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NATIONAL FAIR HOUSING FORUM

Addressing Systematic Housing Challenges: Racism in the Homebuying Process

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Speakers: Demetria McCain, Principal Deputy Assistant Secretary, Office of Fair Housing and Equal Opportunity, HUD, Jacy Gaige, Director, Compliance Disability Rights Division, FHEO Fair Housing, HUD

Moderator: Cashauna Hill, Executive Director, Louisiana Fair Housing Action Center

Panelists: Keith Herbert, Investigations Editor, Newsday, Bryan Greene, Vice President, Policy Advocacy, National Association of REALTORS®, Steve Tomkowiak, Esq., Executive Director, Fair Housing Center of Metropolitan Detroit, Sameena Shina Majeed, Chief of the Housing and Civil Rights Enforcement Section, Civil Right Division, DOJ

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CASHAUNA HILL [0:00:00]: Thank you all very much for joining us today.

Hello again. And welcome to the National Fair Housing Training Academy's National Fair Housing forum titled "Addressing Systemic Housing Challenges: Racism in the Home Buying Process." My name is Cashauna Hill, and I am a NFHTA faculty member as well as the Executive Director of the Louisiana fair housing action center. I'm excited and honored to once again serve as forum moderator. Before we begin today's conversation, please note that this forum features information and examples that represent the experiences of the speakers.

The comments made today do not necessarily reflect the policies of HUD. Now let's review some quick technical tips and instructions before we begin. TJ, over to you.

TJ WINFIELD [0:00:51]: Thanks, Cashauna. If any of you do have technical difficulties with audio or video, we recommend that you first sign out of the webinar and then sign back in. If you are still having trouble, you can then request help in the Q and A box, located on the Zoom panel section at the bottom of your screen. Or you can send an email to [NFHTA@cloudburstgroup.com](mailto:NFHTA@cloudburstgroup.com). We encourage you to ask questions. You can enter your questions at any time by selecting the Q and A button. The webinar is scheduled for two hours, and it is being recorded. The recording and the transcript will be made available on the NFHTA website on HUD exchange along with resources that supplement today's conversation. Back to you. Cashauna.

CASHAUNA HILL [0:01:41]: Thank you, TJ. I would now like to present Demetria McCain, principal deputy Assistant Secretary of HUD's office of fair housing and equal opportunity. She has a long and distinguished history and is committed to advancing racial equity and reinvestment in neighborhood. It is great to have you join us today.

DEMETRIA McCAIN [0:02:06]: Thank you very much. I have to say good morning, to some and good afternoon actually to others. As was mentioned I'm Demetria McCain, Principal Deputy

Assistant Secretary. I want to welcome you to NFHTA's forum on addressing systemic housing challenges, racism in the home buying process.

Now we know that discrimination has a long history, okay, from mortgage redlining which contributes to the home ownership gap, to steering and blockbusting which actually perpetuates segregation, to denial of homeowner's insurance which contributes to distressed neighborhoods and appraisal bias which contributes to the wealth gap.

Although there is much progress to be reported on, on things that we have done over the years, let us not be mistaken. Our role in fair housing is very relevant today. Because discrimination continues to be very prevalent in our society. Back in 1968 the Commissioner's report warned Congress that America is divided into two societies, Black and white, separate and unequal.

Naming residential segregation is one of the primary manifestations of inequality, is what the Commissioner did. And unfortunately, history repeats itself. A Brookings report on segregation notes that substantial levels of neighborhood segregation persist from Black, Latinx and Asian Americans. This level of segregation is part and parcel of continued housing discrimination based on race and ethnicity. Now, many communities across the country remain segregated and they endure the absence of investment, thriving schools, and infrastructure because of it.

And as you know well, fair housing isn't just about access to shelter. It is also about access to employment, education, credit, transportation, safety and really a whole range of institutions and opportunities that constitute the basic fabric of everyday life.

Where and how you live can determine the foods you eat, and even the water you drink. Now need I mention the environmental racism actually plagues marginalized communities even today, today. It affects your health, your welfare, and your ability to pursue your goals and your ambitions.

We cannot be a generation that allows history to repeat itself. As public servants, advocates, researchers, housing providers, and folks in the real estate business, we just squarely reverse this historic inequity that perpetuates systemic barriers and opportunities for people of color and other underserved groups.

Now the Biden/Harris Administration has taken historic pleasures to address inequality in this country. And collectively we have the opportunity to change the trajectory of the wealth and home ownership gap, one neighborhood and community at a time.

That is why the work being done and the efforts in which you do engage each and every day, are so very vital by promoting, defending, and enforcing the Fair Housing Act. We are ensuring that every individual, by doing this across the country, can claim our nation's fundamental precepts of true equality, dignity, and freedom. So, it is my hope today, that today's forum will serve as a platform to increase your awareness, catalyze change, and really strengthen your resolve for equity.

So, thank you for being here, you all. Let's get started. Back to you, Cashauna.

CASHAUNA HILL [0:06:28]: Thank you. I would now like to introduce Jacy Gaige, Director of the Compliance and Disability Rights Division in the Office of Fair Housing and Equal Opportunity. Throughout her time at HUD Jacy has focused on systemic discrimination and has led investigations of redlining and length lending scams, distribution of disaster recovery assistance, nuisance ordinances. She has led HUD's investigation of Facebook's advertising platform that led to a charge of discrimination in March of 2019. Thanks for joining us today.

JACY GAIGE [0:07:12]: I'm so pleased to be here. Thank you for having me. Today's speakers will delve into types of discrimination in the home buying process. But I have been asked to speak more broadly about systemic case work in this space and strategies for approaching these cases.

First, what do I mean by systemic? There is no formal definition, but I find the description in HUD's regs helpful which is discrimination that's pervasive or institutional in nature, affecting large number of persons or involving a complex policy. It is important to start I think by acknowledging the scope of practices affecting home buying with the potential for discrimination. Starting with zoning and other forces that shape what kind of housing even exists in what neighborhoods and at what price point.

For example, layered a top historically jurisdictions may impose unnecessary design sizes and parking and materials restriction that drive up the cost of housing. Some jurisdictions have built in layers of discretionary approvals which can operate as local vetoes on the construction of housing and risk discriminating when exercised.

Other actors such as condo associations and HOAs also impact housing choice by imposing use restrictions or own review of purchasers. Such as steering by real estate agents, differential treatment, credit deserts, studies have shown in many contexts that black and Latinx applicants are more likely to have their loan applications denied, face barriers as delays or subject to product steering into more expensive mortgages. There is a lot of work to do. Today's speakers will share helpful examples from a variety of contexts.

But where do you start in this space if you are listening and intrigued but new to the field or don't feel you have the resources for statistical analysis or testing? I have two strategies for diving in that scenario. The first is recognizing that the non-data or pre-data work is more important than you might think.

Nearly all systemic cases have a qualitative element. For example, in a redlining case, statistics are likely going to matter. But there is also an important inquiry into bank policy, how employees see their roles or talk about neighborhoods, culture of company and content of advertising, et cetera. There are also lending cases where there is little data crunching at all, where the policy or practice at issue is so closely tied to a protected class that more of the work

is actually in identifying the policy and mapping its application.

These include, for example, cases about how lenders treat disability income, foster income, maternity leave as well as collateral such as group homes, homes on Native American reservations or in particular communities. These cases and similar cases beyond the lending sphere require a deep dive into the policy or practice at issue. To understand what the contours are, how it plays out generally, or in given situations, whether it is written or de facto, how it interacts with other policies, who created or implements it and what they say about it.

It often feels that the work before any math is the most time consuming and important part of the case. So, if you come across concerns or allegations about a policy or practice that seem credible, I encourage you to lean in to all the research that you can do even if you don't have a plan for data analysis that you think you may eventually need. There is so much more work on the front end here than one would think by reading the press releases at the end of these cases.

My second strategy is to also spend as much time as you can getting more familiar with fair housing data. When a headline asserts that black or Latinx applicants are more likely to be denied loans, dig down and determine what went into that headline. What loan products did they look at. From new articles or academia, the data at the base is likely to be public.

But cases are also a rich source for learning. What data is possible to get. What comparisons were made. What defenses were raised and how rebutted. This helps over time figure out how to use similar data in your own cases and gives you some somewhere to start to know where you ask for.

Or it knows what other side might have or likely doesn't have or what your best approximation could be if you can't get the original data you are thinking of.

For other headlines refer to white areas or minority areas and how are they defining white areas.

