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Redlining: Remedies for Victims of Urban Disinvestment

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NOTES

REDLINING: REMEDIES FOR VICTIMS OF URBAN DISINVESTMENT

I. Introduction

The practice of redlining by lending institutions raises two major issues: the viability of urban areas and the continuing effort to obtain equal rights for minorities. This policy, sometimes called "urban disinvestment," involves a refusal to provide home mortgage loans or home improvement loans to certain geographical areas. It may also include insistence on particularly burdensome terms or conditions for loans.

A neighborhood becomes redlined when a lending institution presumes the area is no longer economically stable because of age,

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2. Id. at 5.
3. Hearings on S. 1281 Before the Comm. on Banking, Housing and Urban Affairs, 94th Cong., 1st Sess., at 23 (1975) [hereinafter cited as Hearings on S. 1281].
4. Id. at 22.
5. Id. at 35. Methods of redlining by lending institutions include:
   1. Requiring down payments of a higher amount than are usually required for financing comparable properties in other areas;
   2. Fixing loan interest rates in amounts higher than those set for all or most other mortgages in other areas;
   3. Fixing loan closing costs in amounts higher than those set for all or most other mortgages in other areas;
   4. Fixing loan maturities below the number of years to maturity set for all or most other mortgages in other areas;
   5. Refusing to lend on properties above a prescribed maximum number of years of age;
   6. Refusing to make loans in dollar amounts below a certain minimum figure, thus excluding many of the lower-priced properties often found in neighborhoods where redlining is practiced;
   7. Refusing to lend on the basis of presumed "economic obsolescence" no matter what the condition of an older property may be;
   8. Stalling on appraisals to discourage potential borrowers;
   9. Setting appraisals in amounts below what market values actually should be, thus making home purchase transactions more difficult to accomplish;
   10. Applying structural appraisal standards of a much more rigid nature than those applied for comparable properties in other areas;
   11. Charging discount "points" as a way of discouraging financing.

Id.
racial composition or other characteristics. Often the decision to redline a minority neighborhood is not made from racial malice but rather is the result of a traditional view that property values decline in these neighborhoods. The flow of mortgage funds may then be restricted and the decreased availability of such funds causes property values to decline. Consequently, the neighborhood deteriorates.

Aside from furthering the decline of communities, redlining affects the lives of minority group members even more directly. The policy can prevent such persons from purchasing property. Redlining victims are deprived of the benefits of homeownership, i.e., tax advantages, the accumulation of equity and increased economic assets as property value grows.

This Note will examine the legal alternatives open to the victim of redlining. These include pertinent sections of the Civil Rights Acts of 1866, 1964, and 1968, and a recently enacted statute requiring disclosure of lending policies. This Note will also review the possibility of corrective measures by federal agencies.

II. The Civil Rights Act of 1866: Section 1982 of Title 42 of the United States Code

In 1866 Congress appointed a Joint Committee of Fifteen to determine if blacks in southern states continued to be victims of discrimination after the Civil War. The committee concluded that although statutory discrimination was almost eliminated the prejudices of private persons remained intact. To abolish the effects of this private prejudice, Congress enacted the Civil Rights Act of 1866.

7. Id. at 7.
15. Id.
Section 1982 provides:

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

It was not until one hundred years after its passage that section 1982 reached prominence through the landmark case of Jones v. Alfred H. Mayer Co. In Jones the Supreme Court concluded that section 1982 prohibited purely private racial discrimination which denied a citizen the right to buy or rent property. The Court did not construe the 1866 Civil Rights Act to be a comprehensive open housing statute. Because redlining involves the discriminatory refusal to sell or lease property, the applicability of section 1982 to a discriminatory lending policy remained questionable. The majority in Jones clearly stated that section 1982 "does not refer explicitly to discrimination in financing arrangements." It suggested that the general provisions of section 1982 be contrasted with the specific prohibitions contained in the Fair Housing Act of 1968 (hereinafter referred to as the 1968 Act). The Court concluded there was a vast difference between a general statute (section 1982) applicable only to racial discrimination in the sale and rental of property and a detailed housing law (the 1968 Act) applicable to a wide variety of discriminatory practices.

Despite Jones, cases decided thereafter provided some support for the use of section 1982 against redlining. In Sullivan v. Little Hunting Park Inc. defendant corporation refused to approve the assign-
ment of a membership share to a black man. The share would have allowed the use of community recreation facilities. The Supreme Court construed section 1982 broadly and found the attempt to prevent the assignment illegally restricted the right to lease property.

Most recently, the Seventh Circuit decision in Clark v. Universal Builders Inc. supported the use of section 1982 to prevent discriminatory lending policies. There, defendant building contractor exploited a shortage of housing in particular minority neighborhoods by raising prices and making terms onerous. Comparable housing was available to whites, but not blacks, in other areas at much lower prices. Defendants contended that the homes it presented for sale were offered to whites and blacks on the same terms and therefore no discrimination of the traditional type existed. Plaintiff agreed that defendant did not cause the residential segregation, but argued that defendant violated section 1982 by profiting from and perpetuating the situation.

