IN THE UNITED STATES DISTRICT COURT FOR THE

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 UNITED STATES AS AMICUS CURIAE

INTRODUCTORY STATEMENT

Defendants have moved this Court for summary judgment dismissing the action. The gravamen of the Complaint is that defendants, a lending institution and its officers, have violated the Fair Housing Act of 1968, 42 U.S.C. §3601 et seq., by following a policy and practice of refusing to make home mortgage loans, or requiring stricter terms on such loans, in particular residential areas because of the racial composition of these areas. (Complaint, paragraphs 17-18). It is the position of the United States that the Complaint fairly states a claim upon which relief can be granted, and that summary judgment is inappropriate. Briefly, we believe that defendants' alleged practices, which are popularly known as racial redlining:

1. make housing unavailable because of race, in violation of 42 U.S.C. §3604(a); and

2. deny mortgage loans, or discriminate in the terms and conditions of mortgage loans, because of the race of present and future occupants of the neighborhood in which the

borrower wishes to live, in violation of 42 U.S.C. §3605; and

3. interfere with persons exercising the right to voluntary interracial association, in violation of 42 U.S.C. §3617.

As we show below, the proposition that the Act countenances racial redlining is inconsistent with the most reasonable construction of its language and legislative history; with its contemporaneous construction by the agencies charged with its enforcement, and with the general judicial construction which has been accorded to the various provisions of the Fair Housing Act.

INTEREST OF THE UNITED STATES

This suit is brought in substantial part pursuant to the Fair Housing Act of 1968, which was designed to eliminate all traces of racial discrimination from the housing field. */ Marr v. Rife, 503 F.2d 735, 740 (6th Cir. 1974). The Act makes it "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States," 42 U.S.C. §3601, and Congress has accorded this goal the "highest national priority." Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 211 (1972). The United States, through its Attorney General and Secretary of Housing and Urban Development, has important administrative and litigative responsibilities under the Act. See 42 U.S.C. §§3608 through 3613 **/

*/ We do not here address plaintiffs' other statutory claims.

**/ The United States Department of Justice has filed more than 200 lawsuits against more than 600 defendants under the Act since its enactment, and a substantial proportion of them challenge various practices which allegedly contribute to the resegregation of integrated neighborhoods.

Moreover, 42 U.S.C. §3608(c) requires all federal agencies, including the Federal Home Loan Bank (FHLBB), which is responsible for the administration of the home loan banking system, to carry out their responsibilities in a manner which will affirmatively further the right to equal housing opportunity.

STATUTES INVOLVED

Defendants' motion assumes that the issue in this case is whether racial redlining violates 42 U.S.C. §3605. The Complaint herein, however, alleges violations not merely of that section, but of 42 U.S.C. §3601 et seq., which citation embraces the entire Fair Housing Act. The regulations and guidelines of the Federal Home Loan Bank Board which prohibit racial redlining, 12 C.F.R. §§528.2(a)(4) and 531.8(c)(6), were likewise promulgated pursuant to 42 U.S.C. §§3601-3619, and not merely pursuant to §3605.

In our view, the conduct of the defendants alleged in the complaint contravenes the provisions of 42 U.S.C. §§3604(a) and 3617 as well as those of §3605. Accordingly, we set forth the text of each of these sections.

42 U.S.C. 3604: It shall be unlawful:

> (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

42 U.S.C. §3617:

> It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title. This section may be enforced by appropriate civil action.

42 U.S.C. §3605.

> After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: Provided, that nothing contained in this section shall impair the scope or effectiveness of the exception contained in section 3603(b) of this title.

The FHLBB's authoritative interpretation of the Act, discussed in greater detail at pp. 23, infra., provides among other things that

> "The racial composition of the neighborhood where the loan is to be made is always an improper underwriting consideration." 12 C.F.R. §531.8(c)(6).

ARGUMENT

I. FOR THE PURPOSES OF THE PENDING MOTION, THE ALLEGATIONS OF RACIAL REDLINING MUST BE TAKEN TO BE TRUE

In their Motion for Summary Judgment, the defendants allege that the complaint "fails to state a cause of action within the provisions of the controlling statutes." Defendants do not base their motion on any factual showing that they do not engage in racial redlining. On the contrary, defendants apparently rely (brief, pp. 3 and 4) on the language of Rule 12(b)(6) of the Federal Rules of Civil Procedure. The defendants assert in substance that even if all the allegations of the Complaint are true, they do not state a violation of the Fair Housing Act. Accordingly, the motion is directed at the legal sufficiency of the complaint, and amounts in substance to a motion to dismiss the complaint for failure to state a claim upon which relief can be granted.*/

It is well established that a complaint should not be dismissed for failure to state a claim unless it appears to a certainty that the plaintiff can prove no state of facts in support of his allegations that would entitle him to relief, and this principle applies with special force to cases brought pursuant to the civil rights laws. Conley v. Gibson, 355 U.S. 41, 46 (1957); United States v. City of Parma, P.H.E.O.H. Rptr. para. 13,616 at page 14,016 (N.D. Ohio 1973) (Fair Housing Act); Marlowe v. Fisher Body, 489 F.2d 1057, 1066 (6th Cir. 1973);

*/ Even if defendants had predicated their motion on a factual showing that they do not "redline," summary judgment would not lie. On summary judgment, "the inferences to be drawn from the underlying facts . . . must be viewed in the light most favorable to the party opposing the motion." United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). During discovery in this action, it appeared that defendants use a form entitled Professional Residential Appraisal, which explicitly calls for the "ethnic composition" of a neighborhood in which a home mortgage is sought, and whether the neighborhood is "changing." While defendants have objected to discovery as to the actual application of this standard, the form, on its face, sufficiently contradicts any contention that race is not a consideration in defendants' lending practices to raise a genuine issue of material fact which precludes the entry of summary judgment. Rule 56, Federal Rules of Civil Procedure.

Ayar v. Conley, 456 F.2d 1382, 1391 (6th Cir. 1972). Moreover, the material allegations of the complaint are to be taken as admitted for purposes of evaluating the sufficiency of the complaint, and the complaint must be liberally construed and viewed in the light most favorable to the plaintiff. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969); see United States v. City of Parma, supra. Accordingly, the allegations of the Complaint are admitted for the purposes of the pending motion, and the only question presented is whether the Fair Housing Act prohibits the practice of racial redlining.

