

TESTIMONY OF SARA PRATT BEFORE THE U.S. COMMISSION ON CIVIL RIGHTS, ILLINOIS ADVISORY COMMITTEE

MAY 3, 2019

Thank you for the opportunity to testify this morning. I am Sara Pratt and I retired from HUD's Office of Fair Housing and Equal Opportunity as Deputy Assistant Secretary and Senior Advisor to the Assistant Secretary in November 2015. I had the opportunity to serve in FHEO twice, from 1993 to 1999 and again from 2010 to 2015. At all times I was a career, not a political, employee. All told I have worked in fair housing and civil rights for over 42 years. I am currently Counsel at the civil rights law firm of Relman, Dane & Colfax PLLC in Washington D.C. and information about my firm and my work there is available on the firm's website at <https://www.relmanlaw.com/>.

I focus my testimony on three important features of fair housing and civil rights enforcement at HUD today which are important for your attention. First, I discuss the importance of leadership, staffing and resources to the administration of a national fair housing enforcement program. Second, I speak to support the use of the federal government resources to ensure that systemic and intransigent civil rights violations are corrected fully and promptly. And third, I address the importance of strong, consistent national guidance on civil rights issues.

The Importance of Leadership, Staffing and Resources

Work in fair housing enforcement is challenging to say the least. Regardless of the political party in power, federal civil rights work takes on long-standing barriers to full participation in housing, a subject that everyone considers fundamental to a successful life. But housing has been, and still is, often a battleground between those that have the housing they want and need and those who seek housing like that but find that discrimination comes between them and their housing needs. From racist hate crimes, to neighbors who don't want "those people" in affordable housing in their neighborhoods, to landlords who simply refuse to offer an accessible parking place to a tenant with a disability, fair housing issues often touch off royal battles across housing complexes, neighborhoods and whole communities. Anxieties and stereotypes and unfounded suppositions, not supported by facts, drive actions that violate the Fair Housing Act and the other civil rights laws that FHEO enforces. Internal opposition within HUD itself and external challenges hamper full enforcement.

Our country passed these civil rights laws to ensure that federal enforcement could ensure—when local efforts faltered—that rights were preserved and protected. Strong leadership and effective enforcement strategies make the difference in protecting rights and taking on tough issues effectively and fixing the problems for the long term.

Leadership Gaps

FHEO's political and career leadership must be knowledgeable about fair housing and civil rights and must interpret the laws credibly and reliably and consistently. From the Assistant Secretary on down, staffing of the civil rights leadership team is important. Today's FHEO is led

in Washington by people who neither know or understand about the civil rights laws or the rights that they are required to protect and preserve.

In my opinion, there is no question that key losses of career leadership in FHEO have harmed effective management and organizational leadership in civil rights enforcement at HUD. The positions of General Deputy Assistant Secretary, Deputy Assistant Secretary for Enforcement, and Deputy Assistant Secretary for Programs have all been vacated in the past few months. This is the career leadership that operationalizes fair housing nationally. All gone.

As I will discuss later, this administration at HUD has also devoted itself to undoing important work that was done because it was needed to strengthen fair housing. From the Secretary on down the political leadership has implemented an agenda that is disrespectful of civil rights and irresponsible to good governance principles. Its primary mission appears to be to undo, not to do, to tear down rather than to lead, to disrupt rather than strengthen.

Staffing Deficiencies

Although no administration has fully staffed civil rights enforcement, this administration has permitted staffing levels to drop to historic lows. In an article by Danielle McLean, ThinkProgress reported that FHEO staffing had dropped to 481 in 2018, and that this administration has submitted reduced staffing requests for FHEO, asking for fewer staff than the previous year.¹ In prior administrations, in contrast, HUD asked for more staffing for FHEO but its recommended staffing levels were reduced by Congress. Informal conversations with FHEO staff indicate that staffing levels have dropped well under 481 during the 2018 year, perhaps as low as 420. Numerous studies and reports, and my own testimony before Congress, all support a minimum staffing level of 750 Full Time Equivalents (or FTEs) for FHEO.²

Most, if not all, of FHEO's career staff who work hard to make sure that the promise of civil rights protection is fulfilled. But there are many jobs in FHEO in addition to enforcement that make sure that rights are protected. From reviewing plans to demolish public housing from a civil rights perspective, to ensuring accessible housing for people with disabilities, to reviewing how HUD funded properties market their properties to ensure a fair opportunity to apply for limited numbers of units, to overseeing agreements and contract to fund government and private fair housing agencies, FHEO staff perform many unseen tasks that are still critically important to assuring civil rights in multiple arenas. In some situations, those actions are heroic, and serve as the canary in the coal mine to protect rights that no one else notices, much less protects, like

¹ "Trump's HUD wants to expand flawed program that is 'privatizing public housing,'" ThinkProgress, February 27, 2019, available at <https://thinkprogress.org/a-flawed-public-housing-program-leaves-vulnerable-residents-at-the-mercy-of-developers-66a0ee5b2321/>

² See, for example, "The Future of Fair Housing," National Commission on Fair Housing and Equal Opportunity, December 2008, at page 17, available at https://www.prrac.org/projects/fair_housing_commission/The_Future_of_Fair_Housing.pdf

people here today did in trying to right injustices in the Alexander Housing Authority in Cairo, Illinois³ and in many other places across the country.

