiced in connection with Federal housing programs, the obligation of the Federal Government remains unsatisfied. For this pledge was made to *all* Americans and it was to *all* Americans that President Kennedy referred when he declared before Congress: "We must still redeem this pledge." [32]

THE COMMISSION'S STUDIES

The Commission's studies in the field of housing are undertaken pursuant to its statutory mandates to: [33]

> (2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and
>
> (3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

Insofar as government is directly responsible for discrimination in the housing field, denials of equal protection are involved. Commission study of local governmental participation in housing therefore rests on the first of the statutory mandates quoted above. The duty of appraising the laws and policies of the Federal Government is the main emphasis of the Commission's studies. As has been pointed out, Federal activities permeate virtually every aspect of the housing market; the laws and policies governing such activities therefore affect or potentially affect equal opportunity throughout the field of housing.

In its *1959 Report* the Commission covered, at least briefly, most major aspects of the field of housing—private and public; local, State and Federal. Six recommendations were made; [34] only one has been put into effect.[35] In this report the main emphasis is on the laws and policies of the Federal Government.

The relationship of the home mortgage industry and the Federal Government is examined in detail. In addition to continuing its study of such agencies as the Federal Housing Administration (FHA), the Veterans' Administration (VA), the Federal National Mortgage Association (FNMA), and the Voluntary Home Mortgage Credit Program (VHMCP), the Commission has also examined Federal policies con-

cerning the financial community, as these policies bear upon discrimination in housing.

Another important aspect of the Commission's housing study over the past 2 years has been the urban renewal programs of Federal, State, and local government. The Commission has also continued to devote attention to the Federal low-rent housing program and has undertaken to examine the Federal program concerning housing for the elderly.

Because of increasing State and local activity in the housing field and because many Federal programs operate through local authorities, the Commission has devoted some attention to State and local activities affecting equal opportunity in housing.

The development of the Federal Government's role in housing is the first subject discussed—for here, more than in most areas, the present role of the Federal Government cannot be fully understood until we know what has gone before. Federal policies with respect to housing and equality of housing opportunity have emerged from past experiments. It is a dynamic, continuing process, and the past and present constitute the foundation upon which the future will be built.

2. The Emergence of a Policy

The Federal Government's housing policy, until recent years, has been largely a response to crisis. Its seeds were sown in the urgency of World War I when housing near industrial sites proved inadequate and the Government stepped cautiously into the scene as money lender and house builder. It took firm root in the economic collapse of the thirties when the Government turned to housing as a major weapon to stabilize and stimulate the Nation's economy. And it grew in the massive defense effort of World War II when the Government faced up to the problem of providing housing for workers during war and then for returning servicemen in peacetime. Its full potential has not yet been reached. That lies in the future.

TENTATIVE BEGINNINGS

The first fleeting expression of Federal interest in housing occurred in 1892, when Congress appropriated $20,000 to investigate slums in large cities.[1] The study provoked nothing in the way of legislation but it indicated an official awareness of the fact that slums did exist and did involve problems.[2] It also reflected a change—what had once been an essentially rural nation was now fast becoming urbanized. Three cities, New York, Chicago, and Philadelphia, had populations in excess of 1 million. There were 28 cities, each with a population of over 100,000, whereas 20 years before there had been only 14.

Negroes were already coming to the cities in large numbers. By 1890, 1,500,000, or one-fifth of the 7,500,000 Negroes in the United States lived in urban areas. By 1910, the former figure would almost double. As yet, however, their increasing number was obscured by the rapid growth of the cities, themselves. The housing problems of urbanized Negroes were not yet deemed national problems worthy of congressional notice.

By 1913, Dr. George Haynes, professor of sociology at Fisk University, could define the outlines of the problem of residential segregation. In an article titled "Condition Among Negroes in the Cities" Haynes said, in part: [3]

> Migration to the city is being followed by segregation into districts and neighborhoods within the city . . . . Thus the Negro Ghetto is growing up. . . . [The Negroes] seek other neighborhoods, just as the European immigrants who are crowded into segregated sections of our cities seek better surroundings when they are economically able to secure them. But a prejudiced opposition from his prospective white neighbors confronts the Negro . . . . Intelligence and culture do not often discount color of skin. Professions of democratic justice in the North and deeds of individual kindness in the South have not yet secured to Negroes the unmolested residence in blocks with white fellow-citizens. In northern cities where larger liberty in some avenues obtains, the home life, the church life, and much of the business and community life of Negroes are carried on separately and apart from the common life of the whole people.
>
> In southern communities, with separate streetcar laws, separate places of amusement and recreation, separate hospitals and separate cemeteries, there is sharp cleavage between whites and Negroes, living and dead.

The first positive congressional action in the field of housing came during the emergency of World War I. On March 1, 1918, Congress authorized the United States Shipping Board Emergency Fleet Corporation to provide housing for shipyard employees.[4] This program was based on direct loans to real estate companies incorporated by the shipbuilders. Housing projects were constructed under this program in 24 localities. They included 9,000 houses, 1,100 apartments, 19 dormitories, and 8 hotels. On May 16 [5] and June 4, 1918,[6] Congress expanded its housing activities by authorizing and appropriating funds for the housing of war workers in general. The Bureau of Industrial Housing and Transportation was established within the Department of Labor and the United States Housing Corporation was created by Executive order. The Bureau, working through the United States Housing Corporation (USHC) built, organized, and managed 25 community projects containing more than 5,000 single-dwelling units, as well as apartments, dormitories, and hotels. The USHC also considered and adjusted rent grievances. Investigations were made in more than 100 cities, plans were drawn for 128 sites in 71 communities, and work started on 140 projects. The war's end, however, stopped these activities. The USHC was in operation for only 109 days. Almost

all Federal housing was sold to private owners and the Government hastily withdrew from the housing business.[7]

During the 1920's there was some demand for legislation that would ease home mortgage credit,[8] but none resulted. It was only with the advent of the economic collapse of the early 1930's that Congress again passed housing legislation. Again it was a crisis that prompted Federal action. This emergency was of a nature different from war and the means that Congress used to meet it were as different—and more far-reaching.

RESPONSE TO ECONOMIC CRISIS

On July 21, 1932, Congress passed the Emergency Relief and Construction Act—the first Federal legislation to meet the crisis of the Great Depression.[9] This measure authorized the Reconstruction Finance Corporation (RFC) to make loans to State-regulated, limited-dividend corporations chartered to provide housing for low-income families or for the reconstruction of slums. The corporations were subject to State and local laws as to rents, charges, capital structures, and rates of return. Under this law a loan of $8,059,000 was made to finance Knickerbocker Village in New York City, but the program was not received with widespread enthusiasm.

The President's Conference

A year and a half earlier, in December 1931, President Hoover had called a conference on home building and home ownership. Its only immediate result was the Federal Home Loan Bank Act, but the conference had more profound and far-reaching effects. The reports of its committees occupied 11 volumes.[10] Its findings and recommendations covered such areas as slum clearance, public housing, cooperative housing companies, and neighborhood planning. Significantly, an entire volume was devoted to the problems of housing for Negroes.[11] Negro migration to the cities had begun to take on significant proportions. In the 20-year period prior to 1930, the Negro population of New York City had almost quadrupled; in Philadelphia, it had more than doubled; in Chicago, it had more than quintupled; in Detroit, it had increased more than twenty-fold. After considering the uniqueness of the housing problems of Negroes, the President's Conference offered 16 recommendations to improve their situation. Some of these

consisted of general suggestions for changing the climate of public opinion and inducing "civic-minded people" to establish adequate financing agencies to provide loans at reasonable interest rates. The report also recommended that a National Housing Commission and State commissions be established to promote adequate State housing laws. It recommended that permanent commissions be established on the community level to investigate housing conditions and propose specific controls. It also recommended that interracial groups be established to secure local housing improvements. In connection with the construction of low-priced apartments, it recommended that "consideration be given to the intervention by public funds either through tax relief or through direct subsidy." [12] Finally, the report recommended the organization of local cooperative associations of Negro homeowners and prospective homeowners for the purpose of enabling community groups to bargain collectively for financing facilities.

The importance of the President's Conference lies in the fact that for the first time a federally constituted body had studied the housing field in all its aspects and made proposals for dealing with it as a problem that was national in character.

Creation of the Federal Home Loan Bank System

The only immediate result of the President's Conference was the enactment on July 22, 1932, of the Federal Home Loan Bank Act,[13] which created the Federal Home Loan Bank System. This was the first long-term government measure in the area of home financing and is still the basic law governing the network of financial institutions within the Federal Home Loan Bank System. It was a bold device to integrate local credit institutions into a national system that would be supported on a permanent basis by central reserve facilities. It provided a reserve credit pool exclusively for home financing institutions, independent of the commercial banking system. The Federal Home Loan Bank System (FHLBS) was patterned somewhat after the Federal Reserve System in that it had a central governing board, called the Federal Home Loan Bank Board, appointed by the President, and a group of regional banks (Federal Home Loan Banks). Under this system, 11 of the latter were established with an original capital stock of $125 million subscribed by the Secretary of the Treasury.[14] Building and loan associations, savings and loan associations, homestead associations, savings and cooperative banks, and insurance companies were eligible to become members of the system. In 1933, the credit activities of the Federal Home Loan Banks were broadened by the provision in the Home Owners' Loan Act authorizing the chartering of Federal

Savings and Loan Associations.[15] And as part of the National Housing Act of 1934, the Federal Savings and Loan Insurance Corporation was created under the direction of the Federal Home Loan Bank Board to insure savings in Federally chartered associations and in State chartered associations which met prescribed qualifications.[16] Thus the Federal Government had moved away from the gingerly, tentative approach of the World War I measures. The Federal Home Loan Bank Act also marked a change in emphasis. The chief function of the Federal Government in housing would be to facilitate credit, not to build homes.

Home Owners' Loan Corporation

An additional step, one intended to counteract the flood of mortgage foreclosures throughout the country,[17] came on June 13, 1933, when Congress authorized the creation of the Home Owners' Loan Corporation.[18] The HOLC had a capitalization of $200 million and a loan authorization of $4.75 billion to be used for taking over and refinancing mortgages on one- to four-family dwellings that were either delinquent or held in lending institutions whose assets were frozen. Congress later provided for a guaranty as to principal and interest of HOLC bonds.[19] During its first 3 years, the agency financed 1,017,821 homes, or 1 out of 5 of all mortgages on owner-occupied homes in the nonfarm areas of the Nation.[20] It put $3.5 billion in loans and, when it stopped operating on May 29, 1951, it had accumulated a balance of nearly $14 million, which was presented to the U.S. Treasurer.[21]

The initial emphasis of these programs had been on restoring public confidence in the country's financial institutions.[22] To a large extent the effort succeeded and helped pave the way for a resumption of lending activity. The problem now was to devise methods to encourage building and to increase the supply of funds for new lending. To do this Congress in 1934 started in a new direction with a new and independent agency. It was named, significantly, the *Federal* Housing Administration (FHA). The enabling act was entitled, even more significantly, the *National* Housing Act.[23]

FHA and the new era of mortgage financing

The act of 1934 was revolutionary in its approach. FHA was given authority to insure private lending institutions against losses on long-term, first-mortgage, home loans, and on unsecured loans for home repairs. Similar mortgage insurance had been offered by private companies in the past, but for the Federal Government to engage in this operation was a radical departure from previous practice.[24]

Relief and Construction Act of 1932,[29] had been designed to provide housing for families of low income, and for the reconstruction of slum areas.[30] On June 16, 1933, Congress passed the National Industrial Recovery Act,[31] which, among other things, provided for the "construction under public regulation or control of low-cost housing and slum-clearance projects." [32] The Public Works Administration (PWA) was established to make loans and grants to public agencies meeting two statutory requirements—reasonable security and self-liquidation. Under this legislation and subsequent appropriations by Congress, 50 low-rent public housing projects containing 21,600 units were built in 37 cities. In addition, loans were made for 7 limited-dividend projects which had 3,065 dwelling units.[33]

In 1937, Congress passed the United States Housing Act, creating the United States Housing Authority (USHA).[34] Unlike the earlier public housing laws, this was long-range in purpose. USHA was established as a permanent corporate body. Pursuant to this new legislation, the construction, ownership, and operation of public housing properties were to be under the jurisdiction of local housing authorities. The new Federal agency was empowered to make them loans representing 90 percent of the cost and to pay annual subsidies which, as it developed, were usually sufficient to meet the loan carrying charges. The municipalities concerned were required to contribute annual amounts equivalent to 20 percent of the Federal payments.

The earlier New Deal housing legislation, such as the Home Loan Bank Act, the Home Owners Loan Act, and the National Housing Act, had been within the broad category of "pump-priming" measures and did not encroach upon the domain of the private housing industry. The entrance of the Federal Government into public housing in the depression years was a radical departure from the traditional concept of the function of government, for it was the first major long-range effort on the part of the Federal Government to provide housing directly—housing for the underprivileged at rents they could afford.

By 1938, the basic machinery was established. The essential legislative tools were now at hand, available to serve a housing policy that had not yet evolved. The FHLBB, FHA, and "Fannie Mae" provided the basis for continuing Federal influence on home finance. The PWA, and later the USHA, engaged the Government directly in the business of putting good roofs over the heads of low-income families. These measures were, generally, emergency measures, measures of expediency, with no grand design other than to bring the Nation's resources to bear in overcoming economic catastrophe. Now, however, the Government was no longer merely an interested bystander, but an active instrument of public welfare. Though the machinery would be refined, sharpened, and even elaborated in the years to come, the Federal Government was in housing to stay.

When the Federal Government entered the housing scene in the 1930's, it was immediately confronted with a problem that has been with it ever since: The problem of racial discrimination. Since World War I, when Negroes first moved north in significant numbers, discrimination against them in residential areas had been fairly common in roughly its present form.[35] By 1933, racial discrimination had become an operating practice of the private housing industry. But the Constitution and statutes of the United States imposed different standards on Government—Federal, State, and local—from those followed by private enterprise.

More than 60 years before, Congress had passed the Civil Rights Act of 1866.[36] Part of the United States Code, it provided that: [37]

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white persons thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

The 14th amendment was a guaranty that this right could not be denied on the State or local level. As early as 1917, the Supreme Court of the United States, in *Buchanan* v. *Warley* [38] had ruled unconstitutional a city zoning ordinance requiring racial segregation in housing. This principle had become firmly established through other Supreme Court rulings by the time the Federal housing program got in full swing.[39] But what the Supreme Court had declared unconstitutional when attempted through municipal zoning, the private housing industry practiced at will.

Federal policy in the housing field reflected and even magnified the attitudes of private industry. The FHA indeed encouraged racial discrimination. Its explanation for doing so was the widespread belief that property values of a residential neighborhood suffered when the residents were not of the same social, economic, and racial group. Thus the FHA in its "Underwriting Manual" of 1938 declared: "If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial groups." [40] The Manual carried this principle a step further by recommending the use of restrictive covenants to insure against "inharmonious racial groups." [41] It even contained a model covenant and thereby gave great impetus to the spread of racial discrimination in residential areas throughout the country—for the inclusion of the restrictive covenant in real estate sales contracts became almost a prerequisite of FHA mortgage insurance.[42] When land was sold to Negroes or Mexican-Americans, under FHA policy, adjoining land generally would be classed as undesirable.[43]

One housing expert has concluded that FHA's discriminatory policy widened the gap between the living conditions of whites and Negroes and increased the concentration of racial minorities in the older, more deteriorated neighborhoods.[44] It did this, he has said, by aiding the increase of the total supply of new housing, particularly in the suburbs, while denying the minority groups access to it, thus forcing them into existing, substandard housing. Another observer has characterized the FHA policy as "separate for whites and nothing for blacks." [45]

Other Federal agencies dealing with the private housing industry adopted similar attitudes. The FHLBB and HOLC openly followed policies favoring the homogeneity of racial groups in residential neighborhoods.[46] When HOLC acquired homes in white neighborhoods and offered them for sale, Negroes could not buy them. And when this agency made loans, its policy was to do so only if they were used to preserve racial segregation.[47]

In public housing, however, the Federal Government adopted a different policy—one based on the equitable participation of minorities, not only as tenants, but also in construction and management.[48] Fourteen of the 49 projects built by PWA were for Negroes and 17 were for joint occupancy by Negroes and whites. As a result one of every four tenants housed by PWA was a Negro.[49] When USHA was established in 1937 to take over the Federal public housing program, PWA's racial policies were continued and expanded. The USHA created a racial relations service with responsibility to review public housing programs to promote racial equity.[50] By May 1940, about 48,000 of the 140,000 USHA-aided housing units under contract were for Negro occupancy as were one-fourth of the 75,000 dwelling units provided by the program in urban areas of the North.[51] It is true that the majority of the public housing projects were either all Negro or all white. This was, and still is, treated as strictly within the jurisdiction of local public housing authorities. However, the Federal Government's public housing program did provide decent housing for Negroes which they could rarely get elsewhere and it was a breach, however small, in the wall of discrimination which the Federal Government had helped to erect.

RESPONSE TO WAR

By 1940, the thrust of the Federal Government into housing had slackened and the trend was toward withdrawal from this field. The FHA had become a self-sustaining institution with no need for further direct appropriations. The Federal Home Loan Bank System had reason to hope that soon it, too, would be self-sustaining. HOLC was

being liquidated and Congress had ignored urgent requests from the USHA for additional authorization. In 1940, however, the Nation was girding itself for war.

The defense effort required a sudden expansion in industry which in turn required an expansion of the housing supply. This reversed the trend of Federal withdrawal from the housing scene. On October 14, 1940, the Lanham Act,[52] the basic war-housing law, was passed. Funds were appropriated directly for both temporary and permanent housing for war workers, and for related facilities. On March 28, 1941, Congress amended the National Housing Act to authorize more liberal mortgage insurance to private builders or buyers of new homes in critical defense areas.[53] The Nation needed housing quickly and the Federal Government assumed much of the financial obligation of providing it.

In 1942, the housing agencies of the Federal Government—the Federal Home Loan Bank Board, the FHA, the USHA (now called the Federal Public Housing Authority), and the newly born wartime housing agencies—were combined by Executive order into a new super agency, the National Housing Agency (NHA).[54] A unique function given this new agency during the war emergency was that of "programing," *i.e.*, of determining the location, amount, price-range, and ratio of rentals to sales for all new residential construction to be undertaken, as well as the method, whether public or private, by which the construction was to be done. As economic crisis was replaced by war, the criterion for government activity in the housing field was no longer one of stabilizing the Nation's economic system, but of providing houses as fast as possible.

The end of the war did not end the housing emergency. There had been an enormous wartime migration of workers to the cities and these people had come to stay. There had been a high marriage and birth rate during the war years. Moreover, servicemen were coming home. As a result, the housing shortage continued and so did the emergency powers of the Federal Government in the immediate postwar period. The principal concern was with veterans. On June 22, 1944, Congress passed the Servicemen's Readjustment Act,[55] or GI bill, providing Veterans Administration guarantees for financing homes and business ventures at low interest rates. In contrast to the FHA method of reimbursing an insured lender with long-term debentures, the GI loan plan provided for cash payment in case of default. The GI loan was, like the FHA-insured mortgage, a device to encourage mortgage lending through Government guaranty against loss. But there was a difference. The purpose now was not to stimulate the economy but to provide housing for veterans.

Further measures in this early postwar period, such as the creation of the office of Housing Expediter [56] (to formulate plans and programs for dealing with the emergency housing shortage) and the Veterans' Emergency Housing Act of 1946 [57] (which extended and strengthened

Federal control over rents and housing supply) meant continued intimate participation by the Federal Government in housing. In July 1947, Congress accepted the President's plan for reorganizing the housing agencies.[58] The plan established the Housing and Home Finance Agency (HHFA) under a single administrator and made permanent the centralized direction of Federal housing activities which had first been effected through the wartime National Housing Agency.

NATIONAL GOAL IN HOUSING

After the early postwar years America struggled with the need for a long-range Federal housing policy. But the piecemeal approach of earlier days lingered on through 1948. In that year, Congress passed the Housing Act of 1948 [59] and also enacted a measure [60] giving explicit legislative authorization for FNMA and authorizing it to purchase and sell VA mortgages.[61] Until then there had been the possibility that private mortgage associations would be established, as the National Housing Act of 1934 had hopefully contemplated. The 1948 act, in constituting FNMA as a Government corporation, expressly extinguished this possibility. Other housing programs were also extended, but no major reorganization occurred.

The Housing Act of 1949

With the opening of the Eighty-first Congress, the legislative battle for a master housing program was joined again. In his State of the Union message to Congress on January 5, 1949, President Truman underlined the need for new Federal action by calling attention to the fact that "five million families were still living in slums and fire-traps" [62] and that "three million families share their homes with others." [63] On July 15, 1949, slightly more than 15 years after the enactment of the National Housing Act of 1934, Congress passed the Housing Act of 1949,[64] and stated for the first time an overall national goal in housing: [65]

> The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, *and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family,* thus contributing to the development and

redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation.

The policies to be followed in attaining this goal were also set forth: [66] (1) Private enterprise shall be encouraged to serve as large a part of the total need as it can; (2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need; (3) appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, integrated residential neighborhoods, the development and redevelopment of communities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life; (4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural nonfarm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid.

The Housing Act of 1949 not only set these goals and policies but established new programs to achieve them. It initiated a program of Federal assistance to localities for redevelopment and slum-clearance projects to be executed by the administrator of the HHFA. A fund of $1 billion was made available for loans to assist localities in financing slum-clearance and redevelopment projects. The public low-rent housing program was revived and expanded and HHFA was authorized to start a broad program of technical and economic research in the field of residential construction and finance. In addition a decennial census of housing was authorized in conjunction with each decennial census of population.

For the first time Congress had declared that the general welfare demanded that "every American family" have "a decent home and a suitable living environment" and had committed the Federal Government to massive action in achieving this goal. Housing was no longer incidental to some other national purpose, nor was the goal merely to build more houses. The Government started also to attack the larger problem of community redevelopment. Here was a new concept of housing that demanded imagination and daring. Housing and Home Finance Administrator Robert C. Weaver restated this concept 12 years later: [67]

> When we talk of housing we are talking of more than simply shelter. We are talking of cities, we are talking of transportation, we are talking of the various facilities that make up the communities in which we live. And of course we are also talking of people.

The act provided a basic framework for the long-range comprehensive plan toward which the Nation, through experimentation, had been moving. The task of the Government in the years since the Housing Act of 1949 has largely been to expand this framework and to embody it with sinew and substance.

During the years following the Housing Act of 1949, the Federal Government continued to institute specialized housing programs to cover new and special needs as they arose. In 1950, the Community Facilities Administration (CFA) was created and authorized to administer a college program "to assist educational institutions in providing housing for their students and faculties. . . ." [68] Later CFA was authorized to make loans to municipalities for public works planning (1954) and for public works in small cities (1955).

In 1950 the VA was authorized to lend money directly to veterans for home purchase or repair in areas where the administrator found that private capital was not available for such financing.[69] In 1954 FNMA received authority to engage in direct Government lending by purchasing certain types of home mortgages under special housing programs for "segments of the national population which are unable to obtain adequate housing under established home-finance programs." [70] Categories for which special assistance has been authorized by Congress or the President include housing for victims of major disasters, housing in Guam and Alaska, urban renewal, defense and military housing, and cooperative housing.[71] In addition, special assistance has been authorized in connection with housing for the elderly, a program instituted in 1956.[72]

Similarly in 1954 the Voluntary Home Mortgage Credit Program (VHMCP) was instituted [73] with the specific purpose of making FHA-insured or VA-guaranteed loans available to minority groups, as well as to people in small communities. This program has consisted of an informal arrangement between Government and private financial institutions by which the Government offers its encouragement and the use of certain facilities to enable financiers to meet a demand that is not being otherwise satisfied. The VHMCP constituted the first legislative recognition of the lack of equal opportunity in home financing for minority citizens and the first legislative attempt to rectify this inequality. It also signaled recognition by the private financial community of its responsibility in this regard.[74]

The advent of urban renewal

Urban renewal in the Housing Act of 1949 was a pioneering concept in housing. Soon, however, it became obvious that the scope of the 1949 program, with its emphasis on slum clearance and rebuilding, was too limited to meet the needs of the Nation's cities. In 1953, therefore, President Eisenhower appointed a citizen's committee to study and make

recommendations for "a new and revitalized housing program. That program should meet the problems of housing and sound community development through a series of related actions." [75] In December 1953, the committee rendered its report. The first recommendation was that: [76]

> The program of Federal loans and grants established by Title I of the Housing Act of 1949 should be broadened. It should provide assistance to communities for rehabilitation and conservation of areas worth saving as well as for the clearance and redevelopment of wornout areas. It should make Federal loans and grants available for well-planned neighborhood projects at any stage of the urban renewal process provided they will clear blight and establish sound healthy neighborhoods.

The report suggested the establishment of urban renewal services in an "Urban Renewal Administration," as a new constituent of the HHFA, "to provide technical and professional assistance to communities for the planning and development of programs for urban renewal." [77] The committee further recommended that FHA be empowered to insure loans on liberal terms for the rehabilitation of existing properties and for the construction of new dwellings in renewal areas.[78] The key to the report, however, lay in the following statement: [79]

> To see to it that Federal assistance as related to local programs which actually face up to the local problems, the Committee recommends that extension of Federal financial assistance and the insurance of mortgages in urban renewal areas be conditioned upon submission by the local communities of a *workable program* to attack the problem of urban decay.

This was a broadened concept from that of the 1949 act. The committee observed, "there is no justification for Federal assistance except to cities which will face up to the whole process of urban decay and undertake long-range programs." [80] In effect, it recommended a shift of emphasis to overall planning rather than "project planning on a limited, piecemeal, few-blocks-at-a-time basis." [81]

All of the committee's recommendations, and more, were enacted into law in the Housing Act of 1954.[82] This was a direct response to the urgent need for rehabilitation of our cities. It was a major attempt to achieve comprehensive, long-range planning in a tremendous Federal-local cooperative venture. Each community was given the responsibility of developing an overall "workable program" that would include a master city plan, housing codes, rehousing of displaced families, along with financing, administrative organization, and citizen participation.

Special FHA mortgage insurance terms were authorized to stimulate housing construction in project areas with special regard for displaced families within or outside such areas.

The Housing Act of 1949 had been the initial attempt to meet the problems of increasing urbanization. The 1954 act carried it beyond slum clearance and redevelopment to include the total community. Subsequent legislation has aimed principally at refinement and more effective implementation. The implications of this legislation for all Americans are profound and still largely unrealized.

THE CHANGING POLICY

World War II brought the first hints of a change in Federal policy toward the housing needs of minorities. War turned what had been a stream into a great river of Negro migrants moving to urban production centers. In August of 1942 the newly created National Housing Agency announced its basic policy that "no discrimination shall be made on account of race, creed, color, or national origin." [83] In 1943 the War Manpower Commission noted a steady increase in the employment of Negroes in war industries and a trebling of Negro enrollment in war training programs over a 12-month period. Recognizing the necessity of providing adequate housing to meet this new demand, NHA observed: [84]

> Every effort is to be made to assure that the housing programs to be developed reflect the viewpoints and war housing needs of all representative elements in the community. It is to be continuously kept in mind that the selection of sites and the provision of war housing without undue delay for all eligible war workers is the war-time job of the NHA.

Such directives were by no means antisegregation orders. War housing was still programed separately for whites and nonwhites. Rather, they were aimed at assuring equitable shares for Negroes in housing as it became available. Some administrative machinery was established within the NHA organization to execute this policy, but it was entirely inadequate. Nonetheless, a degree of success was achieved in public war housing, where Negroes ultimately received about 15 percent of all the units—although only on a segregated basis.[85] This represented almost 6 times as many units as were provided for Negro occupancy under the larger FHA program of private war housing—84,000 as compared with 15,000 units.[86] The "racial equity" policy of public housing,

which has existed from the beginning, at least succeeded in securing for Negroes a semblance of an equitable share of low-rent housing, although principally on a segregated basis.[87]

The national emergency caused no appreciable change in FHA policy. Throughout the war—while the NHA was attempting to satisfy the need for adequate housing for Negroes—FHA adhered to the segregation policies of its "Underwriting Manual." Economic considerations remained the principal criteria governing FHA policy and the significant decisions on financing were still made by private financial institutions over which there was no government control.[88] Of the total private, priority war-housing planned, under construction, and completed during the war, only 4.3 percent was for Negroes.[89] By the end of 1944 they had only 2.4 percent of the private, nonpriority war housing.[90] Thus, although the NHA expressly recognized the housing needs of Negroes, its failure adequately to implement its new policy and the failure of both the NHA and the FHA to encourage nonsegregated, privately financed housing for war workers restricted Negro participation in the war housing program and further institutionalized residential segregation.[91] Still, the Government's policies during World War II represented a significant change in outlook. If the NHA policy of nondiscrimination was only a response to the urgent requirements of war, it was a beginning.

Prompted by criticism from various groups, the FHA in 1947 took some hesitant steps in the same direction. It established a Racial Relations Service to serve the minority group segment of the housing market.[92] The 1947 edition of its "Underwriting Manual," substituting terms such as "user groups" and "incompatible groups," carried no direct reference to race. Statements on the relation of user group changes to property values were couched in more cautious and qualified language, and the manual stressed the physical, social, and economic, rather than the racial, factors in the decline of property values. In addition restrictive covenants were no longer recommended. Appraisers were advised to study the significance of "a mixture of user groups" or a change in occupancy from one user group to another, but the revised manual added that "additional risk is not necessarily involved in such change."[93] The impetus for a vital alteration in FHA policy, however, would come from outside the executive or legislative branches of government.

In August 1945, just before the close of World War II, a Negro family in St. Louis named Shelley purchased some real estate from a white owner named Josephine Fitzgerald. The property was subject to a 50-year racially restrictive covenant agreed to in 1911. By 1961, Negroes and orientals would be eligible to own property there. The Shelleys were 16 years early. A Mr. and Mrs. Kraemer, who owned other property subject to the same restrictive covenant, brought suit to enforce it. (In 1926 the United States Supreme Court in *Corrigan* v. *Buckley*[94] had ruled in effect that such restrictive covenants were not

constitutionally invalid, but the Court had never ruled on their *enforceability.*) For nearly 2 years the Shelley case made its slow progress through the Missouri State courts in the cautious manner of the judicial process. During this period, Congress did nothing and the executive branch did very little with respect to housing discrimination. Then on June 23, 1947, the U.S. Supreme Court agreed to review the decision of the Missouri Supreme Court which had declared that the covenant was enforceable.

On May 3, 1948, the U.S. Supreme Court announced its unanimous decision in *Shelley* v. *Kraemer.*[95] It ruled that the Missouri State courts could not enforce the restrictive covenant. To do so, the Supreme Court held, would constitute State action in violation of the 14th amendment of the Federal Constitution.[96] The Court did not disturb the earlier *Corrigan* ruling, but rested its decision on a distinction between validity and enforceability of restrictive covenants.[97]

The *Shelley* decision brought a gradual but real change in Federal policy.[98] In December 1949, a year and a half after the Supreme Court decision, FHA ruled that it would not provide mortgage insurance for property on which restrictive covenants were recorded after February 15, 1950. At the same time it announced that the racial composition of a neighborhood "is not a consideration in establishing eligibility." [99] The agency was still a long way from sponsoring a policy of open occupancy, but if an application should happen to be made for the insurance of a mortgage on an open occupancy development, FHA would be willing.

In 1951 FHA announced that all repossessed FHA-insured housing would be administered and sold on a nonsegregated basis.[100] In 1952 in connection with the programing of housing for nonwhite defense workers during the Korean War, it directed its field offices to give "some preference" to proposals for open-occupancy developments as against all-minority projects.[101] Two years later, the FHA commissioner announced the intention of taking "active steps to encourage the development of demonstration open-occupancy projects in suitable key areas." [102] Thus, in the 7 years from 1947 to 1954, FHA had moved from a policy requiring segregation to one expressly encouraging open occupancy. Despite these changes it remained a fundamental principle of FHA that builders and lenders should be entirely free to make their own decisions on who could buy or rent houses built with the aid of Federal mortgage insurance. The discriminatory practices of the private real estate-home building industry and the financial community have continued for the most part unabated. Huge FHA-insured projects, for example, have been built with an acknowledged policy of excluding Negroes. Thus the governmental policy in favor of open occupancy has clearly emerged but it awaits full implementation. More recently, however, in States that have enacted antidiscrimination laws, FHA has adopted a policy of refusing to insure loans for discriminatory builders.[103]

There is now no question that housing is a matter of governmental concern. The Housing Act of 1949 settled this with renewed purpose and committed the Federal Government to massive action. "A decent home and a suitable living environment for every American family" is the national housing goal and the legislative tools created in the context of depression and war have been reshaped in an effort to achieve it. The goal has not yet been achieved; 14 million American families currently live in substandard or deteriorating homes.[104] It is a declaration of legislative purpose awaiting fulfillment. But it is a vision of the Nation's future.

Alongside this legislative program, developing tardily but with increasing sureness, has been the recognition of an overall Federal responsibility to insure that this goal is achieved for *all* Americans, on a basis of equal opportunity. It, too, has thus far failed of achievement. Of the 6 million nonwhite households, one-third live in substandard housing.[105] Discrimination is still widespread—often with governmental indifference, sometimes with governmental help. Equality of opportunity is short of fulfillment. But it has developed with increasing clarity as governmental policy.

A total housing policy has emerged: "A decent home and a suitable living environment for every American family." This is the solemn pledge of the Federal Government. There is a depth of meaning to this pledge for it rests upon the firm basis of equal opportunity. And there is a nobility to the reaffirmation declared by President Kennedy before Congress 12 years after it was made: "We must still redeem this pledge." [106]

3. Government and Housing Credit

A. THE SCOPE OF FEDERAL INVOLVEMENT

A Nation of homeowners

When the Federal Government first entered the field of housing on a major scale it was principally concerned with relieving unemployment in the building trades and restoring public confidence in our financial institutions. The Government's interest in housing conditions was subordinate to its concern with economic conditions. As a result its initial involvement in housing was characterized by a lack of any long-range plan and reliance on stimulation of private housing credit. The value of homeownership, however, was emphasized from the outset. Private credit is still the chief context, and homeownership the chief emphasis, of Federal participation in housing; but both are now part of an enlarged, long-range program.

Before Government intervention, homeownership was difficult for those lacking the full purchase price at the time of the sale. The prevalent financing vehicle was the short-term, unamortized, low loan-to-value mortgage. Thus a family that wished to buy a $15,000 house had to have at least a $7,500 downpayment, for mortgage-lending institutions would rarely lend more than 50 percent of the value of a house, often considerably less. Such loans were frequently for periods as short as 5, or even 3, years. Moreover, they were typically "straight," "unamortized" loans repayable not in equal monthly installments but in a large lump sum at maturity (refinancing was available only at a high premium fee).[1] The high rate and strict arrangement of interest charges increased the difficulties.

Purchasing a home obviously was not easy. In 1920 there were only 17½ million nonfarm dwelling units in the entire country, and only 40 percent of them were owned by the occupants. (Nonwhites owned only 23.2 percent of the 2½ million farm and nonfarm residences that they occupied.)[2] Throughout the country less than 3 million (or 40

percent) of the owner-occupied homes were being purchased under any sort of financing arrangement.[3] The total outstanding mortgage debt on nonfarm homes at this time was only $6 billion.[4]

These home-financing practices changed radically in the years following the Federal Government's entrance on the scene. As a result of FHA-insurance and VA-guarantee programs, long-term, low-interest, high loan-to-value, fully amortized loans were made available on a large scale for the first time. Conventional financing ultimately followed suit. A series of amendments to the National Bank Act, for example, enlarged the home-financing powers of national banks. They were finally authorized in 1959 to make 20-year, fully amortized real estate loans for up to 75 percent of appraised value.[5] By 1960 the number of nonfarm dwelling units had tripled and the number of owner-occupied units had more than quadrupled. Of the 30 million owner-occupied homes (60 percent of all occupied homes), less than 40 percent were unfinanced.[6] Thus, 7 times as many owner-occupied homes were being financed in 1960 as in 1920, and the outstanding mortgage debt on nonfarm residential properties had increased to $160 billion,[7] more than 20 times the 1920 figure. Largely through governmental facilitation of housing credit, we have become, for better or worse, a Nation of homeowners—or, more accurately, of home mortgagors.

The Federal Government and the financial community

The means which the Federal Government has utilized in facilitating private housing credit has consisted principally of conferring benefits on the private financial community, with the expectation that these benefits would ultimately redound to the home-buying public. The theory has apparently been that desirable housing ends can be achieved through private credit institutions if the achievement of these ends is made economically profitable. Rather than establish publicly owned and managed institutions, the Government in most cases has sought to make its programs attractive to privately run institutions. It has done this in two principal ways: through Federal mortgage insurance and guarantees, and through Federal sponsorship and support of many of the private institutions themselves.[8] Federal involvement varies in degree according to the type of credit institution and the precise nature of the transaction, but it is clear that the Federal Government is the Atlas of the Nation's home finance community, supporting the entire structure with its resources, its prestige, and its blessing. In this role, it has significant power to help shape the Nation's housing future.

The Federal Government as supervisor of mortgage lenders.—At the Commission's hearing in Detroit, an elementary truth was expressed regarding the function of mortgage lending institutions: "Mortgage

financing is considered to be the fountainhead of the housing industry." [9] In Cleveland, Ohio, another truth was stated: "Banks dictate where the Negroes can live." [10]

These twin truths suggest the extensive civil rights implications of Federal supervision of the financial community. The Federal Government has much to say about how privately owned and controlled mortgage credit institutions conduct themselves.

Savings and loan associations deal almost exclusively in home mortgage credit; of all financial institutions, they have been the most directly affected by Federal Government housing activity. Certain of them are chartered by the Federal Home Loan Bank Board, a Government agency. The Board also maintains the Federal Home Loan Bank System, offering, among other things, a nationwide reservoir of low-interest credit (all savings and loan associations, whether federally or State chartered, savings banks, cooperative banks, and insurance companies, may become members). Finally the Board supervises the Federal Savings and Loan Insurance Corporation (itself a federally chartered and operated institution), which offers to eligible associations the invaluable advantage of Federal insurance of share accounts.

The Federal Government plays an equally substantial role in the area of commercial banks which, although engaged in many other kinds of activities, are responsible for a significant portion of all home financing in the country. Through the Office of the Comptroller of the Currency, the Federal Government offers Federal charters to national banks. Through the Board of Governors of the Federal Reserve System, it offers the advantages of membership in the Federal Reserve System to all qualified banks, whether federally or State chartered. And through the Federal Deposit Insurance Corporation, deposit insurance is offered to all qualified banks.[11]

All of these financial institutions, privately owned and operated for private profit, are influenced in varying degrees by Federal authority. Federal savings and loan associations and national banks are Federal creations. Associations and banks that are members of the Federal Home Loan Bank System or the Federal Reserve System participate in a nationwide, governmentally controlled banking system. The growth and success of federally insured institutions are in large part attributable to the confidence which Federal insurance of share accounts and deposits has instilled in the public. The Federal Government is indispensable to many of these institutions; it is important to all. All are regulated, supervised, and examined by agencies of the Federal Government. At the end of 1960 they held $100.3 billion in nonfarm residential mortgage loans. Table 1 shows the amount of mortgage loans held by each category of financial institutions.

The Commission has found evidence of racially discriminatory practices by mortgage lending institutions throughout the country. In De-

TABLE 1.—*Nonfarm residential mortgages held by federally supervised financial institutions, 1960*

	Number	*Amount (in billions)*
Federal savings and loan associations	1,873	$32.3
FSLIC-insured savings and loan associations	4,098	56.8
Member savings and loan associations [1]	4,694	58.5
National banks	4,537	11.4
Member banks	6,174	16.2
FDIC insured banks [2]	[3] 13,451	[4] 41.8

[1] Includes all Federal savings and loan associations and all FSLIC-insured associations.

[2] Includes all national banks and all State member banks of the Federal Reserve System.

[3] Includes 13,126 insured commercial banks and 325 insured mutual savings banks.

[4] $20.3 billion held by insured commercial banks and $21.5 billion held by insured mutual savings banks.

Source: Figures obtained from respective agencies.

troit the Commission heard of the "common policy of refusing to lend to Negroes who are the first purchasers in a white neighborhood." [12] In Dayton the great majority of lending institutions are reported to want 30 or 40 percent Negro occupancy in a neighborhood before they will finance the purchase of a home for a Negro.[13] In Cleveland lending policies were said to vary with institutional marketing areas; West Side companies, for example, will lend to Negroes who wish to buy on the East Side, while the East Side banks refuse loans on similar property.[14] In Columbus it was reported that: "Mortgages available to [minorities] involve short-term amortization and excessively high downpayments." [15] In Los Angeles, the Commission was told, "if a white person buys a home and later wants to sell to a non-Caucasian, [and] the non-Caucasian tries to qualify for the loan, the lending institution will not approve of this successive non-Caucasian buyer. Now that necessitates refinancing which is expensive and burdensome and oftentimes impossible. So the lending institution tends to control certain areas in that manner."[16]

Freedom of choice is often denied to whites as well as nonwhites. In San Francisco, the Commission was told, white persons desiring to purchase a home in an integrated neighborhood experience great difficulties in securing financing.[17] The representative of a leading mortgage lending institution told one family that one such neighborhood in the Palo Alto area was "blacked out" and that no loans would be available.[18]

There has been some recognition by the lending community of the financing inequalities confronting members of minority groups. The Voluntary Home Mortgage Credit Program, a unique Government-private enterprise arrangement, is an attempt to encourage equal treatment through essentially private means. Beyond this, little has been done by Government or the lending community to reduce or discourage discriminatory practices and, as will be shown below, Federal agencies have made no substantial attempt to intervene.

Federal assistance to home finance.—The Federal Government has undertaken extensive programs of mortgage insurance (FHA), mortgage guarantees (VA), and secondary market operations (FNMA) to implement national housing policy. These programs have been a principal factor in the dynamic expansion of the homebuilding industry. William Levitt, one of the country's largest homebuilders, has said that "we are 100 percent dependent on the Government. Whether this is right or wrong, it is a fact." [19] At the same time the programs have virtually eliminated the financial community's risk of loss from large numbers of mortgages. Thus Federal programs are a form of subsidy to the mortgage lending and homebuilding industries, yet the Federal Government has done little to see that the benefits from this subsidy—an increased housing supply—are available to all Americans on a basis of equal opportunity. In Detroit, a Commission witness pointed out that—[20]

> The situation still persists where FHA- and VA-approved lending institutions are permitted to utilize the credit, the insurance, the guarantee of the Federal Government to practice discrimination and foster segregation in the private housing market.

In Los Angeles, a Commission witness referred to "the fact that the builders and developers refuse to sell FHA and VA homes to non-Caucasians." [21] He added: "I think that public acceptance of residential segregation is kept at a maximum by the common knowledge that the Government through its housing agencies is a partner to the refusal of FHA and VA." [22]

The resources of the Federal Government, then—its credit, its sponsorship, its very name—are involved in virtually all aspects of mortgage credit, and yet racial discrimination is a widespread practice among the enterprises which enjoy these Federal resources. The succeeding sections of this chapter will explore the precise nature and scope of Federal involvement in both supervision and subsidy of mortgage credit, the relationship of the various Federal agencies to the institutions which they regulate, the steps presently being taken to insure equal access to housing, and the steps that could be taken.

B. SUPERVISION OF MORTGAGE LENDERS

FHLBB and savings and loan associations

Savings and loan associations are the Nation's most important contributors to home finance. Over the past 20 years, they have consistently been responsible for well over 30 percent of the home financing in the country.[23] In 1959 and again in 1960, they were responsible for 41

percent. By the end of 1960, their aggregate assets amounted to $71.4 billion; their nonfarm mortgage loan portfolios had swelled to $60 billion. They are big business.

Savings and loan associations are anomalies in the world of high finance. Much of their anomalous nature is a result of their origins. They developed during the 19th century as local semi-cooperative institutions making home loans to individual members who owned shares in the associations. Loans were largely limited to these share owners; there were no depositors. The informal origins of these associations lent them a flexibility which has facilitated their unprecedented growth.

They are still genuine "associations" and not banks. They accept no deposits, pay no interest, and possess no independent capital structure. Their entire capital still consists of funds from individuals in the form of "share accounts." "Share owners" receive dividends on their shares, not interest on deposits, and constitute, in effect, the associations' stockholders, not depositors. But what were once neighborhood associations of local people banded together by intimately common interests if not friendship, are now, for the most part, large impersonal institutions with share owners from all over the country, banded together only by the common expectation of high dividends on share accounts.[24] The scope of their business, still limited almost exclusively to home finance, has expanded from low-cost, single-family residences to multimillion dollar land development projects and condominiums.[25] At the summit of this industry is a single agency of the Federal Government, the Federal Home Loan Bank Board.

The Federal Home Loan Bank Board enjoys an unusual concentration of authority over much of the home finance industry, since it performs three functions essential to the community of savings and loan associations. The Board, it will be recalled, was originally created in 1932 to supervise the Federal Home Loan Bank System; in 1933 its authority was expanded to include the chartering and supervision of a new kind of association, the Federal Savings and Loan Association. The following year, as part of the National Housing Act of 1934, its authority was again expanded to include the direction and management of the newly created Federal Savings and Loan Insurance Corporation.[26] In commercial banking by contrast, each of these functions is performed by a separate administrative agency.[27] Each of the Board's three functions will be discussed briefly before relating them to the problem of discrimination.

Federal Home Loan Bank System.—The System consists of 11 regional Federal home loan banks, which provide a reservoir of credit for members. All federally chartered savings and loan associations are required to be members;[28] State-chartered associations, savings banks, cooperative banks, homestead associations, and insurance companies are eligible to become members or nonmember borrowers.[29] The

principal benefits of membership are assured advances of funds from Federal home loan banks at low interest rates and the ability of Federal home loan banks to transfer funds from one regional bank to another—an advantage of some significance because of intermittent regional credit shortages. Member savings and loan associations hold 97 percent ($69.5 billion) of all savings and loan assets.[80] Member associations made nonfarm residential mortgage loans of $14 billion during 1960, and at the close of that year, the holdings of member associations in such mortgages amounted to $58.5 billion.[81]

The Federal Home Loan Bank Board presides over this nationwide community of economic power. It fixes the rate of interest at which member institutions may obtain advances from the regional banks.[82] The appropriate Federal home loan bank may approve or disapprove applications for such advances.[83] The Board also can require examinations of institutions requesting advances even though they may already be subject to examination by other supervisory authority.[84] The act further provides:[85]

> The board shall supervise the Federal home loan banks created by this act, shall perform the other duties specifically prescribed by this act, *and shall have power to adopt, amend, and require the observance of such rules, regulations, and orders as shall be necessary from time to time for carrying out the purposes of the provisions of this act.*

Significantly, the act declares:[86]

> No institution shall be eligible to become a member of, or a nonmember borrower of, a Federal home loan bank if, *in the judgment of the board, . . . the character of its management or its home-financing policy is inconsistent with sound and economical home financing, or with the purposes of this act.*

Although the purposes of the act are not explicitly spelled out, the chief purpose certainly has to do with stimulating thrift and making available to the people of this country a steady and sufficient supply of home mortgage credit.[87] Indeed, the principal requirement (and sine qua non) for either membership or nonmember borrowing is that the institution in question make long-term home mortgage loans.[88]

In summary, the Federal Home Loan Bank System is the creation of the Federal Government. To provide the necessary reservoir of low-interest credit within the System, the Federal Government has organized regional Federal home loan banks, which one Federal court of appeals has characterized as "Federal instrumentalit[ies] organized to carry out public policy and [having functions which] are wholly governmental."[89] The Federal Home Loan Bank Board, an independent administrative arm of the Federal Government,[40] supervises and regulates the entire

System. No lending institution can become a member of the System or even borrow from a Federal home loan bank if the Board does not approve of the "character of its management or its home-financing policy."