The court, cognizant of a national housing policy to replace ghettos with truly integrated and balanced living patterns, concluded that plaintiff had stated a valid claim under section 1982. It said the spirit of that law condemned actions which prolong and perpetuate a system of racial residential segregation.

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26. Id. at 235.
27. Id. at 234.
28. Id. at 237. The dissenting opinion strongly states that petitioner's claim should have been brought under the 1968 Act and not section 1982. Section 3604(b) of the 1968 Act appears to be directed at situations such as that in Sullivan. Id. at 241 (Harlan, J., dissenting). Section 3604(b) (Supp. IV, 1974) makes it unlawful:

To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.

The dissent reasons that the use of section 1982 is an unnecessary and vague expansion of that section when section 3604(b) exists and is clearly directed at such violations of civil rights. 396 U.S. at 241 (Harlan, J., dissenting).
29. 501 F.2d 324 (7th Cir. 1974), cert. denied, 419 U.S. 1070 (1975).
30. 501 F.2d at 327.
31. Id. at 328.
32. Id. at 329.
33. Id. at 328.
34. Id. at 331 n.4, citing Barrick Realty, Inc. v. City of Gary, 491 F.2d 161, 164 (7th Cir. 1974).
35. 501 F.2d at 334.
36. Id. at 331.
rejecting market conditions as a justification for unequal treatment, would be applicable to a refusal to provide mortgage funds to minority neighborhoods.\textsuperscript{37}

III. The Fair Housing Act of 1968

Section 1982 can be held to prohibit redlining only when very broadly construed.\textsuperscript{38} The 1968 Act,\textsuperscript{39} however, is a comprehensive federal law "to provide, within constitutional limitations, for fair housing throughout the United States."\textsuperscript{40} It covers more than 80 percent of all housing,\textsuperscript{41} and contains provisions directed at specific discriminatory practices.

Section 3604(a)\textsuperscript{42} provides that it shall be unlawful to "otherwise make unavailable or deny" a dwelling on a racial basis. Courts have held that this clause prohibits a wide variety of discriminatory housing practices. Using its broad phraseology, causes of action have been stated when a prospective black tenant’s application to rent was impeded by a refusal to provide necessary and correct information;\textsuperscript{43} when minority applicants were discouraged by a rental agent’s misrepresentation of prices and terms;\textsuperscript{44} and when a rental agent attempted to "steer" a prospective home buyer to an area on a racial basis.\textsuperscript{45} A policy of refusing home mortgage loan applications on the basis of race, therefore, would also appear to deny or

\textsuperscript{37} Accord, Contract Buyers League v. F&F Investment, 300 F. Supp. 210 (N.D. Ill. 1969), aff'd on other grounds, 420 F.2d 1191 (7th Cir. 1970). Section 1982 prohibits profiting from and perpetuating segregation because "there cannot in this country be markets or profits based on the color of a man's skin." 300 F. Supp. at 216.


\textsuperscript{40} Id. § 3601.

\textsuperscript{41} Exemptions from Title VIII are listed in section 3603(b). Among these are single-family houses sold or rented by an owner, and rooms or units containing living quarters occupied or intended to be occupied by no more than four families living independently if the owner occupies one of such units as his residence. Id. § 3603.

\textsuperscript{42} 42 U.S.C. § 3604(a) (Supp. IV, 1974) provides it shall be unlawful:

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, sex, or national origin.

\textsuperscript{43} United States v. West Peachtree Tenth Corp., 437 F.2d 221 (5th Cir. 1971).


make housing unavailable in violation of section 3604(a). 46

Under the 1968 Act the burden of proof is on the plaintiff to present a "prima facie case." 47 To establish this, plaintiff must show that defendant's conduct "actually or predictably results in racial discrimination; in other words, that it has a discriminatory effect." 48 Intent to discriminate or a racial motivation need not be shown as long as the effect of the action is racially discriminatory. 49 This aids the plaintiff because the decision to redline frequently is made to protect depositor's funds and is not the result of racial malice. 50

In McDonnell Douglas Corp. v. Green 51 the Supreme Court required the plaintiff to satisfy the initial burden of establishing the prima facie case by showing: (1) he belonged to a racial minority; (2) he was qualified and applied for a job for which the employer was seeking applicants; (3) he was rejected; and (4) after plaintiff's rejection, the employer accepted applications from persons of plaintiff's qualifications. 52 The victim of a discriminatory lending policy would have little difficulty in satisfying similar requirements. In a civil rights action a plaintiff may use statistics to facilitate the formation of the prima facie case. 53 This would appear to be particularly useful in the redlining situation. 54 For example, data assembled in Chicago revealed that a lending institution with 10.4 million dollars in deposits from thirteen redlined neighborhoods failed to make a single home loan in those areas. 55 Statistics are not the complete solution, "but nothing is as emphatic as zero." 56

Section 3605 of the 1968 Act 57 provides:

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48. See United States v. City of Black Jack, 508 F.2d 1179, 1184 (8th Cir. 1974), cert. denied, 422 U.S. 1042 (1975); United Farmworkers of Fla. Housing Project, Inc. v. City of Delray Beach, 493 F.2d 799, 808 (5th Cir. 1974).
52. Id. at 802.
54. See section VI infra.
55. Lending institutions must disclose certain data. See note 116 infra.
It shall be unlawful for any bank, building and loan association . . . to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, or 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, sex, or national origin of such person . . . .

