IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROBERT F. LAUFMAN, et al., Plaintiffs, v. OAKLEY BUILDING AND LOAN COMPANY, et al., Defendants.	Civil Action No. C 1 74-153

BRIEF OF THE FEDERAL HOME LOAN BANK BOARD, AMICUS CURIAE

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INDEX

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STATEMENT OF THE CASE

The Federal Home Loan Bank Board ("Board"), pursuant to leave of this Court, submits this amicus brief addressed to the issue of whether the Board has exceeded the authority statutorily conferred upon it by Title VIII of the Civil Rights Act of 1968 ("Title VIII") (42 U.S.C. § 3601, et seq.), by the Federal Home Loan Bank Act of 1932 ("Bank Act") (12 U.S.C. 1421, et seq.), and by Title IV of the National Housing Act ("NHA") (12 U.S.C. § 1724, et seq.) in adopting and issuing sections 528.2(a)(4) and 531.8(c)(6) of the Board's Bank System Regulations (12 CFR 528.2(a)(4) and 531.8(c)(6)). 1/ These regulations, in relevant part, prohibit discrimination in home financing because of the race, color, religion, sex or national origin of the residents of the neighborhood in the vicinity of the property for which financing is being sought. 2/

This is a suit by a non-minority, married couple against the Oakley Building and Loan Company ("Oakley") (a Federally-insured savings and loan association and a member institution of the Federal Home Loan Bank of Cincinnati) and various of its officers and directors. Plaintiffs allege, in part, that their application

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1/ These Regulations were originally adopted as sections 528.2(d) and 531.8(c)(4), respectively, of the Bank System Regulations (12 CFR 528.2(d) and 531.8(c)(4)), and amended and renumbered on December 17, 1974 (39 F.R. 43620).

2/ A lender's refusal to make available funds for mortgage lending in whole areas is generally known as "redlining". For a fuller discussion, see infra, pp. 12-15.

for a mortgage loan was denied by Oakley because of the racial composition of the neighborhood of the house they wished to purchase, in violation of plaintiff's rights under Title VIII and the Board's anti-redlining regulations. On May 5, 1975, defendants moved the Court to enter summary judgment in their favor, alleging that Title VIII did not prohibit discrimination based on the race of the residents of the area surrounding the security property and that the Board lacked authority to adopt regulations prohibiting such discrimination. 3/

INTEREST OF
THE FEDERAL HOME LOAN BANK BOARD

The Board, as the Federal governmental regulator of savings and loan associations which are Federally-insured, and of all financial institutions which are members of the Federal Home Loan Bank System, is concerned about the challenge raised by defendants herein to those Board regulations which prohibit a member institution from refusing to make loans in an area because of its racial composition. Since "savings and loan associations remain the most important source of home mortgage financing in the United States" and, thus, contribute substantially to a sound and economical system of home financing for the nation 4/, it is vital that this challenge be rejected. The regulations at issue implement the Congressional policy that savings and loan associations and all other mortgage lenders refrain from using racial criteria in connection with the purchase and sale of homes.

These regulations permit savings and loan associations to accept or reject loan applications on the basis of such legitimate, rational criteria as the credit standing of the applicant, the underlying value of the security property and an appropriate diversification of the association's assets. The

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3/ Although Defendants' motion is styled Motion for Summary Judgment in Favor of Defendants, it is in substance a motion to dismiss the complaint for failure to state a valid claim.

4/ Lyons Savings & Loan Ass'n v. Federal Home Loan Bank Board, 377 F. Supp. 11, 20 (N.D. Ill., 1974).

regulations prohibit associations from intentionally discriminating based on the irrational criteria of the racial composition of the area where the applicant seeks to live, or from applying other criteria which have a racially discriminatory effect.

A persistent refusal by lending institutions to provide funds for the purchase and improvement of properties in redlined areas, which generally are older urban neighborhoods, is at odds with a rational, fair, efficient and sound system of economical home financing. The boycotting of older city neighborhoods by lending institutions endangers urban areas by inducing prospective home buyers to relocate in newer suburban locations. This practice will cause decay in established neighborhoods not only in the inner core of the cities, but also in the older suburbs adjacent to the cities, as home buyers are thrust to ever more remote areas of the suburban fringe. This practice, if not barred by law, will create hardship for persons who wish to purchase residential property, and will have an adverse impact upon the Nation's economy. The Board strongly supports the policies which underlie Title VIII and believes that a proper interpretation on this Statute is of utmost importance. Therefore, the Board, as amicus, deems it essential to demonstrate its clear and overriding authority to issue its regulations intended to prohibit "redlining".