Why? These details matter and they come up in almost every single case. Being as well versed as you can in the possibilities and rationales and as many different scenarios as possible, is going to serve you well going forward in these kinds of cases.

So, with that, I look forward to hearing what the speakers today have to say to help us all leverage our respective tools to advance fair housing enforcement in the home buying process, which is sorely needed, and I will turn it back to Cashauna.

CASHAUNA HILL [0:13:01]: Thank you so much for those remarks, Jacy. Let's move on. And I will share the learning objectives for today's forum. Together we will identify the common types of housing discrimination in the home buying process, gain knowledge of the economic impacts of discrimination in the home buying process. And including the continued disparities in wealth

accumulation. Explore the phenomenon in steering, discuss, fair housing laws regulations and theories of liability used to combat steering and other forms of discrimination in the home buying process.

Explore methods for conducting systemic and complaint-based investigations of unlawful steering practices and identifying responsible parties.

Finally, before I introduce our panel speakers, I want to provide a few reminders. Throughout today's roundtable discussion, you will all have the opportunity to submit questions that we will do our best to address later in today's event. However, please note that we will not have time to get to all questions and personal questions will not be able to be addressed. You can submit questions at any time via the Q and A box. Also, as a reminder, this event is being recorded.

The slide deck is already available on the forum of page on HUD exchange and other materials including the recording will be available on HUD exchange soon after the event.

Finally, I'll mention this again at the end of today's forum, but I wanted to let you all know about our upcoming forum, Violence Against Women Act, part 1, understanding survivor experiences which will be held on October 19. Using first person narratives and current research on trauma and mental health, the impactful forum will establish a foundation upon participants can build their own knowledge and cultural competencies when working with survivors. Please sign up for the forum on the NFHTA Web page. We hope that you can join us for that discussion.

At this time, we'll move on, and I'll introduce our panel speakers. I know that you all are very eager to learn from the experiences of the speakers and you can find their bios on the forum page of the NFHTA website.

Joining us today we are honored to have Keith Herbert, Bryan Greene, Steve Tomkowiak, and Shina Majeed. Before we get started with Keith, we are going play a brief video that will help set the stage for today's discussion. This video is a short clip related to Long Island divide I which is a three-year probe by Newsday in conjunction with New York's fair housing justice center. That investigation found evidence of widespread discriminatory treatment in the home buying process on Long Island, New York.

Long Island Divided: How Newsday Used Data to Uncover Evidence of Bias in Real Estate on Long Island (Video) [0:16:25]:

I have coordinated more than 12,000 investigations across the country. I have personally done more 1,500 tests. I have been named as a witness in 400 fair housing lawsuits and I have testified 56 times in state and federal courts around the country. So yes, I have some experience.

Okay.

We relied on the judgment of two nationally recognized experts in the fair housing field.

All we're asking in these tests you get two people come in and ask for exactly the same thing. Why don't you give them the same listing? Why don't you prequalify them in exactly the same way. It is not that big of a burden?

The scope of Newsday's investigation was quite extensive. It matches what most levels of government would ever do and certainly is more than any media organization ever did. The tests were designed in such a way to reflect virtually the entire population and almost all of the geography of Long Island.

The ten test zones that we picked all together, more than 80% of Long Island live there, too, we wanted to cover areas where a large group of minorities lived closely to large concentration of whites. We wanted to look at areas where million-dollar homes were readily available, and those areas covered the gold coast and also the Hamptons.

Another type of test zone covered western Nassau. Newsday's tests focused on the 12 largest real estate brokerages on Long Island.

Once we narrowed down the real estate companies we wanted to pick, the agents were picked at random. When we sent out testers, they would be unannounced. Most of the time the receptionist had assigned whichever agent was available that day. We would follow up with the same exact agent. Throughout the investigations our testers received more than 5,700 house listings.

We started with 109 paired tests across Long Island. We had to verify that they were in fact, accurate, fair, tests. Did the testers engage with the real estate agencies in equal ways. Did both sides of the test, both make the same request. If they did not, that's not a fair test. And it would have to be eliminated. Through that process, we whittled the number of valid tests down to 86 tests that match white and black, white, and Hispanic and white and Asian buyers.

The primary question that we were trying to answer was whether the agents provided equal service to both testers in every test. Was one side provided with more listings than the others. Where were those listings placed. As permitted by law, Newsday recorded all meetings between testers and agents and then transcribed the recordings.

(Off microphone).

Matching those tests, mapping the listings, and relying on the judgment the fair housing experts you start to get a picture of whether an agent or more importantly agents at large across Long Island engaged in different treatment of testers.

CASHAUNA HILL [0:20:18]: Many thanks to the tech support crew for queueing up and playing

the video. Now that the stage has been set, and we have some context for today's discussion, I will hand things over to our first panelist, Keith Herbert.

KEITH HERBERT [0:20:36]: Thank you, Cashaura. Appreciate that. I want to thank you all for inviting me to join this event. And allowing me to contribute to this important discussion.

What to expect when doing testing is a pretty broad subject. And I'm going to focus on the sort of posttest fallout that comes with testing agents and the industry as well as the regulators that were involved from Newsday's testing program. First, I need to say to anyone that is even considering doing a paired testing investigation like Newsday did to consult someone like Fred Fryberg from the fair housing center in New York City, I think that even the most experienced test coordinator could learn something from a person like Fred or anyone in your own community that has a great degree of testing experience. Fred was an invaluable resource to us. And I'm should you can find someone like Fred in your own communities.

Another qualifier so to speak is that as you saw there in that video, Newsday's testing was done to produce investigative news stories. So, the structure and design of our tests might look radically different from what your testing program looks like and what your end goals are. We were really motivated by the question of what a real estate agent would do if they were presented with buyers of the same wherewithal. Asking for the same thing. And where they would place listings for our testers in a growing community, in 2015 we already realized that Long Island was growing more diverse. And remain a segregated residential hazard.

And also, you know, our testers went out on home tours, but that was really basically to make them look like real testers, rather testers that look like real buyers and to collect any comments that, you know, an agent might make about a school district or a neighborhood that may be a violation of a fair housing standard. We really wanted to get from agent's home listings so we could plot the mental map and overlay census tracks.

We really weren't trying to gather evidence for a lawsuit or for the New York Department of State to take any regulatory action. As practitioners you might be gathering evidence from testing to using a court case. So actually, I say take whatever testing you can from Newsday's, so design your testing program so it fits your needs. The only thing I will say about a tip, pro-tip, if you will, early on we just kind of went to the federal courthouse and looked up cases litigated over the Fair Housing Act that made use of bare testing that gave us a window into how testing programs work.

What were the strengths, how they litigated around the Fair Housing Act. And how any defense of the industry handled themselves in court. And any flaws spotted in the testing we made note of to make sure that our testing program, you know, eliminated those.

I would say do that even if you have done testing recently and are testing veteran because these things change. Lastly, we certainly aren't experts in testing. We are a bunch of reporters who wanted to -who- wanted to see if we could do a story about residential housing

segregation and realized that in order to do that, we needed to make use of paired testing here on Long Island. On to the slides, so basically you didn't do it right.

This was a reaction we got from just about every agent that we tested. And this action- or- this reaction kind of got compounded and simplified when the industry's lawyers got involved in explaining what exactly their side of our testing results were. We often heard things like, you know, your testers didn't ask for the same thing when they came in. One agent would say one of your testers was clearly a motivated buyer while the other one wasn't. When we sent in people asking, you know, the same thing, same neighborhood, we would say 30 minutes from a school district or 20 minutes from a person's job. Make sure that both sides of the test said the same thing.

The other thing you want to do is, you know, you want to eliminate the possibility that the agent that you are testing simply had a bad day. So, workload being what it was it wasn't possible for that agent to give the other side of your tests, the equal treatment that it gave one side.

For us, our solution there was to repeat the test at the agency multiple times so that we weren't -we weren't- doing something that would take a test that showed a lot of results, disparate treatment of one tester on one day. We went back to that agency and tested that agency multiple times to see if there are anything that we could gather that would knock down the argument that oh, you tested a tester on a bad day.

But broadly speaking, if you are going to do testing, the industry or individual real estate agents are going to attack the methodology that you used and try to find a flaw.

This is what we had to deal with in our test. We did 100 tests over 18 months. Three-year project. So, we did a lot. We didn't use all 100. But one of the problems that kept creeping up for us was the time between tests. So, we would put a black tester with a white tester. Hit realty connect agency. And for some other reason our tester, same two testers couldn't go back because one of the testers had a family issue or a car broke down or, you know, had to catch,- had- to catch the bus to take an exam because they are still in college. Those things caused issues where the difference between the time in between the two tests was increasing and large in some instances.