Federal savings and loan associations.—The Board's authority over member institutions of the Federal Home Loan Bank System is extensive; its authority over the community of Federal savings and loan associations is plenary. Their very existence depends on the Board. The Board is authorized "under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal savings and loan associations,' and to issue charters therefor." [41] Their statutory purpose: ". . . to provide local mutual thrift institutions in which people may invest their funds and to provide for the financing of homes. . . ." [42] The Board establishes conditions to be met before a charter is issued: (1) minimum number of subscribers to the association's capital; (2) minimum amount of capital to be paid into the association's savings accounts upon issuance of a charter; (3) guarantee by the organizers or others, of the association's organization and operating expenses; and (4) "such other requirements as it deems necessary or desirable." [43]

The benefits that run to these institutions are significant. They hold the exclusive privilege within the savings and loan community of using the word "Federal" in their titles,[44] and enjoy the prestige of direct association with the Federal Government. More tangibly, they enjoy certain tax exemptions [45] and automatic membership in the Federal Home Loan Bank System. Furthermore, the Federal Savings and Loan Insurance Corporation automatically insures, in amounts up to $10,000, all share accounts in these associations.[46] These benefits help account for the spectacular growth of these institutions from their relatively small beginnings to their present dominant position in the savings and loan industry. At the end of 1934, there were only 539 Federal savings and loan associations. Total assets were $138 million, and they accounted for only 2.2 percent of all savings and loan assets. By 1950, their number had not quite tripled (to 1,526); their assets had grown to $8.5 billion. At the end of 1960, their number had risen to 1,873, or 30 percent of all savings and loan associations (6,276). But their assets had leaped to $38.5 billion, 54 percent of all savings and loan assets, and they held $32.3 billion in home mortgage loans. Significantly, of the 1,873 existing Federal savings and loan associations at the end of 1960, only 870 had been originally organized as such. The rest had converted from State charters.[47]

These are, to be sure, privately owned and operated institutions, but they are subject to the FHLBB's extensive and exacting regulation. They owe their very existence and a large part of their success to the

Federal Government. They are creations of the Federal Government, chartered for express public purposes.

Federal Savings and Loan Insurance Corporation (FSLIC).—The third function of the Federal Home Loan Bank Board is to direct the activities of the Federal Savings and Loan Insurance Corporation, which insures share accounts in amounts up to $10,000. All federally chartered savings and loan associations must be insured by FSLIC; State-chartered associations and cooperative banks are also eligible for insurance.

This Federal insurance has been a significant factor in the phenomenal growth of savings and loan associations over the years. The overwhelming number of savings and loan failures early in the depression caused a loss of public confidence in these institutions. In 1933, the enactment of the Federal Deposit Insurance Act,[48] providing for Federal insurance of deposits in banks, caused a further draining of money from savings and loan associations. In 1934, as part of the National Housing Act, the FSLIC was established [49] to restore public confidence and help revitalize these institutions. Public confidence, together with the attractive rate of dividends these associations offer, have been important factors in their explosive expansion. At the end of 1960, associations holding $67.4 billion in assets (94 percent of all savings and loan assets) were insured by FSLIC.[50] The importance of this Federal insurance is not lost on the savings and loan community. Insured associations prominently advertise that the Federal Government stands behind them. Federal insurance and a high dividend rate are a formidable combination in the intense competition to attract the public's savings.

FSLIC maintains effective controls on the institutions whose share accounts it insures. The Corporation may reject any application for insurance "if it finds that the character of the management of the applicant or its home-financing policy is inconsistent with economical home financing or with the purpose of this title." [51] The purpose again is not made explicit, but undeniably it is similar to that of the Federal Home Loan Bank Act—to stimulate thrift and to aid in home financing.

Under the FSLIC, insured associations must make monthly and annual reports to the Corporation [52] and submit to periodic examinations.[53] They are restricted as to the type of advertising they may carry on,[54] the geographical radius in which they may make loans,[55] and the proportion of their assets which may be loaned.[56] Their charters, bylaws, forms, passbooks, and certificates must be approved by the Corporation.[57] Furthermore, this insurance may be terminated if the FHLBB finds that the institution in question "has violated its duty . . . or negligently permitted any of its officers or agents to violate any provision of any law or regulation to which the insured institution is subject." [58] They are a regulated industry.

FHLBB policy and discrimination.—On April 13, 1961, the Commission sent a letter of inquiry to the Board concerning its policies and practices with respect to making mortgage credit available on a nondiscriminatory basis. On June 8, 1961, a reply was received from Joseph P. McMurray, the newly appointed chairman. Because of the short time he had been on the Board, he had not yet given adequate personal consideration to the questions; therefore, he enclosed a memorandum which reflected the views of the Board's staff on each of the Commission's questions.[59] He did inform the Commission, however, that on June 1, 1961, the Federal Home Loan Bank Board had adopted the following resolution: [60]

> It is hereby resolved that the Federal Home Loan Bank Board, as a matter of policy, opposes discrimination, by financial institutions over which it has supervisory authority, against borrowers solely because of race, color, or creed.

He added that this resolution would be circulated to all supervisory agents.[61]

In response to a further inquiry from the Commission, Chairman McMurray elaborated to some extent on the Board's plans for implementing this policy.[62]

> All of the Board's examiners, who examine institutions over which the Board has supervisory authority, have also been advised of the June 1 resolution for their guidance in the examination of such institutions.
>
> If in the examination of these institutions our examiners find that there is discrimination against borrowers solely because of race, color, or creed, they will report the facts and such supervisory action as is feasible will thereupon be taken to effect a discontinuance of the practice.

The resolution was the Board's first statement of policy on discrimination.[63] The precise nature of this new policy and the effectiveness of its implementation are matters of great future interest.

The resolution itself constitutes a meaningful first step toward eliminating discrimination. There seems to be some inconsistency, however, between the Board's new policy, and the memorandum which was forwarded to the Commission dated 6 days after the adoption of the resolution. The memorandum, prepared by the Board's staff, seems to be a justification for a policy of neutrality regarding discrimination—a policy which the Board itself has abandoned.

The staff indicates that the Board has not attempted in any way to uncover discrimination in the making of real estate loans,[64] nor can the

staff estimate the extent to which the institutions under the Board's supervision make mortgage credit available to racial minorities.[65] The staff adds, however, "we do know that it is a widespread practice among savings and loan associations to make loans to all so-called minority groups." [66]

While it is undeniably true that many savings and loan associations do make loans to members of minority groups, it does not follow that racial discrimination is wholly alien to the community of savings and loan associations. The Commission's studies indicate that discrimination is, in fact, widespread among these institutions. In Los Angeles, for example, a builder, having obtained a mortgage loan for a white purchaser, was unable to obtain a similar loan for a Negro purchaser. The Federal association denied the second loan on the grounds that the neighborhood (white) was unsuitable.[67]

A 1959 Chicago survey showed that of the 243 associations in Cook County (69 federally chartered and 143 State chartered and insured), only 21, including the 2 Negro associations in the city, had made loans in the heavily Negro-populated South Side area during the preceding 12 months. And only one white association had made an initial mortgage loan to a Negro family in a white area.[68]

"Negro mobility" was concluded to be "limited to the resources of Negro owned institutions." [69] In San Francisco, the Commission was told, "Nonwhites have found that they must develop their own lending sources." [70]

The view of the Board's staff regarding the legitimacy of race as a factor in mortgage financing bears mention. When asked whether there are any circumstances under which a federally chartered, federally insured, or other member institution might properly consider either the race of the would-be borrower, or the racial composition of the neighborhood in determining whether to make a real estate loan, the Board's *staff* replied: "It is our view that associations should base their mortgage lending solely on considerations of economical home financing and prudent investment in sound loans under reasonable standards applicable alike to all applicants." The staff added, however: [71]

> Where the management of an association determines that the soundness of its home mortgage investments is being, or is likely to be adversely affected by economic factors, *whatever their nature or source,* it is obliged by prudence and faithful discharge of fiduciary responsibilities to effectuate such lending policies and practices as will safeguard such investments.

The implication is that race may be an adverse "economic factor," justifying the denial of a mortgage loan application. It is not clear to what extent the staff—or the Board, in view of its newly announced policy—consider that race is necessarily such an adverse factor.

There is much the Board can do to carry out its new policy. The circulation of this policy within the community of savings and loan associations is, of course, a necessary first step. The Board further indicates that examinations will be utilized to discover whether discriminatory practices are carried on by the institutions it supervises. This can be an important implementing step. As the staff notes, the Board can take measures to have objectionable loan transactions or practices corrected. Significantly, the staff advises: "With relatively few exceptions, illegal, defective, or unsound practice is revised upon supervisory request." [72] The Board can use this informal exertion of supervisory authority as a further means of implementing its new policy against discrimination.

The Board's staff, strangely enough, is not in favor of extending the scope of examination for purposes of implementing nondiscrimination. For one thing, the staff appears to question whether examination may properly be used for this purpose. It advises that the purposes of examinations in general "are to assure sound financial condition and practice and adherence to law and to prevent, detect, and correct financial practices that are illegal and unsound." [73] With particular reference to mortgage loans, the staff advises, the purpose of examination "is to ascertain and report the facts as to any violation of law or regulation and as to any material failure to pursue safe and sound financial practices." [74] But an effective policy of nondiscrimination involving a wider scope of examination would not appear to be necessarily inconsistent with either of these purposes. Furthermore, in view of the fact that the Board has indicated its intention of extending the scope of examination for this purpose, it would appear that the Board, if not the Board's staff, is in accord with this conclusion.

It should be noted that the Board's staff does believe that the Board presently has legal authority to require federally chartered associations and member associations of the Federal Home Loan Bank System (though not State-chartered insured associations) to conduct their mortgage loan business on a nondiscriminatory basis.[75] If this is so, then clearly the Board has authority to help implement its new policy against discrimination by extending the scope of examination of these institutions to include discrimination. The Board has indicated that it intends to do just that.

The staff also had reservations about the desirability of a regulation requiring nondiscrimination in mortgage lending. The administration of such a regulation, the staff explained, would require recording the race, creed, and color of each denied application; the specific reasons for denial; and a supervisory determination as to whether the particular application should have been approved.[76] Therefore, while the staff believes that the Board has the legal authority to require nondiscrimination, it also believes that such a requirement would be undesirable because it "would be unenforceable and ineffective and probably would

operate to obstruct rather than to promote the objective sought to be attained." [77] The staff concluded: [78]

> In our opinion such a . . . regulation would inevitably effectuate a "segregation" of borrowers by race, color, or creed where no such differentiation now exists or has any cause to exist, and would therefore impede, rather than facilitate, progress toward the desired objective.

But an effective requirement of nondiscrimination need not involve listing the race, creed, and color on mortgage loan applications. Considerable progress has been made in the elimination of discrimination in such matters as Federal employment, even though the keeping of racial records was explicitly forbidden.[79] On the other hand, even if a listing is required, the consequences need not be adverse. A required record of race should do no more than make known to the examiner information which has been previously available only to the association's loan officers. It is not entirely clear how this would "impede" progress toward nondiscrimination.

Between the initial step of circulating a statement of its policy and the ultimate step of requiring and enforcing nondiscrimination, there is a broad array of means available to the Board whereby it can utilize its prestige and powers of persuasion to encourage the associations to halt discrimination. As will be seen in the case of the banking agencies, the Board already exerts a good deal of its authority through less formal means than the issuance and enforcement of regulations and requirements.

The Board's resolution of June 1, 1961, opposing discrimination as a matter of policy is a significant beginning. The FHLBB is the only Federal agency involved in supervising the financial community that has taken any action in this regard. If the Board carries forward by undertaking and making an effective examination into discrimination (and Chairman McMurray indicates that this is the Board's intention), it will be a move of momentous significance.

The Federal Government and commercial banks

Commercial banks, unlike savings and loan associations, are involved in various lending activities other than home mortgages. Nevertheless, at the end of 1960 the 13,456 commercial banks in the country (with assets of over $258 billion) had more than $20 billion invested in nonfarm residential mortgage loans.[80] Nearly all of these institutions are benefited and supervised by one or more of three administrative agencies of the Federal Government: the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation. These three separate agencies exercise,

The National Housing Act also provided for the establishment of national mortgage associations "to purchase and sell first mortgages and such other first liens as are commonly given to secure advances on real estate . . . under the laws of the state in which the real estate is located." [25] These associations were to be privately owned but governed by FHA. They were to deal directly with financial institutions rather than with the borrower. In short they were devices for assuring the financial community that FHA mortgages would have a ready market. Draftsmen of the act had anticipated that the financial community might respond with some hesitancy to the FHA-insured mortgage. Financiers were accustomed to short term, low loan-to-value ratio, unamortized mortgages. The FHA mortgage, with its low interest rate, high loan-to-value ratio, and long term might be considered too risky—despite government insurance—if there were no ready market for it.

Until these private associations were organized, however, the need for a secondary market had to be satisfied. On January 31, 1935, therefore, Congress authorized the creation of the RFC Mortgage Company "to assist in the reestablishment of a normal mortgage market." [26] This new subsidiary of the RFC was utilized temporarily to provide the secondary market function, while Congress waited confidently for the organization of the private associations. None were established.[27] The Government was forced to take a more direct hand.

In February 1938, at the request of the President, the RFC established the Federal National Mortgage Association (FNMA).[28] Now known as "Fannie Mae," it was originally expected to serve two purposes in aiding the Federal housing program. First, it made FHA mortgages more desirable by offering an assured secondary market to mortgage lenders concerned with liquidity. The mere fact that FNMA was available was a source of comfort and an inducement for many financial institutions to enter the mortgage market, even though they actually made little or no use of the Federal agency. Secondly, it facilitated the geographic spreading of mortgage capital. The reluctance of private enterprise to form private national mortgage associations was not repeated when FNMA notes were offered to the public. The initial offering of $29 million was oversubscribed many times.

Public housing

Up to this point, the main thrust of the Federal Government's housing policy had been to facilitate credit. The 1934 National Housing Act was aimed primarily at relieving economic conditions, and only incidentally at improving housing conditions. At the same time, however, the Government was taking some direct housing action. The first emergency legislation enacted during the depression, the Emergency

in the world of commercial banking, roughly the same three functions that the Federal Home Loan Bank Board exercises in the separate world of savings and loan associations. Of the several categories of commercial banks, national banks are most highly regulated and benefited by the Federal Government. They are also, perhaps not by mere coincidence, the dominant institution in the commercial banking community.

Comptroller of the Currency (national banks).—Between 1935 and the end of 1960 the total assets of national banks more than quintupled, jumping from $26 billion to $140 billion. They constitute only 34 percent of the Nation's 13,456 commercial banks, yet they presently account for 54 percent of all commercial banking assets.[81] In the area of mortgage lending, they occupy a similarly dominant position. In 1939,[82] the total holdings of national banks in nonfarm residential mortgage loans were $1.2 billion, 46 percent of the total held by all commercial banks. By the end of 1960, the holdings of national banks had leaped more than tenfold to $11.4 billion, and their share of the expanding commercial bank holdings in nonfarm residential mortgages had grown to 56 percent.

The importance of national banks goes beyond the sizable resources at their command. They are leaders in the financial community and, as a group, enjoy perhaps the highest prestige and public confidence of all the Nation's financial institutions. Furthermore, their importance in the home mortgage market is growing.[83]

As with Federal savings and loan associations, national banks are a Federal creation, dating back to 1863.[84] 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; [85] they automatically receive the benefit of FDIC deposit insurance; [86] they are members of the Federal Reserve System; [87] and they are protected by Federal statute from certain forms of State taxation.[88] In addition, they have been treated with great solicitude by the courts, which have noted a quasi-governmental character about them. On numerous occasions the Supreme Court has declared that "National banks are instrumentalities of the Federal Government created for a public purpose. . . ." [89]

The Comptroller of the Currency [90] is the administrative officer charged with the duty of chartering, supervising, regulating, and examining these favored institutions. The Comptroller also has authority to initiate proceedings for the removal of a director or officer of a national bank who, in the opinion of the Comptroller, has continued to violate any law or has continued unsafe or unsound practices.[91] And under designated circumstances, he may initiate proceedings to forfeit the charter of a national bank.[92] The great bulk of the Comptroller's pervasive authority over national banks, however, lies in the wide range of discretion he has in regulating their activities. There is little formality in the Comp-

troller's operations and almost no occasion for public hearings. One of the foremost administrative law authorities has noted, regarding the regulation of national banks: [93]

> 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.

The Comptroller has considerable discretion in deciding whether to grant a charter to a new national bank.[94] He has similar discretion as to whether to approve a branch application by a national bank.[95] Moreover, the decision as to how often a national bank is examined is also discretionary with the Comptroller, so long as it is at least three times within each 2-year period.[96]

Through regulations and these regular examinations, the Comptroller maintains effective control over the operations of national banks. For example, when the mortgage loan policies of national banks are criticized by the examiners, the Comptroller secures correction in the following way: [97]

> Such criticisms are brought to the attention of management, and generally we experience little difficulty in obtaining its cooperation in correction of any mortgage loans which may have been made in conflict with sound credit standards or law. If, of course, the bank fails to take such action as might be within its power to bring about correction, the Comptroller has authority under the statutes to place the bank under close supervision by means of more frequent examinations or to proceed against those responsible to have them removed from office. *Cause for such action is extremely infrequent.*

The supervisory and regulatory authority of the Comptroller over national banks is extensive and pervasive; the prestige of his office in the community of national banks is high; the breadth of his directive and persuasive powers to influence that community's policy is wide; and national banks themselves are "instrumentalities of the Federal Government created for a public purpose." It seems clear that the Comptroller of the Currency has both the legal authority and the effective power to require the elimination of discriminatory mortgage lending practices by national banks.

This Commission requested the Comptroller's opinion regarding his present legal authority to establish a requirement of nondiscrimination by national banks. He replied:[98]

> Throughout the history of this office all regulatory authority granted to the Comptroller of the Currency has been directed toward legality, safety, and soundness of activities of the national banking system. We have adhered consistently to the position that our supervisory functions *should be directed* fully toward these objectives.

The reply appears to acknowledge the existence of sufficient authority to impose such a requirement. But it also suggests that such a requirement would be undesirable or inappropriate—a suggestion borne out by the Comptroller's other responses to the Commission's inquiries.

In response to a question as to whether his office presently maintains any policy regarding racial discrimination by national banks in the making of real estate loans, the Comptroller, Hon. Ray M. Gidney, replied: "Our office does not maintain any policy regarding racial discrimination in the making of real estate loans by national banks."[99] He added: "Our interest lies in the legality and credit soundness of each loan, irrespective of the race, creed, or color of the borrower."[100]

In response to a question as to whether his office has attempted to find out if national banks make loans on a discriminatory basis, Mr. Gidney replied: "[W]e do not attempt to determine whether national banks make loans on a basis which weighs any factors other than legality and sound credit."[101] The Comptroller was also explicitly asked for his opinion on the desirability of a requirement that mortgage loans be made by national banks on a nondiscriminatory basis. He replied: "We have no knowledge of discrimination by national banks in their lending practices. We are not aware of whether there is a need for a statute or administrative regulation dealing with this as a factor in the making of real estate loans. Thus, we are not in a position to express an opinion as to its advisability."[102]

The Comptroller's opinion was also requested on the question of whether the race of the would-be borrower or the racial composition of the neighborhood are legitimate considerations for a national bank in determining whether to make a real estate loan. Mr. Gidney replied: "Aside from the questions of legality and the borrower's credit worthiness, mortgage lenders are generally interested in the stability of the real estate involved."[103]

Whether, in his opinion, the presence of Negroes or members of other racial minority groups necessarily affects the stability of real estate, Mr. Gidney did not say.

"[N]ational banks are not Government corporations," Mr. Gidney has stated.[104] "They are privately owned institutions and the legal responsibility for the operation of each bank rests entirely with its board of directors. The formulation of each bank's loan and investment policies is also the responsibility of its board of directors." [105] The Comptroller adds: [106]

> The essential purposes of our examination of national banks, which we are required by law to make, are to determine the solvency of each bank on the basis of an appraisal of its assets and to ascertain whether the bank is operating within the framework of applicable laws and regulations. Although in an examination each bank's loan and investment policies are factors which the examiner considers, primarily he is interested in knowing whether safe and sound credit standards are followed, irrespective of the race, creed, or color of the borrower, and the action the bank takes to deal with those extensions of credit that may have been made illegally or have deteriorated below acceptable credit standards since inception.

The Comptroller's standards in supervising the mortgage-lending policies of national banks are credit soundness and legality. A policy of nondiscrimination would not be inconsistent with these standards, and Mr. Gidney does not assert that it would be. But the Comptroller clearly indicates that, so far as he is concerned, national banks, as "privately owned institutions," are free to practice racial discrimination if they so desire. This is a matter which, in Mr. Gidney's view, is outside the concern of his office. But the fact that national banks are "instrumentalities of the Federal Government created for a public purpose" (a status which they have not been reluctant to claim when involved in litigation)[107] indicates that the Federal agency charged with the duty of chartering and regulating them might be justified in requiring them to assume some public responsibility.

Board of Governors of the Federal Reserve System.—The Board of Governors supervises and controls the Federal Reserve System, which was established in 1913.[108] The System is made up of 12 Federal Reserve banks, one for each of the districts into which the country is divided, plus their 24 branches. National banks are required to become members of the System, and State-chartered banks may become members "subject to the provisions of this act [Federal Reserve Act] and to such conditions as it [the Board of Governors] may prescribe pursuant thereto." [109] The benefits of membership are—[110]

> (1) to borrow from the Federal Reserve banks, subject to criteria for discounting set by statute and regulation, when temporarily in need of additional funds;

(2) to use Federal Reserve facilities for collecting checks, settling clearing balances, and transferring funds to other cities;

(3) to obtain currency whenever required;

(4) to share in the informational facilities provided by the System;

(5) to participate in the election of six of the nine directors of the Federal Reserve bank for their district; and

(6) to receive a cumulative statutory dividend of 6 percent on the paid-in capital stock of the Federal Reserve bank.

Member banks must also comply with laws, regulations, and conditions of membership. Such matters as the adequacy of capital, mergers with other banks, relations with holding company affiliates and bank holding companies, interlocking directorates, and loan and investment limitations are within the supervisory and regulatory jurisdiction of the Board of Governors.[111] The jurisdiction exists whether the member bank is federally chartered (i.e., a national bank) or State-chartered. In addition, State-chartered member banks are subject to examination and general supervision by the Federal Reserve.

The 6,174 members of the Federal Reserve System constitute less than half the total 13,456 commercial banks in this country. And, of these, the 4,537 national banks (which are required to be members) constitute better than 70 percent. However, of the $258 billion in total commercial banking assets throughout the country, $217 billion, better than 80 percent, is held by member banks. Of the 8,919 State-chartered commercial banks, only 1,637, less than 20 percent, are members of the System, yet this small percentage holds 65 percent of the total assets of all State-chartered commercial banks. At the end of 1960, Federal Reserve System members held $16.2 billion in nonfarm home mortgages, 80 percent of the total held by all commercial banks.[112]

The Federal Reserve regulates, examines, and closely supervises its member banks. The purpose of regulation ranges from insuring safety and stability in loans and investments to upholding competition in the banking community. The means available include the drastic steps of removing an officer or director [113] and requiring forfeiture of membership.[114] There is seldom any necessity for resort to these measures: [115]

> Statutory provisions which elsewhere would be given meaning through formal adjudication are typically in the banking field given meaning only through supervision. . . . What happens is that the Board [of Governors of the Federal Reserve System] enforces the statute through methods of bank examiners, who call to the bank's attention the items which require correction. A bank which is inclined to disagree does not typically stand on its sup-

posed rights and defy the Board to start a formal proceeding; suspension is too drastic a remedy for the bank to risk. The bank deals informally with the Board's representatives until some mutually satisfactory solution is worked out. Adjudication gives way almost entirely to supervision. The administrative mainstay is prevention rather than cure or punishment. The sanction is not the power of suspension but the power of instituting proceedings.

The mortgage loan policies and practices of member banks are reviewed with respect to financial soundness by means of periodic examinations. Federal Reserve Chairman William McChesney Martin describes the Board's corrective procedure as follows: [116]

> All banking law violations, deficiencies in supporting papers, and "classified" loans are brought to the attention of management both in the report of examination and in an accompanying transmittal letter, and their correction is requested. If the request is ignored and the management persists in following unsafe and unsound policies, the bank can be subjected to special examinations and a warning can be issued under the provisions of section 30 of the Banking Act of 1933 which, if not heeded, can lead to the removal of the director or officer responsible for such unsound policies.

The Commission inquired of the Board as to whether, in its opinion, this extensive regulatory power includes the authority to require that mortgage loans by member banks be made on a nondiscriminatory basis. Unlike the FHLBB (and presumably the Comptroller), the Board does not consider that it has such authority.[117] Furthermore, the Board stated that even if it had the authority, its supervisory and examining processes would not be adaptable to the establishment of such a requirement.[118] Like the Comptroller (but unlike the FHLBB), the Board presently has no policy on the question of discrimination,[119] and, like the Comptroller, it considers that the establishment of such a policy would be undesirable. The Board stated that, "Neither the Federal Reserve nor any other bank supervisory agency has—or should have—authority to compel officers and directors of any bank to make any loan against their judgment." [120] It explained that "*denials* of applications for bank loans in contrast to *approvals* have never been considered within the purview of bank supervisors or examiners." [121] The Board did not make clear whether it would be equally vigorous in opposition to a policy or regulation which did not involve affirmatively compelling banks to make particular loans to particular persons.

The Board makes no attempt to learn, through examination or otherwise, whether member banks practice racial discrimination in making real estate loans.[122] The Board does, however, implicitly acknowledge the existence of such discrimination in the following statement, which

also sets forth a suggested method of eliminating the problem—a method that the Board finds preferable to the regulatory approach: [123]

> [T]he range of choice open to the would-be borrower of mortgage funds is a wide one. This suggests, perhaps, that the existence of an adequate supply of alternative sources of credit provides the most feasible way of assuring nondiscriminatory lending to finance home purchases. If there are sufficient alternative sources, the forces of competition can come into play to make certain that the qualified borrower is not denied credit simply because of race, creed, or color.

The Board did not indicate what specific measures might be taken to increase competition to the point where discrimination would be eliminated.

Board Chairman Martin implicitly recognized the discrimination problem when he said: "Ideally, decisions that member banks make as to whether or not to grant loan applications should rest upon financial considerations alone." [124] He added: "considerations of race, creed, or color should not enter into business decisions." [125]

The latter statement appears, in the Board's view, to be subject to an important qualification. In response to a question as to whether the race of the would-be borrower or the racial composition of the neighborhood might be legitimate considerations for a member bank to take into account in deciding whether to make a real estate loan, Chairman Martin had this to say: [126]

> Since banks are primarily trustees of depositors' funds and must seek to protect those funds, it is entirely appropriate for them to take cognizance of historical patterns in real estate values. Both at the inception of any mortgage and during its life, a mortgagee must be concerned with the stability of the value of the underlying property and the trend of values in the neighborhood in which any particular property is located.

The reference to "historical patterns in real estate values" seems to be a gingerly allusion to what the Board believes is the likely result when a Negro moves into a white neighborhood. Thus, if a member bank felt that real estate values would become unstable, it could, for example, properly reject a loan application from a Negro who wished to buy a home in a predominantly white neighborhood. Therefore, Chairman Martin's first statement must be qualified to read: "considerations of race, creed, or color should not enter into business decisions *except when the bank feels that they may affect real estate values.*" Such a qualification considerably alters the meaning of this statement.

The opinion of the Board, then, appears to be that race, creed, or color are not, in themselves, legitimate considerations in the decision regarding the making of a mortgage loan; but they may have a bearing on purely economic factors which are legitimate considerations. From this viewpoint, the elimination of discrimination involves, first, determining the exact extent to which race, in fact, affects economic factors and thereby becomes a legitimate consideration; and second, finding ways of eliminating its consideration in all other circumstances.

The position of the Board of Governors of the Federal Reserve System concerning racial discrimination in home financing is considerably less neutral than that of the Comptroller of the Currency. The Comptroller does not know whether national banks discriminate, nor does he intend to find out. He also takes no position on whether a requirement of nondiscrimination would be desirable. The Board's position is similar in that it maintains a hands-off policy regarding racial discrimination on the part of the banks under its supervision, and does not make any attempt to determine the extent to which this practice is carried on. It has, however, recognized that discrimination on the basis of race, creed, or color is improper and, in its response to the Commission's letter of inquiry, addressed itself to the problems involved in ending this practice.

Federal Deposit Insurance Corporation (FDIC).—The Federal Deposit Insurance Corporation was created in 1933 during the famous "one hundred days" of the New Deal. Beginning in New York State in 1829, attempts had been made, with some success, at deposit insurance on the State level.[127] For almost 50 years there had been considerable agitation for such insurance on the Federal level,[128] and the banking crisis of 1933 transformed this agitation into legislation. Public disillusionment with the independent banking system had reached the point where even so fundamental a change as nationalization of the banking industry was a distinct possibility; it is not untenable to suggest that deposit insurance may have been a primary factor in the continuation of our existing banking structure. Certainly, it has been a formidable factor in the return of public confidence in our banking institutions and the consequent growth and success of this country's banks.

In 1934, the 14,205 insured banks in the country had total assets of $47.6 billion. By 1960, although the number of insured banks had decreased (to 13,451), their total assets had increased more than sixfold to $291.4 billion.[129] In 1947, insured banks held loans secured by residential properties totaling $9.6 billion.[130] By 1960, this figure had increased to $41.8 billion ($20.3 billion held by insured commercial banks; $21.5 billion held by insured mutual savings banks).[131] Of the three Federal banking agencies, the FDIC supervises the largest concentration of economic power. Although national banks and State member banks of the Federal Reserve System automatically have their

deposits insured by FDIC,[132] the Corporation confines the bulk of its examining powers to insured State institutions which are not members of the Federal Reserve System.

The Corporation has considerable supervisory power.[133] Before a State nonmember bank is accepted for insurance, the Corporation subjects it to a thorough examination to determine whether the bank is in sound condition. The Board of Directors of the Corporation then makes its decision on the basis of the following statutory factors:[134]

> The financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, *the convenience and needs of the community to be served* by the bank, and whether or not its corporate powers are consistent with the purposes of this act.

The Board of Directors of the Corporation can terminate the insurance if it finds that an insured bank has "continued unsafe or unsound practices in conducting the business of such bank." [135] Insured banks are further subjected to thorough periodic examinations.[136] By this means, the Corporation keeps informed of the operations and policies of the insured banks, and can control them. Like its sister banking agencies, FDIC maintains effective control over the operations of insured banks through informal means rather than by use of its ultimate formal weapons. An eminent authority has made the following observation on FDIC's method of control: [137]

> The Federal Deposit Insurance Corporation has statutory authority, after hearing, to terminate the insured status of a bank whenever it finds that the bank is following "unsafe or unsound practices." Termination of insured status means termination of a State bank's membership in the Federal Reserve System, or action by the Comptroller of the Currency to force a national bank into receivership. Such drastic penalties are naturally avoided and the effective power becomes one of supervision rather than one of adjudication. In 20 years the FDIC took action against 177 banks, of which only 41 were suspended, but in the year 1956 over 10,000 examinations and investigations were conducted. Letters from supervising examiners of the FDIC reinforcing the examiners' criticisms are probably the most effective administrative tool for inducing compliance. In addition to the threat of formal proceedings, the FDIC has statutory authority to publish reports of examinations, but even this penalty of publicity is usually too drastic for practical use and is valuable chiefly as a background threat.

In the course of these thorough and frequent examinations, the Corporation pays considerable attention to the mortgage loan policies and practices of the insured banks. In response to a Commission letter of inquiry, Hon. Earl Cocke, Sr., Chairman of FDIC, stated: "Corrections are usually secured through pressure upon management to correct unsound mortgage loan policies." [138] The mortgage policies of insured banks are judged by the same standards as those used by the Comptroller of the Currency and the Board of Governors—legality and credit soundness. But there is a distinct difference in terms of attitude toward discrimination. The Board of Governors indicates, in a circumspect way, that in its view the race of the would-be borrower or the racial composition of the neighborhood are legitimate factors for a bank to consider in determining whether to make a real estate loan. The Comptroller, even more circumspectly, appears to agree. The FDIC is not so circumspect.[139]

> There are circumstances under which a bank in its consideration of a real estate loan application may consider the race of a potential borrower or the racial composition of a neighborhood. There exists a possibility that the financing of a real estate purchase for a member of a minority group might have a serious effect upon values in a neighborhood. If the bank already had a substantial number and dollar volume of mortgage loans in the neighborhood, it would necessarily consider the effect upon these assets. The bank management's important responsibility for safe investment of its depositor's funds may include the consideration of such aspects of any loan.
> * * * Aside from the moral aspects of racial or other discrimination, every bank has a moral as well as legal obligation and responsibility toward the economic welfare of its depositors and stockholders.

In Mr. Cocke's view, it appears, banks whose deposits are insured by this Federal agency may not only with complete propriety deny a mortgage loan to a member of a minority group because of the racial composition of the neighborhood, it may well be their obligation to do so. Mr. Cocke, like Mr. Martin of the Federal Reserve Board, appears to acknowledge that to the extent that race does not, in fact, affect the value of the property, it is not a proper consideration in mortgage lending; but unlike the Board (and the FHLBB), "[T]he Corporation has no reason to believe that race is being used *improperly* by banks as a criterion in the making of real estate loans." [140] FDIC apparently makes no attempt, through examination or otherwise, to learn whether discrimination is practiced by banks which receive the benefit of its insurance. "The Corporation is primarily interested in the value of the bank's assets which are a determinant of the risk assumed by the Corporation in insuring the bank's

depositors." [141] Mr. Cocke states, nevertheless, that "The Corporation has had no indication of an existing problem regarding racial discrimination in the making of real estate loans by insured banks." [142]

In response to a question concerning the desirability of a requirement that mortgage loans be made on a nondiscriminatory basis by insured banks, Mr. Cocke replied that such a requirement would not be desirable.[143]

> There is a long-established and well-tested principle in bank supervision that the supervisory authority will not dictate to bank management that it should or should not make loans to certain groups or individuals. The supervisory authority is interested in the legality and credit quality of bank loans.

With respect to the present legal authority of FDIC to establish such a requirement, Mr. Cocke had this to say: [144]

> The Corporation does not have authority to condition insurance of deposits of an applicant bank upon an agreement by the bank that it will make real estate loans on a nondiscriminatory basis. *The Corporation has no authority to require a bank to make any particular loan, nor should such authority be vested in the Corporation.*

The Corporation's prinicipal objection, like that of the Federal Reserve Board, to the issuance of a nondiscrimination requirement in mortgage lending is that such a requirement would constitute dictation to bank management "that it should or should not make loans to certain groups or individuals." [145] The Board puts it in terms of compelling officers and directors of any bank "to make [a] loan against their judgment." [146] Again, however, it is not clear whether the objection would apply equally to a regulation which did not compel banks to make loans to particular persons against their better judgment of purely financial considerations.

Mr. Cocke further states: [147]

> Applications for membership in the Corporation by nonmember State banks require consideration by our Board of Directors of statutory factors (sec. 6, FDIC Act). None of these factors confer upon the Corporation authority to dictate to the bank what loans it may make or to whom it shall extend credit.

One of these factors is "the convenience and needs of the community to be served by the bank." [148] Where the FDIC dispenses its benefits, the banking "needs" (if not the "convenience") of the entire community, including minority groups, would seem to be entitled to consideration. "The banking business has a quasi-public character," [149] Mr. Cocke tells us. An institution engaged in such a business and benefited by

deposit insurance—insurance conferred under the statutory criterion (among others) that the "convenience and needs of the community" will be served—appears to be failing to satisfy its public and statutory responsibility insofar as it discriminates against a segment of the "community."

Finally, Mr. Cocke points out that it would be both unwise and futile to attempt a requirement of nondiscrimination: [150]

> A regulation or statute requiring a bank to make mortgage loans on a nondiscriminatory basis could well defeat its purpose by antagonizing bank management not now practicing such discrimination. Furthermore, it would probably prove to be unenforceable because its provisions could be thwarted by decisions of boards of directors or loan committees to the effect that certain loans lacked the credit quality required by the bank.

The Commission does not concede, however, that the banking community adheres so strongly to racial discrimination as an operative practice that it would dishonor and demean its venerable profession by the deliberate violation of a legal requirement of nondiscrimination.

Summary

These four supervisory agencies—the Federal Home Loan Bank Board, Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation—represent Federal authority over the community of mortgage lending institutions. The institutions which they regulate and supervise hold $363.3 billion in assets. Their home mortgage loan portfolios amount to $100 billion.

According to the evidence that the Commission has received throughout the country, the financial community in which these agencies play so large and vital a role is a major factor in the denial of equal housing opportunities to minority groups. In Cleveland, a real estate broker told the Commission's Ohio Advisory Committee of "the gentleman's agreement among the builder, the banker, and the real estate agent in which all have agreed to prevent an open market in housing as far as Negroes are concerned." [151] He concluded: "in the final analysis it goes back to the bank." [152]

Two of the four supervisory agencies [153] acknowledge, at least implicitly, that discrimination in mortgage lending does occur. All four appear to agree that outright discrimination—the denial of credit on grounds of race, creed, or color alone—is improper. None, however, has conducted any inquiry into the extent to which the institutions under their supervision engage in such improper practices. (None, it should also be mentioned, has received any complaint of discriminatory practices by the institutions supervised.)

One of the four agencies—the FHLBB—has recently adopted a policy opposing such discrimination and has expressed the intention to implement this policy in the future. None of the other three gives any indication of adopting any such policy in the near future. While two of the agencies (Federal Reserve Board and FDIC) disclaim any authority to promulgate a requirement of nondiscrimination, all four agencies express serious doubts as to the desirability of such a course of action. These doubts cluster about two points: the nature of the regulation required to effectuate a policy of nondiscrimination; and the belief, which all of the agencies share, that race, creed, or color may affect the purely economic value of property.

The types of policy or regulation that might discourage discrimination in mortgage lending have not, unfortunately, been explored in practice. They would appear to range from policy declaration, persuasion, education, and simple leadership at the one extreme, to the most stringent supervision and control of individual transactions at the other.[154] It may be, however, that effective measures could be developed at some point short of the latter extreme to diminish discrimination without depriving the banking community of the independent financial judgment that is its traditional prerogative. Such measures, if they could be developed, need only be directed at those practices which turn on race, color, or creed, in themselves; they need not prevent the banker from making a legitimate financial decision based on all the facts. In this connection the relationship of race to property values is of considerable importance. Although all four of the supervisory agencies seem to adhere, in varying degrees, to the belief that race and property value are necessarily interlinked, this view does not appear to be shared by FHA, VA, or FNMA.[155] As will be seen, moreover, it is totally rejected by VHMCP. Indeed, in recent years, the trend of expert real estate opinion has been to question it.[156]

Recently, Dr. Luigi Laurenti conducted a detailed and scientific study in seven northern cities concerning this question of property values and race.[157] The author told the Commission of the results of his study and concluded: "I believe very strongly that these findings place in great doubt the statement generally heard that nonwhites inevitably and seriously damage property values." [158] It was Dr. Laurenti's belief that if his findings were widely circulated, they could significantly reduce the amount of discrimination in the housing market by reducing the apprehension of the property owners, the real estate profession, and the lending community.[159] As he put it: [160]

> . . . the evidence could help expand the housing opportunities for nonwhites by reducing or eliminating the exaggerated fears about property values which have for so long kept so many doors closed to them.

The evidence on this question of property values is by no means complete, but it seems clear that an important element of the problem is simply apprehension. As the Commission noted in 1959, "In a real sense, the only thing people in this situation have to fear is fear itself." [161] The elimination of fear appears essential to equal housing opportunity. As Dr. Laurenti pointed out to this Commission: [162]

> [I]f this happens, we will be moving toward a single housing market for all. Those who are searching for shelter will not be divided into two groups, the whites and the nonwhites. They will all have equal access to whatever housing is placed on the market.

Voluntary Home Mortgage Credit Program (VHMCP)

Although the Federal agencies which supervise the mortgage financing community seem largely unaware of any problem with respect to racial discrimination, and largely unwilling to do anything about it, this is not equally true of the lending industry itself. The establishment of the Voluntary Home Mortgage Credit Program in 1954 was, to a great extent, a result of the lending industry's realization that minority groups were not securing their fair share of housing or home finance.

President Eisenhower, in his housing message to Congress on January 25, 1954, called attention to the fact that ". . . many members of minority groups regardless of their income or their economic status, have had the least opportunity of all our citizens to acquire good homes." He pledged: "we shall encourage adequate mortgage financing for the construction of new housing for such families on good well-located sites." [163] During the 1954 congressional hearings, there was some demand for direct Federal loans to aid segments of the population unable to get mortgage financing on equal terms,[164] and for elimination of the discriminatory features of federally aided housing. The growing demand for direct Federal lending to help minority citizens obtain home financing was one impetus to the creation of the VHMCP. Another was the opposition of private lenders to the VA direct-lending program for veterans.[165]

The Life Insurance Association of America advanced the proposal for a Voluntary Home Mortgage Credit Program as a frank alternative to the prospect of more direct Federal lending.[166] As presented by the insurance industry, this program was to "assure the general availability of insured and guaranteed mortgage credit in small communities and remote areas *and for minority groups.*" [167] The VHMCP, which was enacted into law as part of the Housing Act of 1954,[168] marked the first formal governmental recognition that minority citizens needed special assistance to equalize their opportunity to obtain home financing. It is, however, unique as a Government program. Its purpose and function are stated as follows: [169]

> To the extent that the network of private financing institutions in the mortgage market does not facilitate a flow of such funds into remote areas and small communities and to minority groups, this Program is designed to meet the problem. It is based on the philosophy that private financing institutions can, if organized, handle the problem without the need for more direct Government assistance.

Following the enactment of the 1954 law, President Eisenhower declared: "[U]nder this new law private financial institutions have a really good chance to mobilize their own resources to supply adequate credit without regard to race, creed, or color, to homeowners in every part of our country." [170]

In general, then, VHMCP has attempted to make mortgage money available to people in small communities and to members of minority groups anywhere, who cannot obtain FHA-insured or VA-guaranteed loans on the same terms as are generally available to others. Its successes are a tribute to the good faith of the private lending industry. But its failures are a sober reminder of the fundamental limitations of reliance upon good faith alone.

Operation of VHMCP.—The program is operated by a National Home Mortgage Credit Committee, which consists of the Housing and Home Finance Administrator as Chairman, and 14 members appointed by him representing the various types of lending institutions, and the building and retail lumber industries. In practice, the Committee is made up of the representatives of the respective trade associations. There are also regional committees with representation similar to that of the national committee. There are Negro members on all regional committees and on the national committee, and all committee members serve without compensation. The role of the Federal Government, which consists of providing a small staff, office facilities, and advice,[171] is carried out through HHFA. In response to a letter of inquiry, Housing and Home Finance Administrator Robert C. Weaver described the Government's function in VHMCP as follows:[172]

> VHMCP is a joint private industry-Government undertaking. Since the program relies on private lenders to provide the mortgage funds, the Government's role in the program necessarily becomes one of encouragement, guidance, and support of the effort of the consumer and the lender to get together on financing the home loan transaction.

The program is limited to FHA-insured or VA-guaranteed mortgage loans and applicants may seek VHMCP assistance if they submit evidence that they have tried unsuccessfully to obtain such a loan from

at least two lending institutions. There is no racial identification on application forms; however, any application received from an area not previously designated as a "remote area" or "small community" eligible for VHMCP assistance is returned with a form statement indicating that VHMCP cannot process it unless the property is to be "available for ownership or occupancy by a member of a minority group." [173] Each regional office maintains a roster of cooperating private lending institutions, to which loan applications are sent on a rotating basis. If refused by one institution the application is referred to the next in order, and so on.

No influence is exerted on the participating institutions with respect to any of their loan criteria.[174]

> FHA and VA standards are, of course, applicable, since VHMCP is restricted to these types of loans. Beyond this under the VHMCP, all loans are made by private lending institutions in accordance with their own lending standards—each institution is free to apply its own credit tests, its own standards of construction, its own loan-to-value and amortization standards, etc.

VHMCP and equal housing opportunity.—VHMCP has issued no regulations or directives to its participating institutions concerning credit or appraisal policies with respect to minorities. "Since VHMCP depends upon participating private lenders to provide the funds for making loans to VHMCP applicants, it is in no position to issue [such regulations or directives]."[175]

The program is based on the frank premise that racial discrimination is an operating practice in mortgage lending. As a real estate broker pointed out to the Commission's Ohio Advisory Committee: "The mere fact that there exists a Voluntary Home Mortgage Credit Program is unrefutable testimony that discrimination in financing exists. . . ." [176] In Little Rock, Mr. C. J. Herman, executive secretary, VHMCP Region 5, told the Commission's Arkansas Advisory Committee: [177]

> [T]he minority groups were considered to have trouble in obtaining financing, so consequently we treat them across the board without exception as being eligible for the facilities of this program. . . . I might give you our definition of a minority group insofar as our program is concerned. It is those individuals who through color, race, creed, or national origin are unable to obtain mortgage financing under reasonable conditions from reasonably accessible sources.

The following colloquy then ensued between Mr. Herman and a Commission representative: [178]

Mr. AMIDON. I notice that your definition of minority groups, as you read it, seems to recognize that there is racial discrimination in lending practices of the private lending institutions. Is that a correct conclusion?

Mr. HERMAN. Now, please understand that I didn't write the definition.

Mr. AMIDON. Yes, sir.

Mr. HERMAN. But certainly I agree with you. That must have been our interpretation at that time.

During the 6½ years of its existence the VHMCP has placed 47,036 loans, in an amount of $479 million. The highest number, 12,941 (2,704 of which were for minorities), was placed in 1956, but since then the number has become progressively lower each year. In 1960, 4,686 loans were placed (1,108 of which were for minorities). Of the total number of loans placed, 10,197 (22 percent) totaling $112 million have been for minority group members. This represents 58 percent of the total applications received by VHMCP from minorities.[179] Most of the remaining 42 percent whose applications have been turned down by VHMCP lenders were unable to meet the requirements of the lenders or FHA, usually because of insufficient income or unacceptable property.

The life insurance companies, which originally proposed the VHMCP, have been the mainstay of the program. They have been responsible for more than 30,000 of the 47,000 VHMCP loans placed. With respect to loans to minority groups, they have been responsible for 75 percent of the total placed throughout the history of the program,[180] mutual savings banks being next in importance with slightly less than 11 percent of the total.

VHMCP has had some success in assisting the development of open occupancy by locating financing for integrated projects. Successes to date include 3 integrated projects in California covering 250 units, one 35-unit project in Arizona, one 20-unit project in Wisconsin, and one 17-unit project in Nevada. In addition to locating mortgage financing for these owner-occupied units, the VHMCP has located mortgage financing for 4 integrated rental projects covering 634 units. VHMCP points out that "Open occupancy projects have proven to be sound investments for those lending institutions which have made them." [181]

In addition, VHMCP has recently undertaken to develop pools of mortgage credit for section 221 relocation housing.[182] So far, in Nashville, Tenn., 105 such loans totaling $1 million have been made through the mortgage pool (55 were made to members of minority groups). In St. Louis, Mo., the details have been worked out for a $1 million financial pool to encourage rehabilitation of homes in that city, and VHMCP reports that financing plans are in the making in other cities.[183] But as a

regional representative of VHMCP pointed out: "we haven't had a world of success in this field [of section 221 housing]." [184]

The principal effort and effectiveness of VHMCP has been in focusing the attention of the lending fraternity on its responsibility in the minority housing field. In speeches, conferences, interviews, and the day-to-day conduct of business, the VHMCP exerts persuasion on the lenders to fulfill their obligations and their opportunities in this field.

