REDLINING OF THE INNER CITY HOUSING MARKET: A VIOLATION OF THE FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE

by

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Dedication

I am a part of all that I have met ...
Too much is taken, much abides ...
That which we are, we are ...
One equal temper of heroic hearts...
Strong in will
To survive, to seek, to find and not
to yield.

Tennyson

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Frederick L. Lager

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I. INTRODUCTION

Introduction

The endeavor to carve a remedy for this nation's metropolitan dilemma has gone awry. Despite tons of bureaucratic red tape, America's inner city neighborhoods continue to decline. Rising property taxes, rising housing costs, rising unemployment and the decreasing quality of public services escalate the rate of decline. Compounding this, an aging housing stock, and the out-migration of white middle class families aggravate the problems of the inner city even more. Agitating the situation, discouraging interest and mortgage loan rates work to deprive many credit worthy people from otherwise affordable housing. Faced with this situation, these people turn to other alternatives such as apartments, condominiums, suburbs or subsidy housing. At this point, the decline of the inner city accelerates.

The neighborhood, the building block of these cities, has been studied, analyzed and classified countless times by scholars and residents alike. The incidence of decline, its accompanying scenario and impact on inner city neighborhoods is well known. Despite the forces, public or private, that motivated this empirical effort, the definition of neighborhood remains surrounded by ambiguity. Basically, the neighborhood is composed of the residents of the area, the existing housing stock, the physical pattern and the surrounding environment. These elements must be compared in relationship to one another when examining the life and subsequent decline of a neighborhood. If an area experiences a transition, each of these elements reacts in relation to changes occurring in the other and in reaction to greater external forces which induce decline.

The forces that influence the nature and severity of a neighborhood's decline can be subdivided into two groups. Regional influences include population migration (in and out), perceived job opportunities, existing housing and personal income. Internal forces involve action such as poor land use, racism, classism, racial steering and structural aging. Individually, each of these elements only minimally affects the rate of neighborhood decline. Combined, they stagnate the viability of our inner city neighborhoods and increase the rate of decline.

Reflection upon the life cycle of a neighborhood's existence furnishes a descriptive scenario of decline. A neighborhood begins as a result of the expansion required by additional homes, the consequent development and the eventual occupation by an income group. For a period of time, the area retains its initial value. The occupants eventually sell their homes and are replaced by owners with a similar income. Over time, and as a result of structural age, neighborhood change and increased costs, these people will also sell; probably to a more moderate income group.

Gradually a new income group emerges in the neighborhood. No longer does the area retain its original worth. Instead, a stable middle income area results where high standards of living exist. Over an additional period of years this average income area begins to show signs of aging. Things are not the way they were. Homeowners raise their families and the children leave. Incomes of some of the homeowners eventually reach a peak and begin to decline in relation to the increased costs of homeownership. Homes seem to take longer to sell. New people move into the area who can't afford to maintain their homes the way the old owners did. Mortgage lending firms recognize the initial stages of decline and become more cautious. Competitive financing for home purchase or improvement becomes hard to find. Homes which were previously owner occupied are suddenly rented. Many of the older residents express a desire to leave. The sale price of housing in the area, relative to other areas, begins to slip. As new people move in, poor maintenance becomes the rule rather than the exception. The tax base suffers due to the out-migration of the middle income owners and services decline. Abandonements sully the neighborhood; housing, its foundation eroded.

The process of neighborhood decline implicitly interwoven with the thread of housing; its development, occupation, transition, and abandonment, involves a complex set of interrelated activities. Homeowner satisfaction, rights, obligations, conveniences and expectations must all be taken into account. The patters formulated by the mix of these activities determine the utilization of the largest part of our urban land. Thereby, housing, is the critical element when formulating any potential solution to the problem of neighborhood decline in our inner cities.

A. The Nature of Housing

The classical definition of housing, as being "both a product and a process" 1/, illustrates the dual nature of the housing dilemma. Housing, as a product, refers to the physical unit and its accompanying economic value. The tangible figure that represents this value is based on the worth of the unit's design, materials, location and final cost. The relative cost of these variables fluctuates either because of local demand for housing or the individual unit's stage of development. Once established, the value of the structure affects mortgage loan rates, the amount and allocation of open space, neighborhood facilities and innumerable other components that affect the individual choice of housing.

Individual housing units combined form neighborhoods. Neighborhoods decline over time as a result of structural age, deterioration or lack of maintenance. This distinction allows housing to be viewed in terms of a process. The scenario of decline within a neighborhood and the process of housing become one in the same. Otherwise, housing is subject to a process known as downward filtration whereby it passes from one income group to another over a period of years. The transition of housing can be either up or down, but in most cases it is down, due to the physical aging of the individual structures involved. Thus, housing can be analyzed in terms of an economic product characterized by changes in ownership, the result of downward filtration.

The dual nature of housing, product and process, results in a two-tiered economy operating in our urban areas. The soaring real-estate market in many of our major metropolitan areas contributes to the maintenance of this two-tiered economy. Uneven growth, consolidated in upper middle class homeownership, professional and managerial employment, and in central business district office space separates the first and second tiers. The eminent cause of this two-tiered economy rests in a series of policy decisions rendered by our urban governments. Under the guise of "helping the poor" these metropolitan governments have enacted laws that benefit the city in the short run, but that have devastating effects upon it in the long run.

The first tier of this economy, and the most obvious, operates within the city at large. Characterized by various interdependent relationships of an economic nature, its performance relies upon the city's ability to make the best possible use of the limited resources available. The salient resources of land, labor, production, profit, loss, cash and credit, combined with the advantages of location, weather, nature resources and personal industry beget the nature of urban economics and the basis for this first level of economy.

The dilemma of decision, facing all metropolitan areas, hides the recognition of a lower second tier economy. Essentially based on discrimination and segregation, this second economy cripples the infra-structure of the city, its neighborhoods. The decision not to devote some tangible resource to these inner city areas eventually results in severe blight and abandonment. The second economy, a non-productive element, results only in the scars that eventually become the shell of what once was a neighborhood. These scars, the corollary of crime and arson are the result of neighborhood decline and downward filtration. The initial stages of this second economy's development are most often evidenced by the vaguely institutionalized practice of red-lining.

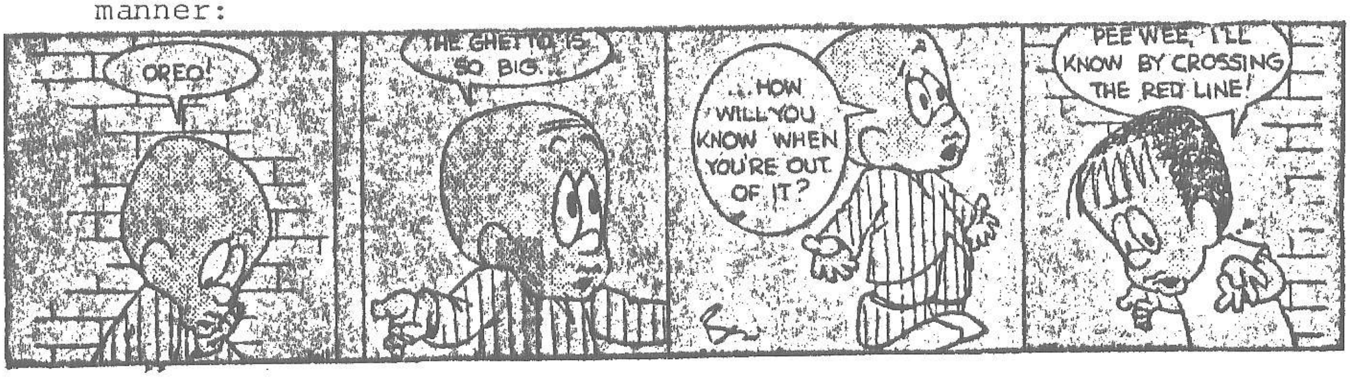
Redlining, simply identified, is a phenomena whereby banks, mortgage lending firms or savings and loan companies deny mortgage or credit assistance to areas deemed to be an unsound business risk. Often, the act of redlining a specific geographic area is synonymous with a decline in economic activity that suggests the area may not prove viable enough for credit investment by the financial entity. Redlining, physically recognizable with the identification of abandonment and decline, actually occurs sometime prior to the out-migration of middle income families from the area. The result of this economic decision is the acceleration of the decline process within the neighborhood. Redlining draws its name from the practice of using red markers to outline selected geographical areas on maps composed of older, transitional or declining neighborhoods. The practice results in these neighborhoods being denoted as "bad business risks". The risk, involves the investment of time, energy and capital towards what technically is a maintenance effort. The result without this investment can easily be identified in Northern Philadelphia, New York City, Washington D.C. and various other metropolitan areas of this nation.

The typical redlining situation generally develops prior to the initial recognition of abandonment. It becomes imminent as the process of downward filtration accelerates. Financial institutions make their decision to redline on the basis of physical maintenance, the quality of public services in the area, the age of the area, and the economic ability of the credit applicant. Many of these applicants, some on fixed incomes, are caught in the crunch of a wage-price spiral. In addition, they are burdened with increased housing costs such as property taxes, maintenance costs, insurance premiums and the like, while their incomes remain the same. In conjunction with this, the impact of inflation reduces the buying power of the capital they do have available. Applicants for credit in these redlined areas with adequate or better credit histories are turned down on the basis of the unit's structural age, its location, and the likelihood of return on the initial investment by the lending firm. In many cases redlining can be identified on the basis of ethnic or lower income areas. The evidence of geographic discrimination, disinvestment and/or redlining becomes evident. Abandonment, arson and vandalism soon transform the area into a burnt shell.

Thus, the act of redlining raises a question under the Equal Protection Clause of the Fourteenth Amendment, in that its effect treats separate classes of people differently. The various lending institutions that offer home mortgage or renovation monies, also are in many cases insured by a public entity, such as the Federal Housing Administration, the Federal Deposit Insurance Corporation and the Veterans Administration. The established precedent of the Fourteenth Amendment demands the color of state action, whenever the remedies under the Equal Protectection Clause are invoked. The state action must occur in conjunction with the illegal action, for a cause of action to be sustained under the

Equal Protection Clause. The fact that these federal agencies insure these lending institutions, suggests the color of state action, and therein the act of redlining becomes suspect. Proceeding from this hypothesis, two questions can be identified immediately. First, does the government's action in relation to redlining constitute state action for the purposes of the Equal Protection Clause? And second, what responsibility does the private lending institution bear in relation to its geographic location and the occurance of redlining?

Brumsic Brandon Jr., in the Washington Post, distinguished redlining in his comic strip Luther in the following manner:



While lighthearted in context, this simple comic strip's recognition of the inner city problem of redlining portrays the significance of the problem currently facing our metropolitan inner cities. From this basis arises the need for an indepth analysis of the problem so that an equitable solution for all parties involved may be formulated.

II. PRIOR CASE STUDIES

II. Prior Case Studies

A. Theoretical Explanations of Decline:

The problems of deterioration, blight and abandonment in America's metropolitan areas demand a workable solution. Despite massive effort, a solution till now has eluded us. Evidence supporting the existence of urban decline, all too obvious, faces us daily. Major metropolitan areas throughout the nation face similar problems in regard to the deterioration of their inner-city housing. Chicago's ghetto area, experiencing an ever increasing rate of decline, lost 50% of its occupancy between 1960 and 1970. 2/ Baltimore's mid-town area exhibits an aggravating decline caused by disinvestment on the part of local mortgage lending entities. 3/ Philadelphia, its renovated Society Hill and Independence Mall areas not withstanding, still exhibits a decline in the city's Northwest area. 4/ Youngstown, Ohio experienced the closing of the Youngstown Sheet and Tube Corporation, its major employer. As a result, a morass of problems arose, some of which were new and others previously dormant. 5/ Finally, who fails to remember the recent trip of President Carter, former Secretary of Housing and Urban Development Harris and then Mayor Beame into the shell of the South Bronx in New York City 1977.

The process of decline, as experienced in these and many other cities, basically follows the scenario of a neighborhood's deterioration. Downward filtration of this nature, the product of redlining, results in a higher degree of urban disinvestment. The opposite of typical investment patterns, disinvestment refers to the practice of withdrawing mortgage investment monies from so called "questionable" neighborhoods by various lending entities. A recent Harvard - M.I.T. study brough to light three theories from different disciplines that address the disinvestment process, as a cause of neighborhood decline.

Briefly, these were:

1.) Orthodox Economic Theory which concentrates upon decline of the housing stock as a natural result to existing economic conditions.

2.) Socio-Economic Dual Theory which focuses upon the relationship between the tenant-landlord and the real estate-finance relationship.

3.) Radical Political Economic Theory which dwells on the control of capital and the distribution of political power as essential to the dynamics of decline. 6/

The following discussion will review the basic principles behind each of these theories, and the role of financial institutions in each. An understanding of these will allow a better appraisal of the different explanations of neighborhood decline and downward filtration.

Orthodox Economic Theory

The oldest of the three, Orthodox Theory can be analyzed in terms of its reliance upon disinvestment as the natural means of eliminating obsolete housing stock. Its basic premise is the traditional assumption that downward filtration operates naturally when the costs of maintaining an inner city property surpass the tangible value of that property. The theory indicates that the owner must then reduce the costs or face loss of value in his investment. To achieve this goal, the owner's effort to reduce cost usually takes the form of reduced maintenance to the structure in question, or non-payment of taxes. The next result usually includes a drop in the appraised value of the property. Thus, Orthodox Theory views disinvestment as a direct response to either the poor prospects of return or the real and perceived risks associated with investment of this nature.

Obviously, the action of the financial community plays a major role in Orthodox Theory. The factors these various institutions utilize when deciding whether or not to accept or reject a loan application include consideration of the area and its ability to retain its value during the duration of the individual loan. This takes into account the potential for fires, vandalism, riots and property damage in general. The individual parcel's quality and age, characteristics of the particular applicant that affect maintenance and the history of foreclosures in the area are also considered. In addition, the ability of the potential owner to make mortgage payments takes into account such factors as the stability and source of income, stability of family relationships and credit history. 7/

The Orthodox Theory concludes that these financial institutions will eventually withdraw from the mortgage market in the area. The withdrawal from the market begins with the savings and loan associations, and is followed by the mutual savings banks only because their diversified portfolios can permit them to offset high risks through more stable investments. 8/ Finally, these too withdraw, replaced by the mortgage brokers (described in the literature as mortgage bankers or mortgage companies) who fill the financial vacuum. These entities can only bring buyers and sellers together in the inner city market because they are able to demand higher profits in the form of higher interest rates. 9/ In the final stages of the area's decline, even these non-institutional lenders withdraw, bringing the entire finance market to a halt, conceding the area to blight and abandonment.

Upon this basis, Orthodox Theory concentrates upon the materialization of decline and calls for intervention into the market place in the form of subsidy programs. These intervention programs, generated in many different forms, include such devices as rent assistance programs, subsidized mortgage instruments and rehabilitation loan guarantees.

Intervention into the housing market on the part of various levels of government, primarily based on certain quality standards of the structures and areas involved, results in an increased rate of decline for the areas most in need of assistance. This situation develops as the result of two forces. First, the subsidizing/insuring agency will, of right, demand that certain standards of quality both in construction and amenity be present prior to the issuance of a loan guaranty to the lending entity. Second, the mortgage or rehabilitation lender will not lend the capital necessary to maintain these standards if it so deems the area too great of a risk despite the creditworthiness of the applicant. As a result, the area and its structures decline and thereby the standards necessary for assistance are not present. This situation creates many problems and foretells of future blight and abandonment. As a result, the Orthodox Theory, while lending valuable insights, is but a portion of the vital explanation of the relationship between neighborhood decline and actions of the financial sector.

Socio-Economic Dual Theories

Sociology offers several dual theories which espouse a relationship between behavioral attitudes and market imperfections as the primary cause of neighborhood decline. One of the more well-known, the Krohn Hypothesis 10/ suggests a dichotomy between the economic real estate market's function, and a peasant-like economy evident in a lack of participation in national capital markets and reciprocal arrangements between landlords and tenants. Black-White Theory, another within this group, relies on the importance of racial relationships 11/ between minority tenants and white landlords or mortgage representatives. Finally, Welfare Theory views the source of income as fundamental. 12/ It postulates a different level of treatment to welfare recipients as opposed to non-welfare residents. This treatment on the part of landlords and mortgage lenders usually results from an informal rationing process which links receiving welfare with risk. As a result of more attention being paid to traditional economic theory and its relationship to decline, dual theories have remained either less developed or untested. They may, however, prove more helpful in the final analysis for explaining the dynamics of neighborhood decline. Thus, a brief review of each becomes necessary.

Krohn Hypothesis

An empirically tested theory 13/, the Krohn Hypothesis concentrates on the relationship between the landlord or mortgage lender and their respective clients. It rejects the traditional economic explanations of decline in favor of one based more on the social relationships of the parties involved.

In areas composed primarily of owner-occupied units, home sales are generally based on reciprocal relationships between the owners under this hypothesis. In such cases religion, family type and mutual self-selection play an important role in the transfer of ownership. The cause of this situation, a "dislike" of outsiders, brings to light the motivational variable upon which the decision to sell or not is made. 14/ The hypothesis relies upon the availability of mutually acceptable homeowners or tenants. Upon this basis, it concludes that neighborhood decline and deterioration begin when there are not enough potentially desirable buyers or tenants to go around. The current owners are then forced to accept buyers or renters of lower socio-economic status, and the area becomes more susceptible to decline.

The area's existing mortgage market plays a role in determining the rate of decline when this theory is relied on. When the area's social relationships begin to break down, friends and relatives become less likely to offer loan funds to new owners. The drying up of these sources either slows down the level of maintenance and sales or forces the credit applicant into the national capital market, with higher interest rates. The result, a tighter cash-flow squeeze in the area, hastens the development of the decline process.

Black-White Theory

Existing or past racial transition in an area plays a prominent role in many theories of inner city decline. This specific body of theory claims that discrimination, the sine qua non of neighborhood decline and abandonment, permeates the housing market operation. It postulates a separate submarket of black housing with distinct geographic boundaries enforced by decisions on the part of real estate agents, appraisers and mortgage lenders. 15/ The process of decline sets in as a result of pressures initiated by an expanding black community that threatens to expand into a previously white neighborhood. Seeing the initial stages of a transition, the financial community feels obligated to withdraw from the mortgage market on the premise that the area represents a bad business risk and poor management of their depositors' funds.

Black-White Theory and its influence upon the mortgage market have been debated for the last twenty-five years since Grebler 16/ and Abrams 17/ first introduced discriminatory lending practices to the housing dialectic. Since that time, three branches of the Black-White Theory have developed. Once group contends that "whites have a greater aversion to living among Negroes than do Negroes", which would lend justification to the argument that blacks will actually seek to outbid whites for properties in transitional neighborhoods. 18/ Another group grapples with the problem and concludes that while whites discount prices in transitional areas, blacks will pay higher premiums to find housing in an integrated neighborhood. Knowing full well the risk they take, blacks still take this action despite the fact that the area may well lose its value once its transitional period passes. 19/ The third group adhers to the premise that preferences to living apart imply discounts in the transitional neighborhood for both groups. 20/ Neighborhoods currently undergoing the initial efforts of rehabilitation can be identified in this last group based on the lower cost of living evident due to the large number of rental units still in existence.

Mortgage lending firms recognizing the initial stages of housing filtration as the result of transition become more cautious in their efforts to solicit lending portfolios in the declining area. Evidence indicates a trend of overt discrimination in these transitional areas. 21/ Of note, a recent study in the state of New York found that the rate of mortgage lending drops significantly as the percentage of non-white residents increases in an area. 22/ Inasmuch, as race may not be the sole factor responsible for neighborhood decline, it does show a high correlation to the many factors that are associated with decline and deterioration.

Furthermore, many factors generally associated with high risk areas can also be associated with minority applicants for mortgage credit.

The transitional neighborhood, especially where minority home mortgage applications exist, lends credibility to the hypothesis of Black-White Theory. The fact that these areas may be transitional due to the withdrawal of mortgage loan funds raises the question of redlining. When Black-White Theory and redlining are mentioned together, the need for a more realistic appraisal of the situation and a more concentrated effort at broader solutions becomes paramount.

Welfare Theory

Welfare Theory, perhaps the least developed of all socio-economic theories, focuses upon the relationship between landlords or real-estate agents and their clients with welfare or non-welfare income. Income and its source, the critical elements of this body of theory provide a rationing device, as was race in Black-White Theory. Utilizing this standard, various mortgage lending entities identify applicants as a potential risk. As a result, two groups emerge: 1.) the "deserving poor" placed in their situation by unfortunate circumstances beyond their control, such as relocation of employment, inadequate transportation systems and insufficient public services for the inner city indigent, and 2.) The "problem family" which usually receives some form of welfare assistance and thus is no longer considered acceptable as a good credit resk. 23/ Additional support for this theory may be acquired from various decline studies which identify a widespread concentration of welfare families as the penultimate stage in the abandonment process. 24/

The process of neighborhood decline in terms of Welfare Theory exhibits a strong relationship to the dynamics of deterioration under Black-White Theory. Reluctance to associate with problem welfare families on the part of lenders and neighbors alike, leads to the initial stages of abandonment. A belief that these families represent an increased risk elicits the demand for higher rent premiums by the landlord or higher interest on loans from the various lenders. Due to the fact that many of these people are unable to afford these increased costs, the level of maintenance in the area declines and the initial stages of abandonment begin their cycle. Vandalism, crime and arson, the typical results when problem families are concentrated under these circumstances, become pervasive until abandoned properties dominate the neighborhood.

Suggesting a dichotomous relationship between various representatives of the private financial sector and individuals categorized on the basis of their income or race, these three socio-economic theories present the process of decline in sociological terms. Focusing upon class and the relationship between the landlord and tenant or between the real estate and finance industry, the proponents of these theories view disinvestment as a discriminatory rationing device. An exploitative tool utilized in this manner, disinvestment preserves and increases the power of the financial community at the expense of another element of society that is less fortunate. 25/ Thus, this body of theory goes beyond the realm of pure orthodox theory and examines decline in terms of the relationship between individuals.

Radical Theory

A group of discontented economists, arguing that the previously discussed theories of decline fail to explain the dynamics of neighborhood deterioration, support a theory not as prevalent, yet enduring. 26/ The explanation of decline they propose, endorses the idea that the primary motivation of the financial sector to lend in the inner city results from their effort to maximize profit via the most advantageous power relationship available. These liaisons develop due to the interaction between landlords, real estate agents, mortgage bankers, savings and loan associations and banks. The utilization of this technique, while working to the disadvantage of local mortgage and rehabilitation credit applicants, evolves as a result of their lack of political power and financial sophistication. 27/

The basic element of this theory, power relationships between financial actors, seeks to explain the distribution and control of capital as it benefits the actors by market transactions. The supports of the Radical Theory claim the ability to prove that profit is generated by means of the perpetuated existence of the status quo and the process of decline. They maintain that the federal financial regulatory agencies rather than seeking solutions to the problems, act as participants when their regulatory measures, in effect, maintain these power relationships. Thus, proponents of the theory contend that these relationships perpetuate the decline process, thereby creating profit for the financial actors involved. The actors, not likely to consider reducing their profit margin, promote neighborhood decline and abandonment by their actions.

The theory proposes a different scenario for the process of downward filtration of housing in these areas.

1.) Speculators of the area spread rumors of impending sales to minority families, and possibly support this situation with actual sales at little or no profit.*

2.) The fear of decline promoted in the neighborhood results in "panic" selling by the residents. These properties (formerly held at a mortgage rate of anywhere from 3½ to 5½ per cent) are acquired by the speculators.

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* - This technique is more commonly recognized within the the discipline as blockbusting.

They, along with the lenders profit from the 8 3/4 (if not greater) per cent mortgage held by the new owners. 28/

3.) Traditional lenders evacuate the area by attempting to unload as many of their portfolios as they can. As a result, a financial vacuum for conventional lending is created.

4.) Minority families descend upon the area due to their desire for improved housing, better neighborhood conditions and the promises of mortgage brokers who fill the financial vacuum with the assistance of FHA guaranteed mortgages.*

5.) Vacated residences in the transitional area are sold to minority families at inflated prices, resulting in huge profits for the speculator. Sales are often facilitated through FHA first mortgage guarantee programs, with downpayments as low as $200. Many of these homes are unappraised and many defects unnoticed.

6.) Many of the families that move into the area have inadequate financial reserves. Soon repair problems increase - along with negative externalities resulting from problem families. Low equity in the residence results in mortgage defaults, foreclosure and abandonment. The neighborhood declines. 29/

The Radical Theory 30/ suggests that three ideas should be adopted to reverse the process of decline. If these were accepted, the hope is that the power relationships between

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* - Many of these mortgage brokers remain all but unregulated under the current application of federal regulatory devices.

the landlord and tenant or between the lender and resident homeowner might be reversed. First, inadequate leasing papers cause a great deal of the problem. They do not spell out the landlord's duty to maintain the property in conjunction with the tenant's duty to pay rent.** One potential solution to this matter, suggested by theory proponents would be a redefinition of tenant agreements in contract law that would mandate reciprocity and permit mutual maintenance and tenantry obligations.

Second, the adherents of the Radical Theory support the use of collective *bargaining* through tenant organizations. As a result of organization of this nature, the theorists anticipate an increase in the occupants political power and thus a shift in the balance of power favoring the tenants.

Finally, to insure that local interest will gain, and from that point, hold the representation they need, advocates of the Theory endorce widespread community action. A few of the more notable suggestions include minority owned banks and mortgage brokerage services, self-help housing programs and equity transfers by absentee owners.

As one might expect, a theory originally embraced by Saul Alinsky would be one that involves participatory

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** - Recently, some courts have implied a continuing covenant by the landlord of habitability and repair in leases of urban dwellings: see, Javins v. First National Realty Corporation 428 F.2nd 1071.

community action. Going beyond the previously discussed theories, Radical Theory advocates community involvement and participation as the most likely method to solve the problems of inner city stagnation. Based on this suggestion, and while still hoping to adopt elements of the previously discussed theories, the solution to neighborhood decline seems within reach. The knowledge and theory of traditional economics may now be accompanied by the interaction of various individuals to solve the problems that have beset us for so long. This effort previously led only to discussion, emperical work and bureaucratic regulation. But now with the addition of participatory community action, we may well hold the key to finding a solution to our inner city housing problems. The waves caused by these events may well merge, to create the public swell that will be necessary to wash away the stain of inner city blight and abandonment.

II B: Examples of Decline

History's course indicates that one element of society cared little, if at all, for the struggles and fate of those underneath. Content to hold the rest of society down, they retained their power base. The source of their power, the exploitation of labor and neglect of its well being, caused ever growing discontent among the lower echelons of society. Eventually, the discomfort and crowded conditions became so great that mere contests of will turned into upheavals so turbulant that the comfortable upper element began inquiring as to what was the matter. Since that time, mountains of evidence describing the conditions prevalent in our urban areas accumulated rapidly until the world had its hands full, answering for its age old neglect. With this came the acknowledgement "we can do better" and as a result the effort to seek a solution to our urban enigma.

I.

In New York City, the period of questioning the status quo did not come until much later than in the rest of the world. One of the world's youngest great cities, it did not experience the decline of its neighborhoods until much later than its sister cities of the world. Only as a result of massive migratory movements of minorities from the South and immigration from many European nations were its neighborhoods to become overcrowded.

As a result of these overcrowded conditions, such works as Progress and Property, How the Other Half Lives and Wealth Against Commonwealth 31/ reviewed the elements contributing to the problem. In addition, movements such as the Reform Housing Movement 32/ and legislative efforts such as the "dumbbell" plan 33/ and the Tenement House Act 34/ vigorously sought to improve the situation. Despite this period of municipal reform, no matter the effort or intent of these people, the overcrowded housing problem persisted.

In 1909, the initial Conference on City Planning met in New York and Benjamin Marsh explained that "the land question is fundamental to a proper solution of the housing questions." 35/ With this development, the problems of overcrowding and housing deterioration became subject to economic analysis. Over the next sixty years, many more suggestions to solve the housing dilemma arose. Several suggestions, even implemnted brought initial relief by cosmetically treating the problem. Yet, urban blight and deterioration still persist even today, as evidenced by the conditions prevalent in New York City.

Between 1965 and 1968, the loss of housing in New York to abandonment would have been sufficient to house more than 300,000 people. 36/ Addressing this situation ten years later, Secretary Harris formally with the Department of Housing and Community Development recognized that:

> "Too often the older cities have become monuments to our lack of regard for the essence of our national character. In many great urban centers, particularly those of the Northeast and North Central States, neighborhoods, the traditional building blocks of a great city, have declined sharply. Usable, sound housing stock in these neighborhoods has become unsalvageable through lack of maintenance, abandonment or a combination of these factors." 37/

Many of the initial causes of abandonment and eventually blight seem traceable to a combination of elements. The process of housing filtration occurs from the desire of middle and upper income families to improve the image of their environment. They seek low density and open space and as a result migrate towards suburbia, in favor of inner city living, where maintenance, amenities and taxes have become unsatisfactory. 38/ Out-migration of residents from the inner city significantly reduces the tax base and leaves various properties vacant. This condition becomes even more acute when the focus turns to the central city portions of this nation's metropolitan areas. For example:

> "Between March of 1975, and March of 1976, metropolitan areas of the United States lost nearly 400,000 citizens through out-migration. Central city areas sustained a net loss of almost two million during the same period." 39/

On the basis of these figures, and evidence indicating that redlining occurs sometime prior to the out-migration of population 40/, redlining becomes suspect.

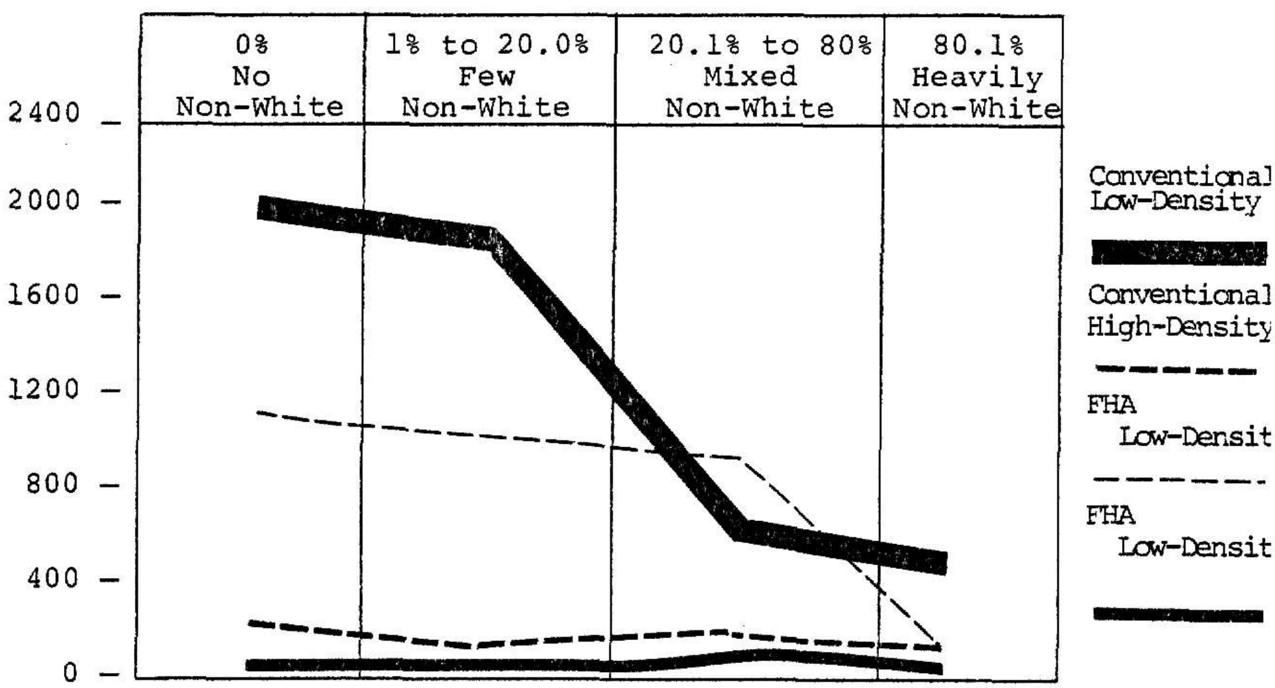
A recent study 41/ of the state of New York analyzed the lending patters of seventy-nine various financial institutions. The study focused upon differential lending as affected by the single factor of race. It discovered that as the composition of an area changed from white to non-white, the number of home mortgage loans decreased proportinately. The potential for neighborhood transition primarily resulted from increased upper and middle income population out-migration. The investigation was based on two preliminary assumptions: first, that redlining does exist and second that redlining could be directly correlated with an area's racial composition.

Analysis of differential lending patters indicated that conventional lending practices were more susceptible to an increase in the percent of non-whites than the lending patters of the FHA. For the state of New York as a whole, the initial decrease in conventional lending did not occur until evidence of a non-white population of between one and

Graph - 1

Racial Redlining in the New York State Mortgage Stock

No. of Loans per Million People



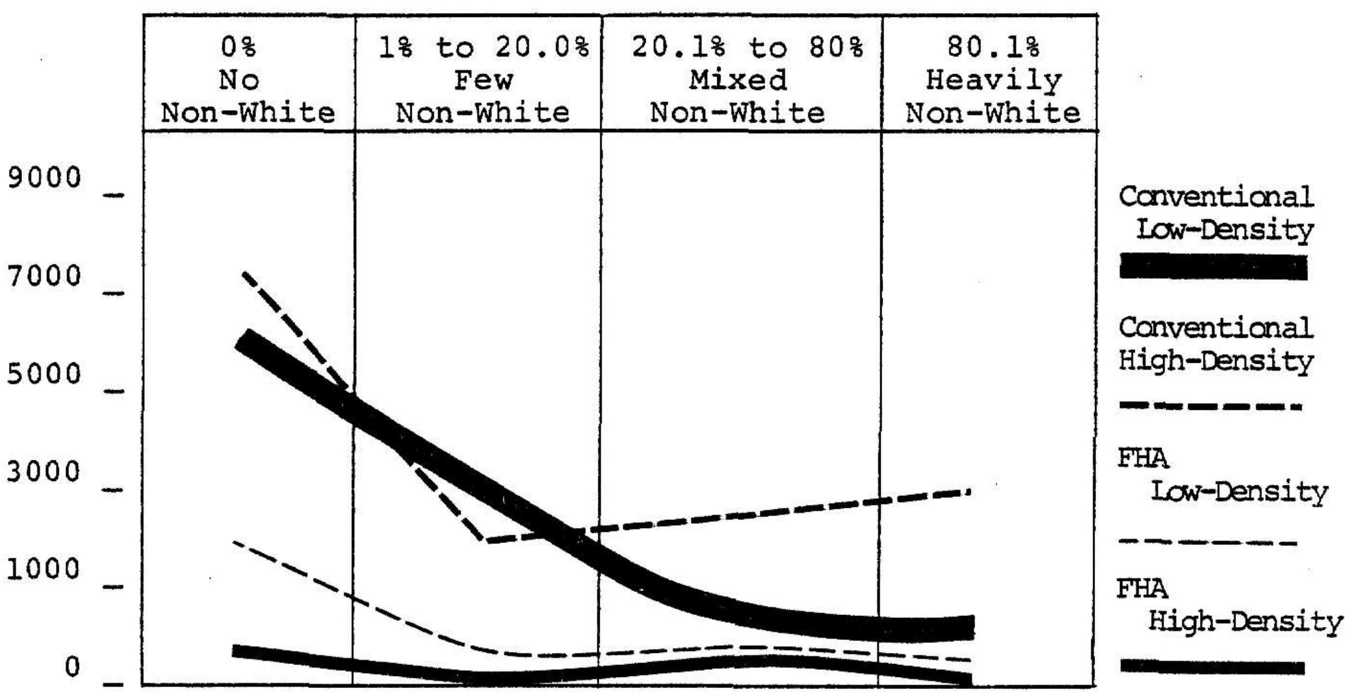
twenty percent existed. Another adverse discovery showed FHA lending at the state level lower than conventional, except in areas evidencing a non-white population between twenty and eighty percent. Significantly, the statewide results indicated conventional and FHA lending shockingly lower in the high density areas most in need of assistance. (See Graph 1) 42/ The ultimate result of the statewide portion of this study, that both FHA and conventional lending - either in high or low density areas decreased proportinally as the area became more non-white, sheds new light on the role of the mortgage lender.

While the statewide results might disturb, the ramifications of the Brooklyn area specifically discredit the system. (See Graph 2) 43/ The data indicated that local mortgage lending firms hesitate to invest not only in racially mixed areas, but also in areas where any non-white

<u>Graph - 2</u>

Racial Redlining in the Brooklyn
Mortgage Stock

No. of Loans per Million People



population existed at all. While FHA lending decreased significantly during the initial stages of transition with conventional lending, it did increase minimally in Brooklyn when the neighborhood became twenty percent or more non-white. This patter did not occur with respect to conventional lending, which continued down, nor did it occur at all on the state-wide level. The increase of FHA lending occurred primarily as a result of various attempts by government agencies to stabilize the area. Critical for Brooklyn, the results indicated a severe drop for both FHA and conventional lending during the initial stages of transition. This prominent decline evidenced itself in low-density areas, where racial transition was in its initial stages. These findings suggest that some lending may in fact be based on the racial composition of an area, as opposed to the "bad business judgement" claim offered by many lenders.

Combined, the results of Brooklyn and the state indicate that the level of lending progressively declines as a neighborhood becomes increasingly transitional. This situation, the withdrawal of mortgage investment from the area, potentially indicates that the role of the lender impacts neighborhood decline comparatively more than previously perceived. Finally the accumulated evidence suggests that the withdrawal of mortgage money can be linked to the racial composition of an area. This perplexing situation becomes even more critical when considered in light of the mandates of the Fourteenth Amendment Equal Protection Clause.

