

STATE CIVIL RIGHTS AGENCY DEMONSTRATIONS OF STRATEGIES
TO FIGHT HOUSING DISCRIMINATION

FINAL REPORT

Case Studies

By

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The research and studies forming the basis for this Report were conducted pursuant to a contract with the Department of Housing and Urban Development (HUD). The statements and conclusions contained herein are those of the contractor and do not necessarily reflect the views of the U. S. Government in general or of HUD in particular. Neither the United States nor HUD makes any warranty, expressed or implied, or assumes responsibility of the accuracy or completeness of the information herein.

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CASE STUDY:

Colorado Civil Rights Commission

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I. INTRODUCTION

A. THE NINE-STATE DEMONSTRATION PROJECT

This case study is one of a series being prepared under contract to the U.S. Department of Housing and Urban Development as part of a HUD-funded research and demonstration project. A key element of this project was the provision of funds to nine State civil rights agencies to enable them to either launch or expand fair housing programs directed particularly against systemic discrimination.

1. Background

Notwithstanding the efforts of the past two decades, there remains an intolerably wide gap between the promise of choice implicit in an array of civil rights legislation and the reality of housing discrimination for minorities in America today. Moreover, discrimination in housing contributes to social injustices reaching well beyond its most immediate consequence, residential segregation. These include inequality of job opportunities, separate and unequal schools (notwithstanding the 1954 Brown decision), and increased tax burdens on inner city residents to support growing social service costs and an irregular pattern of urban growth.

So systemic and institutionalized is racism in the housing system that public enforcement efforts--crippled by weak budgets and preoccupied with responding to individual complaints--seem only to have changed the face of discrimination without uprooting it. Replacing the blatant housing discrimination of the pre-civil rights era are new discriminatory practices, subtle, indirect, and often hidden--but just as effective. The struggle for equal opportunity in housing is far from over.

State human rights agencies are called upon to play a major role in that struggle. State laws often give them far-reaching responsibilities, while Federal law gives many the added burden of processing housing discrimination complaints filed under Title VIII. Their limited resources, however, permit little more than the handling of individual complaints, often leaving significant patterns and practices of housing discrimination unchallenged.

And at all levels--Federal, State and local; public and private--there is a need to find and test new ways to use existing fair housing laws more creatively and effectively. Also needed is precise, reliable information about systemic discrimination in housing and about the programs necessary for the full enforcement of existing fair housing laws.

The message is clear: both qualitatively and quantitatively, this nation's level of public intervention on behalf of the minority shelter-seeker must be substantially upgraded.

2. The Project

It is to this message that HUD responded in 1976 by committing Federal resources under this project to enable States to assume a more aggressive role in meeting fair housing goals. In doing so, it addressed in a single programmatic thrust two broad national problems: how to assist minority families in obtaining decent housing in the face of increasingly sophisticated discriminatory practices, and how to help the States increase their capacity and effectiveness in carrying out responsibilities under existing laws.

Even before issuing the Request for Proposals (RFP) for this project, HUD selected the participating State agencies. On June 16, 1976, HUD invited 10 State civil and human rights agencies to take part in this project. One agency, ultimately unable to meet all of HUD's requirements, did not participate. The remaining nine are:

- Colorado Civil Rights Commission
- Connecticut Commission on Human Rights and Opportunities
- Kentucky Commission on Human Rights
- Massachusetts Commission Against Discrimination
- Michigan Department of Civil Rights
- New Jersey Division on Civil Rights
- Ohio Civil Rights Commission
- Pennsylvania Human Relations Commission
- Washington State Human Rights Commission

Each of these agencies was offered up to \$120,000 to pay for a year-long demonstration of one or more strategies to combat systemic discrimination. They were not required to match the Federal money, but were, of course, free to supplement it with funds of their own. Within general guidelines and a minimum of specific requirements, each agency designed its own demonstration program.

The agencies performed their demonstrations as subcontractors to A. L. Nellum and Associates, Inc. (ALNA), the contractor HUD selected to run the project. They received their money through ALNA and had no direct contractual relationship with HUD.

Under its contract with HUD, ALNA's role has included the following:

- Assisting each State agency during the planning stage of its program, and assuring that proposed strategies met project requirements.

- Distributing funds to the agencies.
- Monitoring each program over a 12-month period.
- Evaluating the impact of each program.
- Preparing a final report (of which this case study is a part) describing the implementation and results of the project in detail.

The project has been under ALNA's direction since October 1976.

Focusing on State agencies as vehicles for social change, this project has two primary objectives:

- To identify replicable, tested, and proven intervention strategies for combating systemic discrimination.
- To strengthen State agency capacity and effectiveness in carrying out their responsibilities under existing laws.

Additional objectives are an increased understanding of systemic discriminatory practices and of the states' role in combating them, and the dissemination of this understanding to interested citizens.

B. STRATEGIES AT A GLANCE

To briefly introduce the subject of this case study, the two fair housing strategies demonstrated by the Colorado Civil Rights Commission consisted of the following:

1. A-95 Strategy

- Establish working relationships with A-95 clearinghouse and planning agencies.
- Substantively review Federal funding applications from selected localities.
- Through A-95 comments and persuasion, seek changes in applications so as to comply with fair housing and related program requirements.

2. Land Use Strategy

- Identify discriminatorily restrictive land use and development controls.
- Investigate land use regulations and practices in selected target areas.
- Pursue one or more alternative approaches to removing

discriminatorily restrictive land use and development controls
in selected target areas.

These strategies are described in detail in Chapter IV below. The
outcomes of the strategies are described in Chapter VI.

II. INTRODUCTION TO THE AGENCY

The Colorado Civil Rights Commission (CCRC), created in 1951 as the Colorado Anti-Discrimination Division, 1/ is one of the nation's oldest. The law that originally gave it general jurisdiction and enforcement authority over housing discrimination in 1959 was the first fair housing law in the nation with such broad coverage. 2/

CCRC's seven members are appointed by the governor and serve without compensation. 3/ CCRC is represented in court by the State attorney general, and, under a 1975 reorganization, has no legal staff of its own. The commission, a commissioner, or the attorney general may file complaints alleging discrimination, 4/ but only "in those instances where a specific person or persons have been aggrieved by the alleged discriminatory practices charged." 5/

The Colorado Fair Housing Act of 1959 prohibits discrimination in housing or in providing financial assistance on the basis of physical handicap, race, creed, color, sex, marital status, religion, national origin, or ancestry. 6/ It also prohibits the inclusion of any restrictive covenants based on handicap, race, creed, color, sex, national origin, or ancestry in any transfer, sale, rental, or lease of housing. 7/

CCRC's budgets for fiscal years 1977 and 1978 were \$526,300 and \$545,000, respectively, exclusive of Federal funds. 8/ In fiscal year 1977 it opened 2,315 cases, of which 87 (3.7 percent) alleged discrimination in housing. 9/ In the following year, its total new cases went down to 2,000 while its new housing cases rose to 112 (5.6 percent). 10/

Prior to the project, CCRC's activities had centered on handling complaints, with "little formal development of an administrative capability to deal with systemic discrimination." 11/ Its participation in the A-95 review process had been perfunctory at best, rarely if ever involving substantive reviews of either applicants or applications. 12/ Nor had it ever had a case alleging that a local government's land use regulations or practices were discriminatory. As a result, it had little knowledge of either exclusionary land use or the civil rights aspects of Federal housing programs.

III. STATEMENT OF THE PROBLEM

1970 Census data and 1977 population estimates by the Denver Regional Council of Governments show that the Denver Standard Metropolitan Statistical Area's minority population is concentrated in the city of Denver. The city contains seventy percent of the region's minority households and an even greater portion (86 percent) of the SMSA's black and Hispanic households below the poverty line. The city's minority population is approximately 40 percent of its entire population. Between 1970 and 1977, the city experienced the smallest population increase in the region (only 1.4%) as growth in the black and Hispanic population slightly outpaced the decrease in the Anglo population.

Racial and economic segregation within the Denver metropolitan area is linked with the fact that there are limited housing opportunities for minorities, women (as heads of households), and low-income persons generally in suburban jurisdictions. One factor keeping minority families in the central city is their inability to afford the kind of housing that is available in the suburbs. And one of the reasons that suburban housing costs so much is the overall effect of a variety of land use regulations that do not permit less expensive housing to be built. ^{1/} Multifamily buildings, which generally provide less expensive housing than single family homes, are often excluded completely or severely limited in number and location. Less expensive single family housing is kept to a minimum by zoning that allows them to be built not on small lots that would be adequate, but only on large lots that cost more to buy. These and a variety of other land use rules and practices keep the cost of suburban housing beyond the reach of families with lower incomes, and disproportionately more such families are minority than are Anglo.

In 1972 the Denver Regional Council of Governments (DRCOG) adopted a "fair share" housing plan, which called for construction of 21,454 new low- and moderate-income housing units between 1972 and 1977. These units were to be distributed according to seven criteria among the 25 member jurisdictions in the Regional Council, giving each its "fair share." Three-fourths of the local governments (representing 93 percent of the region's population) adopted the plan.

Since suburban jurisdictions failed to provide their share, however, the fair share housing plan's goals, aimed at some dispersal of the low- and moderate-income housing, were not achieved. Suburban jurisdictions for example, were to have met three-quarters of their 1972 goal by building new family units, but they built new elderly units instead. They produced only 535 units of family housing, only 4.5 percent of their family housing goal, almost exclusively by converting existing units to family units through Section 8 housing assistance payments. Denver, on the other hand, produced 19.4 percent of its family housing goal.

DRCOG undertook an update of the plan in 1977. Called the Regional Housing Opportunity Plan, it defines a three-year need of 98,972 units of low- and moderate-income housing in the region, including 32,000 units in

need of rehabilitation. The new plan's goals reflect a major DRCOG policy emphasizing dispersal of low-income units into suburban jurisdictions while simultaneously upgrading units in the city of Denver. Denver's share of existing and new units is 22.1 percent of the total regional need. The city is allocated 73 percent of all rehabilitation funds and one-half of the funds to meet the region's elderly need which is limited to one-third of all households in need of assistance. The suburbs are thereby encouraged to construct new family units or to provide greater assistance to families through Section 8 subsidies on existing housing units.

The new plan places a great deal of responsibility for providing low- and moderate-income housing on the suburbs. It proposes, for example, that DRCOG recommend that Federal and State agencies deny all applications for assistance from local governments that have not adopted the plan or made good faith efforts in achieving their goals. Many localities have refused, or have not acted, to adopt the plan. The discriminatory policies and practices of local governments have not been limited to negative reactions to the housing opportunity plans. Indeed, many governmental policies, practices, and decisions, at all levels of government, contribute to systemic residential discrimination in Colorado, serving to exclude minorities, female heads of households, and other low-income persons by limiting the availability of housing. Colorado's suburban communities, for example, have requested very little financial assistance from HUD to improve their housing supply, other than Section 8 proposals limited almost exclusively to existing housing subsidies for the elderly. They also oppose proposals to deal effectively with the problem of inner-city concentration. In 1977, DRCOG formed a special task force of Denver and suburban officials to develop proposals for a regional housing delivery mechanism. The task force recommended against the establishment of a metropolitan housing authority, fearing that it would have too much control over the production and placement of low-income housing in the region. Members of the task force representing suburban governments also vetoed Denver's proposal to allow its Housing Authority to develop housing outside the boundaries of the city. The suburban representatives favored the formation of a regional housing district instead, an alternative much more difficult to carry out since it would require passage by the State legislature and the execution of inter-jurisdictional agreements. The proposal has yet to be passed.

Other policies, practices and decisions also serve to exclude minorities from these communities. In addition to having restrictive land use regulations and practices, most, if not all, local governments do not do enough to curb discrimination by landlords who refuse to rent to minorities and other low-income persons, or by realtors who steer "undesirable" persons from Anglo neighborhoods. Indirectly, the lack of affirmative efforts to hire minority and female employees also has a discriminatory impact upon access to housing.

Some of the policies and practices of Federal and State agencies also fail to foster construction of low- and moderate-income housing in suburban areas within the State of Colorado. Federal and State agencies have continuously allocated funds to local communities without requiring demonstrated performance in upgrading the quantity, quality or availability of housing. The Department of Housing and Urban Development, for example, has failed to

use its influence to change suburban Housing Assistance Plans and other proposals contained within applications for Community Development Block Grant funds. When suburban communities refused to apply for conventional public housing funds after the Federal housing moratorium was lifted, HUD did nothing to encourage them to change their minds. Instead, it asked Denver to accept the region's full allocation. During the first three years of the Community Development Block Grant program, HUD's Region VIII office approved over \$65 million in CDBG funds to six Metropolitan Denver entitlement cities without requiring evidence of housing assistance performance or civil rights compliance. 2/

The State of Colorado has contributed to the problem by its failure to conduct any "substantial civil rights reviews or monitoring" of the spending of government funds. 3/ The Colorado Civil Rights Commission, in its own words, had not "participated in efforts to eliminate systemic discrimination in housing" 4/ prior to the demonstration project. Prior to the project, having been set-up primarily to process complaints, it did not have the personnel or developed capability to move in this area. 5/

A serious limit on CCRC's capacity to deal with systemic discrimination by government was the lack of adequate data upon which to base its actions. The primary source of readily available data was the 1970 Census--increasingly out of date and generally considered to have undercounted minority households. Finding data to supplement the 1970 Census is also a problem since updates do not provide sufficiently detailed or comprehensive information.

IV. DESCRIPTION OF STRATEGIES

A. A-95 STRATEGY

As the State administrative agency charged with the enforcement of civil rights laws, the Colorado Civil Rights Commission (CCRC) is one of the agencies entitled to review and comment on applications from local governments to Federal funding sources (the A-95 review process).

While funding agencies ultimately decide whether requested grant funds will be approved, CCRC planned to use its participation and influence in the A-95 review process as an administrative incentive to local communities to propose and implement activities to increase the supply of dispersed low-income housing. This strategy depended on CCRC's ability to show that an applicant's past performance or proposed activities failed to comply with applicable civil rights laws and regulations and to negotiate changes in an application before submission to the funding agency, or to convince the funding agency that the applicant did not deserve its requested assistance or should be required to reprogram the money.

Because the Colorado agency had no previous substantial involvement in making A-95 reviews and comments, it was first necessary to collect, synthesize, process, and then disseminate information concerning the A-95 process and CCRC's participation in it, while also establishing and nurturing relationships with agencies, groups, and individuals who could assist CCRC in implementing the strategy.

The next step was to use the A-95 review process to persuade the target communities to propose activities in their applications for Federal assistance that would increase the supply of low-income housing and to encourage them to use funds awarded (for this purpose or otherwise) appropriately and in compliance with civil rights laws and regulations. CCRC attempted this primarily by negotiating with applicants before formal submission of applications to the Federal funding agencies or by submitting comments on applications to the funding agencies before awards were made so that they could put conditions on the award.

The strategy therefore, proceeded in two stages, (1) research and development and (2) action.

1. Research and Development

- Collection and analysis of information on the administrative and legal basis for civil rights compliance in Federal programs.
- Collection and analysis of data describing the social, economic, and demographic character of target area communities.
- Collection, analysis, and synthesis of information on

the current housing situation in the region and actions taken by local jurisdictions to upgrade the supply.

- Collection of information to provide a working knowledge of the A-95 review process in Colorado and in the metropolitan region.
- Preparation of a framework on which to base reviews of applications under the A-95 review process and establishment of procedures for reviews.
- Preparation of an instructional manual for citizens interested in participating in the review process.

2. Action

- Community Outreach and Enlisting Support
 - Organization and orientation of community groups and persons to provide information on the performance of the communities, to assist in reviewing applications, to advise on courses of action, and to apply pressure on the communities.
 - Notification and orientation of governmental and private agencies at all levels (local to national) of the A-95 review process and of CCRC's participation, and solicitation of their support in providing information, in reviewing applications, and in generally encouraging support for more low-income housing.
 - Exchange of information with the clearinghouses on the A-95 review process, and solicitation of cooperation and support in coordinating the process.
 - Exchange of information with the U.S. Department of Housing and Urban Development (the funding agency), and solicitation of support in coordinating the review process.
- A-95 Process: Reviews, Comments, and Negotiations
 - Collection and analysis of data pertinent to the review of an application and comparison of data with information contained within an application to determine whether an applicant has sufficiently addressed housing needs and has complied with civil rights requirements.
 - If the applicant has not met its responsibilities, attempts to change the application before the award is made by negotiating with or by pressuring the applicant before the application is submitted and, if unsuccessful in doing

this, by submitting negative comments to urge the funding agency to have the applicant submit changes within the application or reprogram funds as a condition to award of the grant. Grants awarded without conditions were sometimes followed up with additional efforts to have funds reprogrammed by negotiation, pressure, or other determinatives.

- Monitoring Performance

- Comparison of communities proposed performance with actual performance.

B. LAND USE STRATEGY

The land use strategy, as originally planned, contained essentially two components, research and development, and action.

1. Research and Development

The purpose of the research component was to gather and analyze a variety of data that would either shape the strategy or become its focus. This information included the literature on exclusionary zoning, a wealth of demographic and housing information (from a wide variety of sources) about the target localities, and the zoning and other land use regulations from each target locality. Also included in this component were two surveys--(1) a mail survey (paid for by CCRC) of employers asking about employees and their housing problems, and (2) a series of interviews with more than a dozen types of respondents, asking about their perceptions of and experiences with housing and land use barriers and their suggestions for possible remedies. The groups interviewed (each of which had fewer than 10 respondents) included Federal, State, regional, and local planning, housing, and other officials; land developers, home builders, real estate brokers, lending institutions, and union officials; and community leaders and members of CAP agencies, religious and civil rights organizations, and housing advocacy and public interest groups. These interviews, it was hoped, would not only provide helpful information, but also turn up people who, as recent or current victims of exclusionary land use regulations, might serve as "live" cases should the CCRC need examples or aggrieved parties to serve as complainants or plaintiffs.

2. Action

The action component consisted of several elements, each of which is discussed below.

- Selecting Target Communities

Although CCRC had already picked the general locations from which its target communities would eventually be chosen--the Denver suburbs and the Western Slope "boom town" areas--it would still have to select specific communities on which its strategy would focus.

- Community Involvement

The purpose of this element was to arouse citizen interest, knowledge, and action concerning land use issues--at the minimum to have a knowledgeable citizenry who would support CCRC's efforts, but, more desirable, to have individuals or groups participating in the strategy along with the commission. To accomplish this, the project's community organizer met with groups, explained the linkage of land use regulations to housing opportunities for minority groups and women, and sought their support and assistance. In addition, the staff prepared educational materials, including a slide presentation and a pamphlet, to help explain the problem and possible solutions.

- Investigating Exclusionary Practices

The data gathered as part of the research component was supplemented by site visits to each target community. After additional analysis, the staff prepared a community profile on each target, stating specific findings and conclusions on its land use policies and practices.

- Enforcement

This component included the possible actions CCRC might take in response to any findings that land use practices in the target communities were exclusionary. These actions included forming coalitions with citizen and other groups to seek voluntary changes, bringing pressure to bear on the exclusionary communities through the A-95 review process by recommending that funds be withheld unless applicant communities agree to change their land use practices, filing commissioner charges, and filing lawsuits, either on its own or in conjunction with outside groups or individuals.

C. CHANGES IN THE STRATEGIES

Changes in the A-95 strategy reflect the major extension of its research and developmental components. CCRC considered several approaches to organize communities for participation in the A-95 process, including the formation of human relations commissions, but decided instead to conduct community organizing activities at the grass-roots level and to organize community groups to act in an advisory capacity rather than in an official capacity. The project's target area, as expanded, included the cities of Littleton and Aurora in Arapahoe County, the cities of Lakewood and Arvada in Jefferson County, the city of Longmont in Boulder County, and the city and county of Denver. The number and types of applications to be reviewed were narrowed so that the A-95 reviews would concentrate on community development block grant applications and comprehensive planning assistance (701) applications.

The only other major change in the strategies was the addition at the end of the demonstration period of a housing conference to discuss and disseminate information about both strategies as part of a larger consideration of housing problems in the Denver metropolitan area. Since one of the conference's purposes was to build a housing coalition,

participants included representatives from the whole spectrum of agencies, special interests, and groups involved in housing or affected by it.

V. IMPLEMENTATION

A. STAFFING

The project staff was organized under the direction of the Executive Director of CCRC and the supervision of the Housing Director who also coordinated the two strategies.

Except for the Housing Director, the project staff was new to CCRC and had varying degrees of knowledge and expertise in the areas of housing and civil rights. None was familiar or experienced in all such areas. In addition to making some of its regular employees available as an in-kind contribution to supplement those hired with HUD/ALNA project funds, CCRC was especially resourceful in providing still other staff to the project using the Department of Labor's WIN and CETA programs. Through the latter program, for example, CCRC added several professional level staff members who made valuable contributions to the project.

Individual responsibilities of project staff are specified below. In this listing, those staff members holding positions marked with an asterisk (*) were paid in whole or in part with project funds.

- Assistant Director for Special Projects (Housing)
 - responsible for supervision, administration, complaint investigation, training, court decisions, meetings, fair housing and equal opportunity input, writing land use final report.
- Project Director/Research Planning (Land Use Strategy)*
 - responsible for planning the strategy, resource materials, demographics, housing information, legislative, governmental and community contacts, conference planning.
- Project Director (A-95 Strategy)*
 - responsible for planning the strategy, directing it, research, reports, analysis, etc.
- Research Consultant (Land Use)*
 - responsible for land use profiles, zoning ordinances.
- Research Assistants (A-95) (2)*
 - responsible for gathering information for the strategy, analysis, report writing.
- Research Assistant (Land Use) (CETA)
 - responsible for land use analysis, mapping, interviewing, affirmative action.

- Community Organizer*
 - responsible for identifying and organizing community groups and for providing information and training for them concerning the two strategies.
- Administrative Officer II*
 - responsible for supervision of clerical staff, administrative details, and assisting with land use strategy.
- Office Manager (CETA)
 - information, office manager, typing and secretarial duties.
- Secretary*
 - secretarial duties.
- Administrative Assistant (CETA)
 - assisted administrative officer, and also responsible for conference planning.
- Student Intern (Land Use) (unpaid)
 - responsible for reviewing court cases.
- Graduate Student (Land Use) (unpaid)
 - responsible for court cases, and land use profiles.
- Survey Analyst (Land Use) (CETA)
 - responsible for demographics, mapping, and interviewing.
- Research Assistant (Land Use) (CETA)
 - responsible for interviewing, surveys, housing data, and court cases.
- Survey Analysts (Land Use) (CETA)
 - responsible for demographics, community organizing, conference.
- Survey Analyst/Investigator (Land Use) (CETA)
 - responsible for complaint investigation, court cases
- Survey Analyst (Land Use) (CETA) - responsible for interviewing, newspaper review, community organizing.

Commissioner Harvey Deutsch was given the special assignment of adviser to the project. Additionally, an advisory committee was established composed of persons with expertise in the areas of social research, housing, community participation, planning, migrant housing, housing for the elderly and handicapped, demography, and project management.

CCRC has no in-house legal staff. While two lawyers from the State attorney general's office were available to the project to handle legal matters, this service was not without its cost. Obtaining their help involved a certain degree of inconvenience, and CCRC was charged an hourly

fee for each attorney's time. (For these reasons, plus the lawyers' lack of any particular experience with housing discrimination, the project staff did not seek their help until it became involved in a formal complaint.)

In February 1978, CCRC hired a well qualified CETA staff. Two persons, for example, had M.A. degrees in Urban Planning with one of these persons specializing in housing. Another person had three years of experience as a CCRC investigator. These persons enabled the CCRC staff to attend more meetings, to increase the agency's data sources, to expand its overall research capabilities, and to carry out a detailed formal complaint investigation.

CCRC also obtained technical assistance from several consultants. Dr. George Bardwell, a statistician, arbitrator, and professor at the University of Denver, reviewed the operations of CCRC to recommend ways the agency could improve its efficiency and effectiveness. CCRC also consulted with Dr. Charles Cortese, a sociology professor from the University of Denver, and the Suburban Action Institute for planning and training purposes that will be discussed below.

B. STAFF TRAINING

The project staff received extensive training of various kinds throughout the project, including the following:

1. Training by Commission Staff

For a week at the start of the project, and later as new staff were hired, the project director and others offered basic orientation and training in civil rights laws and enforcement, and the commission's jurisdiction, authority, and procedures.

2. Training by Outsiders

Officials from HUD and several State and local agencies and outside experts also participated in staff training. Most made presentations of one to three hours, covering a wide range of topics that included the structure, politics and housing needs of the Western Slope boom towns; Denver housing problems and programs; analysis of Housing Assistance Plans (HAPS), zoning ordinances and zoning maps; expected-to-reside calculations and measures; and Federally assisted housing programs, policies and problems. Other sessions, geared more toward CCRC's A-95 strategy, covered such topics as clearinghouse procedures and CDBG requirements, procedures and reviews.

In addition, there were two lengthier sessions. In September 1977, Paul and Linda Davidoff of Suburban Action Institute, spent about one full day on each of the two strategies. They were especially helpful in the process of identifying exclusionary land use practices and the use of 701 guidelines to assist in the analysis. They analyzed Lakewood's zoning map and ordinances, and their publication, A Study of Exclusion, served as a basic handbook for the project. In short, they provided what was felt to be clear and decisive guidance on how to carry out the projects.

Similarly, definitive training was also provided by Zina Greene, then of HUD's Office of Fair Housing and Equal Opportunity in Washington. She spent a day and a half with the staff in February 1978, devoting much of her time to CDBG reviews, but also covering various elements of the land use strategy. In addition to providing helpful forms and checklists she had detailed familiarity with relevant regulations and their interpretation, and was able to convey the HUD central office view of the equal opportunity dimensions of various policies and programs.

3. Attendance at Conferences

Throughout the project, various staff members attended a number of conferences that were all or partly related to the areas of land use and A-95. These included HUD's Voluntary Fair Housing Conference, the Colorado Women's Conference, the Western Regional Conference of the National Tenants' Organization, the HUD/Agriculture/Commerce Urban Growth Hearings and Conference, a conference held by Colorado's Office of Human Resources and Colorado Housing, Inc., the Western Regional Conference of the U. S. Commission on Civil Rights, a Housing and Community Development Seminar sponsored by the Bureau of National Affairs, the NCDH/HUD Fair Housing Conference, an Urban Revitalization Conference, and a conference of the Rocky Mountain Chapter of NAHRO.

4. University Courses

Several staff members took courses at the College of Environmental Design of the University of Colorado at Denver, including Housing and the Social System, and the Legal Aspects of Land Use.

With hindsight, because of the staff's general inexperience in equal opportunity programs, the project director reported that the training should have been given more emphasis initially on the civil rights laws, their implications for A-95 reviews and for exclusionary land use, and the identification of discrimination. She also felt that the detailed, definitive training offered by SAI and by Ms. Greene should have come at the very beginning of the project, as well as later on when the staff had gained some practical experience and had specific problems to work on and discuss. Despite all the training provided, she felt that even more was needed, perhaps as much as an entire month at the start of the project.

C. A-95 STRATEGY

1. Research

In the research stage of the strategy, the project staff acquired information and data, synthesized the information, and produced information pertinent to the A-95 review.

To familiarize themselves with the governmental environment affecting dispersal of low-income housing, the staff collected and analyzed information on the administrative and legal basis for civil rights compliance in Federal programs. In conjunction with the Land Use staff, the A-95 staff

reviewed Federal housing legislation and program regulations as well as relevant civil rights legislation and attempted to determine the relationships.

The staff examined court cases for the rationale behind equal opportunity in housing and to gain an understanding of court-admissible evidence. Also, the staff gained knowledge of A-95 reviews by talking with other persons who were more experienced or more knowledgeable in the review process. For example, CCRC project staff visited civil rights agencies from other States to learn their procedures and problems. Staff also identified persons for a research advisory committee to obtain expertise in planning, housing, and civil rights A-95 review process. For pertinent information, CCRC looked to civil rights review groups, citizens' groups, real estate agencies, various ethnic groups, architects, and Federal, State and local agencies dealing with housing.

To develop the baseline data by which to make comparisons and to assess progress in achieving the objectives of the project, the staff collected data on the social, economic, and demographic character of each target community--Arvada, Aurora, Denver, Lakewood, Littleton, and Longmont. In attempting to update the 1970 census data, CCRC sought U.S. Census updates and information from the State Division of Planning, the State Employment Office, local planning offices, or from Housing Assistance Plans. Data from these sources were incomplete and methodologically inconsistent. CCRC was also able to use data published by the Denver Regional Council of Governments (DRCOG) in its Regional Housing Opportunity Plan.

CCRC also obtained revealing income and public assistance data on low-income residents of Arvada and Lakewood through Jefferson County's Department of Social Services and also obtained unpublished income information from the U.S. Department of Labor.

In addition to documenting the character of the target communities, CCRC collected, examined, and summarized information on the current housing situation in the region to determine what efforts local jurisdictions had made to provide an adequate supply of housing by quantity and type. In contacting HUD and DRCOG, CCRC received data on all subsidized housing units provided in the Denver metropolitan region since the 1940's by program type and jurisdiction. Other research activities included a review of the Denver Regional Council of Governments' Regional Housing Plan (RHOP).

Throughout the course of the project, the agency developed a working knowledge of the A-95 review process in Colorado and in the metropolitan region. For this purpose also, CCRC contacted people involved with the review process at all levels of government to determine the procedures used in the region to carry out the process as well as the expected responses from CCRC reviews. The agency also collected information on the types of CDBG applications from the target areas and the timetables for commenting. Toward the end of the demonstration year, CCRC began examining other Federal programs and the social/demographic situation in communities outside of the targeted areas.

From its synthesis of the data, CCRC prepared a framework for reviewing applications. The framework includes criteria for evaluating both the applications and the applicants' past performance. The criteria were not used consistently since their development extended throughout the review period. Yet they were designed to give staff a guide with which to make evaluations. The major categories of the framework are listed:

- Principal benefit to low- and moderate-income families
 - Who will the proposed activities benefit and how?
 - Who has benefitted from past CDBG activities?
- Civil Rights Compliance
 - To what extent is housing discrimination a problem in the community?
 - To what extent does such discrimination exclude minority residents of other communities in the metropolitan area?
 - To what extent is such discrimination the result of official policies?
 - To what extent is the jurisdiction "affirmatively furthering fair housing"?
 - To what extent is the jurisdiction implementing its affirmative action plans?

Also in setting up its system to review applications, CCRC established a filing system for all past and pending A-95 applications, worked out review schedules, task assignments and procedures for processing applications, and developed four form letters for commenting on applications. Actions of the letters are as follows:

- Approval
- Approval with request for affirmative action plans
- Approval with request for list of prime contractors and subcontractors when contracts are signed.
- No comment

If CCRC recommends disapproval or conditional approval, it sends justification comments.

CCRC project staff also prepared an instructional manual for citizens interested in monitoring their communities' Housing and Community Development Programs through the A-95 review process. The manual:

- Describes the A-95 review process and how citizens can become involved.
- Describes Housing and Community Development Act programs and their requirements including citizen participation requirements and techniques for citizen review of applications.
- Describes the relationship of the Housing and Community Development Act to civil rights legislation and guidelines.
- Describes how to review an application, and includes sample forms to be used by persons reviewing applications.
- Includes copies of relevant housing and civil rights laws and regulations.

2. Action

As indicated, CCRC's A-95 strategy consisted of three components:

- Community Outreach and Enlisting Support
- A-95 Process: Reviews, Comments, and Negotiations
- Monitoring Performance

These components were implemented as discussed below.

● Community Outreach and Enlisting Support

The "supports" component of the strategy involved CCRC's efforts to make government agencies, private agencies and groups, and individuals within the State of Colorado aware of the A-95 review system; to inform them and HUD also, of CCRC's participation in the review process; and to enlist help from all those involved in the review process, especially local government officials and housing agencies, in obtaining support for more low-income housing and for affirmative action programs in housing, employment, and contracting. CCRC sought support particularly from HUD in coordinating the A-95 review process and in giving attention to the recommendations made by CCRC, from the clearinghouses in also cooperating in the review process, and from community groups in providing information and in helping CCRC to monitor the performance of applicant communities.

CCRC's activities in this phase of the strategy, and the contacts made as a result, were numerous. The agency exchanged information with others at all levels through written correspondence, meetings, conferences, and presentations, and through training sessions with community groups. This process included the following:

Community Groups. CCRC worked in a variety of ways with a variety of groups. The following are some examples.

- CCRC worked to develop community groups and to provide them with orientation and technical information. CCRC gave presentations on the A-95 process to a group of citizens in Jefferson County and to the Minority Association of Contractors early in the project. The agency asked the groups for assistance in reviewing and monitoring applications.
- CCRC contacted the Vice President of the G.I. Forum to explain the project and the project staff's community organizer was invited to a G.I. Forum meeting to give a presentation on A-95.
- Project staff met with and informed the minority community of Longmont about the A-95 requirements of CDBG applications.
- Community groups assisted CCRC in reviewing the A-95 procedures manual and also reviewed CCRC's preliminary criteria reviewing applications for funding.
- At CCRC's invitation, Zina Greene, Program Analyst, HUD, Washington, D.C., met with a Longmont citizens group, representatives of the Minority Association of Contractors and other interested community persons.
- Conducted a training session on A-95 for the League of Women Voters (state and metropolitan organizations).
- In meeting to discuss development of the Housing Assistance Center (a proposed fair housing center), CCRC's community organizer briefly explained the A-95 review process to representatives from the Commission on Community Relations, Denver Urban Renewal Agency, Greater Park Hill Community, Inc., and Citizens Housing Advisory and Planning Committee.
- CCRC's community organizer shared information on A-95 with representatives from the Denver City Planning Office, Denver Housing Authority, and Platte Valley Legal Services in another meeting pertaining to the Housing Assistance Center.
- CCRC's community organizer met with a representative of the Mennonite Urban Ministry to discuss CCRC's program.

HUD and the Clearinghouses. Prior to the demonstration project, CCRC had difficulties in communicating with HUD and with the state and regional clearinghouses, since a coordinated A-95 review process had not been established previously in Colorado and since civil rights had been virtually left out of the existing A-95 process. To remedy this situation CCRC met

with the clearinghouses and with HUD and exchanged information on the A-95 review process. For example, CCRC reviewed its preliminary criteria for Community Development Block Grant application reviews with HUD and with the , DRCOG (the regional clearinghouse), and with the Department of Local Affairs Colorado Division of Planning (the State clearinghouse), and later sent them copies of the revised preliminary review criteria. As a result of CCRC's efforts to work cooperatively with the clearinghouses, the State clearinghouse agreed to consider civil rights reviews prior to signing off any housing related applications. The clearinghouse now seeks CCRC's input on many civil rights and related issues. For example, the clearinghouse sought CCRC's comments on the Environmental Impact Requirements and the Human Growth and Settlement Policy.

Also as a result, CCRC has also developed a cooperative relationship with DRCOG which is now acknowledging its responsibility to make civil rights a part of its A-95 function influenced by CCRC's exemplary use of the strategy. DRCOG has not developed an in-house capability to conduct civil rights reviews, as CCRC had suggested at another time, but instead relies on CCRC's expertise. On April 19, 1978, CCRC's Executive Director testified at a public hearing on the Denver Regional Council of Governments' Regional Housing Opportunity Plan. He supported the Plan's adoption but also recommended several changes to tighten it and improve its implementation.

The relationship between CCRC and HUD was tested throughout the year but has improved to the point that HUD now responds to CCRC's A-95 comments on applications. This was accomplished through efforts by both agencies. In the beginning, however, a feeling that HUD was not giving credence to the A-95 process prompted CCRC to send a letter of complaint to the HUD regional office (dated October 29, 1977). The complaint stemmed from the failure by the cities of Longmont and Littleton to provide a Notice of Intent to the State clearinghouse before submitting their full applications to HUD. HUD not only asked the clearinghouse to sign off on the applications without the full period to review them, but even approved Longmont's application without giving the clearinghouse a chance to prepare its own review or compile the comments of other agencies. CCRC's letter reminded HUD of the civil rights agency's efforts to develop review criteria and of its desire to provide substantive comments on all 1978 block grant applications and program amendments involving affirmative action efforts in employment practices and fair housing by the applicant. This would not be possible without proper notification.

Several meetings were held between HUD and CCRC, not only to discuss matters pertaining to specific applications but also to work out specific difficulties between the two agencies and their participation in the review process. For example, on one occasion, CCRC staff attended a meeting requested by the Community Planning and Development Director of the HUD regional office. CCRC and HUD exchanged interpretations of "principal benefit to low income persons" and "maximum feasible priority," key phrases in the CDBG application.

On another occasion, CCRC met with Betty Miller, Regional Administrator/HUD, for a policy discussion on HUD's role in the region and

CCRC's efforts concerning Community Development Block Grants and other matters. Ms. Miller told CCRC representatives that the HUD regional office preferred not to withhold funds from any community and that it would encourage communities to reprogram funds instead. She also informed CCRC that, as she interpreted regulations then in effect, neither an applicant's past performance nor its lack of housing implementation was a basis for rejecting its application. CCRC received similar information in discussions with other HUD representatives. Yet it seems that HUD did take past performance and lack of housing into consideration when it conditionally approved several applications after CCRC had expressed these concerns in its comments.

Other State and Local Governments, Agencies and Private Organizations.

To gain further support for its A-95 strategy, CCRC worked with more than just community groups, HUD and the clearinghouses. Some of these additional efforts are briefly described below.

- CCRC sent letters to all local governments in the target areas informing them of the project, the rationale and preliminary criteria for commenting on CDBG applications.
- CCRC interviewed a reporter from a Littleton Newspaper to give a response to an article published by the paper. The article concerned HUD's approval of the city of Littleton's 1977 CDBG application in spite of CCRC's claims that the application's proposed activities would not benefit low- and moderate-income persons. The response article was also unsatisfactory to CCRC so the agency wrote a letter to the editor.
- CCRC met with a staff person from Colorado Housing, Inc. to discuss appropriate approaches to fair housing.
- CCRC met with staff of the Denver Planning Office (coordinating agency for Denver's A-95 comments to regional clearinghouse) and obtained an agreement by which DPO's housing planner would work with CCRC to coordinate comments on 1978 CDBG applications from suburban jurisdictions.
- CCRC met with its research advisory committee to describe the project and to get the committee's feedback. It got many good suggestions, but also a complaint from a Congressman's assistant who said CCRC's review of Littleton's block grant application were too hard on the city.
- The A-95 staff met with the marketing consultant from the Colorado Economic Development Association in order to develop a plan to help minority contractors. A plan was established by which the A-95 staff would share applications received from the clearinghouse with the Economic Development Association. The Association's marketing consultant would then use this information to advise minority contractors about proposed construction activities.

Housing Conference. CCRC sponsored a Housing Conference on May 12-13, 1978 at the University of Colorado in Denver. Entitled Metro Housing Crisis: An Equal Opportunity Conference, it had two major purposes: 1) to build a housing coalition, and 2) to develop support for a fair housing center. In the A-95 Workshop, the staff distributed its citizen's training manual and explained how to evaluate CDBG applications. The staff showed slides of how the city of Littleton proposed to use CDBG funds to beautify the downtown area and remodel a waterway. The slides also showed areas of widespread poverty in Littleton. These were some of the areas in which CCRC proposed that Littleton use CDBG funds. The conference had a wide variety of co-sponsors, from the grassroots to the national level. HUD's Zina Greene and Betty Miller were active participants.

- A-95 Process: Reviews, Comments, and Negotiations

The core of CCRC's strategy was its attempt to change local government funding applications before the award of the grants, thus making the review of applications the strategy's most crucial component.

Generally, this component was implemented in the following stages:

- Review of the application
- Attempt to iron out conflicts in the application before it is submitted, or at least before the award is made.
- Conduct follow-up activities if funds are not reprogrammed before the award is made.

When the CCRC A-95 staff received an application, they reviewed the application; collected and analyzed pertinent data and information provided internally and from on-site visits to community sources, other agencies (Federal, State, or local), or the local governments themselves; and compared the data collected with the application to determine whether it affirmatively addressed housing needs within the locality and the region. The CCRC Land Use project staff worked closely with the A-95 staff on some of the reviews, particularly on the block grant reviews for the cities of Arvada and Aurora by providing land use analyses.

When an application conflicted with the information collected by CCRC, the civil rights agency attempted to have the application changed or to have funds reprogrammed by the city or by the Federal agency before the award was made. Though the process was difficult at times, CCRC succeeded in its goal in all but one case--its first review, the Littleton 1977 CDBG application. After this case, funds for the other CDBG applications reviewed were reprogrammed or were awarded conditionally upon changes in the application.

CCRC was not instrumental, however, in influencing changes by applicants before their applications were submitted to the funding source. In many cases, CCRC tried to meet with the applicant, either alone or with representatives from other concerned parties, such as the clearinghouses or community groups, before submitting comments on the application. Applicants

were unwilling to make changes merely upon the advice of agencies not directly responsible for the allocation of funds. Such reviews and pre-application meetings were new, and there was no reason for the localities to believe that HUD would be adversely influenced by comments it received from State agencies. Moreover, HUD representatives did very little initially to give credence to the process.

Being unsuccessful in influencing changes in applications before the application was submitted to the funding source, CCRC continued its efforts to have funds reprogrammed before the award was made. Its primary tool was its A-95 comments.

CCRC enlisted the support of several other agencies in reviewing applications. As mentioned previously, the Denver Planning Office agreed to identify a staff person to become a civil rights reviewer to work with CCRC to coordinate comments on 1978 CDBG applications from suburban jurisdictions. The Denver Commission on Community Relations and the Colorado Department of Local Affairs agreed to work with CCRC on its A-95 reviews. CCRC coordinated its comments with these agencies and with the advisory groups in the target areas. CCRC submitted the comments hoping to have funds withheld unless the applicant agreed to reprogram funds or at least until it made substantive changes within its application. After submitting its comments, CCRC was sometimes challenged by counter-responses from the applicant. In defending its comments, CCRC was able to set the stage for some of its victories. The clearinghouse, upon receipt of an applicant's response, asked CCRC to review the responses and to see whether its previous objections had been met. Based on CCRC's response, the clearinghouse then amended its sign-off letter and sent copies to the applicant and the funding agency indicating whether or not conflicts were resolved and recommending courses of action.

For example, the cities of Lakewood and Arvada sent responses to CCRC comments to the clearinghouse. As a result of CCRC's ability to defend its comments, HUD set conditions for approval of their applications.

In those cases in which HUD appeared to be processing applications without fully considering CCRC comments, CCRC continued to press the applicant for changes before the award was made and also continued to press the funding agency. In stalling the funding agency's decision, CCRC increased its limited bargaining position with the applicant. To accomplish its purpose, CCRC also encouraged and helped community groups to apply pressure upon the applicant and/or the funding agency.

Even if CCRC was unsuccessful in having funds reprogrammed before the award was made, it sometimes continued its efforts to have funds reprogrammed and urged citizens not to give up their efforts to participate in determining how funds would be spent even after the award. After conducting an in-depth review of Arapahoe County's approved application, CCRC advised some citizens of the county of procedures to follow in order to challenge the funding through HUD. In some cases CCRC considered other courses of action when other efforts failed to produce the desired results.

A more detailed description of the activities surrounding CCRC's efforts to influence the award of grants is given below for the major cities involved in the process during the demonstration year.

Longmont. The city of Longmont is not considered to be a part of the Denver metropolitan area since it is a rural community located about 30 miles northwest of Denver. Hispanics are the largest minority group, and two-thirds of them live in the two lowest income census tracts.

By organizing project area committees, Longmont citizens actively participated in Urban Renewal activities of the 1970's until the program was replaced by the Community Development Block Grant program and activities were shifted to a growing commercial part of town. In talking with some Longmont residents, CCRC found considerable unhappiness with the way community development projects had been administered, and CCRC's efforts to reactivate a group of target area citizens were accepted with enthusiasm and interest.

Based on its own analysis and the complaints of about 15 Longmont residents, CCRC recommended disapproval of the city's CDBG application. CCRC criticized the Longmont Urban Renewal Board, responsible for conducting hearings on CD programs, for being unresponsive to citizens' requests such as expansion of the Community Action Center, and not providing low-income and minority residents an adequate opportunity to participate in shaping the community development program. In response, the city submitted minutes of Board meetings showing that no one had ever presented a solid proposal and funding request for the Community Action Center. At one meeting, for example, the Community Action Center project was raised briefly, but the spokesman for the Community Action Center was not present.

CCRC also found the applicant had not made substantial progress in providing housing assistance in accordance with goals in its housing assistance plan, and that it had not complied with program requirements for equal opportunity. Since 1976, with the exception of housing rehabilitation work in the low-income census tracts, an estimated 90 percent of the city's CDBG funds for public improvements was expended on laying the foundation for industrial development outside the low-income census tracts of the city.

Upon receipt of CCRC's comments on the Longmont application, the clearinghouse (the Department of Local Affairs, Colorado Division of Planning) recommended the city resolve its difficulties with CCRC, and so informed HUD. In attempting to iron out some of the difficulties, CCRC conducted further on-site visits and met with city staff and community representatives, respectively, to discuss the issues raised in the comments.

In the case of Longmont, CCRC was successful in delaying approval of the application. HUD originally approved it as submitted. CCRC challenged the decision with one of HUD's representatives and requested copies of correspondence between HUD and the city. HUD did not comply with this request. However, after determining the city's response to CCRC comments was inadequate, HUD asked the city to justify its projected use of funds.

Based on its own survey of residents in areas where CD projects were

to go, the city found that one of them--the proposed water line improvements and street paving on Third Avenue--did not substantially benefit low-income persons as required by HUD. As a result, the city was required to reprogram funds and to submit an amended application.

The Longmont citizens, in cooperation with CCRC, tried to obtain input into the city's decision of how to reprogram the funds. CCRC testified at meetings in which the Longmont minority community appeared before the Urban Renewal Board and the City Council to request funding for several projects in their area and to demand expanded minority input into program funding.

After CCRC and approximately 45 citizens appeared at a meeting on November 28, 1977, with the Longmont Urban Renewal Board, the Board approved a citizen request to ask the City Council to establish a citizens advisory committee to discuss priorities among nine proposed projects to determine which to fund with reprogrammed community development money. The city's Executive Director for Community Development had suggested that reprogrammed funds be used for land acquisition and for another project to be selected, but a concerned citizen had instead suggested postponing a decision and forming a committee of target area residents to discuss the priorities of what goes into the program.

On November 29, the Urban Renewal Board presented the request for a citizens committee to the City Council. The City Council turned down the request and approved the use of the reprogrammed funds for a multi-purpose center, a request from citizen groups that had previously been ignored. In December 1977, however, the city's community development office announced an increased effort to include citizens' input in planning community development projects.

Although later events made it unnecessary, CCRC had prepared a draft complaint to HUD for the community group in Longmont based on CCRC's A-95 review comments and interviews with citizens (primarily Chicanos) who had been left out of the community development process.

Longmont's funds were reprogrammed as indicated below:

Table 1
Changes in Longmont CDBG Application

<u>Activity</u>	<u>Original</u>	<u>Amount of Change</u>	<u>Revised</u>
Street Improvements	\$160,000	\$-109,000	\$51,000
Water System Improvements	73,000	-64,000	9,000
Multipurpose Neighborhood Center	0	173,000	173,000

Littleton. Of the localities reviewed in the A-95 strategy, Littleton had the smallest proportion of minority residents--96.9 percent of its population of 31,900 was Anglo (1977 estimate). The median value of a

housing unit in Littleton (\$46,810) is the second highest in the SMSA.

Since 1975, Littleton expended 90 percent of its CDBG funds, amounting to \$675,000, on activities that provide no benefit to lower-income persons. Littleton's 1977 Community Development Block Grant Application was a request for Federal funds in the amount of \$240,000. CCRC found in its review of the application that only \$23,230 (\$16,000 for a mini-census and \$7,230 for street improvements) would provide a direct and obvious benefit to low- and moderate-income households, or were intended to move in that direction.

CCRC questioned the appropriateness of the city's proposal for open space acquisition and a flood retention facility. The proposal had been submitted earlier in the year in the original application which HUD approved conditionally, requesting the city to provide more information on how the project would directly benefit low-income persons. In resubmitting the proposal the city identified low- and moderate-income persons as beneficiaries, but made few changes in the proposal to reflect that benefit to the satisfaction of CCRC. CCRC's first criticism was that since a major portion of the total project (\$62,000 including funds matched by the State through a grant from the Division of Outdoor Recreation) would be spent to extend a park, the direct beneficiaries would probably be households east and south of the proposed site, an area that is not a low-income neighborhood relative to other areas in the census tract.

Secondly, CCRC felt that even if the project was indeed viewed as a flood retention project, low-income persons could not be identified as the beneficiaries from flood control of Little Creek since the sixty-seven residential units identified by the city are endangered more by flooding of the South Platte River. According to CCRC, available studies did not indicate a threat to any residents of the South Platte Flood Plain by an overflow of Little Creek but one study did note a continuous hazard to numerous business and industrial buildings in downtown Littleton. Since the city planned extensive redevelopment in the area, with hopes of rezoning a part of the area occupied by mobile home parks to encourage high density commercial and residential development, CCRC feared residents would be displaced without any long-term relocation assistance. Since the city of Littleton was taking no aggressive actions to influence the type of development that would occur, outside of rezoning the area for mixed residential and commercial purposes, it seemed especially likely that relocation of individual households would just be left to private developers. Thus, any long-term benefits to low-income residents would be minimal.

Other CCRC criticisms of Littleton's 1977 CDBG application on the direct beneficiaries included questions on proposed miscellaneous neighborhood improvements, concerns about the city's past performance in addressing the needs (including housing) of low- and moderate-income persons, concerns that the application did not reflect that affirmative measures would be taken by the city to address fair housing (thereby leaving few alternatives for low- and moderate-income persons or families, especially large families, seeking housing), and remarks concerning the city's lack of equal opportunity efforts. CCRC comments were submitted following the city's 3rd 1977 CDBG application.

HUD withdrew approval for the \$100,000 project to extend Sterne Parkway when the city submitted its second 1977 CDBG application. The withdrawal of approval was the result of the persistent questioning of a Littleton resident and her discovery of the city's use of erroneous figures to support the claim that the area was eligible for community development funds. The city obtained the erroneous figures on the population in the tract where the Sterne Park project was proposed from the Denver Regional Council of Governments following HUD's rejection of the project in the first application. DRCOG's computer print-out showed that 88 percent of the families were in low- to moderate-income categories and that more than 1,000 of them earned under \$7,000 a year. In reality, only 23 percent of the families were in the low- to moderate-income categories and only 175 of them earned under \$7,000 a year.

City, HUD, and DRCOG representatives all claimed the mistakes were innocent. A DRCOG official acknowledged the mistake was made by a computer operator who fed the computer incorrect instructions. CCRC, supported by one of its consultants, a University of Denver statistician, felt that the figures were intentionally misrepresented since the correct 1970 census figures were known to all parties when the project was submitted with the original application. The differences in the figures were drastic.

CCRC also questioned the innocence of the public agencies because of their delay in responding to the fact that there was a discrepancy. Upon learning about the proposed project, the Littleton resident, a citizen-advocate of housing aid for low-income suburbanites, obtained the correct figures for the census tract from the Census Bureau (on August 2) and gave them immediately to one of HUD's community development representatives, but the meeting did not produce results. The resident wrote an official at the HUD office on August 23 and as a result received a reprimand from a city official angered by the fact that the resident's actions resulted in the waste of city staff time and taxpayer dollars for his office's research to respond to the accuracy of the figures. The resident also received a response from the CPD director, HUD regional office, pertaining to HUD's efficiency in reviewing and monitoring community development applications and inquiring about the resident's satisfaction with the answers received. Fortunately the resident was not satisfied, and continued the search for correct figures at the Denver Regional Council of Governments. Upon discovering the error, DRCOG contacted the city and the city notified HUD of what had happened. HUD formally withdrew approval of the Sterne Park project on September 9.

It was the activities of this citizen that got CCRC involved in investigating the city's community development activities. This citizen had CCRC's attention when she challenged the city's third submission of its 1977 CDBG application. CCRC investigated the city's use of CD funds for the past three years, reviewed the 1977 application and submitted its comments.

The clearinghouse sent copies of a notice to the city and to HUD recommending that conflicts between the city and CCRC be resolved. CCRC pursued its comments and attempted to resolve conflicts by conducting post-comment, on-site reviews of the proposed program and by meeting with

city staff and concerned citizens to examine documents and to have questions answered. In spite of efforts to resolve conflicts with the city, CCRC was unable to concur with the city's funding request. CCRC reported this to the HUD assistant regional administrator for community planning and development (CPD).

As a result of the criticisms charging that the poor had been slighted in the city of Littleton's plans to use federal funds, HUD delayed the award of the \$240,000 grant for a third time.

On November 28, 1977, the regional clearinghouse (DRCOG) sponsored an A-95 conference with other representatives from the city, CCRC, HUD, and the State clearinghouse to resolve differences on the application. A spokesman for the city claimed that 64 percent of the dwellings that would benefit from the project belong to low- and moderate-income families. According to CCRC, a HUD CPD representative undermined the purpose of the meeting with comments suggesting CCRC's comments need not be taken into consideration by the city. On the same day that HUD received CCRC's comments recommending disapproval, it approved Littleton's application for \$240,000 in community development funds. The funds were to be expended as follows:

- \$101,000 for open space acquisition and a flood retention facility west of Sterne Park between Bemis Street and the railroad tracks.
- \$16,000 for a census to determine housing conditions and to assess future needs in the low- and moderate-income areas of the city.
- \$123,000 for neighborhood improvement projects.

Although Littleton was awarded the \$240,000 grant from HUD, CCRC considered further actions to contest the award. One option seriously considered by CCRC was its filing of a formal complaint with HUD in Washington, but before the complaint was filed CCRC was scheduled to meet informally with city officials to negotiate assurances that any 1978 grants to the city from HUD would fulfil CCRC's requirement of addressing the needs of low-income residents.

Littleton's 1978 Community Development Block Grant Application was for \$121,000. The purpose of the funds were for relocation and renovation of old homes, for code enforcement activities, and for a housing rehabilitation and preservation program. Although about 58 percent of the requested funds were to benefit low-income persons, CCRC also recommended that this application be turned down, citing the following concerns:

- There were no provisions for relocation to standard housing of those persons displaced as a result of code enforcement efforts.
- Code enforcement activities were not supplemented by a grant program, thus leaving some persons unable to pay even minimal expenses open to displacement.

- Housing assistance plan goals were not appropriate to meet the needs described. This is especially true for families. Yet three times as many elderly households have been assisted as family households.
- The applicant has not acted to affirmatively further fair housing.
- The applicant's employment profile did not reflect the regional distribution of minorities in the labor force, nor in the population.

Littleton's City Manager, in a letter to the regional HUD administrator, denied charges that the city discriminates in its housing practices, that it had failed to meet the housing needs of the poor, and had not hired women and minorities in sufficient numbers for city staff positions.

CCRC did not have an opportunity to defend its comments on the review of Littleton's 1978 CDBG application since the city submitted its response to the comments directly to HUD and not to the clearinghouse as required. Without CCRC's having an opportunity to counter-respond, and in spite of its concerns, HUD conditionally approved the application in the amount of \$120,000 which was to be expended as follows:

- \$8,000 for administration
- \$17,000 for code enforcement
- \$25,000 for housing rehabilitation loans and administration
- \$71,000 for acquisition of undeveloped lots and for the cost of moving houses.

Before the city received the funds it was to meet fair housing and equal opportunity conditions (including a resurvey of housing needs of minorities and female heads of households), to submit documentation on actions the city would take to assure that minorities and female heads of households would benefit from the funds (specifically from housing assistance), and to submit environmental review records predicting the impact of the proposed projects on adjacent properties and existing public facilities.

Lakewood. The city of Lakewood is the newest of the entitlement cities since two-thirds of its 51 square miles became incorporated in 1969. As of January 1, 1976, the city had an estimated population of 123,700. The fact that the minority population has increased in absolute numbers is not reflected by percentage figures since the city's population as a whole has increased.

In 1976 over 60 percent of Lakewood's families had incomes over \$15,000, only 13 percent had incomes less than \$10,000 (compared to 28 percent of the families in the entire Denver metropolitan area) and four percent had incomes under \$4,000.

Since 1975, the city has applied for community development funds totaling \$2,431,000 and has spent 86 percent of these funds in an area known as the Simms Street Project. Simms Street is the artery connecting the municipal buildings to Colfax Avenue, the main artery. Community Development Block Grant funds have not been expended, for the most part, in two areas known to be the poorest in city.

CCRC's review of the city of Lakewood's CDBG application resulted in its submission of a non-concurrence on the application based on the following findings:

- The sites proposed for spending \$87,636 to complete four district plans were all located in the newer, more affluent area of the city.
- The proposal to expend \$121,000 for the first phase of major renovation for Morse Park does not principally benefit low- and moderate-income persons.
- The proposal to complete the Simms Street Project with funds amounting to \$83,000 does not serve the objective of eliminating slums or blight as the city suggests. The city has failed to address needs presented as alternatives to this project by citizens of deteriorating areas adjacent to the project.
- The city did not identify low- and moderate-income needs or remedial actions that it has taken.
- The city's affirmative action efforts were lacking, one example being the city's failure to identify efforts taken to further fair housing or to meet fair housing goals it identified.
- The city identifies inappropriate actions to be taken to eliminate or prevent discrimination in the sale, rental, or financing of housing.

Upon receipt of CCRC's comments, the clearinghouse sent its notice to the city recommending that conflicts or difficulties between the city and CCRC be resolved. The city sent the clearinghouse a response to CCRC's comments. So that it could give the proper sign-off on the application the clearinghouse forwarded a copy of the city's response to CCRC and asked the agency to notify the clearinghouse if the response satisfied CCRC's concerns. It was CCRC's counter-response (submitted to HUD via the clearinghouse) indicating the inadequacy of the city's response and documenting further the city's lack of affirmative action in housing that stimulated HUD's conditional approval of the locality's receipt of \$914,000 in Federal funds. Evidence of this was a March 28, 1978, letter from HUD to the clearinghouse stating that as a result of comments transmitted by the

State- and area-wide A-95 clearinghouses, the city's response, and the CCRC's followup letter, HUD approved Lakewood's 1978 CDBG application with the following two conditions.

- That the city apply for 23 units of public housing (its first such housing), and
- That the city reprogram the \$83,000 budgeted for the final overlay and striping of Simms Street.

The letter also indicated that in response to some of the issues raised during the review period, the city had agreed to divert some of the funds from district planning to a land use inventory project for the purpose of identifying barriers to the provision of assisted housing, and that the city had already agreed to apply for the 23 units of public housing.

Arvada. According to 1977 population estimates, the city of Arvada has a population of 80,000. The minority population is small. In 1970 there were only 29 blacks and 1,986 Hispanics.

Since 1975 the city has spent a very large portion of its community development block grant funds to revitalize the decaying downtown area thus stimulating commercial and industrial growth in spite of the fact that the area is not in the city's lowest income area. Of the funds requested in the 1978 application, 58 percent were to be expended in the downtown area with other activities including alterations in buildings to aid the handicapped, meals for the elderly, and the construction of basketball and volleyball courts.

After Denver and Boulder, Arvada has the most productive record in the SMSA for providing housing for low- and moderate-income persons, but minorities have not benefitted from the housing. The city stated that it intends to rely on private industry and on HUD's Section 8 program for any new construction of low cost housing, but, as the discussion of the developer's complaint against Arvada (see Enforcement in Chapter V, section 2) suggests, fulfilling this intent is problematic. The city does not have any public housing and has no plans to acquire any.

As in the case of Lakewood, the city of Arvada's response to CCRC comments on its CDBG application failed to resolve conflicts. CCRC's non-concurrence with the application was submitted based on some of the following concerns:

- The city's estimate of families expected to reside in the city were inconsistent with estimates from HUD and DRCOG.
- By minimizing the figure on families expected to reside in the area, the city included very limited and inappropriate housing assistance needs figures and goals to meet the needs.
- The city did not properly assess the needs of minorities.

- Program activities seemed not to comply with program requirements in that they did not give maximum feasible priority to low- and moderate-income families.
- The application contained no activities designed to affirmatively further fair housing although statistics indicate that it is a racially and ethnically segregated community, that minorities have not benefitted substantially from the city's subsidized housing units.
- The program did not benefit minorities and women.

After receiving CCRC's counter-response to the city's comments, the clearinghouse notified the city and HUD of CCRC's continued dissatisfaction with the city's proposed program and recommended that HUD work directly with the city and CCRC. HUD officials then met with the city council, which serves as the Arvada Housing Authority, and gave preliminary indications to the council that the city would receive only part of its requested funds because of its lack of sufficient progress in providing low- and moderate-income housing. The city would have to make a "good faith" effort within 45 days to provide part of the goal set in its Housing Assistance Plan if it wanted to receive its requested funds.

The official notification that arrived days later indicated HUD's conditional approval of Arvada's entire CDBG application. The conditions included the city's evidence of good faith effort in achieving its housing assistance goals. Arvada's city manager wrote a memorandum to the city council outlining several ways the city could indicate an "effort" to HUD to gain release of the funds.

Other conditions were the receipt within specified time periods of additional equal opportunity assurances, evidence that minorities and female heads of households will benefit from the funds, and documentation showing several proposed projects will benefit low-income households or help eliminate slums or blight.

Denver. Denver's current population is estimated at 509,500 persons, and, as mentioned previously, the city contains over 70 percent of the region's minority population. Since 1970, the city has experienced a minimal increase in its population growth rate, while the suburbs have experienced an increase of around 69 percent, due largely to the migration of the middle- to upper-class Anglo population.

Suburban communities in the Denver metropolitan area have not shared Denver's burden of providing low- and moderate-income housing; Denver has received the bulk (\$56 million) of funds allocated to the area (\$68 million) since the inception of the community development block grant program. Denver presently provides 72 percent of the region's subsidized housing units and 60 percent of its family housing units.

To aid the review of Denver's fourth year community development application, CCRC's community organizer gathered data on prime contractors

and subcontractors awarded CDBG project contracts from the Denver Public Works Office's Affirmative Action Officer, the Director of Rehabilitation from the Denver Urban Renewal Authority, and representatives from the Community Development Agency. Since CCRC found the application complemented activities of previous years, it recommended approval of the grant request for \$11,946,000 in federal funds to be expended as indicated below:

- \$3,000,000 for public housing rehabilitation
- \$75,000 for emergency home repair housing rehabilitation
- \$7,070,000 for housing rehabilitation loans and grants for owner-occupied single family units.
- \$715,000 for management planning, administration.
- \$1,086,000 for an unspecified local option.

Denver's CDBG application was one of two to receive CCRC's approval. HUD's community planning and development office was still in its review period at the end of the demonstration project.

Aurora. The city of Aurora borders Denver on the north and east. Having grown in population from 75,000 persons in 1970 to an estimated 139,100 persons in 1978, it is considered to be the fastest growing community in the United States with a population over 100,000. Outside of Denver, the city houses the largest minority community in the SMSA. Although the Hispanic population decreased from 6.96 percent in 1970 to 3.4 percent in 1976, the black population in 1976 had increased from .9 percent in 1970 to 6.7 percent.

A great deal of Aurora's growth has been residential; therefore, 68 percent of its employed citizens work outside of the city, and 83.9 percent of these persons commute to Denver.

Aurora's CDBG application requesting \$914,000 in federal funds was approved by CCRC and was the second CDBG application reviewed by the agency which received its recommendation for approval. Since 1974 the city has requested \$2,463,000 in community development funds and has used them in a manner acceptable to CCRC.

- Monitoring Performance

In addition to challenging the use of funds awarded, CCRC monitored grants awarded. This was an apparent attempt to see that localities used funds as proposed. This activity was pending at the end of the project.

3. Future of the Strategy

Although CCRC will try to continue reviewing applications, its resources to do so are limited. The staff hired to conduct CCRC's strategy

was terminated at the end of the project, except for one person who was retained to train a permanent CCRC staff investigator. That investigator, assigned full-time to A-95 responsibilities and with assistance from the Director of Preventive Programs, has conducted A-95 reviews of all of the cities covered by the strategy plus most of the other entitlement cities in the State and some small city grant applicants. More resources for A-95 reviews were expected as part of a pending commission reorganization.

D. THE LAND USE STRATEGY

1. Research

Various forms of research were a major part of this strategy. CCRC conducted a literature search, read applicable legal decisions, collected a wealth of demographic data on the target localities, and performed a close analysis of each locality's zoning and other land use regulations and conducted two surveys (one by mail and one through interviews). The major part of this research began with an extensive data collection effort that drew from a wide variety of sources. CCRC's description suggests the breadth of this effort:

"...data was collected by contacting each of the target cities and interviewing the planners, community development departments and the housing authorities. Copies of the Comprehensive Plans, zoning ordinances, building codes, subdivision regulations, Land Use and Zoning maps, population estimates, current housing or population surveys. Information on public housing, fair housing activities were obtained and a tour was usually taken of the community. In some instances these visits were combined with the A-95 Strategy's visits.

"Additional data was collected from State and Federal agencies, including the U.S. Census Bureau, various divisions of the U.S. Department of Housing and Urban Development (i.e. Community Planning and Development, Housing, and Fair Housing and Equal Opportunity as well as the HUD Public Information Office and the HUD Library), the U.S. Commission on Civil Rights, General Services Administration, and the Federal Executive Board.

"At the State level the contacts began with the Colorado Division of Housing, the Office of Human Resources, The Colorado Housing Finance Authority, the Colorado Real Estate Commission, the Colorado State Department of Labor and Employment (for affirmative action statistical information), the State Division of Planning (for demographic updates of the 1970 Census and other planning reports and local surveys), the Governor's Energy Coordinator, and others as needed.

"At the regional level the Regional Councils of Governments were contacted. The Housing Director of DRCOG (Denver Regional Council of Governments) was extremely helpful. Many of the housing statistics and ethnic statistics used in the current research were obtained from him. The Regional Transportation District provided the project with a Journey to Work Survey. The State Library provided much useful land use material.

"At the local level, in addition to the information received from the primary target areas, the Denver Planning Office, the Denver Housing Authority, and the Zoning Office were extremely helpful. They have conducted a number of surveys and have statistical information not available elsewhere. The League of Women Voters had excellent information available from the National, State, Metro, County and City levels on land use and community profiles.

"Literature obtained from other State Commissions, the Suburban Action Institute, the National Committee Against Discrimination in Housing, Morris Milgram, the Potomac Institute, the U.S. Commission on Civil Rights, and the American Bar Association were extremely helpful."1/

The commission hoped to complement the information thus collected with two surveys. The first was a series of 78 interviews with planners, developers, real estate brokers, and citizens selected for their likely knowledge of housing and land use practices and their impact on the availability of housing in the target localities. The purpose of this survey was two-fold: to inform the project staff and thus to guide their efforts to identify specific restrictive practices in each locality, and to help the staff find possible "live" cases, such as a housing developer or sponsor whose proposed low-income project had just been blocked by the very practices the strategy hoped to challenge. Given this purpose, there was no need to analyze the data statistically for reliability or validity. Unfortunately, the CETA staff members who conducted most of the interviews could not be hired until several months after they had been expected. As a result, the survey was postponed until it was no longer needed to serve its exploratory function of identifying specific exclusionary practices. Nor did it turn up any "live" cases as had been hoped. Nonetheless, the staff found the interviews "a valuable level in getting the CCRC access to important subjective data and impressions that were instrumental in determining the direction and intensity of other CCRC investigations (into land use practices as part of the strategy)."2/

Unexpectedly, they did more than just provide information to the commission. The interview format, by allowing the respondent to question the interviewer, served a public relations function as well. Respondents learned about the commission generally and, specifically, about its interest in land use and Federal spending programs. This "sensitivity," reported the commission, prepared them for news stories about the project and some of its more controversial activities.

A second survey was undertaken in connection with the strategy, but without using project funds. The commission mailed a questionnaire to about 50 large suburban employers, seeking information about the residence of minority workers employed in suburban Jefferson County, and whether the respondents had ever asked about their employees' problems finding satisfactory housing. Most employers claimed not to have the data requested and were not interested in having CCRC obtain it from their employees. Accompanying the questionnaire was an invitation to a luncheon. While only

eight employers returned the questionnaires (with varying degrees of incompleteness), 12 did come to the luncheon. But since only one company expressed any interest in CCRC's concern for the employees' housing problems, and since the commission did not yet have the extensive demographic data that it later collected, nothing much came of this effort.

To prepare for its analysis of the target localities, the staff read available literature on land use and exclusionary practices, and consulted such experts as the Suburban Action Institute, which served CCRC as a consultant. Its review included reading court decisions to identify criteria for finding land use practices exclusionary in violation of Title VIII. It then developed a list of exclusionary policies and practices to look for when it analyzed the target localities.

CCRC also sought to analyze each locality's power structure to identify leverage points that could be useful if local practices were challenged. Staff members attended planning commission and city council meetings, and consulted League of Women Voters publications.

In its search to identify specific exclusionary practices, the staff picked up cases of zoning denials from the local papers, but did not find lists of such denials from the cities to be particularly helpful without sufficient background information. Although it lacked the staff to do it, CCRC felt that studying the minutes of zoning commissions and city councils for meetings during the the recent years would have been helpful.

CCRC's review of the target localities included the following:

- Analyzing zoning ordinances comparing them with zoning maps, and comparing the requirements and prescribed densities of different zoning districts with each other and with the standards set out in SAI's The Study of Exclusion and CCRC's modified list of such standards (these are discussed in more detail below).
- Tabulating the amount of vacant land and of land in each zoning category to show comparisons by jurisdiction.
- Comparing each jurisdiction's comprehensive plan with actual land use.
- Studying community profiles prepared by the League of Women Voters and others for additional data on land use, growth, and housing policies.
- In one locality (Arvada, because of the developer's complaint), reading minutes of city council meetings for the past year.
- Analyzing collected news clippings from each locality for expressions of citizen and government attitudes toward multi-family and low income housing, as well as for background

information about local problems and for reports of developers having difficulty obtaining approvals for multifamily housing.

- Reviewing each locality's CDBG performance reports and CCRC's A-95 comments for information about past and proposed efforts to meet low-income housing needs.
- Reviewing each locality's HAP for its measures of low-income housing needs and its recognition of those housing needs.
- Searching CCRC files for housing complaints filed in each locality.
- Contacting CCRC sources in each locality for citizen input about local low-income housing efforts.
- Surveying metropolitan counties for recorded racially restrictive covenants.
- Analyzing demographic data to determine the effect of exclusion.

Consideration of so wide a range of variables proved worthwhile, because many of the usual, often clear-cut examples of exclusionary zoning (e.g., large lot and house size requirements, absolute prohibitions against multifamily housing and mobile homes) were not found in most of the target cities (see Agency Findings, below). CCRC's research efforts, and other aspects of its demonstration as well, were assisted by the Research Advisory Committee it created for the project. Its membership drew expertise from the fields of planning, housing, civil rights, real estate, finance, and architecture, as well as from a range of citizen groups, two congressional offices, and Federal, State, and local agencies dealing with housing. The committee's role in the land use strategy included the following:

- helping to clarify the aims and goals of the strategy, focus the issues, and plan the methods and scheduling of its implementation;
- helping to explain the project to the communities involved;
- providing a supportive group, and establishing a working relationship with the Colorado Housing Finance Authority, Colorado Housing, Inc., the Denver Planning Office, and minorities in the private sector;
- telling the staff about related similar research by other agencies; and
- forming the nucleus of the conference planning committee.

2. Action

● Selecting Target Communities

The target cities were Arvada, Lakewood, Littleton, Longmont, Meeker, and Wheat Ridge. Denver was included for purposes of comparison. Only Longmont and Meeker are not in the immediate Denver suburbs. Wheat Ridge was not targeted at first, but was later added because it appeared especially exclusionary based on demographic data, news reports, and the lack of subsidized housing there, and because it is located between (and similar to) two other target cities. Also added later were Littleton and Longmont, because of the problems CCRC discovered there in the course of implementing its A-95 strategy. On the other hand, Grand Junction was dropped early in the project because it did not receive any CDBG funds, and there were no indications of exclusionary practices. The others were selected because each had a housing authority and was a CDBG entitlement city. The latter consideration permitted the integration of CCRC's two strategies and provided another point of leverage (A-95 comments) that might be useful to persuade a locality to change its practices and adopt a more inclusionary stance. Additional selection criteria included the percentage of minorities in the population, the absence of human relations commissions, the presence of large employers, proximity to Denver, and the recommendations of Suburban Action Institute and of authorities on the communities considered.

● Community Involvement

While the project staff conducted its research and began its studies of the target communities, it also worked to involve individual residents and citizen groups in the raising and resolution of land use issues. The project's community organizer and other staff members worked to raise citizen consciousness of the land use problems and their relation to the supply of low- and moderate-cost housing, and to encourage (or organize) greater involvement. In the early months of the project, for example, they helped form a steering committee for a Housing Coalition, attending meetings in various communities to lay the groundwork for the establishment of such a group. As meetings continued, the steering committee later developed a hierarchy of housing needs for the Denver area. Meetings were also held with interested Jefferson County citizens and with residents and leaders of Meeker. Meetings with other groups included the League of Women Voters Social Legislation committee, the Episcopal Housing Coalition, Minority Association of Contractors, the Mennonite Urban Ministry and the Chicano Education Committee (both to develop community contacts), and the DRCOG housing advisory committee. Relevant literature and materials were presented at such meetings as they were identified or developed. Such contacts and meetings continued throughout the project, culminating in the Metro Housing Crisis conference (see below).

● Investigating "Exclusionary" Practices

To determine whether a target community could be said to have exclusionary land use practices that violate State and Federal civil rights laws, CCRC reports that it looked at evidence of two factors: impact and intent.