II. THE PRACTICE OF RACIAL REDLINING VIOLATES THE FAIR HOUSING ACT OF 1968, AS REFLECTED BY THE STATUTORY LANGUAGE, JUDICIAL AND ADMINISTRATIVE CONSTRUCTION, AND LEGISLATIVE HISTORY OF THE ACT

A. The Fair Housing Act

The Fair Housing Act of 1968 was enacted pursuant to the authority of Congress under the Thirteenth Amendment to eliminate the badges and incidents of slavery. Jones v. Mayer Co., 392 U.S. 409 (1968); United States v. City of Black Jack, 508 F.2d 1179 (8th Cir. 1975); United States v. Bob Lawrence Realty Co., 474 F.2d 115 (5th Cir. 1973), cert. den. 414 U.S. 826 (1973). Discriminatory practices which "herd men into ghettos" are relics of slavery, Jones v. Mayer Co., supra, 392 U.S. at 442-443, and the Act, which the Supreme Court described in Jones as a "detailed housing law, applicable to a broad range of discriminatory practices and enforceable by a complete arsenal of federal authority," 392 U.S. at 417, was designed to "replace the ghettos with well integrated, truly balanced living patterns." Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 211 (1972). Practices which contribute to resegregation

and thereby perpetuate the existence of ghettos are therefore unlawful. Otero v. New York City Housing Authority, 484 F.2d 1122 (2nd Cir. 1974). Barrick Realty Inc. v. City of Gary, 491 F.2d 161 (7th Cir. 1974); United States v. Bob Lawrence Co., 474 F.2d 115 (5th Cir. 1973) cert. den. 414 U.S. 826 (1973); Shannon v. HUD, 436 F.2d 809 (3rd Cir. 1970).

The Fair Housing Act is to be accorded a "generous" construction so that it can accomplish the "enormous" task which Congress contemplated for it. Trafficante, supra, 409 U.S. at 211-212; see also Daniel v. Paul, 395 U.S. 298 (1969). The Act was designed to prohibit all forms of discrimination, sophisticated as well as simple-minded, and to reach practices which have a segregative effect, regardless of motivation. United States v. City of Black Jack, supra, 508 F.2d at 1184-85; Williams v. Matthews, 499 F.2d 819, 826 (8th Cir. 1974), cert. den. 419 U.S. 1027 (1974); see also Griggs v. Duke Power Co., 401 U.S. 424 (1971). As Chief Judge Battisti aptly put it in United States v. City of Parma, supra, the principles of broad construction applicable to this statute require "that it be construed in such a manner as to foreclose singular loopholes in the coverage of the Fair Housing Act." P.H.E.O.H. Rptr. at p. 14,015.

The discriminatory practices which the Fair Housing Act was designed to counteract were, in general, predicated on the assumption that racial integration tends to depreciate property values, and that racially homogeneous neighborhoods therefore constitute a sounder investment than those in which there is

a racial mix. Until the 1950's, the Code of Ethics of the National Association of Real Estate Boards explicitly prohibited the introduction into any neighborhood of "members of any race or nationality or any individuals whose presence will clearly be detrimental to property values in that neighborhood," Zuch v. Hussey, P.H.E.O.H. Rptr. para. 13,708, at pp. 14,511-14,512, note 12 (E.D. Mich. 1975) (hereinafter Zuch II)(emphasis added). Even after the words "race or nationality" were eliminated, the Code of Ethics was construed by most real estate brokers to the same effect; blacks and members of other minorities were still thought to have an adverse effect on land value. See generally, Rose Helper, Racial Policies and Practices of Real Estate Brokers, U. of Minn. Press (1969), pp. 233 et seq. Successive Underwriting Manuals issued by the Federal Housing Administration stressed the protection of property values against "adverse influences," which were described as including "the infiltration of inharmonious racial or nationality groups." */ The "Dean" of the American Institute of Real Estate Appraisers wrote that "the infiltration of minority racial or nationalistic groups accelerates the obsolescence of neighborhoods and decreases the volume of home ownership appeal," and that the "essential criterion" of the neighborhood is the residents' homogeneity in "income level, race, ethnic background and, to some extent, religion." Arthur A. May, Valuation of Residential Real Estate, pp. 73-74, (Prentice-Hall, 2d Ed. 1953).

*/ An informative chronology of actions taken by federal agencies to segregate the races in housing, all based on the assumption that integration lowers property values, can be found in Bradley v. School Board of the City of Richmond, 338 F. Supp. 67,215 et seq. (E.D. Va. 1972), rev'd on other grounds 462 F.2d 1058 (4th Cir. 1972), aff'd by an equally divided court. 418 U.S. 717 (1973).

As pointed out in testimony with respect to the proposed Fair Housing Act before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency, many real estate appraisal manuals have been "quite emphatic on the dire results to be expected when minorities were brought into white neighborhoods" and "this axiom is still regarded as 'gospel truth' ... by most realtors, ..." */

One textbook specifically referred to in the 1967 hearings is "McMichaels Appraising Manual," (3rd edition Prentice-Hall)(1945). That book provides a "ranking of races and nationalities with respect to their beneficial effect on land values" with the instruction that "those nationalities and races having the most favorable influence come first in the list and those exerting detrimental effects come last."**/

According to its publisher, "McMichael's Handbook" "has been the bible of the real estate man ... and the best selling book in its field." The fifteenth printing (4th edition) released and distributed in 1970, still contains the "ranking of nationalities" referred to above.

In his book "Forbidden Neighbors" ***/ Charles Abrams has observed that "mortgage lenders were conditioned by the

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*/ Ninetieth Congress. Hearings on S.1358, S.2114 and S.2280 (Fair Housing Act of 1967). Testimony of Seattle Realtor Elliot N. Couden, at 407.

**/ The ranking provided by McMichael is as follows: 1. English, Germans, Scotch, Irish, Scandinavians. 2. North Italians. 3. Bohemians or Czechs. 4. Poles. 5. Lithuanians. 6. Greeks. 7. Russians, Jews (lower class). 8. South Italians. 9. Negroes. 10. Mexicans.

***/ Charles Abrams, Forbidden Neighbors, Harper and Brothers: New York (1955) at 174.

same attitudes on the racial issue as were the realtors ... their mortgage officers read the same texts, swallowed the same myths. Their appraisers were generally allied with NAREB or its affiliate, the American Institute of Real Estate Appraisers."

In a passage in a later book, */ referred to on at least two occasions by proponents of the Fair Housing Act during debate in the Senate, **/ Mr. Abrams described in detail the housing problems of Negroes.

> "The housing available to Negroes is inferior in quality compared to the housing of whites; both the housing and the neighborhood in which he lives shows signs of deterioration; there are fewer amenities; mortgages are difficult to obtain; there is little or no private investment in buildings for Negroes."

Finally, one survey of the practices of lending institutions shortly before the Fair Housing Act was passed reflected that many of them refused to make loans to blacks in white areas, on the grounds that such loans impaired property values, and that many likewise refused to make loans in areas into which Negroes were moving, such areas being "written off" as "going colored" or "conceded to colored" and, accordingly, as representing an unsound investment. Helper, supra, at pp. 170-172.