While the conduct of the previously discussed New York and Brooklyn lenders acted as a catalyst for decline, they claimed that their action resulted from sound business judgement. 44/ The Legislative Institutes study went beyond simply discovering that both FHA and conventional lending decline when an area becomes increasingly non-white. It dealt also with what lenders refer to as disinvestment on the basis of bad business risk. Of particular interest in this regard, it dealt with late payments, foreclosure and default. The analysis of these three offers an insight into the claim that these transitional areas present a bad business risk and thus mandate the withdrawal of mortgage investment monies.

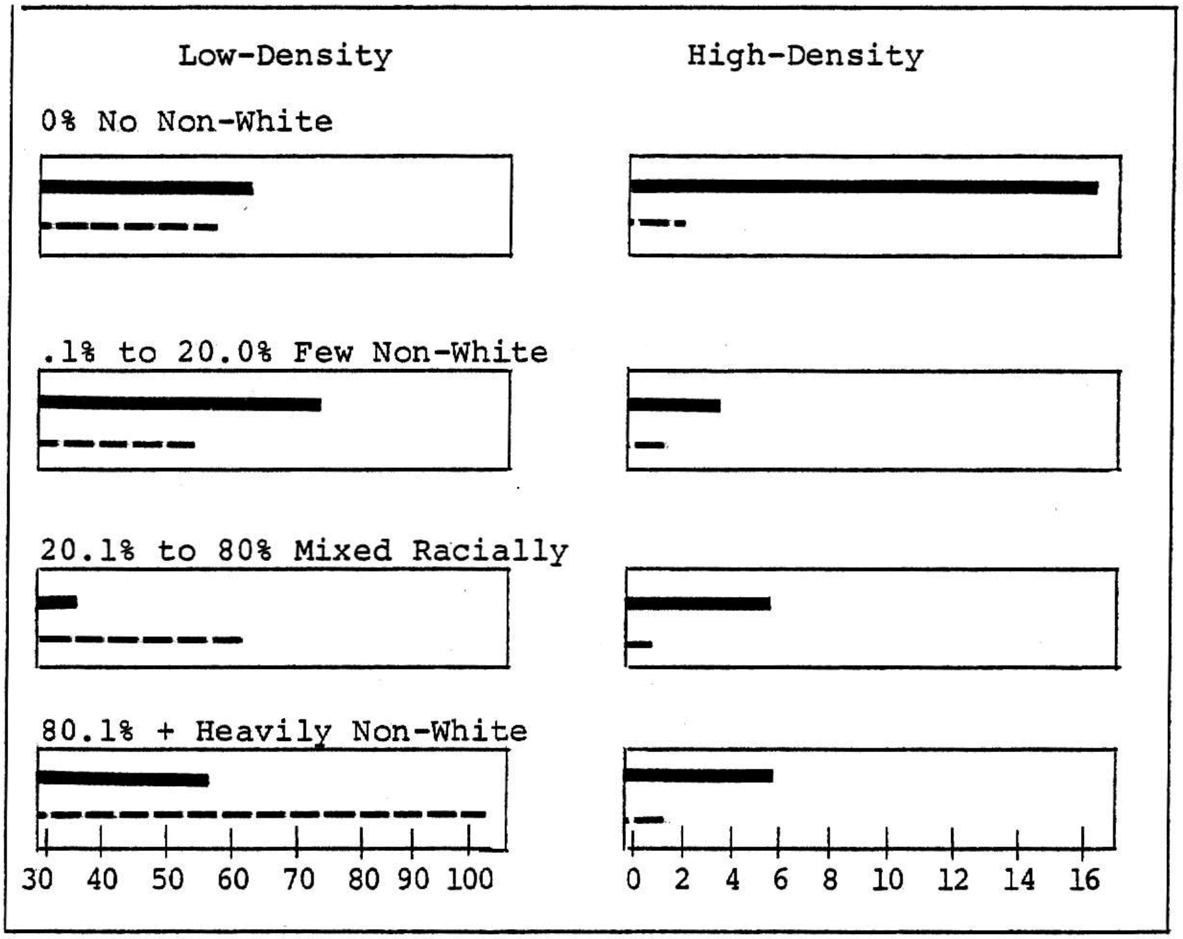
The statewide figures indicate that while white areas have equal or higher rates of default, there were more foreclosures on mortgages in the non-white area. (See Charts 1 & 2) 45/ One might assume that late payments or default could be associated with foreclosure based upon the element of risk. But apparently on the statewide level, risk was partially associated with the amount of non-white population an area had, rather than on "sound business judgement". This was indicated by the increasingly higher

Chart - 1

Statewide Number of Loans Currently with
2 or More Late Payments per Million People

Conventional -

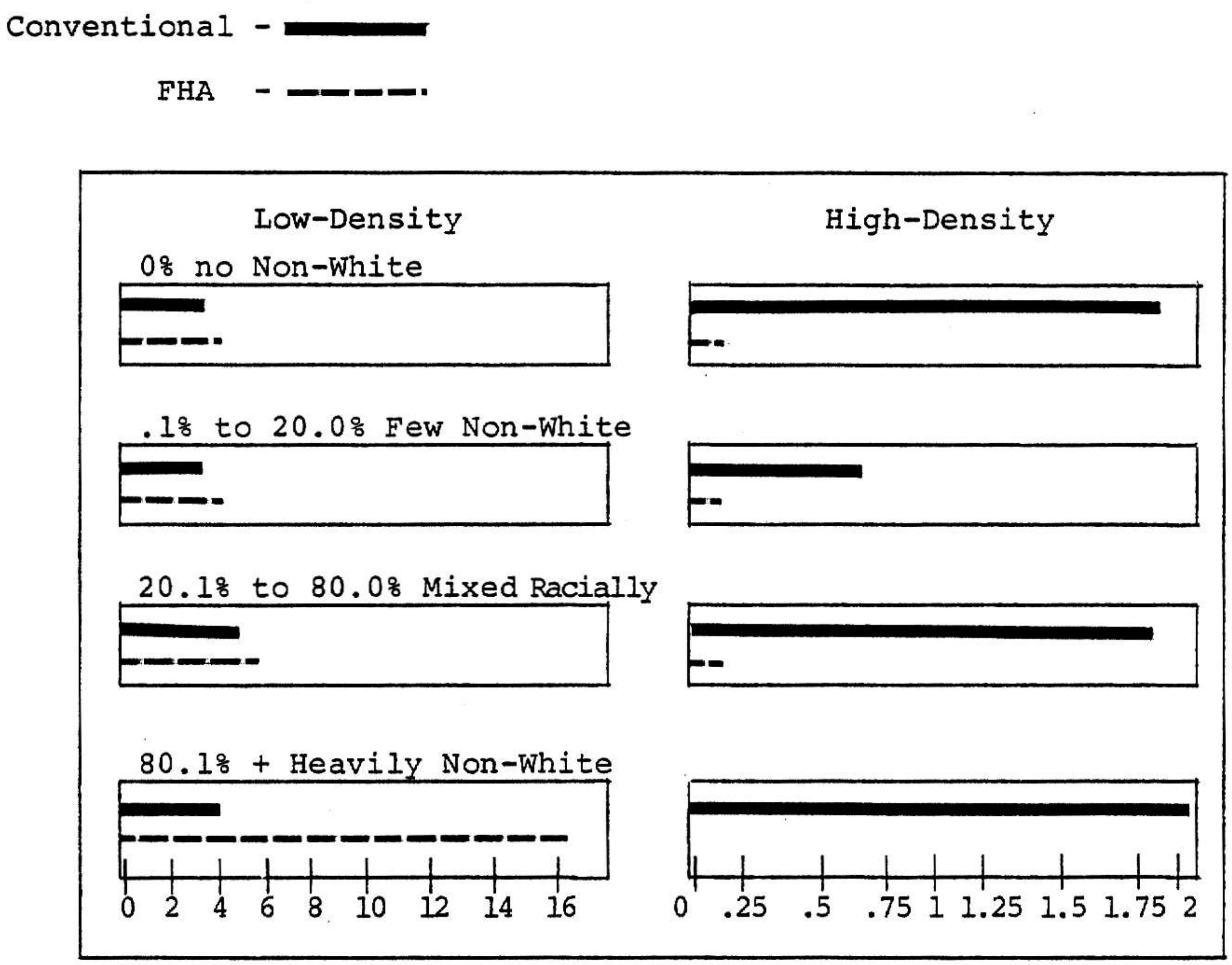
FHA -



rate of foreclosures as an area became more non-white. The pattern significantly evidenced itself in regard to FHA lending in low-density areas. A critical element in the statewide figures shows FHA lending to be very low if it exists at all in high-density areas. This situation may be caused by the all but unregulated practices of mortgage

Chart - 2

Statewide Number of Loans in Foreclosure
per Million People



brokers in these areas. 46/

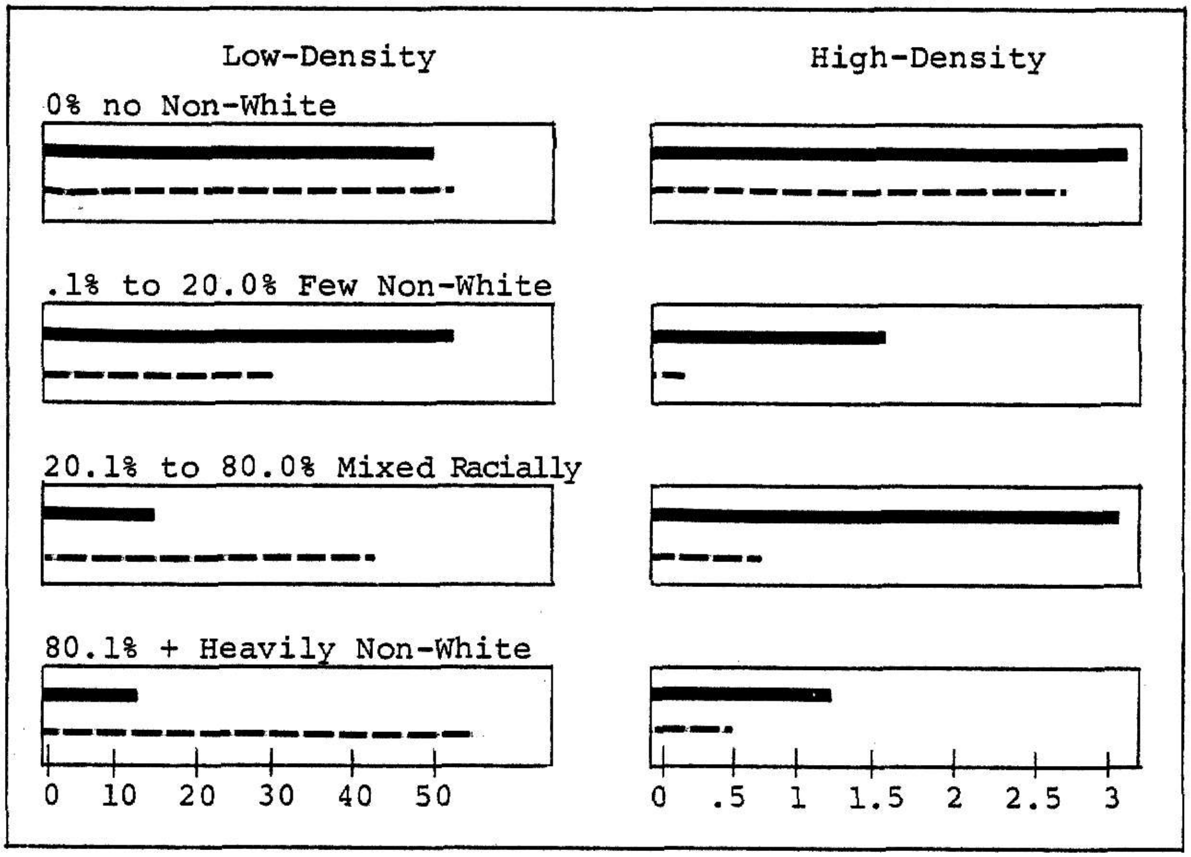
In Brooklyn, the rates of late payment and default showed no real significant difference between white and non-white areas with only one exception. The rate of default and late payment for conventional lending actually decreased as an area became more non-white. (See Chart 3) 47/ An explanation of this decrease evolves from the

Chart - 3

Current Number of Mortgages in Brooklyn
With 2 or More Late Payments
per million people

Conventional -

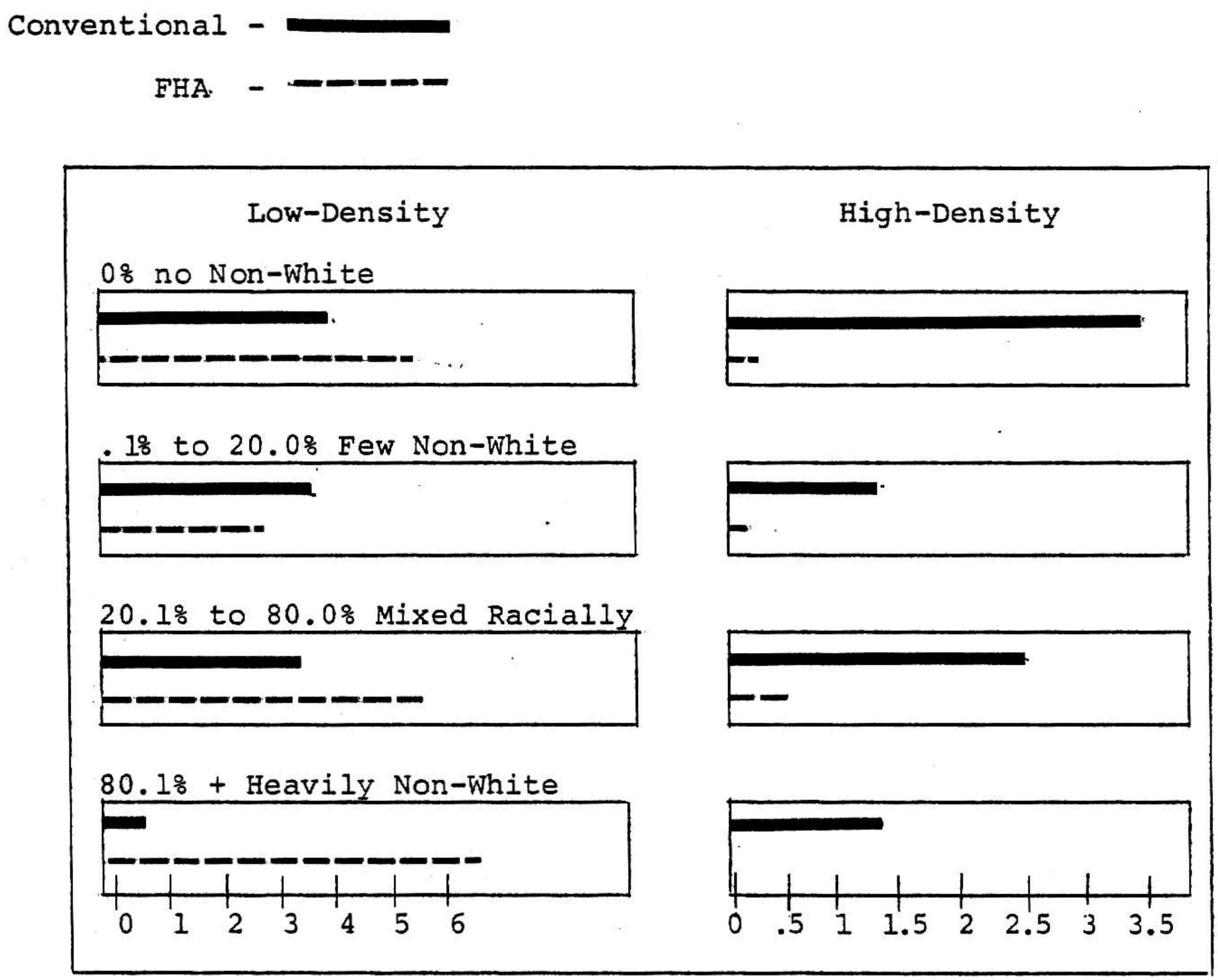
FHA -



fact that conventional lending in these areas took such a dramatic plunge as the area became more non-white. (See Graphs 1 & 2) Combined, the figures suggest that lenders became less willing to risk capital for mortgage loans in transitional areas, and that when they do, they are more apt to withdraw and foreclose on the existing mortgages quicker. (See Chart 4) 48/

Chart - 4

Current Number of Loans in Foreclosure In
Brooklyn per Million People



"Clearly, the data show an increased rise in the potential mortgage default in non-white areas... Since the percent of non-white population in an area is easy to observe, and since it can easily be equated with risk, the lender is under pressure to defend against that risk and frequently over-compensates by denying mortgages." 49/

The result and apparent conclusion offered by the Legislative Institutes' study of New York and Brooklyn indicates that redlining exists and that it corresponds with transitional non-white neighborhoods. The fact that these neighborhoods are transitional, and become even more susceptible to decline as federally insured mortgage money is withdrawn, suggests that redlining is in violation of the 14th Amendment Equal Protection Clause.

II

The city and county of Baltimore provide still another example of the situation when redlining occurs. In 1967, primarily motivated by federal policy shifts from Urban Renewal programs to the newer Model Cities thrust, Baltimore sought to implement an adequate housing program for its lower income residents.

Like many other older American cities, Baltimore experienced a significant increase in its minority population in the inner city, while the white population of the suburban county areas increased. Over the past decade, Baltimore's population registered an increase of approximately 100,000 or 30% in its black population while the number of whites decreased by 130,000 or 20%. 50/ Combined the two trends left the black population of the inner city at about half the total population of the entire city.

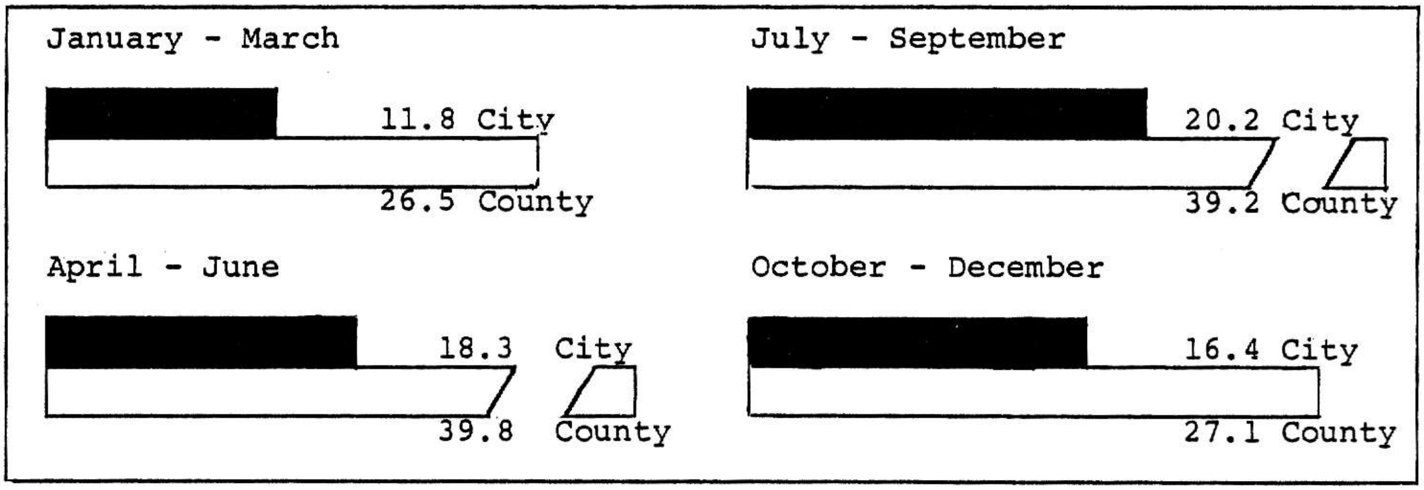
The situation in Baltimore's inner city becomes even more acute when considered in light of the findings disclosed in the Congressional hearings for the 1975 Home Mortgage Disclosure Act. The testimony indicated a significant difference in lending patterns between the inner city when compared to the surrounding county. 51/ (See Chart 5) Taken in context, these lending patters suggest a great disparity between the mortgage amounts forwarded to the inner city and those shared with the county. The local lending institutions, their objective to minimize their foreclosure rate did so by pursuing conservative lending practices. 52/ As a result, minority and low income families of the inner city became heavily burdened to retain the decent standards of their neighborhoods.

The areas of Baltimore wherein the disinvestment occurred conform to the area on map 1 that is dotted. 53/ These areas represent the area most commonly referred to as the inner city of Baltimore. The crosshatched area denotes those areas of the city considered to by marginally blighted or in jeopardy of becoming so. The dotted area corresponds with the area that experienced the largest out-migration and the subsequent increase in non-white population over the last several years. In Baltimore, the inner city includes 40% of the available housing units for the city as a whole. At the same time, this area accounts for 60% of the low income minority households for the entire area. 54/

The map's boundaries coincide almost identically with an area denoted as "inner city" by another recent report. 55/ The report stated that inner city areas were usually characterized as:

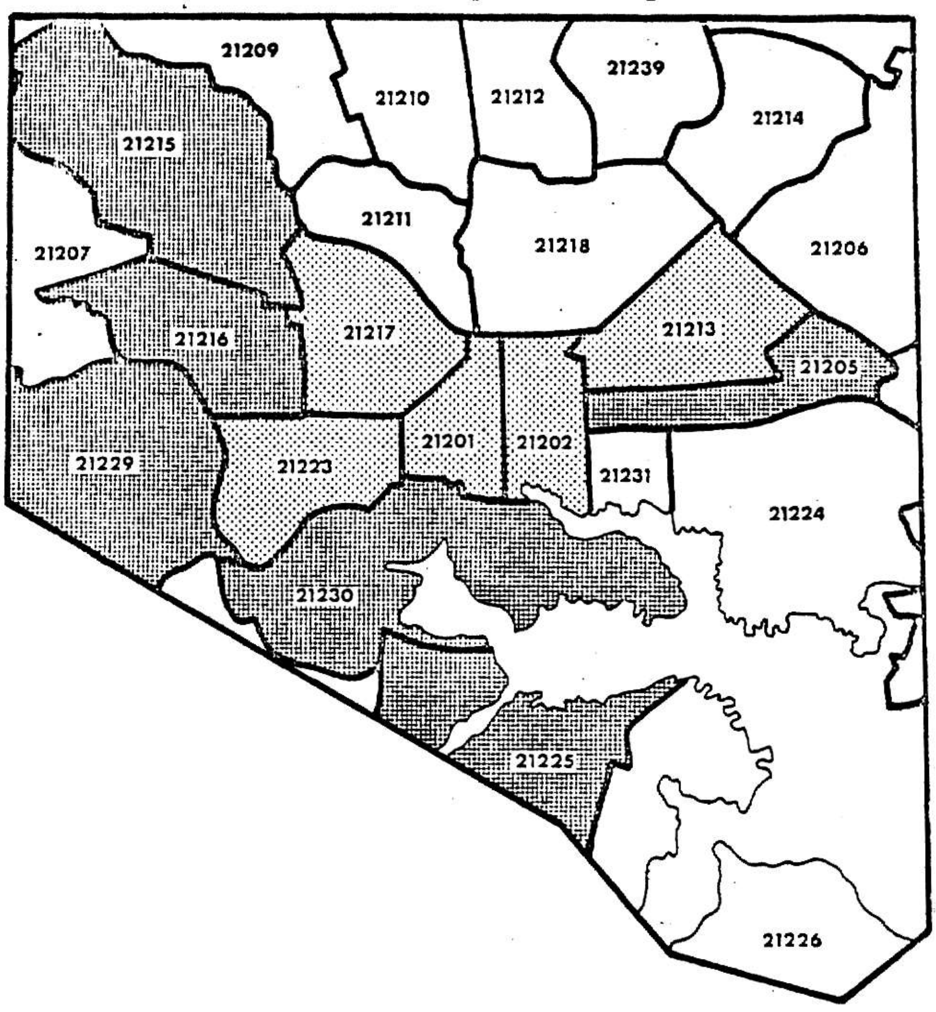
Chart - 5

1974 Mortgage Investment in Baltimore City and County in Millions



Map - 1

Baltimore Zip Code Map



> "Dominated by cash transactions (two thirds); most of the properties selling for less than \$5,000 (average price around \$3,500); very sluggish market (low turnover rate); predominantly black and renter occupied with a low median income and a high rent/income ratio. The boundary of the inner city effectively establishes a "red-line" within which mortgage funds are not available for housing... the FHA does not involve itself in these areas at all... 56/

The only significant difference between the zip code map's designation of the inner city and that of the John Hopkins study area, fell in zip code area 21321. This area, Fells Point, recently underwent a major redevelopment and clearly is not redlined at present.

The distinction between inner city and outlying areas created by these classifications indicates imperfections in the private real-estate market and public housing programs rather than simply the low-income nature of the area. The number of available housing units in the central city actually decreased by 17,300 or 5.7% between 1970 and 1976. 57/ Of all housing units available in the central city market 82% were valued at less than \$35,000 while the median value for the entire S.M.S.A. was \$37,300. 58/ The majority of housing units available in the central city (62%) were built prior to 1939, with only 4% being contstructed since 1960. 59/ Out os 257,800 existing housing units available in the central city, 56% were renter-occupied. 60/

This ratio has continually increased since 1960. By 1970, within the city of Baltimore whites were twice as likely to be owner-occupants when compared to blacks (60% - 30%). Accounting for the generally lower age of black owners leaves the ratio at 1.8:1, however the low income population indicates an age adjusted rate of 2.2:1 61/ for home ownership. This high ratio of minority rentals to owner-occupied units is not due to overly high prices in the inner city. Thus, a more "likely explanation for the deline in owner occupancy is that reasonable mortgage financing in the inner city is impossible to obtain." 62/

The impact of this situation, inflicted upon the Baltimore area several problems that are synonymous with the scenario of decline previously described. The homes in the area were frequently in disrepair and lacked adequate space, privacy, cooking, bathing and heating facilities. The neighborhoods these units made up often were found to be crowded, strewn with trash and unsafe at night. To obtain even unsatisfactory living quarters, the residents were forced to pay such a large percentage of their income that they were unable to retain sufficient funds for other every-day items. As the conventional sources of lending began to decrease, the opportunity for abuse of the system increased when when the unregulated practices of the mortgage banking industry descended upon the Baltimore inner city area.

The state of Maryland found this situation to be intolerable and wentto work to correct the problem. The 1972

Table - 1

Experience of Maryland Department of Economic and Community Development In So-Called Redlined Areas of Baltimore City (As of June 30, 1977)

	Maryland Housing Fund					Maryland Home Finance Program	Total
	Loan-to-Value Ratio				Total		
	80%	90%	95%	100%	MHF		
Loans in "highest risk" zips	1	68	11	74	154	30	184
Foreclosures	0	0	0	0	0	0	0
Loans in "highest risk" and "moderate risk" zips**	2	214	37	214	467	195	662
Foreclosures	0	0	1	8	9	3	12 (1.8%)

*Zip Codes: 21201, 21202, 21213, 21217, 21223
*Zip Codes: 21201, 21202, 21205, 21213, 21215, 21216
21217, 21223, 21225, 21229, 21230

session of the Maryland Assembly enacted legislation that created the Maryland Housing Fund and the Maryland Home Finance Program. 63/ These programs sought to provide direct, low-interest loans to low income families. As a result of this effort, home mortgage and rehabilitation loans increased and the foreclosure rate in the Baltimore inner city decreased to only 1.8%. 64/

Table 1 depicts the findings of these programs as of June 30, 1977. Clearly, the risk many lenders claimed to exist in redlined areas may be less than often perceived. The state supported program did in fact begin to initially turn the inner city of Baltimore around. But what must be remembered is that these programs were supported by the state government and offered the participating lenders insurance against the risk they claimed to be taking. The major point is that these institutions most likely would not have made this move on their own initiative. The Baltimore experience presents a case where redlining existed, and has now been eradicated through the efforts initiated by the state government.

Several states have recently enacted similar legislation. New Jersey and Connecticut in 1977 went even further by enacting legislation that makes it illegal for lenders to discriminate by neighborhood, or geographical discrimination. 65/

The hope that these state legislative endeavors hold, does not however, extend to all the inner city areas of this nation. Upon this basis arises the hypothesis that redlining is supect in that it is in violation of the Fourteenth Amendment Equal Protection Clause.

III

The Woodstock Project 66/ demonstrated significantly unequal loan-deposit ratios for at least five of the largest loop area banks in Chicago. The data collected disclosed that these banks failed to reinvest in their home branch neighborhoods, even though they collected a substantial amount of their deposits from them. 67/ The result of this situation, eliminating a neighborhood's access to credit, insured an increased flow of mortgage credit out of these already credit starved areas.

One of these banks, Central National, located downtown, with assets of 680 million made only 32% of its residential property loans to "in Chicago" neighborhoods. 68/ (See Table 2) That entire amount went to units designed for not more than four families and condominiums. Of the amount lent by Central National, only nine FHA/VA loans were made that totaled $175,000, or 20% of the entire amount lent to

Table 2

Assets and Lending
In Chicago v. Out of Chicago*

Bank	Assets	In Chicago Loans	Outside Chicago Loans	In Chicago % of Tot. Loans
1. Central Natl.	680,471,830	842,000	1,715,000	32%
2. Continental	19,535,838,868	3,035,000	43,271,000	1%
3. Exchange Natl.	471,637,774	990,000	2,021,000	32%
4. First Natl.	12,620,062,733	7,867,000	25,057,000	23%
5. La Salle Natl.	724,048,350	446,000	2,433,000	15%
6. National Blvd.	383,359,547	293,000	1,801,000	13%

*Outside Chicago refers to the Six County SMSA including Cook Co., but not Chicago City. Also included are Dupage, Kane, Will, McHenry, and Lake Counties.

"in Chicago" neighborhoods. At the same time, the bank lent $1,715,000 to "outside Chicago" neighborhoods. 69/ Central National's deposits from customers residing in Chicago totaled over 44 million dollars. Their residential loans to these selected neighborhoods totaled only $129,000, or two-tenths of on percent of their total deposits. 70/ (See Table 3)

Table 3

Total Deposits to Total Residential Loans in Selected "in Chicago" Neighborhoods

Bank	Total Time & Demand Deposits	Total Residential Loans	% Residential Loans to Deposits
1. Central Natl.	44,726,000	129,000	.28%
2. Continental	339,972,000	1,585,000	.47%
3. Exchange Natl.	48,807,000	280,000	.57%
4. First Natl.	459,351,000	1,573,000	.34%
5. La Salle Natl.	40,057,000	191,000	.49%
6. National Blvd.	15,792,000	2,493,000	15.78%

Another study documented several other instances wherein the lending deposit ratio seemed unbalanced. The National Peoples Action (N.P.A.) survey selected Chicago's Continental Bank as well as three others for their investigation. 71/ Figures supplied under the disclosure requirement of the Home Mortgage Disclosure Act showed that Continental had well-served the outlying suburb of Northbrook. The area composed of 99.9% whites 72/ received 3.16 million in home mortgage loans. 73/ Chicago's central city neighborhood of North Austin, a community of Continental customers never received one loan from Continental. This pattern of disinvestment also occurred in another central city neighborhood. The First National Bank of Chicago loaned only $1,000 to the New City neighborhood while the Near North Side received $678,000 in conventional or home improvement loans. Bell Federal Savings and Loan lent only $5,300 to the New City area while lending the Near North Side $997,300. 74/ (See Table 4)

Table 4

Conventional Home Mortgage and Home Improvement Loans
Redlined Neighborhoods vs. Non-Redlined Neighborhoods

Bank	Redlined Neighborhood	Non-Redlined Neighborhood
1. First Fed. Savings & Loan	$ 98,000	$ 2,110,000
2. Continental Bank	-0-	3,116,000
3. Bell Federal Savings & Loan	5,300	997,300
4. First Natl. Bank of Chicago	1,000	678,000

The bleak picture created by these disinvestment patterns coincided with a decrease in the amount of housing units available in the central city. Between 1970 and 1975, the number of central city units available decreased by 62,400, or 5.2% of the entire housing stock available in the central city at that time. Synonymous with this occurrence, the suburban fringe areas of Chicago increased their available housing stock by 18%. 75/ Of the central city units available in 1975, 68% of these had been built prior to 1939, while only 2% had been built since 1970. 76/ This situation, indicative of an out-migration from the central city, combined with the decline of residential construction and home improvement lending in the inner city points out several of the characterists previously referred to in relation to the scenario of neighborhood decline. These characteristics, among others generally coincide with a neighborhood that has been redlined by the financial community of the area.

Henry Scheff, former research director of the Citizens Action Program (C.A.P.) adequately expressed the situation in Chicago. He said:

> "First, the realtors panicked the whites, in an effort to promote rapid profitable sales with FHA mortgages. Conventional mortgages had already been cut off to the neighborhood. This brought down property values, then with local realtors predicting an even gloomier future for the neighborhood, the whites were convinced to flee to the suburbs, where they had to pay inflated prices for inferior housing...
>
> Slowly, they began to see that "the enemies" were the Banks, Savings & Loan institutions, Mortgage Bankers, and the realtors -- those who expoited the "changing neighborhood". Anger was focused at the financial institutions who translated their judgement that a neighborhood might change into a self-fulfilling prophecy.
>
> Meanwhile, Blacks found that they were getting no bargain when they moved into a "changing neighborhood". The FHA frequently certified that homes were in good repair when they weren't. Some of their new Black neighbors were really

> too poor to own homes. Of course, many defaulted under the tremendous burden of mortgage payments. The foreclosures and repossessions by FHA left dozens of abandoned, boarded up homes. The neighborhood was fast becoming the slum they had moved out of only a few years earlier." 77/

When the previously described N.P.A. study was released, it appeared simultaneously with a statement by the Federal Savings and Loan Council of Illinois. 78/ Their statement, although disclaiming redlinings existence, acknowledged that the highest mortgage loan denial rate (27%) existed in zip code area 60644, the post office serving the North Austin neighborhood. 79/

Grover Hansen, President of the Fist Federal Savings of Chicago voiced the typical attitude of the savings and loan industry when he remarked: "We're not even sure what we're accused of doing. Redlining doesn't exist. (emphasis added) If our neighborhoods are deteriorating that's a social problem - not a bank problem." 80/ The impasse between the financial community and the neighborhood associations brought to light the problem that declining and transitory areas represented to the financial community.

At the least, the evidence derived from these investigations indicated the disappearance of conventional mortgage credit from the inner city area. The major banks of the area (i.e., Continental), as well as the savings and loan associations instituted policies that would allow mortgage lending only in the suburban areas and thus abandoned the inner city areas. When this institutional disinvestment occurred, the only realistic source of available mortgage credit was the Federal Government, the builder of last resort. Through the FHA Insured Home Mortgage Program, 81/ as might be expected, the Austin area soon developed a high concentration of federally insured mortgage instruments. 82/

As in the previously discussed case studies, as well as many other major metropolitan areas of the nation, Chicago, too, experienced a pattern of disinvestment that more commonly can be referenced as redlining. The problem in Chicago developed as a result of the belief by the financial community that better returns on their investments could be realized in the suburban mortgage market. In part, this situation resulted from construction standards set by the FHA administrative guidelines, which in turn iniated the flight to the suburbs for what was individually perceived to be better quality housing. Additionally, the withdrawal of mortgage lending from the inner city areas was based on what the lenders perceived to be the transitory/declining nature of the inner city. This perception often became reality as a result of the withdrawal of mortgage lending from the area.

The perception that the lending community held in regard to inner city areas also included the fact that there was an out-migration of white middle-income residents to the suburbs. Unmentioned by the lenders, but also an underlying component of this attitude was the fact that these neighborhoods were becoming increasingly occupied by low income minority residents, usually Black. Apparently the lending communities attitude had not significantly changed since the early 1930's when Home Hoyt ranked neighborhoods and property on the basis of race and, to a lesser degree, ethnic background. His rank order, published by the University of Chicago Press, was as follows: 83/

1. English, German, Scotch
2. North Italians
3. Bohemians
4. Poles
5. Lithuanians
6. Greeks
7. Russian Jews
8. South Italians
9. Negroes
10. Mexicans

Proceeding from this classification of neighborhoods, Hoyt made an interesting qualification: "Except in the case of Negroes and Mexicans, however, these racial and national barriers disappear when the individuals in the foreign nationality groups rise in the economic scale or conform to American standards of living." 84/ If this statement were an accurate reflection of the current attitude in the lending community of Chicago, then, as in the previously discussed cases, arises the need to examine the premise that redlining is in fact a violation of the Fourteenth Amendment Equal Protection Clause.

IV

Philadelphia's inner city neighborhoods and surrounding environs provide still another example of what happens when mortgage money is substantially withdrawn from declining and

and racially mixed areas. Philadelphia's pattern of disinvestment, combined with similar situations in other major metropolitan areas, led the Senate Banking, Housing and Urban Affairs Committee to initiate hearings on the subject in 1975. 85/ The testimony from these hearings contributed to the ever increasing debate among legislators that something had to be done in regard to the existing disinvestment patters present in many inner city neighborhoods. The debate led to the passage of the Home Mortgage Disclosure Act of 1975. 86/

The testimony before the Senate Committee included the presentation of studies that exhibited discrepancies in the patterns of mortgage lending in Philadelphia. 87/ While the actual amounts of money invested by institutional lenders in Philadelphia were similar to patters already cited for other cities, the real contribution of Philadelphia was the development of variables whereby mortgage risk could be analyzed. These variables included:

1. Stability of income of the area's mortgage applicants,
2. Nature of employment of the area's occupants,
3. Educational levels of the area's occupants,
4. Marketability of housing in the neighborhoods,
   A. Age of the units
   B. % of owner occupied units
   C. % of vacant housing units
   D. Trends in property values
5. Neighborhood racial composition. 88/

These variables, it was believed, would allow the actual risk of mortgage lending to be determined, rather than simply relying upon differences in actual amounts lent to the various applicants in a given neighborhood. They did, however, fail to consider such things as the availability of public transportation, freedom from undesirable odors and noise and convenience of schools and shopping, which also have a relation to the choice of housing. Those individuals that conducted the study of Philadelphia felt that these additional characteristics were either too difficut to measure or not significantly different for the study area. 89/ It was also determined that these additional variables did not fairly represent or have consequence in relation to mortgage risk in and of themselves.