So, you want it to be days and it ended up being weeks. That allows them to say the market changed. So, you know, it is hard to say that the same homes are available. So, the same listings aren't similar. So, what you want to do is make sure that if you have a testing coordinator someone is watching the clock. So, this doesn't creep up for an issue, to be an issue for you.

The tests need to be close in time. You want to prevent agents or agencies claiming that too much time passed. This is an example of if you are going to do a testing, these are the types of things that you kind of have to kind of be nimble about and if it crops up, you want to make sure you have a response and don't let it creep in to giving away a defense for the real estate

industry.

This is just something to keep an eye on. We tested several minority agents. Some of them ended up having problematic tester whether it was disparate treatment. You test everyone. You don't assume that a person is a person of color that they won't have a problem with meeting fair housing standards. I would say make sure you test to see if everyone is treating would be buyers equally. Even agents of color.

These are just two things to look out for. We had to deal with this. This is the way I work with everyone was a typical statement by real estate agents we tested. We have on Long Island this is something that, you know, we have seen that probably doesn't exist everywhere. But agents will require the use of an exclusive agreement. Exclusive agreement says a real estate agent and proposed buyer they both sign it, and it says for housing search for the next six months you will work with me exclusively. And some of them says that even after our agreement expires after 45 days, if you sell the home, I still get a cut of that. The problem with that is that those type of agreements were being exercised against our testers of color and not being exercised against white testers. So that's just something to be aware of: Also, preapproval letters from banks, again agents ask yourself are the agents using these fairly or using it to weed out testers. Usually, it is the person of color that gets to provide a preapproval letter in order to see houses or listings.

This is the other thing that was really common in our testing. You know, the agents we would be dealing with could not resist the urge to tell our testers both black and white, but usually white testers got wealth of information about school districts. What's a good school district. You want to avoid that school district. You don't want to go to that school district because of XYZ. So, this was often the defense that they were- I- was giving this tester information about the performance of the school district. I wasn't disparaging any particular school district. But the fair housing standards are pretty clear that real estate agents aren't experts in education. So, they should probably be directing any home buyer to third party sites that evaluate how a school performance can be measured.

Or call the school district yourself, call the superintendent and ask can I have some data on how this school district performs. So many of them were talking about the quality of the school districts. If you are going to do a testing program, you are probably going to see a great deal of. It goes way back. It is something that you can use to measure whether there is disparate treatment or whether the agents are treating everyone fairly.

The industry on Long Island, you know, largely had a reaction to our stories that came under the umbrella of well, we didn't like it. No one likes to get tested. But because we were, you know- as- conservative as we were in producing the testing results by recording the interactions, by making the recordings available on our website, by throwing out tests that we determined weren't fair to the real estate agent, that the industry largely realized that we uncovered some problems that needed correction.

Industry groups made the point of pointing out to us that, you know, what we did was good for the industry as a whole and rapidly endorse reforms that included more testing.

Long Island realtors that cover steering in residential areas. I'm sure you are going to hear more about this throughout the course of this seminar. But the point here is that, you know, you have an industry that seems to be recognizing that there is an issue with how minorities are treated in the housing market. And it needs to be dealt with.

So, Newsday's testing program did, you know, spark a lot of attention. And it --was really a driver of change from a legislative standpoint. As well as the industry taking a hard look. Just recently the end of August, Long Island real estate, three Long Island real estate brokers agreed to a settlement with the New York Attorney General who based their action against these three real estate firms on the information documented in Newsday's testing investigation. The firms agreed to pay \$115,000 which is not a whole lot of money for a real estate firm. Some of that is dedicated to specific funding to do additional testing here on Long Island as well as fair housing support and training. This is what I was saying earlier, is that testing -if done properly it- resonates with the community because you get the media involved. The regulators pay attention. The legislators pay attention. So it's an endorsement that there needs to be some type of what I'll call enforcement of fair housing standards because that one of the things that we found in Newsday when we started was that for going back at least a decade or more there hadn't been a sustained testing program by, you know, government agency or a regulator of the industry for a long time. That's one of the reasons that we chose to go down this path in addition to what I said about our general curiosity is that there didn't seem to be anyone looking into this issue in a way that involved paired testing.

Also, the governor in New York, Kathy, signed into law a wide range of antidiscrimination laws spurred by our testing results and those included increasing the fine which created a pot of money to fund the testing and increased broker's fees. This is evidence that if done correctly the power of it can really drive change.

I got my eye on the clock and this is the last slide. This is a guy named Raza. Anyone who has seen the documentary that went along with our investigation remembers Raza. He was a guy who actually explained in our undercover video what- steering actually is- to a home buyer.

And, you know, and then we looked at the testing results and found that, you know, some of the homes that Raza said the minority tester were in more diverse neighborhoods than he sent the white tester. I'm not picking on him. I'm putting in here even an agent that you test can eventually realize that perhaps they need to pay more attention to how they do their job, how they can get more training and do their job better in a way that ensures people are treated fairly in a housing market. Raza was one of the real estate agents that testified before a hearing, a state Senate hearing in which he acknowledges that, you know, he will think twice about how he practices going forward based upon the results uncovered by Newsday. Even down to the agent level, the industry can and seems to be taking an eye towards reform.

And with that, I'm going to turn it back over to Cashauna.

CASHAUNA HILL [0:39:21]: Thank you so much Keith. It is great to have you here to provide additional insight and context when it comes to the Newsday investigation that I know many of today's attendees are familiar with. Before we move on to our next panelist, a reminder that this event is being recorded. The slide deck is already available on the forum page on HUD exchange and that link has been posted in the chat. Other materials including the event recording will soon be available on HUD exchange as well.

Bryan Greene will now address the steering and standards set, Bryan-- Greene will now address steering and the standards set forth in article 10 of the code of ethics and standards of practice of the national association of realtors.

BRYAN GREENE [0:40:14]: Thanks. It is great to be with everyone today. Let me just say, the Newsday testing was actually just the shot in the arm that the real estate industry needed. And for me it created a raison d'être for my work at the national association of realtors because that investigation hit the paper at my very first month at the national association of realtors. At a time when the association had first created a fair housing policy committee. So, we know from Keith just what the testing showed. And when leadership at the realtors said all right, this certainly indicates we have a huge problem, what do I propose. I said well, you know, we need to do a number of things. We need to promote accountability, culture change and training.

And I said that, you know, because almost immediately some people began - some- people in the industry began to say Newsday shows the need for more training. Well, training, yes. But - and- training was a feature of the Newsday expose. Training was one part of issue. There were many people who referenced the Fair Housing Act and their knowledge of it and decided to act differently despite that.

So, I emphasize there needs to be a cultural shift, certainly among those who haven't embraced their training. But at the end of the day, there must also be accountability and putting those things together of course it created a handy acronym, ACT. So, I said we need to focus on all of these things. So, training itself is sort of the foundation. And I said insofar as we do more training and we have been doing training for decades on fair housing, we need to also find more effective, more innovative ways to do training. And Newsday exposed some of the training in New York which was really inadequate. One of the things that we said we want to do is use technology. Let's run people through scenarios. And demonstrate that they know what to do under different circumstances. We launched something called fair haven, interactive training program where agents are confronted with different scenarios where they may be lured to discriminate or may witness other people discriminating. And even it switches seats for folks to put them in the place of the consumer to see how a consumer is viewing a transaction.

And that's been immensely popular among agents nationwide and many companies have brought that training inhouse. So that was innovative training that we launched. And then also

in recognition that not everyone who engages in discrimination is conscious of it. And so, we said we need to do what we call implicit bias training. And help people recognize some of their biases so that they can override them. Again, immensely popular throughout the country. And all of these were expanding to do more on to address new and different scenarios as we see them.

So, the training is essential. We also want to make sure that what happens at the state level, the requirements that people have to become licensees, include adequate training. And so, we took a survey of what's going on nationwide with respect to training for licensees. And discovered many deficiencies that, you know, sometimes there is general real estate training but no dedicated hours to fair housing.

So, you might get fair housing training, or you might not. You might get a dose of it sprinkled in. That's not sufficient. So, we have set forth some best practices in working with our state associations to make changes to state licensing laws. To advocate for changes to state licensing laws. So, we're setting some best practices there.

But beyond the training as they said, culture change is key. And we set forth a number of goals with respect to culture change. One we partnered with Fred Fryberg and the New York fair housing justice center. You saw Fred in the Newsday video. We're working with them to highlight those agents who are doing the right thing, to help peers see that you can do well by doing the right thing. And showing that this is something that folks care about.