In *Lindsey v. Modern American Mortgage Corp.*, defendant mortgagor foreclosed on the delinquent loan and sold complainant’s home. Complainant alleged that defendant violated section 3605 by not allowing the complainant the same flexibility in complying with mortgage terms as was allowed white mortgagees. Utilizing the section 3605 clause which prohibits racial discrimination in “other terms or conditions of such loans,” complainant argued that the foreclosure would not have occurred had he been white. The federal district court agreed.

The alleged conduct in *Hunter v. Atchinson* was similar to the discriminatory act in *Lindsey*. Plaintiffs accused defendant lender of maintaining a dual standard for whites and blacks who failed to meet payment dates. Defendant allowed white borrowers more time than blacks to satisfy debts before it initiated foreclosure proceedings. Section 3605 demands uniformity in terms and conditions of loans for all racial groups. Although the case was remanded on a statute of limitations issue, the Sixth Circuit appeared to accept the contention that section 3605 requires that whites and blacks in similar circumstances be treated identically by lending institutions.

Congress enacted the 1968 Act in the period after the summer race riots of 1967 and 1968. It attempted to eliminate all segregated housing and to rectify the conditions which led to those disturbances.

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59. Id. at 294.
60. Id.
61. Id.
62. 466 F.2d 490 (6th Cir. 1972).
63. Id. at 491.
64. Id.
65. See note 23 *supra* for the text of section 3605.
66. 466 F.2d at 491.
Judicial construction of section 3605 in *Lindsey* and *Hunter* prohibits any disparate treatment of blacks in any phase of home financing. This interpretation and the strong legislative intent to achieve equal housing indicates that section 3605 would provide a cause of action against redlining institutions.

IV. Section 1982 and the 1968 Act: A Comparison

The 1968 Act is specific in its procedural provisions and may present some limitations and disadvantages not confronted when section 1982 is used in litigation. To avoid these obstacles a section 1982 claim should be included in a case based upon the 1968 Act whenever it is possible.

A claim under the 1968 Act must be initiated within 180 days after the alleged discriminatory housing practice occurred. This short period of limitations does not apply to section 1982. The Rules of Decision Act provides that federal courts must apply state statutes of limitations to federal causes of action unless (as in the 1968 Act) Congress has provided otherwise. Thus, when a complainant filed a 1968 Act claim 224 days after the last discriminatory act, the court ruled it was time barred. The section 1982 claim remained timely as the minimum period of limitations under state law for any cause of action was one year.

The 1968 Act does not apply to any “single family house sold or rented by an owner.” This is the so-called “Mrs. Murphy” exemption. Causes of action precluded by the single-family house exemption may be brought under section 1982 which is not so restricted.

The 1968 Act specifically provides that a complainant may recover attorney’s fees when he is financially unable to bear the

76. 42 U.S.C. § 3603(b) (1970); see note 41 supra.
77. Morris v. Cizek, 503 F.2d 1303 (7th Cir. 1974).
78. Id. at 1304.
costs.\textsuperscript{79} Section 1982 contains no such provision. The test under the 1968 Act is not whether complainant is indigent but whether the cost would threaten complainant's financial security.\textsuperscript{80} Shifting the cost of counsel to the defendant is meant to encourage victims of discrimination who might have abandoned legal remedies due to the high cost of attorneys.\textsuperscript{81}

In \textit{Alyeska Pipeline Service Co. v. Wilderness Society},\textsuperscript{82} the Supreme Court held that absent statutory authorization, courts should not award attorney's fees to victorious plaintiffs.\textsuperscript{83} The "private attorney general" theory is severely restricted by this decision.\textsuperscript{84} Thus plaintiff employing section 1982 can no longer expect to recover the cost of counsel.\textsuperscript{85}

The 1968 Act specifies that the successful complainant may collect actual damages but not more than one thousand dollars punitive damages.\textsuperscript{86} Actual damages include out-of-pocket losses and compensation for the humiliation and indignity caused by the violation of this basic civil right.\textsuperscript{87} A presumption of emotional distress

\textsuperscript{79} 42 U.S.C. § 3612(c) (1970) provides:

The court may grant . . . reasonable attorney fees in the case of a prevailing plaintiff:

\textit{Provided}, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

\textsuperscript{80} Steele v. Title Realty Co., 478 F.2d 380 (10th Cir. 1973).

\textsuperscript{81} Id. at 385. See Knight v. Auciello, 453 F.2d 852 (1st Cir. 1972); Lee v. Southern Home Sites, 444 F.2d 143 (5th Cir. 1971). See also Note, \textit{Remedies-Attorney's Fees Recoverable for Violation of Civil Rights Act of 1866}, 40 FORDHAM L. REV. 714 (1972).