The study of Philadelphia included 10,400 mortgages applied for in either the Northwest or Northeast sections of what could be termed "in city" Philadelphia. The following information represents the results of that study. Between 1960 and 1972, the percent of mortgages granted in the Northwest area by institutional lenders decreased from 73% of the total in 1960 to only 20% of the total by 1970. During the same period, the percent of mortgages granted in the Northeast area fluctuated between 70% and 90% of the total. 90/ Obviously, the Northeast sections of Philadelphia retained their mortgage attractiveness, while the Northwest lost theirs. One might assume that changes were occurring in the Northwest neighborhoods that drastically increased the risk to institutional lenders. With this assumption in mind, the variables studied indicated the following:

1. Stability of Income of area's mortgage applicants, 91/ increased from $7,799.00 in 1960 to $12,327.00 in 1970, an increase of 58%. During the same period the median income in the Northeast for mortgage applicants increased from $7,010.00 in 1960 to $11,098.00 in 1970, also an increase of 58%. Thus, there was no apparent difference in the stability or level of income between applicants in the Northwest or Northeast.

2. Nature of employment of the area's occupants. 92/ The nature of employment analysis was determined on the basis of three major employment classifications and the percentage change in each between 1960 and 1970. The analysis of these characteristics indicated that there was really no significant difference between the two areas. (Refer to Table 5) One percentage increase does however deserve mention. The number of low income workers increased in the Northwest while the higher income professionals decreased in both cases by 6%. This same pattern evidenced itself in the Northeast, but to a less significant degree. In and of itself, this difference between the two areas does not justify the large scale disinvestment experienced in the Northwest area during the study period.

Table 5

Employment Classifications	Northwest 1960	Northwest 1970	Northeast 1960	Northeast 1970
I. High Income: White Collar Professional	37%	31%	22.5%	21%
II. Mid Income: Skilled & Semi-Skilled Workers	57%	57%	67%	66.5%
III. Low Income: Generally Skilled	6%	12%	11.5%	12.5%

3. Educational level of the areas' occupants. 93/ These statistics were derived via a computation of the median school years completed and the percent of High School graduates among the residents living in the area. (Refer to Table 6). As in the previous cases, there was really no significant difference between the two areas that would justify the disinvestment that occurred in the Northwest area between 1960 and 1970. The only difference even worthy of mention in

Table 6

Educational Variables	Northwest 1960	Northwest 1970	Northeast 1960	Northeast 1970
I. Median School Years Completed	12.4%	12.4%	11.1%	11.7%
II. Percent of High School Graduates	32%	66%	30.5%	47%

regard to the educational levels of the two areas' residents would seem to tip the scale in favor of the Northwest area.

This situation would seem to arise from the fact that the statistical analysis indicated that the level of education was actually higher in the Northwest due to a higher percentage of High School graduates. If this were true one might be led to conclude that due to a higher degree of competancy as a result of High School graduation, the residents of the Northwest would be more employable and thus better able to make timely payments on their outstanding loans, in this case a mortgage loan. However, and once again relying on the previously cited figures, this was not the case.

4. Marketability of Housing in the Northwest & Northeast Neighborhoods. 94/

A. The age of the various structures in each area indicated that the majority of structures were built between 1940 and 1950. Only 33% of the units were built prior to 1940.

B. Generally, there has been a movement away from owner-occupied housing in both areas. During the period of the study, this movement did not, however, prove significant enough to foster the attitude that its residents were not creditworthy as can be seen by viewing Table 7. In fact,

Table 7

Geographic Area	Amount of Owner Occupied Housing	
	1960	1970
I. Northwest	79%	73%
II. Northeast	82.6%	77.5%

the percentage of owner-occupied housing in the area remained relatively high during the study period. The decline of owner-occupied housing in both areas can be explained by the suburban exodus that many metropolitan areas experienced during the study period. The signifcant point to be remembered when comparing the Northwest and the Northeast neighborhoods is that both areas had and maintained a similar percentage of owner-occupied units. Once again, there is no significant difference in the areas and thus no justification for the disinvestment that occurred in the Northwest area of Philadelphia.

C. Few professional planners, real-estate representatives, or mortgage lenders would deny that an increasing percentage of vacant housing units in an area is a prime indicator of marketability. The percentage of vacant housing in both areas remained below 2% between 1960 and 1970. Further analysis of the area revealed an actual decrease in the number of vacant units during the study period. As a result, the 1970 percentage of vacant units in both areas hovered at slightly over one percent.

D. The trend of residential property values overtime depends on the selling price when a residential unit changes ownership combined with an inflation factor. In this manner, the median selling price in the Northeast rose 13% from $12,550.00 to $14,200.00 between 1960 and 1970. During the same period, in the Northwest, the median increase was only

1%, from $13,700.00 in 1960 to $13,800.00 in 1970.

To this point, the analysis of the variables considered in the Philadelphia study demonstrated that there was no significant difference between the Northeast and Northwest neighborhoods of the "in-city" area. The only difference even worthy of mention, between the percentage selling price increase of the Northeast (13%) as compared to the Northwest (1%) hardly accounts for the disinvestment that occurred in the Northwest between 1960 and 1970. Thus, from this basis there obviously must have been another significant difference between the two areas. That difference apparently accounts for the pattern of disinvestment experienced in the Northwest neighborhoods between 1960 and 1970.

5. Neighborhood Racial Composition. 95/ The analysis of racial composition revealed the most significant difference between the Northwest and Northeast neighborhoods of Philadelphia. While the non-white population of the Northeast represented less than one percent of the population in both 1960 and 1970, the percentage non-white population in the Northwest represented a significantly higher proportion by 1970. (See Table 8) The number of non-white residents (46%) in the Northwest indicates that institutional lenders considered the racial composition of the area as a factor in their determination mortgage risk. This conclusion was derived from the fact that there was no other significant difference between the Northwest and Northeast neighborhoods

of Philadelphia. 96/ Supporting this conclusion, Hayden Withers in her study; Redlined - A Study of Four Philadelphia Neighborhoods concluded, "racial composition of the area was the leading reason for mortgage disinvestment. 97/

Table 8

Geographic Area	Number of Non-White Residents as a percent of the total population	
	1960	1970
I. Northeast	.0003%	.0016%
II. Northwest	18%	46%

One suggested reason for the immensity of the increase in the Black population of the Northwest, that the area lost a great deal of middle income whites as a result of out-migration to the suburbs, only partially explains the situation. Due to the fact that the percentage of vacant housing in the Northwest did not increase during the study period, but actually decreased, we must assume that a segment of the population filled this vacuum in housing occupancy. In Philadelphia's Northwest area, the void was filled by Blacks who perceived the area as a better living environment, and thus sought to move into it. The question arises, where did these people obtain the necessary financing to purchase these homes, especially in light of the fact that residential mortgage lending drastically decreased during the study period.

The situation dictated that the Blacks seeked another source of mortgage finance. More often than not, that source was either the institutional banking community in the form of consumer loans at 12% (at 1974 interest rates) or the relatively unregulated mortgage finance houses at an even higher percentage interest rate. The higher level of interest these in-migrating Blacks were forced to pay highlights the problem so often experienced in declining inner-city neighborhoods. Otherwise, they had to pay 10% to 12% for a mortgage, while their white counterparts in the suburbs had only to pay 7% to 8% for their residential mortgage. In addition, higher down payments to acquire the loan were often required. 98/ Based on this evidence, it becomes readily apparent that the institutional residential mortgage lenders had, in fact, considered the aspect of race in their determination of mortgage risk. They had, in fact redlined the Northwest neighborhoods of Philadelphia on the basis of race.

The practice of considering the racial composition of an area in the determination of mortgage risk is highlighted by the practices of the Ephemeral Federal Savings and Loan Association. 99/ Ephemeral has four offices in Philadelphia, one downtown and three branches at the city's edge. Approximately 18% of the Philadelphia SMSA's population is Black. 100/ Of that amount, 77% reside within the city limits of Philadelphia. 101/ A study conducted by the Philadelphia City

Council indicated that Ephemeral, along with several other lending institutions, had made 95% of their residential property loans in the suburbs, outside the city limits, 102/ thereby disinvesting in Philadelphia's inner city.

The Governor's Commission on Redlining heard testimony from several witnesses in regard to the difficulty of obtaining residential property loans from Ephemeral Federal. The transcript of these hearings included portions of that testimony. Several applicants to Ephemeral stated:

> "Witness 1: (Black) States that she applied for a loan from Ephemeral on a thirty-year old house in very good condition in a Black neighborhood of new homes. Ephemeral refused to accept her application. A loan clerk told her "we're not lending in that area, the houses are too old".
>
> Witness 2: (Black) Applied for a $40,000.00, 80% loan from Ephemeral in an area which recently became integrated. The property was a semi-detached stucco single family home, with five bedrooms about twenty-five years old. The appraisal came in at $45,000.00, and the loan officer said they could only lend 70%, or $32,000.00 on the house, in a conventional loan for a twenty-year term. The loan officer said the house was "appraised low and was in an area that was being commercialized". 103/

In addition, the loan officer for Ephemeral stated that he discouraged people who sought loans on older structures located in declining neighborhoods "as a service, out of friendliness". The record further indicated that unitl 1972, the appraisal form utilized when determining the value of a residence on which a mortgage was sought had a category for "Predominant Nationality/Infiltration." In one area of

Philadelphia the appraisals were marked "Negro, Black or Non-White". In another neighborhood the forms, when filled in, indicated "some black influx" or "social change". 104/ Clearly the record indicates that Ephemeral had been making lending decisions based on either the race of the applicant or the racial composition of the area. Thus, not only did Ephemeral redline the area, but they redlined the area on the basis of its racial composition.

The just described scenario of Northwest Philadelphia's housing problem, as impacted by massive disinvestment, accurately describes the situation as it stood in early 1975. Stemming from this situation, the condition of many homes in the area had reached crisis proportions. Many structures were in dire need of maintenance and rehabilitation. The area was declining at an ever accelerating rate and there seemed to be nothing that the residents could do about the situation. Finally as a result of increased citizen demand for solutions and the experience gained from confrontations between the savings and loan associations and citizen groups in the mid-west, the local financial community took notice of the problem. Their primary motivation it seems, stemmed from the fear of what public protests would do to their public relations rather than the fact that within only two miles of their home offices these conditions existed. 105/

During the summer of 1975, one savings and loan association, the Philadelphia Savings Fund Society and two commercial banks, the Philadelphia National Bank and the 1st Pennsylvania Bank together formulated the groundwork for what eventually became the Philadelphia Mortgage Plan in October of the same year. 106/ Initially, the plan proposed to invest 20 million dollars of mortgage monies into the Philadelphia housing market. It was their ambition to revitalize the city of Philadelphia and thereby correct the imperfections in the housing market caused by disinvestment. Since that time, other commercial banks have begun to participate in the program to a point where now there has been an investment of almost 40 million dollars. 107/

The Philadelphia Mortgage Plan, as conceived, for the first time encouraged local mortgage lenders to accept welfare and second incomes as an "earning source". It redefined the property criteria for lending. Participating lenders were restrained from consideration of the neighborhood or area of the loan application. They could consider, in their lending determination, the block on which the loan was to be made. If the block had a rate of 10% or less unoccupied vacant housing the loan would be made. As in most lending decisions, a 20% down payment was necessary. But if the applicant could only come up with 5 or 10%, the remaining protion would be insured through the F.H.A. or V.A. via their mortgage insurance programs. To date, approximately 4,000 people have participated in the plan, at an average of $17,500.00 per mortgage loan. 108/

As a result of the Philadelphia Mortgage Plan, many areas of the city have now become relatively stable neighborhoods and thereby reversed the process of decline. Northwest Philadelphia, especially Germantown, where the plan was very active has become an attractive area. At this time, the only area of the city that still shows signs of disinvestment is the Lower North Side. In this area, primarily Black, the participating banks still reject applications, but only for one of two reasons - either creditworthiness of the applicant or for property/block considerations. Out of fifty application rejections in the area, forty were for legitimate reasons. The participating banks are still leary of the area and suggest that government insurance programs provide the only viable alternative to the continued process of decline evident in the area at present. 109/

Thus, the Philadelphia area, as well as those areas previously discussed evidenced the process of redlining. In both Philadelphia via the Philadelphia Mortgage Plan and Baltimore via the Maryland Home Finance Program, many of the problems concerning disinvestment have been eliminated. Yet in New York, Chicago and other areas of the nation the problem still exists. In most of the cases examined, the act of redlining occurred prior to the out-migration of white middle income groups and definitely in conjunction with Black in-migration to an area. The fact that the racial composition of an area was the leading reason for mortgage disinvestment or redlining, indeed postulates a cause of action for the purposes of the Fourteenth Amendment Equal Protection Clause.

II C Analysis:

A literature review that combines the theoretical explanations of decline with various case studies illuminates several significant relationships. Housing, its product and process acute elements of neighborhood decline, illustrates the dual nature of the housing delimma facing our metropolitan inner cities. Out-migration of white middle income residents fosters the belief by the lending community that the neighborhood has lost its economic vitality. As the percentage of vacant units increases, discriminatory elements of the appraisal technique in large part misrepresent actual unit values in the area. This situation acts as an incentive to further disinvestment in the area. As a result, the lending community's original perception of imminent deterioration, blight and abandonment becomes reality through the incipient decision to disinvest in the area, more commonly referred to as redlining.

Downward filtration of housing units from one income group to another corroborates the lender's decision to disinvest in a two-fold manner. First, as white middle income residents move out of an area seeking more amenity in their housing environment the lenders perceive more advantageous investment opportunity in the suburban market. In this manner, the initial stage of disinvestment preceeds migration as lenders view the suburbs as more auspicious when compared to the initial stages of deterioration evident in the older neighborhood. As original owners migrate out, the vacant units for a time act as a burden upon the local tax structure unless immediately sold. Otherwise, unless the new immigrating population can find quick financing, there will be less tax income available to support adequate public services in the area.

The lender's decision to disinvest in the inner city is supported next by downward filtration as lower income people seek to move into these vacated units. The deterioration accelerated by the initial withdrawal of mortgage monies combined with reduced maintenance and poor services reduces the atrractiveness of the area for investment. This situation combined with the perception that these lower income applicants are less likely to be credit worthy further accelerates the delince process and forces them into the higher interest mortgage banking market. Thus, commercial lenders who initially saw the out-migration of whites as an investment opportunity in the suburbs, now view the in-migration of lower income blacks and minorities as a cause for additional disinvestment in the inner city.

The previously discussed theories of decline intensified by the application of case studies offer an even more compelling reason for the application of remedies under the

14th Amendment Equal Protection Claus.

In Baltimore the lending patterns indicated a great disparity between the mortgage monies forwarded to the suburban market and those relinquished to the inner city. The conservative practices pursued by the Baltimore lenders corresponds to the explanation of decline offered by the Orthodox Theory. Otherwise, the lenders perception of a physically declining housing stock led naturally to disinvestment on the basis of existing economic conditions. The Black-White Theory of decline that postulated an expanding Black community's expansion as pressure upon a previously White area especially raises questions under the 14th Amendment Equal Protection Clause. Otherwise, the withdrawal of mortgage monies from inner city Baltimore corresponded with the influx of Black applicants to the area. The lenders seeing the initial stages of transition felt obligated to withdraw from the inner city market on the premise that the area represented a bad business risk and poor management of their depositers' funds. Of note, however, is the fact that in many cases those depositors were often those same blacks that were now applying for mortgage credit in the inner city area.

The Brooklyn area exhibits an even better example of Black-White Theory. The lending community there offered "sound business judgement" as their reason for disinvestment. While the proportion of the area's residents became increasingly

Black, the lenders fell back on the claim that the area's late payment, foreclosure and default rate had increased, and thus they felt compelled to withdraw mortgage monies from the area. The Legislative Institute's study indicated while White areas have equal or higher rates of default, there were more foreclosures in the non-white areas. They concluded:

> "Clearly, the data show an increased rise in the potential mortgage default in non-white areas... Since they percent of non-white population in an area is easy to observe, and since it can easily be equated with risk, the lender is under pressure to defend against that risk and frequently over-compensates by denying mortgages." 110/

As a result, the Black in-migrants to the area suffer as a result of the higher interest rates they are forced to pay either by the commercial lenders who more often than not will not grant them loans, or the unregulated mortgage banking firms.

Philadelphia's experience offers examples of characteristics from several of the decline theories. As the Northwest area of the city exhibited the initial stages of decline and families moved out, no longer were there enough potentially desirable buyers available. As the area's social relationships began to break down and people moved out, friends and relatives of Italian heritage were less willing to offer maintenance assistance to the new Black owners. From this basis of disinvestment relying upon the Krohn Hypothesis, the area soon slipped into a stage of disinvestment identified by the Welfare Theory. As the majority of residents migrated out of the area, those remaining "problem families" that were on some form of assistance were not considered to be a good credit risk and the area further declined due to lack of maintenance. Finally, in terms of Black-White Theory the lending community was simply unwilling to invest mortgage money in the area based on the fact that its population had become predominantly black as indicated by the Northwest Commission Housing Association study.

These case studies, relying upon the theoretical explanations of decline, support the conclusion of Hayden Withers that the leading reason for disinvestment or redlining was a change in the racial composition of the area. It is further quite clear that the decision to disinvest inequitably distributes mortgage lending monies to the disadvantage of lower income applicants. Acknowledging this situation, but realizing the federal government's intent to eliminate discrimination necessitates an examination of the federal government's role in mortgage finance and equal housing opportunity.

III. FEDERAL HOUSING POLICY AND ITS IMPACT ON PRIVATE MORTGAGE LENDING MARKETS

Section III

INTRODUCTION

A gambit of federal activity in the last fifty years which sought to provide a decent and suitable housing environment for every American citizen has not met its aspirations. That goal continues to evade us, and as such appears illusory. The resulting situation demands an analysis of the federal legislative and administrative involvement in the private housing and mortgage lending markets.

An analysis of these last fifty years inclines to separate into three distinct categories. The years 1928 through 1948 when the federal government, faced with emergency and crisis, reacted in a quick and decisive manner. This period witnessed a significant change in the manner of operation for the mortgage instrument. The mortgage contract, mortgage financing procedures and appraisal techniques all lent to the development of the mortgage as an investment vehicle.

The period from 1949 through 1970 exhibited the concept of growth as a distinct element of what was perceived to be the common good. Housing starts increased drastically with the advent of FHA and VA financing which resulted from the post war perception of homeownership. Millions of people migrated out of declining central cities. The 1960's altered the various roles of participants in the mortgage market and witnessed the transformation of the investment appeal of the instrument itself.

Between 1971 and the present, the concept of growth as an absolute gave way to the consumer protection and conservation ethic. The population generally became concerned with conservation of what they deemed to be scarce resources. Hyper-inflation and the wage-price spiral generated critical concern for the quality of life rather than its quantity. Various legislative and administrative rulings reappraised the mortgage disinvestment process spurred by consumer demand for action. All of these eras resulted in the question asked today by legislators, have we in fact provided a decent and suitable housing environment for every American citizen?

The Federal Government's concern for the housing of its citizens began with the enactment of the Homestead Act which sought to expand the borders of the nation and disperse its population rather than adequately house its population. The massive land grant programs that pushed railroads across the continent also created new communities throughout the West. Once again this policy was intended to disperse the population and gain dominance over the vast western lands rather than adequately housing the population. The Federal Government initially involved itself with subsidized housing 1918 by appropriating funds for the housing of war workers. 111/ The burden of discussing the entire evolution of government activity in regard to housing and the mortgage instrument soon becomes obvious. Thus, the division of the modern era into the previously discussed categories proves itself advantageous to the analysis of those legislative and administrative devices that culminated in our present inner city housing dilemma.

Prior to the Depression's impact and the election of Franklin D. Roosevelt, federal urban policy was nebulous at best. In terms of importance, the urban areas were not perceived to be special entities as were foreign policy or agriculture. Relegated to this minor position, various civic organizations sought to illustrate their plight in the federal arena. The 1920 census, when released indicated that a majority of the nation's population resided in urban areas for the first time. Still the urban areas found themselves under-represented in the state and Federal Government while their problems increased.

The Federal Government's position in regard to urban areas seemed based upon constitutional grounds. This situation arose out of the fact that there was no mention of urban concern within the Constitution. As such, the authority to deal with urban areas and their problems was deemed a responsibility of the various states. City Charters and Articles of Incorporation were granted by the state legislatures and any amendments or further grants of power came from the states also.

During the period following the Civil War and up until 1930, many state governments maintained dominance over the urban areas by gerrymandering and thus achieved inequitable representation favoring the rural areas. The Federal Government via a conservative congress and an unimaginative executive branch maintained a hands-off policy. The Supreme Court refused to consider the issue, resting upon the principle of stare decisis because prior cases 112/ deemed the issue of representative apportionment a political question. The cities themselves were in no better position to deal with their own problems. They were either disorganized and politically fragmented or corrupted with the existence of boss-rule. Across the nation, this patters was more often the rule rather than the exception.

The urban areas of the nation at this time had neither the population, nor the political clout to deal with the national government. Basically, the United States was still a rural nation. Constitutionally, the cities of the nation were considered to be non-entities. This situation did not drastically change until the advent of the depression in the late 1920's and the public demand for a solution to these ever increasing problems. The Hoover Administration at this point was forced into the area of urban policy and as such made the intial efforts to determine the reasons behind the ever increasing problems of the inner cities.

II. THE ROLE OF THE FEDERAL GOVERNMENT BETWEEN 1928 and 1948

A. INITIATIVES OF THE HOOVER ADMINISTRATION

President Hoover, the man who did so much to rehabilitate Europe after World War I, as president did little to break the downward spiral of the economy during the last half of the 1920's. During his administration, residential construction starts plummeted from 160,000 a year to only 40,000 as Roosevelt entered office four years later. 113/ The President seemed to focus attention away from the inner cities when he implied that slum clearance and related matters were not of immediate concern, by expressing that these matters at some future time should be analyzed by a "more definitely organized national intelligence." 114/

The Hoover administration did however initiate the first reforms of mortgage lending practices. Spurred by the problems arising from the Depression and his traditional belief in private enterprise as a cure-all, he called for a national Conference on Home Building and Home Ownership. The President presented the assembled conferees with their main objective when he challenged them to discover how to "make a home available for installment purchase on terms that dignify the name credit." 115/ The conference was divided into twenty-five fact finding committees that were asked to present their findings at a meeting in December of 1931.

The Committee on Blighted Areas concluded that there was an "irresistable demand for government action", unless the private sector was willing to undertake the rehabilitation of metropolitan slum areas on its own. 116/ Other committees made recommendations calling for the reform of mortgage lending practices and the creation of a Federal Housing Administration. Unfortunately, the conference did not address the issue of direct federal involvement in the mortgage market or the form that it might take.

Spurred by the recommendations of the Conference, the Congress took a hard look at the issue of mortgage lending practices in its Seventy-Second Session and determined that there was sufficient need for reform. As a result of their findings, combined with the increasing deterioration of housing caused by the Depression, the Congress passed the Federal Home Loan Bank Act. President Hoover, not initially in favor of the legislation as written, eventually signed it in July 1932 as a result of the increasing pressures of the Depression. 117/

The legislation, as signed, provided for a system of regional institutions that would be designated to provide member savings and loan associations with supplemental funds. These funds would be available to the membership in two forms of assistance loans, an unsecured short-term note and a collaterilized long-term note that would be amortized over a period of ten years. 118/

The financial community perceived the ten-year amoritization article as a very significant change in the manner of mortgage lending. This attitutde, fostered by the fact that at that time the average term on a residential mortgage was only five years, caused great consternation within the financial community. Because these loans were not insured by the Federal Government and the additional period of risk would be borne by the lender, their initial fears increased.

Unfortunately, the government's action did not serve as a vehicle for turning the deteriorating inner cities around either. As a result of the Depression, most of the institutions designated to offer these loans faced either financial ruin or had already closed their doors due to the panic withdrawal of their savings during the period. Otherwise, the initial monies that provided the lenders with the necessary capital to offer residential mortgages simply did not exist and thus any governmental assistance was insignificant when compared to the nature of the problems.

President Hoover's initiatives in the field of morgage lending did not prove enough, and the national economy continued to decline in the wake of the Depression. Hoover's theory of modest reaction to the problems was not enough and the private real-estate market continued to sag beyond the ability of the various states to correct the problem. 119/ The Depression, combined with the inactivity of the administration to stem the downward spiral led many in the home-building and mortgage lending industry to seek new alternatives to the problems that besieged them.

Combined with other factors, this chain of events contributed to the election of Franklin D. Roosevelt on a platform that advocated decisive action. The first one-hundred days of the administration signaled a new relationship between the Federal Government and the municipality. The interaction created by this relationship foreshadowed significant developments in the home-building industry and the residential mortgage market.

B. HOME OWNERS LOAN ACT OF 1933

Even before the Federal Home Loan Bank system could implement its operation, the Home Owners Loan Act was passed by Congress. 120/ This legislation allowed for the refinancing of mortgages and their purchase,the creation of the Home Onwers Loan Corporation and the authorization for a system of federally charted savings and loan associations. 121/ During the Corporation's three years of activity, it refinanced more than one million homes whose mortgages had previously been held by private lenders. 122/

The legislative history of the Act indicates that the Congress, led by the executive branch sought to assist three types of distressed homeowners. These groups included:

1. Those homeowners in involuntary default on the date of the acts passage;

2. Those homeowners who had lost their homes through foreclosure;

3. Those homeowners, who owned their homes free and clear but who could not obtain from other sources the funds necessary to pay past due assessments or pay for necessary repairs. 123/

To assist these groups, the Congress set the total individual loan amount at $14,000.00 per unit. 124/ This requirement indicated that the purpose of the legislation sought to assist the low and moderate income people rather than the more wealthy.

In 1934, the HOLC loan applications reached their peak at 35,000 per week. 125/ Each of these applications that were approved allowed for a loan amount not to exceed 80% of the assessed value of the home. 126/ The Congress perceived this requirement as a provision that would encourage a much sounder lending basis than existed prior to that time for private lending institutions. 127/ During the HOLC's three years of activitiy, it assumed mor than one/sixth of the urban home mortgage debt in the United States. 128/ Never-theless, 252,000 families lost their homes in 1933 while the pattern continued to grow even up until 1939. 129/

The Roosevelt Administration had taken the first decisive step in its effort to eliminate the impact of the depression, by establishing the HOLC. Largely, as a result of the HOLC, private lending institutions came back into the field and entered with revised or improved lending procedures. This situation allowed almost 90% or the HOLC money to filter through commercial banks, savings banks, building and loan corporations and other various mortgage companies. 130/ Due to the fact that the corporation lasted for only three years by congressional intent, more positive and lasting action would be necessary.

The home-building industry and the private lending community had become familiar with short term, low ratio, unamortized mortgages throughout the twenties. The HOLC with its program of bond issue and eventual reloan did little however to induce activity in the home construction industry in terms of creating employment, a major goal of the bill. 131/ This situation combined with the Depression's impact upon the economy as a whole edged the cities into a position where from they could not recover on their own or even with state assistance. This climate allowed the Federal Government to make the fundamental choice to intervene in the private sector. At that point, the Federal and State constitutions were faced with new challenges presented by the instrumentality chosen to transmit Federal, urban and, specifically, housing policy. The tool selected, the money power, provided the means for direct federal intervention into private capital markets.

C. THE NATIONAL HOUSING ACT OF 1934

As the Depression prolonged itself, economic strategists from both the public and private sectors deemed decisive action as imperative. The neighborhoods of the cities were deteriorating at an ever accelerating rate. Mortgage lenders recognizing the initial stages of decline became increasingly more cautious in the already credit starved market. Foreshadowed by the Home Building and Home Ownership conference's recommendations, the Congress with assertive executive leadership responded to these problems by enacting the National Housing Act of 1934. 132/

The act signed into law by President Roosevelt on June 27, 1934, provided for the establishment of the Federal Housing Administration (FHA) 133/ the creation of a Mutal Mortgage Insurance Fund 134/ the establishment of private National Mortgage associations 135/ and the creation of a Federal Savings and Loan Insurance Corporation (FSLIC). 136/

The legislation mandated that an administrator, appointed by the President, would provide for the establishment of national mortgage associations "to purchase and sell first mortgages and such other first liens as are commonly given to secure advances of real estate... under the laws of the state in which the real estate is located." 137/ The associations also received the authorization to "borrown the money for such purposes through the issuance of notes, bonds, debentures, or other such obligations." 138/

The act's legislative history suggests that the authors of the bill believed that the FHA mortgage, with its low interest, long term, and high loan-to-value ratio would be an object of criticism within the financial community.

Suspecting this situation to be the case, they anticipated that the national mortgage associations would serve as assurance to the lending community that the FHA instruments were sound. 139/

The private national mortgage associations concept was viewed with some scepticism during the legislative floor debates in both chambers of Congress. The members objecting cited the issue of whether or not the associations would perform only secondary market functions or be allowed to offer direct loans. 140/ To stem this tide of criticism, Representative Reilly of Wisconsin suggested an amendment that would strike from Title III any authorization to loan money directly. 141/ Accepting this amendment, the House passed the omnibus bill by a vote of 147 to 90. The issue of the Act revitalizing the housing industry arose on the Senate floor. Senator Barkley of Kentucky argued that Title III was a vital element of the entire package. 142/ Only after intensive floor debate on the concept of private national mortgage associations did the Senate pass the bill by a vote of 53 to 29. 143/

The primary issue at stake between whether or not Title III would allow only secondary market operations or direct loans arose as a result of the bills intention. The bill, "to encourage improvement in housing standards and conditions, to provide a system of mutual mortgage insurance, and for other purposes," basically sought to revitalize the depressed housing industry. 144/ The commercial banks already at their limit of lending could only pass off any new mortgage applications to the savings and loan associations. The savings and loan industry had already reached its saturation point and decisive action was obviously necessary.

The members of Congress that argued in favor of no direct lending authorization were actually speaking for the savings and loan industry. Acturally, they sought to eliminate any possibility of creating competition for the already depressed financial sector via the creation of a government sponsored lending corporation. As a result of this concern, the direct lending authroity was withdrawn. Thereby, private national mortgage associations could buy up only the paper of the savings and loan associations at a discounted rate rather than offering direct loans on their own. This situation allowed the savings and loans more access to available capital and thereby initiated an atmosphere wherein new lending protfolios could be solicited by the associations.

The home building industry and the private mortgage sector welcomed the passage of the National Housing Act. The FHA's programs for insuring both small loans for home improvement and modernization and mortgages for homes specifically found support within the savings and loan community. An added benefit of the legislation was its potential for reducing the soaring unemployment rate as a result of increased housing starts and thus creating a demand for labor.

The act did however have its opponents. Albert Mayer suggested that it would encourage large scale speculation and thus further burden the already depressed cities with greater costs for service to these new subdivisions. 145/

Keeping that in mind, another problem seems to have slipped through the crack. As the FHA mortgages spurred new development, they also encouraged the potential for out-migration from the central cities. As the trend continued, the cities eventually faced a declining tax base and thus a decrease in the quality of services in the area. This situation eventually fostered neighborhood deterioration and decline. While it must be admitted that the initial intention and early results of the Act were good, it also must be acknowledged that over the years the FHA mortgage programs allowed out-migration to occur easier. That stiuation contributed to those elements that eventually foster neighborhood decline based upon the practice of residential mortgage redlining.

D. RECONSTRUCTION FINANCING ACT OF 1935

The Reconstruction Finance Corporation (RFC), created in January of 1932, sought to assist banks and other financial institutions such as insurance companies when threatened with bankruptcy. 146/ Under President Hoover, the RFC made little progress towards stemming the impact of the Depression for the financial community. Its utilization favored the established businessmen, particularly the eastern establishment. 147/ Securing its funds from the Treasury with specific appropriation from Congress, the RFC struggled with the increasingly deteriorating economic situation in the months immediately prior to the 1932 election. 148/

Immediately after his inauguration in March of 1933, President Roosevelt quickly included the RFC into his recovery drive. He perceived the Corporation to be a device designed to serve only bankers and businessmen with Federal Assistance as a last resort. 149/ He believed, the RFC - a giant bank had done little to stem the tide of the depression. Its loans did not filter down from larger institutions to the smaller ones. It had inspired little confidence among the loan recipients. 150/ This situation convinced the incoming President that mere reliance on large financial houses and giant cooperative enterprises would be futile in the recovery drive.

With the passage of the Emergency Banking Act of 1933, the RFC's powers were greatly enhanced. By it, the corporation was authorized to buy or lend against preferred stock issued by state as well as national banks. 151/ This mandate of authority fostered a recovery in the confidence of the banks, both from within the financial community and from the standpoint of the depositers as well. Under Roosevelt, the RFC expanded from what it had been under

Hoover to include loans to farmers, small businesses and even homeowners.

The National Industrial Recovery Act 152/ further expanded the authority of the RFC. By it, the corporation could provide assistance through Home Loan Banks for the relief of homeowners who were being displaced. 153/ As a result of this, the banks became less demanding due to the increase of their liquid assets. They were able to modify or even stop their foreclosing and extend debtor credit in some cases. Unfortunately, the lag in the home construction industry still persisted.

The expansion of the RFC combined with the efforts of the HOLC had not reversed the Depression's impact. The private national mortgage associations authroized by the 1934 Housing Act had not materialized as intended and thus there was still a need for a secondary market function.

This need recognized in the 1934 debates on the Housing Act did not at the time illicit the question of a federally financed mortgage association. Upon this basis the Congress, acknowledging the need for a secondary market passed the Reconstruction Financing Act of 1935. 155/ The Act allowed the RFC to establish the RFC Mortgage Company to provide financing and refinancing for apartment developments and business enterprises when private financing could not be secured. 156/

The financial community up to this time had not reacted to the FHA mortgage instrument as intended. The immediate burst of building activity anticipated by the Congress and the administration did not materialize. The RFC Mortgage Company soon became very significant due to its ability to insure the marketability of the FHA instruments. 157/ Between 1935 and 1947, when the Mortgage Company was dissolved, it purchased 62,424 FHA mortgages in the amount of some $252 million. 158/ Upon this basis the RFC Mortgage Company furthered the secondary mortgage operation that had been intended by the authorization of private national mortgage associations which had not materilized.

A question soon arose regarding the efficiency of operation and whether or not the Mortgage Company functioned on an economically sound basis. This question arose out of the fact that the Mortgage Company had not been organized or designed for the purpose of providing the secondary market operation but rather to purchase stock in national mortgage associations. This concern, combined with only a gradual increase in residential construction and persistant deterioration in the urban areas spurred even more federal involvement in the private mortgage market and its housing related functions.

E. THE HOUSING ACT OF 1937

Before the situation could be addressed, however, the President, campaigning for re-election in 1936 acknowledged the bill introduced by Senator Wagner of New York in April of 1936. The Senator's bill sought the creation of a National Housing

Agency. The seventy-fourth Congress had not passed the bill primarily because the President had failed to endorse it. But Wagner's persistent efforts eventually paid off and after the election, the President finally threw his support behind the measure. 159/

The Housing Act of 1937 160/ provided "financial assistance to the States and political subdivisions thereof ...for the provision of decent, safe and sanitary dwellings for families of low income... and the creation of a United States Housing Authority." 161/ This bill allowed the new federal authority to loan as much as 90% of the total cost of a project at a low interest rate. 162/

The 1937 Act also for the first time created two separate classes of cities based on their aggregate size. When the legislation was reported out of the conference committee different limits were set on construction costs based on this classification of cities. One limit set expenses for cities over 500,000 and another lower one for cities under that figure. 163/ In this manner, the urban areas finally were recognized on the national level as distinct entities rather than simply receiving acknowledgement as the result of legislation concerned more with unemployment and economic recovery.

The Act designated that cities were in fact different, but it also sought to assist in slum clearance through the "development, acquisition or administration of low-rent (public) housing". 164/ The Act as written authorized that effort of this nature could occur in both classes of cities, but it soon became obvious that the major thrust would come in the urbanized area. The public housing program developed under the Housing Act, "segregated housing" where residents became wards of the state "through rents given at less than cost", initiated the presence of the federal government as a major force within the metropolitan inner cities. 165/

This situation, combined with an expanding FHA market potentially fostered the spark that initiated the initial out-migration from the metropolitan areas. The housing filitration process, having had the full opportunity to work accelerated the out-migration even further to the point that neighborhood deterioration and decline eventually developed. This process adminittedly would take years to transpire, but with the enactment of this legislative package in the early years of the Depression, the process had begun. It should be remembered that these legislative and administrative devices were intended to resolve the problems of the depression and as such they accomplished many of their objectives. But together they fostered an environment that would allow different treatment of individuals based upon either their income or more often their race and nationality.

As Hugh Pomeroy remarked, "It has produced all our slums and blighted-areas. There is no magic whereby there can be any other result." 166/ In this climate, the Federal Government turned their attention once again to the development of a secondary mortgage market to further expand the FHA mortgage and mortgage insurance programs.

F. THE NATIONAL HOUSING ACT AMENDMENTS OF 1938

In 1938, after witnessing several years of inactivity under Title III of the National Housing Act, the failure to create a private national mortgage association casued consternation among the members of Congress. At the same time President Roosevelt acknowledging a potential backslide of the economy urged the chairman of the RFC to establish a federal mortgage association. 167/ This effort culminated in February of 1938 when the Federal Housing Administrator issued a charter for the National Mortgage Association of Washington. 168/ By this the administration sought to provide the secondary mortgage market which hadn't materialized under Title III.

The effort to create the secondary mortgage market had not gone unnoticed by Congress. In 1935 the Congress indicated a greater tolerance for the secondary market when they liberlized the limit of capital stock and capitalization necessary for the creation of a private national mortgage association. 169/ They believed that this measure would reduce the rigidity for terms allowing authorization of the private association. Supporters of the amendment argued, "it will be possible to secure the incorporation of at least a few of these national mortgage associations." 170/ This measure did not prove to be the solution they sought, however, and further action would be necessary.