HHFA Administrator Weaver related one incident as an example of the success that can be achieved by this means. In Shreveport, La., the builder of a minority group housing project found his construction plans blocked by a lack of mortgage financing. FHA and VA had approved his plans for 300 2- and 3-bedroom units in the $7,000 price range, but none of the lending institutions would make mortgage commitments. The builder took his problem to the regional office of VHMCP, and within 6 weeks he had commitments for 50 loans and had started building. One month later, he had 80 more commitments and was out of trouble.[185]

There are no sanctions to require cooperation from participating institutions. The program, as its title clearly indicates, is purely voluntary, and must rely largely on the good will of participating institutions. The effectiveness, indeed the entire concept, of VHMCP has been questioned by some minority group spokesmen. One such spokesman referred to the program as a "gimmick." [186] An experienced Dayton, Ohio, real estate broker reported: "I know of no instance . . . that the [VHMCP] program has secured a lender for the first home [to be occupied by a Negro] in a new area." [187] He further reported that in his experience, applications by minority group members were referred back to the same institutions that had discriminated in the first instance.[188]

In 1959 this Commission concluded: "VHMCP has neither stimulated any large volume of construction of new homes for minority group families, nor apparently has it relieved to any appreciable extent the shortage of mortgage credit for minority groups." [189] Despite some additional successes since then, the conclusion must still stand. Chairman Weaver readily admits now, as did Executive Secretary Graves in 1959,[190] that "the total number [of minority applications] has been far smaller than was originally anticipated." [191] Mr. Weaver believes there are quite a few factors responsible for the relatively low response from minority group purchasers and for the general shortage of mortgage funds for minority group housing. The basic difficulty, he believes, has been the failure of local communities to make desirable land available. Minorities are often restricted to older sections which do not meet FHA and VA standards. In addition, the very scarcity of minority housing tends to drive price to a point where the inflated sales prices require conventional financing. Moreover, he stated that most Negro lending institutions favor conventional loans over FHA. Negro real estate brokers

and salesmen are especially bound to conventional financing resources in the sale of existing housing, and these persons often control or effectively influence the conditions under which the home buyers obtain financing. The buyer seldom asks for FHA or VA financing,[192] and even when he does, the delay inherent in the VHMCP referral system often causes a loss of interest on the part of both brokers and borrowers.[193]

VHMCP has found that the scarcity of loan money for Negroes stems more from lack of experience on the part of lenders than from unfavorable experience. One of VHMCP's principal functions is to provide this experience and persuade lenders of the opportunities open to them. Herein lies perhaps the greatest potential effectiveness of the program, because "private lending institutions frequently expand their lending activities in this field after being alerted to the investment merits of minority loans." [194] Mr. Weaver points out "it is the policy of VHMCP to help provide mortgage credit to nonwhites *in any location.* . . . It is one of the aims of VHMCP to promote freedom of choice and equality of opportunity in housing for minority groups." [195] Thus in his view the racial composition of the neighborhood is not a legitimate consideration which may properly be taken into account by an institution participating in the program.[196] Mr. Weaver adds: "Traditionally . . . it has been a consideration with many lenders, but I do not believe that this is generally true of VHMCP lenders." [197] This view, that consideration of race is improper as a lending factor, is largely shared by FHA, VA, and Fannie Mae. It is only the Federal agencies supervising the financial community that support the legitimacy of race as a factor.

It is interesting to contemplate that if the philosophy and attitudes of VHMCP have had the impact on the financial community which VHMCP claims, these banking agencies which represent our Federal Government may well be the rearguard of the effort to bring our practices in line with our ideals in the field of housing credit.

C. FEDERAL ASSISTANCE TO HOME FINANCE

The three Federal agencies primarily involved in aiding home finance are the Federal Housing Administration (FHA), the Veterans' Administration (VA), and the Federal National Mortgage Association (FNMA). The principal function of the first two is to insure or guarantee mortgages for eligible persons on eligible property, thus minimizing the risk of loss to the lender, easing the way for the builder and developer, and facilitating mortgage credit to the public. The function of FNMA is to help

provide a ready market for these FHA-insured and VA-guaranteed mortgages, and to provide special assistance in connection with particular housing programs designated by the President or Congress. Each of these Federal agencies operates in the context of the private housing and home finance industry, and the members of that industry largely decide who will receive these Federal benefits. None of the three Federal agencies has exerted more than a token of its power to insure that all Americans will have equal opportunity to enjoy these benefits.

FHA and VA

FHA and VA are the Federal agencies involved in the primary housing market. The power of the Federal Government as a force for equal housing opportunity can be unleashed chiefly through these two agencies.[198] Between them, FHA and VA have insured or guaranteed over $117 billion in loans. The two agencies differ in several ways,[199] but their fundamental function is the same. One court has described their function in the following way: [200]

> The involvement of the Government [through FHA and VA] in the construction of a housing community . . . consists of a guarantee to various banks and lending institutions that money advanced by them to purchasers of individual properties will be repaid, incidental to which guarantee and for the purpose of minimizing the risk of loss to the Government is the prescribing of the conditions upon which the Government will undertake to guarantee the loans.

Another court has had this to say: [201]

> Here we have a situation where Government, accompanied by constitutional restrictions against discrimination, has entered the field of housing to stimulate its construction and make more and better housing available to its citizens. To do this, the way is eased for all concerned—for subdividers, builders, and realtors, as well as lending agencies and the homebuyer.

With respect to the recipients of these governmental benefits, this same court has said: [202]

> Indirectly and secondarily, but not unimportantly, the beneficiaries are (1) the lender who gets a Federal guarantee of his loan; (2) the real estate man, the builder and the subdivider, who have been provided a ready means by which they can market their respective products. Each of the latter group can count on his market, rather

than simply invest his time, labor, and money in developing property and then hope for buyers who can persuade a lender to advance enough to enable them to purchase with no security other than the property itself.

There have been two court cases involving discrimination in FHA-insured and VA-guaranteed housing, in addition to several decisions determining the validity of State antidiscrimination laws, in this regard.[203] In *Johnson* v. *Levitt & Sons,*[204] the plaintiff Negroes sought to restrain a developer from refusing to sell to them solely because of their race, and to restrain FHA and VA from insuring and guaranteeing mortgages on the properties so long as the racial discrimination continued. The Federal district court, while indicating that FHA and VA "probably" had the power to prevent discrimination in the sale of housing project properties covered by Government insurance or guarantees (and that Congress certainly did have that power),[205] refused to hold that these agencies were required to do so.

In *Ming* v. *Horgan,*[206] on the other hand, where a builder and his real estate agents refused to consider a Negro's application to purchase one of the FHA-insured and VA-guaranteed homes that the builder had constructed, a California superior court held that in view of the degree of governmental involvement, the Negro plaintiff had a constitutional right not to be discriminated against. The court approved the plaintiff's argument that "when one dips one's hand into the Federal Treasury, a little democracy necessarily clings to whatever is withdrawn."[207]

The *Levitt* court, then, indicated that an FHA and VA requirement of nondiscrimination would be legally valid, and the *Ming* court indicated that not to require nondiscrimination was a violation of the Constitution. The discussion that follows will focus on the relevant present policies and practices of these two agencies.

Federal Housing Administration (FHA)

Through the years since its creation in the National Housing Act of 1934,[208] FHA has been the principal agency carrying out the Federal Government's role in housing. Since the time of its creation, FHA has administered the various Federal mortgage loan insurance programs. The principal programs are:

Title I

Section 2 authorizes FHA to insure qualified lending institutions against loss on loans made to finance the alteration, repair, improvement, or conversion of existing structures and the building of small new nonresidential structures.

Title II

Section 203 authorizes the insurance of mortgages on new and existing one- to four-family dwellings.

Section 207 authorizes the insurance of mortgages, including construction advances, on rental housing projects of eight or more family units.

Section 213 authorizes the insurance of mortgages on cooperative housing projects of eight or more family units. It also authorizes FHA to furnish technical advice and assistance in the organization of cooperatives and the planning, development, construction, and operation of their projects.

Section 220 authorizes FHA insurance on liberal terms to assist in financing and rehabilitation of existing salvable housing and the replacement of slums with new housing in areas certified to FHA as eligible by the Housing and Home Finance Administrator.

Section 221 authorizes mortgage insurance on low-cost housing for relocation of families from urban renewal areas and families displaced by Government action.

Section 222 authorizes the insurance of mortgages on dwellings owned and occupied by persons on active duty with the Armed Forces or the Coast Guard.

Section 223 authorizes the insurance under sections 203, 207, and 213 of mortgages on specified types of permanent housing sold by the Federal or State Government.

Section 231 authorizes insurance of mortgages on multifamily rental housing for elderly persons.

Title VII

Authorizes the insurance of a minimum amortization charge and a minimum annual return on outstanding investments in rental housing projects for families of moderate income where no mortgage is involved.

Title VIII

Authorizes the insurance of mortgages on housing built on or near military reservations for the use of personnel of the Armed Forces, and houses for sale to civilians employed at military research and development installations.

FHA has written a total of $67 billion in mortgage insurance on nearly 6 million homes, on multifamily projects with almost 900,000 units, and on property improvement loans for more than 24 million homeowners.[209]

The evolution of FHA policy from one actively encouraging discrimination to one advocating open occupancy has already been recounted.[210] A considerable residue of bitterness, however, remains with many people who remember early FHA policy (FHA in its early years has been characterized as "a sort of 'Typhoid Mary' for racial covenants")[211] and from the effects of its present permissive policy. One Commission witness in Los Angeles, for example, had this to say:[212]

> It is my firm belief . . . that what we have in California by way of residential segregation, we have because of the direct and indirect governmental sanction and support, the direct Government sanction and support that came from the enforcement of covenants, the direct sanction that came from FHA's earlier activities, and the indirect sanction that comes from FHA's present policies of permitting builders and developers to refuse to sell or rent units in peripheral areas to so-called non-Caucasians.

FHA and open occupancy.—FHA's present policy is to encourage open occupancy, at least in connection with housing projects. By 1957, 41 such housing projects had been FHA-insured.[213] FHA has insured 17 additional open occupancy projects since that time.[214] To encourage the establishment of these projects, it has issued policy statements and directives to its field offices. In addition, an Intergroup Relations Service renders guidance and assistance to all segments of the agency on housing matters pertaining to minority groups. Although FHA's policy of encouraging open occupancy is uniform throughout the country, the agency operates on a decentralized basis with insuring office directors having full responsibility for implementing the prescribed requirements and directives.[215] Obviously, implementation of this policy varies with local conditions and the vigor with which the local Director tries to carry it out. In Detroit, for example, FHA Director Hamborsky told the Commission of his methods in approaching the objective of open occupancy. The best way, he realized, was "to begin at your own doorstep."[216] The Detroit office of FHA now employs Negroes at all stages of administration. Approximately 18 of the 180 Detroit staff members are Negroes, with positions ranging from clerks to appraisers, architectural examiners, and one attorney.[217] Mr. Hamborsky was able to show a good deal of success in implementing the FHA policy of open occupancy. In Cleveland, on the other hand, Director Hackman told the Commission's Ohio Advisory Committee that no positive steps had been taken locally to encourage open occupancy.[218]

The overall effect of FHA's open occupancy policy is almost impossible to measure. FHA has no information relating to nonwhite use of FHA-insured mortgages; this includes the 58 open occupancy projects FHA lists as having been established with the aid of its mortgage insurance.[219]

Some estimates, however, have been made as to the extent of nonwhite participation in the benefits of FHA-insured mortgages. In 1959, it was estimated that less than 2 percent of the new homes insured by FHA since 1946 had been available to minorities.[220] In the San Francisco Bay area, it was estimated that between 1950 and 1958, 200,000 (60 percent) of the 325,000 new houses were financed with FHA or VA assistance. Less than 3,000 of these houses (under 1.5 percent) were offered and sold to nonwhites, who comprised 10 percent of the population.[221] The Baltimore FHA district office and other sources indicate that of the 68,000 units insured under FHA programs, only 1,800 (1,500 rental and 300 sale), or 2.5 percent, have been built for nonwhite occupancy. Most of these units for nonwhites were built under the title VI program for low-cost "war housing." [222]

FHA has considered maintaining precise figures on nonwhite use of FHA-insured mortgages. But Commissioner Hardy points out that frequently the same people who urge the development of such data have also argued that to assure unbiased processing of applications for mortgage insurance, race should not be indicated on any FHA processing form.[223] In 1959, an FHA spokesman told the Commission that several years earlier, FHA had attempted to compile figures on nonwhite participation in the program. But lack of sufficient personnel in FHA offices and the difficulty of getting data from lending institutions were such, he said, that "We simply abandoned the whole idea." [224] Commissioner Hardy believes that over a period of the time the development and maintenance of such figures could be achieved—assuming the decision is made to indicate race on the mortgagor's application form and other processing materials.[225]

Restrictive covenants.—As noted in the Commission's *1959 Report,*[226] the Supreme Court's 1948 decisions holding that racial restrictive covenants are unenforceable,[227] caused FHA not only to eliminate the model restrictive covenant and all reference thereto from its *Underwriting Manual,* but also to announce publicly that after February 15, 1950, it would no longer insure mortgages on homes for which racial restrictive agreements or covenants are filed after that date. Since that date, all FHA mortgage forms have contained a covenant under which the mortgagor agrees that so long as the insured mortgage is in existence, he will not file for record any racial restrictive covenant. FHA ignores racial covenants as of no force and effect in the case of properties whose deeds contain such covenants executed before February 15, 1950.

But restrictive covenants, after all, constitute only one means of housing discrimination, and FHA's restrictive covenant policy has not had a great effect in securing equal housing opportunity.

Cooperative agreements.—Where States and cities have antidiscrimination housing laws, FHA will refuse to insure loans for discriminatory builders and developers. Such agreements exist between FHA and the

States of California, Colorado, Connecticut, Massachusetts, New Jersey, New York, Oregon, and Washington; and between FHA and the cities of New York and Pittsburgh.

Under these agreements, FHA will refuse to do business with a builder or developer found to have violated the State's antidiscrimination law who has failed or refused to correct the noncompliance.[228] In States with antidiscrimination legislation an informational sticker announcing this policy is attached to all applications for FHA mortgage insurance.

But FHA does not act on its own initiative. Only after the State law enforcement body finds that the law has been violated, does FHA do anything. It then holds an informal hearing and only if it is satisfied that the builder or developer has willfully violated the law and refused to take appropriate action, will FHA suspend the violator from the further benefits of participating in the FHA programs until compliance is firmly established. As noted in the *1959 Report,*[229] it is likely that by the time the State agency adjudicates a particular case, the builder will have completed and sold all the homes on a discriminatory basis. Apparently, the suspension applies only in the State in question and not on a national scale. This is an academic matter, however, for FHA has never suspended any builder or developer. Commissioner Hardy states: "We have no knowledge of any case in which there has been a valid determination made that a builder or developer has violated State or local antidiscrimination laws and has failed to make satisfactory correction of the noncompliance." [230]

Perhaps the most celebrated case involving an FHA cooperative agreement is Levittown, N.J., planned as a development of 16,000 homes to be built over a period of 5 to 7 years. Early in 1958, its builder was quoted as saying that sales would be limited to whites, and that long-term mortgages, insured by FHA, would be available to qualified purchasers. Sales began in June 1958, and shortly afterward, two Negro applicants filed complaints against the builder with the New Jersey Division Against Discrimination (now called the Division on Civil Rights) under the New Jersey antidiscrimination law, charging that they had been barred from purchasing homes in Levittown solely because of their race. The State agency proceeded to take action in the matter, but protracted litigation on procedural and constitutional points prevented a "valid finding" for some time. During this period, FHA continued to insure loans on Levittown property. In November 1959, the builder and the agency agreed (in a consent order) that if the court held the law applicable, an immediate order could be issued directing the builder to cease its discriminatory practices. At the time of the consent order, some 2,100 homes insured by FHA had been sold. In March 1960, the builder announced that he would voluntarily begin selling homes in the development to Negro families and urged the establishment of a Levittown council on human relations. More

than 2,400 units insured by FHA had been sold. The litigation, however, continued. In June 1960, the U.S. Supreme Court refused to review the New Jersey Supreme Court's ruling that the State law did not violate the Constitution [231] and the case was closed. Approximately 2,700 homes insured by FHA had been sold. No action had been taken by FHA by way of suspension or investigation, and mortgage insurance had been granted as usual.

In its *1959 Report,* this Commission recommended that FHA require builders subject to State and city laws against housing discrimination to agree in writing that they will abide by such laws. It further recommended that FHA establish its own factfinding machinery to determine whether such builders are violating State and city laws, and, if it finds that they are, that it should take immediate steps to withdraw Federal benefits from them, pending final action by the appropriate State agency or court.[232] The first of these recommendations—that builders subject to State and city laws against housing discrimination agree in writing that they will abide by such laws—is now receiving active consideration by FHA.[233] FHA does not, however, contemplate adopting the second recommendation—that FHA establish its own factfinding machinery. Commissioner Hardy explained:[234]

> It is our opinion that enforcement of State-local antidiscrimination laws is a local responsibility. FHA should be neither a factfinding organization nor a policing authority for enforcement of State and local laws. FHA does take the responsibility of refusing to do business with persons who do not comply with such State and local antidiscrimination laws and refuse to correct such noncompliance.

Nondiscrimination as uniform policy.—Commissioner Hardy was asked whether FHA takes any action (or plans to take any action) in States and cities other than those which have enacted antidiscrimination laws, to require nondiscrimination on the part of builders and developers who receive the benefit of FHA mortgage insurance. He advised that certain requirements prohibit discrimination in employment in connection with construction contracts and subcontracts for multiple dwelling houses constructed under FHA-insured mortgages.[235] He also stated:[236]

> No further changes are presently contemplated in FHA policy or practice to impose an open-occupancy requirement in FHA-assisted housing without such a policy directive from either the Congress or the Executive.

In its *1959 Report* [237] the Commission recommended such a policy directive in the form of an Executive order.

Appraisals.—FHA generally uses its own appraisers to determine the value of the real estate upon which an insured mortgage will be given. Commissioner Hardy states: "Factors of race are not admissible as appraisal considerations under FHA regulations and directives." [238] FHA was asked whether there are any circumstances under which the race of the would-be borrower or the racial composition of the neighborhood might be legitimate considerations for FHA appraisers to take into account in appraising the value of the property. Commissioner Hardy replied: [239]

> The appraiser evaluates the property—never the mortgagor. He has no knowledge of the proposed mortgagor, unless the mortgagor happens to be a resident in an existing house and identifies himself to the appraiser. He has no interest in the identity of the mortgagor, since his purpose is to find a value which will reflect the attitude of typical purchasers and the price they are warranted in paying.

FHA credit evaluation policies.—The Commission noted in its *1959 Report* [240] that most FHA local insuring offices were accepting all or part of the wife's income in mortgage credit analysis. Because of this new policy, FHA stated, "thousands of nonwhite families whose incomes were formerly too low became eligible for minimum-cost homes." [241]

Commissioner Hardy reports that the present policy is to include the income of working wives as effective income "in all cases where it is reasonable to assume that such income can continue during the early period of mortgage risk." [242] This practice applies to all groups.[243] As such, it goes far beyond the practices of lenders in uninsured mortgage financing, who generally exclude the income of working wives in their determination, except in certain professions, and then only within certain age limits.[244]

District offices implement this FHA policy at their own discretion. FHA processing instructions apply equally to all insuring offices, but each individual case, Commissioner Hardy points out, must be analyzed "consistent with the facts surrounding the transaction," [245] and the application of credit policies requires the exercise of judgment by the local insuring office.[246]

Although FHA does not have information available to determine the effect of the inclusion of secondary income on minorities' opportunities for adequate housing, Commissioner Hardy reported that in a 50-percent sample of single-family homes processed in 1959, 28.2 percent involved the dual income of husband and wife. In 65.2 percent of these cases the wife's income was considered effective in determining the ability to meet the mortgage obligation.[247]

Another way in which FHA's credit standards differ from those of the general mortgage credit community, FHA states, is that most mortgage lenders apply rigid rules of thumb to the relationship between income

and monthly payments, mortgagor's age, and secondary income; FHA does not use such rules.[248] The monthly mortgage payments must be within the mortgagor's reasonable ability to pay a determination made with the help of extensive experience data relating housing expenses to income.

FHA's stated policy is opposed to varying the credit evaluation on the basis of race.[249] Commissioner Hardy reports that FHA has no record of having received any complaints as to violations of this policy.[250]

FHA and lending institutions.—For a lending institution to deal in FHA-insured mortgages, it must be "approved" by FHA.[251] Nondiscrimination in the making of mortgage loans is *not* one of the FHA's "approval" criteria. Asked whether, in his opinion, the inclusion of nondiscrimination as a requirement for "approval" could be accomplished without additional legislation, Commissioner Hardy replied: [252]

> In our opinion, a nondiscrimination requirement for "approval" could be accomplished without additional legislation, but we do not presently contemplate adopting such a requirement without a policy directive from the Congress or from the Executive.

But should lending institutions have to meet a requirement of nondiscrimination to obtain FHA "approval," Mr. Hardy says: "No problems are anticipated. It is probable some mortgagees may reduce their FHA activity or drop out entirely so as to avoid possible controversy." [253]

Reacquired property.—Since its creation, FHA has acquired a considerable number and dollar amount of properties. Through the first 9 months of fiscal year 1961, FHA had acquired a total of 46,141 properties, consisting of 124,604 units, in a total amount of $897,454,706. Of these acquired properties, 29,643 had been sold. They consisted of 63,336 units in an amount of $408,423,126. Thus, FHA has on hand nearly $500 million worth of repossessed property.[254]

FHA depends upon broker-managers for the rental management of all properties and for the sale of homeownership-type properties. It instructs brokers to make properties available on a nondiscriminatory basis. Manuals emphasize that these properties are to be made available without distinction as to race, creed, or color, and that the public is entitled to a continuous flow of information about acquired properties.[255] In addition, in a letter to the directors of all field offices, dated November 30, 1959, FHA reaffirmed its nondiscrimination policy regarding acquired properties.[256] But there is no indication that FHA makes any attempt to insure that the brokers don't discriminate.

The Commission has received reports of some of the practices with respect to such repossessed property. In Morrisville, Pa., for example, FHA reacquired approximately 275 homes in a housing project known as Grandview Estates. An exclusive listing was given to one broker. Mr. William Kelley, director of the Philadelphia FHA district office,

stated to a Commission representative that as of April 1961, about 50 of these houses had been resold. Attempts by other firms to present interested Negro buyers to the realtor handling the resale were rejected. FHA Director Kelley acknowledged to the Commission representative that his office had expressly permitted this broker to refuse cooperation with any other broker.[257]

Mr. Peter J. Longarzo, director of FHA's Newark district office, informed a Commission representative that he had instructed his property manager to inform all brokers who had been given exclusive listings to cooperate with other brokers having prospective purchasers, without regard to race. FHA's primary interest, he explained, was to return the houses to the private market as soon as possible. On the other hand, attempts by Negro real estate brokers to obtain a statewide list of FHA-reacquired properties from the Newark office of FHA were unsuccessful. Director Longarzo stated to a Commission representative that this entailed too much clerical work, but that a complete list of reacquired properties was maintained in his office, available to all persons who wished to see it.[258]

In Baltimore, the local FHA director, Charles H. Bocherding, informed a Commission representative that listings of FHA repossessions were sent to selected brokers who operated in the particular area where the houses were located. When asked whether this practice could result in discrimination by limiting Negro brokers, for example, to sales in areas considered Negro, Bocherding replied that no attempt was made to tell a broker to whom to sell. [259]

These reacquired properties are *Government owned.* The question therefore presents itself whether FHA has not a positive obligation to make these properties available on a nondiscriminatory basis; whether when brokers are used, FHA has not an obligation to *require* by contract that these brokers, acting as agents of FHA, will not discriminate against any prospective purchaser or lessee.

Veterans' Administration (VA)

One of the benefits that Congress has conferred upon veterans in the period since World War II is the opportunity to buy a home or farm with little, and at one time with no, downpayment.[260] From 1944 to the end of 1960, VA, through its loan guarantee program, guaranteed almost $50 billion in mortgages on more than 5½ million homes. Through its direct loan program, which began in 1950,[261] more than 177,000 homes have been financed, in an amount of almost $1.5 billion. Because of its more liberal policies, VA's benefits have been available to more low-income home purchasers, and hence to more nonwhites, than has FHA insurance.

VA does not maintain statistics on the race of the recipients of either direct loans or loan guarantees, because they would not "serve any useful

purpose insofar as VA or the applicant for a loan is concerned," and "the requirement of supplying the information would be misinterpreted by some persons." [262] The 1956 National Housing Inventory indicated 2,976,129 single dwelling properties with VA loans, of which 2,889,496 had a white person as the head of the household and 86,633 (2.9 percent) had a nonwhite head of household.[263] VA statistics show that as of June 30, 1955, about 7.5 percent of all civilian veterans of World War II and the Korean conflict were nonwhite.[264]

Restrictive covenants.—As noted in the Commission's *1959 Report,*[265] VA regulations prevent the use of racial restrictive covenants on property financed under a VA guarantee. These regulations apply to property encumbered by racial restrictions created and recorded after February 15, 1950. Unlike FHA, VA does not refuse to issue a guarantee on a loan covering property subject to such a restriction. But the lender is deprived of the very valuable right of conveying the property to VA in the event of default and foreclosure. "Thus," VA states, "prudent lenders would not make such loans." [266] This has the corollary effect of making it virtually impossible for the developer who placed the racial restriction on the property to market his product to veterans. Furthermore, VA regulations provide that if a borrower should file a racial restriction subsequent to February 15, 1950, the holder can declare the unpaid balance of the loan immediately due and payable.[267] With respect to the direct loan program, VA will make no loan on property encumbered by a racial restrictive covenant created and filed after February 15, 1950.[268] A subsequent filing of such a restriction by the borrower subjects the loan to optional acceleration by VA.

As pointed out in the discussion of FHA, however, restrictive covenants are only one means by which racial discrimination is practiced; a means which is judicially unenforceable in any case.

Cooperative agreements.—VA now has cooperative agreements with five States that have antidiscrimination laws, with respect to the sale of newly constructed housing: New York, New Jersey, Washington, Oregon, and Connecticut.[269] In addition, the VA regional offices are trying to work out a cooperative agreement with the California authorities. As noted in the Commission's *1959 Report,*[270] under these agreements VA will advise the State's enforcement agency of new housing developments which are submitted to it for approval, and the State in turn advises the builder of its antidiscrimination statute. VA requires the State to find that a builder has violated the State law before it will undertake to determine whether a veteran is involved. If so, VA will suspend the builder from its program. No such suspension has ever occurred. In a few cases where suspension was considered, VA stated, "the subsequent action of the builder of complying with the State law made suspension unnecessary." [271]

In its *1959 Report*,[272] the Commission recommended that these cooperative agreements require that builders subject to these laws against discrimniation in housing who desire the benefits of the VA loan guarantee programs agree in writing that they will abide by such laws. It was further recommended that VA establish its own factfinding machinery to determine whether such builders are violating these laws, and, if it is found that they are, immediate steps should be taken to withdraw these benefits from them pending final action by the appropriate State agency or court. VA does not contemplate putting either of these recommendations into effect.[273] Chief Benefits Director Brownstein contends: "They [the builders] are charged with knowledge of the law and are bound to know the possible consequences of violations. The enforcement of these laws is the responsibility and prerogative of the State or local authorities." [274]

With respect to factfinding machinery, VA does not believe it either advisable or feasible to "duplicate" the factfinding of State enforcement agencies: "We believe the State enforcement agencies charged with the enforcement ought to make the necessary determinations and the action of the VA [should be] based on these findings." [275] As the Commission noted in the *1959 Report,* where a State antidiscrimination agency finds a builder discriminating against veterans by reason of race, the VA will suspend the builder and inform him "that the discrimination which the builder has engaged in is considered to be an unfair or prejudicial marketing practice or method under the provisions of section 504(c) of the Servicemen's Readjustment Act of 1944, as amended." [276] This statute authorizes the VA Administrator to [277]—

> refuse to appraise any dwelling or housing project owned, sponsored, or to be constructed by any person identified with housing previously sold to veterans . . . as to which it is ascertained that the type of contract of sale or the method or practices pursued in relation to the marketing of such properties were unfair or unduly prejudicial to veteran purchasers.

If such discrimination is covered by the provision of that Federal act (and VA has determined that it is), it is difficult to understand VA's position that "the enforcement of these laws is the responsibility and prerogative of the State or local authorities" and that the State enforcement agencies should make the determinations upon which VA action will be based.

Nondiscrimination as uniform policy.—The Commission noted in its *1959 Report,* if such discrimination is covered by the provision of that Federal act, it also is difficult to see why it is applied only in States with antidiscrimination laws.[278] Mr. Brownstein explained: "There is a serious legal question of whether the VA has the authority, based solely

on the cited statute, to suspend a builder from participation if his conduct is not unlawful in the State." [279] But a State enforcement agency's finding of discrimination, although of considerable value in showing that discrimination has, *in fact,* been practiced, should have no bearing on the legality of VA's position that discrimination is an "unfair or prejudicial marketing method" under the Federal act. If VA's position is legally valid, it would seem to be valid in all States, not just in those with their own antidiscrimination laws.

Mr. Brownstein also pointed out that the factfinding and enforcement machinery would be quite complex, and he raised the question of whether such factfinding and enforcement are a proper function of the Veterans' Administration.[280] No other agency, however, was suggested as being better suited.

In response to a question concerning the desirability of requiring nondiscrimination as a uniform policy throughout the country in connection with VA-guaranteed loans, Mr. Brownstein had this to say: [281]

> [A]ll aspects of the problem must be weighed and balanced. I do not believe anyone would suggest that in order to avoid [discrimination] of one group, all groups should be discriminated against. Thus, there is presented the question of the extent to which other veterans would lose the opportunity to participate in the programs because of an interest in avoiding discrimination against one group of veterans.

The difficulty with this formulation is that it ignores the third alternative—that the proper function of the Veterans' Administration is to avoid discrimination against *all* groups of veterans; and to insure that the benefits it administers are available to *all* veterans on a basis of equal opportunity.

Appraisals.—Unlike FHA, VA generally utilizes the services of private "fee appraisers" in assessing real estate. It uses its own staff primarily for spot checks. VA directives state that the race of the applicant is not "germane" and the fee appraiser should not record it on the appraisal form.[282] Under VA procedures, each appraisal made by the designated fee appraiser is reviewed to determine that the appraiser's conclusions are "consistent, sound, supportable, logical, and prepared in accordance with acceptable appraisal techniques, standards, and prescribed VA instructions." [283] In addition, VA staff technicians conduct a monthly field review of at least 10 percent of the average sum of appraisal requests received during each of the 3 preceding months. But no review or spot check is aimed specifically at discovering whether these private fee appraisers discriminate on the basis of race.

VA was asked whether there are any circumstances under which the race of the would-be borrower or the racial composition of the neighborhood might be legitimate considerations to be taken into account by appraisers. Mr. Brownstein replied: "Under our policies and procedures the race, creed, or national origin of a particular applicant for a mortgage loan or an appraisal is not to be considered in determining the reasonable value." [284] He added: [285]

> Neighborhood characteristics undoubtedly have a bearing on valuations. However, the racial composition would be a legitimate consideration only to the extent that an available market and demand is being influenced. However, we do not believe that the race of a proposed occupant per se should have any bearing on property values.

VA and lending institutions.—There is no restriction on the type of lending institution eligible to make a VA-guaranteed home loan. Even an individual may be a lender.[286] VA makes no attempt to determine whether these lenders discriminate. Mr. Brownstein explained: "It always has been VA's position that we cannot require lenders to make GI loans or to prescribe lending policies." [287] He also added: "We do not believe that there would be a proper basis for VA to try and establish why a particular lender is not making GI loans or has declined to make one to an individual veteran." [288]

With respect to the legality of a nondiscrimination requirement for lenders, Mr. Brownstein said that the VA is authorized by statute to refuse to allow a lender to participate in the program if he fails to maintain adequate accounting records, to demonstrate proper ability to service loans, or to exercise proper credit judgment in respect to loans guaranteed or insured by VA.[289] This section also provides, however, for the suspension of the lender if he "willfully or negligently engaged in practices otherwise detrimental to the interests of veterans or of the Government." [290] Mr. Brownstein pointed out that "the principal objective of the latter provision was the protection of the monetary interests of veterans and the Government arising from their respective interest as borrowers and guarantor." [291] Nevertheless, discrimination on the part of participating lending institutions could well be considered "detrimental" to the interests of those veterans discriminated against, and of the Government, which has established the VA-guarantee program for the benefit of *all* veterans.

Reacquired property.—As shown by the accompanying table, VA has acquired a sizable number of properties over the years.

TABLE 2.—*VA reacquired properties*

Year	*Number*	*Amount*
1947–53	11, 300	$61, 553, 530
1954	2, 509	17, 630, 130
1955	3, 611	24, 154, 420
1956	4, 771	38, 651, 930
1957	6, 780	57, 620, 960
1958	9, 017	81, 400, 790
1959	11, 088	102, 927, 900
1960	12, 073	102, 475, 300
Total	61, 149	486, 414, 960

Source: Statistics supplied by VA.

It is VA's policy to sell these acquired properties as quickly as possible for the best obtainable prices, usually through local brokers. An information bulletin, dated December 11, 1959, distributed to all parties concerned with the sale of VA-acquired properties, clearly sets forth the VA policy against discrimination on the basis of race, creed, or color, and states that VA expects all persons concerned to abide by this policy.[292] There is no indication, however, that VA attempts to police this policy.

As in the case of FHA, reports of broker discrimination have come to the Commission. For example, a Commission representative was informed that in Trenton, N.J., one local realtor has enjoyed a virtual monopoly on exclusive listings of VA-foreclosed properties. On one occasion, it was reported, a Negro real estate broker requested a list of such properties from this realtor and was sent a small list of houses, all located in Negro areas. The balance of the realtor's VA properties was in white areas.[293]

In Los Angeles, a Negro witness told the Commission of his experience in helping a cousin locate a VA-repossessed home in the Azusa area. After three or four VA-authorized brokers had refused to sell him a home, the cousin found one broker who said that he would give him a passkey and a list of a number of available VA properties, and he could go to inspect the properties by himself. However, if he found one he liked, this particular broker would not represent him in buying the home. In attempting to take the matter up with the Los Angeles regional office of VA, the assistant loan guarantee officer told the witness that "personally he was interested in the matter, but officially it was not a popular item to be discussed at the Veterans' Administration office." [294]

In Baltimore, a Commission representative was told that a broker advised a Negro family interested in purchasing a VA-repossessed home that it was "not available to colored." This family had originally been quoted a price of $8,000 in a telephone discussion. They subsequently paid $9,000 to a speculator for an identical VA-repossessed home next door, receiving a land installment contract, which gave them no title. It was charged that VA's Baltimore office policy was to make properties in "white" areas available only to white brokers, and properties in Negro areas to only Negro brokers. The matter was ultimately resolved through a Baltimore VA office directive to all of its personnel, stating a firm nondiscriminatory policy in sales and in dealings with brokers, appraisers, and contractors.[295]

As noted in the discussion of FHA,[296] these properties acquired by VA are Government owned. Thus VA has a particular obligation to insure that they are sold on a nondiscriminatory basis.

Federal National Mortgage Association (FNMA)

The Federal National Mortgage Association, known as Fannie Mae, is the only governmentally operated financial institution among the Federal Government's complex of housing credit machinery. Its activities involve the purchase and sale of residential mortgages that have previously been insured by FHA or guaranteed by VA. It is, in the words of its President, Mr. J. Stanley Baughman, "a business-type corporation." [297] Its principal functions are twofold—secondary market operations and special assistance—and in both, its "business-type" character and attitude are evident.

Secondary market operations.—Pursuant to its secondary market operations, FNMA may purchase FHA-insured or VA-guaranteed mortgages which it deems to meet purchase standards of private investors, limited to a maximum amount of $20,000 each. Since 1938, FNMA has spent over $10 billion to buy more than 1 million mortgages.[298] Although these loans have already been appraised, investigated, and approved as meeting FHA or VA standards, FNMA makes its own analysis. "The fact that a mortgage is guaranteed or insured by an agency of the Federal Government," Mr. Baughman explains, "does not in itself provide assurance that a mortgage is or will be readily marketable in the general secondary mortgage market." [299] FNMA is concerned with future marketability as well as current status. In practice, relatively few such mortgages have been declined for purchase by FNMA. Of the more than 367,000 offers for immediate purchase received between November 1, 1954, and December 31, 1960, in connection with secondary market operations, FNMA has declined only 25,530 (6.94 percent). During that period, FNMA purchased 311,766 mortgages, amounting

to $3.7 billion.[300] The principal reasons for declining to purchase are as follows: [301]

1. Poor location of the security properties.
2. Credit problems (usually having become so during the several months' interval between the time when FHA or VA agreed to insure or guarantee the mortgages and the date when they were offered to FNMA for purchase).
3. Inadequate living space.
4. Properties improperly maintained and not reasonably modernized.
5. Ineligible mortgages.
6. Deficiencies in respect to construction and utilities.
7. Very old dwellings.

Mr. Baughman further states, in this connection: "Limitations in respect to color, race, creed, or national origin have no proper place in determining whether mortgages offered to the Association for purchase meet the prescribed objective standards." [302]

Until recently, FNMA attempted to obtain data concerning minority occupancy of properties covered by mortgages purchased under FNMA's secondary market operations.

TABLE 3.—*FNMA's secondary market minority group mortgage purchases*

Year	*Minority group purchases*	*Total purchases*	*Minority group percent of total*
1955	1,262	9,482	13.3
1956	2,460	53,234	4.6
1957	1,754	86,597	2.0
1958	660	22,291	3.0
1959	849	61,727	1.4
	6,985	233,331	[1] 2.9

[1] Average.

Source: Data obtained from HHFA Annual Reports.

The data shown in table 3 concerning minority group purchases were taken from a review of the mortgage files. It was found, however, that many mortgage files did not show the mortgagor's race, color, creed, or national origin and, as a consequence, the information obtained was incomplete and unreliable. In view of this FNMA believes that the number of minority group purchases is substantially larger than the number reported.[303] The practice was discontinued after 1959.

FNMA prices in its secondary market operations follow the market. This results in the purchase of FHA-insured and VA-guaranteed mortgages by FNMA at high discounts, depending on the geographical area, the interest rate, and the amount of the borrower's equity. At the

end of 1960, mortgages paying 4¾ percent interest were being purchased by FNMA at 90–92 percent of par (full) value; 5¼ percent mortgages at 94–96 percent of par; 5¾ percent mortgages at 98–100 percent of par. In areas where mortgage money is scarce, the discounts are highest. This geographical differential affects all home buyers,[304] but hits minorities most severely.[305] Thus, FNMA is a "business-type corporation" and operates, to some extent, with the same principles and attitudes as private enterprise. FNMA's President has said: "There is to be the closest possible analogy of the secondary market operation to a like private enterprise corporation." [306]

Although FNMA is a "business-type corporation," it is a Government corporation, and several of its attitudes and procedures reflect this distinction. Like FHA and VA, FNMA will refuse to purchase mortgages on any property subject to a racially restrictive covenant executed after February 15, 1950. In addition, FNMA's credit evaluation policy regarding the inclusion of secondary income (such as that of the wife) follows that of FHA and VA.[307] FNMA's view of the propriety of considering the race of the mortgagor or the racial composition of the neighborhood in determining whether to purchase a mortgage is as follows:[308]

> FNMA's requirements prescribed in connection with its acquisition of mortgages provide for analysis of the *mortgage security* itself and the *credit reports* covering the mortgagor, against uniform objective standards. It is FNMA's policy that matters involving race, color, creed, or national origin could have no proper place among such standards.

But, like FHA and VA, FNMA has no policy concerning the purchase of mortgages on property sold by discriminatory builders or developers, or from discriminatory lending institutions.

Special assistance function.—The special assistance function of FNMA involves the use of Government funds to buy home mortgages under special housing programs for "segments of the national population which are unable to obtain adequate housing under established home financing programs." [309] Special assistance funds are available for advance commitments and amount to direct Government lending.

As of June 1960, the authorization for special assistance was $2,675 million of which $950 million was available for programs designated by the President and $1,725 million for programs established by Congress. Of the $950 million subject to the President's determination, $868,316,000 had been authorized (leaving $81,684,000 unallocated) and $814,441,000 had been used. The Housing Act of 1961, passed on June 30, 1961, increased the authorization for programs designated by the President by $750 million to $1.7 billion.[310]

TABLE 4.—*Programs designated by the President for FNMA special assistance, as of June, 1960*

	Authorized by President	*Contracts executed*
Disaster	$10, 000, 000	$864, 000
Guam	7, 500, 000	280, 000
Urban renewal	650, 000, 000	620, 181, 000
Alaska	58, 000, 000	48, 494, 000
Wherry-defense	11, 072, 000	11, 072, 000
Elderly persons	130, 000, 000	131, 806, 000
Low cost	1, 744, 000	1, 744, 000
Total	868, 316, 000	814, 441, 000

Source: Data provided by FNMA.

An example of the effect of the special assistance program aid in providing new low-rent housing was described in the Commission's *1959 Report.*[311] With the help of FNMA's special assistance funds, resulting in a reduction of interest and amortization, one developer was able to bring rents on a two-bedroom garden apartment down from $119 to $107.

There has been some controversy concerning the desirability of recognizing housing available to minority groups as a category for special assistance. In the past spokesmen for minority groups have opposed such a program designation. The bulk of any special assistance funds, they apparently felt, would undoubtedly go for the building of segregated minority group housing projects which they had previously condemned.[312] This, of course, could be averted by such designation for open occupancy housing developments.[313] Mr. Emil Keen, chairman of the Long-Range Planning Committee, New York State Home Builders Association, told the Commission at its 1959 New York housing hearing that "the purchase by Fannie Mae at par of open-occupancy development mortgages will encourage builders to experiment in this relatively untried field." [314] Mr. Keen added: [315]

> Only from such experimentation can we hope to succeed in reaching the broad practical answers from which the solution to this problem must stem.

The HHFA Administrator, however, expressed his opposition to this proposal.[316] Open occupancy housing has not been designated for FNMA special assistance.

FNMA's "business-type" attitude is evident in its special assistance function as well as in its secondary market operations. FNMA pays low prices for special assistance, lower interest mortgages, thus forcing home buyers to pay more in the form of discounts. President Baughman has stated that he did not want the price paid for special assistance mort-

gages to be so high that it would exclude private financing.[317] This policy could conflict with the very purpose of special assistance—to provide Government aid to categories of housing that private institutions are *not* servicing. But as a Fannie Mae representative explained to the Commission's Arkansas Advisory Committee: [318]

> [I]t is our function to stimulate interest, not to buy mortgages with the intention of holding them forever. Now, that is one of the reasons why we believe that perhaps on the special assistance function mortgages should be adjusted so that we are not so far above the market that the hope of interesting the institutional investors is going to be destroyed.

Mr. Baughman has summarized the view of FNMA, with respect to equal opportunity in housing, as follows: [319]

> FNMA's present policies and practices are such as to afford to every person equal rights and opportunities to seek and obtain the services and assistance provided by this federally sponsored corporation. Accordingly, no changes are contemplated.

Mr. Baughman's summary is literally correct; i.e., FNMA does not, itself, discriminate either in policy or practice. Asked about the possibility of FNMA encouraging the establishment of housing available on an open occupancy basis, Mr. Baughman said, "The sequence of events is always such that the property is acquired by the owner-mortgagor before FNMA purchases the mortgage."[320] VA and FHA, he further pointed out, are involved at an early stage. Consequently, with respect to the encouragement of open occupancy housing, "[T]he latter two [VA and FHA] would appear to have greater potentials for effectiveness and uniformity."[321] Mr. Baughman goes on to say that "FNMA's financing function of purchasing mortgages which occurs after the related properties have been purchased, seems to bear no relationship to the question of the desirability of a policy favoring the encouragement of open occupancy housing."[322]

Certainly, any discussion of FNMA policy, at least with respect to its secondary market function, must first recognize that it is largely dependent upon the policy set by the primary Government home-credit agencies—VA and FHA. Nevertheless, it does not follow that FNMA's secondary market function bears "no relationship to the . . . encouragement of open occupancy housing." An FNMA policy of refusal to purchase mortgages of discriminatory builders or from discriminatory lenders, coupled with VA and FHA antidiscrimination policies, would constitute a formidable battery of governmental weapons in the battle for equal opportunity in housing.

FNMA's special assistance function, on the other hand, with its advance commitment feature, amounts to direct Government lending and, in effect, places Fannie Mae in the primary market. This aspect of FNMA's function appears to have a more direct potential for encouraging open occupancy housing. But presidential or congressional action may be necessary to designate open occupancy housing as a program available for special assistance, or to insure that certain of the programs already so designated (such as urban renewal and housing for the elderly) are available on an open occupancy basis.

Summary

These three agencies—FHA, VA, and Fannie Mae—represent the extent of Federal assistance to home finance. The announced policies of each are in favor of equal housing opportunity to all people, and each has expressed itself as opposed to the inclusion of race as a factor in its decision making. But is this sufficient? None of these agencies initiates loans. Rather, they each operate in the context of the private housing and home finance industry. It is here that the critical decisions are made that determine the effect of Federal aid to home financing, and it is here that the force of the Federal Government must be exerted against housing discrimination if it is to be exerted effectively.

FHA and VA are the agencies primarily involved. The benefits that they offer (mortgage insurance and guarantee) are dispensed at the moment of the initial transaction between the lender, builder, and borrower. But neither agency has an effective policy to insure that the fruits of these benefits (an increased housing supply) reach home buyers on an equal opportunity basis. Both agencies will, under limited circumstances, withhold the benefits where discrimination is demonstrated. But they will only do this in States which have antidiscrimination housing laws; and only after the State enforcement authorities have found a violation of State law and the violator has not satisfactorily complied—a combination of circumstances which has not yet occurred. But where States lack antidiscrimination legislation, members of the private housing industry are free to utilize the credit of the Federal Government in aid of housing discrimination if they choose. Many so choose.

Fannie Mae is involved on the secondary level, providing a ready market generally for FHA-insured and VA-guaranteed mortgages, and providing special assistance for housing programs designated by the President or authorized by Congress. The full extent of FNMA's current contribution to equality in housing opportunity is that it does not itself discriminate. In view of its principal function of providing a secondary market for Government insured or guaranteed mortgages, FNMA can do little in and of itself other than to help provide the moral leadership in the housing community which has been seldom evidenced in connection with Federal participation in home financing. Nevertheless,

FNMA, acting in conjunction with the primary agencies, FHA and VA, could take forceful and meaningful steps to bring about true equality of housing oportunity.

In view of the public policy regarding housing as stated in the Housing Act of 1949, and reaffirmed by President Kennedy as the "pledge" of our Federal Government, the key question is presented whether any Federal housing agency can justifiably do less.

Of the three agencies, only FHA has expressed anything but reluctance to change the status quo. FHA Commissioner Hardy is unwilling, however, to attempt any remedial measures without an express directive from the Executive or the Congress. VA has concluded that effective remedial measures would be undesirable. FNMA has difficulty seeing that it has any relationship at all to the problem.

There is considerable justification in FHA's position. In order for any policy of nondiscrimination to be effective, it must be broadly based. FHA, while it is the most important of the Federal agencies engaged in assisting home finance, is only one of the several Federal agencies so engaged. It is for this reason that the Commission recommended in its *1959 Report* that an executive order be issued stating the objective of equal opportunity in housing and directing *all* Federal agencies to shape their policies and practices to make the maximum contribution to the achievement of this goal.[323]

4. Urban Renewal

Urban renewal is a comprehensive program for the revitalization of the Nation's cities, where 7 of 10 Americans now live, and where in all probability an ever-increasing proportion will be concentrated in coming years.[1] It has been aptly called the "program of the future." Although it is concerned with urban problems on a scale much broader than housing alone, it may involve every major Federal housing program and agency. Above all, it involves the mass displacement of people, and particularly nonwhites. For this reason, if it is to succeed, urban renewal, more than any other program, must meet and master the problem of the restricted minority group housing market.