The awarding of attorney's fees has been the source of some comment. Traditionally, attorney's fees were awarded when opposing counsel was guilty of some misconduct such as obstinacy, evasion, or bringing an unnecessary suit. See Vaughan v. Atkinson, 369 U.S. 527, 531 (1962). Lee changed this rule by awarding attorney's fees when necessary to encourage private litigation to effectuate congressional policy. 444 F.2d 143 (5th Cir. 1972); see Comment, \textit{The Allocation of Attorney's Fees After Mills v. Electric Auto-Lite Co.}, 38 U. CHI. L. REV. 316 (1971).

\textit{But cf.} Tillman v. Wheaton-Haven Recreation Ass'n, 367 F. Supp. 860 (D. Md.), rev'd, 517 F.2d 1141 (4th Cir. 1973). The \textit{Tillman} court rejected plaintiff's claim for attorney's fees on the grounds that defendant's position contained substantial merit, defendant's contentions were made in good faith, allowance of attorney's fees would not effectuate congressional policy and plaintiff was not unduly burdened by the cost of counsel. \textit{Id.} at 866-67.

\textsuperscript{82} 421 U.S. 240 (1975).

\textsuperscript{83} Id. at 247.

\textsuperscript{84} See 4 FORDHAM URBAN L.J. 211, 213 (1975).

\textsuperscript{85} Id. at 219.

\textsuperscript{86} 42 U.S.C. § 3612(c) (1970) states: "The court may . . . award to the plaintiff actual damages and not more than $1,000 punitive damages."

\textsuperscript{87} Jeanty v. McKey & Poague, Inc., 496 F.2d 1119 (7th Cir. 1974); Seaton v. Sky Realty
often arises from the circumstances of the violation. Punitive damages, may be granted when it is shown that defendants wilfully and wantonly committed the discriminatory act. The requisite ill will or malice must be clearly shown as the courts do not favor punitive damage awards. Recoveries under section 1982 are not restricted by the one thousand dollar limit on punitive damages.


Section 2000d provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The policy of withdrawing financial assistance from federal programs which have discriminated against minorities originated in the Executive and Judiciary branches several years before the enact-

Co., 491 F.2d 634 (7th Cir. 1974); Steele v. Title Realty Co., 478 F.2d 380 (10th Cir. 1973).
88. Seaton v. Sky Realty Co., 491 F.2d 634, 637 (7th Cir. 1974).
90. Jeanty v. McKey & Poague, Inc., 496 F.2d 1119, 1121 (7th Cir. 1974).
91. Wright v. Kaine Realty, 352 F. Supp. 222, 223 (N.D. Ill. 1972). However, the Wright court did note that "the limitation in § 3612(c) will naturally be a consideration in determining the amount of any award which may be called for." Id.
92. Section 1982 does not provide an administrative remedy for the alleged discriminatory act. In contrast, section 3610(a) of the 1968 Act states:

Any person who claims to have been injured by a discriminatory housing practice... may file a complaint, with the Secretary [of Housing and Urban Development]....

If the Secretary decides to resolve the complaint he shall proceed to try to eliminate or correct the... practice by informal methods of conference, conciliation, and persuasion.


Initially, under the 1968 Act, controversy developed over the issue of direct access to the courts when there was an administrative remedy provided in the statute. See Note, Discrimination in Employment and in Housing: Private Enforcement of the Civil Rights Acts of 1964 and 1968, 82 Harv. L. Rev. 834, 848 (1969). In Brown v. Lo Duca, 307 F. Supp. 102 (E.D. Wis. 1969), the court held that section 3612(a) is an alternate remedy which may be used without first complying with section 3610(a). Id. at 103. Johnson v. Decker, 333 F. Supp. 88 (N.D. Cal. 1971), went a step further and found it permissible for a plaintiff to employ the remedies provided in both sections simultaneously. Id. at 91-92.
ment of section 2000d. As early as 1953, President Eisenhower declared that federal funding should be withheld from programs with discriminatory practices.\textsuperscript{93} In \textit{Simkins v. Moses H. Cone Memorial Hospital},\textsuperscript{94} the Fourth Circuit furthered this policy. Here, a black physician contended that defendant hospital which maintained "separate but equal" facilities for blacks and whites had violated his fifth and fourteenth amendment rights.\textsuperscript{95} Defendant was a recipient of federal funds under the Hill-Burton Act.\textsuperscript{96} Employing the guidelines set down by the Supreme Court in \textit{Burton v. Wilmington Parking Authority},\textsuperscript{97} the court found the degree of federal funding sufficient to constitute "state action"\textsuperscript{98} and to require application of the equal protection clause.\textsuperscript{99} Thus, the court prohibited defendant hospital from continuing any discriminatory practice.\textsuperscript{100}

Executive and judicial efforts to eliminate discrimination in federally funded programs were assisted by the passage of section 2000d. Congress enacted the statute to\textsuperscript{101} provide a uniform approach to the problem and to respond to a summer of racial violence.\textsuperscript{102} The statute is, in effect, a legislative confirmation of judicial construction of "state action."\textsuperscript{103}