In most suburban communities, evidence of impact--a lack of low- and moderate-income housing within the community such that the number of minorities and women who can afford to live there is disproportionately low compared to the rest of the metropolitan area--is not hard to find. While some might argue that this is enough to prove illegal discrimination, the more cautious view, which CCRC has taken based on the U.S. Supreme Court decision in Metropolitan Housing Development Corp. v. Arlington Heights, 429 U.S. 252 (1977), is that proof of discriminatory intent is also needed. 3/ To supply that proof, CCRC looked both for evidence of overt racial motivation, and for evidence of policies, practices, and conditions that form "the construction of layers of suspicious circumstances which make the supposition of good faith on the part of the municipal government less and less tenable." 4/ In making its determination for each of the target cities, CCRC considered the following:

- Demographic and housing data. CCRC reviewed these to determine whether the supply of low- and moderate-income housing, and the minority and female head of household populations were underrepresented compared with the entire metropolitan area.
- Zoning ordinances, subdivision regulations and building codes. CCRC checked to see if these were at least minimally inclusionary, if site development plan and other requirements are more stringent for multifamily housing or mobile homes than for single family homes, and if zoning district densities are exclusionary. The standards for inclusionary zoning were a slightly modified version of the standards suggested by SAI in A Study of Exclusion 5/; zoning densities were compared to those in other communities in the metropolitan area. CCRC has quantified only one standard of non-exclusion of its own, accepting multifamily zoning that allows at least 30 dwelling units per acre. The 30-unit minimum was criticized by some as being too high, and by others as being too low. CCRC was also criticized for not having any rationale to support the 30-unit standard, which it says was arrived at "intuitively" by its land use staff. 6/
- Land Use Allocations. CCRC reviewed the percentages of allocated land and of just vacant land allocated to each residential zoning use, looking for exclusionary impact.
- Administrative practices. CCRC looked at this aspect of land development to check the complexity of the review process, evidence of administrative delays, and denials by planning commissions and city councils.
- The Comprehensive Plan. CCRC looked in the plan for expressions of each locality's policies on land use, especially housing and, in particular, housing for minorities and low- and moderate-income persons.
- Housing. This consideration included a range of factors--in addition to those covered elsewhere in this listing, there were the types of housing available in the community, the existence of a housing authority, participation in a regional fair share plan,

and performance in implementing such plans as well as the CDBG HAPs.

- Past history of discrimination and housing development. CCRC looked especially at whether there was any history of difficulties in developing subsidized housing in the community, and whether racially restrictive covenants were on the record books.
- Discrimination complaints on file. CCRC checked its case records for discrimination complaints filed previously.
- CDBG proposals. CCRC considered its A-95 comments and each locality's response.
- Equal opportunity programs. CCRC assessed employment and other EO practices.

In effect, the project staff's standard of proof, CCRC reports, was the equivalent of that required for an administrative finding of discrimination- whether all these considerations, taken together, provide sufficient evidence for a person to have probable cause to believe that discriminatory exclusion exists.

- Agency Findings

CCRC combined all these considerations into a community profile for each target city and identified Arvada, Lakewood and Wheat Ridge as exclusionary. Of these, Wheat Ridge was "by far the most exclusionary." An overall finding, positive or negative, could not be made for Littleton because its land use allocations by acreage were not available. Based on the demographic profile, however, CCRC felt further investigation was indicated. CCRC also made no overall finding as to Longmont, a small city (1977 estimated population, 37,800) on the fringe of the Denver SMSA. Until the 1960's it was primarily a farming center, and "may not qualify as a suburban community although it is fast becoming one." In the final target city, Meeker, CCRC's approach was different. Because of the circumstances discussed below, CCRC's activities "were more of a community relations nature or a political influence rather than a study of exclusion." No overall finding was made.

The following characteristics were common to all three of the cities found to be exclusionary:

- Lack of minority residents.
- No existing public housing.
- City government employment of minorities not representative of the metropolitan area.
- Either no emphasis in CDBG activities on low- and moderate-income needs (Arvada and Lakewood), or no CDBG program at all (Wheat

Ridge).

- History of opposition to multifamily subsidized housing.
- Restrictive covenants in subdivisions.

CCRC's findings for each city are discussed in greater detail below:

-- Arvada

"The pattern of exclusion exists. The following specific instances were identified:

1. There is a history of resistance to assisted housing.
2. There is no public housing, although there is subsidized housing.
3. There is a very low percentage of minorities living in the city; the representation of blacks is especially low. This is significantly different than would have happened by chance in the metropolitan area.
4. A Developer's Complaint was filed under the Colorado Fair Housing Law and Probable Cause was found. It is pending.
5. The city's employment pattern is as unrepresentative of the metropolitan area as the city's population is.
6. The CDBG application and past performance reports have not emphasized concern for low- and moderate-income persons.
7. Citizens have expressed their prejudices at planning commission and city council meetings.
8. The subsidized housing is located primarily in one quadrant of the city.
9. There is no provision for mobile homes in the land use plan.
10. The restrictions on multifamily housing and mobile homes are indicators of exclusion. These require development plans, whereas single family homes do not.
11. Racially restrictive covenants.
12. Delays in administrative processing of development plans." 7/

-- Lakewood

"Exclusion is indicated by:

1. The low percentage of minorities living in Lakewood.
2. Lack of public housing or new construction Section 8. These types of subsidized housing are required to use affirmative fair marketing practices to obtain tenants from throughout the metropolitan area, which may explain why they have not been built.
3. Racially restrictive covenants on 79 subdivisions in Lakewood.
4. Land Use allocation which restricts availability of land for multifamily housing.
5. Attitude towards priorities for CDBG.
6. Small allocation of land for multifamily high density housing.
7. Small or minimal allocation of land for mobile homes.
8. Lack of affirmative action on the part of the city to change attitudes expressed by the various homeowners associations.
9. No specific plans, except Policy No. 15, to disperse subsidized and multifamily housing throughout the city.
10. Lack of serious commitment to public housing and to Section 8 New Construction family housing.
11. Lack of housing for the low-income elderly.
12. Reports of statements made by City Manager on his lack of commitment to affirmative action.
13. Reports of discrimination among city employees.
14. Evidence that the subsidized housing programs have not benefited many minorities.
15. Lack of affirmative action on the part of the city in the area of fair housing.
16. The use of rehabilitation loans only and not grants.
17. Lack of support provided the Lakewood Housing Authority by the City Council." 8/

-- Wheat Ridge

"Wheat Ridge is the most exclusionary city of those studied in the project. The following areas of exclusion were identified:

1. The R-1 zoning is exclusionary with a minimum lot size of 12,500 square feet and a density of 3.5 du/acre. 25% of the land is R-1.
2. The 35 ft. building height restriction with the requirement of two parking spaces of 150 square feet have two effects. The building height limitation means that more land will be required to build a fixed number of dwelling units driving up the cost per unit. The parking lot requirement seems excessive unless one lives on a heavily traveled street.
3. R-1A also has an excessively large minimum lot size of 9,000 square feet.
4. There is a limited amount of land available which is zoned for multifamily. There appears to be no effort to disperse multifamily housing throughout the community.
5. Public officials (city council persons) have publicly stated that they are not interested in a Fair Housing Center.
6. At least three subsidized housing plans have been rejected in the last year.
7. The City Council rejected a PUD with multifamily housing last August.
8. They have no housing authority and say they prefer to work through the Jefferson County Housing Authority.
9. The city has no subsidized housing (the Jefferson County Housing Authority may be subsidizing some 30 existing Section 8 housing units in Wheat Ridge).
10. They did not adopt the DRCOG Fair Share Plan.
11. There are 36 subdivisions with racially restrictive covenants.
12. Only two minority persons are employed by the city (1.6%).
13. A homeowners groups has a temporary restraining order to keep the city from issuing a building permit in an area zoned for a duplex.
14. City employees have informally said that the city administration and council do not want minorities or low-income residents. These employees said that they couldn't afford to live in Wheat Ridge.
15. A city survey indicates that one of the characteristics citizens see as most important is low density residential dwellings." 9/

-- Littleton

Although CCRC made no overall finding as to exclusion, it did draw some specific conclusions:

"The exclusionary practices identified are:

1. Littleton has four low density zoning districts which would be labeled exclusionary. Land use information on acreages is not available so it is difficult to state the pervasiveness of this exclusion except with further investigation.
2. The mobile home ordinance requires a development plan.
3. The minimum floor areas for R-S, R-L, R-E, and R-1 are exclusionary.
4. The minimum lot size is exclusionary for five (sic) of the zoning categories: R-S, R-L, R-E, R-1.
5. The lot frontages are excessive for R-S, R-L, R-E, R-1, R-2.
6. The resistance of the city to CDBG A-95 comments indicated a lack of concern for low-income persons. The emphasis was on developing the downtown commercial area.
7. The ethnic percentage is less than could have occurred by chance in the metropolitan area." 10/

-- Longmont

CCRC similarly drew specific conclusions in lieu of an overall finding:

"At this stage of the investigation the following exclusionary practices were identified:

1. The Comprehensive Plan perpetuates the status quo and perpetuates the existing segregation of the community.
2. Experience with the A-95 Review indicated possible discrimination against the minority citizens in providing equal opportunities for benefiting from the grant programs.
3. The mobile home zoning ordinances are restrictive and exclusionary.
4. The emphasis on PUDs can act to exclude minorities and low-income persons unless the ordinance is amended to provide for a specific percentage of each development's housing units be set aside for low- and moderate-income housing." 11/

-- Meeker

Meeker is an entirely different case from the other targeted communities. Now only a very small town (1977 population, 1,848), it is expected to become a "boomtown" by 1980 because of the development of the shale oil industry. Therefore, although CCRC's strategy in Meeker began as elsewhere with an analysis of existing land use, housing, and demographic data, it ended quite differently. CCRC has been working with Meeker officials and some of its citizens, providing assistance in some instances, trying to push them along in others, and trying to find Federal funds for the town. In addition, CCRC reports that a project staff member played a key role in stimulating the formation of a nonprofit family housing corporation that hopes to build a low-income project in an affluent area of town.

Partially as a result of CCRC's activities, several moves are now underway in Meeker, some further along than others, to permit multi-family housing, to construct low-income housing, and to adopt a fair housing ordinance and establish a human relations commission. Already it has loosened zoning restrictions in two areas to permit multi-family housing (approving a PUD with 160 multifamily units in an area that had previously been intended primarily for single family development, and moving from R-1 to R-3 in the other area and approving a plat for 18 multifamily units) and obtained a change in a county mobile home ordinance to allow smaller, less expensive campers where previously only trailers were allowed.

● Enforcement

CCRC's responses to its findings were several. For those communities whose CDBG and other applications it reviewed under the companion A-95 strategy, any findings of exclusion were reflected in its comments and in its recommendations against funding. In Arvada, it has received and investigated a complaint from a developer whose efforts to build subsidized housing have been frustrated. The commission's director subsequently made a finding of probable cause, but its jurisdiction over such a complaint has been challenged in court. (See detailed discussion below).

Other responses, however, were just in the talking or planning stage as the project ended. These included, for example, plans to participate in cases against Littleton and/or Lakewood with the Colorado Lawyers Committee for Civil Rights Under Law, and perhaps to file an administrative complaint against HUD, depending on its funding decisions on pending CDBG applications from communities CCRC found to be exclusionary. CCRC's plan to file a "pattern and practice" commissioner complaint is dependent on the pending court ruling as to its jurisdiction over local land use decisions (see below), and finding at least one aggrieved party to name in the complaint. With regard to racial covenants, CCRC has begun to test for discrimination in areas where such restrictions are still on the books, with a view toward the possibility of publicizing the covenants and their illegality in an effort to have them removed from land records, or filing a commissioner complaint.

Although CCRC did not take any enforcement action on its own initiative as a result of the strategy, it did stimulate and pursue a housing developer's complaint against an exclusionary land use practice in the city of Arvada. The developer had an option to purchase land in Arvada on which he sought to build a subsidized housing project with the help of the Section 8 program. It was expected that a large portion of the project's residents would be either black or Chicano. On March 27, 1978, only one week after first approving the plat for his proposed project, the Arvada City Council reconsidered and voted to deny approval. The developer then filed a complaint with CCRC alleging that it had blocked his attempt to provide housing to low-income persons without regard to their race, national origin, sex, and marital status; that disapproval of the project was based on the race, national origin, sex, and marital status of low-income persons and families who would seek to rent the housing in his project; and that this disapproval continued a historic pattern of discriminatory exclusion that had resulted in little housing being available in Arvada to blacks, Hispanics and female heads of households. The project staff investigated the complaint, and performed an extensive analysis of demographic data that showed the discriminatory impact of the city council's disapproval. On June 13, 1978, shortly after the demonstration period ended, the director of CCRC found probable cause to believe that the complaint was true, and referred the case for conciliation.

Meanwhile, the developer also filed suit against the city in a State district court; the city sought to enjoin the CCRC proceeding, not only challenging the "probable cause" finding, but also arguing that the commission lacked jurisdiction to question its disapproval of the project; CCRC staff helped the developer file a Title VIII complaint with HUD; and, finally, CCRC requested HUD to turn down Arvada's CDBG application, which it had only conditionally approved, if the city continued to block the developer's project. All these developments were still pending shortly after the project ended.

Although CCRC's original strategy had been to take enforcement action against exclusionary land use practices on its own initiative, rather than in response to a complaint, the commission feels that, had it not been for the project, the developer's law suit and discrimination complaints would not have developed as they did. Project staff first contacted the developer in July 1977 when they read a news article about his troubles (the city council's denial was not the first obstacle his project had faced). Only after he read a news report of CCRC's comments on the Littleton CDBG application (as part of the A-95 strategy) did he agree to meet project staff; and only after the staff members attended the Arvada city council meeting did his trust in them build. In addition, it was also as a direct result of the project staff's involvement that the developer found an attorney to handle his civil suit against the city.

3. Future of the Strategy

CCRC plans to continue much of its land use strategy. It will pursue such enforcement efforts as trying to resolve the developer's complaint against Arvada (now tied up in litigation challenging CCRC's jurisdiction

over land use complaints), and filing either a lawsuit or commissioner complaint against Lakewood or Wheat Ridge (if CCRC prevails on the jurisdictional question).

Also related to enforcement, CCRC will continue to use its A-95 reviews to gain additional leverage for convincing localities to adopt more inclusionary zoning. In addition, CCRC wants to have racial covenants removed from land records. It is considering either a commissioner complaint or a publicity campaign, but will first determine whether these clauses have any relevance to the developer's case in Arvada.

It also hopes to prod some implementing action out of HUD and the General Services Administration in connection with their interagency agreement that is supposed to require housing for Federal workers in locations reasonably accessible to their jobs. CCRC feels that something can be accomplished for workers at the Solar Energy Research Center, and is concerned by project findings that the Federal Center in Lakewood is surrounded by subdivisions with racial covenants still on the books.

Other future plans include a follow-up to the conference, and an attempt to determine better estimates of demographic and housing data, and working with the Housing Coalition and with citizen and civil rights groups to seek less restrictive land use regulation.

E. HOUSING CONFERENCE

On May 12-13, 1978, CCRC and 37 co-sponsors held a conference on housing problems in metropolitan Denver, focusing on such topics as housing rights of women and minority groups, exclusionary land use and zoning, moderate-income homeownership, housing problems of the handicapped, affirmative action by city and county officials, neighborhood discrimination and displacement, and participating in A-95 reviews of block grant and other applications. Entitled "Metro Housing Crisis: An Equal Opportunity Conference," it brought together 200 people representing all of the many agencies, special interests and groups that have some concern with metropolitan housing problems. CCRC outlined several conference objectives, all of which it feels were accomplished:

- To involve community and minority groups
- To create housing coalitions to support both housing needs and CCRC itself (the Jefferson County League of Women Voters, the NAACP, and other groups are revitalizing their housing task forces)
- To train both community people and agency officials in A-95 reviews, fair housing, recognizing exclusionary zoning and the need for affirmative action (there have been several requests for further training growing out of the conference)
- To help dispel myths about subsidized housing (in addition to discussions and presentations on this topic, the

conference included a tour of such housing by the Denver Housing Authority)

- To strengthen the image of the commission (CCRC reports, "Legislators and the media became quickly aware that the CCRC does have a considerable constituency. . . . An active planning committee of 46 people helped CCRC achieve credibility as an agency truly concerned with housing needs and problems of many groups.")
- To create communication among those who provide housing and those who require it (the boards and staff of all suburban housing authorities were represented, most providing a panelist or speaker; both HUD and the Department of Justice were among the co-sponsors; real estate brokers, developers, and financial institutions all participated; community action agencies, tenant councils, low income people, and minorities were also represented, 30 on scholarship; State offices, including the governor's office, also participated in a variety of ways).

Well publicized, the conference heightened awareness throughout the metropolitan area, CCRC claims, of the problems of exclusionary land use. It "sowed the seed" for organizing a Metro Denver Fair Housing Center to work on breaking down the barriers to equal housing opportunities for minorities, low-income persons and female heads of households, and a Housing Coalition to continue "to take on other problems in the metropolitan area."

F. COSTS

The total costs of the demonstration strategy was \$173,083, including \$120,000 of HUD/ALNA funds and \$53,083 from CCRC in either dollars or in-kind contributions. The A-95 strategy cost a total of \$71,635, and the Land Use strategy, \$101,448. A detailed breakout of project costs appears in Table 2.

Table 2
Project Costs

COST CATEGORIES	Both Strategies Combined	A-95 Strategy		Land Use Strategy	
		Strategy as a Whole	Amount Funded by HUD/ALNA	Strategy as a Whole	Amount Funded by HUD/ALNA
Staff Salaries and Benefits	149,683	60,309 ^{1/}	46,667	89,374 ^{4/}	48,483
Consultant Fees and other Non-Staff Labor Costs	5,476	2,738 ^{2/}	2,738	2,738 ^{2/}	2,738
Travel	3,556	1,404 ^{3/}	1,404	2,152 ^{5/}	891
Production of Materials	1,782	891	891	891	891
Supplies	9,834	4,917	4,917	4,917	4,917
Conference	2,752	1,376	1,376	1,376	1,376
TOTAL	173,083	71,635	57,993	101,448	60,557

^{1/} Includes \$694 in one-time costs that need not be repeated if the project continues (essentially, initial research, program development and other start-up costs).

^{2/} One-time cost.

^{3/} Includes \$1,155 in one-time costs.

^{4/} Includes \$1,291 in one-time costs.

^{5/} Includes \$495 in one-time costs.

Source: CCRC, Supplement to Final Report (July 27, 1978).

VI. OUTCOMES

For the most part, the outcomes reported in this section are the contractor's findings as to changes resulting from what the agency did in the course of its demonstration. All outcomes were grouped into two categories, agency capacity and equal housing opportunity:

Agency Capacity. The agency's own capability to identify and challenge systemic housing discrimination, as measured by such pre-post project changes as increased staffing, new research or investigative or analytic expertise, better use of community groups, new training techniques, and strengthened negotiating tactics. Improvements in handling individual complaints, while not generally a concern of this project, may also be a relevant measure of increased capacity if they include, for example, new procedures for identifying individual complaints that should be treated as charges of systemic discrimination.

Equal Housing Opportunity. The impact of the strategy on systemic discrimination, as measured by pre-post project changes in specific discriminatory policies and practices or in increased housing opportunities for minorities or other protected class persons. The equal opportunity outcomes have themselves been divided into two subcategories -- potential opportunity and actual opportunity. Potential equal housing opportunity outcomes are real-world changes that hold the promise of leading to increases in actual housing opportunities for minorities. Actual equal housing opportunity outcomes are either measurable increases in housing actually obtained by minority groups or actual changes in behavior (such as affirmative actions known to have been taken or the absence of discriminatory treatment previously known to exist).

Potential opportunity outcomes are one step removed from actual opportunity outcomes in the same way that changes in the rules of a game are one step removed from the actual moves the players make. In fact, the distinction between potential and actual opportunities is essentially the difference between rules and behavior. Promises made in a binding conciliation agreement, for example, are only a potential opportunity outcome; they change the rules that govern the respondent's behavior but not necessarily his behavior itself (which, if also changed, would represent an actual opportunity outcome).

Capacity and opportunity outcomes, it should be noted, are not mutually exclusive. By definition, an agency cannot have produced an equal opportunity outcome if it did not have the capacity to do so. Each equal opportunity outcome, therefore, is indicative of a capacity outcome as well.

A. A-95 STRATEGY

1. Potential Equal Housing Opportunity Outcomes

CCRC's A-95 strategy did result in changes in discriminatory policies and practices and has thereby influenced planned increases in housing opportunities for low-income persons in the Denver metropolitan area. For the first time in the operation of the CDBG program in the Denver region applications have been approved conditioned on the applicants' documentation of compliance with civil rights laws and regulations and on their production of low-income housing. As protected class persons have disproportionately low incomes, they would be expected to benefit, either immediately or in the longer run, from the strategy's outcomes. Changes in the following CDBG applications are the potential equal housing opportunities of CCRC's A-95 strategy:

- Longmont - \$173,000 were reprogrammed from street and water system improvements to a multipurpose community center located in the low-income minority area.
- Littleton, 1978 - the application was approved conditioned on the city's compliance with fair housing and equal opportunity conditions including a resurvey of the housing needs of minorities and female heads of households, and upon documentation of affirmative actions the city would take to assure HUD that minorities and female heads of households would benefit from the funds and specifically from housing assistance provided by the city. Unlike the 1977 CDBG application, more than half of the funds in the 1978 application were to be expended on housing related activities. In response to earlier recommendations by CCRC, the city even established a housing rehabilitation grant program for emergency cases instead of using funds for low-interest loans.
- Lakewood - the application was approved conditionally pending the city's application for 23 units of public housing and its reprogramming funds budgeted for the final overlay and striping of Simms Street, the artery leading to the city's municipal district. (Also see C. EPILOG below.)
- Arvada - the application was approved conditioned on the city's efforts to achieve its housing assistance goals, equal opportunity assurances, evidence that minorities and female heads of households would benefit from the funds and, documentation to show that several proposed projects would benefit low-income households or eliminate slums or blight.

2. Agency Capacity Outcomes

Notwithstanding staffing problems, the agency's capacity to challenge systemic discrimination has greatly increased. Since the project began, the quality of the reviews changed from cursory form letter responses that reflected no in-depth analysis of the communities or the applications to thoroughly knowledgeable analyses based on pre-established criteria. Procedures for reviewing applications have also been defined internally and externally.

A major success was CCRC's ability to stimulate appreciation of the A-95 process and to generate some benefits from its use. It was not only able to initiate a coordinated review process, but also to negotiate with the clearinghouses the inclusion of civil rights in that process. The State clearinghouse and HUD now adhere to the guidelines established in OMB Circular A-95. CCRC has established relationships with citizens and other agencies, in addition to HUD and the clearinghouses, and has worked with these entities in a coordinated manner as never before to implement the strategy.

The agency has stores of new research information and has the potential to retrieve more information to conduct better reviews since it has expanded its sources of information. As a result of the project, the agency has developed and has disseminated two important documents: criteria for evaluating applications and a citizens' training manual that is now being used by the National Committee Against Discrimination in Housing. Indeed, these two documents, along with the new data collected, could be beneficial to any agency wishing to participate in the A-95 review process. (Also see C. EPILOG below).

B. LAND USE STRATEGY

1. Potential Equal Housing Opportunity Outcomes

After CCRC made its recommendations to Meeker, that town made two changes in its zoning, approving the construction of multifamily housing in two areas where previously none or only a few units had been permitted. Meeker also obtained a change in the county's mobile home ordinance to permit lower cost campers as well as trailers. While CCRC was not the only influence at work in these changes, it claims partial credit for the outcome.

In addition, the project director feels that public knowledge of CCRC's activities, particularly in connection with the developer in the Arvada land use complaint, was partially responsible for the success that the same developer had obtaining approval of a family project in Fort Collins where he had previously been having trouble. (Also see C. EPILOG below.)

In the other target communities, because few of CCRC's enforcement efforts were underway at the end of the project, and the others were still pending, there are no equal opportunity outcomes to report.

2. Agency Capacity Outcomes

CCRC has greatly increased its capability to combat land use restrictions that discriminate against minorities and women by excluding or restricting the construction of lower cost housing. The following are some of the indications of the increase:

- CCRC now has a network of contacts in agencies and groups that bear on the land use problems. These include "almost

all the important formal and informal contacts" in HUD's Region VIII office, some in HUD's central office in Washington, lines to national organizations such as NCDH and National Neighbors, Inc., and to the local real estate industry (as a result of the conference), and a working relationship with planners and housing authorities in most of the target jurisdictions.

- CCRC has made both the media and the public more alert to land use problems and has stimulated community involvement (e.g., the Metro Housing Crisis conference, the Fair Housing Center, the Housing Coalition, and the revitalization of Jefferson County's housing task force).
- CCRC now has increased visibility and feels that it has gained credibility in the land use arena. The project director reports, for example, that when she merely attended a Boulder City Council meeting about zoning, the mayor "was concerned about why I was there."
- CCRC now possesses some basic tools to continue its efforts. It has developed criteria against which to analyze communities to determine whether they are exclusionary, and has prepared a slide presentation and a booklet on land use for its community outreach efforts.
- In addition to developing land use profiles of the target communities that identify land use restrictions, CCRC has also found approximately 150 subdivisions with racial covenants--neither of which it had previously done.
- For the first time, CCRC has investigated and found "probable cause" in a land use complaint.

C. EPILOG: Post-Project Developments

About the end of the demonstration period, the National Committee against Discrimination in Housing and the Colorado Lawyers Committee for Civil Rights, based on CCRC's findings, filed an administrative complaint with HUD challenging Lakewood's CDBG plans. The city subsequently settled the complaint, agreeing to provide substantially more public housing and other housing.

Developments in the several actions arising out of Arvada's rejection of a proposed subsidized housing project included the following:

- in a move that ended the CCRC proceeding, the suit challenging the commission's "probable cause" finding was dismissed as moot (at the government's request) after the developer's option on the land expired;
- HUD almost negotiated a conciliation to the Title VIII complaint,

but the city council turned it down (and by that time the developer was time-barred from pursuing his Title VIII complaint in the courts);

- the developer's own lawsuit against the city is still pending; and
- the developer regained his option on the land in question and is once more seeking city approval for his project.

Partly as a result of the project, the "sunset law" audit of the commission recommended strengthening CCRC's research and education activities, but legislated cutbacks in staffing made this difficult to do.

VII. OBSERVATIONS

Numerous factors affect the implementation and results of any demonstration project, some positively, others negatively. Some of these factors are within the control of the agency, others are not; some can be encouraged or avoided, others can only be accepted or accommodated. Below are some of the factors that affected the Colorado agency's demonstration, with a short discussion of the role of each. Any other group or agency trying the same or similar strategies will face at least some of these same factors, and may find Colorado's experiences instructive.

1. Strategy Design

The design of a strategy can affect both its implementation and its effectiveness. CCRC lost time having to redesign both its strategies, in some cases for a second and third time. This extended over several months, even after the demonstrations had begun.

With respect to the A-95 strategy, targeting was not particularly well thought out. Most of the targeted communities did not have significant minority populations that would benefit from the commission's efforts. Better targeting in this regard might have increased the strategy's immediate benefits to protected class citizens.

To some extent, the same problem plagued the land use strategy since it focused primarily on the same communities. The most significant land use gains, however--namely the zoning changes in Meeker--were in a community whose population was expected to boom shortly. This meant that although there might be no immediate minority benefits, the strategy-induced provision for increased lower cost housing could in the near future make Meeker more accessible to protected class citizens with lower incomes.

Identifying what is needed to implement a strategy--and how to get it--is a crucial step in project design. The chief design problem with the land use strategy was the failure to develop, or provide for the development of, criteria to judge land use ordinances. Unless there are some standards for determining what is exclusionary and what exclusionary regulations are tantamount to violations of anti-discrimination laws, the agency is certain to flounder in its attack.

The strategy directors and their staffs had not been involved in designing their projects--indeed, an outside consultant played a significant role in planning the land use strategy and, to a lesser extent, the A-95 strategy as well. This generated initial dissatisfaction among the staff, and time was lost while the strategies were redesigned to their satisfaction. Whether the answer in such a case is to involve the staff earlier or to provide more demanding leadership that will insist on the original design being followed is unclear. In this case, however, because the project staff had not yet been hired when the strategies were first designed, it could not have been involved at this stage.

ALNA contributed to the design of the commission's project in several respects. Initially, ALNA's objections to over-ambitious and in some cases vague proposals led the commission to look for a different strategy. When it adopted the two that it eventually implemented, ALNA was a factor in getting the commission to focus its efforts and to commit itself to going beyond a mere research and study approach.

2. Agency Authority

An agency's legal authority can affect both the choice and design of its strategy. CCRS's authority affected the land use strategy in two ways. First, a jurisdictional question of agency authority arose late in the project and was still pending before a State court at the project's close. A respondent locality had questioned the commission's jurisdiction to decide complaints that challenged local land use decisions. Second, the commission was required to name an aggrieved party whenever it filed a complaint under its own initiative. As zoning litigation in other States suggests, the problem of identifying a person whom the courts will recognize as being aggrieved by exclusionary zoning is a recurring one and often hard to resolve satisfactorily.

3. Agency Support for the Demonstration

The commission reports it added more than \$50,000 worth of in-kind materials and services, obviously a significant contribution to carrying out the strategies beyond what could have been done with only the \$120,000 from HUD.

4. Research and Action

The balance between research and action can affect both implementation and outcomes. Because of an imbalance between research and development on the one hand, and action on the other, there was relatively little action on the land use strategy. This was no doubt attributable to both an emphasis on research as opposed to action, as well as on the need to cover basic ground to make up for the agency's inexperience.

With respect to both strategies, the commission did not begin with the necessary data on hand, nor the resources to obtain such data already identified. Considerable time had to be spent, therefore, in gathering basic data. This turned out to be less of a problem in the A-95 strategy, because the agency quickly became involved with substantive issues raised by reviews of particular applications.

5. Agency Experience and Knowledge of the "Territory"

Agencies need not avoid an area of strategy activity simply because they lack prior experience. Since the commission had virtually no substantive experience in either land use or A-95, it was starting from scratch in both cases. Had the commission been more experienced and knowledgeable, it would certainly have gotten off to a faster start and would have been able to achieve more.

Agencies that enter areas in which they are not experienced will generally benefit from time spent learning about the new territory. To fill the gap in its own experience and knowledge, CCRC turned initially to the Suburban Action Institute. But SAI did not offer a complete solution. The information it provided and the strategy design it contributed were based on its general views of the problems of restrictive zoning, on which it is certainly an acknowledged expert. Missing, however, were the particular thrust, slant, facts, and considerations that are peculiar to Colorado and that would have to be supplied sooner or later as the strategy was applied to Colorado. Had SAI's involvement been more oriented toward Colorado, or had a similarly knowledgeable source, if any were available, contributed the necessary Colorado slant to the project design and to the material on restrictive zoning generally, the strategy would no doubt have been greatly improved.

6. Leadership and Management

Leadership and management can be crucial factors in the effectiveness of a strategy. Both strategies were affected by various degrees of ineffective project leadership, the land use strategy more so than A-95. This contributed to a certain lack of focus, direction, and thrust, as well as to intra-project bickering and morale problems that at times became quite serious. All this unquestionably cut into the overall effectiveness and efficiency of the agency's activities.

During implementation, ALNA acted to help keep the commission focused on what it had set out to do, since monthly monitoring helped hold the commission to its projected activities. Had it not been for ALNA's role in this regard, the commission might have made even more changes in its strategies and let more things slide to the point where its effectiveness would have been reduced.

7. Staffing and Staff Skills

Several commission activities in the land use strategy required significant staff time. These included the development of land use profiles and the implementation of a survey to learn about land use problems and look for "live" cases of land use discrimination that affected potential housing developers. Because of the absence of staff to conduct these activities, they had to be postponed until the commission was able to hire additional workers under the CETA program.

Technical expertise, not just knowledge and experience in civil rights, may enhance a strategy and may even be essential for its success. Staff inexperience, to some extent in civil rights and particularly in A-95 and zoning, also affected both strategies. The A-95 staff, for example, took longer to get its strategy under way. The quality of its early reviews was certainly less than what a more experienced staff could have produced, and indeed less than what the project staff itself was able to produce later on in this project. Inexperience turned out to be less of a problem than it might have been, however, because the staff's relatively early involvement in A-95 review controversies required it to learn very quickly.

Land use, however, suffered not only from inexperience and a need to build staff knowledge, but also from lack of staff familiarity with the enforcement (as opposed to the thrust) of civil rights laws. Had the staff been more attuned to civil rights and less to research and public relations, the project itself would doubtless have moved in more of an enforcement direction. Conceivably, the staff could then have taken a more forceful position and been more effective. Whether it would have won the controversies it would thus have generated, of course, is impossible to say.

The lack of an in-house legal staff or readily available outside counsel from the attorney general's office affected the A-95 strategy to some extent, in that the commission was never able to draft the legal complaint it had originally contemplated. Since none of the A-95 controversies reached the stage of litigation, however, this had little substantive impact.

8. Political Environment

The political environment in which an agency operates is an important influence on whatever it does, in ways in both subtle and blatant. Political sensitivity among project staff and leadership is often an essential ingredient to an effective strategy. At the time CCRC implemented its strategies, it was under rather serious attack within the State legislature and its continued existence was at times in doubt. Although there was little that linked this directly to the strategies, it was not a factor that could be easily ignored since the strategies, if carried out in an aggressive manner, could have invited reaction and hostility. There are no data, however, to delineate this factor more precisely.

Beyond this there were few political constraints except the commission's own awareness that zoning touches a lot of political nerves. Pushing against restrictive zoning, and even merely identifying "exclusionary" restrictions, entailed a touchy exercise that had to be undertaken.

9. Linkages Outside the Agency

To enhance the implementation of their strategies, agencies should seek out and take advantage of outside sources of knowledge and advice. Both strategies were significantly aided by the involvement of outside experts. The Suburban Action Institute, Zena Greene from HUD, and others made a significant contribution by training the staff and providing information expertise that the agency totally lacked itself. Had these not been available, neither strategy could have progressed as far as it did. Community support undoubtedly helped the A-95 strategy in several localities where the commission collaborated with local groups in presenting their positions before zoning boards and local legislatures. It was not, however, a significant factor in the land use strategy.

The importance of other agencies of the State and local governments to the implementation of the land use strategy as it was carried out was

primarily in the provision of data, research assistance, training, and briefings. The A-95 strategy was additionally affected particularly by the attitude and role of the State clearinghouse, and, to a lesser extent, the Denver regional clearinghouse. Initially the State clearinghouse was not particularly cooperative and did not follow basic A-95 procedures. This changed, however, as a better working relationship developed, to the point where the clearinghouse became substantially supportive and thus a positive factor. Colorado's A-95 strategy was also helped by consultations that the commission had with several other State agencies that were more experienced in this area. The Colorado commission was certainly in need of such assistance as it had very little in its own experience to build upon.

10. Use of the Media

The use of the media can be a proper and effective element in an agency's strategy. The press was generally supportive of the commission's activities, particularly with respect to A-95. Negative press, of course, could have done severe damage by arousing hostility to the commission's activities and the positions it was taking. Although at one point it was necessary to write a series of letters to correct misleading news reports, in general the commission's strategy activities received favorable coverage. The agency's housing conference, held at the end of the demonstration, was also favorably reported.

11. Other Factors Affecting Implementation

Though they cannot always be anticipated, outside circumstances can affect a strategy. Both strategies were helped by unexpected outside involvements. In the case of the A-95 strategy, it came in the form of a private citizen who had been carrying on a one-woman fight against her city's community development block grant program. When she sought the commission's help she immediately pulled the agency into the thick of the controversy, where it was forced to learn quickly what the A-95 rules and block grant requirements were, how to deal with the manipulation of demographic data, and so forth. This not only proved to be a tremendous learning experience, but also forced the commission early into active involvement.

In the case of land use, the unexpected assistance came in the form of a particular developer who sought the commission out because he felt that his proposal to build family housing in a particular locality had been discriminatorily blocked. He eventually filed a complaint with the commission. Had it not been for this particular developer, the commission's strategy might never have focused on a particular case and could have remained predominantly a research and public relations effort. On its own, the commission had been unable to identify a developer actively involved in a dispute over restrictive land use policies.

Opinions of the attorney general were not particularly relevant to either strategy. One question before the attorney general, however, did play a small part. The developer whose housing proposals had been blocked not only filed a complaint with the commission, but also sought its legal

assistance in pressing his claims in court. The attorney general eventually decided not to provide such assistance.

12. HUD's Role

HUD can play a key role--for better or worse--in response to particular strategies. HUD's impact, felt primarily through the A-95 strategy, came particularly from its initial lack of cooperation with the agency, as well as its failure to follow required procedures with respect to A-95 reviews. This was later corrected, and indeed the overall working relationship with the local HUD office was improved considerably. On the other hand, HUD helped the strategy significantly by enabling Zena Greene to come from the central office to aid the commission and to help mediate some of its problems with the regional office.

HUD affected the land use strategy only indirectly and to a limited extent. Some A-95 reviews incorporated land use considerations, and the agency hoped that leverage obtained through the funding process would enable it to influence some changes in land use regulations. HUD's failure to go along with most of the commission's A-95 positions obviously did not help this effort.

The HUD offices of FH&EO and PD&R in Washington were also a factor with respect to the strategy design. They supported ALNA when several aspects of the agency's plans were vague and unclear, in requesting a more precise delineation of its strategy proposals initially, and later its projected activities. Such requests forced the agency to think more precisely about what its project entailed, and to plot out step-by-step exactly what it would have to do.

NOTES

Chapter II: INTRODUCTION TO THE AGENCY

1. Colorado Anti-discrimination Act of 1951.
2. Colorado Fair Housing Act (1959).
3. Colorado Revised Statutes (CRS) 1973, 24-34-304.
4. Id. at 24-34-406.
5. Sisneros v. Woodward Governor Company, 560 P.2d 97, 99 (Colo. 1977).
6. CRS 1973, 24-34-405(a) and (b).
7. Id. at 24-34-405(b).
8. CCRC, Activities 1976-77, p. 8.
9. Id. at p. 4.
10. CCRC, "Statistical Report for Year 1977-78," p. 1.
11. CCRC, "Final Work Plan," p. 16.
12. Id. at pp. 3 and 16.

Chapter III: STATEMENT OF THE PROBLEM BEING ATTACKED

1. See generally, Suburban Action Institute, A Study of Exclusion.
2. CCRC, A-95 Strategy--Final Report (June 12, 1978), p. 9.
3. CCRC, "Final Work Plan," p. 3.
4. CCRC, A-95 Strategy--Final Report (revised July 27, 1978), p. 10.
5. Ibid; CCRC, "Final Work Plan," p. 3.

Chapter V: IMPLEMENTATION

1. CCRC, Land Use--Supplemental Report II (August 7, 1978), pp. 12-13.
2. Id., p. 41.
3. David Falk and Herbert Franklin, Equal Housing Opportunity: The Unfinished Federal Agenda (The Potomac Institute, 1976).
4. Professor Lawrence Sager, NYU School of Law, quoted in CCRC, Land Use--Supplemental Report II (August 7, 1978), p. 49.
5. See Appendix.

6. CCRC, Land Use--Supplemental Report II (August 7, 1978), p. 57; project closeout interviews on file at ALNA.
7. CCRC, Land Use--Supplemental Report II (August 7, 1978), pp. 20-21.
8. Id., pp. 24-25.
9. Id., pp. 37-38.
10. Id., pp. 27-28.
11. Id., p. 31.

APPENDIX

APPENDIX

Based on material in SAI's A Study of Exclusion, the following are the guidelines used by the CCRC staff in evaluating the target communities:

I. Zoning

<u>Item</u>	<u>Evaluative Guidelines</u>
1. <u>Type of Dwelling Units allowed.</u> Do they allow multifamily? Do they allow high-rises? Planned Unit Developments Mobile Homes	Are special permits or site reviews required for any of these? Lack of mapped zones for these? Are these permitted?
2. <u>Density of Units Allowed</u> <u>Type of dwelling unit</u>	<u>density/net acre</u>
single family	5 - 7 units
duplex	6 -12 units
townhouse or garden apartment	8 -20 units
multifamily 3 - 6 stories	20 -45 units
6 - 9 stories	45 -75 units
9 - 12 stories	75 - 95 units
3. <u>Minimum Lot Size</u>	<u>Square Feet of Net Residential Land per Unit</u>
Dwelling Unit Type:	
Single family	6,000 - 8,000
Duplex	4,000 - 6,000
Townhouses or garden apartments	1,600 - 3,000
Multifamily 3 - 6 stories	550 - 1,000
" " 6 - 9 "	500 - 550
" " 9 - 13 "	450 - 500
4. <u>Minimum Yard Requirements</u>	
Yards need not exceed:	
Front yard	25 feet
Side yards	20 feet
Rear yard	20 feet
There are exceptions where septic tanks are used.	
5. <u>Maximum Building Coverage</u>	<u>Percent of Net Residential Land Covered</u>
Single family	30%
Duplex	30
Townhouse or Garden Apartment	30
Multifamily 3 - 6 stories	25 - 30
" " 6 - 9 "	20 - 25
" " 9 - 13 "	17 - 20
6. <u>Minimum Floor Area Requirements</u>	
150 square feet for the first occupant and 100 square feet for every occupant thereafter and no more than a total number of persons equal to two times the number of habitable rooms.	Must not be over 1000 sq. ft.

7. Are there limitations on the number of bedrooms?

8. Design and Improvement Requirements on Dwelling Units:

Are there either "lookalike" or "non-look alike" requirements?
Examples are covered garages, brick veneer, high fences or walls,
extensive landscaping, steeped roofs, etc.

II. Restrictions on Low and Moderate Income
Housing

Zoning Ordinance

(1) The type of dwelling units that can be constructed in the community

(2) What types of units are permitted as of right, by special exception, conditionally, or some other method.

(3) Regulations applied to each type of dwelling unit:
Minimum lot size

Minimum floor area

Yard and Bulk requirements

(4) Other requirements applied to residential uses:

(1) A variety of dwelling units in both single lots and on a large scale basis

(2) All residences permitted on equal basis without procedural requirements required of some and not for others.

(3)
--at least $\frac{1}{2}$ acre
zoning permitted for single-family dwellings
150 square feet for the first occupant
100 square feet for every person thereafter
Reasonable for maintenance of light and air to all dwelling units

--no restrictions on the % of dwelling types
--no restrictions on the number of bedrooms permitted
--no excessive design or improvement requirements

Zoning Map

How much land is zoned to permit various residential uses?

% of land zoned high density___

A relative balance of mapped districts outlined in the zoning ordinance (Ideally residential districts should be mapped in proportion to estimated need for various housing or income types.
Compare to Central City and SMSA

Administrative Procedures

Review Procedures

extra procedural requirements,
review process, special exceptions
required for multi-family or mobile
homes not required of a single-family d.u.
Amount of land not in built up areas
(not publicly owned, water, swamp,
excessively sloped)

Vacant Developable

Challenges to "balanced"
land use plans (An interest
measure of popular sentiment re: housing)

Municipal of private objections to
projects for low/moderate income people

Regional Housing Opportunity
Plan Component (HOP)

80% (Denver as norm)

Evidence of Inclusionary Community

Statement in a public document

Yes ___ where ___ when ___

No ___ Who ___

Map

Examine the census map for concentrations
of minority and/or low income people.
Compare this map to the land use map
showing the distribution of multi-
family zoned land.

The % of multi-family residential
land should not be over-concentrated
in the minority or low income tracts.

See density scale and
Land Use profiles

yes ___ No ___

STATE CIVIL RIGHTS AGENCY DEMONSTRATIONS OF STRATEGIES
TO FIGHT HOUSING DISCRIMINATION

CASE STUDY:

Connecticut Commission on Human Rights and Opportunities

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I. INTRODUCTION

A. THE NINE-STATE DEMONSTRATION PROJECT

This case study is one of a series being prepared under contract to the U.S. Department of Housing and Urban Development as part of a HUD-funded research and demonstration project. A key element of this project was the provision of funds to nine State civil rights agencies to enable them either to launch or expand fair housing programs directed particularly against systemic discrimination.

1. Background

Notwithstanding the efforts of the past two decades, there remains an intolerably wide gap between the promise of choice implicit in an array of civil rights legislation and the reality of housing discrimination for minorities in America today. Moreover, discrimination in housing contributes to social injustices reaching well beyond its most immediate consequence, residential segregation. These include inequality of job opportunities, separate and unequal schools (notwithstanding the 1954 Brown decision), and increased tax burdens on inner city residents to support growing social service costs and an irregular pattern of urban growth.

So systemic and institutionalized is racism in the housing system that public enforcement efforts--crippled by weak budgets and preoccupied with responding to individual complaints--seem only to have changed the face of discrimination without uprooting it. Replacing the blatant housing discrimination of the pre-civil rights era are new discriminatory practices--subtle, indirect, and often hidden, but just as effective. The struggle for equal opportunity in housing is far from over.

State human rights agencies are called upon to play a major role in that struggle. State laws often give them far-reaching responsibilities, while Federal law gives many the added burden of processing housing discrimination complaints filed under Title VIII. Their limited resources, however, permit little more than the handling of individual complaints, often leaving significant patterns and practices of housing discrimination unchallenged.

And at all levels--Federal, State and local; public and private--there is a need to find and test new ways to use existing fair housing laws more creatively and effectively. Also needed is precise, reliable information about systemic discrimination in housing and about the programs necessary for the full enforcement of existing fair housing laws.

The message is clear: Both qualitatively and quantitatively, this nation's level of public intervention on behalf of the minority shelter-seeker must be substantially upgraded.

2. The Project

It is to this message that HUD responded in 1976 by committing Federal resources under this project to enable States to assume a more aggressive role in meeting fair housing goals. In doing so, it addressed in a single programmatic thrust two broad national problems: how to assist minority families in obtaining decent housing in the face of increasingly sophisticated discriminatory practices, and how to help the States increase their capacity and effectiveness in carrying out responsibilities under existing laws.

Even before issuing the Request for Proposals (RFP) for this project, HUD selected the participating State agencies. On June 16, 1976, HUD invited 10 State civil and human rights agencies to take part in this project. One agency, ultimately unable to meet all of HUD's requirements, did not participate. The remaining nine are:

- Colorado Civil Rights Commission
- Connecticut Commission on Human Rights and Opportunities
- Kentucky Commission on Human Rights
- Massachusetts Commission Against Discrimination
- Michigan Department of Civil Rights
- New Jersey Division on Civil Rights
- Ohio Civil Rights Commission
- Pennsylvania Human Relations Commission
- Washington State Human Rights Commission

Each of these agencies was offered up to \$120,000 to pay for a year-long demonstration of one or more strategies to combat systemic discrimination. (The Connecticut agency's budget was only about \$90,000, however, and its demonstration period only eight months, because of extended contracting difficulties and other problems that delayed the start of its project.) The agencies were not required to match the Federal money, but were, of course, free to supplement it with funds of their own. Within general guidelines and a minimum of specific requirements, each agency designed its own demonstration program.

The agencies performed their demonstrations as subcontractors to A. L. Nellum and Associates, Inc. (ALNA), the contractor HUD selected to run the project. They received their money through ALNA and had no direct contractual relationship with HUD.

Under its contract with HUD, ALNA's role included the following:

- Assisting each State agency during the planning stage of its program, and assuring that proposed strategies met project requirements.
- Distributing funds to the agencies.
- Monitoring each program over a 12-month period.

- Evaluating the impact of each program.
- Preparing a final report (of which this case study is a part) describing the implementation and results of the project in detail.

The project was under ALNA's direction from its inception in October 1976.

Focusing on State agencies as vehicles for social change, this project had two primary objectives:

- To identify replicable, tested, and proven intervention strategies for combating systemic discrimination.
- To strengthen State agency capacity and effectiveness in carrying out their responsibilities under existing laws.

Additional objectives were an increased understanding of systemic discriminatory practices and of the States' role in combating them, and the dissemination of this understanding to interested citizens.

B. STRATEGIES AT A GLANCE

To briefly introduce the subject of this case study, the three fair housing strategies demonstrated by the Connecticut Commission on Human Rights and Opportunities consisted essentially of the following:

1. A-95

- Develop a Memorandum of Understanding, a bi-lateral agreement between the commission and HUD, to augment the commission's enforcement capabilities.
- Under the terms of the agreement, monitor the performance of third-year Community Development Block Grant recipients.

2. Zoning

- Analyze zoning ordinances and practices throughout the state.
- Develop model "affirmative zoning" ordinances.
- In one or more selected target communities, seek to replace restrictive zoning with affirmative zoning, filing complaints if necessary.

3. Housing Marketing

- Select one or more housing developers whose "pattern or practice" discrimination restricts housing opportunities.

- Initiate and process a commission complaint against the target developers.

II. INTRODUCTION TO THE AGENCY

The Connecticut Commission on Human Rights and Opportunities (CCHRO) has 12 members appointed by the governor for five-year terms. 1/ The commission chooses its chairman and deputy chairman. 2/ The commission has its own counsel, who represents it in all cases in which another State agency is an adversary party, and in all other cases subject to agreement between the commission and the attorney general; 3/ in the absence of such an agreement, the attorney general represents the commission. 4/

In addition to its central office in Hartford, the State capital, CCHRO has four regional offices in Bridgeport, Hartford, New London, and Waterbury. The commission receives housing discrimination complaints filed by individuals, and may itself issue complaints if it has reason to believe a violation has been committed. 5/

Housing discrimination is proscribed by the State's public accommodations law, which prohibits any denial of "full and equal accommodations" based on race, creed, color, national origin, ancestry, sex, marital status, age, or physical disability, 6/ or on grounds of mental retardation. 7/ The law prohibits "any discrimination, segregation, or separation" on all the above grounds. 8/

As is true of other State civil rights agencies, CCHRO's employment discrimination caseload is its largest, constituting 72.2 percent of all cases filed in fiscal year 1976. 9/ Nevertheless, a significant portion of the commission's caseload concerns discrimination in housing. Of 1,348 cases filed in fiscal year 1976, 205 (15.2 percent) were private housing cases, and six (0.4 percent) were public housing cases. 10/ Of these 211 public and private housing cases, 134 (63.5 percent) alleged discrimination based on race, color, or national origin, 41 (19.4 percent) based on marital status, and 24 (11.4 percent) on sex. The remaining cases included complaints based on age (11) and physical disability (1). 11/ Due primarily to an increase of more than 150 percent over the previous year in the number of marital status cases, the overall housing caseload grew by more than 25 percent in fiscal 1976.

As part of this project, CCHRO analyzed the 964 housing complaints it had received from July 1971 through December 1977. Of these, 733 (more than three-fourths of the total) alleged discrimination in rental housing. 12/

Since 1972, when OMB Circular A-95 was amended to include civil rights reviews of pending applications for Federal financial assistance, CCHRO has been designated a review agency. The commission's normal procedure is to send an applicant a Civil Rights Impact/Implications Questionnaire, which elicits information about its equal employment record, the proposed project's impact on minorities, and the extent of minority input into the proposal's development. 13/ When the commission has raised civil rights questions about a proposal, the State clearinghouse has delayed its certification of a project to give CCHRO and the applicant time to resolve or clarify the issues. In FY 1976, for example, the commission commented on 314 of the

623 applications it had received, and 167 were delayed at its request by the clearinghouse. 14/ In one case, U.S. Department of the Interior has held up a grant since 1974 because of one community's failure to resolve a civil rights issue (the "exclusionary implications of local land use policies and practices") first raised in CCHRO's A-95 comments. 15/ In the more usual case, such delays are ended by the applicant's promise to take corrective action (or sometimes by the Federal agency's decision to approve the funds despite CCHRO's objections). After applications have been approved, however, CCHRO has had no systematic approach to monitor what happens--whether the applicant kept its promises; whether it subsequently met any conditions imposed by the Federal agency when it approved the project. 16/

CCHRO's past A-95 activities have involved community groups. In 1975 CCHRO attached comments from community groups to its own comments on applications. As a result of the numerous A-95 comments submitted by the commission and community groups, HUD delayed funding of the city of New Haven's application. In 1976, CCHRO organized a coalition of community groups in Bridgeport to review and comment on that city's community development application. The group submitted comments through CCHRO and through the area-wide clearinghouse. Not only did CCHRO's efforts stimulate community education and use of A-95 as a viable tool for community participation, they also influenced HUD's delay in funding the city of Bridgeport's application.

Primarily on a case-by-case basis as part of the A-95 process, but also in connection with CCHRO's participation in the Capital Region Land Use/Transportation Policy and Coordination Boards (focusing on the civil rights impacts of highway construction), the commission had occasionally "confronted" discriminatory zoning in the past, and had "persistently dabbled" in it "over the years." 17/ It had also worked with a consultant firm to develop a technique for analyzing the impact of zoning as a component of a long-range land use/transportation plan. 18/ It had never taken any enforcement action regarding exclusionary land use, however, nor conducted any comprehensive study of zoning problems in Connecticut communities.

With regard to more "traditional" types of housing discrimination, CCHRO had received and investigated both individual and "pattern and practice" housing complaints prior to the project, and had developed "housing interrogatories--to suit individual complaint needs." 19/ But it had no such tools for investigating charges of systemic discrimination, nor any "model affirmative remedies" for systemic cases. 20/ Nor had it made any comprehensive study of the systemic practices that limit minority housing opportunities in Connecticut.

III. STATEMENT OF THE PROBLEM

The State of Connecticut is facing a problem similar to what is being experienced throughout the country. Central cities, while sometimes declining in net growth, are absorbing the State's increasing minority population, female heads of households, and low income groups in general. Approximately 90 percent of the black population and 70 percent of the Spanish-speaking population are concentrated in the State's 13 major cities. Only one-third of the State's total white population lives in these same 13 cities. Between 1960 and 1970, eighty percent of the population growth within the cities was accounted for by families of low and moderate income.

A major concern with this trend is that economic opportunities are moving from the cities to the suburbs, where housing opportunities, created by growth in the State's population and economy, are basically unavailable to minorities and other low income persons. A separation of classes is taking place within the State. 1/

According to CCHRO, the following characterize the housing crisis for the State's minority and poor populations:

- Lack of aggressive leadership by the three branches of government;
- Failure of the private housing market to produce an adequate supply of housing;
- Discrimination based on race, color, and national origin by persons engaged in selling and renting housing, and by lending institutions;
- Inadequate resource allocations by public policy makers;
- Land and transportation policies and practices whose net effect is the denial of housing access; and
- Pervasive economic discrimination against racial and ethnic minorities. 2/

CCHRO's strategies are directed at several of these problems. The first is use of Federal funds by local governments in ways that increase or perpetuate discrimination and segregation. CCHRO has participated in the A-95 process for several years, reviewing applications for Federal funds in several areas, including community development, housing, and housing-related programs. The commission has found that although the review process can be a deterrent to discrimination, there are several problems that need to be remedied if the system is to be used effectively for this purpose. The commission identified the following problems:

"a. The volume of A-95 notices has been continually increasing since

the commission began review in 1973. The volume of A-95 notices has impacted on the commission's ability to do in-depth reviews.

- "b. The A-95 review process contains no enforcement provision. The Federal funding agency and the applicant are free to ignore review comments and recommendations made by CCHRO.
- "c. The commission generally has no knowledge of Federal granting determinations or to what extent its comments have or have not been considered by the Federal funding agency. While the State clearinghouse does have a follow-up mechanism, Federal agencies for the most part choose to ignore it.
- "d. Federal agencies in some instances have funded applications prior to A-95 review and also over the objections of A-95 review agencies.
- "e. Lack of resources has prevented the commission from doing substantial monitoring to follow-up comments and recommendations made through the A-95 process. This has also prevented the commission from providing local governments with technical assistance." 3/

As these problems suggest, CCHRO needs a mechanism to augment its A-95 review capability and lend enforceability to its comments and recommendations.

Second, findings of national studies and recent court decisions in neighboring States indicate exclusionary zoning is a prime cause for separation between classes and races. Zoning can be called "exclusionary" if it unnecessarily precludes lower income housing. More precisely, CCHRO's subcontractor, Suburban Action Institute (SAI), defines a zoning regulation as exclusionary if:

- it affects either residential construction or the development of land for residential use;
- it is "not reasonably necessary" to protect the health, safety, morals, or general welfare of the public; and
- it has the effect of either raising construction costs or excluding lower cost types of housing.

Such regulations are called "exclusionary" because, by precluding or limiting lower cost housing, they exclude anyone who would be expected to live in such housing--i.e., lower income individuals and families, in which racial and ethnic minorities and female heads of households are found in disproportionately high numbers. 4/

The third problem is discrimination in marketing and developing housing throughout Connecticut. This problem persists despite fair housing laws and affirmative marketing requirements in assisted housing programs

because of inadequacies in enforcement and oversight by both State and Federal agencies. 5/

IV. DESCRIPTION OF THE STRATEGIES

A. THE A-95 STRATEGY

1. Description

As authorized by amended Office of Management and Budget Circular No. A-95, the Connecticut Commission on Human Rights and Opportunities (CCHRO) assesses the civil rights implications and impact of proposed Federally assisted projects, in cooperation with Federal agencies, other State agencies, and local governments. Its reviews consider the following: the applicant's record of equal opportunity employment, the project's benefit to minorities, minority input in the design of the project and employment opportunities for minorities created by the project. Prior to the project, CCHRO's primary objective had been to clarify or resolve civil rights issues raised in its review. Through past experience, however, CCHRO had identified the need to give credibility to its A-95 activities by monitoring what applicant communities do after the commission makes its reviews--and using what it finds in subsequent reviews and comments. CCHRO chose to demonstrate that this could be done through the design and implementation of a memorandum of understanding with HUD, the funding agency targeted by CCHRO to give it support in monitoring applicant communities.

Under this memorandum, HUD would agree, in effect, to let CCHRO stand in its stead when monitoring applicant performance and to give substantial consideration to CCHRO comments when determining whether an applicant for community development block grant funds was in compliance with civil rights requirements (i.e., compliance with HUD program standards, and Titles VII and VIII). CCHRO's comments would reflect its monitoring of previously approved applications. While CCHRO can monitor Connecticut communities on its own authority, it cannot count on the cooperation of local governments, nor on having easy access to their records. The Memorandum of Understanding, however, could clothe CCHRO with sufficient authority to make effective monitoring possible.

The following components of CCHRO's strategy, as implemented, show how the commission hoped to incorporate its new A-95 activities with the old.

Research

- Analyze CCHRO's experience with the A-95 process.
- Select communities to be monitored.

Development

- Execute a Memorandum of Understanding between CCHRO and HUD to increase CCHRO's post-review capability. This would be done principally through HUD's agreement, in effect, to clothe CCHRO

with its authority to monitor the civil rights performance of CDBG recipients and to give substantial weight to CCHRO comments based on its monitoring.

- Develop monitoring tools to implement the memorandum of understanding.
- Community Outreach and Enlisting Support
 - Inform and educate potential supporters about the commission's new approach to combat systemic housing discrimination.
 - Solicit information and public opinion from community groups throughout the State concerning target communities, and encourage them to monitor local government civil rights performance.
 - Obtain the support of others involved in the A-95 review process.

Action

- Implement the Memorandum of Understanding (monitoring)
 - Monitor performance of selected third-year CDBG recipients (request periodic reports, conduct on-site visits, provide technical assistance).
 - Submit comments to HUD on third year grant recipients' compliance with assurances, recommendations, and approved conditions.
 - If HUD rejects the final findings, it will indicate the specific reasons to CCHRO. If HUD accepts CCHRO's final findings and recommendations as a determination pursuant to Section 109(b) of the Housing and Community Development Act, it will notify the governor of the locality's noncompliance and proceed in accordance with the provisions of that section.

The strategy was designed to benefit low-income persons (a disproportionate number of whom are elderly, handicapped, and black and Hispanic minorities) who are seeking housing opportunities in communities receiving community development funds, particularly in the target communities.

2. Changes in the Strategy

● Changes From the Original Strategy

In contrast to the two-party agreement described above, the Memorandum of Understanding, the heart of CCHRO's A-95 strategy, was

originally to be a three-party agreement among CCHRO, a Federal funding agency and a targeted local government. (HUD would not necessarily have been the only participating Federal funding agency.) Each such agreement was to focus on the issues raised in CCHRO's review of the particular target community relative to housing issues and was to contain a number of remedial actions that the applicant could take to affirmatively address the issues cited. (See Chapter V, Implementation.)

- Other Changes Made During Implementation

The Memorandum of Understanding between CCHRO and HUD, essential to the strategy's success, was not executed during the demonstration year. In the absence of the agreement, the commission did not feel justified in using its resources trying to compel local governments to submit information for monitoring purposes. Thus, strategy activities centering on the development of the agreement were revised and CCHRO focused primarily on the preparation of several documents in anticipation of later implementation of the agreement, and the development of various review methodologies. Products of the approach will also be discussed in Chapter V.

B. ZONING STRATEGY

1. Description

CCHRO's second strategy, grounded on a Statewide research study, was to be an enforcement effort against exclusionary zoning in selected target towns or cities in Connecticut. As originally planned, this zoning strategy consisted of the following steps:

- Research

- Conducting both a literature search and a legal review of relevant court cases from Connecticut and elsewhere.
- Surveying zoning policies, ordinances, and practices, and collecting demographic data for all 169 Connecticut jurisdictions.
- Analyzing the above to identify jurisdictions where zoning has a serious exclusionary impact.
- Developing legal criteria for showing whether a locality's zoning violates State antidiscrimination laws.
- Using these legal criteria to identify communities in which the best case can be made that exclusionary zoning violates State antidiscrimination laws.

- Development

- Preparing a handbook on affirmative zoning for citizens and public officials that will identify exclusionary zoning and

propose alternatives in the form of model affirmative zoning policies and practices. Affirmative zoning ordinances would require a locality (1) to periodically reexamine its zoning maps and classifications in light of changing housing needs and (2) to place a positive emphasis on providing a variety of housing types and opportunities, taking corrective action where needed to provide adequate variety.

- Working with citizens and citizen groups, whose role will be primarily as sources of information and, if necessary, complaints and testimony. This includes not only residents of target communities, but also those living elsewhere, such as in a central city, who are affected by a target community's zoning policies and practices.

- Action

- Seeking voluntary remedies to exclusionary zoning in the target jurisdictions but, where necessary, filing complaints to obtain the adoption of policies and procedures along the lines of the models to be proposed in the handbook on affirmative zoning.

2. Changes in the Strategy

The major change was the decision not to file a complaint against one or more communities with discriminatory zoning. This decision was dictated by the need for more investigation before CCHRO would be ready to file a charge, and in May 1978 the commission instructed the director to perform the necessary research. 1/ The commission also felt, however, that the delay in enforcement could be justified on strategic grounds. It did not feel that the mood of either the courts or the general public was particularly favorable to the "harsh act of litigation" on this issue. 2/ Even if the commission were to prevail in a suit, it felt more public support would be necessary before the fruits of victory could actually be realized. Otherwise, public opposition could severely limit the practical effectiveness of a court order, in the same way that it has continued for so long to frustrate legal and administrative efforts to end segregated schools. 3/

C. HOUSING MARKETING STRATEGY

1. Description

The housing marketing strategy, as implemented, was designed to identify housing developers who exhibited "pattern or practice" discrimination in the development and marketing of housing, and to target one or more marketers for a commission-initiated complaint. The following components were involved in this strategy:

- Research

- Analyze housing discrimination complaints filed with the commission over a 6-year period.
- Collect available statistical and demographic information from 1970 census reports and reports and data from regional planning agencies, State agencies and departments, local governments, and national studies.
- Solicit views and comments of private civil rights organizations, community groups, and minority leaders.
- Conduct a survey of 99 respondents in the housing industry to obtain information concerning their marketing and development practices.
- Initiate and process a complaint against one or more selected marketers of housing suspected, on the basis of survey data and other information, of discriminatory practices.

2. Changes in the Strategy

The commission originally planned to survey only a few potential targets, all of whom were major multifamily housing developers, chosen on the basis of an analysis of complaints filed over a 6-year period. However, when the analysis showed that there was no concentration of complaints against only a few respondents and that many actors in the housing industry, not just developers, contribute to inequitable housing opportunities, the commission decided to expand the survey to obtain a better idea of "pattern and practice" discrimination in the housing industry.

V. IMPLEMENTATION

Because the initial submissions of CCHRO's project work plans were late, and then several requirements of State law and policy necessitated extended contractual negotiations, the start of the project was considerably delayed. As a result, CCHRO's demonstration period lasted only eight months, instead of a full year. The following sections describe what happened during those eight months.

A. STAFFING

The project staff and consultants consisted of the following:

- Project Director - management, direction, and coordination of all strategies and supervision of consultants and staff.
- Deputy Project Director - assisting the project director generally, with particular responsibility for implementation of the Housing Marketing strategy according to the work plan.
- Strategy Planner (A-95 Strategy) - implementation of A-95 strategy according to the work plan.
- Typists (2) - typing, filing, reproducing, manuscript preparation, correspondence, appointment schedules and other clerical duties.
- Community Participation Coordinator/Facilitator (Consultant) - identification of community interest in housing issues relative to the project strategies; meeting with community groups and interested persons; planning, coordination, and facilitation of agency meetings in communities around the state; generation of community interest in the commission's fair housing enforcement program.
- Suburban Action Institute (Consultant) - staff of seven; all zoning research, preparation of report on Connecticut zoning and handbook on affirmative zoning, and (to a lesser extent) development of community relations.

In addition to the above, the following other CCHRO staff were also significantly involved in the demonstrations:

- CCHRO Director - administration, management, and overall direction.
- Supervisor, Special Projects - coordination, technical assistance in project development and implementation.
- Administrative Assistant to Special Projects Supervisor - coordination, training and skill development of project clerical staff.

- Commission Counsel - legal counsel, interpretation and advice, contract review.
- Field Representative - investigation of complaints initiated by the commission under the Housing Marketing strategy.

B. STAFF TRAINING

CCHRO provided orientation on its policies and procedures to new staff members and to consultants. In addition, the project director and the strategy planner enhanced their knowledge through attendance at such conferences as a workshop on regionalism sponsored by the League of Women Voters, a seminar on community development sponsored by Legal Aid lawyers, and a HUD-sponsored training session. Finally, the consultant acting as CCHRO's Community Participation Coordinator learned more about the issues relevant to the project through her work with the Suburban Action Institute and the project staff.

C. A-95 STRATEGY

1. Research

Problems identified by CCHRO and its subsequent approach to them were results of specific research activities. The following methodology was used in designing the strategy:

- Analysis of the A-95 process within CCHRO.
- Selection of the local government targets.
- Development of tools for implementing the strategy.

A description of the individual elements is provided below.

● Analysis of the A-95 Process within CCHRO

CCHRO's strategy planner began by scrutinizing the agency's activities and accomplishments during the four years of its participation in the A-95 review process. The purpose of this review was two-fold. First, it sought a comprehensive view of the problems CCHRO had experienced with the A-95 process over the years. This would be helpful in shaping the strategy and, possibly, drafting the Memorandum of Understanding. Second, it sought a comprehensive view of the kinds of civil rights problems that had arisen in past reviews, how they were handled, and what kinds of follow-up were needed. This would be similarly helpful.

The analysis revealed a dramatic increase in the number of Federal funding requests (185 in 1973-74 fiscal year; 1,011 in 1976-77 fiscal year) and CCHRO's inability to remain abreast of the increase. Applicants for Federal funds generally consisted of local governments, State agencies, housing developers, social service agencies, and health services. However, the lack of funds and resources limited CCHRO's list of priorities in reviewing applications to municipal government projects, transportation projects, sewage treatment and pollution control projects, social service programs,

housing projects, health programs, community development entitlement grants, open-space acquisition, and recreational grants. Considering these applications in depth, CCHRO's A-95 reviews had addressed not only the anticipated impact of each proposed project, but also such issues as exclusionary zoning implications, the impact of sewage systems upon multi-housing units, restrictive residence requirements, employment patterns and practices, housing patterns, affirmative action policies in reference to employment and housing, and minority involvement and input into the proposed project.

The analysis also revealed that Federal agencies and local fund recipients had failed, for the most part, to respond to CCHRO's comments. It concluded, nevertheless, that in spite of inherent problems in the A-95 review system, it could be used as an effective force in combating discrimination if a review agency has sufficient cooperation from Federal funding agencies and applicants.

- Selection of Federal Agency and Target Communities

Since HUD funds many housing-related programs, CCHRO selected this Federal agency for the purpose of developing a Memorandum of Understanding and chose to establish criteria for selecting and monitoring the local government target around HUD's Community Development Block Grant program.

CCHRO identified two alternative sources from which to choose its target communities. One alternative was to look for monitoring targets among all communities with housing or housing-related applications that were currently being reviewed under the A-95 process. In the fall of 1977, the 11 housing or housing-related applications that CCHRO received from the State clearinghouse were sent to the project staff for A-95 reviews to be performed in accordance with CCHRO's usual procedures. If additional information is needed, CCHRO sends the applicant its Civil Rights Impact/Implications Questionnaire (See Appendix A), and then considers the following as it reviews the application: the applicant's record of equal opportunity, the project's expected impact on minorities, minority input in the design of the project, and employment opportunities for minorities created by the project. Following its review, CCHRO decides to withhold comments, to submit comments, or to delay State clearinghouse certification of the project until issues can be resolved. Except for agreeing to such delays, the clearinghouse plays an essentially passive role in the process, submitting no comments of its own.

Based on the project staff's reviews of the 11 applications (see Appendix B for the nature and results of these reviews), CCHRO decided that the specific projects involved (predominantly subsidized housing developments) were generally not appropriate for the kind of follow-up monitoring it had envisioned. Moreover, such an approach to targeting made CCHRO's selection depend on chance, in that it would be choosing from the limited sample of projects and communities whose applications happened to have been sent to CCHRO for comment at that particular time.

The second source from which to select targets was the group of 22 third-year CDBG recipients whose applications CCHRO had previously reviewed

and HUD had funded despite the commission's negative recommendations. This source provided a more appropriate universe from which to choose its monitoring targets, especially in light of HUD's recommendation that CCHRO's first monitoring efforts focus on the performance of third-year CDBG recipients. CCHRO considered three methods for choosing among the 22 localities:

Compiling information on each community's civil rights posture. Once collected, the information would be analyzed to determine the community most deficient in addressing minority needs. Difficulties in collecting consistent and complete information from the various communities and the lack of standardized, objective review criteria eliminated use of this method.

Rating community development entitlement communities on seven performance elements. The seven performance standards to be utilized were:

- Reputational Evidence
- Complaint Record
- Fair Housing Program
- Affirmative Action Program
- Responsiveness
- Housing Goals
- Sensitivity to minority needs.

A score for each community was to be derived based on the sum of weights to be assigned to each performance standard. This method was also discarded, due to the imprecision of the scores and the generality of the performance standards.

Evaluating and ranking communities using a "Civil Rights Compliance Report." This was the method ultimately used to select a target community. The "Civil Rights Compliance Report" was the product emerging from efforts to develop a standard tool that could provide precise and qualitatively consistent indicators by which to measure a community's civil rights posture. Reviewers rated the activities of individual communities as satisfactory, fair, or unsatisfactory for each of the following (except for the last three items):

- Fair Housing Posture
 - Affirmative fair housing posture of third-year community development applicant.
 - Second Year Performance Report - Section V.B. Fair Housing (24 CFR 570.900).
 - HUD Hartford Area Report on Fair Housing in Connecticut. Processing of Third Year CDBG Applications (November 1977).
- Affirmative Employment Posture
 - Affirmative employment posture of third-year community development applicant - Section VII.

- Second Year Performance Report - Section V.E., Utilization of Minority Contractors.
- Second Year Performance Report - Section V.G., Recipient Employment.
- Alternative Employment Evaluation - EEO-4.
- Housing Goals -- Goals to meet housing assistance needs stated in the Third Year Housing Assistance Plan
 - Elderly
 - Family
 - Large Family
 - Overall evaluation of housing goals.
- Sensitivity to Minority Needs -- Record of addressing the special needs of minorities in the Third Year CD program/budget.
 - Black/Hispanic
 - Elderly
 - Handicapped
- Compliance with reporting requirements:
 - Second Year Performance Report submitted (yes or no)
 - Affirmative Action Plan on file (yes or no)
- Reputational Evidence: Information concerning character of town/city obtained from community sources (narrative)
- Complaint Record: Listing of complaints newly filed or pending with the commission.

Deviating from its original plan to target one community, CCHRO decided to target a community in each of its four administrative regions. Picking the community in each region with the worst evaluation, CCHRO targeted the following: New Britain (Capitol Region), Norwich (Eastern Region), Fairfield (Southwestern Region), and East Haven (West Central Region).

2. Development

- Execution of the Memorandum of Understanding

To enlist HUD's support in implementing the original strategy based on three-party agreements, CCHRO's director wrote to HUD's Secretary Patricia Harris (November 8, 1977), briefly describing what CCHRO hoped HUD's role would be in developing the agreement and the major components of the strategy. The letter also requested a meeting to discuss HUD's role and the terms of the agreement.

In response, a meeting was held on December 8, 1977, in Washington, D.C., between CCHRO representatives and staff from HUD's Office of the Assistant Secretary for Fair Housing and Equal Opportunity. HUD officials indicated their participation in the strategy could extend only to the execution of a two-party agreement that would not include the local communities. CCHRO reports, "HUD cited statutory authority and precedence for working agreements with agencies such as the commission whose fair housing law had been recognized as 'substantially equivalent' to Title VIII of the 1968 Civil Rights Act." 1/ HUD also asked the commission to redirect its strategy to focus on monitoring the performance of third-year Community Development Block Grant recipients, so that the monitoring results could be used when CCHRO made its A-95 reviews of the upcoming fourth-year applications.

On March 21, 1978, CCHRO submitted a draft of the proposed Memorandum of Understanding (see Appendix C) to HUD for review. HUD did not respond until October 11, 1978, almost seven months after the draft was submitted and more than four months after the demonstration period ended. Despite HUD's previous expressions of interest, the overall thrust of the letter was "Thanks, but no thanks" (see Appendix D). Its rejection appeared to be based on only one potential legal problem (perhaps based on a misreading of the draft) with respect to only one aspect of the proposed relationship between the two agencies. But its silence on the rest of the proposal suggested that there was no possibility of negotiating terms that would be mutually acceptable, nor even any interest in doing so.