ARGUMENT

I

THE BOARD HAS A CONGRESSIONAL MANDATE TO TAKE AFFIRMATIVE ACTION TO IMPLEMENT THE PROHIBITIONS ON DISCRIMINATION IN HOME FINANCING CONTAINED IN TITLE VIII.

It is beyond dispute that Title VIII imposes a duty and mandate upon the Board to establish a program aimed at eliminating all forms of discrimination in the lending practices of the savings and loan industry. Section 808(c) of Title VIII provides as follows:

> "All executive departments and agencies shall administer their programs affirmatively to further the purposes of this subchapter [Title VIII] . . ." (42 U.S.C. § 3608(c))

This language demonstrates a clear and compelling Congressional intent that the Board see to it, not only that those institutions under its jurisdiction refrain from violating the specific provisions of Title VIII, but also that it take affirmative steps to ensure that these lending institutions not act in any way contrary to the purposes and policies of Title VIII. Thus, the Board's anti-redlining regulations are not only a valid exercise of its authority, but are a necessary and wholly proper response to the mandate imposed on the Board by Title VIII. See, e.g., Shannon v. HUD, 436 F.2d 809, 816 (C.A. 3, 1970).

II

TITLE VIII WAS INTENDED, IN PART, TO PROVIDE A COMPREHENSIVE PROHIBITION AGAINST VARIOUS FORMS OF DISCRIMINATION, INCLUDING REDLINING, IN CONNECTION WITH HOME FINANCING.

A. Section 804(a) of Title VIII (42 U.S.C. § 3604(a).

42 U.S.C. § 3604(a), reads, in relevant part, as follows:

> ". . . it shall be unlawful - (a) to refuse to sell or rent . . . or to refuse to negotiate for the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any person because of race . . ." (Emphasis added.)

The Courts consistently have held that the prohibitions of § 3604(a) extend not only to direct refusals, on racial grounds, to sell or rent, but to other practices which are intended to, or have the effect of, making unavailable or denying a dwelling to a person because of racial considerations. As alleged in the complaint, the act for which the defendants are charged, if established, falls squarely within the proscription of section 804(a), since defendants made "unavailable . . . a dwelling to [plaintiffs] because of race. . . ." It must be emphasized that the statute is not limited to the race of the "person" who seeks to occupy the "dwelling" which has been made "unavailable". Rather, the word "race" is wholly unqualified -- therefore, Congress obviously intended to extend the statutory prohibition to any refusal to make a dwelling available because of the

race of any person. Thus, it is immaterial under the statute whether a loan application to purchase a dwelling is turned down because of the race of the proposed borrower or because of the race of his prospective neighbors. Accordingly, the Board regulations under attack here, which prohibit lenders from refusing to make dwellings available to prospective home buyers (by denying their loan applications) because of the race of persons living near the homes for which financing is sought, do no more than implement the proscriptions of section 804(a), and defendants' challenge to their validity must be rejected.

Contrary to the suggestions contained in defendants' memorandum (pp. 3-4), it is without significance that the plaintiffs here are non-minority, since the courts consistently have held that the rights granted by Title VIII, and specifically by § 3604(a), are intended to benefit all persons, not just racial minorities. Thus, in Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972), the Supreme Court held that non-minority as well as minority residents of an apartment complex could properly challenge practices of the landlord which discriminated against minority persons attempting to move into the complex. The Court reviewed the legislative history of Title VIII and concluded as follows (409 U.S. at 210):

> "While members of minority groups were damaged the most from discrimination in housing practices, the proponents of the legislation emphasized that those who were not the direct objects of discrimination had an interest in insuring fair housing, as they too suffered."