In \textit{Gautreaux v. Chicago Housing Authority},\textsuperscript{104} black tenants con-

\begin{itemize}
\item \textsuperscript{93} N. Y. Times, Mar. 19, 1953, at 1, col. 6. In 1963, President Kennedy stated: In short, the executive branch of the Federal Government . . . now stands squarely behind the principle of equal opportunity, without segregation or discrimination, in the employment of federal funds, facilities, and personnel. All officials at every level are charged with the responsibility of implementing this principle. . . .
\item \textsuperscript{94} Message from the President of the United States Relative to Civil Rights, H.R. Doc. No. 75, 88th Cong., 1st Sess. 10 (1963).
\item \textsuperscript{95} 323 F.2d 969 (4th Cir. 1963), cert. denied, 376 U.S. 938 (1964).
\item \textsuperscript{96} Id. at 961.
\item \textsuperscript{97} Id. at 962-63.
\item \textsuperscript{98} 365 U.S. 715 (1961).
\item \textsuperscript{99} 323 F.2d at 967.
\item \textsuperscript{100} Id. at 968.
\item \textsuperscript{101} The House of Representatives approved section 2000d on Feb. 10, 1964. 110 Cong. Rec. 2804. The Senate passed the bill on June 19, 1964. Id. at 14511. President Johnson signed the bill on July 2, 1964. Id. at 11783 (1964).
\item \textsuperscript{102} See N. Y. Times, June 13, 1963, at 1, col. 8 (Medgar W. Evers, civil rights leader, was murdered); Id. Sept. 16, 1963, at 1, col. 7 (four black girls were killed when a Birmingham church was bombed); Id. Aug. 29, 1963, at 1, col. 8 (200,000 black people marched on Washington, D.C.). See also Comment, \textit{Title VI of the Civil Rights Act of 1964—Implementation and Impact}, 36 Geo. Wash. L. Rev. 824, 828 (1968).
\item \textsuperscript{103} Comment, supra note 102, at 829.
\item \textsuperscript{104} 296 F. Supp. 907 (N.D. Ill. 1969).
\end{itemize}
tended that defendant municipal corporation intentionally maintained existing patterns of racial residential segregation in violation of section 2000d. In a companion suit plaintiffs alleged that the Department of Housing and Urban Development (HUD) approved and financed the Chicago Housing Authority's (CHA) racially discriminatory programs. Reversing the district court, the Seventh Circuit found HUD to be in violation of section 2000d. HUD argued unsuccessfully that it had acquiesced in the discriminatory plan because the only alternative was no housing at all for the impoverished. The court of appeals was sympathetic with the dilemma faced by defendant but decided good faith was not a defense to a federally funded discriminatory act. Lending institutions are beneficiaries of federally funded programs such as the Federal Deposit Insurance Corporation. Thus, banks which redline minority neighborhoods would appear to be violating section 2000d. However, that section's applicability to banks is restricted by section 2000d-1 which provides:

Each Federal Department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of 2000d.

105. Id. at 908.

106. The district court stayed all proceedings against HUD in an unpublished order on Sept. 1, 1970. See Gautreaux v. Romney, 448 F.2d 731 (7th Cir. 1971).

107. Id. at 733.

108. Id. at 737. See also Shannon v. HUD, 436 F.2d 809 (3d Cir. 1970); Hicks v. Weaver, 302 F. Supp. 619 (E.D. La. 1969).


In Lau a class action was brought on the behalf of non-English speaking Chinese students against the federally funded San Francisco school district. 414 U.S. at 564. Petitioners contended they were denied equal educational opportunities due to a language barrier. Id. The Supreme Court accepted petitioner's cause of action under section 2000d. Id. at 566. The Court concluded that the defendant school district had contractually agreed with HEW to provide the language programs in order to receive the federal funds. Id. at 568-69.

111. See section VIII infra.
The question of including lending institutions in the coverage of section 2000d had created controversy in Congress.\textsuperscript{112} Several legislators feared that banks, as beneficiaries of federally funded insurance programs, would be subject to the prohibitions of section 2000d.\textsuperscript{113} To placate these fears, the clause "other than a contract of insurance or guaranty" was added to section 2000d-1.\textsuperscript{114} Thus, section 2000d-1 explicitly removes lending institutions from the coverage of section 2000d rendering the statute of little use to the redlining victim.