America's cities face formidable problems of growth and decay. Each year a constant stream of migrants flows from the countryside increasing their size and their burdens. And as the poor, ill-educated, and unadapted migrants move into the central cities, there is an exodus of the wealthier, more stable, middle class into the expanding suburbs. The migrants, largely nonwhites, are fenced off into the older, deteriorating neighborhoods and the tempo of decay increases. Slums grow, with their concomitants of crime, disease, and human degradation, and the city governments must pay an ever larger cost in police, fire, health, and welfare services. The middle class which in the past has provided stability, leadership, and a firm fiscal base for municipal taxes, is fleeing to the "white noose" of the suburbs, where its members are largely beyond the reach of municipal taxing power, although they work in the city and require many urban services which municipal government must help provide.

A program of revitalization must be geared to meet these problems and attract suburban dwellers back into a dynamic, attractive central city. This can be achieved partly through removal and replacement of slum structures; rehabilitation and conservation of existing structures; strategic placement of educational and recreational facilities; provision of adequate transportation, within, to, and from the city; and dispersion or dissolution of the heavy concentration of low-income population.

In an effort to meet these urban needs, new governmental programs have been created and the entire concept of housing has been altered and

enlarged. As HHFA Administrator Robert C. Weaver recently explained: [2]

> [W]hen we talk of housing we are talking of more than simply shelter. We are talking of cities, we are talking of transportation, we are talking of the various facilities that make up the communities in which we live. And of course we are also talking of people.

The Federal urban renewal program, which seeks to meet these needs, was originally narrow in scope. It was thought that cities could be revitalized and urban dwellers accommodated merely by eliminating blighted areas and constructing new homes on the cleared sites. Consequently in 1949, Congress declared the national housing policy to be [3]—

> . . . the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family. . . .

Experience under the 1949 act soon showed that to be effective urban renewal must encompass a much broader program. The Housing Act of 1954, therefore, expanded the slum clearance concept to embrace a program of total community improvement.[4] This legislation and related regulations require the community that seeks Federal assistance to draft a "program for community improvement" which includes, in addition to slum clearance, a plan for strict code and zoning enforcement, a comprehensive community program, a neighborhood-by-neighborhood analysis of blight, adequate financing, housing for displaced families, and communitywide citizen participation in the total plan.[5] To those communities that comply with congressional and HHFA requirements the Federal Government offers substantial loans to assist planning, and provide working capital for acquiring land and structures, relocating families, demolishing structures and preparing the project area for its reuses. In addition, Federal grants pay two-thirds of the net cost of these activities, that is, the difference between what they cost and the price received for the land. In the Housing Act of 1954 special FHA mortgage insurance programs were provided to spur construction both within and without the renewal area. Between 1949 and the end of the fiscal year 1961 the Congress authorized grants of $2 billion to local communities for urban renewal projects. On June 30, 1961, President Kennedy signed the Housing Act of 1961,[6] adding $2 billion to the program. As of April 30, 1961, there were 786 communities operating under active urban renewal programs.[7]

The concentration of minority groups in the decaying cores of the cities, together with their forced immobility, means that urban renewal

has a particular impact upon them. As a result major problems of discrimination or unequal opportunity arise in connection with three aspects of urban renewal. The most pervasive is the problem of displacement. A program of urban renewal must provide for the adequate relocation of those displaced by slum clearance, highway, and other municipal projects. The Federal Government, aware of this crucial need, requires communities to provide for relocation of displacees to decent, safe, and sanitary dwellings.[8] This presents special hardships with respect to nonwhites and other minorities. Their relocation is difficult because of the many racial and economic barriers that impede their mobility in the housing market. At the same time these barriers cause severe overcrowding, as exploding nonwhite populations have pressed on the limited supply of housing available to them. Therefore adequate relocation must provide substantially more housing units for those displaced than they are now occupying. To relocate deprived minorities in contiguous slums, or for them to relocate themselves in new slums, is no solution to urban revitalization. Albert M. Cole, former HHFA Administrator, underlined the importance of this problem when he said:[9]

> . . . no program of housing or urban improvement, however well conceived, well financed, or comprehensive, can hope to make more than indifferent progress until we open up adequate opportunities to minority families for decent housing.

The second aspect of urban renewal that raises problems of unequal opportunity is the use of land that has been cleared by the exercise of governmental power. For example, where new housing is built on slum-cleared land, who shall be permitted to occupy it?

A more general problem of unequal opportunity in urban renewal is that of assuring adequate consideration of minority group interests in the planning of both the overall program and particular projects. HHFA has recognized and responded by requiring, through the workable program, arrangements for full opportunity for citizens to participate in program developments as they are being considered and put into effect.

Whatever course the planners follow will affect the entire metropolitan community, and especially the disadvantaged nonwhite population. Statistics from HHFA indicate that as of June 30, 1960, an estimated 106,457 of 184,151 families residing in urban renewal project areas which reported color of population were nonwhite.[10] Complicating the nonwhite relocation factor of urban renewal is the low income characteristic of many of these families. Of 200,629 families residing in a total of 466 projects which reported eligibility for low-cost housing, 116,690 had earnings low enough to qualify them for low-income publicly subsidized housing.[11]

States and municipalities may undertake urban renewal on their own. If they desire Federal assistance, which is principally administered through the Urban Renewal Administration (URA), an agency of the HHFA, they must meet certain criteria intended to assure that the recipient community views renewal as a process of total revitalization. These criteria are set out in the "program for community improvement" (formerly called the "workable program") established by the Housing Act of 1954 and defined by HHFA. The program consists of seven requirements, four of the most important being: [12]

1. That the local community appoint a citizens' advisory committee, representative of the community in membership, and a subcommittee of this committee, or a special committee on minority housing problems. The latter's membership must include representatives of the minority population of the community.
2. The preparation of a comprehensive community plan covering land use, thoroughfares, community facilities, public improvements, zoning ordinances, and subdivision regulations.
3. That the community conduct neighborhood analyses, developing a communitywide picture of blight—where it is, how intense it is, and what needs to be done about it.
4. That plans be made for the relocation of families displaced by governmental action.

Once the community devises a workable program for community improvement, it is submitted to the regional office of HHFA for its recommendation, and then directly to the HHFA Administrator for review and approval. His certification is good for 1 year and once the approval is obtained, the community is entitled to apply for Federal financial aid for specific renewal projects. "Thereafter the community must show that it is diligently carrying out its plan for community betterment in order to obtain recertification each year and maintain its eligibility for Federal urban renewal aids." [13]

After preparation and certification of the overall program for community improvement, the community may prepare for the execution of specific urban renewal projects. Each project must meet certain statutory and administrative requirements. These include approval of the plan for the specific project by the local governing body; agreement by the purchasers or lessees of the land that they will devote its reuse according to the project plan; proper provision for the relocating of families displaced by the project; a public hearing on the project plan; and

public disclosure of the names of the redevelopers, estimated cost of redevelopments, and estimate of rentals and sales prices of the redevelopment housing. When these requirements (among others) are met HHFA enters into a loan and capital grant contract for the project, with the local public agency handling the urban renewal program for the locality.

CITIZEN PARTICIPATION

Since urban renewal affects the whole community, and particularly minority group members, the importance of wide participation in the planning and execution of the entire urban renewal program, as well as specific projects, cannot be over-emphasized.

Pursuant to the 1954 legislation, HHFA set up a general requirement that cities applying for loans and grants must provide as part of their workable program "full-fledged communitywide citizen participation and support." [14] Until 1960 this was not understood to require the participation of minority group citizens. As a consequence application of the directive was far from uniform. This brought serious criticism by minority groups who, with some justification, felt that they were not consulted even though their members were most directly concerned. In a few large cities nonwhite political strength, representation in city councils, presence among board members of local agencies, and intergroup relations agencies, both public and private, filled the vacuum at the community level. Even in these infrequent instances, however, opportunity for participation at the project level left much to be desired.

This Commission, noting the seriousness of the problem, recommended in its *1959 Report*:[15]

> . . . that the Urban Renewal Administration take positive steps to assure that in the preparation of overall community "workable programs" for urban renewal, spokesmen for minority groups are in fact included among the citizens whose participation is required.

On February 8, 1960, Housing and Home Finance Agency Administrator Norman P. Mason announced that a new requirement of the workable program for community improvement would be the appointment of a citizens' advisory committee, communitywide and representative in scope. He provided further for the naming in each locality of a special committee or a subcommittee on which the principal minority groups in the community must be represented. Such committees were to have as their primary function the responsibility of working for full

opportunity in housing for all groups. By March 1, 1961, according to the Administrator's directive, it would be mandatory that each community create and have in operation such a committee as a requirement for certification or recertification of its program for community improvement.

Many communities have met the requirement. Others have been slow in complying. HHFA has informed this Commission that in the 3 months following the effective date of the new requirement, it received 132 submissions for certification or recertification from communities which had not yet conformed to the requirement.[16] The Commission's Michigan Advisory Committee reported:[17]

> Organized citizens' support is important to the success of an urban renewal program. A representative citizens' committee, by participating in the plans from the beginning, can rally such support. But such a committee is the exception in Michigan communities.

The mere inclusion of minority representatives on the subcommittee or even on the general committee does not, of course, necessarily assure the broad citizens' participation required. The minority members may be unrepresentative or inarticulate. Moreover it sometimes appears that minority members of the committee or subcommittee are simply not consulted.

The Commission's New York Advisory Committee was particularly critical in its analysis of minority participation. It reported in 1961 as follows: [18]

> Of the 16 communities which had organized such committees, 13 had Negro representation.
>
> Our survey indicated that more than one-half of the Negroes selected for these committees in the smaller communities do not represent the interests of the so-called Negro community and too often have a vested interest to protect in the community. It would also appear that in the eyes of urban renewal officials, minority group participation, if accepted at all, should be confined to the sole issue of relocation and not the basic, fundamental matter of planning.
>
> The fact is the LPA [local public agency] directors and other officials in most of these communities resent and resist citizen participation in their programs. . . . Real citizen participation would mean the airing of problems. Too often these officials take the position that to "air" a problem is to *create* one. One of the most disturbing phenomena to witness year after year is to attend conferences of local urban renewal officials and never once hear the word "Negro" or "minority group" even though practically all their programs have bogged down because of the inability to solve the

problem of relocation of Negro and Puerto Rican families. A "conspiracy" of silence prevails and it is as if they were "wishing" away the problem by refusal to discuss it openly.

One of the minority members of a North Carolina citizens' advisory committee reported: [19]

> . . . it [the committee] had met several times, but the two Negro members . . . were never included on any of the planning whatsoever. During the committee meetings the white members told them very little and spoke only in generalities.

In Little Rock, Ark., the local public agency appointed an all-Negro citizens' advisory committee to assist with several renewal projects.[20] Another group, the Urban Progress Association of Little Rock (a private, nonprofit corporation) was organized by interested citizens to assist in urban renewal planning. It is composed of local businessmen and the operating membership is all-white, although some Negro businessmen appear to have membership credentials.[21] The association rents space from the local public agency officially charged with urban renewal—the Little Rock Housing Authority.[22] The all-Negro citizens' advisory committee contends that it is not consulted on planning and is only called upon to approve plans which are already drafted and await imminent execution.[23] Although there is considerable dispute as to whether the Negro group is intentionally ignored, the dual arrangement has unquestionably instilled suspicion in the minds of the Negro committee and others as to the true intent of Little Rock's overall urban plan. Several nonwhite citizens complained to the Commission's Arkansas Advisory Committee that the slum clearance program seemed geared to undermine the interracial character of some Little Rock neighborhoods and sharply define racial residence patterns.[24] Although the validity of this complaint was disputed, the fact that it was made appears to indicate a need for better communication.[25]

HHFA has indicated that it will strictly enforce the citizens' advisory committee and minority committee requirements, and its regional offices have recently turned down a number of submissions for lack of adequate compliance.[26] As has been stated, effective nonwhite participation is not necessarily achieved by a subcommittee dealing exclusively with minority problems. If minority group representatives are confined to the minority group committee, and this is kept apart from the general planning of urban renewal, communitywide citizen participation is not achieved. Nonetheless with all these reservations the new HHFA requirements are a step in the right direction.

Communitywide participation is particularly important in connection with another key element of the program for community improvement—comprehensive planning, or the master plan. This should provide for orderly growth of the community as well as for the elimination of blight. (Special funds were provided in the Housing Act of 1954 to assist communities in such planning.) This means that the master plan must encompass such things as housing, commerce, industry, transportation, public utilities, recreational and community facilities. It may project as far as 50 years into the future to chart the course of total urban growth—of which slum clearance and redevelopment are only aspects.

The significance of comprehensive planning to civil rights lies in the fact that the master plan can encourage or discourage an ample, free housing market. It can create or reinforce ethnic group concentrations. Jefferson B. Fordham, dean of the University of Pennsylvania Law School, has concluded [27]—

> . . . that with respect to equality of opportunity, a master plan cannot be neutral. A plan will either promote equality in housing, for example, or the converse. There is no genuine neutrality.

A highway, a factory, and a river may triangulate and seal off a racial concentration; a public facility, improperly located, may serve only a favored portion of the community; the racial makeup of a student body is changed, or its future complexion assured by a planner's pencil stroke. Use of the planning tool in sum can affect the entire complexion of the city and cause racial stratification. As a recent article in *Architectural Forum* observed: [28]

> . . . Urban renewal was largely devised to end the growing imbalance of urban populations, which was much less apparent in 1949 than it is today. Yet that program has intensified residential segregation and speeded more white families to the suburbs than it has attracted back to the city.

The adequate master plan, many planners feel, should rejuvenate the central city so as to attract all economic groups. As HHFA Administrator Weaver has pointed out: [29]

> What we want to achieve is not similarity but diversity; not uniformity, but unity; not leveling, but balance.
>
> We will achieve that in urban renewal when high, middle, and low income families can all find a place in the same community.

Also important is the dispersion of low-income whites and nonwhites to break up existing blighted areas and prevent new ones. In sum, comprehensive planning, as contemplated by the workable program requirement, must relate future land use to dynamic community needs and orderly geographical development.

The "neighborhood analyses" element of the workable program which requires communities to assemble, neighborhood by neighborhood, communitywide information on housing conditions and characteristics of families affected by poor housing, is crucial. In this connection URA "cautions . . . that decline can result from blighting influences which extend beyond the boundaries of a particular neighborhood." [30] It also advises that "a common and acute blighting influence is the lack of adequate housing open to minority groups, forcing their concentration in tightly congested central areas." [31] These two elements emphasize the need for communitywide citizens' participation in *all* of the planning phases of urban renewal. It would appear that the nonwhite citizen has as vital a stake in comprehensive planning and neighborhood analyses as does his white counterpart.

RELOCATION

In its *1959 Report,* the Commission on Civil Rights observed: [32]

> . . . while full citizens' participation may be a prerequisite for successful and equitable urban renewal, the most difficult and probably the most important test of the program is in the relocation of displaced families. This is particularly true with respect to Negro families whose mobility is limited not only by virtue of their economic status but also by racial restrictions.

Time has not dulled the pertinence of this observation.

The problem of relocating displaced families has plagued slum clearance programs from their inception at the State level in the early 1940's. Section 105(c) of the Housing Act of 1949, as amended, requires that [33]—

> There be a feasible method for the temporary relocation of families displaced from the urban renewal area, and that there are or are being provided, in the urban renewal area or in other areas not generally less desirable in regard to public utilities and commercial facilities and at rents or prices within the financial means

of the families displaced from the urban renewal area, decent, safe, and sanitary dwellings equal to the number of and available to such displaced families and reasonably accessible to their places of employment.

In administering this provision HHFA and URA require the local public agency to assume responsibility for: [34] (1) demonstrating that appropriate existing and anticipated local housing resources are or will be adequate to meet relocation needs; (2) formulating an acceptable plan for orderly relocation; and (3) providing competent staff services (generally described as a family relocation service) to assist families in obtaining decent, safe, and sanitary housing.

HHFA and URA, then, have provided guidelines which if followed, should assure rehousing of most persons displaced from urban renewal sites. The URA, through its regional offices, must oversee relocation; the HHFA, through its recertification procedure, can effectively bar further aid to a project area not providing adequate relocation services; Federal funds are offered to help pay relocation costs, but the machinery, imagination, and decency with which it is carried out are matters for the local public agency. It is not required actually to supply housing for displacees, but only to assure that housing is available to them. This may or may not require governmentally assisted new housing, depending on the adequacy of existing housing in the community.

It is difficult to appraise the effectiveness of these relocation requirements, for URA has only incomplete data. The statistics that are available from URA indicate progress in the location of displaced nonwhites in standard housing. From the beginning of the slum clearance and urban renewal program through September 1955, URA reported that 64.4 percent of nonwhites relocated had been rehoused in standard housing; by December 1957 this figure had risen to 67.1 percent, and in June 1960 it stood at 70.6 percent.[35] For white relocatees the figures are consistently higher: For example, 79.1 percent were rehoused in standard housing as of June 30, 1960.[36] This contrast reflects the differential in standard housing available to the two groups.

The practices of local relocation authorities have differed and overall achievement has not been uniform. H. W. Reynolds of the University of Southern California conducted a study of relocation practices and their results in 41 cities which had relocation programs for areas cleared for redevelopment or public housing.[37] Information for the analysis was gathered over a 4-year period extending from 1955 to 1958. It indicated that 26 of the 41 cities confined themselves largely to taking a census of threatened families; advising them of probable deadlines; and leaving them to their own resources in seeking out available rehousing.[38]

According to the Reynolds study: [39]

. . . In 14 of these municipalities, families to be relocated received no other official information about their displacement except handbills announcing the demolition dates and the new uses for the land. Aid by relocation authorities in matters such as standards for suitability of housing, how new housing could be found, what rents ought to be paid in relation to income, or what preparations were necessary for moving was not common. In six of these communities during the period of our study, relocation was due to the clearance of a single site. These municipalities accounted for approximately 65 percent of all relocations. What were the results of their approach to administering relocation?

Of 5,722 families from 4 sites in 3 of the larger municipalities studied, 34 percent had lived in the areas selected for renewal for 30 years or longer, and 22 percent for 20 to 30 years. Forty-six percent of the principal wage earners in these families traveled no farther than a mile to work.

About 93 percent of these families were nonwhite. Deprived of guidance or incentive for finding housing in other neighborhoods, these people overwhelmingly preferred the neighborhoods they lived in. This has increased various problems which already marked the blighted areas—population density, traffic congestion, and so on . . . *70 percent of all those relocated in these 26 cities chose to enter nearby housing that was substandard and unsafe,* with structural defects, lack of central heating or hot running water, shared toilets, and overcrowding. Only a small number, about 5 percent of the total, chose housing distant from their old neighborhoods (further than a mile and a half, or 12 city blocks).

About 80 percent of the relocated families paid higher rent for their new housing.

The study also disclosed that the 15 cities which adopted sound administrative relocation practices achieved results more in keeping with the objectives of urban renewal: [40]

Of the 16,540 families relocated in these 15 cities—all of whom received some kind of rehousing guidance—only 34 percent chose to move to nonrecommended (and generally substandard) dwellings. . . . Only about one-quarter of all displaced families in these 15 municipalities resettled close to their former addresses (within 12 blocks); of these, most occupied substandard dwellings. Most families that moved to decent housing, 45 percent of all households relocated in these 15 communities, resettled some distance away from their former sites.

Successful relocation of nonwhites is especially difficult. M. Justin Herman, executive director of the Redevelopment Agency of the City and County of San Francisco, told the Commission that [41]—

> [M]uch of the problem is a matter of economics—the inability of families to afford such housing as can be made available in the market today. The biggest problem is the discrimination that exists with respect to nonwhite persons.

He also provided this sidelight: [42]

> Perhaps it should also be mentioned that on July 1, 1959, the Attorney General of the State of California issued a ruling that redevelopment agencies in the State of California cannot service the listing of a landlord who will not accept members of minority groups as tenants. The trickle of availabilities listed with the agency by private landlords immediately disappeared. During a 2-month period following the [Attorney General] Mosk decision, the redevelopment agency housing locators made 502 calls on landlords with respect to existing rental vacancies. Of this number, only 14 were available on a nondiscriminatory basis.

Partly to help meet these problems, in January 1960 URA started employing regional intergroup relations officers whose duties include "staff assistance on the intergroup relations aspects involved in the selection and planning of urban renewal areas; land acquisition and disposition; the planning and execution of relocation. . . ." [43] This service should be of help. It is HHFA, however, that possesses and should wield the ultimate power to assure adequate relocation results—the power to withhold certification or recertification. There is evidence that in the past HHFA has not been vigorous in holding local communities to proper relocation practices.

A suggested standard for compliance was succinctly stated at the Commission's San Francisco hearing, by Frank Quinn, executive director of the Council for Civic Unity: [44]

> A general survey of housing vacancies should not be accepted as sufficient, but rather a plan for the placement of the dislocated, family by family, should be developed. If it cannot be shown that each family will have a specific housing opportunity, the area is not ready for Federal assistance.

Congress did not expect communities to be able to relocate in existing housing all families displaced by urban renewal or other governmental action. In fact it authorized an entirely new housing program under the Federal Housing Administration (FHA) to provide additional accommodations for displaced families, a program now familiarly known as section 221 housing.[45]

This was conceived by the President's Advisory Committee on Housing to parallel and aid urban renewal. The original recommendation was a program of Federal insurance for home mortgages within reach of all low-income families. Congress, however, adopted the committee recommendations only as they pertained to relocation of families displaced from urban renewal areas or by other governmental action.[46] Aware that most displacees would be low-income families with limited resources, Congress provided for the insuring of loans at 100 percent of appraised value with terms extending for as long as 40 years. In addition, closing costs were limited to $200 in the case of individual home purchasers. Congress further made these terms available for rental housing sponsored by nonprofit corporations, and then extended it to housing rehabilitation as well.[47]

Further encouragement, intended to interest the building and lending industries in the 221 program, was accorded in 1954 when the President authorized the Federal National Mortgage Association (FNMA), under its special assistance function, to purchase section 221 mortgages covering residential properties rehabilitated or constructed under a redevelopment or urban plan.[48]

Before passage of the Housing Act of 1961, it was required that a community have an approved workable program as a prerequisite for FHA 221 mortgage insurance. The 221 "programing" process ran as follows: It began when the mayor of an interested community notified the HHFA regional office of the need for relocation dwellings and submitted a written request to the FHA insuring office for 221 assistance. This request was then reviewed in the office of the HHFA Administrator. If he approved, the Administrator certified the locality's need for section 221 assistance to FHA, setting the unit ceiling within which FHA was authorized to insure section 221 mortgages in the community. The insuring office had a responsibility to publicize the program and invite applications for section 221 housing from builders and lenders. Section 221 housing could be built anywhere within the city limits of a community for which it was certified, or in an outlying area if the government thereof consented in writing.

The Housing Act of 1961 has eliminated the required prerequisite of an approved workable program for 221 mortgage insurance, except in the case of limited or nonprofit or cooperative moderate income rental housing.[49] It has also eliminated the requirement that the number of 221 commitments in a given community must be predetermined and certified by the HHFA Administrator.[50] In addition, the new act has set the maximum mortgage amount as follows: [50a]

		High cost area
1-family	$11,000	$15,000
2-family	18,000	25,000
3-family	27,000	32,000
4-family	33,000	38,000

Multiple rental units may be insured up to $12.5 million.[50b] Most importantly the act has also eliminated the requirement that 221 housing may be built in outlying areas only if the community requests it.[50c]

Until passage of the Housing Act of 1961, only families displaced by governmental action and families situated in urban renewal areas were eligible for 221 housing. The new act has broadened 221 eligibility to include low and moderate-income families as well, but more liberal terms are provided for displacees.[50d] The types of governmental action qualifying displaced families for such accommodations are governmental construction such as highways, public buildings, playgrounds, low-rent housing projects, and code enforcement; eviction as an over-income tenant in low-rent housing; and construction by quasi-public bodies such as State universities.[51]

Eligible displacees or potential displacees obtain certificates of eligibility for 221 mortgage insurance from the community government or the local public agency concerned. These certificates entitle the holder to priority in renting units available under the 221 rental housing program. For single-family dwellings an eligible family presents its certificates to the seller, builder, or lender it chooses in buying a home.[52]

The builder with a section 221 guarantee (under the more liberal terms available for displacees) who erects new housing, or who rehabilitates existing housing and spends at least 20 percent of the mortgage proceeds to rehabilitate it, must keep the property available for sale or rental for 60 days after its completion to permit holders of 221 certificates an opportunity to purchase the property. After the 60-day waiting period the builder may sell the property to anyone under 221 terms.[53] An existing dwelling of less than 20 percent rehabilitation, however, *must* be sold to a displaced family to obtain 221 terms.

The section 221 program, as originally conceived, appeared to possess considerable potential both for speeding relocation and for aiding the vast numbers of low-income, nonwhite displacees to obtain decent housing and improve their environment. In addition, the rehabilitation phase of the program had the built-in feature of automatically upgrading

neighborhoods which were otherwise deteriorating. The results have not, however, borne out these optimistic estimates.

An HHFA special report in 1959, evaluating the section 221 relocation housing program, emphasized its limited success.[54] The report found that whereas section 221 accomplishments had been striking in some communities, its overall success in providing housing for low-income relocatees left a great deal to be desired. Only 33 percent of new construction under 221 had been occupied by certificate holders, while 56 percent of rehabilitated 221 housing had gone to certificate holders. As of December 31, 1960, FHA had issued 38,951 mortgage insurance policies under section 221 covering 47,486 dwelling units. (Of these units, 39,046 were for single homes and 8,440 were for units contained in project-type rental developments.)[55] On March 31, 1961, FHA announced that a total quota of 106,270 units of 221 housing had been authorized for the 50 States, the District of Columbia, and Puerto Rico.[56] It is apparent, then, that the building of section 221 dwellings lags far behind the certified need.

Critics of the program have been numerous though not uniform in their views. Northern builders complain that FHA has applied such strict underwriting standards that it is virtually impossible to find qualified certificate holders. The recurrent complaint on this point was expressed by John H. Haas, author of *221—The Program Nobody Knows,* and executive secretary of the Metropolitan Association of General Improvement Contractors, who testified before the Senate Subcommittee on Housing as follows:[57]

> Congress meant it to be . . . a supplementary insurance program for assistance to families, and so forth. FHA has chosen to completely reverse this intent of Congress in a very thorough and elaborate manner. Through its administrative prerogative, it has instituted a complete system of checks and balances, prerequisites, conditions, and underwriting principles which resulted in a portfolio of mortgage insurance as gilt edged, economically sound, and riskless as gold bullion stored away at Fort Knox . . .

Southern builders, at least in Atlanta and Little Rock, have had little difficulty with the mechanics of the program, and in these areas section 221 has been relatively successful. In Little Rock, Ark., FHA policies were no barriesr to use of section 221. On the contrary the local FHA office appeared to view 221 as a special program and took special measures to assure its success.

The area was designated as low-cost (mortgage insurance not to exceed $9,000). Owing to price and market factors, the office procured authority to increase the limits to $9,500.[58] More important, however, were the realistic underwriting standards applied by the local director of

the FHA office, Charles R. Watson. He testified at a conference of the Arkansas State Advisory Committee on housing as follows: [59]

> Well, sir, I don't think that our mortgage pattern is set up properly for the minority groups in the South for the simple reason that they have never had the opportunity of good housing. Now, we find a number who would normally not qualify under our regulations, mortgage creditwise, that I insist on passing for the simple reason that they are making enough money to justify their owning this home, but one of the criteria that we have in our operation to go by in judging whether or not you can afford a home is what you have been paying for housing in the past. That is one of the major things that is considered under our mortgage credit pattern, and since those people haven't had the opportunity to own better homes where they are making enough money and I am convinced they could own that home, I have insisted on the mortgage section in my office to approve it.
>
> . . . to prove the point that I was right, out of that same number of people and houses we haven't had any more than the normal defaults in that whole setup. We are very proud of it and it has been now 2 years or better since that happened, so it's proved my point . . .

Maceo Smith, zone intergroup relations adviser, FHA, further stated at the Arkansas Conference that FHA officials throughout the country were becoming more aware of special minority credit considerations and were making more flexible appraisals of their applications for mortgage insurance.[60] As a consequence of these realistic practices, Little Rock builders have constructed and sold over 200 "221's" to both white and nonwhite applicants.[61]

Another criticism of the section 221 program, and until recently a cogent one, has been that the legislative straitjacket which confined construction to those communities which expressly permitted such building within their boundaries, unnecessarily impeded the program. A builder under this requirement could not purchase the less expensive vacant land in the suburbs for 221's unless the suburban governing officials granted such permission in writing. Suburban communities have been largely reluctant to grant such permission fearing an influx of low-income and nonwhite families.[62] The Housing Act of 1961, while it has eliminated this requirement, does not reach the other forces operating to keep nonwhites out of the suburbs.

Still another problem in the program relates to the need for close coordination of effort by the FHA, the builders, and relocation authorities in assuring the availability of 221 housing when it is needed. Dwight K. Hamborsky, director of the Detroit FHA office, testified before the Commission as follows: [63]

. . . You will note that the quota of certificates for the entire city is 1,112, but that the certificates issued by the Detroit Housing Commission is only 251. We found that the reason for this small percentage of certificates issued is because the 221 housing was not available at the same time that governmental action displaced many potential purchasers.

Other problems encountered in the use of section 221 in Detroit were discussed by Mel J. Ravitz, professor of sociology at Wayne State University, senior social economist of the Detroit City Plan Commission, and chairman of the Relocation Advisory Committee of the Detroit Housing Agency: [64]

> While section 221 of the Housing Act of 1954 is designed to aid these displacees buy a home by guaranteeing a mortgage of up to $10,000 [$15,000] with very little downpayment, this 221 program has not worked well in Detroit. In many instances the credit rating of the family is not adequate to permit the loan to be made. Secondly, many of the houses newly built to attract 221 certificate holders are inadequate for the needs of these families. Incidentally, they are being built almost exclusively in all-Negro or heavily Negro areas. If a Negro family were to choose to use the 221 provision—as it may—for either new housing above the $10,000 [$15,000] level or for new housing in the suburbs, it would experience a variety of difficulties related to credit rating and availability of a mortgage. While theoretically there is a Federal agency [Voluntary Home Mortgage Credit Program] to assure minority group mortgage money, if the local lending agencies are unwilling or unable to grant the mortgage, this program does not work smoothly. As a consequence of these difficulties the Negro family that has an adequate credit rating and uses its 221 opportunity usually finds itself buying either a small house in an all or nearly all-Negro area or a used house also in an all or nearly all-Negro area.

A more overt sort of racial control in the use of 221 housing was reported in the summer of 1960 by the Philadelphia Commission on Human Relations. A developer in the northeast section of Philadelphia constructed 54 section 221 homes which were advertised and sold for $9,290. The Rehousing Bureau of the Philadelphia Redevelopment Authority, central relocation agency for the area, disclosed that only veterans living in an all-white public housing section that was being torn down in northeast Philadelphia were informed of the new development. (These veterans were ineligible for entry into other public housing since their income exceeded maximum limits.) Nonwhite relocatees in north central Philadelphia, however, received no information whatsoever on the new 221 development. As a result, only two of the houses

went to displaced certificate holders; the balance were sold to nondisplaced white purchasers after the 60-day priority period for displacees had passed.[65]

Elsewhere the racial aspects of the program have a different aspect. As the *Atlanta Journal and Constitution* explained: [66]

> [I]n the South, where social patterns are strong (and social pressures are strong) this has proven no barrier. Negroes in Atlanta, for example, have a crying need for all housing and for this kind in particular. They're not going to slow down the program by demanding the right to move into 221's in non-Negro neighborhoods.

As of January 1, 1959, Atlanta, Ga., a high-cost area, had the Nation's largest FHA authorized quota for 221 housing: 5,500 units. Of these, 3,900 units were "reserved" for nonwhites and 1,600 for whites.[67] Like many other southern cities, Atlanta made a determined effort to use the section 221 program. Some 2,000 houses have been built. But in 1960 HHFA cut its authorization from 5,500 units to 3,100. A survey had shown there was no need for the additional units: only 30 percent of the white displacees had purchased such housing. However, the cut affected Negroes more than whites, since 98 percent of the units built where Negroes would (or could) move had drawn qualified buyers.[68]

If, in the purchase of 221 housing, credit standards and other indirect controls may prevent equal access for minority groups, in the rental of such housing there should be no barrier. A displaced nonwhite certificate holder can hardly be refused a unit in any 221 rental project. The only applicable criterion is that the applicant be a relocatee. This may be one of the reasons why the 221 rental program has stimulated relatively little interest.

Section 221 rentals have not been a failure everywhere, however. Both Columbus, Ohio, and Pittsburgh, Pa., have made good use of the program. As of March 31, 1961, Columbus, a low-cost area, had an authorized quota of 2,212 units.[69] The relative ease and rapidity with which that city was able to meet FHA requirements made it possible to build and completely occupy two 221 rental projects, Southgate Manor and Eastgate Apartments. The former was the first multifamily rental housing project in the Nation to receive an FHA commitment under Section 221.

These two section 221 projects were brought about as follows: The 2,212 units of section 221 were requested and authorized by FHA with the expectation that a considerable portion of them would be available to nonwhite families about to be displaced by new expressway construction and redevelopment of the Goodale and Market-Mohawk areas. An Urban League study conducted with the assistance of other interested organizations had shown a demand for private housing on the part of nonwhites. The Columbus Slum Clearance and Rehabilitation Com-

mission in charge of urban renewal stimulated interest in Federal relocation aid and documented the community need for a section 221 allocation. The Redevelopment Committee for Greater Columbus, an organization of industrial, commercial, and civic leaders, gave the whole effort strong support. The local FHA office took the initiative in pushing for a section 221 multifamily housing venture with real estate managers and apartment builders. It sparked the Southgate Manor sponsorship. A rental housing builder and real estate manager joined forces with an attorney and a physician to form a qualified nonprofit corporation. Site selection was troublesome. An initial location near the central part of the city drew vigorous neighborhood opposition, and the city council voted down the necessary zoning changes. But a second selection proved feasible with the city helping to rezone the area for apartment use and making utilities available. The Columbus experience shows what can happen when the local urban renewal agency, the local FHA office, community leaders, and civic organizations move early and diligently in pushing 221 housing.[70]

Pittsburgh's experience with an authorized quota of 1,150 dwelling units is another 221 success story. Its Spring Hill Gardens development was the second section 221 rental housing project completed in the Nation. Both white and nonwhite relocatees found housing in this well-located, attractive project in a previously all-white neighborhood of third- and fourth-generation middle-income families. J. Stanley Purnell, of Action-Housing, Inc., and president of the nonprofit Spring Hill Gardens Corporation, observed that [71]—

> Renting these apartments has gone quite slowly, but today they are 93 percent rented, the mortgage is current, and Spring Hill Gardens is financially sound. We have caused new private rental housing to be provided at a price far below any other new private development.

HIGHWAY DISPLACEMENT

The federally assisted highway construction program poses massive displacement and relocation problems—often more massive than those created by slum clearance and urban renewal.

Speaking of new highways in his special message to Congress on February 28, 1961, President Kennedy said: [72]

> As more and more rights-of-way are acquired and construction begins, tens of thousands of families are required to move from

their path and find new places to live—more persons displaced, it has been estimated, than are displaced by all our urban renewal and slum clearance programs combined. To date, this serious problem has been largely overlooked. Neither the Federal Government nor the State highway departments have assumed any positive or explicit responsibility for meeting these needs.

Large numbers of these displacees are nonwhites. For example, it has been estimated that Detroit's Chrysler Expressway going through 8 miles of the central city will displace 3,900 families, 3,390 of them nonwhite.[73] Unlike urban renewal, the Federal highway program imposes no obligation on either the Federal Government or the States to defray household moving costs. The Bureau of Public Roads in the Department of Commerce, the agency in charge of the Federal-State highway programs, does not maintain detailed statistics on displacement and relocation of highway displacees.[74] Without Federal guidance or leadership the States and cities have been slow to give assistance and at the time of the President's message only 25 cities had established relocation facilities to assist highway displacees.[75]

REUSE HOUSING

The question of who will have access to the new or rehabilitated housing in areas that have been slum cleared or rehabilitated with public funds, raises another major problem of urban renewal. Is the land to be rebuilt with housing which, because of high sale prices or rental structure, is only available to persons of high income? Is the claim that such use is necessary to bolster sagging revenue a legitimate one or do urban renewal authorities, in fact, use this argument as a device to engage in "Negro clearance"? And finally, regardless of price structure, is all reuse housing to be made available to all citizens, regardless of race?

Neither the Federal urban renewal statute nor the workable program regulations for community improvement contains any requirement as to reuse of cleared areas. Suitable reuse is implicit, however, in the requirement of an adequate "master plan." A community may utilize cleared land for housing, industrial, or hospital facilities, or any combination thereof. As previously indicated, the local public agency in charge of urban renewal, after acquiring title to land in a blighted area and clearing it, generally sells it to private parties—usually at a subsidized price—for planned redevelopment. If the plan calls for housing, the redeveloper may choose conventional financing or he may elect to utilize numerous federally insured mortgage programs. The congressional

architects of the FHA section 221 legislation did, however, provide a companion program in section 220 which was specifically intended as an aid to urban renewal. It provides for a system of mortgage insurance to assist in the financing of rehabilitation of existing dwelling accommodations and the construction of new ones if they are located in an urban renewal area.[76]

The redeveloper has sole control of selling or renting such housing. The local public agency is required, however, to [77]—

> . . . [make] public, in such form, and manner as may be prescribed by the Administrator, (1) the name of the redeveloper, together with the names of its officers, and principal members, shareholders and investors, and other interested parties; (2) the redevelopers' estimate of the cost of any residential redevelopment and rehabilitation; and (3) the redeveloper's estimate of rentals and sales prices of any proposed housing involved in such redevelopment and rehabilitation. . . .

In response to an inquiry directed to the URA regarding its policy on discrimination, William L. Slayton, Urban Renewal Commissioner, said: [78]

> The Urban Renewal Administration has no requirements expressly prohibiting racial or other ethnic group discrimination in the sale or rental of property built in urban renewal project areas by private developers. In the absence of a policy directive on this subject from either the Congress or the Executive, the Agency regards antidiscrimination requirements as a matter for local (or State) determination.
>
> However, consistent with the position that antidiscrimination policy is a matter for local determination, the following requirements are administered to facilitate and encourage acceptance of a full measure of such responsibility—urban renewal plans cannot contain provisions racially restrictive of use or occupancy in the project area. Before the disposition of lands in project areas, any restrictive covenants based on race or creed must be removed. Moreover, disposition documents must prohibit the establishment of any agreement or other instrument restricting use of the land on such basis.

Mr. Slayton further observed that URA does cooperate with States which have adopted antidiscrimination housing laws and advises prospective redevelopers that they must abide by the local law or risk being denied further participation in the development of urban renewal land.[79] These URA policies provide slight assurance of nondiscriminatory access to reuse housing. No racial restrictive covenants (which are unenforceable

in any event) may be placed or kept on renewal land. Unless local law prohibits it, however, nothing prevents the actual disposition or use of the property in a discriminatory manner.

Despite the flimsiness of these protections, reuse housing has been made increasingly available to nonwhites. URA reports that as of December 31, 1960, there were 61 urban renewal dwelling-type projects in construction or completed. Of these, 57 had some degree of nonwhite occupancy. A total of 29,870 dwelling units were occupied and of this number, 9,793 units, including 1,830 units of public low-rent housing, were occupied by nonwhites. There were 40 projects (including 7 low-rent developments) which were conducting sales or rentals on a noncontrolled "open-occupancy" basis and 2 were available to nonwhites on a controlled "open-occupancy" basis. (The latter redevelopments were utilizing a "benign quota" system, which regulates the percentage of nonwhites accepted in a given project, or were assigning nonwhites to a certain location within the project area.) Fifteen projects were occupied totally by nonwhites, whether programed for such use or because of market factors.[80]

These figures indicate substantial nonwhite participation in reuse housing. However, the 61 projects reported represent only a small part of the total number of urban renewal projects. As of June 30, 1960, 245 residential projects were in advanced planning or had contracts authorized.[81] Moreover, these figures do not indicate the greater number of nonwhites displaced from these sites. Often their low-income status renders them unable to return to their original neighborhoods. The director-secretary of the Detroit Housing Authority described the situation in his city:[82]

> To the best of our knowledge, no families displaced from an urban renewal site have occupied the new housing built on that or another site. Only the Gratiot project has thus far had new residential construction, and that construction is priced somewhat above what the displaced families might be able to afford.

Similarly, in San Francisco:[83]

> [M]ost of the units so constructed [under redevelopment programs] will be well beyond the means of most nonwhites; 150 are to be low rent, 500 medium rent, and 1,500 ceiling unlimited; most will be for single people, childless couples, or small families. The density of the population of the site will have been lowered from its original level; therefore, not as many units will be constructed.

In view of the fact that a substantial majority of those displaced from urban renewal sites have, in the aggregate, been nonwhites, the lower pro-

portion of nonwhites occupying reuse housing on the same sites may be an indication of a change in racial residential patterns resulting from urban renewal. Whether this change represents a desirable dispersion of minority concentrations, or an undesirable use of urban renewal for "Negro clearance" cannot be determined without more detailed information.

Undoubtedly some local public agencies have interpreted the restrictive covenant ban to require nondiscriminatory sale of the reuse housing. Some States and cities prohibit sale or rental of urban renewal housing on a discriminatory basis and provide for this in sales contracts with redevelopers.[84] Other localities have permitted racial segregation.

Recent court decisions suggest that discriminatory use of urban renewal land may be invalid under the 5th and 14th amendments.[85] Urban renewal programs are clearly permeated with governmental action in the exercise of eminent domain, in the use of public funds, in public regulation and control. Indeed inasmuch as almost every urban renewal project involves expenditure of public funds, the policies that govern their application require, by and large, equal treatment and opportunities to all affected groups. The issue was raised in *Barnes* v. *City of Gadsden* [86] where the plaintiffs sought an injunction against a segregated urban renewal project. The district court denied the relief sought on grounds that the action was premature. The court of appeals affirmed, but Judge Rives dissented in part:[87]

> . . . the district court entered formal judgment for the defendants . . . [and] it held that the redeveloper is a mere private individual and as such free to discriminate in sales to persons of different races. For reasons presently to be stated, I do not agree with that conclusion, but, by the same token, I do agree that injunction at the present stage of development of the plans should be denied. . . .
>
> We should, I think, follow the course so well outlined by Judge Johnson of the Middle District of Alabama in Tate v. City of Eufaula, Alabama . . . "this Court must now assume that these defendants, their agents and successors in office, after receiving the federal assistance in this public project, will, upon a completion of this project (or any phase of it), recognize the law that is now so clear; this law being to the effect that there can be no governmentally enforced segregation solely because of race or color.
>
> If these defendants, their agents or successors, as public officers and with federal financial assistance complete this project or any phase of it, they do so with the certain knowledge that there must be a full and good faith compliance with this existing law.

Two Chicago projects built on slum-cleared land are interracial. The story of these developments (financed by the New York Life Insurance

Co., The Aetna Insurance Co., and FNMA)[88] was told recently by Ferd Kramer, president of Draper & Kramer, Inc., the redeveloper:[89]

> The developers of the two gigantic housing projects in this area had a number of things in mind. One, they wanted planned developments that would provide the light, air, and greenery that have never been made available in the city before; two, that the rentals be such that the projects would be made available to middle income people; three, that the fine modern apartment developments which would be replacing a Negro slum should not in turn become a Negro ghetto; and four, that ancillary facilities be provided to make this area an attractive place to live; namely, shopping, educational, and recreational facilities.

"In the early stages, by far the most difficult objective to attain was a fully integrated neighborhood," Mr. Kramer said, even though the rentals were "40 percent below anything comparable in the city."[90] "The first 22-story buildings [in the Lake Meadows Development] ran about 25 percent white occupancy; the last 22-story building, about 50 percent white occupancy."[91] The Prairie Shores development with three high-rise apartments completed and two under construction is now running about 80 percent white and 20 percent Negro occupancy. In response to a question whether a quota on nonwhites was necessary, Mr. Kramer answered: "No; there should be open-occupancy from the beginning."[92]

Detroit has developed a moderately successful "open-occupancy" renewal project, though neither Michigan nor Detroit have anti-discrimination housing legislation related to urban renewal.

In testimony before the Commission, the director-secretary of the Detroit Housing Commission, stated that:[93]

> [A]ll contracts between the Federal Government and the city of Detroit for the carrying out of the urban renewal program specifically state the reuse of the project land shall be on a nondiscriminatory basis. In keeping with this policy, all sales agreements for land sold to private redevelopers contain assurances that the occupancy of any new facilities, residential or otherwise, will be open to all persons without discrimination.

Lafayette Park, consisting of a 320-unit, high-rise rental structure and 186 low-rise units, was sold or rented on an open-occupancy basis. Today the tenancy is about 2 percent Negro and 98 percent white—this proportion has been constant since the project opened.[94] The high rentals (despite 220 financing and FNMA special assistance), and the adequate supply of moderately priced housing available in the Detroit area, partly account for the low percentage of Negroes living in

Lafayette Park. Philadelphia and New York City, both in States with antidiscrimination laws applicable to urban renewal, have been the scene of other successful "open-occupancy" developments.

In Baltimore, however, where from 1951 to 1959 some 4,553 families, 91 percent of them nonwhite, were displaced by urban renewal and other governmental clearance projects,[95] efforts to assure equal access to reuse housing have so far been largely unsuccessful. Four renewal projects have been or are in the process of being completed. A total of 649 dwelling units have been built in the Waverly and Broadway projects—for white occupancy only. The third, Mount Royal Plaza, contemplates a 300-unit rental housing development which, the developer says, will be rented on an "open-occupancy" basis. Projected rentals are $85 per room, however, and it is doubtful that large numbers of nonwhites will find the project financially feasible. The fourth, Harlem Park, is a 32-block rehabilitation project in an area almost entirely occupied by nonwhites.

These Baltimore projects were planned and executed without the assistance of a citizens' advisory committee. A new project, Mount Royal-Fremont, is utilizing such a committee and the change in public response is dramatic. The Mount Royal Advisory Council (a representative interracial group) has joined with other groups in demanding an "ironclad open-occupancy commitment" which the Baltimore Urban Renewal Housing Commission has been reluctant to provide in its redevelopment contract. The commission had adopted a policy stating that it will encourage and give priority to builders who will not discriminate, but it claims that the success of the project will be endangered if such a commitment is demanded. The issue has not been resolved.[96]

REHABILITATION AND CONSERVATION

According to the Bureau of the Census, 11 million of the 58.3 million housing units in this country are substandard; another 4.8 million have been described as deteriorating.[97] Some of these cannot be saved, but it is possible to arrest deterioration and rehabilitate the bulk of these units. In Detroit, for example, there are an estimated 300,000 homes in middle-aged areas in need of conservation and improvement to prevent their becoming slums.[98]

On March 9, 1961, the President, in a message to Congress on housing, called attention to this need for conservation of existing housing and

urged that the dimensions of urban renewal be broadened for this purpose: [99]

> As we broaden the scope of renewal programs looking toward newer and brighter urban areas, we must move with new vigor to conserve and rehabilitate residential districts. Our investment in nonfarm residential real estate is estimated at about $500 billion—the largest single component in our national wealth. These assets must be used responsibly, conserved, and supplemented, and not neglected or wasted in our emphasis on the new.