It was the intent of Congress in providing for "fair housing throughout the United States," to

*/ Charles Abrams, The City is the Frontier, Harper and Rowe: New York (1965).

**/ See remarks of Senator Brooke 114 Cong. Rec. 2525 and remarks of Senator Javits 114 Cong. Rec. 2704.

sweep away all of the practices which emanated from the unfounded assumption that integration in housing depreciates property and is to be avoided. Senator Mondale's articulation of the purpose of the Act as being to "replace the ghettos with truly integrated and balanced living patterns," 114 Cong. Rec. at 3472, quoted in Trafficante, supra, 409 U.S. at 211, is only one of numerous statements in the legislative history which reject in its entirety the proposition that integration lowers property values. */ On February 8, 1968, Senator Mondale introduced into the Congressional Record a study of the effect of racial integration on housing values which, in the Senator's views "explodes ... the myth that the entry of nonwhites into an all-white community diminishes real estate values." **/ Proponents of the legislation likewise recognized the role which lending institutions played in the implementation of that myth. Senator Brooke observed that discriminatory practices by lending institutions existed throughout the country, and that these practices were often based on "the argument that a homogeneous neighborhood makes a loan economically more sound." 114 Cong. Rec. 2526.

Mr. Algernon Black of the American Civil Liberties Union, in testimony during hearings on the Fair Housing Act observed that "lending institutions have been party to the

*/ See e.g. 114 Cong. Rec. 2279 (Senator Brooke) and 114 Cong. Rec. 2704 (Senator Javits).

**/ 114 Cong. Rec. 2692 introducing study by Luigi Laurenti, Property Value and Race (Berkely: Univ. of Calif. Press, 1960) as reported by Anthony Downs in Land Economics (Univ. of Wisconsin), Vol. 36, No. 2, May 1960.

racial zoning of most of the cities in the nation," and have refused to cross the "line between colored and white neighborhoods or zones, even where there have been willing buyers and sellers." */.

Accordingly, while the legislative history does not specifically address the practice of racial redlining by name or direct description, it does reflect an emphatic Congressional rejection of the premise on which that practice is based.

Indeed, when introducing the Fair Housing Act Senator Mondale referred to the

> sordid story of which all Americans should be ashamed developed by this country in the immediate post World War II era, during which the FHA, the VA, and other Federal agencies encouraged, assisted, and made easy the flight of white people from the central cities of white America, leaving behind only the Negroes and others unable to take advantage of these liberalized extensions of credit and credit guarantees. 114 Cong. Rec. at 2278 (1968)

Citing the foregoing language, although in a somewhat different context, the Court of Appeals for the Second Circuit recently held that Title VIII was designed, among other things, " to protect people ... who continue to live in ghettoized communities." Evans v. Lynn, ____ F.2d ____ No. 74-1793 (2nd Cir. June 2, 1975). Accordingly, the Courts have held in a variety of contexts that the Fair Housing Act was designed to counteract racially based practices which imperil stable integrated living

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*/ Hearings before the Subcommittee on Housing and Urban Affairs of the Committee on Banking and Currency, U.S. Senate, Ninetieth Congress, on S.1358, S.2114, and S.2280, at p. 181. See also Senator Mondale's favorable comments on Mr. Blacks' testimony. 114 Cong. Rec. 2281 and 2541.

patterns and to provide legal redress to, among others, the residents of the integrated areas, even though any discrimination may not be directed against them. See, e.g., Shannon v. HUD, 436 F.2d 809 (3rd Cir. 1970); Barrick Realty, Inc. v. City of Gary, 491 F.2d 161, 164-165 (7th Cir. 1974); United States v. Bob Lawrence Realty, 474 F.2d 115 (5th Cir. 1973); cert. den. 414 U.S. 826 (1973); Cf. Clark v. Universal Builders, 501 F.2d 324 (7th Cir. 1974). Since it was the purpose of the Act to "fulfill, as much as possible, the goal of open integrated residential housing patterns and to prevent the increase of segregation [of nonwhite persons] in ghettos," Otero v. New York City Housing Authority, 484 F.2d 1122, 1134 (2nd Cir. 1974), the Act can hardly have been intended to countenance practices by lenders, such as the practice alleged in the Complaint in this case, which "write off" integrated communities - the very kinds of communities which Congress explicitly intended to promote.

B. 42 U.S.C. §3604(a)

42 U.S.C. 3604(a) makes it unlawful, among other things, to make a dwelling unavailable to a person, or to deny a person a dwelling, because of race. While some earlier civil rights laws prohibited discrimination against a person only because of such individual's race, see e.g. 42 U.S.C. §2000e-2(a) (employment discrimination), §3604(a) prohibits discrimination because of race generally, without regard to whether or not it was the plaintiff's race that precipitated the denial of housing. Since the complaint in this action specifically alleges that the plaintiffs were denied a loan because of race - namely, the race of the persons living in the neighborhood (Complaint paras. 17-18) - and since these allegations of conduct which violates the language of §3604(a) must be accepted as true for the purpose of this motion, these plaintiffs have a right to prove their case, and the action should not be dismissed.

The authorities uniformly negate any suggestion that §3604(a) should be read less expansively than its language directs. In United States v. City of Parma, supra, the Court, in holding that the Act applies to racially exclusionary land use practices by a municipality */, discussed the language of §3604(a) as follows:

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*/ Accord: United States v. City of Black Jack, supra. See also Mayers v. Ridley, 465 F.2d 630 (D.C. Cir. 1972), holding that the Act prohibits a registrar of deeds from recording instruments containing racially restrictive covenants.

> While it is true that the allegations of the Government's complaint do not charge defendant specifically with refusing to sell or rent dwellings on racial grounds, the prohibitions contained in Section 3604(a) are clearly not so limited. 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 deemphasized. 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.' United States v. Youritan Constr. Co., 370 F. Supp. 643 (N.D. Calif. 1973). */

Other courts have likewise held that Section 3604(a), is "as broad as Congress could have made it" and have applied the language of this Section to varied factual circumstances, e.g. Zuch v. Hussey, 366 F. Supp. 553, 556 (E.D. Mich. 1973) (racial steering); United States v. Hughes Memorial Home, ___F. Supp. ___, P.H.E.O.H. Rptr. para. 13,708 (C.A. No. 75-0005 (W.D. Va. May 2, 1975) (discriminatory practices of orphanage covered). Indeed, the Courts have held that as a result of its "catchall" character, §3604(a) reaches even conduct more specifically governed by other provisions of the Act. See, e.g. United States v. Reddoch, P.H.E.O.H. Rptr. para. 13,569, Conclusion of Law No. 9 (S.D. Ala. 1972), aff'd per curiam 467 F.2d 897 (5th Cir. 1972) and United States v. City of Black Jack, supra respectively holding §3604(a) applicable to conduct prohibited by §§3604(d) and 3617.