Next the Congress had passed the authorization for the previously discussed RFC Mortgage Company. Jesse Jones, its director, discussed the mechanisms that the Mortgage Company utilized to attract the development of private mortgage associations. 171/ It had been their policy to buy preferred capital stock rather than the common stock which they had the authorization to do by Congressional intent. This more often than not left the private investor with the risk of facing profit or loss when he purchased the FHA paper. This program had worked in regard to the commercial banking industry, but left a great deal to be desired in the field of mortgage banking and secondary markets. 172/ Thus, the Congress having come to accept the secondary market operation as the potential cure for the housing and mortgage market slump, finally took what they deemed to be positive action.

At the President's urgining, in his message to Congress of September 27, 1937 173/, the Congress finally passed the National Housing Act Amendments of 1938. 174/ This Act among other things allowed for the unheard of lending rate of a 90% twenty-five year loan on mortgages not exceeding $5,400.00. 175/ With this mechanism, the government insurance program (FHA) opened the final door for private national mortgage associations to pick up the secondary market.

These amendments climaxed the government's effort to induce the private sector into the secondary mortgage market. Beyond the term of amortization on insured mortgages, the amendments modified other significant elements of the 1934 Act so as to attract private capital into the secondary market. The required capital stock that an association must hold was reduced from $5 million to only $2 million. 176/ Incorporation of an association required only 25% of that amount rather than the 1934 requirement of full payment.

The amendments excluded elements of conventional lending such as franchise, capital reserve, surplus stock, and all potential obligations from federal or state taxation. 177/ Criticism of the amendments concentrated on this section due to the fact that the financial community perceived it as the creation of unfair competition. Representative Wolcott of Michigan went so far as to offer an amendment that struck all proposed changes to Title II in the language of the Act. He believed that it represented government expansion into a private field of enterprise. 178/ The House defeated the amendment, and along with the Senate, subsequently enacted the bill. 179/

The liberalized language of this legislation provided a workable vehicle for the development of private national mortgage associations. Through it, the Administration, Congress and specifically the FHA made their final painstaking effort to induce private capital into the secondary market. Again it was unsuccessful. Despite the fact that the right of private citizens to create these associations existed until 1948, it was never exercised.

G. THE FEDERAL NATIONAL MORTGAGE ASSOCIATION: 1938

The administration, particularly the FHA and the White House deemed housing rehabilitation and construction as a major employment generator. Their concern as well as that expressed by Congress in the previously discussed acts indicates their belief that the FHA mortgage programs should serve as tools to implement their strategies. The succession of legislative devices that sought to create private mortgage associations points out their conviction that the escondary mortgage market should serve as an encouragement to the private sector to align themselves in this effort.

Potential for the creation of a private national mortgage association dwindled by 1938. Despite the attractive advantages created by the Amendments of 1938, the potential for private initiative in the secondary market became only conjecture. Acknowledging this situation and prompted by President Roosevelt, the chairman of the RFC announced the formation of the National Mortgage Association of Washington in February of 1938. Retitled in April as the Federal National Mortgage Association (FNMA), it initiated along with the RFC Mortgage Company the pruchase of FHA insured mortgage instruments. 180/

In this manner, the FNMA provided the secondary mortgage market which had been sought for so long. The association provided those lenders concerned with liquidity the reserves they needed in much the same manner as conventional banks discount short-term paper and replenish their capital reserve at Federal

Reserve Banks. The entire mechanism allocated more cpaital into the private sector and thereby fostered recovery.

Originally, FHA and White House Officials expected the FNMA to serve two crucial functions, thereby assisting the development of Federal Housing programs. First, the FNMA could offer assurance to those skeptical lenders concerned with liquidity. Otherwise, their perception of the FHA mortgages as too high a risk would be alleviated by the secondary market function served by the FNMA. When the lenders' liquidity began to fall short, the FNMA would buy the paper at discounted rates and thereby accept the risk while the private lender could continue lending. 181/

The second function that the FNMA was intended to serve concerned a facilitation of the geographical spreading of mortgage capital. 182/ The administration sought to expand mortgage capital throughout the national economy thereby fostering development activity and in turn reducing unemployment.

The creation of the FNMA instituted mechanisms whereby assistance encouraged the development of secondary market operations. Several types of FHA issured mortgage programs allowed this progress towards a more equitable solution to the present problems of that time. Section 203 183/ mortgages were bolstered despite the Congressional restriction of no direct lending based on the Federal financial assistance the association received. Otherwise, the private lender could solicit the mortgage and obtain advance commitment acting as a conduit for the paper. The FHA would insure the mortgage, at which time the FNMA would purchase it and thereby eliminate any risk for the private lender.

Section 207 184/ mortgages were stimulated also. These mortgages, "covering property held by Federal or State instrumentalities..." allowed the FNMA to become involved in the direct lending function. This situation arose out of the fact that these entities, being agents of the government could receive government assistance directly to aid in the development of their individual projects. The FNMA's participation in these programs was, however, limited to only $5.3 million on eleven separate project. 185/

With these housing programs, the FNMA entered the pre-war years with a burst of activity. In 1939, the association purchased nearly $100 million worth of mortgages. 186/ From that high point, the activity began to subside due to the lack of building material caused by the demand for war materials. The FNMA activity did not cease entirely, however, due to privately financed defense housing projects. The war economy erased the last vestigages of the Depression creating abundant capital reserves within the private institutional market. This development accounts for the decline in FNMA activity rather than any lack of performance on its own part.

H. SUMMARY 1928 - 1948

Several conclusions can quickly be drawn from the preceding review of the federal housing activities during this period. The legislation discussed acted as significant elements in the development of the residential mortgage market as we know it today.

The length of amortization on mortgage loans was dramatically increased. Prior to the 1934 National Housing Act, the amortization period had generally been short and the loan-to-value ratio low. This precluded many otherwise eligible people from homeownership. With the increase in the amortization period and the development of high loan-to-value ratios combined with the FHA insured morgage programs, many individuals were able to purchase their first homes. Evidence of this stares one in the face in many major metropolitan areas today, with the realization that a large percentage of inner city housing was constructed either during this period or before.

The formation of the RFC Mortgage Company and eventually the FNMA accelerated these developments. With the inception of these programs the long sought after secondary mortgage market became operational. This situation fostered the development of the mortgage instruments backed by the FNMA.

While these devices achieved their primary goals, they also impacted the inner cities in a manner not necessarily intended. With the advent of easier mortgage terms and amortization periods the mortgage lending community began to seek more lucrative markets. This situation combined with the individual perception of homeownership initiated the suburban out-migration of the next period of discussion. As these individuals began to seek the perceived ammenities of the suburb, they often sold to individuals not necessarily financially prepared to accept the burden of homeownership.

As these less financially qualified people began to dominate an area, it eventually began to decline in terms of maintenance and care. The same legislative devices that fostered the initial recovery of the private home-building industry also allowed these individuals to accept responsibilities often beyond their means. As a result, the inner cities soon began to decline and deteriorate on the basis of disinvestment and mortgage credit withdrawal by the private lending sector. This left the government more often than not holding the bag in the declining central cities of this nation's metropolitan areas.

This situation would be accelerated even more by activities of the private mortgage market spurred by federal activity in the next few years.

III. THE ROLE OF THE FEDERAL GOVERNMENT FROM 1949 TRHOUGH 1970

A. THE HOUSING ACT OF 1949

The year 1949 provides a convenient breaking point in the discussion of the Federal Government's role in the private mortgage market and its subsequent impact upon the inner cities. That year the Congress and the administration made a long term commitment to the cities and the private mortgage market by their decision to allocate a large percentage of public assistance monies to the housing market. The Housing Act of 1949 declared that it was the intention of the Congress to provide "...a decent home and suitable living environment for every American family." 187/

The Act established a goal for the nation. To accomplish the objectives set forth in Section II of the Act, it authorized the provision of capital grants to the various municipalities, new federal loans, and funding for research on construction and farm mortgage loan programs. 188/ The Act gave legal form to the governments intention to attain the adequate living environment that was intended. The Act more commonly referred to at the time as the Taft, Ellender, Wagner Act postulated a "share the wealth theory" of housing assistance. It provided for the public housing programs that eventually developed into the urban renewal programs that so drastically changed the face of America's cities.

Another section of the legislation reauthorized the Housing and Home Finance Administration originally constituted under the Presidential Reorganization Plan Number 3 of 1947. The HHFA consisted of three constituent agencies - the Federal Housing Administration (FHA), the Public Housing Administration (PHA), and the Federal National Mortgage Association (FNMA). 189/ It was the intention of Congress to provide a coordinated effort to deal with the housing problems that existed at the time. The HHFA became the liaison on housing between the White House and the Congress. 190/

The omnibus package received many critical comments as might any legislative endeavor that sought to serve as a cure all to the housing problem. The portions of the bill that authorized assistance loans to the various municipalities received a great deal of criticism on the basis that the private sector, specifically the housing industry, believed that the augmentation of a public housing program would act as a device to foster a government controlled economy. This debate arose many times over the years whenever Congress began to consider the housing problems of the nation.

The National Association of Home Builders (NAHB), expressed substantial concern over this section of the legislation and seemed to even take personal exception to the premise of the bill. They believed that the bill's assumption charged that they hadn't done their part to relieve the congestion then present in the inner cities. In a statement before the House Banking and Currency Committee considering S. 866, Milton J. Brock, President of NAHB stated: "We say we want no part of

S. 866 if it means we have to accept a half million units of public housing, vast Federal slum clearance programs, control over the secondary market, and wide credit controls over the industry by an omnipotent Federal housing bureaucracy." 191/

In terms of the bill's impact upon the mortgage finance industry, the charge was rendered that the reason for the problems facing the home building industry stemmed in fact from the "off again, on again" Title VI authorizations by Congress. 192/ This situation created an environment wherein the builder could not make any long range plans in terms of his ability to obtain the necessary construction loans that were vital to the maintenance of his building activity. The building industry believed that they would thus be at the mercy of the HHFA administrator because of the nature of his control over the government's housing agencies.

The public housing program authorized by the bill also drew critical comment. Many critics perceived the program as a device that encouraged "indolence" on the part of local communities that failed to deal with their inner city areas where blight and slums existed. 193/ Otherwise, the critics believed that the city governments would now be lulled into inactivity because of the federal government's intention to eradicate the problem of inner city slums and blighted conditions. If the cities perceived that the federal government would provide the mechanism, then it was assumed that the cities would not have the incentive any longer to deal with their own problems.

The fault finding in regard to public housing did not stop there, however. The attitude of the federal government was also attacked. It was deemed that the intent of the federal government was to assist the cities to provide a better standard of living. In so doing, the critics of the legislation beleved that the legislative authorization to provide public housing would create the precedent for federal competition in the private sector. If this were not enough, many critized the omnibus package on the premise that this federal competition would be supported by tax dollars. Inasmuch the critics charged that they would be legally forced to pay for the development of the cities twice.

Stemming from this situation, arose another criticism that in light of hindsight seems to have been almost a prediction. It was suggested at the time that the legislation would initiate an attitude in the public mind that demanded more and more assistance or a "pork from the barrel" philosophy. 194/

The bill basically provided the mechanism for the federal government to enter the housing market as a builder. This situation cause great consternation among officials of the housing industry. The legislative endeavor impacted the mortgage market, housing construction and thus the cities of America in general. The FHA and FNMA mortgage programs were authorized to assume new burdens that resulted in significantly more federal presence in the effort to solve the problems of inner city America.

B. THE HOUSING ACT OF 1952

By 1952, the funds avilable to the FNMA for over-the-counter purchase of non-defense mortgages had been exhausted. As a result, FNMA would be forced to cease its activity unless re-authorization was received from Congress. Thus, legislative action to support the private mortgage lending market was deemed a paramount objective of the 82nd Congress.

The purpose of the Housing Act of 1952 195/ sought to amend the previously enacted legislative measures in regard to the production of defense housing units. 196/ Despite the fact that the bill did not seek to replenish the funds for non-defense housing mortgage loans, it did achieve that objective by re-plenishing the assistance available for defense loans which already had $600 million of its former authority left. This situation allowed that amount to be freed and thereby inadvertently granted the FNMA an additional $362 million for non-defense loans.

The act also pushed the FNMA into the area of advance commitment authority by increasing the authorization $900 million, leaving a total of $1,152 million for such purposes. 197/

This situation fostered further development of the trend of the federal government to become involved in the development of our cities. By increasing the FNMA authority, the Congress had increased the presence of the federal government in the construction industry.

To prevent the "dumping" of mortgages on the FNMA, the legislation 198/ amended section 301 (a) (1) of the National Housing Act. This amendment acted to improve the mortgage market in several ways. Because the average mortgage investor usually prefers to purchase "seasoned" mortgages rather than making a commitment for mortgages on homes to be built in the future, the amendment allowed the purchase of existing mortgages under then present economic conditions. 199/ This situation allowed the mortgage investor more security in his purchase as opposed to the insecurity of purchasing paper on future construction.

The legislation also allowed for the creation of a "Special Purchase Fund" that would seek to stimulate the sale of mortgages. By October 1, 1952, the FNMA had instituted the program. 200/ The potential purchaser of mortgage paper was granted a "nontransferable purchase receipt" that entitled him to sell back to FNMA an equal package of mortgages within the 1st year of their period. This "one-for-one" exercise allowed the investor to obtain the seasoned mortgages and relinquish his loss potential on future mortgage paper. 201/

Once again the Congress had further pushed the federal government into the business of construction and thereby the redevelopment of the cities. This trend was to continue over the course of the next several Congresses.

C. THE HOUSING ACT OF 1954

The Housing Act of 1954 202/ provides evidence of the Government's intent to bolster the housing market even more. The act liberalized the FHA mortgage insurance program and authorized a new charter for the FNMA that allowed for the further expansion of the secondary mortgage market. 203/ Title III of the act approved the new charter for the FNMA.

The legislative hearings on the act indicated a split over the function of the FNMA in the secondary market. Most federal officials supported the argument that a privately financed secondary mortgage market should purchase only mortgages that were deemed to be generally marketable. 204/ Witnesses that favored a different function for the secondary market supported the theory that the secondary market should not be regulated totally by the economic function of the marketplace, but rather should strive to attain welfare ends. 205/ Representative Wolcott indicated that he did not believe that it was the intended function of the FNMA to "bail-out" those financial institutions that were worried about the marketability of their mortgage paper. 206/

The activities of the FNMA were distributed into three separate functions as a result of the 1954 Housing Act. First, a secondary market function was authorized. This legislative authorization sought to provide additional support to the secondary market thereby assisting the residential mortgage market through government-insured or guaranteed mortgages. 207/

The second function of the FNMA under the 1954 amendments provided for Special Assistance Functions. This provision sought to moderate any decline in the residential mortgage market and provide special assistance to those segments of the population that were unable to obtain adequate financing on their own. To achieve this a combination of mortgage programs was devised. 208/ The third purpose of Congress was to develop a management and liquidation operation within the FNMA. Due to the fact that the FNMA had acculated a large number of mortgages during its existence, it was deemed necessary to liquidate some of thier portfolio. To achieve this, the Congress sought to "substitute private financing for Treasury borrowings." 209/

As a result of all of these new mechanisms, the Federal Government had in fact entered the private housing and mortgage lending market to a considerable degree. The existence of a multitude of agencies indicates that the Federal Government perceived the development of housing as a worthy goal and thereby the intended purpose of this vast array of agencies was to achieve that purpose. But unfortunately, as the number and authority of these agencies increased, so too did the mechanisms that fostered what was rapidly becoming an overwhelming outmigration to the suburbs. As this trend continued, the new owners in the inner city areas, financially less capable to be a homeowner, were also finding themselves financially pressed to maintain the quality of housing that they had been able to purchase under this vast arrage of programs previously discussed.

As this trend continued, the areas soon fell into disrepair and the neighborhoods began to decline. Based on this, many mortgage investors began to solicit mortgages in the outlying suburban area and in effect redlined the inner city areas.

The 1954 Housing Act provided the first significant changes in the Federal Government's function in relation to the private housing and mortgage lending markets since the 1949 Housing Act. In the previously discussed way, the authority of the FNMA was expanded. But the Act did not stop there, it also expanded the authority of the FHA in regard to the inner cities of the nation. Under Sections 220 and 221, the Act authorized the FHA to provide mortgage insurance in urban renewal areas for the construction and sale of private housing. 210/ This rehabilitation insurance was perceived to be the most significant element in the government's attempt to remove the enigma of urban blight from American's inner cities. 211/

Under its authority granted by Section 220, the FHA's basis for appraisals was to compute a profit allowance strictly against the construction costs of the individual unit. 212/ This technique excluded the variable costs such as the land, architect's fees and any project overhead. As a result, there soon developed significant abuses of the program and more direct action would once again be necessary. The real loser as a result of this congressional oversight were the residents of these inner city areas that now could buy the homes based on the FHA's technique and with insurance offered by FNMA. What happened was that the poor appraisal techniques misrepresented the actual value of the home and thus the local property tax structure based on the stystem of appraisals unfairly burdened these homeowners. Being financially less adequate to maintain the structures anyway, this situation burdened them even further and as a result the individual structures as well as entire neighborhoods began to decline at an even quicker rate.

D. THE HOUSING ACT OF 1961

Between the enactment of the 1954 Housing Act and the election of John F. Kennedy, the several pieces of legislation that were passed in regard to the housing and mortgage banking and industry did little more than simply expand the authority of the FHA and the FNMA. By expanding the authority of these organizations the Congress either increased the actual dollar amounts or re-authorized their ability to offer mortgages be they either insured or guaranteed. More often than not the legislative endeavors of the Congress and the Eisenhower administration simply sought to further expand the authority of the urban renewal programs which were perceived to be the answer to America's inner city problems.

It was not until the Housing Act of 1961, 213/ that a substantial effort was made by the government to subsidize low and moderate income housing. 214/ The Act authorized several new programs that all sought to further the ability of people to obtain new homes and thereby spur the development of the housing industry and mortgage lending market. The new programs included: a low and moderate income housing subsidy program and a program of FHA insured loans for the repair and moderization of existing homes. 215/

But once again, the Act spurred the out-migration from the inner cities. In the congressional hearings that considered the legislation, Mayor Daley of Chicago charged that the FHA had "encouraged people to move from the cities by failing to give them the opportunity for home ownership and general improve- of housing conditions..." 216/ This situation further induced the mortgage banking industry to disinvest themselves in the inner city which had the overall affect of accelerating the decline of these areas.

The 1961 Act also instituted another signifcant structural change in the private mortgage lending sector. By amending Section 221 (d) (3) of the 1949 Housing Act, the Congress created the Below Market Interest rate loan program. By this process, legally limited dividend corporations were allowed to borrow construction loans at 3%. As the market fluctuated, the government would make up the difference between that 3% and the prevailing market rate. 217/

Beyond these developments, the Congress spurred by the administration enacted several other programs that had significant impact upon the construction and mortgage lending markets of the nation. One of these, the Housing and Urban Development Act of 1965 218/ established the long sought after cabinet level Department of Housing and Urban Development.

This many believed, would finally allow the problems of urban American to receive recognition on the national level in the highest councils of government. 219/

Another legislative and administration effort of the mid-sixties that influenced the current character of America's cities was the Demonstration Cities and Metropolitan Development Act of 1966. 220/ This legislative device allowed for the creation of the Model Cities Program. Via this program, the Congress intended to correct the inequities of the urban renewal program that had been referred to as the "Federal Bulldozer". By the coordination of various assistance programs the Congress as well as the administration believed that the problems of the cities could be eradicated and the inequity of the system corrected. Unfortunately, either through mismanagement, lack of funding or petty squables among the program officials the program eventually died by its own mismanagement under the Nixon Administration.

Although it is possible to trace the large commitment of the Federal Government to the cities back to the Housing Act of 1961, the dramatic change in the "level and form" of government activity did not occur until the passage of the Housing and Urban Development Act of 1968. 221/

E. THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

This legislation represented the largest commitment by the Federal Government in the field of housing and mortgage finance since the inception of the federal commitment by the National Housing Act of 1934. The Congress determined that the private sector had simply not done its part and that it was time for the Federal Government to take assertive action.

The legislation as passed and signed by then President Johnson authorized new programs for the subsidy of mortgage interest for low income families. It established a special high risk insurance fund for utilization by the FHA. It placed the FNMA secondary mortgage market operation in the hands of a privately owned corporation. It authorized the creation of the Government National Mortgage Corporation to oversee the management and liquidation functions authroized under the 1954 Housing Act. The smaller less populated areas were also recognized by this legislation. The Farmers Home Administration was authorized to make direct and indirect loans to low income families in rural areas and towns. Finally, the GNMA was additionally granted the authority to guarantee the principal and interest on securities supported by the pool of FHA and VA mortgage instruments. 222/

Each of these programs allowed a great deal of flexibility for the FHA, FNMA, GNMA, and the FmHA to initiate positive programs designed to foster the development of "decent and suitable living environments" 223/ in every American city.

The impact of the Housing and Urban Development Act dramatically influenced the operation of the mortgage market and thus it becomes necessary to briefly review each of the programs.

1. Section 202: Direct Loan Program for Housing for the Elderly or Handicapped.

This program directly assists private, non-profit corporation and consumer cooperatives in their activites to develop rental or cooperative multi-family housing for the elderly, the physically handicapped, or developmentally disabled adult. Through this program HUD is authorized to make Below-Market-Interest-Rate loans directly to non-profit mortgagors. The National Housing Act restricts the participation in Section 202 programs to private, non-profit mortgagors. The term of the mortgage shall not exceed forty years and the interest rate on the loan shall be equal to the current average market yield on outstanding marketable obligations of the United States government. 224/

2. Section 203 (b): Home Mortgage Insurance

This program is the chief source of assistance for families purchasing their own homes. Under this program, HUD guarantees the mortgage lender protection against any financial loss. While the agency does not actually lend any money directly under this program, it does provide for the issuance of mortgage insurance that allows the lenders to initiate portfolios on more liberal terms for longer periods at lower interest rates. Under this program, the mortgage term will not be for less than ten years and not longer than thirty.

The current maximum statutory limitation upon the insurance is $60,000 for single-family units, $65,000 for two or three family homes and $75,000 for a four family home. 225/

3. Section 221 (d) (3) and 221 (d) (4); Mortgage insurance: New and substantially rehabilitated rental developments

This section established by the National Housing Act seeks to provide insurance on rental and cooperative housing for low and moderate income families. In accordance with HUD's Minimum Property Standards the program is designed for non-profit and provides 100% mortgage insurance, the (d)(4) program is limited to profit motivated sponsors and provides 90% mortgage insurance. The term of the mortgage is limited to forty years or three fourths of the remaining economic life of the development. 226/

4. Section 207: Multi-Family Mortgage Insurance

This program serves as HUD's basic multi-family rental housing insurance program. It is designed to assist the development of rental housing for moderate and middle income families. Despite the regulations for Section 207 insurance that allow for the approval of virtually any type of mortgage, HUD administratively limits eligibility to profit-motivated corporations, trusts, partnerships and individuals. Again, as in the previous case, the term limitation is for forty years of three fourths of the remaining economic life of the project. 227/

The number of federal mortgage insurance programs available include many others. A few of the more notable include:

1. Section 223 (f) Mortgage Insurance: Existing Multifamily Developments
2. Section 231: Rental Housing for the Elderly and Handicapped
3. Section 235: Homeownership Program for Lower Income Families
4. Section 245: Graduated Payment Mortgage Program
5. Section 502: FmHA Homeownership Program
6. Section 515: FmHA Rural Rental Housing Loan Program. 228/

By the utilization of these various devices and programs, the Federal Government has in fact become a major actor in the mortgage lending market. Its presence in the market sought to provide adequate, safe and equal housing for all American families. Yet despite the massive transfusion of Federal Funding into these programs, the inner cities of America continued to decline.

It begins to seem readily apparent that while the intention of the government was to provide a decent and secure living environment, it had in fact assisted in the decline of significant areas of our nation's metropolitan areas. The process whereby mortgage insurance was offered as well as direct loans and the secondary market function of federal activity combined to accelerate migration from the central cities. These same programs while serving a large portion of the population adequately also inflicted upon another class of citizens the responsibility for financially maintaining their homes. These less adequately financially prepared persons quickly yielded to the attractive terms of the federal housing programs. Inasmuch, they also accepted a financial burden and responsibility that many were unprepared to accept. In this environment, the Congress again reacted to the persistent decline of the central cities.

F. THE EMERGENCY HOUSING FINANCE ACT OF 1970

Interest rates began to spiral upward in late 1969 and early 1970. As a result, the government perceived a situation that would soon result in decreased housing production and thus an increased unemployment rate. To avert this situation and avoid any economic backlash, the Congress reacted by passing among other measures, the Emergency Home Finance Act of 1970. 229/

The Act sought to increase the availability of mortgage credit for financing of the most urgently needed housing. To achieve this, the interest charges for members of the FHLBB were reduced. 230/ The FNMA was given re-authorization to provide the secondary market for conventional mortgages 231/ The Act also created the Federal Home Loan Mortgage Corporation. 232/ The corporation was authorized to purchase and make commitments to purchase residential mortgages if the principal balance did not exceed 75% of the value of property securing the mortgage. 233/

Initially, the fear arose that a tremendous impact would be felt in the national capital market. But, the bill as signed contained enought safeguards to assure the private mortgage lenders that the Treasury and Department of Housing and Urban Development would be able to control the amount of agency issues so as to avoid overburdening the capital markets. 234/

The fear of the financial community, however, may have been well founded. For example, Title I of the Act authorized an appropriation of $252 million for the reduction of interest rates. Were these rates to drop quickly, it would thus drastically impact the on-hand reserves of the member institutions. Thus, the lawmakers instituted measures that would reduce the likelihood of that occurrence. Title II expanded the purchase authority of the FNMA to include conventional mortgages in addition to the federally underwritten mortgage it then purchased and sold.

Also, the expectation of the bill was to provide a boost to the economy. Utilizing U.S. Bureau of Labor Statistics, the National Association of Home Builders derived the following employment impacts of the legislation. The employment referred to would be generated as a result of the creation of 160,000 housing starts of which 150,000 would occur in the near future. Based on that, the figures that the association derived indicated the following:

CREATION OF JOBS AS A RESULT OF THE STIMULUS RECEIVED BY ENACTMENT OF THE EMERGENCY HOME FINANCE ACT

147,000	On-site construction jobs
25,000	Off-site construction jobs
80,000	Jobs in manufacturing of building materials
71,000	Jobs in transportation
97,000	Secondary market jobs
420,000	Total jobs created by the enactment of the Emergency Home Finance Act of 1970.

Source: U.S. Dept. of Labor Statistics/Economics Dept. NAHB 235/

Utilizing this model, the association came out in support of the legislation that would serve as a boost not only to them, but to the entire economy as well.

Once again the Federal Government had funneled money into the private mortgage market for the purpose of creating employment. As in the previously documented attempts, this effort among others usually diluted the problem. But with every action, there must be a reaction. In this case, as housing starts increased 236/ they provided the incentive for out-migration from the central city portions of the metropolitan areas. This situation was alluded to by Secretary Harris in the hearings held in conjunction with the Housing and Community Development Act of 1977. She stated:

> "Between March of 1975 and March of 1976, U.S. metropolitan areas lost nearly 400,000 citizens through out-migration. Central City areas sustained a net loss of almost 2 million people during the same period" 237/

Not in an effort to suggest that the FHA, FNMA, and GNMA programs caused the decline of our metropolitan inner cities, but rather to suggest that they did assist the acceleration of this process, the activity of the Federal Government becomes suspect. The actions that led to easier mortgage credit in suburbia spurred the development of out-migration patters and thereby allowed people of less than adequate income to become homeowners at a much quicker rate than the natural process of housing filtration would have allowed on its own.

G. SUMMARY OF THE PERIOD 1949 - 1970

The government programs that developed in this period, especially the 1960's had a distinct impact upon the housing and mortgage markets. The three largest impacts include the utilization of federal guarantees and insurance to lower the default risk premiums, the development of a preferred borrowing position of the Federal Government agencies that provided the full faith and credit sanction of the Federal Government, and the use of subsidies to lower the cost of mortgage credit to homeowners. 238/ Despite the fact that most of the agencies of the Federal Government that dealth with housing were established by the 1940's, this period saw the development of a single cabinet level department that sought to recognize the plight of the cities.

The activity of these agencies, beginning with the Housing Act of 1949, initiated the concept of social priority as an element of the housing characteristics of the United States. The acknowledgement of this situation combined with the previously indicated impacts of federal activity have several different implications. The constant pressure excerted upon the institutional community by the federal mortgage insurance and guarantee programs forced these lenders to liberalize their terms in regard to the issuance of mortgage credit. The preferred position of the Federal Government's various housing agencies made it continually more difficult for the institutional community to compete in the mortgage market. The third implication of this period was that as a result of the federally subsidized programs, linked to the FHA insurance program, it may well have caused a decline in the demand for conventional mortgage credit had not the institutional community reacted.

The financial community reacted to all these pressures and implications by seeking the most lucrative return on their initial investment. This ambition led them out of the central market into the more rapidly expanding suburban market. In effect, the private lending community had disinvested in America's metropolitan inner cities. This process more commonly known as redlining, led to the eventual decline and deterioration of our inner cities and eventually the conditions of blight that the government had initially sought to eradicate by their policy initiatives.

IV. THE ROLE OF THE FEDERAL GOVERNMENT FROM 1970 TO THE PRESENT:

The last and final section of this review concerns the period since 1970. These last few years have witnessed a dramatic change in the utilization of mortgage instruments. There has been a growing concern by the consumer movement in regard to the warranty one should be able to expect when making a housing purchase. The mortgage instrument and its utilization has come under a great deal of scrutiny in the wake of mortgage disinvestment and redlining. Discrimination in consumer credit elicits a very emotional response. All these and more indicate that this most recent period has rejected the concept of growth as the ultimate good. The population in general has become more concerned with the quality of life rather than the quantity. The impact of these consumer movements has greatly influenced the reliance on and the use of the mortgage as an investment concept.

President Nixon, on March 17, 1970 in a White House release stated "To bring down the cost of money... to direct the flow of more money into the mortgage market. I am proposing new actions to... get building now." 239/ With this, the administration recommended to Congress that among other things the authority of the FNMA should be expanded so as to allow participation in the conventional market as well as FHA & VA programs. On this basis the President concluded: "No more urgent challenge faces our monetary, banking and financial community than to help the economy get on with the task of achieving lower interest rates." 240/

Another element of the President's proposals that affected the housing and mortgage markets was his decision to push for home mortgages with variable interest rates. 241/ This initiative on the part of the administration would have tied interest rates on home mortgages to the national economy. Otherwise, if the interest rates increased, so would the mortgage interest rates, as it would also drop under the opposite conditions. Advocates of the plan including the National Savings and Loan League, believed that the time was ripe for such a proposal.

The concern over mortgage policy also impacted the FHLBB. On March 9, 1970, the board announced the plans for its intention to release $1.2 million of bonds to eradicate the nation's housing crisis. 242/ These bonds were intended to be offered as both short and long term notes. An annual yield of 7.90% would be allowed for the short term notes, while the long term notes would mature with a rate of 7.75%. The result of all these initiatives on the part of the administration was the urging of Congress to take some similar action to create or authorize assistance in this effort.

A. HOUSING AND URBAN DEVELOPMENT ACT OF 1970

This Act, 243/ when sent to Congress by the administration entailed several goals. Initially, the White House wanted this to be the device that implemented the President's "New Federalism." 244/ To achieve this end, whereby decisions would be made at the most appropriate operational level, several goals of the administration were written into the legislation. First the administration sought to improve the capacity of the nation's housing programs so as to stimulate production 245/ Next they desired to make subsidized housing programs more responsive to the local communities by gearing income and construction cost limitations to income and cost factors prevalent throughout the country. 246/ Third, the administration's proposal sought to distribute subsidized housing programs so as to increase the participation among the low and moderate income families of the country. 247/ Finally, the legislation was written so as to include an optimum number of low income families in the rental and homeownership programs. 248/

The National Association of Home Builders approved of the administration's proposal as sent to Congress. They specifically supported the concept of maximum mortgage limits. But they reserved this support on the premise that cost determinations should include "not just the brick and mortar costs, but also those costs of financing, overhead and marketing." 249/ The amendment to Title I of the National Housing Act sought to remove the FHA maximum insurable mortgage amount and replace it with one determined on the basis of housing market areas. This would allow for the marketplace restrictions of the various areas of the country to act as a determinant in the mortgage cost calculations. This the National Association of Home Builders also supported with the recommendation that there be more than only one prototype. 250/

The Act, as passed by Congress 251/ extended all programs of the FHA. Those specific amendments to the 1934 Act included an extension of the total amount of homeownership contracts the secretary (HUD) could undertake by $25 million in 1971 and an additional $30 million for fiscal 1972. 252/ Otherwise, the Act simply followed the pattern of the previous housing legislation by adding to the amount of funding available to these various housing agencies, so as to keep pace with inflation and hopefully create employment.

In terms of its impact upon the mortgage instrument specifically, the 1970 Act did initiate a new loan-to-value ratio. Under this new standard, the first $20,000 of the appraised value would be eligible for 100% mortgage insurance, the value of the unit in excess of $20,000 would receive 90% and the value in excess of $30,000 would receive 80%. This provision of the legislation was in lieu of the previous limitation of 97% on the first $15,000, 90% on the next $10,000 and 80% for that amount in excess of $25,000. In effect, what this provision recognized was that the cost of homeownership was increasing significantly. Unfortuantely, the 1970 Act did little if anything at all to control or reduce the cost of housing but rather simply just allowed the mortgage insurance programs to keep pace with the rapidly increasing cost of homeownership.

The inflationary spiral that the 1970 Act recognized was rapidly becoming a significant element of public concern. Simply increasing the authority of the federal morrgage devices to deal in the secondary market would not be enough.

B. FAIR CREDIT REPORTING ACT OF 1970

As initially introduced, 253/ this bill sought to further many of the objectives established by the Consumer Credit Protection Act. 254/ The bill recognized that a trend was developing whereby credit-installment buying was on the increase. The Congress found that in 1967 credit bureaus across the nation held files on over 110 million individuals on which 97 million credit reports were given to 400,000 creditors in 36,000 communities. 255/ But what Congress most recognized was that these bureaus had no public supervision. At the time of the bill's introduction, the fear was that with the development of national data banks (e.g., the FBI, the Selective Service System and the IRS) there would be little if any protection afforded to the buyer, especially in terms of his privacy.

This bill, as signed 256/ did not specifically address the issue of mortgage finance or warranty protection for the home buyer, but the time when the mortgage and credit would fuse as an issue was drawing near.

C. FINANCIAL STRUCTURE AND REGULATION

In November of 1973, the Senate Banking Committee began its hearings on the recommended changes in the strucutre of the nation's financial system. 257/ These hearings were held in conjunction with the Treasury Department and Administration's recommended changes in the Federal Banking laws and regulations. These recommendations were introduced to Congress, 258/ and based on the findings of the Hunt Commission. 259/

The administration's proposal, when introduced, sought to amend Section 13 of the Federal Reserve Act so as to authorize the Reserve Banks to receive checks for collection from Home Loan Banks and their members. Also the legislation hoped to amend Section 16 of the Federal Reserve Act to require that Reserve Banks offer Home Loan Banks and their members a clearinghouse function. 260/ The clearinghouse function was intended to be based on a rather limited concept in that their assistance to the Home Loan Banks could never exceed the total amount the member institution retained in a reserve account.

William E. Simon, then Deputy Director of the Treasury remarked:

> "Recognizing the need to reduce such discrimination against small savers and consumer buyers and reduce distortions created by past control devices, the President has recently recommended changed in our financial system." 261/

Inasmuch, the proposals were designed to ensure a more steady flow of loan funds to home buyers. If the interest rates were allowed to increase on savings, then the institutional community could obviously have more readily available capital reserves deposited with a Federal Reserve Bank. And in this manner, the bank would be able to have new funds available for making home mortgage loans. 262/

These hearings had been preceded by another Congressional Investigation. 263/ Gail Cincotta, director of the Chicago Disinvestment study for the University of Illinois at Chicago appeared before these hearings on the Credit Crunch and Reform of the Financial Institutions. She stated:

> "The credit crunch with increased interest rates from my perspective... is just another symptom of the disinvestment and lack of availability of funds for whole groups of people, whole communities, communities we describe as usually fringe communities or inner city so that it is another way of people not being able to get money. 264/

In her statement in regard to the reform of financial institutions, Mrs. Cincotta suggested that the direct responsibility for inner city decline and deterioration was at the door step of the savings and loan industry. 265/ Recognizing this, and having acknowledged the impact of the FHA, FNMA and GNMA upon the inner city, the Congress decided that it was time to act.

D. HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

This Act, 266/ generally cited as the "Revised National Housing Act: reaffirmed the goals of the 1949 Housing Act and sought to achieve them. It further established a national housing goal by its finding 267/ that the policies previously enacted into law by Congress to achieve that national housing goal had not directed sufficient attention and resources to the preservation of existing housing and neighborhoods. The Act also sought to eliminate the trend of the last decade that had accelerated the deterioration and abandonment of the lower income housing in the metropolitan areas. This neighborhood deterioration they found, had partially negated the progress toward achieving the national housing goal which had been primarily through new housing construction. 268/

To achieve this end, the Act sought to:

> "Provide an assessment of developments and progress during the preceding fiscal year with respect to the preservation of deteriorating housing and neighborhoods and indicate the efforts to be undertaken in future years to encourage such action." 269/

Thereby, the Act recognized that the Congress' previous action may in part have led to the deterioration of America's inner cities as a by-product of the action to adequately house every American family.

One mechanism initiated by the Act to correct this situation, the "market area ceiling" replaced the former authority to underwrite mortgages under the "maximum statutory mortgage ceiling". This action was deemed a necessary function even by NAHB, but they still felt it necessary to first evaluate the process through prototype analysis. 270/

Unfortunately, neither the Congress, the Administration, nor the private sector had taken any affirmative action to deal with the enigma of inner city decline and abandonment.

The mortgage lending market still was able to disinvest in these areas based on the premise that they were obligated to make what they referred to as "safe mortgage loans". Thus still more action was demanded by the consumer groups. They demanded that this action take affirmative steps to achieve the goal of a "decent and suitable" home for every American family.