At the same time URA stated that ". . . the conservation aspect of urban renewal . . . has been receiving increased URA emphasis in recent months. . . ." [100] URA now plans to retain 128,500 of 235,000 dwelling units in 179 projects in 135 localities.[101]

The 1961 Housing Act,[102] passed by Congress on June 30, 1961, gives URA several new tools to stimulate rehabilitation and conservation. An addition to section 220 of the National Housing Act establishes a new home improvement loan program for homes and multifamily structures within urban renewal areas; [103] a second provision (amending sec. 203) creates a similar program for structures outside renewal areas.[104]

The act also provides a new formula for calculating the amount of the mortgage on rehabilitation housing, intended to permit mortgage amounts more adequate to finance rehabilitation.[105] The new legislation provides that "limitations upon the amount of the mortgage shall be based upon the estimated cost of repair and rehabilitation and the [FHA] Commissioner's estimate of the value of the property before repair and rehabilitation . . . ." [106] Formerly, mortgages were provided on the basis of estimated replacement cost; under this formula only 95 loans for rehabilitating housing in urban renewal areas had been insured in the Nation prior to 1961.[107]

The act also authorizes FNMA to purchase home improvement loans, under either its secondary market or special assistance functions.[108] Two further amendments specifically authorize Federal savings and loan associations [109] and national banks [110] to make home improvement loans insured by FHA under the new rehabilitation provisions.

Preservation and rehabilitation of existing housing is of particular importance to nonwhites—first, because they are usually those most affected by urban renewal programs, as a result of their concentration in older sections of cities; and second, because of the severe restrictions they face in finding new housing, and their consequent dependence on used housing. In addition, relocation from urban renewal clearance sites has often sent displaced nonwhites into adjacent older areas, where resultant overcrowding hastens deterioration and helps create new slums which will eventually be unsalvageable. But where conservation and

rehabilitation are possible, displacement is less likely to occur. In Los Angeles, the Commission was told that: "Modernization, repair, and improvement of existing structures appear to be [the] most practical and immediate means of providing reasonably priced, safe, and sanitary housing for minority families in central areas." [111] In Baltimore, the Harlem Park rehabilitation project—in a neighborhood almost entirely occupied by Negroes—which has been seriously held back by FHA's former conservative mortgage underwriting policy, may well be aided by the new legislation and policy.[112]

Greater emphasis on conservation and rehabilitation can make it possible to preserve some of the real advantages of city living. As a Commission witness pointed out: [113]

> The older, centrally located residential areas . . . offer numerous advantages for family living not found in the suburbs. Streets, sidewalks, utilities, are all installed and have been paid for. Residents need pay only the costs of maintenance. Schools, churches, shopping districts, police and fire protection, and similar facilities are all close at hand. The locational amenities which are usually considered necessary for attractive residential areas are all present.

An emphasis on conservation and rehabilitation holds the promise of something more than bulldozers and dislocation for residents of the older central city. It holds the promise of revitalization without clearance. For the nonwhite minority, who are so greatly and, in the past so adversely, affected by urban renewal, it can help make of the program an instrument of hope for the future.

SUMMARY

As of December 31, 1960, urban renewal projects have demolished 128,244 dwelling units.[114] The URA does not collect data on the number formerly occupied by nonwhites, but statistics would suggest that the percentage is high.[115] No available governmental data assuage the fear that urban renewal has diminished the total housing available to Negroes. Private sources, moreover, strongly suggest that the housing supply available to nonwhites has been substantially reduced as a result of urban renewal activity. L. K. Northwood, associate professor in the School of Social Work, University of Washington, recently reported that [116]

> . . . the supply of housing has been reduced in areas formerly occupied by Negro families. During the first 10 years of urban

renewal, approximately 115,000 housing units were built or in process by 1959. These were planned to replace 190,500 original dwelling units—*a net loss of 75,500.* About 56 percent of the families displaced were nonwhites. This process is expected to continue as the overcrowded slums are cleared; a special problem is thereby set up in finding other housing for Negroes.

Urban renewal has provided nonwhites with new housing through FHA relocation programs and local "open-occupancy" reuse policies. This has probably reduced the number of substandard housing units occupied by nonwhites. For a small segment of the nonwhite middle-income population, urban renewal has meant new housing for the first time—after a lifetime spent in costly, hand-me-down properties. In short, urban renewal has provided opportunity for some Negroes to bid for better shelter in an opening market. This is an important beginning, but, major shortcomings persist.

Like FHA and PHA, URA has not effectively insisted that its tools be used to assure equal opportunity to all Americans. Like FHA and PHA, it contends this is a matter for presidential or legislative action (which has not been forthcoming). The consequences of such permissiveness are now legend: FHA added impetus to the growth of all-white suburbia; PHA built shiny ghettos. If URA maintains a "no policy" posture it may reduce the inventory of available nonwhite housing with no guarantee that the rebuilt sites will be available to all. In the face of a closed housing market, urban renewal, though it beautifies cities, may offer nothing more than increased misery to low-income nonwhites.

Another important consideration is the posture which the Federal Government assumes in those communities that restrict the nonwhite's access to the housing market. It is folly indeed to suppose that urban renewal can be successful in large metropolitan centers, without opening all avenues of housing to all minority groups that so heavily populate our slums. As the Commission's Rhode Island Advisory Committee was told: "Urban renewal will fail unless a free housing market can be established." [117] To the degree that urban planners plunge into federally aided renewal projects without endeavoring to solve this problem, the Federal Government must share responsibility for the results.

5. Other Federal Programs

Two additional Federal housing programs deserve mention. They are public housing, one of the oldest programs, and housing for the elderly, the newest. The former is the only major Federal housing program in which Government plays a direct role in both construction and management. Although public housing is relatively small in terms of total housing starts, it is a key program and of particular significance to minority groups. It will have continuing importance as urban renewal endeavors to use all available tools in creating a balanced metropolis. Housing for the elderly is of particular importance because it offers means to deal with an urgent and increasing urban problem: An expanding elderly population.

Both programs present familiar civil rights problems. After 24 years of public housing, critics contend that while it has improved the physical surroundings of the nonwhite population, the program has intensified racially restrictive residential patterns. The housing for elderly persons program shows signs of adopting features of the FHA and PHA programs that will bring it under similar critical attack as soon as it supplies a significant volume of dwelling units.

A. PUBLIC HOUSING

As of December 31, 1959, the Federal Government's permanent public housing program had produced (in cooperation with local governments) 3,217 projects with a total of 585,212 dwelling units throughout the continental United States, the District of Columbia, Puerto Rico, and the Virgin Islands.[1] The program started with the passage of the United States Housing Act of 1937,[2] after the Public Works Administration [3] had entered the housing field in a limited way 3 years earlier.[4] Today the Public Housing Administration (PHA), a constitu-

ent agency of the Housing and Home Finance Agency, is directly responsible for administering the low-rent public housing program.

Public housing is intended to provide standard shelter for persons whose income prevents the purchase or rental of standard housing in the private market. To this end Federal and local government have combined their resources.

The low-rent public housing program is local to the extent that the municipality concerned picks out the site for plans, designs, constructs, owns, and operates each project. But all of the local housing authority's standards are subject to PHA approval, the prerequisite for project planning grants to the local public housing authority. A municipal bond issue generally finances the project and is repaid from the project's rental income. PHA pledges its credit as security for repayment and makes yearly contributions to maintain the low-rent nature of the development.

Public housing and civil rights

The following figures suggest the public housing impact on minorities. As of March 31, 1961, there were 456,242 public housing dwelling units occupied or available for occupancy.[5] These units are included in 2,639 projects.[6] Of these, nonwhites occupied 210,280 units in 1,534 projects, or 46 percent of the total units,[7] an increase from 1952 when non-white-occupied units were only 37.9 percent of the total.[8]

Richard G. Coleman, director of the Springfield, Ohio, Metropolitan Housing Authority, told the Commission's Ohio Advisory Committee at its housing conference of public housing's importance in terms of meeting his city's minority housing needs: [9]

> I do not believe that an immediate cessation of all racial bars in relation to rental and sales discrimination would resolve this problem [of inadequate housing for minorities]. . . . The real hope of providing adequate housing to the minority groups . . . is the Federal aid public housing program.

In Detroit, where nonwhites make up 29 percent of the population, 51.3 percent of the 7,700 public housing tenants were nonwhite, as of September 30, 1960.[10] In Los Angeles, where nonwhites make up only 15 percent of the population, 86 percent of the total families (35,000 people) occupying public housing units were nonwhite, as of September 30, 1959. Negroes, who comprise only 12 percent of the city's population, constituted 65 percent of this total.[11] In Baltimore, where nonwhites make up 41 percent of the population, they occupy 75 percent of the 9,500 public housing units.[12]

Although low economic status, in itself, is undoubtedly a major cause of this disproportionate nonwhite use of public housing, one Commission witness contended: [13]

> This focuses attention upon the unrealistic, undemocratic, and unjust practices of the housing forces in the private real estate market who cling to outmoded patterns of racial segregation. Inability to secure housing in the real estate market on an open-occupancy basis and the accumulated effect of employment discrimination are directly responsible for the disproportionate number of nonwhite families in public housing.

Federal public housing legislation, like other Federal housing legislation, contains no guarantees for minority homeseekers. But as Davis McEntire, a University of California economist, noted: [14]

> . . . in striking contrast to the FHA, which for years seemed to think of minorities only as a threat to real estate investments, the administration of public housing has always operated on the principle that the minority groups were entitled to share in the program. . . . The [A]dministration supported its racial relations officers [intergroup relations officers] in working for a maximum degree of equity for minority groups, community by community.

The racial equity formula and open-occupancy

Prior to World War II, local public housing authorities were permitted to enforce either "separate but equal" or "open occupancy" policies. Most cities North and South chose the former. During the war a significant trend toward "open occupancy" began. This trend has gained momentum from State laws outlawing discrimination in public housing,[15] and from court decisions ruling that the enforcement of segregated housing patterns by State instrumentalities is unconstitutional.[16]

In 1952 PHA formally adopted a "racial equity formula" to spread low-rent housing benefits equitably to nonwhites:[17]

> Programs for the development of low-rent housing, in order to be eligible for PHA assistance, must reflect equitable provisions for eligible families of all races, determined on the approximate volume and urgency of their respective needs for such housing.

This, however, applies only where public housing is provided on a segregated basis; [18] it is not applied where "open occupancy" policies have been adopted by States or cities. PHA's publication, "Trends Toward Open Occupancy," reports that (as of March 31, 1960) 32 States operated their public housing projects on an "open occupancy" basis.

Of 886 projects in these 32 States, 492 were reported by PHA to be "completely integrated" (white and more than one nonwhite family).[19] Moreover, the publication further reported that 35.4 percent of the Negro tenants lived in "completely integrated" projects in contrast to 15 percent in 1952.[20]

But these statistics must be interpreted in view of the definition of the term "completely integrated." In Detroit, for example, five of the seven public housing projects are "completely integrated" according to the definition. In one, Herman Gardens, of the 2,056 tenants, only 64, or 3.1 percent, are nonwhite.[21] In another, Smith Homes, only 9 of the 295 tenants are nonwhite.[22] But in a third, Jeffries Homes, 1,837 of the 2,001 tenants, or 91.8 percent, are nonwhite.[23] Two public housing projects, Brewster-Douglas and Sojourner Truth Homes, are occupied entirely by nonwhites.[24] Moreover, Mark K. Herley, director-secretary of the Detroit Housing Commission, told this Commission: "We do not anticipate any significant number of white families moving into predominantly or all-Negro projects in the foreseeable future.[25] He added: "The number of Negro families in formerly all-white projects will undoubtedly continue to increase." [26]

In Baltimore, the percentage of nonwhites in all four of the integrated public housing projects has increased in the past year.[27] Local housing authority officials doubt that integration can be maintained without occupancy controls.[28]

Site selection

Site selection is one of the perpetually controversial aspects of public housing. PHA regulations allow the location of public housing projects in slum-cleared areas or in any area which best suits the needs of the community. But neighborhood groups resist proposals to locate public housing in nonslum neighborhoods or in outlying areas, and public pressure on local governing bodies often prevents appropriate site selection. For example, George A. Beavers, Jr., chairman of the Housing Authority of Los Angeles, told the Commission that in 1952 and 1953, political pressure forced the public housing authority to reduce a planned construction from 10,000 to 4,532 units; and that the same pressure, generated by a public housing controversy, secured a law which required a referendum before any public housing could be built.[29] This law was "aimed directly at public housing." [30]

Site selection is a major political issue in many large cities, because, as a witness pointed out at the Commission's Detroit hearing, "some people, especially those who have been homeowners of even a deteriorated structure, view public housing as several status steps downward and do not want it under any conditions." [31] Often the unexpressed motivation is to keep out minorities.

In the summer of 1960 an observer reported:[32]

> . . . Several weeks ago, acting Public Housing Commissioner Lawrence Davern was asked by a Senate committee why cities were no longer requesting Federal aid for public housing, and he replied that northern cities, in particular, were not requesting more aid, despite demonstrated shortages in low-income housing because of integration problems. City officials, Davern maintained, are unwilling to approve sites where neighbors might object to public housing (which must have open occupancy in almost all northern cities, although Federal law does not require it), or where integration might prove difficult.

Local authorities determine site selection, often a decisive factor in determining the racial composition of public housing projects. In its *1959 Report,* this Commission recommended:[33]

> . . . that the Public Housing Administration take affirmative action to encourage the selection of sites on open land in good areas outside the present centers of racial concentrations. PHA should put the local housing authorities on notice that their proposals will be evaluated in this light.

PHA has no mandatory site selection requirements. It does suggest to local authorities, however, that they operate more imaginatively. It also discourages site selection in racially stratified areas.[34] Marie C. McGuire, Commissioner of the PHA, informed the Commission:[35]

> PHA has long been aware that the selection of sites in areas of predominant occupancy by one race or another makes for de facto racial segregation. . . . It actively encourages the use of vacant land, sites outside of areas of racial concentration. . . . [I]ts efforts are often vitiated . . . because of the fact that sometimes the only sites available are those created by clearing slums which are usually occupied by racial minority groups and because of local determination that only certain areas are open to nonwhite occupancy.

In Chicago, Negroes occupy 85 percent of the public housing, most of which is located in the "Black Belt."[36] In Baltimore, location of projects in nonwhite or transition neighborhoods has been largely responsible for the marked increase of all-nonwhite projects.[37] On the other hand, local housing authority officials in Baltimore have been unsuccessful in attempts to encourage nonwhites to apply for the city's three all-white projects. All three are located in far-out areas where no other facilities are available to nonwhites.[38] In San Francisco, the Commission was

told, "this city's so-called Chinatown is officially recognized, if not encouraged, by the erection and maintenance of public housing facilities in the heart of the area complete with pseudo-Chinese architectural trappings and occupied solely by Chinese-Americans." [39] Thus, de facto segregation can be imposed by locating public housing projects within the confines of existing racial concentrations.[40]

New approaches to public housing

A stigma often attaches to the tenants of public housing developments. The isolation created by unimaginative or indifferent site selection is compounded by the institutionalized appearance of the traditional development. Into these "high rise," monolithic projects pour persons of limited economic and social vistas. In these close quarters the antisocial behavior of a few "problem families" is accentuated, and the effect is devastating both to their neighbors and the general reputation of the project. Mark K. Herley, director-secretary of the Detroit Housing Commission, told the Commission: "We wish we didn't have 19- and 14-story buildings. They are a headache. They are a problem. There is no doubt about it. We wouldn't do it if we had it to do over." [41]

Thus in its *1959 Report* this Commission recommended:[42]

> PHA should . . . encourage the construction of smaller projects that fit better into residential neighborhoods, rather than large developments of tall "high rise" apartments that set a special group apart in a community of its own.

PHA Commissioner McGuire advised the Commission: [43]

> [I]n recent years [PHA] has come more and more to the conclusion that scattered sites with small projects on each are generally more desirable than one huge site for all units of a large project. . . . As for scattered sites, it has now become quite common for local authorities to plan for such use . . . [and] we believe the number is substantial and is growing.

Director-Secretary Herley of the Detroit Housing Commission told the Commission, in this connection: [44]

> [O]ur public housing is now all over the city. John W. Smith Homes is way out in the edge of the city. Herman Gardens is way out in the northwest. Parkside is way out east. Charles Terrace is way out in the northeast. And the two projects which are downtown in the old area are Brewster-Douglas and Edward J. Jeffries Homes. We think that is good, and we subscribe to

that. What we don't subscribe to is having 2,000 units in one place.

In San Francisco, the Commission was told that public housing units were "spread out" and "pretty well distributed." [45] In 1959, at the Commission's hearing in New York, William Reid, chairman of the New York Housing Authority, stated that "the authority is emphasizing the development of smaller projects which will better lend themselves to becoming a part of the surrounding community." [46]

Today some 10,000 units in scattered site projects are either completed or under construction in more than 15 communities. These programs have largely been well received. The projects range from single-family homes and duplexes in California, to New York City "vestpocket" apartment buildings housing 168 families.[47] Sacramento, Calif., has recently moved 46 Negro and 4 white families into scattered, single-family rental homes with a high degree of success. John G. Melville, San Francisco regional Public Housing Administration director, pointed out a unique advantage to scattered public housing: "We get them built before people who oppose public housing find out about them." [48] But scattered site selection has a more positive advantage. It improves appearance and is an incentive to other homeowners to improve their property, thus upgrading an otherwise deteriorating neighborhood.

In this connection, PHA Commissioner McGuire pointed out: [48a]

> Another practice now being encouraged by PHA, related to "scatteration," is the acquisition and rehabilitation of existing housing for public housing units. This involves selecting scattered basically sound but deteriorating structures in built-up neighborhoods and renovating them to public housing standards, thus perhaps saving from creeping blight otherwise good neighborhoods as well as making units available in less time and at less cost. Particularly in localities which have open occupancy practices, this can mean increasing the land areas open to nonwhites and thinning out areas of racial concentration.

In Chicago recently, the Metropolitan Housing and Planning Council, a nonprofit citizen organization, proposed a radically different public housing approach: Take government out of low-rent housing.[49] This plan provides a subsidy program through which private industry could build low-rent housing for needy families. The Federal Government would pay that part of the rent or mortgage payment which the occupant could not pay. A local public agency would certify families in need and use a sliding scale to determine the size of the subsidy. Private developers in turn would accept subsidy certificates which the Government would redeem as interest or principal to be applied on

Government loans. The New York Times, commenting on the proposal, said: [50]

> . . . Housing certificates are flexible. . . . They would avoid the stigma of the public housing project . . . observers noted that the plan would avoid segregation of low income groups, often of the same ethnic background, in stark, factory-like housing projects. . . .
>
> . . . builders would be encouraged to build in a variety of areas, preferably in small projects so that they could overcome suburban antipathy to public housing.

Scatteration, subsidy, and rehabilitation are the most recent plans conceived to overcome the demoralizing aspects of public housing. Each of these plans, in contrast to previously prevailing patterns of highly concentrated, racially stratified, low-rent public housing pockets, is aimed at housing low-income families in dignity throughout the community. Only if these other new approaches can be improved and implemented, will the community accept public housing. And only then will the needy get full benefit from the program—a necessary part of urban living, and a component part of urban planning.

B. HOUSING FOR THE ELDERLY

The expansion of the elderly population during the past half century has been no less dramatic than the rapid emergence of urban America. Medical advances have added years to life expectancy.[51] America's population now includes 16,559,580 persons over the age of 65, and current projections indicate that by 1975 there will be 21 million. Between 1900 and 1960 this age group has increased more than five times—from 3 million to over 16 million. As a proportion of the total population, it has increased from 4 percent in 1900 to 9 percent in 1960, and is expected to increase to 10 percent by 1975.[52] The 1960 census figures indicate that there are 1,255,692 nonwhite persons aged 65 or over.

State and Federal Government and the building industry have become alert to the housing needs of elderly persons. These needs—enough adequate housing at low cost—parallel those of the disadvantaged, nonwhite citizens.

California and New York were the first States to recognize the serious nature of the problems of the elderly. New York established a Joint Legislative Committee on Problems of the Aged in 1947. California formed a Governor's Committee on the Aged in 1952. Subsequently 31 States followed suit.[53] The States of New York and Massa-

chusetts and the cities of New York and Chicago had successfully built experimental housing for the elderly before the Federal Government turned to the problem.

In its report of December 1953 the President's Advisory Committee on Housing recommended ". . . that more attention be paid to the problems of the aged, both in the design and size of dwellings." [54] From 1956 through 1959, Congress enacted a program designed to: (1) facilitate the purchase of homes by older people; (2) facilitate the financing of nonprofit rental projects for the elderly; and (3) make Federally aided, low-rent public housing more readily available to older people, especially those unmarried.[55] The FHA section 203 mortgage insurance program [56] was liberalized to permit persons over 60 to borrow the necessary downpayment and closing costs for the purchase of single homes.[57] The multidwelling rental program (sec. 207) was expanded to permit construction of housing specifically designed for the elderly. In 1959 Congress added a new section to the FHA mortgage insurance program (sec. 231) to stimulate rental housing for the elderly. This plan permits FHA to insure mortgages on structures built by private, nonprofit sponsors, and intended for rental to persons 62 years of age or older.[58] The 1956 act also amended the public housing law to make public low-rent housing more readily available to elderly persons.[59]

In the same year, the President authorized the Federal National Mortgage Association (FNMA) to purchase mortgages issued under either of the FHA programs insuring elderly housing facilities. Since FNMA issues advance commitments guaranteeing purchase of housing mortgages for the benefit of the elderly,[60] the Federal Government is directly engaged in the building and administration of elderly housing facilities.

The Housing Act of 1959 added a new and different program for the elderly. Now administered by the Community Facilities Administration (CFA), this program involves direct loans (covering the total development cost)[61] to nonprofit corporations for the provision of rental housing and related facilities for elderly persons.

On April 30, 1961, 37 projects containing 3,905 dwelling units had been or were being constructed under the FHA section 207 program. Seventy-eight projects containing 10,593 dwelling units were in the preconstruction, construction, or management stage under the section 231 program. And as of March 31, 1961, PHA announced that throughout the country a total of 271 projects (with a planned capacity of 21,731 units), in which some or all of the units are designed for the elderly, were in the preconstruction, construction, or management stage.[62] The Housing Act of 1961 increased the CFA direct loan program authorization from $50 million to $125 million.[63]

FHA does not maintain data distinguishing among the elderly housing population by race.[64] It is impossible, therefore, to record the extent

to which nonwhites occupy section 207 and section 231 housing. PHA has reported that as of March 31, 1961, of 16 projects with all their 930 units designed for the elderly, 895 units were occupied by whites and 26 by nonwhites. It is reported that only eight of the projects contained nonwhites. However, PHA notes that of 391,871 families living in low-rent public housing throughout the country, 67,326, or 17 percent, were elderly persons. Of these 67,326 tenants, 19,800 were nonwhite. PHA further stated that "consistently, since such data have been available, the proportion of elderly tenants has been higher for white than for nonwhite." [65] CFA reports that although 21 of its projects are in the preconstruction or construction stage, no housing units for the elderly have yet been occupied.[66]

Neither FHA nor PHA has announced any policy for equal opportunity guarantees in its housing for the elderly programs.[67] The brief record of PHA projects for the elderly indicates that the Southern States, with the exception of Kentucky, have built exclusively all-white projects, thus ignoring even the racial equity formula. The number of projects completed in other sections of the country is too small to show a significant trend.

The direct loan program, however, has been described as one that will require builders to afford equal opportunity to all prospective tenants. In a brochure which describes the direct loan program for the elderly, Norman P. Mason, then the Administrator, stated that, "The borrower will establish occupancy standards which extend equal opportunity to all regardless of race, creed, color, or national origin." [68] In answer to a recent inquiry regarding this provision, the HHFA responded: [69]

> The direct loan program requires the borrower to offer units on a nondiscriminatory basis. The Policies and Requirements of the Administrator require the adoption of occupancy standards which extend equal opportunity to all regardless of race, creed, color or national origin. Failure to adopt or maintain occupancy standards as approved by the Administrator would constitute a breach of the loan agreement.

However, the loan agreement, which defines the borrower's duties, fails to include this provision nor do the authorized contracts and other documents required under the program. It is questionable, therefore, whether the Administrator has an effective sanction if the borrower, after completing construction and dispensing all funds received from the Federal Government, engages in discriminatory tenant-selection practices. Neither those discriminated against nor the Federal Government appears to have a real remedy. All housing programs for the elderly are new, however, and judgment on the operation of the total program in relation to equal opportunity for all must await the test of time.

6. State and Local Action

The Commission's principal concern in its housing studies has been the policies and practices of the Federal Government. It is at the national level that governmental housing programs largely draw their impetus and direction. Despite this Federal dominance, however, State and local governments play a critical role in determining how national housing programs will be carried out. Discrimination *in fact* occurs at the State and the community level, and can also be prevented at those levels. For this reason, and because of increasing State and local action, the Commission has devoted some attention to recent developments in this area.

Although the Federal Government has been slow to take positive action to insure that all people have equal access to the housing benefits it offers, a number of States and cities have taken bold legislative and administrative action to end discrimination; in some instances, this action has extended to private as well as public and publicly assisted housing. But on the local level, there has also been some governmental action to keep minorities out and to forestall equality of housing opportunity.

These conflicting kinds of governmental action illustrate some of the obstacles that must be overcome in order to reach the objective of equal housing opportunity and they suggest some feasible governmental methods to be used in achieving it.

A. ACTION TO PREVENT DISCRIMINATION

In recent decades the major governmental moves to end discrimination against minorities have occurred primarily at State and local levels.[1] This activity, principally legislative, has demonstrated a variety of approaches to promoting equal rights; it has also followed an evolutionary pattern: from public accommodations laws, through fair employment practice laws, to fair housing laws.[2]

Early developments

Section 1982 of title 42 of the United States Code, a section of the Civil Rights Act of 1866, provides:

> 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 U.S. Supreme Court has held that although this statute and the 14th amendment restrict governmental activities,[3] the activities of private individuals do not fall within the scope of either.[4]

Against this background, opponents of housing discrimination sought judicial determinations that private property owners, operative builders, and developers, who were substantially aided and regulated by the State, were State agents or were exercising State power. *Dorsey* v. *Stuyvesant Town Corporation* [5] concerned a large multiple dwelling development in New York City. Under New York's redevelopment companies law,[6] the municipality condemned property for redevelopment; granted a 25-year tax exemption on the improved property; transferred the property to the private company at cost; and approved (through a supervisory agency) the project plan. In a suit brought by prospective Negro tenants whose applications had been rejected because of their race, the New York Court of Appeals in 1949, by a 4-to-3 majority, rejected the argument that an operative builder, substantially aided and regulated by the State, acts by, for, or as the State.[7]

But the court did indicate that outlawing discrimination in housing was a proper legislative function: [8]

> That high responsibility of the States, implicit in our Federal system, indicates that the political process must furnish the appropriate means for extension of those rights in areas wherein they have not been heretofore asserted.

The *Dorsey* case thus gave impetus to antidiscriminatory housing legislation. And in the decade that followed the *Dorsey* decision, this matter moved largely from the courtroom to the legislature.

New York—pioneer State in civil rights laws

Over the last 100 years, New York State, endowed with a great variety of racial, national, and religious groups, has adopted 49 laws to guarantee equal rights to all of its citizens. These laws cover voting, education, public accommodations, and housing (public, publicly assisted, and private).

New York antidiscrimination housing laws date back to 1896. The initial legislation, intended to meet the flood of immigration from foreign countries, gave aliens the right to acquire and transfer housing property for 6 years after filing a notice of intent to become a citizen.[9] In 1939, discrimination was forbidden in the selection of tenants for low-cost housing.[10] And in 1950, in response to the *Dorsey* decision,[11] the legislature banned discrimination in housing built or maintained in whole or in part by State or municipal assistance; i.e., tax exemptions, condemnations, etc.[12]

In 1955 the New York Legislature added two elements to its antidiscrimination housing laws: it prohibited discrimination by private persons renting or selling homes financed by an FHA-insured or VA-guaranteed loan,[13] and it gave to the State Commission Against Discrimination (SCAD) responsibility for administration of the laws which controlled publicly assisted housing.[14] In 1956 it gave similar responsibility to SCAD with respect to federally insured or guaranteed housing.[15]

When it came to extending antidiscrimination housing legislation to private housing, i.e., housing built or maintained without any Federal, State, or local governmental assistance, the pioneer role was assumed by such States as Colorado, Massachusetts, Connecticut, and Oregon. On December 30, 1957, however, New York City enacted the Nation's first law prohibiting discrimination (on the basis of race, color, religion, national origin, or ancestry) in the sale, rental, or leasing of certain private housing accommodations.[16] Enforcement of the ordinance has been entrusted to the Commission on Intergroup Relations (COIR), to a specially created Fair Housing Practice Panel (which examines cases for possible court action recommended by COIR) and ultimately to the courts.

State and local antidiscrimination housing laws

There are 17 States and numerous cities [17] throughout the country with antidiscrimination housing laws. The State laws fall into three categories:

1. *Laws extending only to low-rent public housing projects and/or urban redevelopments.*[18]

Montana [19] and Illinois [20] have proscribed discrimination in urban redevelopment projects; Michigan [21] and Rhode Island [22] have done so in public housing; Wisconsin [23] and Indiana [24] have barred discrimination in both.

2. *Laws extending to publicly assisted housing, including housing built with the aid of FHA-insured and VA-guaranteed loans.*[25]

California,[26] Washington,[27] and New Jersey [28] fall in this category. In California enforcement is by private law suit only, but in Washington and New Jersey a State agency administers the statute.

3. *Laws extending to private housing (nongovernmentally assisted).*[29]

In its January–February 1959 issue, the publication of the National Committee Against Discrimination in Housing, *Trends in Housing,* stated: ". . . 1959 may well go down in history as the year equal opportunity in the housing market moved into first place on the Nation's civil rights roster." In 1959, State legislatures in Colorado, Massachusetts, Connecticut, and Oregon provided for nondiscrimination in private, as well as publicly assisted housing.

On May 1, 1959, Colorado became the first State to enact a comprehensive antidiscrimination housing law.[30] Its fair housing act prohibits discrimination in the sale, rental, or leasing of all housing accommodations, erected with public assistance or not, excepting only owner-occupied housing. The act is administered by the Colorado Anti-Discrimination Commission, created by the Anti-Discrimination Act of 1957.[31] It covers lending institutions as well as those persons who aid and abet in any housing discrimination, and outlaws any oral or written inquiry or record concerning race, creed, color, sex, national origin, or ancestry.

On July 21, 1959, Massachusetts became the second State to extend its antidiscrimination housing law to nongovernmentally assisted housing.[32] The Massachusetts law is limited to housing of 10 or more contiguous units. An amendment to Connecticut's antidiscrimination housing law, effective October 1, 1959, extended its coverage to nongovernmentally assisted housing of five contiguous units or more.[33] Oregon's statute does not cover housing per se; rather it prohibits persons engaged in the business of selling and leasing real estate from discriminating.[34]

In 1961, the above States were joined by: New York (which extended its act to cover private multiple dwellings with a minimum of three units),[35] Pennsylvania (whose "Human Relations Act" covers all housing except owner-occupied accommodations and duplexes in which one unit is owner occupied),[36] Minnesota (whose housing law excludes owner-occupied units and housing containing two dwelling units, one of which is owner occupied),[37] and New Hampshire (whose law extends to rental or occupancy in buildings containing more than one dwelling).[38] The cities of New York [39] and Pittsburgh, Pa.,[40] have also adopted ordinances outlawing discrimination in nongovernmentally assisted housing.*

Antidiscrimination laws and real estate brokers

One element in housing discrimination has been given noteworthy attention on the State and local level—the practices of real estate brokers. The real estate broker is a key man in the majority of housing transactions. He finds buyers for housing and housing for buyers and he has detailed knowledge (or access to it) of the location of homes of various styles and prices. His policies and practices are among the foremost

*On Sept. 12, 1961, New Jersey extended its act to cover private housing. See app. VI, table 1.

influences that determine where the various racial or religious groups will live.

The Commission has heard considerable testimony concerning the practices of real estate brokers and realty boards. Discrimination is often the rule rather than the exception. California's Sonoma County Committee on Human Relations, after a study of housing conditions in the county, stated: "Indications are strong that the realty board has unofficially agreed not to show Negroes property within the city limits. . . ." [41] In San Francisco, a white homeowner was told by her real estate agent that "she must be psychotic for even thinking of selling to a nonwhite family in her neighborhood." [42] In the Palo Alto area, the Commission learned, only 3 of the 600 real estate brokers and salesmen show property on a nondiscriminatory basis.[43] In its Detroit hearing, the Commission was told that many realtors "maintain separate listings of properties which may be shown to Negroes and which may be shown to white homeowners." [44] In San Francisco the Commission heard significant testimony on broker-inspired panic selling and the practice of "block busting." [45]

Many real estate boards themselves maintain a "white only" membership policy. The assistant secretary of the Los Angeles Realty Board admitted to this Commission that although Negroes had applied for membership in the board, "their applications were not approved." [46] This exclusionary policy by many local associations, according to at least one noted observer, is responsible for the formation of the National Association of Real Estate Brokers, the national Negro organization.[47]

The willingness of one real estate board to fight for discriminatory practices is indicated in the case of *O'Meara* v. *Washington State Board Against Discrimination*.[48] In this case, the State board found that the O'Mearas refused to sell to a Negro, solely on the basis of his color. O'Meara attacked the board's jurisdiction. Evidence was introduced at the trial on appeal, showing that the Seattle Real Estate Board [49]—

> agreed with respondents O'Meara to bear the cost of this litigation and all future litigation carried on in respondents O'Meara's name, either alone or with contributions from [others], and that said real estate board agreed to and did liquidate respondents' equity, leaving them with record title only.

At the Commission's Detroit hearing, Mr. William R. Luedders, president of the Detroit Real Estate Board, explained his board's policy to the Commission: [50]

> All public housing should be open to all qualified citizens regardless of race, creed, or color.
>
> All Federal loans and Federal mortgage guarantees should be available to all qualified citizens regardless of race, creed, or national

origin; . . . once a loan is made, however, disposition of the real estate should be the province of the owner of the property, for private property is, and we hope it will remain, private.

Mr. Luedders also stated: "As to the role of the broker in achieving equal opportunity in housing, we do not think this is the broker's responsibility." [51] When another witness suggested that the black dollar is worth less than the white dollar in Detroit's housing market, Mr. Luedders took issue. "I completely disagree with Mr. Ravitz' answer on that. It is not worth less. It is worth more. The colored buyer is in a preferred position in the Detroit housing market." [52] Commissioner Johnson questioned Mr. Luedders on this point: [53]

Commissioner JOHNSON. In your map you referred to the yellow area as an integrated area, and I assume that when you say the black dollar is worth more than the white dollar, you are referring to that area?

Mr. LUEDDERS. It buys more. It buys more housing in that whole area.

Commissioner JOHNSON. In the yellow area?

Mr. LUEDDERS. In the yellow area.

Commissioner JOHNSON. How about outside the yellow area?

Mr. LUEDDERS. Well, these houses on Boston Boulevard are a good example of four- and five-bedroom, two- and three-bath houses, with a first-floor lavatory and strictly modern.

Commissioner JOHNSON. That is outside the yellow area?

Mr. LUEDDERS. No. These are within the yellow area.

Commissioner JOHNSON. I mean outside the yellow area——

Mr. LUEDDERS. Outside, out Grand River or in the North Woodward District out here or in Grosse Pointe, they will bring $32,000 to $35,000.

Commissioner JOHNSON. Could a Negro buy it?

Mr. LUEDDERS. If he wants to pay the difference? I think he can. In fact, they're gradually working in that direction [laughter], but I don't know why any Negro would go out and pay $35,000 if he can buy what he can——

Commissioner JOHNSON. No. What I am really trying to get at is whether you are, in fact, saying that the housing market in Detroit is open without regard to race or whether you are saying it is open only in a restricted area.

Mr. LUEDDERS. Well, it's wide open in the yellow area, and other areas are becoming open . . . .

Commissioner JOHNSON. . . . Why should a Negro be confined to the yellow area in order to get equality?

Mr. LUEDDERS. Well, Dean Johnson, this is no ghetto. This is some of the finest housing in Detroit.[54]

Certain States and municipalities have enacted legislation prohibiting discriminatory practices in varying degrees on the part of this unique group. Others have reached the same result through attorney general opinions and administrative regulations. State authority to license and regulate real estate brokers is also a formidable weapon and has been utilized in at least three States for purposes of insuring equal housing opportunity.

Pennsylvania, Minnesota, Washington, New York and Oregon [55] expressly cover real estate brokers and salesmen in their antidiscrimination housing laws. Similarly, Pittsburgh's [56] and New York City's [57] ordinances expressly apply to real estate salesmen. Baltimore has adopted an ordinance specifically directed against "block busting" tactics.[58]

The Attorney General of Massachusetts has held that a real estate agency "is open to and accepts or solicits the patronage of the general public" within the meaning of the State public accommodations law. As such, he said, it may not "refuse to offer its services to any person or . . . refuse to accommodate any person as a client because of his race, creed, or color." [59] On March 6, 1961, the Massachusetts Legislature enacted a law providing for the revocation of a real estate broker's license for failure to comply with the final order of the Massachusetts Commission Against Discrimination. [60] Similarly Oregon law provides for the revocation of such a license by the State real estate commissioner in the event that the State antidiscrimination housing law is violated by a real estate broker.[60a] The Attorney General of California, interpreting his State's civil rights act, concluded that the law "requires all citizens regardless of race, color, religion, ancestry, or national origin to be given the full and equal accommodations, advantages, privileges, and services supplied by real estate brokers and salesmen in regard to selling, transferring, renting, or rental management." [61] And the Connecticut Commission on Civil Rights has held that it has jurisdiction over real estate brokers and salesmen.[62]

Michigan, like Massachusetts and Oregon, has attempted to eliminate broker discrimination through its licensing powers. In 1960, the Michigan Corporation and Securities Commission, the licensing agency of the State for real estate brokers and salesmen, amended its rules and regulations by adding a "rule 9," prohibiting real estate brokers or salesmen from selling, buying, appraising, negotiating, or leasing real estate on the basis of race, color, religion, national origin, or ancestry.[63] The scope of this rule is not confined to public housing, as is Michigan's public accommodations law, but applies to all activities of the real estate profession.

As Commissioner Lawrence Gubow told this Commission: "It should be obvious that the rule was not dreamed up in a vacuum." [64] He issued this regulation shortly after the press revealed the highly institutionalized discrimination practiced in Grosse Pointe, an exclusive suburb

of Detroit. Grosse Pointe operated under what it called a "point system." The Grosse Pointe Brokers Association and the Grosse Pointe Property Owners Association cooperated in carrying out the system, whose purpose was to keep so-called "undesirable" persons from living in the area.[65]

The point system operated as follows: A private detective agency investigated prospective purchasers of Grosse Pointe homes. A committee of three brokers[66] then graded the information (gathered largely by talking to neighbors of the prospective purchaser) to determine whether to admit the person to the area. Fifty points was passing. However, persons "of Polish descent had to score 55 points; southern Europeans, including those of Italian, Greek, Spanish, or Lebanese origin, had to score 65 points; and those of the Jewish faith had to score 85 points. Negroes and orientals were excluded entirely."[67] Any broker selling property to a person rated as "undesirable" was compelled to forfeit his commission to the Grosse Pointe Property Owners Association, and refusal to do so rendered him liable to expulsion from the Grosse Pointe Brokers Association.[68] The type of information that a person could be graded upon, and found undesirable, was: whether his way of living was "typically American," whether his business associates and friends were "typically American"; the degree of his "swarthiness"; the extent to which he "spoke with an accent"; whether his name was "typically American"; whether he dressed "neatly," "slovenly," "conservatively," or "flashy"; and how his family had been thought of in previous neighborhoods.[69]

Against this background Michigan Commissioner Gubow proposed "rule 9."[70] The Detroit Real Estate Board unsuccessfully advocated an alternative proposal which would allow the broker or salesman to discriminate—but only if his principal specifically instructed him to do so.[71]

Before "rule 9" went into effect, three real estate concerns obtained a temporary injunction in a Michigan State court against its enforcement.[72] Pursuant to an order by State Commissioner Gubow and Michigan Attorney General Adams, however, the Grosse Pointe Property Owners Association and the Grosse Pointe Brokers Association agreed to abandon the point system.[73]

When the Michigan legislature met in 1961, it passed a bill effectively repealing rule 9.[74] Governor Swainson vetoed this bill. The future of rule 9 is presently in doubt.

Validity of antidiscrimination housing laws

Statutes applying to public housing or urban redevelopment.—There appear to be no court decisions determining the validity of statutes applying either to public housing or urban redevelopment. Several decisions, however, have indicated that even in the absence of such statutes, discrimination or segregation in public housing is constitutionally objection-

able.[75] Discrimination in urban renewal has not yet been tested on the merits.[76]

Statutes applying to publicly assisted housing.—Several cases have ruled on State legislation prohibiting discrimination in publicly assisted housing. In *New York State Commission Against Discrimination* v. *Pelham Hall Apartments, Inc.*,[77] the defendant corporation had built an apartment building financed by an FHA-insured mortgage loan. A Negro applied to lease an apartment, and was refused because of his race. He filed a complaint with SCAD. The State commission directed Pelham to cease and desist from its discriminatory practices. SCAD then instituted an action in the State court to enforce its order. Pelham defended against the order on the grounds that its apartment building was not "publicly assisted housing accommodations" within the contemplation of the law, since the FHA commitment had been made before the law's effective date. The apartment corporation contended also "that the private owner of property has the fundamental right to choose whether or not he will sell or rent." [78] The corporation further argued that the act itself was unconstitutional because it created an unreasonable classification in violation of the equal protection clause of the 14th amendment.

The court declared that the building was a "publicly assisted housing accommodation" within the meaning of the law since the actual money advances were made after the effective date. As to the constitutional question of the right of a private property owner, the court said:[79]

> [W]hat is here involved is a conflict between the rights of the private property owner and the inherent power of the state to regulate the use and enjoyment of private property in the interest of public welfare; and . . . the power of the state, when reasonably exercised, is supreme.

The court then found that the power had been reasonably exercised. Turning to the arbitrary classification issue, the court said:[80]

> [T]he test is whether or not the classification rests upon some reasonable basis, bearing in mind the subject matter and the object of the legislation. . . .
>
> In determining whether or not there was reasonable basis for establishing the specified classes of housing accommodations to which the provisions of the Civil Rights Law and the Executive Law were made applicable, the court may take into consideration the fact that civil rights and antidiscrimination legislation in this state, and on the federal basis for that matter, has been and is a *step-by-step* proposition. . . . The Legislature was authorized to proceed as it did in imposing a ban against discrimination in housing, that

is, by gradual steps, beginning with provisions applicable to various classes of publicly owned and managed housing and over a period of time extending the provisions to specified classes of private housing projects inaugurated or carried out with government assistance.

In *Levitt & Sons, Inc.* v. *Division Against Discrimination,*[81] defendant housing developers were constructing single-family homes on which FHA had given written commitments to insure mortgage loans. They refused to sell houses to certain Negroes, who filed complaints with the New Jersey Division Against Discrimination. The developers then instituted action in the New Jersey State courts challenging the jurisdiction of the Division. They argued that the New Jersey law against discrimination, by including only publicly assisted housing, created an unreasonable and arbitrary classification in violation of the 14th amendment, and that the State law invaded a legislative field preempted by Congress. The court upheld the constitutionality of the State law and the jurisdiction of the State Division Against Discrimination. It said: [82]

> Considering the circumstances which led to the enactment of the statute in question, it becomes apparent that the classification presents no constitutional difficulties. . . . The desired end may be achieved by legislating in regard only to a specific kind of housing. And the type of housing chosen is that most easily financed and as to which established patterns would least likely be disturbed. If these goals are not the intent of the Legislature, they do at least serve to demonstrate, insofar as they give a *reasonable basis* for the statutory classification, that the statute is not invalid on its face or palpably arbitrary. . . .

With respect to the question of Federal preemption, the court said: [83]

> There is a considerable gap between Congress' refusing to adopt an express policy of nondiscrimination in regard to FHA insured housing, to be applicable under all circumstances and in all sections of the country, and a congressional policy prohibiting States from enacting laws proscribing such discrimination. Congress did refuse to accept amendments to various versions of the National Housing Act, 12 U.S.C.A. sec. 1701 et seq., which would have expressly prohibited the discrimination with which plaintiffs are charged. . . . But to construe this action as establishing a congressional policy against state laws having the same effect is not warranted by the circumstances.

The *Pelham* and *Levitt* courts agreed that the State had the power to require nondiscrimination of private parties, and that statutes limited

in their application to publicly assisted housing were not unreasonable or arbitrary. A Washington State court, however, disagreed with both of these principles.

In *O'Meara* v. *Washington State Board Against Discrimination,*[84] the court declared Washington's antidiscrimination housing law unconstitutional as applied. When Comdr. John J. O'Meara of the U.S. Coast Guard received orders transferring him from Seattle, Wash., to Washington, D.C., he decided to sell his home. The O'Mearas had bought the home in 1955, with an FHA-insured mortgage loan. The Washington antidiscrimination housing law was not enacted until 1957. Robert L. Jones, a Negro, offered the O'Mearas $18,000 for the home. O'Meara refused to sell to Jones because of his color, and Jones filed a complaint with the Washington State Board Against Discrimination. The board ordered O'Meara to cease and desist from refusing to sell his home on the basis of Jones' color. The O'Mearas appealed from the order of the board. The court held the order to be null and void on three grounds.

First, holding that in order for the State to prevail, Jones, the Negro complainant, must bring himself within the coverage of the equal protection clause of the 14th amendment, the court concluded that Jones could not do so because O'Meara was not acting by, for, or as the State:[85]

> This court concludes that it is palpable sophistry to argue that Commander O'Meara, in endeavoring to sell his home, is acting by, for, or as the state. A private individual acting in his private capacity is perfectly free to discriminate as he pleases.

Second, the court reasoned that if an FHA antidiscrimination regulation had existed at the time O'Meara purchased his home, it might very well have been binding. O'Meara would then have had the choice of purchasing under FHA financing and subject to the regulation, or obtaining private financing without FHA. However, the court said:[86]

> Commander O'Meara obtained his loan 2 years before the effective date of the [State] antidiscrimination law. In the circumstances, it can hardly be argued that he voluntarily assumed any limitations at the time he obtained his loan. The court concludes, therefore, that as applied to Commander O'Meara and others similarly situated, the Act is unconstitutional and void as in violation of the 14th Amendment.

Third, the court said that the classification was unreasonable.[87]

> There is no reason to suppose that persons with FHA mortgages on their homes are more likely to discriminate against minority

groups than those who have conventional mortgages or no mortgages, or those who are purchasing upon contract. This act would prohibit Commander O'Meara from doing what his neighbors are at perfect liberty to do. It gives to those who have conventional mortgages, or no mortgages, and those who are buying upon contract, special privileges and immunities which are not accorded to him. The classification is arbitrary and capricious and bears no reasonable relation to the evil which is sought to be eliminated. It not only violates the equal-protection clause of the 14th Amendment to the United States Constitution, but violates the special privileges and immunities clause of Article 1, Section 12, of the Washington State Constitution.

Thus, neither the "step by step" rationale of the *Pelham* case nor the "reasonable basis" conclusion of the *Levitt* case was acceptable to the *O'Meara* court.[88] The court further indicated, it should be noted, that even if the State legislature were to correct the unreasonable classification aspect of the law by applying it to all housing, the law would nonetheless be unconstitutional in that the State lacks the power to require nondiscrimination of private individuals.

An appeal from this decision is pending in the Washington Supreme Court.

