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How TARP Funds Could (and Should) Be Used to Improve Our Neighborhoods

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Fair Housing and the Troubled Asset Relief Program:

How TARP Funds Could (and Should) Be Used to Improve Our Neighborhoods

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Abstract

The federal Fair Housing Act – passed in 1968 – has the dual mission to both eliminate housing discrimination and promote residential integration. In order to promote integration, the Fair Housing Act requires that government agencies spend funds dedicated to housing and community development in a manner that "affirmatively furthers fair housing." This obligation is not limited to the Department of Housing and Urban Development; rather it applies broadly and means that government agencies spending housing and community development funds – and recipients of government grants – must use those funds in way that helps create integrated, healthy neighborhoods.

As America struggles to emerge from its current economic struggles, the requirement to affirmatively further fair housing is as important as ever. Government efforts to jumpstart the economy have involved massive spending on housing and community development. For example, the Troubled Asset Relief Program (TARP), the single largest program in place to address the economic crisis, has recapitalized banks with the intention of restoring their ability to lend and has worked to provide homeowners on the brink of foreclosure with opportunities to modify their loans before it is too late. Because the recession has hit communities of color the hardest, and because the recession began in part because of failed discriminatory mortgage loans made in those communities, any attempts to ease the recession must involve explicit plans to increase residential and economic opportunities for the residents of those neighborhoods.

If TARP funds are to be administered in a way that affirmatively furthers fair housing, the federal government must: (1) analyze its own programs for racially disparate impacts and adjust programs to eliminate those impacts, (2) identify ways in which grantees and recipients of its funds can affirmatively further fair housing and evaluate their performance based upon this criteria, and (3) allocate funds to community groups with experience connecting people to economic and residential opportunities. The financial services industry can also take specific steps to meet its fair housing obligations by offering responsible loans that enable community choice, assuring fair marketing of properties, sponsoring non-discriminatory foreclosure prevention efforts, and financing fair economic development opportunities. Advocates play an important role in this equation: they must remind the federal government of the importance of affirmatively furthering fair housing, use publicly available information to evaluate the performance of TARP recipients, challenge TARP recipients that are neglecting their responsibilities, and partner with willing TARP recipients to provide meaningful opportunities for the American public.

National Fair Housing Alliance *(www.nationalfairhousing.org) – Founded in 1988, the National Fair Housing Alliance is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights groups, and individuals from 37 states and the District of Columbia. Headquartered in Washington, D., NFHA, through comprehensive education, advocacy and enforcement programs, provides equal access to housing for millions of people.*

Introduction

The financial crisis is arguably the biggest civil rights issue facing our nation today. Although this crisis has spread throughout all sectors of the economy, stripping jobs from America's middle class and leaving the giants of Wall Street "bankrupt, bought, or bailed out,"[1] it has its roots in the housing market: mortgage lenders and mortgage brokers made predatory loans destined for foreclosure and often times illegally steered African Americans, Latinos and others into those loans. The federal government has developed a number of programs designed to mitigate the effects of the financial crisis, but many have focused on restoring those same institutions that enabled the crisis to begin with. Federal law requires that programs addressing the crisis go further.

In order to address the civil rights implications of the crisis, all federal government programs intended to address the mortgage and financial crisis must be vigilant in meeting their obligations under the federal Fair Housing Act. The Fair Housing Act was passed in 1968 to eliminate segregation and housing discrimination, both of which have resulted to a certain extent from past laws and policies.[2] Overcoming these problems requires comprehensive and coordinated government action, which is why the Fair Housing Act requires all federal programs relating to "housing and urban development" to "affirmatively further fair housing," or work to overcome segregation and discrimination. This obligation is broad and applies to all federal agencies and recipients of their funding; however, federal agencies and grantees have often overlooked it.

The Troubled Asset Relief Program (TARP) is the largest federal program in place to address this crisis. Congress passed TARP to improve the economy by assisting banks' and others' ability to increase mortgage credit. By the nature of the program itself, this federal funding is clearly being used for both housing and urban/community development, and is therefore subject to the obligation to affirmatively further fair housing under the federal Fair Housing Act. By way of illustration, $50 billion in TARP monies are funding part of Treasury's Home Affordable Modification Program to keep an estimated 3 to 4 million families out of foreclosure. Because TARP recipients – in this case, companies offering loan modifications – are engaged in activities related to housing and urban development, they and the Treasury Department must ensure that the funds increase housing opportunity instead of perpetuating segregation.