Numerous other courts have reached similar conclusions regarding the rights of non-minorities to be free of racial discrimination which is directed specifically at minority persons and have held that such discrimination deprives non-minority persons of the opportunity to enjoy the benefits of fair housing and racially integrated living. See, e.g., United States v. City of Parma, Prentice-Hall Equal Opportunity in Housing Rptr. (hereinafter "P-H EOH") para. 13,616 (N.D. Ohio, 1973), TOPIC v. Circle Realty Co., 377 F. Supp. 111 (C.D. Cal., 1974); Village of Park Forest v. Fairfax Realty Co., P-H EOH, para.

13,699 (N.D. Ill., 1975); Heights Community Congress v. Rosenblatt Realty, P-H EOH para. 13,702 (N.D. Ohio, 1975).

As noted above, § 3604(a) refers to the refusal to rent or sell or "otherwise make unavailable" a dwelling because of race The courts consistently have held that the language "otherwise make unavailable" covers a wide variety of actions. In United States v. City of Parma, supra, the District Court held that § 3604(a) barred a municipality from adopting an ordinance purporting to bar the construction of low- and moderate-income housing, if the plaintiffs could show that adoption of the ordinance was motivated by racially discriminatory intent or had racially discriminatory effects. The Court discussed the sweeping language of § 3604(a) in the following terms (P-H EOH at p. 14,015):

> "Section 3604(a) not only makes it unlawful to 'refuse to sell or rent . . .' a dwelling for racial reasons, but also makes it unlawful to 'otherwise make unavailable or deny a dwelling to any person because of race, color, religion, or national origin.' This catch-all phraseology may not be easily discounted or de-emphasized. Indeed it appears to be as broad as Congress could have made it, and all practices which have the effect of denying dwellings on prohibited grounds are therefore unlawful."

Similarly, the practice of "steering" prospective buyers into specific geographic areas on the basis of the buyer's race was held to violate § 3604(a) even though the practice was not specifically mentioned therein. Zuch v. Hussey, 366 F. Supp. 553 (E.D. Mich., 1973). Courts also have held that other actions, even though not specifically mentioned in the statute, were nonetheless prohibited by § 3604(a) because they were based upon racial considerations. See, e.g., United States v. City of Black Jack, 508 F.2d 1179 (C.A. 8, 1975) (exclusionary zoning); Mayers v. Ridley, 465 F.2d 630 (C.A.D.C., 1972) (registration of deeds with restrictive covenants); United States v. Hughes Memorial Home, P-H EOH para. 13,708 (W.D. Va., C.A. No. 75-0005) (exclusion of racial groups from orphanage); United States v. Reddoch, 467 F.2d 897 (C.A. 5, 1972) (false representations as to availability of rental units).

It thus is well-established that in applying § 3604(a) the courts will consider both the expansive purpose of Title VIII and the canon of statutory construction that civil rights statutes should be read broadly to fulfill their purposes, and will construe Title VIII "in such a manner as to foreclose . . . loopholes in the coverage of the Fair Housing Act [Title VIII]." United States v. City of Parma, supra, P-H EOH at 14,015.

The language of § 3604(a), and the interpretation afforded to it by the courts, leads inescapably to the conclusion that a refusal to make a loan to a person because of the race of that person or any other person is prohibited by § 3604(a).

B. Section 805 of Title VIII (42 U.S.C. § 3605).

Section 3605 makes it unlawful

> ". . . for any . . . building and loan association . . . to deny a loan . . . to a person applying therefor for the purpose of purchasing . . . a dwelling . . . because of the race . . . of such person or of any person associated with him in connection with such loan . . . or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan . . . is to be made or given." (Emphasis added.)

The prohibition is in the conjunctive, that is, it refers to (1) the person applying for the loan, or (2) persons associated with the applicant, or (3) the present or prospective occupants of the dwellings "in relation to which" the loan is to be made. It is a well-established rule of statutory construction that statutes be construed to give effect to all their provisions, and that no phrase or word should be regarded as mere surplusage or a redundancy. See, e.g., United States v. Menasche, 348 U.S. 528, 539 (1955); Jarecki v. Searle & Co., 367 U.S. 303, 307-308 (1961). The expansive language of § 3605, with respect to "dwellings in relation to which such loan is to be made or given", therefore, must be given a very broad construction. It therefore is clear that Congress intended to bar actions such as "redlining" where a lender refuses to make a loan

based on consideration of the racial characteristics of the occupants of dwellings "in relation to" which the loan is to be made, that is, of the residents of the neighborhood in which the property is located.