Statutes applying to private housing.—In *Martin* v. *City of New York,*[89] a landlord unsuccessfully challenged the constitutionality of the New York City ordinance to the extent that it forbids owners of multiple dwellings (apparently nongovernmentally assisted) to deny accommodations on account of race, color, or religion. The court said: [90]

> [The landlord] claims that a vital element in successful renting is the selection of tenants and that any regulation which hampers the exercise of his judgment in this phase of his business is beyond the power of the state. To an extent he is correct. Just because a man is a negro he is not, ipso facto, a desirable tenant. But the statute does not say that. It says the converse—because a man is a negro he is not, ipso facto, an undesirable tenant.

The court further pointed out that the city ordinance ". . . is an additional instance where the individual must yield to what legislative authority deems is for the common good." [91]

In *Case* v. *Colorado Anti-Discrimination Commission,*[92] on the other hand, the constitutionality of the Colorado Fair Housing Act of 1959 was successfully challenged after the State Commission had found that a realty company had violated the State law by refusing to sell certain property to the complaining Negroes because of their race. The court

held that the State law was unconstitutional, pointing to a section of the law which authorized the State Commission [93]—

> to take such affirmative action, including (but not limited to) the transfer, rental, or lease of housing; the making of reports as to the manner of compliance and such other action as in the judgment of the Commission will effectuate the purposes of this act.

The court concluded that [94]—

> [T]his subsection is vague, indefinite and an unlawful delegation of legislative power to an administrative commission.

Although the court expressly stated that other issues were not essential to the determination of the case, it nevertheless expressed "grave doubts" concerning them. The court was particularly troubled by the fact that although no contract had existed between the realty company and the complainants, the State commission had authority to require a "transfer:" [95]

> Can it be that the legislature is now, under the guise of the police powers of the state, legislating as to the rights of a private person to own, possess and dispose of his personal property to whomever he sees fit, and further delegating to an administrative body the power to determine the right of ownership of property *and order a conveyance thereof where there has been no contract between the parties?*

The court concluded on this point: [96]

> It is the opinion of this Court that to uphold such legislation as this would require a distorted construction of our constitutions and would require the reversal of many case decisions heretofore protecting the right of a private individual to privately contract on his own terms.

The decision is being appealed.

The above cases suggest that legislation banning discrimination in housing raises two principal constitutional questions: First, do the States have the requisite police power to enact such legislation? And second (where the legislation applies only to publicly assisted housing), does the legislation create an unreasonable classification in violation of the 14th amendment? In the absence of rulings by the U.S. Supreme Court, these will continue to be critical factors for the drafters and enforcers of this type of legislation.

B. LOCAL ACTION AIDING DISCRIMINATION

In the course of its studies, the Commission has found that the power of the local government has sometimes been actively exerted to prevent equal opportunity in housing rather than to foster it.

Local governments have come up with a variety of devices—some already discredited—designed to hinder equal housing opportunity. In 1917, in *Buchanan* v. *Warley*,[97] the U.S. Supreme Court declared that Louisville's attempt to zone the city into white and Negro sections was a violation of the equal protection clause of the 14th amendment.[98] But as one housing authority has observed, "while the court's decisions have put an end to racial zoning legislation legally, they have not ended the use of the zoning weapon against minorities." [99] He added:[100]

> Communities no longer resort to the clumsy device of racial zoning laws, thereby exposing themselves to judicial attack. The methods are more subtle, motives less discernible, and exclusions more effective.

Other methods include use of the power of eminent domain, by which the Government can acquire particular land for "public" purposes. In addition, there are the many discretionary decisions that local officers make which can either ease the way for a prospective homeowner or discourage and effectively exclude him. All of these methods, subtle and obvious, have been utilized.

Four cases that have come to the attention of the Commission are described below. All involved affirmative action by local governments—action resulting in the exclusion of minorities who either had already moved into the locality or were about to do so. It is doubtful that these four cases are isolated or unique.

Deerfield, Ill.—Deerfield, Ill. might properly be called a typical small town in Suburbia, U.S.A., in this second half of the 20th century. Unlike the small towns of the past, it is not an isolated community, but part and parcel of the Chicago metropolitan area; it is located some 20 miles northwest of Chicago on the North Shore. Like many such communities, the 1960 racial composition of its population of 11,786 was virtually all white.[101] For the most part, its people are young parents (the husband commuting to Chicago for his job) and school-age children—middle-class families not yet economically secure, and more mobile than most because of job transfers.

In April 1959, and on dates thereafter, the Progress Development Corp.,[102] a national builder, purchased two tracts of vacant land, suitable for subdivision and development. On July 8 and September 16, Deerfield's governing body approved plats of the two subdivisions. On Sep-

tember 21 and 22, Deerfield's Building Commission approved plans and specifications for the construction of two model homes and issued building permits. Work on the two homes, which were to sell for $30,000 each, was well advanced on November 11 [103] when the Deerfield governing board discovered that the builder intended to sell some of his homes, when completed, to Negroes.[104] "The whole community was thrown into an uproar. . . ." [105] Two days later a building inspector found the construction work on one of the model homes in violation of Deerfield's zoning ordinance and building code, and issued a stop order.[106] The village inspector who shut down construction later testified that "he was biased against Negroes and did not want any in Deerfield." [107]

On November 17, the board of the Deerfield Park District of Lake County held a meeting. The Deerfield Park District is a body politic under the laws of Illinois with the power to acquire real estate by eminent domain for park purposes.[108] The Park District Board adjourned its meeting to December 7. On December 6, the results of a house-to-house poll of Deerfield residents was announced showing 3,507 opposing the builder's development, 460 favoring it, and 56 with no opinion.[109] At its resumed meeting the following day, the Deerfield Park District Board voted to acquire, by condemnation proceedings, six sites in Deerfield for park purposes, including the two sites owned by the builder. The board called for the residents to vote on a $550,000 bond issue to finance the purchase of these sites on December 21.[110] With 86 percent of the registered voters in Deerfield turning out to vote in the referendum, 2,635 voted for the bond issue (to condemn the sites for park purposes), 1,207 against.[111]

The following day, December 22, the builder filed a suit in the U.S. district court against 21 defendants, including the trustees of the village of Deerfield and the board of the Deerfield Park District, claiming a conspiracy to violate his civil rights under the 14th amendment.[112] On March 4, 1960, District Judge Perry, after a preliminary hearing, dismissed the builder's complaint. The judge held that the conspiracy was unproved, that the evidence established building code violations, and that the builder would have to raise his civil rights claims in the condemnation suit in the State court.

On appeal, the U.S. Court of Appeals for the Seventh Circuit stated that the builder has "the legal right to see if they can prove such a conspiracy as the foundation for legal damages in a trial by jury." [113] The court of appeals further found that the lower court had erred in dismissing the action against the Deerfield Park District Board: [114]

> The common law immunity of state legislators for their acts . . . does not extend to local officials charged with administering in a *discriminatory* manner the laws so as to preclude Negroes from moving into an all-white community.

In the meantime, there was activity in the Illinois State courts with respect to the Deerfield Park District's condemnation suit, filed on December 24, 1959. On June 28, 1960, the Circuit Court of Lake County ruled that the Park District could obtain the sites and denied the builder the opportunity to prove that his civil rights had been violated.[115]

On appeal to the Illinois Supreme Court, this decision was reversed on April 26, 1961, and the case was remanded for a new trial.[116] The opinion of the State's high court said that the builder's complaint contained sufficient allegations "to charge the Park District with using its power of eminent domain for the sole and exclusive purpose of preventing the sale of homes by [the builder] to Negroes in violation of [the builder's] right to equal protection of the law.[117] The court also observed: [118]

> It is conceded, as it must be, that every private owner of property holds his title subject to the lawful exercise of the sovereign power of eminent domain, and courts may not substitute their judgment for that of the condemning authority in inquiring into the necessity and propriety of the exercise of the power. . . .
>
> Nevertheless, the power of eminent domain, great as it is, is subject to constitutional limitations, and the courts may interpose their authority to prevent a clear abuse of the exercise of that right. . . .
>
> If, therefore, the Park District's attempted exercise of the power of eminent domain would deprive Progress [the builder] of equal protection of the law, it is the duty of the Illinois courts to prevent it. We do not think the resort of Progress to the Federal forum absolves the tribunals of this State from the duty of protecting their rights.

At this time, both cases are awaiting trial in the lower Federal and State courts.

Portland, Oreg.—In September 1959, Rowan M. Wiley and his wife purchased a vacant lot in northeast suburban Portland, Oreg. In February 1960, they started construction of a home.[119] On February 20, 1960, Wiley visited the premises and for the first time the neighbors became aware of the fact that the Wileys were Negroes. Two neighborhood meetings resulted and a petition was circulated: "We do not want these colored people in our society." [120] The superintendent of the Richland Water District, a political subdivision of Oregon empowered to condemn property for water supply purposes, attended the second meeting, held on February 28, 1960.[121]

On March 2, 1960, a special meeting of the board of the water district was held and the superintendent advised the commissioners that they had two problems—"color and water." [122] The board adopted a resolution

to acquire the Wiley site through condemnation proceedings "for preservation of sufficient land for future development and sanitation control," and instituted a suit for this purpose in the State court.[123]

The Wileys filed an action in the U.S. district court to enjoin the condemnation. On June 30, 1960, Federal District Judge East permanently enjoined the board's condemnation proceedings, finding that—[124]

> 16. The primary motive and reason for the adoption of the resolution was not for a lawful use of the district, but was motivated with the desire to deprive the plaintiffs of the use of the enjoyment of the land which they purchased because of the fact that they were of the Negro race.
>
> 17. That the individual defendant directors did conspire together, act jointly and in concert to use their office and said resolution under color of State law and authority with the intent of discrimination against the plaintiffs on account of their race or color.

Three days after this decision, the Wiley's half-finished house was partly burned by an arsonist.[125]

The Richland Water District Board appealed Judge East's ruling to the U.S. Court of Appeals for the Ninth Circuit. But while the appeal was pending, Wiley and the board settled the matter and the appeal was dismissed. The Wileys finished building their residence and moved in.

Creve Coeur, Mo.—Another claim that the power of eminent domain was being used to bar Negro occupancy arose in the city of Creve Coeur, Mo. Creve Coeur is a virtually all-white community with a 1960 population of 5,122.[126] It is a suburb of St. Louis and part of the St. Louis metropolitan area.

The city filed an action in the Missouri Circuit Court of St. Louis County to condemn, for playground and park purposes, land tracts owned by three defendant couples. One of the couples, Howard P. Venable and Katie Venable, was constructing a home on one of the two lots they owned. The Venables were Negroes.[127]

The Venables filed a counterclaim to the city's condemnation suit and sued, among others, the board of aldermen of Creve Coeur, the mayor, the building commissioner, and the city attorney. The counterclaim alleged that the city officials had (1) "directed emissaries . . . to force" the Venables "to sell their property to private persons under intimidation and threat of community coercion, official coercion, and condemnation . . ."; [128] (2) "refused to issue" to the Venables "and their contractor a plumbing permit to which they were entitled . . ."; [129] (3) enacted "a condemnation ordinance solely for the purpose . . . of denying to them [the Venables] the exercise of their constitutional rights of

residence in the city of Creve Coeur . . ."; [130] (4) "hastily chose[n] a site for alleged park condemnation purposes and disregarded the unsuitable topography, location, and cost of the area sought to be condemned . . ."; [131] (5) "forced, by reason of the acts aforesaid, the withdrawal of other Negroes proposing to build and live in the city of Creve Coeur"; [132] and (6) "acquiesced on the basis of passion, bias, and prejudice in a scheme, device, and artifice of a citizens committee whose operation concerned the solicitation and payment of donations to acquire the real estate owned by and surrounding the defendants in order to eliminate occupancy by said defendants."[133] The city officials denied these charges.

On December 3, 1959, the St. Louis Circuit Court of Appeals ruled that, although "aware of the seriousness of the charges," it had no jurisdiction over the counterclaim.[134] The court said: "The motive which actuates and induces the legislative body to enact legislation is wholly the responsibility of that body, and courts have no jurisdiction to intervene in that area."[135] The Venables' claim was dismissed.

Milpitas, Calif.—In 1954 the Ford Motor Co. decided to move its plant from Richmond to Milpitas, Calif.[136] Milpitas, an urban locality with a 1960 population of 6,572, is located in Santa Clara County and is part of the San Jose metropolitan area.[137] When, because of discrimination, minority group workers encountered difficulties in obtaining decent housing, the United Auto Workers Union decided to build a project for its members.[138]

Through the American Friends Service Committee, the union engaged a San Francisco builder and he set out to find a suitable site in the vicinity of Milpitas.[139] An insurance company approved the first site selected, but "word got out in the community that the development was planned to be interracial. The land was almost immediately rezoned from residential to industrial use."[140] When the builder located a second site, he "was bluntly told he would never get approval."[141] A third site had to be abandoned because of the increased land costs resulting from a change in building regulations requiring "a minimum of 8,000 square feet instead of 6,000." [142] After a fourth effort failed, when an option to buy was withdrawn "when the proposed use became known in the community," the builder quit; his efforts of almost a year cost him about $17,000 of his own money.[143]

At this point the American Friends Service Committee and the union selected the town of Milpitas itself as a logical site, since Mexicans, Portuguese, and persons of Oriental descent were included in its population. There were no Negroes in Milpitas.[144] "[A]fter the San Francisco Chronicle headlined the proposed interracial development, describing it as 'A Bold Housing Project [for Milpitas],' trouble began."[145] Testifying at the Commission's San Francisco hearing, Arnold Callan, subregional director of the United Auto Workers Union, recalled:[146]

[T]he sewer board met just the day after he [the builder] poured his first foundation, and raised the price of the sewer connection some $90,000. And, of course, it would be impossible to absorb that cost into the price of the houses because they raised the cost beyond the ability of the people to qualify.

And this is the type of problem with which we were faced.

When asked by the union to "investigate charges that local government was racially discriminating in the sewer-line controversy," California's Attorney General replied that he would "do anything within the power of my office to assist in overcoming any racial discrimination by governmental units which might be disclosed." [147] Apparently the assignment of a deputy attorney general to investigate was effective "in obtaining more cooperation from local government officials." [148] Thus, Callan went on to relate: [149]

After some 3 or 4 years, we were able to get a builder . . . interested. . . . And he purchased some land; had a few houses on it that were built by another party.

And from this development we have built 500 homes. . . .

There are 22 Negro families, 59 Mexican-Americans, 2 Japanese, 2 Chinese, a few Hawaiians, and the rest are Caucasians.

* * *

Little comment seems necessary on the Illinois, Oregon, Missouri, and California cases outlined above. In some instances, the facts clearly suggest discriminatory action by local governmental officials acting under color of State law and authority.[150]

How many similar incidents have occurred in the last 2 years, nobody knows. Builders are understandably reluctant to complain. In 1959, a Long Island, N.Y., builder informed the Commission that opposition from local governmental units, perhaps as a reflection of lack of "tolerance" in the community, in many cases is the "big problem that confronts a builder in case he announces that there will be no discrimination whatsoever as respects race, color, or creed in his proposed new home development." [151] He continued: [152]

Many local communities outside the city of New York look with considerable disfavor on that type of operation. This means that filing a plat plan for a development can be delayed for a year or more to get approval, instead of a month or two. There are numerous other obstacles that can be placed in the way of the builder, such as delays in obtaining building permits, excessive stringency in inspections, logical variances, and other items. When the time comes to dedicate streets in order to obtain occupancy

certificates and to close titles to homes, there is another point at which an uncooperative community can develop more obstacles for the builder. . . .

The builder concluded: [158]

> [Y]ou must consider that there is a tremendous economic obligation entailed in the program of "integration in housing," and I can say to you gentlemen that there are very few builders who can stand the brunt of that economic cost. . . .
>
> After all, we as builders are interested in selling houses, but we cannot possibly go through the extraordinarily expensive process of resistance from some local communities in the cases where we indicate that we are willing to sell regardless of race, color, or creed.

The California State Attorney General's intervention in the Milpitas episode suggests at least one possible remedy for the plight of the builder and the nonwhite property owner faced with discriminatory action by local governmental officials. A State attorney general's office can collect the real facts concealed behind official pretexts. Moreover, it is properly the responsibility of the State government to assure that its political subdivisions do not discriminate by abuse of legal powers—powers granted by the State—and thereby restrict the residence of minority groups.

7. Conclusions

In 1949 the Congress of the United States enacted legislation in which it announced a national housing objective: "A decent home and a suitable living environment for every American family." This pronouncement marked the end of a long period of piecemeal measures largely in response to crisis—first the Great Depression, and later World War II. In short, housing had been a means to the solution of greater problems, rather than an end in itself.

The Housing Act of 1949 inaugurated a new housing era and a vast Federal responsibility. It is an era of which we are still a part; and it is a responsibility from which we have not retreated. The declared objective remains the unfulfilled promise of the Federal Government. It is, as President Kennedy has declared before the Congress, an unredeemed "pledge" to the American people. This pledge goes beyond an increase in the Nation's housing supply. Incorporated as its cornerstone is the constitutional principle of equal opportunity. As this Commission pointed out in its *1959 Report:*

> It is the public policy of the United States, declared by the Congress and the President, and in accord with the purpose of the Constitution, that every American family shall have equal opportunity to secure a decent home in a good neighborhood (page 534).

In the past decade 17 States and numerous cities have taken legislative and administrative action to eliminate racial discrimination in housing, but the Federal Government has not acted meaningfully in this connection. Several of the agencies that administer Federal housing programs have taken small and essentially ineffectual steps, but neither the President nor Congress has exerted the authority available.

The Federal Government has been without question the major force in the expansion of the housing and home finance industries. Its funds, its credit, many of its facilities, and its name have been made increasingly available in an effort to achieve the professed goal of "a decent home and a suitable living environment for every American family." Governmental measures include cash contributions to locali-

ties, FHA and VA mortgage insurance and guarantees, FNMA mortgage purchases and special assistance, chartering and support of financial institutions, as well as insurance of their accounts. But the benefits of these governmental activities have not been available to the American people on an equal-opportunity basis.

The Commission's first housing study revealed the central fact that housing was "the one commodity in the American market . . . not freely available on equal terms to everyone who can afford to pay." The present study emphasizes the extensive nature of the Federal contribution. The private housing and home finance industries, through which governmental housing assistance largely reaches the American people, rely heavily on that contribution. They profit from the benefits that the Federal Government offers—and on racial grounds deny large numbers of Americans equal housing opportunity. At all levels of the housing and home finance industries—from the builder and the lender to the real estate broker, and often even the local housing authority—Federal resources are utilized to accentuate this denial. This is the central finding of the Commission's present study.

Denial of equal housing opportunity means essentially the deliberate exclusion of many minority group members from a large part of the housing market and to a large extent confinement in deteriorating ghettos. It involves more than poverty and slums, for it extends to the denial of a fundamental part of freedom: choice in an open, competitive market. This is a strange phenomenon in a Nation that cherishes individual freedom. For in housing, as elsewhere, the essence of freedom is choice. Nevertheless Federal programs, Federal benefits, Federal resources have been widely, if indirectly, used in a discriminatory manner—and the Federal Government has done virtually nothing to prevent it.

SUPERVISION OF LENDING INSTITUTIONS

At the end of 1960 the Nation's nonfarm home mortgage debt stood at $160 billion. More than 60 percent of this amount ($100 billion) is held by financial institutions that are benefited in varying degrees by the Federal Government and closely supervised by one or more of four Federal regulatory agencies—the Federal Home Loan Bank Board, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation. National banks (regulated by the Comptroller of the Currency) and Federal savings and loan associations (regulated by the Federal Home Loan Bank Board) operate under Federal charters and are subject to the

exclusive control of the Federal Government. These institutions represent almost $180 billion in assets and hold $44 billion in nonfarm home mortgages. Member savings and loan associations of the Federal Home Loan Bank System and member banks of the Federal Reserve System receive the benefits of a nationwide, governmentally controlled system of financial institutions, and are regulated by the Federal Home Loan Bank Board (in the case of savings and loan associations) and the Board of Governors of the Federal Reserve System (in the case of banks). These institutions represent almost $290 billion in assets and hold $75 billion in nonfarm home mortgages. Insured associations and banks receive the benefit of Federal insurance of accounts and deposits, and are regulated, in the case of savings and loan associations, by the Federal Savings and Loan Insurance Corporation (under the direction of the Federal Home Loan Bank Board) and, in the case of banks, by the Federal Deposit Insurance Corporation. These institutions represent almost $360 billion in assets and hold $99 billion in nonfarm residential mortgages.

According to the evidence that the Commission has received from many parts of the country, these institutions are a major factor in the denial of equal housing opportunity. Mortgage credit, upon which homeownership so largely depends, is often denied to members of minority groups for reasons unrelated to their individual characters or credit worthiness, but turning solely on race or color. Although all four of the Federal supervisory agencies appear to agree that outright discrimination is improper, none apparently has conducted any inquiry into the extent to which the institutions under their supervision engage in it. Until recently none had proclaimed or followed any antidiscrimination policy. In June 1961, however, the Federal Home Loan Bank Board adopted a resolution opposing discrimination by financial institutions over which it has supervisory authority. The Board further indicated that its examiners had been advised of this resolution for their guidance in examining member institutions, and that if discrimination were found supervisory action would be taken to abolish it. None of the three other agencies has given any indication of a similar policy. A broad array of means is available to each of these agencies to reduce discrimination in mortgage lending. Except for the Federal Home Loan Bank Board, however, they appear to believe that this is a private matter with which they are not concerned. In addition, all of them (including the Federal Home Loan Bank Board) have expressed the view that race may properly be a consideration in deciding whether to make a real estate loan. The introduction of minority group members into a white neighborhood, they appear to believe, may predictably cause a decline in property values. This view of the propriety of racial consideration is not shared by FHA, VA, FNMA, nor the Voluntary Home Mortgage Credit Program.

Moreover modern real estate opinion, supported by several studies on the relation of race and property values, tends to cast doubt on the view that the one necessarily affects the other.

FEDERAL ASSISTANCE TO HOME FINANCE

The agencies most directly involved in Federal assistance to home finance are FHA, VA, and FNMA. Their policies, unlike those of the Federal banking agencies, are affirmatively, if not effectively, in favor of equal housing opportunity for all people. Each has expressed itself as opposed to the inclusion of race as a factor in its operating decisions. None of them, however, has taken effective steps to insure that the benefits they offer are made available without regard to race. FHA and VA profess a policy, not yet actually applied in any case, of refusing to do business with any builder who violates State antidiscrimination housing laws. In States that do not have such laws, neither of these agencies requires builders, developers, or lenders to make available on an equal opportunity basis homes financed with its assistance. The full extent of FNMA's role in reducing housing discrimination is in not itself affirmatively discriminating.

Of the three agencies, only FHA has expressed anything but reluctance to take effective action. FHA Commissioner Hardy is unwilling, however, to attempt any remedial measures without an express directive from the President or Congress. VA has concluded that effective remedial measures would be undesirable. FNMA has difficulty in seeing that it has anything to do with the problem of housing discrimination. Action by these three agencies could effectively reduce inequality of housing opportunity. In view of their key roles in helping to achieve the objective of "a decent home and a suitable living environment for every American family," the question is whether they can justifiably do less.

PUBLIC HOUSING AND ELDERLY HOUSING

In connection with some Federal housing programs, the Federal Government has offered direct aid as distinct from credit facilities. Public housing, one of its oldest programs, involves Federal grants and yearly contributions to local housing authorities for the purpose of establishing and maintaining low-rent accommodations for those who, because of

their economic status, would have no alternative but to live in slums. This program must play an important role if the national housing objective is to be achieved. It is of particular significance to nonwhites, who occupy 46 percent of the total federally aided public housing units throughout the country. After 24 years of operation it has improved the physical surroundings of the nonwhite population—but it has contributed to racial residential patterns and the isolation of public housing occupants. Although PHA has insisted from the beginning that minority groups are entitled to share equitably in the fruits of the program, the key decisions have been made by local public housing authorities. So far as PHA is concerned, these authorities may provide public housing on a segregated basis, so long as PHA's "racial equity formula" is satisfied. In the matter of site selection, which can be a decisive factor in determining the racial composition of housing projects, PHA encourages local authorities to use vacant land outside the areas of racial concentration. But the decision is left to the local authority, and sometimes results in governmentally determined de facto racial segregation, as well as ghetto-like isolation. Recently new approaches have been devised to overcome these demoralizing aspects of public housing. Scatteration, rehabilitation, and a Government subsidy plan are efforts to achieve community acceptance of the program and to make it a vital aspect of urban planning and a meaningful part of community life.

The housing-for-elderly-persons program involves the Federal Government in activities ranging from mortgage insurance to direct loans, and includes such agencies as FHA, PHA, FNMA, and the Community Facilities Administration (CFA). While these programs are new, there are indications that a passive and permissive approach (like those of FHA and PHA) may lead to similar discriminatory practices. Although the HHFA Administrator has stated that the direct loan program for the elderly will require nondiscrimination, it is doubtful that the measures so far taken will be effective.

URBAN RENEWAL

The principle focus of Federal housing programs since the declaration of a national housing objective in 1949 has been the revitalization of the Nation's cities. The massive program designed to achieve this is urban renewal, and the resources of government—Federal, State, and local—have been brought to bear in an effort to achieve it. The program involves, above all, the displacement of people—most of them nonwhites; their relocation has been a major problem. Recent urban renewal legislation, however, has emphasized rehabilitation and conservation rather than clearance.

Like FHA and PHA, the Urban Renewal Administration (URA) has not effectively insisted that its tools be used to assure equal opportunity to all Americans. Thus representatives of minority groups sometimes are not permitted to participate effectively in urban renewal planning. Furthermore there is no requirement that a supply of relocation housing be assured for displacees, but only that there be a sufficient *inventory* of such housing available. Despite the establishment of a special FHA program designed to meet relocation needs (recently extended to meet the needs of low and moderate-income families as well), relocation has continued to be the major urban renewal problem. Failure to resolve it has often resulted in elimination of one blighted area and creation of another. A further difficulty is that URA does not prohibit discrimination in connection with housing built on urban renewal project areas. The redeveloper has sole control of selling or renting such accommodations. Negroes and other nonwhites have often been excluded on racial grounds.

Although urban renewal has provided a small segment of the Negro middle-income population with new housing for the first time, it probably has diminished the total housing inventory available to Negroes. This is a matter of importance to more than the minority elements of our population. Urban renewal is of supreme importance to the entire Nation, for the future vitality of our cities depends in large part upon its success. The breadth and potential impact of the program, however, are diminished by the presently insurmountable obstacle of the restricted housing market. If our cities are to thrive, this obstacle must be overcome and the question asked by American Negroes—Where shall we live?—must be answered in accordance with the pledge of the Federal Government and the promise of the Constitution. As it was put to the Commission: " 'To save the city from the Negro is against my principles. To save the city for the Negro I would have no enthusiasm,' . . . we hope . . . to save the city for everyone, which . . . is the only way it can be done." (*California Hearings* 28.)

FINDINGS

General

1. In the Commission's *1959 Report,* two basic facts were found to constitute the Nation's central housing problem:

First, a considerable number of Americans, by reason of their color or race, are being denied equal opportunity in housing.

Second, the housing disabilities of colored Americans are part of a national housing crisis involving a general shortage of low-cost housing.

These two basic facts remain as urgent today as they were in 1959.

2. In the 27 years since passage of the first National Housing Act, Federal agencies have been created, Federal programs have been established and Federal funds and credit have been committed in an effort to achieve the goal articulated in the Housing Act of 1949—"a decent home and a suitable living environment for every American family." The goal has not been achieved either in terms of supply, or equal opportunity for all Americans. The President has declared before Congress: "We must still redeem this pledge."

3. There has been significant governmental action in recent years aimed at increasing the general supply of low-cost housing. The Housing Act of 1961, for example, is expressly designed to help make decent housing available for low- and moderate-income families. But there has been little effort on the part of the Federal Government to insure equal housing opportunities. States and cities have been increasingly active in this connection, but the Federal Government—the major force in housing today—has not taken similar action. Thus the Commission again has found that Federal housing assistance has been denied to some Americans because of their race. The Commission's 1959 findings—"Housing . . . seems to be the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay"—is still an urgent fact.

Overall Federal laws, policies, and programs

4. Of the many Federal agencies concerned with housing and home mortgage credit, none has attempted to exert more than a semblance of its authority to secure equal access to the housing benefits it administers, nor to insure equal treatment from the mortgage lenders it supports and supervises. Many have taken no action whatsoever in this connection. And neither the President nor Congress has yet provided the necessary leadership.

5. The Constitution prohibits governmental discrimination by reason of race, color, religion, or national origin, and the Civil Rights Act of 1866, reenacted in 1870 and still part of the United States Code, recognizes the equal right of all citizens regardless of color to purchase, rent, sell, or use real property. The fundamental principle of equal housing opportunity is clear; and Federal policies have been gradually emerging in accordance with this principle. But the practice of Federal agencies in relation to the housing and home finance industries has not yet come into line with established principle or professed policy.

6. Both major political parties in their 1960 platform statements pledged action to prohibit discrimination in housing built with Federal subsidies. The Democratic Party pledged itself specifically to the issuance of an Executive order to eliminate discrimination in connection with Federal housing programs and federally assisted housing.

7. In its *1959 Report* the Commission found that direct action by the President on equality of opportunity in housing was needed. It recommended that an Executive order be issued. The need still exists.

8. For full effectiveness, an Executive order should extend to all Federal agencies concerned with housing and home mortgage credit, including those agencies which supervise the mortgage lending community. It should apply to all federally assisted housing, including housing constructed with the assistance of Federal mortgage insurance or loan guaranty, as well as federally aided public housing, elderly housing, and urban renewal projects.

Federal assistance to home finance

9. The present policy of the Federal Housing Administration and the Veterans' Administration is to discontinue business with any builder who is held in violation of a State or city law against discrimination. The policy of both agencies is necessarily limited to those jurisdictions that have antidiscrimination laws. Its effectiveness even within these geographical limits is open to serious doubt. By the time State or city action against a discriminatory builder has been completed the projects may well have been built and sold or rented on a discriminatory basis. Neither agency has actually applied the policy.

10. In no other aspects of their operations do the Federal Housing Administration or the Veterans' Administration maintain effective nondiscrimination policies. Thus, for example, in the absence of applicable State or local antidiscrimination housing laws both agencies offer benefits to builders and mortgage lenders who may discriminate on the basis of race. And in connection with the sale or lease of reacquired housing, i.e., housing that is *government-owned,* neither agency effectively requires that such housing be made available on a nondiscriminatory basis.

11. Similarly the Federal National Mortgage Association maintains no effective policy against discrimination in its dealings with the housing and home finance industries.

12. Nondiscrimination requirements on the part of these three agencies together with the Federal agencies that regulate or supervise financial institutions would go far to eliminate discrimination in home finance.

13. As the chairman of the Voluntary Home Mortgage Credit Program informed the Commission: "Open occupancy projects have proven

to be sound investments to those lending institutions which have made them." If "Fannie Mae" special assistance funds were made available for open occupancy projects, mortgage lending institutions would be encouraged to make such loans, and builders would also be encouraged to experiment in this field. This might well encourage builders and lenders to venture on their own initiative into housing available to all Americans on the basis of equal opportunity.

Federal supervision of mortgage lending institutions

14. Among the four Federal agencies that supervise financial institutions, the Federal Home Loan Bank Board and the Board of Governors of the Federal Reserve System acknowledge—at least implicitly—that racial and religious discrimination in mortgage lending does occur among the institutions they supervise. The Comptroller of the Currency and the Federal Deposit Insurance Corporation disclaim any knowledge of such discrimination.

15. All four of these Federal agencies appear to agree that outright discrimination—the denial of mortgage credit on the basis of race or religion alone—is improper.

16. All four of these Federal agencies enjoy prestige among the institutions they supervise, and much of their supervisory authority is exerted effectively through essentially informal means.

17. The Federal Home Loan Bank Board is the only one of these four Federal agencies that has adopted a policy opposing discrimination. It has indicated that its examiners will inquire into possible discrimination on the part of member savings and loan associations, and that where discrimination is found, counter measures will be taken. There appears to be no good reason why the other three agencies should not take similar action.

18. None of these four agencies has attempted to require nondiscriminatory mortgage loan policies on the part of the financial institutions they supervise. There is a great need for these Federal supervisory agencies to exert their full authority to secure equal access to home mortgage credit, without which homeownership is virtually impossible.

19. The Voluntary Home Mortgage Credit Program, a unique Government-private enterprise arrangement, constitutes recognition on the part of the mortgage lending community and the Federal Government that many minority group members suffer discrimination in the mortgage credit market. The program is an attempt to encourage equal treatment through essentially private means. Its successes are a tribute to the good faith of the private lending industry. But its failures are a sober reminder of the fundamental limitations of reliance upon good faith alone.

Urban renewal

20. The Urban Renewal Administration has not effectively insisted upon nondiscrimination in connection with the program it administers. In the urban renewal planning stage there is evidence that minority group members—those most often uprooted and displaced—are sometimes not represented in a meaningful way; that their representatives are relegated to "subcommittees on minority housing problems" and are not permitted to participate fully in planning the future of the communities of which they are a part.

21. In many instances Negroes and other minority group members are denied access to the housing built on urban renewal project areas—housing built with the assistance of substantial governmental subsidies.

22. The most significant failure of urban renewal has been in the matter of relocation. Negroes, facing the presently insurmountable obstacle of a restricted housing market, comprise a majority of urban renewal displacees. Present provisions have been inadequate to secure their relocation in "decent, safe, and sanitary housing." Frequently one blighted area is removed only to be replaced by another.

23. There are indications that the urban renewal program, designed to revitalize our cities, has actually diminished—by reason of failure to provide housing that is accessible to those who are displaced—the total housing inventory available to minority group members.

24. New programs of rehabilitation and conservation with emphasis on the preservation of existing housing rather than clearance and dislocation hold future promise of stability to central city residents, many of whom are Negroes and members of other minority groups.

Federal highway program

25. The federally financed interstate highway program is displacing large numbers of low-income families. Like urban renewal displacees, these families require relocation assistance. But unlike urban renewal displacees, they are not receiving it.

26. This Federal program does not presently require the assurance of decent, safe, and sanitary housing to persons so displaced, nor is there any provision for aid to displaced families in order to facilitate their movement to new homes. FHA section 221 housing available to all persons displaced by governmental action (as well as to low- and moderate-income families) does not meet these needs.

Public housing

27. The success of the public housing program is essential if low-income families, of which minority groups make up a large percentage,

are to have the opportunity to live in decent housing. The program is also an inherent and necessary part of urban planning.

28. The location of public housing sites and the kind of housing provided play important parts in determining whether public housing becomes almost entirely Negro housing, whether it accentuates or decreases the present patterns of racial concentration, and whether it contributes to a rise in housing standards generally.

29. The Public Housing Administration has taken steps to encourage the selection of sites on open land outside the present centers of racial concentration. It has also encouraged the construction of relatively small projects in scattered locations. Its activities in this regard, however, do not extend beyond encouragement and suggestion. The Public Housing Administration has no mandatory requirements on these matters.

30. Imaginative site selection and development of such concepts as "scatteration" and rehabilitation can help to achieve community acceptance of the public housing program and to remove its degrading and isolating aspects. Through these means the public housing program can fulfill its proper function of enabling low-income families of all races and religions to live in dignity as a vital part of community life.

Housing for the elderly

31. The new Federal program of housing for the elderly—one in which several Federal housing agencies play a significant part—shows signs of adopting the permissive policies largely maintained by Federal housing agencies in other programs. There are already indications that discrimination against elderly Negroes is taking place.

32. Neither the Federal Housing Administration nor the Public Housing Administration has announced any policy of equal opportunity guarantees in their housing program for the aged.

33. In connection with the direct loan program, the stated policy of the Housing and Home Finance Agency Administrator opposes discrimination. But in view of the fact that loan agreements presently contain no nondiscrimination provision, there is doubt that the policy is effectively enforced.

State and local action

34. Governmental housing programs are carried out on the local level; it is here that the denials of equal housing opportunity generally occur. Therefore, in addition to the need for Federal action regarding equality of housing opportunity, local awareness and action, both public and private, are necessary.

35. During the past decade there has been a significant trend on the State and local level toward equality of housing opportunity. This trend

has accelerated in the past 2 years. Seventeen States and numerous cities have enacted antidiscrimination housing laws. Several States and cities recently have undertaken to prevent racial or religious discrimination by real estate brokers, whose policies and practices in large measure make or break equal opportunity in housing.

36. Despite the fact that on the whole the legal developments on the State and local level over the past 2 years have been encouraging, there remains a need for more leadership from community spokesmen.

Statistical information

37. There are no generally available statisical data on the availability of home mortgage credit for minorities, or the extent to which they participate in the benefits of governmental housing programs. Such information is a prerequisite to any precise conclusion concerning the dimensions and nature of the problems of housing discrimination.

RECOMMENDATIONS

Overall Federal laws, policies, and programs

Recommendation 1.—That the President issue an Executive order, stating the national objective of equal opportunity in housing and specifically directing all Federal agencies concerned with housing and with home mortgage credit to shape their policies and practices to make the maximum contribution to the achievement of this goal; and that the President use his good offices to stimulate the participation of all elements of the housing and home finance industries in the achievement of the national objective of equal housing opportunity.

Federal assistance to home finance

Recommendation 2.—That the President (*a*) direct FHA and VA, *on a nationwide basis,* to take appropriate steps to assure that builders and developers will not discriminate on the grounds of race, color, or creed in the sale or lease of housing built with the aid of FHA mortgage insurance or VA loan guarantees;* (*b*) direct FHA, VA, and FNMA to take appropriate steps to assure nondiscrimination by lending institutions with

*Such steps may include an agreement in writing containing a nondiscrimination provision.

which these agencies have dealings;* (*c*) direct FHA and VA, in selling or leasing reacquired housing, to take appropriate steps to assure that such Government-owned housing will be available on a nondiscriminatory basis;** (*d*) designate open occupancy housing for FNMA special assistance.

Federal supervision of mortgage lending institutions

Recommendation 3.—That the Federal Government, either by executive or by congressional action, take appropriate measures to require all financial institutions engaged in a mortgage loan business that are supervised by a Federal agency to conduct such business on a nondiscriminatory basis, and to direct all relevant Federal agencies to devise reasonable and effective implementing procedures.

Concurrence in part, dissent in part by Commissioner Rankin

While I subscribe entirely to the proposition that mortgage credit should be available to all Americans without regard to race, color, or creed, I cannot agree that the best method of achieving this result is by means of wholesale Federal intervention. Exacting thought must be devoted to developing limited measures to assure nondiscrimination without infringing the right of financial institutions to pursue their economic policies free from unwarranted Federal control. For example, to the extent that this recommendation will cover such institutions as savings and loan associations which are members of the Federal Home Loan Bank System, I concur in full with the majority. For these institutions have the purpose of making available home mortgage credit throughout the country. If member associations deny mortgage credit on the basis of race, this purpose is contravened.

Dissent to Recommendation 3 by Vice Chairman Storey

While I am fully agreed that it is not in keeping with American principles that a person be denied a housing mortgage loan solely on the basis of his race, religion, or national origin, I am, nevertheless, very much opposed to further intervention by the Federal Government into the affairs

*Such steps may include an FHA requirement for "approval" of lending institutions, that such lending institutions not discriminate in mortgage financing on the basis of race, color, or creed; a VA requirement that in order for a lending institution to be eligible to make VA guaranteed home loans it must agree in writing not to discriminate on the basis of race, color, or creed; and an FNMA requirement, in connection with its secondary market operations, that lending institutions, as a condition of eligibility to sell mortgages to FNMA, certify that they maintain nondiscriminatory policies and practices in mortgage lending.

**Such steps may include an agreement in writing with any broker who acts as an agent of FHA or VA that he will not discriminate.

and policies of private financial institutions. It is important to recognize that under democratic capitalism there must be a realm of institutional autonomy. Private financial institutions, even where their activities are in part already regulated by the Federal Government, are primarily business institutions and not institutions for social reform. The first duty of officials of such organizations in lending money is to make sure an investment is prudent so as to protect the funds entrusted to them. There are a great many factors involved in every mortgage loan. Private institutions will lend their money on a nondiscriminatory basis when it is in their obvious economic self-interest. Even the most conservative banker lends when the risk seems minimal and the return adequate.

Before Federal power is extended, even when that power admittedly exists, it should be determined whether or not such additional centralization is desirable. What constitutes the appropriate sphere of governmental intervention in private institutional financial policies may be a relative matter, but some separation must be kept between political, social, and economic affairs. Every increase in Federal supervision of the economic life of the Nation for the purpose of achieving certain specific social objectives automatically diminishes the function that the free competitive market discharges under democratic capitalism. In the long run, this can lead only to autocracy.

Recommendations, such as this, for increasing Federal control assume a totally powerful National Government with unending authority to intervene in all private affairs among men, and to control and adjust property relationships in accordance with the judgment of Government personnel. It is at this level that a more serious and obvious weakness arises, for political employees are seldom absolutely objective. It is impossible to keep Federal intervention from becoming an institutionalization of special privilege for political pressure groups. This must lead eventually not to greater human freedom but to ever-diminishing freedom.

Therefore, a great deal of caution is needed before succumbing to the politically tempting suggestion of resorting to the Federal Government for increased control. Reliance on the Federal Government for the solution of all problems of discrimination can bring about only a weakening of confidence in the capacity of the institutions of a free economy to serve democratic values. I am firmly of the belief that in the majority of instances a free economy is better able than the Federal Government to work out fairly the problem of discrimination in mortgage loans. This, in turn, will halt the tendency to shrink freedom of private enterprise to smaller dimensions.

The issue here is much more than the technical problem of devising new controls to deal with financing minority housing. It is the issue of freedom versus authority. The success of a democratic free enterprise economy depends as much on what the Federal Government does not do,

or does not have to do, as on what it does. Successful regulation must be limited to issues that cannot be dealt with by voluntary association and, even then, only after the imperative need for more extensive Federal intervention into private affairs has been established. This is a slow process requiring considerable restraint, especially in times of emergency or rapid change. This is the process, however, by which our laws and institutions have developed. That they have fallen short of perfection may be obvious. That they have lagged at times may be apparent. But the results in the long run have justified the slower evolution of the democratic process. Hence, I am opposed to the creation of further Federal controls to supervise private financial institutions as proposed in Recommendation 3.

Urban renewal

Recommendation 4.—That the Federal Government, either by executive or by congressional action, take appropriate measures to require communities as a prerequisite to receiving Federal urban renewal assistance: (*a*) to assure that there is a supply of decent, safe, and sanitary housing for displacees in fact adequate to the needs of the families displaced; and (*b*) to provide sufficient relocation facilities to assure the relocation of such displacees into decent, safe, and sanitary dwellings.

Recommendation 5.—That the President direct the Urban Renewal Administration to require that each contract entered into between local public authorities and redevelopers contain a provision assuring access to reuse housing to all applicants regardless of race, creed, or color.

Federal highway program

Recommendation 6.—That Congress amend the Highway Act of 1956 to require that in the administration of the interstate highway program, States assure decent, safe, and sanitary housing to persons displaced by highway clearance; that in those localities where there are agencies administering relocation programs, such agencies be made responsible for the relocation of persons displaced by highway construction; and that Congress provide also for financial aid to displaced families in order to facilitate their movement to new homes.

Statistical information

Recommendation 7.—That the President direct all Federal agencies concerned with housing and with home mortgage credit to develop procedures for obtaining information on the availability of home mortgage credit to nonwhites and other minority groups, and the extent to which they participate in the benefits of the housing programs administered by these agencies.

Documentation—Book 4

NOTES: HOUSING, Chapter 1

1. *Report of the U.S. Commission on Civil Rights 1959* at 534 (hereinafter cited as *1959 Report*).
2. See Castan, "A Negro Takes Over Federal Housing," *Look,* April 11, 1961, p. 36. See also *1959 Report* 344–46.
3. Mayor Richardson Dilworth of Philadelphia thus described the imbalance of white residence in the suburbs. *1959 Report* 367.
4. See, e.g., *Hearings in Detroit before the U.S. Commission on Civil Rights,* 268–76 (1960) (hereinafter cited as *Detroit Hearings*).
5. *Hearings in Los Angeles and San Francisco Before the U.S. Commission on Civil Rights* 31 (1960) (hereinafter cited as *California Hearings*).
6. *Detroit Hearings* 272–73.
7. *1959 Report* 386.
8. *Shelley* v. *Kraemer,* 334 U.S. 1 (1948); *Hurd* v. *Hodge,* 334 U.S. 24 (1948).
9. Washington Post and Times Herald, Feb. 19, 1961, p. A5.
10. See ch. 6A, at 122, *infra.*
11. *Ibid.*
12. *Detroit Hearings* 477.
13. See, e.g., *Detroit Hearings* 477.
14. *Id.* at 213.
15. See, e.g., *Detroit Hearings* 266.
16. *Id.* at 262.
17. *Report of the Commission on Race and Housing: Where Shall We Live?* 27 (1958).
18. *1959 Report* 380. See also Laurenti, *Property Values and Race* (1960).
19. *A Statement of the National Urban League to John F. Kennedy, President-Elect: The Time Is Now* 11 (1960).
20. 106 *Cong. Rec.* 12037 (daily ed. June 16, 1960).
21. See ch. 6A, at 121, *infra.* See also app. VI, tables 1 and 2.
22. *Shelley* v. *Kraemer, supra,* note 8, at 10.
23. *Buchanan* v. *Warley,* 245 U.S. 60 (1917).
24. *Shelley* v. *Kraemer, supra,* note 8.
25. *Hurd* v. *Hodge,* 334 U.S. 24 (1948).
26. *Bolling* v. *Sharpe,* 347 U.S. 497, 500 (1954).