This is a unique opportunity to create a model for promoting fair housing through government programs. The Treasury Department and TARP recipients must work together with community groups and others to change the traditional practices of the financial industry, which has historically offered substandard and discriminatory terms and services to minority customers. Instead, the industry should be working to create healthy neighborhoods with real options for

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[1] Obama, Barack. "Financial Rescue and Reform." Speech, Federal Hall, New York, NY, September 14, 2009.
[2] James Carr and Nandinee Kutty write, "The severe level of…segregation, and isolation resulting from those policies have created a complex web of socio-economic challenges that defy piecemeal and uncoordinated intervention. These problems are growing. As these problems grow, they increasingly take on grave significance for the nation beyond the sole issue of social justice." *Segregation: The Rising Costs for America,* edited by James Carr and Nandinee Kutty. New York: Routeledge, 2008, 2-3.

their residents. In this paper we will discuss: 1) why the Fair Housing Act and other documents highlight the importance of the obligation to affirmatively furthering fair housing; 2) why TARP funds should be required to meet the obligation; and 3) innovative ways in which the Treasury Department and TARP recipients can enhance civil rights and fair housing options in communities nationwide.

Affirmatively Furthering Fair Housing – A Key to Improving Neighborhoods

The common understanding of the Fair Housing Act is that it prohibits discrimination in housing on the basis of race, sex, national origin and other characteristics.[3] This is true – but the vision of the authors of the Act made it much broader. Drafting the legislation during the height of the civil rights movement and passing it in the immediate aftermath of the assassination of Dr. Martin Luther King, when the nation's racial divide was particularly stark, the authors of the bill made racial integration an explicit national priority. This purpose is stated most clearly by Senator William Proxmire (D-WI), who said that the Fair Housing Act would establish "a policy of dispersal through open housing … look[ing] to the eventual dissolution of the ghetto and the construction of low and moderate income housing in the suburbs." Senator Walter Mondale (D-MN) called the bill "an absolutely essential first step" toward reversing the trend toward "two separate Americas constantly at war with one another," and Senator Edward Brooke (R-MA) identified housing discrimination as "the root cause of the widespread patterns of de facto segregation which characterize America's residential neighborhoods."[4]

This vision, articulated in 1968, remains relevant as demonstrated by the words of both George W. Bush and Barack Obama. Following Hurricane Katrina, President George W. Bush said of New Orleans, "[T]here is also some deep, persistent poverty in this region as well. That poverty has its roots in a history of racial discrimination, which cut off generations from the opportunity of America. We have a duty to confront this poverty with bold action. So let us restore all that we have cherished from yesterday and let us rise above the legacy of inequality."[5] And as then Senator Barack Obama stated, "There is not a Black America and a White America and Latino America and Asian America -- there's the United States of America."[6]

To achieve this vision of one America without discrimination, the authors of the Fair Housing Act built into the law a provision that calls for the federal government, through all of the relevant programs of all of its agencies, to use its resources to take positive steps to break down the barriers of residential segregation and promote equal housing opportunity for all. The term used

[3] The Fair Housing Act prohibits housing discrimination on the basis of race, color, national origin, religion, sex, familial status and disability. It also covers all housing transactions and services, including advertising, rentals, sales, lending, and insurance, as well as harassment.
[4] *NAACP v. Sec'y of Housing and Urban Development*, 817 F.2d 149, (1st Cir. 1987).
[5] Speech in Jackson Square, New Orleans, September 15, 2005.
[6] 2004 Democratic National Convention Keynote Address, Boston, MA, July 27, 2004.

in the Act is "affirmatively furthering fair housing," and is defined in Section 808(d) of the Fair Housing Act:

> All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) *in a manner affirmatively to further the purposes of this subchapter* and shall cooperate with the Secretary [of Housing and Urban Development] to further such purposes. [7] (*emphasis added*)

In addition, the Fair Housing Act and the Executive Orders related to affirmatively furthering fair housing provide the following:

- Section 805 of the Fair Housing Act lays the groundwork for this mandate by detailing discrimination in residential real estate-related transactions,;

- Section 808 of the Act spells out the responsibility of the Secretary of Housing and Urban Development (HUD) to administer the Act, and the Act's application to other federal agencies; and

- Executive Order 110638, signed on November 20, 1962, and Executive Order 128929, signed on January 17, 1994, together state the responsibilities of all federal agencies to administer their programs in a manner that affirmatively furthers fair housing and clarify what is meant by programs and activities relating to housing and urban development.