E. HOME MORTGAGE DISCLOSURE ACT OF 1975

As a result of many previous attempts to document the existence of disinvestment or redlining, the Congress passed this legislation 271/ to facilitate that effort. This legislation sought to allow the public access to the reasons that the were denied mortgage credit. Many of the studies undertaken indicated that commercial banks, savings and loan associations and especially mortgage brokerage firms were in fact redlining these declining and deteriorating inner city areas. 272/

Based on the evidence accumulated, the conclusions indicated that the financial community more often than not disinvested in these areas because of what they deemed an inherent risk factor. Otherwise they felt that because the area was declining, then the potential for loss on their mortgage investment was too high. The studies further confirmed the fact that this attitude on the part of the mortgage investment community was in part due to the FHA appraisal techniques.

These techniques basically disallowed mortgage insurance in areas where substantial decline existed. 273/

As a result of these findings, it seems fair to conclude that in fact the Federal Government's efforts to create a "decent and suitable" living environment have fallen short of their overall objective. This situation seems to have arisen from the system of FHA appraisal techniques, the continual re-authorization and authority granted the FNMA to act within the secondary market and finally the attitude imparted by the financial community that suggests that because the risk is too high - no profit can be made in these area.

F. 95th and 96th Congresses

The 95th Congress besides passing the Housing and Community Development Act of 1977, 274/ took several other steps that have had impact upon the rate of decline present in our inner cities.

The Housing and Community Development Act of 1977 as in many of the past cases amended various Federal laws that related to community development, housing and related programs. Some of these measures included the entitlement of Minority Small Business Investment Companies as eligible for federal funding under the Community Development Block Grant Program. The Act also made structural changes upon the recommendation of the Administration to change the previous hold-harmless clause of discretionary funding to one more inclined to represent the smaller communities as well as the larger cities.

This new authority to direct funding into the cities of America would now be based upon a "dual formula". Finally one of the more significant actions taken by the legislation provided that 25% of the Urban Development Action grant money go to communities with populations under 50,000. 275/

During the 95th Congress, Senator Proxmire introduced the Neighborhood Re-Investment Corporation Act. Elements of this legislation included a waiver of the Davis-Bacon labor requirements for housing rehabilitation projects if the rehabilitation was performed by a neighborhood based non-profit organization. In regard to the mortgage market, the Act authorized a raise in the mortgage ceiling for public non-profit mortgagors to the same level provided for profit making mortgagors in the National Housing Act Title I. Finally, the Act encouraged through the Neighborhood Reinvestment Corporation a new program referred to as Urban Homesteading. This program basically sought to facilitate the trend in some cities of moving back into the city and rehabilitating those structures formerly considered as deteriorated. 277/

Congressman Brodhead and Congresswoman Holtzman both introduced measures that sought to amend the Equal Credit Opportunity Act. 278/ These bills essentially sought to prohibit discrimination against any applicant for mortgage or general credit on the basis of the geographical location of the applicant's residence. In effect, they sought to prohibit the practice of redlining and thereby eliminate the process of mortgage disinvestment. The combined total co-sponsorship of these several bills included thirty-five members of Congress. These pieces of legislation along with the previous recognition by Congress of disinvestment indicate that there is a growning concern that financial regulation will be necessary to end the practice of redlining and thereby take another step towards creating a "decent and suitable" living environment. Unfortunately, none of these bills made it out of their subcommittee assignments.

The 95th Congress made the initial attempts to effectively deal with the plight of our inner cities caused by mortgage disinvestment or redlining. On the other hand they continued to re-authorize the various programs that have led to the deterioration present in our inner cities. This situation indicates that a more concrete solution must be formulated. This solution might take the form of continued re-authorization of the mortgage insurance programs along with redefinition of the FHA appraisal techniques and continued encouragement of programs like the Urban Homesteading Program assisted by the Neighborhood Reinvestment Corporation. Another possible alternative device might include a redefinition of the charter authority of the FSLIC's ability to charter savings and loan associations. The third possible alternative to attack the redlining enigma would be legislative authority granted under the Commerce Power thereby regulating the flow of mortgage credit funds through reliance on the theory of Interstate Commerce.

The 96th Congress, under the leadership of President Carter quickly moved to deal with the situation present in the declining areas of our nation. Initially, Congresswoman Holzman re-introduced her bill in regard to geographical discrimination in credit. 279/ The President formulated a program to deal with the declining areas of America's cities based on three policies formulated by the group led by Patricia Harris the Secretary of the Department of Housing and Urban Development. Representative Annunzio introduced the American Dream Act. 280/ Several different pieces of legislation have been introduced that would in effect change the utilization of the mortgage instrument as an investment tool. These legislative and administrative attempts to deal with the urban problem have not as of yet passed Congress or been implemented by the Administration. But they do indicate that the concern is there and upon that basis they should be evaluated.

The Annunzio bill seeks an amendment to the Home Owners Loan Act of 1933. Primarily, the bill if passed would prohibit federal savings and loan associations from making variable rate and rollover mortgages. 281/ It would, however, extend to the Federal Home Loan Bank Board the permission to issue graduated payment and reverse-annuity mortgages. 282/ The theory behind this legislation, the opposite of that proposed by the

Nixon Administration several years earlier rests on the assumption that mortgage interest rates will continue to increase if allowed to and thus force the homeowner into continually higher payments for his purchase. The original Nixon Administration legislation sought to lower down payments and create lower initial interest rates, but then allow them to increase or decrease over time based on the fluctuations of the mortgage market. This legislation seeks to prohibit the creation of variable interest rate mortgages on the premise that they will serve as a handicap to the individual homeowner in later years and act as a significantly greater investment tool for the financial community at present. This bill seeks to reduce the potential for this happening and thereby reduce the process of disinvestment that allowed the decline of inner city areas to begin in the first place.

A bill, 283/ introduced by Senator Proxmire primarily seeks to develop substantial evidence that would support the premise of the Annunzio bill. It seeks to provide Congressional control over public policy with respect to variable rate mortgages by the incorporation of various consumer safeguards and the geographic limitation adopted by the Federal Home Loan Bank Board. It also seeks to establish a sunset provision as a rider to the bill that would curtail the authority of the federal savings and loan associations to utilize the instrument.

The Proxmire legislation also seeks to put a grace period on the variable rate mortgage contract for not less than one year. It also mandates that the prospective borrower to whom a variable rate mortgage is offered, must also be offered a comparable mortgage instrument so as to provide the consumer with a choice.

This legislation combined with the Annunzio bill primarily would reduce the chances that the homeowner and consumer would be taken advantage of. Additionally, they would assure that the financial community was no longer able to make greater profits off of the variable rate interest mechanism and thereby contribute to the inflationary interest spiral at the expense of the consumer. But most importantly, it would reduce the impact of disinvestment in the inner city by curtailing the use of the instrument in declining areas.

Another bill 284/, introduced by Congressman Stokes would require more responsibility on the part of any federal mortgage holder prior to instituting any foreclosure action. It would require that certain services and procedures be complied with prior to instituting foreclosure proceedings. These procedures include the provision of facilities that allow the mortgagor to attain information on his mortgage, meetings with the mortgagor prior to any foreclosre proceedings being instituted again him, providing advance notice of a servicing transfer, and refraining from initiating foreclosure proceedings simply on the basis of one delinquent payment.

CONCLUSION

A review and analysis of the federal involvement that influenced the activity of the private mortgage market in the inner city brings several significant findings to light. The activity of the Federal Government concerning the mortgage market initially sought to provide a "decent and suitable" living environment for every American family. To that extent, the effort was quite noble and did in fact substantially increase the quality of housing for many American citizens. But in another context, it worked at cross purposes to the intention of the government to improve the quality of life in American cities.

This situation occurred primarily as a result of the combination of several different policy objectives and actors in the mortgage market. Initially, the FHA and later the FNMA and GNMA sought to improve the quality of housing primarily by assistance to the private market. This was achieved by the purchase of home mortgages in a secondary market that worked primarily in the fashion of a holding company. Otherwise, the private lender would solicit and service the mortgage. Then, through various FHA mortgage insurance programs the mortgage was insured and the risk to the private lender reduced. At a later date, the FNMA and eventually the GNMA would buy up these mortgages at a reduced or discounted rate and thereby provide the lender with additional capital reserves. With these resources, the lender was capable of initiating more mortgage portfolio's and the entire process began again.

The long term result of this situation accomplished the goal of the various Congresses and Administrations in terms of reducing the unemployment rates or at least holding them constant and stable. However, whenever another inflationary pressure was excerted on the economy, the government would react by increasing the authorization for the various housing agencies among other things. Over time, the various re-authorizations by Congress boosted the construction industry. As new homes were constructed and people moved in, the inner cities began to lose population and the gradual increase of out-migration had started. With the successive housing acts and their re-authorizations of the multitude of housing assistance programs, the process of out-migration was accelerated.

As large amounts of vacancies began to occur in the central city areas, the private mortgage lenders justified their withdrawal from these areas on the basis of what they considered considerable risk to their investment. As the disinvestment increased, the Federal Government reacted by taking on the responsibility of granting mortgages in these declining areas. More often than not, the proportion of FHA mortgages and insured mortgages drastically increased in these declining areas as the out-migration accelerated.

Financial institutions such as mortgage brokerage firms began to buy up these mortgages in large quantities as an investment mechanism. They believed that there was considerable profit in a high turnover of these mortgage instruments. Thus, they began to foreclose on these mortgages at an ever accelerating rate. They would then in turn resell the properties at an ever increasing interest rate based on the national economy. The result of this process was the continually accelerating decline of the central city portions of this nation. This situation caused more often than not by redlining and the policies of the Federal Government had the tangible effect of creating the ghetto, slum and generally blighted conditions of our inner cities today.

IV. DRAFT LEGISLATION

Section IV: Draft Legislation

A. Introduction

The existence of redlining illustrates the need for intensive government action so as to once again seek the goals of the 1949 Housing Act. In an effort to provide "...a decent home and suitable living environment for every American family", the Congress must recognize the ongoing practice of the lending community whereby it refuses loans for real estate in risky urban areas. This situation evidenced by the Bill Moyer's Journal in 1978 285/, became even more evident when the Philadelphia Inquirer acknowledged the problem on July 8, 1979. 286/ The article pointed out, that despite such mechanisms as the Philadelphia Mortgage Plan, the practice of redlining still exists in such areas as the north central portion of Philadelphia. This situation was confirmed by Ben Herbert, a Community Dispute Settlement expert, involved in many Philadelphia housing issues. 287/

Redlining's persistence demands a concerted effort to eradicate its utilization. This endeavor must take into account the numerous methods commonly referred to as redlining. Those methods include; the under-appraising of urban property, the granting of urban mortgages with a low-loan-to-value ratio and the granting of high cost loans with short terms and high interest rates. These problems continue to plague many of the nation's inner city areas and must be dealt with in an assertive fashion.

Many private sector initiatives; the Housing Rehabilitation Program of San Diego, the Philadelphia Mortgage Plan of Philadelphia, and the Home Mortgage Opportunity Committee of Chicago to name a few; supplied new life to the mortgage markets of many previously redlined areas. But, because of their limited cash reserve's, the ability to influence the existing mortgage markets eventually fell short. 288/

The Philadelphia Mortgage Plan represents one such case. With an initial outlay of $22.1 million in mortgage investment monies, the program spent $10.7 million in its first year of operation on 1,039 applications. 289/ Having spent almost half of its initial outlay, the program began to become more conservative in its lending policies and in some cases even began to make loans to the suburban market which it was intended to counteract. As a result of this situation; by 1979, the program has significantly reduced its lending activity.

These ambitious undertakings of the private sector, while well publicized and promoted have not corrected the inequities of redlining. Their common problems of low capitalization and minimal return on investment tend to reduce the effectiveness of the programs. Likewise the participation of local lenders begins to decline after a short time. A more realistic appraisal of which neighborhoods are benefiting from the programs needs to be implemented. This would allow the targeting of limited funds so as to serve on the basis of need.

An examination of home improvement loans or mortgage packages with "repair" money should be considered. More efforts to induce new savings and loans into these programs should be undertaken. Finally, local, private and public participation should be better explained by the proponents of these programs. 290/

States likewise instituted efforts with the same ambitious goals in the last few years. The State of Illinois passed the Financial Disclosure Act which became effective in 1976. 291/ Colorado created the Public Deposit program in 1975. 292/ Pennsylvania considered a disclosure bill for the banking industry in its 1978 legislative session. 293/

These states, as well as many other recognize the plight in many of their respective cities. Commendable provisions of these efforts include various monitoring proposals in conjunction with the Home Mortgage Disclosure Act passed by Congress in 1975. Michigan suggested stricter enforcement of the licensing process of real estate appraisers. 294/ The Texas legislature introduced legislation creating a Rehabilitation Loan Purchase Program for both low income families and rural areas in 1977. 295/ In addition, in Texas, local neighborhood preservation agencies would be responsible for filling in a "needs assessment" so as to help in targeting their monies. 296/

Other states developed similar programs directed at solving the enigma of redlining. Unfortunately, as in the case of the private initiatives they too soon encountered problems of financial reserves. But unlike the the private programs they encountered areas of difficulty that throw an even thicker blanket over the inner city mortgage market. One of these areas was that of code enforcement procedures. It was discovered that violations of the codes (health, safety and building standards) often prevented these ambitous programs from having any real impact in the most distressed areas. Otherwise, there were specific criteria and conditions that were necessary prior to the allocation of any assistance monies. So, as a result of well intended standards for the public health and safety, much of the monies allocated never reached those areas most in need. 297/

It soon becomes apparent that many of these regional and local, private and public initiatives have fallen short of their ambitious goals. The problem of redlining, disguised as it may be in such practices as mortgage lending, code enforcement, appraisal techniques and even outright discrimination will not be an easy hurdle to conquer. In many cases, when local public and private initiative fails, the history of this country indicates that the proponents for change have turned increasingly to the Olympus of the Potomac or the Federal Government and Washington. Recently, however, many people have become weary of the bureacratic red tape and directives that accompany many federal programs. Thus, one soon recognizes that the solution for the dilemma of redlining will have to be an effort that combines the many interacting constitutencies. Therefore, in this section I intend to suggest several legislative measures that may provoke a solution rather than demanding one.

B. Administrative Enforcement:

The issue of administrative enforcement of the existing laws persists as one of the leading changes recommended by the anti-redliners. These proponents for change, while not entirely happy with the existing law maintain that the real trouble has been not with the existing law, but rather with it's enforcement. Keeping this in mind, the Supreme Court considered that issue in the celebrated housing discrimination case of Jones v. Mayer. 298/ There the court considered the issue of whether or not a Civil War Reconstruction statute was in conflict with a 1968 statute passed by Congress. 299/

The court said that the Reconstruction statute placed the burden of proof on the victim of discriminatory treatment. Additionally, they held that the victim must expend his own funds and get a remedy as best he could under the original statute. In deference to that the court held that the 1968 statute allowed the victim to invoke the full panoply of Federal power for the purpose of protecting his or her individual rights.

The decision of the court illustrates the perplexing situation that many victims of redlining face. Otherwise, no matter how perfect the law may be, it is basically worthless unless the commitment to enforce it is evident in its administration. In the case of the 1968 Fair Housing Act this commitment was not present. To illustrate the need for legislative remedy, it must first become obvious that this commitment was in fact not present.

The failure to achieve the objectives of Title VIII of the 1968 Act were recently documented by HUD. In a study conducted by HUD's aegis the National Commission Against Discrimination in Housing several problems came to light. In the study, a representative sample of 3000 sales and rental agencies were visited by pairs of black and white perspective buyers or renters. The overall findings indicated that a middle income black family which visits at least four or more real estate offices in a homebuying search faces a 62% chance of being victimized by discrimination. 300/

The Act of discrimination may well take several forms and will usually be in the form of racial steering where perspective owners are steered towards neighborhoods based on their race. It may take the form of significantly higher interest rates on short-term notes. Or finally, it may be the result of different appraisal standards applied to the area a perspective homeowner chooses. No matter the form, redlining and discrimination soon begin to take on a similar nature as a result of the lax enforcement of the existing law.

Faced with this situation, the perplexed home seeker and victim of discrimination soon is faced with the burden of proof were he to bring suit under the Civil War Reconstruction statute. If, however, he invoked the remedies of the 1968 statute, he would have full use of the panoply of federal power. At this point, unfortunately, either the Secretary of the Department of Housing and Urban Development or the Attorney General and their respective departments lacked and still lack the enthusiasm to enforce the standards of the 1968 statute. 301/ This problem became even more evident when early in his first administration President Nixon remarked "The crisis of the cities is over".

This remark by the then President signaled the intent of his administration with regard to the cities. President Ford did little more to assist the cities in their growing plight as is evidenced by his refusal to assist New York City in its period of financial insolvency. The Carter Administration despite noble announcements to the contrary has done little to reverse the eroding blight of redlining and its effects. As a result, almost from its inception, the lack of enthusiasm by each successive administration to enforce the standards of the 1968 Fair Housing Act has eroded the effectiveness of the statute. This situation in and of itself provokes the necessity for a legislative remedy. To this end, I would concur with the recent passage of the Fair Housing Amendments Act of 1980, by the House of Representatives. This legislation is detailed in Appendix I.

The Act 302/ as presented, specifically prohibits the practice of insurance and mortgage redlining. To this end, that goal would be accomplished by prohibiting any act of intimidation or discrimination in thse transactions, against any person, because of their race, color or national origin, as referenced in Title I, Section 106 of the bill. Therefore, in an effort to legislatively deter the practice of mortgage redlining, I urge the Senate to take action on this program. In that manner one small step may be taken to reduce the inadequate financing relationships currently rampant in the mortgage finance industry.

One might be led to assume, as many have, that the reason for the declining amounts of mortgage money or for the refusal of insurance protection is basically economic rather than racial. This could lead to a question concerning the issue of whether or not a bill of this nature would in fact end the practice of redlining. It is my contention, based on the preponderance of evidence presented herein as well as elsewhere, that this bill, as written, would accomplish that objective. The assumption that redlining is based on economic considerations is simply inaccurate. This point was well put by Clarence Mitchell. He said:

> "That is just about the standards by which the lending institutions are guided in making loans, purely arbitrary, capricious and prejudiced, and I would say that there is just no rhyme or reason to it except the old type of racial prejudice. I do not concede that it is economic because I have found that when the

> lending institutions decide that what they had formerly redlined, or when they decide that what they formerly considered a bad business risk area has some money in it, they race in there and get it." 303/

This point of view finds support in the comments of Hayden Withers of Philadelphia, when she commented on the cause of redlining in that city. 304/ Similar situations provide examples of this problem from around the country. The Curtis Park area of Denver, the Victoria Hills section of San Francisco, 305/ the Salesian Seminary and Fells Point areas of Baltimore and even the Capitol Hill area of Washington, D.C. 306/ were all considered poor investment risks until it became fashionable to live there. At that point, the investment in these neighborhoods began to drastically increase.

As a general rule, while the investment increased in these areas, simultaneously the percent of minority and Black residents fell in proportion to the increase of affluent whites. 307/ Most of these families were displaced as a result of this investment due to the fact that as property taxes increased, they were no longer able to afford the homes in which they lived.

A dramatic example of this chain of events is evidenced in the Georgetown section of Washington, D.C. At the turn of the century, the area was composed of mostly Black and poorer segments of the population in the area. Soon there was an upswing of interest in the area and it became fashionable to live there. When that occurred, Georgetown soon became the area where many members of Congress and foreign dignitaries sought their housing once again displacing the minority residents. These different cases suggest that what Clarence Mitchell said is in fact true. Thus the bill which I would submit for acceptance prohibits both insurance and mortgage redlining on the basis of race, color or national origin.

But, the legislation does not stop there. It goes on to provide the administrative functions that would allow for the enforcement of these prohibitions. Primarily, the bill would allow for the development of administrative enforcement mechanisms within the Department of Housing and Urban Development. Currently many of the existing state civil rights agencies have similar powers and find that as a result their enforcement strucutre is significantly enhanced. 308/

Another important result of enactment of this legislation would be the clear prohibition of redlining as written in the bill. This alone would spur the development of interpretive regulations regarding mortgage redlining by several of the Federal financial regulatory agencies. Specifically in this sense I am referring to the Comptroller of the Currency and the Federal Reserve Board. 309/

Concerning the ability of the several governmental departments to issue regulations prohibiting redlining, many have failed to do so as a result of Congressional ambivalence in specifically outlawing the act of redlining. This legislation would correct that situation. Many organizations have in the past requested for instance the Department of Housing and Urban Development to issue such regulations to prohibit redlining. In the past the Department has been reluctant to do so for the aforementioned reason. Their reluctance is in part based on the statutory construction that the courts have placed on the rule making authority. (Lau v. Nichols, 414 U.S. 563 (1974); Morton v. Ruiz, 415 U.S. 199 (1974); and Udall v. Tallman, 380 U.S. 1, 16 (1964)). The general rule followed is that administrative rules "...will have the force of law if the statute has granted authority to the administrator to issue them, if they are reasonable, and if they are issued pursuant to proper procedures." 310/ At present there is no explicit rule making authority within Title VIII. This legislation would provide that authority and thus the mechanism to eradicate the practice of redlining.

Another important change as a result of this bill would assist in the development of investigative procedures for discrimination complaints. This would be accomplished by the provision of the bill that amends Title VIII so as to allow the Secretary of Housing and Urban Development to file a charge of housing discrimination on his or her own initiative. So strengthening Title VIII would provide a statutory and thus enforceable method for the systematic investigation of discrimination complaints.

In the same manner, the bill provides for court procedures that are designed to assist the home seeker when faced with an act of intimidation or discrimination. This proviso of the legislation includes such things as expert witness fees so as to document the charge of discrmination before the administrative hearing or more formal court proceeding. Depending on the court's interpretation of expert witness, as provided for by the amendment of Title VIII, this provision could also authorize "testers" or checkers" that would provide the court with testimony regarding the issue of whether or not discrmination is occurring on a large scale or is simply the result of one dissatisfied home seeker. This would allow the court to establish the degree of discrimination in compliance with the dictates of recent case law. 311/

Some might suggest at this point that testing or checking of this nature would constitute an article of entrapment. This charge is simply not true. It becomes quite clear with an analysis of recent case law that testing of this nature is not entrapment. The court held in Lopez v. United States 312/ that the conduct of a government informer cannot be entrapment simply because he or she creates a favorable situation for the defendant to violate the laws. 313/ The court went on to conclude:

> "...in all types of law enforcement, particularly with respect to matters involving certain types of regulatory statutes, it is often difficult for the government to get evidence, and government agents may properly, and without violating the law or their duty, take such steps as make it possible to procure evidence even though such steps involve their own participation, provided that their participation is not a deliberate temptation to men of ordinary firmness, provided that they do not cause a crime to be committed by someone who does not have the criminal disposition to commit that crime." 314/

Also in this vain, many agency officials have put forth the argument that conduct of this nature by testers would violate the individual defendants First Amendment right to privacy. This argument is simply without merit. A recent Supreme Court decision, Whalen v. Roe 315/ held unanimously that the right to privacy embraces an "...individual interest in avoiding disclosure of personal matters..." 316/ This language implies that any landlord, realtor, or individual seller who openly invites people to enter into a commercial agreement for rent or sale of property, cannot argue that reasonable inquiries made as to the racial composition of his tenants by a purchaser or "tester" is an invasion of privacy. In this light, the bill as written allows for the creation of these procedures for the enforcement of the anti-redlining statute.

Unfortunately, there has been some doubt expressed in regard to whether or not an administrative process or hearing can constitutionally assess damages. Since the Supreme Court decision of Curtis v. Loether 317/ held that a jury trial is necessary in order to assess civil damages in fair housing cases, there is some doubt as to whether or not a jury trial requirement could be circumvented by the creation of a parallel administravie process. If this question is decided in favor of the administrative process, it would significantly reduce the already overburdened courts. Upon that basis, I would recommend passage of the proposal as written.

This provision of the bill, possibly the most open to need for judicial interpretation, concerns whether or not the bill's administrative complaint procedure would offend the Seventh Amendment guarantee concerning civil damages. The Amendment states,

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of by jury shall be preserved..."

Almost certainly, this protion of the bill would be litigated on appeal by the respondent who was assessed civil damages as a result of the administrative complaint procedures.

The application of any appeal on the part of the respondent who invoked the Seventh Amendment to this statutory scheme brings two apparently conflicting principles into the forefront. First, it has been established that evidently the Seventh Amendment "does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law." 318/ As a result of this holding by the Supreme Court, it can be argued that a jury may be demanded for suit in federal courts for actual or punitive damages under section 812 of the Civil Rights Act of 1968. Supporting this holding, the Supreme Court also held that the Seventh Amendment did apply in civil suits in the District of Columbia courts for recovery of possession of real property. 319/

The conflicting principle that emerges, finds that the Seventh Amendment does not prevent Congress from properly assigning the duties of fact finding and adjudication to an administrative tribunal when a jury trial would be incompatible. The Supreme Court upheld this right of Congress under such circumstances. 320/ The Court said:

> "When Congress creates new statutory "public rights", it may assign their adjudication to an administrative agency with which a jury trial would be incompatible, without violating the Seventh Amendment's injunction that jury trial to be 'preserved' in 'suits at common law'. Congress is not required by the Seventh Amendment to choke the already crowded federal courts with new types of litigation or prevented from committing some new types of ligitgation to administrative agencies with special competence in the relevant field. This is the case even if the Seventh Amendment would have required a jury where the adjudication of those rights is assigned to a federal court of law instead of an administrative agency." 321/

This decision of the Court complied with another decision where it upheld the power of a bankruptcy court, exercising summary jurisdiction without a jury, to adjudicate the otherwise legal issue of voidable preferences. 322/ In their opinion, the court held that this specialized court of equity "constituted a forum before which a jury would be out of place and would go far to dismantle the statutory scheme." 323/ In that proceeding the court did not concur with the petitioner's claim that his Seventh Amendment rights had been violated. 324/ Finally, the court has also upheld the "...Congressional power to entrust enforcement of statutory rights to an administrative process or court of equity free from the strictures of the Seventh Amendment." 325/

The resolution of this delemma would obviously be rectified by the courts. The important thing to remember is that the aforementioned bill would explicity outlaw redlining, and without substantial change to existing law. It would accomplish that goal by enhancing the administrative enforcement mechanisms already in existence. This would be in line with many recent requests from aound the country that indicate the desire for federal action on this issue.

Finally, another important provision of the bill, and possibly the most significant, is the creation of the Fair Housing Loan Fund. This Fund, which has been dropped from the legislation currently before the Congress, should be included prior to final adoption by possibly a floor amendment during the Committee presentation. I believe that this segment of the legislation is important for several reasons.

As I have included the proposal for a Fair Housing Fund, it would allow for the funding of litigation involving practices of intimidation or discrimination. As a result, the home seeker would be able to proceed with either litigation or an administrative hearing process at no expense to himself. The person brining the allegation of mistreatment could hold the unit in question until such time as the Secretary's investigation or civil action reached a conclusion. Also, the Fund would allow loans for such purposes as expert witness fees or mileage costs so as to support the charge or, in some cases testify as to its existence. This, in and of itself would probably encourage more litigation and or complaints thereby determining the actual extent of the alleged discrimination or redlining.

At the time of the investigation's conclusion; any amount lent to an individual or group alleging mistreatment would be reimbursed to the Fund and thereby continue its existence for use in the future. This reimbursement would result from the amount of damages awarded by either the court or the administrative examiner. If, however, these damages did not meet the amount loaned to the plaintiff(s) in the action, the Secretary would have within his power the ability to liquidate any protion or all of the remaining amount. This capability would be derived from the Secretary's authorization to meet such circumstances as a result of consulations with the Secretary of the Treasury.

Another cause for the re-introduction of this section of the legislation is premised on the mere recognition of redlining's existence. Only when more affluent people began to find inner city living more attractive did we discover the existence of redlining. Otherwise, these people were financially more prepared to bring suit than were the original inhabitants of these areas that were redlined. The initiation of these suits, combined with the growth of a back to the city movement initiated the concern about redlining and its implications for the enforcement of Fair Housing. By inclusion of the Fair Housing Loan Fund, more people, presumably the less affluent, would be thus capable of initiating complaints and legal actions so as to end the practice of neighborhood and racial redlining.

The enactment of this leglation would bring the practice of redlining to a halt by enhancing the administrative enforcement powers of the concerned departments and allowing those persons aggrieved by the practice to bring suit easier. Some, however, feel that this bill represents too difficult a change in the existing framework for the aforemention reasons. Thus, I would suggest that an alternative might be the enactment of either of the following two measures.

C. Geographic Discrimination:

This bill 326/ outlined in Appendix 2, designed to amend the Equal Credit Opportunity Act, seeks to add geographical location to the list of illegal considerations when making a lending decision. This specifically would reduce, if not eliminate the practice of mortgage redlining. As a result, no longer would the lenders be able to take place or geography into account when making a lending decision.

But one must also consider the adverse impacts upon the mortgage lending industry. For instance, no longer would the lender be able to consider such things as the incidence of crime or arson in the area. Nor would the prospective lender be able to consider such elements as the rate of abandonment, degeneration or physical decline within the area. Additionally, the bill as presented here and currently before the Congress makes no designation of what "geographical area" means. Otherwise, does the bill as written mean the block, subdivision, neighborhood or plat where the perspective unit is located? Furthermore, the bill makes no provision for some form of guaranteed insurance to the lender who is forced to make what seemingly is a poor business decision in some cases. Finally, the mortgage lender is currently prohibited from making bad loans, of this nature, with a depositor's money by the Federal Deposit Insurance Corporation, the Federal Reserve Board and the Federal Housing Administration's Guaranteed Loan Program. Thus, if this piece of legislation were enacted as it is currently written, it would end redlining, but it would also act as a hindrance to the lending community while being in direct conflict with the directives of the administrative agencies.

Therefore, while the intention of the legislation is worthwhile, it must be amended so as to account for the above mentioned criticisms. If these changes were incorporated into the legislation either by the drafting of a clean bill, amendment during Committee or floor consideration, or change during a Conference Committee; I could fully lend my support to the measure. But only after these changes could I urge the enactment of the measure as a device to assist in the elimination of the practice of redlining.

D. Variable Rate Mortgages:

This piece of legislation, 327/ outlined in Appendix 3 designed to allow for Congressional control over the practice of utilizing variable rate mortgages, seeks to expand the realm of consumer protection. The bill primarily resulted from the Federal Home Loan Bank Board's move to allow the use of alternative mortgage instruments at federal savings and loans, particularly in the state of California. 328/ This decision produced significant reactions from across the country, that ranged anywhere from strong support on the part of the savings and loan industry, to concerned disapproval from many housing groups. Norman Hedenbery, President of the San Diego Building Contractors Association voiced his impression when he remarked: "We've actually had a number of buyers who wanted to go to the savings and loan for a variable rate mortgage." 329/ On the other hand, Senator Proxmire (D., Wis.) reacted by expressing "grave doubts about the wisdom of permitting variable rate mortgages under any circumstances." 330/ On this basis, the Senator took the course of introducing the included piece of legislation.

Several members of Congress in addition to Senator Proxmire have aligned themselves against the utilization of the variable rate mortgage instruments. They include Representative Annunzio (D., Ill.) and Representative St. Germain (D., R.I.), chairman of the House Banking Committee. 331/ These members of Congress all signed a letter calling upon the Bank Board to "take no action to adopt variable rate mortgage programs" 332/ without prior Congressional oversight of the issue. Despite this, Bank Board Chairman Robert McKinney embarked upon the program to utilize the variable rate mortgage instrument without the prior knowledge of the Congress. As a result of this Senator Proximire, already leary of the variable rate mortgage introduced the piece of legislation.

While it must be admitted that the utilization of the variable rate mortgage instrument would make mortgage money more plentiful, it would also cost the perspective homeowner more. "Instead of costing a total of $77,000, a $40,000 thirty year mortgage at nine percent as a variable rate mortgage would cost as much as $100,000." 333/ This situation would be the result of the fact that the variable rate mortgage starts out at a fixed interest rate, but would be allowed to fluctuate with the trend of the national interest rate at then current market rates. The proponents of the program argue that this rate could go down and thus actually cost the mortgage holder less than the original price as a result of the reduced interest. But in practice, this situation simply does not exist, because the trend of mortgage interest rates has steadily increased over the last quarter of a century. So actually, the mortgage would end up costing its holder more in the long run.

To counter this argument, proponents of the program argue that this really would work to the depositors and mortgage holders benefit. They base this argument on the fact that there have been wide swings in the levels of interest rates in recent years. 334/ Due to this situation of uncertainty in the market, they argue that the variable rate mortgage would act as a calming influence. On the basis of this uncertain market, lenders presently engage in what is referred to as "interest differential" lendings. 335/ Basically, this means that the cost of a mortgage loan in interest will rise or fall in accordance with observable and measured economic events. For the borrower this means that his interest rate would float at a fixed difference on top of the prime rate. Under the California statutes this difference can be adjusted only a fixed number of times a years. Thus argue the proponents, that because the lenders have to pay current rates on the money they lend, they should be able to earn current rates on the money they have lent. The impact of this upon the borrower would be that his rates would fluctuate only as the variable rates were allowed to fluctuate. 336/

But, once again even the proponents must admit that these rates have consistently gone up over the last quarter of a century, with the effect of increasing the cost of a home mortgage loan to the borrower. For this reason, I would recommend the enactment of Senator Proxmire's bill so as to afford the consumer more protection in the immediate future while allowing a period of time for study of the variable rate mortgage instrument. In this manner the impact of the variable rate mortgage could be determined without a great deal of difficulty. The National Association of Home Builders voiced approval of this format in June of 1979. Their task force on Alternative Sources of Mortgage Finance concluded:

> "Variable Rate Mortgages (VRM's) provide some measure of additional choice for the consumer, but more importantly allow the institution's return on funds to fluctuate more consistently with their cost of funds. Providing thrifts a sufficient spread to allow profitability will ensure a more stable supply of mortgage funds. However, safeguards should be imposed by government authorities to protect consumers, including giving borrowers a choice between Variable Rate Mortgages and Fixed Rate Mortgages. Changes in mortgage interest rates should be tied directly to a nationally established index of the cost of money." 337/

Senator Proxmire's bill would provide the necessary safeguards for the consumer while allowing the period of study necessary to determine the value of the variable rate mortgage instrument.

The utilization of the VRM has a great impact upon the inner city and thus the issue of redlining. For example, when lenders that still lend in the inner city charge anywhere from 5 to 10% more than the average national interest rate because of what they refer to as the "bad business risk" of the area, the only foreseeable impact of variable rate mortgages would be an increased cost to the mortgage holders in the area. This situation would also affect the rate of mortgage applications in the area and thus the issue of redlining. The additional cost forwarded to these people in the form of the variable rate mortgage could be viewed in terms of its discriminatory effect much in the same manner that redlining affects these disadvantaged people presently.

For these reasons, I feel that adoption of Senator Proxmire's bill would assist in the elimination of redlining. The bill would reduce the incidence of discriminatory lending practices with the control that it provdes over the use of the variable rate mortgage instrument. Also, the bill would allow for a period of study concerning the impact of the mortgage instrument and might even lead to it eventually being decalared illegal. In this manner, while the bill might not specifically address the issue of redlining, its enactment would act as a hindrance to the fraudulent utilization of the variable rate mortgage in the redlined areas of this nation.

E. Conclusion

Redlining represents an issue that compels the interest of all adherents of the philosophy that our cities should and ought to be decent and safe places in which to raise a family. Robert Kennedy, an adherent of this philosophy and then Senator from the state of New York, often toured the various cities and boroughs of the state that he represented. On one of these trips, he found himself in a rundown tenement section of Brooklyn, where he came upon a small girl with a mangled face that was seriously disfigured. 338/ At the sight of this, he asked:

> "'What happened to her?' The Puerto Rican mother explained that the rats had bitten her face off when she was a little baby. Kennedy was outraged: 'how could such things continue to happen in the richest city on earth?'" 339/

In this same vein, Martin Luther King wrote in 1965 that the "northern black sought 'more significant participation in government and the restructing of his economic life to end ghetto existence.'" 340/ As such, Senatory Kennedy remarked that the problem of the ghetto would yeild only "to forces created by better education and better housing and better job opportunities." 341/ Together these comments combine to paint a very bleak picture of life in the American city.

Today, ten years later, if we provide the leadership and encourage the commitment this nation can still realize the goal of a decent and safe home for every American citizen. Congress, by its authority granted in the Constitution, has within its power the ability to reach that goal. The enactment of legislation designed to promote fair housing to all segments of the population could be the first step towards the realization of that goal.

Various groups, as well as individuals, from across the country have voiced concern over the fact that neither the Congress nor the successive administrations have formulated any stiff regulations or laws regarding the practice of redlining. As a result, the judicial arm of the government seems timid to act on redlining because of no explicit definition by the Congress. This situation creates a perplexing problem for the officials that are responsible for the enforcement of regulations designed to prohibit such practices.

In the meantime, the lending community over the past few years experienced a growing crescendo of criticism regarding its mortgage lending practices. Concurrently they faced an entangled web of government regulation that prohibited them from acting to correct the problem on their own. All these problems, combined, work in conjunction to further complicate the ability of perspective homebuyers to obtain a home within these redlined areas. Finally, as a result, the potential homeowner will look elsewhere and the redlined inner city area continues to decline.

Together these numerous, intricate and perplexing problems preclude any simple solution to the enigma of inner city decline. Liberal zeal, the Kerner Commission Report 342/ and the waste being laid to the cities during the late sixties moved the Congress as well as the Administration to enact Civil Rights legislation and the Fair Housing Act in 1968. Many people felt that with massive infusions of money and talent, the cities could be rebuilt so as to become attractive and desirable to places to live.

This attitude fostered such innovative measures as the Model Cities Program, stimula to the Section 701 Planning Grants Program and various other proposals to renovate the cities. But with the advent of the Nixon Administration, such innovative thought came to a halt and the renovation of the urban environment ground to a standstill. This situation exemplified itself when President Nixon remarked that the "crisis of the cities was over". Currently, a Congress perplexed by budgetary problems and internal bickering, and the Administration's disregard of its campaign commitments to the cities speeds up the deterioration of this nation's inner cities.