27. Act of April 9, 1866, ch. 31, sec. 1, 14 Stat. 27, reenacted in sec. 18 of the Act of May 31, 1870, 42 U.S.C. 1982 (1958).
28. 42 U.S.C. sec. 1982 (1958).
29. In *Johnson* v. *Levitt and Sons,* 131 F. Supp. 114 (E.D. Pa. 1955), a Federal District court refused to hold, in the absence of a duty imposed by Congress, that FHA and VA were required to prevent discrimination in the sale of housing project properties financed with the aid of their mortgage insurance and guarantee. In *Ming* v. *Horgan,* No. 97130, Superior Ct., County of Sacramento, Cal. (1958), 3 *Race Rel. L. Rep.* 693, on the other hand, a California superior court held that in view of the degree of involvement of FHA and VA in the planning and inspection of private housing projects and the insuring and guaranteeing of mortgages, there was sufficient governmental action to give a Negro plaintiff a constitutional right not to be discriminated against in the sale of homes by the real estate agents and builders.
30. *Shelley* v. *Kraemer, supra,* note 8, at 10.
31. Housing Act of 1949, sec. 2, 63 Stat. 413, 42 U.S.C. sec. 1441 (1958). [Emphasis added.]
32. President Kennedy's Special Message on Housing and Community Development, 107 *Cong. Rec.* 3408 (daily ed. Mar. 9, 1961).
33. Civil Rights Act of 1957, sec. 104(a)(2)(3), 71 Stat. 635, 42 U.S.C. 1975c(a)(2)(3) (1958).
34. (1) That all cities and States with substantial nonwhite population establish biracial committees on housing; (2) that the President issue an Executive order stating the constitutional objective of equal opportunity in housing, directing all Federal agencies to shape their policies and practices to make the maximum contribution to the achievement of this goal; (3) that the Administrator of the Housing and Home Finance Agency give high priority to the problem of gearing the policies and the operations of his constituent housing agencies to the attainment of equal opportunity in housing; (4) that the Federal Housing Administration (FHA) and the Veterans Administration (VA) strengthen their present agreement with cities and States having antidiscrimination housing laws by requiring that builders using FHA and VA machinery agree in advance, in writing, to abide by those laws; (5) that the Public Housing Administration (PHA) encourage selection of building sites on open land in good areas outside the present centers of racial concentrations; and (6) that the Urban Renewal Administration (URA) assure that spokesmen for minority groups will be among the citizens who work with URA in preparing community programs for urban renewal. *1959 Report* 534–40.
35. The recommendation concerning urban renewal. See ch. 4 at 85, *infra.*

1. Act of July 20, 1892, 27 Stat. 399 [no longer in effect].
2. See H.R. Doc. No. 532, 82d Cong., 2d Sess. 1 (1952).
3. Quoted in 6 Report of the President's Conference on Home Building and Home Ownership 199–200 (1931).
4. Act of March 1, 1918, ch. 19, 40 Stat. 438 [no longer in effect].
5. Act of May 16, 1918, ch. 74, 40 Stat. 550 [no longer in effect].
6. Act of June 4, 1918, ch. 92, 40 Stat. 594 [no longer in effect].
7. This haste is exemplified by the decision, after the Armistice was signed, to abandon all projects not in an advanced construction stage. Chiefly as a result of this decision, a large deficit was incurred by the United States Housing Corporation, which, on its liquidation in 1945, had a final deficit to the Government of nearly $34 million or 44.5 percent of the total investment. See U.S. Housing and Home Finance Agency, *1st Annual Report* II–3, 4 (1947).
8. For example, there were proposals for the establishment of a central mortgage bank with the power of loan and discount, the discount of home mortgages by Federal Reserve Banks, and for the expansion of the Land Bank System to cover urban as well as farm mortgages. See Colean, *The Impact of Government on Real Estate Finance in the United States* 92 (1950).
9. Emergency Relief and Construction Act of 1932, ch. 520, 47 Stat. 709 [no longer in effect].
10. Report of the President's Conference on Home Building and Home Ownership (1931).
11. 6 *id.*
12. *Id.* at 115.
13. Federal Home Loan Bank Act, ch. 522, 47 Stat. 725 (1932), 12 U.S.C. sec. 1421 (1958).
14. Through the years, the Treasury stock was gradually retired, until completely retired in July 1951.
15. Home Owners' Loan Act of 1933, ch. 64, sec. 5(a), 48 Stat. 132, 12 U.S.C. sec. 1464 (1958).
16. National Housing Act, ch. 847, secs. 402(a), 403, 48 Stat. 1256–57 (1934), 12 U.S.C. secs. 1725(a), 1726 (1958).
17. It has been estimated that at the time HOLC was established, foreclosures of homes were taking place at the rate of 1,000 a day. H.R. Doc. No. 532, *supra,* note 2, at 5.
18. 48 Stat. 129 (1933) [no longer in effect].
19. Act of April 27, 1934, 48 Stat. 643 [no longer in effect]. Also under this act, HOLC invested $223 million in purchasing the shares of savings and loan associations which were members of the Federal Home Loan Banks. This sum has been completely repaid.
20. H.R. Doc. No. 532, *supra,* note 2, at 5.
21. *Ibid.*

22. In addition to the creation of HOLC and the Federal Home Loan Bank System, Congress, in 1933, had also created the Federal Deposit Insurance Corporation (48 Stat. 168), designed to insure depositors in State and national banks which became members. The Federal Savings and Loan Insurance Corporation (FSLIC) was similarly constituted to insure accounts in approved associations.
23. 48 Stat. 1246 (1934), 12 U.S.C. sec. 1701 (1958).
24. Private "mortgage guaranty companies had flourished briefly and collapsed spectacularly in the years just past." Colean, *op. cit. supra* note 8, at 97.
25. National Housing Act, ch. 847, sec. 301(a)(1), 48 Stat. 1253 (1934) [no longer in effect]. The background and development of the secondary mortgage market is discussed in detail in Haar, *Federal Credit and Private Housing,* ch. 4 (1960).
26. Act of January 31, 1935, ch. 2, 49 Stat. 3 [no longer in effect].
27. Between 1935 and 1938, Congress enacted such measures as easing the capital requirements and providing tax exemptions for these private associations in an unsuccessful attempt to induce their organization.
28. FNMA was originally called the National Mortgage Association of Washington.
29. See note 9, *supra.*
30. Moreover, the World War I housing measures had been in terms of providing housing for war workers.
31. National Industrial Recovery Act, 48 Stat. 195 (1933) [no longer in effect].
32. National Industrial Recovery Act, ch. 90, sec. 202, 48 Stat. 201 [no longer in effect].
33. H.R. Doc. No. 532, *op. cit. supra,* note 2, at 6.
34. United States Housing Act of 1937, 50 Stat. 888, 42 U.S.C. sec. 1401 (1958). The USHA was succeeded in 1942 by the Federal Public Housing Authority, which was in turn succeeded by the Public Housing Administration (PHA), a constituent agency of the Housing and Home Finance Agency.
35. See Weaver, *The Negro Ghetto,* ch. 4 (1948).
36. Act of April 9, 1866, ch. 31, sec. 1, 14 Stat. 27, reenacted in act of May 31, 1870, ch. 114, sec. 18, 16 Stat. 144.
37. 42 U.S.C. sec. 1982 (1958).
38. 245 U.S. 60 (1917).
39. *Harmon* v. *Tyler,* 273 U.S. 668 (1926); *City of Richmond* v. *Deans,* 281 U.S. 704 (1930).
40. FHA Underwriting Manual, sec. 937 (1938).
41. *Id.,* sec. 980.

42. Abrams, *Forbidden Neighbors* 235 (1955).
43. *Id.* at 236.
44. Weaver, *op. cit. supra* note 35, at 72.
45. Abrams, *op. cit. supra* note 42, at 237.
46. "Neighborhood Rating" (Suggestions drawn up by Division of Research and Statistics of Federal Home Loan Bank Board), *Review of the Society of Residential Appraisers,* Aug. 1940.
47. Abrams, *op. cit. supra* note 42, at 237. Various reasons have been advanced to explain this unique adoption of discrimination policies on the part of the newly created public agencies. One reason was that these new agencies enlisted "experts" from private fields where discrimination was an operative business practice. Perhaps the principal explanation is that the focus of the New Deal housing legislation was primarily on improving economic conditions by concentrating on the Nation's credit machinery, and only secondarily on improving housing conditions. The FHA and the Home Loan Bank Board were, above all, concerned with creating business volume for their agencies. Their concern was with financial success and not with insuring equality in the marketplace. The path of least resistance did not lead to experimentation in interracial harmony.
48. Weaver, *op. cit. supra* note 35, at 158.
49. *Id.* at 73–74.
50. McEntire, *Residence and Race* 317–18 (1960).
51. Weaver, *op. cit. supra* note 35, at 74.
52. 54 Stat. 1125 (1940).
53. Act of March 28, 1941, 55 Stat. 55, 12 U.S.C. sec. 1737 (1958).
54. Exec. Order No. 9070, 7 *Fed. Reg.* 1529 (1942).
55. 58 Stat. 284; 38 U.S.C. sec. 1801 (1958).
56. Exec. Order No. 9686, 11 *Fed. Reg.* 1033 (1946).
57. 60 Stat. 207 [no longer in effect].
58. Reorganization Plan No. 3 of 1947, 61 Stat. 954, 5 U.S.C. sec. 133y–16 note (1958).
59. Act of July 1, 1948, ch. 784, 62 Stat. 1206, 12 U.S.C. sec. 1716 (1958).
60. 62 Stat. 1268, 12 U.S.C. sec. 1716 (1958).
61. During the period from 1948 to 1950, FNMA made widespread use of the "advance commitments" procedure principally in connection with VA mortgages. Under this procedure, the builder and lender secured a commitment from FNMA to purchase mortgages at a specified price, before construction started, thus effectively eliminating any risk to the lender. This FNMA activity helped to make more lower-priced housing available during this period. In

1950, however, Congress repealed this "advance commitment" authority.

62. 95 *Cong. Rec.* 74 (1949).
63. *Ibid.*
64. 63 Stat. 413 (1949), 42 U.S.C. sec. 1441 (1958).
65. *Ibid.* [Emphasis added.]
66. *Ibid.*
67. *Hearings on the Nomination of Robert C. Weaver To Be Housing and Home Finance Agency Administrator Before the Senate Committee on Banking and Currency,* 87th Cong., 1st Sess. 9 (1961).
68. Act of April 20, 1950, ch. 94, tit. IV, sec. 401(a), 64 Stat. 77, 12 U.S.C. sec. 1749(a) (1958).
69. Act of April 20, 1950, ch. 94, tit. III, sec. 301(h), 64 Stat. 75, 38 U.S.C. sec. 1811 (1958).
70. Housing Act of 1954, ch. 649, tit. II, sec. 201, 68 Stat. 612, 12 U.S.C. sec. 1716 (1958).
71. Significantly, recognized spokesmen for minority groups have been unenthusiastic about authorizing special assistance programs for members of minority groups, apparently not wishing to confuse their campaign for equal rights with special governmental assistance on the basis of race. Bills introduced to accomplish this have not been enacted. McEntire, *op. cit. supra* note 50, at 310–11.
72. 70 Stat. 1104 (1956), 42 U.S.C. sec. 1402 (2) (1958).
73. Housing Act of 1954, ch. 649, tit. VI, sec. 603, 68 Stat. 637–38, 12 U.S.C. sec. 1750aa (1958).
74. The VHMCP is more fully discussed in ch. 3 B at 53, *infra.*
75. *A Report of the President's Advisory Committee on Government Housing Policies and Programs: Government Housing Policies and Programs 1 (1953).*
76. *Id.* at 5.
77. *Id.* at 6.
78. *Id.* at 7.
79. *Ibid.* [Emphasis added.]
80. *Id.* at 112.
81. *Id.* at 123.
82. 68 Stat. 590 (1954), 42 U.S.C. sec. 1450 (1958).
83. NHA, Administrator's Order No. 9, Aug. 10, 1942, sec. 12, p. 10.
84. NHA Memorandum, 15–1, issued July 21, 1943.
85. McEntire, *op. cit. supra* note 50, at 318. For a detailed account of the experience of public housing during the war, see Weaver, *op. cit. supra* note 35, ch. X.
86. McEntire, *op. cit. supra* note 50, at 318.
87. See ch. 5 *infra* for a full discussion of public housing.
88. Weaver, *op. cit. supra* note 35, at 143–44.

89. *Id.* at 144.
90. *Id.* at 145.
91. *Id.* at 148.
92. In 1958, the Racial Relations Service was changed to Intergroup Relations Service in order to avoid the connotation of racial separateness.
93. Federal Housing Administration, Underwriting Manual, 1947, sec. 1320(2).
94. 271 U.S. 323 (1926).
95. 334 U.S. 1 (1948).
96. In a companion case involving covenants written in the District of Columbia, the Court reached the same conclusion on the principal basis of the Civil Rights Act of 1866. *Hurd* v. *Hodge,* 334 U.S. 24 (1948).
97. In 1953, the Supreme Court extended the *Shelley* decision in holding that money damages could not be recovered for breach of a racial restrictive covenant. *Barrows* v. *Jackson,* 346 U.S. 249 (1953). But although such covenants are now clearly unenforceable either by way of injunction or money damages, they are still apparently valid. See, for example, *Rice* v. *Sioux City Memorial Park Cemetery,* 60 N.W. 2d 110 (1953), cert. granted, 347 U.S. 942, aff'd per curiam by evenly divided Court 348 U.S. 880 (1954), vacated and cert. denied as improvidently granted, 349 U.S. 70 (1955).
98. The policy of the VA has been similar to that of FHA, with perhaps greater emphasis on a neutral position. See ch. 3 *infra,* for the discussion of VA policies.
99. FHA *Underwriting Manual,* sec. 303 (Dec. 1949).
100. See ch. 3C at 67, *infra,* for a discussion of the effectiveness of this policy.
101. See McEntire, *op. cit. supra* note 50, at 305.
102. *Ibid.*
103. See ch. 3C at 63, *infra,* for a discussion of FHA's relation to State antidiscrimination laws.
104. President Kennedy's Special Message on Housing and Community Development, 107 *Cong. Rec.* 3408 (daily ed. Mar. 9, 1961).
105. *Ibid.*
106. *Ibid.*

1. The President's Conference reported in 1931 that even for building and loan associations (which offered the most liberal terms available), the usual loan-to-value ratio was only 57 percent. 2 *Report of the President's Conference on Home Building and Home Ownership* 67 (1931). Some building and loan associations made loans for periods of 3 to 5 years with only partial amortization, while many insurance companies made their loans for this same short period, sometimes without any amortization at all. 2 *Id.* 20.

   For commercial banks, the typical mortgage loan was unamortized, for a term of 3 years, and with a loan-to-value ratio of 50 percent. Behrens, *Commercial Bank Activities in Urban Mortgage Financing* 52–53 (1952). National banks had been permitted to make loans on urban property for the first time in 1916. Act of Sept. 7, 1916, sec. 24, 39 Stat. 754. The maximum permissible term had been set at 1 year and the maximum amount of the loan could not exceed 50 percent of the actual value of the real estate. In addition, a low limit had been placed on the aggregate amount of real estate loans a national bank could make. In 1927, the maximum permissible term was increased to 5 years and the aggregate amount was also raised. Act of Feb. 25, 1927, sec. 16, 44 Stat. 1232.
2. Figures on nonfarm residences occupied by nonwhites are unavailable for 1920.
3. Figures cited in Conway, *Mortgage Lending* 6 (1960). Figures unavailable for nonwhites.
4. U.S. Bureau of the Census, *Mortgages on Homes* 152 (1923).
5. Act of Sept. 9, 1959, sec. 4, 73 Stat. 489, 12 U.S.C. sec. 371 (Supp. I, 1959).
6. These figures are estimated.
7. Preliminary figures. See U.S. Housing and Home Finance Agency, *Housing Statistics* 57 (1961).
8. Many of the financial institutions, such as commercial banks, were already receiving this Federal sponsorship and support before the time of governmental involvement in housing. Others such as savings and loan associations, became beneficiaries of such Federal support at this very time and for the purpose of encouraging home finance.
9. *Detroit Hearings* 261.
10. Ohio Advisory Committee Housing Conference 19 (1961) (hereinafter cited as *Ohio Conference*).
11. These include mutual savings banks, which are especially important in the area of home financing.

12. *Detroit Hearings* 262.
13. *Ohio Conference* 1.
14. *Id.* at 18.
15. *Ibid.* (statement of Columbus Urban League).
16. *California Hearings* 251.
17. *Id.* at 638.
18. *Ibid.*
19. *Hearings on the Housing Act of 1957 Before the Subcommittee on Housing of the House Banking and Currency Committee,* 85th Cong., 1st sess. 566 (1957).
20. *Detroit Hearings* 257.
21. *California Hearings* 252.
22. *Ibid.*
23. *Conway, op. cit. supra,* note 3, at 15.
24. It is significant that these dividends have been confused in the mind of the public with "interest on deposits," for the associations themselves are commonly confused with banks. Moreover, despite the lack of the legally necessary debtor-creditor relationship between the associations and their share owners, the analogy between share accounts in associations and deposits in banks has received considerable judicial blessing. See, for example, *Michigan National Bank* v. *Michigan,* 365 U.S. 467 (1961).
25. These are residential apartment buildings which differ from the cooperative type in that each resident obtains a fee simple interest in his own apartment, rather than a share in the entire building. This type of arrangement is a rather recent development, in keeping with the prevalent emphasis on homeownership.
26. For a discussion of the origins of the FHLBB, see ch. 2 at 12 *supra.*
27. Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation.
28. Home Owners' Loan Act of 1933, sec. 5(f), 48 Stat. 133, 12 U.S.C. sec. 1464(f) (1958).
29. Federal Home Loan Bank Act, sec. 4(a), 47 Stat. 726 (1932), 12 U.S.C. sec. 1424(a) (1958).
30. As of Dec. 31, 1960. Data obtained from the FHLBB.
31. Data obtained from the FHLBB.
32. Federal Home Loan Bank Act, sec. 10(c), 47 Stat. 732 (1932), 12 U.S.C. sec. 1429(c) (1958).
33. Federal Home Loan Bank Act, sec. 9, 47 Stat. 731 (1932), 12 U.S.C. sec. 1429 (1958).
34. Federal Home Loan Bank Act, sec. 22(b), 47 Stat. 739 (1932), 12 U.S.C. Sec. 1442(b) (1958).

35. Federal Home Loan Bank Act, sec. 17, 47 Stat. 737 (1932), 12 U.S.C. sec. 1437(a) (1958). [Emphasis added.]
36. Federal Home Loan Bank Act, sec. 4(a), 47 State 726 (1932). 12 U.S.C. sec. 1424(a) (1958). [Emphasis added.]
37. The events leading up to the creation of the System underscore this purpose. See ch. 2, at 12 *supra.*
38. Federal Home Loan Bank Act, sec. 4(a), 47 Stat. 726 (1932), 12 U.S.C. sec. 1424(a) (1958).
39. *Fahey* v. *O'Melveny & Myers,* 200 F. 2d 420, 446 (9th Cir. 1952).
40. From 1947 to 1954, it was a constituent agency with HHFA.
41. Home Owners' Loan Act of 1933, sec. 5(a), 48 Stat. 132, 12 U.S.C. sec. 1464(a) (1958).
42. *Ibid.*
43. 12 CFR sec. 543.2(d).
44. 18 U.S.C. sec. 709 (1958).
45. Home Owners' Loan Act of 1933, sec. 5(h), 48 Stat. 134, 12 U.S.C. sec. 1464(h) (1958).
46. Act of July 16, 1952, 66 Stat. 727, 12 U.S.C. sec. 1724(b) (1958).
47. Data obtained from the FHLBB.
48. Banking Act of 1933, sec. 8, 48 Stat. 168, 12 U.S.C. sec. 1811 (1958).
49. 48 Stat. 1255 (1934), 12 U.S.C. sec. 1725 (1958).
50. Data obtained from the FHLBB.
51. National Housing Act of 1934, sec. 403(c), 48 Stat. 1258, 12 U.S.C. sec. 1726(c) (1958).
52. 12 CFR sec. 563.18.
53. *Id.* at sec. 563.17.
54. *Id.* at sec. 653.27.
55. National Housing Act, sec. 403(b), 48 Stat. 1258 (1934), 12 U.S.C. sec. 1726(b) (1958).
56. *Ibid.*
57. Except Federal savings and loan associations. 12 CFR sec. 563.1.
58. Housing Act of 1954, sec. 501(3), 68 Stat. 633, 12 U.S.C. sec. 1730 (1958).
59. Letter From Joseph P. McMurray, Chairman, Federal Home Loan Bank Board, to the Commission, June 8, 1961 (hereinafter cited as *FHLBB Letter;* enclosed staff memorandum hereinafter cited as *FHLBB Memorandum.*
60. *FHLBB Letter.*
61. *Ibid.*
62. Letter From Chairman McMurray to the Commission, June 23, 1961.

63. *FHLBB Memorandum.*
64. *Ibid.*
65. *Ibid.*
66. *Ibid.*
67. *Hearings Before the Home Loan Bank Board In the Matter of Application of Safety Savings and Loan Association for Insurance by the Federal Savings and Loan Insurance Corporation,* Aug. 23, 1955, pp. 69–70.
68. *Hearings in Chicago Before the U.S. Commission on Civil Rights* 740 (1959) (hereinafter cited as *Chicago Hearings*).
69. *Chicago Hearings* 750. As of Dec. 31, 1960, there were 28 Negro-operated savings and loan associations which were members of the Federal Home Loan Bank System and whose accounts were insured by FSLIC. The assets of these associations are shown in thousands of dollars. Associations having Federal charters are identified by an asterisk; the others are operating under State charters.

Citizens FS&LA, Birmingham, Ala.*	$4,165
Tuskegee FS&LA, Tuskegee, Ala.*	1,757
Broadway FS&LA, Los Angeles, Calif.*	32,097
Liberty S&LA, Los Angeles, Calif	16,310
Safety S&LA, Los Angeles, Calif	10,143
Watts S&LA, Los Angeles, Calif	14,680
Beneficial S&LA, Oakland, Calif	3,383
Trans-Bay FS&LA, San Francisco, Calif.*	20,767
Equity S&LA, Denver, Colo	1,038
Mutual FS&LA, Atlanta, Ga.*	10,036
Illinois FS&LA, Chicago, Ill.*	11,428
Service FS&LA, Chicago, Ill	5,100
First FS&LA, Scotlandville, La.*	1,433
Home FS&LA, Detroit, Mich.*	3,605
New Age FS&LA, Kansas City, Mo.*	7,703
Twin City FS&LA, Kansas City, Mo.*	2,516
Allied FS&LA, Jamaica, N.Y.*	1,370
Carver FS&LA, New York, N.Y.*	12,727
Mutual S&LA, Durham, N.C	4,443
American FS&LA, Greensboro, N.C.*	995
Industrial FS&LA, Cincinnati, Ohio*	796
Quincy S&L Co., Cleveland, Ohio	5,152
Berean S&LA, Philadelphia, Pa	3,677
Mutual FS&LA, Memphis, Tenn.*	1,527
Standard S&LA, Houston, Tex	1,213
Peoples B&LA, Hampton, Va	2,715
Berkeley Citizens Mutual B&LA, Norfolk, Va	1,557
Columbia S&LA, Milwaukee, Wis	2,767

70. *California Hearings* 578.
71. *FHLBB Memorandum.* [Emphasis added.]
72. *Ibid.*

73. *Ibid.*
74. *Ibid.*
75. *Ibid.* The Board's staff believes that there is a "substantial legal question concerning the Board's authority in this regard over insured associations operating under State charters." This matter is of only academic importance in that all insured associations are also members of the Federal Home Loan Bank System. The Board's legal authority would therefore extend to insured associations in their capacity as member associations.
76. *Ibid.*
77. *Ibid.*
78. *Ibid.*
79. Exec. Order No. 8587, 5 Fed. Reg. 4445 (1940); Classification Act of 1949, 63 Stat. 972, 5 U.S.C. sec. 1074 (1958).
80. Data obtained from the Office of the Comptroller of the Currency.
81. The figures concerning national banks include nonnational banks in the District of Columbia. These banks are also supervised by the Comptroller of the Currency.
82. Data unavailable prior to 1939.
83. As noted earlier, the statutory authorization for national banks to make real estate loans has become increasingly liberal over recent years, so that their future importance in the area of home finance may well be even greater than it is today.
84. Act of Feb. 25, 1863, sec. 5, 12 Stat. 666.
85. 18 U.S.C. sec. 709 (1958).
86. Federal Deposit Insurance Act, sec. 4b, 64 Stat. 875 (1950), 12 U.S.C. sec. 1814(b) (1958).
87. Federal Reserve Act, sec. 2, 38 Stat. 251 (1913), 12 U.S.C. sec. 222 (1958).
88. Act of Mar. 4, 1923, 42 Stat. 1499; as amended by act of Mar. 25, 1926, 44 Stat. 223, 12 U.S.C. sec. 548 (1958).
89. *Davis* v. *Elmira Savings Bank,* 161 U.S. 275, 283 (1896). See also *Farmers' & Merchants' National Bank* v. *Dearing,* 91 U.S. 29, 33–34 (1875); *Franklin National Bank of Franklin Square* v. *People of the State of New York,* 347 U.S. 372 (1954).
90. One of the primary original functions of national banks was to issue currency; hence, the supervisory Federal official was named "Comptroller of the Currency." National banks no longer perform this function, but the name of the supervisory Federal official has remained unchanged.
91. Banking Act of 1933, sec. 30, 48 Stat. 193, 12 U.S.C. sec. 77 (1958).
92. Act of Mar. 3, 1911, sec. 291, 36 Stat. 1167, 12 U.S.C. sec. 93 (1958); Banking Act of 1933, sec. 28, 48 Stat. 192, 12 U.S.C.

sec. 481 (1958); Act of Dec. 23, 1913, sec. 2, 38 Stat. 251; as amended by act of Aug. 23, 1935, sec. 203(a), 49 Stat. 704, 12 U.S.C. sec. 501a (1958).

93. Davis, *Administrative Law Treatise,* sec. 4.04 (1958).
94. 12 U.S.C. sec. 27 (1958); 12 CFR sec. 4.1.
95. 12 U.S.C. sec. 36c (1958); 12 CFR sec. 4.5.
96. Act of Apr. 30, 1956, 70 Stat. 124, 12 U.S.C. sec. 481 (1958).
97. Letter From Ray M. Gidney, Comptroller of the Currency, to the Commission, Apr. 27, 1961 (hereinafter cited as *Comptroller's Letter*). [Emphasis added.]
98. *Ibid.* [Emphasis added.]
99. *Ibid.*
100. *Ibid.*
101. *Ibid.*
102. *Ibid.*
103. *Ibid.*
104. *Ibid.*
105. *Ibid.*
106. *Ibid.*
107. See, e.g., *Franklin National Bank of Franklin Square* v. *People of the State of New York,* 347 U.S. 373 (1954).
108. Federal Reserve Act, 38 Stat. 251 (1913).
109. Act of June 21, 1917, sec. 3, 40 Stat. 232; 12 U.S.C. sec. 321 (1958).
110. Board of Governors of the Federal Reserve System, *The Federal Reserve System: Purposes and Functions* 66 (1961).
111. 12 CFR sec. 201–224.
112. The total of nonfarm mortgages held by all commercial banks as of Dec. 31, 1960, was $20.4 billion, according to information obtained from the Comptroller of the Currency.
113. Banking Act of 1933, sec. 30, 48 Stat. 193, 12 U.S.C. sec. 77 (1958).
114. 12 U.S.C. sec. 93 (1958).
115. Davis, *op. cit. supra,* note 93, at sec. 4.04.
116. Letter From William McChesney Martin Jr., Chairman, Board of Governors of the Federal Reserve System, to the Commission, May 23, 1961 (hereinafter cited as *Board Letter*).
117. *Ibid.*
118. *Ibid.*
119. *Ibid.*
120. *Ibid.*
121. *Ibid.*
122. *Ibid.*
123. *Ibid.*

124. *Ibid.*
125. *Ibid.*
126. *Ibid.*
127. See Golembe, "The Deposit Insurance Legislation of 1933: An Examination of Its Antecedents and Its Purposes," 75 *Pol. Sci. Q.* 181 (1960).
128. Between 1886 and 1933, 150 separate proposals for deposit insurance or guaranty were made in Congress. *Ibid.*
129. These figures include insured mutual savings banks as well as insured commercial banks.
130. 1947 is the earliest year for which this figure is available.
131. Data obtained from FDIC.
132. Federal Deposit Insurance Act, sec. 4(b), 64 Stat. 875 (1950), 12 U.S.C. sec. 1814(b) (1958).
133. FDIC points out that the Federal Government does not insure bank deposits. FDIC is an independent agency of the Federal Government and no taxes are levied for its support. "Its funds are derived from assessments paid by insured banks and from interest on its investments. The funds originally provided for its creation have been repaid to the Federal Government with interest." Letter From Earl Cocke Sr., Chairman, FDIC, to the Commission, May 8, 1961 (hereinafter cited as *FDIC Letter*).
134. Federal Deposit Insurance Act, sec. 6, 64 Stat. 876 (1950), 12 U.S.C. sec. 1816 (1958). [Emphasis added.]
135. Federal Deposit Insurance Act, sec. 8(a), 64 Stat. 878 (1950), 12 U.S.C. sec. 1818(a) (1958).
136. Such examinations are largely confined to State nonmember banks.
137. Davis, *op. cit., supra* note 93, at sec. 4.04.
138. *FDIC Letter.*
139. *Ibid.*
140. *Ibid.* [Emphasis added.]
141. *Ibid.*
142. *Ibid.*
143. *Ibid.*
144. *Ibid.* [Emphasis added.]
145. *Ibid.*
146. *Board Letter.*
147. *FDIC Letter.*
148. Federal Deposit Insurance Act, sec. 6, 64 Stat. 876 (1950), 12 U.S.C. sec. 1816 (1958).
149. *FDIC Letter.*
150. *Ibid.*
151. *Ohio Conference* (Statement of Charles J. Francis).
152. *Ibid.*

153. The FHLBB and the Board of Governors of the Federal Reserve System.
154. Chairman Martin of the Federal Reserve, for example, contends that "to attempt to use these processes [examination and supervision] for collateral purposes, however worthy, would change them not only radically, but detrimentally." *Board Letter.* But Chairman McMurray of the FHLBB does not seem to share this view, at least with respect to using the process of examination for purposes of implementing FHLBB's new policy opposing discrimination.
155. See pp. 66, 72, and 76, *infra.*
156. See, *e.g.,* Beehler, "Colored Occupancy Raises Values," 11 *The Review of the Society of Residential Appraisers* No. 9 at 3–4 (1945); Stern, "The End of the Restrictive Covenant," 26 *The Appraisal Journal* 434 (1948); Morgan, "Values in Transition Areas: Some New Concepts," 18 *The Review of the Society of Residential Appraisers* No. 3 at 5–9 (1952).
157. Laurenti, *Property Values and Race* (1960).
158. *California Hearings* 517.
159. *Id.* at 517–18.
160. *Id.* at 518.
161. *1959 Report* 380.
162. *California Hearings* 517.
163. 100 *Cong. Rec.* 738 (1954).
164. *Hearings on S. 2889, S. 2938, and S. 2949 Before the Senate Committee on Banking and Currency,* 83d Cong., 2d sess., 289, 373, 893 (1954); *Hearings on H.R. 7839 Before the House Committee on Banking and Currency,* 83d Cong., 2d sess., 294, 302–303, 581–582, 666, 746 (1954) (hereinafter cited as *1954 Senate Hearings* and *1954 House Hearings*).
165. Haar, *Federal Credit and Private Housing* 380 (1960).
166. *1954 Senate Hearings* 604.
167. *Id.* at 601. [Emphasis added.]
168. 68 Stat. 637 (1954), 12 U.S.C. sec. 1750cc (1958).
169. Voluntary Home Mortgage Credit Program, *Operating Policy Statement No. 1* (1954).
170. White House Release, Aug. 2, 1954.
171. The budget for the fiscal year 1960 was $300,000.
172. Letter From Robert C. Weaver, Housing and Home Finance Agency Administrator, to the Commission, May 26, 1961 (hereinafter cited as *VHMCP Letter*).
173. VHMCP, *Operating Policy Statement No. 4* (1954).
174. *VHMCP Letter.*
175. *Ibid.*

176. *Ohio Conference* (Statement of Charles J. Francis).
177. Conference on Housing Before the Arkansas State Advisory Committee 133 (1961) (hereinafter cited as Arkansas Conference).
178. *Id.* at 140.
179. Data obtained from VHMCP.
180. In 1960, 85 percent of the minority loans placed through the program were placed with life insurance companies.
181. *VHMCP Letter.*
182. An FHA program to help relocate people displaced by governmental action. See ch. 4, *infra.*
183. *VHMCP Letter.*
184. *Arkansas Conference,* 138.
185. *VHMCP Letter.*
186. *Ohio Conference* 2.
187. *Ohio Conference* (Statement of Charles J. Francis).
188. *Ibid.*
189. *1959 Report* 493.
190. *Washington Hearings* 170 (1959).
191. *VHMCP Letter.*
192. *Ibid.*
193. *California Hearings* 150.
194. *VHMCP Letter.*
195. *Ibid.* [Emphasis added.]
196. *Ibid.*
197. *Ibid.*
198. FNMA, in its secondary market function, does not become involved, as a matter of chronology, until after the loan has been made and the mortgage has been insured or guaranteed.
199. *E.g.,* VA-guaranteed loans are available to only one class of people—veterans—while FHA-insured loans are available to all. In addition FHA issues debentures to the holder of the mortgage in the event of default and foreclosure, while VA satisfies its guarantee by cash payment.
200. *Johnson* v. *Levitt & Sons,* 131 F. Supp. 114, 116 (E. D. Pa. 1955).
201. *Ming* v. *Horgan,* No. 97130, California Superior Ct., Sacramento County (1958), 3 *Race Rel. L. Rep.* 693, 697.
202. *Id.* at 695.
203. See ch. 6A at 126, *infra.*
204. *Johnson* v. *Levitt & Sons,* note 200, *supra.*
205. 131 F. Supp. at 116.
206. *Ming* v. *Horgan,* note 201, *supra.*
207. 3 *Race Rel. L. Rep.* at 697.
208. 48 Stat. 246 (1934). 12 U.S.C. sec. 1702 (1958).
209. Data obtained from FHA.

210. Ch. 2 at 16, 25, *supra.*
211. *California Hearings* 258.
212. *Id.* at 250.
213. *Washington Hearings* 15.
214. Letter From Neal J. Hardy, Commissioner, Federal Housing Administration, to the Commission, June 9, 1961 (hereinafter cited as *FHA Letter*):

Name	*Type*	*Location*
.....	Sec. 220.....	New Haven, Conn.
.....	Sec. 213.....	Stamford, Conn.
.....	Sec. 221.....	Hartford, Conn.
Willoughby Walk.....	Sec. 220.....	Brooklyn, N.Y.
Southridge.....	Sec. 213.....	Queens, N.Y.
Pelham Park Apts.....	Sec. 207.....	New Rochelle, N.Y.
Drake House.....	Sec. 207.....	Do.
Drake Manor.....	Sec. 207.....	Do.
Harbor House.....	Sec. 207.....	Do.
Central Park Gardens..	Sec. 207.....	Yonkers, N.Y.
5th Avenue Coop.....	Sec. 213.....	New York, N.Y.
Park West Village.....	Sec. 220.....	Manhattan, N.Y.
.....	Sec. 203.....	Lackawanna, N.Y.
.....	Sec. 203.....	Tonawanda, N.Y.
.....	Sec. 207.....	Rome, N.Y.
.....	Sec. 203.....	Levittown, N.J.
.....	Sec. 203.....	Boulder, Colo.

215. *FHA Letter.*
216. *Detroit Hearing* 280.
217. *Id.* at 280–81.
218. *Ohio Conference* 3.
219. *FHA Letter.*
220. Hearings in New York City Before the U.S. Commission on Civil Rights 349 (1959) (hereinafter cited as *New York Hearings*).
221. *California Hearings* 561–62.
222. Commission field notes. Memorandum dated February 7, 1961.
223. *FHA Letter.*
224. *Washington Hearings* 36.
225. *FHA Letter.*
226. *1959 Report* 464. See also ch. 2 at 25, *supra.*
227. *Shelley* v. *Kraemer,* 334 U.S. 1 (1948), and *Hurd* v. *Hodge,* 334 U.S. 24 (1948).
228. FHA policy, in this regard, is described in a letter from former Commissioner Zimmerman to Senator Joseph S. Clark (Pa.), July 9, 1959. The letter states, in part, as follows:

"Let me begin by explaining our basic policy in matters of this sort. For some years now, it has been the FHA's policy to sup-

port the principle of nondiscrimination in housing in States, like New Jersey, which have made nondiscrimination in housing part of their public policy.

"Our approach is based on the simple and, we believe, understandable position that the FHA has a right to expect and require that the users of its program be responsible and law abiding people. As such, therefore, we expect them to comply with the the State's antidiscrimination law, as well as all other State and local laws which affect their operations.

"Our support to the State takes on a real and practical form. We actively cooperate with the appropriate enforcement of the State antidiscrimination law. We take steps to explain our policy to local housing industry leaders and groups. Finally, we are prepared to withhold our assistance to any builder if, after our own review, we find that the State agency has made a valid determination that he is violating the State law, and despite this, he continues to steadfastly refuse to comply. We think that this procedure constitutes a very meaningful support to the State's policy and, because of its great weight, we also think that it is an action which must be taken with great care and consideration."

229. *1959 Report* 466.
230. *FHA Letter.*
231. *Levitt and Sons, Inc.,* v. *Division Against Discrimination,* 363 U.S. 418 (1960).
232. *1959 Report* 538.
233. *FHA Letter.*
234. *Ibid.*
235. *Ibid.*
236. *Ibid.*
237. *1959 Report* 538.
238. *FHA Letter.* See also pertinent paragraphs from the FHA Underwriting Manual. Par. 70203.2, for example, states in part "[R]isk is never attributed soley to the fact that there is a mixture of user groups due to differences in race, color, creed, or nationality." Par. 70242 states in part:

"Underwriting considerations shall recognize the right to equality of opportunity to receive the benefits of the mortgage insurance system in obtaining adequate housing accommodations irrespective of race, color, creed, or national origin. Underwriting considerations and conclusions are never based on discriminatory attitudes or prejudice."

239. *FHA Letter.*
240. *1959 Report* 469.

241. *Ibid.*
242. *FHA Letter.*
243. *Ibid.*
244. *Ibid.*
245. *Ibid.*
246. *Ibid.*
247. *Ibid.*
248. *Ibid.*
249. See Underwriting Manual, par. 70242.
250. *FHA Letter.*
251. Lenders within four categories are eligible for "approval" by FHA. These four categories of institutions are as follows:

Federal, State, or municipal agencies: Any Federal, State, or municipal governmental agency that is or may hereafter be empowered to hold insured loans is approved as a mortgagee by virtue of the wording of FHA Administrative Rules.

Nonprofit or charitable organizations: Any such organization which presents evidence (*a*) that it is responsible, (*b*) has permanent funds of not less than $100,000, and (*c*) has experience in the field of investment, may be approved upon application.

Supervised institutions: Any institution under the supervision of a governmental agency which is required by law to make periodic examinations of the books and accounts of the institution and which institution can submit satisfactory evidence that it has a net worth of not less than $25,000 may be approved upon request.

Nonsupervised mortgagee: Any corporation whose principal business is lending on or investing in mortgages, funds which are under its own control, and which has a net worth of not less than $100,000 in sound acceptable assets and which has adequate credit facilities and experience in mortgage origination and servicing may be approved upon application. *FHA Letter.*

252. *Ibid.*
253. *Ibid.* In 1960, mortgage companies were responsible for the financing of 57.6 percent of all FHA-insured home mortgages. With respect to the holdings of such mortgages, however, insurance companies were the leading institutions as of the end of 1960, holding almost 33 percent of all FHA-insured home mortgages. Data obtained from FHA.
254. Data obtained from FHA.
255. FHA's statement of policy reads as follows:

Policy—avoiding discrimination—sale and rental of acquired properties.—It is the established policy of the Administration to

deal with the public without distinction as to race, creed, or color, in the rental and sale of properties acquired by FHA.

It is the responsibility of the Director [FHA insuring office] to make certain that all concerned with the handling of acquired properties understand this policy clearly and provide for conducting the sale and rental of acquired properties accordingly. It is essential that justified criticism or any appearance of lack of compliance with this policy by FHA staff and brokers be avoided.

To this end the Field Office Director shall make available all facilities of his office and staff for the direct reception, consideration, and processing of offers without distinction as to race, creed, or color whenever, in the opinion of the Director, such facilities are required to assure compliance with this established policy of nondiscrimination, even though such direct handling may necessitate payment of a commission under an outstanding contract or agreement, or may occasion consideration of the desirability of terminating an existing broker agreement.

Particular care shall be exercised to assure that information concerning acquired properties is continuously available to the general public, various associations, and regulatory agencies, the Director shall provide for the establishment and maintenance on a current day-to-day basis of a Public Information Record consisting of a card index inventory providing essential data as to such properties.

Quoted in *FHA Letter.*

256. The letter reads as follows:

FEDERAL HOUSING ADMINISTRATION,
WASHINGTON, D.C., *November 30, 1959.*

Property Management Letter No. 48

To: Directors of all field offices.

Subject: Policy as to avoiding discrimination sale and rental of acquired properties.

The long-established policy of this Administration is to deal with the public without distinction as to race, creed, or color in the rental and sale of properties acquired by FHA.

It is the purpose of this memorandum to make certain that all concerned with the handling of acquired properties understand this policy clearly and provide for conducting the sale and rental of such properties accordingly. It is essential that justified criticism or any appearance of lack of compliance with the established policy by FHA staff and brokers be avoided.

To this end the field office director shall make available all facilities of his office and staff for the direct reception, consideration, and processing of offers without distinction as to race, creed, or color whenever, in the opinion of the Director, such facilities are required to assure compliance with this established policy of nondiscrimination, even though such direct handling may necessitate payment of a commission under an outstanding contract or agreement, or may occasion consideration of the desirability of terminating an existing broker arrangement. In all instances, the Warning Sign, FHA Form No. 274, shall identify the FHA field Office by stamped or typed addition as follows: Federal Housing Administration (address, city, State), and extreme care shall be exercised to make certain that the Warning Sign is in place on all vacant properties. Field office directors shall immediately instruct *all* staff members, and shall immediately inform all brokers handling acquired properties whether under contract (Broker contract or broker agreement) or under a general or open listing in accordance with the foregoing by letter.

Very truly yours,

(S) C. B. SWEET, *Deputy Commissioner.*

257. Commission field notes. Memorandum dated April 5, 1961.
258. *Ibid.*
259. Commission field notes. Memorandum dated January 19, 1961.
260. Servicemen's Readjustment Act of 1944, 58 Stat. 284.
261. Housing Act of 1950, sec. 301, 64 Stat. 74.
262. Letter From P. N. Brownstein, Chief Benefits Director, to the Commission, May 18, 1961 (hereinafter cited as *VA Letter*).
263. U.S. Department of Commerce, *National Housing Inventory* Vol. ii, at 22 (1956).
264. Information supplied by VA.
265. *1959 Report* 497.
266. *VA Letter.*
267. *Ibid.*
268. This requirement has been waived on three occasions, each of which involved hardship. See *Washington Hearings* 30.
269. The instructions to the New York regional office of VA, for example, are as follows:

a. When an allegation of discrimination by a builder has been sustained at a public hearing by the State Commission against Discrimination *and* a cease and desist order issued to the builder, the Commission will inform the regional office of the facts of the case. The notification by SCAD will be furnished to the Regional office which issued the "Master Certificate of Reasonable Value" on the units constructed by the builder.

b. Upon receipt of such notification from SCAD, the regional office will review the facts developed by the Commission. Care must be exercised to ascertain that an eligible veteran seeking to finance a transaction with a VA-guaranteed or direct loan was the subject of the discrimination which was the basis of the issuance of the cease and desist order to the builder. If the regional office finds (based on the facts developed by SCAD and such facts as the regional office may develop from its own inquiry) that an eligible veteran was involved in the discrimination which caused SCAD to act against the builder, the regional office will notify the builder by letter that the VA will refuse future appraisal requests submitted by the builder unless corrective action is taken immediately. If the builder fails to take corrective action promptly, the regional office will issue the builder a letter notifying it that future requests for appraisals will not be accepted on any units proposed to be constructed by the builder. The notification to the builder will state that the basis of the regional office action is the facts developed in the public hearing by SCAD and its finding that the builder has violated the Metcalf-Baker law which prohibits discrimination in the sale of Government-assisted housing. The letter will also state that the discrimination which the builder has engaged in is considered to be an unfair or prejudicial marketing practice or method under the provisions of sec. 504(c) of the Servicemen's Readjustment Act of 1944, as amended. The letter will conclude by advising the builder of his right to a hearing under VA Regulation 4361 by filing a request therefor with the Administrator within 10 days after receipt of the notice of the refusal to appraise. Officials of the New York State Commission Against Discrimination will extend full cooperation to regional offices in the event a VA hearing on an appraisal refusal becomes necessary.

c. When the discrimination which was the basis of the action by SCAD has been discontinued in accordance with arrangements between SCAD and the builder, SCAD will notify the VA regional office of the facts of the case. The regional office will decide whether to terminate or continue its refusal to appraise. The decision will be on the basis of the facts available to the regional office, including the detriment or loss suffered by the veteran and the action which has been taken by the builder to remedy or correct this aspect of the matter.

Exhibit E, *VA Letter.*

270. *1959 Report* 498.

271. *VA Letter.*

272. *1959 Report* 538.

273. *VA Letter.*
274. *Ibid.*
275. *Ibid.*
276. *1959 Report* 499.
277. 38 U.S.C. sec. 1804(b) (1958).
278. *1959 Report* 499.
279. *VA Letter.*
280. *Ibid.*
281. *Ibid.*
282. A VA directive to its regional offices, dated Mar. 14, 1955, states in part: "Any appraisal report made for GI home, farm or business loan or direct loan purposes which contains data or comments regarding the race, color, or creed of the veteran-applicant will not be acceptable to VA and will be returned to the appraiser involved for the elimination of such comments and data."
Exhibit I, *VA Letter.*
283. *VA Letter.*
284. *Ibid.*
285. *Ibid.*
286. Mortgage and real estate companies were responsible for 54.2 percent of all VA home loans made during 1960. With respect to the holdings of such loans, mutual savings banks were the leading institutions (30.6 percent), followed by savings and loan associations (24.3 percent) and life insurance companies (23.3 percent). Exhibits C and D, *VA Letter.*
287. *VA Letter.*
288. *Ibid.*
289. *Ibid.*
290. 38 U.S.C. sec. 1804(d) (1958).
291. *VA Letter.*
292. SALE OF VA PROPERTIES

1. It is the policy of VA to sell VA-acquired properties at the best available prices. While cash offers are preferred, the VA will sell on terms to acceptable credit risks. In determining credit risks, VA is concerned only with the prospective purchaser's ability to pay and his reputation for meeting his obligations in a satisfactory manner. His race, creed, or color is immaterial to this determination. Sales for all cash obviously do not involve credit.

2. It has at all times been the policy of VA not to discriminate against any eligible purchaser of a VA-acquired property on the grounds of race, creed, or color. This policy is equally applicable to prospective tenants of VA properties and also to individuals

desiring to do business with the VA as repair contractor, sales broker, management broker, fee attorney, or in any other contractual capacity.

3. It will be observed that no reference to race is contained in the VA Manual, M4A–8, part V, or in the various forms or releases dealing with property management or any other loan guaranty matters. This is in keeping with the overall recognition by the VA that its benefits and facilities were created to deal with veterans' matters generally and to administer its programs solely on the basis of eligibility factors applied equally to all veterans.

4. It is expected that all persons concerned with the sale, rental, and management of VA-owned properties, both salaried personnel, real estate brokers, and other fee people, will abide by VA policy. The material contained in this bulletin should be brought to the attention of all concerned.

Exhibit G, *VA Letter.*

293. Commission field notes. Memorandum dated April 5, 1961.
294. *California Hearings* 243–44.
295. Commission field notes. Memorandum dated February 7, 1961.
296. See p. 68, *supra.*
297. *Washington Hearings* 24.
298. Baltimore Sun, Sept. 25, 1960, 20c (Statement by J. Stanley Baughman, President, FNMA).
299. Letter From J. Stanley Baughman, President, Federal National Mortgage Association, to the Commission, May 18, 1961 (hereinafter cited as *FNMA Letter*).
300. Data obtained from FNMA.
301. *FNMA Letter.*
302. *Ibid.*
303. *Ibid.*
304. H.R. 10213 passed by the House of Representatives (106 *Cong. Rec.* 8910 daily ed., Apr. 28, 1960) provided priority in special assistance for areas of geographical inequity.
305. Thompson, "The Effect of Monetary and Fiscal Policy Upon the Supply of Housing, With Special Reference to Housing for Nonwhites" (June 1, 1956).
306. Quoted in Haar, *op. cit. supra,* note 165, at 117 (1960).
307. *FNMA Letter.*
308. *Ibid.*
309. Housing Act of 1954, sec. 201(b), 68 Stat. 612, 12 U.S.C. sec. 1716(b) (1958).
310. Public Law 87–70, 87th Cong., 1st sess. sec. 601(a) (1961).
311. *1959 Report* 495.

312. See McEntire, *Residence and Race* 310–311 (1960).
313. *1959 Report* 495.
314. *New York Hearings* 276.
315. *Ibid.*
316. *Washington Hearings* 40.
317. *Hearings, Housing Amendments of 1956, Senate Committee on Banking and Currency,* 84th Cong., 2d sess., 142 (1956); *Hearings before Subcommittee on Housing, House Committee on Banking and Currency,* 86th Cong., 2d sess., 33–34 (1960).
318. *Arkansas Conference* 173.
319. *FNMA Letter.*
320. *Ibid.*
321. *Ibid.*
322. *Ibid.*
323. *1959 Report* 538.

