

**Excerpts from**  
**Segregation in the Chicago Metropolitan**  
**Area –**

**Some Immediate Measures to Reverse this**  
**Impediment to Fair Housing**

**A Report by The John Marshall Law School Fair Housing  
Legal Support Center**

**May 1, 2013**

**Prepared for**  
**The Illinois Department of Human Rights**  
**Under a Grant From**  
**The United States Department of Housing and**  
**Urban Development**

Full report available at: [www.jmls.edu/fairhousing/pdf/2013-chicago-segregation-study.pdf](http://www.jmls.edu/fairhousing/pdf/2013-chicago-segregation-study.pdf)

## **I. Summary of Recommendations**

This report outlines some steps that can be taken to better achieve the goals of fair housing in the Chicago metropolitan area.

The report first examines the history of segregation in Chicago and the impact of the foreclosure crisis on segregation in Chicago. It relies on existing studies that detail the extent of segregation in the Chicago area. The report then offers a critical review of Chicago's, Cook County's, and selected suburbs' consolidated plans and analyses of impediments of fair housing studies.

The report identifies six areas for study and action. They include discrimination on the basis of wealth and against housing voucher holders; discrimination against persons with arrest and criminal records; discrimination against immigrants and persons who are not proficient in English; discrimination against LGBT (Lesbian, Gay, Bisexual, Transgendered) populations, particularly youth of color and seniors, and against persons because of marital status; and discrimination against seniors. It also identifies certain procedural and administrative changes that could further enforcement of the fair housing laws and encourage the filing of fair housing complaints. The report does not specifically isolate special problems experienced by persons with disabilities. This population has specific needs that are worthy of a separate study.

Some of the recommendations are easy to implement; others may meet with more resistance, but the Center believes that all would further the cause of fair housing. The recommendations delineate two types of reforms – legislative and regulatory – and propose education and outreach initiatives. These proposals will be most effective if there is cooperation between federal, state, and local governments in implementing them.

## **Federal legislative proposals**

1. Amend the Fair Housing Act to include “source of income” as a protected class and define source of income to include housing choice (section 8) voucher holders.
2. Amend the Fair Housing Act to provide *limited* protection to ex-offenders and persons with arrest records.
3. Amend the Fair Housing Act to provide protection to immigrants and persons who are not proficient in English, and to require that housing providers and lenders accord immigrants and persons who are not proficient in English reasonable accommodations in rules, practices, or services when such accommodations may be necessary to afford such persons equal opportunity to use and enjoy a dwelling because of their immigration status or lack of proficiency in English.
4. Amend the Fair Housing Act to provide protection on the basis of sexual orientation and gender identity. Although protected under Illinois law, and for HUD-subsidized housing, these bases are not protected under the Fair Housing Act.
5. Amend the Fair Housing Act to provide a private right of action to enforce the duty to affirmatively further fair housing.
6. Amend the Fair Housing Act to impose a duty to affirmatively market their properties on owners of multi-family buildings of four units or more, condominium associations and other homeowner associations, and real estate brokers and management companies. The duty to affirmatively market their mortgage loans and other financial products should also be expanded to all entities that engage in the business of financing housing. Congress should direct that HUD exercise its rule-making powers to promulgate guidelines for private housing providers on how to comply with this affirmative duty.

## **State and local legislative proposals**

1. Amend the Illinois Human Rights Act and local ordinances to include “source of income” as a protected class and define source of income to include housing choice voucher (section 8) holders. The City of Chicago provides protection for housing choice voucher holders. Cook County and the Village of Oak Park made this a priority in their Analyses of Impediments, and Cook County has now enacted this protection.

2. Amend the Illinois Affordable Planning and Appeal Act to require that all local plans specify procedures and substantive standards to demonstrate how they will affirmatively further fair housing.

3. Amend the Illinois Human Rights Act and local ordinances to provide *limited* protection to ex-offenders and persons with arrest records.

4. Amend the Illinois Human Rights Act and local ordinances to provide protection to immigrants and to persons who are not proficient in English. Also, to require that housing providers and lenders accord immigrants and persons who are not proficient in English reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such persons equal opportunity to use and enjoy a dwelling because of their immigration status or lack of proficiency in English.

5. Expand the protections in 225 ILCS 429/120 and 815 ILCS 505/2N to require that when real estate transactions are conducted through an interpreter, documents be translated into that language as well.

6. Amend the Illinois Human Rights Act and local ordinances to define marital status to make it explicit that it applies to cohabitation by unmarried couples of both the opposite and of the same sex.

7. Amend the Illinois Assisted Living and Shared Housing Act, 210 ILCS 9/1 to make it consistent with the Fair Housing Act and the Illinois Human Rights Act. Make violation of the Fair Housing Act or the Illinois Human Rights Act a ground for suspending or revoking a license and require consideration of reasonable accommodations in determining residency requirements in assisted living and shared housing developments.