VI. The Home Mortgage Disclosure Act of 1975

Sections 1982 and 2000d and the 1968 Act are statutes conceived to protect basic human rights by making it illegal to discriminate on the basis of race. The Home Mortgage Disclosure Act\textsuperscript{115} shares this purpose, but places the burden on the victims of discrimination to effect changes in the illegal practice.\textsuperscript{116}

The Disclosure Act requires lending institutions making federally-related mortgage loans to follow certain procedures.\textsuperscript{117} Such institutions located within a standard metropolitan statistical area (SMSA) must compile and make available for copying data which reveals completely the number and amount of mortgages granted inside and outside the SMSA.\textsuperscript{118}

The Disclosure Act is meant to facilitate consumer action. Ultimately, the consumer-depositor will decide, on the basis of the

\begin{enumerate}
\item \textsuperscript{112} 110 CONG. REC. 13435 (1964).
\item \textsuperscript{113} Id. at 2500-01.
\item \textsuperscript{114} The purpose of this clause is clearly shown by Representative Celler's remarks:
\begin{quote}
It was feared \[2000d\] might be stretched to cover insurance or guaranty [contracts] . . . . To prevent such construction we offer this amendment. . . . We allay all fears that, for example, actions under the FDIC, FSLIC, and the FHA insurance programs . . . are included in the bill. They are excluded.
\end{quote}
Id. See also Id. at 13443 (remarks of Senator Pastore).
\item \textsuperscript{115} Act of Dec. 31, 1975, Pub. L. No. 94-200, §§ 301-10, 89 Stat. 1125.
\item \textsuperscript{116} S. Doc. No. 187, supra note 1, at 9. See also Hearings on S. 1281, supra note 3, at 807-55.
\item \textsuperscript{117} Pub. L. No. 94-200, § 304, 89 Stat. 1125 (1975). Lending institutions covered by the Disclosure Act must reveal: (1) the number and dollar amount of mortgage loans which were (a) originated or (b) purchased by that lending institution during each fiscal year; (2) the location of the mortgage loans by census tract (or where not feasible by zip code); (3) the number and dollar amount of all mortgage loans secured by property outside the SMSA; (4) mortgage loans insured under the National Housing Act and the Housing Act of 1949; (5) mortgages made to mortgagors who did not intend to live on the property; and (6) the number and dollar amount of home improvement loans. Id. §§ 304-05.
\item \textsuperscript{118} Id. § 304.
\end{enumerate}
available statistics, whether the lending institution is acting in the community's interest.\textsuperscript{119} If the policies are not consonant with the good of the neighborhood, residents might withdraw their deposits and force the banks to re-evaluate such policies.\textsuperscript{120}

Lending institutions opposed the passage of the Disclosure Act for four main reasons.\textsuperscript{121} First, the banks argued that investing in declining neighborhoods is not sound financial policy. Their statutory responsibility to invest funds prudently\textsuperscript{122} is contravened by such investments.\textsuperscript{123} Second, the banks contended the Disclosure Act was an attempt to allocate credit in the private sector—an unacceptable intrusion by government in the marketplace. Third, the banks claimed the deterioration of certain neighborhoods occurs long before the financial support is withdrawn. Lending institutions do not cause the decline.\textsuperscript{125} Fourth, the banks feared the supplied data would be incorrectly interpreted, with unjustified community criticism resulting.\textsuperscript{126}

Congressional advocates of the legislation noted that lending institutions have a charter obligation to serve their home area.\textsuperscript{127} Applications for all new branch offices and charters must show that their establishment is necessary to meet the "convenience and needs" of the community.\textsuperscript{128} The Disclosure Act will allow a more accurate determination of a bank's compliance with its charter obligation.\textsuperscript{129} If a bank is not satisfying the convenience and needs of the neighborhood, future applications for branch offices might be rejected.\textsuperscript{130}

\begin{itemize}
\item \textsuperscript{119} Hearings on S. 1281, supra note 3, at 843.
\item \textsuperscript{120} Id.
\item \textsuperscript{121} S. Doc. No. 187, supra note 1, at 17 (additional views of Senators Tower, Garn, Helms and Morgan).
\item \textsuperscript{123} Hearings on S. 1281, supra note 3, at 828.
\item \textsuperscript{124} Id.
\item \textsuperscript{125} Id.
\item \textsuperscript{126} Id.
\item \textsuperscript{127} 12 U.S.C. § 1464(a) (1970) states:
  \begin{quote}
  In order to provide local mutual thrift institutions in which people may invest their funds in order to provide for the financing of homes, the Board is authorized . . . to issue charters . . . giving primary consideration to the best practices of local mutual thrift and home financing in the United States.
  \end{quote}
\item \textsuperscript{128} S. Doc. No. 187, supra note 1, at 10.
\item \textsuperscript{129} Id. at 11.
\item \textsuperscript{130} Id.
\end{itemize}
The Disclosure Act directed the Federal Reserve Board to establish guidelines to effectuate the purpose of the legislation.\textsuperscript{131} To form a more complete and accurate picture of the lending practices of depository institutions the Board brought the operations of majority owned subsidiaries under the coverage of the Act.\textsuperscript{132} Without this provision a depository institution might avoid the disclosure requirements by conducting its federally-related mortgage activity through a subsidiary.\textsuperscript{133}

The Disclosure Act covers mortgage loans made by federally insured or regulated lending institutions with 10 million dollars or more in assets.\textsuperscript{134} The Board issued regulations on the breakdown of required mortgage data, stipulating the necessary geographical itemization, dates and manner of disclosure,\textsuperscript{135} and a suggested mortgage disclosure statement form.\textsuperscript{136} The regulations and the Disclosure Act both became effective on June 28, 1976;\textsuperscript{137} the Act expires four years from that date.\textsuperscript{138}

Although the Disclosure Act clearly reveals the goal of Congress to abolish redlining it also shows that body was unwilling to write a specific provision making that lending practice illegal. The failure

\textsuperscript{131} Act of Dec. 31, 1975, § 305(a), 89 Stat. 1125 states: The [Federal Reserve] Board shall prescribe such regulations as may be necessary to carry out the purposes of this title. Those regulations may contain such classifications, differentiations, or other provisions . . . as in the judgment of the Board are necessary and proper to effectuate the purposes of this title, and to prevent circumvention or evasion thereof, or to facilitate compliance therewith.