Judicial construction of § 3605 has been limited, but it is clear that this provision is to be construed as liberally, and with the same view toward effectuating the purposes of Title VIII, as are other provisions of the Act. In Hunter v. Atchinson, 466 F.2d 490 (C.A. 6, 1972), and Lindsey v. Modern America Mort. Corp., P-H EOH para. 13,694 (N.D. Tex., No. CA 3-74-845-F), the courts held that discriminatory foreclosure tolerance policies, although not specifically mentioned in § 3605, are barred by that section. Furthermore, the cases cited supra, pp. 4-5, for the proposition that non-minorities as well as minorities have protected rights under § 3604(a), apply equally to § 3605.

Thus, whatever the conclusion may be regarding the breadth of § 3604(a), the practice of "redlining" -- where race is a factor -- is clearly prohibited by § 3605, and the regulations adopted by the Board which prohibit such practices are valid and proper.

III

THE BOARD'S ANTI-REDLINING REGULATIONS ARE A VALID EXERCISE OF ITS AUTHORITY UNDER THE FEDERAL HOME LOAN BANK ACT

A. The Legislative History of the Bank Act Evidences a Congressional Intent to Invest the Board with Broad Powers Over Member Institutions in Order to Carry Out the Purposes of the Act.

The Federal Home Loan Bank Act, 12 U.S.C. 1421-1449 was first enacted into law in 1932 for the purpose of providing "adequate long-term credit facilities for home owners." 5/ The Bank Act, in part, created the Board and empowered it to divide the United States into districts and to establish a Federal Home Loan Bank in each district (12 U.S.C. 1437, 1423). Qualified

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5/ 75 Cong. Rec. 12609 (Remarks of Congressman Hancock).

home-financing and thrift institutions were allowed, with the Board's approval, to become members of the Federal Home Loan Banks (12 U.S.C. 1424), and each such member institution was thereupon authorized to receive loans ("advances") from the Federal Home Loan Bank of which it was a member (12 U.S.C. 1430).

The Bank Act confers on the Board sweeping powers to regulate the activities of the member institutions. Thus, section 17(a) of the Bank Act (12 U.S.C. 1437(a)) empowers the Board "to adopt, amend, and require the observance of such rules, regulations, and orders as shall be necessary from time to time for carrying out the purposes of the provisions of this [Act]". Section 4(a) of the Bank Act (12 U.S.C. 1424(a)) provides that "[n]o institution shall be eligible to become a member of . . . a Federal Home Loan Bank if, in the judgment of the Board . . . the character of its management or its home financing policy is inconsistent with sound and economical home financing, or with the purposes of this [Act]" (emphasis added). Section 6(i) of the Bank Act (12 U.S.C. 1426(i)) provides specific authority for the Board to remove from membership any member institution which "in the opinion of the Board . . . has failed to comply with any provision of [the Act] or regulation of the board made pursuant thereto . . . or has a management or home-financing policy of a character inconsistent with sound and economical home financing or with the purpose of [this Act]." Section 9 of the Bank Act (12 U.S.C. 1429) grants each Federal Home Loan Bank the authority to deny any application for advances at its discretion or to impose such conditions for the granted advances "as the bank may prescribe", subject to the approval of the Board.

The foregoing provisions amply demonstrate that the Bank Act confers overriding discretionary powers on the Board to regulate and supervise each and every lending practice of member institutions in order to carry out the Congressional purpose of providing a "sound and economical home financing" system for the United States. Thus, no institution may join

the Bank System unless the Board approves of its home financing policy and the Board may remove institutions from membership, or deny advances, to institutions whose home financing policy fails, in the Board's judgment, to meet the objectives and requirements of the Bank Act. Congress did not see fit, in the Bank Act, to impose any explicit restrictions on the Board's authority in those areas. Nor is there any statutory limitation on the Board's power to adopt regulations in order to effectuate and implement the Congressional intent. As we show below, the legislative history of the Bank Act fully supports the position that Congress deliberately provided the Board with sweeping discretion to carry out the purposes of the Bank Act.