8. Amend the Life Care Facilities Act, 210 ILCS 40/1, and the Nursing Home Care Act, 210 ILCS 45/1, to make compliance with the Fair Housing Act and the Illinois Human Rights Act explicit.

9. Enact legislation in Illinois that requires all recipients of state and local government funding for housing to show that they are affirmatively furthering fair housing.

## **Federal regulatory and policy initiatives**

1. HUD should require all housing authorities to keep records of any complaints by housing voucher holders against landlords who refuse to rent because the applicant is a housing choice voucher holder.

2. HUD should explicitly require all public housing authorities to extend the time for persons to use their housing choice vouchers when the voucher holders have filed a facially valid complaint against a housing provider for denying them housing because of their status as a voucher holder.

3. HUD should collect data on all complaints that allege discrimination against an existing protected class to determine how many of them are filed by housing choice voucher holders.

4. HUD should collect data on all complaints that involve the denial of housing because of an applicant's arrest or conviction records to determine the extent of discrimination against these classes and especially to track whether the denials implicate other classes protected under current law.

5. HUD should collect data on all complaints that involve the denial of housing involving immigrants and persons who are not proficient in English to determine the extent and basis of discrimination against these classes and especially to track whether the denials implicate other classes protected under current law.

6. HUD should pass regulations or guidelines making it explicit that senior housing, including assisted care facilities and nursing homes, are dwellings under the Fair Housing Act.

7. HUD should clarify its rules and guidelines to require the administrative investigation of all complaints that show merit on their face, and to prohibit administrative dismissal of

complaints solely on the basis that the complainant may not have standing before an Article III court.

8. HUD should continue to expand its use of Secretary-initiated complaints in cases of systemic violations and especially in cases involving immigrants and persons with arrest or conviction records and seniors who often do not initiate complaints on their own behalf.

9. HUD should provide by regulation that civil penalties will be awarded to complainants and not to the government, as a means of encouraging victims to initiate fair housing complaints. The Fair Housing Act states that civil penalties are to be imposed to “vindicate the public interest” but does not expressly direct to whom civil penalties shall be paid.

10. HUD should adopt a schedule of presumed damages in fair housing cases to provide a guideline in conciliation and to assist administrative law judges and state and federal judges in imposing damages in fair housing cases. HUD should also set guidelines for the awarding of punitive damages, when applicable.

11. HUD should continue to encourage systemic testing by FHIP and FHAP agencies and HUD should consider whether it should initiate its own testing program to assist it in conducting investigations so that it does not need to rely solely on the tests of private fair housing organizations.

12. HUD should define the requirement “to affirmatively further fair housing.” HUD should require local governments that receive federal funding to specify how they are going to eliminate the impediments to fair housing that are identified in their analyses. These local governments should specify the timeline for implementing change and should be required to implement their recommendations making them not merely aspirational, as appears to be the case at the present time.

13. HUD should require all state and local recipients of federal money to provide a minimum of one year to file administrative complaints under the fair housing laws.

14. ICE should eliminate the discretion given to its agents and state firmly that removal proceedings will not be instituted against immigrants who have filed facially valid fair housing complaints so as to encourage this vulnerable population to report violations of the Fair Housing Act.

## **State and local regulatory and policy initiatives**

1. The Illinois Housing Appeals Board should adopt a regulation and interpret the Illinois Affordable Planning and Appeal Act to require all local plans to affirmatively further fair housing.

2. The Illinois Department of Human Rights should collect data on all complaints that allege discrimination against an existing protected class to determine how many of them are filed by housing choice voucher holders.

3. The Illinois Department of Human Rights and local commissions should collect data on all complaints that involve the denial of housing because of arrest or offense records to determine the extent of discrimination against these classes and especially to track whether the denials implicate other classes protected under current law.

4. The Illinois Department of Human Rights and local commissions should adopt regulations requiring housing providers and lenders to reasonably accommodate persons who are not proficient in English.

5. The Illinois Department of Human Rights and local commissions should adopt regulations to require housing providers to reasonably accommodate immigrants by accepting a co-signer when the lessee does not have sufficient documentation to establish a good credit history.

6. The Illinois Department of Human Rights and local commissions should adopt regulations and guidelines similar to those of HUD to specify that immigrants and persons not proficient in English are protected under existing bases of discrimination and that policies that disparately impact them are illegal.

7. The Illinois Department of Human Rights and local commissions should collect data on all complaints that involve the denial of housing involving immigrants and persons who are not proficient in English to determine the extent of discrimination against these classes and especially to track whether the denials implicate other classes protected under current law.