Recognition of this downward spiral negates any progress towards the national housing goal expressed by the Congress over thirty years ago in the National Housing Act of 1949. 343/ That goal has consistently been re-affirmed by the successive Congresses. 344/ As a result, one is led to believe that the members of Congress and the Administration should still actively seek that goal. This, however, does not seem to be the case. Despite the recurrent pledges of the Congress, any commitment towards the attainment of the goal has not been matched by legislative enactment. There appear to be several reasons for this failure.

First, the inner city housing problem proved to be a much greater problem than originally perceived. 345/ Second, the escalating costs of a single family residence in the inner city have far outdistanced the means available to the average unassisted worker. 346/ Third, the Congress' unwillingness to make the political decisions necessary to transform their rhetoric into meaningful programs further accelerates the decline of this nation's inner city areas. 347/ This Congressional inaction presents a most perplexing situation to the proponents of inner city revitalization.

Today, Congress finds itself faced with a situation where it must choose between assistance to public or private housing construction. It must decide whether to promote suburban development at the expense of inner city rehabilitation, or to funnel funds into the revitalization of deteriorating inner city areas. While doing this, they, as well as the Administration must balance the costs of that process with the accelerating costs of doubledigit inflation. 348/

This perplexing situation intensifies with its impact upon the politically powerful construction industry, as well as the labor and mortgage banking organizations. As a result, Congress finds itself presented with a unique and intense lobbying effort by both sides of the housing spectrum. Thus, Congress must choose between competing goals if it is to even remotely put this nation back on the track towards a "decent and safe living environment" for every American citizen.

Without the process of judicial review, more congressional supervision is necessary so as to eliminate redlining and for the continued feasibility of this nation's housing goal. By the enactment of the previously discussed legislative proposals, this process can begin. For every little ripple that is created by a proponent of fair housing, the result will be a tide that will sweep down the walls of financial oppression that currently impact our nation's inner cities. To this end, the nation's housing goal should be more than a mere campaign promise during election years. The benefits that would derive from achievement of this goal are quite substantial and would accrue to the individual homeowner as well as society as a whole. For this reason, the enactment of the previously discussed legislation should be a paramount issue before the second session of the ninety-sixth Congress.

V. REDLINING, A VIOLATION OF THE 14TH AMENDMENT EQUAL PROTECTION CLAUSE

V. Redlining, A violation of the 14th Amendment Equal Protection Clause

A. Introduction

Congress, by its enactment of the National Housing Act of 1949 349/ and subsequent legislation, especially the Housing and Urban Development Act, 350/ broadened the expectations of every American citizen. The people of this nation now have reason to believe that each and every one of them may expect to have "a decent home and suitable living enrivonment". The continual re-affirmation of this goal with such statements as, "there exists in the public and private sectors of the economy the resources and capabilities necessary to the full realization of this goal", 351/ statutorially has cemented this goal into the public's mind. Unfortunately, no one who has studied or analyzed our cities, or actually lived in the inner cities of this nation would attest to the fact that eleven years later - 1979 - we are any closer to the realization of this ambitous undertaking than we were in 1968.

One practice - mortgage disinvestment, more commonly referred to as redlining - consistently has impeded progress towards that declared intention of Congress. The blame for this failure rests in many hands. The real estate industry, the mortgage lending entities of the nation, the Congress and even the Executive and Judicial branches of government in concert can all be faulted for the failure. Thus, the residents of the inner city and victims of this unfortunate quagmire of financial ineptiness have no place to turn so as to realize a solution to their problems.

This situation, while consistently subverting the aspirations of many home seekers, presents an even more complex set of problems to those members of the government charged with its eradication. The interrelated components of redlining, together form an intricate maze of activity that precludes any simple solution to the problem. Irregardless of the many elements that lend to the practices continuance, a decisive juncture in its utilization presents itself when the area's mortgage supply becomes non-existent. 352/ The exact point in time when this action occurs often is difficult to determine. But, more often than not, it precedes the out-migration of low income owners and minority residents from the area. 353/ What then presents the problems to those charged with redlining's elimination is the duplicity of goals within which the Congress has attacked this nation's housing dilemma.

The Congress, despite its intent, over the last few years enacted legislation that works at odds with itself. The legislation originally enacted delegated authority to the Federal Housing Administration (FHA) to promulgate specific regulations that would guide mortgage lenders in their determination of the specific degree of risk that would be undertaken on an FHA mortgage insurance package. 354/ These regulations originally were designed to be based on the "economic soundness" of the area. 355/

The economic soundness requirement that allowed the decision to be made in regard to the issuance of mortgage insurance was based upon what appear to be the traditional assumptions of banking concerning what was a sound investment practice. 356/ Otherwise, the property in question would necessarily be assumed to be able to maintain a higher than market value as opposed to the outstanding principal of the loan for the duration of the loan period. 357/ On its face, this rationalization appears to be in the best interest of the Federal Government who was providing the insurance on the loan. But in reality, when examined closer, it appears to fly in the face of the Congress' intention when it enacted the enabling legislation for the program.

The Congress enacted the legislation so as to provide the sector with the insurance that it would need so as to once again loan mortgage and rehabilitation money in the declining portions of this nation's inner cities. The problem arose on the basis of the fact that the issuance of this mortgage insurance would be based on the economic soundness of the area. The test that provided this knowledge was the FHA valuation process. 358/ That particular process based its assessment on the particular property to be mortgaged as well as the surrounding neighborhood in which it was located. 359/ The value that was derived from this process was that price that should be paid for the property in terms of its long term productivity. 360/ That price, however, did not reflect the current market value of property in terms of its area and or demand. As a result, the property was always underappraised with the result that the mortgage insurance would only cover a portion of the market value of the residence in question. Not being able to cover the entire market value of the house, the FHA mortgage insurance would thus be denied and the home as well as the neighborhood in which it was located were, in a manner of speaking, redlined as a result of the FHA guidelines.

This situation was worsened by the impact of the locational analysis which was performed in conjunction with the property assessment. 361/ The location analysis included the quality of the area's economic trends (employment, mortgage interest rates, and population change), land use (zoning and protective covenants), physical and social attractiveness and its availability to civic and social centers, transportation and utilities. 362/ Upon this basis, the property in question - usually in a declining portion of the city, was denied mortgage insurance by the FHA guidelines. Thus the property as well as the surrounding neighborhood in question were, in effect, redlined.

Finding that these tests inherently denied many inner city areas any chance for potential development, 363/ the Congress sought to change the standards for accepting risk for the purposes of mortgage insurance. They enacted a two-pronged test whereby areas would be considered on the basis of their "reasonable viability" or their "acceptable risk". 364/

These programs have, to date, been given no clear definition and thus the courts are forced to utilize the standard of "in pari materia" 365/ in their determination of whether a violation of the fair housing laws has occurred or not. The application of these standards still leaves declining inner cities in a category that excludes them from mortgage insurance.

The judgement as to whether or not an areas is reasonably viable or an acceptable risk is based upon factors that are not subject to waiver. These include: hazards (physical conditions such as unsafe construction, flooding, unstable soils, air or vehicular traffic, etc.); obnoxious odors; grossly offensive sights; excessive noise and marketability. 366/ These classifications have the effect of denying the area in question the mortgage insurance they need if they are to become the viable and desirable places to live that the Congress intended. The continuance of this situation plagues the urban environment and thereby accelerates the process of urban decay via the practice of de facto redlining by the very government agencies designed to eradicate its existence.

Thus faced with this situation, the aggrieved person impacted by the vestiges of redlining could rely upon remedies prescribed under the Administrative Procedure Act. 367/ Under the provisions of this Act, administrative agencies such as the FHA are required to follow the congressional mandate whether explicit or ascertainable as inherent in the underlying policy of the law. 368/ If this be the case, the agency would be committed to act in a manner that was consistent with the intent of the Congress when they passed the respective law. In the case of redlining, the FHA would be obligated to promulgate regulations that sought to remold the cities into decent and safe places to live. The administrative agency must act in accord with the Congressional mandate. As has been shown, this has not been the case in regard to the issue of redlining.

Upon that basis, one might be led to conclude that the aggrieved victim of redlining might be able to derive satisfaction under the Administrative Procedure Act. This, however, is not the case. In Citizens to Preserve Overton Park Inc. v. Volpe 369/ the Supreme Court held that "a Federal Court must first consider whether the agency decision is based on a consideration of all relevant legislative factors". If this be the case, the court would be forced to rely upon the previously cited factors of rasonable viability and acceptable risk. Acknowledging that these categories are as of yet undefined, the victim of redlining is once again placed in a no win situation.

This problematic state is compounded by the fact that the agency action "committed to agency discretion by law" 370/ has been construed as a very narrow exception. 371/ This leaves the victim of redlining in an even worse state than he was had he not begun the action at all. This is evident due to the decision in Ness Investment Corporation v. U.S. Department of Agriculture 372/ where the court held that the "committed to agency action by law" clause does not bar review of arbitrary action on the part of the agency. 373/ Otherwise, the court may review arbitrary action on one had, but if that action is based upon undefined parts of the law, the victim of redlining will have no cause of action in the first place.

With all this in mind, it soon becomes apparent that the victim of redlining has few, if any, avenues open for redress of his grievances. The bleak reality of this situation demonstrates itself easily by reliance upon any one of several examples. The FHA, the agency charged with eradication of redlining, in fact redlines areas in a de facto fashion by the mere enforcement of its regulations. Additionally, the aggrieved person cannot turn to the Administrative Procedure Act for any remedy to this situation. Furthermore, the courts will not rule upon the issue because of the lack of definition through administrative use of the law. It would seem, that the victim of redlining faced with these seemingly insurmountable odds would give up and seek his housing accommodation elsewhere. At that point, the decline of the inner city becomes no longer a question for debate, but rather a stark and cold reality.

There is, however, yet two other alternatives that bear examination prior to all the sources of present remedy being exhausted. First, the anti-redliners have recently held up the standards of Section 1982 374/ of Title 42 of the United States Code. Pursuant to this section, all citizens are deemed to have the "same right...as is enjoyed by white citizens to purchase ...real ... property." 375/ It was first presumed for many years that this protection was applicable to only acts of public discrimination. 376/ But, in 1968, in the landmark decision of

Jones v. Alfred H. Mayer, Co. 377/ the Supreme Court held that Section 1982 prohibited "(all) racial discrimination, private as well as public, in the sale or rental of property." 378/ Based upon this, many anti-redliners claim that the section in turn prohibits the practice of redlining. But in all cases this does not bear out as has been previously documented.

The apparent problem with Section 1982 seems to stem from the fact that the aggrieved victim of redlining must prove to the court that the challenged practice resulted in such a degree of racial discrimination that it meets the requirements of the original Act. 379/ In most circumstances, this simply means an outright and blatant refusal to sell or rent to minority applicants. Thus, the standard set by Section 1982 often turns out to be a question for the court to decide. 380/

Section 1982 and its protections are further complicated by recent decisions in the Fifth and Seventh Circuits of the U.S. Court of Appeals. The decisions of these two courts made the issue of whether or not Section 1982 applies only to the traditional forms of racial discrimination or not vague. The Fifth Circuit chose a strict definition of the section in Love v. DeCarlo Homes, Inc. 381/ There the plaintiffs alleged an injury because they "were forced to buy houses in a limited geographical area because of residential racial discrimination." 382/ The court held that "the acts complained of do not fit within the traditional concept of racial discrimination." 383/ The action thus did not show a violation of

Section 1982 because there was no demonstration that the plaintiffs and whites had sought to buy the same or similar housing.

This decision, on its face, would seem to preclude any possible redress of grievance for the victim of redlining. But the situation is further complicated by the Seventh Circuit's decision in Clark v. Universal Builders, Inc. 384/ There the court holding that a "prima facie case under Section 1982" could be made 385/ held: that the section "covers not only the 'traditional' type of discriminatory conduct (as in DeCarlo), but it also is violated by defendants who exploit a situation created by socio-economic forces tainted by racial discrimination." 386/ Finally, the situation becomes even more complex based on the decision in Baker v. F. & F. Investment Co. 387/ There the court held that a cause of action was stated under Section 1982 against the Federal Housing Administration for an alleged discriminatory market policy in the administration of their home loan mortgage insurance programs. 388/

Upon that basis, the victim of redlining then faces a two-sided coin if he invokes the safeguards of Section 1982. The outcome of any action will inevitably turn upon the basis of the plaintiff's race and his ability to provde the alleged discriminatory action. If Section 1982 might be construed as "...a broad based instrument to be utilized in eliminating all discrimination and the effects thereof in the ownership of property", it could serve as an excellent vehicle for attaching the redlining issue. 389/ But because of DeCarlo's 390/ departure from the intent of Section 1982, "it must not be followed." 391/

Therefore, in the event that Section 1982 might fail its test at bar in relation to redlining, the anti-redliners also claim that Title VIII of the 1968 Civil Rights Act 392/ offers remedies to the victim of redlining. Primarily, the Congressional purpose apparent in Title VIII was to provide "within constitutional limitations ... fair housing throughout the United States." 393/ Inherent within this prupose was the prohibition of discrimination by lenders in either the terms of availability of mortgage financing. 394/ As such, Title VIII represented the first comprehensive effort of the Federal Government to effectively eliminate discrimination in the access to decent and safe housing by all segments of the population.

Unfortunately, the application of Title VIII to the issue of redlining has been hampered by the lack of access to information necessary to sustain a prima facie case of racial discrimination. 395/ For a cause of action to be sustained under Title VIII racial discriminatory action or its effects must be proven. 396/ Because racial discrimination, as caused by redlining, may be difficult to substantiate and often may never even be perceived by the victim, the individual may have to resort to the utilization of a "white tester". 397/ Unfortunately the availability of such people, aside from initial attorney's fees is often costly. That in addition to the inaccessability of hard information from the defendant institution almost proves an insurmountable burden to the victim of residential racial redlining.

If and when that burden is overcome, and the discriminatory effect proven, the burden of proof for purposes of the action shifts to the defendant lender to prove that he has not violated the Civil Rights Acts. 398/ When this event occurs, the defendant lender may rely upon the argument of "genuine business need" to sustain his alleged discriminatory action. 399/ Thus, if the defendant lender could prove that lending in an area resulted in too high a cost, he "presumably would be exonerated." 400/ This being the case, the victim of redlining still faces the insurmountable burden of overcoming federal regulation if he is to find redress for his grievances.

Within the ever growing complexity that surrounds the utilization of Title VIII to combat redlining there appears little hope for the victim. Recently, however, several cases have held that Title VIII can be utilized against practices that even "though not racially motivated, have a racially discriminatory effect." 401/ If this analysis were applied to redlining, it would then be possible to use statistical evidence so as to support the action charging that mortgage lending practices within a designated area had the effect of discrimination on existing minority groups. 402/ But the problem still exists that the information must be collected to sustain the action.

Finally, Laufman v. Oakley Building and Loan Company 403/

offered some degree of satisfaction to the anti-redliners that support Title VIII litigation. There, the court held that the act of redlining was a violation of Section 3605. 404/ Even though a lower court opinion, and thus not having the force of law in any jurisdiction other than that within which it was decided, it is the first litigation that expressly states that redlining is a violation of the civil rights laws included within Title VIII.

Another source of hope for the anti-redliners was provided by the enactment of the Home Mortgage Disclosure Act in 1975. 405/ This Act allowed for the access to information that Title VIII demanded for a cause of action to be sustained in regard to redlining. Unfortunately, the beneficial effects of the Act are somewhat modified by its reduction and regulation of disclosure requirements simply on the basis of increased costs to the lender. 406/ So in reality, while the victim of redlining may have several existing avenues available to him for redress of his grievances, actually he is left with an all but insurmountable task if he relies upon the safeguards of Title VIII.

Finally, while Title VIII may apparently provide the best vehicle for challenging the practice of redlining, it has not to date effectively eliminated discrimination in the practice of mortgage lending. 407/ This failure, as previously cited, falls mainly into the realm of two federal agencies. Partially, the blame may be laid in the hands of the Department of Justice whose lack of adequate jurisdiction and available resources only hampers its effort. 408/ Additionally, the Department of Housing and Urban Development shares a portion of the blame due to its inadequate staff and lack of effectiveness in enforcing its fair housing responsibilities. 409/ As a result, the victim of redlining still finds little availability for redress of his grievances. Redlining still persists. And without regard for Congressional intent the inner city continues to decline. Based on these inherent inadequacies in the present structure of the law, I would propose that redlining is suspect in that it is volatile of the Fourteenth Amendment Equal Protection Clause.

B. Questions

So as to familiarize the reader with the issues that would prove paramount in any action invoking the Fourteenth Amendment Equal Protection Clause, utilized so as to declare the discriminatory practice of mortgage redlining illegal, the following two questions should serve as a guide for a cause of action by the trial attorney in this suggested and potential court action:

1. Whether or not the action of private mortgage lenders, their interest-bearing monies and loans insured by the various departments and agencies of the Federal Government, particularly the FHA, who refuse mortgage, renovation and rehabilitation loans to areas inhabited or occupied by members of a minority group or race, which prohibits the sale or transfer of real property, constitutes state action for purposes of the Fourteenth Amendment Equal Protection Clause?

2. Whether or not the perceived rational basis of not lending mortgage, renovation, and rehabiliation monies to declining, deteriorating or abandoned areas is not in fact an arbitrary decision that irrationally distinguishes a geographic area as unsound, and therein a practice of either intimidation or discrimination, and thus a violation of the Fourteenth Amendment Equal Protection Clause?

The two questions, as written, pray upon the court to issue a declaratory judgement as to whether or not redlining violates the Fourteenth Amendment Equal Protection Clause. In this manner, the actions of private mortgage lenders who deny credit, presumably on a rational basis would come under the scrutiny of the courts. These questions in mind, the potential arguments that might be presented at bar in regard to each follows:

C. Arguments

Argument I

The first section of the Fourteenth Amendment;

> "No State shall make or enforce any law that shall abridge the privileges or immunities of Citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor equal protection of the laws".

herein relied upon, announced the prohibitation of discriminatory action by the State. That prohibition extended to all arms of the State and to any action taken on its part, "either by its legislative, its executive, or it judicial authorities." 410/

The Equal Protection theory came under judicial scrutiny early on in Ex Parte Virginia. 411/ There the Court held that, "The inhibitation contained in the Fourteenth Amendment means that no agency of the State, or (action) of the officers or agents by whom her powers are excerted, shall deny to any person within its jurisdiction the equal protection of the laws." 412/ The principal of Equal Protection was further clarified when the same court concluded that "They (the prohibitions) have referenced to actions of the political body denominated (as) a State, by whatever instruments or in whatever modes of action may be taken." 413/ This analysis indicates that official action by the state, or any of its delegated officers, that in effect discriminates against a person because of their race, color or creed stands in violation of the Fourteenth Amendment Equal Protection Clause.

When, however, private action alone works to discriminate, as in the case of a mortgage lender acting independently, the Court resoundingly has stated that the Fourteenth Amendment prohibits only state--not private or individual--discriminatory action. 414/ Thus in the Civil Rights cases 415/ the Court held that the Fourth Amendment did not ban discrimination by privately owned inns, theaters or common carriers. They held that "Individual invastion of individual rights is not the subject of the amendment." 416/ The Supreme Court further held that "the Fourteenth Amendment erects no shielf against merely private conduct, however discriminatory or wrongful." 417/ These decisions of the Court on their face would seem to preclude any action on the part of individuals or private firms from the sanctions of the Fourteenth Amendment.

But the Court pointed out that the amendment makes void "State action of any kind" which would prove inconsistent with the rights and guarantees granted therein." 418/ The Court, thereby, delicately laid the intricate foundations of the Fourteenth Amendment. In that manner they established a rule whereby action of the State could be distinguished from action taken on the part of private principals. The rule stands steadfast as a bulwark against state inspired discriminatory action. But what of private action taken "under the color of law", or taken so as to accomplish the objectives of federal law?

In recent years, the standard where State Action was adjudicated, has come to be based on the degree and intensity of the states involvement in the issue at bar. This construction of the Fourteen Amendment stands out in the opinions of the lower courts as well as that of the Supreme Court. Even the existence of the new construction became apparent in Ascherman v. Presbyterian Hospital of Pacific Medical Center Incorporated. 419/ That Court concluded that "The direct connection between the state and the violation of the plaintiffs civil rights was enough to convert the action of the private institution into action of the state. 420/ Thus, where private individuals or firms willfully engage in a "joint activity" with state officials to infringe upon the civil rights of others, the private individuals as well as the state officials are subject to the sanctions of federal law.

The Supreme Court recognized the problematic nature of this relationship in Evans v. Newton 421/ several years earlier when they found that "What is 'private' action and what is 'state' action if often difficult to determine." 422/ The determination of state action would thus rest not only upon the presence, but also the degree of state involvement. Based on these decisions, the special relationship between the government and private action became apparent, and therefore in need of judicial interpretation.

So as to define this relationship, the Geneva Towers Court 423/ said that "only by shifting facts and weighing circumstances can the non-obvious involvement of the state in private conduct be attributed its true significance." 424/ The Supreme Court early on saw the potential for abuse to the intent of the Equal Protection Clause. 425/ The Court in Burton v. Wilmington Parking Authority, 426/ held that where a state owned and operated parking facility leased a portion of its building to a coffee shop which engaged in racial discrimination, the state so far insinuated itself into a position of interdependence as to be a joint participant in the unconstitutional activity. Therein, the Fourteen Amendment proved applicable to private conduct due to the principally financial relationship involved between the parking facility and the coffee shop.

The Geneva Towers Court made the concept of State Action applicable to the situation where the Federal Government and private investigators jointly seek to provide housing for low and moderate income families. 427/ Their participation in the Section 221 (d) (3) program subjected potential investors to an elaborate and pervasive body of government regulation. 428/ The benefits derived from the program proved mutually significant to both parties. The relationship existed due to the intertwined activity of the participants. This situation becomes even more significant when viewed from the perspective that current federal mortgage insurance programs are intended to rehabilitate the inner city through a joint federal and private relationship of a financial nature.

So as to define the degree of state involvement, for purposes of the Equal Protection Clause, the courts have ruled that, "State discriminatory action of every kind including state participation through any arrangement, management, funds or property cannot be squared with the command(s) of the Fourteenth Amendment." 429/ Thus, private involvement stands in violation of the Fourteenth Amendment when, "to some significant extent the state in any of its manifestations has become involved in its." 430/

The concept of State Action has been scrutinized so finely, that it can now recognize even action of a private individual as state action. This recognition becames apparent even to the degree of the decision to discriminate. "Where there is state involvement, the fact that the decision to discriminate may be made by (a) private individual rather than a public official is not decisive." 431/ This indicates that when the action of a private firm or individual works so as to discriminate against a person, and when the action carried out is in concernt with the government or so as to accomplish the government's objectives, the action taken stands in violation of the Equal Protection Clause.

Clearly, in this fashion, when private action acts in a discriminatory manner "under the color of law", it manifests itself as a state action for purposes of the Fourteenth Amendment Equal Protection Clause. This conclusion solicits even more support when considered in light of the complex relationship of federal financing, mortgage insurance programs, tax advantages and monitoring systems that exist between the public and private housing markets. Consider the fact that such agencies as the Federal Housing Administration insure the activity of private lending institutions, or through the Federal National Mortgage Association accumulate mortgage paper in the secondary mortgage market. Thus, private action monitored by government regulation and utilizing federal assistance serves a government prupose by increasing the flow of mortgage money in the private sector.

This indicates that the linkages which bind the private and public housing markets together stand out as significant. This relationship becomes even more prominent when one considers the fact that many of these lending institutions have their deposits and assets insured by the Federal Deposit Insurance Corporation. Thereby, the activity of private mortgage lenders becomes subject to the precepts of the Equal Protection Clause when invoked to combat the discriminatory affects of mortgage redlining.

The courts have likewise addressed the issue of significant government involvment for purposes of state action. "As a general rule, the proscriptions of the Fourteenth Amendment do not extend to private conduct, but conduct that is formally 'private' may become so intertwined with governmental policies or so impregnated with a government character as to become subject to the constitutional limitations placed on state action." 432/ But, for the Court to conclude that state action was present in the alleged wrong, that state involvement must be "significant". 433/ The Ascherman Court 434/ held that "only when the state becomes to some significant extent involved in the conduct of affairs of a private institution can the (private) conduct be classified as state action, and thus run afoul of the Fourteenth Amendment". 435/

This analysis of the state action concpet has even been applied to the statutorially regulated Federal National Mortgage Association. In Northrip v. Federal National Mortgage Association 436/ the Court concluded that "when private corporations are endowed by the state with functions or powers of the governmental nature, they become instrumentalities of the state and are subject to its constitutional limitations". 437/ Thus, might not the action of private mortgage lenders, insured and regulated by the Federal Government be also subject to the constitutional limitations of the Equal Protection Clause?

In reaching this conclusion, the Northrip Court supplemented their decision with the judgement that "There is some, and perhaps even significant, governmental involvement in, and regulation of, the workings of the FNMA. The appointment of one-third of the board of directors by the President, the supervisory control of the Secretary of Housing and Urban Development over the corporation, the governmental status of some of its employees, and the congressional creation and extensive statutory regulation of the corporation amounts to at least some state involvement in the operation of FNMA business." 438/ Thus, it could be concluded that private action taken in a discriminatory fashion, that is insured, regulated or monitored by the Federal Government could be tanamount to state action for purposes of the Equal Protection Clause.

Purely private action, that in effect places an unnecessary burden upon a minority group and thus works in a discriminatory manner, may be challenged as state action when the private action works by means of federal funding. In accord with the *Geneva Towers Court*, 439/ the *Ascherman Court* 440/ held that "federal funding can transform private conduct into conduct by the state." 441/ This suggests that in the case of redlining, when federally insured mortgages are denied on the basis of race, that state action is indeed present; and therein arises the contention that mortgage redlining is indeed a violation of the Fourteenth Amendment Equal Protection Clause.

This analysis of the state action concept, for purposes of the Equal Protection Clause, was examined earlier in *Simkins v.*

Moses H. Cone Memorial Hospital. 442/ There, the court concluded that the hospital's exclusion of Black patients and doctors postulated the presence of state action. 443/ Their conclusion was predicated upon the fact that the defendant hospital received substantial assistance and funding under the provisions of the Hill-Burton Act. 444/ More recent decisions further clarified this special relationship between a private hospital's action and that of the state. 445/ If the analysis of the relationship between these hospitals and the government were applied to the relationship between the private lender and the government via mortgage insurance programs, etc., the questions of state action for purposes of the Equal Portection Clause would surely arise. In this fashion, the issue of mortgage redlining would fall within the purview of the Fourteenth Amendment for the court's consideration at bar.

Some might, however, suggest that an alleged wrong by the Federal Government might be better attacked under the precepts of the Fifth Amendment. This situation, in regard to housing, came under judicial scrutiny in Brown v. Lynn. 446/ In that decision, the court found sufficient interdependence between government under mortgage insurance and mortgage assistance programs of the National Housing Act 447/ and private lenders which held the mortgages of the plaintiffs under such Act and which instituted foreclosure proceedings which were claimed by plaintiffs to violate due process rights, to bring such actions under the pruview of the Fifth Amendment. 448/ In Bloodworth v.

Oxford Village Townhouses, Inc., 449/ the presiding court similarly found sufficient government involvement in housing projects organized under the ageis of the Housing and Urban Development Act to allow residents to invoke Fifth Amendment protections of their rights with respect to that housing. 450/ Finally, the Geneva Towers 451/ court found with regard to projects for construction of housing for low and moderate income families and for families displaced by urban renewal, that the government provided federal financing, below market interest rates, and tax advantages. Furthermore, the government insured compliance with its goal though a monitoring system that commenced with the construction of housing and which would not terminate until the mortgagor's obligations were satisfied. As such, the court found sufficient government involvement so as to invoke the prohibitions of the Due Process Clause of the Fifth Amendment. 452/

These decisions offer insight into the issue of discriminatory redlining and its application under the sanctions of the Fourteenth Amendment. This suggestion arises from the fact, that "standards utilized to find federal action for purposes of the Due Process Clause of the Fifth Amendment are idential to those employed to detect state action subject to the strictures of the Fourteenth Amendment." 453/ In accord with this, the presiding court in Conner v. Finch 454/ said that the "Due Process Clause of the Fifth Amendment imposes on the Federal Government a somewhat similar standard as applied to the states under the Equal Protection Clause." 455/

The state action mandate of the Fourteenth Amendment can be seen in application to the Federal Government. This contention is illuminated in light of the fact that the "Fourteenth Amendment (is a) protection from state action as well as that from the national government." 456/ In as much, this protection of the Fourteenth Amendment extends itself to involve "private ownership and control of the physical premises on which people live." 457/ As such, the action of a private lending principle, insured by the Federal Government, which discriminates against minorities on the basis of race stands in violation of the Fourteenth Amendment Equal Protection Clause.

The utilization of the Fourteenth Amendment safeguards, in relation to federal action became conclusively apparent in Short v. Fulton Redevelopment Company, Inc. 458/ There the court found that "where private redevelopment companies were created to operate low and moderate income apartment housing projects on urban renewal lands, operated under (the Federal Housing Administrations mortgage insurance program, under an FHA regulatory agreement, involvement of federal, state and local governments in (the) housing projects was sufficient to constitute "state action" under the Fourteenth Amendment." 459/

The foregoing analysis of state action for purposes of the Equal Protection Clause sufficiently indicates that the activity of a private mortgage lender, insured by the Federal Government, that discriminates invidiously upon the basis of race alone stands in violation of the Fourteenth Amendment Equal Protection Clause. When the denial of mortgage assistance monies, insured by the Federal Housing Administration, for the purpose of meeting the congressional intent of rehabilitating the inner city, proves to be based on race alone there is sufficient state action present to invoke the standards of the Equal Protection Clause.

When as in the example provided in Philadelphia, 460/ where no apparent difference other than the racial compostion of the two areas compared was found, and an inadequate supply of mortgage, renovation and rehabilitation mones existed for the Northwest area, only one conclusion becomes readily apparent. That conclusion simply put is that invidious discrimination existed and was evident in the mortgage lending practices of the area's commercial banks and savings and loan associations. 461/ The harmful effects of that activity - redlining, that still exist 462/ placed an unnecessary and unequal burden upon the minority residents of the neighborhood. The activity currently is still widespread enough 463/so as to fall within the bounds of "significant harm" prescribed by the court in Washington v. Davis. 464/

In Washington v. Davis, 465/ the court determined that it should decide whether the "effect" standard developed in Griggs v. Duke Power Company 466/ applied to an equal protection action. Delivering the opinion for a seven-man majority, Associate Justice White found that the case presented an appropriate occasion to notice "a plain error not presented", 467/ and concluded that the lower court of appeals decision should be reversed. As such, for the court, he held that "proof of discriminatory racial purpose is ... necessary in making out an equal protection violation. 468/ Otherwise, a significant harm must exist.

The commercial lenders and savings and loan associations of the Philadelphia area, their deposits and assets insured by the FDIC, their intended and actual mortgage monies insured by the FHA, and who held state banking licenses, had a significant financial relationship with the various levels of government involved so as to suggest the presence of state action. The previously established fact that the mortgage lenders activity worked so as to deny mortgage assistance to the area's minorities evidences the significant harm that did exist. That harm in effect overly burdened the area's mortgage activity to the disadvantage of its minority residents. Thereby, the practice of these Philadelphia lending institutions, more commonly referred to as redlining stands in violation of the Fourteenth Amendment Equal Protection Clause.

Argument II

The practice of mortgage redlining relies upon the creation of distinct geographical areas, that are then refused mortgage assistance monies by the area's lenders for a series of nebulas reasons previously cited. These geographic distinctions are presumed to be rational because they are based upon the FHA's established regulatory mechanisms governing the issuance of mortgage insurance monies. As such, the practice of mortgage redlining persists and the lenders activity, oblivious to the intent of Congress, is for all practical purposes officially sanctioned. As a result, the inner city continues to decline from the impact of a general shortage of mortgage assistance monies.

The FHA's two-pronged test of reasonable viability and acceptable risk, 469/ utilized by the agency to determine whether or not mortgage insurance shall be issued in an area, runs afoul of the protections proscribed by the Fourteenth Amendment Equal Protection Clause. The dual test acts so as to create invidious distinctions between such areas as Northwest and Northeast Philadelphia, that work so as to place an unequal burden upon the neighborhood's minority residents. The test's application to the mortgage lending process inherently disqualifies many older urban sections, otherwise acceptable, from mortgage insurance and assistance. Its incorporation into the mortgage lending process allows the mortgage lenders of the area to utilize the practice of redlining and thereby run afoul of Congressional intent. The perceived rational basis of the tests legitimatizes, "under the color of law", a practice of discrimination that has otherwise been expressly prohibited. Thereby, the invidious justification of redlining, offered as rational, but in reality an arbitrary decision, stands in violation of the Fourteenth Amendment Equal Protection Clause.

A Special Risk Insurance Fund stands available to lenders willing to loan mortgage monies to declining and deteriorated urban areas. 470/ It allows for the issuance of mortgage insurance monies for the repair, rehabilitation, construction and purchase of property in the older declining areas of the this nation. 471/

Despite the good intentions of this federal program, promulgated on the basis of congressional intent; its guidelines, rather than promoting mortgage investment actually outline the procedures for the denial of such mortgage insurance and assistance by the FHA. As required by statute, the neighborhood within which a specific applicant's property is located must be reasonably viable, and the specific property must be an acceptable risk 472/ for the mortgage insurance to be granted. As previously cited, these categories are dependent upon such factors as hazards, obnoxious odors, grossly offensive sights, excessive noise and marketability.

The problems that exist in many of this nation's older urban area's could easily fall into one of these categories. Thereby, the two-pronged set of criteria significantly reduces the potential for issuance of mortgage insurance to older and declining urban areas. This situation stands in opposition to the often expressed intent of Congress. Thus, the lenders, by regulation and with official sanction can create distinctions between the areas they will favor with their mortgage investment. 473/

When these criteria are used as factors in the determination of which areas are reasonably viable and an acceptable risk, more often than not, it is the older declining neighborhoods that eventually suffer from an inadequate supply of mortgage assistance. This situation results from a series of interrelated problems. Most older urban neighborhoods, often composed of minority and poorer residents, 474/are subject to numerous hazards. There is often vehicular and air traffic that congests the area. As these areas become older, the incidence of fire and arson perceptively increases. Usually, there is an underlying influence of inadequate police and fire protection in the area. Also, the pervasive influence of inadequate water and sewage facilities along with building code violations induces further deterioration. For these reasons, usually due to the low income nature of its residents, the area is designated as unsound and thereby refused mortgage insurance in accord with the FHA standards. In effect, it is redlined by official sanction and therein a distinction of unsound mortgage risk burdens its mortgage activity.

This distinction of unsound business risk falls disproportionately most often upon the lower income minority individuals that reside in these inner city areas. Numerous studies, previously cited, sought to explain this phenomena. Although many of these studies rely on elaborate statistical models, even the most primitive raise serious doubt as to the cause of this situation. If, as the financial community would have us believe, low income variables explain the persistance of urban decay and the concentration of low income individual in these areas; one might expect to find all low income individuals, Black as well as White, residing in these urban ghettos.

This, however, is not the case. One example of this situation cites this problems development in the city of Detroit. There, fifty-two percent of Detroit's poor White families live in the suburbs while in contrast, poor Black families remain concentrated in the inner city with only eleven percent having their residences outside the central city. 475/ This example finds comparitive support in such areas as Boston, Washington, D.C., Pittsburg, Cleveland and St. Louis. 476/

This problem is not unique to any one section of the country. The situation has been previously cited herein for such areas as New York, Chicago, Baltimore and Philadelphia. The fact is that only Black and minority families find themselves especially burdened by the lack of mortgage capital in this nation's inner cities. As the mortgage interest rates continue to soar, their plight becomes increasingly worse as the mortgage capital drys up for all home seekers, as a result of inflation. Thus, there is a disproportionate and significant impact from the operation of the FHA's mortgage insurance programs upon the Black and minority residents of this nation's inner cities.

When a court action, alleging the legislative creation of a distinction based on race arises, the courts have spoken with unanimity. In Salyer Land Company v. Tulare Lake Basin, 477/ the Supreme Court held that : "Invidious distinctions cannot be enacted without violation of the equal protection clause." 478/ In terms of education, the courts have stated that "state imposed separation by race is (an) invidious classification and for that reason alone is unconstitutional." 479/ Thereby, any distinction that might legislatively be enacted, especially when it creates a disproportionate impact upon a minority race, shall come under far greater scrutiny when applied at bar.

This analysis has been extended to instances where the distinction burdens both race and property. In Valtierra v. Housing Authority of City of San Jose, 480/ a California District Court held that "classifications based on race and property bear a far heavier burden of justification than other classifications." 481/ The court arrived at this conclusion by relying upon the fact that any distinction or classification based on race is "constitutionally suspect" 482/ and those based on property are "traditionally suspect". 483/ Thus, one might to persuaded to conclude that any distinction of geographic area, for the purpose of mortgage lending, that is based upon race or property might be rendered as constitutionally suspect. This in effect, would lead to the prohibition of the practice of mortgage redlining by the invocation of the Fourteenth Amendment Equal Protection Clause.

For the court to reach the conclusion that such activity was not constitutionally suspect, it would necessarily have to find that the activity bore a compelling state interest. In Thomas v. Mims, 484/ an Alabama District Court held that "any state action which discriminates against segments of its population is subject to 'strict scrutiny' ... and must show a compelling state interest." 485/ In regard to welfare classifications, an Alaska District Court held that the "test of constitutionality is whether the classification is rationally related to a permissable purpose." 486/ Otherwise, any legislative or regulatory device that creates a distinction in its own right must bear a compelling state interest.