In plain language, "affirmatively furthering fair housing" includes eliminating discrimination as well as the proactive promotion of healthy neighborhoods and geographic opportunity for all people. For most people, housing location – where they live – determines access to opportunities, wealth, and resources.[10] Discriminatory housing policies and practices have restricted opportunities for people of color, who are much more likely than white families to live in impoverished and resource-poor neighborhoods. In fact, three times as many poor African Americans and over twice as many poor Latinos currently live in resource-poor neighborhoods as poor whites. [11] African Americans, regardless of income are likely to live in a poor neighborhood over the course of a decade, while only ten percent of whites are expected to do the same.[12] Prospering communities, on the other hand, have access to good schools, healthcare, jobs, grocery stores, commercial enterprises, transportation, and financial services, among other benefits. The affirmatively furthering fair housing provision of the Fair Housing Act works to eliminate this divide.

[7] 42 U.S.C. Sec. 3601 et seq.
[8] http://www.hud.gov/offices/fheo/FHLaws/EXO11063.cfm
[9] http://www.hud.gov/offices/fheo/FHLaws/EXO12892.cfm
[10] Carr and Kutty. 2.
[11] Ibid., 14.
[12] Ibid., 14.

To promote and create healthy communities, federal agencies and their grantees must take effective steps to identify and redress past discrimination, and put in place measures to ensure that they neither engage in actions that are discriminatory nor perpetuate segregated living patterns. As federal agencies work to undo the damage of the foreclosure crisis, the law mandates that they apply a fair lending and fair housing focus to their programs.

Segregation – A Root of the Foreclosure Crisis

The foreclosure crisis has done much to increase existing racial wealth disparities and segregation rooted in discriminatory public policy and lending practices. Discriminatory lending practices, including giving subprime loans to families who qualified for prime loans,[13] has led to major financial losses in home equity, jobs, and the economy overall. People of color and communities of color have been particularly hard hit by the subprime mortgage crisis. They were affected first, and have felt the impact most deeply. From 2000 to 2007, communities of color alone lost between $164 billion and $213 billion[14] – and that was before the worst of the crisis hit.

Much of the foreclosure crisis could have been avoided were federal agencies and their grantees abiding by their obligation to affirmatively further fair housing and enforcing fair lending laws. HUD, federal banking regulators, the Treasury Department, USDA, Veterans Affairs (VA), and even the Department of Education all administer or oversee programs directly related to housing. Their grantees include most, if not all, towns, cities, counties, and states. It is hard to see which federal agency is not involved in some way in housing or community development. Other examples include the Department of Transportation (in where it locates highways and public transportation), the Department of Defense (in where it houses its bases), the Department of Labor (in where it promotes job creation), and the Department of Health and Human Services (in where and how it locates health services), among others.

Today, integration matters more than ever before, as the costs of segregation could keep us from reaching our full potential as a nation. America is quickly becoming a majority-minority nation, and segregation and discrimination have put people of color at a substantially competitive disadvantage. Minority households continue to grow as a share of the nation's labor force, and people of color will comprise a majority of America's population by the midpoint of this century. Segregation and housing discrimination "artificially limit individuals from achieving their full potential as contributing members of society, stifle human achievement, create unnecessary social program dependencies, and breed dysfunctional behavior." This denies the victims of segregation the same opportunities enjoyed by their white peers to built wealth and engage in the national economy. As James Carr and Nandinee Kutty have reported, "the fastest-growing share of the nation's population is the least well housed, has the most tenuous connections to labor and

[13] Fannie Mae and Freddie Mac estimate that up to half of the borrowers who received subprime loans should have qualified for "prime-rate" conventional loans, had mortgage lenders exercised proper business sense. See the Center for Responsible Lending's *Fact Sheet on Predatory Mortgage Lending* at http://www.responsiblelending.org/pdfs/2b003-mortgage2005.pdf.