8. The Illinois Department of Human Rights and local commissions should adopt regulations or guidelines making it explicit that senior housing, including assisted care facilities and nursing homes, are dwellings under their fair housing laws and ordinances.

9. The Illinois Department of Human Rights and local commissions should clarify their rules and guidelines to require the administrative investigation of all complaints that show merit on their face, and to prohibit administrative dismissal of complaints solely on the basis that the complainant may not have standing before an Article III court.

10. The Illinois Department of Human Rights and local commissions should initiate complaints in cases of systemic violations and especially in cases involving immigrants, housing choice voucher holders, persons with arrest and conviction records, LGBT youth, and seniors who often do not initiate complaints on their own behalf. If these agencies are uncertain of their legal authority to initiate complaints, they should seek explicit authority from the legislature.

11. The Illinois Department of Human Rights and local commissions should provide by regulation that civil penalties will be awarded to complainants and not to the government as a means of encouraging victims to initiate fair housing complaints.

12. The Illinois Department of Human Rights and the Illinois Human Rights Commission, which adjudicates cases originating at the Illinois Department of Human Rights, and local commissions should adopt a schedule of presumed damages in fair housing cases to provide a guideline in conciliation and to assist administrative law judges and state and federal

judges in imposing damages in fair housing cases. They might also set guidelines for the awarding of punitive damages, when applicable.

13. Local commissions should consider initiating their own testing programs or partnering with local FHIP agencies when available to assist them in conducting testing for fair housing violations. The Illinois Department of Human Rights should continue its partnership with The John Marshall Law School or other FHIP testing organizations to test in investigations when warranted and where the FHIP organization is not a party or is not representing one of the parties in the investigation.

14. The City of Chicago should amend its Fair Housing Ordinance to give complainants one year to file an administrative complaint to make the ordinance consistent with federal and state requirements. Other local communities that do not provide a one year limitation period should do the same.

15. The Illinois Department of Human Rights and the City of Chicago should initiate a study about the feasibility of establishing homeless shelters that serve LGBT youth on the south and west sides of Chicago. The operators of homeless shelters should be encouraged to locate facilities on the west and south sides of Chicago that explicitly welcome LGBT youth. The opening of El Rescate-Vida/Sida, which serves Latino LGBT youth in the Humboldt Park neighborhood, demonstrates the need for such facilities and is a positive step in serving this vulnerable population.

## **Education and outreach initiatives**

1. Increase activities to educate the public and housing providers about source of income discrimination. HUD and DOJ should adopt a joint statement similar to what the two agencies prepared to educate the public about reasonable accommodations and modifications. This statement can help educate the public on when discrimination against housing voucher holders may violate existing provisions of the Fair Housing Act. Congress and HUD should increase the funding for education and outreach activities as should the State of Illinois and all local governmental units.

2. Initiate a national and local media campaign to educate the public and housing providers about the benefits of renting to housing choice voucher holders.

3. The CHA and the Chicago Commission on Human Rights should continue their efforts to educate housing providers and housing choice voucher recipients that discrimination on the basis of source of income is illegal in Chicago and encourage voucher holders to file a complaint if they feel that their rights are violated. The CHA should expand its website to include this information and provide a link to the Chicago Commission on Human Relations. The Cook County Housing Authority should initiate similar education and outreach efforts now that discrimination against housing choice voucher holders is illegal in Cook County.

4. Systemic testing should be regularly conducted in the City of Chicago, Cook County, and elsewhere to determine if landlords are violating the prohibition against source of income discrimination.

5. Education and outreach should be conducted for the public and for public officials about the relationship and difference between fair and affordable housing and the duty of municipalities to ensure that all protected classes have access to fair and affordable housing

within their communities. Municipalities should be encouraged to adopt fair housing policy statements and post them prominently on the home pages of their websites.

6. Education and outreach should be conducted for the public about the problems of overbroad restrictions that prevent persons with arrest and conviction records from securing housing. Fund more studies on the effectiveness of restrictions on persons with arrest and conviction records in both public and private housing in preventing crime and recidivism and educate the public about those findings.

7. Systemic testing should be conducted on a regular basis in all communities to determine the nature and extent of the denial of housing against persons with arrest and conviction records, as well as determine if general policies against renting to persons with such records are equally enforced against all persons.

8. Fair housing organizations or governmental agencies should draft model rental policies and lease provisions that provide limited protection to persons with arrest and conviction records and distribute them to housing providers.

9. Education and outreach activities at all levels should be targeted to immigrants and to persons who are not proficient in English. Foreign language and culturally sensitive materials should continue to be developed to inform immigrants and non-English speakers of their fair housing rights. Outreach to undocumented immigrants and their counselors is especially important because of the opportunities for exploitation of this vulnerable subclass of immigrants.

10. Systemic testing should be conducted to detect discrimination against immigrants and persons who are not proficient in English because these individuals are very unlikely to report violations of the fair housing laws that they encounter.