- Development of Tools

In addition to the forms CCHRO prepared to help select its target communities and to summarize its A-95 comments on CDBG applications, the commission developed two other documents as monitoring tools. The first was a questionnaire to solicit comments from community groups about third-year CDBG recipients. It asked three questions in each of the following areas: third-year program activities, fair housing posture, employment posture, and housing assistance plan.

The second document was a CDBG civil rights compliance monitoring design. It consisted of the following major categories:

- Community Development Recipient (including name, address, and phone number of the chief executive).
- Activities undertaken to further Title VIII of the Civil Rights Act of 1968, Section 109 of the Housing and Community Development Act of 1974, and the Connecticut Public Accommodations Law.
- Procedures undertaken to achieve full utilization of minorities and women in accordance with 24 CFR 570.601.
- Activities taken to overcome the effects of conditions that have in the past limited the participation of minorities in programs and activities receiving CD monies.

- Goals set to meet housing assistance needs as stated in the Housing Assistance Plan.

Finally, a by-product grew out of the project's survey of CCHRO's previous A-95 reviews and the reviews it conducted in the fall of 1977. The staff suggested several new items for the questionnaire that CCHRO uses to elicit civil rights information from applicant communities as part of its A-95 reviews. All the suggestions dealt with fair housing and the expansion of housing opportunities. (See Appendix A).

- Community Outreach and Enlisting Support

Encouraged by the results of its past work with community organizations (see Chapter II, above), CCHRO included a community support element in its demonstration year activities. Because of the partial overlap among the strategies with respect to community outreach, the following discussion necessarily includes material on all three strategies.

The first step was to identify groups, agencies, and individuals who would be most effective in providing the types of support that CCHRO desired. This task was accomplished at two levels-- (1) in each of the four regions, by one of CCHRO's Community Relations Specialists, and (2) State-wide, by the community participation coordinator. A special contact list was developed for Community Relations Specialists to use in the four regions on each of the four target CDBG communities that had been selected for A-95 monitoring. Another contact list was developed, based on criteria established by the community participation coordinator, to obtain input into CCHRO's overall strategy demonstration program. The coordinator's list was composed of groups, agencies, and individuals that met at least one of the following criteria:

- Have attitudinal values in support of eliminating discrimination in the State.
- Have worked within the State as civil rights advocates.
- Desire open housing within the State.
- Represent classes of individuals subject to housing discrimination.
- Are political leaders who have demonstrated efforts to combat systemic housing discrimination.

The resulting list included the commission's traditional constituent groups--local human relations commissions, private civil rights agencies, housing advocate groups, religious associations, non-profit housing corporations, organizations representing legally protected classes (i.e., blacks, spanish-speaking persons, ethnic organizations, women, and groups representing handicapped persons), community action agencies, and some political leaders. The commission had had previous contact with many of them.

Having identified contacts, the next step was to inform them about CCHRO's new strategy to combat systemic discrimination in housing and, if possible, to organize them to carry out activities pertaining to the project. With the assistance of the community coordinator, CCHRO sponsored a series of four community participation meetings, one in each region, to discuss the concept of systemic housing discrimination and to encourage support of commission efforts to deal with it. Also included was a presentation on the A-95 review process and the ways it can be used to change discriminatory practices. A special effort was then made to reach groups that could not attend these first four meetings. The community organizer continued to meet with such groups as the Coalition for Open Suburbs (Statewide), Greater Hartford Conference of Churches, Puerto Rican Organization Program (Willimantic), La Casa De Puerto Rico (Hartford), NAACP (Statewide), Urban League of Greater Hartford, Permanent Commission on the Status of Women (State agency), and Connecticut Women's Educational and Legal Fund, Inc. (New Haven and Hartford).

To collect information that could be of value in monitoring the target communities, the Community Relations Specialists met with several minority groups and organizations in two of the target communities, New Britain and Norwich, using the "Civil Rights Compliance Questionnaire for Soliciting Comments from Community Groups on Third-Year Community Development Recipients", a form developed by the project staff. For Fairfield and East Haven, which had no resident minority organizations, CCHRO had to solicit comments from minority organizations in neighboring communities.

Efforts to enlist support for the demonstration project as a whole were not limited to community groups, but extended to State agencies, regional planning agencies, to the local governments themselves, and of course, to HUD. The most significant effort, of course, was the very heart of the strategy--to obtain participation by HUD officials in Washington in developing and implementing the Memorandum of Understanding. Despite the lack of response from Washington, CCHRO continued to work with HUD's Hartford Area Office. CCHRO's director wrote a letter (December 12, 1977) to the Area Office director, requesting data and information to facilitate the staff's A-95 review and monitoring functions. A specific request was for funding determinations made by HUD for the three previous entitlement periods for each entitlement community, and the funding conditions that were imposed relative to equal opportunity requirements. The Area Office director provided the requested information.

In seeking the support of the local governments, CCHRO's director sent a notice (dated April 24, 1978) to the chief executive officers of community development entitlement communities, telling them of the agency's intent to review fourth-year CDBG applications and requesting their cooperation in identifying and eliminating violations of civil rights laws. The director requested specific information to facilitate CCHRO's review of applications--a copy of the third-year CDBG Grantee Performance Report, and the most recent copy of each community's Equal Employment Opportunity Local Government Information Report (EEO-4 form). From the 35 communities to whom notices were sent, CCHRO received 20 performance reports and 17 EEO-4 forms. Approximately 13 local governments failed to submit either form of

information.

On that same date, CCHRO's strategy planner notified HUD's Area director of CCHRO's intent to review fourth-year CDBG applications from entitlement communities, and informed him of CCHRO's notification to the entitlement communities and the information requested from them.

3. Action

- Implement the Memorandum of Understanding (Monitoring)

Since no memorandum with HUD was signed, and since "having an agreement to support monitoring activities was the whole point of the strategy," CCHRO decided not to monitor any of the four target communities. Monitoring would not have been productive, it felt, without the authority that the agreement with HUD would have given it.

To gain additional information about one of the target communities in preparation for monitoring, the strategy planner did perform an A-95 review of an application from Fairfield to the U.S. Department of the Interior for money to construct a public golf course and restore an adjacent salt marsh. To the extent that this review can be characterized as monitoring, it and the solicitation of comments from community groups in or near the target communities (described in Community Outreach and Enlisting Support, above) were the only monitoring activities performed during the project.

4. Future of the Strategy

Unless the commission pursues a Memorandum of Understanding with HUD or another Federal agency, there appears to be little future for the strategy as originally conceived. Still uncertain about the status of the draft Memorandum at the end of the project, CCHRO had not pursued additional funding for the A-95 strategy, and could not identify specific project activities that would be continued. However, the commission did decide that such project activities would become an ongoing responsibility of the Special Projects Division, whose staff would include the A-95 strategist and the project's clerical personnel. The commission plans to continue its relationship with community groups and hopes to work with them on A-95 reviews. A number of post-project meetings have been held with community groups to share data and information about the three strategies.

D. ZONING STRATEGY

As implemented, CCHRO's zoning strategy had two components--Research and Development. For reasons explained below, the Action component of the original strategy was delayed.

1. Research

Most of the research component of the zoning strategy was completed according to plan by CCHRO's subcontractor, Suburban Action Institute (SAI). It included a literature and legal review, a zoning and demographic study,

and the development of legal criteria for judging exclusionary zoning regulations as possible violations of State antidiscrimination laws.

- Literature and Legal Review

The purpose of this survey of zoning and related materials was to establish the context in which to analyze the zoning regulations of Connecticut jurisdictions. The survey also contributed to the development of the "Handbook on Affirmative Zoning Ordinances" discussed under Development below. Drawing on its previous experience in the field, SAI examined "the general literature on zoning, the emerging case law on exclusionary zoning, and an analysis of Connecticut's zoning enabling acts, and cases arising under it." 2/

- Zoning and Demographic Study

This aspect of the research, also performed by Suburban Action Institute, was reported in A Study of Zoning in Connecticut, which the commission released to the public in May 1978. SAI conducted what it called "a general study" 3/ of zoning in Connecticut to determine the extent to which jurisdictions in the State have exclusionary zoning regulations, and the extent to which the demographic characteristics of these jurisdictions reflect such exclusion.

Thus, SAI looked at two sets of related data, both Statewide, for each of Connecticut's 169 cities and towns, and then brought the two together in drawing its conclusions. As explained in more detail below, the zoning data set included zoning ordinances and related administrative practices, and the demographic data set included housing, employment and socio-economic information. Only objective data (such as published legal materials and census statistics) were considered; SAI did not interview "either proponents or opponents or neutral observers" to collect personal experiences, viewpoints or understandings. 4/

Within the zoning data set, SAI examined the three aspects of a zoning ordinance that it identified as important to the question of exclusion: 5/

- requirements governing the types of permitted residential units, and standards controlling their characteristics;
- the administrative processes and requirements for approving various types of residential development; and
- mapping patterns that identify how much of various types of residential development can take place at which locations.

Of these, SAI selected as the "most important" regulations those that determine: 6/

- the types of housing that are permitted to be built within the community (e.g., single-family detached, duplexes, townhouses, garden apartments, high rise apartments, mobile homes, etc.).

- which of the various types of housing in each district can be built as of right or only by special exception, site plan review, or other procedure.
- the size of each dwelling in each district ("in particular, minimum floor area requirements").
- other aspects of residential development, such as number of bedrooms permitted, design requirements, and improvements the developer may be required to provide.

In addition, SAI also determined the amount of vacant land in each community and how much of it was available for residential development.

The second set of data that SAI examined was demographic--housing, employment and socio-economic information about localities, regions and the entire State. This analysis covered five areas, the first of which was population characteristics. SAI described the total population and its distribution (including that of households with incomes below poverty level) throughout the State, increases and decreases in specific regions, and various characteristics of blacks, Hispanics and female heads of households.

SAI looked also at income categories within each community and changes over the last decade in local income distributions compared to those in the State as a whole, used quintile analysis to compare local and Statewide income distribution, and compared household income of whites and non-whites.

In its third area of analysis, SAI looked at employment patterns, including local job growth and decline, and job distribution throughout the State.

Housing characteristics of each community were the fourth area analyzed. This included the various housing types available in each community, whether housing conditions are substandard, whether housing is rented or owner-occupied (as tends to be characteristic of certain population groups), and the number of Federally and State assisted housing units.

The fifth area of analysis was the cost of housing. SAI determined the accessibility of housing to various income groups by relating selling prices (as an indicator of housing costs) to income.

Finally, SAI determined a variety of relationships and comparisons across the five areas of analysis, as well as between a particular community and either the State as a whole or the region in which it is located. This enabled it to show, for example, how minority group distribution relates to low income distributions or to substandard housing; how job trends are related to housing availability or construction.

Combining the zoning and demographic sets of data, SAI was able to show, for each community, where different groups of people live (income, minority, etc.), where they are able to live (as determined by household

income, housing costs, and housing availability), and the extent to which the exclusion suggested by various zoning regulations was reflected in the living patterns of various income and minority groups and female heads of household. In addition, based on the content of their zoning regulations, the 169 Connecticut communities were classified into three groups--those having the most severe zoning restrictions (69 communities), those with the least severe restrictions (27, including nine with no zoning at all), and those whose zoning fell between the extremes (73). Various demographic data were analyzed and compared for each group.

While there is a wealth of supporting analyses and findings contained in SAI's report, the following overall conclusions 7 are pertinent for this case study:

- "[M]any towns in Connecticut practice forms of zoning that have had the probable effect of excluding large portions of the State's population from residence within the boundaries of those towns. Further, the data on social characteristics indicate strongly that whether or not the communities intended to exclude minorities or low- and moderate-income households, those groups do not live in great numbers in those communities."
- "It may be the case that by combining restrictive zoning practices and inaction regarding publicly assisted housing and programs for multifamily housing, these towns have established a situation in which lower priced housing is generally not available to lower income residents of the State. As a result, the legally protected classes in Connecticut are denied opportunity to become residents of these communities."
- "[T]he State of Connecticut, by its zoning enabling legislation, has made possible the practices which, together with other public and private discriminatory acts, increase the degree of separation between higher and lower income groups and between whites and members of racial or ethnic minorities."
- "By failing to counter the aggregate tendency of local zoning to exclude multifamily housing, small houses or small lots and mobile homes, the State quietly tolerates forces making the achievement of equal opportunity for protected classes of the Connecticut population increasingly difficult to achieve."

Despite the detail and thoroughness of its analysis, however, SAI did not provide the basis for the commission to file a complaint charging that any particular community's zoning was so exclusionary as to violate Connecticut's antidiscrimination laws. As SAI points out in the introduction to the report of its study:

- "The consultant's work aims to enable the commission and other interested parties to identify patterns of zoning and related demographic conditions that strongly suggest zoning may play a

significant role in contributing to the small numbers of members of legally protected classes residing in those communities. A more detailed examination of a specific community would be required in order to conclude with reasonable certainty that zoning does in fact have this effect and that the effect of zoning has been accomplished in a way that contravenes State laws against discrimination." 8/

And a few pages later, under the subheading "Study Limitations," SAI said the following:

"This study presents information to the commission and to other interested parties to employ as a basis for deciding whether or not to make more detailed analysis. While general correlations are possible, any fair determination about whether the zoning practiced is exclusionary would require more detailed analysis." 9/

SAI then went on to identify some of the additional research and analysis that are still needed:

". . . examination of the administration of the zoning ordinance, and of related land use practices in addition to the zoning ordinance itself. Some of these regulations, known to increase the cost of land and housing, are practices of Inland Wetlands Commissions and Conservation Commissions. Their actions may exacerbate the impact of towns' restrictive zoning, or in combination with local zoning, may create exclusionary policies not in the zoning ordinances themselves.

". . . subdivision regulations, building codes, and provision or withholding of water and sewer lines.

". . . the impact of how a town has protected its environmentally sensitive areas. What needs to be known is whether the environmental objectives have been met through relatively [exclusionary] zoning practices, for example, such as large acreage requirements.

". . . the use of discretionary administrative powers in zoning and related land use fields. The object would be to determine if towns have mandated expensive housing as a price for local approval. Interviews with public officials, residents and other parties would also augment the above information. The commission and other interested parties could then determine more fully whether local policies and practices exclude low and moderate income families." 10/

● Development of Legal Criteria

Finally, as one of its last research products, SAI also provided CCHRO with a legal analysis that isolated "particular and key factors which the courts have focused upon in determining that communities have engaged in illegal exclusionary zoning policies." 11/ CCHRO plans to use this as the legal criteria for determining whether particular instances of exclusionary

zoning constitute violations of antidiscrimination laws.

2. Development

In addition to releasing SAI's report, A Study of Zoning in Connecticut, and the citizen involvement effort described below, CCHRO plans to educate the public about zoning using another document prepared by SAI. 12/ CCHRO entitled it the Handbook on Affirmative Zoning Remedies, and claims it represents "the most exhaustive study of the field made so far." 13/ The Handbook, well documented with 135 footnotes, includes recommendations for changes in the State's zoning enabling legislation and in local zoning practices in order to effect what SAI calls "inclusionary zoning."

Once a final version of the Handbook is submitted to HUD and approved for publication, CCHRO plans to circulate it publicly. The commission has identified three groups of potential users for whom the Handbook can serve as a guide: investigators and others developing remedies for exclusionary zoning; civil rights groups and human rights commissions promoting voluntary change; and local governments interested in changing their zoning regulations. CCHRO says it might hold community meetings to discuss the Handbook and, resources permitting, would like to distribute a copy to each local planning and zoning commission and each regional planning agency in the State.

In developing support for the zoning strategy, the commission felt it was necessary to expand its support base beyond the traditional contacts it had established. The traditional groups and individuals understood the validity of zoning as a problem, but did not indicate particular interest in this strategy because they did not feel it was relevant to their immediate struggle to overcome poverty and discrimination. Additional groups to support the zoning strategy were selected as interest was generated. From the recommendations of a few supportive individuals in the real estate and housing industry, the list of supporters grew to a network of potential supporters all over the State. In addition to meeting new community groups and agencies representing their interests, CCHRO met with the new support groups to point out common interests in increasing housing opportunities for low- and moderate-income persons and legally protected classes. Groups that CCHRO met with included:

- members of the Governor's Central Housing Committee
- League of Women Voters
- Connecticut Association of Realtors
- Connecticut Association of Homebuilders
- Regional builder and realtor groups
- Construction Institute (representing construction trade, architects, etc.)

The Governor's Central Housing Committee has emerged as a key support group in taking a special interest in CCHRO's zoning strategy. This committee is composed of chairpersons from each of the fifteen Regional Housing Councils that represent planning regions throughout the State. Created by the Governor in 1975 to improve housing conditions and availability, the committee has recently developed several proposals for expanding housing opportunities.

Several other individuals, agencies and groups cooperated with CCHRO on its zoning strategy. The additional cast and CCHRO's interaction with them are described below:

-- Local planning and zoning officials - in response to 173 survey requests for relevant data and information submitted by CCHRO to local planning and zoning officials, it received 113 replies.

-- Regional Planning Agencies -

CCHRO and the Suburban Action Institute made two presentations (in November and February) to the directors of the planning agencies at their monthly meetings. The cooperation CCHRO received as a result of the directors' interests in the strategy included submission of data and information requested by CCHRO and also of other data not furnished by localities. The directors also hosted meetings of the commission and Regional Housing Council members.

-- State Office of Policy and Management -

CCHRO's meetings and contacts with the regional planning agency directors were coordinated by the Office of Policy and Management.

-- State Department of Community Affairs, Bureau of Housing -

CCHRO had a productive working relationship with the housing planner provided by the Department of Community Affairs to assist the Governor's Central Housing Committee. The housing planner referred CCHRO to members of the Central Housing Committee and explained the committee's legislative proposals for the 1978 session of the General Assembly. He also advised CCHRO of the committee's Housing Conference in April and arranged for the director of the Suburban Action Institute to speak before the committee at its May meeting.

-- State Tax Department -

The Tax Department permitted Suburban Action Institute staff to view and extract relevant portions of municipal data concerning housing costs and transactions.

-- State Department of Transportation -

The Department of Transportation provided CCHRO with materials on income distribution extracted from 1960 Census data.

-- U.S. Department of HUD - Hartford Area Office -

HUD's cooperation with CCHRO during the demonstration year included referring CCHRO to developers who had demonstrated interest in constructing multifamily housing over the last few years.

-- Legal Advisory Group -

CCHRO formed a legal advisory group composed of attorneys with concern and expertise in the area of exclusionary zoning. CCHRO met with the group to discuss legal ramifications of a commission-initiated zoning complaint. Follow-up meetings were planned.

3. Action

As indicated earlier, the action component of the zoning strategy was delayed because the research component did not, as originally anticipated, provide a specific enough basis for the commission to charge a particular community with discrimination. (The additional research that SAI suggested was needed is reported under 1. Research, above.)

In addition, CCHRO's director has expressed reservations about pursuing such a charge. 14/ Without substantial public support for reforming exclusionary zoning, he felt that a complaint and any subsequent litigation would not be particularly productive in terms of the ultimate goal of expanding housing opportunities in exclusionary communities. He likened the problem of opening the suburbs to that of ending school segregation, which in areas of public opposition remains without a satisfactory solution 25 often frustrating years after the Supreme Court's original Brown decision. Indeed, expanded housing opportunities may be even harder to achieve in some communities, because the fight for more low cost housing is likely to be more decentralized and episodic. There are so many more roadblocks available to opponents, and so many more agencies that may be involved. Court-ordered remedies in desegregation suits apply to all schools in a district, but housing suits may well have to be fought anew each time a different development is proposed, either because the facts in each case are unique, or because a different agency or roadblock is involved.

Therefore, the director talked of first developing public support for CCHRO's efforts against exclusionary zoning--through some of the methods discussed in the preceding section--in the hope that the legal battles will then be either much easier or even unnecessary. It remains to be seen, however, whether such a level of support can be achieved. Moreover, the commission has instructed the director to continue the zoning research in order to supply the needed factual base for taking enforcement action (see 4. Future of the Strategy, below).

4. Future of the Strategy

In June 1978, immediately following the end of the project, the commission held eight citizen forums throughout the State to discuss its zoning and housing discrimination reports, which had received considerable media attention.

With respect to enforcement, on May 15, 1978, CCHRO "instructed" its director to undertake the additional analysis necessary to support a "reason to believe" determination leading to a complaint that a community's zoning is discriminatory in violation of State law. 15/ In January 1979, the director reported that he had "not formulated a specific strategy for implementing the commission's recommendation," but that the additional work could include further analysis of the localities SAI found to have the "most severe" zoning restrictions, an examination of the content and effects of subdivision regulations, special district zoning and inland wetland regulations, or a study of "motivating factors behind particular zoning uses." 16/ On the basis of such further analysis, CCHRO could eventually file a complaint. Limiting this effort, however, is the fact that "available resources will not permit the commission to do very much." 17/

E. HOUSING MARKETING STRATEGY

As indicated in Chapter IV, Description of the Strategies, the research component of this strategy had a wide focus, encompassing not just discrimination in marketing, but also in location and future development; not just those who market housing, but also all of those CCHRO identified as the "constituent members of the housing industry": builders/developers, real estate brokers, investors/sponsors and property managers. 18/ For the action component, however, having to focus its efforts more narrowly, CCHRO picked as a target one company that manages housing, charging it with discrimination against blacks and Hispanics in marketing, advertising, and rental practices.

The scope of this strategy, therefore, might more accurately be reflected if it had two titles, one for each component. Its research component could accurately be described by the title of the report that it produced--The Status of Equal Housing Opportunity. The action component, however, does focus, as the strategy title suggests, on discrimination in the marketing of housing--more specifically, multifamily housing.

1. Research

The research component of this strategy looked at several major elements of equal housing opportunity in Connecticut. It drew on a wide variety of data in three categories:

- Data about housing conditions, household income, and minority (black and Hispanic) housing needs, housing costs, and the housing industry. Many of the data came from census reports. Other sources included the Tri-State Regional Planning Commission, the State Department of Community Affairs, and regional planning agencies (for housing needs assessments and planning efforts); the Connecticut Home Builders Association, the Connecticut Association

of Realtors, and the State Real Estate Commission (for industry membership and licensed agents); and the State Tax Department (for 1977 tax assessment files showing raw housing cost data).

- Federal, State and local government records. These produced such information as lists of endorsed housing sponsors and units and occupant characteristics, housing assistance plans of Community Development Block Grant recipients, housing discrimination complaints filed with CCHRO, and logs of applications for Federal housing subsidies and loans subject to A-95 review.
- A CCHRO survey of 99 firms and individuals in the housing industry, asking 14 questions about the "five principle areas of impact": marketing and advertising practices, existence of Federally required affirmative fair marketing plans, records of household characteristics, housing site location, and future development plans.

CCHRO's research began with an analysis of the 964 housing discrimination complaints it had received over the six and one-half years from July 1971 through December 1977. More than three-fourths of these alleged discrimination in rentals. ^{19/} Rather than identifying a few respondents with major responsibility for limiting minority housing opportunities, the analysis showed that many types of respondents had contributed. CCHRO, therefore, decided that a survey of a select sampling of the housing industry was needed "to produce an adequate picture of pattern and practice discrimination," ^{20/} as well as to help select a target for enforcement action.

The survey sought to probe the marketing and developing behavior of the housing industry in Connecticut. The cost of developing and circulating the survey questionnaire, though part of the strategy, was paid entirely out of agency funds.

The names of the 99 individuals and firms surveyed were drawn from a 1976 HUD inventory of endorsed projects in Connecticut, CCHRO respondent records (covering November 1973 - November 1977), and CCHRO's log of Federal grant applicants subject to A-95 review. All but 10 were located within the State. Of the 99, 37 responded in some fashion--27 providing a complete or partial response, and 10 saying the questions were not appropriate to their business operations. ^{21/}

In addition to the survey and the analysis of past discrimination complaints, other research covered the extent of Federally assisted housing development; an analysis of Federal affirmative fair marketing requirements; Federal fair housing laws and regulations; demographic data, primarily from the 1970 census, but also from regional planning agencies, agencies of State government, and national studies from such sources as the U.S. Commission on Civil Rights and the Potomac Institute; and the views of civil rights and community groups and minority community leaders. ^{22/}

Among its other conclusions, CCHRO called Federal fair housing efforts

"lackluster and inadequate at best." 23/ Special mention was made of the fact that the Farmers Home Administration failed to promulgate affirmative fair marketing regulations until nearly 10 years after Congress enacted the Federal Fair Housing Act in 1968, and of the contribution this failure made to maintaining a dual housing market. 24/ HUD also was criticized. CCHRO's research showed substantial racial segregation in HUD-assisted housing, and a failure by the sponsors of that housing to develop and implement fair marketing plans, or even to maintain records and report occupancy patterns, as required. 25/ CCHRO foresaw little improvement in this regard unless HUD assigned this effort more than just two specialists spending only part of their time on fair housing for the entire state. 26/ CCHRO also cited its own need for greater resources. 27/

While the elements of the commission's research were wide-ranging, the core was in its examination of what it felt were the five principal areas of impact of the housing industry's patterns and practices and their consequential effects on minority housing opportunities. Below are the five areas, followed by CCHRO's statement of its overall finding with regard to each:

Marketing and Advertising Practices. "The commission finds that the marketing and advertising practices of the respondent housing firms: may result in primary and/or exclusive solicitation of purchasers and prospective tenants that are non-minority; are not directed at Minority and other protected group purchasers and prospective tenants; and do not further fair housing opportunities for Minorities and other legally protected groups."

Affirmative Fair Housing Marketing Plans. "The commission finds: that the affirmative fair housing marketing obligations of respondent housing firms are not seriously and consistently being carried out by those participating in FHA housing programs; that the obligation is not being passed on to parties which are contractually engaged for marketing purposes; and that these noted failures effectively deter fair housing opportunities for minority and other legally protected groups."

Record-Keeping and Occupant Characteristics. "The commission finds: that records of occupant characteristics are not uniformly maintained by sponsors of Federally assisted housing; that certain sponsors do not maintain required records; and that sixteen subsidized housing projects operated by six HUD endorsed respondent firms are racially segregated."

Housing Site Locations. "The commission finds that respondent housing firms: are developing/operating new housing (since 1974) in predominantly suburban and rural locations with Minority population ranging from 0.9 percent to 4.6 percent; are developing/operating privately funded new housing in predominantly suburban and rural locations with Minority population ranging from 1.3 percent to 4.6 percent; are developing/operating new publicly assisted housing in predominantly urban locations with Minority population ranging from 9.5 percent to 33.7 percent; and thus are not promoting

fair housing opportunities for Minority persons."

Future Development Plans. "The commission finds that proposed housing development as reported by respondent firms: will not significantly increase the number of housing units in the market; will not significantly expand housing choices for Minority and low-income housing seekers; and will not serve to spatially deconcentrate fair housing opportunities for Minorities, lowincome households, and other legally protected groups." 28/

The main body of the commission's report on its research ended with 22 "principal findings" and 36 recommendations, each linked to one or more of the findings, and each identifying who or which agencies should have the lead responsibility for implementation. CCHRO's summary of its general and specific findings is contained in Appendix E.

2. Action

Based on its research, CCHRO selected and filed a commission charge against a company that manages five apartment complexes in Waterbury, Connecticut. Consistent with its findings that HUD had not been enforcing fair housing requirements (see 1. Research, above), CCHRO chose as its respondent a company that was receiving substantial interest reduction subsidies from HUD and had a substantial number of units in the rent supplement program--yet allegedly had made no affirmative marketing efforts and had a disproportionately low minority occupancy rate.

With the help of CCHRO's counsel, a member of the project staff developed the complaint. The charges against the company were several--that the respondent violated fair housing laws; that, unlike companies in the same area offering similarly priced and sized units, the respondent made no "efforts to ensure that Blacks and Hispanics are afforded equal housing opportunities"; that "the respondent has denied Waterbury's substantial Black and Hispanic population" "a fair share of its housing accommodations" by not advertising and marketing its units in a manner to "ensure that Blacks and Puerto Ricans" obtain equal information and are offered equal housing accommodations, and by not "equally applying non-discriminatory standards" in its tenant selection process. 29/ The complaint also charged that respondent's discriminatory rental practices had "caused the present tenants to be denied their rights of association with all people." 30/

Since the charge was filed toward the end of the project, the investigation had to be completed after the demonstration period ended. A member of the project staff began the investigation, assisted by a field representative and the supervisor of CCHRO's Compliance and Technical Analysis Unit.

The primary investigatory tool was the CCHRO-developed "housing interrogatory," "which CCHRO hopes also to use in future pattern and practice housing cases." Among other things, the interrogatory asked the respondent for occupancy data with a minority breakout (white, black, Spanish-surnamed, and other); and for information about its marketing and tenant selection

rules and practices, the extent of any State or Federal financing or subsidies it receives, and its affirmative fair marketing plans, if any. 31/

Though this complaint was still pending at the end of the project, CCHRO had also prepared a draft conciliation agreement to be used if needed. The agreement was developed specifically to address "pattern and practice" housing discrimination. It provided, among other things, that the respondent would not commit certain named prohibited acts, and would develop and implement a CCHRO-approved affirmative marketing plan, notify its employees and agents and all applicants of its non-discrimination policies and procedures, follow uniform selection standards and procedures, designate an equal housing opportunity officer for the company, follow specified record-keeping and reporting requirements, and submit to monitoring. 32/

3. Future of the Strategy

Following the demonstration period, CCHRO planned to finish investigating the "pattern and practice" complaint it had filed against the company managing five apartment complexes in Waterbury. It would then pursue the complaint to resolution, preferably conciliation using the draft agreement discussed above. (As of mid-June 1979, the investigation was still in progress. 32a/)

In September 1978, the Commission adopted all 36 recommendations growing out of the research component of this strategy, and instructed the director to start to implement them. The director reported in January 1979 that CCHRO has begun implementing the ones for which it has the lead responsibility, and is facilitating the implementation of the others. 33/

F. COSTS

Because the project's delayed start left only eight months for the demonstration, CCHRO submitted a budget of \$90,883, rather than the full \$120,000 available to it. It estimates that the entire project cost a total of \$113,016, including a proportional allocation of labor costs for time spent on the demonstration by agency employees who were not on the project staff and not included in the original budget. The costs for each strategy are shown below.

STRATEGY COSTS

<u>Cost Item</u>	<u>A-95</u>	<u>Zoning</u>	<u>Housing Marketing</u>
Salaries and Benefits-Project Staff	\$12,547	\$ 6,342	\$18,417
-Other Agency staff	9,315	5,937	12,687
Consultant Fees and Other Non-Staff			
Labor Costs	5,333	30,333	5,333
Travel	240	267	136
Production of Materials	9	2,132	1,867
Supplies	-0-	265	265
Other (Equipment Rental)	531	530	530
	<hr/>	<hr/>	<hr/>
Total	\$27,975	\$45,806	\$39,235

Source: CCHRO, Final Report, Tables J.1 and J.2.

VI. OUTCOMES

For the most part, the outcomes reported in this section are the contractor's findings as to changes resulting from what the agency did in the course of its demonstration. All outcomes were grouped into two categories, agency capacity and equal housing opportunity:

Agency Capacity. The agency's own capability to identify and challenge systemic housing discrimination, as measured by such pre-post project changes as increased staffing, new research or investigative or analytic expertise, better use of community groups, new training techniques, and strengthened negotiating tactics. Improvements in handling individual complaints, while not generally a concern of this project, may also be a relevant measure of increased capacity if they include, for example, new procedures for identifying individual complaints that should be treated as charges of systemic discrimination.

Equal Housing Opportunity. The impact of the strategy on systemic discrimination, as measured by pre-post project changes in specific discriminatory policies and practices or in increased housing opportunities for minorities or other protected class persons. The equal opportunity outcomes have themselves been divided into two subcategories -- potential opportunity and actual opportunity. Potential equal housing opportunity outcomes are real-world changes that hold the promise of leading to increases in actual housing opportunities for minorities. Actual equal housing opportunity outcomes are either measurable increases in housing actually obtained by minority groups or actual changes in behavior (such as affirmative actions known to have been taken or the absence of discriminatory treatment previously known to exist).

Potential opportunity outcomes are one step removed from actual opportunity outcomes in the same way that changes in the rules of a game are one step removed from the actual moves the players make. In fact, the distinction between potential and actual opportunities is essentially the difference between rules and behavior. Promises made in a binding conciliation agreement, for example, are only a potential opportunity outcome; they change the rules that govern the respondent's behavior but not necessarily his behavior itself (which, if also changed, would represent an actual opportunity outcome).

Capacity and opportunity outcomes, it should be noted, are not mutually exclusive. By definition, an agency cannot produce an equal housing opportunity outcome if it does not have the capacity to do so. Each equal opportunity outcome, therefore, is indicative of a capacity outcome as well.

When considering the outcomes reported below, it should be kept in mind that because of its delayed start, the CCHRO demonstration covered only eight months, rather than the full year originally anticipated.

A. A-95 STRATEGY

1. Equal Housing Opportunity Outcomes

Because no monitoring was performed (in the absence of a signed memorandum of understanding with HUD), the project did not reach the stage where any equal housing opportunity outcomes could be expected.

2. Agency Capacity Outcomes

The principal increased agency capacity resulting from this strategy grew out of the work done in preparation for monitoring. CCHRO now has a Community Development Civil Rights Compliance Monitoring Design, a Civil Rights Questionnaire for Soliciting Comments From Community Groups on Third-Year Community Development Recipients, Civil Rights Compliance Reports for evaluating applicants for federal funds (also used to select target communities for monitoring), and lists of groups, agencies, and individuals to contact, both Statewide and in each region, for support and assistance in monitoring. In addition, adoption of the proposed questions to be added to the Civil Rights Impact/Implications Questionnaire (or others to the same effect) will build housing considerations into CCHRO's A-95 reviews.

B. ZONING STRATEGY

1. Equal Housing Opportunity Outcomes

Because more research is needed before a target can be selected for a commissioner charge (if such a charge is, in fact, to be filed), there were no equal housing opportunity outcomes reported.

2. Agency Capacity Outcomes

Although SAI's research did not become focused enough for targeting specific communities, it narrowed the field of likely targets (those with the "most severe" restrictions) and provided CCHRO with a substantial theoretical and factual base for further efforts. That base included the various legal analyses of zoning cases generally and Connecticut laws and decisions specifically; the extensive data collected, analyzed, and presented in A Study of Zoning in Connecticut; and the material in the Handbook on Affirmative Zoning Remedies. With this base, CCHRO has a more specific understanding of exclusionary zoning and what can be done about it. It also has (and has begun to use) the materials with which to generate a better understanding of the problem and stimulate concern about it on the part of public officials, private organizations, and the general public. Because of the additional research still to be done, however, CCHRO has yet to develop the full capacity needed to combat the discrimination inherent in exclusionary zoning.

C. HOUSING MARKETING STRATEGY

1. Equal Housing Opportunity Outcomes

Because the commission's "pattern and practice" complaint was still pending at the end of the project, the strategy had not yet had an impact on reducing discrimination or expanding housing opportunities.

2. Agency Capacity Outcomes

CCHRO's capacity to deal with systemic discrimination in the marketing of multifamily housing has been increased by this project in several respects. While the commission had filed and investigated systemic employment complaints before, the project improved CCHRO's enforcement capability because it was the commission's first systemic effort in housing. In addition, the project's extensive research has given CCHRO not only a fuller, more sophisticated and detailed picture of the problem than it previously had, but also some of the information and data analyses that will provide part of the investigatory and evidentiary base needed for any future enforcement actions it may take. Prior to the project, CCHRO had no such source of information. Nor did it have the administrative capability to develop and pursue "pattern and practice" housing complaints.

In addition, the commission now has the housing interrogatory to help it investigate such a complaint and the draft conciliation agreement for their resolution. CCHRO says, "Certainly the major accomplishment of [this strategy] is the demonstration of a housing interrogatory as a viable investigatory technique in a systemic housing discrimination case." 1/

VII. OBSERVATIONS

Numerous factors affect the implementation and results of any demonstration project, some positively, others negatively. Some of these factors are within the control of the agency, others are not; some can be encouraged or avoided, others can only be accepted or accommodated. Below are some of the factors that affected the Connecticut agency's demonstration, with a short discussion of the role of each. Any other group or agency trying the same or similar strategies will face at least some of these same factors, and may find Connecticut's experiences instructive.

1. Strategy Design

The design of a strategy can affect both implementation and its effectiveness. Before choosing a strategy that depends on action or support from others outside the agency itself, an agency should be reasonably certain that it will be forthcoming--and should have alternative plans in case it is not.

Serious flaws in design affected all three of CCHRO's strategies. Almost total dependence on HUD was built into the A-95 strategy's very design, and it eventually collapsed when HUD did not cooperate.

The zoning strategy failed to anticipate the two reasons later cited to explain why complaints and enforcement might not be particularly fruitful--the conservative judicial climate within the State and the undercutting impact that hostile citizen opinion can have on a litigation strategy. Had the strategy been more carefully thought out, these problems would either have been taken into consideration and the strategies changed initially, or at the very least alternative actions would have been available.

Identifying what is needed to implement a strategy--and how to get it--is a crucial step in project design. The fact that the research performed provided no basis upon which action could be taken at the end of the strategy should have either been anticipated or detected earlier and changes made in the initial scope of the research. A Statewide study of zoning was much more than was necessary for attacking discriminatory land use practices in particular localities. A smaller universe of potential targets could have been selected and the initial research accomplished much more quickly. The failure to produce sound evidence for filing a complaint as originally anticipated was thus built into the strategy design.

The need to switch research techniques in the housing marketing strategy should also have been anticipated in design. It should have not taken a study of six years of housing complaints to determine that developers are not the only actors in the housing industry causing discrimination. Yet this "finding" was one of the two bases cited for having to expand the initial research from a study of a few housing developers to a Statewide survey of 99 participants in the housing industry.

2. Agency Authority

An agency's legal authority can affect both the choice and design of its strategy. CCHRO's powers affected only one of the three strategies. The agency's view that it lacked authority to look at communities and their performances of commitments made under A-95 reviews was the reason it insisted that it get HUD's signature on its memorandum of agreement before it did any monitoring. Even when it became clear that HUD was not going to sign an agreement the agency felt that monitoring on its own would have been futile.

3. Agency Support for the Demonstration

The commission reported it spent approximately \$20,000 more than its overall budget of HUD funds. Since that budget was almost \$30,000 below those of the other agencies, \$20,000 represented a proportionately large contribution of in-kind services and materials.

4. Research and Action

All three strategies were affected by an imbalance of research and development as compared with action. The A-95 strategy never even completed the development stage, let alone entered the action stage, because HUD did not respond to the proposed memorandum of understanding which the agency felt had to be signed before it could take any action. While the housing marketing strategy did begin its action stage, it would have been further along had the agency not felt it necessary to prolong the research phase by surveying 99 respondents rather than focusing on only a few developers. As it turned out, the zoning strategy was all research and no action at all.

5. Prior Experience and Knowledge of the "Territory"

Agency experience was not a terribly significant factor. Obviously, had the agency had no A-95 experience, its A-95 strategy would have been completely different, but that experience did not contribute to either strategy design or, particularly, implementation. Given more experience with zoning, the agency might not have fallen into the research pitfall that it did, and it might have been able to produce a basis for taking enforcement action by the end of the strategy.

6. Leadership and Management

Leadership and management can be crucial factors in the effectiveness of a strategy. Agency leadership of CCHRO's project can be faulted in several respects. The entire project was affected by the agency's failure to meet the early deadline for submitting its proposed work plan and strategy descriptions to ALNA. Had this been done earlier, the question that prolonged the contractual negotiations would have arisen earlier and could have been resolved sooner, which would have allowed the agency to begin its project at, or closer to, the starting date for all the other projects. As it was, these negotiations did not even begin until after virtually all the other projects had started their operations. Leadership was also a problem with respect to A-95, in that nothing was done to change the strategy even though HUD's silence made it clear that the strategy

simply would not work. Leadership was similarly a problem with respect to the zoning strategy, because no effort was made to shorten the research, even though it should have been clear at an early point that the Statewide survey would not produce the evidence needed for a specific complaint or other action. Had the agency reacted in time, its initial research could have been given a narrower focus and perhaps targets could have been chosen and action begun within the demonstration period.

7. Staff Skills

Lack of staff and agency experience in the zoning area led to the heavy dependence on outside consultants. On the positive side, the research report produced in the housing marketing strategy often reflects sophisticated understandings of the problems being examined, understandings for which staff experience deserves credit.

8. Political Environment

There is a certain amount of speculation in discussing the political constraints on the project. It is a fact, however, that during the project the agency was at times under serious attack in the State legislature. Thus it is possible that anticipated political problems played a role in the agency's view that HUD's imprimatur was necessary in order for it to conduct any A-95 monitoring. Political restraints, as well as the conservative judicial climate in the State, may also have been involved in the director's resistance to pursuing zoning litigation. Clearly, even if such restraints were not a problem in either of these two strategies in Connecticut, any State in which the climate was hostile or potentially hostile to civil rights enforcement would present political constraints that might very well have the effect that is here being put forth only speculatively.

9. Linkages Outside the Agency

Although it was not a major consideration, it is worth mentioning that the CCHRO found that the groups it traditionally worked with, especially urban minority groups, were not particularly interested in the zoning strategy. Their concerns were other forms of discrimination closer to home. Thus, it became necessary for the commission to look elsewhere for community support. This problem is probably common to most localities where zoning strategy might be tried.

An agency's ability to generate community support for its efforts can sometimes be valuable. The lack of community support or the anticipated lack of such support for the zoning strategy was cited by the director as one reason for not pursuing zoning litigation. This was not a significant factor, although potentially very significant, only because the strategy did not reach this point due to the lack of the kind of evidentiary base on which a complaint could be filed.

It is somewhat premature to talk about local government support since in both strategies involving local government--zoning and in A-95--the action stage was never reached. But local government support would obvious-

ly be a key factor if the strategies were pursued with more results than they have been so far.

Other State agencies were not particularly involved in supporting the commission's strategies although several did cooperate in providing data to the commission for its various analyses.

10. Use of the Media

The use of the media can be a proper and effective element in an agency's strategy. Media support or hostility did not come into play until the very end of the demonstrations, when the commission held a press conference for both its research reports. The media obviously will be an important factor if the commission pursues its efforts to engender community and citizen support for what it proposes to do.

11. Other Factors Affecting Implementation

Factors of State law and State policy necessitated the prolonged negotiations over the subcontract between the agency and ALNA. This in turn delayed the project several months and cut short the demonstration period. While the delay would not have been as great had the issue arisen earlier, coming when it did cost the agency three to four months of demonstration time.

Legal assistance was a factor only in the agency's inability to get a draft memorandum of understanding for HUD to sign drafted before March. Had the agency counsel had more time for this project the draft could have been prepared earlier. They cited other demands on counsel's time as the reason that the memorandum of understanding was drafted so late in the project.

12. HUD's Role

HUD can play a key role--for better or worse--in response to particular strategies. HUD was obviously influential in the A-95 strategy, albeit negatively. Its refusal to participate essentially killed the commission's approach to the whole problem. HUD was not a significant factor in any of the other strategies, except in the sense that some of its policies and previous actions, which the commission criticized in its survey of housing discrimination, contributed to the problem at which the strategies were directed. This did not bear, however, on the implementation of the strategy itself.

NOTES

Chapter II: INTRODUCTION TO THE AGENCY

1. General Statutes of Connecticut, section 31-123.
2. Ibid.
3. Id., section 31-125a.
4. Id., section 53-36c.
5. Ibid.
6. Id., section 53-35.
7. P.A. 78-148.
8. General Statutes of Connecticut, section 53-35. Although "age" does not appear in the compilation of laws as revised to January 1979, this omission is due only to a technical error in codification that has since been corrected.
9. CCHRO memorandum re: Commission Complaint Statistics During Fiscal 1975-76 (August 6, 1976), pp. 3-4.
10. Ibid.
11. Ibid.
12. CCHRO, Status of Equal Housing Opportunity (May 1978) (hereafter, Status), p. 41.
13. CCHRO, Final Work Plan--(April 1977), 1st attachment (hereafter, "Work Plan").
14. Ibid.
15. CCHRO, Status, p. 39.
16. CCHRO, Work Plan, pp. 8 and 42.
17. Id., p. 8.
18. Ibid.
19. Id., p. 42.
20. Ibid.

Chapter III: STATEMENT OF THE PROBLEM

1. Suburban Action Institute, A Study of Zoning in Connecticut, (April 1978) (hereafter Study) pp. 1-2.
2. CCHRO, Status, p. x.
3. CCHRO, Final Report, p. 23.
4. See, generally, SAI, Study.
5. See, generally, CCHRO, Status.

Chapter IV: DESCRIPTION OF THE STRATEGIES

1. CCHRO, Response to ALNA Questions (January 1979) (hereafter, "Response"), p. 12.
2. CCHRO, Final Report, p. 14.
3. Interview with Arthur L. Green, August 8, 1978 (on file at ALNA).

Chapter V: IMPLEMENTATION

1. CCHRO, Response, p. 23.
2. CCHRO, Final Report, p. 11.
3. SAI, Study, p. 6.
4. Ibid.
5. Id., p. 7.
6. Id., p. 8.
7. Id., p. 93.
8. Id., p. 1.
9. Id., p. 6.
10. Id., pp. 6-7.
11. SAI, Supplemental Report to CCHRO Re: Criteria for Determining the Propriety of Undertaking Complaints in Cases of Exclusionary Zoning (May 1978).
12. CCHRO, Final Report, Appendix D.
13. Id., p. 12.
14. Interview with Arthur L. Green, August 3, 1978 (on file at ALNA).

15. CCHRO, Response, p. 12.
 16. Ibid.
 17. CCHRO, Final Report, p. 6.
 18. CCHRO, Status, p. xviii.
 19. Id., p. 41.
 20. CCHRO, Response, p. 15.
 21. CCHRO, Status, p. 61.
 22. CCHRO, Final Report, p. 20.
 23. CCHRO, Status, p. 97.
 24. Ibid.
 25. Ibid.
 26. Ibid.
 27. Id., pp. 97-98.
 28. Id., pp. 74-82.
 29. CCHRO, Response, Appendix C, Exhibit A.
 30. Ibid.
 31. Id., Exhibit B.
 32. Id., Exhibit C.
 - 32a. CCHRO comments on ALNA draft case study, submitted June 14, 1979.
 33. CCHRO, Response, p. 18.
- Chapter VI: OUTCOMES
1. CCHRO, Response, p. 18.

APPENDICES

APPENDIX A

A-95 CIVIL RIGHTS IMPACT/IMPLICATIONS QUESTIONNAIRE

This appendix contains (1) the questionnaire CCHRO has been using to gather information from applicant communities for use in its A-95 reviews, and (2) additional questions suggested by the strategy planner to provide coverage of housing issues.



STATE OF CONNECTICUT
 COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
 90 WASHINGTON STREET HARTFORD, CONNECTICUT 06115

NOTICE

CAPITOL REGIONAL OFFICE
 90 WASHINGTON STREET
 HARTFORD, CONN. 06115

TELEPHONE:
 AREA CODE 203
 566-3350

TO:

IN REPLY ADDRESS TO:

FROM:

Ms. Jurate L. Vaitkus, Special Assistant to the Director
 COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

DATE:

SUBJECT:

A-95 PROJECT NOTIFICATION # _____

In accordance with the Office of Management and Budget and State Clearinghouse procedures for the A-95 Project Notification and Review System, the State Commission on Human Rights and Opportunities has received the above-entitled project notification for review. Section 31-123 of the Connecticut General Statutes, as amended, states: "The Commission shall compile facts concerning discrimination in employment, violations of civil liberties and other related matters."

In order that we may thoroughly assess the civil rights impact of the proposed project, we respectfully request you to respond to our concerns. Enclosed herewith please find a copy of the Commission's CIVIL RIGHTS IMPACT/IMPLICATIONS QUESTIONNAIRE.

Your cooperation in promptly attending to this request, no later than _____, would be greatly appreciated.

enc.

REGIONAL OFFICES

SOUTHWEST REGIONAL
 1842 EAST MAIN STREET
 BRIDGEPORT, CONN. 06610
 TEL 384 0328

WEST CENTRAL
 79 LINDEN STREET
 WATERBURY, CONN. 06702
 TEL 754 2108

CAPITOL REGION
 90 WASHINGTON STREET
 HARTFORD, CONN. 06115
 TEL 566 5447

EASTERN REGIONAL
 302 STATE STREET
 NEW LONDON, CONN. 06111
 TEL 447 1485



STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
80 WASHINGTON STREET, WATERBURY, CONNECTICUT 06702

TELEPHONE
AREA CODE 203

A-95 PROJECT NOTIFICATION AND REVIEW SYSTEM

IN REPLY ADDRESS TO:

CIVIL RIGHTS IMPACT/IMPLICATIONS QUESTIONNAIRE

- I. Project Summary Description.
 1. Type of project.
 2. Purpose of project.
 3. General size.
 4. Total cost.
 5. Geographical boundaries affected.
 6. Nature of Federal involvement.
- II. Applicant's past direct involvement with minorities.
 1. Nature of involvement.
 2. Identifiable organizations, representatives, community groups.
- III. Has the Applicant ever been the subject of complaints to, or investigations by, civil rights agencies such as the Commission on Human Rights and Opportunities, the Equal Employment Opportunity Commission, or the Office of Federal Contract Compliance? If so, what was the nature of the complaint?
- IV. The size of the minority population to be directly affected/served by the project.
- V. The number of jobs to be created as a result of the proposed project, and occupational descriptions of the positions created.
- VI. Changes in land use, transportation-related use, congestion, mobility that will directly or indirectly affect minorities.
- VII. Analysis of minorities and women on the Applicant's staff.
 1. Minority group employment by job category.
 2. Employment of women by job category.
 3. Employment of minority women by job category.
 4. Current total staff.

REGIONAL OFFICES

SOUTHWEST REGIONAL
1862 EAST MAIN STREET
BRIDGEPORT, CONN. 06610
TEL. 384-0328

WEST CENTRAL
70 DUNBAR STREET
WATERBURY, CONN. 06702
TEL. 254-2105

CAPITOL REGION
80 WASHINGTON STREET
1960 LYDE CONVENTS
TEL. 5-61447

EASTERN REGIONAL
102 SHAIL STREET
NEW BRITAIN, CONN. 06103
TEL. 447-1465

- VIII. The availability of an approved and workable Affirmative Action Plan, statements of Equal Employment Opportunity policy, Title VI (Civil Rights Act of 1964) compliance reports and assurances.
- IX. The active recruitment and participation of minority communities in the design of the proposed project.
 - 1. Citizen participation mechanism.
 - 2. Special outreach efforts - community organizing.
- X. The support of identifiable minority organizations and/or representatives of minority organizations for the proposed project.
- XI. The names of minority individuals and/or community groups that can be contacted for input in any further review of the proposed project.

PROPOSED ADDITIONS TO QUESTIONNAIRE

The following additional items* were proposed by the strategy planner for inclusion in CCHRO's A-95 Civil Rights Impact/Implications Questionnaire.

- "1. Evidence of the applicant's commitment to further equal housing opportunities in its area of responsibilities, consistent with the State law against discrimination in housing.

Open Housing Policy Statement

Fair Housing Program

Fair Housing Commission

Activities to promote fair housing at State level and regional level (briefly explain the nature of these activities)
- "2. Briefly describe how this project will further equal housing opportunities.
- "3. If an Affirmative Marketing Plan is required for this project pursuant to Title VIII of the Civil Rights Act of 1968, please submit a copy for the commission's review.
- "4. Describe zoning ordinances and regulations that you have used to promote equal housing opportunities for low- and moderate-income families, the elderly and the handicapped at the local level, the regional level, and at the State government level.
- "5. Your present goals with respect to the creation of housing opportunities for low-income and moderate-income families, the elderly and the handicapped."

*Quoted from CCHRO, Final Report, pp. 27-28.

APPENDIX B

A-95 REVIEWS BY PROJECT STAFF

The following listing describes the nature and results of the 12 reviews the project staff performed in connection with the demonstration-- the first 11 during the fall of 1977 for possible use in selecting target communities, and the last (Fairfield) in the spring of 1978 to gather additional information about one of the targets.

- Starrett Housing Corporation, Taft Apartments, New Haven--CCHRO requested that delay of certification for the project be removed. The major issues raised by CCHRO were the applicant's need to disseminate information to minorities concerning the project, the high cost of the apartments, and the applicant's need to display its "Discrimination Is Illegal" poster in the rental office of the apartments.
- Warehouse Point Housing for the Elderly, Inc., Elderly Housing, Warehouse Point--CCHRO requested that delay of certification for the project be removed. Issues raised were the applicant's need to either submit a fair housing affirmative marketing plan or to be a signatory to a voluntary fair housing affirmative marketing agreement as required by the Farmers Home Administration of participants in its rural housing program, the applicant's need to work with the minority community and to attract elderly minority residents, and the applicant's need to display CCHRO's "Discrimination Is Illegal" poster in a clearly visible area.
- Town of Greenwich, CDBG application--CCHRO commented in favor of funding the application conditioned upon the applicant's development of a fair housing program and a program for affirmative action in community development employment, provision of funds for the administration of these programs, and identification of the special needs of blacks and Hispanics in the locality with actions to address the needs.
- Allen Bacchiochi, Builder, Riverside Village, Stafford Springs--CCHRO requested that delay of certification for the project be removed and raised as issues the Farmers Home Administration's requirement that its housing program participants pursue affirmative fair housing marketing policies in soliciting and in determining the eligibility of buyers and renters, the applicant's lack of contact with the minority community, and its obligation to display the poster "Discrimination Is Illegal."
- Town of Wallingford, Recreation Improvement/Open Space--CCHRO requested the applicant to respond to issues raised in the comments. CCHRO was concerned that the applicant was using Federal funds to construct a golf course and clubhouse while overlooking its obligation to provide low- and moderate-income housing.

- Town of Monroe Open Space Land Acquisition--CCHRO requested that delay of certification for the project be removed, but asked also that the applicant respond to its comments in a timely fashion. Issues raised were the applicants failure to provide housing for low- and moderate-income persons, lack of contact with the minority community, and poor minority hiring record.
- Town of Stratford, Mellitz Property, Open Space Acquisition-- Since the applicant fulfilled the commission's requirement of responding to the Civil Rights Impact/Implications Questionnaire, CCHRO requested the State clearinghouse not to delay the project, but requested the town's response to four issues raised in the comments. The four issues were actually requests for documentation showing the consistency of the Town of Stratford's equal opportunity in housing posture with State policy prohibiting discrimination in housing, indicating whether the town had zoning ordinances and regulations that restrict low- and moderate-income and multifamily housing, showing progress made within the previous CDBG entitlement year toward meeting housing assistance goals, and providing evidence the town had consulted with the minority community on the proposed project.
- Clark S. Rainey, The Meadows Apartments for the elderly, Canton--CCHRO recommended that the applicant comply with the requirements of the Farmers Home Administration by developing and implementing a fair housing affirmative marketing plan, and by specifically expanding its efforts to attract minorities to the proposed project. CCHRO also suggested the applicant's use of contractors with a demonstrated record of affirmatively recruiting and hiring minorities and further encouraged the identification and utilization of minority businesses.
- Town of Berlin, Willow Brook Drive and Brick Yard Road Pump Station--CCHRO requested the Town of Berlin to respond to the issues raised in the comments. Information requests include evidence that the town's posture toward furthering equal housing opportunities is consistent with State law prohibiting discrimination in housing; a description of zoning ordinances and regulations used by the town to promote equal housing opportunities for low- and moderate-income persons; and specifications of the town's goals in providing housing for low- and moderate-income families, the elderly, and the handicapped. CCHRO also recommended that the applicant initiate efforts to contact the minority community, implement an Affirmative Action Plan for hiring minorities, and explore the possibilities of utilizing minority businesses on the construction phase of the project.
- New Haven Jewish Federation Housing Corp., Tower One Extension, Elderly Housing, New Haven--CCHRO requested the State clearinghouse to remove the delay of certification imposed on the project.

CCHRO recommended the applicant implement the activities in its affirmative fair housing marketing plan, particularly in advertising in a manner that would reach elderly minorities so they could benefit from the project, including display of the poster "Discrimination is Illegal." CCHRO also reminded the applicant of its obligation to select contractors who have demonstrated affirmative action in hiring minorities in proportion to their availability in the relevant labor market (the city of New Haven), and urged its utilization of minority businesses as contractors, vendors, and suppliers for the project.

- Village View Associates, Village View Apartments, Norwich, Connecticut--CCHRO comments on the application recommended the applicants implementation of its Affirmative Fair Housing Marketing Plan to assure benefits to minorities, increased involvement with minority groups, utilization of minority businesses with respect to the project, and appropriate display of the poster "Discrimination is Illegal."
- Town of Fairfield, Golf Course Construction and Restoration of an Adjacent Salt Marsh--Review of the Town of Fairfield's application was the only A-95 review performed to provide additional information for later monitoring of this target community. CCHRO reports, based on newspaper accounts and community reports, that the Department of the Interior's Heritage Conservation and Recreation Service has delayed funding for the Fairfield project as a result of the commission's A-95 review comments.

APPENDIX C

MEMORANDUM OF UNDERSTANDING

APPENDIX C



STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
90 WASHINGTON STREET HARTFORD, CONNECTICUT 06115

March 21, 1978

Mr. Kenneth F. Holbert, Director
Fair Housing Enforcement and Contract Compliance
Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D. C. 20410

Dear Mr. Holbert:

I am pleased to submit herewith the proposed memorandum of understanding between the U. S. Department of Housing and Urban Development and the Connecticut Commission on Human Rights and Opportunities pursuant to the Commission's contract with A. L. Neilson and Associates, Strategy III, Monitoring System for Agreement Under the A-80 Process.

As you recall, representatives of the Commission discussed this with you in Washington on December 8, 1977.

I regret the somewhat long delay in getting this to you. However, we wanted Commission Counsel to carefully consider the various desirable ideas and references for incorporation. Your assistance to this, per our discussion, will be deeply appreciated inasmuch as our contract with A. L. Neilson and Associates terminates on or about May 1, 1978. Of course, the agency will follow through on the monitoring provisions contained in the proposed agreement with our own resources after the contract terminates.

Very truly yours,

Arthur L. Green
Director

skm
Attachment

MEMORANDUM OF UNDERSTANDING

BETWEEN

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

AND THE

CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

This Memorandum of Understanding, by and between the Department of Housing and Urban Development (hereinafter H.U.D.), a cabinet-level department of the government of the United States and the Connecticut Commission on Human Rights and Opportunities (hereinafter CHRO), an administrative agency of the State of Connecticut. H.U.D. and CHRO do hereby certify that the officials whose signatures appear at the bottom of this document have the authority to act and bind their respective agencies to the representations and promises set forth in this agreement.

PURPOSE

The purpose of this agreement is to establish procedures which will ensure the cooperation and mutual assistance of H.U.D. and CHRO with respect to the submission, review, approval or disapproval, and monitoring of applications and grants made pursuant to the "Housing and Community Development Act of 1974", 42 USC 5301 et seq (Public Law 93-383, 26 stat. 633 et seq) as amended by the "Housing and Community Development Act of 1977", 42 USC 5301 et seq (Public Law 95-128) and also to provide cooperation and assistance in the investigation of complaints of housing discrimination under the Civil Rights Act of 1963 (P.L. 88-294) as amended by the Housing and Community Development Act of 1974 and the Public Accommodations Law of the State of Connecticut, Conn. Gen. Stat. Secs. 53-34 through 53-36a.

PRELIMINARY DRAFT
FOR REVIEW PURPOSES ONLY

FOR REVIEW PURPOSES ONLY

STATUTORY AUTHORITY

The statutory authorities for H.U.D. are the Housing and Community Development Act of 1974 as amended by the Housing and Community Development Act of 1977 and Title VIII of 1968 as amended by the Housing and Community Development Act of 1974. The statutory authorities for CHRO are the Public Accommodations Law, Conn. Gen. Stat. Secs. 53-34 through 53-36d, and Conn. Gen. Stat. Secs. 31-123, 31-125, 31-127, and 31-128. The parties to this agreement also recognize the CHRO's status as the designated review agency for civil rights aspects of federal grants in the State of Connecticut pursuant to Circular A-95 of the Office of Management and Budget.

PROCEDURES

To accomplish the purposes of this agreement, the parties do hereby agree to carry out the following procedures in order to maximize cooperation and mutual assistance pursuant to the statutory authorities set forth above.

A. Review and Monitoring of Housing and Community Development Grant Recipients

1. The CHRO will continue its review function with regard to the civil rights impact of Housing and Community Development Act and applications submitted in the State of Connecticut. This review function shall be conducted in accordance with the procedures set forth in the A-95 Circular of the Office of Management and Budget and the CHRO's established procedures.

2. H.U.D., upon the awarding of a grant pursuant to the Housing and Community Development Act in the State of Connecticut, will provide the CHRO with a copy of the approved grant application and all reports, correspondence and documents relating to the civil rights assurances including those relating to low and moderate income housing; the recommendations made by CHRO during the A-95 review process, and any conditions relating to civil rights, including, but not limited

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recipients

to those low and moderate income housing, which have been required by H.U.D.

3. The CHRO will develop selection criteria for the review of approved Housing and Community Development Act grant applications. Based upon these selection criteria, the CHRO will then select specific grant recipients to monitor.

4. The purpose of the monitoring will be to ascertain whether or not the civil rights assurances contained in the grant application, the CHRO recommendations with regard to these assurances, and approval conditions which have been attached by H.U.D. regarding civil rights impact are being carried out by the grant recipients. H.U.D. and CHRO agree that, initially, monitoring will be performed with regard to third year grant recipients. The selection of third year grant recipients for initial review and monitoring is not intended by H.U.D. or CHRO to preclude monitoring of subsequent year grant recipients.

5. CHRO agrees that it will establish and follow the following procedures in monitoring grant recipients of Housing and Community Development Act funds:

- a. Upon receipt from H.U.D. of the approved grant application and the supporting documentation as outlined above, the CHRO will review the approved grant in accordance with its selection criteria to determine whether or not a particular grant recipient should be monitored.
- b. When a grant recipient is selected for monitoring, a notice will be sent to that grant recipient informing it that it has been selected for monitoring pursuant to this agreement. Copies of this notice will also be sent to H.U.D. area, regional and headquarters offices.
- c. Upon notice to the recipient, the CHRO will begin monitoring of the grant in accordance with appropriate procedures and techniques developed by the CHRO.
- d. The CHRO will prepare and send to H.U.D. headquarters office semi-annual interim reports as CHRO deems necessary, and a final report evaluating the grant recipients compliance with the assurances, recommendations and

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approval conditions. Copies of all reports will also be sent to the grant recipient and to the H.U.D. area and regional offices. The final report will contain the CHRO's findings and recommendations with regard to the grant recipient's civil rights compliance.

6. The CHRO may provide, in its sole discretion, technical assistance to grant recipients during the course of its monitoring program. The provision or non-provision of technical assistance shall not be deemed by HUD or CHRO to relieve the grant recipient from its obligation to carry out its assurances, such recommendations as the CHRO has made regarding those assurances, and any approval conditions attached by H.U.D. to the grant.

7. H.U.D. agrees that it will cooperate with the CHRO in its monitoring function by providing such guidance, technical assistance and information as may be reasonably requested by CHRO. H.U.D. also agrees that it will also receive all reports submitted by CHRO and take such action as may be necessary to accomplish the purposes of the Housing and Community Development Act, as amended, and this agreement.

8. H.U.D. agrees that, upon receipt of copy of CHRO's notice to a grant recipient that it has been selected for monitoring, H.U.D. will notify the grant recipient as follows:

- a. That the monitoring is pursuant to an agreement between H.U.D. and the CHRO.
- b. That the grant recipient must cooperate with the CHRO in the performance of its monitoring function,
- c. That cooperation includes, but is not limited to, timely reporting on a regular basis, access to data and to appropriate personnel, record keeping and the copying of documents as are necessary for CHRO's monitoring, without cost.

PRELIMINARY DRAFT
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d. That failure to cooperate with the CHRO in its monitoring function will result in a finding of non-compliance pursuant to Section 109(b) of the Housing and Community Development Act.

9. H.U.D.'s headquarter office will grant substantial weight to CHRO's final findings and recommendations in making a determination of compliance or non-compliance pursuant to Section 109(b).

10. H.U.D. agrees that CHRO's final findings and recommendations, if accepted by H.U.D., will act as a determination pursuant to Section 109(b) of the Housing and Community Development Act.

11. H.U.D. agrees that it will promptly review CHRO's final findings and recommendations and will either accept or reject them within thirty days of receipt. If H.U.D. rejects CHRO's final findings and recommendations, it will indicate to the CHRO the specific reasons why they were not accepted. H.U.D. agrees that if it accepts the final findings and recommendations of CHRO regarding non-compliance, it will proceed in accordance with the provisions of Section 109(b) of the Housing and Community Development Act to notify the Governor of the State of Connecticut of the grant recipient's non-compliance.

12. CHRO, in its sole discretion, may comment on any report submitted by the Governor with regard to his or her efforts to achieve compliance by the grant recipient pursuant to Section 109(b).

13. H.U.D. will notify CHRO of any action taken pursuant to Section 109(b) or Section 111 of the Housing and Community Development Act. CHRO, upon submission of a timely request, may become a party to any proceeding pursuant to Section 109(b) or Section 111 of the Housing and Community Development Act.

B. Investigation of Complaints of Housing Discrimination

1. H.U.D. and CHRO agree that those portions of this agreement relating to the investigation of claims of housing discrimination will constitute a written agreement pursuant to Section 816 of the Civil Rights Act of 1968. H.U.D. re-

PRELIMINARY DRAFT

iterates its recognition of the Connecticut Public Accommodations Law as a substantially equivalent law pursuant to Title VIII of the 1968 Act, as amended, and its regulations (24 CFR Chapter 1, Part 115, subchapter A, as amended, 42 Fed. Reg. 63425 (effective 12/16/77)). H.U.D., upon receipt of a claim of housing discrimination occurring in the State of Connecticut, will refer said complaint immediately to the CHRO.

2. CHRO, upon receipt of a H.U.D. referral, will immediately contact the complainant and commence proceedings under the Connecticut Public Accommodations Law, Conn. Gen. Stat. Secs. 53-34 through 53-36(d). If, upon contact by the CHRO, the Complainant no longer wishes to proceed, or it appears that the matter complained of does not fall within the CHRO's jurisdiction, CHRO will terminate its proceeding and notify H.U.D. of the termination and the reasons therefor.

3. If the complaint referred by H.U.D. is within the jurisdiction of the CHRO, the Commission will commence investigation pursuant to both state and federal law in accordance with the Commission's established procedures.

4. The CHRO will provide to H.U.D. reasonable status reports regarding complaints processed in accordance with this agreement.

5. Upon completion of its proceedings, CHRO will notify H.U.D. of its final action on all complaints processed in accordance with this agreement. H.U.D. and CHRO agree that H.U.D. will recognize the following as final actions by CHRO: A finding of no cause and summary of the investigation, a finding of reasonable cause summary, and a copy of any conciliation agreement, hearing examiners' order, court court order or combination of the above. An administrative dismissal for lack of jurisdiction, unavailability of the complainant, or for similar grounds, and a withdrawal of the complaint at the written request of the Complainant.

6. H.U.D. agrees that it will accept CHRO's final determination of a complaint as its own if it determines that the final determination of CHRO is in accordance with the theories and principles of Title VIII of the Civil Rights Act of 1968 as interpreted by the federal courts.

7. H.U.D. will promptly notify the CHRO as to whether or not it has accepted or rejected CHRO's final determination. All such notification shall be in writing and, in the case of a rejection of CHRO's final determination, shall specifically state the reasons for such rejection.

8. H.U.D. agrees that it will cooperate with the Commission in its processing of complaints of housing discrimination pursuant to this agreement, and will provide such guidance, technical assistance, and information which the CHRO may reasonably request. H.U.D. and CHRO specifically agree that assistance will include, but is not limited to, copies of reports, computer printouts and other documents identifying individuals or firms receiving H.U.D. financial assistance in the State of Connecticut and copies of affirmative fair housing marketing plans and reports.

OFFICIAL NOTICES

H.U.D. and CHRO agree that the mailing of official notices, reports, and other documents pursuant to the terms of this agreement will be deemed sufficient if they are placed in the U.S. Mail, postage prepaid, and addressed to the following individuals:

Connecticut Commission on Human Rights
and Opportunities
90 Washington Street
Hartford, Connecticut
Attention: Arthur L. Green, Director

Housing and Urban Development
Headquarters Office
(Address and name of individual to
be provided)

Housing and Urban Development Regional
Office
(Address and name of individual to be
provided)

Housing and Urban Development Area Office
(Address and name of individual to be
provided)

**PRELIMINARY DRAFT
FOR REVIEW PURPOSES ONLY**

TERMINATION

H.U.D. and CHRO agree that this Memorandum of Understanding shall remain in force until terminated by either party. H.U.D. and CHRO further agree that this agreement may be terminated by either party by the mailing of official notice pursuant to the section immediately above.

either CHRO at the office noted above, or to H.U.D. at its headquarters office noted above. Any notice of termination shall be given thirty days in advance of the proposed date of termination of this agreement.

AMENDMENT

H.U.D. and CHRO agree to meet ninety days after execution of this agreement to review its operation and to determine if any amendments are necessary to improve the agreement or to facilitate cooperation pursuant to the agreement. H.U.D. and CHRO further agree that this agreement may be amended at any time with the mutual consent of the parties thereto.

SEVERABILITY

H.U.D. and CHRO agree that, should any provision of this Memorandum of Understanding be declared illegal or unenforceable by a court of competent jurisdiction, the remainder of this agreement shall continue in full force and effect until amended or terminated pursuant to the terms of this agreement.

Department of Housing and Urban Development

Connecticut Commission on Human Rights and Opportunities

By _____
Patricia Roberts Harris
Secretary

By _____
Arthur L. Green,
Director

Date _____

Date _____

PRELIMINARY DRAFT
FOR REVIEW PURPOSES ONLY

APPENDIX D

HUD RESPONSE TO CCHRO CONCERNING MEMORANDUM OF UNDERSTANDING
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410



OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

OCT 1978

IN REPLY REFER TO:

Mr. Arthur L. Green
Director
State of Connecticut
Commission of Human Rights and Opportunities
90 Washington Street
Hartford, Connecticut 06115

Dear Mr. Green:

This is in reply to your letter of August 31, 1978 and in further reference to the Commission's proposed Memorandum of Understanding relative to the Commission's contract with A. L. Nellum and Associates Strategy III Monitoring System for Agreement under the A-95 process.

Your achievements in developing innovative approaches in the utilization in the A-95 process pursuant to the Nellum's contract have been very impressive.

Accordingly, we share your concern that the Connecticut Commission continues to utilize this process in a constructive and positive way. However, as you know, the A-95 process was created by the Office of Management and Budget to establish working procedures to implement the Intergovernmental Cooperation Act of 1968. The A-95 review is incorporated by HUD in its regulations establishing procedures for approving the funding of its various housing and urban development programs.

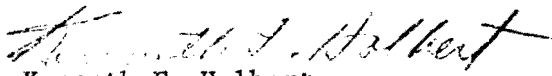
Your memo particularly addresses applications and grants made pursuant to the Housing and Community Development Act of 1974. Criteria for disapproval of such grants are also incorporated into the Community Development Block Grant regulations. Further, monitoring for civil rights compliance has also been established pursuant to HUD regulations. We would not be able to enter into a Memorandum of Understanding relative to the referrals of Section 109 complaints when such referrals are not based upon the statute, as in the instance of Title VIII referrals. As you know, Title VIII referrals are referenced in Section 810(c) of Title VIII. However, this does not preclude the area and regional offices from working closely with the Connecticut Commission in its utilization of the A-95 process. These offices may take cognizance of information, facts, and findings by an established civil rights law enforcement agency in the processing, reviewing, and evaluating of applications for HUD financial assistance.

2.

We have advised our regional and area offices to continue to cooperate in all ways with the Connecticut Commission, particularly in view of your having been recognized as a substantially equivalent agency and having signed a memorandum of understanding with us.

We thank you for your interest in this matter and look forward to our continued cooperation. For your information in regard to the overall functioning of the A-95 system, we are enclosing a copy of a report entitled, Local Government Participation in A-95, committee development evaluation series #1.

With warmest regards.



Kenneth F. Holbert
Director
Fair Housing Enforcement
and Section 3 Compliance

Enclosure

APPENDIX E

CCHRO's Summary of its Findings*

"The commission's general findings are summarized as follows:

- Minority housing opportunities are constrained within areas of existing minority concentrations--areas containing 85.3% of the State's minority population.
- Federally subsidized (HUD) housing is similarly concentrated within minority areas, offering little opportunity for housing choice and spatial deconcentration.
- A majority of new subsidized housing endorsed by HUD since 1976 is earmarked for the elderly.

"The commission's specific findings of patterns and practices of housing discrimination are summarized as follows:

- The prevailing occupancy pattern in HUD endorsed housing, operated by sample firms is fifty percent or more non-minority (caucasians, not of Hispanic background).
- Thirty-two HUD endorsed housing projects, operated by sample firms, have a racially segregated occupancy pattern--ninety-five to one-hundred percent of all occupants are minority (Black, Hispanic, American Indian, Oriental, other), or all are non-minority.
- The marketing and advertising practices of respondent housing firms: may result in primary and/or exclusive solicitation of purchasers and prospective tenants that are non-minority; are not directed at minority and other protected group purchasers and prospective tenants; and do not further fair housing opportunities for minorities and other legally protected groups.
- The affirmative fair housing marketing obligations of respondent housing firms: are not seriously and consistently being carried out by those participating in FHA programs; are not being passed on to parties which are contractually engaged for marketing purposes; and these noted failures effectively deter fair housing opportunities for minorities and other legally protected groups.
- Records of occupant characteristics: are not uniformly maintained by sponsors of federally assisted housing; are not maintained at all by certain sponsors although required; and indicate that sixteen HUD endorsed projects, operated by six respondent firms, are racially segregated.

* Quoted from CCHRO, Status of Equal Housing Opportunity (May 1978), pp. 83-84.