In regard to the issue of housing, this situation may, however, not always apply. Because the right to housing is nowhere guaranteed in the constitution, government classifications in housing law are subject to only the traditional test of reasonableness. Otherwise, no compelling state interest need be established. 487/ Most economic and social regulations fall into this class. This traditional equal protection test until recent years has been the sole test employed by the courts in determining the reasonableness of a statutory classification. It was based upon three values. First, whether the classification itself was a reasonable one in light of congressional intent. Second, did the classification further a proper governmental purpose? And third, were all persons within the classes established treated equally? This analysis would raise a question under the equal protection clause if it were invoked so as to combat the effects of mortgage redlining.

But, because redlining's impact upon the inner city and therein housing has the effect of discriminatory treatment, it becomes subject to a stricter equal protection test. Otherwise, because race is a suspect criteria and the statutory classification created by the FHA's regulatory tests work so as to especially burden the minority residents of our inner cities, a stricter test would be applied. Therefore, when race is involved, the challenged classification must not only meet the traditional equal protection test, but also it must be shown necessary to promote some compelling state interest; and it must be narrowly drawn to express only the legitimate state interests at stake. Otherwise, it must be the least burdensome alternative possible. 488/

When any such distinction or classification functions so as to treat individuals or a group in different fashions, the courts have also spoken. In Bel v. Chernoff, 489/ a Massachusetts District Court held that the "State has the burden of justifying seemingly disparate treatment within a given classification and, in order to do so, must establish that the challenged distinction rationally furthers some legitimate, articulated state purpose. 490/ In light of the articulated purpose of Congress; so as to create a decent and suitable living environment, the Federal Government most likely would be found wanting were the FHA's criteria challenged on the basis of mortgage redlining.

Were this analysis applied to the issue of redlining, in light of congressional intent with respect to the inner cities previously cited, one might be led to subject the issue to the scrutiny of constitutional mandate. This would enable the court(s) to rule upon the issue of whether or not redlining is actually a rational judgement or rather, as herein alledged, an arbitrary decision that overtly burdens the low income minorities of this nation's inner cities.

The FHA criteria, as well as the practice of redlining, seem to additionally violate the Equal Portection Clause because a "special burden" is placed upon the affected minority groups by the operation of the challenged provisions. In this manner, the Supreme Court applied the prohibitions of the Equal Protection Clause to housing in Hunter v. Erickson. 491/ They said that "Because the core of the Fourteenth Amendment is the prevention of meaningful and unjustified official distinction based on race, 492/ racial classifications are 'constitutionally suspect' 493/ and subject to the 'most regid scrutiny' 494/ (and) 'bear a far greater burden of justification' than other classifications, 495/ ...We hold that Section 137 496/ discriminates against minorities and constitutes a real, substantial, and invidious denial of equal protection rights." 497/

The Hunter Court thereby concluded that a facially neutral law that burdens minorities is an invidious for equal protection purposes as a law that discriminates on its face. Upon that basis, any legislative, regulatory, or administrative classification or distinction that burdens a suspect minority class becomes questionable. This holds even more valid when that distinction works so as to place an undue burden upon minority residents of an inner city neighborhood, by the denial of mortgage assistance monies guaranteed by the Federal Government.

The state, or any of its delegated authorities, may no more disadvantage any particular group or race by distinguishing it as separate for purposes of mortgage lending than it may dilute any person's right to vote or give any group a smaller representation. 498/ They likewise may not place any special burden upon a minority group by the operation of legislation or regulation. While all forms of distinction or classification are not volatile of the constitution, they all must be rationally drawn and thus relative to the purpose and intent of Congress. 499/

Based upon this contention, when the FHA's reasonably viable and acceptable risk criteria operate so as to sustain the practice of refusing mortgage insurance monies to minority residents of the inner city, based on their race, that action should stand as a violation of the Equal Protection Clause. As such, no classification may be drawn that is either arbitrary or invidious. 500/ Based upon this analysis, the FHA's criteria, as utilized by private mortgage lenders, become suspect due to their invidious impact upon the minority residents of this nation's inner cities.

The question for any litigation that alleges discriminatory conduct as a result of mortgage redlining, must attack the rational basis for denying mortgage credit and insurance to areas of declining, deteriorating or abandoned housing. If one area alike in all other ways to another excluding the factor of race, was denied mortgage credit, it could be contended that discrimination and or intimidation did in fact exist. The evident discriminatory patters of Philadelphia's lenders not only overburdened the area's minority residents, but it also acted in such a fashion so as to deny the intent of Congress.

Many homes in both Northwest and Northeast Philadelphia are located near gas stations, all night cafes, and industrial plants. Despite the similarity of living standards and housing in the two neighborhoods, only the Northwest area was overwhelmingly disfavored by the areas mortgage lenders. Homes in both areas were of similar age and structural quality. Residents of both areas had similar income and educational levels. Yet only the Northwest neighborhood was denied access to mortgage assistance. It in reality was redlined by the Philadelphia mortgage lenders with the official sanction of the Federal Housing Administration based on their utilization of the FHA risk determination criteria. Upon this basis, the criteria of the FHA, and their utilization by the Philadelphia area's mortgage lenders becomes suspect in light of the dictates and supporting case law of the Fourteenth Amendment Equal Protection Clause.

When substantial evidence exists 501/ to indicate that the

FHA's mortgage risk criteria operated so as to unjustifiably burden not only the poor, but the overwhilming minority population of Northwest Philadelphia, their rational basis becomes suspect. Those who would support the lending practices' rationality based upon risk in Northwest Philadelphia cannot justify their argument in light of the similarity between Northwest and Northeast Philadelphia. Thus the only risk in Northwest Philadelphia resulted from its lack of mortgage assistance and insurance. For these reasons, a Philadelphia grand jury indicted forty-six people for similar offenses, including the former head of FHA's insuring office. 502/

Yet, the problem still persists. This situation resulted from the combined discriminatory mortgage redlining activity of Philadelphia's lenders and the implementation of the FHA's risk criteria. Upon that basis, the activity of redlining must fall when it is challenged by the invocation of the Fourteenth Amendment Equal Protection Clause.

D. Prayer

Wherefore, any presumed petitioner aggrieved by the practice of mortgage redlining would pray upon the appropriate court for restitution and damages as a result of the discriminatory practice, and to the end of challenging the arbitrary nature of the FHA mortgage risk criteria, that said court would invalidate the practice of mortgage redlining as an invidious violation of the Fourteenth Amendment Equal Protection Clause.

VI. RECOMMENDATIONS

VI. Recommendations

The substantial redevelopment of antiquated local building codes to modern building technologies, the revision of existing zoning regulations, technological improvements and the like concievably could reduce the cost of inner city housing relative to the potential resources available to members of the lower income brackets. In such fashion, the multiplier effect of such action might increase their individual income through better jobs and increased productivity. But it is hard to perceive of many ways that will eliminate the public necessity of footing a substantial portion of the costs in one fashion or another. Because the public sector has committed itself, for better or worse, to accepting the burdens of assisting those otherwise unable to help themselves in education, health, income and housing, there will be no cheap and easy way out of this responsibility. Three potential courses of action, one public and two private, might lend to this effort and thereby deserve future consideration.

First, in the public domain, further investigation of the assigned risk mortgage pool concept is needed. The creation of state chartered associations that readily provide mortgage assistance funds to lower income residents and home seekers of the inner city might tend to encourage either the purchase or rehabilitation of homes in the inner city. The funds for these state mortgage pools could be derived from several alternative sources, including investment by financial institutions, capital grants by the Federal Government or corporate tax breaks for inner city development. Any one of these in addition to other income incentives might potentially induce inner city redevelopment, through an assigned risk mortgage pool.

One example of such a device was utilized in the city of Philadelphia. The implementation of the Philadelphia Mortgage Plan anticipated that inner city decline and deterioration could be reversed. The initial investment of only twenty million dollars did act to renovate such areas as Society Hill and the Independence Mall section. But because the first year's cost was in excess of ten million dollars, little mortgage assistance found its way into such areas as Northwest Philadelphia where the real problems existed. As a result, many deteriorated areas of Philadelphia still exhibit the various elements of the decline scenario.

In Philadelphia, it was discovered that the net cost of inner city rehabilitation far exceeded the ability of lower income residents to afford it. The Plan provided an example of how the cost of inner city rehabiliation efforts will continually rise as the various areas are impacted by the process of housing filtration. These two facts necessitate the government's involvement in such mortgage pools so as to provide a continual infusion of money till the effort of rehabilitation reaches a point where the market will sustain itself.

A mortgage pool of this nature, administered by the state could assign the risk of lending in these deteriorated areas to instituitonal lenders. Mortgages could be vested in the state's interests, and granted by private lenders on an impartial basis. At such time as the market began to support itself by increased demand, the state support could be withdrawn on a gradual basis. Mortgages would be granted during this interim period to only those individuals who had previously been refused funding because of the location of the property they desired to purchase. The various savings and loan associations, as well as commercial lenders might be statutorially required to participate in various degrees based on their liquid and federally held assets. The financial endeavor would thus be spread throughout the marketplace and thereby remove the entire burden of rehabilitation from only those institutions located in the declining and deteriorated areas of inner city America.

Evidence abounds to document the fact that an initial infusion of funds can create demand. If that infusion were initially insured or guaranteed by the government, then the continued viability of such assigned risk programs would be a viable alternative to decline. Such areas as Victoria Hills in San Francisco, Socity Hill in Philadelphia, Georgetown in Washington, D.C. and others indicate the success of such programs. Their intermitant failures can only be blamed on the lack of initial seed monies utilized so as to create demand in the market. But, with initial state support, programs of this nature might well provide one viable alternative to the previously evidenced decline of this nation's inner cities. And, based on that they are worthy of further consideration and academic investigation.

The second area that deserves further investigation concerns the private mortgage lenders and their relationship with borrowers. Specifically, it concerns the utilization of the wraparound mortgage instrument. This instrument can prove to be an advantage for both lender and borrower alike. But because this versatile financing device might present pitfalls to the less well-versed borrower, it necessitates in-depth investigation.

In wraparound mortgages, the lender most often undertakes an obligation to pay a debt that would otherwise remain in the borrowers realm of influence. That debt is most often in the amount that includes the total borrowers debt to the lender. Generally, the debt is secured by an interest in real property and thus is often referred to as an all-inclusive mortgage.

The potential misuse of this instrument arises when one considers the fact that the wraparound mortgage usually is at a higher interest rate than the underlying obligation would normally incur. As a result, the utilization of this mortgage instrument could conveivably detract from the general will to renovate the city. This situation develops for much the same reason that detracted from the variable rate mortgage instrument. Its utilization would seem to unnecessarily burden the inner city resident faced with such an obligation.

The point that makes this instrument rather compelling on on the other hand is its ability to include prior indebtedness. Otherwise, an inner city resident seeking to renovate his property might have a prior obligation that detracts from his ability to incur more debt so as to maintain his residence. This instrument's utilization could include that debt, and thereby spread the costs of renovation over a longer priod. Much in the same manner as some lenders will offer money for extensive credit obligations, this tool allows the same mechanism to function in the housing marketplace.

The utilization of this instrument for the inner city buyer would vastly improve his ability to obtain financing. But it would also necessarily involve a long term obligation wherein the lender has in fact advanced funds to the borrower beyond the cost of the mortgage. The need for investigation arises upon consideration of the interest rate involved with this advance of funding. If some interest ceiling could be devised so as to avoid the invidious impact of usuary upon the homebuyer, then this device could well take a step to assist in the redevelopment of this nation's inner cities.

At this point, one must recognize that there are serveral legal impediments to the issue of mortgage innovation. These impediments become distinct when one conceptualizes the use of such lending devices as the variable rate, price-level adjusted and wraparound mortgage instruments. The specific issue develops as a result of the fluctuating rates of inflation that are in turn reflected in the ever increasing rate of interest on mortgage loans. This situation creates abnormalities in the market that especially burden those individuals and families seeking housing, especially in the inner city.

The legal problems arise as a result of the difference between the standard mortgage instrument and those previously mentioned. Most parties to a standard mortgage agreement know the interest to be charged for their obligation at the outset of their loan term. The parties to a mortgage based on these new innovations has no degree of certainty as to either his interest or the total cost of the loan, over the duration of its term. The legal dilemma develops as a result of the fact that federally chartered institutions are not permitted to use these new innovative mortgage devices, while state chartered institutions are allowed to in many areas. The relationship between these two spheres of influence is as a result made more complex with the result that the homeseeker is faced with an underserved burden when he makes application for mortgage assistance. This dilemma must be eradicated as a prerequisite to the development of a more decent and safe living environment for every American citizen.

There is yet another concept that bears identification and therein academic scrutiny. That concept evolves from the issue of implied warranties. In recent years, many homeseekers have voiced a growing concern over the fitness and merchantability of the homes they purchase. The courts have responded to this situation by judicially taking notice of the degree of liability a builder-vendor must be held accountable for. 503/ One court went so far as to conclude that, "we recognize that liability must have an end, but question the creation of any artificial limits of either time or remoteness from the original purchaser." 504/

The private sector took notice of this growing concern in 1974. In response to the introduction of the Home Owners Warranty Act by Senator Percy that same year, the National Association of Home Builders created a wholly-owned subsidiary, the Home Owners Warranty Corporation.

The Corporation's purpose was to reduce the incidence of building and construction related defects in the development of new residential units. The program enlisted the participation of builders who were affiliated with its parent organization. By the utilization of approved standards applied at the local level the Corporation sought to improve the quality of new home construction.

The new homeowner who bought a home enrolled in this program could expect to have a unit free from unsound construction practices. If, however, there were defects, the homeowner could proceed against the builder to have these problems fixed in an amicable process of conciliation. If the builder refused to honor his commitment of implied warranty, then an arbitration mechanism would legally bind him to repair the defect if he were found to be at fault. If, however, the homeowner was still unsatisfied, his claim regarding defective building practices would be turned over to the Corporation's underwriters for eventual solution. Thereby, the new homeowner could rest assured that his investment remained secure.

The benefits of this program are innumerable. For example, now the homeseeker, if he buys a HOW approved home may reasonably expect that the implied construction warranty will be honored by the builder. If not, the Corporation assures the owner that any construction related defects will be in due course repaired to his satisfaction. By the program's implementation the incidence of construction defects has been reduced and incompetent builders are being weeded out of the home building profession, by means of a subrogation process. As a result, the horizon for new home construction appears to be bright.

Of benefit to the individual homeseeker, the enrolled homes may even offer reduced downpayments as a result of recent federal regulatory decisions by the Federal Trade Commission and the Federal Housing Administration. All of these benefits bring the realization of the 1949 Housing Acts proclamation closer.

Where this analysis applied to the rehabilitation and renovation of the inner city, the true realization of the Congressionally mandated goal might be well within grasp. If those people seeking to renovate their own inner city housing were able to rely on similar practices by contractors involved solely with renovation, surely the Federal Government would take notice. It would seem that these contractors also have an implied reasonability for their construction. If so, the potential risk of the inner city mortgage loan would be reduced. Finally, as a result, the Federal Government as well as private mortgage lenders could join hands in such a fashion, that would truely move the nation towards the realization of a decent and safe living environment for every American citizen.

If, the inner city homeowner were able to expect improved quality standards in the renovation or remodeling of his home, the Federal Government would surely take notice. Pilot projects have been initiated by the Home Owners Warranty Corporation that take this perspective into mind. Currently, in Washington, D.C., such a pilot exists and has had noteworthy results. This new development bears close examination in that it very well may provide the bond between the private and public sectors that would allow for the true realization of the previously alluded to Congressional intent.

VII. Conclusion

If the practice of mortgage redlining is as suggested, an invidious violation of the Fourteenth Amendments Equal Protection clause, then it becomes the burden of the victims to litigate the issue via their pleadings. If, however, each specific case must be reviewed on its own merits as current case law suggests; then the mere eradication of the practice in one instance, such as Philadelphia, will not provide the the necessary incentive for massive inner city revitalization. Thus, faced with this dilemma, we as citizens must come to grip with the issue. By asserting ourselves, we can still mold our urban centers and landscape into a decent and suitable living environment for all those who by their preference decide to live there. This will demand consistant action on many fronts ranging from the neighborhoods we claim as our residence to the very steps of the Supreme Court and its bar of justice.

To realize this goal, previously set by Congress, we must henceforward rely upon a partnership of the private and the public sectors. Fostering this relationship could well provide the catalyst for a realization of the aforementioned objective.

Judge Elbert H. Gray put it in this manner:

> "A nation depends upon its citizenship for vitality and progress in the plans for rehabilitation which are decided upon. Its endeavor must correspond to the everyday practice of individuals." 505/

Utilizing this analysis, one quickly reaches the conclusion that apart, neither the federal government in all its manifestations nor the private sector by its embrace of the free market system can provide the solution to the dilemma historically and presently presented by this nation's inner cities. Apart, neither sector can provide the will, imagination or financial acumen necessary for realization of the goal previously created by the Congress. They separately entangle each other and themselves in a quagmire of regulation, red tape and blatant denials of responsability while the problems of the inner city only accumulate, most often to the disadvantage of the inner city resident.

Together these two sectors of the economy must join forces so as to set aside the prejudices of the past and implement concrete proposals that will benefit each other as well as eradicate the problems of the inner city resident. Various alternatives exist that will allow this cooperation to develope. Such governmental incentives as tax breaks, insurance programs and monetary incentives, to name a few, will provide the environment to allow for this cooperation. Variably unlimited corporate technological improvements in construction and planning can easier be implemented if government at all levels would only provide the initial incentive. Financial expertise unleashed can and has proven itself in the past. Were governments to provide relief and thus incentive via its tax structure rather than burdening creative endeavor and improvement, this process could well begin.

The suggested relationship between these two realms must occur so as to even have a remote chance of realizing the previously congressionally mandated goal. The slum clearance and public housing programs of recent history and those since the New Deal have perpetuated segregated and discriminatory housing patterns in the inner city. The private sectors ambivalance towards its public responsibility has accelerated the seemingly imminent decline of this nation's inner cities, almost to the degree of a self-fulfilling prophecy. Massive housing efforts initiated by the Federal Government, with the most benign intent, have become little more than jungles and places of despair and personal danger for their residents. The enigma of redlining perpetuates this process of inner city decline in such a fashion so as to invidiously discriminate against the inner city minority population.

Singularly, new institutions, agencies and departments seem oblivious to the call for compassion of these underprivleged citizens. The crisis of the city still exists despite the denial of President Nixon. The crisis of the city, in the words of the late Robert Kennedy originated with "the destruction of the sense, and often the fact of community, of human dialogue, the thousand invisible strands of common experience and purpose, affection and respect which tie men to their fellows." The practice of mortgage redlining invidiously validates this premise. Because the history of this nation, as well as that of the world has been the story of relationships between men, more often than not in community, we can ill afford to loose that community.

That community could well be seen in terms of neighborhood. Wherein local markets, various family businesses, and a local church provide life to the area's residents; this sense of neighborhood exists. Such security provides incentive for an attitude that places pride of ownership on a higher plateau than what might be gained by self induced arson and abandonment. The satisfaction gained from this pride maintains the individual neighborhoods quality. This attitude must be pursued rather than strangled by the invidious practice of mortgage redlining.

In this vein, because corporations and governments can go far in revolutionizing the techniques of meeting our urban needs, it is time to begin. We must reassert the previously stated goal of Congress and therein the nation. We must realize the dream of a decent and suitable living environment for every American citizen. A partnership of the public and private sectors can attain this goal. As Senator Edward Kennedy remarked: "The American house will be divided against itself so long as there is prejudice against any American family buying or renting a home". The time to correct this situation is at hand, we can do better and we must.

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169.) P.L. 74-76; 49 Stat 300; (1935) Section 30 (d).

170.) 79 Congressional Record; p. 5430 (1935).

171.) Hearings on Amendments to the National Housing Act before the Senate Committee on Banking and Currency, 75th Congress 2nd Session, 1937, p. 33.

172.) Ibid.

173.) 82 Congressional Record, p. 1885 (1937).

174.) National Housing Act Amendments; P.L. 75-424; 52 Stat. 8.

175.) Ibid., section 203 (B) (1) (b).

176.) Ibid., section 301 of the 1934 National Housing Act was amended by section 5 of the 1938 amdnements.

177.) Ibid., Section 301 of the 1934 National Housing Act was amended by section 5 of the 1938 amendments.

178.) 82 Congressional Record; p. 1885 (1937).

179.) Ibid., pp. 1896 and 2022.

180.) Oliver Jones and Leo Grebler; Secondary Mortgage Market, It's Purpose, It's Performance, and It's Potential; Real Estate Reserach Program, U.C.L.A.; 1961; pp. 115-119.

181.) Haar, 1960; op. cit. p. 83.

182.) Ibid.

183.) The Natioanl Housing Act of 1934, op. cit. Section 203: Insurance of Mortgages.

184.) Ibid., Section 207: Low Cost Housing Insurance.

185.) Haar, 1960; op. cit. p. 85.

186.) Ibid.

187.) The Housing Act of 1949; P.L. 81-171; S. 1070.

188.) Ibid.

189.) Haar, 1960; op. cit. p. 21.

190.) Ibid.

191.) Statement of Milton J. Brock, President of the National Association of Home Builders before the House Banking and Currency Committee considering S. 866 on June 8, 1948, p. 10.

192.) Ibid.

193.) Ibid., p. 11.

194.) Ibid., p. 13.

195.) The Housing Act of 1952; P.L. 82-531; 65 Stat. 315; 12 U.S.C.A. section 1715h.

196.) Haar, 1960; op. cit.; p. 99.

197.) Ibid.

198.) Housing Act of 1952; op. cit.; Section 3 (a) (1).

199.) Statement of Alan E. Brockbank, President of the National Association of Home Builders on S. 3006 before the House Banking and Currency Committee; June 23, 1952; p. 2.

200.) Haar, 1960; op. cit.; p. 99.

201.) Ibid.

202.) The Housing Act of 1954; P.L. 83-560; 68 Stat. 590; 12 U.S.C. section 1703.

203.) Thygerson, 1973; op. cit.; p. 64.

204.) Hearings on Amendments to the Natioanl Housing Act before the House Banking and Currency Committee; 83rd Congress; 2nd Session; 1954; pp. 74 and 106.

205.) Ibid., p. 605.

206.) <u>100 Congressional Record</u>; p. 4455 (1954).

207.) Haar, 1960; op. cit.; p. 104.

208.) Ibid., p. 107.

209.) Housing Act of 1954; op. cit.; section 306 (b).

210.) Ibid., sections 220 and 221.

211.) Haar, 1960; op. cit.; p. 204.

212.) Ibid., p. 205.

213.) The Housing Act of 1961; P.L. 87-70; 12 U.S.C. 371 & 1701; 42 U.S.C. 1401 et. seq.

214.) Thygerson, 1961; op. cit.; p. 65.

215.) Ibid., p. 64.

216.) Hearings on Housing Legislation of 1961; 87th Congress; 1st Session p. 501.

217.) Thygerson 1973; op. cit.; p. 65. Also refer to section 221 (d) (3) as amended by the Housing Act of 1961.

218.) Housing and Urban Development Act of 1965; P.L. 89-117; 12 U.S.C. Sections 371, 1464 and 1701 et. seq.; 15 U.S.C. Sections 633, 671 and 692 et seq.; 40 U.S.C. Sections 461 and 462; 42 U.S.C. Sections 1401, 1466 and 1487 et. seq.

219.) Frederick N. Cleaveland, Congress and Urban Problems; Brookings Institution; Washington, D.C.; 1969; pp. 220-221.

220.) The Demonstration Cities and Metropolitan Development Act of 1966; P.L. 89-754; 80 Stat. 1255; 12 U.S.C. 1702 et. seq. 42 U.S.C. 1453 et. seq. and 3301 et seq.

221.) Housing and Urban Development Act of 1968; P.L. 90-448; 82 Stat. 416.

222.) Ibid.

223.) The Housing Act of 1949; op. cit.; preface.

224.) HUD Handbook 4571.1; Section 202.

225.) HUD Handbook 4100.1, Section 203 (b).

226.) HUD Handbook 4560.1, Section 221 (d) (3), and 4560.2, section 221 (d) (4).

227.) HUD Handbook 4400.1, Section 207.

228.) The rules and regulations governing these various programs are all available through the HUD Handbook series.

229.) Emergency Home Finance Act of 1970; P.L. 91-351; 84 Stat. 450.

230.) Ibid., Title I.

231.) Ibid., Title II.

232.) Ibid., Title III.

233.) Ibid., Title III, Section 301 (a) (1) and (2).

234.) New York Times, July 27, 1971, p. 37 and 38.

235.) National Association of Home Builders forcast to Senator Proxmire, July 8, 1970.

236.) Between February 1970 and February 1972, housing starts increased by over 1,000,000. Congress and the Nation, Vol. III Congressional Quaterly Service; Washington, D.C. 1973; p. 636.

237.) Housing and Community Development Act of 1977; Hearings before the Subcommittee on Housing And Community Development of the Senate Banking, Finance and Urban Affairs Committee; 95th Congress; 1st Session; Part 1; February 24, 25, 28 and March 1, 1977; p. 3.

238.) Thygerson, 1973; op. cit.; p. 66.

239.) Statement of the President on Combating Construction Inflation and Meeting Future Construction Needs, White House Press Release, March 17, 1970.

240.) Ibid.

241.) Wall Street Journal, March 16, 1970; " Administration Pushs for Home Mortgages With Variable Interest".

242.) Wall Street Journal, March 9, 1970; " Home Loan Banks Plan $1.2 Billion of Bonds this week to ease Housing Crisis".

243.) H.R. 19100; 91st Congress; 2nd Session; September 9, 1970; to this bill, S. 3639 was the Senate companion measure.

244.) Statement of George Romney before the Subcommittee on Housing and Urban Affairs of the Senate Banking and Currency Committee considering the Housing and Community Development Act of 1970; July 13, 1970; p. 2.

245.) Ibid., p. 3.

246.) Ibid., p. 4.

247.) Ibid., p. 5.

248.) Ibid., p. 6.

249.) Statement before Subcommittee on Housing and Urban Affairs of the Senate Banking and Currency Committee; U.S. Senate; July 14, 1970; Louis Barba - President of the National Association of Home Builders; p. 4.

250.) Ibid., p. 5.

251.) Housing and Community Development Act of 1970; P.L. 91-609; 12 U.S.C. section 1701s note.

252.) Ibid., Title I, Mortgage Credit Assistance Act.

253.) H.R. 16340, 91st Congress; 2nd Session.

254.) Consumer Credit Protection Act; P.L. 90-321; 82 Stat. 146; 15 U.S.C. 1601 and 18 U.S.C. 891,et. seq.

255.) Ibid.

256.) H.R. 15073, P.L. 91-508.

257.) Financial Structure and Regulation: Hearings before the Subcommittee on Financial Institutions of the Committee on Banking, Housing and Urban Affairs; U.S. Senate; 93rd Congress; 1st Session; November 6, 7 and 8, 1973.

258.) S. 2591 and H.R. 10990; 93rd Congress; 1st Session.

259.) Presidents Commission on Financial Structure and Regulation, more commonly was referred to at the time as the Hunt Commission.

260.) Financial Structure and Regulation: Hearings, op. cit.; p. 363.

261.) Ibid., p. 51.

262.) Ibid., p. 53.

263.) The Credit Crunch and Reform of Financial Institutions; Hearings before the Committee on Banking and Currency; U.S. House of Representatives; 93rd Congress; 1st Session; Parts 1&2; September 10, 11, 12, 13, and 14, 1973.

264.) Ibid., p. 588.

265.) Ibid.

266.) The Housing and Community Development Act of 1974; P.L. 93-383; 88 Stat. 633; 42 U.S.C. 5301 et. seq.

267.) Ibid., Chapter VIII; Section 801.

268.) Ibid.

269.) Ibid.

270.) National Association of Home Builders; Legislation Department; Comparison of Principal Provisions of the Senate and House versions of the Housing and Community Development Act of 1974; 1974.

271.) Home Mortgage Disclosure Act; P.L. 94-200; 89 Stat. 1125; 12 U.S.C. 2801 et. seq.

272.) Some of these studies include: 1.) Housing Construction in the Suburbs and Housing Demand and Prices in the Inner City; Chicago Regional Hospital Study; April 1976, and 2.) Woodstock Project; Sylvia and Aaron Schinfeld Foundation; Chiago; 1976.

273.) Title 24, Code of Federal Regulation, Section 221.546 (a).

274.) Housing and Community Development Act of 1977; P.L. 95-128.

275.) Ibid.

276.) Neighborhood Reinvestment Act; P.L. 95-527.

277.) Ibid.

278.) Congressman Brodhead's introductions included: H.R. 8451 and H.R. 9196; Congresswoman Holtzman's introductions included: H.R. 8464 and H.R. 10025 and H.R. 10026. These were all introduced in the 95th Congress.

279.) H.R. 476; 96th Congress; 1st Session; January 15, 1979.

280.) H.R. 38; 96th Congress; 1st Session; January 15, 1979.

281.) Ibid., Preface.

282.) Ibid.

283.) S. 218; 96th Congress; 1st Session; January 28, 1979.

284.) H.R. 760; 96th Congress; 1st Session; January 15, 1979.

285.) Bill Moyer's Journal; 1978; interview with Gail Cincotta of the National Peoples Action on Housing - Chicago, produced by WNET of New York, New York.

286.) Philadelphia Inquier; July 8, 1979.

287.) Interview conducted April 13, 1979 wiht Benne Herbert of the Home Owners Warranty Corporation of Washington, D.C.

288.) Neighborhood Reinvestment: A Citizen's compendium to programs and strategies; Arthur Naparstek and Karen Kollian; the National Center for Urban Ethnic Affairs; 1977; pp. 35 - 40.

289.) Ibid., p. 39.

290.) Supra., ft. nt. 97.

291.) Ibid., p. 13; Pa. Statute 79-632.

292.) Ibid., p. 14, Colorado State Treasury Department.

293.) Ibid., p. 15.

294.) Ibid., p. 18, Governor's Task Force on Redlining.

295.) Ibid., p. 19.

296.) Ibid.

297.) Ibid., p. 22.

298.) Jones v. Mayer, 392 U.S. 409 (1968).

299.) Civil Rights Act of 1968; P.L. 90-284; April 11, 1968.

300.) Statement of the Housing Task Force of the Leadership Conference on Civil Rights. June 7, 1978. Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, United States House of Representatives; p. 305.

301.) Ibid., Testimony of Clarence Mitchell, Chairman of the Leadership Conference on Civil Rights, p. 302.

302.) This bill was originally introduced as Title II of H.R. 3504 in the 95th Congress. At that time, the bill as originally written died in the Judiciary Subcommittee on Civil and Constitutional Rights. Also it had been referred to the Education and Labor Subcommittee of Employment Opportunities and had no action. In the 96th Congress, Representatives Edwards (D-Calif.) and Drinan (D- Mass.) reintroduced the bill as H.R. 2504. The Senate companion was S. 506 by Senator Mathais. The current bill excludes the Fair Housing Loan Fund and as of this writing is still in the process of passing the Senate after being reported out of the Senate Judiciary Committee in June of 1980. The bill as presented herein is a combination of the two bills previously mentioned with additional redlining prohibitions developed by myself in consultation with Janice Cooper of the Civil and Constitutional Rights Subcommittee staff.

303.) Fair Housing Act; Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary; United States House of Representatives; 95th Congress; 2nd Session; February 2, 9 & May 10, 11, 15 and June 7 and July 27, 1978; p. 312. (hereafter cited as the Fair Housing Act Hearings.)

304.) Supra., ft. nt. 97.

305.) Ibid.

306.) Fair Housing Act Hearings., op. cit. ; p. 310.

307.) Ibid., p. 311.

308.) Ibid., p. 534. Ben W. Hillard, Executive Secretary of the Washington State Human Rights Commission.

309.) Ibid., p. 321.

310.) Administrative Law Treatise, Davis; 1970 Supplement, Section 5.04; p. 252.

311.) Washington v. Davis, 462 U.S. 229 (1976).

312.) 373 U.S. 427 (1963).

313.) Ibid.

314.) Ibid., p. 431.

315.) 97 S. Ct. 869 (1977).

316.) Ibid.

317.) 415 U.S. 189 (1974).

318.) Ibid., p. 194.

319.) Pernell v. Southall Realty 416 U.S. 363 (1974).

320.) Atlas Roofing Company v. Occupational Safety and Health Review Commission, 430 U.S. 442 (1977).

321.) Ibid., p. 455.

322.) Kachen v. Landy, 382 U.S. 323 (1966).

323.) Ibid.

324.) Ibid., p. 328.

325.) N.L.R.B. v. Jones & Laughlin Steel Corporation, 301 U.S. 1 (1937).

326.) This bill was introduced by Ms. Holtzman (D. N.Y.), as H.R. 10025 in the 95th Congress with 17 co-sponsers. It was referred to the House Banking Committee and thereafter to its Consumer Affairs Subcommittee where it died with no action. Subsequently it has been reintroduced in the 96th Congress as H.R. 476 with the same Committee assignment with no action to date.

327.) This bill was introduced by Senator Proxmire (D. Wis.) in the 96th Congress and referred to the Senate Banking, Currency and Urban Affairs Committee and has had no action to date.

328.) Builder Magazine; February 19, 1972; "Are VRM's Good For the Industry ?"; p. 52.

329.) Ibid.

330.) Ibid.

331.) Housing, January 1979;"McKinney: Damn the Torpedoes, VRM is 'Go' "; p. 30.

332.) Ibid.

333.) Supra, note 328.

334.) Robert C. Mason,"Valuing the Effects of a Variable Rate Mortgage"; The Appraisal Journal; April 1979; p. 245.

335.) Ibid.

336.) Ibid.

337.) Report: NAHB Task Force On Alternative Sources of Mortgage Finance; June 1, 1979; pp. 9-10.

338.) Robert Kennedy and His Times; Arthur M. Schlesinger, Jr.; Houghton Mifflin Company, Boston, 1978; p. 817.

339.) Ibid., Andrew Young to William Vanden Heuvel; May 16, 1969; The Vanden Heuvel papers.

340.) Ibid., p. 815. Martin Luther King, Jr., Let Justice Roll Down; Nation; March 15, 1965.

341.) Ibid., Address to Third Annual WGHO Human Relations Award Dinner; Ellenville, N.Y.; April 19, 1966; RFK papers.

342.) Report of the National Advisory Commission on Civil Disorders; (Commonly referred to as the Kerner Commission). Hereinafter referenced as the Kerner Commission Report. The Commission Report attributed a large part of the anger and frustration of the urban residents which led to the urban riots of the period to urban slum conditions and to government programs which reinforced those conditions.

343.) "The Congress declares that the general welfare and security of the nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family. 42 U.S.C. Section 1441 (1970).

344.) See 12 U.S.C. Section 1701t (1976), 42 U.S.C. Section 1441a.

345.) Rouse and Wehbring, Housing as a National Priority, 39 George Washington Law Review 674 (1970-71).

346.) Sternlieb, Death of the American Dream House; in 2 Housing 1971-1972; p. 492 and 496; (G. Sternlieb and V. Paulus eds. 1974).

347.) Rouse and Wehbring, Supra., note 344 at 685.

348.) Ibid., p. 686.

349.) Supra., note 343.

350.) 12 U.S.C. Section 1701t (1970).

351.) Ibid.

352.) Marcia Duncan, Edwin Hood, and Hames Neet; Redlining Practices, Racial Segregation and Urban Decay: Neighborhood Housing Services as a Viable Alternative; 7 Urban Lawyer; 1975; p. 510, and 511.

353.) Rose Helper; Racial Policies and Practices of Real Estate Brokers; University of Chicago Press; (1969). In addition to that situation, it was discovered that "the practices of the real estate industry are partially responsiable for discrimination which results in segregation of minorities in older neighborhoods." This situation was documented in the same authors work that studied the real estate profession conducted in 1958 and 1964 at the University of Chicago, id, at XII.

354.) 12 U.S.C. Section 1709c (1976).

355.) Ibid.

356.) Clifford Altfeld; FHA "Redlining" - Inflexable Agency Guidelines Defeat Congressional Intent for the 223(e) "Acceptable Risk" Program; Arizona Law Review; Vol. 19; No. 4; 1977; p. 921; at 927.

357.) Ibid., See 12 U.S.C. Section 1709c (1976).

358.) Ibid.

359.) Ibid.

360.) Ibid.

361.) Ibid.

362.) Ibid., p. 928.

363.) Ibid., p. 922.

364.) Ibid., p. 929. See 12 U.S.C. Section 1715n (e) (1976).

365.) "In Pari Materia" - Latin for " on like subject matter". "This can occur when statutes relate to the same person or thing, or to the same class of persons or things or have the same object or purpose." From C. Sands, 2 A Sutherland Statutory Construction Section 51.03 at p. 298. (4th Edition) 1973.

366.) United States Department of Housing and Urban Development, A HUD Handbook: Misscellaneous Type Home Mortgage Insurance Section 223 (a), (e) and (d).(No. 4260.1) (Nov. 1972), at Section 4-5 (a) (1) through 4-5 (a) (4) and Section 4-7.

367.) Administrative Procedure Act: P.L. 89-554 at 5 U.S.C. Section 551 and following, as well as 5 U.S.C. Section 701 and following.

368.) United Steel Workers of America, AFL-CIO v. N.L.R.B., 390 F. 2d 846 (1968).

369.) Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971).

370.) Supra., note 367.

371.) Supra., note 369.

372.) Ness Investment Corporation v. U.S. Department of Agriculture, 512 F. 2d (9th Cir. 1975)

373.) Clifford Altfeld; op. cit., p. 942, also id. at 715.

374.) 42 U.S.C. Section 1982 (1970). As originally enacted, Section 1982 was part of the Civil Rights Act of 1866, ch. 31, 14 Stat. 27.

375.) Ibid.

376.) Hurd v. Hodge, 334 U.S. 24 (1948) at 31-34. Here the Supreme Court held that to invoke the sanction of Section 1982 required a showing of state action.

377.) 392 U.S. 409 (1968).

378.) Id. at 413 (emphasis in original opinion).

379.) Duncan, Hood and Neet; op. cit., p. 524.

380.) Ibid.

381.) 482 F. 2d 613 (5th Cir. 1973).