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*/ The Youritan decision cited by Chief Judge Battisti was subsequently modified as to one item of relief and aff'd 509 F.2d 623 (9th Cir. 1975).

The injury suffered by the plaintiffs in this case, as a result of the alleged violation of §3604(a), is similar to that successfully asserted by the complainants in Trafficante v. Metropolitan Life Ins. Co., supra. The plaintiffs in Trafficante alleged that the landlord's discriminatory practices vis-a-vis nonwhite applicants restricted them in the exercise of their opportunity for voluntary interracial association by keeping their apartment complex all-white, and the Supreme Court held that this opportunity was protected by the Fair Housing Act. The conduct alleged in Trafficante had the prohibited effect of preventing the plaintiffs' present neighborhood from becoming integrated; the conduct alleged in the present case injures the identical interest in interracial association by preventing plaintiffs from moving into a neighborhood which is already integrated. In each case, such conduct adversely affects "the very quality of [plaintiffs'] daily lives." Trafficante, supra. 409 U.S. at 211.

The decision in Trafficante conclusively refutes defendants' suggestion (Memorandum, p. 4) that the Act prohibits discrimination only on account of the race of the plaintiff or of persons in privity with him. In Trafficante, there was no privity alleged between plaintiff and the unnamed blacks who were allegedly denied residence in the complex where plaintiffs lived; the injury, as here, was the restriction on plaintiffs' opportunity to live near any substantial number of nonwhite citizens. Moreover, the

Court in Trafficante explained that:

> 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 ensuring fair housing, as they too suffered.
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> * * *
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> The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, "the whole community", 114 Cong. Rec. 2706 . . ." 409 U.S. at 210-211.

See also Topic v. Circle Realty Co., 377 F. Supp. 111 (C.D. Calif. 1974) (appeal pending); Heights Community Congress v. Rosenblatt Realty Co., P.H.E.O.H. Rptr. para. 13,702 (N.D. Ohio 1975); Village of Park Forest v. Fairfax Realty Co., P.H.E.O.H. Rptr. para. 13,699 (N.D. Ill. 1975), all applying Trafficante to accord standing to black and white residents of integrated communities to contest alleged "steering" practices of real estate companies which threaten to resegregate their neighborhoods.

The racial redlining alleged in the present case has much in common with the practice of racial steering, which has been defined as including any conduct by a real estate agent which influences residential choice because of race, and which has been held to violate §3604(a) on the grounds it makes housing unavailable because of race. See Zuch v. Hussey, 366 F. Supp. 553 (E.D. Mich. 1973) (Zuch I); Zuch v. Hussey, P.H.E.O.H. Rptr. para. 13,706 at p. 14,505 (E.D. Mich. 1975) (Zuch II); United States v. Robbins, P.H.E.O.H. Rptr. para. 13,655 (S.D. Fla. 1974). The practice of steering treats racially integrated or transitional neighborhoods differently from those inhabited predominantly by white persons;

blacks are channelled towards, and whites away from, residence in the former kind of neighborhood, while the reverse is true of the latter. Such conduct is unlawful because it "tends to perpetuate racially segregated communities", Zuch I, supra, 366 F. Supp. at 55 ; Zuch II, supra, P.H.E.O.H. Rptr. at p. 14,506. */

Just as the real estate agent who engages in steering restricts integrated areas to a certain type of customer because of the race of the residents, and thereby perpetuates ghettos, so the lender who redlines "writes off" such an area for racial reasons, with similar segregative consequences. The process resulting from such "disinvestment" based on impending racial change has been well described in the Harvard Law Review:

> 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

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*/ The prohibited practice of "blockbusting" likewise involves a difference in the treatment of an area based on the race of residents in the area. It often consists of heavy solicitation of listings in integrated areas, to which real estate agents flock like "flies to a leaking jug of honey". United States v. Bob Lawrence Realty Co., supra, 474 F. 2d at 124, note 13; Zuch II, supra, P.H.E.O.H. Rptr. at p. 14,507, with no comparable solicitation in white areas. In Bob Lawrence, the order affirmed by the Court of Appeals explicitly required defendants to refrain from treating white and integrated areas differently in relation to their solicitation practices - a precise analog to what plaintiffs seek here. See Bob Lawrence, supra, 474 F.2d at 118-119, note 6.

> 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. */

So, too, outlined in a report by the "Governor's Commission on Mortgage Practices", entitled Home Ownership in Illinois - The Elusive Dream (1975), at pp. 7-8

> Redlining (disinvestment) is a complex problem caused in part by the assumption that complete racial resegregation of neighborhoods in major cities is inevitable and that to cut one's losses, one should anticipate this trend in making short run decisions. When this assumption is shared by homeowners, apartment managers, real estate brokers, institutional mortgage lenders, appraisers and government regulatory agencies, it easily becomes a self-fulfilling prophecy.
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> Redlining is a long-run result of redlining, neighborhood deterioration and abandonment, are not caused by the presence of blacks, latinos or other minorities in city neighborhoods and communities. Many individuals, financial institutions, government agencies and other sectors of the housing industry, however, mistakenly believe this to be true, and their actions collectively result in the disinvestment and eventual deterioration of neighborhoods and communities. **/

See also Daniel A. Searing, Discrimination in Home Finance 48 Notre Dame Lawyer 1113 (June 1973).

As reflected in the above passages, racial redlining is based upon the same set of assumptions about the desirability of racial homogeneity as are the kindred practices of racial

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*/ Note, Enforcement of Municipal Building Codes, 78 Harv. L. Rev. 801 (1965).

**/ This Report cites numerous other studies which have reached a similar conclusion.

steering and blockbusting, and ultimately results in undesirable conditions in housing and in life for citizens of racially integrated areas. In Clark v. Universal Builders, 501 F.2d 324 (7th Cir. 1974), the Court held that the granting of less favorable terms and conditions of financing based on racial residency patterns, when superimposed on the racially dual housing market, violates the Civil Rights Act of 1866, 42 U.S.C. §1982. If such conduct is reached by §1982, it is surely also within the ambit of a "comprehensive" statute designed to "eliminate all traces of racial discrimination in the housing field." Marr v. Rife, supra, 503 F.2d at 740.

B. 42 U.S.C. §3605 */

Since we believe that Section 3604(a) unambiguously covers the conduct described in the complaint, the present motion can be decided without specific disposition of the applicability of Section 3605 to defendants' alleged conduct. Nevertheless, it is submitted that the language of Section 3605, while somewhat ambiguous, should be "generously" construed, Trafficante, supra, and that, if so construed, it prohibits the conduct alleged in the complaint.