[14] "Foreclosed: State of the Dream 2008," United for a Fair Economy, 2008.

financial markets, has exceptionally low levels of wealth, and is becoming increasingly isolated from quality educational opportunities."[15]

If America and its economy are to remain healthy and competitive in the global market, we must build healthy, prosperous communities that eliminate the structural barriers that have created these gaps – and it is up to federal agencies and recipients of federal funds to promote these communities. These agencies and recipients fell down on the job of fighting discrimination, which led to more people of color getting bad loans and more communities failing because of it. A recent Bloomberg article reported that the foreclosure crisis will cost taxpayers approximately $9.7 trillion.[16] Much of the cost from TARP and other federal programs designed to help the economy rebound. The foreclosure crisis primarily stripped equity from communities of color; programs meant to restore the economy must take these costs into account and strive to close these gaps.

Why TARP Funds Must Promote Fair Housing

TARP is intended to "restore liquidity and stability to the financial system of the United States…in a manner that (A) *protects home valu*es, college funds, retirement accounts, and life savings; (B) *preserves homeownership and promotes jobs and economic growth*; (C) promotes overall returns to the taxpayers of the United States; and (D) provides public accountability."[17] (*emphasis added*) This law authorized the Treasury Department to spend up to $250 billion initially, followed by another $100 billion, and another $350 billion with additional consent from Congress. According to the Office of the Special Inspector General for TARP, the scope of the program is actually closer to $3 trillion.[18]

The explosion of foreclosures in the subprime mortgage market set off a chain of events that nearly brought down the global economy. Although Treasury's strategy in spending the funds has changed over time,[19] there was never a question that somehow, some way, TARP had to fix the crisis in the mortgage market. In other words, TARP's programs and funds relate "to housing and urban development," and, therefore, must be spent in a way that affirmatively furthers fair housing. The connection to the Fair Housing Act's "programs and activities relating

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[15] This paragraph is informed in large part by Carr and Kutty, pages 2, 23, and 28

[16] Pittman, Mark and Bob Ivry. "U.S. Taxpayers Risk $9.7 Trillion on Bailout Programs," *Bloomberg Press* (Feb. 9, 2009).

[17] Pub. L. No. 110343 § 2 (Oct. 3, 2008)

[18] TARP is authorized by the Emergency Economic Stabilization Act of 2008. The Office of the Special Inspector General for the Troubled Asset Relief Program's Quarterly Report to Congress (July 21, 2009) (OSIG Report) defined the scope of TARP as follows: "[T]he U.S. Department of Treasury…has created 12 separate programs involving Government and private funds of up to almost $3 trillion. From programs involving large capital infusions into hundreds of banks and other financial institutions, to a mortgage modification program designed to modify millions of mortgages, to public-private partnerships using tens of billions of taxpayer dollars to purchase "toxic" assets from banks, TARP has evolved into a program of unprecedented scope, scale, and complexity." Office of the Special Inspector General for the Troubled Asset Relief Program's Quarterly Report to Congress, July 21, 2009, page 3.

[19] "Questions About the $700 Billion Emergency Economic Stabilization Funds: The First Report of the Congressional Oversight Panel for Economic Stabilization," (December 10, 2008)

to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions)" couldn't be plainer; therefore the Treasury Department has a clear obligation to use TARP to promote housing choice and diverse, inclusive communities.

To fulfill the "affirmatively furthering fair housing" mandate of the Fair Housing Act, Treasury and TARP recipients must work to create fair housing opportunities – not just rescue financial institutions and stabilize the market. Such action would be consistent with recent recommendations of the bipartisan National Commission on Fair Housing and Equal Opportunity, co-convened by former HUD secretaries Jack Kemp and Henry Cisneros. The Commission called for the federal government and federal grantees to ensure that fair housing principles are emphasized in programs addressing the mortgage and financial crises.[20]

One specific example of TARP's reach into the home market is Treasury's Home Affordable Modification Program (HAMP), funded in part by $50 billion in TARP funds. The goal of the program is to prevent 3 to 4 million foreclosures by providing incentives to mortgage servicers, investors, and homeowners to modify mortgage loans so that the payments become affordable.