So, we've been able to highlight real estate professionals who are leaders in fair housing. Champions in fair housing. So, we continue to do that. And we also work with Fred Fryberg and the New York fair housing justice center to highlight discrimination when it occurs. So, we can build more scenarios in to our fair housing training. The Newsday expose highlighted the connection between schools and fair housing. Even if people aren't explicit in racial training, encouraging people to live in particular school districts or how school districts are described can shape people's choices and can steer based on race. So away want to dig in deeper on that. And provide more best practices. And even, you know, looking at many of these services that provide information on schools, we know that test scores aren't necessarily reflecting the quality of schools. Test scores are most highly correlated with parental income. We want to dig deeper there and find ways that we can be leaders there and ensure that consumers have the best information and more accurate information about schools, and they are not inadvertently steering. Finally, in 2020, our president of the national association of realtors gave an apology for NAR's history of opposing fair housing, it goes back decades, but opposing fair housing and even our code of ethics which at one point explicitly said to be an ethical real estate agent, ethical member, that you must discriminate. You cannot introduce people of certain backgrounds to certain neighborhoods. And that's been replaced by the article 10 that was referenced earlier on that, that prohibits discrimination in our code of ethics. And that's been there now for decades and something that we enforce throughout the country.

But it was important for our president to make clear that, you know, not only do we recognize

this history but as an association we apologize for that history.

But, of course, apologies are not enough. At the end of the day in people engage in discrimination there must be accountability. And so, this is really where the rubber meets the road. And this is the tough stuff. We believe in testing. And we think testing is vital just as how Newsday exposed what was going on in Long Island and has led to much reflection and consequence. We have said rather than having a Newsday have to show the industry what it is doing, brokerages should take proactive steps to self-test. We have created a self-testing program so brokerages can do that. And many are signing up to do that right now.

We also advocate for testing by the Federal Government. And stronger enforcement by the Federal Government. So, we have been supporting more testing by federal agencies. We'd like to see HUD do more testing, private fair housing groups do more testing and stronger enforcement overall. And beyond that we have been supporting a range of policies supportive of fair housing which I will get in to in a moment.

And then finally, we want to see some real estate licensure reforms so that when people do engage in discrimination, something happens. We don't want people who are engaging in discrimination among our membership. It is just like the American Medical Association wouldn't want quacks going around claiming they are doctors. We don't want that either. You will hear real estate agents say they engage in discrimination because if they did they would lose their license. We are working with our state associations who do the lobbying at the state level, to strengthen real estate licensure laws. So, there is some real consequence when discrimination occurs. So that it is also clear in the law and in practice that fair housing violations are a base for losing your license. Sometimes in is a general prohibition against unethical conduct and it is not clear in a fair housing violation would lead to a loss of a license.

And then beyond that how these violations are enforced can be stronger, too. In many states the licensing commission cannot do the investigation if they have the information. It has to be done by a state association state-- commission on human rights or the like.

So, there is not necessarily the coordination or the independent authority to do this. So, we just believe that this can be stronger, whether through coordination or through granting more independent authority of the licensure bodies to do more in this area.

So that's something that we are continuing to work on with our state associations. So, there is some consequence when people violate the law. So that is just like the basics. That's those-- are the things that should be happening. Those are the things that are already against the law and that people should be conforming with. We believe beyond that, even if we did all those things right, it is important that we advocate for stronger policies that promote the goals of the fair housing laws because the persistence of discrimination for decades has resulted in home ownership gaps that will still be hard to close because of the legacy effects of past discrimination.

And so that's one reason why we are members of a collaborative called the black home ownership collaborative. It consists of trade associations as well as housing advocacy groups. You see them there on the screen. Who are working together to promote regulatory and legislative policy that would help close the home ownership gap. And increase the home ownership rate for African Americans by 3 million, by the year 2030.

So, we're engaged in a number of efforts there to do that. Out of a recognition that the legacy that we are left with, it means that black home buyers are more than twice as likely to have student loan debt which impedes the ability to buy a home. When you look at who is buying homes, African Americans are more likely to have to rely on other sources for their down payment that whites don't. For example, African American buyers were three times as likely last year to tap into their 401K or their pension funds in order to buy a home three times as likely compared as whites. Whites were more than twice as likely to have proceeds from at sale of a primary residence when they were buying a home. So that history of home ownership, the differences in appraisals and equity, all make a difference, and all continue to perpetuate these gaps and, of course, if you have less and things cost the same for everyone, it is harder to meet your credit obligations. So, we need to do more to recognize that the impact of all of this on credit and recognize that many people who are strong credit ratings who are not getting the opportunities to purchase homes. We are working with this collaborative to identify mortgage ready African Americans who may not currently be getting a fair shake. Finally, I want to stress that with all of these things we do, with addressing discrimination, with the policy to promote more opportunities, to make up for past discrimination, we have a challenge right now that still will make all of our efforts even more complicated.

We don't have enough housing in the country. And the scarcity of housing is contributing to skyrocketing prices for homes. Which makes it disproportionately harder on People of Color. So, we are pushing to do more, to increase the inventory of housing stock. In fact, today, we are at the White House with other groups talking about this very issue. And how this the scarcity of housing is making it hard for all Americans but especially People of Color to buy homes and to acquire wealth. And so, some of the things and this is the last slide here that we are talking about, can we do more to reduce capital gains tax for investors who will sell to first time home buyers. When the existing housing that's out there, induce more people to sell so we have an increased stock out there. Can we offer tax credits so that we can add more to the housing stock out there. And then there are other incentives to deal with the labor shortages that make it hard to build right now. Zoning has always been a challenge. Can the Federal Government do more. We know it can. Will it do more to incentive local governments to reduce some of the zoning barriers and other regulatory restrictions to building and make sure the fair housing work we do actually translates into home ownership opportunities for all.

So, I want to thank you very much. And as Cashauna repeats, these slides are available to you. And happy to hear more from people if they want to discuss the work of the realtors. Thanks a lot.

CASHAUNA HILL [0:56:33]: Thank you so much for joining us today. I know you do need to leave

us shortly. Rest assured we will do our best to handle any questions on what you have covered. Thank you again.

So, we'll now take a moment to complete a poll before we move on to our next panelist. And the poll question that has come up on your screen is in what ways do you collaborate with real estate professionals in your community?

The options are: Provide fair housing training to real estate professionals; leverage local home sales data and trends to better serve the public; invite real estate professionals to educate the public and home buyers; collaborate on education and outreach activities; align media and press engagements to reach the public; and advocate for policy changes at the federal, state, or local level. In what ways do you collaborate with real estate professionals in your community? Please take a moment to answer the poll question and click submit.

Before we move on to our next panelist, we will review the poll results. 52% of you are collaborating with real estate professionals in your community by providing fair housing training to real estate professionals. 9% of you are leveraging local home sales, data, and trends to better serve the public. 28% of you invite real estate professionals to educate the public and home buyers. 43% of you collaborate on education and outreach activities. 11% of you align media and press engagements to reach the public. So, a great mix of ways that people are collaborating with real estate professionals in their communities. Thank you very much for providing those poll responses.

We'll now move on to our third panelist, Steve Tomkowiak who will discuss the main laws, court decisions, and applicable elements of proof for cases involving unlawful steering. Steve.

STEVE TOMKOWIAK [0:58:57]: Thank you Cashauna. Keith and Bryan for clearly laying out the problem of discrimination in the home buying process. I'm going to address two main points. First what is the extent of the problem of discrimination or racism in the home buying process and second how to prove a violation of. I have got 34 slides to cover in 15 minutes. All the slides will be available. They are available now to be downloaded so they can be reviewed in detail later.

To set the context, it is moving slow, there are a variety of unlawful steering practices. Based on protected class of a home purchaser, rental applicant, and others. We will be addressing unlawful steering that occurs. We regard home ownership as the American dream. And it is unfortunate to have that dream unfulfilled or impaired due to discrimination.