Whether Section 3605 prohibits racial redlining turns upon whether residents of the integrated areas allegedly "written off" by defendants are within either the category "person associated with him [the applicant] in connection with such loan," (hereinafter referred to as Alternative 1),

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*/ The text of §3605 appear on p. 4, supra.

or the category "present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings" (hereinafter referred to as Alternative II). While the term "associated with him" in Alternative I is not defined, and could conceivably be read as including future neighbors, we believe that the fair sense of Alternative I is that it prohibits discrimination based on the race of the applicant or of those who could reasonably be described as being in privity with him. Alternative II, however, relates to "present or prospective . . . occupants" of dwellings in relation to which the loan is made. This is a category of persons, not connected or associated with the prospective borrower, who, by definition, already live or will live in the area in which the applicant wishes to live. While the language could be clearer, c.f., United States v. Mintzes, 304 F. Supp. 1305 , (D. Md. 1969), we believe that the second alternative must have been intended to serve some purpose other than to repeat the "first alternative", and that the reference to dwellings and persons in the plural in the second alternative is consistent with the proposition that Congress had in mind the occupants of the area generally. Accordingly, we believe that the interpretation of the statute adopted both by the Federal Home Loan Bank Board and by the Department of Housing and Urban Development is the most reasonable in light of the broad remedial purposes of the Act. As the Supreme Court put it in according a broad construction to the similarly ambiguous phrase "place of entertainment"

in the public accommodations section of the Civil Rights Act of 1964, 42 U.S.C. 2000a(b)(3):

> Admittedly, most of the discussion in Congress regarding the coverage of Title II focused on places of spectator entertainment rather than recreational areas. But it does not follow that the scope of §201(b)(3) should be restricted to the primary objects of Congress' concern when a natural reading of its language would call for broader coverage. In light of the overriding purpose of Title II "to remove the daily affront and humiliation involved in discriminatory denials of access to facilities ostensibly open to the general public," H.R. Rep. No. 914, 88th Cong., 1st Sess., 18, we agree with the en banc decision of the Court of Appeals for the Fifth Circuit in Miller v. Amusement Enterprises, Inc., 394 F.2d 342 (1968), that the statutory language "place of entertainment" should be given full effect according to its generally accepted meaning and applied to recreation areas.

Daniel v. Paul, 395 U.S. 298, 307-308 (1969).

C. 42 U.S.C. §3617

We believe that defendants' alleged racial redlining also violates §3617 in that it interferes with the plaintiffs' exercise of their right to voluntary interracial association, which is protected by the Act under Trafficante.

In general, §3617 has been held applicable to situations in which a willing seller or builder is prepared to make a dwelling available to a person, but is prevented from doing so by the defendant, because of race. In United States v. City of Black Jack, supra, the Park View Heights Corporation was prepared to build dwellings in Black Jack for black residents of St. Louis, but the city interfered with this plan by rezoning the property because of race. This was held to violate §3617. Accord: United States v. City of Parma, supra.

In Tokaji v. Toth, ___ F. Supp. ___, P.H.E.O.H. Rptr. para. 13,679 (N.D. Ohio, 1974), plaintiffs were rental agents who were prepared to rent to blacks, but were allegedly fired by the defendant, their employer, for doing so. The defendants were likewise held to have violated §3617. Accord: Smith v. Stechel, 510 F.2d 1162 (9th Cir. 1975).

In the present case, the Complaint alleges that the plaintiffs were prepared to buy a home in an integrated area from a willing seller, but were temporarily prevented from doing so by the racially based policy of the bank. This type of race-connected interference with the transfer of a dwelling by a willing seller to a willing purchaser is the very kind of conduct reachable by §3617, and the Complaint should be sustained under that section of the Act as well as under §§3604(a) and 3605.

D. Administrative Interpretation of the Fair Housing Act

The Fair Housing Act has been unambiguously interpreted as applicable to racial redlining by the two agencies responsible for its administration. On April 25, 1972, the United States Department of Housing and Urban Development (HUD) issued a report with respect to an extensive survey conducted of lending institutions by HUD in cooperation with the four federal financial regulatory agencies, the Department of Justice, the U.S. Commission on Civil Rights and the Office of Management and Budget. The report states that "redlining of areas in a community in which minority

group families are concentrated and the refusal to make loans in these areas . . . are prohibited by Title VIII."

HUD is the agency with the primary responsibility for administration of the Fair Housing Act, and the Supreme Court has specifically held that its interpretation of the language of the Act is entitled to "great weight". Trafficante, supra. 409 U.S. at 210. The report quoted here was specifically designed to be a part of a comprehensive plan to "assist lending institutions to comply with the requirements of federal civil rights laws" and to assist regulatory agencies to develop standards or advisory guidelines to aid regulated institutions in implementing affirmative action programs under Title VIII. A copy of this HUD report is attached hereto.

Regulations and guidelines issued by the Federal Home Loan Bank Board similarly interpret the Act as prohibiting racial redlining, and provide in relevant part as follows:

> 12 CFR 528.2(a)(4) "No member institution shall deny a loan or other service rendered by the member institution for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or discriminate in the fixing of the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of such loan or other service because of the race, color, religion, or national origin of
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> * * *
>
> (d) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling or dwellings in relation to which such loan or other service is to be made or given." (emphasis added)

12 CFR 531.8(c)(6) "Age, income level, or racial composition of neighborhood. Refusal to lend in a particular area solely because of the age of the homes or the income level in a neighborhood may be discriminatory in effect since minority group persons are more likely to purchase used housing and to live in low-income neighborhoods. The racial composition of the neighborhood where the loan is to be made is always an improper underwriting consideration."

In a lengthy formal opinion dated March 21, 1974, the Home Loan Bank Board's general counsel stated

> . . . the practice by member institutions of refusing to extend credit, and the practice of extending credit on terms that are less favorable than those usually offered, to borrowers whose security property is located within a predetermined geographic area or areas, because of the location of the property, violate section 528.2(d) if such practices have a discriminatory effect against members of racial ethnic or religious groups.

In an earlier formal opinion dated February 7, 1974 relating to property appraisal forms, the general counsel of the Home Loan Bank Board said:

> . . . to extend credit on the basis of an appraisal form which calls for information relating to the ethnic composition of a neighborhood violates section 528.2(d) of the Board's regulations, and therefore use of such forms */ by member institutions must be discontinued . . . The use of appraisal forms which call for racial information regarding the neighborhood clearly violates the well-established legal prohibition against consideration of racial factors in real estate transactions.