Senator Goldsborough, the floor leader for the bill which ultimately was enacted into law as the Bank Act, affirmed the Board's sweeping powers over member institutions in the following terms:

> "The supervision of the board will be absolute. It will be much more drastic, much more uniform, than the supervision of the Comptroller of [the] Currency over the national banks. . . . The building and loan associations cannot come in unless the board decides that the set-up is proper, and they cannot remain in unless the inspection by the board justifies the board in allowing them to remain. . . . [Members] must subject themselves to such inspection as the regulations of the board may prescribe. The board has absolute control over the institution. It has control as to whether the institution shall be admitted, first, and then after the institution gets in, it has to adhere to every rule and regulation with respect to inspection that the board shall prescribe in order to stay in." 6/

Congressman Reilly, the floor leader of the House bill, was quoted by Senator Robinson as describing the Board's authority in terms similar to those used by the Senate's floor leader:

> ". . . section 4 and section 9 give the Federal loan board, the governing body created in this bill, complete authority to refuse the privileges of the home-loan bank to any home-mortgage organization that does not carry on a legitimate and fair home-mortgage

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6/ 75 Cong. Rec. 12722-3.

> business. . . . the final authority rests with the Board to keep out all organizations which are not functioning in accordance with the plans and purposes of this bill." (Emphasis added.) 7/

As to the plans and purposes of the Bank Act, the legislative history clearly shows that Congress intended this statute to provide relief for individual home owners and potential home owners by making credit more easily available to them, thereby maintaining the value of residential properties. Thus, the House Report on H.R. 12280 -- the bill which was enacted as the Bank Act of 1932 -- contains the following description of the legislation's purpose:

> "The investment in the homes of the country is a significant and imposing portion of our national wealth. Much of the decline in values of residential real estate has been due to the lack of credit. . . . Foreclosures and inability to borrow on homes create distress conditions and low prices in homes. . . . The existence of a home loan bank system will in the future prevent the recurrence of present conditions." 8/

Congressman Hill's description of the statutory purpose is even more explicit:

> "It must be borne in mind at all times that the ultimate purpose of this legislation is to help the small home owner. . . . The main purpose therefore is to bring relief to the great army of small home owners who constitute the mass and the rank and file of our people. . . . It is impossible to segregate the economic from the social conditions of a people. . . . The beneficial effects of this legislation will be far-reaching in bettering both the economic and social conditions of the people." 9/

Congressman Hancock agreed in the following terms:

> "These facts all bring out the point that if home ownership in America is to be fostered. . . we must make provision for a continuous and adequate stream of credit in the home-financing field and make certain that such credit will be available. . . ." 10/

7/ 75 Cong. Rec. 14593.

8/ H.R. No. 1418, 72nd Cong., 1st Sess. (1932).

9/ 75 Cong. Rec. 12606.

10/ 75 Cong. Rec. 12607.

Congressman Hancock also noted that:

> "The primary purpose behind [section 4] is to set up a system which will be sound and permanent and which will foster the objectives of the bill . . . that is, adequate long-term credit facilities for home owners. For this reason, since the system is built up on member institutions, it is important that only regulated and sound institutions be admitted." 11/

Thus, the Home Loan Bank System was designed, in part, to prevent the decline in values of residential real estate due to lack of credit and the Board was given exceedingly broad powers to carry out the statutory purpose. The Bank Act, itself, states that two of its main purposes are "sound mortgage credit and a more stable supply of such credit." 12/

The legislative history and the statutory provisions quoted above demonstrate beyond question that Congress intended the Board to supervise the member institutions of the Home Loan Bank System to assure that the home financing policies of such institutions were consistent with the statutory objectives of maintaining the value of homes by providing an adequate stream of credit. As we show below, it is clear that discriminatory redlining practices are inconsistent with the purposes of the Act, since such practices arbitrarily withhold from particular groups or areas an adequate flow of credit in the home-financing field, thereby depressing the value of homes and contributing to the deterioration of neighborhoods.

B. The Board Has Authority to Prohibit "Redlining" as a Practice Inconsistent with the Purposes of the Bank Act.

The term "redlining" is derived from the practice of marking maps with red lines to indicate areas which are believed to involve high risk to lenders. Redlined areas are usually older city neighborhoods or suburbs, and often are areas which

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11/ 75 Cong. Rec. 12609.