- Respondent housing firms: are developing/operating new housing (since 1974) in predominantly suburban and rural locations; are developing/operating privately funded new housing (since 1974) in predominantly suburban and rural locations; are developing/operating new (since 1974) publicly assisted housing in predominantly urban locations; and thus, are not promoting fair housing opportunities for minority persons.

- The future development plans of respondent housing firms: will not significantly increase the number of housing units in the market; will not significantly expand housing choices for minority and low-income housing seekers; and will not serve to spatially deconcentrate fair housing opportunities for minorities, low-income households, and other legally protected groups."

STATE CIVIL RIGHTS AGENCY DEMONSTRATIONS OF STRATEGIES
TO FIGHT HOUSING DISCRIMINATION

FINAL REPORT

Selected Case Studies

By

A. L. Nellum and Associates, Inc.
1990 M Street, N. W. - Suite 200
Washington, D. C. 20036

Prepared for and submitted to U.S. Department of
Housing and Urban Development pursuant
to Contract H-2528 (ALNA No. 124)

January 1980

also

disclaimer from
Case Studies

also

Acknowledgements
from CASE STUDIES

STATE CIVIL RIGHTS AGENCY DEMONSTRATIONS OF STRATEGIES
TO FIGHT HOUSING DISCRIMINATION

CASE STUDY:

Kentucky Commission on Human Rights

By
A. L. Nellum and Associates
1990 M Street, N.W., Suite 200
Washington, D.C. 20036

Submitted to
U.S. Department of Housing and Urban Development
Washington, D.C. 20410

Contract No. H-2528

ALNA No. 124

January 1980

The research and studies forming the basis for this Report were conducted pursuant to a contract with the Department of Housing and Urban Development (HUD). The statements and conclusions contained herein are those of the contractor and do not necessarily reflect the views of the U. S. Government in general or of HUD in particular. Neither the United States nor HUD makes any warranty, expressed or implied, or assumes responsibility of the accuracy or completeness of the information herein.

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I. INTRODUCTION

A. THE NINE-STATE DEMONSTRATION PROJECT

This case study is one of a series being prepared under contract to the U.S. Department of Housing and Urban Development as part of a HUDfunded research and demonstration project. A key element of this project was the provision of funds to nine State civil rights agencies to enable them either to launch or expand fair housing programs directed particularly against systemic discrimination.

1. Background

Notwithstanding the efforts of the past two decades, there remains an intolerably wide gap between the promise of choice implicit in an array of civil rights legislation and the reality of housing discrimination for minorities in America today. Moreover, discrimination in housing contributes to social injustices reaching well beyond its most immediate consequence, residential segregation. These include inequality of job opportunities, separate and unequal schools (notwithstanding the 1954 Brown decision), and increased tax burdens on inner city residents to support growing social service costs and an irregular pattern of urban growth.

So systemic and institutionalized is racism in the housing system that public enforcement efforts--crippled by weak budgets and preoccupied with responding to individual complaints--seem only to have changed the face of discrimination without uprooting it. Replacing the blatant housing discrimination of the pre-civil rights era are new discriminatory practices, subtle, indirect, and often hidden--but just as effective. The struggle for equal opportunity in housing is far from over.

State human rights agencies are called upon to play a major role in that struggle. State laws often give them far-reaching responsibilities, while Federal law gives many the added burden of processing housing discrimination complaints filed under Title VIII. Their limited resources, however, permit little more than the handling of individual complaints, often leaving significant patterns and practices of housing discrimination unchallenged.

And at all levels--Federal, State and local; public and private--there is a need to find and test new ways to use existing fair housing laws more creatively and effectively. Also needed is precise, reliable information about systemic discrimination in housing and about the programs necessary for the full enforcement of existing fair housing laws.

The message is clear: Both qualitatively and quantitatively, this nation's level of public intervention on behalf of the minority shelter-seeker must be substantially upgraded.

2. The Project

It is to this message that HUD responded in 1976 by committing Federal resources under this project to enable States to assume a more aggressive role in meeting fair housing goals. In doing so, it addressed in a single programmatic thrust two broad national problems: how to assist minority families in obtaining decent housing in the face of increasingly sophisticated discriminatory practices, and how to help the States increase their capacity and effectiveness in carrying out responsibilities under existing laws.

Even before issuing the Request for Proposals (RFP) for this project, HUD selected the participating State agencies. On June 16, 1976, HUD invited 10 State civil and human rights agencies to take part in this project. One agency, ultimately unable to meet all of HUD's requirements, did not participate. The remaining nine are:

- Colorado Civil Rights Commission
- Connecticut Commission on Human Rights and Opportunities
- Kentucky Commission on Human Rights
- Massachusetts Commission Against Discrimination
- Michigan Department of Civil Rights
- New Jersey Division on Civil Rights
- Ohio Civil Rights Commission
- Pennsylvania Human Relations Commission
- Washington State Human Rights Commission

Each of these agencies was offered up to \$120,000 to pay for a year-long demonstration of one or more strategies to combat systemic discrimination. They were not required to match the Federal money, but were, of course, free to supplement it with funds of their own. Within general guidelines and a minimum of specific requirements, each agency designed its own demonstration program.

The agencies performed their demonstrations as subcontractors to A. L. Nellum and Associates, Inc. (ALNA), the contractor HUD selected to run the project. They received their money through ALNA and had no direct contractual relationship with HUD.

Under its contract with HUD, ALNA's role included the following:

- Assisting each State agency during the planning stage of its program, and assuring that proposed strategies met project requirements.
- Monitoring each program over a 12-month period.
- Evaluating the impact of each program.
- Preparing a final report (of which this case study is a part) describing the implementation and results of the project in detail.

The project was under ALNA's direction since its inception in October 1976.

Focusing on State agencies as vehicles for social change, this project had two primary objectives:

- To identify replicable, tested, and proven intervention strategies for combating systemic discrimination.
- To strengthen State agency capacity and effectiveness in carrying out their responsibilities under existing laws.

Additional objectives were an increased understanding of systemic discriminatory practices and of the States' role in combating them, and the dissemination of this understanding to interested citizens.

B. STRATEGIES AT A GLANCE

To briefly introduce the subject of this case study, the four fair housing strategies demonstrated by the Kentucky Commission on Human Rights consisted of the following:

1. Section 8

- To expand previous efforts to work with families certified in the combined Louisville and Jefferson County Section 8 program to promote desegregation of suburbs by:
 - briefing all such families on their fair housing rights and on the availability of suburban housing to them; and
 - helping interested families find suburban Section 8 housing, primarily by providing lists of available apartments and transportation to go look at them.

2. Multiple Dwelling Report

- To use multiple dwelling reporting rule data and "testing" results to select targets for compliance efforts.
- To seek remedies, either through voluntary conciliation or enforcement actions, for discrimination in apartment rental practices.

3. Public Housing Authorities

- To identify public housing authorities whose residential patterns suggest discriminatory placement policies and practices.
- To seek to eliminate such discrimination through voluntary agreements or enforcement measures.

4. Fair Share Plan

- To develop a "fair share" housing allocation plan for Jefferson County.

These strategies are described in detail in Chapter IV below. The outcomes of KCHR's strategies are described in Chapter VI.

II. INTRODUCTION TO THE AGENCY

The Kentucky Commission on Human Rights (KCHR) was created by statute in 1960, but its jurisdiction did not include housing discrimination until adoption of the 1968 Fair Housing Act. 1/ The governor appoints the commission's 11 members, and names one of them chairman. 2/ The commission hires its executive director and other personnel, including attorneys who represent it in court. 3/ Commission members may initiate discrimination complaints on their own. 4/

In the field of housing, the Kentucky Civil Rights Act prohibits discrimination on the basis of race, color, religion, or national origin. 5/ In the field of financing, the act broadens the protected classes by prohibiting discrimination also on the basis of sex and age. 6/ It is also an unlawful practice to violate a conciliation agreement entered into after a "probable cause" determination has been made. 7/ Proof of discriminatory intent is not necessary to prove a violation of the act. 8/ The commission may seek enforcement of its orders in an appropriate county circuit court. 9/

In 1974, pursuant to its statutory authority to require anyone subject to the civil rights act to keep records and file reports, 10/ the commission issued a multiple dwelling reporting regulation which became effective on January 10, 1975. 11/ The regulation requires owners of apartment buildings with 25 or more units to keep records and file annual reports of their racial occupancy and application experience. Apartment buildings, garden apartments, and condominiums--whether single buildings of 25 or more units, or buildings with common ownership or management with an aggregate total of 25 or more units--are all covered by the rule. The reports include the racial designation (white, black, or other) of applicants, renters, and buyers, together with information about unit sizes, rents, length of lease required, turnovers, and rental and sales marketing techniques. 12/ The commission may seek a court order to enforce its reporting and recordkeeping 13/ requirements. At the start of the demonstration, the Kentucky Court of Appeals handed down a decision 14/ with a potential impact on one of KCHR's strategies. The court held that:

- KCHR does have the authority to order a "ratio remedy" or quotas to reverse a pattern of housing segregation; but,
- before it does, it must first:
 - find that such a remedy is both necessary and workable, and
 - give the respondent an opportunity to try its own affirmative action program, so long as the respondent has such a program and it is not "patently inadequate."

The case before the court was directly applicable to the project, since, like KCHR's public housing strategy, it involved segregation in public housing. The stated goal of this strategy was to have each housing

project's percentage of minority residents equal the overall percentage of minority residents in all projects under a local housing authority's jurisdiction--precisely the measure of compliance that the court rejected, saying "Current occupancy is a consideration, but it may not be a sole criterion." Other criteria include the number of applications and future changes in housing demands.

At the start of its demonstration, KCHR claimed "some limited experience" in the areas of all its strategies, but in none had it achieved effective implementation, and in most "very little progress has ever been made previously." 15/ More specifically,

- Because of "resource limitations," only one strategy (Section 8) was a current commission activity, and that involved only one housing specialist attending Section 8 briefings. 16/
- A year before the demonstration, the commission had issued a report, Desegregation Increases in Kentucky Apartments, July 1976, which analyzed earlier reports filed under the multiple dwelling reporting regulation. No specific enforcement actions were taken based on the report, however. 17/
- While KCHR had done previous work to desegregate public housing projects, there was "no concentrated current activity." Thus, the public housing strategy represented a revitalization using new staff resources. 18/
- Without any senior investigator to handle "pattern and practice" complaints in housing, such cases had no priority, 19/ and there had been no such investigations in the previous two years. 20/
- Finally, although there had been some discussion of fair share plans, KCHR had taken virtually no action to develop one. 21/

KCHR had regularly looked at data from several sources relevant to housing discrimination, including reports by apartment owners filed under the multiple dwelling reporting regulation, periodic occupancy reports filed with HUD by local housing authorities, and printouts on moves by families receiving Section 8 assistance. 22/

KCHR's total budget in 1976-77 was \$633,000; the previous year it had been \$598,000. 23/

III. STATEMENT OF THE PROBLEM BEING ATTACKED

All but one of KCHR's strategies attack various dimensions of the same overall problem--housing segregation and discrimination in the Louisville-Jefferson County area. Together, the city and its suburbs became increasingly segregated from 1940 to 1970, the segregation index for the area having increased from 81.7 to 90.0. 1/

A reversal of this trend, however, is suggested by data showing the racial breakout of children who live and attend public school in Jefferson County. Since most school children live with their families, a change in enrollment is a fairly reliable indicator of a corresponding change in residential patterns (e.g., an increase in black enrollment suggests a rise in black households in the county). It would appear, therefore, that more black families are finding housing in Jefferson County than in the past, for in the three school years from 1973-74 to 1976-77, the number of black children living in the county and enrolled in the public schools rose by 2,503, a greater increase than in the entire preceding 12-year period. 2/ Although these new black residents are not spread uniformly throughout the county, neither are they confined to a single suburban ghetto.3/

But suburban Jefferson County school and housing desegregation may continue to be a slow process because of the limited income of the average black family in Louisville. The 1970 U.S. Census shows a Louisville black family median income of more than \$3,000 less than the white family median income (\$6,124 and \$9,209), and while black families make up 17 percent of all families within the city, they account for over 23 percent of all families with incomes under \$6,000. 4/ Thus, any plan designed to influence the city-to-suburbia movement of black families must take into consideration the racial impact of income barriers and the need for more suburban low income public and private rental housing.

Not only do their lower incomes work against them, but black families also face racial discrimination. This is strongly suggested in the Section 8 program, where all recipients have equally low incomes, by the fact that it took black families significantly longer on the average than whites to find suitable apartments. A study by the University of Louisville 5/ found that in 1977 the average search time was only 37 days for white families, but 53 days for black families--only seven days short of the maximum time allowed before Section 8 certificates expire.

Unlike its other strategies, KCHR's public housing strategy looks outside Louisville to attack a problem that is found generally throughout the State--residential segregation in public housing developments. Based on December 1974 and July 1976 occupancy reports filed with HUD, changes in the level of segregation can be charted for 37 of Kentucky's 39 public housing authorities with both black and white tenants. Of these, 17 actually increased the level of racial residential segregation in the projects they operate, and two authorities continued to maintain totally segregated projects. Only 18 authorities reduced the level of segregation at all in the same 18-month period, some substantially but some only minimally. 6/

IV. DESCRIPTION OF THE STRATEGIES

As originally planned KCHR's strategies consisted of the following:

- Providing transportation and informational assistance to Section 8 recipients to facilitate desegregating moves to housing in suburban Jefferson County.
- Using multiple dwelling report (MDR) data to target suburban apartment complexes for auditing and, based on the audit results, filing "pattern and practice" charges against those appearing to discriminate.
- Targeting the 15 most segregated public housing authorities in the State for either voluntary compliance or discrimination complaints.
- Designing a fair share plan providing a basis for distributing future lower cost housing in areas which currently provide little or no such housing.

Each is described below.

A. SECTION 8

1. Research

The multiple dwelling reports were used to list suburban complexes with a rental range within Section 8 income requirements.

2. Action

Briefing. The housing specialists participated in Section 8 certification orientation sessions for purposes of briefing new recipients on (1) their rights to find housing anywhere in Jefferson County 1/ and (2) the advantages to be gained by making a desegregating move to suburban areas.

Transportation Assistance. During the briefings, the housing specialist offered transportation assistance (by appointment) to anyone needing the service to search for rental units in suburban Jefferson County. Project staff then provided such assistance to those requesting it.

B. MULTIPLE DWELLING REPORTS

1. Research

Outstanding reports were secured and MDR data were used to provide field investigator with information on the racial makeup of apartment complexes that could be potential targets of commission-initiated housing complaints.

2. Action

Audits were conducted to secure an evidentiary basis for supporting a commission-initiated complaint against private rental housing complexes.

- Scope of Strategy

The scope of the strategy was limited to looking for discrimination against blacks seeking rental apartments in suburban Jefferson County. Thus, auditing teams would be looking for racial discrimination.

To uncover patterns of racial discrimination and to make maximum use of project resources, complexes run by the 10 largest rental firms, along with other large Jefferson County complexes, were selected for the auditing program.

C. PUBLIC HOUSING AUTHORITIES

To identify the 15 public housing authorities whose black and white tenants were most segregated by race, KCHR computed segregation indexes from HUD occupancy report data for each authority in the State. It then worked to persuade authorities selected from among the 15 to adopt and implement affirmative action plans, with the possibility of filing complaints against those that did not cooperate.

D. FAIR SHARE PLAN

The commission reviewed demographic data and fair share plans from elsewhere in the country and developed plans to provide guidance for allocating more future lower cost housing to areas that now have little or no such housing.

V. IMPLEMENTATION

In April 1977, the Kentucky Commission on Human Rights (KCHR) implemented a four-pronged attack on the problem of segregated public housing authorities and limited suburban Jefferson County residency of low and lower income black families. KCHR's project staff consisted of (1) a project director, (2) an assistant project director, (3) three housing specialists, (4) a field investigator, and (5) a principal clerk stenographer. Each strategy is discussed separately below.

A. SECTION 8

1. Staffing

Two housing specialists were responsible for briefing and transporting newly certified Section 8 recipients requesting the service. Near the end of the project one specialist was transferred to another agency activity and was replaced by two CETA workers.

2. Research

Previous to the project, KCHR had been analyzing multiple dwelling reports and providing Section 8 recipients with a list of complexes presently accepting program certificates. Based on 1977 reports, the 1976 list was revised. Also, a much larger list was compiled of all complexes in the county meeting Section 8 rent criteria.

3. Action

The components of KCHR's Section 8 strategy to increase low-income black family access to suburban rental units were: briefing newly certified Section 8 recipients, and transporting to suburban county areas families requesting the service.

- Section 8 Briefings.

The Jefferson County Housing Authority certifies Section 8 applicants. Under that HUD-sponsored rent subsidy program, a family can rent private housing and pay no more than 25 percent of its income for rent and utilities. As part of the certification process, each applicant must attend a briefing session. These are held, during peak certification periods, as often as three times daily. Using a HUD-prepared film, a housing authority staff counselor informs applicants of their rights and obligations to obtain and maintain a clean and safe living space, and the fair market rents and monthly per-bedroom utility-dollar allowance under the program. Applicants are provided a checklist to remind them of the necessary rental procedures they must adhere to, and a HUD-published Dwelling Unit Inspection booklet to help them watch out for substandard rental housing not likely to pass final inspection by the housing office.

Since 1976, KCHR housing staff persons have attended some of the ses-

sions for purposes of (1) explaining applicant rights under fair housing laws, (2) describing the services the commission provides to citizens who feel they have been discriminated against in their housing search, (3) explaining the advantages of using Section 8 certificates to make desegregated moves, and (4) offering transportation to participants who request it to help them look for housing in suburban Jefferson County. One of the advantages cited by KCHR speakers is, to quote a commission publication, that the court-ordered school desegregation plan for Louisville-Jefferson County provides a "built-in incentive for families, both black and white, to make moves which result in housing desegregation." 1/ Under the plan, students in an attendance district where they are a minority are exempt from being bused to an out-of-district school. A school district with a white-to-black student ratio of three-to-one is considered desegregated. 2/

KCHR's strategy was to expand its efforts by doubling the staff so that it could attend all briefing sessions and help more applicants. By October 1977, KCHR housing specialists had attended 17 briefing sessions with an average of five families in attendance. But, by the beginning of November it was learned that the Section 8 office would discontinue most of the briefing sessions and would make no more two-bedroom certifications until the first of the new year because the HUD two-bedroom allocations had been expended. (Most available county rental units are two-bedroom.) As a result no sessions were held in November, only two in December, one in January 1978, and five in February and March combined. Although it was anticipated that briefing activity would increase beginning in April when the Section 8 office began accepting new applications for all size units (due to new HUD allocations), this five-month lull in briefing activity greatly diminished the overall impact of the Section 8 strategy.

As expected, application activity did pick up in April when the housing authority started taking applications for one-, two- and three-bedroom apartments or rental houses. During that month, KCHR housing specialists attended briefing sessions for 226 families (an average of 16 family heads per briefing). Many more briefings were held in May and, as a result of transportation requests from families, desegregated moves also increased.

- Section 8 Transportation Assistance

Either the housing specialist contacted the potential Section 8 transportee (from a list secured during a briefing session), or the applicant contacted the housing specialist (through the telephone number given during the sessions). The transportee was initially asked to indicate a suburban area and a rental complex preference. If that person had no preference, the housing specialist might suggest a location and complex (selected from the list, described above, compiled from multiple dwelling reports or based on her common knowledge about the area). She might drive them around suburbia so they could visually evaluate several alternative locations.

KCHR had expected its increased participation at briefings would generate a large list of Section 8 black families needing transportation assistance 3/. But because of the slow-down in briefing sessions (described

above), the number of transports from the start of the project (June 1977) until the next year's effort was less than 14 a month on an average. In May 1978, however, after the new certifications began, KCHR's transports jumped to 36. Although dropping to 28 during the June post-project month (with a CETA worker replacing a project housing specialist), the monthly number of KCHR transports was still twice the previous year's average.

But the overall transportation process was not a problem-free venture. First, because of the amount of time the process often involved, it became critical that Section 8 persons requesting the service (1) did some preliminary checking on their own, (2) had some idea where they wanted to look, (3) kept the scheduled transportation appointment, and (4) did not keep the housing specialist waiting. These conditions sometimes were not met, often making the transportation activity frustrating for both the involved housing specialist and the Section 8 family member.

Second, because of the very low rental vacancy rate in Jefferson County (2.5 percent in 1977-78), there was no real incentive for property owners to participate in the Section 8 program. Owners could (and often did) drop out of the program after a tenant's one-year lease expired; they could refuse to accept additional Section 8 recipients; and the housing authority was often delinquent with rental payments. As a result there was actually very little Section 8 suburban rental housing available. Those problems often frustrated the search for suburban low-income housing. Nevertheless, KCHR claims its strategy helped influence 83 families to make integrating moves from Louisville to suburban Jefferson County.

B. MULTIPLE DWELLING REPORTS

1. Staffing

One housing specialist and a staff investigator were responsible for securing delinquent reports, updating the listing of apartment complexes, selecting complexes to audit, and initiating the filing of complaints against those believed to be discriminating.

2. Research

KCHR's Multiple Dwelling Reporting Rule requires apartment owners or managers of 25 or more units to file annual occupancy reports. 4/ These reports request information on the race of both occupants and of applicants. The first research task for this strategy was to update the commission's listing of apartment owners and managers, and to secure all overdue reports.

● Securing Overdue Reports

Complexes on the 1976 list that had failed to report in that year or in 1977 were called to verify ownership and then sent reporting forms. Where needed, copies of the form, together with reminder letters, were mailed out during the first week of September 1977. During the following week, a third and final letter, more formal and "legal" in tone than the

previous ones, was sent. These efforts were so successful that no further enforcement action to obtain overdue reports was necessary.

- Updating Listing of Apartments

KCHR's search for the names of apartment owners and managers not appearing on its existing list included a review of apartment complex lists in the phone directory, the commission's own housing complaint list, HUD reports on new construction, and county tract records. Any complex not on the 1976 list was called to verify its existence and then sent a multiple dwelling reporting form with directions for completion.

- Identification of the Ten Largest Private Apartment Rental Firms.

During September, a KCHR housing specialist used the 1977 multiple dwelling reports to identify the ten largest apartment complex owners or managers in the Louisville-Jefferson County area. First, complexes under single ownership and the total number of units they contained were listed together, along with relevant occupancy data. This list was cross-referenced by area (zip code). Added to it were (1) number of area complexes owned, (2) number of one-race complexes, (3) number of black families in each complex, and (4) total occupied units. This area analysis was further refined by determining the area vacancy rate, the overall black occupancy for the zip code area, and the average rental unit base rent of complexes in areas with few or no black tenants. Complexes with rents within reach of the average black in the area, but with no black tenants, were selected for auditing.

In addition, during the initial weeks of the project, the KCHR staff attorney designated to work specifically on the project's "pattern and practice" implications reviewed the tentative findings of the HUD-funded national Housing Marketing Practices Survey, which included apartment audits in the Louisville area. The attorney also reviewed the commission's files for existing complaints against owners with large holdings, and then looked for any racially discriminatory patterns in those owners' multiple dwelling reports. The information was also used to select target complexes for an auditing program.

3. Action

The action components of the multiple dwelling report strategy were:

- Audits of the targeted apartment rental complexes.
- Filing complaints against suspect complexes based on the audit results.

The implementation of each component is discussed below.

- Audits

The purpose of each audit was to find whether black and white testers

were treated differently with respect to:

- Stated availability of units.
- Quoted rental or leasing terms.
- Courtesies extended.
- Other, such as racial comments, request for prior rental experience, application fee, or bank account number.

The audit procedures KCHR used were basically those developed by the National Committee Against Discrimination in Housing (NCDH) for its HUD-funded Housing Marketing Practices Survey. However, while NCDH paid auditors \$10 per sales or rental visit and an additional \$3 for up to three sale-property inspections, KCHR auditors were volunteers and were paid only for their mileage.

- Pre-Audit Preparation

The volunteer auditors KCHR recruited were paired into teams consisting of black and white testers matched in sex, age, appearance, and such actual or assumed characteristics as employment and household size. Dress and general behavior guidelines were established, and the components of each team's "cover story" (assumed characteristics) were assigned. Although most of the volunteers were inexperienced, there was no substantial training for them.

KCHR provided the auditors with the following list of things to remember:

- Audit team members must make visits as close together as possible to increase the likelihood that the same conditions were present for both tests.
- A completed audit can take as little as 10 minutes and as long as 20 minutes.
- The auditor plays a fairly passive role, generally allowing the rental agent the opportunity to volunteer information.
- If no information is volunteered, the auditor then inquires about such aspects as availability, waiting lists, terms, credit checks, deposits.
- If something is available the auditor asks to see the unit.
- Auditors try to get a business card or the signature of the rental agent on literature from the complex.
- As soon as auditors leave the complexes and are out of sight of the rental agent, they should describe what

happened on KCHR forms provided.

● Audit Results

The audits provided substantial evidence of discriminatory treatment. Of 40 complexes audited, some form of discrimination was found in 26, or 65 percent. The frequency of such discrimination, by type of unequal treatment, 5/ was as follows:

-- Availability	13 instances
-- Courtesies	16 instances
-- Lease Terms	3 instances
-- Racial Comments	1 instance
-- Segregated Units	1 instance
-- Other	1 instance

● Pattern and Practice Complaints

During the project period, the commission picked the most promising cases based on the audit results and the expected impact, and filed complaints charging three large management firms, one realty firm, and two owners with discriminatory rental practices. In addition, pending individual citizen complaints were expanded into "pattern and practice" cases using data from the audits, from a previous audit program, and from multiple dwelling reports. Both the commission's and the expanded citizens' complaints were still pending at the end of the project.

C. PUBLIC HOUSING AUTHORITIES

1. Staffing

The major responsibility for implementing the attack on segregated public housing authorities and negotiating voluntary agreements belonged to one of the project's housing specialists.

2. Research: Selecting Targets

During the initial phases of the project a KCHR housing specialist used the 1976 public housing occupancy reports filed with HUD to select 15 significantly segregated housing authorities in the State for voluntary compliance or enforcement targeting. The lack of integration of each authority was measured by a segregation index. 6/ An authority was selected for targeting if (1) it had a potential for significant integration, 7/ (2) it was geographically contiguous to other segregated authorities, (3) there was no existing affirmative action plan for tenant placement, (4) the authority had been designated as a problem by a city's local human rights commission or NAACP, and (5) there was a good likelihood, based on conversations with

local people, that KCHR could persuade the authority to sign an affirmative action agreement.

3. Action

The essential steps of KCHR's public housing strategy were to:

- Publicize the degree of segregation present in target complexes;
- Meet with authority officials to negotiate an affirmative action agreement; and
- If necessary, file a commissioner complaint against recalcitrant authorities.

By August 1977 the action approach had gotten off to an aggressive start, as discussed below.

● Publicity

KCHR published a summary of its research on the segregation level of the public housing authorities in Public Housing Authorities in Kentucky are Slow to Desegregate (August 1977). It named the 15 most segregated public housing authorities in the state, tabulated the number of black and white families in each authority's public housing projects (as of July 1976), described the complaint process, listed the steps segregated authorities should take, and included a copy of KCHR's Voluntary Affirmative Action Plan. A copy of this report was sent to each targeted housing authority with a cover letter explaining the specific problems found at that authority, and briefly outlining the HUD-funded project of which this strategy was part. The letter also described the substance of the recent Middlesboro opinion, 8/ which recognized KCHR's authority to correct residential segregation in public housing. The court spelled out the conditions under which KCHR could order a "ratio remedy," or quota system in residential placements to reverse a pattern of segregation. An authority with an affirmative action plan that was not "patently inadequate" could avoid having such a remedy imposed on it. KCHR staff assistance was offered to help any authority wanting to deal with its particular problem.

KCHR indicated that media response to the letters and report was tremendous. Papers throughout the state named all or some of the 15 target segregated public housing authorities, and reported KCHR's stated intention to meet with authority officials in each city to see if a voluntary desegregation plan could be worked out--but if not, to impose its own plan.

● Negotiation

The circulation of KCHR's report and the resulting media exposure were followed by a series of meetings between KCHR's housing specialist and targeted (and other) housing authority officials.

During September, the executive directors of all 15 targeted authorities were visited or contacted by telephone, as were the human rights commissions in the respective cities and any citizen groups that had expressed an interest in gathering facts about their authorities.

The KCHR housing specialist visited four target authorities to evaluate the possibilities of successful implementation of an affirmative action plan. In two instances, he determined that desegregation of particular projects would be difficult (for example, two rather large complexes were so rundown that it would probably be difficult to convince anyone to live there), but in two others conditions appeared favorable, with one executive director indicating that a plan already been had implemented and appeared to be working. That plan was to be submitted to the Commission for approval.

During early October, the housing specialist and KCHR's director visited the executive director of an especially recalcitrant authority. Accompanied by the director of the local human rights commission, they took a driving tour of all public housing projects in town to determine whether the heavily black projects appeared to be receiving equal maintenance. KCHR staff had also brought the problem to the attention of the local HUD fair housing and equal opportunity officer, who subsequently was briefed further by the commission's compliance and housing director. Armed with details of the commission's affirmative action plans the HUD representative attended the authority's board meeting on October 25, 1977, in order to furnish his input on the plan. Two days later the commission housing specialist was informed by the HUD official that the plan had been rejected by the board, but a substitute resolution to desegregate was proposed and passed. The main points of this resolution were (1) to notify all tenants that apartment transfers resulting in desegregation would be given priority, (2) to fill present vacancies in two all-black projects with white tenants, and (3) to require periodic progress reports to be made to a housing authority official. The resolution was unacceptable to KCHR, whose housing specialist pursued further negotiations, because an effective monitoring procedure was considered essential.

The first KCHR affirmative action plan was signed by Cynthiana Housing Authority officials on October 17, 1977. The plan was officially adopted at an October 26 board meeting. Around the same time, in a show of good faith, officials of the Hazard Public Housing Authority (although not a target) also signed an agreement. The remaining authorities were neither as quick to sign, nor as responsive to the housing specialist's request for meetings.

By the end of November 1977, the continuing negotiations with target authorities had met with varying degrees of success. For example:

- One authority finally showed evidence of having begun to desegregate its all-black and all-white projects.
- Another authority board refused to adopt any written plan, but the director indicated he was achieving some success on his own.

- When board members of another authority board first adopted an abbreviated commission plan that did not include all projects, the specialist negotiated an expanded plan.
- Executive directors of two other authorities, although skeptical of the commission's plan, indicated it would be presented to their board members for review.

Negotiations with the fifteen targets continued through the remainder of the project year. The following additional highlights are noted:

- In February, an executive director accepted the housing specialist's suggestion to make use of his contacts in the black community to stimulate transfers to and placements in desegregated units as a way of breaking up the current racial concentrations in three projects.
- In April, the housing specialist and KCHR's commission compliance director met with a regional HUD official and an attorney from the Justice Department's Civil Rights Division to discuss the continued segregation at one of the target authorities. In the ensuing week, the two federal officials reviewed KCHR compliance files, examined the authority's records, and interviewed personnel in order to determine if there was a basis for bringing federal charges against the authority. For post-project developments in this case, see the Epilog at the end of Chapter VI, OUTCOMES.

KCHR's strategy influenced a number of target authorities either to sign the commission's affirmative action plan or to adopt suitable plans of their own. More specifically, authorities signed four KCHR agreements and KCHR tentatively approved three alternative authority plans. Subsequent occupancy reports indicated a decline in level of the segregation in some of the authorities (see Chapter VI).

- Complaints

Because of its general progress in seeking to negotiate affirmative action plans, KCHR filed no complaints during the project period as part of this strategy.

D. FAIR SHARE PLAN

1. Staffing

The principal staff for this strategy consisted of one person. Because of various financial and technical difficulties it was not possible to bring her on board until August, so the strategy period did not really begin until then. Rather than find someone else for the job, however, KCHR was willing to tolerate this delay because the particular person was so appropriately qualified by her previous experience and relevant contacts in

the housing and planning communities throughout Jefferson County.

2. Training

Because this was essentially a one-person strategy, and the one person that KCHR hired to do the job was already experienced with housing and fair share planning, no training was necessary.

3. Research

There were three kinds of research for this strategy:

- Finding useful and reliable demographic data.
- Examining fair share plans developed elsewhere.
- Gathering information about fair share plan methodology.

● Finding Data

Data were needed initially to document the need for lower-cost housing in various localities within Jefferson County--or, to put it another way, to define the problem that the fair share plan would be designed to solve. These data were readily available from such sources as census reports, multiple dwelling reports filed with KCHR, Housing Assistance Plans filed with HUD, and various public and assisted housing reports. While not always current and compatible, these data were sufficient to define the problem (see Chapter IV above).

More demanding was the choice of data around which the fair share plan would be built. In designing any but the crudest fair share plan, demographic data are a determinative factor. Since plans calling for information that is not available are of no practical use, it is the nature of the available data that will determine the very shape and substance of whatever formulas are incorporated into the plan.

The essence of a fair share plan is to provide a method for determining how much of what kinds of housing should be built in which geographic areas. Since this determination is based on the relative availability and need for housing at various cost levels, it is of paramount importance that demographic data be comparable throughout the entire area to which the plan applies. KCHR's review of the available statistics showed the 1970 Census to be the only source of such comprehensive, uniform data. This made the choice and compilation of data relatively easy. (See the Action section below for a discussion of some of the problems caused by the use of census data).

● Examining Existing Plans

The second major element of the research phase of this strategy was a review of fair share plans from other parts of the country, including Miami Valley (Dayton), Ohio; Denver, Colorado; Miami, Florida; and Sacramento,

California. Beyond considering basic concepts, methodologies, and strategies, this review proved to be of limited use because these other plans were all regional in nature, whereas the KCHR plan would cover only a single urban county. The allocation formulas in regional plans generally did not go below the county or major municipality level, nor were they suitable for the individual site reviews KCHR hoped to provide. Moreover, in terms of strategies for its proposal's adoption and implementation, KCHR was not in the same position as the regional bodies that promulgated the other plans. The regional bodies' composition (policy boards generally composed of elected officials from constituent jurisdictions) and functions (regional housing and land use planning, clearinghouse responsibilities for A-95 reviews of proposed developments) differed considerably from those of KCHR, which has no comparable constituent relationship with Jefferson County, the target of its plan.

- Surveying Methodologies

The third aspect of KCHR's research involved talking with various groups and agencies in the Louisville area about relevant methodologies. Of particular concern were the methods of making housing needs assessments and defining geographic districts for purposes of making housing allocations.

4. "Action"

The heading to this section appears in quotation marks because, unlike most other strategies, the development of a fair share plan involves, by its very nature, much more planning than action. Indeed, the true action phase must come later, after the plan has been not only developed, but also officially recognized and put to such uses as providing a guide for the placement of federally assisted housing and a yardstick for KCHR in its A-95 reviews. Until then, the essential core of this strategy is planning.

Combined with the research phase, the major part of the initial work on the strategy consisted of a series of meetings, virtually all successful, with various interest groups and agencies to seek their support and, in some cases, their advice and any data they could provide. These included the following:

- County Community Relations Office
- City Landmark Commission
- Kentuckiana Regional Planning and Development Agency
- Louisville Community Development Office, Housing Division
- Homebuilders Association of Louisville
- HUD/EO Office
- Jefferson County Building Department

- Louisville-Jefferson County Planning Commission

In addition, the following community organizations attended a group meeting that also included some government agencies:

- Urban League
- NAACP
- League of Women Voters
- Legal Aid
- Peace and Justice Committee
- Various church groups

This initial outreach effort constitutes KCHR's entire community effort thus far. It is well aware, however, of the controversy that has surrounded fair share plans elsewhere, and recognizes the importance of undertaking additional efforts to gain community and political support before "going public."

KCHR originally developed two alternative fair share plans, features of which were later combined to form a third plan. All three plans seek to achieve the same overall objectives:

- Encourage the production of assisted housing in areas where lower cost housing is not now available.
- Avoid further concentrations of such housing where it is now available in substantial quantity, or where there is a substantial lower income population.
- Avoid tipping the economic balance in areas that now have a substantial mix of income levels.

In addition to having the same overall objectives, the three plans all have certain features in common:

- They all distinguish between proposed developments that consist entirely of assisted housing and those that include a mix of cost levels.
- They all apply both to rental units, whether in a single building or in a group of buildings within a single complex, and to sales units, whether in a subdivision or a section of a subdivision.
- Each places limits on the number or percentage of assisted units that can be built in any single development.

- Each requires that all proposals for new lower cost housing include affirmative marketing plans at the time they are submitted.

Finally, all three alternative plans take the same basic approach:

- Each divides Jefferson County into districts (ten districts in two of the alternatives; eight in the third), each with approximately the same portion of the county's total population.
- Assisted housing is then allocated among the districts by percentages computed on the basis of (1) the median sale and rental costs of housing for the entire county, and (2) certain demographic data for each census tract--median sale and rental costs, the percentage of units occupied by owners and renters, and the total number of housing units.
- The location of each district's allocation of assisted housing and the number of units that can be built in any single development are then determined by sets of development/site policies that vary according to the amount of lower cost housing already in the area for which a given proposed development is being considered.

The chief difference among the three alternative plans is the geographic focus of the development/site policies used to determine how each district's allocation may be distributed within its borders. Alternative Plan A applies the policies to entire census tracts. Based on each tract's demographic characteristics, one of three possible sets of policies will apply to all proposed sites located anywhere within the borders of that tract. Under Alternative Plan B, on the other hand, the particular demographic characteristics of the area within a one-mile radius of each proposed site determines which development/site policies apply. Alternative Plan C is a combination, following the Plan B approach in census tracts that already have a predominance of lower cost housing, and the Plan A approach in all other tracts. A brief, but more detailed, discussion of the three plans follows.

Alternative Plan A

Under Alternative Plan A, each census tract in a district is classified using a simple computation based on the median value of owner-occupied units in the tract, median rents, the proportion of owner-occupied units in the tract and the proportion of renter-occupied units. There are three classifications of tracts:

- Class A. Census tracts that currently have little or no low cost housing--these are deemed priority areas for either 100 percent-assisted or economically mixed developments.
- Class B. Census tracts that currently contain a mixture of housing at different cost levels--these are deemed suitable

for economically mixed developments only; not suitable for 100 percent assisted housing.

Class C. Census tracts that currently have a predominance of lower cost housing--these are deemed not suitable for any assisted development unless proposed for a designated neighborhood improvement district.

For each classification of tracts, a different set of development/site policies applies. To illustrate, the following policies apply under Alternative Plan A to all developments proposed for census tracts in class A:

"Policy 1: Assisted lower cost multifamily construction shall:

"a) be limited to fifty (50) units within developments

proposed exclusively for lower income occupancy; or

"b) be limited to twenty (20) percent of the total number of units within developments proposed for mixed income occupancy.

"Policy 2: Assisted lower cost single-family construction shall:

"a) be limited to twenty-five (25) units within developments proposed exclusively for lower income occupancy; or

"b) be limited to twenty (20) percent of the total number of units within developments proposed for mixed income occupancy."

Alternative Plan B

Under the second alternative, the policies are independent of census tracts. Instead, they prescribe where particular types of developments may be located, based on the demographic characteristics of the area surrounding the proposed site. For example:

"Policy 4: Sites proposed for housing development which will include up to 20 percent of the total number of units for lower income occupancy shall:

"a) be located at least one (1) mile from existing lower cost housing provided through one or more government housing assistance programs; and

"b) be located within an area in which less than 50% of all housing units within a one mile radius, including the proposed development, are valued or rented below the median value and rent for Jefferson County; and

- "c) be located within an area in which less than 50% of all households within a one mile radius, including those expected to reside in the proposed development, have incomes below 70 percent of the median income for Jefferson County; and
- "d) be located within an area in which the number of households within a one mile radius with incomes below the poverty level does not exceed the proportion of such households within the total household population of Jefferson County."

Alternative Plan C

Plan C is essentially the same as Plan A except for the policies to be applied within census tracts that already have a predominance of lower cost housing (class C). Within class C tracts, the two applicable policies, similar to those in Alternative Plan B, restrict the location of particular types of developments based on the demographic characteristics of the area surrounding the proposed site:

"Policy 1: Sites proposed for housing development intended exclusively for occupancy by lower income persons shall:

- "a) be located within an area in which no more than one-third (33.3%) of all housing units within a one mile radius are valued or rented below the median value and rent for Jefferson County; and
- "b) consist of no more than 25 new multifamily units or 15 single-family units.

"Policy 2: Sites proposed for housing development which will include up to 20 percent of the total number of units for lower income occupancy shall be located within an area in which less than 50% of all housing units within a one mile radius are valued or rented below the median value and rent for Jefferson County."

The differences in geographic focus that distinguish the three alternative plans make Alternative Plan A the easiest to implement. To determine whether a proposal conforms to the plan, one need only consider the policies that apply in the particular census tract in which the proposed site is located. In Plan B, on the other hand, one must first determine the appropriate demographic characteristics of the area within a one-mile radius of the site before applying the appropriate policies. Each time a different site is considered, different data must be compiled. Such a compilation may not be easy, since data are not likely to be available in intervals of one-mile circles. Implementing Plan C, of course, would be relatively easy in census tracts where it follows the approach of Plan A, and more difficult where the policies to be applied are similar to those of

Plan B. On the other hand, it is precisely the manner in which Plan B does consider the specific characteristics of the area around each proposed site that makes it a more precise tool for controlling the placement of assisted housing. In contrast, under Plan A, which looks only at the overall characteristics of a census tract no matter where inside the tract a proposed site may be, proposals that increase the concentration of assisted housing can more easily slip through. This might happen, for example, if a proposed site were adjacent to an existing area of concentration, even though the tract as a whole appeared mixed, or if a site at the edge of a tract that truly has little assisted housing is adjacent to an area of concentration in a neighboring tract.

Although the strategy did not move into an action phase in which its effectiveness could be tested, several points made in the agency's final report are worth brief mention. First, the agency foresees a variety of uses for the plan, although most depend on its adoption by agencies over which KCHR has no control. The allocation plan for dividing Jefferson County into eight or ten districts and then distributing assisted housing among them is intended primarily as a planning and monitoring tool. As such it will be of use to the planning commission for planning and zoning, to the city and county community development offices for developing and implementing Housing Assistance Plans, and to regional and State A-95 clearinghouses in reviewing applications for funds that will have a direct or indirect impact on housing. It will be of similar use to KCHR as the commission relates to these various agencies, providing for the first time, for example, objective, measurable grounds to support the positions it takes on housing and related issues. The policies that govern the size and location of assisted housing developments within the eight or ten districts will be similarly useful in relation to specific housing proposals.

Obviously, the acceptance the plan receives in other agencies-- particularly whether it is officially adopted by the relevant planning and development agencies--will determine its effectiveness both inside and outside the commission. But even if it is not officially adopted, a fair share plan can certainly be used to guide the deliberations of an agency such as KCHR. Moreover, by providing a rational, quantitative approach to housing planning and development, the use of such a plan lends both credence and substance to an agency's policies and public positions, thereby making them harder to refute or reject.

KCHR does concede, however, that there are several weaknesses inherent in its plan--or indeed any fair share plan. First, while an unofficial plan may be better than none at all, only if it gains local official and community support and official recognition outside KCHR will the plan have any real chance of implementation. It is far from certain that KCHR will be able to win such support and recognition for its plan. Second, a plan for the location of new assisted housing can hardly have much impact unless a substantial amount of new assisted housing is being produced. This requires an adequate and reliable flow of Federal housing funds for new construction. If rehabilitation funding substantially outweighs funds for new construction, the underlying purpose of the plan will not be fulfilled, because rehabilitation is needed most in inner city

neighborhoods, rather than in the areas in which the plan would locate new construction. Finally, if housing desegregation is the ultimate goal of a fair share plan, even an implemented plan is no guarantee of success, for it would govern only the placement of assisted housing, not who chooses--or is permitted to choose--to occupy it.

5. Future Strategy

Having developed three alternative fair share plans, KCHR now intends to choose among them before seeking outside support for what it has done. Among other factors, KCHR will consider the feasibility of each plan, its implementation and its expected effectiveness in achieving its purposes.

6. Time Spent on Strategy

The following is KCHR's estimate of the time spent on the various parts of the overall effort to develop a fair share plan:

	<u>Percent</u>	<u>Amount</u>
Data compilation	10	1 month
Data analysis	20	2 months
Meetings	10	1 month
Policy development	20	2 months
Drafts and revisions	40	4 months

E. COST

The total cost of the demonstration project was \$118,328, all of which was funded by HUD/ALNA.

Cost Categories	All Strategies	Apartment Rentals	Section 8	Public Housing	Land Use
Staff Salaries and Benefits	\$ 89,366	35,879	22,930	20,157	10,400
Consultant Fees and other other Non-staff Labor	15,960				15,960
Travel	7,350	2,000	2,250	2,100	1,000
Production of Materials	1,325			675	650
Supplies	2,050	1,000	600	450	
Other (Telephone)	2,277	900	577	500	300
TOTAL	\$ 118,328	39,779	26,357	23,882	28,310

VI. OUTCOMES

For the most part, the outcomes reported in this section are the contractor's findings as to changes resulting from what the agency did in the course of its demonstration. KCHR's findings from its own research or investigations (e.g., its MDR analysis and its apartment audits) are reported in Chapter V, IMPLEMENTATION.

All outcomes were grouped into two categories, agency capacity and equal housing opportunity:

Agency Capacity. The agency's own capability to identify and challenge systemic housing discrimination, as measured by such pre-post project changes as increased staffing, new research or investigative or analytic expertise, better use of community groups, new training techniques, and strengthened negotiating tactics. Improvements in handling individual complaints, while not generally a concern of this project, may also be a relevant measure of increased capacity if they include, for example, new procedures for identifying individual complaints that should be treated as charges of systemic discrimination.

Equal Housing Opportunity. The impact of the strategy on systemic discrimination, as measured by pre-post project changes in specific discriminatory policies and practices or in increased housing opportunities for minorities or other protected class persons. The equal opportunity outcomes have themselves been divided into two subcategories -- potential opportunity and actual opportunity. Potential equal housing opportunity outcomes are real-world changes that hold the promise of leading to increases in actual housing opportunities for minorities. Actual equal housing opportunity outcomes are either measurable increases in housing actually obtained by minority groups or actual changes in behavior (such as affirmative actions known to have been taken or the absence of discriminatory treatment previously known to exist).

Potential opportunity outcomes are one step removed from actual opportunity outcomes in the same way that changes in the rules of a game are one step removed from the actual moves the players make. In fact, the distinction between potential and actual opportunities is essentially the difference between rules and behavior. Promises made in a binding conciliation agreement, for example, are only a potential opportunity outcome; they change the rules that govern the respondent's behavior but not necessarily his behavior itself (which, if also changed, would represent an actual opportunity outcome).

Capacity and opportunity outcomes, it should be noted, are not mutually exclusive. By definition, an agency cannot produce an equal housing opportunity outcome if it does not have the capacity to do so. Each

equal opportunity outcome, therefore, is indicative of a capacity outcome as well.

A. SECTION 8 STRATEGY

1. Actual Equal Housing Opportunity Outcomes

By doubling its staff participation in helping to influence Section 8 families to make desegregating moves to suburban Jefferson County, KCHR increased the number of such moves by more than 3-1/2 times from 23 in the previous year to 83 during the project year. Although this fell short of KCHR's original goal of 96 moves (due in large part, no doubt, to the problems discussed in Chapter V), it constituted a marked increase in efficiency. Not only was the increase in staff far exceeded proportionately by the number of additional integrating moves it influenced, but the placement rate (measured by the ratio of moves to transports) also grew substantially from .20 to .52. See Table 1.

Table 1
Section 8 Strategy Transport
and Moves

	<u>6/76-5/77</u>	<u>6/77-5/78</u>	<u>Increase (%)</u>
Transports	114	161	141%
Integrating Moves	23	83	361%
Placement Rate (Moves and Transports)	.20	.52	258%

Source: Kentucky Commission on Civil Rights records supplied to the contractor in monthly and final reports

2. Increased Agency Capacity Outcomes

KCHR had been transporting Section 8 certified persons since the early part of 1976. Between June 1976 and May 1977, it transported 114 and influenced 23 moves. During the project year (June 1977 to May 1978), it transported 161 and influenced 83 to move. This represents an increase not only in the number of moves, but also in the rate of placement--while the transportation level of effort rose by less than 50 percent, the moves that effort produced increased by more than 100 percent.

An additional increase in capacity was the use of multiple dwelling report data to identify suburban apartment complexes within the Section 8 rental range to expand its list of apartments potentially available to the families KCHR was transporting.

B. MULTIPLE DWELLING REPORT STRATEGY

● Increased Agency Capacity Outcomes

Because of a stepped up effort to secure MDR reports there was a 100 percent response rate from known Louisville-Jefferson County complexes and a 75 percent response from those known in the remainder of the State. Compared to the previous year, this was an addition of 25 and 15 percent, respectively

Through this strategy, KCHR developed its capability to use the multiple dwelling reports on which to build an enforcement program, picking audit targets on the basis of MDR data, and filing "pattern and practice" complaints based on the audit results against some of the largest owners in the Jefferson-Louisville County area.

In a related effort, KCHR was able to take several pending individual complaints and, with the use of MDR data, expand them into "pattern and practice" charges. Before the project, the housing complaint investigation process invariably focused on just the incidents occurring to one individual, the complainant.

(Also see E. EPILOG below.)

C. PUBLIC HOUSING AUTHORITIES

1. Actual Equal Housing Opportunity Outcomes

Using the U.S. Housing and Urban Development public housing occupancy reports for July 1976, 1977, and 1978, KCHR computed yearly segregation indexes for each of the 15 target public housing authorities. As shown in Table 2, a comparison of pre-project (1977) and post-project (1978) data indicates that the segregation index dropped by more than 15.0 in two authorities, by more than 10.0 in a third authority, by more than 5.0 in an additional five, and by 2.0 in a ninth authority; it remained unchanged in authority and increased by a small amount (less than 2.0) in three authorities; and in two no comparison could be made because the data were available for only one of the two years. The total net decrease for the 13 authorities for which change could be measured was 82.5, about 2.8 times as great as the net decrease these same 13 authorities experienced during the year before the project. Segregation was reduced in more than half of the targeted housing authorities.

2. Potential Equal Housing Opportunity Outcomes

An additional benefit of the strategy has been that several public housing authorities were prodded into adopting affirmative action plans to counteract or eliminate policies and practices that created and acted to sustain segregated residency patterns.

Table 2

Pre and Post Project Comparisons of
Differences in Segregation Level of
Fifteen Target Kentucky Public Housing
Authorities, 1976, 1977 and 1978

<u>Target Housing Authorities</u>	<u>Segregation Indices</u>				
	<u>1976</u>	<u>1977</u>	<u>(1976-77) Difference</u>	<u>1978</u>	<u>(1977-78) Difference</u>
1. Mt. Sterling	60.7	60.7	0	50.8	-10.8
2. Cynthiana*	70.3	62.6	-7.7	45.76	-16.9
3. Hopkinsville*	97.6	a/		78.9	
4. Newport	74.4	77.6	+3.2	59.3	-18.3
5. Danville	51.0	50.2	- .8	51.2	+1.0
6. Somerset	47.2	42.2	-5.0	a/	
7. Maysville**	53.0	49.5	-3.5	50.5	+1.0
8. Owensboro	100.0	100.0	0	91.9	- 8.0
9. Henderson	71.1	71.1	0	62.8	- 8.3
10. Paris**	54.1	48.5	-5.6	41.6	- 6.9
11. Winchester	56.8	52.4	-4.4	45.4	- 7.0
12. Mayfield*	91.4	84.4	-7.0	82.4	- 2.0
13. Murray*	74.1	74.1	0	74.1	0
14. Paducah	45.8	45.5	- .3	47.4	+ 1.9
15. Covington**	67.6	64.6	-3.0	57.4	- 7.2
Net Difference			-34.1 b/		-81.5

Source: Summary statistics compiled by the Kentucky Commission's housing specialist Ray Foushee.

* Affirmative Action (A.A) agreements were secured

** A.A. already in effect

a/ Data not available

b/ For the 1976-77 and 1977-78 net differences to be comparable, Somerset (-5.0) should first be excluded, since 1978 data were not available for that authority. Without Somerset, the 1976-77 net difference is -29.1.

3. Agency Capacity Outcomes

KCHR's increase in agency capacity as a result of this strategy is evidenced by the following outcomes:

- Secured four voluntary affirmative action agreements from public housing authorities with a high degree of residential segregation.
- Prompted Department of Justice investigations of residential segregation in public housing. (Also see E. EPILOG below.)
- Identified the 15 most segregated housing authorities in the State, based on an analysis of data reported to HUD, and targeted them for compliance efforts under this strategy.
- Developed a constructive working relationship with HUD field staff to gain compliance by public housing authorities.

D. FAIR SHARE HOUSING PLAN STRATEGY

● Agency Capacity Outcomes

The measure of increased capacity resulting from this strategy was KCHR's proven ability to produce the primary product--three alternative fair share housing plans.

E. EPILOG: POST-PROJECT DEVELOPMENTS

- One management firm, as of December 1978, had been sent a conciliation proposal that included an affirmative marketing agreement developed during the project. No response had been received by the end of that month.
- The case against another management firm was dismissed by KCHR because of an argument which occurred between one tester and manager. Also, further investigation indicated that there were some black tenants in the complex.
- Charges of racial steering against a real estate company were dismissed by KCHR because no support for the allegation was found.
- Another complaint will probably be dismissed by KCHR because further investigations indicated that one-third of the tenants are black.

- A complaint against one management company is in conciliation.
- The U.S. Department of Justice has filed a fair housing suit charging the Owensboro, Kentucky, Housing Authority with operating racially segregated housing projects.

VII. OBSERVATIONS

Numerous factors affect the implementation and results of any demonstration project, some positively, others negatively. Some of these factors are within the control of the agency, others are not; some can be encouraged or avoided, others can only be accepted or accommodated. Below are some of the factors that affected the Kentucky agency's demonstration, with a short discussion of the role of each. Any other group or agency trying the same or similar strategies will face at least some of these same factors, and may find Kentucky's experiences instructive.

1. Strategy Design

The design of a strategy can affect both its implementation and its effectiveness. Two of Kentucky's four strategies--the multiple dwelling reporting rule strategy, based on testing and multiple dwelling reports, and the public housing strategy, based on analysis of HUD occupancy reports and other data about particular authorities--were well designed, providing a strong basis for moving quickly to action. The Section 8 strategy had one major design flaw, in that it did not take HUD's certification cycle into account, and was unexpectedly slowed down when the supply of certifications dried up for several months. While the design of the fair share strategy did not chart out precisely where it was going, this was in part due to its experimental nature, for it was part of the strategy itself to develop the actual thrust and direction of the plan.

2. Agency Authority

The Kentucky agency has a long history of independence, apparently having asserted and established its authority to act independently of other government control. In the face of opposition to some of its public housing work, for example, the agency was not swayed, but simply moved right on with its strategy.

An agency's legal authority can affect both the choice and design of its strategy. The multiple dwelling reporting rule strategy quite obviously depended upon the agency's power under its multiple dwelling reporting rule to collect data on occupancy patterns among apartment houses throughout the state. The public housing strategy was supported by a recent Kentucky Supreme Court decision upholding the agency's right to impose a quota remedy if public housing authorities did not take suitable remedial action themselves to desegregate their developments.

3. Research and Action

The balance between research and action can affect both implementation and outcomes. Two of the three action strategies--multiple dwelling reporting rule and public housing--struck a proper balance between research development and action. There was a relatively brief period of research, all of it action-oriented, after which the agency moved directly to action. The third action strategy (Section 8) involved no research at all, and the

fair share plan strategy was essentially a planning strategy that did not reach the action stage.

4. Prior Experience and Knowledge of the "Territory"

The Kentucky agency had considerable experience both in civil rights and housing discrimination generally, and particularly with several of its strategies. The Section 8 strategy, for example, was not new, but rather a substantial expansion of an existing activity. The agency had similarly done some work in public housing discrimination, and was well versed in the problems of public housing desegregation. One of their staff members had recently been involved in the nationwide NCDH testing project, an experience of obvious use to the multiple dwelling reporting rule strategy.

Because of its prior experience and knowledge of the particular problems its strategies were attacking, with one exception the agency was essentially ready to go when the project started, with the necessary research materials either in hand or identified. The exception was the fair share strategy, where substantial data collection was required and there was initially a problem hiring the desired staff person.

5. Leadership and Management

Leadership and management can be crucial factors in the effectiveness of a strategy. The entire KCRC project was under the full-time supervision of the agency's housing director, and spurred on by the "can-do" leadership of the agency director, who gave the project high priority. To cite one example of such leadership, at the start of the demonstration, bureaucratic limitations made it difficult through normal channels to hire the person with the necessary experience to carry out the fair share strategy. This problem was overcome only through the resourcefulness of the agency director, who convinced ALNA, with HUD's approval, to cooperate by hiring the employee in question as a consultant, although she remained under his supervision and direction in Louisville.

6. Staff Skills

The project staff was generally experienced, from director on down, and there was little need for basic training before the project could get underway. Some staff members were experienced agency employees, and others had previous experience outside the agency relevant to their particular strategies. For example, the staff person working on the fair share strategy had previously worked for the area-wide planning agency, and was to have worked on that agency's fair share plan had it decided to develop one. She already had the necessary contacts with other agencies, and was familiar with all the issues involved.

The project was benefitted by the fact that an agency staff lawyer was assigned to it and was able to work full-time on the demonstration, particularly in drawing up the complaints under the multiple dwelling reporting rule strategy.

7. Political Environment

The political environment in which an agency operates is an important influence on whatever it does, in ways both subtle and blatant. By tying several of its strategies to the use of fair housing as a method to reduce the need for busing to desegregate the public schools, the agency was able to respond to and try to take advantage of, wide-spread concern in the Louisville-Jefferson County area about court-ordered busing.

8. Linkages Outside the Agency

The extent of an agency's prior relations and cooperation with people and groups or other outside agencies can be important if such outsiders are to play a key role in the strategy. KCRC has a good reputation with civil rights groups and citizen groups, which it has maintained not only by its performance, but also through the active membership of agency officials in several of the groups; it had no problem gaining their support whenever needed.

An agency's ability to generate community support for its efforts can sometimes be valuable. In contrast to apartment owners and managers, some residents of the areas to which the agency hoped to move Section 8 families did support the strategy. The agency received offers from some tenant groups, for example, to help find housing for Section 8 families.

While local government support is obviously a requirement for the adoption of any fair share plan by the jurisdictions to be affected by it, the Kentucky agency did not reach the point of trying to sell its plan or engender such support. The chances of doing so successfully did not appear particularly promising, since the board of the area-wide planning commission, whose members represent the very same jurisdictions, had previously rejected proposals from its own staff to develop a fair share plan.

In the public housing strategy, support from 15 targeted authorities was mixed, some being cooperative, some resistant; other authorities, who were not even among the 15, also agreed to adopt affirmative action plans to desegregate.

9. Use of the Media

The use of the media can be a proper and effective element in an agency's strategy. KCRC was adept and well experienced in gaining widespread media coverage, which helped in the implementation of at least two of its strategies. Its report on the 15 most segregated public housing authorities in the State received wide coverage, as did the results of its testing activities.

10. Indirect Impacts

Though they cannot always be anticipated, outside circumstances can affect a strategy. KCRC received unexpected help from the Department of Justice which, spurred by reports of the public housing strategy,

investigated several authorities and eventually filed suit against the one that was most resistant to the commission's efforts to desegregate.

11. HUD's Role

HUD can play a key role--for better or worse--in response to particular strategies. HUD had a dual impact on this project. In the case of the Section 8 strategy, the past history of delayed payments to Section 8 landlords made the program unpopular with apartment owners and managers, thus contributing to the problem of finding enough units for Section 8 families. On the other hand, the local HUD office was particularly helpful in the public housing strategy, not only supplying information, but also participating in some of the negotiations with the authorities and generally backing up the agency's position that the public housing should be desegregated.

NOTES

Chapter II: INTRODUCTION TO THE AGENCY

1. "The Kentucky Civil Rights Act", p. E-1 (KCHR, n.d.); 1968 S 264, Sec.3.
2. KRS 344.150.
3. KRS 344.180; KRS 344.190.
4. KRS 344.200(1).
5. KRS 344.360.
6. KRS 344.370.
7. KRS 344.290.
8. Interpretation B--On Housing Discrimination (KCHR, December 12, 1974).
9. KRS 344.240.
10. KRS 344.250 (2).
11. 104 KAR 1:060.
12. 104 KAR 1:060, Exhibit A, Multiple Dwelling Report Form.
13. KRS 344.250 (7); 104 KAR 1:060.
14. Middlesboro Housing Authority v. Kentucky Commission on Human Rights, 533 S.W.2d 57 (Ky. App. 1977).
15. "Proposal Strategies to Combat Systemtic Housing Discrimination" (KCHR Work Plan, January, 1977) (hereafter, "Work Plan") p.7.
16. Ibid.
17. Ibid.
18. Id. at 8.
19. Ibid.
20. KCHR answers to Baseline Data Questions (ALNA notes) (hereafter, "Answers"), p. 6.
21. KCHR, Work Plan, p. 7.
22. KCHR, Answers, p. 7.
23. Id. at 8.

Chapter III: STATEMENT OF THE PROBLEM BEING ATTACKED

1. The index runs from zero (complete desegregation) to 100 (total segregation). KCHR, More Housing Segregation than Ever...In Louisville and Jefferson County (December 1973), p. 4.
2. KCHR, Housing Desegregation Increases as Schools Desegregate in Jefferson County (May 1977) (hereafter, Desegregation), p. 1.
3. Id., p. 2.
4. KCHR, Final Report, pp. 52-53.
5. University of Louisville Urban Studies Center, Section 8 Monitoring System: Year 2, (April 1978), p. 69.
6. KCHR, Public Housing Authorities in Kentucky Are Slow to Desegregate (1977), p. 20.

Chapter IV: DESCRIPTION OF THE STRATEGIES

1. KCHR had been instrumental in the merger of the Louisville and Jefferson County Section 8 certification areas into a single area. This made it possible for Section 8 families to move freely from Louisville to the suburbs, for otherwise their certificates could only have been used in the city itself.

Chapter V: IMPLEMENTATION

1. KCHR, Desegregation, p. 7.
2. See Newbury Area Council v. Board of Education of Jefferson County, 521 F.2d 578 (6th Cir. 1975).
3. Non-black families or the aged or handicapped were not refused the service but they seldom requested it. Those few who did were transported.
4. In Kentucky, apartment managers and rental agents, with the owner, are equally liable for filling out the forms.
5. More than one type of discrimination was encountered in some instances.
6. The index is an indicator of the degree to which black families are concentrated or unevenly represented in a housing authority's various projects. One hundred percent equals total segregation.
7. Some all-white authorities with projects scattered in areas with no blacks were not considered targets.
8. Middlesboro Housing Authority v. Kentucky Commission on Human Rights, 553 S.W.2d 57 (Ky. App. 1977).

STATE CIVIL RIGHTS AGENCY DEMONSTRATIONS OF STRATEGIES
TO FIGHT HOUSING DISCRIMINATION

CASE STUDY:

Massachusetts Commission Against Discrimination

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I. INTRODUCTION

A. THE NINE-STATE DEMONSTRATION PROJECT

This case study is one of a series being prepared under contract to the U.S. Department of Housing and Urban Development as part of a HUD-funded research and demonstration project. A key element of this project was the provision of funds to nine State civil rights agencies to enable them to either launch or expand fair housing programs directed particularly against systemic discrimination.

1. Background

Notwithstanding the efforts of the past two decades, there remains an intolerably wide gap between the promise of choice implicit in an array of civil rights legislation and the reality of housing discrimination for minorities in America today. Moreover, discrimination in housing contributes to social injustices reaching well beyond its most immediate consequence, residential segregation. These include inequality of job opportunities, separate and unequal schools (notwithstanding the 1954 Brown decision), and increased tax burdens on inner city residents to support growing social service costs and an irregular pattern of urban growth.

So systemic and institutionalized is racism in the housing system that public enforcement efforts--crippled by weak budgets and preoccupied with responding to individual complaints--seem only to have changed the face of discrimination without uprooting it. Replacing the blatant housing discrimination of the pre-civil rights era are new discriminatory practices, subtle, indirect, and often hidden--but just as effective. The struggle for equal opportunity in housing is far from over.

State human rights agencies are called upon to play a major role in that struggle. State laws often give them far-reaching responsibilities, while Federal law gives many the added burden of processing housing discrimination complaints filed under Title VIII. Their limited resources, however, permit little more than the handling of individual complaints, often leaving significant patterns and practices of housing discrimination unchallenged.

And at all levels--Federal, State and local; public and private--there is a need to find and test new ways to use existing fair housing laws more creatively and effectively. Also needed is precise, reliable information about systemic discrimination in housing and about the programs necessary for the full enforcement of existing fair housing laws.

The message is clear: both qualitatively and quantitatively, this nation's level of public intervention on behalf of the minority shelter-seeker must be substantially upgraded.

2. The Project

It is to this message that HUD responded in 1976 by committing Federal resources under this project to enable States to assume a more aggressive role in meeting fair housing goals. In doing so, it addressed in a single programmatic thrust two broad national problems: how to assist minority families in obtaining decent housing in the face of increasingly sophisticated discriminatory practices, and how to help the States increase their capacity and effectiveness in carrying out responsibilities under existing laws.

Even before issuing the Request for Proposals (RFP) for this project, HUD selected the participating State agencies. On June 16, 1976, HUD invited 10 State civil and human rights agencies to take part in this project. One agency, ultimately unable to meet all of HUD's requirements, did not participate. The remaining nine are:

- Colorado Civil Rights Commission
- Connecticut Commission on Human Rights and Opportunities
- Kentucky Commission on Human Rights
- Massachusetts Commission Against Discrimination
- Michigan Department of Civil Rights
- New Jersey Division on Civil Rights
- Ohio Civil Rights Commission
- Pennsylvania Human Relations Commission
- Washington State Human Rights Commission

Each of these agencies was offered up to \$120,000 to pay for a year-long demonstration of one or more strategies to combat systemic discrimination. They were not required to match the Federal money, but were, of course, free to supplement it with funds of their own. Within general guidelines and a minimum of specific requirements, each agency designed its own demonstration program.

The agencies performed their demonstrations as subcontractors to A. L. Nellum and Associates, Inc. (ALNA), the contractor HUD selected to run the project. They received their money through ALNA and had no direct contractual relationship with HUD.

Under its contract with HUD, ALNA's role has included the following:

- Assisting each State agency during the planning stage of its program, and assuring that proposed strategies met project requirements.
- Distributing funds to the agencies.
- Monitoring each program over a 12-month period.
- Evaluating the impact of each program.
- Preparing a final report (of which this case study is a part)

- describing the implementation and results of the project in detail.

The project has been under ALNA's direction since October 1976.

Focusing on State agencies as vehicles for social change, this project has two primary objectives:

- To identify replicable, tested, and proven intervention strategies for combating systemic discrimination.
- To strengthen State agency capacity and effectiveness in carrying out their responsibilities under existing laws.

Additional objectives are an increased understanding of systemic discriminatory practices and of the States' role in combating them, and the dissemination of this understanding to interested citizens.

B. THE STRATEGY AT A GLANCE

To briefly introduce the subject of this case study, the fair housing strategy demonstrated by Massachusetts Commission Against Discrimination consisted essentially of the following:

- Negotiate formal agreements with appropriate executive departments and agencies in State government to use their leverage by making equal housing opportunity and local cooperation with MCAD prime factors in their funding decisions.
- Negotiate memoranda of understanding with localities, requiring them to develop equal opportunity plans.
- Develop equal opportunity guidelines by which to judge both the localities and their funding applications.
- Through comments on State and Federal applications and through persuasion, seek corrective actions so as to comply with fair housing and related program requirements.
- Expand MCAD management information system to include application review data.

This strategy is described in detail in Chapter IV below. The outcomes of MCAD's strategy are described in Chapter VI.

II. INTRODUCTION TO THE AGENCY

The Massachusetts Commission Against Discrimination (MCAD) consists of three members appointed by the governor, 1/ who designates one of them as chairperson. 2/ The commission appoints its own attorney (who represents it in court), as well as other employees. 3/

Massachusetts law contains various prohibitions against various specified forms of housing discrimination. 4/ Where such discrimination is on the basis of race, religious creed, color, national origin, sex, age, ancestry, or marital status, all the specified forms of it are prohibited. 5/ In addition, if certain types of housing are involved, the prohibition also covers discrimination based on a person being a veteran, member of the armed forces, or blind. 6/ A more limited prohibition applies as well to discrimination because a person has a child or children. 7/ Also prohibited is discrimination in rental accommodations based solely on a person's being a recipient of various forms of public assistance or housing subsidies. 8/

In fiscal years 1976 and 1977, MCAD's budgets were \$960,947 and \$1,091,368, respectively. Its only fair housing activity was processing complaints. The housing staff, which then consisted only of three field representatives and one part-time attorney, remained unchanged (except for the project staff itself) during the demonstration.

Prior to the project, MCAD had not collected and analyzed racial and ethnic data relative to housing, nor had computer facilities been used to aid the housing staff.

At the start of the project, MCAD had already been participating in the A-95 review process for several years. While it felt that its reviews were getting more sophisticated, their focus had been primarily on the employment implications of applications for Federal funds. Before it was enlarged by this project, MCAD's A-95 staff consisted only of one field investigator and the part-time services of the Director of Public Employment (25 percent of his time) and a secretary (20 percent). With such a small staff, it could offer only limited technical assistance to applicant towns and cities, and could do little effective monitoring of compliance by applicants with the terms of the remedial and affirmative action plans they had adopted (again, primarily in the area of equal employment).

While MCAD had already begun discussing with other State agencies the impact their programs and policies have on housing, none of these talks had resulted in a written memorandum of agreement by the time the project started. The commission had also been developing a cooperative relationship with the State A-95 clearinghouse, which it expected to build on during the project.

In working with other agencies as part of its strategy, MCAD was aided by a governor's executive order under which State agencies must require all recipients of funds from them "to undertake affirmative action programs to eliminate patterns and practices of discrimination due to race, color, sex,

or national origin." 9/ At MCAD's request, these State funding agencies must develop rules, regulations and procedures, subject to review and revision by MCAD, to "implement the goals of non-discrimination and affirmative action." 10/

III. STATEMENT OF THE PROBLEM BEING ATTACKED

Minorities and women within Massachusetts communities do not have equal housing and employment opportunity. Pre-project tenant occupancy data collected by the Massachusetts Commission Against Discrimination from a number of local housing authorities indicate that segregated living patterns have been maintained by housing authorities in areas within the Commonwealth with substantial minority populations. 1/ In Boston, 85 percent of the total minority population (which is around 6 percent of the city population) resides in only four neighborhoods, Roxbury, Dorchester, Mattapan, and the South End. 2/ More recent investigations conducted during the demonstration project confirm that suburban communities, as well as metropolitan areas, are not meeting the needs of the Commonwealth's minority and female heads of household populations. Most minority residents and female heads of household are renters, but government funds to improve housing are designated primarily to benefit homeowners. 3/

The fact that the minority citizens in Massachusetts reside largely in the older core cities like Boston, Cambridge, New Bedford, and Springfield 4/ suggests that there are very real barriers to housing for them elsewhere within the State. This is dramatized by population figures that indicate that Boston alone contained 47.2 percent of the estimated 1976 minority group population within the State. 5/ The income level of minorities and women throughout the Commonwealth continues to be a major obstacle preventing equitable access to housing. Women and minorities have been historically underutilized and underrepresented in the work force in cities and towns throughout the State. 6/ Some progress has been made in a few communities by the increased employment of minorities and women, but there has been little evidence of such an increase at the higher salaried level positions. 7/ This not only confines minorities and female heads of households to certain communities, but further restricts them to certain areas within these communities.

Data limitations inhibit accurate assessments of the housing problems that exist for minorities, raising the possibility that housing conditions for them are even worse than postulated. It is suspected for example, that reported census data inaccurately measure the Portuguese (both black and white), Asian American, Native American, and Hispanic populations. The 1970 Census reports the Hispanic population in Massachusetts to be insignificant, but an informal census conducted by the Office of the Secretary of State established that it numbers 150,000. 8/

As MCAD's current and previous A-95 comments have pointed out, systemic discrimination is displayed in several ways. The inequitable distribution of funds for such things as the construction of housing, rehabilitation of existing units, mortgage and Section 8 guarantees, and employment inhibits open housing by limiting minority access.

Some governmental policies and procedures also have the effect of directly excluding minorities and females. Zoning requirements and residency preference for public housing can be particularly exclusionary.

The effect of the latter, by letting local residents move to the front of the line to get into public housing, is to confine low income outsiders to the older, often crowded communities where they now live and where low cost housing is often poor in quality and in short supply. This limits the effectiveness of migration as a way to ease the housing problems of these older communities. It also prevents low income or unemployed workers from going after jobs that move away from or are created outside these communities. 9/

The general isolation of community representatives from the governmental decision-making process is another factor serving to exclude minorities and women. This impedes feedback into the political system from what could be a valuable resource, one that could be advantageously used to identify needs and problem areas and to assist in monitoring the implementation of policies.

IV. DESCRIPTION OF THE STRATEGY

A. STRATEGY DESIGN

On paper, MCAD's demonstration consisted of two separate, but related, strategies. As implemented, however, the parts of the two strategies were so intertwined that, rather than untangle the strands of each, it would be clearer and more helpful to combine them totally, viewing them together as a single effort.

As such, the MCAD strategy can be described as a comprehensive approach to achieving change by using the leverage of both State and Federal funding programs. MCAD planned to accomplish this through its civil rights reviews under the Federal A-95 review and comment process and an analogous procedure in the case of State-funded programs.

Pursuant to OMB Circular A-95, interested governmental agencies must have an opportunity to review and comment on applications for Federal assistance under a wide variety of programs before they are submitted to the particular funding agency. Applications are first submitted to State and regional clearinghouses (usually planning or community affairs agencies), which in turn distribute them for comment and then compile the responses they receive. When an applicant submits its final application to be funded, it must also send in all A-95 comments, which the funding agency is supposed to consider when deciding whether or not to approve the grant or loan being requested.