Following advocacy from private non-profit civil rights and consumer groups and work with HUD, Treasury has laid some groundwork for measuring the success of this program in reaching people of color and women. Treasury is requiring those with the power to modify loans (mortgage servicers) participating in HAMP to collect and report the race, ethnicity, and sex for applicants for HAMP loan modifications. These reporting requirements are similar to those of the Home Mortgage Disclosure Act, and are critical for assessing the extent to which the program is non-discriminatory and fulfills the Fair Housing Act mandate to promote fair housing opportunity. The collection of these data would make it possible for Treasury, mortgage servicers and the public to monitor HAMP for any discriminatory impacts and for other problems with the program and make needed program changes. However, it remains to be seen how Treasury, or its compliance officer, Freddie Mac, will use these data and to what extent they will be made public. To date, Treasury has released only aggregate data for servicers. It has promised to make loan level data available, including the race, sex and national origin of the borrower, but without servicer information included, but has not announced a schedule for its release.

Collecting fair lending data and similar changes that Treasury has made to HAMP will make the program stronger and amplify its positive impact on communities struggling with the impact of the financial meltdown and ensuing recession. And more changes should be made to the program to enhance its effectiveness. In the same vein, incorporating fair housing goals into other components of TARP has the potential to bring into alignment the interests of the housing and lending industries, the communities they serve, and taxpayers. All of these parties have an interest in seeing good, affordable credit flowing again, having mortgages for which

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[20] *The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity*, December 2008. The Commission was hosted by the Leadership Conference on Civil Rights Education Fund, the Lawyers' Committee for Civil Rights Under Law, the NAACP Legal Defense & Educational Fund, and the National Fair Housing Alliance.

homeowners qualify and fully repay, and keeping communities safe and prospering. If financial institutions are doing their jobs well, it will have a positive impact on fair housing and fair credit.

With TARP, the Treasury Department has an opportunity to create a model for how the government could work with funding recipients to fulfill the mandate to affirmatively further fair housing. One step to move forward is the basic acknowledgment by all parties of both the benefits of fair housing to our health and prosperity as a nation, and the mandate as required by law. The second step is implementing specific programs and activities that both accomplish the objectives of TARP and also address these concerns.

Making It Happen – Financial Institutions

"Affirmatively furthering fair housing" does not need to be an abstract concept. The financial services industry can take specific steps to meet its fair housing obligations under TARP. For example, lenders should: offer responsible, sustainable loans that enable people to live where they choose; assure that homes and other properties are marketed without discrimination; sponsor foreclosure prevention efforts that affirmatively further fair housing and do not discriminate; and finance fair economic development and mixed-income housing opportunities.

Offering responsible loans that enable housing choice means making loans to everyone based on objective, fair underwriting standards including the ability to repay the loan, income, etc. People should not receive higher-cost loans based on their skin color, the neighborhood in which they live, or any other subjective or discriminatory measure. Responsible lenders should open branches and market their products aggressively in currently underserved areas, to assure that predatory lenders are not the only option in some neighborhoods.

Some foreclosures will inevitably take place, but how lenders and servicers deal with those cases will have substantial fair lending implications. When lenders foreclose on homes or other properties and take possession of them, they must establish marketing strategies to ensure that these properties (known as real estate owned, or REO properties) are made available for resale in a non-discriminatory manner. We cannot assume that this will happen, for we know that discrimination still occurs in the sale of housing.

For example, recent matched pair testing conducted by the National Fair Housing Alliance has uncovered blatant racial steering among real estate agents.[21] Racial steering in the sale of REOs would prevent the opportunity, in some instances, for renter households, including households of color, to become occupants of affordable homes in opportunity-rich neighborhoods. Servicers must adopt appropriate policies and procedures to prevent this type of steering, and Freddie Mac, on Treasury's behalf, must monitor REO sales closely to make sure it does not occur. Further, to

[21] From 2003 to 2006, NFHA conducted follow up testing of real estate agents in conjunction with HUD's decennial survey of discrimination. NFHA found high rates of racial steering for Whites, African Americans, and Latinos, and outright denial of service to African Americans and Latinos. Fair housing organizations use testing as a way of determining whether or not housing providers discriminate against members of a protected class. In a test, nearly-identically qualified individuals – one of whom is a member of a protected class and the other of whom is not – will simulate a housing transaction for the purpose of comparing the responses given to them by housing providers..

affirmatively further fair housing, REO properties should be specifically marketed to households who might be unlikely to consider those properties or neighborhoods of their own accord.