1. See U.S. Bureau of Census, News Release, CB 61–17, Mar. 17, 1961.
2. *Hearings on the nomination of Robert C. Weaver to be Housing and Home Finance Agency Administrator before the Senate Committee on Banking and Currency,* 87th Cong., 1st sess., 9 (1961).
3. Housing Act of 1949, 63 Stat. 413, 42 U.S.C. sec. 1441 (1958).
4. Housing Act of 1954, 68 Stat. 623, 42 U.S.C. sec. 1451 (1958).
5. U.S. Housing and Home Finance Agency, *Program for Community Improvement (Workable Program)* (1960).
6. Pub. L. No. 87–70, 87th Cong. 1st Sess. (June 30, 1961).
7. U.S. Housing and Home Finance Agency, *Program for Community Improvement (Workable Program) Monthly Summary Report Status as of April 30, 1961.*
8. Housing Act of 1949, sec. 105(c), 63 Stat. 417, 42 U.S.C. sec. 1455(c) (1958).
9. Quoted in *Report of the Commission on Race and Housing, Where Shall We Live?* 40 (1958).
10. U.S. Housing and Home Finance Agency, Urban Renewal Administration, *Urban Renewal Project Characteristics* 9 (1960).
11. *Ibid.*
12. See note 5, *supra.*
13. U.S. Housing and Home Finance Agency, *The Workable Program: A Plan of Action for the Renewal of a Community by the Community* 4 (1960).
14. *Id.* at 2.
15. *1959 Report* 540. The need for minority group participation in the formulation of an adequate workable program to assist in executing specific projects was brought into sharp focus by the HHFA Technical Memorandum No. 19, submitted to the Commission in June 1959 at the Washington conference with Federal housing officials. The memorandum indicated that the public authority at Dyersburg, Tenn., had recently carried out a demonstration program designed to develop methods of enlisting full citizen support and participation in aiding the community in launching an urban renewal program. Negro leaders were actively enlisted to assist the program and their full participation encouraged. This action left the Negro element of the Dyersburg community with a strong commitment to the urban renewal idea and a readiness to join the attack upon poor housing conditions. *Washington hearings* 138.
16. Letter from Jack T. Conway, Deputy Housing and Home Finance Agency Administrator, to the Commission, June 9, 1961.

    In response to a question to the regional offices as to how many submissions since March 1, 1961 showed deficiencies as to the advisory committee and/or minority committee requirement and

what action they had taken with the community, they reported 132 such cases. In all except a few recently received submissions, the communities have been notified of the deficiency and advised that they must remedy it before the programs will be recommended to the Administrator for approval.

Ibid.

17. *Report of the Michigan State Advisory Committee on Urban Renewal and Minority Housing* 7 (1961).
18. *Report of the New York State Advisory Committee on the Effects of Urban Renewal Programs on Minority Groups* 8–10 (1961).
19. Commission field notes. Memorandum dated Sept. 27, 1960.
20. *Arkansas Conference* 36.
21. *Id.* at 200.
22. *Id.* at 202.
23. *Id.* at 37.
24. *Id.* at 41.
25. *Id.* at 151.
26. See note 16, *supra.*
27. Fordham, *Planning for the Realization of Human Values,* Address, American Society of Planning Officials, May 23, 1960.
28. "The New Urbanites—Nature and Dimension," *Architectural Forum,* June 1960, pp. 116, 194.
29. Washington Post and Times Herald, May 16, 1961, p. B3.
30. Letter from William L. Slayton, Urban Renewal Commissioner, to the Commission, May 18, 1961.
31. *Ibid.*
32. *1959 Report* 482.
33. See note 8, *supra.*
34. See note 5, *supra.*
35. U.S. Housing and Home Finance Agency, *Relocation From Urban Renewal Project Areas* 6–11 (1960).
36. *Ibid.*
37. Reynolds, "The Human Element in Urban Renewal," *Public Welfare,* Apr. 1961.
38. *Id.* at 71.
39. *Id.* at 71–72. [Emphasis added].
40. *Id.* at 73, 82.
41. *California Hearings* 539.
42. *Ibid.* The result, Mr. Herman reported, is that displaced minority families "have moved from blighted area to blighted area." *Id.* at 534. Similarly, in Detroit the Commission heard testimony that urban renewal is "in many instances simply shifting slums from one place to another, like sweeping dust under the rug," and creating

"more density . . . in already congested Negro areas." *Detroit Hearings* 209, 277.

43. U.S. Housing and Home Finance Agency, *Urban Renewal, Job Description, Intergroup Relations Specialist,* GS–101–12.
44. *California Hearings* 563.
45. The Housing Act of 1961, note 6 *supra* broadened the 221 program to serve low and moderate-income families in addition to "displaced families." The latter group is still given preferential treatment, however, and the discussion of the 221 program here is limited to its application to "displaced families."
46. The Housing Act of 1961 has recently extended the program to low and moderate income families. See note 45, *supra.*
47. Housing Act of 1954, sec. 123, 68 Stat. 601, 12 U.S.C. sec. 1715l (d)(3); Housing Act of 1959, sec. 110(c)(3), 73 Stat. 661, 12 U.S.C. sec. 715l(d)(4) (Supp. I, 1959).
48. U.S. Housing and Home Finance Agency, *FNMA Special Assistance Program: Urban Renewal Housing Mortgages* (1960).
49. Pub. L. No. 87–70, 87th Cong., 1st sess., sec. 101(a)(12) (June 30, 1961).
50. *Id.,* sec. 101(a)(2).
50a. *Id.,* sec. 101(a)(3).
50b. *Id.,* sec. 101(a)(6).
50c. *Id.,* sec. 101(a)(2).
50d. *Id.,* sec. 101(a)(4).
51. U.S. Housing and Home Finance Agency, Federal Housing Administration, *221 Relocation Housing* (1959).
52. *Ibid.*
53. *Ibid.*
54. U.S. Housing and Home Finance Agency, *An Evaluation of the Section 221 Relocation Housing Program* 11–21 (1959).
55. Federal Housing Administration, Division of Research and Statistics, Statistics Section, Table II, AR60–TO2 (1960).
56. Federal Housing Administration, Division of Research and Statistics, Statistics Section, Table B1–5(a) (1961).
57. *Hearings on the Housing Act of 1960 before a subcommittee of the Senate Committee on Banking and Currency,* 86th Cong., 2d sess., 350 (1960).
58. *Arkansas Conference,* 160.
59. *Id.* at 183–84.
60. *Id.* at 186–88.
61. *Id.* at 153, 159. A total of 400 units (half for whites, half for Negroes) were built by Winrock Enterprises, Inc., but included in this figure were some houses built under the FHA section 220 program. *Ibid.*

62. See also *Detroit Hearings* 267. See Letter From Neal J. Hardy, Federal Housing Administration Commissioner, to the Commission, June 9, 1961.
63. *Detroit Hearings* 298.
64. *Id.* at 222.
65. Commission field notes. Memorandum dated April 5, 1961.
66. Atlanta Journal and Constitution, May 22, 1960, p. 3C.
67. Haas, " '221'—The Program Nobody Knows," *Metropolitan Association of General Improvement Contractors* 22 (1959).
68. *House and Home,* July 1960, p. 65.
69. Federal Housing Administration, Division of Research and Statistics, Statistics Section, Monthly Locality Report on FHA Operations Under Section 221.
70. *The National Conference and the Report of the State Advisory Committees to the U.S. Commission on Civil Rights* 309 (1959).
71. *Renewal, Race and the Urban Future,* Address, the Golden Fiftieth Anniversary Conference of the National Urban League, Sept. 6, 1960.
72. *President Kennedy's Special Message on Highways to the Congress of the United States,* Feb. 1961.
73. Letter from Damon J. Keith, Detroit Housing Commission, to the Commission, June 8, 1961. In 1956 the Detroit Common Council placed relocation responsibility in a single agency which services persons displaced by any type of governmental action. *Detroit Hearings* 234.
74. Letter from Rex M. Whitton, Federal Highway Administrator, to the Commission, May 15, 1961.
75. "Letter to the Members," *Washington Housing Association,* Issue No. 44, Mar.–Apr. 1961. In a supplementary statement on housing in the *1959 Report,* Commissioners Hesburgh and Johnson suggested that "the [highway] act should be amended to provide that in any urban area where any substantial number of low-income persons are to be displaced by the construction of a federally aided highway, the locality must incorporate the highway program in its urban renewal program, and the relocation requirements and standards of the Urban Renewal Administration must be met in regard to all such displaced persons, or the localities must otherwise see that decent, safe, and sanitary housing is available to such persons." *1959 Report* 541.
76. 68 Stat. 596, 12 U.S.C. secs. 1709, 1713 (1958).
77. Act of Sept. 23, 1959, 73 Stat. 654, 673, 42 U.S.C. sec. 1455 (Supp. II, 1959–60).
78. See note 30, *supra.*
79. *Ibid.*

80. Letter from William L. Slayton, Urban Renewal Commissioner, to the Commission, June 6, 1961.
81. U.S. Housing and Home Finance Agency, URA, *Urban Renewal Characteristics* 11 (1960).
82. *Detroit Hearings* 238.
83. *California Hearings* 574.
84. See ch. 6A, *infra.*
85. *Tate* v. *City of Eufala,* Alabama, 165 F. Supp. 303 (M.D. Alabama, 1958), *Barnes* v. *City of Gadsden,* 268 F. 2d 593 (5th Cir. 1959), *cert. denied,* 361 U.S. 915 (1959).
86. *Barnes* v. *City of Gadsden, supra* note 85 at 596, 598.
87. *Ibid.*
88. *Chicago Hearings* 765.
89. "Open Occupancy—The Challenge of Lake Meadows and Prairie Shores," Address, Pontiac Chapter, National Association of Housing and Redevelopment Officials, Nov. 18, 1960.
90. *Ibid.*
91. *Ibid.*
92. *Ibid.*
93. *Detroit Hearings* 231.
94. *Id.* at 299.
95. Baltimore Urban Renewal and Housing Agency, *Distribution of Families and Individuals Displaced and Relocated* (1960).
96. Commission field notes. Memorandum dated February 7, 1961.
97. U.S. Bureau of Census, News Release, CB–13, March 13, 1961.
98. *Detroit Hearings* 219.
99. 107 *Cong. Rec.* 3410 (daily ed. Mar. 9, 1961).
100. Urban Renewal Administration, *Urban Renewal Notes,* March–April 1961.
101. *Ibid.*
102. Pub. L. No. 87–70, 87th Cong., 1st sess. (June 30, 1961).
103. Pub. L. No. 87–70, sec. 102(a).
104. Pub. L. No. 87–70, sec. 102(b).
105. S. Rep. 281, 87th Cong., 1st sess. 13 (1961).
106. Pub. L. No. 87–70, sec. 102(a).
107. *House and Home,* June 1961, p. 66.
108. Pub. L. No. 87–70, sec. 102(c).
109. Pub. L. No. 87–70, sec. 901(a).
110. Pub. L. No. 87–70, sec. 902.
111. *California Hearings* 206.
112. Commission Field Notes, Memorandum dated Feb. 7, 1961.
113. *California Hearings* 206.
114. Letter from William L. Slayton, Urban Renewal Commissioner, to the Commission, June 5, 1961.

115. For example, as of June 30, 1960, of 61,000 relocated families for whom color was reported, more than 42,000, or 69 percent, were nonwhite. U.S. Housing and Home Finance Agency, *Relocation from Urban Renewal Project Areas* 7 (1960).
116. Northwood, "The Threat and Potential of Urban Renewal: A Workable Program for Better Race Relations," *The Journal of Intergroup Relations,* Spring 1961, p. 108; see also National Committee Against Discrimination in Housing, *Trends in Housing,* May–June 1959; Millspaugh and Breckenfield, *Human Side of Urban Renewal* (1959); Chicago Urban League, *Urban Renewal and the Negro in Chicago* (1958); Philadelphia Commission on Human Relations, *Urban Renewal and Intergroup Relations* (1959); Pittsburgh Human Relations Commission, *Background for Pittsburgh Interracial Leadership Conference* (1957).
117. *Report of the Rhode Island State Advisory Committee* 7 (1961).

1. U.S. Housing and Home Finance Agency, *Thirteenth Annual Report* 213 (1959).
2. United States Housing Act of 1937, 50 Stat. 888, 42 U.S.C. sec. 1401 (1958).
3. National Industrial Recovery Act of 1933, Title II, 48 Stat. 195, 201, 202 [no longer in effect].
4. See ch. 2 at 15, *supra.*
5. Letter From Marie C. McGuire, Commissioner, Public Housing Administration, to the Commission, May 11, 1961.
6. *Ibid.*
7. *Ibid.*
8. U.S. Housing and Home Finance Agency, *Trends Toward Open Occupancy Low-Rent Housing Programs of the Public Housing Administration* (1960).
9. *Ohio Conference* (Statement of Richard G. Coleman, director of Springfield Metropolitan Housing Authority).
10. *Detroit Hearings* 238.
11. *California Hearings* 23.
12. Commission field notes. Memorandum dated Feb. 7, 1961.
13. *California Hearings* 24.
14. McEntire, *Residence and Race* 317–18 (1960).
15. See ch. 6A at 121 *infra.* See also app. VI, table 1.
16. See, *e.g., Banks* v. *Housing Authority of San Francisco,* 260 P. 2d 668 (Cal. 1953), *cert. denied,* 347 U.S. 974 (1954); *Detroit Housing Commission* v. *Lewis,* 226 F. 2d 180 (6th Cir. 1955).
17. U.S. Housing and Home Finance Agency, Public Housing Administration, *Low-Rent Housing Manual,* sec. 1021 (1951).
18. The U.S. Supreme Court has never passed on the validity of segregation in public housing. The trend of decisions, however, particularly after the *School Segregation Cases,* has been to hold segregation in public housing unconstitutional. See, *e.g., Detroit Housing Commission* v. *Lewis, supra* note 16; *Heyward* v. *Public Housing Administration,* 238 F. 2d 689 (5th Cir. 1956). But see *Miers* v. *Housing Authority,* 266 S.W. 2d 487 (Tex. 1954).
19. Trends, *op. cit. supra,* note 8 at iii.
20. *Id.* at v.
21. *Detroit Hearings* 238.
22. *Ibid.*
23. *Ibid.*
24. *Ibid.*
25. *Id.* at 237.
26. *Ibid.*
27. See note 12 *supra.*

28. *Ibid.*
29. *California Hearings* 27.
30. *Ibid.*
31. *Detroit Hearings* 208.
32. "The New Urbanites and the City Housing Crisis," *Architectural Forum,* July 1960, pp. 118–119.
33. *1959 Report* 539.
34. See note 5 *supra.*
35. *Ibid.*
36. *1959 Report* 475.
37. See note 12 *supra.*
38. *Ibid.*
39. *California Hearings* 482.
40. Objections of another sort have recently been raised to the proposed location of public housing projects in Negro neighborhoods in the suburbs of Washington, D.C. As the Washington Post recently explained:

    > . . . The deeper objections of Negroes to public housing are closely tied to the absence of opportunities for Negroes to buy land or houses in most of suburbia. . . . Land now occupied by Negro homes, or on which Negro homes might be built, is likely to be used for the project. The dispossessed homeowners, mostly the more successful Negroes who are natives of the area, and who don't wish to leave are likely to end up in [nearby] Washington.

    Washington Post and Times-Herald, May 5, 1961, p. 10C.
41. *Detroit Hearings* 232.
42. *1959 Report* 539.
43. See note 5 *supra.*
44. *Detroit Hearings* 232.
45. *California Hearings* 536.
46. *New York Hearings* 136.
47. "Scattered Site Projects Spread to West Coast," *House and Home,* Jan. 1961, p. 54.
48. *Ibid.*

48a. See note 5 *supra.*

49. N.Y.Times, Jan. 29, 1961, p. 55.
50. *Ibid.*
51. In 1900, the life expectancy of a male person in the United States was 46.3 years; in the year 1958 it was 66.4 years. In 1900 the life expectancy of a female person was 48.3 years; in 1958 it was 72.7 years. S. Rep. No. 1121, 86th Cong., 2d sess., A5 (1960); "Vital Statistics of the U.S., 1958," sec. 5, Life Table [National Office of Vital Statistics].

52. "A New Housing Market: The Old," *Architectural Forum,* Dec. 1960; *Housing for the Aged: Staff Report to the Subcommittee on Housing, Committee on Banking and Currency, U.S. Senate,* May 21, 1956.
53. S. Rep. No. 1121, 86th Cong., 2d sess., A108 (1960).
54. *Report of the President's Advisory Committee on Government Housing Policies and Programs* 271 (1953).
55. Housing Act of 1956, title IV, sec. 404, 70 Stat. 1104, 42 U.S.C. secs. 1402(2), 1410(m) (1958); Housing Act of 1957, title I, sec. 101(b), 71 Stat. 295, 12 U.S.C. sec. 1709(b)(9) (1958); Housing Act of 1959, title II, sec. 201(a), 73 Stat. 665, 12 U.S.C. sec. 1715v (Supp. I, 1959).
56. See ch. 3C at 61 *supra.*
57. Housing Act of 1957, sec. 101(b), 71 Stat. 295, 12 U.S.C. sec. 1709(b)(9) (1958).
58. Housing Act of 1959, sec. 201(a), 73 Stat. 665.
59. Housing Act of 1956, sec. 404(a), 70 Stat. 1104.
60. See ch. 3C at 77 *supra.*
61. The Housing Act of 1961, Public Law No. 87–70, 87th Cong., 1st sess. sec. 201(b) (June 30, 1961). Under previous law, direct loans were authorized up to 98 percent of the total development cost.
62. Letter From Jack Conway, Deputy Administrator, Housing and Home Finance Agency, to the Commission, June 9, 1961.
63. See note 61 *supra.*
64. Letter From Jack Conway, note 62 *supra.*
65. *Ibid.*
66. *Ibid.*
67. It may be assumed, therefore, that the observations in those sections of this report dealing with FHA (see ch. 3C at 62 *supra*) and PHA (see p. 111 *supra*) are also pertinent to the programs providing housing for elderly persons—that is, no specific provisions guarantee nondiscrimination.
68. U.S. Housing and Home Finance Agency, *Housing for the Elderly Direct Loan Program; Policies and Requirements of the Housing and Home Finance Administration* 7 (1960).
69. See note 62 *supra.*

1. See app. I, table 1 for a list of State antidiscrimination laws.
2. The evolution has also been toward a single State agency to administer *all* such laws; to receive and investigate complaints; to initiate studies and investigations; to emphasize education, mediation, and conciliation; but with enforcement powers through the courts when education, mediation, and conciliation fail.
3. *Buchanan* v. *Warley,* 245 U.S. 60 (1917); *Civil Rights Cases,* 109 U.S. 3 (1883); *Hurd* v. *Hodge,* 334 U.S. 24 (1948).
4. *Corrigan* v. *Buckley,* 271 U.S. 323 (1926).
5. 87 N.E. 2d 541 (N.Y. 1949), *cert. denied,* 339 U.S. 981 (1950). Justices Black and Douglas favored granting the writ.
6. N.Y. Laws 1942, ch. 845, p. 1855.
7. *Dorsey* v. *Stuyvesant Town Corporation, supra* note 5.
8. *Id.* at 551.
9. N.Y. Laws 1896, vol. 1, ch. 547, pp. 559, 561. Later laws eliminated the 6-year limitation as well as other limitations on the right of aliens to own or handle property.
10. N.Y. Laws 1939, vol. 2, ch. 808, pp. 1978, 2038.
11. *Dorsey* v. *Stuyvesant Town Corporation, supra* note 5.
12. N.Y. Laws 1950, ch. 287, p. 961.
13. N.Y. Laws 1955, ch. 341, p. 981.
14. N.Y. Laws 1955, ch. 340, p. 978.
15. N.Y. Laws 1956, ch. 563, p. 1293.
16. New York, N.Y. Administrative Code, ch. 41, title X (1957).
17. The principal emphasis in this section is on State laws. Only the laws of New York City, Pittsburgh, and Baltimore are discussed in this chapter. See app. VI, table 2, for a supplementary list of cities that have passed antidiscrimination housing ordinances or resolutions. See also *1959 Report* 411–12.
18. See app. VI, table 1, for a list of antidiscrimination housing laws.
19. Mont. Laws 1959, ch. 195, p. 422.
20. SHA ch. 67½, sec. 267. Ill. Laws 1953, p. 1138.
21. Mich. Public Acts 1952, No. 101, p. 112.
22. R.I. Public Laws 1952, ch. 2958, p. 836.
23. Wis. Statutes Anno., secs. 66.40 (2m), 66.43 (2m), and 66.405 (2m) (1957).
24. Ind. Laws 1945, ch. 276, p. 1219; Ind. Laws 1961, ch. 256.
25. See app. VI, table 1.
26. Calif. Statutes 1959, vol. 2, ch. 1681, p. 4074. The Attorney General of California has ruled, similar to rulings in Massachusetts and Connecticut, that a real estate broker's office is a public accommodation and, therefore, subject to the State public accommodations law.

27. Wash. Laws 1957, ch. 37, p. 107.
28. N.J. Laws 1957, ch. 66, p. 128.
29. See app. VI, table 1.
30. Colo. Laws 1959, ch. 148, p. 489.
31. Colo. Laws 1957, ch. 176, p. 492.
32. Mass. Acts 1959, ch. 239, p. 159.
33. Conn. Pub. Acts 1958, No. 113, p. 199. On June 5, 1961, the Connecticut law was extended to rental housing containing three or more units. Conn. Pub. Acts 1961, No. 472.
34. Ore. Laws 1959, ch. 584, p. 1114.
35. N.Y. Laws 1961, ch. 414.
36. Pa. Laws 1961, No. 19.
37. Minn. Laws 1961, ch. 428.
38. New Hamp. Laws 1961, ch. 219.
39. See note 16 *supra.* The ordinance applies to multiple dwellings and to housing in 10 or more contiguous units controlled by 1 person.
40. Pittsburgh, Pa., Ordinance 523, Dec. 15, 1958. The ordinance extends to all types of housing.
41. *California Hearings* 588.
42. *Id.* at 576.
43. *Id.* at 640.
44. *Detroit Hearings* 255.
45. *California Hearings* 637.
46. *Id.* at 277.
47. McEntire, *Residence and Race* 249 (1960).
48. Civ. No. 535996, Washington Superior Ct. King County, July 13, 1959, 4 *Race Rel. L. Rep.* 664 (1959).
49. Brief for Appellant, p. 21, *O'Meara* v. *Washington State Board Against Discrimination,* Civ. No. 35436, Supreme Court of the State of Washington (1960).
50. *Detroit Hearings* 243.
51. *Ibid.*
52. *Id.* at 243–44.
53. *Id.* at 247–49.
54. In addition to the matter of the denial of housing choice to Negroes, which Commissioner Johnson raised, Mr. Luedders' evaluation of the quality of housing available to Negroes in the "yellow area" was disputed by Mr. Theodore R. Barnes, president of the Detroit Real Estate Brokers Association (a Negro association).

    ". . . in much of this [yellow] area, the housing is poor, old, run down, and in the central city area rat infested, with no semblance of upkeep." *Detroit Hearings* 428.

55. See app. VI, table 1. The Oregon law is exclusively aimed at persons engaged in the business of selling and leasing real estate.
56. See note 40, *supra.*
57. See note 16, *supra.*
58. Baltimore, Md., City Code, art. 24, sec. 69A (1950).
59. 5 *Race Rel. L. Rep.* 253, 254–55 (1960).
60. Mass. Laws 1961, ch. 181.
60a. Ore. Laws 1959, ch. 585.
61. 5 *Race Rel. L. Rep.* 255, 256 (1960).
62. *Id.* at 254.
63. *Detroit Hearings* 478–79.
64. *Id.* at 476.
65. *Ibid.*
66. *Id.* at 477.
67. *Ibid.*
68. *Ibid.*
69. *Id.* at 479.
70. *Id.* at 478.
71. *Id.* at 251.
72. *McKibbin* v. *Mich. Corp. and Sec. Comm.,* No. 42667, Ingham Co. Cir. Ct. 1960.
73. Detroit (Mich.) News, Aug. 19, 1960, p. 17A.
74. Mich. S. 1344, 71st Legis. (1961).
75. See, *e.g., Detroit Housing Commission* v. *Lewis,* 226 F. 2d 180 (6th Cir. 1955). See also ch. 5, note 18, *supra.*
76. See *Barnes* v. *City of Gadsden,* 268 F. 2d 593 (5th Cir. 1959), *cert. denied,* 361 U.S. 915 (1959).
77. 170 N.Y.S. 2d 750 (Sup. Ct. of Westchester County, 1958).
78. *Id.* at 757.
79. *Ibid.*
80. *Id.* at 759–60. [Emphasis added.]
81. 158 A. 2d 177 (N.J. 1960), *cert. denied,* 363 U.S. 418 (1960).
82. *Id.* at 187. [Emphasis added.]
83. *Id.* at 188.
84. Civ. No. 535996, Washington Superior Ct. King County, July 13, 1959, 4 *Race Rel. L. Rep.* 664 (1959).
85. *Id.* at 687.
86. *Id.* at 687–88.
87. *Id.* at 688.
88. The *O'Meara* court expressly referred to the *Pelham* and *Levitt* cases (*Levitt* had recently been decided by the New Jersey Superior Court, Appellate Division, but not yet by the New Jersey Supreme Court, which affirmed the lower court).

89. 201 N.Y.S. 2d 111 (Sup. Ct. of N.Y. County, 1960).
90. *Id.* at 112.
91. *Id.* at 113.
92. Civ. No. 39682, D. Colo., June 2, 1961.
93. Colo. Laws 1959, ch. 148, p. 489, 495.
94. See note 92, *supra.*
95. *Ibid.* [Italicized in original.]
96. *Ibid.*
97. 245 U.S. 60 (1917).
98. After this decision, the "private" racial restrictive covenant became the main device to bar nonwhites and other minorities from certain neighborhoods and communities. When the U.S. Supreme Court, in *Shelley* v. *Kraemer,* 334 U.S. 1 (1948), ruled that the judicial enforcement of such "private" covenants was State action and therefore violative of the 14th amendment, thereby destroying their effectiveness, new devices were needed to maintain the barriers to thwart nonwhite residential mobility.
99. Abrams, *Forbidden Neighbors* 210 (1955).
100. *Ibid.*
101. U.S. Bureau of the Census, *U.S. Census of Population: 1960, Advance Reports: General Population Characteristics* PC(A2)–15 (Ill.) (1961). A Negro family had moved to Deerfield some 4 or 5 years earlier without incident and had lived there for some 2 or 3 years before they voluntarily moved away. *Progress Development Corporation* v. *Mitchell,* 182 F. Supp. 681, 705 (N.D. Ill. 1960) (hereinafter cited as *Deerfield* case).
102. Progress Development Corp. is a legal subsidiary of Modern Community Developers, Inc., a New Jersey corporation, with Morris Milgram as president. *Deerfield* case, *supra* note 101, at 690, 706.
103. *Deerfield* case, *supra,* note 101, at 700–701.
104. *Id.* at 701.
105. *Id.* at 705. "The court finds, however, that the ensuing turmoil was not caused solely by the fact that the public had been informed of the proposed sale of houses to Negroes," but a fear of falling property values induced in part by anonymous telephone calls, was also an important cause. *Id.* at 705–706. See Laurenti, *Property Values and Race* (1960); *California Hearings* 512–33.
106. *Id.* at 702–703.
107. *Id.* at 703.
108. *Id.* at 696–97. Illinois ranked second among the States in number of local governments, with 6,509 as of January 1957. U.S. Bureau of the Census, *1957 Census of Governments,* vol. I, No. 3, p. 27. In 1957, the Chicago metropolitan area had 984 local

governmental units operating within its boundaries. *Id.* at vol. I, No. 1, p. 35–36.

109. American Friends Service Committee, *Freedom of Residence in Deerfield* 4 (1960).

110. *Deerfield* case, *supra* note 101, at 698–99.

111. *Freedom of Residence in Deerfield, op. cit., supra,* note 109, at 6. A series of referenda in 1959, before this referendum, to secure additional recreation areas had been unsuccessful.

112. *Deerfield* case, *supra* note 101 at 686. Specifically, the plaintiff-builder charged all defendants with conspiracy to induce the Deerfield Park District to abuse its lawful powers of eminent domain and thereby acquire the subdivisions "solely for the purpose of preventing Progress from building residential housing thereon and preventing sales of homes thereon to Negroes . . ." The plaintiff-builder further sought to enjoin the village of Deerfield from enforcing the building code of the village in an unlawful, arbitrary, and capricious manner against the builder, and charged all defendants with conspriacy "to induce the village trustees to abuse their lawful powers of enforcing local laws and ordinances relating to the village building code in 'seeking to harass, impede, delay, and otherwise prevent the construction of homes by Progress and the sale of some of said homes to Negroes' in violation of the lawful rights of plaintiffs." *Progress Development Corp.* v. *Mitchell,* 286 F. 2d 222, 226 (7th Cir. 1961).

113. *Progress Development Corporation* v. *Mitchell, supra* note 112 at 234. "It is our considered judgment that the complaint on its face states a Federal cause of action." *Id.* at 230.

114. *Id.* at 231. [Italicized in original.] The circuit court of appeals affirmed the refusal of the district court to enjoin the enforcement of building codes and the condemnation proceedings; however, the plaintiff-builder was not held to be barred from seeking relief because of its proposed use of a "benign quota."

115. *Deerfield Park District* v. *Progress Development Corporation,* No. 71780, Illinois Cir. Ct., Lake County (1959).

116. *Deerfield Park District* v. *Progress Development Corporation,* No. 36207, Ill. Sup. Ct. Apr. 26, 1961.

117. *Ibid.*

118. *Ibid.* Arthur Falls, board chairman of Progress Development Co. and a Negro, had experienced similar difficulties in a Chicago suburb in 1953. When the Western Springs Park District attempted to condemn his property for park purposes, on June 9, 1953, Judge Berkowitz ruled in favor of the property owner by sustaining his motion to dismiss the condemnation proceedings. *Western Springs Park District* v. *Falls,* No. 52–C–14741, Illinois

Cir. Ct., Cook County (1953). Judge Berkowitz said: "It appears from the evidence in this case that they [Western Springs Park District] were not attempting to get the land for park purposes. . . . They wished to remove Dr. and Mrs. Falls for their color and for no other reason. If this land were condemned . . . it would be a monument in that particular area to hate and intolerance." Lathers, "From Segregation to Community," *The Crisis,* October 1960, p. 517.

119. *Wiley* v. *Richland Water District,* Civ. No. 60–207, D. Ore., June 30, 1960, 5 *Race Rel. L. Rep.* 788, 789 (1960).
120. *Ibid.*
121. *Ibid.*
122. *Ibid.*
123. *Ibid.*
124. *Id.* at 790.
125. *House and Home,* August 1960, p. 67.
126. U.S. Bureau of the Census, *U.S. Census of Population: 1960 Advance Reports General Population Characteristics* PC(A2)–27 (Mo.) (1961).
127. *City of Creve Coeur* v. *Weinstein,* St. Louis (Mo.) Ct. of App., Dec. 3, 1959, 5 *Race Rel. L. Rep.* 207, 209 (1960). Motion for rehearing or transfer denied, Dec. 29, 1959, 329 S.W. 2d 399.
128. *Ibid.*
129. *Ibid.*
130. *Ibid.*
131. *Ibid.*
132. *Ibid.*
133. *Ibid.*
134. *Id.* at 215.
135. *Ibid.*
136. *California Hearings* 800.
137. U.S. Bureau of the Census, *U.S. Census of Population: 1960, Advance Reports: General Population Characteristics* PC(A2)–6 (Calif.) (1961).
138. *California Hearings* 800.
139. *Ibid.*
140. Grier and Grier, *Privately Developed Interracial Housing* 81 (1960).
141. *Ibid.*
142. *Ibid.* The legal issue of big lot zoning (sometimes called "snob zoning"), as "edicts of exclusion masquerading as ordinances for the general welfare" (Hodza, "The Constitutionality of Minimum Size for Buildings and Lots," 15 *N.Y.U. Intra. L. Rev.* 83, 92

(1960)), was thrown back to the States by the U.S. Supreme Court in 1960. *Senior* v. *Zoning Commission of Town of New Canaan,* 153 A. 2d 415 (Conn. 1959), *appeal dismissed,* 363 U.S. 143 (1960); *House and Home,* July 1960, p. 41; *Architectural Forum,* July 1960, p. 6. See generally "Land—a Special Issue," *House and Home,* Aug. 1960, pp .97–164.

143. Grier, *op. cit., supra* note 140, at 81–82.
144. *Id.* at 82.
145. *Ibid.*
146. *California Hearings* 800.
147. Grier, *op. cit., supra,* note 140, at 84.
148. *Ibid.*
149. *California Hearings* 800–801.
150. One commentator has remarked: "The Deerfield [case] . . . lays bare the harsh truth that residential segregation depends for its vitality on the exertion of State power." Address by Loren Miller, 1960 Biennial Conference of American Civil Liberties Union, Apr. 22, 1960.
151. Letter From O. J. Hartwig, Assistant to the President, Long Island Home Builders Institute, to the Commission, Jan. 29, 1959.
152. *Ibid.* See, generally, McEntire, *Residence and Race* 184–89 and 286–90 (1960).
153. *Ibid.*

Tables in text

Tables in Appendix

APPENDIX VI

TABLE 1.—*Analysis of State antidiscrimination housing laws*

		California	*Colorado*	*Connecticut*	*Illinois*	*Indiana*	*Massachusetts*	*Michigan*	*Montana*	*Minnesota* [4]	*New Hampshire*	*New Jersey*	*New York*	*Oregon* [1]	*Pennsylvania*	*Rhode Island*	*Washington*	*Wisconsin*
Groups protected.	Race	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	Creed	..	X	X	..	..	..	..	..	X	..	X	..	..	..	..	..	..
	Religion	X	..	..	X	..	..	..	..	X	..	X	..	X	X	X	..	X
	Color	X	X	X	..	..	X	X	X	X	X	X	X	X	X	X	X	X
	National origin	X	X	..	X	X	X	..	X	X	X	X	X	X	X	X	X	X
	Ancestry	X	X	..	..	..	..	..	..	..	X	X	..	..	X	X	..	..
	Sex	..	X	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
	Age	..	..	..	..	..	..	..	..	..	..	..	..	..	X	..	..	..
	Political affiliation	..	..	..	..	..	..	..	..	X	..	..	..	..	..	..	..	..
Property affected.	Assembled and/or acquired by State power	X	..	..	..	..	X	..	..	X	X	..	X	X	X	..	..	..
	Tax exempt	X	..	..	..	..	X	..	..	..	..	..	X	X	X	..	..	..
	Public low-rent housing	X	X	X	..	X	X	X	..	X	X	X	X	X	X	X	X	X
	Urban redevelopments	X	X	X	X	X	X	..	X	X	X	X	X	X	X	..	X	X
	FHA or VA: Minimum No. of units	5 [2]	All	All	..	..	10 [3]	..	..	All	..	All	10	All	All	..	All	..
	Nongovernmentally-assisted housing minimum No. units.	..	All	3	..	..	10	..	..	All	2	3	3	All	All	..	..	..
	Tract developments	..	..	..	..	..	..	..	..	X	X	..	..	X	X	..	..	..
	Commercial	..	..	..	..	..	..	..	..	..	X	..	X	X	X	..	..	..
	Vacant land	..	X	..	..	..	..	..	..	..	..	X	..	X	X	..	..	..

Persons affected.	Owner	×	×	×	..	..	×	..	..	×	×	×	×	..	×	..	×	...
	Lessee	×	×	..	..	..	×	..	..	×	..	×	×	..	×	..	×	...
	Agent	×	×	..	..	..	×	..	..	×	..	×	×	..	×	..	×	...
	Real estate agent	×	×	×	..	..	×	..	..	×	..	×	×	×	×	..	×	...
	Lending institution	..	×	..	..	..	×	..	..	×	..	×	×	..	×	..	×	...
Actions affected.	Sale	×	×	×	..	..	×	..	..	×	..	×	×	×	×	×	×	...
	Rental	×	×	×	..	..	×	..	..	×	×	×	×	..	×	×	×	...
	Lease	×	×	×	..	..	×	..	..	×	×	×	×	×	×	×	×	...
	Negotiate	..	..	..	..	..	×	..	..	×	..	×	×	..	..	..	..	...
	Terms, conditions, and privileges	×	×	..	..	..	×	..	..	×	..	×	×	×	×	×	×	...
	Oral references to race, etc	×	×	..	..	..	×	..	..	×	..	..	×	×	×	..	×	...
	Written references to race, etc	×	×	..	..	..	×	..	..	×	..	×	×	×	×	×	×	...
	Aid or abet	..	×	..	..	..	...	..	..	×	..	×	×	×	×	..	×	...
	Furnishing of facilities or services	×	×	..	..	..	×	..	..	×	..	×	×	×	×	×	×	...
	Knowledge of public assistance	×	..	..	..	..	...	..	..	..	..	..	..	..	..	..	..	...
Exemptions.	Owner occupied; Minimum No. of units	..	1	..	..	..	...	..	..	2	..	3	..	..	2	..	..	...
	Religious organizations	×	×	..	..	..	×	..	..	..	..	×	×	..	×	..	×	×
	Property after aid has ceased	..	..	..	..	..	×	..	..	..	..	..	..	..	..	..	×	...
	Educational or social organizations	..	×	..	..	..	×	..	..	..	..	×	..	..	..	..	..	...
	Fraternal organizations	×	×	..	..	..	...	..	..	..	..	..	..	..	×	..	×	...
	Charitable organizations	×	..	..	..	..	×	..	..	..	..	..	..	..	..	..	..	...
	Nonprofit organizations	×	×	..	..	..	...	..	..	..	..	..	..	..	..	..	..	...
Enforcement.	Power to initiate complaints	..	×	..	..	..	...	..	..	×	..	×	×	..	×	×	×	...
	Mediation and conciliation	..	×	×	..	..	×	..	..	×	..	×	×	×	×	×	×	...
	Criminal action	..	..	×	..	..	...	×	..	..	×	..	×	..	..	..	..	...
	Private civil law suit only	×	..	..	..	..	...	..	..	..	..	..	..	..	..	..	..	...
	Agency order	..	×	×	..	..	×	..	..	×	..	×	×	×	×	×	×	...
	Court order	..	×	×	..	..	×	..	..	×	..	×	×	×	×	×	×	...
	Revocation or suspension of broker's license	..	..	..	..	..	..	..	..	×	..	..	..	×	..	..	..	...

[1] Oregon's law applies primarily to the real estate industry. However, individual owners, lending institutions and builders may be found within the law if they are engaged in the sale of property "as an incident of [their] business enterprise."

[2] California's law includes multiple dwellings of 3 or more units.
[3] Massachusetts' law includes multiple dwellings of 3 or more units.
[4] Minnesota's law does not go into effect until Dec. 31, 1962.

For citations to statutes, see notes, chapter 6; see also app. I, table 1.

TABLE 2.—*Supplementary list of city antidiscrimination housing ordnances and resolutions* [1]

Newport, R.I. (resolution of city council re private housing, 1961).
New York, N.Y. (local law of city council re private housing, 1961).
Pittsburgh, Pa. (ordinance of city council re private housing, 1959).
Hazel Park, Mich. (resolution of housing commission re public housing, 1960).
Mount Clemens, Mich. (resolution of housing commission re public housing, 1958).
Newport, R.I. (resolution of city council re public housing, 1961).
Providence, R.I. (resolution of city council re housing projects supported by Federal, State, or city funds, 1950).
Saginaw, Mich. (policy statement of housing commission re public housing, 1956).
Toledo, Ohio (resolution of housing authority re public housing, 1953).
Washington, D.C. (resolution of housing authority re public housing, 1955).
Chicago, Ill. (resolution of city council re urban redevelopment, 1958).
Cincinnati, Ohio (ordinance of city council re urban redevelopment, 1953).
Cleveland, Ohio (ordinance of city council re urban redevelopment, 1954).
Dayton, Ohio (ordinance of city council re urban redevelopment, 1957).
Des Moines, Iowa (ordinance of city council re urban redevelopment, 1959).
Fargo, N. Dak. (deed form governing urban redevelopment, 1960).
Hamilton, Ohio (ordinance of city council re urban redevelopment, 1958).
Inkster, Mich. (resolution of city council re urban redevelopment, 1960).
LaPorte, Ind. (resolution of city council re urban redevelopment, 1958).
Madison, Wis. (plan approved by city council re urban redevelopment, 1961).
Michigan City, Ind. (resolution of city council re urban redevelopment, 1960).

---

[1] This list supplements the compilation in the *1959 Report* 411–412. Data obtained from HHFA.

Milwaukee, Wis. (resolution of city council re urban redevelopment, 1955).
Minneapolis, Minn. (deed form governing urban renewal projects, 1958).
Mishawaka, Ind. (resolution of city council re urban redevelopment, 1960).
Mount Clemens, Mich. (resolution of city council re urban redevelopment, 1960).
Newport, R.I. (resolution of city council re urban redevelopment, 1961).
Oakland, Calif. (resolution of redevelopment agency re urban redevelopment, 1958).
Providence, R.I. (ordinance of city council re urban redevelopment, 1959 and 1960).
St. Paul, Minn. (contract between city and redeveloper re urban redevelopment, 1960).
Toledo, Ohio (resolution of city council re urban redevelopment, 1958).

SELECTED BIBLIOGRAPHY

(Including works cited and abbreviations used)

ABRAMS, *Forbidden Neighbors,* Harper & Bros., New York, N.Y., 1955.

American Friends Service Committee, *Freedom of Residence in Deerfield,* Chicago, Ill., 1960.

Atlanta Hearings: Abbreviation for *Housing Hearings Before the U.S. Commission on Civil Rights in New York, N.Y.; Atlanta, Ga.; and Chicago, Ill. 1959.*

BEEHLER, "Colored Occupancy Raises Values," 11 *The Review of the Society of Residential Appraisers* 1 (1945).

Board of Governors of the Federal Reserve System, *The Federal Reserve System: Purposes and Functions,* Washington, D.C., 1961.

California Hearings: Abbreviation for *Hearings in Los Angeles and San Francisco Before the U.S. Commission on Civil Rights, 1960.*

Chicago Hearings: Abbreviation for *Housing Hearings Before the U.S. Commission on Civil Rights in New York City, New York; Atlanta, Georgia; and Chicago, Illinois, 1959.*

COLEAN, *The Impact of Government on Real Estate Finance in the United States,* National Bureau of Economic Research, New York, N.Y., 1950.

Commission on Race and Housing, *Report of the Commission on Race and Housing: Where Shall We Live?* University of California Press, Berkeley, Calif., 1958.

Detroit Hearings: Abbreviation for *Hearings in Detroit Before the U.S. Commission on Civil Rights, 1960.*

Federal Housing Administration:

FHA Underwriting Manual, 1938.

FHA Underwriting Manual, 1939.

FHA Underwriting Manual, 1947.

FHA Underwriting Manual, 1949.

GOLEMBE, "The Deposit Insurance Legislation of 1933: An Examination of Its Antecedents and Its Purposes," 75 *Political Science Quarterly* 181 (1960).

GRIER, *Privately Developed Interracial Housing in the United States,* University of California Press, Berkeley, Calif., 1960.

HAAR, *Federal Credit and Private Housing,* McGraw-Hill, New York, N.Y., 1960.

HAAS, *"221"—The Program Nobody Knows,* Metropolitan Association of General Improvement Contractors, Washington, D.C., 1959.

Hearings on the Nomination of Robert C. Weaver To Be Housing and Home Finance Agency Administrator Before the Senate Committee on Banking and Currency, 87th Cong., 1st sess., 1961.

House of Representatives Document No. 532, 82d Cong., 2d sess., *Your Congress and American Housing, The Actions of Congress on Housing From 1892 to 1951* (1952).

Housing for the Aged: Staff Report to the Subcommittee on Housing, Senate Committee on Banking and Currency, 84th Cong., 2d sess., 1956.

LAURENTI, *Property Values and Race,* University of California Press, Berkeley, Calif., 1960.

McENTIRE, *Residence and Race,* University of California Press, Berkeley, Calif., 1960.

MORGAN, "Values in Transition Areas: Some New Concepts," 28 *The Review of the Society of Residential Appraisers* 1 (1952).

National Urban League, *Statement of the National Urban League to John F. Kennedy, President-Elect: The Time Is Now,* 1960.

"Neighborhood Rating," *Review of the Society of Residential Appraisers,* August 1940.

New York Hearings: Abbreviation for *Housing Hearings Before the U.S. Commission on Civil Rights in New York City, N.Y.; Atlanta, Ga.; and Chicago, Ill., 1959.*

1959 Report: Abbreviation for Report of the U.S. Commission on Civil Rights 1959.

President's Advisory Committee on Government Housing Policies and Programs, *Government Housing Policies and Programs: A Report of the President's Advisory Committee on Government Housing Policies and Programs,* Washington, D.C., 1953.

President's Conference on Home Building and Home Ownership, *Report of the President's Conference on Home Building and Home Ownership,* Washington, D.C., 1931.

REYNOLDS, "The Human Element in Urban Renewal," *Public Welfare,* p. 71, April 1961.

"Scattered Site Projects Spread to West Coast," *House and Home,* p. 54, January 1961.

STERN, "The End of the Restrictive Covenant," 26 *The Appraisal Journal* 439 (1948).

"The New Urbanites—Nature and Dimension," *Architectural Forum,* p. 116, June 1960.

U.S. Bureau of the Census, *Mortgages on Homes,* Washington, D.C., 1923.

U.S. Commission on Civil Rights:

Hearing Before the U.S. Commission on Civil Rights, Conference with Federal Housing Officials, 1959.

Hearings in Detroit Before the U.S. Commission on Civil Rights, 1960.
Hearings in Los Angeles and San Francisco Before the U.S. Commission on Civil Rights, 1960.
Housing Hearings Before the U.S. Commission on Civil Rights in New York, N.Y.; Atlanta, Ga.; and Chicago, Ill., 1959.
Report of the U.S. Commission on Civil Rights, 1959.
The National Conference and the Report of the State Advisory Committees to the U.S. Commission on Civil Rights, 1959.
U.S. Department of Commerce, *National Housing Inventory,* Washington, D.C. vol. 2, 1956.
U.S. Housing and Home Finance Agency:
An Evaluation of the Section 221 Relocation Housing Program, Washington, D.C., 1959.
Housing the Elderly, A Review of Significant Developments, Washington, D.C., 1959.
Housing for the Elderly, Direct Loan Program; Policies and Requirements of the Housing and Home Finance Administration, Washington, D.C., 1960.
Program for Community Improvement (Workable Program), Washington, D.C., 1960.
Public Housing Administration, *Low-Rent Housing Manual,* Washington, D.C., 1951.
Relocation From Urban Renewal Project Areas, Washington, D.C., 1960.
The Workable Program: A Plan of Action for the Renewal of a Community by the Community, Washington, D.C., 1960.
Trends Towards Open Occupancy, Low-Rent Housing Programs of the Public Housing Administration, Washington, D.C., 1960.
Urban Renewal Administration, *Urban Renewal Project Characteristics,* Washington, D.C., 1960.
Washington Hearings: Abbreviation for *Hearing Before the U.S. Commission on Civil Rights, Conference With Federal Housing Officials, 1959.*
WEAVER, *The Negro Ghetto,* Harcourt, Brace & Co., New York, 1948.

LIST OF CASES CITED

U.S. GOVERNMENT PRINTING OFFICE: 1961