A-95's value as a civil rights tool hinges on the attention that a funding agency pays to comments that point out any equal opportunity deficiencies on the part of either the applicant or its proposal. If the funding agency agrees with the comments, it can refuse to approve an application unless the applicant corrects the deficiencies, or at least makes a commitment to do so. That message--solve the problem or give up the money--is a strong incentive for the applicant to take required remedial action. Based on particular circumstances, bargaining may also take place before the application even goes to the funding agency if the civil rights agency tells the applicant it will submit negative comments unless remedial action is taken or at least promised. In either case, the applicant's need and desire for government funding provide the leverage by which civil rights agencies can try to win concessions from localities that might otherwise slight the interests of minority citizens.

As a Federal requirement, of course, OMB Circular A-95 does not apply to applications for State funds. ^{1/} But pursuant to arrangements worked out under a Massachusetts executive order, MCAD has a similar opportunity to make civil rights reviews of applications for State funding submitted to several State agencies. In making such reviews, MCAD is not limited to a 30-day review period, as it generally is under the A-95 process, and it has chosen to make its comments directly to the funding agencies, because it felt that would be more effective than going through the State clearinghouse. The essence of MCAD's comprehensive approach was twofold:

- first, to put into place a set of procedures, requirements, and commitments of support and cooperation from other agencies; and then
- to apply pressure through the application review and comment procedures to persuade the target municipalities to make their proposed use of Federal or State funds more responsive to the needs of low income and minority citizens and women and to take steps of their own to expand the the opportunities available to such citizens.

The strategy thus proceeded in two stages: Phase 1, putting the machinery into place, and Phase 2, pulling the levers.

1. Putting the Machinery Into Place (Establishing Relationships, Procedures, and Requirements)

This included the following steps:

- Establish criteria for selecting target cities and applications to review and for defining the limits of the reviews.
- Develop formal procedures with the State clearinghouse with regard to A-95 reviews to govern MCAD's receipt and analysis of applications for Federal funds and its submission of comments (Standard Operating Procedures).
- Develop working relationships and formal agreements with State funding agencies whose programs directly or indirectly affect housing opportunities. At the core of these agreements would be provisions that the funding agency would develop and issue rules and regulations concerning equal opportunity in its programs, that MCAD would have a timely opportunity to review and comment on funding applications to the State agency, that the agency would seriously consider MCAD's recommendations in deciding whether to fund the applicant, and that it would make compliance with MCAD's equal opportunity requirements (see below) a condition for funding.
- As a condition to MCAD's submitting favorable comments when it reviewed applications for State or Federal funds, develop, negotiate and sign Memoranda of Agreement (MOA) with localities. In general, each MOA was to spell out the review and monitoring ground rules to govern MCAD's relationship with applicants for State and Federal funds:
 - The applicant assures MCAD it will provide opportunities for minorities and women.
 - The applicant will submit an annual equal opportunity (EO) plan (to be developed with MCAD's help, if desired) to be approved by MCAD.

- MCAD will review the plan and either approve it or, if necessary, negotiate changes as a condition to its approval.
- Later, progress in developing and carrying out the EO plan would be considered when MCAD reviewed the locality's funding applications.
- Develop a computerized management information system to keep track of data about localities and about the use of MCAD staff time on the strategy.

2. Pulling the Levers (Monitoring, Reviews, and Comments)

This phase included the following steps:

- At least once a year, conduct an on-site visit and monitor each locality's implementation of its EO plan, by using information from outside sources (e.g., citizen advisory boards) as well as from the locality.
- Review the locality's applications for projects supported by State or Federal funds that would affect housing opportunities for minorities and women.
- Comment to the funding agency (directly, in the case of State programs; through the State clearinghouse, in the case of Federal programs).
 - MCAD will comment favorably if both (1) an applicant is adequately implementing its EO plan and (2) its proposed use of the funds will adequately serve the interests of equal opportunity and of minorities and women.
 - If either or both of these conditions for favorable comment are not met or the application does not contain sufficient information, then (time permitting) MCAD will request or negotiate changes (or assurances of change), offering technical assistance where appropriate, as a prerequisite to making a favorable comment.
 - If such negotiations do not succeed, MCAD will withhold favorable comment or submit negative comments.

Depending on the variables in a particular case--e.g., the nature of any problems, the locality's progress in developing or implementing its plan, the attitude of local officials, the degree of cooperation expected from the funding agency--these procedures may vary (e.g., the funding agency may or may not be asked to participate in the negotiations), as would the nature of the changes or commitments MCAD seeks to achieve.

The chart on the next page illustrates the general flow of the strategy from start to finish.

3. Research

The project staff performed limited research tasks at various points throughout MCAD's demonstration. But, as explained in the following chapter, such research was more an incidental, though ongoing, supportive activity than a separate component of the strategy.

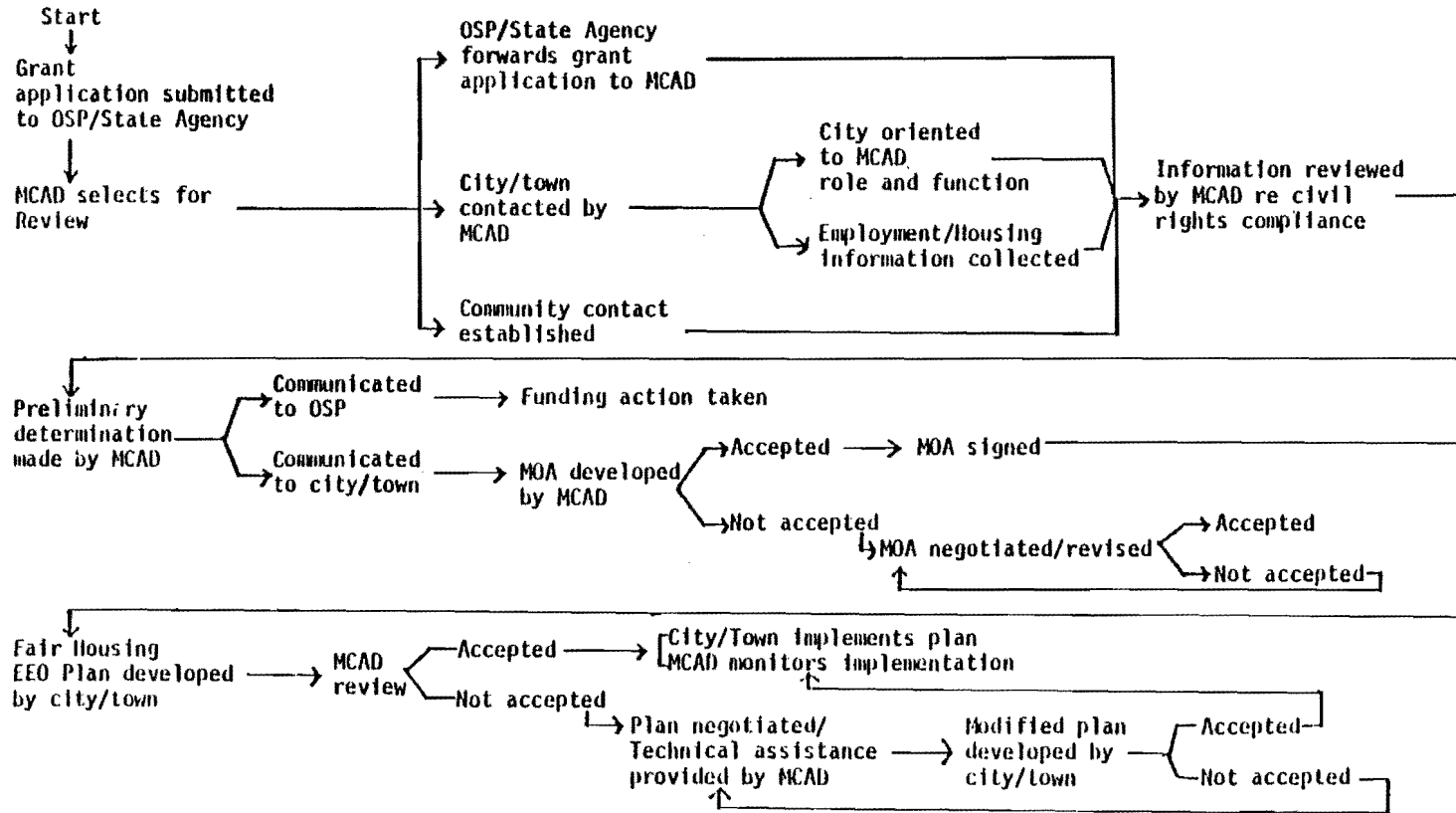
B. CHANGES DURING IMPLEMENTATION

Several changes occurring during implementation should be noted. The first was the decision to help localities develop and implement their equal opportunity plans less by providing direct technical assistance, as originally planned, than by issuing sets of guidelines. These guidelines showed the localities what was expected of them in connection with both fair housing and equal employment and offered guidance on how to meet these expectations. The value of such documents as a partial substitute for direct technical assistance became clear as the need for such help quickly surpassed the commission's resources to provide it.

The second change, concerning the management information system, was twofold. First, for reasons more administrative than tactical, the computerized system was developed after the demonstration period ended. More substantively, as originally conceived the MIS was intended less as a tool to help the staff review applications than as a system to monitor the time that commission employees were spending on various aspects of the review and comment process. As later implemented, this emphasis was reversed, and the system was also expanded to include not only the storing and tracking of data, but also the evaluation of equal opportunity plans to determine their acceptability.

Finally, MCAD departed somewhat from its strategy in the case of Boston's community development block grant application due to special circumstances. For example, the commission negotiated not only with the city but also with the Federal funding agency (HUD). (See Chapter V for details).

FLOW OF MCAD CITY/TOWN REVIEW



Source: Report to MCAD on Management Information System (Provider's Management Incorporated, December 1978, p.7)

V. IMPLEMENTATION

A. PROJECT STAFF

1. MCAD Staff

Initially, the project staff was composed of the Director of Public Employment, one investigator/field representative, and one secretary. During implementation of the strategy, six additional positions were added to the project: a project coordinator, one attorney, three field representatives, and one secretary. Late in the project a special service assistant was also added.

Responsibilities were as follows:

Director of Public Employment--responsible for overall program management.

Project Coordinator--responsible for overall program coordination and for reporting.

Counsel--assistant to the Director of Public Employment

Field Representatives III and IV--perform A-95 reviews.

Secretaries (Special Service Assistant and Senior Clerk/Typist)--perform secretarial duties.

Principal Clerk--performs secretarial duties.

In carrying out the A-95 strategy, MCAD was able to draw on past experience and previously developed review skills since the agency had participated in the A-95 review process since 1972. The Director of Public Employment and the Field Representative, both of whom had worked in MCAD's Public Employment Division for several years, were very familiar with the dynamics of Federal, State, and local government agencies. Since 1972, one-quarter of the Field Representative's time had been devoted to the A-95 function. Between 1975 and the beginning of the demonstration project, the Field Representative reviewed in depth the civil rights performance of the cities of Boston, Lynn and New Bedford, and prepared limited comments on other grant requests as well. These reviews concerned only equal employment issues.

The program staff had varied backgrounds and experience. One had worked for the State Clearinghouse and also had two years of State government experience. Two others had gained fair housing experience with private civil rights agencies and had frequent contact with HUD. Another had background in computer methodology. With the exception of one person, the balance of the new staff had had previous experience with the A-95 review process.

In addition to the project staff, the members of the commission played a very active role in the implementation of the program, primarily during major and some minor negotiation stages of the process. Although the Project Director was responsible for the day-to-day decisions regarding the operation of the program, MCAD's Chairman was ultimately responsible for any major policy decisions.

2. Other Participants

In the course of implementing the A-95 Review Strategy and especially in preparing the A-95 review comments, MCAD made sporadic, though effective, use of local human relations commissions, other local civil rights advocacy groups, and interested citizens. These groups and individuals provided information and technical assistance to MCAD in its reviews of specific municipal applications and in accomplishing its overall objectives in eliminating the targeted forms of discrimination. Many of the advisory organizations had expertise in the housing area.

Most of the community input originated with the MCAD citizen advisory councils, already established independently of this project. In addition to a Statewide Advisory Council, MCAD maintains Advisory Councils for the following geographic areas: Boston, Berkshire (Pittsfield area), Cape Cod, Fall River, Fitchburg, Lynn, Merrimack Valley (Lawrence, Havenhill area), New Bedford, South Shore, Springfield, and Worcester. Particularly active groups whose participation was encouraged by the Field Representatives include the Arlington Civil Rights Committee; the New Bedford Coalition Against Discrimination in Employment and Housing; the Ethnic Coalition of Concerned Citizens in Brockton; the Lawrence Black Ecumenical Council; the Winchester Community Development Council; the Old Hill Neighbors' Council and the Spanish-American Union in Springfield; and Concerned Black Citizens of Brookline.

B. TRAINING

Initially new staff members were provided only minimal on-the-job training, most of it of an informal nature. Each staff person was furnished a copy of the appropriate Massachusetts civil rights statutes, the Compilation of Laws of the Commission, the Commission Rules of Procedure, the Governor's Executive Order, the OMB A-95 Circular and the HUD Community Development Block Grant regulations. Weekly staff meetings were held to discuss problems encountered during the previous week, and topics of common interest were placed on the agenda.

Later in the project, however, more extensive training occurred. Prior to the start of the demonstration year's Community Development Block Grant review period (November 1), the staff attended a HUD-sponsored conference on the 1978 CDBG regulations. Additionally, HUD's Boston Area Office Director of Fair Housing and Equal Opportunity spent an afternoon with the staff explaining how MCAD should structure its Block Grant review comments to be of maximum assistance to HUD's equal opportunity staff. All the new grant staff members "walked through" a number of Block Grant reviews with the Field Representative who had worked at the commission for a number

of years. Each staff person was also provided with the CDBG application review package prepared by the Coalition for Block Grant Compliance in Detroit. Staff persons also received training through several other workshops and lectures. Since many of MCAD's reviews were HUD-related, the conferences and meetings on the CDBG regulations were helpful in providing staff with needed base knowledge.

C. RESEARCH

Research was an on-going activity within each component of the strategy's implementation, particularly during data collection and the review and analysis activities required for the program's development and implementation. For example, in June 1977 MCAD began a search for reliable and generally available demographic information on Massachusetts municipalities to update the 1970 census and to compensate for its inaccuracies. Indeed, much of the information generated by the project (data, guidelines, standard operating procedures) was a result of such supportive research. Also, many if not most of the reviews required an ability by the individual staff persons to collect data, analyze it, and assess what was presented. The data collected were qualitative and quantitative. Important research skills were also required to verify the information received.

D. ACTION

1. Putting the Machinery Into Place

- Defining the Limits of the Reviews

One of the earliest activities involved in MCAD's A-95 project involved the agency's defining the limits of its reviews. As indicated above, MCAD began by collecting data pertinent to the project at the beginning of the demonstration year. It contacted several other agencies for data broken out by race and sex to supplement the 1970 Census data. Agencies contacted included the Joint Center for Urban Studies of MIT and Harvard University, and the Massachusetts Office of State Planning, Department of Community Affairs and Division of Employment Security. MCAD had previously collected tenant occupancy data from local housing authorities. The Division of Employment Security was the only one of these agencies with information broken out by race and sex. However, it was aggregated for entire Standard Metropolitan Statistical Areas (SMSA) and Labor Market Areas, rather than reported for individual communities.

After analyzing all pertinent, existing data to identify areas, MCAD selected 20 target communities. These communities are listed below in Table 1 by population and minority composition. MCAD expanded the scope of the strategy to 33 additional communities that were either Community Development Block Grant (CDBG) Entitlement cities and towns or were applicants for housing-related funds. These additional communities are listed in Table 2 below by population and minority composition.

Having decided on the geographic targets, the agency then established

Table 1

ORIGINAL TARGET COMMUNITIES

	Total Population	Black	Spanish- Speaking	Minority as % of Total
1. Boston ¹	641,056	104,596	17,984	19
2. Brockton ¹	89,040	2,103	936	3.4
3. Cambridge ¹	100,417	6,636	1,954	8.5
4. Chelsea ¹	30,639	576	1,098	5.4
5. Chicopee	66,676	1,208	899	3.1
6. Framingham ¹ (T) ²	64,048	609	1,237	2.8
7. Haverhill ¹	46,144	467	278	1.6
8. Holyoke ¹	50,051	1,145	1,870	6
9. Lawrence ¹	66,915	644	2,327	4.4
10. Lowell ¹	94,280	737	1,079	1.9
11. Lynn ¹	90,289	2,419	953	3.7
12. Medford ¹	64,389	1,554	437	3
13. Methuen (T)	35,456	**	**	**
14. New Bedford ¹	101,527	3,335	1,144	4.4
15. Northampton	29,643	**	**	**
16. Pittsfield ¹	57,115	1,114	272	2.4
17. Plymouth ¹ (T)	18,375	**	**	**
18. Springfield ¹	163,916	20,615	5,456	15.9
19. Westfield	31,433	**	819	2.6
20. Worcester ¹	176,617	3,400	1,674	2.8
Total	2,018,026	151,158	40,417	9.4
Total Massachusetts population	5,688,903	173,376	64,860	4.1
Targets as % of total Massachusetts population	35.4%	87.1%	62.3%	

¹Community Development Block Grant Entitlement recipient

²(T)=Town

Source: MCAD Final Report, p.5.

Table 2

ADDITIONAL COMMUNITIES

	Total Population	Black	Spanish- Speaking	Minority as % of total
1. Arlington ¹ (T) ²	53,576	142	220	.6
2. Barnstable (T)	19,842	628	**	3.1
3. Brookline ¹ (T)	58,886	387	667	1.7
4. Danvers (T)	26,231	**	**	**
5. Dedham ¹ (T)	26,955	**	**	**
6. Everett	42,500	585	476	2.4
7. Fall River ¹	96,976	278	220	.5
8. Fitchburg ¹	43,343	**	**	**
9. Gloucester ¹	27,938	**	**	**
10. Leominster ¹	32,939	**	634	1.9
11. Malden ¹	56,127	656	302	1.7
12. Marlborough ¹	27,936	**	**	**
13. Marshfield (T)	15,223	**	**	**
14. Melrose	33,222	**	**	**
15. Milton	27,190	**	**	**
16. Newburyport ¹	15,809	**	**	**
17. Newton ¹	91,051	1,056	1,333	2.6
18. Norton	9,487	**	**	**
19. Quincy+	87,966	141	564	.8
20. Randolph (T)	27,035	488	**	1.8
21. Revere ¹	43,159	**	**	**
22. Salem ¹	40,543	**	**	**
23. Sharon (T)	12,367	**	**	**
24. Somerville ¹	88,732	680	701	1.5
25. Stoughton (T)	23,429	**	**	**
26. Taunton ¹	43,756	472	502	2.2
27. Walpole (T)	18,149	**	**	**
28. Waltham ¹	61,582	430	529	1.5
29. Ware (T)	8,187	**	**	**
30. Wareham (T)	11,492	**	**	**
31. Watertown (T)	39,295	**	**	**
32. Westford (T)	10,365	**	**	**
33. Weymouth (T)	54,575	95	166	.4
Total	1,275,863	6,038	6,314	.9
Total Mass. Pop.	5,688,903	173,376	64,860	4.1
Additional Communities as % of total Mass. Pop.	22.4%	3.4%	9.7%	
Targets and Additional Communities	3,293,889	157,196	46,731	
Targets and Additional as % of Total Mass.	57.9%	90.6%	72%	

¹Community Development Block Grant recipient²(T)=Town

Source: MCAD Final Report, p.6.

the criteria for reviewing applications. All of the applications reviewed had to meet one or more of the following criteria:

- (a) Target Area--the original 20 communities (to which 33 were later added.)
- (b) Type of Funding Requested--Community Development Block Grant, elderly housing, Section 8, new construction and substantial rehabilitation, sewer-wastewater treatment, outdoor recreation (EPA), public health, public works and employment acts, and other housing-related proposals.
- (c) Applicants previously subject to the A-95 review process.
- (d) Applications from State agencies and municipalities that would have a significant impact on equal opportunity in housing.

- Development of Standard Operating Procedures

The need for a mechanism by which MCAD would receive notification of the applications targeted for review and for a guide for processing its comments triggered the development of Standard Operating Procedures (SOP) with the State Clearinghouse (Office of State Planning). The Standard Operating Procedures established, among other things, the nature of MCAD's comments (concur, needs more information, cannot concur, or concur conditionally, as the case may be) and the clearinghouse's response to the specific comments.

- Development of Relationships with State Funding Agencies

Important to the strategy was MCAD's development of cooperative working relationships with the Governor's Development Cabinet, a group made up of five Cabinet Secretaries (from the Executive Offices of Environmental Affairs, Economic Affairs, Consumer Affairs, Transportation and Construction, and Communities and Development), the Lieutenant Governor, the Governor's Cabinet Coordinator, and the Executive Director of State Planning. These officials worked together to determine State policy and plans relative to development-related issues. Also important to the strategy was MCAD's relationship with the Massachusetts Housing Finance Agency (MHFA) and the Department of Community Affairs (DCA). MHFA is an independent lending institution that promotes housing for people with low, moderate and middle incomes by financing new construction and rehabilitation of multi-unit housing. DCA acts in the areas of housing, community development, urban renewal, local assistance and social and economic opportunity.

Proposing formal agreements was one method used by MCAD to establish relationships. In the course of developing Standard Operating Procedures, MCAD proposed a Memorandum of Agreement to be entered into with the Office of State Planning. The agreement was designed to institutionalize the roles of both agencies in protecting the rights of minorities and women through the A-95 process. The Director of the Office of State Planning supported every MCAD comment during the demonstration year as a result of the

established relationship. He also supported MCAD at meetings of the Governor's Development Cabinet.

MCAD also worked to establish agreements and to develop procedures with the State agencies that had housing-related funding programs to delineate both MCAD's authority to require the disbursing agencies to develop and issue affirmative action rules and procedures, and the disbursing agencies' responsibility to impose equal opportunity requirements as a condition for funding. To insure its ability to review and comment on applications to State funding agencies in a timely manner and to have its recommendations considered seriously, MCAD worked closely with the Executive Office of Communities and Development (EOCD), the Executive Office of Environmental Affairs (EOEA), and the Massachusetts Housing Finance Agency (MHFA).

MCAD assisted in the development and promulgation of the Department of Community Affairs' (DCA) Regulations for Affirmative Action Governing Local Housing Authorities. These require that local housing authorities report tenant occupancy statistics on a quarterly basis and, based on these statistics, develop affirmative fair marketing plans that include percentage goals for minority occupancy.

On July 18, 1977, the Chairman of MCAD wrote the Secretary of the Executive Office of Communities and Development to inform him of MCAD's fair housing program and to suggest a meeting to discuss mutual fair housing goals and DCA's plans to promulgate affirmative action regulations. During this same time, MCAD also contacted DCA's Office of Local Assistance, an advocate for Massachusetts municipalities, to familiarize the DCA staff with MCAD's plans to develop written equal opportunity guidelines and a civil rights review system for State-funded programs.

To forestall or withstand possible legal challenge, the Secretary of the Executive Office of Communities and Development encouraged an exhaustive review by State and Federal officials and attorneys of each draft of the DCA Regulations. This process, including frequent meetings between MCAD staff and DCA staff to insure consistency of the Regulations with MCAD's Fair Housing Guidelines, delayed their promulgation. A public hearing on the Regulations was held on March 9, 1978, and promulgation was scheduled for July 1978. As a result, MCAD was unable to play any role during the project period in enforcing the Regulations or assessing the results of their implementation. A public hearing on the Regulations was held on March 9, 1978, and promulgation was scheduled for July 1978.

In summary, MCAD's cooperative relationship with DCA and EOCD were a very productive. In addition to the activities mentioned above, the three agencies co-sponsored a conference for community development directors and met frequently to discuss EOCD's housing programs.

Progress in developing an agreement with the Board of Directors of the Massachusetts Housing Finance Agency was delayed by the appointment of its new Executive Director and his subsequent appointment of a new Director of Affirmative Action. MCAD discussed with MHFA the system of eliciting a

commitment from developers to affirmatively market State-funded housing units. MHFA already required developers to submit an Affirmative Fair Housing Marketing Plan, but the agency planned to work with MCAD to revamp the agreement and to revise the implementation and monitoring process.

One of the most significant relationships established as a result of MCAD's intergovernmental efforts was that between the commission and the Executive Office of Environmental Affairs. Even while the written Memorandum of Agreement was being negotiated, the Secretary of EOEa continuously supported MCAD's efforts throughout the year, and her support was instrumental in MCAD's successful interaction with the Governor's Development Cabinet. As a result of the increased visibility provided through this project, MCAD's chairman eventually became a member of the Development Cabinet.

- The Development of Memoranda of Agreement

Whenever possible, MCAD notified potential applicants of MCAD's intent to review applications well in advance of review and comment deadlines. Advance notice was possible where State and Federal funding programs followed an annual schedule. For example, MCAD met with Community Development Directors from the CDBG entitlement communities in November, and the first application did not arrive at the State Clearinghouse until January 1, with the balance in the spring.

Advance notifications eased the path for relaxed negotiations and fruitful agreements. But when advance notice was not possible, MCAD could not tell a community that the commission's review of an application would be linked to the development of an acceptable equal opportunity plan until it first learned about the application at the beginning of the 30-day period allowed for A-95 reviews. Because it would be unreasonable for MCAD to withhold favorable comment on a pending application unless the municipality could produce an acceptable EO plan in such a short period, the commission saw the need for a formal instrument by which applicants could provide satisfactory assurance of their intent to comply with State civil rights standards. The Memorandum of Agreement (MOA) was devised for this purpose.

The Memorandum of Agreement assured MCAD that an applicant would develop an acceptable fair housing and/or affirmative action program within a reasonable period of time specified within the agreement. In the case of a pending application, an applicant could expect to receive a "conditional concurrence" from MCAD if it was willing to enter into such an agreement.

Communities that failed to sign a proposed Memorandum of Agreement with MCAD risked unfavorable comments when MCAD reviewed their applications for assistance.

MCAD did not seek to impose a standard MOA on all municipalities. The terms of the MOAs, and the staff time required to draft them, varied with each community and with the particular community problems the agreements were designed to address. MCAD recognized that the problems in the smaller, less populated communities differed in scope and severity from those in the

larger, more concentrated cities. MCAD also considered the differences in government structure, political climate, and the number and nature of other issues that demand the attention of elected officials within the different municipalities. The MOAs were drafted to reflect these differences.

Yet, most of the agreements were similar in that they established review and monitoring ground rules to govern MCAD's relationship with applicants for State and Federal funds. They were designed to allow each municipality the opportunity to identify present and potential problem areas, to assess the problems, and to design remedial activities to assure MCAD it will provide opportunities for minorities and women.

In the housing MOAs, MCAD would usually encourage the applicants to collect community profile information. If data indicated problems, the communities were encouraged to identify barriers or factors contributing to the problems, to design remedial activities based on this information, and to set timetables to implement the activities.

Contract compliance MOAs promised that communities would adopt the contract language of the revised version of State Administrative Bulletin 75-14 and to carry out the terms of this document in developing and implementing their equal opportunity programs.

In most cases, the proposed MOAs were not accepted without some negotiation. Negotiating tactics varied from community to community, again as a result of the unique community attributes. An added factor was the applicant status of the communities--that is, whether or not applications were pending and, extending from this, whether or not the activities proposed within the applications would benefit, ignore or adversely affect minorities and women.

MCAD was successful in executing a much larger number of Memoranda of Agreement in the project demonstration year than in previous years. Between 1974 and 1976 no agreements were signed, and between 1976 and 1977, twelve agreements were signed (7 employment, 5 contract compliance, none in housing). In the project year, however, eighty-one agreements were signed (27 each for housing, employment, and contract compliance). By June 1, 1978, the results for the twenty original target communities and the thirty-three additional communities were as indicated below:

<u>Communities</u>	<u>Signed Agreements</u>		
	<u>Housing</u>	<u>Employment</u>	<u>Contracts</u>
20 Original	13	12	12
33 Additional	14	15	15

By the end of the project, thirteen of the original twenty target communities had signed fair housing agreements, and MOAs were also pending in nine of the additional thirty-three target communities. By mid-October, four of the nine had signed housing and employment agreements. A fifth housing agreement was signed with another of the thirty-three. In addition,

several communities fulfilled some of the requirements of the agreement without ever having signed them.

Once an applicant had entered into a Memorandum of Agreement with the commission, the MOA required it to submit written equal employment opportunity or fair housing plans to MCAD within a specified time period, usually 60 to 120 days from the date of the agreement. MCAD staff would provide technical assistance to the applicant when requested in the development of the plans. This assistance included:

- interpreting Federal and State civil rights laws, regulations and requirements;
- providing examples of language to be used in the fair housing and equal employment opportunity plans;
- referring questions to appropriate Federal and State sources;
- providing demographic information;
- helping to develop goals and timetables;
- helping to solve practical problems concerning program implementation; and
- providing lists of minority and female recruitment and referral agencies.

MCAD soon found that these forms of technical assistance were not adequate. Recognizing the limitations of local resources and the complexity of Federal and State civil rights requirements, MCAD proposed to develop fair housing and equal employment opportunity guidelines. By providing applicants with copies of the guidelines, which would set forth the steps they must take to develop effective programs that meet both State and Federal civil rights standards, MCAD planned to reduce the amount of its time required for technical assistance. The Preliminary Draft Guidelines, completed in November 1977, were circulated to a number of local, regional, State, and Federal agencies for their review and comment. On November 14, 1977, the Commissioners and project staff distributed and discussed the guidelines at a conference for community development directors. On November 16, 1977, MCAD also met with the Massachusetts League of Cities and Towns to discuss the guidelines.

The proposed guidelines were then mailed to the chief executive officer of each of the 351 cities and towns in the Commonwealth with an invitation from the commissioners to submit written comments. In addition to giving all communities an opportunity to comment, distribution of the guidelines also provided notice of MCAD's requirements and standards to any potential applicant that had not previously been contacted.

On December 15, notices were sent and newsletter articles were published concerning an informal public hearing on the proposed guidelines scheduled for January 12, 1978. Two days prior to the public hearing, the commissioners met with the Governor's Local Government Advisory Committee.

After all this publicity, MCAD was able to reduce the technical assistance it gave municipalities in the development of their equal opportunity programs to little more than discussing the provisions of the guidelines. Even such limited technical assistance contributed to MCAD's receipt of plans. Sixteen fair housing plans and thirty-three affirmative action plans were received. Of the several communities that submitted plans without having signed a Memorandum of Agreement with MCAD, nine were among the fifty-three target communities. Five others were communities that responded to the notice given through distribution of the guidelines.

Following receipt of plans, MCAD reviewed them to determine their compliance with MCAD civil rights standards. Normally, MCAD had to request several revisions in the plans, often requiring negotiation, which delayed formal approval. As a result, no fair housing plans were approved by MCAD during the demonstration year and few, if any, affirmative action plans were approved. For those communities whose plans had not been formally approved, negotiation with MCAD was a continuous activity. The purpose of negotiation was to persuade communities to carry out terms of their agreements in developing their plans.

- The Development of a Management Information System

As MCAD implemented its strategy, project staff found that it was becoming more and more difficult to process all the information it was accumulating on the civil rights performance of the individual communities. In addition to the quantitative information, MCAD was beginning to collect more information on the localities' intent to perform and on the quality of their performance through the submission of MOA's, equal opportunity plans, and then revised plans. It became increasingly difficult for the staff to use all of this information effectively.

To solve this problem, MCAD reconsidered a part of its original strategy that it had set aside--the expansion of its Management Information System to incorporate data from municipalities as well as information on the activities of staff persons involved in each aspect of the project. This was enlarged to include a formal tool to measure performance and proposals, and to evaluate the individual and collective civil rights performance and progress of Massachusetts cities and towns.

After assessing its internal needs and activities pertaining to the development of the system, MCAD hired a consultant firm (Providers Management, Inc.) to assist in developing this system to expand its data collection, review and analysis, and enforcement capabilities. MCAD's project contract was extended beyond the end of the original demonstration period to allow completion of this activity.

The Management Information System is designed to perform several specific functions covering a full range of MCAD activities, including various types of project-specific (i.e., municipality-related) activities as well as such other activities as those of a general and administrative nature. Project-specific functions that are being presently incorporated into the system include a mechanism by which equal opportunity plans can be

assessed on the basis of ratings on an adequacy scale ranging from 1 to 5 by MCAD staff members according to standard criteria.

The system is designed so that assessments of specific features within broad sections of a given plan can be weighted according to their relative importance. For the assessment of fair housing plans, the system not only can provide aggregate scores on how individual plans are rated by several reviewers, but also tabulate individual scores for each major section of the plan reviewed. For each variable pertaining to a major section of the plan's review, the system can tabulate mean scores. Computation of variance for each question asked of reviewers allows comparison of the degree of agreement or disagreement among raters. Also, through the computation of a section score, the system can identify a plan's strongest and weakest points in meeting the requirements of MCAD fair housing guidelines. These computations can be used not only to assess individual fair housing plans and to evaluate the performance of individual municipalities, but also to compare the plans and performance of all municipalities by comparing aggregate scores. MCAD views this process of applying a standard methodology for reviewing fair housing plans as exploratory and developmental since the fair housing guidelines are preliminary and subject to change, and since MCAD's policy of requesting fair housing plans has been only recently introduced.

To provide a descriptive profile of MCAD target communities, the MIS is designed to maintain socio-economic data. For the lack of other sources of consistently comparable data, the data presently used are derived from the 1970 Census. The data are maintained for each community by population size, percentage black and other minority residents, median years of school completed (residents over 25 years old), median family income, and percentage of families below the poverty level. Percentage comparisons for each variable have been calculated relative to appropriate SMSA figures and are also maintained. This information is used to relate expended MCAD staff effort to the characteristics of a target community, as the system is also designed to identify the level and type of effort required for specific project activities (e.g., the development and signing of Memorandum of Agreement).

The system identifies individual staff efforts expended on three levels: by project, by activity, and by area of review (program or application, housing, employment, contract compliance). For determining staff activity expended to obtain signed MOA's it can identify the amount of individual staff effort for each target community, combining background information on each city or town with information of MCAD staff input and project outcome (that is, whether or not the agreement is signed). Also, the system can give a comparative analysis of individual staff effort expended on various target communities, identifying the contribution of individual staff for each project, the amount of aggregate staff effort expended on various project activities, and total staff hours. Extending from this it can provide information to perform a comparative analysis of effort expended on analysis and follow-up activities by area of review, indicating the varying focal points for different projects on areas of review (e.g., housing, employment) as well as on the broad categories of activity (analysis vs. follow-up).

In sum, this information can be used to track the level and type of staff activities expended on various organizational functions and to track the progress of municipalities by maintaining records of key outcomes which occur on all active municipal projects.

MCAD's Management Information System keeps records of all cities and towns with which the agency is currently involved. It is also designed to identify the amount of effort and related costs expended by cities in developing and implementing equal opportunity plans.

In addition to its various uses as an accountability tool, MCAD's management information system also serves as a tool for planning and evaluation purposes. Applied prospectively, historical information generated from the MIS can be used to plan the future allocation of resources and levels of maintenance for program activities (whether they should be increased, maintained, or decreased). Information allowing estimation of time requirements for active projects can be used to assess the amount of free time available (if any) for planning new project strategies, including decisions to increase the level of activity on existing projects or to initiate new project activities. The system can be used to determine how and where staff efforts should be expended. It can also be used to assess outcomes or the degree of goal achievement for individual projects as well as for projects that can be evaluated collectively as a programmatic entity within the review unit. Thus, it allows comparisons between projects with a high degree of goal achievement with those and a low degree of goal achievement for purposes of policy changes or further strategy development. Used practically and intelligently, the management information system can maintain and generate information that can be used by management and review staff for numerous purposes.

2. Pulling the Levers

● Monitoring of Equal Opportunity Plans

At least once a year MCAD will monitor the performance of each locality's implementation of its equal opportunity plans. This will be done by comparing information presented within the plans with data collected by occasional on-site visits, by reviews of progress reports submitted weekly, monthly, quarterly, or annually as required by MCAD, or by talking with members of the advisory groups and other persons selected by MCAD to advise it of activities within the communities.

● Review and Analysis of Applications for Funding

After receiving an application for review from the State Clearinghouse, MCAD compared the contents with its own information about the applicant's prior performance. If any question of the applicant's intent to comply with civil rights laws and rules was raised by the application itself or the locality's past performance, MCAD notified the applicant and attempted to iron out conflicts so that MCAD would not have to make a negative comment. In most cases, MCAD succeeded in its bargaining and obtained assurances that there would be changes in performance. In one case, MCAD

succeeded in having an applicant (the City of Chelsea) change its Urban Development Action Grant application before submitting it to HUD. The city had proposed to build elderly housing despite the fact that a housing needs study by the Department of Community Affairs showed a need for family housing. Following a number of sessions between MCAD and city staff, the city agreed to modify its program to address the need for family housing.

● Comment on Applications

As implied above, MCAD commented favorably (concurred) if an applicant's performance and its proposed activities indicated that it was working in good faith to provide equitable opportunities for minorities and women. When either the applicant's performance or its application indicated that it was not making good faith efforts, MCAD asked for assurances or requested changes in the application in return for commenting favorably (either concurring or concurring conditionally). If negotiations failed, MCAD withheld all favorable comment or commented negatively with a nonconcurrence.

Since MCAD was generally successful in its negotiations with applicants, most of its A-95 comments during the demonstration year were "conditional concurrences" premised generally on the applicants' assurances that they would provide equitable opportunities for minorities and women.

This approach met with a degree of success. MCAD feels HUD imposed civil rights conditions or special assurances in its approval of some of Massachusetts applications as a result of its A-95 reviews. MCAD's A-95 review strategy proved effective in initiating changes in applications from the cities of Chelsea (CDBG and UDAG), Brookline (CDBG), Marlborough (CDBG), and Chicopee (CDBG).

Early in the demonstration year, however, it became obvious to MCAD that it would have to establish formal relationships with HUD in order to make the strategy work effectively. Departing from the original strategy, therefore, MCAD spent much time during the demonstration year meeting with HUD area, regional, and central office representatives in an attempt to encourage support for MCAD's programs and recommendations. MCAD hoped to persuade HUD to include conditions in its grant approvals to Massachusetts municipalities, a tool that had been rarely used in the past.

Unfortunately, HUD originally responded negatively to MCAD's recommendations. The earliest and perhaps the most significant example of HUD's negative response was its handling of Boston's CDBG application. This brought home to MCAD the basic truth that the success of its strategy depended to a very large extent upon the cooperation of the funding agencies.

MCAD's negotiations with HUD about the Boston application began in June 1977, the beginning of the demonstration year. Nevertheless, MCAD did not learn of HUD's decision to unconditionally fund Boston despite the civil rights objections the commission had raised until it was announced at a joint press conference by HUD and the city.

MCAD strongly opposed this decision. In August the MCAD Commissioners met in Washington with the HUD Secretary and an Assistant Secretary to express their concerns about the unconditional funding of the Boston application in spite of clear civil rights violations. The Commissioners also recommended to the Secretary that HUD enter into a Memorandum of Agreement with MCAD to prevent the occurrence of a similar situation over the 1978 funding decision of Boston's CDBG application. The Secretary agreed to forward such an agreement within a few weeks. After a couple of months and a couple of letters from MCAD, however, the "agreement" the Commission received on October 19 merely restated MCAD's review authority under OMB Circular No. A-95. MCAD's subsequent efforts during the demonstration period to elicit a more substantive agreement from HUD were unsuccessful.

In February 1978, MCAD forwarded to the State Clearinghouse a comment of conditional concurrence with the funding of Boston's four Urban Development Action Grant applications. Although the conditions proposed within the comment had been previously negotiated and agreed upon by MCAD and the city, HUD chose again to ignore MCAD's recommendations and, instead, included its own, weaker assurances in the grant contract. In what had become a matter of routine, MCAD notified HUD area, regional, and central office officials, the Massachusetts congressional delegation, and others of its displeasure with HUD's decision.

Even more displeased than the commission, the NAACP and individual minority residents of Boston filed suit in federal district court against the city and HUD over the UDAG grant awards. The MCAD Commissioners filed an affidavit outlining the commission's experience with the city and with HUD, and they and project staff members later participated in pre-trial discovery proceedings.

E. FUTURE OF THE STRATEGY

State funds have been budgeted for MCAD to continue the strategy for an additional year, enabling the project to become an integral part of MCAD's operations. All job positions have been maintained to carry on activities growing out of the project.

The monitoring of local community activities, including on-site visits and data reviews, will continue. In addition, MCAD planned the following schedule beyond June 1978 for the completion of other activities begun in the project:

- Promulgation of the Department of Community Affairs regulations--60 days.
- Development of rules and regulations by State funding agencies as per Memoranda of Agreement--150 days.
- Completion of establishment of formal citizens' A-95 advisory panels--90 days.

In addition to the above activities, MCAD is considering the possibility of beginning litigation against local housing authorities within six months of the end of the demonstration. It is also considering the possibility of hiring a consultant to train community groups to participate in the A-95 process.

Although MCAD has secured full financial support to continue the project, it also plans to seek Federal funds to enable it to provide a kind of brokering service by assisting local governments in meeting Federal civil rights requirements.

An important "spin-off" benefit of the project and of its firm place within the agency is the increased attention MCAD now gives to fair housing issues, including the development of a rapid processing method for housing cases, membership on a task force established by the Massachusetts Housing Finance Agency (MHFA) to examine the policy of residency preference for local public housing, and membership in the Citizens Housing and Planning Association (CHAPPA). MCAD also plans to involve itself in the development by regional planning agencies of areawide housing opportunity plans, to attend meetings of the Joint Housing Task Force (members including MHFA, OSP, DCA, and the Farmer's Home Administration), and to assume an active role in considering the fair housing implications of both Massachusetts and national urban growth policies.

F. COST

The project cost a total of \$174,017, of which \$117,732 in HUD/ALNA funds were expended as follows:

<u>Cost Categories</u>	<u>Amount</u>
Staff Salaries and Benefits	\$ 95,553.99
Consultant Fees	11,863.66
Travel	2,358.72
Production of Materials	2,637.10
Supplies	2,915.53
Telephone, Other	<u>2,403.00</u>
Total	\$117,732.00

VI. OUTCOMES OF THE STRATEGY

For the most part, the outcomes reported in this section are the contractor's findings as to changes resulting from what the agency did in the course of its demonstration. All outcomes were grouped into two categories, agency capacity and equal housing opportunity:

Agency Capacity. The agency's own capability to identify and challenge systemic housing discrimination, as measured by such pre-post project changes as increased staffing, new research or investigative or analytic expertise, better use of community groups, new training techniques, and strengthened negotiating tactics. Improvements in handling individual complaints, while not generally a concern of this project, may also be a relevant measure of increased capacity if they include, for example, new procedures for identifying individual complaints that should be treated as charges of systemic discrimination.

Equal Housing Opportunity. The impact of the strategy on systemic discrimination, as measured by pre-post project changes in specific discriminatory policies and practices, or in increased housing opportunities for minorities or other protected class persons. The equal opportunity outcomes have themselves been divided into two subcategories -- potential opportunity and actual opportunity. Potential equal housing opportunity outcomes are real-world changes that hold the promise of leading to increases in actual housing opportunities for minorities. Actual equal housing opportunity outcomes are either measurable increases in housing actually obtained by minority groups or actual changes in behavior (such as affirmative actions known to have been taken or the absence of discriminatory treatment previously known to exist).

Potential opportunity outcomes are one step removed from actual opportunity outcomes in the same way that changes in the rules of a game are one step removed from the actual moves the players make. In fact, the distinction between potential and actual opportunities is essentially the difference between rules and behavior. Promises made in a binding conciliation agreement, for example, are only a potential equal housing opportunity outcome; they change the rules that govern the respondent's behavior but not necessarily his behavior itself (which, if also changed, would represent an actual opportunity outcome).

Capacity and opportunity outcomes, it should be noted, are not mutually exclusive. By definition, an agency cannot have produced an equal housing opportunity outcome if it did not have the capacity to do so. Each equal opportunity outcome, therefore, is indicative of a capacity outcome as well.

A. POTENTIAL EQUAL HOUSING OPPORTUNITY OUTCOMES

MCAD's A-95 strategy has had a direct impact on combating systematic

discrimination within several Massachusetts municipalities. Housing opportunities (potential) have already increased in some localities for minorities and women as a result of the project. Because MCAD did not address housing problems on a metropolitan basis, this impact has been felt primarily in communities with large minority populations, like Chelsea and Boston, rather than in predominantly white areas. Housing opportunities have increased in the few older areas because more housing is being made available (as in Chelsea) by housing minorities in new sections of the old communities (as assured by a few other communities) and because employment opportunities (and consequently renting or purchasing power) have also increased in some localities.

MCAD's strategy has produced or contributed to the following results:

1. The City of Chelsea revised its UDAG application to meet the need for family housing according to MCAD requests, agreeing to reconvert 126 proposed units of elderly housing to family housing. The city also agreed to set a minimum goal of 15 percent minority occupancy for a 300-unit elderly project and to implement an affirmative marketing plan for that and other housing. 1/
2. Although HUD did not require changes in any applicant's spending allocations, it did impose conditions and request special assurances 2/ concerning civil rights in the approval of application from Boston (CDBG), Chelsea (CDBG and UDAG), Brookline (CDBG), Marlborough (CDBG), and Chicopee (CDBG). 3/
3. Boston increased the UDAG allocation for the Boston Housing Authority from \$684,000 to \$2.5 million. 4/
4. By December 1977, MCAD had reached agreement with more than 20 communities seeking funds dispersed by the Executive Office of Environmental Affairs' Division of Conservation Services under the Department of Interior's Land and Water Conservation fund grant program. 5/

B. AGENCY CAPACITY OUTCOMES

MCAD's capacity to identify, challenge, and change systemic discrimination was greatly enhanced by this project. In terms of quantity alone, the yearly comparisons in Table 3 of the number and types of A-95 reviews conducted by the agency are evidence of MCAD's expanded capacity to review applications. The funding amounts of all applications reviewed in 1977-78 totaled over \$149,163,222. The funding amounts of the CDBG entitlement applications alone totaled \$81,684,000. Even more significant, this numerical increase was accompanied by a great increase in the depth of the reviews, particularly with respect to housing concerns which previously received only slight attention.

MCAD now has increased research capabilities through information collected during the project with which to conduct its reviews. Upon

Table 3

TYPES OF A-95 REVIEWS*

Funding Agency/Type	1974-75	1975-76	1976-77	1977-78
HUD CDBG Entitlement	20	24	8	28
HUD CDBG Discretionary	1	2		5
HUD CDBG Urgent Needs		2	1	
HUD CDBG UDAG				7
HUD CDBG Small Cities				
HUD CDBG Innovative				3
HUD CDBG Elderly Housing	2			
HUD LHA Rehabilitation				6
HUD Mortgage Insurance	1			7
HUD 701 Planning Assistance	2	3		
MHFA Mortgage Insurance				4
EPA Wastewater Treatment	1	6		2
EDA Public Works	1	26		2
DOI LWCF (EOEA)	1	2		22
Other	2			2
TOTAL	31	65	9	88

* Source: Appendix C, MCAD Final Report.

completion of the management information system, its capacity to review applications, to track the performance of applicants, to evaluate the strategy, and to plan future activities should multiply.

During the year, the agency developed many working relationships with State agencies and community groups that if maintained and strengthened, will help it to further refine the strategy. The agency also developed a system with the HUD Regional and Area Offices for exchanging information, so it is possible that relationships will improve also between MCAD and HUD.

The most promising result of these relationships is MCAD's increased leverage in turning negative reviews into remedial action. MCAD's working relationship with several key State funding agencies has indeed put the machinery into place and made it apparently likely that the levers can be pulled effectively. With the cooperation and support MCAD receives from other State agencies, local governments will have to take its views seriously, either complying with its recommendations and fulfilling their own equal opportunity plans or facing the financial pressure of denied funding. (Also see C. EPILOG below.)

Overall, MCAD seems to have the capability to move in a positive direction. And because State funds have been appropriated to maintain job positions to carry out activities growing out of the project, it appears that MCAD will be able to proceed without losing momentum.

C. EPILOG: POST-PROJECT DEVELOPMENTS

- In support of MCAD's strategy, the Executive Office of Environmental Affairs denied self-help funds to six localities for refusing to comply with MCAD requirements--some because they would not develop EO plans, and others because they would not implement existing plans. After losing the money, all eventually agreed to comply so that they could be eligible for future funding. 6/
- In August 1978, the U.S. District Court refused to issue a temporary restraining order to prevent HUD from releasing FY 1978 CDBG funds to Boston. (This is unrelated to the UDAG grant cited in A. POTENTIAL EQUAL HOUSING OPPORTUNITY OUTCOMES above.) While this ruling not to cut off funds pending the outcome of the trial does not fully vindicate HUD and the city, it was based on a finding that the NAACP and other plaintiffs had now shown "a substantial likelihood that they will prevail on the merits." Recognizing that "assurances on paper may screen failure of performance in fact," however, the court also told the plaintiffs to come back if they later found evidence that the grant conditions were not being complied with by the city or diligently enforced by HUD. 7/

VII. OBSERVATIONS

Numerous factors affect the implementation and results of any demonstration project, some positively, others negatively. Some of these factors are within the control of the agency, others are not; some can be encouraged or avoided, others can only be accepted or accommodated. Below are some of the factors that affected the Massachusetts agency's demonstration, with a short discussion of the role of each. Any other group or agency trying the same or similar strategy will face at least some of these same factors, and may find Massachusetts' experiences instructive.

1. Strategy Design

The design of a strategy can affect both its implementation and its effectiveness. MCAD's strategy design was generally on target with one exception. The MIS had to be redesigned to increase its usefulness in handling data connected with A-95 reviews and to give it more substantive use. The original intention to develop the MIS early in the project might have been better than the way the project turned out, with the MIS being developed almost at its completion, for the system could have been put to good use at the earlier stages. However, since the agency did continue its strategy after the demonstration period, it now will be able to incorporate the MIS into its implementation.

2. Agency Authority

An agency's legal authority can affect both the choice and design of its strategy. MCAD was able to obtain a fair degree of cooperation from other State agencies in Massachusetts, which was essential to the strategy. A factor that may have contributed to the availability of that cooperation was an Executive Order giving MCAD certain powers with respect to other State agencies in the area of civil rights. An agency without such authority, which would include most other civil rights agencies, might have more difficulty obtaining the necessary cooperation from its sister State agencies.

3. Agency Support for the Demonstration

The cost of the demonstration was considerably more than the amount of money received from HUD/ALNA. MCAD reported spending more than \$50,000 of its own in in-kind services and materials, without which the strategy would have been much poorer and less effective.

4. Prior Experience and Knowledge of the "Territory"

Achieving success in some particular strategies may be difficult without previous experience. Clearly, MCAD's past experience with A-95 was extremely helpful. Based on that experience, it knew where it wanted to go and how to get there. Although most of its past experience had been in the field of employment, it had already been moving in the direction that the strategy took and was easily able to accommodate housing considerations into

an A-95 approach.

Nevertheless, the strategy was somewhat delayed by the lack of available data, lack of the key citizen group linkages, and lack of the knowledge of available data at the start of the project. Thus, some initial time had to be spent in these basic research and developmental aspects.

5. Leadership and Management

Leadership and management can be crucial factors in the effectiveness of a strategy. While in many strategies project leadership need not come from the top of the agency hierarchy, in others the involvement of the agency director or commissioners may be required. Leadership within MCAD was a very significant factor. The project director ran the project efficiently and effectively, contributing to its achievements. In addition, the full-time commissioners, unusual among State civil rights agencies, were able to boost the strategy considerably. Commissioners became individually involved in particular cases, and in some of them no doubt made a difference. By involving commissioners, the agency was able to deal with State agency and local government officials on a higher level than could "mere" staff members. On the other hand, there were communities where the involvement of the commissioners was not needed and did not occur, and still others where it may perhaps have made a modest contribution, but was not terribly significant. Thus, while the involvement of commissioners was critical in some Massachusetts localities, the strategy was not totally dependent on it, and in many localities much could have been accomplished without such involvement.

6. Staff Skills

The on-the-job training provided by the few staff members who were particularly experienced in A-95, combined with a variety of strengths on the part of other staff members, no doubt contributed to the project. Had the staff all been inexperienced, much time and effectiveness would have been lost.

7. Political Environment

The political environment in which an agency operates is an important influence on whatever it does, in ways both subtle and blatant. Political sensitivity among project staff and leadership is often an essential ingredient to an effective strategy.

This strategy was partly a political one, dealing with other State agencies whose heads are also appointed by the governor and with local governmental leadership, both executive and legislative. As such, a certain amount of political skill was necessary, and political sensitivity had to be given its due consideration. Such sensitivity sometimes meant compromising for less than what some might have wished to accomplish, but without such political realism, still less might have been achieved.

Since this strategy required cooperative relationships with other

agencies in the Commonwealth, the support it received from the governor was no doubt an important factor. A neutral stance or, even worse, a hostile attitude, could well have undercut the whole strategy and made it impossible to get off the ground.

Also important was the commission's politically sensitive approach to local governments. It sought to build up good working relationships by recognizing the need to make its demands as clear, rational, and realistic as possible, rather than just dumping affirmative action and civil rights requirements on local governments and saying, "This is what you have to do and don't come back until you've done it."

8. Linkages Outside the Agency

The extent of an agency's prior relations and cooperation with people and groups or other outside agencies can be important if such outsiders are to play a key role in the strategy. This strategy was very much dependent on the cooperation of Federal funding agencies, the essential one in this case being HUD, and State agencies, both the clearinghouse and those that handle State or Federal funds destined for local governments. Had there been no cooperation, the commission would not have had the leverage to set in motion its entire comprehensive machinery for making A-95 an effective tool for civil rights. The likelihood of hostility from sister agencies or the State governor, as well as from Federal agencies, would make this a poor choice of strategies.

The strategy was affected both positively and negatively by other State agencies. Two of them--the Department of Community Affairs and the Executive Office of Environmental Affairs--were particularly supportive in lending their funding leverage to the commission. Indeed, more significant results were obtained through the cooperation of these two agencies than through HUD's reaction to the agency's position. On the other hand, the State clearinghouse somewhat limited the commission's ability to state its full mind in its reviews. Had the clearinghouse not objected, there would have been many more nonconcurrences, as opposed to conditional concurrences or concurrences with comment. (The effect this would have had on strategy, however, is not certain. It might well have given the commission a negative, unsympathetic image among local governments, making cooperation with it less likely. But by the same token, it would have allowed the commission to take a more demanding posture, and perhaps achieve more substantial results.)

The State legislature was also a factor in two senses. First, the State Black Caucus was involved in the commission's ongoing negotiations with the city of Boston, supporting and pushing the commission as required. Second, the legislature was very supportive toward the end of the project, when it voted State funds to continue the strategy for the upcoming year.

Finally, support from the community was important in providing various information resources to the commission staff as it developed its reviews and made substantive judgements about the communities.

9. Use of the Media

The use of the media can be a proper and effective element in an agency's strategy. In MCAD's demonstration, the media were significant not so much for what they did, although the commission did receive generally good press, but for what it did not do. Bad publicity and editorials against the commission for meddling in local government clearly could have provoked a backlash, making the strategy more difficult to carry out and affecting continued funding by the State legislature.

10. Other Factors Affecting Implementation

The pendency of the Bakke affirmative action case affected some communities. At the start of the strategy, the United States Supreme Court had not yet rendered its decision, and many localities were reluctant to make affirmative action commitments before they saw how the court was going to rule. As a result, compliance that might otherwise have been achieved was delayed and put in limbo. Since the court did not act until after the demonstration period ended, the data for evaluating the strategy had to be collected too soon to determine what the affect of the ruling itself would be.

Existing legislation was also a factor. With respect to employment, the State Personnel Act limited the localities' ability to adopt and implement affirmative action plans; in the area of housing, various land use restrictions blocked affirmative efforts to provide low-income housing in a wider variety of locations.

11. HUD's Role

HUD can play a key role--for better or worse--in response to particular strategies. HUD affected MCAD's strategy in both positive and negative ways. Clearly an A-95 strategy is dependent on support from the funding agency--indeed, that is the heart of it. In some cases, HUD hurt the strategy by failing to support the commission. In one case, for example, although a commissioner had convinced a locality to agree to MCAD's demands, HUD took a less demanding position and undercut the agreement. In other cases, however, HUD backed MCAD and gave only conditional approvals to block grant and other applications. In sum, had HUD been more supportive, more could have been accomplished; had it had been less so, the strategy could have been fatally hurt, at least with respect to Federal programs. Despite HUD's mixed response, however, the Boston area office and MCAD did eventually develop a good working relationship that has continued to improve and provide support for the strategy.

NOTES

Chapter II: INTRODUCTION TO THE AGENCY

1. Massachusetts General Laws Annotated (MGLA), Ch. 6, section 56.
2. Ibid.
3. MGLA Ch. 151B, section 3.
4. Id., section 4.
5. Id., subsections 6 and 7.
6. Id., subsection 6.
7. Id., subsection 11.
8. Id., subsection 10.
9. Executive Order No. 74, as amended by Executive Order No. 116, Article XIII.
10. Ibid.

CHAPTER III - STATEMENT OF THE PROBLEM

1. MCAD, Project Work Plan, p. 5.
2. MCAD, Final Report, Appendix B.
3. MCAD, Final Report, Appendix B.
4. MCAD, Monthly Report, June 28, 1977, Demographic Profile for Cities and Towns; and MCAD, Final Report, p. 4.
5. MCAD, Final Report, p. 4.
6. MCAD, Project Work Plan; and MCAD, Final Report, Appendix B.
7. MCAD, Final Report, Appendix B.
8. MCAD, Final Report, p. 5.
9. A State court later ruled against such local resident preferences. A black resident of Boston had complained to MCAD after the Stoughton Housing Authority told her that its resident preference policy would probably keep her out of Stoughton public housing forever. MCAD later brought suit, and the court ruled that the policy was discriminatory in effect. With only seven minority families in its 300 public and leased housing units, Stoughton has a minority population of about two percent, while nearby Boston's population is more than 20 percent

minority. MCAD v. Stoughton Housing Authority (C.A. 334404, Suffolk Superior Court, February 16, 1979), 6 Housing and Development Reporter 940 (1979).

CHAPTER VI - OUTCOMES OF THE STRATEGY

1. Telephone interview with Roger McLeod, November 28, 1978.
2. Ibid.
3. Memorandum from Maureen Hynes to Dr. Patricia A. Wright, "Additional Questions for Final Report," August 24, 1978.
4. Telephone interview with Roger McLeod, November 28, 1978.
5. MCAD, Final Report, p. 45.
6. Telephone Interview with Roger McLeod, November 28, 1978.
7. NAACP, Boston Chapter v. Harris, (D. Mass., Civil Action No. 78-850-S), Memorandum and Order, August 3, 1978.

STATE CIVIL RIGHTS AGENCY DEMONSTRATIONS OF STRATEGIES
TO FIGHT HOUSING DISCRIMINATION

CASE STUDY:

Michigan Department of Civil Rights

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I. INTRODUCTION

A. THE NINE-STATE DEMONSTRATION PROJECT

This case study is one of a series being prepared under contract to the U.S. Department of Housing and Urban Development as part of a HUD-funded research and demonstration project. A key element of this project was the provision of funds to nine State civil rights agencies to enable them to either launch or expand fair housing programs directed particularly against systemic discrimination.

1. Background

Notwithstanding the efforts of the past two decades, there remains an intolerably wide gap between the promise of choice implicit in an array of civil rights legislation and the reality of housing discrimination for minorities in America today. Moreover, discrimination in housing contributes to social injustices reaching well beyond its most immediate consequence, residential segregation. These include inequality of job opportunities, separate and unequal schools (notwithstanding the 1954 Brown decision), and increased tax burdens on inner city residents to support growing social service costs and an irregular pattern of urban growth.

So systemic and institutionalized is racism in the housing system that public enforcement efforts--crippled by weak budgets and preoccupied with responding to individual complaints--seem only to have changed the face of discrimination without uprooting it. Replacing the blatant housing discrimination of the pre-civil rights era are new discriminatory practices, subtle, indirect, and often hidden--but just as effective. The struggle for equal opportunity in housing is far from over.

State human rights agencies are called upon to play a major role in that struggle. State laws often give them far-reaching responsibilities, while Federal law gives many the added burden of processing housing discrimination complaints filed under Title VIII. Their limited resources, however, permit little more than the handling of individual complaints, often leaving significant patterns and practices of housing discrimination unchallenged.

And at all levels--Federal, State and local; public and private--there is a need to find and test new ways to use existing fair housing laws more creatively and effectively. Also needed is precise, reliable information about systemic discrimination in housing and about the programs necessary for the full enforcement of existing fair housing laws.

The message is clear: both qualitatively and quantitatively, this nation's level of public intervention on behalf of the minority shelter-seeker must be substantially upgraded.

2. The Project

It is to this message that HUD responded in 1976 by committing Federal resources under this project to enable states to assume a more aggressive role in meeting fair housing goals. In doing so, it addressed in a single programmatic thrust two broad national problems: how to assist minority families in obtaining decent housing in the face of increasingly sophisticated discriminatory practices, and how to help the States increase their capacity and effectiveness in carrying out responsibilities under existing laws.

Even before issuing the Request for Proposals (RFP) for this project, HUD selected the participating State agencies. On June 16, 1976, HUD invited 10 State civil and human rights agencies to take part in this project. One agency, ultimately unable to meet all of HUD's requirements, did not participate. The remaining nine are:

- Colorado Civil Rights Commission
- Connecticut Commission on Human Rights and Opportunities
- Kentucky Commission on Human Rights
- Massachusetts Commission Against Discrimination
- Michigan Department of Civil Rights
- New Jersey Division on Civil Rights
- Ohio Civil Rights Commission
- Pennsylvania Human Relations Commission
- Washington State Human Rights Commission

Each of these agencies was offered up to \$120,000 to pay for a year-long demonstration of one or more strategies to combat systemic discrimination. They were not required to match the Federal money, but were, of course, free to supplement it with funds of their own. Within general guidelines and a minimum of specific requirements, each agency designed its own demonstration program.

The agencies performed their demonstrations as subcontractors to A. L. Nellum and Associates, Inc. (ALNA), the contractor HUD selected to run the project. They received their money through ALNA and had no direct contractual relationship with HUD.

Under its contract with HUD, ALNA's role has included the following:

- Assisting each State agency during the planning stage of its program, and assuring that proposed strategies met project requirements.
- Distributing funds to the agencies.
- Monitoring each program over a 12-month period.
- Evaluating the impact of each program.

- Preparing a final report (of which this case study is a part) describing the implementation and results of the project in detail.

The project has been under ALNA's direction since October 1976.

Focusing on State agencies as vehicles for social change, this project has two primary objectives:

- To identify replicable, tested and proven intervention strategies for combating systemic discrimination.
- To strengthen State agency capacity and effectiveness in carrying out their responsibilities under existing laws.

Additional objectives are an increased understanding of systemic discriminatory practices and of the States' role in combating them, and the dissemination of this understanding to interested citizens.

B. THE STRATEGY AT A GLANCE

To briefly introduce the subject of this case study, the fair housing strategy demonstrated by the Michigan Department of Civil Rights consisted essentially of the following:

- To identify apartment complexes in the Detroit suburbs, primarily through "testing," as targets for commission complaints.
- To file complaints and pursue enforcement efforts against such complexes.
- To promulgate a multiple dwelling reporting rule requiring apartment owners and managers to report the racial composition of their tenants.

This strategy is described in detail in Chapter IV below. The outcomes of the strategy are described in Chapter VI.

II. INTRODUCTION TO THE AGENCY

Created in 1963 by the State constitution, 1/ the Michigan Civil Rights Commission (MCRC) consists of eight members appointed by the governor. 2/ It is a policy-making body, but has no staff of its own. Its policies are implemented by the Michigan Department of Civil Rights (MDCR), 3/ the executive agency responsible for carrying out this demonstration project. The commission appoints the department's executive director, 4/ and the attorney general of Michigan represents the department at administrative hearings and in court. 5/

The commission's constitutional base gives it a degree of independence and security that State commissions created legislatively do not enjoy. According to an opinion of the State attorney general, for example, the legislature may increase the Michigan commission's authority, but may not decrease or abrogate any of its constitutional powers. 6/

In most respects, however, the commission is governed by the Michigan Civil Rights Act, 7/ Article V of which generally forbids housing discrimination based on religion, race, color, national origin, age, sex, or marital status. The last three of these prohibited grounds for discrimination are legislative additions to the prohibitions contained in the State constitution, 8/ as is the express prohibition against housing discrimination. In addition, the civil rights act permits the adoption and implementation of any private plan "to eliminate the present effects of past discriminatory practices or assure equal opportunity with respect to religion, race, color, national origin, or sex" (thus omitting age and marital status) if the plan is filed with the commission and receives its approval. 9/

Section 601(f) of the civil rights act makes MCRC's rule-making authority subject to the Michigan Administration Procedures Act (MAPA). 10/ Section 45 of MAPA requires that all agency rules be reviewed and approved by a committee of the state legislature before taking effect.

Despite the absence of any explicit mention in MCRC's constitutional charter, housing discrimination had always been considered within the commission's jurisdiction. 11/ Until this project, however, its housing focus was almost exclusively on receiving, investigating and litigating individual complaints, rather than pattern and practice violations. Except for a loosely structured, nonspecific housing audit program in 1975, MCRC had conducted no research into the rental housing market, nor any demographic studies of the availability of such housing to minorities. In addition, MCRC's previous public education efforts had never covered the nature of housing discrimination and the ways in which it can be detected. The commission did have a complaint monitoring and analysis system, but it needed revision to provide a closer, more detailed evaluation of housing discrimination.

III. STATEMENT OF THE PROBLEM BEING ATTACKED

Greater metropolitan Detroit, encompassing the three counties of Oakland, Macomb, and Wayne, exhibits the same residential living patterns common to most other urban areas where minorities live in the United States. Minorities, for the most part, reside in the central city, while the population of the suburbs is mostly non-minority. For example, minority group persons 1/ comprise 29 percent of the total population in Wayne County; however, 90 percent of this minority group population is located within the city of Detroit. For its part, Detroit is 44 percent black, with most living in predominately segregated sections of the city. On the other hand, the racial composition of suburban Oakland and Macomb counties is over 95 percent white. 1a/

Estimates indicate that although minorities do not reside to any significant degree in Oakland and Macomb counties, they do work there in large numbers. For example, a 1976-1977 public school census reports a relatively insignificant suburban black student population, which indicates a correspondingly low suburban black population generally. In contrast, U.S. Labor Department data indicate that more than 16,500 minorities work in Michigan's automotive equipment industry, which is represented heavily in areas in and near suburban Detroit. 2/ It can be inferred that many minorities do not live near their greater Detroit suburban work place.

As documented in Federal Court, 3/ such residential patterns are perpetuated mainly by past and present practices and customs of racial discrimination, both public and private, that restrict housing opportunities of blacks and other minorities. Nationally, the relatively low minority wage level in this country often precludes home ownership, making minorities more dependent upon rental housing than sales housing. This is true also of the Detroit area, even though the minority wage level in the Detroit area is higher than it is nationally, because the cost of living there is also higher. Thus, such rental practices as (1) purposely selecting only white applicants, (2) quoting excessively costly rental and/or leasing requirements and conditions, or (3) indicating unavailability of units to minorities are important factors serving to foster and perpetuate black (and other minority) exclusion from suburban Detroit.

Based on a previous MDCR suburban rental housing audit (a limited effort conducted in 1975-76), a review of the department's housing complaint file and other information (some of which was provided them by groups in the area concerned about fair housing), MDCR designed a strategy to (1) investigate the practices of suburban landlords, 4/ (2) identify circumstances which show evidence of racially discriminatory patterns and practices, and then (3) use its enforcement power to influence a change in those policies and practices.

IV. DESCRIPTION OF THE STRATEGY

A. STRATEGY DESIGN

MDCR's original strategy consisted of the following:

1. Training

To provide special training to agency staff, project staff, and volunteer auditors through agency-sponsored seminars.

2. Research

To compile demographic and other data for purposes of selecting target communities and, within those communities, target apartment complexes.

3. Action

- Audits*

To conduct systematic audits of apartment complexes that either had been targeted on the basis of the research or had been named as respondents in individual discrimination complaints filed with the department.

- Complaints

To initiate complaints against those complexes believed to be discriminating as indicated in audit results.

- Settlements

To seek voluntary settlement of the complaints filed and, if unsuccessful, to litigate complaints at administrative hearings.

- Rule-Making

To promulgate a multiple dwelling reporting rule that would provide data on a regular basis to aid future targeting and investigations.

The heart of the strategy was the action component. The audits were structured to identify racially based differences in the treatment accorded apartment-seekers at the targeted complexes. Following classic discrimination audit design, a two-person team (one member white, the other black) would visit each target. The team members would arrive separately within approximately one hour of each other, and each would ask

* The terms "audits" and "tests" are used interchangeably in this case study, as are "auditors" and "testers."

the same manager or rental agent for the same size and type of apartment. Team members were closely matched in age, were either both male or both female, and claimed real or assumed characteristics indicating substantially similar background and family factors (such as profession, income level and family size).

Each team member would file a report on the treatment he or she received, including such things as courtesy and attitude on the part of the manager or agent, apartment availability, the particular units shown, quoted rents and leasing requirements, and the location of any offered rental units. Because the members of each team were so closely matched except for race, any important differences in the treatment they received could be attributed to the fact that one was white and the other black.

Complaints would be filed against a complex only if at least two audits turned up evidence that black and white audit team members were treated differently. Such evidence of discrimination in particular instances would be bolstered by any evidence that the respondent had few, if any, minority residents, based on a combination of investigative surveillance (described in Chapter V below) and available statistical information.

B. SCOPE OF STRATEGY

Focusing on a specific problem in specific localities, of course, necessarily limits the scope of a strategy. For example, MDCR chose to look only for discrimination against black apartment-seekers before they applied for a unit, and limited its audits to suburban rental multifamily apartments in the greater Detroit metropolitan area. These and other limitations, affecting both the targeted discrimination and the targeted discriminators, are discussed below.

1. Targeted Discrimination

The auditing teams, whose minority members all were black, were looking only for discrimination based on race or color--or, more particularly, only discrimination against black apartment-seekers. The audits were not intended to find or report discrimination on any other basis, such as sex, even if it would have had a racial impact as well. (An example is discrimination against female-headed households which, as shown by other studies, would have had a disproportionate adverse impact on black homeseekers.) 1/

The auditing teams were looking only for evidence of different treatment based on race, as contrasted with similar or identical treatment that has a disparate, discriminatory impact.

The audits looked only at the treatment accorded apartment-seekers before they reached the application stage. Discrimination in processing applications and in selecting tenants from those who applied was not covered.

Finally, the focus was only on access to a complex. The audits did not reach differences in the treatment accorded black and white residents within a complex.

2. Targeted Discriminators

Because of staff and time constraints, the targeted apartments were limited to suburban complexes in the three-county greater Detroit metropolitan area. The targets included only rental multifamily apartments. No sales housing and no rental single family homes were covered.

Because the project could not "go for the whole universe," not all suburban apartments were covered. Only two classes of complexes were chosen as targets--those against which individual complaints had been filed, and those meeting all of the following criteria related to size, racial composition, location, and cost (discussed in detail in Chapter V):

- Large complexes only.
- Those known or believed to have few, if any, minority residents.
- Complexes accessible to a sizable minority population of potential residents and to substantial suburban job opportunities.
- Those with rents that many minority workers in the area could afford.

The second criterion for target selection (low minority occupancy) flowed from MDCR's intent to maximize the strategy's impact within the one-year demonstration period by attacking discrimination where it was most likely to be found. Because there was no intention to survey the suburbs to determine scientifically how severe the problem was, no effort was made to select a random sample of targets. Similarly, although it is quite possible that discrimination could be found even in complexes with substantial numbers of minority residents (e.g., a discriminatory limit to prevent the percentage of minority residents from rising above a certain level), the agency targeted such a complex only if an individual complaint had been filed.

C. CHANGES DURING IMPLEMENTATION

Several relatively minor changes were made in the original strategy after it was implemented, including:

- The agency decided to test each complex two or three times, rather than just once, because multiple tests strengthened any evidence of discriminatory treatment.
- The agency had to use more staff testers and more volunteers

who needed training in auditing than originally planned because of high attrition at the start of the project and the unavailability of experienced volunteer testers to replace those who dropped out.

- The agency decided not to promulgate the multiple dwelling reporting rule without first seeking some form of legislative authorization.

Each of these changes is discussed in detail in Chapter V. In addition, the agency considered expanding the strategy to cover another issue. Early in the project, the project coordinator raised the possibility of working more closely with suburban industries to develop a "live where you work" program. Although some preliminary work was done, MDCR eventually decided--for reasons more administrative than strategic--not to pursue it.

V. IMPLEMENTATION

After project staff selection, implementation of the strategy began with training staff and volunteers, and background research for targeting. These start-up activities were followed by the action phase of the strategy, in which the audits revealed discrimination in 48 percent of the total number of tests conducted. The audit results formed the basis for subsequent enforcement activity, including the issuing and settlement of department-initiated complaints. Concurrent with auditing and enforcement preparations were made for the issuance of a Multiple Dwelling Reporting Rule. This chapter describes each of these project activities.

A. PROJECT STAFF

The Michigan Department of Civil Rights (MDCR) initiated its housing investigation and enforcement strategy in June 1977. Project staff consisted of a full-time project coordinator, assistant project coordinator, three field representatives, a part-time research analyst, and a secretary. Essentially, MDCR's project staff members were regular agency employees who applied for the special demonstration program. Under Michigan employment rules, at the end of the project they would be allowed to move back into their former positions, if necessary replacing less senior employees. At the time of project start-up, several new agency field representative positions had been created, so that new hires took up the slack created by agency-to-project staff moves. Because project staff were still doing agency investigations, although specifically in the area of housing cases, the project coordinator felt that there was no project-related reduction in overall agency staff efficiency.