Current staffing levels are wholly inadequate to do even a minimum level of the work that is necessary. The levels are so low that it is easy to believe that understaffing of the civil rights function is a deliberate action designed to reduce the effectiveness of enforcement and the other work that FHEO does.

Inadequate Resources

Every component of the federal government requires resources besides staffing to do its work effectively. This administration has stopped some important efforts at public education and lacks adequate resources to contract with external entities whose would could supplement and expand fair housing presence nationally.

Most notably, this administration has completely dropped an important national resource for fair housing education materials. Using non-staff resources, FHEO established a Fair Housing Clearinghouse, operated by the National Fair Housing Training Academy. The Clearinghouse aggregated public education materials, including posters, training materials, brochures and public service announcements that were paid for by tax payer dollars and primarily generated by private and public fair housing organizations and made them available on line across the country, so that any group could download and copy the materials. It was a cost-effective way of making existing materials readily available at low cost, and it avoided duplication of effort and saved federal money by avoiding repetitive preparation of materials on the same subject in different locations. It was taken down, and although HUD officials told me that it was going to be reinstated on a HUD platform (which would likely have required contracted work), the materials have never been made available publicly again.

Furthermore, historically FHEO has had contract funds to use to supplement its own resources when they are lacking. For example, contracting with architectural experts to assist in accessibility investigations, hiring a forensic accountant to assist with tracing financial records, or paying a treating physician required fees for a medical evaluation on injuries caused by discrimination, testimony in an investigation or hearing or even paying for an investigative interview. Those funds have not been available for many years.

Correction of Systemic Violations of Civil Rights Laws

One of the results of the lack of staffing and funding for external resources is the limited ability to conduct systemic investigations. In my view, one of the important roles of the federal government is to undertake investigations that are not feasible locally. Whether it is racial segregation of small town public housing, or lending discrimination against pregnant women against a national bank, the federal government should be the unique resource to step in. During the previous administration, FHEO required that each region take on a few, in some cases, one or

³ See, e.g., Molly Parker, "In Cairo, HUD takes possession of Alexander County Housing Authority," available at https://thesouthern.com/news/local/in-cairo-hud-takes-possession-of-alexander-county-housing-authority/article_9b142973-d7ff-5b63-bb4c-10d3ffab5781.html

two, systemic investigations, even with limited resources. In a systemic investigation, multiple victims are identified, and broad patterns of discrimination evaluated and remedies are sought that will eradicate those issues nationally or regionally. FHEO has tools for this—authority in regulations, ability to conduct investigations across jurisdictional lines, the ability to initiate its own complaints, and the ability to work collegially with the Department of Justice on common approaches to large investigations, and FHEO has used that authority in many cases over the years. But not in this administration. Since Ben Carson stepped in as Secretary of HUD, HUD has only used its authority once to take on widespread housing discrimination, in an unnecessary investigation of Facebook. I say unnecessary because the civil rights issues for Facebook had already been challenged in litigation by a national group and there was no pressing need for HUD to step in. In contrast, HUD during the Obama administration opened Secretary initiated investigations on average 10 times a year, and initiated and settled many more cases with systemic investigations.⁴ These cases included several lending redlining settlements, a case against the state of New Jersey for discrimination based on race and national origin in making disaster recovery resources available after Superstorm Sandy,⁵ multiple maternity leaving lending settlements including one with \$5 million in relief for victims against Wells Fargo,⁶ and numerous investigations of discrimination in the siting and operations of HUD-funded housing, including the Alexander Housing Authority investigation.

This administration has focused on processing individual cases, with small remedies, rather than undertaking even a few larger, more systemic cases. Whether it is lack of staffing and resources or a lack of will doesn't matter. The fact is that this work exists, and is needed and it part of the federal civil rights enforcement obligation, and it is not occurring in this administration.