So, what is the extent of the problem? To find out HUD funded three comprehensive nationwide audits based on steering much of what we see similar to Long Island investigation. And these audits the 1991 report made two major findings. First black and Hispanic home buyers were in neighborhoods that were lower percentage white and less affluent than those directed to white testers. This we would agree did unlawful steering. Home buyers who began by asking about the availability of units advertised in major newspaper were shown and

recommended houses in predominately white neighborhoods rather than an integrated or minority/majority neighborhoods. This is something that is not easily detected. Were shown the same listings, but the effect on majority minor communities can be devastating and really smacks a type of redlining. And to me this is a large problem we face today, whether talking about real estate agents or appraisers or lenders. They far too often are located in non-minority and affluent communities, and disproportionately serve those communities. That's something that's not readily detected. The study here 1991 points out that steering is difficult for an individual home seeker to detect, mapping as we are going to see in a couple of minutes looking at Long Island investigation is a key tool that can be used to establish and show racial steering.

The 2000 study showed that white home buyers were favored over black 17% of the tests and white were preferred over Hispanic home buyers in 19.7% of the test. The study found that geographic steering on the basis of neighborhood racial composition increased between 1989 and 2000.

So Long Island is not a one-off unfortunately. And here is another report on racial steering by agents and it says here steering most commonly occurred to informal unsolicited comments directed to white home seekers about the racial composition of selected neighborhoods. Very similar to what we see in Long Island.

Still continuing. Next two slides kind of summarize what took place in Long Island in terms of comprehensive. Keith said are just reporters. They are more than just reporters. They did great work. 19% against Asians, 39% of the time against Hispanics and 49% of the time against black testers. It is terrible.

The key tool in this investigation is mapping. And here's 548. This is what should occur. In the video, there is a picture - is taken from the video. The agent here said he made a point of providing the same listing that's just the right thing to do. And if you look at it, the blue dots are where the listings that were brought into the white testers and orange reddish dot is where the listings were provided to black testers. You can see they are evenly distributed. The next slide shows of what racial steering looks like when it is mapped. The white and black testers again they are matched up with similar qualifications and given listings by the agent in different communities. So, to answer the first question, discrimination by real estate agents still takes place in the home buying process and this occurs too frequently. As Bryan pointed out agents know better than this. Professor Schwemm said it is not too much of a burden for the agents to do the right thing to provide the same listings to everyone regardless of their race or ethnicity.

So, the second very important question is what are the standards for proving a violation. What can we do when this occurs? First off, it is kind of maybe surprising that steering is not mentioned in the Fair Housing Act, the Civil Rights Act of 1866 and 70, or Equal Credit Opportunity Act. There were two Supreme Court decisions, Gladstone Realtors in 1979 and the Havens Realty Corp decision. You can see there are realtor names in the names of the parties of the case. The Supreme Court was addressing standing, who could bring a claim, but they

did - again- almost implicitly recognize that steering was a violation of the Fair Housing Act. Following those decisions all lower federal courts found that steering would violate. Discrimination 804b terms and conditions, c discrimination as to statements and D misrepresentations regarding availability of housing. HUD addressed steering in 100.7. Defining it as a violation of 804a. Here is kind of the best definitions for steering are the Supreme Court's decisions. Directing prospective home buyers interested in equivalent properties. Havens has a very good definition. A great definition is explained by eventual circuit judge Damon Keith in the case that's still frequently cited. It is cited often today. And basically, it says that steering deprives the key fall or violation in steering is that it deprives the home seeker of the choice. To put it in Judge Keith's words, such as race are not eliminated freedom of choice becomes a fantasy. It is the freedom of choice for the purchaser which the fair housing act protects. Judge Keith's freedom of choice policy is carried over, section 100.70 (a) subsection a prohibits based on restricted class. Restrict the choices by word or conduct. Or to discourage or obstruct choices. Should be noted here you do not have to establish that steering segregates or perpetuates segregated housing. The proof requires that housing choices have been discouraged or obstructed.

And the second part, 100.70 (b) talks about the provision of housing or services. Now there are also HUD regulation will give example of what the violations are. There are four examples in 100.70c. First one is discouraging inspection or purchase because of the protected class of persons in a community or development. The second one is exaggerating drawbacks or failing to inform desirable features of housing, or another one example would be telling prospective purchaser that he or she would be - would- not feel comfortable or compatible with existing residents.

The fourth example is assigning a person to a particular section of a community or development.

The addition, there is five additional examples in subsection 100.70 subsection d. In the examples they have include under 2, using codes or other devices to segregate or reject applicants and here is a big one, when you talk about real estate agent steering refusing to take or show listings or refusing to deal with certain brokers or agents.

So, a question is who can bring a claim for unlawful steering? Pretty much anyone. Home seekers certainly they have claims. Residents in a community affected. Municipalities, fair housing organizations, testers, even a seller denied the opportunity to get a full market value because the homes are not being showed or listed. His or her home listing is not shown would have a claim as well because they have also been aggrieved or injured by an unlawful steering practice. HUD has a regulation 100.7 in the Meyers Supreme Court decision deals with that. Can be liable as well.

I know Keith mentioned about how kind of common defenses keep getting raised. One that came up in some of the cases they are arguing well, the agent is simply an independent contractor not responsible for what that agent did. Doesn't work that way. Independent

contractor status does not preclude liability against a broker. Liability under fair housing cases is based on federal law, not state law. Independent contractor is a state law definition. It doesn't have any bearing when it comes to liability under the Fair Housing Act.

We still have liability and responding to superior applies as well. How do you prove it? Unlawful steering requires proof of intent. There may be - I'm- not aware of any cases that have had steering cases where it has been baselined and disparate impact. When it comes to intent, the intent may be established through direct or indirect circumstantial evidence. No need to show that steering was successful.

And another factor too, is that a single incident of unlawful steering is sufficient. Yes. Establishing a pattern and practice is a requirement only for the department of justice claim is not the standard for a private cause of action.

If it can be shown that it is a pattern of practice, great. It is just that this is just not a requirement for liability under the Fair Housing Act. These are examples showing direct evidence of discrimination. Not going to read these. The one on the right, the Hispanic community came in and they really took over springs. That's direct evidence. That's direct evidence. Probably other two in the context of the whole test as being record were probably would show direct evidence of unlawful steering.

In the absence, it probably most of the cases there is no direct evidence of unlawful steering. The challenges that come up with a prima fascia case of discrimination, noted that the typical prima fascia case in fair housing claims do not readily apply to steering cases. Various formulations have been adopted by HUD in elements of proof memorandum and by the courts.

The Cabrera case simplifies it, and it says as long as the plaintiff that the - fewer- housing opportunities than a similarly situated white person, the plaintiff has made out a prima fascia case under title 8. That's a pretty good threshold. I'm going to run through real quick. HUD has different elements of proof. Indirect circumstantial evidence of unlawful steering. This one involves there is a segregated neighborhood, a second standard that are HUD puts in when the steering involves someone being steered to less desirable housing. And these are four elements of a prima fascia case for that type of a claim. HUD versus housing authority of Las Vegas, lists four prima fascia elements in a case similar to HUD's elements of steering. And the one I really think is a recommended one, the village of Bellwood case, the previously mentioned ones do not fit exactly into a real estate steering context. It is a very low threshold. Blacks were shown houses in black areas and whites in white areas. I'm sorry. With the evidence shows blacks were shown primarily houses in black areas and white primarily houses in white areas to place on the defendants the burden of giving a reason for the different treatment. Means a nondiscriminatory reason for treatment. All you that has to be shown, blacks were given homes in black areas and whites were given homes in white areas. That's sufficient. And then it shifts the burden of - burden of production- a nondiscriminatory reason on to the defendant or real estate agent. That's a very common-sense approach. And I think it would work. Federal circuit opinion. That's one step below the Supreme Court. They are considered very, very persuasive. The village of Bellwood also proposed, compare a sample, helpful jury instruction to use in

steering cases.

And it is very, very helpful. And even if you decide there is no or insufficient direct evidence. If you find the defendant showed black customers primarily homes predominately black areas and white customers' homes in white areas and if in addition you did not believe the defendant's explanation of this pattern Keith didn't seem to believe the explanation of the agents he spoke to, I didn't either. Then you may infer that the defendants were steering their customer racially in violation of the statute. It is a great standard.

What are likely defenses? This shows mapping. This would be a violation. So, what do they raise? Well, as Keith put it honest information about the quality of performance of school districts. Right? Customer has asked for and gave honest information, is that a good defense. Professor in his wonderful treatise differentiates three types which is what you have in Long Island. Customer initiated discussions and customer-initiated questions, and again those are different kind of frameworks that occur. And I think Bryan gave examples of how things should be answered, right? You can have the customer or the home seeker find that information out. But if it is - whatever information is given by the real estate agent if it is done in such a way that will influence unlawfully influence the home seeker's choice- that's a violation.

Judge Keith addressed this as well.