The project coordinator had primary responsibility for the day-to-day operation of project activities, writing monthly and final reports, and drafting the Multiple Dwelling Reporting Rule and a legal memorandum in support of the rule. A lawyer, he was also responsible for presenting the rule before the Michigan Legislature. As overall project supervisor, he made the final determination whether facts were sufficient to file a complaint against an apartment complex, or whether additional audits were necessary to establish a firm prima facie case of rental housing discrimination.

The assistant project coordinator had primary responsibility for supervising the project field representatives, selecting the targeted apartments, determining whether subsequent audits were warranted, and, in her role as legal aide, assisting in the drafting of the rule and supporting documentation.

The three field representatives were each responsible for training and coordinating the volunteer testers, scheduling the audits and debriefing the auditors. They also participated in numerous audits as well as in investigative "stakeouts."

A part-time research analyst was principally involved in the target

selection process (to be described in detail below).

Before an audit occurred, the prospective auditors were selected and those untrained were trained in the techniques of auditing (see below). By September 1977, many of the auditors recruited during the project's pre-implementation stage (April and May 1977) were unable or unwilling to participate in the audits. (Most of them originally had been solicited because of their participation in the HUD-funded NCDH auditing program, which was just then ending. MDCR offered no explanation for the high rate of attrition, but one factor could have been that the department's auditing program paid only for travel expenses, whereas NCDH had paid a modest fee for each audit.) As a result, additional recruits, who required training in testing, had to be solicited from voluntary associations in the Detroit area.

Because MDCR rules do not permit payment of auditors, they worked on a voluntary basis receiving mileage reimbursement only. One project staff member felt that pay would have increased tester cooperation, while another felt that a paid tester may not have had the same kind of commitment to project goals geared to uncover behavior that was discriminatory. The project coordinator felt that payment of auditors might have created difficulties if they were later required to appear as witnesses at an administrative hearing.

B. TRAINING

By early July 1977, the agency staff training session concerned with civil rights law and Michigan housing legislation (a first for the agency) had been completed. A second agency-sponsored seminar occurred in August 1977 and was attended by both project staff and volunteer auditors. During this seminar, procedures were explained and the auditing forms were reviewed. Additionally, prospective auditors engaged in role playing in practice for the upcoming audit. Those who joined the project later received similar training before beginning an audit. In both sessions, high-level training was promoted by including as trainers attorneys familiar with civil rights law, civil rights housing supervisors, and fair housing center staff. Both sessions were taped, and the transcript was used as the basis for an in-house housing enforcement manual. Called "HIM/HER" (its full title was Housing Investigation Manual/Housing Enforcement Remedies), it included intake procedures and forms for handling housing discrimination complaints, an outline guide to investigating rental discrimination complaints, procedures and forms for conducting rental audits, and a 24-page legal section, with extensive citations, discussing housing discrimination law.

In addition to the two planned seminars, the training of volunteer auditors was ongoing. This was necessary because several of the initial corps of auditors dropped out of the project and their replacements were generally less experienced in auditing.

C. RESEARCH

The project had two general research components: (1) during project start-up consultation with agencies in other States with experience with Multiple Dwelling Reporting Rule requirements, and discussion with a U.S. Justice Department official regarding evidentiary basis for audit-based pattern and practice complaints; and (2) development of a methodology and data base for selecting an initial list of target communities and apartment complexes. By the July 5-6, 1977, orientation visit, both research components had been completed.

1. Interagency Consultation

In an effort to refine the content, focus and scope of the proposed Multiple Dwelling Reporting Rule, the project coordinator visited the Pennsylvania Human Relations Commission, New Jersey Division on Civil Rights, and Kentucky Commission on Human Rights, each of which administered some sort of Multiple Dwelling Reporting Rule. The project coordinator was able to compare the similarities and differences in rule construction and application and to ferret out components of possible value to MDCR's rule.

The discussions also provided other useful information, such as: (1) from Kentucky, a computational formula for a racial disparity index; and (2) from Pennsylvania, advice on the use of statistical data to support complaints and affirmative remedies in voluntary compliance agreements. Advice on complaints and remedies was also obtained from the Justice Department.

2. Generating a Data Base and Target Selection

The development of a data base and methodology for target selection also began during the period. In general, the data included racial and ethnic breakouts of work force and residential area populations, and the locations of multiple dwelling units. The principal sets of data, and MDCR's creative approach to fitting them together to update and complement each other, are discussed below.

- U.S. Census Data

The most comprehensive and generally agreed upon data available are provided by the decennial U.S. Census. MDCR used 1970 data at the census tract level 1/ as a basic framework from which to indicate the number and location of minorities. Concentrations within census tracts were aggregated at four levels: (1) less than 5 percent; (2) 5 percent to 10 percent; (3) 11 percent to 15 percent; (4) 16 percent or more. The data was then color coded onto county maps.

- Annual Fourth Friday Elementary and Secondary School Census

School enrollment data were used to update the approximately eight-year-old U.S. Census data. The Fourth Friday Count is an elementary and secondary student population census conducted annually in the fall by the Michigan Department of Education. These data, which provide racial and

ethnic breakouts per school, were useful in plotting the location and relative change in the minority student populations. Using school boundary maps an estimated revision of the census tract minority population was made based on minority student population in the area.

- Subsidized Multi-Unit Housing Data

Both the regional planning agency--the Southeast Michigan Council of Governments (SEMCOG)--and the U.S. Department of Housing and Urban Development (HUD) supplied lists of Federally subsidized units. The two reports were compared and combined, and phone calls were made to all developments appearing on only one list to verify their existence. The locations of the units within the tri-county area were established using coding guides prepared by the Detroit Regional Census Advisory Committee. HUD also provided minority occupancy reports for the units on its list.

- Private Multi-Unit Housing Data

Because the project focused on suburban rental units it would have been counterproductive to target communities with few such units. Using SEMCOG data for the period since 1970, new multi-unit construction was aggregated by census tract. MDCR was thus able to identify suburban communities with large supplies of rental properties. (Although MDCR used the SEMCOG data, it had some reservations because (1) the data were based on permits issued rather than actual construction, and (2) MDCR had to assume that the units were all rental units.)

- Private Employer Information Reports (EEO-1)

The U.S. Equal Employment Opportunity Commission annually collects data on such workforce characteristics as race, sex, type of occupation, and employment location from all private employers with 100 or more workers. Using those reports, the MDCR research division was able to ascertain the size and income level ("high" or "low", determined by average wages per types of occupation) as well as the location of the minority work force in suburban areas. MDCR was then able to identify which communities had substantial numbers of minority workers with incomes sufficient to afford the community's rental range. Such communities, MDCR assumed, should also have substantial numbers of minority residents, were it not for other exclusionary factors, among which discriminatory rental practices were a prime suspect.

3. A Framework for Action

Using the above data base, nine communities within the tri-county area of Wayne, Oakland, and Macomb were selected on the basis of their (1) relatively small minority population (less than 12 percent, the 1970 average minority population of the seven-county Detroit SMSA), (2) proximity to large corporate plants where minorities are employed, and (3) presence of 1,000 2/ or more apartment units.

All known apartment complexes within the nine target communities were

listed by size and rental range. To insure both wide coverage and the selection of complexes with rents appropriate for the average \$1,200 monthly income level of minorities working in those areas, all complexes with 100 or more units and with rents not exceeding \$300 were selected as targets for auditing.

In addition, MDCR also audited (1) respondents named in housing complaints either pending before the department or recently closed as adjusted; and (2) respondents named in new housing complaints indicating race or national origin as the ground for discrimination.

D. ACTION

The action component of MDCR's strategy had three focuses: (1) apartment complexes demographically selected for auditing as described in the previous section; (2) respondents against whom citizen complaints of discrimination had been filed; and (3) the multiple dwelling reporting rule. Each of these is separately discussed below.

1. Apartments Demographically Selected

In the case of apartment complexes selected demographically for auditing, the action component consisted of the following:

- auditing of each selected complex.
- filing complaints against complexes where two or more audits showed unequal treatment based on race.
- processing and resolving the complaints.

● Auditing

Auditing Process. The overall auditing process consisted of the following major steps necessary for a program geared toward the initiation of commissioner complaints: (1) the supervisor reviews list of target apartment complexes and decides on a complex to be tested; (2) the investigator coordinates the audits (including rescheduling made necessary primarily by inclement weather and auditor no-shows), gives auditors the characteristics they are to assume, prepares and delivers auditing material, and debriefs auditors at the completion of the audit; (3) auditors perform the audit, and afterward complete report forms and attend the debriefing session with the scheduling investigator. (For a detailed description of MDCR's audit process, see Appendix.)

During the initial weeks of the project MDCR conducted 24 audits. As a result of conversations with a representative from the U.S. Department of Justice, and on the advice of MDCR general counsel, the project coordinator decided to conduct at least one retest of all first audits indicating differential treatment. It was felt that such retesting would strengthen MDCR's case against any defenses that might later be raised based on any claims of entrapment and subjectivity. Thus, of the 24 initial audits MDCR retested approximately 16 that revealed differential treatment. During the remaining project months, MDCR's field investigators continued to audit

apartment complexes at least once, followed by second and third tests of those that, based on a first audit, were suspected of systematically discriminating against black homeseekers.

MDCR's general procedure was to assign each investigator to a county and to assign 10 to 12 testers to each investigator for supervision, training, and debriefing. This included contacting potential volunteer auditors; scheduling, conducting, and participating in training sessions, each for about 20 volunteers and project staff auditors; organizing community audit assignments; and conducting the auditing program, which includes preparing the material for each auditor, going over each auditor's "cover story" prior to the audit, and "debriefing" each auditor afterward.

Elements of "Unequal Treatment." Each audit was designed to uncover evidence of discrimination based on race by identifying differences in the way that black and white members of the team were treated. In addition to noting any expressions of a discriminatory attitude (e.g., racial remarks), auditors looked specifically for differences in the following areas:

- Availability of units
- Amount of rent quoted
- Eligibility requirements for renting
- Terms and conditions of the lease
- Location of rental units shown
- Courtesy

Audit Instrument. After each audit, the testers recorded their experiences on a rental audit report form. Except for minor changes--some reordering of the items and the addition of one question about the display of equal housing opportunity material--the MDCR audit instrument was the same as that developed by the National Committee Against Discrimination in Housing for its HUD-contracted national Housing Market Practices Survey.

Generally, the audit instrument uses items identified by Saltman ^{3/} that can be evaluated according to their usefulness in supporting a department-initiated complaint. These items were constructed so as to (1) ensure standardized audit report data across auditors; (2) provide quantifiable data; (3) provide qualitative descriptions of auditor experiences; and (4) provide an evidentiary basis for further investigation and enforcement. To identify instances of discrimination, the items were designed to measure any unequal treatment accorded the black and white auditors.

Post-Audit "Stakeouts". If unequal treatment of the black and white auditors was noted during two or more audits of a given complex, the staff investigator assigned to the area scheduled a "stake-out" of the suspect complex. During a stake-out, the investigator observed tenants leaving in the early morning hours and arriving during late afternoon hours, and then estimated the number of black tenants living in the complex. ^{4/} Sometimes the investigator also attempted to secure that information from people familiar with the complex, such as mail carriers, grounds keepers, and employees of businesses in the area.

Investigators indicated the stake-out proved especially problematic

during winter months because frigid weather conditions made sitting in their cars for hours extremely uncomfortable and the limited daylight hours made it difficult to distinguish tenants clearly. In fact, the majority of the project staff agreed that to avoid such inconveniences as extreme weather conditions, an auditing program should be scheduled during spring, fall, and possibly summer months.

Audit Results. Initially, MDCR uncovered substantial discriminatory treatment in 24 of the 48 target suburban apartment complexes that it audited during the project. 5/ All but one of these 24 were audited one or more additional times (lack of vacancies prevented a second audit of the remaining complex), and at 12 of them racial differences were found again (see Table 1).

In all, MDCR performed 84 audits, and attempted eight more which it could not complete because of the lack of vacancies. Of the 84 audits, 37 showed racial differences in treatment (See Table 2).

The auditors looked at five areas of treatment in which racial differences might be found. Sometimes the differences found at a particular complex were all in one area of treatment. In other cases they were in several areas. The total instances of different treatment were distributed among the five areas as follows (percentages do not add to 100 due to rounding):

- Availability 54%
- Leasing requirements 9%
- Racial remarks 3%
- Location offered 11%
- Courtesy 24%

Although all its complaints were based on audits in which black and white testers were treated differently, MDCR did not always interpret the lack of different treatment as proof of nondiscrimination. Only in some cases did the staff feel that such audits could be read as legitimate indications of a lack of discrimination. This was particularly true in higher rent buildings, where MDCR staff felt whites were less likely to reject affluent black neighbors than would be the case among whites and blacks with lower incomes. In other cases, however, audit results were considered more ambiguous, especially if the lack of differences in treatment might be explained by one of the following:

- Lack of available vacancies (if that was the reason white and black testers were treated alike, it would not necessarily mean there would have been no discrimination had apartments been available to show the white auditor).
- Deficiencies in the way the audits were conducted;

Table 1

AUDIT RESULTS
By Complexes Audited During Project

	<u>Complexes Audited</u>			
	<u>First Audit</u> <u>Complexes</u>	<u>Audit</u> <u>Percent</u>	<u>Sequent</u> <u>Complexes</u>	<u>Audits</u> <u>Percent</u>
Complexes with differences in treatment	24 <u>1/</u>	50%	12	48%
Complexes with no difference in treatment	22	46%	12	48%
Complexes with inconclusive audits	2 <u>2/</u>	4%	1	4%
Total complexes audited	48	100%	25 <u>3/</u>	100%

1. At one additional complex, while the audit found some differences in treatment, they were so small that the audit was deemed "inconclusive."
2. Includes the complex (see note 1) where the differences found were so small that the audit was deemed "inconclusive."
3. In addition, there were two other complexes at which MDCR was unable to complete any subsequent audits, primarily because no vacancies were available.

SOURCE: MDCR reports to ALNA.

Table 2

AUDIT RESULTS
By Audits Conducted During Project

	<u>Audits</u>	<u>Percent</u>
Audits showing differences in treatment	40 <u>1/</u>	48%
Audits showing no difference in treatment	37	44%
Inconclusive audits	7 <u>2/</u>	8%
Total audits performed	84	100%

1. One additional audit found differences so small that it was deemed "inconclusive."
2. Includes the audit (see note 1) where the differences found were so small that it was deemed "inconclusive." MDCR was unable to complete an additional eight attempts to perform subsequent audits, primarily because no vacancies were available.

SOURCE: MDCR reports to ALNA.

- Suspicion by some apartment managers that a test was being conducted, particularly if few or no blacks ever applied at the complex.

- Complaint Initiation

After reviewing the audit results and other data (e.g., the postaudit "stakeout" reports) to select the strongest cases, the agency filed complaints against five complexes where two or more tests indicated unequal treatment. After citing the particular instances of unequal treatment that occurred when MDCR audited the respondent, the typical complaint charged that "the absence of black tenants at the said complex and the treatment accorded black persons at same is part of a pattern and practice of discrimination on the basis of race."

- Processing and Resolving Complaints

In handling the five complaints it filed based on the audits, MDCR followed its regular procedures, such as meetings and telephone negotiations with the respondents. But its success in resolving two of the complaints through the signing of affirmative action agreements was an agency first in the field of housing.

While not admitting any violation of the Michigan Civil Rights Act, respondents promised in the agreements to refrain from specified rental policies and practices that operate to screen out minority applicants, denying them their right to equal housing opportunities. For example, in addition to making the minimal boiler plate promises to rent to any person without regard to race, color, religion, sex, national origin, marital status, age, or handicap and to impose no discriminatory differences in rental or lease terms, apartment managers agreed to notify the local fair housing center of all vacancies, to include the words "Equal Opportunity" in all advertising, and to furnish MDCR annual reports on minority tenancy.

This was the first time the MDCR had used settlement provisions specifying recruiting, reporting and advertising requirements for housing complexes. The agreements were designed to insure minorities future access to all-white (or almost all-white) buildings and to provide as well a mechanism whereby compliance can be monitored.

2. Respondents Against Whom Citizens Have Filed Charges of Housing Discrimination

Although the focus of the project was on generating pattern and practice rental housing cases through audits, the staff also took several pending individual rental housing complaints and expanded them to cover the pattern and practice implications of the particular complainants' grievances. In these cases, the strategy's action component consisted of the following:

- Processing and resolving each complaint.
- Auditing each respondent after the complaint had been resolved.

- Processing and Resolving Each Complaint

MDCR planned to make auditing, wherever it would be an appropriate technique to use, a standard part of the investigation of citizen complaints. Because of timing or subject matter, however, this was not the case in any of the citizen complaints pending during the demonstration.

MDCR staff indicated that previous to the auditing project, the few housing complaints that had been filed were not given high agency priority. During the implementation of the enforcement strategy, project staff gave special attention to four existing rental housing cases. Using the voluntary approach described above, the cases were processed and all four were settled, three by signing affirmative agreements with the respondents.

- Post-Resolution Audits

The project investigators audited the operators involved in three of the four settled cases, and in each instance found no difference in the treatment of the black and white auditors.

3. Multiple Dwelling Reporting Rule

Under its original strategy, MDCR proposed that the commission issue as a regulation a multiple dwelling reporting rule (the MDR rule), requiring apartment owners and managers to keep records and to report periodically to the department on the racial and ethnic designation of both applicants and tenants. In the course of the demonstration year, MDCR completed the basic preparatory work for issuing the MDR rule. After consulting the Pennsylvania Human Relations Commission, New Jersey Division on Civil Rights, and Kentucky Commission on Human Rights, it developed a draft rule and related reporting forms and cost justifications, together with draft legislation authorizing the commission generally to issue rules requiring racial and ethnic recordkeeping and reporting. By project end little progress had been made toward issuing the MDR rule, however, partially due to the tactical considerations explained below.

Until shortly before MDCR developed its reporting rule strategy, no statute requiring legislative review of administrative rules and regulations applied to the Michigan Civil Rights Commission (MCRC). Although the State constitution provided that administrative rules and regulations could be suspended by a joint committee of the State legislature, an attorney general's opinion states that this applied only to legislatively created agencies, not to MCRC, which was created by the constitution. 6/

In January 1977, however, the governor signed the new Michigan Civil Rights Act, which made all MCRC rules and regulations subject to legislative review. 7/ Moreover, the legislature itself, whose previous approval of other agencies' rules and regulations had been fairly routine, moved to exercise its review authority in a much more substantive manner.

Under these circumstances, MDCR officials eventually decided that, although the agency probably had the power to act directly, too much time and energy might be wasted if it proceeded administratively to issue the rule, including holding a rule-making hearing, only to have the legislature reject what it had done. They chose instead to seek a statutory base for the rule first, and then to pursue the required administrative procedures. 8/

Having rejected the administrative rule-making initiative, MDCR now has to choose which legislative route to follow. It can propose enactment by the legislature of either the entire MDR rule or simply enabling legislation that would expressly empower it to issue the rule administratively. One advantage of the latter route is that the statute could be worded broadly enough to authorize MCRC to issue similar rules in other areas as well, such as employment. Two disadvantages are that statutory authorization would only be a first step, which must be followed by the full administrative rule-making procedure before the MDR rule could take effect, and that the legislature would get a second bite at the apple when the rule went before it for approval or rejection. At project end, MDCR planned to make the choice of which type of statute to seek, as well as other tactical decisions, in time for the next legislative session.

E. FUTURE OF THE STRATEGY

Following the demonstration year, MDCR will pursue the complaints that it filed based on the results of the audits. During the next legislative session, it will also pursue the promulgation of a multiple dwelling reporting rule.

In addition, MDCR officials have indicated that a special unit will be assigned housing enforcement activities, that its costs would be absorbed in the agency budget, and that the project's momentum will be carried over into audits to uncover such discriminatory real estate sales practices as steering and block-busting.

MDCR officials were not certain that the project-induced activities could solve the longstanding problem of moving from under its burdensome caseload, as "the focus on the legislature is on caseload reduction." Nevertheless, a program to attack systemic discrimination through the use of auditing and the promulgation of an MDRR to generate a statistical basis for supporting such an attack would make it easier to consolidate individual charges against the same respondent into a single comprehensive pattern and practice complaint. This, in turn, should have some impact in reducing the burden of the citizen complaint caseload.

F. COST

The U.S. Department of Housing and Urban Development contributed \$120,000 to MDCR's investigative and enforcement demonstration strategy. MDCR contributed \$7,735 in in-kind materials and services for a total project cost of \$127,735. The proportion of total cost allocated to various strategy components is listed in Table 3.

Table 3

COST

	<u>Total Cost</u>	<u>Investigative Enforcement</u>	<u>MDRR</u>	<u>Research</u>
Total Cost	\$127,735	\$94,618	\$26,693	\$6,424
Percentages*				
Staff Salaries & Benefits	87%	85%	96%	96%
In-Kind Salaries & Benefits	6%	8%	--	--
Training & Consultant Fee	2%	2%	3%	1%
Miscellaneous	3%	3%	5%	3%

Source: Michigan Department of Civil Rights final report to ALNA.

*Percent within errors of rounding

In all, MDCR reports that it spent slightly over \$69,000 on the audits and directly related activities, or well over \$700.00 per audit. While that figure is much higher than, say, the per audit cost of the HUD-sponsored Housing Market Practices Survey, 9/ such comparisons can be misleading unless the various cost components are first sorted out and made comparable--which is difficult, if not impossible, to do. In MDCR's view, for example, the NCDH effort was more of a survey project, while its own audits were considered investigative, intended to serve first as the basis for initiating specific charges of discrimination under Michigan's Civil Rights Act and later, if necessary, as evidence to prove the charges. MDCR thus claims its audits required more care in both planning and execution, and the involvement of its legal staff to insure that the quality and substance of the audits were sufficient for complaint purposes.

VI. OUTCOMES

The outcomes reported in this section are the contractor's findings as to changes resulting from what the agency did in the course of its demonstration. MDCR's findings (i.e., the audit results) are reported in Chapter V. IMPLEMENTATION.

All outcomes were grouped into two categories, agency capacity and equal housing opportunity:

Agency Capacity. The agency's own capability to identify and challenge systemic housing discrimination, as measured by such pre-post project changes as increased staffing, new research or investigative or analytic expertise, better use of community groups, new training techniques, and strengthened negotiating tactics. Improvements in handling individual complaints, while not generally a concern of this project, may also be a relevant measure of increased capacity if they include, for example, new procedures for identifying individual complaints that should be treated as charges of systemic discrimination.

Equal Housing Opportunity. The impact of the strategy on systemic discrimination, as measured by pre-post project changes in specific discriminatory policies and practices or in increased housing opportunities for minorities or other protected class persons. The equal opportunity outcomes have themselves been divided into two subcategories -- potential opportunity and actual opportunity. Potential equal housing opportunity outcomes are real-world changes that hold the promise of leading to increases in actual housing opportunities for minorities. Actual equal housing opportunity outcomes are either measurable increases in housing actually obtained by minority groups or actual changes in behavior (such as affirmative actions known to have been taken or the absence of discriminatory treatment previously known to exist).

Potential opportunity outcomes are one step removed from actual opportunity outcomes in the same way that changes in the rules of a game are one step removed from the actual moves the players make. In fact, the distinction between potential and actual opportunities is essentially the difference between rules and behavior. Promises made in a binding conciliation agreement, for example, are only a potential equal housing opportunity outcome; they change the rules that govern the respondent's behavior but not necessarily his behavior itself (which, if also changed, would represent an actual opportunity outcome).

Capacity and opportunity outcomes, it should be noted, are not mutually exclusive. By definition, an agency cannot have produced an equal opportunity outcome if it did not have the capacity to do so. Each equal opportunity outcome, therefore, is indicative of a capacity outcome as well.

A. ACTUAL EQUAL HOUSING OPPORTUNITY OUTCOMES

The project ended before the full extent of its impact on discriminatory practices could be known and documented. Three of the five complaints filed on the basis of the audits, for example, were still pending at the close of the project. But for each of the two audit-based complaints that were settled, there was evidence that the strategy was having the desired effect. Two previous audits of each of the complexes involved had shown they were discriminating, but when each was retested in August 1978, after the respondents signed an affirmative agreement to settle the complaints, there was no evidence that black and white auditors were treated differently. This suggests that the discriminatory practices found in the earlier audits of those same complexes may actually have been eliminated. Similarly, MDCR conducted post-settlement audits of the respondents in three of the four citizen-initiated complaints, and none showed any evidence of different treatment.

B. POTENTIAL EQUAL HOUSING OPPORTUNITY OUTCOMES

The five affirmative action agreements signed in the cases of two audit-based complaints and three citizen-initiated complaints that were settled represent potential equal housing opportunity outcomes. (Also see D. EPILOG below.)

C. INCREASED AGENCY CAPACITY OUTCOMES

The major increase in MDCR's capacity to fight systemic housing discrimination grew directly out of its strategy as a whole--the development and successful, though expensive, implementation of a formalized procedure for auditing apartment rental practices, together with follow-up enforcement based on the audit results. By way of comparison, prior to the project, the MDCR staff received no special training in civil rights law or State housing legislation. Except for a very loosely arranged housing audit program in 1975, MDCR activities had not previously focused on systemic approaches to the problem of racial discrimination in the rental housing market. The 1975 instrument did not list specific criteria by which to evaluate the behavior of apartment complex managers; and the targets were chosen based only on "common knowledge" about particular complexes in particular areas.

Evidence of the agency's increased capacity can be found in the following project outcomes:

- Development of a system for training and a training manual--in particular, two housing discrimination training seminars, one in complaint investigation, the other in testing--and the development from seminar transcripts of a housing enforcement manual (known by the acronym HIM/HER).
- Establishment of linkages that did not exist previously--the development of a cooperative work relationship with Detroit and Toledo Fair Housing Centers, which helped recruit volunteer testers.

- Development of a systematic, data-based method of selecting audit targets.
- Development of an auditing instrument with specific criteria to identify discriminatory treatment of minority apartment seekers.
- Completion of audits of more than 50 apartment complexes in Wayne, Oakland, and Macomb counties to determine whether differential treatment was accorded white and black auditors in the areas of availability, courtesy and the like.
- Use of audit results to target apartment owners for department initiated complaints and to establish a prima facie "pattern and practice" case.
- Initiation of five "pattern and practice" discrimination complaints (MDCR's first time in the area of rental housing).
- Development of voluntary affirmative marketing agreements to settle complaints against apartment complexes, providing for comprehensive affirmative action in terms of advertising, reporting, and recruiting.
- Development of new claimant and interview forms to solicit more complete information about the complainant and the circumstances of the alleged discrimination.
- Development of a rental investigation instrument to search out the presence of "pattern and practice" racial discrimination. Drawing on the case law dealing with pattern and practice in rental housing, this instrument was drafted from materials from HUD, the Pennsylvania Human Relations Commission, the Toledo Fair Housing Center, Justice Department attorney Carl Gabel, Dr. Juliet Saltman, and the Mid-Peninsula Citizens for Fair Housing.

D. EPILOG: POST-PROJECT DEVELOPMENT

- An affirmative agreement was reached with another apartment complex following the end of the demonstration period.

VII. OBSERVATIONS

Numerous factors affect the implementation and results of any demonstration project, some positively, others negatively. Some of these factors are within the control of the agency, others are not; some can be encouraged or avoided, others can only be accepted or accommodated. Below are some of the factors that affected the Michigan agency's demonstration, with a short discussion of the role of each. Any other group or agency trying the same or similar strategy will face at least some of these same factors, and may find Michigan's experiences instructive.

1. Strategy Design

The design of a strategy can affect both its implementation and its effectiveness. MDCR's strategy was designed to achieve results within the short implementation period available to the agency. It allowed the agency to move relatively quickly from research and development to action, and it was well targeted in two senses. First, it was directed at areas where there was a real need to break open the housing market, rather than predominately white areas for which there might be little minority demand or interest. Second, the department targeted apartments where discrimination was likely to be found, rather than testing randomly selected buildings where different treatment might not even be a problem.

Initially, ALNA was a catalytic force in the agency's choice of strategy, although we did nothing to influence the selection itself. At the beginning of the project, it was ALNA that first learned that one of the two strategies the department had originally proposed would duplicate another effort that was just about to begin in Detroit. Such duplication would have been counterproductive. The department agreed readily not only to drop the duplicative strategy, but later dropped its other as well, for reasons of its own. It then chose the strategy that was carried out in this project. Later ALNA again played a role by convincing the agency, at HUD's urging, to conduct some post settlement testing. Such testing subsequently proved that the settlements in both the department-filed complaints and in some pending individual complaints had apparently been effective, as no difference in treatment had been detected.

2. Agency Authority

There were no fundamental questions of the agency's authority to carry out the testing strategy. It was empowered to file complaints on its own, if different treatment was found during the audits, and recent State court decisions had upheld the use of test results as the basis for filing complaints.

The relative certainty or uncertainty of the law can affect a strategy. There was some difference of opinion whether the commission could promulgate a multiple dwelling reporting rule on its own authority. Although this question was never resolved, concern that its rule-making authority might be challenged was obviously a factor in the decision to seek

specific enabling legislation first.

With one exception, the split in agency authority between the Commission and the Department of Civil Rights did not appear to be a factor. Because of the split, the project staff had to answer to both the commission and the department, which caused at least some of the delay, first in reviewing staff drafts and then in reaching a final decision as to how to proceed with the proposed multiple dwelling reporting rule.

3. Agency Support for the Demonstration

The agency reported that it contributed \$8,000 in in-kind services and materials, including staff testers to supplement those hired from outside.

4. Research and Action

Extensive research or "pure" research techniques may not be the best approach for an action strategy to take. In implementation as well as design, MDCR achieved a reasonable balance between research and development, on the one hand, and action on the other. Its approach differed from the HUD/NCDH auditing recently completed in Michigan prior to the project. With enforcement action in mind, MDCR carefully chose the apartments it targeted for testing, rather than testing randomly selected targets for essentially research and informational purposes as did NCDH. The latter would have been "purer" research methodology, but MDCR chose instead to emphasize action by targeting its efforts on apartment complexes where it was most likely to find discrimination. The targeting process was not very time-consuming, however, and MDCR was able to move quickly from research and targeting into the action stage.

5. Prior Experience and Knowledge of the "Territory"

Because it had most of its data on hand and knew the outside data sources it would need for additional data, MDCR, more than most other agencies, was ready to begin its strategy immediately. The agency's familiarity with housing issues no doubt contributed to its ability to move efficiently through the strategy.

6. Management and Leadership

Leadership and management can be crucial factors in the effectiveness of a strategy. MDCR's project was generally well run. Decisions on necessary modification of original plans were made quickly, with little disruption to project activities. Although the agency as a whole did not appear to place high priority on obtaining a multiple dwelling reporting rule, the rest of the strategy was carried out efficiently, even though there was less top level involvement than in most agencies. The project director, although not particularly high in the agency hierarchy, had the necessary authority to keep the project running smoothly.

7. Staff Skills

Technical expertise, not just knowledge and experience in civil rights may enhance a strategy and may even be essential for its success. Having a research unit gave MDCR a ready source of technical help on research problems.

8. Political Environment

Essentially the only political constraint on the strategy was the agency's caution in anticipation of a legislative backlash to promulgation of the multiple dwelling reporting rule, which eventually led to the commission's decision to seek enabling legislation before proceeding. The source of this constraint was recent legislation that had made the commission subject to the Michigan Administrative Procedures Act, which in turn made its rules subject to possible veto by a committee of the State legislature. Prior to this, the commission had been relatively free of legislative veto.

9. Linkages Outside the Agency

The project's reliance on outside sources proved to be somewhat disruptive. Initially, volunteers were expected to carry out the actual auditing program, but work was slowed down when several of them dropped out for one reason or another and new volunteers had to be recruited and supplemented as well by agency staff.

Consultation with agencies in several other States that already had multiple dwelling reporting rules was useful in drafting the proposed rule.

10. Other Factors Affecting Implementation

Because all testing projects may not have the same components and purposes, and may calculate their cost per audit differently, precise cost comparisons are difficult, if not impossible. Nevertheless, it seems safe to conclude that the Michigan agency's costs were relatively high, since it would take more than just accounting and computational differences to explain the magnitude of the disparity between this project and the HUD-funded NCDH testing study. Unfortunately, not enough data were available to identify the source of MDCR's significantly higher costs, nor to determine whether they justified in the context of the entire strategy. Identifying ways to pare down the costs would take an analysis well beyond the scope of this project.

NOTES

Chapter II: INTRODUCTION TO THE AGENCY

1. Revised Constitution of the State of Michigan, Article V, Sec. 29 (1963).
2. Ibid.
3. Act 453, P.A. 1976, Sec. 602(a).
4. Id., sec. 601(c).
5. Id., sec. 602(b).
6. Opinion No. 4161, July 22, 1963, OAG 1963-64, p.2.
7. Act 453, P.A. 1976.
8. Revised Constitution of the State of Michigan, Article 1, Sec. 2 (1963).
9. Act 453, P.A. 1976, Sec. 507.
10. Act 306, P.A. 1969.
11. Opinion No. 4161, July 22, 1963, OAG 1963-64, p.2.

Chapter III: STATEMENT OF THE PROBLEM

1. In the data under discussion, "minority" includes all non-whites. However, since most of the Detroit area's minority population is black, these data are also generally descriptive of black housing patterns in the area.
 - 1a. U.S. Census data compiled by the Michigan Department of Civil Rights staff.
2. One third of all passenger cars, buses and trucks produced in the United States are assembled in Michigan, with General Motors', Ford's, Chrysler's, and American Motors' world headquarters and Volkwagon's national headquarters located in essentially suburban areas of metropolitan Detroit.
3. Bradley v. Milliken, 338 F. Supp. 582 (E.D. Mich. S.D. 1971).
4. The term "suburban landlords" is used herein as inclusive of both owners and managers of multifamily rental complexes.

Chapter V: IMPLEMENTATION

1. A geographic area that usually includes three to six thousand residents.
2. Given the problems inherent in the data (mentioned above), this 1,000 or more figure was used to insure the presence of large numbers of available units.
3. Saltman, Juliet. "Implementing Open Housing Laws Through Social Action," Journal of Applied Behavior Psychology, Vol. II, No. 1, 1975.
4. Multiple dwelling report data would have been helpful at this point in the investigative process in providing statistics on the racial makeup of the apartment complex.
5. Audits at two other complexes were deemed "inconclusive." An audit was deemed inconclusive if, for instance, there was reason to suspect the auditors spoke with different apartment managers, or if for some reason one auditor's discussion with the manager or rental agent was incomplete.
6. Opinion No. 4161, July 22, 1963, OAG 1963-64, p.2.
7. See discussion in Chapter II above.
8. This tactical shift made it unnecessary to answer a basic legal question--whether MCRC had the power to issue the MDR rule on its own. This issue has never been authoritatively or officially resolved, although the project coordinator's legal argument that the commission does have the power is generally accepted within MDCR.
9. Interview with Ed Holmgren, executive director of National Committee Against Discrimination in Housing (June 19, 1978).

APPENDIX

APPENDIX

The Audit Process

The following is MDCR's description* of the audit process involved in its strategy:

"The following parties are involved in an average audit: (1) Staff investigator; (2) Volunteer or staff testers (1 black, 1 white on each team); (3) Secretary; and (4) Supervisor(s).

"Audit Process - Events

The following events take place during an audit (1) the investigator consults with supervisor concerning apartment to be tested; (2) investigator plans audit (i.e., assigns auditors by teams) for test, gives characteristics to testers and reviews same with them; schedules, in accordance with testers' availability, date, time, and place audit to be conducted), prepares and delivers auditing materials (auditor characteristic sheet and rental audit reporting form) to tester and answers any questions either auditor might have; (3) auditors test apartment complex on date and time scheduled and immediately thereafter complex rental audit report form; (4) investigator contacts auditors after testing is completed and arranges debriefing session with auditors, ensuring that the reporting forms are completed, that the necessary information is included and is in comprehensible form and that the narrative is complete and exhaustive; (6) investigator evaluates audits to determine the presence or absence of unequal treatment and the need, if any, for an additional audit; (7) investigator's evaluation shared with staff and supervisor; decision reached regarding additional audit; (8) investigator prepares summary of audit and makes appropriate recommendation; (9) same procedure followed if additional audit is required.

"Audit Process - Time

It is estimated that the total time expended by the various parties in connection with an average audit is 22-25 hours. Additionally, testers must receive audit training which requires approximately 3 hours to complete.

"Factors involved in conducting an average audit:

- (1) Training of volunteers
- (2) Coordination of audit (selecting testers, date, etc.)
- (3) Planning audit, preparing auditing materials package
- (4) Delivering audit package (excluding driving time)

* MDCR Final Project Report to ALNA, pp. 50-52.

- (5) Audit (excluding driving time)
- (6) Debriefing auditor (excluding driving time)
- (7) Analysis of audit
- (8) Meetings on audit
- (9) Consultation/Evaluation
- (10) Reports on Audit

"Other Factors

- (1) Driving time for all parties concerned
- "(2) Secretarial time in preparing all forms, reports

Variable Factors in Audit Process

- "(1) Scheduling and/or rescheduling audit. (It is necessary to match up auditors as closely as possible. If one tester in team cannot test, another team must be scheduled or another pairing must be made. Failure of first auditor to arrive at complex at appointed time cancels out audit. Weather conditions and unexpected events also results in rescheduling of test.)
- "(2) Driving Time. (Distance between office and auditors, auditors and apartment complex will vary considerably.)
- "(3) Evaluation of Audit. (Audit reports will vary in respect to quality, completeness and clarity. Debriefing period, discussions analyzing audit and the need, if any, for additional tests will be conditional upon reports received.)"

STATE CIVIL RIGHTS AGENCY DEMONSTRATIONS OF STRATEGIES
TO FIGHT HOUSING DISCRIMINATION

CASE STUDY:

New Jersey Division on Civil Rights

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I. INTRODUCTION

A. THE NINE-STATE DEMONSTRATION PROJECT

This case study is one of a series being prepared under contract to the U.S. Department of Housing and Urban Development as part of a HUD-funded research and demonstration project. A key element of this project was the provision of funds to nine State civil rights agencies to enable them either to launch or expand fair housing programs directed particularly against systemic discrimination.

1. Background

Notwithstanding the efforts of the past two decades, there remains an intolerably wide gap between the promise of choice implicit in an array of civil rights legislation and the reality of housing discrimination for minorities in America today. Moreover, discrimination in housing contributes to social injustices reaching well beyond its most immediate consequence, residential segregation. These include inequality of job opportunities, separate and unequal schools (notwithstanding the 1954 Brown decision), and increased tax burdens on inner city residents to support growing social service costs and an irregular pattern of urban growth.

So systemic and institutionalized is racism in the housing system that public enforcement efforts--crippled by weak budgets and preoccupied with responding to individual complaints--seem only to have changed the face of discrimination without uprooting it. Replacing the blatant housing discrimination of the pre-civil rights era are new discriminatory practices--subtle, indirect and often hidden, but just as effective. The struggle for equal opportunity in housing is far from over.

State human rights agencies are called upon to play a major role in that struggle. State laws often give them far-reaching responsibilities, while Federal law gives many the added burden of processing housing discrimination complaints filed under Title VIII. Their limited resources, however, permit little more than the handling of individual complaints, often leaving significant patterns and practices of housing discrimination unchallenged.

And at all levels--federal, State and local; public and private--there is a need to find and test new ways to use existing fair housing laws more creatively and effectively. Also needed is precise, reliable information about systemic discrimination in housing and about the programs necessary for the full enforcement of existing fair housing laws.

The message is clear: Both qualitatively and quantitatively, this nation's level of public intervention on behalf of the minority shelter-seeker must be substantially upgraded.

2. The Project

It is to this message that HUD responded in 1976 by committing Federal resources under this project to enable States to assume a more aggressive role in meeting fair housing goals. In doing so, it addressed in a single programmatic thrust two broad national problems: how to assist minority families in obtaining decent housing in the face of increasingly sophisticated discriminatory practices, and how to help the States increase their capacity and effectiveness in carrying out responsibilities under existing laws.

Even before issuing the Request for Proposals (RFP) for this project, HUD selected the participating State agencies. On June 16, 1976, HUD invited 10 State civil and human rights agencies to take part in this project. One agency, ultimately unable to meet all of HUD's requirements, did not participate. The remaining nine are:

- Colorado Civil Rights Commission
- Connecticut Commission on Human Rights and Opportunities
- Kentucky Commission on Human Rights
- Massachusetts Commission Against Discrimination
- Michigan Department of Civil Rights
- New Jersey Division on Civil Rights
- Ohio Civil Rights Commission
- Pennsylvania Human Relations Commission
- Washington State Human Rights Commission

Each of these agencies was offered up to \$120,000 to pay for a year-long demonstration of one or more strategies to combat systemic discrimination. They were not required to match the Federal money, but were, of course, free to supplement it with funds of their own. Within general guidelines and a minimum of specific requirements, each agency designed its own demonstration program.

The agencies performed their demonstrations as subcontractors to A. L. Nellum and Associates, Inc. (ALNA), the contractor HUD selected to run the project. They received their money through ALNA and had no direct contractual relationship with HUD.

Under its contract with HUD, ALNA's role included the following:

- Assisting each State agency during the planning stage of its program, and assuring that proposed strategies met project requirements.
- Distributing funds to the agencies.
- Monitoring each program over a 12-month period.
- Evaluating the impact of each program.

- Preparing a final report (of which this case study is a part) describing the implementation and results of the project in detail.

The project was under ALNA's direction from its inception in October 1976.

Focusing on State agencies as vehicles for social change, this project had two primary objectives:

- To identify replicable, tested, and proven intervention strategies for combating systemic discrimination.
- To strengthen State agency capacity and effectiveness in carrying out their responsibilities under existing laws.

Additional objectives were an increased understanding of systemic discriminatory practices and of the States' role in combating them, and the dissemination of this understanding to interested citizens.

B. STRATEGIES AT A GLANCE

To introduce briefly the subject of this case study, the two fair housing strategies demonstrated by the New Jersey Division on Civil Rights consisted of the following:

1. Multiple Dwelling Reporting Rule Strategy

- To improve data collection under the multiple dwelling reporting rule.
- To analyze reports to identify targets for enforcement action.
- To pursue enforcement efforts against those believed to have discriminatory policies and practices.

2. A-95 Strategy

- To expand the number and improve the substance of A-95 equal opportunity reviews.
- To involve an extensive number of citizens groups at early stages in the development of each locality's applications for Federal programs.

These strategies are described in detail in Chapter IV below. The outcomes of DCR's strategies are described in Chapter VI.

II. INTRODUCTION TO THE AGENCY

In New Jersey, the Law Against Discrimination vests civil rights enforcement power in the Division on Civil Rights of the Department of Law and Public Safety. 1/ The division, in turn, consists of the State attorney general and the Commission on Civil Rights, whose seven members are appointed by the governor. 2/ The commission's powers, however, are largely formal and advisory, 3/ and the attorney general exercises "all powers of the division not vested in the commission." 4/ This includes administering the work of the division and appointing its director (subject to the approval of the commission and the governor). 5/ Acting for the attorney general, the director runs the division. 6/

In the field of housing, the Law Against Discrimination prohibits various forms of housing discrimination on grounds of race, creed, color, national origin, ancestry, marital status, sex, or nationality. 7/ The same prohibitions apply to the physically handicapped 8/ and, under a recent amendment, the mentally handicapped as well. 8a/ The blind have an additional statutory entitlement to housing, and lease provisions against pets are inapplicable to any guide dog owned by a blind tenant. 9/

The division is empowered to issue complaints on its own, 10/ and can investigate possible discrimination even in the absence of a formal complaint having been filed. 11/ In the recent past, the division has worked with fair housing and civil rights groups, seeking their involvement in, among other things, the A-95 process. Although the division had no staff specializing in housing, it had conducted pattern and practice housing investigations.

The division's budgets in fiscal years '76, '77, and '78 have been \$1.275 million, \$1.153 million and \$1.4 million, respectively, of which approximately five percent each year was spent on handling housing complaints. No other fair housing activities were funded.

Among the rules of practice and procedure issued by the Division on Civil Rights is a Multiple Dwelling Reporting Rule. 12/ First promulgated in 1970, it requires the owner of any apartment development of 25 units or more to report annually to the division on the racial composition of the development (white, black, and Spanish surname) and the factors affecting that composition (e.g., rents, unit sizes, turnover rates, marketing techniques). Reports are submitted on a staggered basis depending on the county in which the development is located. Owners are also required to keep records of the marketing techniques they use and of the racial designation of all applicants and tenants. The division has the right to inspect these records.

Although the Multiple Dwelling Reporting Rule dates back to 1970, only recently has its implementation been funded. At first, existing division staff undertook the initial planning and preliminary data gathering efforts, but this ended in 1973 with the advent of a new director. From mid-1973 to 1976, when the directorship changed again, nothing at all

was done to implement the rule. Then, using money borrowed from other division programs, two staff members resumed listing the apartment complexes covered by the rule and collecting reports according to the staggered monthly reporting schedule. At the same time, also using State funds, the division began rudimentary computerization of the data collection and follow-up system, with computerized data analysis to follow in 1977. Until this project, however, no funds from any source had been available for hiring field staff to verify the data submitted, nor to investigate any reported marketing techniques suspected of being discriminatory.

With regard to the second strategy, the division had extensive experience with the A-95 review process for many years. Pursuant to OMB Circular A-95, interested governmental agencies must have an opportunity to review and comment on applications for Federal assistance under a wide variety of programs before they are submitted to the particular funding agency. Applications are first submitted to State and regional clearinghouses (usually planning or community affairs agencies), which in turn distribute them for comment and then compile the responses they receive. When the applicant submits its final application to the Federal funding agency it must also send in all A-95 comments.

DCR has been one of the agencies making comments on selected applications, but it has never had enough staff to examine all Federal funding applications for their civil rights implications. The chief of the Bureau of Education and Administration, to whom the project staff reported, has participated in the A-95 review process since 1972. With the expertise he developed over the years, he has represented the division at numerous conferences and seminars, and serves as its technical advisory representative to both the Tri-State and Delaware Valley Regional Planning Commissions. Both these bodies are regional clearinghouses for the collection of A-95 comments.

III. STATEMENT OF THE PROBLEM BEING ATTACKED

Minorities in the state of New Jersey in 1970 comprised approximately 13 percent of the total population--9.4 percent black and 3.4 percent Hispanic. Minority residency within the State's nine counties ranged from a low in Morris and Somerset Counties of about 5 percent to a high in Essex County of 31 percent.

But a well-known feature of most urban housing patterns is that minorities tend to live in central city areas, and have only limited access to often affordable apartments in essentially white suburban areas. In New Jersey, this is well illustrated by data from the 1969-70 investigation in Parsippany-Troy Hills, New Jersey, which led the New Jersey Division on Civil Rights (DCR) to file charges against apartment owners there.

Parsippany-Troy Hills is about a 35-minute drive from Newark, which had a 62% minority population in 1967. As a suburban area, it had a number of large industrial concerns that employed many blacks who had consistently sought rental housing closer to their jobs. These ingredients--a work force in the area and a rental market--should have promoted a gradual urban to suburban shift in black residency, but DCR's investigation disclosed that out of a total 5,600 apartments in Parsippany-Troy Hills, blacks occupied only 30. 1/ The DCR subsequently developed and filed an apartment segregation case against a group of apartment operators in Parsippany-Troy Hills. 2/

Around the same time, DCR developed its Multiple Dwelling Reporting Rule requiring the State's apartment operators to annually report the racial makeup of their tenants. 3/ Promulgated in October 1970, the rule was challenged in court by a landlords' association and subsequently upheld in March 1972 by the New Jersey Supreme Court. 4/

The rule's leading proponents have written about the data it would elicit:

The experience in the field of employment discrimination demonstrated multiple users for such information: (1) it enabled the agency to identify probable targets for investigation; (2) it forced the respondent to become aware of the composition of his tenants; (3) it provided a basis for statistical analysis of the problem; and (4) it provided an evidentiary basis on which to establish discrimination. 5/

After a few years of lack of internal administrative support for the rule's implementation, a new DCR director breathed new life into it in 1976. At the start of DCR's demonstration in August 1977, more than a thousand reports had been submitted, but few had been verified as to accuracy or completeness and none had been subsequently used as a compliance tool.

DCR's evaluation of some of the 1976 reports, on its face, seemed to verify what was commonly believed--that minority tenancy in suburban complexes falls far short of the minority population residing and/or working in the region. 6/ The DCR suspected that no real effort was being made by those complexes to attract minority tenants, that vacancies were being filled by "word of mouth", and that minorities were not often privy to the flow of information. For whatever reason, the "marketing arrangements for renting apartments in New Jersey perpetuates a pattern of effectively screening out Black and Hispanic applicants." 7/ DCR chose its strategy in the belief that verified multiple dwelling report data could be used to get at systemic patterns of discrimination by focusing on the owners or managers of large apartment complexes, thus moving past "the limitations of a system which relies on receipt of individual complaints from the victims of discrimination." 8/

It was against this backdrop that the New Jersey division designed a strategy to (1) aggressively secure outstanding reports, (2) investigate through site verification the correctness and accuracy of reports submitted, (3) design a computer indexing system to analyze report data, and (4) use computer analyzed data as a basis for filing complaints against suburban apartment operators in key regions in the State.

A quite different problem was the target of DCR's second strategy, a more aggressive monitoring of housing-related Federal funding to cities and more extensive development of community input into the A-95 civil rights review process. As noted above, the chief of DCR's Bureau of Education and Administration is a recognized authority on the A-95 review process. Through his efforts, the division had been active in the A-95 review process since it was expanded in March 1972 to include civil rights review. 9/ Because of limited pre-project budgeting, however, not all funding applications could be reviewed. Of those reviewed, DCR performed no comprehensive investigation (such as site visits to project areas) of each proposed project's relevancy to low and moderate income (predominately minority) areas.

Additionally, experience gained over the years by DCR staff indicated that low- and moderate-income areas in New Jersey traditionally have received fewer than their fair share of Federal dollars intended to alleviate urban blight (only about 45 percent of such dollars in Fiscal Year 1976). 10/

Perhaps unwittingly, an employee in one city's development office suggested one aspect of the problem when she described her job. Her responsibilities included, she said, first identifying and prioritizing the needs of the community; then, after a funding application was completed and submitted, meeting with community people to evaluate it in terms of lower income and minority needs; and finally, to press for changes if those needs weren't met. From the citizens' view, of course, it would be both more efficient and more effective first to let community people themselves identify and prioritize their own needs, and second to seek their input before applications were written and submitted. (This is not meant to suggest, incidentally, that this employee herself is

necessarily part of the problem. On the contrary, she welcomed DCR's involvement in the community in this project. But the fact remains that the philosophy underlying her job description was the very reason that DCR sought in this project to stimulate earlier, more effective citizen involvement in developing applications for Federal assistance.)

For several reasons, DCR felt that the involvement of community groups, both in developing applications and in the A-95 review process, was a necessity. First, at the early stages of the application process there is usually more flexibility and openness to new ideas. This makes it a much better time for citizens to have their say than at the A-95 review stage, when applications are virtually in their final form, interests have gelled, and suggestions for change are more likely to be viewed as disruptive and thus to be rejected.

Moreover, having local citizen input can be much more effective than involving "outside" groups such as DCR. Local people (voters) may receive a more receptive hearing than a State agency trying to inject its views from outside; since they live and work in the locality, local citizens are likely to have a substantially more thorough and intimate knowledge of conditions in their community; and, as a practical matter, DCR does not have the staff resources to be involved substantially across the State without spreading itself too thin. In addition, if a challenge to an application later takes the form of a lawsuit, a local plaintiff with standing to sue may be essential. These same considerations also make the involvement of local community groups valuable at the A-95 review stage, notwithstanding the fact that DCR is an officially recognized agency to make equal opportunity reviews and comments.

The DCR therefore designed its second strategy to (1) increase the number of applications reviewed, (2) investigate more closely the applications' relevancy to low- and moderate-income areas, and (3) increase citizen participation at both the application writing and review stages.

IV. DESCRIPTION OF THE STRATEGIES

The New Jersey Division on Civil Rights designed a Statewide demonstration project to (1) enforce the law against discrimination, using the Multiple Dwelling Reporting Rule, in the area of suburban rental housing, and (2) generate citizen involvement in the Federal funding application process, as well as in the monitoring of applications for appropriateness and relevancy to low- and moderate-income target communities. The strategies consisted of the following components:

A. MULTIPLE DWELLING REPORTING RULE STRATEGY

1. Research

To fully implement the Multiple Dwelling Reporting Rule by continuing to compile an inventory of complexes required to report, collecting the staggered annual reports, computerizing the data, developing a mailing list capability, and performing a computer evaluation of the expected 2,500 annual reports.

2. Action

To use multiple dwelling report data as a fair housing enforcement tool by (1) collecting delinquent reports, (2) verifying report contents, and (3) filing complaints against complexes failing to report and against those with no minority tenants or with substantially fewer than the proportion of minority residents in the region.

Because hand processing 1976 multiple dwelling reports received prior to the project had proved to be a time-consuming exercise, computer processing was proposed to permit a more cost-efficient indexing system and provide for quick generation of report evaluations. DCR planned to secure delinquent reports by issuing complaints if necessary. It also planned to issue, on the basis of statistics alone, complaints against segregated complexes.

Because one group in the population (e.g., white or black) tended to predominate in many counties, the division created eight regions for the purposes of carrying out its multiple dwelling report strategy. It concentrated on three of these. Each region, cross-cutting several county areas, was drawn so that it contained a heavily minority urban area and a heavily non-minority suburban ring.

The percentage of minorities in each region was used as the "expected-to-reside" standard against which the minority occupancy of a given complex could be measured. For example, if minority residency in a region was 12 percent, the expected-to-reside norm for apartment complexes within that region was 12 percent minority occupancy.

Since apartment complexes reported their racial composition in terms of the number of families rather than individuals, DCR had to convert its demographic data from individual to family population, using a methodology obtained from the U.S. Bureau of the Census.

Significant differences between each region's target and the percentage of minority occupancy of a given apartment complex became the basis for filing a discrimination complaint. Filing complaints solely on the basis of statistical disparities had not been tried in New Jersey before this project.

The minority populations expected to benefit from this strategy were blacks and Hispanics (primarily Puerto Ricans). Since the rule collects occupancy data broken out only by "white," "black," and "Spanish surname," it could not serve to identify discrimination on other grounds, such as sex or marital status.

B. A-95 STRATEGY

This strategy consisted of the following action components:

- To review more applications for Federal funds.
- To review applications (especially for community development block grant funds) more intensely for their impact on the housing conditions of minorities and low-income residents.
- To generate citizen involvement in developing applications and in monitoring the use of Federal funds.

As explained in Chapter III, the A-95 process permits interested government agencies to review and comment on applications in over 200 Federal grant and loan programs before they are submitted to the funding agency. A-95's value as a civil rights tool hinges on the attention that a funding agency pays to comments that point out any equal opportunity deficiencies on the part of either the applicant or its proposal. If the funding agency agrees with the comments, it can refuse to approve an application unless the applicant corrects the deficiencies, or at least makes a commitment to their correction. That message--solve the problem or give up the money--is a strong incentive for the applicant to take remedial action. Based on particular circumstances, the bargaining may also take place before the application even goes to the funding agency, with the civil rights agency telling the applicant it will submit negative comments unless remedial action is taken or at least promised. In either case, the applicant's need and desire for government funding provide the leverage by which civil rights agencies and others can try to win concessions from applicants that might otherwise slight the interests of minority citizens.

Although DCR's A-95 strategy was to be a Statewide effort, it focused on large cities where the greatest numbers of minorities reside and where the poorest living conditions exist. But suburban areas were not ignored, because applications are often submitted for funds that could be used to support efforts to meet low- and moderate-income housing needs through the construction of multifamily housing but instead are proposed for such uses as sewage treatment plants, water lines or drainage projects designed to serve only a limited number of single family residences. 2/

Applications were picked for intensive review if (1) they requested funding for a project that previous DCR staff A-95 review experiences had shown to be of little relevancy to the interests of target populations or (2) another agency with A-95 review responsibility (such as the Department of Community Affairs) or a citizens group indicated that DCR should more closely evaluate the project's impact on a community.

V. IMPLEMENTATION

A. MULTIPLE DWELLING REPORTING RULE STRATEGY

1. Staffing

Due to staffing complications within the agency, the New Jersey Division on Civil Rights' Statewide demonstration project got off to a relatively slow start in August 1977. ^{1/} Of the six field representatives from elsewhere in DCR hired for the project, three were assigned as investigators (with one of them acting as overall coordinator) for the multiple dwelling strategy, which was their primary responsibility. Computer services were provided by the State Division of Systems and Communications, Department of Law and Public Safety.

2. Training

Two staff members hired for this strategy had legal backgrounds but little direct knowledge of or experience with multiple dwelling reporting requirements and the field investigation process. The third investigator did have that kind of first-hand knowledge. During the first project week in August 1977, he lectured the others on multiple dwelling report case law and prepared them for the kinds of problems they would encounter during their first assigned task--the collection of delinquent reports from owners in Essex County (see list of problems in Research below).

3. Research

The research component of this strategy had two primary aspects: (1) securing reports, and (2) developing a computer master file and analysis system.

● Securing Reports

Though the New Jersey DCR had revived the Multiple Dwelling Reporting Rule in 1976, staff limitations prevented it from making an aggressive attempt to secure outstanding reports. During the project an average of about 175 report forms were mailed each month on a staggered basis to complexes in each of the State's 21 counties, and a monthly average of about 150 completed reports were returned. Complexes with delinquent reports were assigned to investigators for collection.

● Developing a Computer Master File

The computerized multiple dwelling data file, initially a pre-project idea of the bureau chief, was designed (with the assistance of the State's computer support services) to store MDR and demographic data by regions, and to analyze the report data at four "violation" levels:

Level I - Incorrect or No Reporting

- a. Lists of known complexes with delinquent reports.
- b. Complexes whose reports had internal discrepancies (for example, the number of tenants exceeding the number of units).

Level II - Turnover Rate

Complexes whose reported turnover rate was low as compared to the rate for the region.

Level III - Average Tenant Income

Complexes whose reported average tenant income was significantly different from the average for the region.

Level IV - Tenant Racial Ratio (minority percentage)

Complexes whose reported tenant racial ratio was lower than that for the region.

Complexes in Levels I, II, or III were assigned for field investigation. Complexes in Level IV were suspected of racial discrimination in tenant selection, and became targets of division-initiated complaints.

4. Action

DCR's strategy had four primary action components: collecting delinquent reports and upgrading the report list, verifying reports, filing complaints, and settling the complaints.

● Collecting of Delinquent Reports

Before the project began, a list had been compiled of 150 complexes with delinquent reports in Essex County (175 report forms had been mailed in February 1977). During August, the first month of the project, field investigators visited these complexes and successfully secured or clarified the status of approximately 70 percent of the outstanding reports. During September, in another county, about 300 such contacts were made with an 80 percent success rate. In the remaining months 200 delinquent reports had to be sought. (See discussion in OUTCOMES for overall success rate.)

Some of the problems encountered in attempting to collect delinquent reports were:

- changes in ownership;
- complexes no longer in operation;
- owners unaware of the rule;

- incorrect information previously provided.

During March 1978, using the attorney general's letterhead and signature, the division sent nonreporting owners a letter advising them of their responsibilities under the reporting rule law and of the consequences of failing to report. This gave their request more clout and generated additional reports.

The multiple dwelling list was continually updated by investigators who noticed new complexes during area field visits and who checked telephone listings and advertisements for unlisted complexes. As a result, 183 complexes were added to the list.

- Verifying Report Contents

A second investigative field effort was to verify reports and, from time to time, to spot check the accuracy of a random sample of about 30 or so reports from all regions. The planned computer analysis was to select the complexes for this second investigation, but the system was not in place until late December 1977. During the project's initial months, as during the previous year, division staff reviewed items on every report. Complexes were listed for field verification if their reports appeared inaccurate or inconclusive, such as showing more rentals than units, responding "don't know" for the race of tenants, and leaving out requested information.

Investigative project staff approached complex owners directly about missing information or items believed to be inaccurate. Every attempt was made to secure missing or incomplete information. If the owner indicated, for example, that the tenants' race was unknown, the investigator might complete a door-to-door survey of the apartments in the complex in order to make such a determination.

With the implementation in January of the computer master file (described above), preliminary data was then screened by computer. Complexes (as identified by the computer) with missing, incomplete or suspect data were assigned to investigators for verification. Project field staff verified 360 reports during the project. Project staff indicated that their most difficult problem was the extensiveness of the site verification task. While three field investigators were a decided improvement (only one staff member had previously worked on MDR-related activities), additional staff was still needed for a more intensive verification of an estimated 3,000 rental complexes throughout the State.

- Filing Complaints

For the first time, the New Jersey DCR targeted two groups of apartment operators for complaints: (1) those who failed to submit a report or correct information, and (2) those with possible discriminatory tenant selection practices as indicated by computer analysis of their report data.

Securing Report Information. DCR served twenty subpoenas against apartment operators in attempts to gather delinquent reports, and filed 13 verified complaints for failure to comply with reporting requirements.

By its nature, a subpoena, in the absence of a complaint, is merely a mandatory form of inquiry, while a complaint, being accusatory, might establish a more adversary atmosphere. DCR's general practice, therefore, was to serve subpoenas first, following with complaints only if necessary. One drawback with subpoenas is that it is important to name the specific person responsible for providing the missing report, which is sometimes difficult to do.

Using Statistics. The DCR's computer analysis of the report data in March 1978 led to 26 charges against owners of violations of the Law Against Discrimination. When the computer data analysis indicated those complexes had fewer minorities than would be expected given the minority population in the region, DCR issued the 26 complaints on the basis of the statistics alone. This was the division's first such action.

Because reports led to targeting, one staff investigator reported that some landlords now feel they should have given false information, and if such a tactic became general reporting practice, the field verification effort could become a near impossible task, until and unless DCR can demonstrate that falsifying reports can lead to jail or a stiff fine.

- Settling the Complaints

To resolve the complaints, DCR tried to negotiate conciliation agreements with respondents. By the end of the project, five of the cases had been settled with owners signing a conciliation agreement. Seventeen were still being evaluated; the majority of them involved owners who, in order to delay DCR's investigation, asked for an extension of time in which to answer the interrogatories. In another case, DCR served Notice and Order, a proceeding that warns the owner to answer the interrogatories or face default proceedings. This last approach was something it planned to use more frequently in the future.

Some implementation problems reported by staff members during close-out interviews were (1) difficulty of assessing the strategy's impact after such a relatively short demonstration period, (2) some impractical scheduling, possibly caused by the fact that the original project work plan was developed by administrative personnel with no field experience, and (3) the huge number of Statewide complexes.

Generally, DCR officials expect increased future impact from this strategy, because most owners or managers do not want to go through the complaint process. Compliance reports later on this year or next year should show whether any changes in practices have occurred.

It was hoped by DCR staff that as word of the complaints and conciliation agreements spread, the rental industry's consciousness would be

raised to a point where some voluntary affirmative action steps would be taken to end discrimination.

B. A-95 STRATEGY

In New Jersey, the Department of Community Affairs (DCA) acts as the State clearinghouse for A-95 reviews. The DCA relies on DCR to comment on the civil rights implications of proposed projects (especially Community Development Block Grant applications) and to act as one of the liaisons between DCA and local citizens groups.

DCR used the additional resources provided by project funds to monitor a greater number of applications than previously and for site evaluations of selected projects. It also used the funds to extend its liaison function to an organizational one--by actively generating citizen involvement in the Federal funds application process.

New Jersey's eight urban counties received DCR's concentrated attention during their A-95 strategy.

1. Staffing

The A-95 strategy had a staff of three, with the chief of the Bureau of Education and Administration giving general directions and continued input, especially into the application review process.

2. Training

During the first week of the project, the bureau chief trained the A-95 staff. Lectures provided an overview of A-95 review requirements, the function of the clearinghouse, general procedural legal requirements, and the "hands on" portion of the training included some staff reviews of pending applications. Staff members also attended conferences to acquaint them with HUD requirements.

Some of these initial reviews were sent to the DCA. DCA staff felt that those initial comments were often sketchy or tended to speak to irrelevant issues. However, DCR soon went on to make comments responsive to substantive application issues.

3. Action

● More Agency Involvement

The DCR A-95 staff, during the project year, participated in 14 A-95 conferences held with applicants to discuss community development applications, grantee performance reports, and/or citizen participation plans. In most cases, those meetings were also attended by DCA and the Public Advocate's Office.

The DCR in 1977-78 reviewed more applications than in previous years (116 as compared to 87 in 1975-76 and 98 in 1976-77). By the end of the

project, it had influenced the reprogramming of applications involving about \$700,000. Perhaps of greater or at least equal significance, DCR performed its reviews in greater depth than before.

● Promotion of Community Involvement

The DCR felt that, in New Jersey, stimulation of A-95 community group involvement was an absolute necessity. Recent cases taken by groups or coalitions into Federal court were thrown out because no bonafide resident was represented (person with standing). Also, in an important sense, local groups were better informed, even though discussions with them were necessary to insure they have an understanding of the often technical aspects of the governmental funds application process. For example, unless the reviewer has detailed knowledge of a city's or county's makeup, the comments may tend to be generalized and shallow and thus fail to fully address the problem in a manner that will be listened to. Additionally, groups in cities eligible to submit applications for Federal grants must be brought into the planning process (especially those groups representing project target population).

The DCR implemented an action strategy to generate community group input into both the application development and A-95 review process. Community groups in 42 entitlement cities or counties were contacted during the project year. Initial contacts were followed by meetings with community group leaders (who in turn would disseminate the message to their memberships), and sometimes presentations by DCR at meetings or training workshops with the groups themselves. In some cases, these contacts and meetings led to referrals to still other persons. Generally, the following program goals were stressed: 2/

- The importance of monitoring the total program from planning to completion of activities.
- The importance of ensuring adherence to the purposes for which the grant was approved.
- The importance of ensuring that the money is being spent for the purpose that it was intended and not being misdirected to other purposes.

The DCR concentrated on involving existing groups in discussions with local planning office community development staff on issues concerning (1) improvement of housing, such as demolition of substandard properties, (2) provisions for recreational and other land uses, and (3) the prevention of urban blight. They also influenced the development of 15 monitoring groups to oversee the development and implementation of their respective community development programs. DCR encouraged such groups to form, and met with potential group leaders to explain community development programs, their benefits to minority and other protected groups, and the right of citizens to participate in the process.

The DCR A-95 staff activities also:

- Directly solicited the assistance of 147 groups and three coalitions, and subsequently held meetings and gave assistance in discussion of community development program objectives and in proposal submissions.
- Influenced at least 49 existing groups to participate in their cities' community development programs.
- Conducted at least 54 informal small group community development (CD) workshops. During the workshops CD guidelines, program requirements, and citizen participation requirements were explained.
- Attended 54 public hearings as "observers" only. At these hearings, the applicants solicited program input from citizens and presented initial and final applications for citizen comment.
- Attended 27 Citizen Advisory Committee (CAC) meetings usually as observers; in some cases, however, questions were referred to the DCR staff. The local community development program staff discussed proposals submitted by community groups to the governing body.

In a number of counties, individuals were hired by the community development administrators to perform citizen outreach functions. One project field worker noted the following positive aspects resulting from the project:

- DCR was able to educate citizen groups. (Before the project, groups could not get the information they needed from CD offices.)
- DCR was able to get the community to see where the CD money is going.
- Groups now know of the division's existence and intent.

One negative aspect noted was the time lost at the beginning of the project that could have been used to contact groups. More fundamental was what some staff members saw as their ultimate dependency on HUD to take appropriate action based on their comments. Approvals by HUD in spite of negative comments make the A-95 process a somewhat futile effort. In addition, some staff members felt that, even with the project's efforts, citizen participation is more form than substance, and thus neither effective nor meaningful.

C. COST

The total project cost was \$167,700 (includes \$47,700 agency funds plus \$120,000 project funds). The cost breakout by strategy is shown in the following table.

Project Cost

	<u>MDRR Strategy</u>		<u>A-95 Strategy*</u>	
	<u>Amount</u>	<u>Percent*</u>	<u>Amount</u>	<u>Percent</u>
Staff Salaries & Benefits	\$ 86,350	74	\$43,250	86
Consultants & Other Non- Staff Labor	11,000	9	-0-	0
Travel	7,500	6	4,100	8
Production of Materials	1,500	1	100	**
Supplies	1,500	1	600	1
Computer Data Processing	6,100	5	-0-	1
Other: State Fee, 5%	3,500	3	2,200	4
Total***	\$117,450	100	\$50,250	100

* Percentages may not add to 100 due to rounding

** Less than 0.5%

*** Includes \$47,700 of state funds in addition to the HUD/ALNA contract amount of \$120,000.

Source: New Jersey Division on Civil Rights Final Report

VI. OUTCOMES

For the most part, the outcomes reported in this section are the contractor's findings as to changes resulting from what the agency did in the course of its demonstration. All outcomes were grouped into two categories, agency capacity and equal housing opportunity:

Agency Capacity: The agency's own capability to identify and challenge systemic housing discrimination, as measured by such prepost project changes as increased staffing, new research or investigative or analytic expertise, better use of community groups, new training techniques, and strengthened negotiating tactics. Improvements in handling individual complaints, while not generally a concern of this project, may also be a relevant measure of increased capacity if they include, for example, new procedures for identifying individual complaints that should be treated as charges of systemic discrimination.

Equal Housing Opportunity: The impact of the strategy on systemic discrimination, as measured by pre-post project changes in specific discriminatory policies and practices or in increased housing opportunities for minorities or other protected class persons. The equal opportunity outcomes have themselves been divided into two subcategories -- potential opportunity and actual opportunity.

Potential equal housing opportunity outcomes are real-world changes that hold the promise of leading to increases in actual housing opportunities for minorities. Actual equal housing opportunity outcomes are either measurable increases in housing actually obtained by minority groups or actual changes in behavior (such as affirmative actions known to have been taken or the absence of discriminatory treatment previously known to exist).

Potential opportunity outcomes are one step removed from actual opportunity outcomes in the same way that changes in the rules of a game are one step removed from the actual moves the players make. In fact, the distinction between potential and actual opportunities is essentially the difference between rules and behavior. Promises made in a binding conciliation agreement, for example, are only a potential opportunity outcome; they change the rules that govern the respondent's behavior but not necessarily his behavior itself (which, if also changed, would represent an actual opportunity outcome).

Capacity and opportunity outcomes, it should be noted, are not mutually exclusive. By definition, an agency cannot have produced an equal housing opportunity outcome if it did not have the capacity to do so. Each equal opportunity outcome, therefore, is indicative of a capacity outcome as well.

A. MULTIPLE DWELLING REPORTING RULE STRATEGY

1. Equal Housing Opportunity Outcomes

Seven of the 26 cases filed based on MDR data were settled by affirmative conciliation agreements (potential equal housing opportunity outcomes). Because of the shortness of a one-year project demonstration, the data to assess the effects of DCR's complaints and conciliations were not available during initial post-project months. Multiple dwelling reports submitted by targets in 1978-79 will indicate whether the promised affirmative actions were actually taken, and how well they worked, to increase black and/or Puerto Rican tenancy--and thus whether the strategy's equal housing opportunity outcomes should be reclassified from "potential" to "actual."

2. Increased Agency Capacity Outcomes

For a few months prior to the project, DCR hand-processed the multiple dwelling reports by checking each for completeness, selecting out incomplete reports and reports with suspect information for further investigation, identifying those indicating few minority tenants, indexing relevant information, and filing each report. Few reports had been field-verified, nor had overdue reports been sought. Finally, the reports had never been used by DCR as a compliance tool.

During the project, DCR improved processing and verification of multiple dwelling reports. While the number of reports processed rose by only 77 from 1,368 to 1,445, other results were more substantial:

- The rate of verification of MDR reports was increased (pre-project, 1 percent; during project, 25 percent).
- For first time, MDRs were used as a compliance tool:
 - a. Collected approximately half of 756 delinquent reports (out of a total of 2,285), issued 20 subpoenas to secure delinquent reports and filed 13 verified complaints for failure to report; and
 - b. Issued 26 verified discrimination complaints based on MDR data.
- For first time, computers were used not only to improve the collection of reports, but also to analyze their content and identify probable instances of discrimination.

B. A-95 STRATEGY

1. Potential Equal Housing Opportunity Outcomes

By the end of the project, the New Jersey Division on Civil Rights influenced the reprogramming of \$698,143 that did not respond to low- and moderate-income housing-related interests. Though less than the year before (\$1,350,000), the money reprogrammed during the project year

represented a wider influence in that it affected more programs in more localities. Unfortunately, the effect of these reprogrammings was not known at the end of the project, because in most cases the uses to which the reprogrammed funds would be put had not yet been decided. The instances listed below, therefore, indicate primarily the allegedly unresponsive uses originally proposed for the money, rather than how the funds will ultimately be spent.

- Bridgeton

- A proposal for minority areas to install curbs and sidewalks made of asphalt, rather than concrete (the material most often used in non-minority areas), was cut back from \$24,000 to \$14,000. As both DCR and the clearinghouse pointed out, the use of the poorer, less durable material in minority neighborhoods represented disparate treatment, and the citizens in the areas affected expressed their preference to go without the improvements rather than accept the asphalt.
- Ramps for Handicapped were reduced from \$12,000 to \$5,000 in the downtown business area. This appeared to have little direct relevance to target populations and neighborhoods.
- Spending for Street Improvements in the downtown business area was reduced from \$100,000 to \$86,000. DCR argued that this project had little relevance to the target population and neighborhoods.
- Housing Rehabilitation was changed slightly from \$204,000 to \$205,800, increasing 1977-78 loans and grants available to low- and moderate-income residents for repair of primary code violations.

- Essex County

- The municipality had planned to spend \$20,000 for a recreation center but during review failed to substantiate that the primary users would be low- and moderate-income residents. The funds were subsequently reprogrammed to a library facility convenient to target residents.