\textsuperscript{133} Id.

\textsuperscript{134} Id. at 23932.

\textsuperscript{135} Id. at 23933. Section 203.4 of the Federal Register provides that the following types of loans be disclosed:

(i) FHA, FmHA or VA loans except on multi-family dwellings.

(ii) all other residential mortgage loans except on multi-family dwellings.

(iii) total residential mortgage loans except on multi-family dwellings (total of (i) and (ii)).

(iv) total home improvement loans except on multi-family dwellings.

(v) total mortgage loans on multi-family dwellings.

(vi) all mortgage loans to non-occupants of the property except on multi-family dwellings.

Id. at 23933.

\textsuperscript{136} Id. at 23935.

\textsuperscript{137} Id.

\textsuperscript{138} Id. The regulations also allow the Board to study the feasibility and usefulness of making institutions outside the SMSAs disclose mortgage data in a manner similar to those institutions covered by the Act. Id.
of Congress to make redlining illegal may be solved by judicial initiative.

VII. Laufman v. Oakley Building & Loan Co.

In Laufman v. Oakley Building & Loan Co., a federal district court accepted the previously untested argument that redlining violated the 1968 Act and section 2000d. The district court’s decision that discriminatory lending practices are illegal exemplifies judicial willingness to accept broad constructions of civil rights statutes.

In Laufman, plaintiff applied to the defendant-lending institution for a home mortgage loan. Plaintiff’s desired home was located in an area inhabited primarily by minority groups. For that reason defendant rejected the loan application. Plaintiff asserted that redlining was prohibited by sections 3604(a) and 3605 of the 1968 Act. Plaintiff contended these sections should be construed broadly. Defendant claimed sections 3604(a) and 3605 were not directed at lending policies and should not be read expansively to reach that result.

The “otherwise make unavailable” clause of section 3604(a) had been used to prohibit a wide variety of discriminatory practices. Plaintiff reasoned that its use against a discriminatory lending practice would be a natural expansion. Defendant argued that section 3604, as is stated in its title, should only be applied to the renting

140. Id. at 490.
141. Id. at 492.
142. Id.
143. Id.
144. Id. at 491. See text accompanying notes 42-46 supra.
145. 408 F. Supp. at 491, citing inter alia United States v. Hughes Memorial Home, 396 F. Supp. 544 (W.D. Va. 1975). In Hughes a home for needy children discriminated against black children because the trust establishing the home so stipulated. 396 F. Supp. at 548. The Hughes court concluded that although the defendant was not selling or renting housing, section 3604(a) nevertheless applied. Id. at 549.
146. 408 F. Supp. at 492.
147. 42 U.S.C. § 3604 (Supp. IV, 1974) is entitled, “Discrimination in the sale or rental of housing.”
and selling of housing.\textsuperscript{148}

The court rejected this narrow interpretation of section 3604(a) noting it had been used to condemn restrictive covenants and advertising practices as well as discriminatory sale and rental policies.\textsuperscript{149} The court reasoned that sections 3604 and 3605 are complimentary. Section 3604 covers those transactions involving the sale or rental of housing and section 3605 extends to financial agreements, such as mortgage funds, which provide assistance so the consumer may purchase or rent.\textsuperscript{150} Therefore, a transaction involving the sale or rental of housing and the provision of financial assistance in connection with that sale or rental may be prohibited by either one or both of these sections.\textsuperscript{151}

Section 3605 states no loan shall be denied due to the race of the applicant.\textsuperscript{152} The court viewed this as "an explicit prohibition of redlining."\textsuperscript{153} It rejected defendant's contention that the sections were not applicable, because redlining was not specifically mentioned by Congress. Rather, the court chose to construe the details of the 1968 Act in conformity with its dominating general purpose.\textsuperscript{154}

The opinion gave great weight to the regulations of the Federal Home Loan Bank Board (FHLBB) construing the 1968 Act as making redlining illegal.\textsuperscript{155} The court considered agency interpretations as persuasive evidence of a statute's boundaries.\textsuperscript{156} The FHLBB construction of the 1968 Act is even stronger in light of subsequent amendments to the Act which allowed the agency's interpretation to remain intact.\textsuperscript{157}