If whether it is done on the agent's own initiative or response to the buyer's initiative, the agent either directly or indirectly discourages the prospective home buyer from purchasing a home in a particular area. That's what constitutes unlawful steering.

Real quick, another one that can be raised, being helpful with the information. Or giving them accurate information to make sure they don't go in to a "dangerous neighborhood". Regardless of the motivation, I think it is suspect, even to call it helpful or paternalistic. Another factor could be economic motivation as well as and there is case law that would reject that as well. Why is someone putting a white home seeker into a white area, maybe they are high value properties. I suppose. If that's the motivation or the factor or the white or black home seeker should have been offered those same housing opportunities.

Just - I- have a couple of illustrative cases that look at common defenses. I'm not going to go through those. But the take-away is this, the Supreme Court decisions in *Havens* and *Gladstone* realtors and judge Keith arm us against unlawful steering. One or more of the subsections pertain steering should apply to your case. Legal standard of proof and racial steering cases is involving words, actions, or conduct of real estate agents are readily met. Particularly the *Cabrera* and *Village of Bellwood* cases show that standard. These standards are not too difficult regardless of whether the case involves direct or indirect circumstantial evidence.

Finally, there is helpful case law when it comes to address these common defenses. So, the bottom line is that I hope this presentation helps arm you with the tools to understand and effectively address incidents of unlawful steering by real estate agents. Thank you.

CASHAUNA HILL [1:18:24]: Thanks so much, Steve. Really appreciate all of that information. And there are lots of questions coming into the Q and A box. So, I would like to ask everyone to please keep them coming of we have one more panel list to get to. And then we will be able to answer your questions. Before we move on to our final panelist, another reminder, that the slide deck for today is already available on the forum page on HUD exchange. And we will make all the other materials including the event recording available soon after today's conversation.

Shina Majeed will now discuss examples of housing discrimination in the home buying process. And how to conduct both public and private systemic investigations.

SHINA MAJEED [1:19:12]: Thank you, Cashauna. It is a privilege to be here to-- join the training academy and hear from Steve and Keith and Bryan who so eloquently laid out the problem of racial steering and the legal framework that would support claims of racial steering. I wanted to talk to you today a little bit about other forms of discrimination in the home buying process. And also, what DOJ, the work the DOJ is doing to combat discrimination in the home buying process in a variety of ways. I should mention at the outset that this is a critically important topic. Is really glad to be able to join this panel for that reason, home ownership is the primary means of building wealth. It is the primary means of passing on that wealth from one generation to the next. And yet the home ownership gap in this country between black and white families is worse today than it was in the 1960s. If you saw Bryan's graph you could see comparing 1960 and 2010, the gap between white and black families is greater now than it was in the 1960s before the Fair Housing Act and equal credit and opportunity act were passed. Which is just a stark statistic in my view.

The median wealth for black families is one eighth of that to white families. Another startling statistic. And then the median health of Hispanic families is one fifth of white families today. A lot of work remains to be done in the space. And DOJ, the department, is keenly focused on addressing the wealth gap in and the home ownership gap in this administration.

So, before kind of diving into the cases, I think it is just an important reminder that we have the Federal Government has two main tools in its arsenal. Most of you are familiar with both of these statutes. They both prohibit discrimination in the home buying process. ECOA also prohibits other forms of credit discrimination. Fair housing and equal credit and opportunity act cover different protective classes. Disability is not covered under ECOA.

Here are the slide lays out some common types of discrimination in that home buying process. We heard a lot about sales steering today. I won't talk, I won't talk about that. But we also address mortgage redlining. Pricing discrimination. In home loans. Denial discrimination or underwriting discrimination. Appraisal bias. The practice of reverse redlining. Steering we talked a lot about. I want to mention the intersection of discriminatory policing and its impact on perpetuation of segregation. I will say a little bit about sexual harassment in housing if I have time.

So redlining, clearly one of the most practices of affecting the home buying process. This is an area that the Department of Justice is aggressively working to combat. So, what is redlining? I think when people hear this term they likely think of historic redlining, the government sponsored practices during the 1930s when the homeowner's loan corporation created maps of every major city, outlining neighborhoods too hazardous for lenders to lend in. Those maps were relied in part by the federal housing administration and the VA to determine where to lend or where to underwrite loans. And another fact of that is excluding large geographies and the residents living there to be able to obtain credit. To purchase homes and build homes and refinance homes and pass those homes down from generation to generation.

Even though redlining certainly has its roots in the federal government policy, it has contributed in major ways to the current patterns of residential racial segregation that we see. And the department DOJ has found that lenders are continuing to avoid providing access to credit and those communities of color. Because of the race and national origin of those neighborhoods.

Over the last decade, the department has filed 17 pattern or practice redlining cases against banks across the country resulting in tens of millions of dollars in direct monetary relief for these communities from places from Indianapolis to Newark to Memphis and many other communities across the country. Modern day redlining, our cases, are really multi-factored analysis. I'm not going to do a deep dive in how we build those cases. But some of the categories of evidence are listed here on the slide. We certainly look at the assessment area, the area that the bank claims to service. Where the branches are located. We look at the advertising and the marketing and the outreach to these communities. Are they avoiding providing outreach and marketing and advertising to majority, minority or Hispanic or black communities. We do statistical analysis and comparing the lender to peer banks in those areas. We, of course, do a lot of mapping and look at other categories.

Other categories. While we have been doing this work for a couple of decades, last year the Attorney General and the assistant Attorney General for Civil Rights, Kristen Clark announced the combatting redlining initiative. This represents the government most aggressive effort to address residential and mortgage redlining across the country. As this flag indicates the initiative is unique in many ways. Most notably because we are working in partnership with other agencies and offices around the country. Including U.S. attorney offices, state attorney's general and our sister agencies, bank regulatory agencies of the idea here is a whole of government approach in addressing residential racial segregation and mortgage redlining. All of those partners are playing a critical role in the investigation and development of cases as we speak. Since the launch of this initiative and I can't provide details on this, but the department and the U.S. attorney's office have opened numerous redlining investigations of banks across the country. Until they are public, I'm not at liberty to share the targets quite yet.

What I can do however, is talk about three cases that have been developed, filed in federal court, and resolved by court order since the launch of the initiative last October. Those cases are listed on the slide. The relief provided by these cases will be around 30 million for redlined communities in Philadelphia and Memphis and Houston. I have included summaries of the

cases on the slide. I won't go into detail for each case, but I want to highlight a few things about them.

First, our most recent case the case of the talk about slide here, Trident mortgage company, was the department's first ever redlining case and resolution against what's called a non-depository institution. NDI are less regulated than banks. They initiate loans. They write mortgage loans. And NDIs are major players in the mortgage business right now. More than 50% of loans are done through NDIs and as part of this initiative we are looking closely at the home mortgage disclosure act data of NDIs and of these lenders to assess for patterns of redlining. Trident is the department's second largest redlining settlement to date.

So that's the sort of whole of government approach that I mentioned earlier.

The second thing I just wanted to note about the redlining cases, is the relief that we negotiate and that we obtain in these cases is targeted at addressing, redressing the harm to the red lined communities. So, the types of remedies that we seek and require are to really ensure equal access to credit in those communities. Some of the relief includes requiring a lender to establish bank branches and align loan officers where there were none in red line areas. Requiring the lender to establish loan subsidy fund for applicants. It might support closing costs assistance or might go to down payments. We have learned through our experience that every dollar in the loan subsidy fund can result in \$10 of additional lending for new home buyers. So, for example, Trident Mortgage Company we agreed to a 20-million-dollar loan subsidy loan fund. We hope that will result in 200 million dollars of new lending in the Philadelphia metro area for the red lined communities.

I would say that one of the highlights of my job is to get to see the impacts that these reforms can have in the community when there is a full commitment by the lender to the concept decrees. We see many new first time home buyers. We see the presence of new branches and loan officers where there were none. Sometimes where credit deserts or subprime lending which was the only game in town. And we see lenders go from trailing their peer banks to leading the peers. It can be a win, win for the communities and borrowers. The other types of fair lending discrimination, I want to mention quickly is discriminatory mortgage pricing. So, what's this look like? It might be that a black or Hispanic borrower pays a higher interest rate. Nothing to do with credit worthiness. Or it might be that a black or Hispanic get - doesn't- get the kind of discounts that sometimes come at closing. Again, having nothing to do with credit worthiness. And these types of cases, lenders, discrimination happens because they are providing loan officers with discrimination. They don't have complaints management programs in place to monitor the exercise of that discretion. As a result, that leads to disparate outcomes based on race or national origin.