The authority of the Home Loan Bank Board to regulate lending institutions flow from three related enactments of the 1930's aimed at the development of a nationwide system of home financing institutions. **/ The three statutes

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*/ See note, * p. 5, reflecting defendants' use of an appraisal form which is improper under this standard.

**/ Federal Home Loan Bank Act of 1932; Home Owner's Loan Act of 1933; National Housing Act of 1934.

provide a comprehensive regulatory scheme for federal home loan banks, federal savings and loan associations, and state chartered federally insured savings and loan institutions, and the Board has plenary regulatory power over institutions such as the defendant. Accordingly, Federal Home Loan Bank Board is charged with the contemporaneous construction of the provisions of Title VIII relating to financing of housing, and thus shares with HUD the administrative expertise as to the issues in this case.

In Udall v. Tallman, 380 U.S. 1 (1964), the Supreme Court, speaking through Chief Justice Warren, said:

> "When faced with a problem of statutory construction this court shows great deference to the interpretation given the statute by the officers or agency charged with its administration . . . we need not find that its (the agency's) construction is the only reasonable one, or even that it is the result which we would have reached had the question arisen in the first instance in judicial proceedings . . . Particularly is this respect due when the administrative practice at stake involves a contemporaneous construction of a statute by the men charged with the responsibility of setting the machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new."

Although courts are not conclusively bound by administrative constructions of a statute, */ the Supreme Court has held that such interpretations are persuasive and should be followed unless they are "inconsistent with an obvious congressional intent" or unless there are "compelling

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*/ O'Neil v. United States, 410 F.2d 888 (6th Cir. 1969).

indications that it is wrong". (emphasis added). Espinoza v. Farah Mfg. Co., 414 U.S. 86, 94-95 (1973). Absent such considerations, administrative interpretations of what a statute means are entitled to "great weight", Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205, 210 (HUD's interpretation of Fair Housing Act); and "great deference", Griggs v. Duke Power Co., 401 U.S. 424, 433, 434 (1970) (EEOC Regulations as to meaning of Equal Employment Opportunity Act).

Administrative interpretations of a statute are particularly persuasive where the agency is charged with implementing a new law in an area of complex regulation. In American Trucking Assn. v. United States, 344 U.S. 298, 309-310 (1952), the Supreme Court, in articulating this principle, said it was unreasonable to expect that those who draft legislation

> "can or do include specific consideration of every evil sought to be corrected. It is for this reason that regulatory agencies such as the Commission (Interstate Commerce Commission) are created, for it is the fond hope of their authors that they bring to their work the expert's familiarity with the industry conditions which members of the delegating legislatures cannot be expected to possess."

See also United States v. Georgia Power Co., 474 F.2d 906, 913 (5th Cir. 1973) (EEOC Guidelines under Title VII should be followed "absent a showing that some cogent reason exists for non-compliance".) In this case, two independent agencies with expertise in the field have reached the identical conclusion that racial redlining is unlawful. Moreover, there has been no showing made or attempted, nor does it appear that such a showing is possible, that the regulations

at issue are "obviously" contrary to the intent of Congress or not aimed at the evils which Congress intended to correct.

Finally, 42 U.S.C. §3608(c) provides that

> "All executive departments and agencies shall administer their programs affirmatively to further the purposes of this subchapter . . . "

and courts have held that this obligation is not merely a formal one, but, on the contrary, requires affected agencies to take effective action to promote equal housing opportunity. Shannon v. HUD, supra, 436 F.2d at 816; Otero v. New York City Housing Authority, supra, 484 F.2d at 1129, 1133-34. Under these circumstances, and in view of the adverse effect of racial redlining on the interests sought to be protected by the Fair Housing Act, the reading of the Act by HUD and the F.H.L.B.B. should be held to be consistent with the Congressional intent and persuasive to the courts.

CONCLUSION

For the foregoing reasons, the United States, amicus curiae, respectfully requests that defendants' motion for summary judgment be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Application of the United States for Leave to file a brief as amicus curiae, and proposed brief, upon the parties hereto by placing copies in the United States mail, postage prepaid, addressed to their attorneys, as follows:

To the Defendants:

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This 18th day of June, 1975.

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April 25, 1972

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF EQUAL OPPORTUNITY
PRIVATE LENDING INSTITUTIONS QUESTIONNAIRE
INITIAL REPORT ON RETURNS

I. Background

Title VIII of the Civil Rights Act of 1968, the Federal Fair Housing Law, was approved on April 11, 1968. In its policy statement Title VIII declares: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." Title VIII also sets forth a comprehensive statutory plan for eliminating and preventing discrimination in the sale and rental of housing because of race, color, religion, or national origin.

Among the acts and practices expressly declared to be unlawful by Title VIII is discrimination in the financing of housing. By Section 805, discrimination in residential mortgage lending as to all housing was prohibited as of January 1, 1969. Also, Section 808 directs the Secretary of Housing and Urban Development to administer the provisions of the fair housing law and provides: "All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes."

The role of mortgage lending institutions with regard to housing for members of minority groups is very significant, because mortgage credit is essential to acquiring housing. Many minority group members believe that mortgage lending institutions practice discrimination in refusing to make, or in the making of loans to members of minority groups. Such disparate treatment is alleged to take many forms, such as the denial of mortgage loans to members of minority groups, the "red-lining" of areas in a community in which minority group families are concentrated and the refusal to make loans in these areas; and the offering of loans to members of minority groups under terms more stringent than those offered members of the majority group; e.g., higher down payments, higher interest rates, higher credit standards, and lower appraisal values. All such practices are prohibited by Title VIII, yet they are difficult to detect because few complaints are filed and, where they are, a lending institution may justify its action in a particular case on the basis of the credit worthiness of the complainant.

To develop constructive approaches to this problem, HUD convened a meeting in July 1969 consisting of representatives of the Federal Reserve Board (System), the Federal Deposit Insurance Corporation (FDIC), the Comptroller of the Currency, the Federal Home Loan Bank Board (FHLBB), and the Farm Credit Administration. Representatives also attended from the Department of Justice and the U. S. Commission on Civil Rights. The purposes of this meeting were (1) to review and appraise steps already taken by the agencies; (2) to consider the taking of additional steps to assure compliance with Title VIII; and (3) to discuss the adoption by the regulatory agencies of certain proposals presented by HUD, suggestive of additional action the agencies could take to assure compliance with the requirement of Section 805 of Title VIII.

Among the HUD recommendations to the regulatory agencies were these:

1. The issuance of regulations or binding instructions that each lending institution keep on file all loan applications, indicating the race, or color of the applicant, together with other relevant information, such as the character and location of the neighborhood in which the property involved is located, and if the application is disapproved the reason why.