- Bergen County

- \$338,343 were shifted to the contingency category from projects that had been improperly labeled as "urgent" because, when challenged, the county could not justify their urgency. Under program regulations, projects to meet urgent needs are an exception to the priority that low-income and minority needs are to receive. None of

the allegedly "urgent" projects was in a primarily low- or moderate-income area.

- Morris County

- A total of \$191,000 for drainage projects was shifted to contingency because the county could not substantiate that low- and moderate-income areas would be served by the projects.

2. Agency Capacity Outcomes

The DCR in 1977-78 reviewed a total of 116 applications (as compared to 87 in 1975-76 and 98 in 1976-77). Reviews and comments were more thorough and detailed, and 15 project-year applications were recommended for non-funding (compared to only eight in each of the previous two years). DCR requested ten A-95 conferences (compared to six in 1976-77, and three the year before). Together with other commenting agencies, DCR influenced the reprogramming of about \$698,143 to better respond to low- and moderate-income, predominately minority, housing-related interests.

VII. OBSERVATIONS

Numerous factors affect the implementation and results of any demonstration project, some positively, others negatively. Some of these factors are within the control of the agency, others are not; some can be encouraged or avoided, others can only be accepted or accommodated. Below are some of the factors that affected the New Jersey agency's demonstration, with a short discussion of the role of each. Any other group or agency trying the same or similar strategies will face at least some of these same factors, and may find New Jersey's experiences instructive.

1. Strategy Design

The design of a strategy can affect both its implementation and its effectiveness. New Jersey's multiple dwelling reporting rule strategy was particularly well designed. A variety of initial steps not only led directly to the action phase of the strategy, but also provided the basis for the ongoing collection, use, and analysis of the multiple dwelling reporting rule data in the future.

2. Agency Authority

An agency's legal authority can affect both the choice and design of its strategy. The multiple dwelling reporting rule strategy quite obviously depended on the agency's power under its multiple dwelling reporting rule to collect the reports of apartment owners throughout the state.

Whether it was an advantage or disadvantage remains to be seen, but the fact that the agency was answerable to the attorney general and not independent could ultimately affect its multiple dwelling reporting rule strategy. The previous attorney general had not given the strategy substantive legal review. However, when the new attorney general took office, he questioned the adequacy of using statistical disparities alone as the basis for filing complaints. At the end of the demonstration period, the question had not yet been resolved.

Judicial treatment of agency authority seemed favorable to the multiple dwelling reporting rule strategy when the project began, particularly a court decision that upheld authority to promulgate the rule and to require the reports. However, the appearance of a generally more conservative trend among decisions by the state courts during the demonstration contributed to the attorney general's concern about using statistical evidence alone as the basis for filing complaints.

3. Agency Support for the Demonstration

Agency support for the project was considerable, in that the money from HUD paid only a little over 70% of the total project costs. Because of its size and resources, the agency was able to commit a sizeable staff to the strategy demonstrations and also to provide the computer capability for the multiple dwelling reporting strategy.

4. Research and Action

The balance between research and action can affect both implementation and outcomes. In the multiple dwelling strategy, the balance struck between research and action seemed to be a good one, in that a mass of data was handled fairly efficiently and the results of the research were readily used as the basis for taking action. In the A-95 strategy, the combination of research and action was a continuing one throughout the demonstration. As new localities and new applications came up for review, additional research had to be performed and the staff, in time, became more adept at providing a more solid research basis for substantive A-95 reviews.

5. Previous Experience and Knowledge of the "Territory"

Previous experience, although limited to the activities of one senior staff person, enabled the agency to begin its A-95 activities at a somewhat advanced level.

6. Leadership and Management

Leadership and management can be crucial factors in the effectiveness of a strategy. The major day-to-day leadership of the project came from the project director, who, along with most of the staff, was located in Trenton. The agency director, however, was located in Newark, as was the attorney general, to whom the agency director reported. There was a problem, at times, in communication between them, and perhaps differences over the direction of the project. Nevertheless, with one exception, the project director's leadership seemed generally effective. The exception was the apparent failure of a few of the A-95 staff members, even at the end of the project, to fully understand the strategy's purpose, and exactly how it related to fair housing. The only major management problem occurred at the beginning of the project. Administrative delays impeded the hiring of staff, which in turn cost the project one month of the demonstration period. The agency claimed to have made up the lost time, however, over the remainder of the period.

7. Staff Skills

The project director had long experience in A-95 reviews and was widely respected for his work in the field. Many of the staff members, however, were new to A-95 and to its role in civil rights and particularly in fair housing. Unfortunately, the effort to transfer the director's knowledge and understanding to the inexperienced staff was not wholly successful. This problem was partially alleviated, however, by the later addition to the staff of a person who had previously worked for a planning agency and was familiar with the relevant issues of government programs and fair housing. While she did not turn things around entirely, several sources remarked on the noticeable improvement in staff performance after she joined the staff.

Technical expertise, not just knowledge and experience in civil rights, may enhance a strategy and may even be essential for its success.

Because none of its staff had any background in computers and statistics, DCR found that the cumulative effect of "minor" details that had been overlooked prior to implementation created a "major problem" for the multiple dwelling reporting rule strategy. 1/

8. Political Environment

Although legislative action--and politics generally--did not figure in the implementation of the strategy, the agency was able to get sufficient support in the legislature to gain continued State funding to enable it to continue both of their strategies.

9. Linkages Outside the Agency

The extent of an agency's prior relations and cooperation with people and groups or other outside agencies can be important if such outsiders are to play a key role in the strategy. As an integral part of its A-95 strategy, DCR sought to involve community people in A-95 reviews and particularly to respond to their concerns about proposed Federal program activities.

The agency's standing with civil rights and community groups enabled it to gain wide support and involvement.

The A-95 strategy also received considerable support from the State clearinghouse. Agency staff had a good working relationship with the clearinghouse staff, and on several occasions were invited to participate in conferences with local applicants concerning suggested changes in their applications.

Although the multiple dwelling reporting rule strategy built in part on the work of previous consultants to the agency from the Rutgers University Law School, there was no such outside involvement during the project nor did any appear needed.

10. HUD's Role

HUD can play a key role--for better or worse--in response to particular strategies. But HUD's impact on DCR's A-95 strategy was largely unknown, because by the end of the project many of the proposals on which the agency had commented negatively had yet to be finally approved or acted upon by HUD. However, in at least some of the cases in which HUD did take final action, the agency did not feel that HUD had supported its concerns about fair housing.

NOTES

Chapter II: INTRODUCTION TO THE AGENCY

1. New Jersey Statutes Annotated, (N.J.S.A.) 10:5-6.1
2. N.J.S.A. 10:5-7
3. N.J.S.A. 10:5-10
4. N.J.S.A. 10:5-8
5. Ibid.
6. Ibid.
7. N.J.S.A. 10:5-12
8. N.J.S.A. 10:5-4.1
- 8a. Laws 1978, Ch. 137
9. Laws 1978, Ch. 456, Sec. 4
10. N.J.S.A. 10:5-13
11. N.J.S.A. 10:5-8
12. Rules of Practice and Procedure, New Jersey Administrative Code 13:10-1.1 through 13:10-1.7

Chapter III: STATEMENT OF THE PROBLEM BEING ATTACKED

1. Blumrosen, Alfred W. and James H. Blair, Enforcing Equality in Housing and Employment Through State Civil Rights Laws, (New Jersey Appellate Printing Company, Woodridge, N.J.), 1972, pp. 155-56.
2. Ibid., p.3., Also see The Parsippany - Troy Hills Cases, consent decree August 29, 1974, appeal dismissed July 17, 1975 (N.J. Appellate Court, not reported).
3. Blumrosen and Blair, p.33.
4. N.J. Building Owners and Managers Association v. Blair, 60 N.J. 330, 288 A.2d 855 (1972).
5. Blumrosen and Blair, p. 33.
6. DCR, Project Work Plan submitted to A. L. Nellum and Associates, February 4, 1977 (hereafter "Work Plan").

7. DCR, Work Plan, p. 1.
8. Blumrosen and Blair, p. 53
9. DCR, Work Plan, p. 2.
10. Ibid. p.4.

Chapter IV: DESCRIPTION OF THE STRATEGIES

1. Letter incorporated into Work Plan from Michael J. Prime to Dr. Patricia A. Wright, dated April 4, 1977, p. 2.

Chapter V: IMPLEMENTATION

1. Most of the other state agency projects began their twelve-month implementation period in June 1977. New Jersey was originally scheduled to begin in July (so that the demonstration period and its fiscal year would coincide), but did not get underway until August.
2. DCR, Final Report (June 1978), pp. 1-2.

Chapter VII: OBSERVATIONS

1. DCR, Final Report (June 1978), p. II-4.

STATE CIVIL RIGHTS AGENCY DEMONSTRATIONS OF STRATEGIES
TO FIGHT HOUSING DISCRIMINATION

CASE STUDY:

Ohio Civil Rights Commission

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I. INTRODUCTION

A. THE NINE-STATE DEMONSTRATION PROJECT

This case study is one of a series being prepared under contract to the U.S. Department of Housing and Urban Development as part of a HUD-funded research and demonstration project. A key element of this project was the provision of funds to nine State civil rights agencies to enable them either to launch or expand fair housing programs directed particularly against systemic discrimination.

1. Background

Notwithstanding the efforts of the past two decades, there remains an intolerably wide gap between the promise of choice implicit in an array of civil rights legislation and the reality of housing discrimination for minorities in America today. Moreover, discrimination in housing contributes to social injustices reaching well beyond its most immediate consequence, residential segregation. These include inequality of job opportunities, separate and unequal schools (notwithstanding the 1954 Brown decision), and increased tax burdens on inner city residents to support growing social service costs and an irregular pattern of urban growth.

So systemic and institutionalized is racism in the housing system that public enforcement efforts--crippled by weak budgets and preoccupied with responding to individual complaints--seem only to have changed the face of discrimination without uprooting it. Replacing the blatant housing discrimination of the pre-civil rights era are new discriminatory practices--subtle, indirect, and often hidden, but just as effective. The struggle for equal opportunity in housing is far from over.

State human rights agencies are called upon to play a major role in that struggle. State laws often give them far-reaching responsibilities, while Federal law gives many the added burden of processing housing discrimination complaints filed under Title VIII. Their limited resources, however, permit little more than the handling of individual complaints, often leaving significant patterns and practices of housing discrimination unchallenged.

And at all levels--Federal, State and local; public and private--there is a need to find and test new ways to use existing fair housing laws more creatively and effectively. Also needed is precise, reliable information about systemic discrimination in housing and about the programs necessary for the full enforcement of existing fair housing laws.

The message is clear: Both qualitatively and quantitatively, this nation's level of public intervention on behalf of the minority shelter-seeker must be substantially upgraded.

2. The Project

It is to this message that HUD responded in 1976 by committing Federal resources under this project to enable States to assume a more aggressive role in meeting fair housing goals. In doing so, it addressed in a single programmatic thrust two broad national problems: how to assist minority families in obtaining decent housing in the face of increasingly sophisticated discriminatory practices, and how to help the States increase their capacity and effectiveness in carrying out responsibilities under existing laws.

Even before issuing the Request for Proposals (RFP) for this project, HUD selected the participating State agencies. On June 16, 1976, HUD invited 10 State civil and human rights agencies to take part in this project. One agency, ultimately unable to meet all of HUD's requirements, did not participate. The remaining nine are:

- Colorado Civil Rights Commission
- Connecticut Commission on Human Rights and Opportunities
- Kentucky Commission on Human Rights
- Massachusetts Commission Against Discrimination
- Michigan Department of Civil Rights
- New Jersey Division on Civil Rights
- Ohio Civil Rights Commission
- Pennsylvania Human Relations Commission
- Washington State Human Rights Commission

Each of these agencies was offered up to \$120,000 to pay for a year-long demonstration of one or more strategies to combat systemic discrimination. They were not required to match the Federal money, but were, of course, free to supplement it with funds of their own. Within general guidelines and a minimum of specific requirements, each agency designed its own demonstration program.

The agencies performed their demonstrations as subcontractors to A. L. Nellum and Associates, Inc. (ALNA), the contractor HUD selected to run the project. They received their money through ALNA and had no direct contractual relationship with HUD.

Under its contract with HUD, ALNA's role included the following:

- Assisting each State agency during the planning stage of its program, and assuring that proposed strategies met project requirements.
- Distributing funds to the agencies.
- Monitoring each program over a 12-month period.
- Evaluating the impact of each program.
- Preparing a final report (of which this case study is a part) describing the implementation and results of the project in detail.

The project was under ALNA's direction from its inception in October 1976.

Focusing on State agencies as vehicles for social change, this project had two primary objectives:

- To identify replicable, tested, and proven intervention strategies for combating systemic discrimination.
- To strengthen State agency capacity and effectiveness in carrying out their responsibilities under existing laws.

Additional objectives were an increased understanding of systemic discriminatory practices and of the States' role in combating them, and the dissemination of this understanding to interested citizens.

B. STRATEGIES AT A GLANCE

To briefly introduce the subject of this case study, the fair housing strategy demonstrated by the Ohio Commission on Civil Rights consisted of the following:

- To work with private fair housing groups in Ohio's six largest cities in identifying real estate brokers suspected of discriminating in sales housing.
- To execute voluntary compliance agreements with real estate boards (where no acceptable agreement already exists).
- To monitor implementation of the agreement.
- In cases of noncompliance with the terms of an agreement, to accept and process charges that the private groups would file against the brokers.

This strategy is described in detail in Chapter IV below. The outcomes of the strategy are described in Chapter VI.

II. INTRODUCTION TO THE AGENCY

The Ohio Civil Rights Commission (OCRC) consists of five members appointed for five-year terms by the governor, who designates the chairman. 1/ The commission in turn appoints its executive director. 2/ The State attorney general represents the commission in all litigation. 3/ While the commission may receive, investigate and rule on written charges of housing discrimination, 4/ it is not empowered to initiate such charges on its own. OCRC officials see this as a severe limitation on their authority, allowing them only to react to charges filed by others, rather than take the initiative themselves.

Housing discrimination has been prohibited in Ohio since 1965. 5/ The scope and coverage of this prohibition subsequently were broadened in 1969, 1973 and 1976, 6/ so that the law currently forbids a broad range of such discrimination based on race, color, religion, ancestry, handicap, or national origin, including, of course, housing discrimination by real estate brokers and salespersons. 7/

In addition to pursuing a complaint before the commission, an aggrieved party may seek to enforce the State's prohibitions against housing by filing a civil action in the court of common pleas. 8/ In addition, violations of the prohibitions against housing discrimination constitute third degree misdemeanors. 9/

With its central office in the State capital of Columbus, OCRC also has a regional office in each of Ohio's six major cities--Akron, Cincinnati, Cleveland, Columbus, Dayton and Toledo. Its budget for fiscal year 1978, exclusive of money from outside sources (e.g., EEOC or HUD), was \$2,760,968, up 5.5 percent from the previous year. 10/

Most of OCRC's case load is in the area of employment--allegations of job discrimination accounted for more than 97 percent of all new charges filed, for example, in both fiscal 1977 and 1978. 11/ The number of housing charges is declining. There were 170 such complaints (3.0 percent of all new charges) filed in fiscal year 1975, and 125 (2.6 percent of the total) in the fiscal 1976. 12/ During fiscal 1977, which ended as the project was beginning, OCRC received a total of 5,530 new charges, of which only 60 (1.1 percent) dealt with housing discrimination. 13/ During the following fiscal year, which overlapped this project's demonstration period by 11 months, the number of new housing charges filed with OCRC dropped to 53. 14/ But since the total number of new complaints also dropped, housing charges as a percentage of the total remained the same. 15/ Of the relatively few housing complaints OCRC received, only a small number are filed against real estate brokers (e.g., only three, or 2.4 percent, of the 125 filed in fiscal 1976). 16/

In the absence of specific budget allocations, it is possible to make a rough estimate of OCRC's recent efforts against housing discrimination based on its caseload. Various proportionate measures of housing caseload can be applied to OCRC's FY 1978 budget--\$3,012,519, including funds

received from EEOC--to compute rough estimates of actual expenditures on housing that range from \$89,171 down to \$23,196. ^{17/} One can then readily see the relative significance of this project: budgeted at \$120,000, it was between 1.3 and 5.2 times as great as all of the commission's other housing activities.

III. STATEMENT OF THE PROBLEM

The OCRC strategy was directed at the discriminatory practices of real estate brokers that contributed to the establishment and maintenance of racially segregated neighborhoods. That such neighborhoods exist in the six target cities is an observable fact, as well as one that has been documented, among other places, in school segregation lawsuits. While OCRC conducted no pre-project research to document the causal relationship between housing segregation and the real estate industry in each of the target cities, it is well known, and has been amply documented elsewhere, that real estate discrimination exists and that it is a major cause of segregated neighborhoods. Not unexpectedly, for example, the HUD-funded National Housing Marketing Practices Survey, conducted by the National Committee Against Discrimination in Housing, found that there were indeed substantial discriminatory real estate practices in each of the target sites in Ohio that it examined, as did the OCRC project staff itself in all of the target cities as the project progressed.

In addition to attacking discrimination, in a sense OCRC's strategy was also directed against (and shaped by) a fundamental structural problem of the agency itself--limited authority. In the field of housing, OCRC can only respond to charges filed by the public. It therefore lacked the power to initiate charges on its own against brokers it suspected of discrimination. Moreover, in the absence of charges having been filed, it also lacked the authority to investigate a broker's activities. It was OCRC's hope that this project would demonstrate its potential effectiveness in the housing field, and thus help convince the legislature to grant the commission the authority to file housing discrimination complaints on its own.

Compounding the problem of limited authority was that of limited experience. In the past, OCRC had not had the resources to devote to this area of housing discrimination, and in the last five years had experienced a significant drop in the volume of housing discrimination charges filed by individual complainants. This, too, affected the strategy. By using the opportunity the HUD funding offered to enter an area in which it had been unable to be very active, OCRC had only a limited experiential base on which to build its strategy. It hoped that, as a result of this project, its limited experience would be considerably broadened.

IV. DESCRIPTIONS OF THE STRATEGY

OCRC's strategy targeted each of the six cities in which it had a regional office: Columbus, Cleveland, Akron, Cincinnati, Toledo and Dayton. These are the six largest cities in the State with the highest concentrations of minority citizens, and each has one or more active, experienced private fair housing group. Such groups are private organizations acting as public interest advocates for fair housing.

The OCRC strategy can be divided into two phases: developmental and action. Based on the commission's original work plan, these phases consisted of the following:

A. DEVELOPMENTAL PHASE

In the developmental phase, OCRC was to set the stage for actively pursuing its strategy by enlisting citizen participation, gathering information, and developing the key documents.

1. Enlist Resources

To help implement the strategy, OCRC sought to build a core of cooperating private fair housing groups in each of the six targeted cities by obtaining their signatures on a Memorandum of Understanding.

2. Research

Though not an extensive effort, the staff gathered information:

- To identify private fair housing and other groups willing and able to participate in the project on a voluntary basis.
- To collect information, primarily from cooperating fair housing groups, to identify those brokers suspected of following discriminatory marketing practices.

3. Document Development

As originally conceived, the strategy depended on two key documents that had to be developed and that had to receive internal commission approval:

- A memorandum of understanding to govern the relationship between the commission and the several fair housing groups expected to participate in the project,
- An Affirmative Marketing Agreement (AMA) to be signed by real estate brokers committing themselves to pursue affirmatively nondiscriminatory marketing practices.

B. ACTION PHASE

The action phase consisted of the steps by which OCRC proposed to carry out its strategy:

- Convince local boards of realtors to cooperate and, with their help, convince target brokers (those who, based on information from fair housing and other community groups, are suspected of discriminatory marketing practices) to sign affirmative marketing agreements.
- If they refuse to sign, accept charges (to be filed by cooperating fair housing groups) against them, and accept charges against those who the reviews suggest are still using discriminatory practices.
- Hold a seminar to announce and discuss the findings and results of the project.
- Process and resolve all complaints filed against brokers in connection with the project. Both for those respondents who refused to sign agreements, and for those who did sign, OCRC will try to make affirmative marketing part of the settlement or other resolution of the complaint.

It should be noted that OCRC designed the strategy so that private fair housing groups could fill the gaps in its own limited authority and experience. The participation of such groups was thus an essential element of the strategy. The threat of enforcement action was, of course, a prime incentive for brokers to sign and, more important, implement an affirmative marketing agreement (AMA). But, because the commission itself could not file charges, it had to rely on an outside source--the private groups--to trigger any enforcement activity against brokers suspected of discriminating.

To a somewhat lesser extent, the private groups were also important as sources of information to identify target brokers. OCRC had only a small real estate case load and, thus, only limited experience with discrimination by the real estate industry. Moreover, it could not gain such experience on its own, because unless a complaint were filed it had no authority to investigate the industry.

● Changes During Implementation

Practical problems forced some changes in this strategy. One change was to minimize the importance of OCRC's memoranda of understanding and affirmative marketing agreements. Although developed as planned, both proved unnecessary to the implementation of the strategy. Indeed, few memoranda of understanding were signed with fair housing groups, and in no target city was OCRC's own affirmative marketing agreement used. In a second change, efforts to obtain signatures on AMAs were concentrated more on boards of realtors than on individual brokers as originally planned. The reasons for these changes are discussed in Chapter V, IMPLEMENTATION.

V. IMPLEMENTATION

A. STAFFING

With the exception of one specialist who was later replaced, the staff that carried out the project was all hired during the first month of the demonstration. The project coordinator, who directed the project, was hired first, followed by six affirmative action specialists--one for each target city. A project secretary completed the staff. OCRC officials not paid with project funds who also participated included the agency director and several of his key administrative staff members. They provided more than just policy direction and administrative support; the agency director, for example, also helped train the staff and negotiate with fair housing groups.

Despite OCRC's initial expectation that an experienced staff was an essential ingredient for success, 1/ only one staff member had any substantial relevant civil rights experience prior to joining the project. 2/ This lack of experience is suggested by the actual job titles of the specialists. Rather than "affirmative action specialists," field staff members were officially listed in OCRC records as "social program specialists," a title more reflective of their previous experience.

B. TRAINING

Training was an ongoing activity during the first half of the project. Periodic sessions were held in Columbus for the entire staff, and the project coordinator visited the target cities to provide additional training. In addition, each affirmative action specialist received investigative training from OCRC's regional staff in their respective cities.

Due to the staff's inexperience in civil rights, the training moved well beyond mere orientation to the project. Other training topics included the following: fair housing law, investigations and conciliations, target selection, and representing the project to the public (not a minor item, according to complaints raised by some private fair housing groups--see C.1 DEVELOPMENTAL PHASE, Enlisting Fair Housing Groups, below).

C. DEVELOPMENTAL PHASE

1. Enlisting Fair Housing Groups

As explained in Chapter V, the participation of private fair housing groups to fill in the gaps in OCRC's own authority and experience was an essential element of its strategy. Within the State--more particularly, in each of the target cities--there are not only the usual civil rights organizations but also a number of active, experienced local groups that specialize in fair housing. A measure of the recognition they have received is that more such groups in Ohio have been granted funds under HUD's Community Development Block Grant program than in any other state.

Originally, after discussions with officials of the Ohio Fair Housing Congress (an organization to which all these experienced local groups belonged), OCRC proposed to use most of its \$120,000 to finance separate projects by five of the groups. It did not spell out what these groups would do, however, but instead left it open for them to choose particular strategies for themselves at a later time.

In several respects, this original proposal was unacceptable to HUD, which had funded the overall project to enable State agencies themselves to demonstrate anti-discrimination strategies and, in so doing, increase their own capabilities. If HUD's funds were merely passed through OCRC to private groups, the money would not be used to build the commission's own capacity to fight systemic housing discrimination. And by leaving so much of the project up to the private groups, and having so little to do itself with its ultimate design and implementation, OCRC would neither demonstrate a strategy nor add to its own expertise and experience. Finally, since OCRC did not specify in its proposal what the private groups would be doing, there was no basis for making an informed judgment whether the ultimate use of the money was likely to be worthwhile, appropriate or even legal--that is, no way to tell in advance what HUD would be buying for its \$120,000.

HUD then determined that OCRC's proposal would be acceptable only if it were substantially revised: The commission would have to play a more substantive role in the demonstration and use the bulk of the money to build its own capacity (with no more than \$20,000 to \$25,000 going to outside groups), and its proposal would have to describe in detail the specific strategy or strategies it intended to carry out.

Rather than revise its original proposal, however, OCRC chose to drop it entirely. With no further discussions with Fair Housing Congress representatives, OCRC developed an entirely different strategy. The new strategy could not be carried out without the participation of private fair housing groups, but in contrast to OCRC's original proposal, these groups would receive no money at all.

Although OCRC had cut off its discussions with the Congress members while revising its proposal, it did not tell them why. The next thing they knew OCRC field representatives visited the major groups separately to tell them the commission had a different strategy, and to ask (demand, some groups felt) their help with no remuneration at all. From that point on, the project staff encountered great difficulty enlisting the participation of these groups. Problems with the individual groups were compounded when the president of the Ohio Fair Housing Congress sent a telegram urging all Congress members not to cooperate with the project field staff. Unsure what OCRC was up to, and bothered by the attitudes she and other Congress members perceived on the part of the project field staff, the president wanted to preserve the status quo until things could be clarified. For several months thereafter, the Congress became an additional party to the negotiations. While OCRC also sought the cooperation of a wide range of other groups, none of these could match the Congress members in fair housing experience and knowledge. As a result, implementation of the strategy was slowed by the initial failure to persuade the Congress members to participate.

In early October 1977, unsatisfied with explanations offered at meetings with OCRC officials, the Congress sent OCRC a letter describing its concerns about the project. In general, the Congress members had found "both a lack of definition and confusion of purpose" about the project, and were "deeply concerned" by its "apparent methodology and implementation" as they understood them based on contacts with OCRC. The letter went on to list the following specific concerns:

- OCRC was asking Congress members to cooperate in "a project whose goals, purposes, and strategies have never been made clear to us."
- The affirmative action specialists who had approached them "express some concern about the project, demonstrate some lack of understanding about fair housing constraints, or show some lack of perception about fair housing program implementation."
- OCRC had not adequately explained the "posture" of its AMA in relation to all the other existing and pending agreements, and the affirmative action specialists had a general lack of understanding of the AMA's provisions.
- If the project's purpose was research, they questioned the objectivity of the sampling (targeting) methods. If the objective was enforcement, then they wanted to know the criteria for defining certain OCRC expressions, such as "problem brokers," "putting teeth into affirmative marketing agreements," "suspicion of problem behavior," and "large realtors."
- They questioned focusing on only one part of the industry--members of the National Association of Realtors--rather than on all brokers, and felt also that the project "appears to overlook the opportunity for involving the Real Estate Commission."
- Finally, they questioned "the requests for cooperation which have been paralleled or followed by implicit threats, pressure tactics, and suggestions of intimidation."

Other factors (such as "turf" protection, personality clashes on both sides and lack of mutual trust and respect), all unwritten and many only alluded to in conversations with project evaluators, appear also to have been an element in the conflict. ^{1/} Still another factor that cannot be discounted, although none of the disputing parties voiced it, was resentment at the commission's apparent presumptuousness and parsimony. Although it was OCRC that received the funds for the project, compared to the private groups it was the "new boy on the block" when it came to fair housing. Yet with no explanation, at least at first, OCRC had dropped its original overtures to give the groups not only an essentially free hand to carry out whatever strategy they wanted to pursue, but also a substantial amount of money to pay for it. Instead, OCRC unilaterally picked a strategy, charted out a central, indeed essential role for the private groups without even once

consulting them, and then expected them to perform that role with absolutely no financial assistance or other quid pro quo, even though OCRC had received \$120,000 for the project. 2/

Finally, by mid-December 1977--more than six months into the 12-month demonstration period--after meetings between OFHC members and OCRC, as well as further correspondence, the Congress withdrew its active opposition to participating in the project, and the individual groups reached separate accommodations with the commission. In no case, however, did any of these groups sign an memorandum of understanding--all felt the terms were too open-ended and demanding. Instead, they informally agreed only that, to use the commission's words, "They would do what they could when they could do it." As will be discussed in D. ACTION PHASE below, this differed from city to city.

In addition to enlisting the participation of the Congress members in each of the six target cities, OCRC also sought to involve other groups. It had some success, but the consequence of its focus on the Ohio Fair Housing Congress was, in the commission's words, "an empathetic dearth of interaction" with any of the other groups.

2. Research

Most of OCRC's research was directed toward identifying either resources or targets. In addition, the affirmative action specialists needed to find out about the particular fair housing problems and real estate practices in their respective cities. While their approach differed from city to city, they generally sought this information from fair housing groups and, in some cases, local real estate brokers. In one city, the specialist chose to interview 10 brokers selected at random from the telephone book.

The primary resources OCRC needed to identify were the private fair housing groups in each of the six target cities. Beginning by calling organizations they already knew about, and individuals who might know of others, the affirmative action specialists compiled a list of fair housing groups that might be interested in participating in the project. Although OCRC needed the help primarily of groups with knowledge and experience in fair housing, the specialists initially called a wider range of organizations, including some, such as a model cities neighborhood group, whose interests and purposes were quite different.

Identifying targets was not so easy. As stated in one of its reports, OCRC "targeted in on those brokers believed to meet the following criteria:

- "1. Steering blacks to special communities [i.e., changing or predominantly black neighborhoods].
- "2. Causing panic buying and selling on the part of white communities because busing is part of school desegregation efforts in the city.

- "3. Fair Housing groups have evidence which leads them to see a strong need for Affirmative Action on the part of brokers to cure the ills of alleged discrimination.
- "4. The Ohio Civil Rights Commission's resources show brokers suspected of systemic problems but no prior effort has been made to analyze or resolve those suspicions. (Here we look to housing groups to affirm that they too have suspicions.)
- "5. Broker is presently in court and appears to be amenable to entering an Affirmative Marketing Agreement as an act of good faith.
- "6. Court action is being considered by a Fair Housing agency."

In finding brokers who met these criteria, OCRC records were some help, but not much, because so few of the charges on file had named brokers as respondents. The primary sources of information about brokers who might be discriminating were the private fair housing groups participating in the project. It was expected that these groups would freely give the affirmative action specialists the names of all brokers who they felt were discriminating. While some groups did identify suspect brokers by name, others were reluctant to do so. Unfortunately, the best sources of names--the more experienced fair housing advocates in the State, who were all members of the Ohio Fair Housing Congress--were in the latter category. Among reasons for not cooperating were concern about their potential liability for, in effect, having accused brokers of discrimination, and uncertainty about how OCRC would use the information. (For more details about difficulties between OCRC and the Ohio Fair Housing Congress, see 1. Enlisting Fair Housing Groups, above). Although this slowed down the staff's targeting efforts it was not fatal. Over time, the staff was able to compile an extensive list from other sources, and eventually even obtained informal cooperation from some of the hold-out groups.

Names of target brokers were also drawn from a list of brokers who had been selected at random for a national survey of real estate practices, and from those brokers--particularly ones doing business in racially troubled smaller communities within the SMSAs of the six target cities--whose advertising was believed by the NAACP (the plaintiff in several school desegregation cases) to encourage a hostile or fearful attitude toward court-ordered busing.

OCRC's other research efforts, all relatively minor, were incidental to performing other tasks, such as conducting a review of existing affirmative marketing agreements prior to drafting its own AMA.

3. Document Development

Two basic documents had to be developed--a memorandum of understanding (MOU) that OCRC hoped to sign with each participating fair housing group, and an affirmative marketing agreement (AMA) that it hoped brokers would sign.

- Memorandum of Understanding (MOU)

By early 1977, the project staff had drafted, and the commission's chief of legal operations had approved, a standard form MOU. Its provisions included the following:

- The fair housing group will "secure and supply information" to OCRC about local housing patterns and real estate practices that might affect those patterns.
- The group and/or the commission will select brokers "having an impact on undesirable housing patterns" whose help would be needed "in eliminating them."
- OCRC, with the group's help, will negotiate affirmative marketing agreements with the brokers so selected.
- The group "will expedite the transmittal to the Commission of any and all charges" of discrimination against brokers who do not sign an AMA.
- The groups will hold the commission "harmless for any liability incurred by reason of" the group's activity under the agreement.
- Both parties understand that OCRC will not pay the group anything for its services.

Although few groups were willing to sign this agreement, OCRC did not change it substantially to make it more acceptable. (Ultimately, this problem was not serious, because most of the objecting groups agreed to cooperate even without a written MOU. See 1. Enlisting Fair Housing Groups, above.)

- Affirmative Marketing Agreement (AMA)

By the end of July 1977, the project staff had drafted, and the commission's chief of legal operations had approved, a standard form AMA. In general, it included much the same provisions as other such agreements, such as the one signed by HUD and the National Association of Realtors (NAR), which had been signed or was under consideration by boards of realtors in several of the target cities. However, in a bid to obtain signatures from brokers or organizations that might be unwilling to sign any of the other agreements, OCRC omitted from its version any requirement to recruit or hire minority sales persons. Commission officials felt such a requirement was unnecessary, since they could handle any employment discrimination problems under OCRC's existing authority. Unlike its housing jurisdiction, OCRC is authorized to file charges of employment discrimination on its own initiative.

D. ACTION PHASE

1. Obtaining Signatures on AMAs and Monitoring Their Implementation*

The discussion of this part of the action phase will begin with an overview of what happened generally, and then move to a separate discussion of strategy implementation in each of the six target cities.

OCRC originally expected to be urging boards and brokers to sign its own AMA, prepared during the developmental phase. It soon found, however, that not only were there a number of similar agreements already in effect or being championed and considered within the six target cities, but also that there was some resistance to still another one entering the arena. Brokers were concerned about the competing agreements, wondering how many they were expected to sign and why signing any one of them was not sufficient evidence of good intent. Proponents of each of the other agreements were also concerned. The intrusion of OCRC's AMA could upset the progress they had made convincing boards and brokers to sign their own agreements. And even if not, the confusion that competing AMAs were bound to engender would hardly further the interests of fair housing and might even harden opposition to signing any agreement.

In response, OCRC agreed to recognize any of the other agreements as adequate. If none had yet been signed, OCRC would support the AMA then being considered that had the best chance. Once an AMA was signed, or where one had already been signed, OCRC would move on to the next steps in its strategy, trying either to win more signatures or to monitor compliance. In the end, in no city was the OCRC's AMA signed by a board of realtors.

The other major switch at this point was to focus on obtaining the signatures of boards of realtors, rather than individual brokers. This was in part in response to the situation OCRC found when it entered on the scene--the proponents of the other agreements were beginning at the top--the boards--rather than with the member brokers. In addition, OCRC reasoned that once a board had signed, thereby "blessing" an agreement with its approval, member brokers would be more likely to sign up themselves. Nevertheless, some individual brokers did agree to sign agreements. Of these, only a few, along with a small number of others who signed no agreements at all, were willing to submit to some degree of monitoring. Given the short time left in the project, however, as well as the heavy dependence on broker cooperation in making any monitoring possible, it is not surprising that this element of the strategy was not very productive. The most that could be determined with any certainty was that some of the monitored brokers were using the equal housing opportunity logo and slogan in their advertising.

*In this section, obtaining signatures and monitoring are grouped together as a matter of convenience. Since experiences in the six target cities differed considerably in detail, treating each element separately might require up to six discussions apiece, thus doubling total number of separate narratives.

But beyond that, the available data were insufficient to determine whether the monitored brokers were, in fact, providing their services on a nondiscriminatory basis.

A city-by-city discussion follows:

- Dayton

In Dayton, OCRC found the board of realtors and fair housing advocates (primarily the Miami Valley Regional Planning Commission) at a stalemate, each pushing its own AMA. Despite its stalemate with the board, however, MVRPC was having some success obtaining signatures to its agreement from individual brokers, due in large part, no doubt, to the city's agreement with the planning commission not to do business with brokers who did not sign the AMA. OCRC agreed to help convince the board of realtors at least to cooperate with MVRPC in establishing an effective monitoring board to oversee the implementation of its agreement.

At the same time, in a spirit of cooperation, OCRC accepted the board's AMA (the HUD/NAR agreement). It then met with the board to present its list of target brokers--not as firms accused of discriminating, but rather as brokers whose efforts to implement the AMA OCRC wished to review. In turn, the board gave OCRC a list of individual brokers who had signed the agreement and encouraged brokers to cooperate with the commission. Monitoring consisted of talking with the brokers and reviewing copies of board of realtors and OCRC report forms. While the monitoring did not find anything wrong, with one exception the reports did not, on their face, provide enough information to support any definitive conclusions, nor was OCRC able to look behind any of the reports to verify the statements they contained. The exception was OCRC's Appendix C, Affirmative Action Plan Review, on which the broker answered "yes" or "no" to questions whether the fair housing logo was used in advertising and the fair housing poster was conspicuously displayed, if the firm recruited minority employees (and if so, where), and whether it monitored the activities of its sales agents. Without more, however, even this form says little about whether meaningful affirmative action is occurring.

- Toledo

Two affirmative marketing plans were at issue in Toledo--one, an AMA jointly developed by a coalition of agencies and groups consisting of OCRC, the Toledo Metropolitan Area Council of Governments, the Toledo Fair Housing Center, the Toledo Housing Resources Board, HOPE, Inc., and the Toledo Department of Community Development; the other, a plan adopted in 1975 by the Toledo Board of Realtors. While the fair housing groups in Toledo rejected the board's plan as inadequate, OCRC accepted it. Not being able to file charges on its own, and with fair housing groups in Toledo unwilling to file any based on the board's refusal to sign the coalition's agreement (if grounds for such charges even existed), OCRC felt it had little choice but to accept what it could. As OCRC explained in a statement expanding on its final report, "For us to tell anyone we have no agreement because we believe we can get a better one would at least call for evidence to support

the conclusion (such we do not have)."

In the areas of broker education and advertising, the board of realtors took some affirmative steps as a result of continued negotiating efforts by OCRC and local fair housing groups. It wrote its members in December 1977, reaffirming its commitment to its own affirmative marketing plan and to "emphasize the Affirmative Marketing Policy of the Board." (This letter, it should be noted, went on to assert the Board's belief that its own plan is "sufficient unto itself"-- i.e., that the coalition's AMA was unnecessary.) The January 1978 issue of The Toledo Realtor, the board's monthly publication, contained the entire text of the board's voluntary Affirmative Marketing Plan, "reprinted as a clipout as part of the TBR Equal Opportunity in Housing Committee's continuing education for our members. All members should clip the plan and keep it in their files." The March 1978 issue contained an article by the National Association of Realtors' general counsel entitled, "The Difference Between Steering and Selling." The board also placed a fair housing advertisement in the March 1, 1978 issue of The Community News, a newspaper circulated mainly in Toledo's black community. The ad invited the paper's readers to "Call a Realtor and avail yourself of our professional services."

In March 1978, OCRC's affirmative action specialist in Toledo, on behalf of the members of the coalition of groups mentioned above, wrote to the vice president of the Toledo Board of Realtors thanking the board for its "cooperation and support" of the coalition's affirmative marketing efforts and confirming the designation of a member of one of the coalition groups as liaison to help the board implement its affirmative marketing plan.

- Columbus

The Columbus Board of Realtors adopted an AMA that, according to OCRC, was the board's "own contentwise," but "was no different than affirmative marketing agreements in other cities." OCRC accepted this AMA and proceeded to attempt to monitor its implementation. This proved virtually unsuccessful, as only one broker agreed to cooperate. The others either refused outright or were never available to meet with OCRC's affirmative action specialist. The reports submitted by the one cooperative broker were, in OCRC's view, "not sufficient to determine any activities as to any affirmative marketing position."

- Akron

Although the Akron Board of Realtors told its members as early as October 1977 that it had agreed to sign the HUD/NAR agreement, OCRC reports that this did not happen until April 1, 1978. By its terms, the agreement provided that OCRC could do no official monitoring for at least 60 days. As a result, no monitoring was accomplished during OCRC's demonstration period. Most of its time, OCRC says, was spent working with the Fair Housing Contact Service, a local advocate group, trying to build a cooperative relationship with the board and to convince it to sign the agreement.

- Cincinnati

In Cincinnati the board of realtors had already signed the HUD/NAR agreement and a community housing resources board had been established. Implementation and monitoring proved to be a problem, however. OCRC worked with HOME (a fair housing advocate group), and the city Human Relations Commission to convince the board of realtors to cooperate. The board would not encourage its member brokers to cooperate in furthering fair housing, nor would it provide the names of any brokers who had also signed the agreement.

When OCRC's affirmative action specialist tried to reach the brokers on the target list, most of them successfully evaded her attempts to meet with them and to make a substantive contact. She was able to meet with a few, however, and found that they had also signed the agreement. They agreed to permit OCRC monitoring, but the specialist was later unable to obtain any records from them.

- Cleveland

Initially, the Cleveland Area Board of Realtors refused even to meet with OCRC's affirmative action specialist until it first saw OCRC's response to the October 1977 letter expressing the Ohio Fair Housing Congress' serious concerns about the project. Later, however, the board signed the HUD/NAR agreement, along with the Cuyahoga Plan (one of the fair housing groups) and OCRC. Although the board acceded to the formation of a community housing resources board to monitor the agreement's implementation, it did not encourage individual brokers to cooperate (e.g., by filling out report forms). OCRC reported, in response to questions about its final report, that in Cleveland, "No broker was reporting or recording his effort to impliment (sic) the HUD/NAR agreement." However, an attachment to that same response contained a report from OCRC's affirmative action specialist in Cleveland that several brokers on the commission's target list had agreed to fill out the resource board's reporting forms, and even included copies of some of the completed forms.

(The only other significant development in Cleveland, the blockbusting charges from the Euclid Park Civic Club, is discussed separately below).

2. Accepting and Processing Charges Against Brokers

No charges were filed against brokers by fair housing groups as part of the strategy. Thus, as part of the strategy, there were no charges to accept and process. However, one of the participating groups in Cincinnati (HOME, Inc.) did file an unrelated charge (alleging sex discrimination in apartment rentals), and a citizens group with which OCRC had had no previous agreement or understanding (the Euclid Park Civic Club) filed a complaint charging a Cleveland real estate firm with blockbusting. As these were both filed late in the demonstration period, the investigations could not be completed by the end of the project. The Euclid Park group also filed blockbusting charges against 14 other brokers with the Ohio Real Estate Commission, which in turn referred them to OCRC in late June 1978, after the

end of the demonstration period. OCRC considered these charges, though unconnected with the project, to have been prompted by it, because in the previous year no charges at all had been filed against brokers.

3. Working with the Ohio Real Estate Commission

In 1974, OCRC signed a Joint Statement and Understanding with the Ohio Real Estate Commission (OREC), which regulates and licenses real estate brokers and salespersons in the State. It provided that each could process complaints that also fell within the other's jurisdiction, that complainants before either commission whose allegations also constitute violations of the other's law will be referred to the other commission as well, and that each will identify staff liaisons and cooperate on sharing information and staff training. According to OCRC, however, the "agreement was never given a chance to work because the Ohio Civil Rights Commission did not have a person to set up a procedure for the exchange of data and follow up of efforts."

Building on the 1974 agreement, OCRC informed OREC of its project and sought renewed cooperation. Both agencies agreed to exchange data and to keep each other informed of problems of mutual concern. Pursuant to this, for example, in February, March and May 1978, OREC sent OCRC copies of newspaper stories about the blockbusting situation in Euclid Park that eventually led to blockbusting charges being filed with both commissions. OREC similarly sent OCRC a copy of additional blockbusting charges filed with it in June by the Euclid Park Civic Club. (It is unclear, however, whether this referral of charges was intended to lead to parallel investigations, as contemplated by the 1974 agreement, or whether OREC just intended to wait until OCRC acted first.)

4. Seminar

On May 25, 1978, the project culminated in a one-day seminar on affirmative marketing. Sponsored by OCRC, it was attended by representatives of fair housing groups, HUD, the Ohio Real Estate Commission, and the real estate industry (including the Ohio Board of Realtors, the Boards of Realtors of Toledo, Dayton, Cincinnati and Columbus, and the Cleveland and Columbus Associations of Real Estate Brokers).

The afternoon session, structured in the form of a "Kiva," proved very effective in bringing out each participant's perspective on affirmative marketing, encouraging each to see and maybe even appreciate the other's point of view. Several participants later remarked that they found the airing of views valuable, and felt that such an exchange might have contributed to the project had it occurred earlier, or even at the beginning of the demonstration. 3/

Growing out of the exchange of views and information at the seminar were the following recommendations, as reported by OCRC:

- "1. OCRC should get with HUD on developing a single AMA
- "2. OREC should suspend licenses of violators

- "3. OCRC should have self-initiation power
- "4. Brokers should keep written records."

E. FUTURE

In the immediate future, OCRC will pursue the real estate complaints it has received. At the project's end, the investigations of the blockbusting complaint from Cleveland and the charge of sex discrimination in apartment rentals in Cincinnati had not been completed. Shortly after the end of the project, the Ohio Real Estate Commission referred a letter to OCRC from Euclid Park Civic Club charging 14 additional brokers with blockbusting. OCRC referred the letter to its Cleveland regional office with instructions to take official charges from the group.

OCRC's cooperative relationship with OREC, based on the 1974 joint agreement and renewed during the project, is expected to continue.

F. COST

The entire contract amount of \$120,000 was spent for salaries and the related cost of unemployment compensation contributions. In addition, OCRC spent more than \$14,000 of its own money in other costs and in-kind contributions.

VI. OUTCOMES

The outcomes reported in this section are the contractor's findings as to charges resulting from what the agency did in the course of its demonstration. All outcomes were grouped into two categories, agency capacity and equal housing opportunity:

Agency Capacity. The agency's own capability to identify and challenge systemic housing discrimination, as measured by such pre-post project changes as increased staffing, new research or investigative or analytic expertise, better use of community groups, new training techniques, and strengthened negotiating tactics. Improvements in handling individual complaints, while not generally a concern of this project, may also be a relevant measure of increased capacity if they include, for example, new procedures for identifying individual complaints that should be treated as charges of systemic discrimination.

Equal Housing Opportunity. The impact of the strategy on systemic discrimination, as measured by pre-post project changes in specific discriminatory policies and practices or in increased housing opportunities for minorities or other protected class persons. The equal opportunity outcomes have themselves been divided into two subcategories -- potential opportunity and actual opportunity. Potential equal housing opportunity outcomes are real-world changes that hold the promise of leading to increases in actual housing opportunities for minorities. Actual equal housing opportunity outcomes are either measurable increases in housing actually obtained by minority groups or actual changes in behavior (such as affirmative actions known to have been taken or the absence of discriminatory treatment previously known to exist).

Potential opportunity outcomes are one step removed from actual opportunity outcomes in the same way that changes in the rules of a game are one step removed from the actual moves the players make. In fact, the distinction between potential and actual opportunities is essentially the difference between rules and behavior. Promises made in a binding conciliation agreement, for example, are only a potential opportunity outcome; they change the rules that govern the respondent's behavior but not necessarily his behavior itself (which, if also changed, would represent an actual opportunity outcome).

Capacity and opportunity outcomes, it should be noted, are not mutually exclusive. By definition, an agency cannot have produced an equal opportunity outcome if it did not have the capacity to do so. Each equal opportunity outcome, therefore, is indicative of a capacity outcome as well.

A. AGENCY CAPACITY OUTCOMES

- Developed increased staff knowledge of fair housing issues.

- Undertook first joint effort with groups in Ohio Fair Housing Congress.
- Began working with real estate boards and individual brokers, trying to foster affirmative marketing.
- Helped persuade real estate boards and individual brokers to sign and, to varying degrees, begin to implement affirmative marketing agreements.
- Developed cooperative relationship with Ohio Real Estate Commission, renewing a previously dormant 1974 joint agreement.
- Won cooperation from some brokers to keep records and submit them to OCRC for monitoring compliance.
- Held state conference on affirmative marketing housing, bringing together representatives of the real estate industry, government, and fair housing advocate groups.

B. EQUAL HOUSING OPPORTUNITY OUTCOMES

- None reported during the project demonstration period.

VII. OBSERVATIONS

Numerous factors affect the implementation and results of any demonstration project, some positively, others negatively. Some of these factors are within the control of the agency, others are not; some can be encouraged or avoided, others can only be accepted or accommodated. These factors include strategy design, agency authority, agency experience and knowledge of the "territory", project leadership and management, staff skills, the political environment, and linkages outside the agency. In the case of the Ohio demonstration, these factors were very much intertwined. Any other group or agency trying the same or similar strategies will face at least some of these same factors, and may find Ohio's experiences instructive.

The problems experienced in the implementation of the Ohio strategy began with its design. Due to the agency's lack of power to initiate complaints on its own, it had to look to outside groups to provide the enforcement arm for its strategy. Unfortunately, the strategy design was not such as to ensure the cooperation of such groups, nor did it include alternatives or fall-back positions that the agency could resort to should that cooperation not be forthcoming. Thus when problems arose in gaining the support of fair housing groups, the demonstration stalled, and valuable time was lost in winning them over. As the agency never fully gained their support, the strategy was never fully implemented.

One of the factors contributing to the difficulty in gaining the fair housing groups' support was the agency's own inexperience and lack of performance in fair housing, and the fact that the staff hired for the project was also inexperienced in fair housing issues.

No doubt the agency's inexperience and that of the project staff also contributed to the lack of readiness at the start of the project. Much time was spent in training and in learning the very rudiments of fair housing and real estate discrimination. Nor was the agency ready to make its arrangements with the private fair housing groups, apparently having done nothing to lay the groundwork for gaining their cooperation.

Although there was considerable involvement of high agency officials, including the project director and the agency director, this did not appear to contribute significantly toward improving the performance of the staff or improving relationships with the private fair housing groups. Indeed, if reports from the groups are to be believed, neither the agency director nor the project director was able, for much of the early months of the project, even to convey a clear idea of the strategy and the role that the groups were expected to play.

While the strategy probably could have been helped by the involvement of outside, more experienced people in both design and implementation, such involvement was not sought. The problem was only exacerbated by the agency's poor standing prior to the project with the very groups whose support it needed.

In addition to eventually gaining the partial support of the fair housing groups, the agency was not totally without community support for its strategy, although it did not come until the end of the project. The Fair Housing Conference with which the project ended brought together representatives from the real estate community and various civil rights and other community groups who, under the agency's auspices, at least began talking together to provide some basis for forward movement.

To some extent, the strategy was helped by renewed cooperation between the agency and the Ohio State Real Estate Licensing Commission, reviving a previously dormant cooperation agreement of several years' standing. Without this, the blockbusting charges filed with the Real Estate Commission would probably not have been referred to the Civil Rights Commission.

Although not directly related to the strategy, the agency did receive a complaint of real estate discrimination when a civic association in Cleveland filed a blockbusting charge with it. The association, however, was not one of the groups with which the commission had worked on the strategy, and thus the complaint was not part of the anticipated enforcement activity the commission had hoped would be supplied by the participating fair housing groups.

Both ALNA and a member of its Technical Advisory Panel played a role in the implementation of the strategy at the point when relations between the commission and the private fair housing groups had almost completely broken down. The TAP member, well known and respected among the fair housing groups, urged them at least to continue negotiating with the agency, rather than cutting off discussion altogether. About the same time, two members of the ALNA project staff participated in the meeting between the agency and the groups at which the project's purposes and overall design were once again explained and were put in the context of the overall contract with HUD. The agency and the groups did agree to continue negotiations and eventually worked out a working relationship that enabled the strategy to go forward.

NOTES

Chapter II: INTRODUCTION TO THE AGENCY

1. Revised Code, section 4112.03.
2. Id., section 4112.04(2).
3. Id., section 4112.10.
4. Id., section 4112.04(06).
5. OCRC, Laws Against Discrimination, (1977), p. 4.
6. Ibid.
7. Revised Code, section 4112.02(H).
8. Id., section 4112.051(A).
9. Id., section 4112.99.
10. OCRC, 19th Annual Report, 1977-1978, pp. 32-33.
11. Id., pp. 4-5 and computations based thereon.
12. OCRC, 17th Annual Report, 1975-1976, pp. 10 and 15 and computations based thereon.
13. OCRC, 19th Annual Report, 1977-1978, pp. 5 and 7 and computations based thereon.
14. Id., p. 5.
15. Id., pp. 5 and 7 and computations based thereon.
16. OCRC, 17th Annual Report, 1975-1976, p. 16.

Chapter III: STATEMENT OF THE PROBLEM

1. OCRC, 19th Annual Report, 1977-78, pp. 4, 7, 9, and 32 and computations based thereon.

Chapter V: IMPLEMENTATION

1. Various close-out interviews, July 1978 (on file at ALNA).
2. Ibid.
3. Ibid.

STATE CIVIL RIGHTS AGENCY DEMONSTRATIONS OF STRATEGIES
TO FIGHT HOUSING DISCRIMINATION

CASE STUDY:

Pennsylvania Human Relations Commission

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APPENDICIES

Appendix A - "Business Necessity" and Discrimination

Appendix B - Critique of PHRC Research Report

I. INTRODUCTION

A. THE NINE-STATE DEMONSTRATION PROJECT

This case study is one of a series being prepared under contract to the U.S. Department of Housing and Urban Development as part of a HUD-funded research and demonstration project. A key element of this project was the provision of funds to nine State civil rights agencies to enable them either to launch or expand fair housing programs directed particularly against systemic discrimination.

1. Background

Notwithstanding the efforts of the past two decades, there remains an intolerably wide gap between the promise of choice implicit in an array of civil rights legislation and the reality of housing discrimination for minorities in America today. Moreover, discrimination in housing contributes to social injustices reaching well beyond its most immediate consequence, residential segregation. These include inequality of job opportunities, separate and unequal schools (notwithstanding the 1954 Brown decision), and increased tax burdens on inner city residents to support growing social service costs and an irregular pattern of urban growth.

So systemic and institutionalized is racism in the housing system that public enforcement efforts--crippled by weak budgets and preoccupied with responding to individual complaints--seem only to have changed the face of discrimination without uprooting it. Replacing the blatant housing discrimination of the pre-civil rights era are new discriminatory practices--subtle, indirect, and often hidden, but just as effective. The struggle for equal opportunity in housing is far from over.

State human rights agencies are called upon to play a major role in that struggle. State laws often give them far-reaching responsibilities, while Federal law gives many the added burden of processing housing discrimination complaints filed under Title VIII. Their limited resources, however, permit little more than the handling of individual complaints, often leaving significant patterns and practices of housing discrimination unchallenged.

And at all levels--Federal, State and local; public and private--there is a need to find and test new ways to use existing fair housing laws more creatively and effectively. Also needed is precise, reliable information about systemic discrimination in housing and about the programs necessary for the full enforcement of existing fair housing laws.

The message is clear: Both qualitatively and quantitatively, this nation's level of public intervention on behalf of the minority shelter-seeker must be substantially upgraded.

2. The Project

It is to this message that HUD responded in 1976 by committing federal resources under this project to enable States to assume a more aggressive role in meeting fair housing goals. In doing so, it addressed in a single programmatic thrust two broad national problems: how to assist minority families in obtaining decent housing in the face of increasingly sophisticated discriminatory practices, and how to help the States increase their capacity and effectiveness in carrying out responsibilities under existing laws.

Even before issuing the Request for Proposals (RFP) for this project, HUD selected the participating State agencies. On June 16, 1976, HUD invited 10 State civil and human rights agencies to take part in this project. One agency, ultimately unable to meet all of HUD's requirements, did not participate. The remaining nine are:

- Colorado Civil Rights Commission
- Connecticut Commission on Human Rights and Opportunities
- Kentucky Commission on Human Rights
- Massachusetts Commission Against Discrimination
- Michigan Department of Civil Rights
- New Jersey Division on Civil Rights
- Ohio Civil Rights Commission
- Pennsylvania Human Relations Commission
- Washington State Human Rights Commission

Each of these agencies was offered up to \$120,000 to pay for a year-long demonstration of one or more strategies to combat systemic discrimination. (The Connecticut agency's budget was only about \$90,000, however, and its demonstration period only eight months, because of extended contracting difficulties and other problems that delayed the start of its project.) The agencies were not required to match the federal money, but were, of course, free to supplement it with funds of their own. Within general guidelines and a minimum of specific requirements, each agency designed its own demonstration program.

The agencies performed their demonstrations as subcontractors to A. L. Nellum and Associates, Inc. (ALNA), the contractor HUD selected to run the project. They received their money through ALNA and had no direct contractual relationship with HUD.

Under its contract with HUD, ALNA's role included the following:

- Assisting each State agency during the planning stage of its program, and assuring that proposed strategies met project requirements.
- Distributing funds to the agencies.
- Monitoring each program over a 12-month period.
- Evaluating the impact of each program.

- Preparing a final report (of which this case study is a part) describing the implementation and results of the project in detail.

The project was under ALNA's direction from its inception in October 1976.

Focusing on State agencies as vehicles for social change, this project had two primary objectives:

- To identify replicable, tested, and proven intervention strategies for combating systemic discrimination.
- To strengthen State agency capacity and effectiveness in carrying out their responsibilities under existing laws.

Additional objectives were an increased understanding of systemic discriminatory practices and of the States' role in combating them, and the dissemination of this understanding to interested citizens.

B. STRATEGIES AT A GLANCE

To introduce briefly the subject of this case study, the lending discrimination strategy demonstrated by the Pennsylvania Human Relations Commission consisted of the following:

- To conduct a computer analysis of Home Mortgage Disclosure Act data and related demographic and other data in Harrisburg, Philadelphia and Pittsburgh to identify discriminatory lending patterns.
- To seek voluntary agreements to change such patterns.
- Where necessary, to file pattern and practice complaints against lenders believed to be discriminating.

II. INTRODUCTION TO THE AGENCY

The Pennsylvania Human Relations Commission (PHRC) consists of 11 members appointed by the governor for five-year terms. 1/ The governor designates the commission's chairman. 2/ The commission appoints its executive director and other employees and, with the approval of the attorney general, its own attorneys. 3/ In 1968, PHRC was transferred from the Department of Labor and Industry to the governor's office. 4/

The Pennsylvania Human Relations Act recognizes as a civil right the opportunity to obtain commercial housing without discrimination based on race, color, religious creed, ancestry, handicap or disability, age, sex, national origin, or the use of a guide dog because of the blindness of the user. 5/ The act's later specification of various "unlawful discriminatory practices," however, omits age as a prohibited ground for discrimination. 6/ With regard to housing loans, the practices made unlawful include refusing to finance or otherwise withholding financing of commercial housing; and refusing to lend money, or discriminating in the terms or conditions of any loan, "whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of commercial housing." 7/

Of a total 1,782 complaints filed with PHRC in FY 1976, 125 (7 percent) alleged discrimination in housing or in related credit transactions. 8/ This represented a significant drop from previous years--234 housing complaints out of 2077 (11.3 percent) filed in FY 1975, 9/ and a cumulative total of 2,635 out of 14,710 (17.9 percent) since 1956. 10/

Of the 125 housing complaints in FY 1976, only three (2.4 percent) named lenders as respondents. 11/ Though small, this represented a proportional increase from past years, since lenders were named in only 1.7 percent of the housing complaints filed in FY 1975, 12/ and in only 1.4 percent of all those filed since 1956. 13/

Prior to the project, PHRC had been active in the area of housing finance, but more so with public lenders than private. It had signed an agreement, for example, with the U.S. Department of Housing and Urban Development and the Pennsylvania Housing Finance Agency to "insure both non-discrimination and affirmative marketing practices in connection with federal housing support money allocated to Pennsylvania." 14/ This agreement was not without its desired impact on private lenders, however, for it included a requirement that PHFA deposit its money "in institutions which will reaffirm their non-discriminatory loan and investment policies in writing." 15/

In 1973, the commission and the Pennsylvania Association of Realtors tried to work with the financial community (both regulatory agencies and private institutions) to develop objective criteria for mortgage lending decisions. The effort failed, however, because "the financial segment" would not participate. 16/ Except for this, PHRC's activities prior to the project in the area of discrimination in home financing were confined

to processing the individual complaints that had been filed against lending institutions. 17/

III. STATEMENT OF THE PROBLEM

An historical pattern of restrictive policies and practices at the Federal, State and local levels, has limited access to housing for minorities. In the past, various housing-related codes and guidelines called for the virtual exclusion of "nonhomogeneous" individuals from certain neighborhoods. The results of that past pattern, racial concentration, can be seen today in the cities of Pennsylvania. For example, according to 1970 census data, 95 percent of the State's minorities were concentrated in the cities of Philadelphia, Harrisburg, and Pittsburgh alone. In the city of Philadelphia, virtually the entire minority population of over 650,000 persons live in less than one-hundred of the city's total of 350 census tracts. One study indicates that the majority of the city's census tracts were more segregated in 1970 than they were in 1930.

The discrimination that perpetuates segregated housing patterns is not all in the past. For example, the Pennsylvania Human Rights Commission (PHRC) found, through an earlier testing program, that contributing reasons for the residential concentration of minorities are the inequities in sharing information about available housing and home financing and in opportunities for acquiring housing. The disparities cannot be explained by the racial gap in buying power, for discrimination is a problem for minority persons at the highest income levels regardless of housing cost.

Since very few homes are acquired without financing at some stage, home financing is clearly a significant factor with respect to homeownership, and the policies and practices of financial institutions are a possible source of systemic housing discrimination. In fact, several studies have shown that financial institutions contribute to housing disparities by "redlining," or denying housing-related loans to certain neighborhoods. In many cases, many of the neighborhoods that are not receiving their fair share of home financing either are racially mixed or have heavy minority concentrations. 2/

Although racial disparities in lending have been well documented, most studies fail to prove conclusively, if at all, whether the disparities are caused by racial discrimination or by actions based legitimately on business or economic necessities. Because of this failure, civil rights laws and anti-discrimination remedies are generally unavailable to counter and correct the problem. A basic obstacle to developing such proof has been the lack of sufficient financial data to establish the extent to which lending disparities can be attributed to systemic discrimination in violation of Federal and State civil rights laws. Although the Federal Home Mortgage Disclosure Act made more information available on financial activities, no method had been developed to use the data supplied through this law to identify racially discriminatory activities.

(Note--The extent to which identifying discrimination is a problem, of course, depends on what is meant by "discrimination." While a racially disparate impact is generally held to be evidence of unlawful discrimination only when the policies or practices in question are not required by

"business necessity," PHRC maintains that in Pennsylvania disparate impact per se is unlawfully discriminatory. See the discussion of the Chester Housing Authority case in Appendix A for details.)

IV. DESCRIPTION OF THE STRATEGY

A. DESCRIPTION

The Pennsylvania Human Relations Commission's strategy involved the use of data made available under the Federal Home Mortgage Disclosure Act to determine the extent to which lending institutions discriminate in home financing.

The Act, applicable to depository lending institutions governed by Federal regulatory agencies, requires each such institution with assets of more than \$10 million to report every 6 months on its lending activity, both loans that it made and those that it purchased. These reports, which are not filed with any single regulatory agency but must be made available to the public, show for each census tract the total number and dollar amount for FHA and VA loans (government-subsidized or assisted), other residential loans, total residential loans, multifamily loans, home improvement loans, and loans to mortgage applicants who do not intend to reside in their property. Items must be reported according to where they were secured--outside or inside the SMSA.

Philadelphia, Pittsburgh, and Harrisburg were the target areas for the strategy. These are Pennsylvania's three largest SMSAs, have the largest minority populations in the State, and are also the location of PHRC's three regional offices. The strategy looked at 59 lending institutions, selected on the basis of size (the most assets) and type (commercial bank, savings and loan association, or mutual bank). Included were 29 commercial banks, 26 savings and loans, and 6 mutual savings banks; 19 of the institutions were in Pittsburgh, 16 in Harrisburg, and 24 in Philadelphia.

The heart of the strategy was to analyze the mortgage disclosure data together with a wide variety of demographic data to identify lending disparities between areas where many protected class persons reside and those with few such persons. PHRC then planned to take action to eliminate any violations it found. PHRC's data analyses did not even attempt to show the extent to which racial disparities in lending patterns could legitimately be attributed to "business necessity." The commission felt this was unnecessary. Under its reading of several State court decisions, racially disparate lending patterns per se are unlawfully discriminatory in Pennsylvania, regardless of any explanatory reasons of "business necessity" that lenders might cite as justification. (For a detailed discussion of this point, see Appendix A.)

PHRC hoped eventually, after filing some complaints if necessary, to obtain industry-wide voluntary compliance agreements. By the end of the demonstration period, however, there had only been enough time to complete the data analysis and to hold initial meetings with bankers.

The components of the strategy:

1. Research

- Data collection.
- Data recordation, organization, and synthesis.
- Data analysis.

2. Development

- Use of analysis to prepare remedial actions, including voluntary compliance agreements.
- Development of draft legislation, commission regulations, and a new compliance package.

3. Action

- Implementation of remedial actions, including filing complaints.

B. CHANGES IN THE STRATEGY

PHRC's increasing focus on the research component of the strategy resulted in it having very limited time to implement the action component. Some work originally scheduled to begin after completion of the research was performed earlier. This included drafting complaints and developing and using new compliance procedures such as intake forms to consider any lending discrimination implications in all incoming complaints.

V. IMPLEMENTATION

A. PROJECT STAFF

The following positions were involved in implementing the strategy:

- Housing Director
- Project Coordinator (Harrisburg office)
- 3 Project Staff Investigators (1 in Harrisburg Office, 2 from Philadelphia Office)*
- Project Secretary (Pittsburgh)

The project staff was under the direction of the commission's housing director, who supervised the management and financial aspects of the program, as well as the organization of program activities. Staff supervision followed PHRC's standard organizational lines, with the regional housing supervisors sharing responsibility.

Other staff persons involved in the day-to-day operation of the strategy each had community experience and investigative skills, and an advanced degree in research.

Project staff members were able to find assistance from other sources within the agency. At the headquarters level and at the regional offices, they had access to legal staff headed by the commission's general counsel. Other commission staff members aided the project staff by providing professional input and experimental data secured through their contacts with financial institutions.

B. STAFF TRAINING

Training for the demonstration project was ongoing and occurred at several levels. During the pre-implementation stage of the project, two staff members received formal training from the American Banking Institute, and several enrolled in courses for bank employees (through a waiver from the local banking association) and participated in local and Statewide conferences and meetings. Valuable training was also acquired through a seminar conducted by Pottinger and Company, Washington, D.C. Project staff found the manual accompanying the seminar, "The Integrated Compliance Program--A Comprehensive Strategy for Implementing Compliance with Equal Credit and Fair Lending Laws," to be an excellent source of information for groups concerned about workable financial programs. Since the seminar was designed basically for financial institution officials, project staff were able to establish several contacts within the financial industry and among regulatory agencies, and to gain knowledge of the civil rights sensitivity

*HUD/ALNA paid staff.

of other seminar participants.

Also during the pre-implementation stage, PHRC provided some orientation on the project for the total agency staff, with the level of orientation depending upon the level of involvement of staff members. All staff received bulletins on the parameters and impact of the project. For housing and administrative staff designees, orientation was more detailed and involved meetings, manuals, audio-visual presentations, and referrals to written materials.

As part of the general training program, as well as data collection efforts, project staff reviewed specialized information and materials from numerous sources. Readings included anecdotal materials illustrating Statewide problems in the area of housing finance discrimination, laws on the topic (Federal, State, and local), relevant studies, books, and reports.

C. RESEARCH

Research, the major component of the strategy, was conducted in two stages--the preliminary stage and the actual research, as discussed below.

1. Preliminary

The preliminary stage involved selection of the lenders to be studied, and the development of the initial research methodology and tools to test what PHRC said were its four research hypotheses:

- As the percent of the non-white population increases in a census tract, the number of loans and amount of money for the loans lent in a census tract decrease.
- As the percent of the female head of household population increases in a census tract, the number of loans made and the amount of money for these loans in a census tract decrease.
- As the percent of the non-white population decreases in a census tract, the number of loans and the amount of money for the loans lent in a census tract increase.
- As the percent of the female head of household population decreases in a census tract, the number of loans and the amount of money for the loans increases.

To establish the methodology for collecting data to test these hypotheses, it was necessary to procure preliminary information and data, including:

- All relevant laws, regulations, and organizational data on agencies affected by the demonstration.

- List of sources for procuring required demographic data.
- Information about the format of disclosure under the Federal Home Mortgage Disclosure Act and the accessibility of FMDA reports.
- Data to identify financial institutions by type and category and to develop a method for subdividing classes and subcategories of institutions.
- Data regarding potential target areas and institutions within each SMSA.

To test the four hypothesis, the commission selected a random sample of census tracts from the Pittsburgh and Philadelphia SMSA's, and used all 93 census tracts in Harrisburgh. (Accuracy of the random samples for Pittsburgh and Philadelphia was later tested by additional computations of data from all census tracts--over 2,000 census tracts for both SMSA's.)

In choosing the random samples, it was necessary to exclude non-residential census tracts, since the mortgage disclosure data pertain only to residential areas. All census tracts with less than five percent of the average number of housing units per tract in each SMSA, as determined by the commission, were considered to be non-residential and were eliminated from each SMSA sample.

Lending institutions targeted for the study were chosen from each of the three SMSA areas--Pittsburgh, Harrisburg, and Philadelphia. Targets were commercial banks, savings and loan associations, and mutual savings banks, the three most active types of financial institutions covered by the Home Mortgage Disclosure Act. In selecting a manageable sample, PHRC rated each financial institution according to its assets and selected the largest ones in each category. A total of 16 to 24 financial institutions in each SMSA were chosen for study.

The instruments designed and used by the agency to collect, record, and prepare data for the initial analysis included letters of contact, and follow-up interviews, letters and sheets. The agency also developed a method for entering collected data into the computer, and a plan by which the materials would be collected in a central point and distributed to each of the regional offices in a manner to protect them from being lost.

This stage of the research effort also involved the development of a data collection plan and an instrument for recording demographic data, social variables, neighborhood data, disclosure data, data pertaining to the financial institutions, and other information. This instrument would allow data to be recorded in an organized and uniform manner for each census tract: data on the financial institutions within a tract on one page of an accounting booklet, followed by socio-economic factors within a census tract on another page.

2. The Research

This stage consisted of the actual data collection; data recordation, organization and synthesis; and finally data analysis. Beginning with data collection, this part of the strategy is discussed below.

● Data Collection

Data were collected utilizing the collection procedures developed during the preliminary stage. Data collected on each financial institution chosen for study included its assets for 1976; the location of its branches by census tract; its lending activity (number, amounts, and types of loans provided); whether it is a commercial bank, saving and loan association, or mutual savings bank; and whether applications are accepted and loans are approved at each branch or only the main office. Other information collected using the procedures developed in the preliminary stage included socio-economic data by census tract, and information about financial regulatory agencies, about public and private organizations that could and would supply information relevant to the project, and about additional sources.

The primary sources of basic data about the selected institutions--such as names, addresses, listings of contact persons and their assets--were directories prepared by the State Banking Department and by various professional associations, such as the Pennsylvania Banking Association and the Pennsylvania Savings and Loan League. Information was verified in many cases simply by using the yellow pages from the three target areas. Other data sources included private organization reports such as the Moody's Bank and Finance Manual of 1976, Dun and Bradstreet, Standard and Poor, and Who's Who In Banking. All are listed in the commission's Resource Directory, an overall compilation of sources developed to facilitate the data collection process.

Data originally collected by the U.S. Department of Commerce and the Bureau of the Census (including the 1970 census count) provided population, economic and housing information about the census tracts within each SMSA. These data were retrieved from several sources including the Pennsylvania Regional Planning Commission, Southwestern District. Information that had not been synthesized by the Census Bureau was compiled by the staff from the special annual housing and population reports for 1970 prepared for each SMSA. Individuals working within lending the industry also served as sources of information.

PHRC originally thought that data collection would require letters requesting the data, field visits to agencies that did not respond, and, possibly, subsequent follow-up efforts. Although all necessary documents had been prepared--letters, interview sheets, follow-up contact forms, and letters from legal counsel defining the commission's authority to secure such data--since all but approximately six percent of the institutions surveyed were cooperative, the extensive follow-up collection methods were found to be unnecessary.

- Data Recordation, Organization and Synthesis

After starting with its original plans, the commission soon realized that manual recordation was requiring an enormous amount of staff effort in a very short time, especially for the Pittsburgh and Philadelphia SMSA's. To remedy this situation, PHRC subcontracted with the Southwestern Regional Planning Commission for access to its previously established computer data base for retrieving socio-economic data pertinent to the project. The sub-contract also allowed PHRC to enter into the computer other data collected during the project. Although the commission decided to process data by computer, it prepared a sample manual record for the Harrisburg SMSA to demonstrate the original format.

Several of the socio-economic variables collected were synthesized to form an "economic indicator" to be used as a single variable. This indicator was developed by an outside consultant, who called it the Poverty Intensity Index. While PHRC could not release the formula, it reported that the indicator was based on the following variables:

- Median income (family and unrelated individuals).
- Median education of persons over 25.
- Percent housing units vacant over six months.
- Percent housing units with more than one person per room.
- Percent housing units lacking some plumbing.
- Percent persons below the poverty line.
- Percent non-husband/wife family with children under 18 years old.
- Dependency ratio: the total number of unemployed persons, persons less than 16 years of age, and persons with other income (including public assistance and social security payments), divided by the total number of persons employed or in the military service.

- Data Analysis

The commission looked for correlations between the following two sets of variables:

- 1st Set

- percent non-white population
- percent female head of households
- economic indicator

- 2nd Set

- branch location

- number and dollar each of type of loan:
home improvement, conventional FHA/VA,
multifamily, non-occupant
- type of financial institution
- behavior of individual financial institutions

Neither average age nor median value of housing unit was among the variables analyzed in the final correlation because their inclusion would have been misleading. Since average age of housing unit indicates only how old a home is, it does not reflect the more significant age factor--remaining economic life--which is considered by appraisers and loan officers. The only available data for median value of housing unit are based on the values of single family housing only, and, therefore, are not necessarily representative of all housing values in a census tract.