Another form of discrimination in the home buying process or lending discrimination that we are looking at or have brought cases on include discriminatory denials or underwriting discrimination. This is the type of discrimination that relates to when lenders are denying loan applications or subjecting applicants to different underwriting standards based on race or

national origin. We control for those credit worthiness factors, credit characters.

This is just an example of a case, Bancorp south that included all three kinds. So really the odds were stacked against any borrower that lived in the Memphis area who was trying to get a loan from Bancorp staff. Not going to do a deep dive given the time here. But some information about the case is on that slide.

I want to shift gears here a little bit to talking about another form of discrimination that impacts the home purchase process and that's appraisal bias. This is top of mind for many in the government right now. And I think many of you have probably are familiar with news reports or heard accounts or seen the studies. The scenario goes like this, a black family or other family of color may be seeking to refinance a home. Gets appraisal on their home and surprised by the low figure. Gets a sense that the race is playing a role in that low figure. Stripping your home of all indicia of your lived life of family photos. Books. And then having to explain that white washing process to your kids. And you have a white friend step in to greet the second appraiser. And low and behold you are given much higher value the second time around. There are many highly publicized accounts and scenarios and several lawsuits around the country based on that scenario.

DOJ has done a number of things to address this problem of appraisal bias. First, we have joined with 12 other agencies. And this task force is led by HUD. It is called the property appraisal and valuation equity task force. Paid issued and action plan in March of this year and DOJ's currently working with the federal partners on a number of specific commitments in that action plan. I encourage you all to take a look at that plan. It is an impressive piece of work very well researched. They are readable and digestible. And just an impressive deep dive into the roots of appraisal bias and promising recommendations on what can be done about it. Some of the recommendations and some of the work that's being done by the paid task force led by HUD is here on this slide. For our part, DOJ nod to being a part of the paid task force has filed and is looking at filing statements of interest and looking at investigations to address appraisal bias. One example of that is that we filed a statement of interest earlier this year. And a private lawsuit brought by the Tate Austin, a black couple in Marin County outside of San Francisco. Who alleged that appraiser undervalued their home by nearly \$500,000 because of their race. And then after receiving an unexpectedly low appraisal they conducted that whitewash experience and removing family pictures and evidence that they lived there, and the second appraisal came in \$500,000 higher. They argued that the Fair Housing Act covers appraisals, and it covers appraisers. So, it can be an effective tool to combat appraisal bias.

I want to touch on briefly something that's - we- don't hear a lot about. We talk about redlining, but we don't talk a lot about reverse redlining. And this is where lenders are other kind of entities may target black or Hispanic communities or may target communities because of their limited English proficiency for predatory loan products instead he is offering affordable or safe credit to these populations. They offer unfair, misleading fraudulent credit products. Cheaper mortgages, this slide here includes a few examples of cases that we have brought, for example. We filed a number of cases against companies that propagated fraudulent loan modification in

which they targeted Latino homeowners and had them paid thousands of dollars for sham mortgage applications that never materialized. They were told to stop paying their lenders and many lost their homes as a result. We also filed a statement of interest in a private lawsuit. We filed a statement of interest last week. They challenged a predatory rent to buy program in Indianapolis that had targeted black and Latino neighborhoods. That case alleged the defendants sold properties in poor condition at inflated prices through contracts that were essentially denied to fail. In that case, we argued that the ECOA could cover the defendant's rent to buy contracts. They also had aspects of an extension of credit.

So ECOA could be used as a very - to- help with that case and other rent to buy contract review cases.

Steering we talked a lot about. Just want to say that DOJ has brought a lot of steering cases based on both testing and based on internal data crunching that we do of residential patterns. Our website has a lot of examples of steering cases.

Just wanted to move on here and say a word about discriminatory policing. It does shape the availability of housing options. And clearly can perpetuate racial segregation. And we have really focused on this intersection of discriminatory policing and fair housing in a couple of reported cases. One in California where we alleged that the Los Angeles County housing authority and the sheriff's department had discriminated against black participants in the federal Housing Choice Voucher program. The defendants took a number of actions intended to remove black participants from the program, from rental housing and forced them to relocate out of the analog valley. A deterrent to home buying. And while analog valley settled a number of years ago, we are actively litigating a similar case in California right now. Here we similarly alleged that city and sheriff's department and county, created and enacted a rental ordinance to drive out black and Latino renters out of their homes.

I would be remiss if I didn't mention just briefly that we do a lot of work on sexual harassment. In the last five years and we sexual harassment and discrimination based on gender are impediment to home ownership. And we have had a number of cases that have involved landlords acting both as predator, and a lender and have engaged in discrimination. In the last five years as the slide shows, the department has filed 25 lawsuits alleging sexual harassment and discrimination and obtained just south of 10 million in compensation for dozens of victims across the country.

I want to mention just briefly the various sources of our cases because we rely on all of you for our cases and to help build cases to combat discrimination in the home buying process. As you can see here, we get referrals from agency partners, HUD, as well as CFPD and Prudential regulators. We get referrals based on testing, testing done by many of you, many of the fair housing groups. And we also launch independent investigations under our pattern of practice. Steve talked about that earlier.

These investigations typically involve our analysis of data or other sources of data. And lastly,

we get we-- base our investigations on citizen complaints or tips from fair housing organizations.

Finally, because we did talk a lot about testing, I wanted to mention that the Department of Justice has a testing program where actually this year is our 30th anniversary of the testing program. The program has developed 110 pattern of practice cases, cases filed in federal court and has obtained about 14 million in damages and relief for victims as a result of cases filed in federal court. I want to just mention a couple of cases that we had brought based on testing that some of you have done. Cashauna, Louisiana fair housing action center did terrific testing to lead to this case on the slide, United States versus SFN property. As you can see here this was a case that involved actually four matched pair tests to evaluate whether apartment complexes in Mississippi were steering black testers toward one complex and the testing revealed that it was. And was also falsely representing that two of other complexes did not have vacancies. The white testers were steered towards those two complexes.

We had a huge win in this case recently. It is not too often that plaintiffs win affirmatively on summary judgment. That's to say that the judge finds as a matter of law that the evidence is so overwhelming that the Fair Housing Act can be found to have been violated at the close of discovery. And that's what happened here in this case. Huge congratulations to Cashauna and her team for doing terrific testing leading to that great result.

And then finally, I just want to say that, you know, DOJ, we don't do this work well by any stretch. We rely on all of you to help identify instances of housing discrimination and to bring those complaints to HUD to DOJ and to CFPD and to us. And we rely on your local knowledge and expertise. We love getting calls or examples of cases that we should be involved in statements of interest. We learn a lot through that process. And hopefully can support you in all of your work as well. So, thank you for your important and significant work. And for sharing your time with me today.

CASHAUNA HILL [1:45:34]: Thank you so much. Thank you to all of our speakers today. We are now going to move right into our question-and-answer section. And we'll try and get a few questions answered before we need to wrap up today. And we're also going to welcome back Jacy who will stick around and answer some questions as well.

So, I first wanted to ask a question around outreach. We had a question about for our friends at fair housing assistance program agencies who may not be seeing cases involving claims of discrimination in the home buying process. What can those FHAP agencies be doing so that community members are aware that fact agencies are a resource if folks have experienced discrimination in the home buying process?

STEVE TOMKOWIAK [1:46:42]: I did put an answer in the chat. I can answer that. But all the regular education and outreach efforts should be done. As a FHAP, it should participate. Connect up with other organizations that are doing new home buyer courses. Make sure that they are involved with that. We do a monthly it with one group. We do a -fair we- are now a

fair lending at the conclusion of a new home buyer's class every month. So that's help. But the more contacts and outreach that you can do are very helpful. We get referrals and I'm sure your office does too, in real estate agents when no discrimination is occurring and refer them. We have a couple now.

CASHAUNA HILL [1:48:43]: Thanks so much. Any other insights from anybody else about what FHAP agencies can be doing to ensure they are getting these complaints. I will move on to another question related to agency assistance.

So, we have a question about the role that HUD's office of housing counseling might be able to play in order to reduce discrimination in the home buying question. Steve, I know that you had some thoughts about that you shared in the Q and A box. I want to bring that question to the panel as a whole. Does anyone have any ideas about the work that HUD's office of housing counseling can be doing in this space or is already doing in this space?

JACY GAIGE [1:48:41]: Steve - go- ahead.