2. A requirement that each lending institution post a notice in its lobby stating that the institution does not discriminate in mortgage lending and informing the public that such discrimination is in violation of Section 805 of the Federal Fair Housing Law.

3. The development of a special agency form of examining document for use by agency examiners to check on discriminatory lending practices prohibited by Title VIII.

4. Development of a data collection system designed to reveal acts or patterns or practices of discrimination in home mortgage lending operations covered by Title VIII.

The regulatory agencies agreed to cooperate with HUD in HUD's administration of Title VIII, but expressed reservations as to taking any affirmative action, such as the issuance of regulations in supplementation of Title VIII requirements. They did, however, agree (with the exception of the Farm Credit Administration) to the development of a questionnaire to be sent to all member lending institutions. The purpose of the questionnaire was to obtain information from the Government supervised private lending institutions concerning policies and practices they employ in making loans for the purchase, construction, or rehabilitation of single-family homes and multifamily dwelling units, and indicating the extent to which the problem of discrimination in home mortgage lending exists. The information obtained was to be reviewed and evaluated by HUD and the regulatory agencies to determine if it appears that residential loans are being made by lending institutions in compliance with the nondiscrimination requirement of Title VIII and, if not, to recommend steps that should be taken to develop procedures to assure compliance with Sections 805 and 808 of Title VIII.

The questionnaire was developed by HUD with the cooperation and assistance of representatives of the four named regulatory agencies and of the Department of Justice, the U.S. Commission on Civil Rights, and the Office of Management and Budget.

On December 29, 1971, the regulatory agencies announced the taking or consideration of a number of affirmative actions relating to Title VIII. The Federal Home Loan Bank Board and Federal Reserve Board advised that effective March 1, 1972, (1) all advertising of real estate lending services by banks which they regulate must indicate that loans are made without regard to race, etc.; and (2) a lobby notice attesting to a policy of nondiscrimination must be posted in all regulated banks. The Federal Reserve Board also indicated that it was using a civil rights questionnaire in all bank examinations, that a special course of study on the requirements of Title VIII was included in Federal Reserve schools for bank examiners, and that bank examiners concerned themselves with bank compliance with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964.

The Federal Deposit Insurance Corporation and the Comptroller of the Currency indicated that they were considering proposing regulations pertaining to advertising and the posting of notices similar to those of the Home Loan Bank Board and the Federal Reserve Board; and, in addition, a requirement for collection of racial and ethnic data on applicants by banks and retention of loan applications. Comments were invited for a period of 60 days from publication.

On January 19, 1972, the Federal Home Loan Bank Board published proposed regulations which covered not only the advertising and lobby notice requirements covered in its December 29 issuance, but also racial recordkeeping and a requirement of nondiscrimination in employment practices.

II. The Questionnaire

Returns and Tabulation

The questionnaire was distributed by the regulatory agencies which received the returned forms, with accompanying supplementary materials, and forwarded the forms and materials to HUD. Information received from the regulatory agencies and tentative computation of answers in the questionnaire show that 18,456 forms were distributed and that there has been a return of 91 percent, varying by agency from 69 to 99 percent. Of the 16,834 lenders that returned forms, 15,627 or 92 percent make home loans and, with a few exceptions, answered the questions.

For purposes of this initial report, four analyses have been prepared. Two of them (appendices 1 and 2) include answers to certain questions submitted by savings and loan associations in the 50 listed cities with the largest minority population. (Similar information

as to banks making residential loans in these cities may be considered at a later date.) The two other analyses contain similar information covering all savings and loan associations and all banks in all of the States, Puerto Rico, and the Virgin Islands that are supervised by the Federal Reserve Board, the Comptroller of the Currency, and the FDIC. These analyses are set forth in appendices 3 and 4.

As background for the answers to the questions, it is to be noted that the 50 cities listed in appendices 1 and 2 contain in excess of 39 million total population. Of this total, minorities*/ constitute a 36 percent average population for all of the cities combined.

Lending Practices

A. Savings and Loan Associations

The following tables based on appendices 1 and 2 summarize the lending practices of 582 savings and loan associations in the 50 cities with the largest minority population.

Table 1 - Savings and Loan Associations (50 Cities) Providing Notice to Customers and the Public that Loan Applications are Considered Without Regard to Race

	Gave Notice	Did Not Give Notice	Failed to Answer
Number	330	225	27
Percent	57	39	5

Table 1 shows that three of eight savings and loan associations in cities with substantial minority populations have taken no action to advise the public or prospective borrowers that loans are made solely on credit standing and without regard to race. Development of a uniform notice, such as a poster, would give an opportunity to all institutions to assist in an education program to ensure that minorities are fully apprised of their rights under Title VIII to receive housing loans without regard to race, color, religion or national origin.

Table 2 - Savings and Loan Associations (50 Cities) Which Refuse to Make Residential Loans in One or More Areas With High Concentration of Minority Group Members

	Refuse to Make Loans	Don't Refuse to Make Loans	Failed to Answer
Number	103	463	16
Percent	18	80	3

*/ "Minorities" includes Negro/Black, Spanish American, American Indian, Oriental and other Minorities (such as Eskimos).

Table 2 shows a significant number of savings and loan associations (18%) are apparently denying loans in minority group areas. Appendix I shows that in St. Louis and Buffalo a majority of the associations reporting from those cities deny loans in minority areas. Appendix I also shows that 39% of those savings and loans refusing to make loans may be found in four cities: Chicago, St. Louis, Cleveland, and Baltimore.

Table 3 - Savings and Loan Associations (50 Cities) - Selected Characteristics Considered in Making Loans

	Racial or Ethnic Characteristics of Neighborhood			Proximity of Low-Rent or Public Housing Projects			Income Levels of Neighborhood Residents		
	Considered	Not Considered	Failed to Answer	Considered	Not Considered	Failed to Answer	Considered	Not Considered	Failed to Answer
Number	98	450	33	89	456	37	118	430	34
Percent	17	77	6	15	78	6	20	74	6

Table 3 shows that a sizeable number of lending institutions consider racial or ethnic characteristics of a neighborhood in making loans. Further analysis of the second and third parts of Table 3 will be required to determine whether the effect of such factors is discriminatory and, if so, what policies should be suggested or required to overcome such discriminatory effects.