Sponsoring foreclosure prevention efforts that affirmatively further fair housing and do not discriminate is vital as more than 8 million foreclosures are forecast over the next five years.[22] One sensible option is to adopt a moratorium on mortgage foreclosures of at least nine months, if not longer, so that the government, the industry and the non-profit sector have the time they need to develop the necessary infrastructure to implement the Administration's program and other programs effectively.

A critical component of the foreclosure prevention effort is a strong network of community-based counseling organizations, fair housing centers, and legal services providers that can help homeowners who are delinquent or at risk of default to negotiate with their servicers and save their homes. Where it is impossible to save the borrower's home, these support organizations can help negotiate the best possible alternative for the homeowner. The resources currently devoted to counseling and legal services fall far short of the mark. Both the government and lending institutions should expand their support for non-profit organizations, whose foreclosure prevention efforts benefit both borrowers and servicers.

Fair economic development and mixed-income housing opportunities are necessary components of community prosperity. Lenders must work cooperatively with real estate developers, businesses, and non-profit organizations to finance adequate affordable housing options in opportunity rich neighborhoods and robust commercial development in opportunity poor neighborhoods. African Americans are more likely to live in neighborhoods with poor commercial development, education, and housing opportunities.[23] A massive program like TARP offers an unprecedented opening to change this situation, both by supporting community economic development that improves the quality of communities with limited opportunities and by creating new housing options in high opportunity communities. TARP recipients should evaluate their loan portfolios to make sure they are financing businesses and projects that help achieve these goals.

Making It Happen – Treasury Department

To accomplish these goals and outcomes, Treasury should: examine its own policies for disparate impact and the promotion of fair housing; monitor how the funds are being spent; provide technical assistance to financial institutions, possibly through collaboration with bank regulators, HUD, and others; and create requirements and obligations for all participants under its programs.

Part of affirmatively furthering fair housing by a federal agency is assuring that its own policies do not create a disparate impact and that they promote fair housing. At the front end, Treasury

[22] From 4th quarter 2008 to 2014. Goldman Sachs Global ECS Research, Home Prices and Credit Losses: Projections and Policy Options (Jan. 13, 2009), p. 16; *see also* Credit Suisse Fixed Income Research, Foreclosure Update: Over 8 Million Foreclosures Expected, p.1 (Dec. 4, 2008).
[23] Carr and Kutty, 23-26.

should review in advance of their enactment or adoption, all policies and programs to ensure that they do not have a discriminatory impact. At the back end, Treasury should assess the impact of TARP funding on local communities to make sure it affirmatively furthers fair housing. To undertake this review process effectively, the government should increase its staff with fair lending expertise.

Continuing with the earlier example of the Home Affordable Modification Program, Treasury and the industry should increase their efforts to provide affordable, sustainable loan modifications, both within and outside of the program. HAMP is an important step in the right direction, but needs to be strengthened in the following ways:

- Expand application of the program to all loans serviced or owned by any past, current, or future TARP recipients;
- Cast a broad net with respect to determining which borrowers are eligible for a modification, including giving another chance at a loan modification to borrowers for whom changes in circumstances make their original HAMP loan modification unsustainable and borrowers who are underemployed or unemployed;
- Develop tools to assist borrowers hit by unemployment or underemployment, such as temporary forbearance and short-term loans;
- Make greater use of principal reduction to achieve affordability and realign mortgage debt and property values;
- Stop all foreclosure actions while loans are being evaluated for HAMP modifications;
- Make interest rate reductions permanent, not short-term; and
- Increase the transparency of the process by which decisions are made about whether particular borrowers are eligible for loan modification, and about the terms of those modifications. [24]