11. Provide education and outreach to LGBT youth to inform them of their rights to fair housing and to assist them in finding resources to fight discrimination.

12. Provide cultural competency training for homeless shelters and agencies that deal with LGBT youth, as well as law enforcement officers, social workers, and health care officials about the legal rights of this vulnerable population to discrimination in housing.

13. Provide education and outreach to seniors, persons who work with seniors, and senior housing providers, including assisted living centers and nursing homes, about their duties under the fair housing laws.

14. Systemic testing of senior facilities should be done on a regular basis to ensure compliance with the fair housing laws.

15. Agencies including HUD, the Illinois Department of Human Rights, local fair housing commissions, and local FHIP organizations should take a greater advantage of the opportunities provided by their participation in the Chicago Area Fair Housing Alliance to regularly meet and discuss fair housing and equal opportunity issues to ensure the exchange of information to effectively further fair housing in the Chicago metropolitan area. Agencies that are not currently members should consider joining.

16. Vigilance needs to be maintained by HUD, the Illinois Department of Human Rights, and FHIP organizations to protect affordable housing developments and homeless shelters from NIMBY-inspired ordinances and land use restrictions.

## **XII. Conclusion**

This report is not complete. It does not address in depth the problems faced by persons with disabilities, which merits a whole separate study. Nor does it address the special problems faced by veterans. It does not tackle local development plans, zoning ordinances, or building codes to see how they impact on fair housing. How property is taxed is also an area that impacts on fair housing. Instead we have focused on discreet issues that we think can be remedied, not without political controversy, but at least by some simple amendments to existing laws and without the expenditure of large amounts of money.

Other amendments to the laws and regulations could also have been suggested such as HUD giving consideration to providing guidance on what constitutes a continuing violation. It would also be helpful if Congress amended the Fair Housing Act specifically to require or at least encourage states and local governments to enforce the new construction requirements for multi-family housing. Recent Supreme Court decisions would appear to require that Congress make funds available to the states to do this, but the condition could be attached to the receipt of federal housing subsidies. *See, New York v. United States*, 505 U.S. 144 (1992); *Printz v. United States*, 521 U.S. 898 (1997). However, these recommendations are beyond the scope of this study.

In reaching its recommendations, the Center has studied the Consolidated Plans and the Analyses of Impediments to Fair Housing completed by the City of Chicago, Cook County, and several suburban communities. The Center has also conducted a number of interviews on its own, particularly with community residents and their advocates.

As discussed throughout this report, most of the plans submitted by local governments fail to identify the root causes of segregation and propose concrete solutions. Those problems

and solutions that are identified lack the concreteness or specificity necessary to address them properly. In addition to the impediments to fair housing identified in these studies and to which these political entities have obligated themselves to remedy, the Center recommends that the federal, state, and relevant local governmental entities implement the proposals outlined in this report as a first step to removing the impediments to fair housing in the Chicago metropolitan area.

One of the problems with consolidated plans, analyses of impediments, and action plans is that they lack passion. At their best, they cite statistics, identify problems, and propose solutions. They fail to show how failed or misguided policies, both private and public, have impacted the daily lives of individuals. Segregation is pernicious. It affects housing as well as jobs, education, and the quality of life of every individual in the Chicago metropolitan area. Most importantly, it inflicts deep pain and trauma. This is why existing remedies often fail. When we speak of remedies, we talk about new developments, new laws, and better fair housing enforcement. What we do not talk about is mending the lives of persons who have been affected by segregation and discrimination. The experience of the children who have suffered and died because of the violence in Chicago's neighborhoods speaks to the trauma segregation causes. The great potential of our people is being destroyed because of the cancer of segregation. It must be taken seriously. Now is the time to act.

While this report might appear to be critical of local efforts to remove segregation in the Chicago metropolitan area, it cannot be overstated what a great achievement has been accomplished by the City of Chicago and now Cook County in protecting housing choice voucher holders under the "source of income" provisions of their fair housing laws. Effective enforcement is needed to make these provisions real. Chicago's and Cook County's enforcement

efforts would be enhanced if these governmental entities were not alone in making ‘source of income’ illegal. The federal government, the State of Illinois, and other local governments should follow the progressive lead of Chicago and Cook County. Also, it cannot be overemphasized that the entire history of fair housing demonstrates that legislative change is only a first step. It must be followed by vigorous education and outreach activities and by vigorous enforcement measures.

New forms of housing discrimination arise continuously, and the law and public policy must keep pace. Substantial amendments to the federal Fair Housing Act have not occurred since 1988, a generation ago. The State of Illinois has done better but the process is on-going. The steps proposed here will not end the problem of segregation, but they will at least further us on our journey to a just and fair society.