Table 4 - Savings and Loan Associations (50 Cities) - Proportion of Single-Family Loans Made to Minority Group Members

	0 - 5%	5 - 15%	15 - 25%	25 - 50%	50 - 75%	75 - 100%	Failed to Answer
Number	171	181	73	41	10	13	93
Percent	29	31	13	7	2	2	16

Table 4 shows that a substantial number of savings and loan associations (29%) are making fewer than 5% of their loans to minorities although they are operating in cities with from 16% to 74% minority populations. Of course minority homeownership is generally less than proportional to minority population, but even allowing for this fact, the figures are striking. For example, in Cleveland blacks are 28% of all homeowners (data for other minority homeowners are not available) but not a single savings and loan of 9 reporting stated that it made more than 25% of its loans to minorities. In Detroit, where blacks are 33% of all homeowners, no savings and loan reported making more than 15% of its loans to minorities. In Washington, D. C., where blacks are 61% of all homeowners, no savings and loan reported making more than 50% of its loans to minorities and only 2 exceeded 25%.

Further analysis of the data seems to be warranted. The location of a savings and loan association within a city may, of course, influence its loan portfolio. It is also known that savings and loans have traditionally not been big originators of FHA loans which are often handle by mortgage bankers. These may be among the factors causing the smaller percentage of minorit serviced by savings and loans than the minority homeownership percentage.

In addition, the nonreporting figure of 16% strongly suggests the need for racial data recordkeeping so that the impact of lending practices can be ascertained and evaluated.

Employment and Management Practices

Several questions on the questionnaire relate to employment practices of lending institutions. Although Title VIII does not deal with employment, discriminatory employment practices may well accompany discriminatory housing or lending practices. The Department of Justice often includes requirements for affirmative action in employment in its consent decrees. And at least one other regulatory agency, the Federal Communications Commission, has adopted regulations with respect to the employment practices of its licensees.

Table 5 - Savings and Loan Associations (50 Cities) - Total and Minority Employment

	Total	Loan Officers	Managers and Ass't Managers	Cashiers and Tellers	Appraisers
Total employees	28,204	1,542	3,283	7,555	1,010
Minority employees	2,899	58	151	915	39
Percent Minority	10	4	5	12	4

Table 5 shows that 10% of savings and loan association employees in the 50 cities with the largest minority population are minority. This is not a favorable percentage when compared with the overall 35% population figure for minorities in those cities.

Individual cities reveal great disparities between minority population and total minority employment. In Chicago, for example, the minority population is 42%, the minority savings and loan employment is 5%. In Detroit, the figures are 46% and 10%. In Atlanta, 53% and 10%. In Washington, D.C., 74% and 15%.

Table 6 - Savings and Loan Associations (50 Cities) with Minority Board Members or Loan Committee Members

	Minority Members	No Minority Members	Failed to Answer
Number	46	507	29
Percent	8	87	5

Table 6 shows a very low level of participation by minorities in key policy-making positions of lending institutions, particularly in view of the large minority populations in the cities involved.

Lending Practices

B. All Lending Institutions

The following tables summarize the lending practices of the 15,627 lending institutions which returned questionnaires nationwide. These data include responses of the 567 savings and loan associations tabulated in part A, above.

Table 7 - All Lending Institutions Providing Notice to Customers and the Public that Loan Applications are Considered Without Regard to Race

	Gave Notice	Did Not Give Notice	Failed to Answer
Number	7,017	7,239	1,371
Percent	45	46	9

Here, as in Table 1, we note that although many lending institutions have provided notice to the public that Title VIII applies to their lending practices, an almost equal number have not. A uniform notice, such as a poster, would allow institutions to participate in an educational program to advise minorities of their rights under Title VIII.

Table 8 - All Lending Institutions Which Refuse to Make Residential Loans in One or More Areas with High Concentrations of Minority Residents

	Refused to Make Loans	Don't Refuse to Make Loans	Failed to Answer
Number	415	14,723	489
Percent	3	94	3

A small percentage of lending institutions will not make loans in areas of heavy minority concentration. The existence of such a policy would seem to run counter to Title VIII, although the impact of the policy on minority housing opportunities requires additional analysis.

Table 9 - All Lending Institutions - Selected Characteristics Considered in Making Loans

	Racial or Ethnic Characteristics of Neighborhood			Proximity of Low-Rent or Public Housing Projects			Income Levels of Neighborhood Residents		
	Considered	Not Considered	Failed to Answer	Considered	Not Considered	Failed to Answer	Considered	Not Considered	Failed to Ans.
Number	899	13,741	987	931	13,896	800	1,618	13,551	458
Percent	6	88	6	6	89	5	10	87	3

Table 9 shows that a small but significant number of lending institutions condition loans on factors that may have the effect of violating Title VIII.

Table 10 - All Lending Institutions - Proportion of Single-Family Loans Made to Minority Group Members

	0 - 5%	5 - 15%	15 - 25%	25 - 50%	50 - 75%	75 - 100%	Failed to Ans.
Number	9,110	2,241	1,020	147	225	162	2,722
Percent	58	14	7	1	1	1	17

Since Table 10 represents nationwide figures, the data are difficult to evaluate. Perhaps the most significant figure is the 17% of lending institutions that failed to provide even an estimate of their loans to minorities. Some form of racial and ethnic recordkeeping would seem to be essential to evaluate lending practices.

Table 11 - All Lending Institutions - Total and Minority Employment

	Total	Loan Officers	Managers and Ass't Managers	Cashiers and Tellers	Appraisers
Total employees	894,266	70,077	71,517	207,658	18,561
Minority employees	69,367	1,840	2,860	16,763	476
Percent minority	8	3	4	8	3

Table 11 shows low levels of minority employment, particularly in such key positions as loan officers and appraisers. Appendix A shows this to be true even in states with large minority populations.

Table 12 - All Lending Institutions with Minority Board Members or Loan Committee Members

	Minority Members	No Minority Members	Failed to Answer
Number	533	14,729	365
Percent	3	94	2

Table 12 shows a paucity of minority representation on policy making bodies of lending institutions. It can be expected that those institutions with minorities would be more likely to make loans without regard to race, and this hypothesis will be tested on further analysis.

III. Conclusions

This report is only a preliminary summary of the data which the questionnaire will ultimately produce. Nevertheless, it appears that the facts presented in this report will support the need for a comprehensive program to assist lending institutions to comply with the requirements of all Federal civil rights laws. Such a program would include:

1. Educating the public and prospective borrowers of their right to nondiscriminatory mortgage lending practices. This would include display of a poster and advertising guidelines.

2. Data concerning the race of a prospective borrower and location of the property for which a loan is sought should be required to be retained by lenders. The regulatory agencies should develop monitoring and spot check systems to identify patterns indicating possible noncompliance with Title VIII.

3. The regulatory agencies should develop standards or advisory guidelines to aid regulated institutions to implement an affirmative equal employment opportunity program especially in those job categories (e.g. appraiser and loan officer) which can influence an association's lending practices.

It is clear from the Federal Register issuances of December 29, 1971, and January 18, 1972, that several of these proposals are already under serious consideration by the various regulatory agencies. These proposals should be strengthened and made effective as soon as possible.