Project staff organized and examined the data in three stages to allow for different levels of specificity in the analysis:

- Correlation Stage I - comparison of loans within and outside of the SMSA made by the lending institutions.
- Correlation Stage II - examination of the lending of particular institutions within the SMSA (relative to other types of lending institutions within the area).
- Correlation Stage III - examination of lending institutions by census tracts and types of loans, with some limited comparability of activities of lending institutions with census tracts.

Using the above stages, PHRC project staff attempted to organize and synthesize data so that it could isolate factors that pointed to discriminatory behavior on the part of financial institutions. Data from each SMSA were reviewed, summarized, and compared.

Once the residential census tracts had been identified the random samples were selected. Every Rth item was taken for each SMSA (R=4 for Pittsburgh, R=5 for Philadelphia), and a random starting point was chosen using a table of random numbers. This method produced a sample of 202 census tracts for the Philadelphia SMSA and 174 for the Pittsburgh SMSA.

-- Correlation Stage I

For each SMSA, census tracts were grouped according to the percentage of the non-white population within ranges of 10 percent. For each such group within each census tract the average for each of the following variables was computed:

- percentage female head of household
- average age of housing unit
- average median value of housing
- economic indicator

Based on the above information, the commission found the following

for the Harrisburg SMSA.

- There is a relationship between the percent non-white population and the percent of female head of households within census tracts.
- There is a relationship between percent non-white and average economic indicator.
- Non-whites in the Harrisburg SMSA are concentrated in a few census tracts.

With one exception, PHRC made similar findings for the Philadelphia and Pittsburgh SMSAs. Differing from findings for the Harrisburg and Philadelphia SMSA's, the commission found that in the Pittsburgh SMSA, census tracts with the highest average percentage female head of household population were not necessarily the census tracts with large non-white populations.

The commission's summary of findings for the three SMSA's are:

- For all three SMSA's, the poorest areas (lowest economic indicators) are predominantly non-white.
- Generally, the highest average percent female head of household groups are also the groups with a higher percentage of non-whites.
- In both the Pittsburgh and Harrisburg SMSA's, the oldest homes are in the 30-50 percent non-white census tracts, while in the Philadelphia SMSA the older homes are in the predominantly (over 60 percent) non-white areas.

The commission states that financial institutions assert that they do not like to lend in areas that they perceive as economically depressed. The above relationships show that making lending decisions on that basis adversely impacts on non-whites and females heads of households.

-- Correlation Stage II

PHRC next determined the extent to which financial institutions invest their home-related funds outside the SMSA. It began by deriving a standard percent of investment for each of the three types of financial institutions researched (commercial banks, mutual savings banks, savings and loan associations). The standard was derived by aggregating all the mortgage disclosure data for each type of financial institution and deriving the percentage of total activity.

In reviewing the data, the commission noted that the least active for all three SMSA's was the purchase of loans inside the SMSA. In Harrisburg and Pittsburgh, the majority of institutional activity was found to be in the area of loans originated inside the SMSA. For Philadelphia, the data indicated a mix of activities. As a group, mutual savings banks were found to do a greater amount of investment outside the SMSA. While savings and loan associations were found to invest to a greater extent

inside the SMSA, commercial banks were found to expend half their funds in purchased loans outside the SMSA.

PHRC's next step was an analysis of errors made by financial institutions in meeting the mortgage disclosure requirement. The commission found four basic types of errors:

- Entries into wrong census tracts.
- No census tract designation for loans within the SMSA.
- Zip code entries instead of census tract entries (permitted only in the first reporting cycle).
- Improper census tract.

The commission assumed such errors were due to inexperience in collecting and assembling the data. Staff did not, however, exclude the possibility that some mistakes may have been deliberately made to cover up illegal or discriminatory activities.

-- Correlation Stage III

In the final stage of its analysis, the commission concentrated on each institution's overall lending activity by type of institution.

For the Harrisburg SMSA, the data indicated that the majority of conventional mortgages were made in census tracts with less than ten percent non-white population. From another analysis for the Harrisburg SMSA, the commission concluded that, although the total number and total amount of both conventional loans and home improvement loans increases as the economic indicator increases, the average amounts for each loan type differs very little. Comparing figures for the Harrisburg SMSA, the commission stated that the total number, amount, and type of loans granted in a census tract are related to the racial composition of the area.

To analyze data on financial institutions in the Pittsburgh SMSA, the commission placed census tracts into four groups according to their ratings against the economic indicator. For each census tract, data recorded consisted of percent non-white, percent female head of household, total number of loans, total dollar amount of loans, number of housing units, total number of branches in the tract, type of financial institution in that tract, and type of loans in the tract.

The first analysis was a comparison of census tracts in each group according to the percentage of their non-white populations. Two census tracts with different percentages for the non-white population were chosen for a comparison of lending activity in association with other recorded data.

In another analysis of activities in the Pittsburgh SMSA, census tracts were grouped according to types of loans made within them (i.e.,

FHA/VA, conventional, home improvement, and multifamily and additions). For each group, computations were made for the average percentage non-white, percentage female head of household, and economic indicator. Averages were ranked from highest to lowest (female head of household and non-white) according to the tract groupings and lowest to highest economic indicator.

In a third analysis, census tracts were grouped according to the percentage of their non-white population. For each census tract within the five groups that were formed, the total number and volume of loans were recorded.

A final analysis was made to determine why certain census tracts had reported no transactions, and to review where certain financial institutions loaned money.

Findings based on analyses of the Pittsburgh SMSA were similar to findings for the Harrisburg SMSA.

A variety of similar analyses were performed for the Philadelphia SMSA.

The following were findings of the correlation stage III analyses as they were reported by the commission:

- The more economically depressed areas are usually characterized by higher averages of percent non-white population, higher averages of percent female head of household, higher averages of age of housing and lower economic indicator, as well as lower levels of financial activity.
- Several financial institutions of all three types (commercial banks, savings and loans, mutual savings banks) invested high percentages of funds outside their relevant SMSA.
- Some type of loan activity was present in nearly all census tracts regardless of race and economic indicator. Census tracts in which there was an absence of lending activity of any kind were characterized by one or more of the following:
 - \$0 median value of housing
 - few or no housing units
 - presence of housing project
 - extremely high nonwhite population
 - undeveloped rural areas
 - government land
- The predominant loan types in the higher percent non-white areas were home improvement loans.
- Conventional loans were found to be the predominant loan types in the lower percent non-white areas, and were larger in amount than those made in non-white areas.

- When a census tract regardless of racial composition had little activity, it could be explained in some cases in terms of number of housing units or in value of housing units.
- More financial institution branches were found in areas with extremely high percentages of white population.
- Few financial institutions, if any, made FHA/VA loans.
- Commercial banks seemed to have the largest geographical area of activity, showing lending activity in more tracts than savings and loans, but utilized a significantly smaller percentage of their assets.
- The smallest home improvement loans were found in predominantly non-white areas.
- Home improvement loans were made predominantly by commercial banks.
- Savings and loan associations were located in and lent in predominantly white areas (Philadelphia and Harrisburg SMSA).
- Less lending activity and lower amounts of loans were formed in the second to highest group of percent non-white in each SMSA; in Philadelphia, this was the 60-30 percent non-white group, and in Harrisburg, the 10-20 percent non-white group.
- In the Harrisburg SMSA, race was a factor in total number and dollars of loans made per census tract. The non-white census tracts had less lending activity than the white census tracts of same or similar economic indicators.
- In Pittsburgh and Philadelphia race was not the predominant factor in total number and dollars of loans made per census tract of same or similar economic indicators.
- Most financial institutions' branches were located in predominantly white census tracts.
- Race was a factor in the decline in all lending activities in the census tracts showing moderate integration.

It should be noted that the data analyses on which these and other findings were based do not attempt to show the extent to which racial disparities in lending patterns can legitimately be attributed to "business necessity." PHRC maintains that, in Pennsylvania, racially disparate lending patterns per se are unlawfully discriminatory, regardless of any reasons of "business necessity" that lenders might point to as the cause of such disparities. See the discussion of the Chester Housing Authority case in Appendix A for details.

In addition, PHRC's research has been criticized for various methodological and other problems. These were cited by HUD in its denial of permission to publish the commission's research report. HUD's decision was based in part on the views of the "outside reviewer" it selected to evaluate the report. His critique appears in Appendix B. PHRC has subsequently said, "We readily accept the essence of the evaluation."^{1/}

D. DEVELOPMENT

1. Use of the Analysis to Prepare Remedial Actions

The Commission decided that some of the discriminatory behavior on the part of lending institutions could best be addressed by the commission, some by external sources, and some by litigation and pattern and practice complaints. PHRC developed remedial responses at all these levels. Some of these actions were developed in earlier phases of the project than had been originally projected.

● Pattern and Practice Complaints

By the end of the project and as a result of the study, PHRC felt that 10 to 15 percent of the institutions studied were potential respondents for a pattern and practice case. Several complaints were drafted involving many of the institutions.

● Financial Institution Compliance Package

The commission designed the compliance package to facilitate complaint intake and processing, including drafting of the complaint, complaint research, complaint investigation, finding on the complaint (as to cause or no cause), conciliation, and preparation of the case for public hearing, if necessary. The intake packet contains two new documents that supplement other materials used by the commission: "Financing and Sales: Normal Procedure and Problem Words" and "Financial Institution Research Sheet."

The intake packet is designed to do several things. It explains the financial transaction and lending procedures. In providing direction in conducting a complaint intake interview, it distinguishes financial institutions with complex loan processing procedures from those with simple procedures so the investigator can determine whether specific actors followed normal procedures. It also provides the investigator with an explanation of some of the jargon used by the financial institutions, and sample questions that can be used to research a complaint.

Developed for the compliance package, the investigatory plan includes some of the major kinds of documents to be secured in investigating a complaint, and describes procedures followed by lending institutions and the financial industry as a whole. This information would increase the investigating staff's level of expertise in identifying the existence of the discrimination alleged by complainants.

A consent order covering financial institutions was also included in

the compliance package. A consent order is used when there is a finding of cause on a complaint and a legally enforceable document is needed as the basis for conciliation. In signing the consent order, the respondent waives its right to a public hearing and agrees to take specified remedial actions. Due to complexities involved in developing consent orders for financial institutions, PHRC drafted a "boiler plate" consent order to remove some of the drafting burden that previously fell on individual staff persons, and to formulate uniform terms for the industry as a whole. Further revisions will be made before releasing it to other enforcement agencies who might desire to use it. In post-project documentation, the commission reported its use of the consent order in a case against one lending institution.

Another part of the compliance packet is a research format to be used by investigators to identify officers of a financial institution. With this information, the investigator can become more aware of how a discriminatory policy might be developed and possible difficulties that could be encountered in investigating or conciliating a complaint. The packet also contains drafts of basic allegations to be used in complaints filed by parties outside the commission. The commission is developing another type of allegation to be used solely for pattern and practice complaints. The compliance package was distributed to each of the three regional offices for use and evaluation. Revisions in the package were made to alleviate difficulties in use reported by the Philadelphia Regional office.

- Fair Lending Practices Posters and Brochures

Posters and brochures were also developed. Over 5,000 posters were printed and financial institutions were instructed to post them. The brochures describe the law as it relates to financial institutions and contain a referral form for persons who desire additional information or wish to file discrimination or other complaints that involve financial institutions.

- A Two-Phase Audio-Visual Presentation

Automatically advanced cassettes and slides explaining details of the project were developed. The slides describe the commission, relevant laws, home financing and discrimination problems, how the project was initiated, details of the strategy, methodology, findings of the study, and the development of model actions by the commission.

- A Proposed Amendment to the Pennsylvania Human Relations Act

A proposed amendment to the Pennsylvania Human Relations Act was drafted by the commission to prohibit specific acts of discrimination by financial institutions in connection with home mortgage and housing-related loans. Specifically, the amendment prohibits the use by financial institutions of such "non-objective" criteria in lending and in establishing loan terms as:

- (1) Consideration of geographical locale of property in whole or in part because of:

- (a) present, prospective or projected characteristic of occupants of the property; or
 - (b) present, prospective or projected characteristics of the properties adjacent to the unit for which the loan is requested.
- (2) Consideration of the loan, applicant or recipient based, in whole or part, on the following characteristics of any persons involved in the transaction at any stage--race, color, religion, creed, ancestry, sex, national origin, handicap, disability or the use of a guide dog due to the blindness of the user.
 - (3) Any consideration, whether intentional or not, that has a disparate effect on any class or sub-class of persons of any race, color, religious, creed, ancestry, sex, national origin, handicap, disability or the use of a guide dog due to blindness of the user.

- Draft Regulations on Disclosure By Financial Institutions

The commission submitted draft regulations to its Ad Hoc Committee on Housing on March 20, 1978. The regulations were to be added to the commission's existing regulations. They were designed to require lending institutions to report data concerning their activities "to insure that non-objective criteria, procedures, policies or practices which have a discriminatory intent or effect are not utilized as a basis for acceptance or rejection of such loans or services, facilities, privileges, terms, conditions in any manner in connection with such loans or requests for loans."

- The Federal Home Mortgage Disclosure Act and Federal Regulatory Agencies

The commission also developed a model law and amendments to provide for the disclosure of data by institutions currently not covered by the Act, such as mortgage bankers.

- Statements Pertaining to the Operation of Federal Regulatory Practices

PHRC submitted supportive comments on the new rules proposed by the Federal Deposit Insurance Corporation to require State non-member banks to collect and retain race and sex data on home mortgage applicants. In PHRC's opinion the rule would stimulate a significant body of data that could be used to monitor the lending practices of financial institutions and their compliance with the Equal Credit Opportunity Act, the Fair Housing Act, and the Pennsylvania Human Relations Act. The commission suggested that data resulting from the new rule should be made available to Federal, State, and local agencies.

The commission also supported new regulations proposed by the Federal Home Loan Bank Board to prohibit discriminatory practices by lending insti-

tutions, but the commission also related several concerns in its comments on the the regulations. One was that by requiring financial institutions to collect prescreening data from applications the proposed regulations could require bank employees to make inquiries over the phone as to the race and sex of applicants. The commission found this form of data collection offensive and feared that it placed the lending institution in a bad public relations position. As an alternative, the commission recommended that each institution be required to acknowledge all requests for financing with written replies explaining the need for information and enclosing a reply card for voluntary identification.

PHRC also suggested that the section of the new regulations proposing a "loan application register" should be considered along with a requirement that lenders have written "loan underwriting standards," since used connectively they could point to areas of possible discrimination. Using both lists one can determine disparities in the distribution and terms of loans among neighborhoods with different income levels, building ages, and racial and head of household compositions. The overall recommendation from PHRC regarding the FHLBB's regulations was that they be more clearly defined and strengthened.

In statements on the operation of Federal regulatory agencies, the commission indicated how those agencies might be more effective in the future. Also included was commission testimony on the Community Reinvestment Act.

- A Draft of a Possible Affirmative Action Agreement

An agreement was developed by the commission in which financial institutions would agree to develop a voluntary affirmative action program to assure equal housing opportunity through fair lending practices. The agreement includes such a proposed program. The commission contacted several financial institutions to discuss the agreement and the development of affirmative programs in lending in fulfilling the requirements of the fair housing and equal credit laws.

- Review of the Mortgage Bankers Association of America's Publication

Review of the publication entitled "Redlining: Solution Requires Unified Approach" led the commission to conclude that the MBA Task Force report merely offers a defense for redlining.

- A Draft of Model State Legislation

The commission developed model State legislation, which included a proposed amendment to the Pennsylvania Human Relations Act to provide specific language against discriminatory lending practices, and a proposed Mortgage Disclosure Act for the State, which provided that regulatory functions be shared by a joint committee of banking, commerce, and the commission, and which also defined the duties of each member of the committee.

E. ACTION

The commission planned to apply as many of its new enforcement tools as possible before the end of the project to determine their degree of success and the extent to which revisions would be necessary. As a matter of fact, it was in discussing and in applying the compliance package early in the project that the commission determined a need for the "voluntary compliance package" for institutions wanting to resolve difficulties before complaints were filed against them. The affirmative action agreement or memorandum of understanding was then designed for this purpose. None of the agreements had been executed by the end of the program year, but one lending institution had entered into discussions concerning adoption. Literature distributed by the commission on affirmative programs, moreover, has triggered a number of inquiries regarding efforts along this line, such as training programs and the inclusion of civil rights programs within school curricula.

Other items such as proposed regulations, legislative action and Federal agency action have been directed to the appropriate authorities for consideration and implementation. The commission is in the process of monitoring the responses to its recommendation developed through the project.

As the initial step in the strategy's action phase, the commission contacted each financial institution studied and extended an invitation to respond to information it collected and to profiles it developed as a result of the study. Some of the institutions that responded requested additional meetings, and at least one asked the commission to survey its operations. A general discussion of these responses is provided below.

During the meetings PHRC shared its analysis of the data for financial institutions in each SMSA. In response, the financial institutions offered several reasons for greater activity outside of the SMSA:

- Insufficient demand inside the SMSA.
- Higher rate of return on investments outside the SMSA.
- High degree of competition from other local institutions.
- Heavy purchasing activity involving specific types of loans (e.g., FHA/VA loans) on properties located outside the SMSA.
- "Dying" marketing areas inside the SMSA in terms of housing starts, population and home mortgages.
- Rapid growth in an institution's assets, forcing investment outside.
- Location of institution branches outside SMSA.
- Real estate dealers funneling demand for mortgages outside of the SMSA.

F. FUTURE OF THE STRATEGY

Through post-project correspondence, PHRC project staff indicated plans to share the results of the study by issuing a news release and by issuing an Executive Summary to commissioners and staff.

PHRC intends to file complaints based on its data analyses, and to pursue its plans to seek industry-wide compliance. It also will continue using its new intake and compliance procedures, enabling it to identify instances of discriminatory lending practices.

G. COSTS

The total cost of the demonstration strategy was \$153,713, including \$120,000 of HUD/ALNA funds. A detailed breakdown of project costs appears below.

<u>Cost Categories</u>	<u>Total Project Cost</u>	<u>HUD/ALNA Funded</u>
Staff Salaries & Benefits	\$100,988	\$90,527
Consultant Fees and Other		
Non-Staff Labor Costs	5,438	5,438
Travel	2,755	2,755
Production of Materials	12,760	12,760
Supplies	3,671	2,360
Computer-Data Processing	6,160*	6,160*
Other	21,941	

* The portion or amount of the total project costs that need not be repeated if the project continues (essentially, initial research, program development and other start-up costs).

Source: PHRC Final Report.

VI. OUTCOMES

For the most part, the outcomes reported in this section are the contractor's findings as to changes resulting from what the agency did in the course of its demonstration. All outcomes were grouped into two categories, agency capacity and equal housing opportunity.

Agency Capacity. The agency's own capability to identify and challenge systemic housing discrimination, as measured by such pre-post project changes as increased staffing, new research or investigative or analytic expertise, better use of community groups, new training techniques, and strengthened negotiating tactics. Improvements in handling individual complaints, while not generally a concern of this project, may also be a relevant measure of increased capacity if they include, for example, new procedures for identifying individual complaints that should be treated as charges of systemic discrimination.

Equal Housing Opportunity: The impact of the strategy on systemic discrimination, as measured by pre-post project changes in specific discriminatory policies and practices or in increased housing opportunities for minorities or other protected class persons. The equal opportunity outcomes have themselves been divided into two subcategories -- potential opportunity and actual opportunity. Potential equal housing opportunity outcomes are real-world changes that hold the promise of leading to increases in actual housing minorities. Actual equal housing opportunity outcomes are either measurable increases in housing actually obtained by minority groups or actual changes in behavior (such as affirmative actions known to have been taken or the absence of discriminatory treatment previously known to exist).

Potential opportunity outcomes are one step removed from actual opportunity outcomes in the same way that changes in the rules of a game are one step removed from the actual moves the players make. In fact, the distinction between potential and actual opportunities is essentially the difference between rules and behavior. Promises made in a binding conciliation agreement, for example, are only a potential opportunity outcome; they change the rules that govern the respondent's behavior but not necessarily his behavior itself (which, if also changed, would represent an actual opportunity outcome).

Capacity and opportunity outcomes, it should be noted, are not mutually exclusive. By definition, an agency cannot have produced an equal opportunity outcome if it did not have the capacity to do so. Each equal opportunity outcome, therefore, is indicative of a capacity outcome as well.

A. EQUAL HOUSING OPPORTUNITY OUTCOMES

By project end, PHRC had identified approximately 15 lending

institutions for possible complaint activity. However, since no complaints had yet been filed, there was no measurable impact on the behavior of lending institutions.

B. AGENCY CAPACITY OUTCOMES

While much of PHRC's activity was still in the development stage and its research the subject of serious methodological criticisms, it did demonstrate several areas in which existing capacity had been increased or new skills had been developed. Such increased capacity is evidenced by the accomplishments listed below:

- Conducted extensive staff training on general civil rights issues related to home financing policies of lending institutions.
- Prepared Housing Resource Manual, a compilation of source materials, bibliographies, research reports, etc., that were utilized throughout the project.
- Revised complaint intake form and procedures and conducted staff training to provide special handling for allegations of discrimination in financing.
- Drafted a variety of strategy-related documents (e.g., affirmative action agreements for lenders, model legislation).
- Prepared visual aids including fair lending practice posters and brochures describing the law as it relates to lending practices, as well as a slide show to be used as a training tool for other State agencies.
- Targeted 60 lending institutions for in-depth research on lending practices.
- Conducted extensive data collection on lending patterns by census tract in three Pennsylvania SMSAs, used a computer to organize the data, and performed limited data analysis.
- Identified approximately 15 lending institutions for possible complaint activity.
- Held individual meetings with lending institutions to discuss research findings.
- Drafted complaints against lending institutions on basis of research.

VII. OBSERVATIONS

Numerous factors affect the implementation and results of any demonstration project, some positively, others negatively. Some of these factors are within the control of the agency, others are not; some can be encouraged or avoided, others can only be accepted or accommodated. Below are some of the factors that affected the Pennsylvania agency's demonstration, with a short discussion of the role of each. Any other group or agency trying the same or similar strategy will face at least some of these same factors, and may find Pennsylvania's experiences instructive.

1. Strategy Design

The design of a strategy can affect both its implementation and its effectiveness. A major flaw in strategy design was that PHRC did not adequately consider the amount of time required to perform research activities, thereby underestimating the amount of time that would be left to implement enforcement activities.

As a first step in good strategy design, it is crucial that an agency know the nature of the problem it wishes to attack. Since the strategy was intended ultimately to be the basis for either voluntary compliance, or failing that, filing of complaints by the commission against discriminatory lenders, an additional flaw in its design may well have existed. Although the project staff had identified 15 lenders as having discriminated on the basis of its research results, the commission ultimately decided not to file a case against any of them, in part because of the lack of timeliness of the 1976 census tract data on which the research results were based. In its decision, the commission may simply have confirmed the response of the bankers themselves who, when confronted by the research results, could not be persuaded that they had discriminated, nor that affirmative voluntary compliance was appropriate. The inadequacy of the research results was at least partially due to the failure of the strategy design to identify precisely the kind of research results that would be needed and to specify the steps necessary to achieve such results. That is, the problem was not that research just didn't pan out, but that it was inherently unable to produce the kinds of results that would show discrimination, since it neither collected nor analyzed the data required to produce such findings. (It should be noted, however, that the agency's reading of recent State Supreme Court decisions enabled it to interpret its research results in a more positive way than might otherwise be justified (see Appendix A). In the agency's view, disparate impact alone is a sufficient basis for filing a complaint, even though business necessity might require such an impact. Thus the failure of the research to deal with such elements of business necessity in making lending decisions as demands for loans and creditworthiness of applicants was not fatal in the commission's view to the usefulness of the research results.)

2. Agency Support for the Demonstration

The availability of staff resources within the various regional

offices allow the agency to conduct its research on a widespread basis. Agency support was clearly important in strategy implementation; for HUD funds comprised only approximately 78% of the reported total funding for the project; the rest was contributed in kind by the Pennsylvania agency.

3. Research and Action

The balance between research and action can affect both implementation and outcomes. While a somewhat lengthy research stage was anticipated, PHRC's research actually took so long to complete that virtually all action had to be postponed until after the demonstration ended. However, the agency attempted to make up for this problem by proceeding with other activities during the research stage rather than finishing the research first as originally planned.

4. Leadership and Management

Leadership and management can be crucial factors in the effectiveness of a strategy. Strong leadership for PHRC's project was provided by the housing director, who was well-versed in fair housing issues, but not research. Additional leadership was provided within the regional offices by staff members assigned to the project. In this instance, strong leadership contributed in a somewhat negative fashion to project implementation, for at times it resisted changes suggested by the staff and others that would have improved the strategy.

5. Staff Skills

Technical expertise, not just knowledge and experience in civil rights, may enhance a strategy and may even be essential for its success. There were two critical areas in which experience was needed for strategy implementation. The first was experience with and knowledge of lending practices. This experience was provided early in the project by a staff member who had previously worked with lending institutions. Even though the staff member left the project before it ended, he was able to impart a great deal of his knowledge to staff members.

In the area of research, while there were several staff members who had basic knowledge about research, the project lacked a highly-trained person with research expertise. Had such a person participated in the project--and had that person's advice been heeded and not resisted like the improvements in research methodology suggested by project staff and others--some of the problems related to research design and data analysis might have been alleviated.

6. Linkages Outside the Agency

To enhance the implementation of their strategies, agencies should seek out and take advantage of outside sources of knowledge and advice. Given the staff's lack of research expertise, the strategy might have been helped with more involvement by outsiders who were well-versed in research techniques. Though no such help was sought, the strategy was helped by the

involvement of outsiders in a consultant capacity who set up a computerized system for storing, organizing, and retrieving the data.

NOTES

Chapter II - INTRODUCTION TO THE AGENCY

1. Title 43, Pennsylvania Statutes (P.S.), section 956.
2. Ibid.
3. Id., section 957.
4. 71 P.S. section 753-1
5. 43 P.S. section 953.
6. Id., section 955.
7. Ibid.
8. PHRC, Annual Report 1975-76 (hereafter, 1976 Report), p. 14.
9. PHRC, Twentieth Anniversary Report (1974-75 Annual Report) (hereafter, 1975 Report) p. 6.
10. 1976 Report, p. 15.
11. 1976 Report, p. 19.
12. 1975 Report, p. 10.
13. 1976 Report, p. 19.
14. Id., pp. 26-27.
15. Id., p. 27.
16. PHRC, Final Work Plan ("Utilization of Federal Disclosure Act Data by State Agencies to Combat Systemic Discrimination in Financing of Housing in Pennsylvania") (December 17, 1976; revised March 1, 1977), section E, p. 1.
17. Ibid.

Chapter V - IMPLEMENTATION

1. Letter from Dr. E. S. Inocencio, PHRC Deputy Director for Management, to Michael E. Abramowitz, July 19, 1979, p.2.

APPENDICES

"BUSINESS NECESSITY" AND DISCRIMINATION"

APPENDIX A

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"BUSINESS NECESSITY" AND DISCRIMINATION

In Pennsylvania Human Relations Commission v. Chester School District, 427 Pa. 157, 233 A.2d 290 (1967), the Supreme Court of Pennsylvania upheld PHRC's authority to order an affirmative plan to remedy public school segregation, whatever its cause. In Pennsylvania Human Relations Commission v. Chester Housing Authority, 458 Pa. 67, 327 A.2d 335 (1974), cert. den. 420 U.S. 974, the same court, Middle District, said it was reaching a "similar conclusion with respect to racial imbalance in housing"--"the Act covers de facto segregation in housing" (327 A.2d, at 340). PHRC reads this conclusion as holding that all disparate racial impact is unlawful discrimination no matter who or what caused it, even if it can be explained by nonracial reasons of "business necessity." This reading of Chester Housing Authority would prevent lenders from arguing as a defense against charges of discrimination that the racially imbalanced lending patterns PHRC's strategy identified were not deliberate but simply the unfortunate consequence of lending practices and policies justified by "business necessity." But if this reading is incorrect, such a defense may be raised.

Because the strategy produced no data to rebut a "business necessity" defense, much of the import of PHRC's work on this project depends on whether its reading of Chester Housing Authority is correct. Any evaluation of PHRC's strategy, therefore, must look independently at the Chester Housing Authority decision itself.

It should be noted, first, that the Court's conclusion is stated much more broadly than the facts of the case warrant. The evidence and findings of fact in the case leave no doubt as to the cause of Chester's segregated public housing--it was not a case of de facto desegregation at all, but rather one of deliberate policies and practices by the defendant housing authority. The case involved discriminatory treatment, not disparate impact.

Moreover, the case involved public, not private, housing. In fact, there is little to suggest that the Court was even thinking of private housing. The discussion in question concerned extending the principle of the Chester School District holding (which concerned public schools) from the field of education to that of housing. The Court's use of the unqualified word "housing" may have signified nothing more than that-- the field of housing as opposed to education--rather than the inclusion of all housing, private as well as public. To support its holding, the Pennsylvania court discussed two Federal decisions--Otero v. New York Housing Authority, 484 F.2d 1122 (2d Cir. 1973) and Crow v. Brown, 332 F.Supp. 382 (N.D. Ga. 1971), aff'd 457 F.2d 788 (5th Cir. 1972)--neither of which involved private housing (327 A.2d, at 340). Most, if not all, the additional decisions cited without discussion in a footnote were also public housing cases (Ibid). Finally, if the Court meant to include all housing, it is not likely to have framed its conclusion in terms of "de facto segregation," since the de jure/de facto dichotomy would not even arise in most cases involving private housing where the party charged with discrimination is not a public official

or agency.

The meaning of the Chester Housing Authority decision becomes even murkier when a later decision by the same court is considered. In Upper St. Clair Township v. Commonwealth of Pennsylvania, Department of Community Affairs, the Court said, citing Chester Housing Authority, "Substantial imbalances alone in certain areas may, of course, be sufficient evidence from which one could reasonably infer, without additional evidence, that some official action is responsible for the imbalances" (387 A. 2d 546, 461) (Pa. 1978). (Emphasis added.) To say that responsibility (or cause) may be proved by inference alone implicitly concedes that, however it is proved, responsibility (or cause) matters. This turns Chester Housing Authority on its head. The decision that, in PHRC's reading, held the cause of racial imbalance to be irrelevant is being cited instead for a proposition clearly implying precisely the opposite, that responsibility is indeed relevant.

In short, it is uncertain what the Chester Housing Authority decision stands for. The Court may or may not be saying that racial imbalance or disparate impact in private as well as public housing is discriminatory regardless of cause--i.e., regardless of business necessity. And, because the Court's conclusion is stated so much more broadly than the facts of the case require, its force as legal precedent is also questionable.

APPENDIX B

CRITIQUE OF PHRC RESEARCH REPORT

This appendix contains an unedited excerpt, entitled "Technical Merits of The Research," from a critique of PHRC's research report. It was prepared by an "outside reviewer" that HUD selected to assist it in deciding whether to grant the agency permission to publish the report.

Technical Merits of the Research

The report does indeed draw unwarranted conclusions with respect to the usefulness of the FIDA data in identifying discriminatory lending practices. In addition, the report also recommends techniques for identifying discriminatory lending practices which cannot be substantiated on research grounds. The critique which follows notes the weaknesses of the research and report.

The four hypotheses put forward for testing as to whether discrimination in lending existed (de facto) or not were too elementary, with the actual outcome or results quite obvious to even the most casual reader (page 54):

- a) As the percent of Nonwhite population increases in a census tract, the number of loans and amount of money for these loans lent in a census tract decreases;
- b) As the percent of female head of household population increases in a census tract, the number of loans made and the amount of money for these loans lent in a census tract decreases;
- c) As the percent of Nonwhite population decreases in a census tract, the number of loans and the amount of money for these loans lent in a census tract increases; and
- d) As the percent of female head of household decreases in a census tract, the number of loans and the amount of money for these loans lent in a census tract increases.

A series of correlation models consisting of three basic levels or stages was then designed by project staff for the collection, correlation and analysis stages of the mortgage disclosure data gathered:

Correlation Stage I: a comparison of funding expenditures by the institutions in terms of expenditures both within and outside the S.M.S.A.;

Correlation Stage II: a comparison of the loans made by one set of lending institutions versus the other two sets; and

Correlation Stage III: a study of the individual lending institutions themselves.

In correlation I, the assumption is that expenditures of higher percentages of money made outside the S.M.S.A. would have an impact upon the funding opportunities of minorities and female heads of households. The report then "finds" through its data that such higher expenditure does indeed occur. An unwarranted conclusion then is drawn that systemic discrimination in the financing of housing has occurred and has been documented in this research report. Unfortunately, it has not. At best, there may be an implication that discrimination has occurred but the research, as presented, does not factually find that to be the case. For compliance purposes for the Pennsyl-

vania Human Relations Commission, such conclusions may indeed be effective. For valid research findings, they are not.

In correlations II and III, the lending institutions studied display obvious tendencies to follow their affluent White suburban markets when making mortgage loans. Yet, even as page 9 notes, it is difficult to document the degree to which financial institutions contributed to illegal discrimination (in an active way), or that their lending practices resulted in or perpetuated discrimination (in a passive way). What this research report is guilty of is to take one set of rather basic "findings" and to leap ahead and conclude that loan discrimination has occurred. The "finding" of discrimination cannot be supported by the evidence presented; it is too sparse.

Rather, the usefulness of the FIDA reportable data should be seen as a first step in establishing certain lending practices on the part of large financial institutions. By themselves, the data can neither prove or disprove discrimination. More information is needed on the federal and state regulatory measures that each category of lender works under, its markets of depositors and borrowers, longitudinal time trend of loan practices followed, and standards desired by the PHRC and other agencies involved in its requirements for mortgage loan disclosure data.

Quite simply, the design of three correlation analyses for the hypotheses' tests, and the hypotheses themselves, were inadequate to the task of identifying discriminatory lending practices. The correlations as analytic techniques are promising beginnings in identifying possible lending discrimination, but by themselves they cannot confirm actual discrimination. More corroborative statistical data would be needed, as, total number of loan applicants at any given financial institution, total number rejected for 1976, the terms and conditions of these applications, and of the loans made, the racial/minority breakdown of loan applicants/rejectees/successful borrowers, depositor characteristics as to race, sex and address, the marketing roles of the lending institutions which either encouraged loan applications or discouraged same from minorities or females/female heads of households, each institution's perceived market area and rationale/policy, and more.

WHETHER TO DISTRIBUTE: In my opinion this report fails to meet minimum technical standards. The research is flawed, perhaps due to the sparseness of useful FIDA data available. The simple hypotheses posed, and the simple correlation analyses performed, really do nothing to advance the state of research on the topic of home mortgage discrimination. In addition, the report is replete with many typographical errors, perhaps much more than editing can correct. The report needs major rewriting or reformulation.

STATE CIVIL RIGHTS AGENCY DEMONSTRATIONS OF STRATEGIES
TO FIGHT HOUSING DISCRIMINATION

CASE STUDY:

Washington State Human Rights Commission

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I. INTRODUCTION

A. THE NINE-STATE DEMONSTRATION PROJECT

This case study is one of a series being prepared under contract to the U.S. Department of Housing and Urban Development as part of a HUD-funded research and demonstration project. A key element of this project was the provision of funds to nine State civil rights agencies to enable them either to launch or expand fair housing programs directed particularly against systemic discrimination.

1. Background

Notwithstanding the efforts of the past two decades, there remains an intolerably wide gap between the promise of choice implicit in an array of civil rights legislation and the reality of housing discrimination for minorities in America today. Moreover, discrimination in housing contributes to social injustices reaching well beyond its most immediate consequence, residential segregation. These include inequality of job opportunities, separate and unequal schools (notwithstanding the 1954 Brown decision), and increased tax burdens on inner city residents to support growing social service costs and an irregular pattern of urban growth.

So systemic and institutionalized is racism in the housing system that public enforcement efforts--crippled by weak budgets and preoccupied with responding to individual complaints--seem only to have changed the face of discrimination without uprooting it. Replacing the blatant housing discrimination of the pre-civil rights era are new discriminatory practices--subtle, indirect, and often hidden, but just as effective. The struggle for equal opportunity in housing is far from over.

State human rights agencies are called upon to play a major role in that struggle. State laws often give them far-reaching responsibilities, while Federal law gives many the added burden of processing housing discrimination complaints filed under Title VIII. Their limited resources, however, permit little more than the handling of individual complaints, often leaving significant patterns and practices of housing discrimination unchallenged.

And at all levels--Federal, State and local; public and private--there is a need to find and test new ways to use existing fair housing laws more creatively and effectively. Also needed is precise, reliable information about systemic discrimination in housing and about the programs necessary for the full enforcement of existing fair housing laws.

The message is clear: Both qualitatively and quantitatively, this nation's level of public intervention on behalf of the minority shelter-seeker must be substantially upgraded.

2. The Project

It is to this message that HUD responded in 1976 by committing Federal resources under this project to enable States to assume a more aggressive role in meeting fair housing goals. In doing so, it addressed in a single programmatic thrust two broad national problems: how to assist minority families in obtaining decent housing in the face of increasingly sophisticated discriminatory practices, and how to help the States increase their capacity and effectiveness in carrying out responsibilities under existing laws.

Even before issuing the Request for Proposals (RFP) for this project, HUD selected the participating State agencies. On June 16, 1976, HUD invited 10 State civil and human rights agencies to take part in this project. One agency, ultimately unable to meet all of HUD's requirements, did not participate. The remaining nine are:

- Colorado Civil Rights Commission
- Connecticut Commission on Human Rights and Opportunities
- Kentucky Commission on Human Rights
- Massachusetts Commission Against Discrimination
- Michigan Department of Civil Rights
- New Jersey Division on Civil Rights
- Ohio Civil Rights Commission
- Pennsylvania Human Relations Commission
- Washington State Human Rights Commission

Each of these agencies was offered up to \$120,000 to pay for a year-long demonstration of one or more strategies to combat systemic discrimination. (The Connecticut agency's budget was only about \$90,000, however, and its demonstration period only eight months, because of extended contracting difficulties and other problems that delayed the start of its project.) The agencies were not required to match the Federal money, but were, of course, free to supplement it with funds of their own. Within general guidelines and a minimum of specific requirements, each agency designed its own demonstration program.

The agencies performed their demonstrations as subcontractors to A. L. Nellum and Associates, Inc. (ALNA), the contractor HUD selected to run the project. They received their money through ALNA and had no direct contractual relationship with HUD.

Under its contract with HUD, ALNA's role included the following:

- Assisting each State agency during the planning stage of its program, and assuring that proposed strategies met project requirements.
- Distributing funds to the agencies.
- Monitoring each program over a 12-month period.
- Evaluating the impact of each program.

- Preparing a final report (of which this case study is a part) describing the implementation and results of the project in detail.

The project was under ALNA's direction from its inception in October 1976.

Focusing on State agencies as vehicles for social change, this project had two primary objectives:

- To identify replicable, tested, and proven intervention strategies for combating systemic discrimination.
- To strengthen State agency capacity and effectiveness in carrying out their responsibilities under existing laws.

Additional objectives were an increased understanding of systemic discriminatory practices and of the States' role in combating them, and the dissemination of this understanding to interested citizens.

B. STRATEGIES AT A GLANCE

To introduce briefly the subject of this case study, the two fair housing strategies demonstrated by the Washington State Human Rights Commission consisted of the following:

1. Mortgage Lending Strategy

- To conduct research on the demand side of mortgage lending in areas suspected of being redlined, using real estate brokers and community residents as informants.
- To conduct research on the impact of mortgage insurance policies and practices on home mortgage lending patterns.
- To conduct research on the impact of appraisal standards and practices on home mortgage lending patterns.
- Based on the above research, to work with lending institutions, or file complaints where necessary, to remedy discriminatory lending policies and practices.
- To use the lenders' leverage to remedy discriminatory appraisal and insurance policies and practices.

2. Real Estate Marketing Strategy

- To test real estate brokers for "racial steering" in sales housing.
- To file and process complaints against brokers who steered

during the tests.

- To conduct research into discriminatory listing services and membership policies of multiple listing organizations, and seek to remedy any discrimination found to exist.
- To conduct research into the use of advertising and listing methods that are racially discriminatory in effect, and seek to remedy any such discrimination found to exist.

II. INTRODUCTION TO THE AGENCY

The Washington State Human Rights Commission (WSHRC) consists of five members appointed by the governor for terms of five years. 1/ The governor designates one of the five as chairman. 2/ The commission appoints its executive director, who is its chief administrative officer. 3/

As stated in the law against discrimination, WSHRC was created "with powers with respect to the elimination and prevention of discrimination ... in credit and insurance transactions ... and in real property transactions because of race, creed, color, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical handicap.... 4/ That same law declares it to be a civil right to engage in real estate and credit transactions without discrimination based on any of the same prohibited grounds except age and marital status. 5/ Still another list of grounds--sex, marital status, race, creed, color, or national origin--is used in the same law to prohibit discrimination in credit transactions, and in real estate transactions, facilities or services, including the issuance of title and mortgage insurance. 6/ In addition to these prohibitions, the director of the Real Estate Division of the State Department of Licenses may suspend, revoke, or deny the license of any real estate broker or salesperson who is found guilty of "discrimination against any person in hiring or in sales activity, on the basis of race, color, creed, or national origin, or violating any of the provisions of any State or Federal antidiscrimination law." 7/

In FY 1977, WSHRC received 138 complaints alleging discrimination in housing, and 16 in credit transactions. 8/ The commission says that while most of its caseload consists of employment complaints, it gives priority to housing cases. 9/

The commission's two-year budget for FY 1978 and 1979 is \$2,599,000, almost a fifty percent increase over the previous two years' budget of \$1,758,711. 10/

In the fall of 1975, roughly one and one-half years before the project began, WSHRC established a special Redlining Task Force, which undertook a study "to gather hard data on actual lending patterns and to identify various disparities between communities" 11/ The same consultant economist who was later to work on this project directed the study. The Task Force issued its preliminary report in January 1977. (For more details about the Task Force's study, see Chapter III.)

Despite this study and WSHRC's fair housing enforcement activities since 1969, the commission felt it had "never had the resources to instigate real change." 12/ For the same reason--shortage of resources--it characterized real estate discrimination as an area on which it had "not previously concentrated." 13/

III. STATEMENT OF THE PROBLEM BEING ATTACKED

The State of Washington contains three major metropolitan areas--Seattle, Tacoma and Spokane. The remainder of the state is sparsely populated cities, towns and rural areas.

Seattle is the largest city in the state and has the greatest share of its housing-related problems--such as deteriorating inner city neighborhoods and business district, and a sizeable housing stock needing repairs or rehabilitation.

Within most central areas in Seattle, ethnic residency is disproportionately high and sometimes predominates (Black and Asian residency ranges from 22% to 95% in those city tracts, far higher than elsewhere in the city and surrounding suburbs).

Some evidence indicates that both ethnic concentration and area deterioration are sustained, and in some ways supported, by the markedly low level of mortgage loans being made available to either area property holders or homeseekers wanting to move into the area.

A 1977 Washington State Human Rights Commission preliminary report on neighborhood disinvestment in Seattle indicated that the mortgage industry had, over the past few years, engaged in a markedly low level of lending in older parts of the city, especially in predominantly black areas.

The restricted availability of mortgage funds limits area property owners in the use of their equity to repair and maintain their property. Because new loans cannot be generated, they also often cannot sell their property and/or buy other property in the area.

Failure to complete a real estate transaction because a mortgage cannot be secured restricts both broker business opportunities and their clients' chance to buy or sell property. For the potential buyer, limited access might mean the difference between staying in sub-standard or crowded rental housing and moving to cleaner, safer housing with space more appropriate to their family's size.

The Commission's report indicated that discrimination in any one part of the real estate sales process often causes or reinforces discrimination in other parts of the process. Appraisal policies and practices, for example, can affect lending decisions; lending practices can affect sales.

For the past three years WSHRC has been engaged in research on the mortgage lending process. This effort culminated in August 1977, at the beginning of the project year, in the issuance of a staff position paper. In the paper, WSHRC listed the following primary actors involved in the real estate marketing process: 1/

--Producers (developers, builders, and public and private funding agencies)

- Appraisers (determine market value)
- Insurers (insure repayment of the loan)
- Financiers (banks, savings and loan associations, and commercial lenders who provide loan money)
- Brokers (bring buyers and sellers together and negotiate sales)
- Advertising Media (advertise sale property)

The policies and practices of any of those, alone or in combination with others, can lead to discrimination if "the effects or outcomes of lending decisions can be traced to such categories of group characteristics as race, national origin, sex, and others not specifically and individually linked to the risk of financial criteria associated with creditworthiness." 2/

For example, any of the following might effectively lead, either directly or indirectly, to discriminatory mortgage loan decisions:

- Real estate appraisals that take into account the racial composition of the neighborhood (an automatically lowered appraisal for comparable property in a black neighborhood than in a white neighborhood).
- Insurance standards (governmental or private) that exclude black areas of a city as unacceptable.
- Broker marketing practices that do not treat black and white customers equally, steer homeseekers to or away from certain residential areas, based on race, or use one-race-oriented advertising media.

An additional problem was thought to be the discriminatory exclusion of minority brokers from access to multiple listings of homes for sale. (Subsequent investigation revealed this to be incorrect--see Chapter V, IMPLEMENTATION.)

These problems of discrimination primarily in lending and home sales, but also in the related areas of appraisals, mortgage insurance, and advertising--became the targets of the commission's two strategies.

One final problem that the mortgage lending strategy hoped to alleviate was the difficulty of finding reliable data on the demand for mortgage loans by minority borrowers and for properties in minority neighborhoods. WSHRC's previous redlining research found, as had research elsewhere, that the paucity of data on loan applications and rejections made it hard to assess the role that race and national origin played in the lending decisions that appeared to favor white borrowers and white neighborhoods.

IV. DESCRIPTION OF THE STRATEGIES

A. MORTGAGE LENDING STRATEGY

The WSHRC strategy was aimed at policies and practices in mortgage lending, appraisals, and mortgage insurance that adversely limit the flow of funds into areas of Seattle assumed to be "redlined." The Washington strategy was to proceed in two stages:

1. Research

- Using real estate brokers and community residents as informants, conduct research on the demand side of mortgage lending in areas suspected of being redlined.
- Examine lending company documents to determine any explicit or implicit racially discriminatory loan practices.
- Conduct research on the impact of mortgage insurance policies and practices on home mortgage lending patterns.
- Conduct research on the impact of appraisal standards and practices on home mortgage lending patterns.

2. Action

- Based on above research, work with lending institutions or file complaints where necessary to remedy discriminatory lending policies and practices.
- Use the lenders' leverage to remedy discriminatory appraisal and insurance policies and practices.

WSHRC was looking for racial discrimination against minority home-seekers. The first problem was to find some method of documenting credit denial, since lending companies are not required to keep such information. The second biggest problem was to disentangle the effects of income from those of race. For example, in Seattle, black families are disproportionately low-income; however, there are no laws against denying a mortgage loan on the basis of income. Thus, WSHRC looked for company policies and practices with an adverse racial impact to support a charge of discrimination. Survey respondents were used to provide WSHRC with a list of lenders believed to be engaging in discrimination.

As the project was designed, the target lending institutions were to be limited to those identified in the survey. Any companies unknown to or unidentified by survey respondents would, therefore, escape targeting.

3. Changes in Strategy

During strategy implementation, after some preliminary work, WSHRC

abandoned its investigation into both the impact of appraisal standards and the role of insurers in perpetuating discrimination in mortgage lending. They added to their strategy an investigation of an appraisal manual used as a text in a community college course. Moreover, as the research phase took far longer than originally anticipated and produced inconclusive results, meetings were conducted with bank officials primarily for information purposes. No voluntary agreements with lending institutions had been signed.

B. REAL ESTATE MARKETING STRATEGY

WSHRC attempted to attack racially biased real estate marketing procedures in the following manner:

1. Research

- Conduct research in discriminatory listing services and membership policies of multiple listing organizations, and seek to remedy any discrimination found to exist.
- Conduct research into use of advertising and listing methods that are racially discriminatory in effect, and seek to remedy such discrimination found to exist.

2. Action

- Test real estate brokers for "racial steering" in sales housing.
- File and process complaints against brokers who steered during the tests.
- Select additional actions to be taken from a variety of "action alternatives." Such alternatives included:
 - Suggest guidelines for improvement of racially discriminatory real estate marketing practices.
 - Present recommendations based on prohibition of racially discriminatory practices to state brokerage licensing officials.
 - Promulgate industry agreements regarding racially nondiscriminatory real estate practices.
 - Encourage establishment of Fair Listing Bureaus.
 - Develop guidelines and plans to aid public and private agencies and groups interested in identifying opportunities for reducing the extent of housing segregation.

The focus of the Seattle real estate marketing practices strategy was both on (1) general industry-wide marketing practices and (2) racial steering practices by a specific sample of real estate companies.

WSHRC staff evaluations of advertising and listing patterns in local newspapers were looking for discrimination against black homeseekers. In the evaluation of multiple listing membership requirements, they looked for discrimination against black real estate companies (and, by extension, black homeseekers, because such discrimination put limitations on their housing options).

The real estate company audits were used to look for evidence of differences in treatment based on race (specifically in the housing location offered).

Because of staff and time constraints, targeted real estate companies were limited to those in the city of Seattle. The strategy focused on home sales rather than apartment rentals.

3. Changes in Strategy

During the course of implementation, WSHRC dropped several strategy components, including the investigation of multiple listing services after minority brokers denied that they were discriminatorily excluded from membership. While some work did continue on advertising practices, the strategy primarily concentrated on testing and identifying targets for complaints.

Rather than file complaints based solely on testing results, WSHRC chose in a few cases to incorporate allegations of racial steering into existing complaints against previously identified brokers.

V. IMPLEMENTATION

A. STAFFING

The Washington State Human Rights Commission (WSHRC) initiated its mortgage lending and home sales investigation and enforcement strategies in June 1977. Overall project staff consisted of a part-time project director, an assistant director, three field representatives, a consultant, two student research aides, and a clerk stenographer.

Both the project director and the assistant director were regular agency employees who opted to work on the one-year project. Other staff were new to the commission.

The project director, who also served as special assistant to the agency director, was overall coordinator for the project. He made the major decisions, such as making the final choice of mortgage companies to initiate compliance actions against.

The assistant project director, who had formerly been a field representative, coordinated day-to-day staff activities and wrote monthly and final reports. When the project director resigned from WSHRC in the middle of the project, his title and responsibilities were assumed by the assistant director.

The consultant, a professor of economics and real estate marketing specialist, designed and supervised the overall mortgage lending survey, as well as other research activities in both strategies. The student research aides assisted the consultant.

The agency had no firm plan as to how other aspects of the project were to be carried out. Agency staff as a whole were assigned as available to participate in the testing phase of the real estate marketing strategy. In addition, volunteers (friends, relatives, a few community persons, etc.) were recruited on an "as needed" basis to assist in testing.

B. TRAINING

The mortgage lending strategy had no formal training component. All project staff were generally familiar with "redlining" issues. For the most part, further staff training was provided with on-the-job exposure to information and issues.

The agency staff and volunteers who participated in the "testing" program were put through a brief orientation and training program. They were furnished with a set of "guidelines for testers" prepared by project staff.

C. MORTGAGE LENDING STRATEGY

1. Research

The major element of this strategy was to gather information on general policies of lending companies. These activities set the framework for two general research components: (1) a literature review of the real estate marketing process, especially the mortgage financing stage; and (2) surveys of (a) real estate companies and (b) recent target area borrowers to determine their experiences with Seattle's mortgage lenders. Although WSHRC initially planned to complete the research components early in the project, so the data could provide a basis for enforcement action, these activities lasted the better part of the demonstration period.

● Survey of Brokers

During the initial project month, from a list of all real estate brokers in Seattle, WSHRC staff selected for interviewing (1) all minority-owned firms ^{1/} and (2) a convenience sample of non-minority owned firms (stratified by size). ^{2/} WSHRC's field representatives interviewed one broker in each of these Firms.

During face-to-face interviews, all brokers were asked questions from a standardized interview schedule, focusing on broker experiences with lenders in their attempts to secure mortgages for target area customers. Additionally, open-ended questions were asked to generate additional reasons for loan denials (and approvals). It was hoped that those responses would point to race-related loan decisions. As the opportunity presented itself, the field representative sought information on experiences with specific lending institutions, policies, and practices.

By the end of September 1977, a number of brokers had been interviewed (14% of the 72 companies in the sample). The additional interviews were completed by November 1977.

Of the 72 brokers interviewed, 44 (or 61 percent) reported having "negative experiences" ^{3/} with lending institutions in obtaining client financing; 33% reported no such experiences and 6% gave no response. Seven of the 15 black brokers indicated such experiences with specific lenders. Of the total group, 21 had at one time or another been told by one of the target lenders that their loan would not be transacted because of the property's location.

Broker interviews also revealed:

- conventional mortgages were believed more readily available to white customers than to black customers seeking a house in predominantly white areas in Seattle;
- geographic location of sale property is a primary lending decision criteria.

Broker comments about particular lending institutions included the following: 4/

Bank Number 1.

- very selective
- gives low appraisals
- requires down payments anywhere between 30 to 50 percent
- had a redlining policy in 1964-65 of not lending south of the canal
- refused to loan in Rainier Valley area (in 1974) because it was 50% ethnic

Three cases of credit discrimination had been filed in the last three years against this bank (the latest in March 1977).

Bank Number 2.

- very selective in properties it will handle (may not be related to race)
- gave only three loans in 12 predominantly black census tracts

Bank Number 3.

- has denied loans on the basis of geographical location (four years ago)

Two credit complaints had been filed against this bank (the latest in February 1977).

Bank Number 4.

- is the most unresponsive to black homeseekers
- uses low appraisals

Bank Number 5.

- has used biased appraisals reducing amount of loan offered neighborhood of property.

● Survey of Borrowers

WSHRC selected from the Real Estate Monitor 5/ all target area housing sales since 1974. A questionnaire was mailed to each of 550 home buyers by February 1978. Information requested was race/ethnicity, occupation, time on the job, years of schooling, marital status, life style, and age. It also asked if respondents had had discouraging experiences when they were arranging for home financing and the source and content of that discouragement (such as "we can't loan because of area" or because of applicant's "race" or "marital status"). Because of the low response rate, additional instruments were taken to non-respondents. Data analysis is based on 132 completed questionnaires.

Based on the returned survey instruments, the sample was skewed in the direction of white upper middle-class professionals. Distribution of the 132 borrower respondents by race was 100 white; 16 Asian-American; 10 black; and 1 American Indian. (Five did not identify race.) Forty-nine percent had more than 16 years of schooling and about 55% were managers or

professionals. Many did not reply to the question on the source of loan discouragement (44%), 33% indicated they had in fact never been discouraged, while 23% indicated they had been. Some of the reasons given by banks for not wanting to loan were (1) location of property, (2) marital status, (3) race (only once), and (4) such other factors as time on the job or life style.

2. Action

● Lending Practices

On the basis of final survey results and previous agency experience with particular institutions, five were selected as targets in December 1977. WSHRC first sent letters to the bank presidents, stating its belief that their lending patterns had perpetuated discrimination in real estate transactions. The letter requested a meeting with officials of each bank to discuss the possibility of their joining with the commission to take action against discrimination. It further requested the banks to sign ("in the public interest") an enclosed voluntary agreement "as evidence of the bank's good faith efforts to ensure equal opportunity in credit transactions."

Although the scheduling and holding of such meetings lagged over several months, by June 1978 the agency director and project staff had met with representatives from most of the five target lending institutions.

Meeting With Lenders. Meetings with lenders were designed to do the following:

- review lending patterns since the pre-project study to determine whether there had been any changes in the selected target areas of Central District, Rainier Valley, and Ballard
- determine the lenders' awareness of recent legislative changes at the local, State, and national levels to further fair lending practices, and the extent to which they had been implemented
- determine the extent to which lenders adhered to disclosure laws
- monitor any existing agreements to change practices
- review policies (such as in appraisals) regarding race and neighborhood.

Two of the five banks reported only limited changes in lending practices, but three gave some indication of responsiveness to the needs of target area homeseekers:

Bank Number 1 --claimed to have instituted the most comprehensive changes in its lending policies: (1) property need only meet basic health department and housing code standards; (2) borrower need only be credit-worthy; (3) same interest (10%) and down payment rate (20%) will apply to every successful applicant; and (4) appraisal policy of identifying "risky

loans" will be dropped.

Banks Number 2 and 4 --provided WSHRC with pamphlets and other documents showing procedural changes put into practice. The changes were: (1) new appraisal standards stating that ethnic and racial composition of a neighborhood should be disregarded in determining risks; (2) consumer information regarding a new policy of providing applicants specific reasons for loan denial; and (3) giving the applicant a copy of the appraisal if that was the basis for denying the loan.

Voluntary Agreements. By the end of the project none of the target banks had signed the voluntary agreements. One bank official felt some of the language of the agreement was confusing. Other general statements and concerns were:

- questioned why only the five were chosen from all other lenders to enter into a contractual relationship with the commission.
- already comply with regulations, so additional agreement not necessary.
- already involved in Lender's Review Board (set up to provide an appeal process for borrowers) and receive appeals in manner suggested in the contract; questioned how proposal to involve the Human Rights Commission in loan appeal process would solve the problem.

Proposed Regulations for Real Estate Loans. WSHRC's compliance supervisor requested that the State's attorney general's office draft proposed regulation requiring mortgage companies keep records on race of applicant in credit transactions. A draft was submitted to the compliance supervisor in July 1978.

- Insurance

Early in the project, after looking briefly at the role of Federal insurers and preparing a short report, WSHRC decided to drop a planned evaluation of insurers' roles in perpetuating discrimination in real estate transactions.

- Appraisal Practices

Because of a pending Federal litigation challenging the policies and practices of appraisers, WSHRC's planned evaluation of appraisal practices was subsequently modified. Instead, WSHRC suggested (1) additions, deletions and expansions to sections in the State Real Estate Manual for Brokers and Salespersons, (2) changes in appraisal course materials used in the State community colleges, and (3) legislation to regulate appraisers.

Real Estate Manual. At the beginning of WSHRC's project, the real estate licensing manual was being revised by the State licensing agency. WSHRC took that as an opportunity to review the document's coverage of fair housing regulations and issues, and to suggest additions and expansions.

In September 1977, WSHRC sent a letter with suggested changes to the director of the Department of Licensing, Real Estate Division. The changes were generally suggestions to include wording to promote fair housing practices in housing sales, and a clear statement that race is not a proper factor in assessing neighborhood conditions, such as decline or economic blight. WSHRC felt that five of its seven suggested changes were at least partially accepted and included in the 1978 revised version of the real estate licensing manual (but see Chart A).

State Community College Appraisal Course Textbook. One of the WSHRC project staff members was enrolled in the fall of 1977 in an appraisal course at one of Seattle's community colleges. His initial review of the course's textbook identified outdated content that was discriminatory under recent fair housing laws. The project staff subsequently sent letters to course instructors, and copies to the college presidents, at all metropolitan area community colleges requesting both a meeting and copies of all written course material.

WSHRC subsequently found that two of the colleges were using outdated textbooks. It then prepared an errata sheet and requested it be made available with the manual in the fall quarter, 1978.

Two meetings were held with representatives from the two colleges. One said he would depend on the other one. At first the latter agreed to use the errata sheet, but then changed his mind, stating he would rather include, as an addendum to course materials, "a summarization of the agreement between the Justice Department and the American Institute of Real Estate Appraisers."

Legislation to Regulate Appraisers. WSHRC dropped its plans to propose such a law when it learned the State legislature was not going to hold a special session. However, the staff did prepare an issue paper for internal circulation.

D. REAL ESTATE MARKETING STRATEGY

1. Research

The research component of this strategy was intended to evaluate the racially discriminatory effect of real estate advertising and listing practices. The commission sought to determine how and to what extent some advertising and listing practices might "pattern or 'freeze' racial housing segregation." 6/ Its research sought to determine how broker advertising and listing services influenced a housing search. WSHRC's research was based on common knowledge about advertising practices that, in effect, discriminate against both black and white homeseekers. For example, if sale property in mostly white areas was advertised only in large metropolitan dailies and/or in papers in those communities, or if property in black areas was advertised primarily in black-oriented newspapers, both black and white homeseekers would not be exposed to a part of the housing market. 7/

WSHRC sought to determine whether such practices existed in Seattle.

CHART A

Response to WSHRC's Suggested Changes in the
State Real Estate Manual for Brokers and Salespersons

WSHRC'S SUGGESTED CHANGES	CHANGES MADE BY THE STATE
<p>(1) add a statement that it is unfair real estate practice to induce a property-holder to sell because of "entry into the neighborhood of persons of particular race, creed, color, or national origin (RCW 49.60.223)</p>	<p>(1) added references to the Washington Administrative Code restricting panic peddling (and contents of solicitation)</p>
<p>(2) add a statement that restrictive covenants based on race, creed, or color are void and their continued use is unfair (RCW 49.60.224)</p>	<p>(2) does not cite restrictive covenant regulation, but discusses issue in one section.</p>
<p>(3) current statement that some institutions will lend only within "certain areas and on specific types of property" should be revised because words "certain areas" can be confused with "neighborhood areas based on race."</p>	<p>(3) by-passes and clouds the issue somewhat with statement that "discriminatory housing patterns are changing."</p>
<p>(4) add to section on Ethics "a statement that brokers and salespersons should be knowledgeable of State and Federal antidiscrimination laws."</p>	<p>(4) (no direct mention of outcome.)</p>
<p>(5) the word "neighborhood" in the statement "Policies are strict as to the neighborhood in which loans will be made" should be clarified to indicate that policies based on the racial composition of a neighborhood are illegal.</p>	<p>(5) no changes; claimed that 3 above was responsive.</p>
<p>(6) qualified restatement of neighborhood decline and economic blight to note that races, etc. cannot be a factor in making these determinations.</p>	<p>(6) (not dealt with)</p>
<p>(7) add a definition of "discrimination" and unlawful practices.</p>	<p>(7) added definitions of "discrimination" and additionally of "Realist."</p>

Generally, their results suggested that most real estate advertisements of property in white areas appear almost exclusively in metropolitan or white community press, while advertisements of property in black areas appear primarily in minority-oriented press. Transitional areas sometimes used both press, and generally used signs at or near the property. 8/

A second research activity, to evaluate racially discriminatory effects on black brokers and salespeople of multiple listing membership requirements, was dropped mid-project because it was already under investigation by the Federal Trade Commission and because preliminary research findings indicated that this was not a real problem in Seattle.

2. Action

Using a document entitled "Staff Guidelines on the Use of Testing As An Investigative Tool" as a training device, WSHRC staff investigators were trained to do testing for this project.

The following points were stressed in the guidelines:

- Tests, or audits, should occur as soon as possible after the filing of a citizen-initiated housing (or employment) complaint.
- In order to catch potential respondents off guard, tests might occur before the complaint is issued.
- In a housing complaint, it is important to test while the housing unit sought by the claimant is still available.
- Testers, or auditors, should be matched as closely as possible in assumed or actual control characteristics (for instance, age, sex, socio-economic status), and different in the test characteristic (for instance, race, marital status, or age). To establish a proper comparison, the supervisor must give auditors complete instructions on the identities they are to assume.
- Staff testers, rather than volunteers, should be used to reduce the chance of auditor testing abuses (such as attempting to entrap the audit target by making leading statements suggesting a discriminatory posture).

In addition to these general guidelines, WSHRC provided fair housing project staff auditors with the following testing standards:

- Keep testing activities confidential.
- Present the same size, price, and neighborhood demands as homeseekers.
- Dress and act the part of bonafide homeseekers.

- First wait for real estate agents to volunteer information relevant to the initial inquiry. If such information is not provided, be persistent in securing specifics about the sale property.
- Do not follow up an agents' remarks that appear to be subtle appeals to prejudice.
- Do not take audit report forms or folders into the broker's office or on a housing inspection tour.
- Be believable in the role of a homeseeker by getting in a "house-hunting" mood. While inspecting, look at kitchen and bath facilities, yard, and basement. Ask about heating, wiring, and plumbing.
- Never record audit results while within sight of the real estate office.

The commission selected 35 real estate firms located in the Seattle Metropolitan area for its racial steering auditing program. Staff members began the selection procedure by compiling a list of all real estate companies in the telephone directory. They then organized the listing by zip code areas. Within each zip code area, they selected some small and some large firms (based on number of branches). They then selected 35 firms for auditing. They also audited five firms that were targets in pending complaints.

Auditors were provided with slightly modified versions of the audit instrument prepared by the National Commission Against Discrimination In Housing. Auditors were to determine if the firms engaged in the practice of "steering" black homeseekers to all-black or transitional neighborhoods, and if white homeseekers were steered only to white areas. The auditors were also instructed to survey, for purposes of comparison between the black and white "homeseeker" teams, the quality of the information and services offered them in their housing search.

Teams of black and white agency staff and volunteer auditors posing as homeseekers went to the target real estate companies. The white auditor usually went first, followed (within a twenty-four-hour period) by the black auditor. They were advised to keep the audit supervisor apprised of their time schedule and, in the event of an emergency, to contact each other so the audit could be terminated and rescheduled.

Because the project used commission staff with other primary responsibilities, the problems of scheduling tests were tremendous. It was difficult enough to schedule one round of tests and often impossible to conduct more than one where results were indefinite or ambiguous.

Nevertheless, on the basis of its testing program, WSHRC filed complaints against five real estate firms during the demonstration period. Three were alleged to have engaged in racial steering, while two others were cited for other forms of disparate treatment. None of the complaints had

been settled at project end.

E. FUTURE OF THE STRATEGIES

The WSHRC Final Report indicated that there was a need to do "further research" in several strategy areas. However, other than handling the complaints filed as a result of this project, WSHRC had no definite plans to continue the strategy. Many of the new project staff were hired by the agency at project end, thus incorporating their newly developed skills into the agency.

F. COST

The total cost of the demonstration was \$107,246, all of which was funded by HUD/ALNA. WSHRC reports that this figure was divided equally between the Mortgage Lending and Real Estate Marketing strategies. Staff salaries and benefits were by far the largest cost item, followed by consultant fees, indirect costs and supplies. There were no expenditures for data processing because one of the State universities provided this service free of charge. Estimated data processing cost for the entire demonstration (had there been a charge) is \$1,000.

VI. OUTCOMES

For the most part, the outcomes reported in this section are the contractor's findings as to changes resulting from what the agency did in the course of its demonstration. All outcomes were grouped into two categories, agency capacity and equal housing opportunity:

Agency Capacity. The agency's own capability to identify and challenge systemic housing discrimination, as measured by such pre-post project changes as increased staffing, new research or investigative or analytic expertise, better use of community groups, new training techniques, and strengthened negotiating tactics. Improvements in handling individual complaints, while not generally a concern of this project, may also be a relevant measure of increased capacity if they include, for example, new procedures for identifying individual complaints that should be treated as charges of systemic discrimination.

Equal Housing Opportunity. The impact of the strategy on systemic discrimination, as measured by pre-post project changes in specific discriminatory policies and practices or in increased housing opportunities for minorities or other protected class persons. The equal opportunity outcomes have themselves been divided into two subcategories--potential opportunity and actual opportunity. Potential equal housing opportunity outcomes are real-world changes that hold the promise of leading to increases in actual housing opportunities for minorities. Actual equal housing opportunity outcomes are either measurable increases in housing actually obtained by minority groups or actual changes in behavior (such as affirmative actions known to have been taken or the absence of discriminatory treatment previously known to exist).

Potential opportunity outcomes are one step removed from actual opportunity outcomes in the same way that changes in the rules of a game are one step removed from the actual moves the players make. In fact, the distinction between potential and actual opportunities is essentially the difference between rules and behavior. Promises made in a binding conciliation agreement, for example, are only a potential opportunity outcome; they change the rules that govern the respondent's behavior but not necessarily his behavior itself (which, if also changed, would represent an actual opportunity outcome).

Capacity and opportunity outcomes, it should be noted, are not mutually exclusive. By definition, an agency cannot have produced an equal opportunity outcome if it did not have the capacity to do so. Each equal opportunity outcome, therefore, is indicative of a capacity outcome as well.

A. MORTGAGE LENDING STRATEGY

1. Equal Housing Opportunity Outcomes

No such measurable outcomes had been achieved by project end.

2. Agency Capacity Outcomes

The agency's increased capacity was demonstrated by the following accomplishments:

- Conducted and reported on results of survey research activities, thereby extending research capacity first developed in 1976.
- Drafted legislation and proposed regulations related to mortgage lending practices.
- Established cooperative relationships with bankers and representatives from other agencies.
- Trained staff in mortgage lending practices.
- Incorporated new intake procedures to have trained staff review all complaints possibly related to discriminatory lending practices.

B. REAL ESTATE MARKETING STRATEGY

1. Equal Housing Opportunity Outcomes

No such outcomes were measurable by project end, since the complaints had only recently been filed.

2. Agency Capacity Outcomes

By project end, the agency had demonstrated increased capacity through

- Training and using agency staff as testers.
- Developing comprehensive guidelines for testers.
- Testing 35 targeted real estate companies.
- Filing complaints against real estate brokers, three of which were based on allegations of racial steering and two on "other forms" of disparate treatment.
- Persuading the State Department of Licensing, Real Estate Division, to incorporate changes into its real estate licensing manual.

VII. OBSERVATIONS

Numerous factors affect the implementation and results of any demonstration project, some positively, others negatively. Some of these factors are within the control of the agency, others are not; some can be encouraged or avoided, others can only be accepted or accommodated. Below are some of the factors that affected the Washington agency's demonstration, with a short discussion of the role of each. Any other group or agency trying the same or similar strategies will face at least some of these same factors, and may find Washington's experiences instructive.

1. Strategy Design

The design of a strategy can affect both its implementation and its effectiveness. Identifying what is needed to implement a strategy--and how to get it--is a crucial step in project design.

An essential flaw in the design of the Washington home financing strategy was its failure to identify the strategy's essential components. Similarly, where components were identified during the course of strategy implementation, key elements were overlooked or left out. Moreover, the strategy design depended heavily on the collection of data from sources that might not reasonably be expected to provide such data.

The home sales strategy contained several elements, many of which seemed unrelated and many of which were never carried through. The purpose of these various elements was not clearly identified, nor was the method of implementation clearly laid out.

2. Previous Experience and Knowledge of the "Territory"

Previous agency experience did not seem to have a positive effect on the demonstration. In the home financing strategy, for example, the agency's past research into mortgage lending practices should have led it to a better understanding of the complications involved. Problems in gathering data on denials, rates, and loan applications--all problems it had previously experienced--simply were not adequately taken into account.

3. Leadership and Management

Leadership and management can be crucial factors in the effectiveness of a strategy. In several ways the project badly needed more directive leadership and closer supervision. Both the strategies were delayed by failure to attend to timetables, and thwarted by failure to carry through on planned actions, especially in the mortgage lending strategy. Implementation was often characterized by a lack of focus, as though the agency had a short attention span.

Project leadership did have a positive effect, however, when the agency director himself entered the negotiations with lending institutions regarding the signing of affirmative action agreements. This allowed more in-depth discussion with bankers at a peer level.

4. Staff Skills

Technical expertise, not just knowledge and experience in civil rights, may enhance a strategy and may even be essential for its success. WSHRC's project did not suffer from a lack of technical expertise and staff experience. Included among the staff were people who had previous experience in home financing related work, a credentialed researcher with broad experience in the field of home financing, and several staff members who had some experience with civil rights issues in general.

5. Political Environment

The political environment in which an agency operates is an important influence on whatever it does, in ways both subtle and blatant. The pending Department of Justice suit against several national appraiser groups, for example, seemed to help establish a basis for limited cooperation on the part of local appraisers when they were approached by commission staff regarding changes in appraisal materials.

6. Linkages Outside the Agency

At times cooperation from other agencies proved to be very useful in strategy implementation. For example, a local lending review board allowed commission staff to review its complaint file to determine whether any of the pending complaints were related to redlining or other discriminatory mortgage lending practices.

There was keen community support for the testing portion of the same strategy; in fact, the commission received several requests from community groups who were interested in developing their own testing activities.

7. Other Factors Affecting Implementation

In terms of bureaucratic limitations, although the project staff proposed regulations, it took a long time for them to be reviewed--first by the legal staff and then by the commissioners. The proposal regulations were never promulgated.

Though they cannot always be anticipated, outside circumstances can affect a strategy. As part of its home financing strategy, for example, WSHRC was to propose legislation on the problems being attacked, but this was temporarily thwarted when the legislature did not convene as expected. The project also provided another example of an unanticipated circumstance. Minority real estate brokers did not feel there was any discrimination for the multiple listing portion of the real estate marketing strategy to attack. Based on their views that they were not denied access to multiple listings, this part of the strategy was dropped.

NOTES

Chapter II: INTRODUCTION TO THE AGENCY

1. Revised Code of Washington 49.60.050
2. Ibid.
3. Id., 49.60.120.
4. Id., 49.60.010.
5. Id., 49.60.030.
6. Id., 49.60.176 and 49.60.222.
7. Id., 18.85.23.
8. WSHRC, Detailed Reports on Complaints Filed for the Period July 1, 1976, through June 30, 1977.
9. ALNA, Report on project orientation visit (August 1-2, 1977), p.5 (on file at ALNA).
10. Ibid.
11. WSHRC, Final Work Plan (April 25, 1977) (hereafter, "Work Plan"), p.5.
12. Id., p. 8.
13. Id., p. 9.

Chapter III: STATEMENT OF THE PROBLEM BEING ATTACKED

1. WSHRC, "An Analysis of Mortgage Lending Practices and Systemic Housing Discrimination," n.d.
2. Ibid.

Chapter V: IMPLEMENTATION

1. Based on staff common knowledge about the firms' ownership.
2. As determined by numbers of listed branches.
3. WSHRC, Final Research Report (June 1978), Table I, p. 53.
4. WSHRC, Report to ALNA (April 3, 1978), Attachment.
5. It lists annually all property sales in Seattle.
6. WSHRC, Work Plan, p. 19.

NOTES (continued)

Chapter V: IMPLEMENTATION (continued)

7. In some cases, of course, this is precisely what the advertisers intended.
8. WSHRC provided no numbers on this, and did not indicate how they determine such advertising as "sign placement" or "word of mouth." In fact, those aspects were apparently added on as the research was underway.