The Need for Strong Guidance that is Consistent with Civil Rights Principles

One of the most important things that a civil rights agency can do is to offer guidance and public materials on how the civil rights laws apply. Part of this is standardizing interpretations and operations for the public and part is providing reasonable guidance to practitioners (lenders,

⁴ Tracey Jan, The Washington Post, Ben Carson's HUD dials back investigations into housing discrimination, December 24, 2018, available at https://www.washingtonpost.com/business/economy/ben-carsons-hud-dials-back-investigations-into-housing-discrimination/2018/12/21/65510cea-f743-11e8-863c-9e2f864d47e7_story.html?utm_term=.7ab8d944acce.

⁵ This settlement is known for being the largest settlement in the history of fair housing case, with over \$240 million in resources involved as part of the settlement. Press release and agreement available at https://www.washingtonpost.com/business/economy/ben-carsons-hud-dials-back-investigations-into-housing-discrimination/2018/12/21/65510cea-f743-11e8-863c-9e2f864d47e7_story.html?utm_term=.7ab8d944acce. See also "Agreement Requires Targeting Sandy Funds to Hardest Hit Communities, Addressing Language Barriers in Recovery Programs, and Helping Renters and Homeowners Left Out of Recovery to Date," May 30, 2014, available at <http://fairsharehousing.org/blog/entry/settlement-reached-in-sandy-civil-rights-case/>.

⁶ See, e.g. Emily Wax-Thibodeaux, The Washington Post, "A HUD win: Wells Fargo to pay \$5 million settlement for bias against maternity leave," October 9, 2014, available at https://www.washingtonpost.com/news/federal-eye/wp/2014/10/09/hud-reaches-5-million-settlement-with-wells-fargo-over-maternity-leave-discrimination/?utm_term=.ca41ad519780.

landlords, real estate agents, developers) and to consumers (people who are discriminated against and those who think that they have been discriminated against.)

Such guidance is important to prevent discrimination by those who merely want to know what to do so they can do it, and as a basis for training, instruction, investigation and even for enforcement action. This administration has failed to issue affirmative instruction on any issue and it has focused its attention on undoing work that has already been done which is consistent with case law and long-standing interpretations of the law by HUD and DOJ.

I am unaware of any useful civil rights guidance that has been issued by FHEO in this administration. I won't bore you with listing the guidance that was issued in the previous administration, but it included three major regulations, on harassment, on proof of discriminatory effects and on the obligation to affirmatively further fair housing, all overdue and important guidance pieces, and more than twenty guidance and instruction pieces on interpretation of fair housing and civil rights issues. More if you count documents issued in conjunction with the Department of Justice such as the Joint Statement on accessibility and the updated Joint Statement on zoning and fair housing.

I am aware, however, that this administration is making strenuous efforts to remove or remodel past guidance in ways that are completely inconsistent with long-standing legal principles. I am part of a legal team that has been in litigation against HUD on two of those: the gutting of the obligation to affirmatively further fair housing by removal of the Fair Housing Assessment process, and the unsuccessful attempt of HUD to pull back a prior rule about the level of rent payments available to Section 8 voucher holders that would allowed them more opportunities to move to better neighborhoods by paying landlords more rent. That lawsuit was successful, and a recent report indicates that the pilot of this program also has been very successful.⁷ The lawsuit on the obligation to affirmatively further fair housing is still underway.

In addition, it is common knowledge that FHEO is seeking to significantly revise the regulation on discrimination effects under the Fair Housing Act in a way that is profoundly different from the past regulation just issued in 2015 and inconsistent with an entire body of case law interpreting the Fair Housing Act. The use of the disparate impact/discriminatory effects theory as one way to establish whether a policy or practice is discriminatory is well established in the law. I personally have training, taught and applied it since 1977 in occasional fair housing cases, and it is an important tool for undoing long standing patterns of segregation, exclusion and discrimination. In fact, one might argue that is why it is still so controversial—because it is needed to finally eradicate systemic and long-standing discrimination from our country once and for all.

I urge the U.S. Civil Rights Commission to use its powers of leadership on civil right public policy issues and its powers of persuasion to oppose these backward steps on important civil rights issues and offer my assistance in that process.

⁷ See HUD's recent issuance of a study on the Small Area Rent Demonstration Project, published on April 15, 2019 and available at <https://www.huduser.gov/portal/pdredge/pdr-edge-research-041519.html>.

I trust that things will get better at HUD but they may not without great external leadership. I mean when I say this that things will get better for its employees who are trying to make a difference without micromanaging or being over enthusiastic, and better for a federal agency that is currently failing in its obligation to protect the fair housing and civil rights of people who rely on the government for justice. Justice requires a fair and impartial investigation, that is correctly resourced and correctly led, justice requires effective remedies that end individual and systemic discrimination and remedy the injuries that discrimination causes, justice requires that their government addresses the deeply entrenched patterns of segregation and discrimination that still divide communities. I hope that my testimony turns the light on some of the key issues that must be fixed to make civil rights enforcement at HUD work again.

Thank you.