12/ 12 U.S.C. 1425a (added in 1969).

are changing in racial composition. 13/ It is beyond dispute that the lack of investment funds has the effect of discouraging new residents and businessmen from moving into a neighborhood and often hastens the decay of the neighborhood and its transformation into a slum. 14/

Of course, the deterioration of any neighborhood is usually the result of numerous factors, some of which are beyond the control of the home financing industry. Nevertheless, it cannot be doubted that the refusal of lenders to provide funds for certain areas can cause serious problems and exacerbate existing problems. The editors of the Harvard Law Review, following an extensive study of municipal housing code violations, described the key role of lending institutions in the creation of urban decay 15/:

> "Many factors contribute to the development of slums. When signs of blight or impending racial or economic change appear, financial institutions, anticipating a potential drop in market value, become reluctant to invest in an area. Responsible individuals are deterred from purchasing buildings, and present owners may be unable to finance improvements. As surrounding properties deteriorate, homeowners lose faith in the neighborhood and neglect basic maintenance; landlords, fearful that rental income will be too low to justify investment, react similarly. Financing and ownership devolve upon investors who demand substantial short-range profits for their high-risk investment. Because tenants often cannot afford higher rents, landlords may increase their returns by deferring maintenance and by overcrowding individual units. This, in turn, speeds deterioration and overburdens community facilities. As one building after another becomes blighted, the character of the neighborhood worsens, investors demand that their capital be returned more quickly, and the downward spiral continues at an accelerating pace."

13/ The issue herein is the validity of the Board's Regulations which proscribe those redlining practices which relate to a lender's refusal to provide financing for homes because of the racial composition of the area surrounding the home for which the loan application has been made.

14/ Redlining - The Fight Against Discrimination In Mortgage Lending, 6 Loyola University (Chicago) L.J. 71, 72-74.

15/ Enforcement of Municipal Housing Codes, 78 Harv. L. Rev. 801.

Thus, lack of funds for the purchase and improvement of existing homes in the neighborhood in itself can create and add to enormous pressures and a lender's determination that an area is deteriorating may become a self-fulfilling prophecy.

In certain instances, lending institutions which refuse to provide funds to prospective occupants of homes in "redlined" areas have made such funds available to real estate speculators who live outside the area. The latter often are able rapidly to accumulate large blocs of homes in older declining neighborhoods, since redlining by financial institutions often results in panic selling by existing home owners. These absentee landlords, who frequently hold the property for speculative purposes, manifestly lack the commitment to the dwelling itself and to the neighborhood which an owner-occupant would have. Thus, absentee ownership has been described as "one of the major problems" of older urban neighborhoods. 16/ As former Senator Goodell noted, "a major deterrent to proper management is the preponderance of absentee landlords whose feeling of responsibility to the property is limited." 17/ City housing officials are unanimous in their belief that resident ownership results in a superior level of maintenance. 18/ A study in the District of Columbia disclosed that the prevalence of absentee ownership in inner-city neighborhoods substantially resulted from the practice of local lenders who either shunned these neighborhoods altogether or provided financing only for absentee owners. In inner-city neighborhoods, moreover, absentee ownership of multi-family dwellings usually involves a White owner and minority tenants. This situation creates additional problems. "Racial tensions complicate the landlord-tenant relationship. Some landlords are afraid to personally supervise their properties and they collect their rent through the mails." 19/

16/ Nachbaur, Empty Buildings: Abandoned Residential Buildings In The Inner City, 17 How.L.J. 1, 18.

17/ Ibid.

18/ Id, at 19.

19/ Ibid.

The foregoing analysis, we suggest, demonstrates that redlining practices so affect the home-financing policy of an institution as to make it inconsistent with "sound and economic home-financing", as that term is used in section 6(i) of the Bank Act. No elaborate analysis is required to show that the restriction of potential customers for certain markets invariably distorts the prices in these markets. Discriminatory redlining practices also exacerbate the nation's housing shortage by decreasing the stock of housing through abandonment of sound structures in the inner-city. Refusal to lend in particular areas because of the racial composition of these areas has led to the creation of separate housing markets in which real estate speculators exploit minority groups locked into these markets by redlining and other discriminatory practices. The speculators profit from overcrowding, decreased maintenance and increased rents. Thus, individuals may profit from discriminatory redlining, but society as a whole suffers economic loss, since, as noted above, lack of mortgage funds in a neighborhood often leads to speculation, deterioration and abandonment.