STEVE TOMKOWIAK [1:48:42]: I'm not sure if anybody here has a lot of involvement with HUD counseling agencies. But they do need to know and recognize when discrimination is occurred. I was doing a training in Phoenix, and they were describing the series. Home buyers that were facing discrimination. What's the ethnicity? They are all Hispanic. And the counseling, HUD counselor did not see that, did not recognize the fair housing issue in that. That's the kind of thing. Just to be alert of what occurs.

I got to believe I'm almost- certain -UD encourages fair housing counseling agencies to get this kind of fair housing training.

JACY GAIGE [1:49:32]: Yeah, as part of PAVE initiative, housing counseling is rolling out to new fair housing training for their counselors. And in addition to that I would say it is kind of the same answer to the question before about FHAP, to the extent people can familiarize themselves with all the forms of lending discrimination and be able to talk about them in the community, the more you give people examples, the more they are able to see it in their own experience.

CASHAUNA HILL [1:50:01]: Great. Thanks. I am going to move into several questions that we have gotten around how industry is responding to all of what we have us asked today, including the Newsday investigation. First, we had several questions around the idea of real estate professionals discussing school district performance. I know that you mentioned this, Keith, in your remarks. And Steve I know that you had some very detailed resources that you provided in the Q and A box as well. But I'd like to ask whether folks can expand on this topic of agents discussing school district performance and how this can constitute potential violations of the Fair Housing Act. And so just what should real estate agents and professionals be cautious of in discussing school performance and how should professionals handle those questions about schools that they might get from home seekers? Does anyone have any thoughts around any of

that?

KEITH HERBERT [1:51:13]: Yeah. I can try and field that. I think I'll leave it to the lawyers to talk about how you can - if you are agent you can get in to- trouble by giving an answer on that. What we found was that it was discussion of the school district was integral to an agent's marketing of a particular home or a particular neighborhood. So particularly if it was a high performing school district. So there -doesn't seem to be much separation between an agent saying okay, let me suggest this neighborhood to you. And schools.

And the issue that we found was that too often the discussion of the schools was reserved for the white tester. And, you know, the discussion of schools seemed to be along the lines of, you know, that's an okay school district for you if you are a person of color. And searching for a home.

But the key thing that we found is that at least on Long Island that you couldn't talk about one without talking about the other if you are a real estate agent. So, if you are going to get involved in testing, be on the lookout for it.

CASHAUNA HILL [1:52:46]: Thanks, Keith. Steve, would you like to share anything on this topic?

STEVE TOMKOWIAK [1:52:51]: The it-- is kind of a real estate agent training guide dealing with fair housing and it was put together by our former director here. And the leading realtor as well. Question 15, if the customer asks, are there high-quality schools in the area, how do you field that question. There needs to be conversations with realtors on these types of questions, how do they respond. But yeah, it is a subtle kind of discrimination. But it is discrimination.

The performance of school districts is something that a customer, a home buyer can determine. But it is not the role that agents make critical comments concerning school districts or to steer someone to one particular school district or not another. Keith hit it on the head. That's steering. We're not - they are -not - their- role is not to give opinions on, you know, educational institutions.

CASHAUNA HILL [1:53:59]: And I do want to ask a related question, we had several folks in the Q and A box to ask about situations where home seekers might ask about race, data, or racial demographics. So, their question is what should they do, you know, in order to not be liable for violating the Fair Housing Act or expresses a desire to live in a community of certain racial makeup. How should they handle those kinds of questions?

STEVE TOMKOWIAK [1:54:45]: Question 16, where are all the white residents moving to now that the area is integrated? Suggested responses. There are always people moving in and out of this area. If you want to buy, I'm sure I can help you find a house in an area that suits your needs. Do you have a particular area in mind. If someone wants to know about the racial makeup of the area that's the time you have a frank discussion. I can't get in to race and color and ethnicity. As a professional every area is fine. I'm here to offer whatever is available in

terms of home listings. If you have a particular area you would like me to show listings in, I'm fine with doing it. I want to find a home that's best suited for you and your family.

CASHAUNA HILL [1:55:41]: Thanks, Steve. We have time for just really one more question. And so, what I'm going to do is ask one big question. Ask for input and then I'm going to ask a final question at the same time, and everyone should just share whatever they feel comfortable with. So, we had several questions around how the real estate industry is going to address the issue of discrimination in the home buying process.

And so, I'd love to know whether anyone is aware of whether the industry as a whole has any widespread plans for testing themselves. Bryan obviously talked about this idea of self-testing. Does anyone know whether there are any widespread plans for that kind of testing to occur? Do we know whether that testing might be done in conjunction with fair housing organizations who have this expertise? And does anyone have a sense of whether or not self-testing is actually the way to go and whether it might be effective? And then I would like to wrap up by asking whether you all can share how individuals can advocate for additional resources for fair housing centers to conduct fair housing testing and get involved generally with the fair housing movement because that was a question that came up several times. So, there is a lot there. Industry responses if anybody has anything to share. And how can folks who are looking to engage in the work do so.

KEITH HERBERT [1:57:23]: I can only say that I know that as a result of, you know, our investigation and the legislative actions taken in New York there have been efforts to put money in to pots that can be distributed to local fair housing groups in order to really be the watchdog and to do the type of testing that would audit, whether agencies are following the fair housing standards. I don't know- I can't really say anything about -self-testing by an agent or an agency because it is the first- I'm hearing of it. I'm interested to see if anyone else knows anything about it.

CASHAUNA HILL [1:58:13]: Thank you.

STEVE TOMKOWIAK [1:58:14]: I do know there is a self-testing- privilege in the Fair Housing Act for lenders as well as the equality credit opportunity act. They can engage in self testing if they evidence in differences in treatment provided they take action-. And can't be used against any kind of enforcement proceeding. I don't know that there is that same kind of self-testing- privilege. I don't believe there is when it comes to real estate practices. Lenders have done it. My gut feeling it has not - I have offered- and I have mentioned it to real estate firms. And they are not a great deal of receptivity to it. I think it is something that needs to be done. If this is an occurring in Long Island, I think it is occurring elsewhere as well. And we need to test that. Absolutely.

CASHAUNA HILL [1:59:07]: Thank you. So, with this understanding that discrimination is happening everywhere, how can people in their communities get involved in the fight to stop housing discrimination in the home buying process in and in general? Jacy?

JACY GAIGE [1:59:25]: If you are talking about just any individual, one thing people can do is sign up to be a tester which can be a very interesting experience. You get the training, and you get to see, you know, what it feels like going through the process. It can also be not a positive experience as some of the testers from the Long Island study went through when they learned the results of their test. But it is important work. And a lot of FHIPs are recruiting testers.

CASHAUNA HILL [1:59:54]: Shina, I wanted a chance to share any additional insight or thoughts of how people can get involved.

SHINA MAJEED [2:00:04]: Sure. One helpful thing we have found if there are suits that you have brought or thinking of bringing, fair housing groups or legal aid organizations, we are all on the front lines. You know best what's happening in your communities. What I said earlier, we do rely on those reports and those accounts to hear from you whether it is a case that we should be filing a statement of interest in, or whether you are a legal aid lawyer and seeing the same type of housing issue, contract for deed issue or something that predatory lending issue, it is possibly a violation. That's something that we want to hear about. And, of course, you know, if it is an individual instance that goes to HUD in the first - in- the first place, but if you sense a pattern of practice, you are seeing it again and again, that's something that we certainly want to hear about. I did want to also mention on the testing point, we have a testing program. All of our testers are federal employees, FBI, ATF, that kind of thing. But I think even in that context, you know, employees who join our testing program, it is really a terrific experience for them to - if they are having to go through the training and also- just the process of getting disparate, if you have time to join the fair housing groups.

CASHAUNA HILL [2:01:48]: Thank you. It has been a pleasure to have you with us today. And thank you, everyone for your participation in today's forum. We hope you will join us for our next forum on October 19, title Violence Against Women Act, part 1, understanding survivors' experiences. This impactful forum will establish a foundation upon which participants can build their own knowledge and cultural competencies when working with survivors of domestic violence and stalking. Check out the NFHTA Web page for a description and important information on registration for our October forum and other upcoming forums. Please also connect with the National Fair Housing Training Academy on LinkedIn for insights and information about upcoming events including future forums and courses. Thanks to everyone who made today's event possible including the tech support team and our interpreters. Finally, please be on the lookout for a survey which will pop up when this training ends. The survey will allow you to provide feedback on today's event. Your feedback is critical to improving these forums. It shouldn't take you long to complete the anonymous survey and we highly value your input. Thank you again. And we look forward to seeing you again for the next had NFHTA forum. Take care.