The court recognized that the Home Mortgage Disclosure Act, then pending before Congress, evidenced a strong disapproval of redlining and was consistent with the court's decision to prohibit the policy.\textsuperscript{158} The court noted that the Disclosure Act would facilitate

\begin{itemize}
  \item[\textsuperscript{148}] 408 F. Supp. at 492.
  \item[\textsuperscript{149}] \textit{Id.} at 493.
  \item[\textsuperscript{150}] \textit{Id.}
  \item[\textsuperscript{151}] \textit{Id.}
  \item[\textsuperscript{152}] See note 19 supra.
  \item[\textsuperscript{153}] \textit{Id.}
  \item[\textsuperscript{154}] See text accompanying notes 175-77 infra.
  \item[\textsuperscript{155}] 408 F. Supp. at 493.
  \item[\textsuperscript{156}] \textit{Id.} at 494.
  \item[\textsuperscript{157}] The amendment to section 3604(a)-(e) inserted "sex" following "religion" each time it appears. Act of Aug. 22, 1974, Pub. L. No. 93-383, §§ 808(b)(1)-(3), 88 Stat. 729.
  \item[\textsuperscript{158}] 408 F. Supp. 496.
\end{itemize}
implementation of the 1968 Act by exposing lending patterns.\(^{159}\)

In addition to his Title VIII claims, plaintiff asserted a cause of action under section 2000d.\(^{160}\) Plaintiff contended that defendant loan company was a recipient of federal financial assistance and was subject to this provision.\(^{161}\) The court ignored section 2000d-1 and accepted plaintiff’s argument.\(^{162}\) This constituted a serious flaw in the opinion.

Defendant attempted to show that it was caught between two conflicting regulations: the Federal Savings and Loan Insurance Corporation requirement that loans be made to stable and not declining neighborhoods;\(^{163}\) and the FHLBB regulation prohibiting refusal of loan applications on the basis of race.\(^{164}\) The court discarded this argument noting that the defendant was not asked to invest in a declining neighborhood but was merely being told the equating of racial characteristics with deterioration would not be tolerated.\(^{165}\)

VIII. Possible Corrective Measures by Federal Agencies

Federal agencies may impose sanctions on lending institutions which fail to comply with applicable statutes and regulations. Discriminatory lending policies might be eliminated by threats of, or actual withholding of, insurance contracts.\(^{166}\)

The Federal Deposit Insurance Act,\(^{167}\) which created the Federal Deposit Insurance Corporation (FDIC), reserves the power to terminate the status of an insured bank under certain circumstances.\(^{168}\) Section 1818(a) of Title 12 of the United States Code\(^{169}\) provides:

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159. Id. at 498.
160. Id.
161. Id.
162. Id.
163. Id.
164. Id. at 500.
165. Id.
168. Id. § 1811. The FDIC is not only authorized but appears to be obligated to, at the least, inform the bank of the violation and seek correction; further action is discretionary. *Hearings on the Federal Government’s Role, supra* note 166, at 821.
Whenever the Board . . . shall find that an insured bank . . . violated an applicable law, rule, regulation or order . . . the Board shall first give . . . a statement with respect to such . . . violations for the purpose of securing the correction thereof . . . Unless such corrections shall be made . . . the Board shall give . . . notice of intention to terminate the status of the bank as insured . . .

The National Housing Act of 1934,170 which created the Federal Savings and Loan Insurance Corporation171 (FSLIC), contains similar provisions authorizing the termination of insurance of an institution which violates applicable laws, regulations, or orders.172 Discriminatory lending policies violate section 3605 of the 1968 Act. Sanctions which may be employed to correct such violations include cease and desist proceedings,173 suspension or removal of bank officers174 and withdrawal of insurance.

The FHLBB175 has promulgated specific regulations forbidding discriminatory lending practices. These regulations provide:176

[T]he racial composition of the neighborhood where the loan is to be made is always an improper underwriting consideration.

The decision to redline a neighborhood is clearly prohibited by this regulation. The FHLBB is authorized to deny privileges and remove from membership an institution which violates a regulation.177

The continued support of FDIC, FSLIC and FHLBB programs is essential to lending institutions. These agencies can exert strong influence on lending institutions to alter discriminatory lending practices.

IX. Conclusion

Lending institutions contend they have been wrongly portrayed as the primary cause of the deterioration of urban areas. They argue that housing in the United States is affected by a complex interaction of social, political and economic forces, i.e., shifting preferences from city to suburb, changes in interest rates and attractive alter-

171. Id. § 1725.
172. Id. § 1730(b)(3).
175. Id. §§ 1421-49.
nate investments which have a more direct effect on the neighborhood than does their lending policy.

Community residents claim that once an area is redlined, its fate is inevitable. The absence of funds to improve and maintain the property results in deterioration and consequent property devaluation. Opponents of redlining argue further that banks have a charter obligation to serve the needs of the community.

The redlining of a neighborhood by a lending institution has many deleterious effects. Whether based on the age and location of the homes or the race of the residents, the refusal to provide loans to a community substantially decreases its stability. Redlining not only threatens the viability of neighborhoods but also alienates racial minorities by depriving them of the opportunity to own property. *Laufman v. Oakley* holds that the refusal to provide mortgage loans to a qualified applicant on a racial basis is a violation of the 1968 Act. Other statutes, such as the Civil Rights Act of 1866, may be naturally expanded to condemn such a practice.

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