382.) Id. at 615.

383.) Ibid. Also see Duncan, Hood and Neet op. cit., p. 524, note 78. "The traditional forms of racial discrimination are such things as outright refusal to sell or rent to blacks, or the sale or rental of houses to whites on better terms than the same or similar homes offered to blacks.

384.) 501 F2d 324 (7th Cir. 1974).

385.) Ibid. A prima facie case can be made by showing that 1.) as a result of racial residential segregarion dual housing markets exist, and 2.) defendent sellers took advantage of this situation by demanding prices and terms unreasonably in excess of prices and terms available to white citizens for comparable housing.

386.) Ibid.

387.) Baker v. F. & F. Investment Corporation, 489 F. 2d 829 (7th Cir. 1973). See also, Dawn H. Cole, Redlining in Mortgage Lending: California Approach to Getting the Red Out; Pacific Law Journal; Vol. 8; 1977; p. 720.

388.) Id. at 831-32.

389.) Supra., note 384.

390.) Supra., note 381.

391.) Duncan, Hood and Neet; op. cit. p. 527.

392.) 42 U.S.C. Section 3601 et. seq.

393.) Id.

394.) Id., Seciton 3605.

395.) Id. Sections 3612 (a) & (b) and 3617 (1970). "Most financial institutions are understandable hesitant to divulge any information or data that would aid a potential adversary in a court action against that bank for alleged racial discrimination." Robert P. Voyles; Redlining and the Home Mortgage Disclosure Act of 1975: A Decisive Step Towards Urban Redevelopment; Emory Law Journal, Vol. 25; 1976; p. 681; note 81.

396.) Id. Section 3605. Also see, Discriminatory Housing Markets, Racial Unconscionability and Section 1982: The Contract Buyers Case; 80 Yale Law Journal, 516 (1971).

397.) "The practice of using 'testers' to demonstrate racial discrimination has been upheld by the courts". Duncan, Hood and Neets; op. cit., p. 529 n. 110. Several of these cases include, United States v. Youritan Construction Co.,370 F. Supp. 643 (N.D. Calif. 1973); Newbern v. Lake Lorelei Inc., 308 F. Supp. 407 (S.D. Ohio 1968) and Bush v. Kaim, 297 F. Supp. 151 (N.D. Ohio 1969).

398.) Duncan, Hood and Neets., op. cit. p. 531. Also see, Kim E. Baptise, Attacking the Urban Redlining Problem, 56 Boston University Law Review, 1976; p. 1012.

399.) Federal Home Loan Bank Board guidelines address this point: The use of lending standards which have no economic basis and which are discriminatory if their effect is a violation of law even in the absence of an actual intent to discriminate. However, a standard which has discriminatory effect is not necessarily improper if its use achieves a genuine business need which cannot be achieved by means which are not discriminatory in effect or less discriminatory in effect. 12 C.F.R. Section 531.8(b) (1976.

400.) Kim E. Baptise; op. cit.; p. 1013. Also see Duncan, Hood and Neets; op. cit. p. 531.; note 120.

401.) Robert P. Voyles, op. cit.; p. 682; 1976. These cases include: Williams v. Matthews Co. 499 F.2d 819, 826 (8th Cir.) cert. denied 419 U.S. 1021, 1027 (1974); United States v. City of Black Jack,508 F. 2d 1179, 1184-85 (8th Cir. 1974), cert. denied 422 U.S. 1042 (1975); United States v. Hughes Memorial Home,396 F. Supp. 544 (W.D. Va. 1975); and Zuch v. Hussey 366 F. Supp. 533 (E.D. Mich. 1973)

402.) Id. at 683. Cases supporting this contention include United States v. Reddoch, No. 6541-71-P (S.D. Ala. Jan. 27, 1972), aff'd 467 F. 2d 897 (5th Cir. 1972); Parham v. Southwestern Bell Telephone Co., 433 F. 2d 421 (8th Cir. 1970); United States v. Yoruitan Construction Co.,op. cit.; and United States v. Real Estate Development Corporation, 347 F. Supp. 776 (N.D. Miss. 1972).

403.) 408 F. Supp. 489 (S.D. Ohio 1976).

404.) Id. at 493.

405.) Supra., note 271.

406.) H.R. Report No. 94-561; 94th Congress; 1st Session; 32 (1975).

407.) See U.S. Commission on Civil Rights, II The Federal Civil Rights Enforcement Effort - 1974.

408.) U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort: A Reassessment, 37 (1973).

409.) See Enforcement Effort, supra., note 407 at Ch. 1 III A.

410.) Virginia v. Rives, 100 U.S. 131, 318 (1880).

411.) Ex Parte Virginia, 100 U.S. 339, (1880).

412.) Id.

413.) Id. at 346.

414.) Strauder v. West Virginia, 100 U.S. 303 (1880).

415.) Civil Rights Cases: They included: U.S. v. Stanley, U.S. v. Nichols, U.S. v. Singleton and Robinson and Wife v. Memphis and Charleston Railroad Co., 109 U.S. 3 (1883).

416.) Id.

417.) Shelley v. Kraemer,334 U.S. 13 (1948).

418.) Id.

419.) 507 F.2d 1103 (1974).

420.) Id. at 1104.

421.) Evans v. Newton, 382 U.S. 296 (1966).

422.) Id.

423.) Geneva Towers Tenants Organization v. Federated Mortgage Investors, 504 F.2d 483 (1974).

424.) Id. at 487.

425.) Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961).

426.) Id.

427.) Supra., note 420, at 487.

428.) Id., p. 488.

429.) Cooper v. Aaron, 358 U.S. 1 (1958). See also; Arrington v. City of Fairfield, Alabama,414 F.2d 687, 693 (1969).

430.) Burton v. Wilmington., op. cit.

431.) Arrington v. City of Fairfield, op. cit., See also, Reitman v. Mulkey, 387 U.S. 369 (1967), and Shelley v. Kraemer, op. cit.

432.) Perez v. Sugarman, 449 F.2d 761 (1974).

433.) Bright v. Isenbarger, 314 F. Supp. 1382, affirmed 445 F.2d 412 (1970).

434.) Supra., note 419.

435.) Id., Also see, Holodnak v. Avco. Corp., Avco-Lycoming Division, Stratford Connecticut, 514 F.2d 285, cert. denied 423 U.S. 892 (1975).

436.) 527 F.2d 23 (1975).

437.) Id., at 23-24.

438.) Id., at 31-32.

439.) Supra., note 423.

440.) Supra., note 419.

441.) Id., at 1104.

442.) 323 F.2d 959 (1963).

443.) Id., at 960.

444.) Hospital Survey and Construction Act, Section 622(f), 42 U.S.C. Section 291 e (f).

445.) Bond v. Dentzer, 494 F.2d 302 (2nd Cir. 1974), Ward v. St. Anthony Hospital, 476 F.2d 671 (10th Cir. 1973), Doe v. Berlin Memorial Hospital, 479 F.2d 756 (7th Cir. 1973) and Powe v. Miles, 407 F.2d 73 (2nd Cir. 1968).

446.) 385 F. Supp. 986, reconsideration denied 392 F. Supp. 559 (1974). Accord in McQueen v. Druker, 317 F. Supp. 1122, affirmed 438 F.2d 781 (1970).

447.) Supra., note 187.

448.) Supra., note 446.

449.) 37 7 F. Supp. 709 (1974).

450.) Id.

451.) Supra., note 423.

452.) Id.

453.) Id.

454.) 314 F. Supp. 364, affirmed Conner v. Richardson, 400 U.S. 1003 (1970).

455.) Id.

456.) Chicago Joint Board, Amalgamated Clothing Workers of America, AFL-CIO v. Chicago Tribune Company, 307 F. Supp. 422 (1967).

457.) Id., at 425.

458.) 390 R. Supp. 517, on reconsideration 398 F. Supp. 1234.

459.) Id.

460.) See Text and notes pgs. 85 - 109.

461.) Supra., note 97.

462.) Supra., note 286.

463.) Ibid.

464.) Washington v. Davis, op. cit.; at 229.

465.) Id.

466.) 401 U.S. 424 (1971).

467.) Supra., note 464 at 238; Sup. Ct. R. 40 (1) (d) (2).

468.) Id. at 245.

469.) Supra., note 364.

470.) 12 U.S.C. Section 1715z-3 (1976).

471.) HUD area Handbook No. 4260.1, November 1972.

472.) Supra., note 364.

473.) Supra., text and notes 85 - 109. Also see text for references to similar situations in Baltimore, New York and Chicago. The case for Chicago is additionally documented in 6 Loyola University Law Journal, p. 71. by Freddie L. Greenberg in Redlining - The Fight Against Discrimination in Mortgage Lending.

474.) That minority groups comprise "the Poor" is increasingly clear. Mr. Franklin Lockfield in his affidavit for Valtierra v. Housing Authority of City of San Jose, 313 F. Supp. 1 (1970) stated: "The low income areas are closely related to the areas of concentration of minority residents ... While twenty three percent of the units occupied by Mexican-Americans and twenty percent of the units occupied by non-whites were in dilapidated or deteriorated condition. Minorities were thus over represented in the less than standard housing by greater than four to one and occupied nearly one-third of the deteriorated and delapidated housing in the county in 1960." Mr. Lockfield at the time was senior planner for the Santa Clara County Planning Department.

475.) John R. Dain and John M. Quigley, Housing Markets and Racial Discrimination: A Microeconomic Analysis; National Bureau of Economic Research; 1975. Distributed by the Columbia University Press., p. 58-59.

476.) Ibid., p. 59.

477.) 410 U.S. 719 (1973).

478.) Id., also see Williams v. Rhodes, 393 U.S. 23 (1968).

479.) U.S. v. Jefferson County Board of Education, 372 F.2d 836, corrected 380 F.2d 385, cert. denied in Caddo Parish School Board v. U.S., 389 U.S. 840 (1966).

480.) Supra., note 474.

481.) Id., p. 4.

482.) Bolling v. Sharpe, 347 F. supp. 497 (1971).

483.) Harper v. Virginia State Board of Education, 383 U.S. 663 (1966). See also; McLaughlin v. Florida, 379 U.S. 184, 194 (1964).

484.) 317 F. Supp. 179 (1970).

485.) Id.

486.) Carrol v. Finch, 326 F. Supp. 891 (1971).

487.) Lindsey v. Normet, 405 U.S. 56 (1972).

488.) Roe v. Wade, 410 U.S. 113 (1973).

489.) 390 F. Supp. 1256 (1975).

490.) Id., p. 1258.

491.) 393 U.S. 385 (1969).

492.) Slaughter House Cases, 16 Wall 36, 71 (1873): Strauder v. West Virginia, surpa., note 414 at 307 - 308; Ex parte Virginia, supra., note 411 at 344 - 345; McLaughlin v. Florida supra., note 483 at 192 and Loving v. Virginia, 338 U.S. 1 at 10 (1967).

493.) Supra., note 482 at 499.

494.) Korematsu v. United States, 323 U.S. 214, 216 (1944).

495.) Supra., note 482.

496.) Section 137 was the section added to the Charter of the City of Akron, Ohio in qestion in Hunter v. Erickson, supra., note 491.

497.) Supra., note 491 at 391 - 393.

498.) Reynolds v. Sims, 377 U.S. 533 (1964).

499.) Retail Clerks Union, Local 770 v. Retail Clerks International Association, 359 F. Supp. 1285 (1973).

500.) Kline v. Vlandis, 346 F. Supp. 526, affirmed 412 U.S. 441 (1972)

501.) See text and notes pgs. 85 - 109.

502.) Shah, Housing Mess, National Observer, June 24, 1974, at 1, col. 4.

503.) Crawley v. Terhune, 437 S.W.2d 743 (Ky. App. L969), House v. Thornton 457 P.2d 199 (Wash. 1969), Cochran v. Keeton, 252 So.2d 313 (Ala. 1971), Rutledge v. Dodenhoff, 175 S.E. 2d 972 (S.C. 1970), Wawak v. Stewart, 449 S.W. 2d 922 (Ark, 1970), and Bethlahmy v. Bechtal, 415 P.2d 698 (Idaho, 1966).

504.) Gable v. Silver, 258 So. 2d (Fla. 4th Dist. 1972).

505.) Elbert H. Gray - Judge; Address at Northwestern University, Evanston, Illinois, June 19, 1922.

APPENDIX

I

To provide for administrative enforcement of existing fair housing laws.

IN THE HOUSE OF REPRESENTATIVES

January 15, 1980

A BILL

TO AMEND TITLE VIII OF THE CIVIL RIGHTS ACT OF 1964 COMMONLY REFERRED TO AS THE CIVIL RIGHTS ACT OF 1968 TO REVISE PROCEDURES FOR THE ENFORCEMENT OF EQUAL OPPORTUNITY IN FAIR HOUSING, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, that this Act may be cited as the "Fair Housing and Administrative Enforcement Act of 1980".

Title I - Fair Housing

Short Title for Title I

Sec. 101. This title may be cited as the "Fair Housing Amendments Act of 1980".

Short Title for 1968 Act

Sec. 102. The Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting immediately after the comma at the end of the enacting clause the following: "That this Act may be cited as the Civil Rights Act of 1968.".

Short Title for Title VIII

Sec. 103. Title VIII of the Act entitled "An Act to Prescribe penalties for certain Acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting immediately after the title's catchline the following new section:

"Short Title

Sec. 800. This title may be referred to as the 'Fair Housing Act'.".

Definition of Unfair Housing Practice

Sec. 104. Section 802(f) of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by striking out "section 804, 805, or 806" and inserting "this title" in lieu thereof.

Modification of Owner-Occupied Exemption

Sec. 105. Section 803 of the Act entitled "An Act to prescribe penalties for certain Acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended -

(1) By inserting "and before the date of the enactment of the Fair Housing Amendments Act of 1980," immediately after "1968" in subsection (a) (2);

(2) By striking out "Nothing" in subsection (b) and inserting in lieu thereof the following: "Before the date

of the enactment of the Fair Housing Amendments Act of 1980, nothing"; and

(3) By adding at the end the following:

"(d) After the date of the enactment of the Fair Housing Amendments Act of 1980, subject to the provisions of section 807, the prohibitions against discrimination in the sale or rental of housing set forth in section 804 of this title shall apply to all dwellings, except with respect to the renting of space withing a single family dwelling unit by the occupant of such unit to any other person or persons.".

Discriminatory Housing Practice Amendments

Sec. 106. (a) The catchline of section 804 of the Act entitled "An Act to prescribe penalties for certain Acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by adding at the end the following: "and other prohibited practices".

(b) Section 804 of such Act is amended by inserting ", 803 (d)," immediately after "803 (b)".

(c) Section 804 of such Act is amended by adding at the end, the following:

"(f) For a person in the business of insuring against hazards to refuse to enter into a contract of insurance against hazards to a dwelling because of the race, color, or national origin or persons residing in or near the dwelling."

"(g) For a person, company or firm in the business of loaning, brokering or holding monies for purchase, repair, renovation or rehabilitation to refuse to enter into a contract or mortgage on a dwelling, residence or business because of the race, color, or national origin of persons residing in or near the dwelling, residence or business."

(d) Section 805 of such Act is amended by inserting ", or of the neighborhood of such dwelling or dwellings" immediately after "made or given".

Title II - Administrative Enforcement

Short Title for Title II

Sec. 201. This title may be cited as the Administrative Enforcement Act of 1980.

Functions of the Secretary

Sec. 202. Section 808 (e) (3) of the Act entitled "An Act to prescribe penalties for certain Acts of violence or intimidation, and for other purposes: (Public Law 90-284, approved April 11, 1968) is amended by inserting "financial and" immediately before "technical".

Enforcement Changes

Sec. 203. The Act entitled "An Act to prescribe penalties for certain Acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by striking out section 810 through 814 and inserting in lieu of the matter so striken the following:

"Enforcement by the Secretary

Sec. 810. (a) (1) Whenever an aggrieved person(s), or the Secretary on the Secretary's own initiative, or another agent so designated by the Secretary, files a charge alleging that a discriminatory housing practice has occured, is occuring, or is about to occur, the Secretary shall serve a notice of the alleged discriminatory housing practice on the person charged (hereinafter in this title referred to as the respondent') within ten days after such filing, and shall make an investigation thereof. Such charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Secretary requires. An aggrieved person shall file a charge under this section with the Secretary not later than three years after the alleged discriminatory housing practice occurred or terminated. The Secretary may also investigate housing practices to determine whether charges should be brought under this section or new rules should be made under section 814 of this title.

"(2) (a) In connection with any investigation of such charge or of a housing practice, the Secretary shall, with respect to existing law at reasonable time, have access to, and the right to copy, any information that relates to such charge or housing practice. The Secretary may issue subpenas to compel such access to or the production of such information, or the appearance of persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpenas or interrogatories were issued or served in aid of a civil action in the United States District Court for the district in which the investigation is taking place. The Secretary may administer oaths.

"(b) Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpenas issued by the Secretary under clause (a) of this paragraph.

'(c) Witnesses summoned by subpena of the Secretary shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States District Courts. Fees to a witness summoned by subpena requested by the respondent shall be paid by the respondent.

"(d) The Secretary (Through the Attorney General) or a respondent at whose request a subpena is issued may enforce such subpena in appropriate proceedings in the United States District Court for the district in which the person to whom the subpena was addressed resides, was served, or transacts business.

"(e) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in such person's power to do so, in obedience to the subpena or lawful order of the secretary, shall be fined not more than

$1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Secretary, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to the Secretary's subpena or other order, or shall willfully neglect or fail to make or or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter or by other means falsify any documentary evidence, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(3) Whenever a charge alleges a discriminaroty housing practice occuring within the jurisdiction of a State or Local Public Agency certified by the Secretary under such regulations as the Secretary may prescribe, the Secretary may, before taking any action with respect to such charge, notify the appropriate State or Local Officials and, upon request of such Officials, afford them a definite period of time, set by the Secretary, to make a final determination on the charge. In certifying or refusing to certify an agency under this paragraph, the Secretary shall take into account the substantive provisions (including scope and availability of remedies) of the law or regulation such agency administers, the procedural effectiveness of such law or regulation and practice thereunder, and the past performance, if any, of such agency.

"(b) (1) If the Secretary determines, after such investigation, that insufficient evidence has been found to proceed with the charge, the Secretary shall so advise the aggrieved person and the respondent. If the Secretary determines, after such investigation, that reasonable cause exists to believe the charge is true, the Secretary shall refer the matter to the Attorney General for the filing of an appropriate civil action under subsection (c) of section 811, or file an administrative complaint under paragraph (2) (a) of this subsection. In determining whether reasonable cause exists, the Secretary may accord such weight as appropriate under the facts and circumstance of each case of any final determination under a State or Local Fair Housing Enforcement procedure.

"(2) (a) Upon filing an administrative complaint, the Secretary shall cause a copy of such complaint to be served on the respondent, together with a notice of opportunity of a hearing on the record at a place and time (not less than thirty days after the service of such complaint) specified in such notice. If the Secretary concludes that prompt action is necessary to carry out the purposes of this title, the Secretary, after ten days' notice and opportunity to be heard has been given the respondent, may order temporary or preliminary relief pending the final disposition of such complaint. Such relief shall expire after a period not exceeding 90 days from the time of the complaint. The respondent shall have the right to file an answer to the administrative complaint and to appear in person or otherwise and give testimony at a hearing on the record. In the discretion of the person conducting the hearing, any aggrieved person may be allowed to intervene and to present testimony. After the conclusion of such hearing, the person conducting the hearing shall make findings of fact and conclusions of law, and may issue an order providing such relief as is described in section 812 (c) of this title.

"(b) The findings of fact and conclusions of law made at such hearing, together with any order of relief, shall be served on each aggrieved person and each respondent in the proceeding.

"(c) Any petition for judicial review of a final order of the Secretary under this subsection shall be filed in the appropriate Court of Appeals not later than thirty days after the entry of such final order by the Secretary. Such judicial review of a final order shall be in the manner provided under Chapter 158 of Title 28 of the United States Code. The findings of the Secretary shall be conclusive if substantial evidence exists in the record as a whole. No objection not urged before the Secretary (or other person holding the hearing) shall be considered by the court unless the failure or neglect to urge such objection should be excused because of extraordinary circumstances.

"(d) (I) Any person who violates a final order of the Secretary under this section shall be subject to a civil penalty assessed under subparagraph (e) of not more than $1,000 for each day during which such violation continues after the date on which such final order becomes unreviewable.

"(II) For the purposes of subclause (I) of this clause, a final order becomes unreviewable -

"(I) If a petition for review has not been filed in the appropriate reviewing court, on the day thirty days after the entry of such final order, or

"(II) If such a petition is so filed within such thirty-day limit, on the date on which the last appelate court's decision becomes final and not subject to any further appellate proceeding.

"(e) The Secretary may assess the civil penalty to which a person becomes liable under subparagraph (d), and such civil penalty may not be compromised or settled without the consent of the Secretary.

Enforcement role of the Attorney General

"Sec. 811. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may bring a civil action in a appropriate United States District Court.

"(b) The Attorney General is directed to bring a civil action in an appropriate United States District Court (1) to enforce any final order under section 810 of this title that is referred for enforcement by the Secretary; (2) that initiates a proceeding in circumstances in which no administrative order has been issued by the Secretary; (3) to collect any civil penalty assessed by the Secretary under section 810 of this title; and (4) to remedy any discriminatory housing practice (a) with respect to which the Secretary has made a finding that reasonable cause exists under this title and (b) which the Secretary refers to the Attorney General for enforcement under this subsection.

"(c) The court may award such relief in any civil action under this section as is authorized in section 812 (c) of this title in cases brought under that section.

"(d) If the Secretary concludes on the basis of a preliminary investigation of a charge that prompt judicial action is necessary to carry out the purposes of this title, the Secretary may refer the matter to the Attorney General and the Attorney General may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. It shall be the duty of a court having jurisdiction over proceedings under this paragraph to assign such proceedings for hearing at the earliest practical date and to cause such proceedings to be in every way expedited. An application for relief under this paragraph shall not affect the initiation or continuation of administrative proceedings under section 810 (b) (2) of this title.

'(e) The Attorney General may delegate any function the Attorney General has under this title to a specially designated Assistant Attorney General.

Private Enforcement

"Sec. 812. (a) An aggrieved person may commence a civil action in an appropriate United States District Court at any time not later than three years after the alleged discriminatory housing practice occurred or terminated, or one year after the Secretary has completed proceedings under section 810 with respect to a charge of such alleged practice, whichever is later. No such civil action may be commenced by an aggrieved person who has filed a charge under section 810 (a) of this title after the Secretary files an administrative complaint under section 810 (b) (2) of this title or the Attorney General files a complaint under section 811 (b) (3) of this title, based on the same charge, until proceedings with respect to such complaint have been concluded. After an aggrieved person has commenced a civil action under this section, the

Secretary may not commence proceedings toward the issuance of such a remedial order based on such charge. Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance.

"(b) Upon application by an aggrieved person, any trial or appellate court may, in such circumstances as it deems just, appoint an attorney for such person and may authorize the commencement or continuation of the action without the payment of fees, costs, or security.

"(c) If the court finds in a civil action under this section that an alleged discriminatory housing practice has occured, is occuring, or is about to occur, the court shall award such relief as may be appropriate, which may include money damages, equitable and declaratory relief, and punitive damages not exceeding $10,000 in the case of of each willful violation. The court may divide the trial of issues in cases where relief described in this subsection may be granted so that all issues which must be tried by a jury are tried separately from those which may be tried by the court alone.

"Attorney fees and other costs

"Sec. 813. (a) In any action or proceeding under this title, the court, in its discretion, may allow a prevailing party (other than the United States with respect to attorney fees) reasonable attorney fees and expert witness expenses as part of the costs, and the United States shall be liable for such costs the same as a private person. Such costs may also be awarded upon the entry of any interlocutory order which determines substantial rights of the parties.

"(b) In any administrative proceeding based on a charge under section 810 (a) of this title, the Secretary may award to any prevailing party (other than the United States with respect to attorney fees) reasonable witness expenses as a part of a final order under section 810 (b) (2) of this title.

"Rulemaking Authority

"Sec. 814. The Secretary, in consultation with the Attorney General, may issue rules and regulations to implement the policies, purposes, and provisions of this title.".

Interference, Coercion, or Intimidation

"Sec. 204. Section 817 of the Act entitled " An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by striking out "section 803, 804, 805, or 806." and inserting "this title" in lieu thereof.

Fair Housing Loan Fund

"Sec. 205. (a) The Act entitled " An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting immediately after section 817 the following new section:

"Fair Housing Loan Fund

"Sec. 818. (a) The Secretary may make loans from the Fair HOusing Loan Fund established under subsection (d) of this section to any aggrieved person alleging a violation of this title for use by such person in paying the costs of a civil action to enforce this title.

"(b) Any loan made under subsection (a) of this section shall bear interest at a rate per annum on the outstanding principal determined by the Secretary and shall, together with such interest, be repayable out of any costs allowed the plaintiff in such civil action. If the total amount of any such costs allowed is inadequate to repay such loan and interest thereon, the Secretary may cancel that protion of the total amount of such loan and interest thereon which is equal to the difference between the total amount of such loan and interest thereon and the total amount of such costs. If no such costs are allowed, the total amount of such loan and interest thereon may be canceled by the Secretary.

"(c) Repayments of Loans made under subsection (a) of this section and of interest thereon and all penalties collected by the Secretary under this title shall be deposited in the Fair Housing Loan Fund.

"(d) There is hereby established in the Treasury the Fair Housing Loan Fund (Hereinafter in this section referred to as the "fund") which shall be available to the Secretary without fiscal year limitation for purposes of making loans under subsection (a) and which shall consist of such amounts as may be appropriated to the fund from time to time. The Secretary may authorize the Secretary of the Treasury to invest and reinvest such portions of the fund as the Secretary of Housing and Urban Development may determine are not needed for current operations in any interest-bearing securities of the United States or in any securities guaranteed as to both principal and interest by the United States or in bonds or other obligations which are lawful investments for fiduciary, trust, and public funds of the United States, and the income therefrom shall constitute a part of the fund.

"(e) (1) If, in the judgment of the Secretary of Housing and Urban Development, a loan to the fund is required at any time for carrying out the purposes of this section, the Secretary of the Treasury shall make the loan, but loans under this paragraph shall not exceed in the aggregate $1,000,000 outstanding at any one time. Except as otherwise provided in this subsection, each loan under this paragraph shall be made on such terms as may be fixed by agreement between the Secretary and the Secretary of the Treasury.

"(2) Interest shall accrue to the Treasury on the amount of any outstanding loans made to the fund pursuant to paragraph (1) of this subsection on the basis of the average daily amount of such outstanding loans determined at the close of each fiscal year with respect to such year, and the Secretary shall pay the interest so accruing into the Treasury as miscellaneous receipts annually from the fund. The Secretary of the Treasury shall determine the applicable interest rate in advance by calculating the average yield to maturity (on the basis of daily closing market bid quotations during the month of June of the preceeding fiscal year) on outstanding marketable public debt obligations of the United States having a maturity date of five or less years from the first day of such month of June and by adjusting such yield to the nearest one-eighth of 1 per centum.

"(f) So long as any loans to the fund are outstanding, the Secretary shall from time to time, not less often than annually, determine whether the balance in the fund is in excess of the amount which, in the Secretary's judgment, is needed to meet the requirements of the fund and shall pay such excess to the Secretary of the Treasury, to be credited against the loans to the fund.

"(g) There is authorized to be appropriated, in addition to any other sums that are authorized to be appropriated for the purposes of this title, the sum of $10,000,000 for the establishment of the fund.'.

(b) Such Act is further amended by redesignating sections 818 and 819 as 819 and 820 respectively,

Sec. 206. Section 901 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting "handicap," immediately after "sex," each place it appears.

Conforming Amendment to Title 28 of the United States Code

Sec. 207. (a) Section 2341 (3) (b) of Title 28 of the United States Code is amended by inserting "or the Secretary of Housing and Urban Development, as the case may be" immediately after "the Secretary of Agriculture".

(b) Section 2342 of such Title 28 is amended -

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting "; and" in lieu thereof; and

(3) by adding immediately after paragraph (5) but before the final sentence, the following: "(6) all final orders of the Secretary of Housing and Urban Development under the Fair Housing Act.".

Effective Date

Sec. 208. This Title and the amendments made by this Title shall take effect on the date of the enactment of this Act.

Appendix 2

H.R. 476

In The House Of Representatives

A Bill

To Amend the Equal Credit Opportunity Act To Prohibit Discrimination against any applicant for credit on the basis of the geographical location of the applicant's residence.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, that section 701 (a) of the Equal Credit Opportunity Act is amended by striking out "or" at the end of paragraph (2) thereof, by striking out the period and inserting "; or", and by **inserting** at the end thereof the following:

"(4) On the basis of the geographical location of the applicant's residence (other than any extension of credit which is secured by real property which is the applicant's residence).".

Appendix 3

S. 218

To Provide for Congressional Control over Public

Policy With Respect To Variable Rate Mortgages

In the Senate of the United States
January 25 (Legislative Day, January 15), 1979

A Bill

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,

Short Title

Sec. 1. This Act may be cited as the "Variable Rate Mortgage Act of 1979".

Findings and Purposes

Sec. 2. (a) The Congress finds that-

(1) There has been substantial disagreement and controversy as to whether variable rate mortgages are in the public interest;

(2) The Federal Home Loan Bank Board has authorized federally chartered savings and loan associations in California to make, purchase, and participate in variable rate mortgages;

(3) Careful study needs to be given (a) to actual experience of consumers with variable rate mortgages, and (b) to the possible inflationary impact of such mortgages;

(4) Any decision to expand variable rate mortgage authority to additional states should be made by the Con-

gress;

(5) The ultimate decision on whether to continue to allow federally chartered savings and loan associations to make, purchase, and participate in varible rate mortgages should be made by the Congress;

(6) Safeguards designed to protect consumers should be outlined in law and not merely by regulation; and

(7) State chartered federally insured savings and loan associations in California should be covered by the same consumer protection safeguards that are applied to federally chartered savings and loan associations.

(b) It is the purpose of this Act to provide for Congressional control over public policy with respect to variable rate mortgages, by incorporating into statute various consumer safeguards and the geographic limitation adopted by the Federal Home Loan Bank Board, so that changes in such provisions can only be made by the Congress, and by providing for a sunset provision so that variable rate mortgage authority for Federal savings and loan associations will only become permanent if Congress, after careful study, renews such authority.

Definitions

Sec. 3. As used in this Act-

(1) The term "Home Mortgage Loan" means a loan secured by real estate which is used or intended to be used as a residence containing not more than four dwelling

units;

(2) The term "Variable Rate Mortgage" means a home mortgage loan in which the interest rate is not, by contract, held constant during the full term of the loan;

(3) The term "Grace Period" means the length of time as provided in a variable rate mortgage contract, between the first regular monthly payment and the month when the interest rate can first be adjusted;

(4) The term "Rate Adjustment Period" means the length of time, as specified in a variable rate mortgage contract, between possible changes in the interest rate; and

(5) The term "Standard Mortgage Instrument" means a home mortgage loan with a contractually interest rate, level payments, and full amortization.

Authorization

Sec. 4. Federally chartered savings and loan associations may make, purchase, or participate in variable rate mortgages, subject to the provisions of this Act and its implementing regulations, except that the authority of federally chartered savings and loan associations to make, purchase, or participate in variable rate mortgages shall limited to mortgages secured by real estate located in the State of California and made by associations home office is in the State of California.

Interest Rate Adjustments

Sec. 5. (a) The grace period providied in a variable rate mortgage contract may be of any duration but not less than one year.

(b) The rate adjustment period specified in a variable rate mortgage contract shall be not less than one year. The contract may specify a rate adjustment period which exceeds one year, but any such longer rate adjustment period shall be a whole number of years.

(c) For variable rate mortgages with rate adjustment periods of one year, interest rate adjustments shall not exceed 0.5 per centum in either direction in any given year. For variable rate mortgages with rate adjustment periods of two years or more, interest rate changes shall not exceed an anount equal to 0.5 per centum multiplied by the number of years in the adjustment period.

(d) Interest rate adjustments shall only occur in response to movements of an index which has been approved by the Federal Home Loan Bank Board.

(e) The interest rate on the loan shall never exceed a level which is 2.5 percentum above the initial interest rate.

(f) Allowable increases in interest rates pursuant to this section shall be at the lender's option. Allowable decreases in interest rates shall be mandatory.

Documented Choice

Sec. 6. Each prospective borrower to whom an offer of a variable rate mortgage is made shall be given the option of selecting a comparable standard mortgage instrument. In connection with this option, each prospective borrower shall be provided information containing-

(1) A side-by-side comparison of differing interest rates and other terms;

(2) Payment schedules for types of instruments, including a schedule for the variable rate mortgage showing every maximum increase at the time it could first occur, the highest possible monthly payment during the loan term, and the maximum total payment in dollars over the full term of each loan;

(3) A statement, prominently displayed, that borrowers have the option to elect a standard mortgage instrument; and

(4) Such information as the Federal Home Loan Bank Board may prescribe.

Percentage of Loans Limitation

Sec. 7. Not more than 50 percentum of the principal amount of the home mortgage loans made in any year by a savings and loan association shall be variable rate mortgages. Not more than 50 percentum of the principal amount of the home mortgage laons purchased in any year by a savings and loan association shall be variable rate mortgages.

Regulations

Sec. 8. The Federal Home Loan Bank Board shall issue regulations to carry out the provisions of this Act. Such regulations may contain additional provisions designed to protect consumers.

Applicability of Consumer Protection Provisions

Sec. 9. The provisions of sections 5, 6, and 7 of this Act, and regulations issued in accordance with section 8, shall be applicable to State chartered savings and loan associations in the State of California, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

Sunset Provisions

Sec. 10. (a) The authority of federally chartered savings and loan associations to make, purchase, or participate in variable rate mortgages shall expire on December 31, 1982.

(b) The applicability of sections 5,6,7, and 8 of this Act to state chartered insured savings and loan associations in California shall expire on December 31, 1982.

Consumer Study

Sec. 11. (a) The United States Office of Consumer Affairs (hereinafter in this section referred to as the "office") shall conduct a study of consumer experience with variable rate mortgages.

(b) Such study shall include -

(1) An assessment of the extent of consumer under-

standing of the specific provisions of their variable rate mortgage contracts;

(2) An assessment of the capacity of consumers to evaluate the information provided in the side-by-side comparison required by section 6 of this Act; and

(3) such other information relating to possible advantages or disadvantages to individual consumers as is deemed by the office to be significant and feasible to study.

(c) The Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System shall cooperate with the office for the purposes of this study, and, to the extent necessary to conduct the study, the provision of lists of consumers who have received variable rate mortgages and information contained in mortgage files. Any information which identifies individual consumers shall be handled by the office so as to protect individual privacy.

(d) The Office shall transmit to the Congress an interim report by not later than December 31, 1980, and a final report by not later than March 15, 1982.

Inflationary Impact Study

Sec. 12. The Council on Wage and Price Stability shall conduct a study of the possible inflationary impacts of variable rate mortgages. The Council shall transmit to the Congress an interim report not later than December 31, 1980, and a final report not later than March 15, 1982.

REDLINING OF THE INNER CITY HOUSING MARKET: A VIOLATION OF THE FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE

by

FREDERICK LAWRENCE LAGER

B.S., Kansas State University, 1973
A.A., Hutchinson Community Junior College, 1971

AN ABSTRACT OF A MASTER'S THESIS

submitted in partial fulfillment of the

requirements for the degree

MASTER OF REGIONAL AND COMMUNITY PLANNING

College of Architecture and Design

KANSAS STATE UNIVERSITY
Manhattan, Kansas

1981

With the claim of "sound business judgement", the mortgage lending firms of this nation flaunt the intention of Congress to provide a decent and safe living environment for every American citizen. More specifically, the mortgage lenders invidiously deny mortgage assistance monies to those declining and deteriorating inner city areas most in need of assistance. This practice, more commonly referred to as redlining, designates these areas as unworthy of mortgage assistance, with the approval of the Federal Housing Administration. Therein, arises the hypothesis that red-lining is suspect in that it violates the Equal Protection Clause of the Fourteenth Amendment.

The examination of this issue necessitated a review of several different discipline's and their economic theories in regard to the decline process. Along with this, the impact of housing filtration was examined so as to ascertain its effect upon the rate of inner city decline, deterioration and abandonment. By this process, I reached the conclusion that mortgate lending firms, in fact, played a significant role in the eventual decline of this nation's inner-city neighborhoods.

From that point, it became necessary to review realistic examples of this process upon inner-city housing markets. I reviewed specific examples from the South Bronx in New York City, the inner city of Baltimore, examples from Chicago's north side and Philadelphia's Northeast and Northwest neighborhoods. This investigation supported the conclusion of Hayden Withers in her study of the city of Philadelphia. Thereby, and along with several other sources it was determined that the decision to disinvest in these inner-city neighborhoods was more often than not based on the factor of the mortgage applicant's race.

Were this practice base solely upon the motivation of private mortgage lenders, there would be no violation of the Fourteenth Amendment Equal Protection Clause. But, if there were government involvement through any regulation, monitering or oversight and thus state action; the Fourteenth Amendment remedies could surely be relied upon. So as to determine the involvement of the Federal Government in the mortgage market-place, an investigation of their role since the early years of the Depression was undertaken. The results of that investigation along with the recent risk regulatory guidelines of the F.H.A. documented only one conclusion. In fact, the Federal Government had perpetuated a segregated housing market in this nation's inner-city areas.

Relying upon the investigations of current economic theory, case studies, and federal policy action in the mortgage market-place provided the ability to rely upon the Fourteenth Amendment Equal Protection Clause as a remedy for redlining. Prior to that case abstract, other alternatives such as Section 1983 and Section 2003 of the United

States Code were reviewed for their applicability and were found wanting. Upon the basis of two questions, the issue of invidious mortgage redlining was attached under the standards of the Fourteenth Amendment Equal Protection Clause. The arguments and case law to support the hypothesis that mortgage redlining violates the Equal Protection Clause are herein presented for your consideration.