In passing the Bank Act, Congress charged the Board with the mandate of providing a healthy climate for the creation of institutions which would supply needed capital for the nation's housing market. Accordingly, the Board could properly determine that discriminatory redlining practices by Bank System members are detrimental to sound and economic financing of homes for a considerable portion of the nation's citizens and has a deleterious effect on the stability of the housing market in general. For these reasons, we submit, sections 4(a), 6(i), 9, 10(a) and 17(a) of the Bank Act clearly provide sufficient authority for the issuance of the Board's anti-redlining regulations.

To be sure, the term "redlining" nowhere appears in the Bank Act and it may even be argued that, when Congress enacted the Bank Act in 1932, it was unaware of the intimate relationship between discriminatory redlining practices and the disruption of a proper home financing market, so that the regulations at issue

herein must therefore exceed the Board's authority. This argument clearly must be rejected since, under settled law, the Board has authority to regulate practices which may not even have existed at the time the legislation was enacted. This is so for the same reason that the Interstate Commerce Commission, pursuant to a definitive ruling by the Supreme Court, may validly regulate aspects of interstate truck leasing even though the Motor Carrier Act of 1935, from which the Commission's authority allegedly is derived, contains no express delegation of power to the Commission in the area of leasing practices. 20/ The Court in that case made it clear that the Commission's lack of specific authority was of secondary importance: 21/

> "Our function . . . does not stop with a section-by-section search for the phrase 'regulation of leasing practices' among the literal words of the statutory provisions."

The Court then added that an administrative agency must be given considerable latitude in carrying out a broad, Congressional mandat even where it asserts the right to make law in an area not even mentioned in the statute. The Court said that it is neither practical nor realistic to assume 22/ . . .

> "that the draftsman of acts delegating agency powers . . . can or do include specific consideration of every evil sought to be corrected. . . . [N]o great acquaintance with practical affairs is required to know that such prescience, either in fact or in the minds of Congress, does not exist. . . . Its very absence, moreover, is precisely one of the reasons why regulatory agencies . . . are created, for it is the fond hope of their authors that they bring to their work the expert's familiarity with industry conditions which members of the delegating legislatures cannot be expected to possess."

In a recent case involving Board regulation of Federal savings and loan associations, the court held that:

20/ American Trucking Associations v. United States, 344 U.S. 298, 309-310 (1953).

21/ Id, at 309.

22/ Id, at 309-310.

> ". . . A meditative and comprehensive examination of the very purpose of the [Federal Home Loan Bank] Board discloses that this agency must act in view of tomorrow. . . ." 23/

Obviously, the identical rationale applies with equal force to Board regulations under the Bank Act.

For the foregoing reasons, we urge the Court to rule that the Board regulations at issue herein are a valid exercise of the authority and discretion conferred on the Board under the Bank Act.

IV

THE BOARD'S ANTI-REDLINING REGULATIONS ARE ALSO A VALID EXERCISE OF ITS AUTHORITY UNDER TITLE IV OF THE NATIONAL HOUSING ACT

Title IV of the National Housing Act ("NHA"), 12 U.S.C. 1724-1730c, established the Federal Savings and Loan Insurance Corporation ("FSLIC"), which insures the accounts of all Federally-chartered savings and loan associations and qualified State-chartered savings and loan associations (12 U.S.C. 1726), including defendant. The preamble to the NHA indicates the broad remedial purpose for which it was passed: "To encourage improvements in housing standards and conditions and to provide a system of mutual mortgage insurance and for other purposes." (48 Stat. 1246.)

The Congressional grant of authority to the Board in the NHA is parallel to the powers granted to the Board under the Bank Act. Section 402(a) of the NHA (12 U.S.C. 1725(a)) provides that the FSLIC "shall be under the direction of the Federal Home Loan Bank Board and operated by it under such bylaws, rules and regulations as it may prescribe for carrying out the purposes of this subchapter." Thus, the NHA contains a broad grant of authority for the Board, as the operating head of the FSLIC, to adopt such regulations, as in its judgment are appropriate, to carry out the purposes of the statute. Similarly, section 403(c) of the NHA (12 U.S.C. 1726(c)) authorizes the FSLIC (and, by

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23/ Bloomfield Federal Savings & Loan Ass'n v. American Community Stores Corporation, ____ F. Supp. ____ (D. Nebraska, 1975).

necessary implication, the Board, the FSLIC's operating head) to reject the application of any applicant [for Federal insurance of its savings accounts] if it finds that [the applicant's] home financing policy is inconsistent with economical home financing. . . ." As noted above, (pp. 12-15), the practice of discriminatory redlining is wholly inconsistent with any proper concept of "economical home financing". Accordingly, it is clear that the Board has plenary authority under the NHA, as well as under the Bank Act, to adopt the anti-redlining regulations at issue herein.