Monitoring of funds being spent includes data collection, making sure participants are meeting the requirements of the program, and taking proactive steps if goals are not being met – either overall or on an individual basis by specific industry players. TARP recipients are among the many financial institutions that engaged in discriminatory and predatory lending practices. A recent study issued by the Center for American Progress reports that 14 systemically significant national banks and their subsidiaries, all TARP recipients, made substantial numbers of high cost loans and primarily sold them to African American and Latino borrowers.[25] When banks receive TARP funds, Treasury should conduct an expedited review for potential civil rights violations and unfair or deceptive practices. If violations are found, the Department should take immediate remedial actions or make appropriate referrals for enforcement. Such reviews should be coordinated with HUD and DOJ. This, and other, information must be made public: making

[24] For a detailed list of recommendations, see March 25, 2009 letter to Treasury Secretary Timothy Geithner, National Economic Council Director Lawrence Summers, and HUD Secretary Shaun Donovan from 19 organizations.

[25] Jakabovics, Andrew and Jeff Chapman. "Unequal Opportunity: Analyzing Racial Disparities in Big Banks' Higher-Priced Lending." Center for American Progress. (September 2009). The study reports that these banks made more than 876,000 higher-priced first-mortgages in 2006. While 17.8% of white borrowers received higher-priced loans, over 30% of Hispanics and over 40% of African Americans received them instead of prime loans.

data and other information public is key to enabling the public to help in the monitoring process and to build public confidence that program goals are being carried out effectively.[26]

In order to avoid the need for enforcement actions and to assure a productive program, Treasury should provide technical assistance to financial institutions to help them carry out their fair housing mandate. Treasury has a number of partners to call on in this effort, beginning with the staff of its own Community Development Financial Institutions Fund, which supports lending institutions whose mission centers on community development and affordable housing. The CDFI Fund staff not only have expertise themselves, they also have widespread contacts in the community development/affordable housing field whose knowledge can be tapped to further the fair housing mandate of TARP. In addition, Treasury can call on the community affairs staff of the federal banking regulatory agencies, who have developed this type of expertise in order to promote compliance with the Community Reinvestment Act, and who may already have relationships with many of the recipients of TARP funds. This knowledge may enable them to help TARP recipients leverage their own institutions' existing efforts in these areas, as well as making them aware of planned or ongoing community development and housing efforts in their local communities. Another potential partner is HUD, which has fair housing expertise and also manages a host of programs that promote community development. By making use of these and other resources, Treasury could ensure that TARP recipients are not starting from scratch in finding ways to fulfill their fair housing obligations.

Experience shows that making affirmatively further fair housing voluntary is likely to have limited success. In order to make sure that TARP recipients take their fair housing obligations seriously and make it a high priority to fulfill them, several elements are necessary. One of these is leadership and commitment from the federal government. Treasury officials, starting with the Secretary, must use their positions to promote fair housing and make it clear to TARP recipients that this is a federal priority. In addition, performance benchmarks must be set, so that the Treasury, the TARP recipients and the public can measure the progress each TARP recipient has made in affirmatively furthering fair housing. This also lays the groundwork for highlighting best practices initiated by one company that may be adopted or adapted by others. Similarly, it makes it possible to identify shortcomings in performance that must be addressed. Finally, in the event that TARP recipients fail to further fair housing effectively, enforcement actions must be taken. The absence of any sanctions for non-performance would send a message to the industry that fair housing is not really a priority of the federal government.

Conclusion

This is an incredible opportunity to further the goal of fair housing. Not only will it have a huge impact on housing choices now, but it could create a model to apply to other federal funding streams that would create a society the drafters of the Fair Housing Act envisioned.

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[26] These recommendations and others are also included in correspondence from the National Commission on Fair Housing and Equal Opportunity to former Treasury Secretary Henry Paulson, Senators Christopher Dodd and Richard Shelby, and Representatives Barney Frank and Spencer Bachus. *The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity*, December 2008.

Although it would have made sense to implement these suggestions at the outset, changes now to TARP and HAMP could still have large, positive impact. To make this change, a wide spectrum of stakeholders should work to change the Administration's programs and industry participation. These stakeholders include private non-profit organizations, labor unions, investors, elected officials in undercapitalized communities, national intermediaries, and many others. These groups and communities nationwide should push the Treasury department, HUD, Fannie Mae, Freddie Mac, mayors, other elected officials, and all federal housing recipients to meet their obligations under the Fair Housing Act to make us a more competitive nation with options for all of its residents.

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