Any question about the extent of the Board's authority in this area must, under settled law, be resolved in favor of the Board, since the courts have long held that a broad delegation of authority to an administrative agency to carry out the purposes of a remedial statute implies a Congressional intent that the statute be so construed by the courts as to afford the agency the broadest possible latitude in interpreting the statute, so long as the agency's interpretation is consistent with and furthers the purposes of the statute. For example, the Fifth Circuit recently held that a statute granting the Federal Deposit Insurance Corporation (the FSLIC's sister agency) authority to prescribe rules governing the payment and advertising of interest on bank deposits should ". . . be given a practical construction, and one which will enable the agency to perform the duties required of it by Congress." Federal Deposit Insurance Corporation v. Sumner Financial Corp., 451 F.2d 898, 904 (1971). The court held that the FDIC's authority extended beyond the insured banks over which the FDIC had regulatory authority and embraced all those who solicited deposits for banks so regulated. By the same token, in construing the NHA, the FSLIC's governing statute, it has been held that:

> "Statutes which are remedial in nature should be construed in a manner consistent with promoting the legislative objectives and purposes. Courts have defined words broadly in order to achieve such a result, especially where a narrow construction would serve to defeat such objectives and purposes. See, Blau v. Oppenheim, 250 F. Supp. 681, 684 (S.D.N.Y., 1966)." Federal Savings and Loan Insurance Corporation v. Lykel, 333 F. Supp. 1308, 1311 (E.D. Pa., 1971).

In Blau v. Oppenheim, supra, relied upon in the Hykel decision, the court held that a suit could be brought under section 16b of the Securities Exchange Act of 1934 (15 U.S.C. 78p(b)) by one who was not a shareholder of the company at the time of the insider transactions complained of, although the plaintiff did not fit within the literal definition of those authorized to bring suit under the statute. It stated: ". . . the courts have not hesitated to define words broadly to assure the legislative purpose where otherwise a strict or literal definition would have defeated the purposes. . . ." 250 F. Supp. at 684. Accord: American Trucking Associations v. United States, supra, 344 U.S. at 309-310 (1953); Public Service Commission of the State of New York v. Federal Power Commission, 327 F.2d 893, 896-897 (C.A.D.C., 1964). Obviously, the Board's anti-redlining regulations, which were adopted as part of a remedial statute, are fully justified under the rationale of the above cases since such regulations "encourage improvements in housing standards", which is one of the legislative purposes of the NHA.

Finally, the Board, as the operating head of the FSLIC, has specific statutory power to issue a cease-and-desist order (after an administrative hearing) to prohibit "unsafe or unsound" practices by insured State savings and loan associations. See Section 407(e) of the NHA, 12 U.S.C. 1730(e). Congress has not defined the term "unsafe or unsound" but has left such definition to the discretion of the Board. For the reasons discussed above, redlining" clearly is an "unsound" practice. Since the Board is statutorily authorized to stop such a practice by a cease-and-desist order under 12 U.S.C. 1730(e), it obviously follows that the Board also is empowered to promulgate a regulation -- such as the anti-redlining regulation -- which defines and prohibits the unsound practice, and puts insured savings and loan associations on advance notice of such pronibition.

In view of the foregoing, we ask the Court to hold that the Board's anti-redlining regulations at issue herein were authorized by the NHA as well as the Bank Act.

CONCLUSION

For the foregoing reasons, the Board, as amicus, urges that the Court rule that the Board regulations at issue herein are valid in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief of the Federal Home Loan Bank Board, amicus curiae, was mailed via United States mail, postage prepaid, this 18th day of June, 1975, to the following attorneys of record of the parties in this proceeding:

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