THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release **June 24, 1998**

STATEMENT BY THE PRESIDENT

Today I am pleased to announce policies that continue my commitment to expand economic opportunity for all Americans. These new guidelines for federal procurement are designed to remedy discrimination in a carefully targeted way. These reforms, which continue my promise to mend, not end affirmative action, expand opportunities for small disadvantaged businesses.

These new guidelines allow small disadvantaged businesses to receive a price credit of up to 10 percent in bidding for federal contracts. The credits will be available only in industries that show the ongoing effects of discrimination. The Department of Commerce identified these industries through a process called benchmarking, which compares the actual share of federal procurement by small disadvantaged firms to the share that would be expected in the absence of discrimination. Limiting credits to these industries satisfies constitutional requirements while targeting our efforts in areas where disparities still exist.

This program is based on authority given the Administration by Congress in 1994. These credits will help level the playing field for firms that have suffered from discrimination. However, they do not ensure that any firm will win a contract. Small disadvantaged businesses must compete with all other businesses to win federal contracts.

The steps we are taking today comply with legal requirements and preserve competition, while serving to remedy discrimination.

-30-30-30-

PROCUREMENT REFORMS: SDB CERTIFICATION AND THE PRICE EVALUATION ADJUSTMENT PROGRAM

The Clinton administration is implementing major reforms of federal government procurement programs that assist small disadvantaged businesses ("SDB's"). These reforms include a new process for certifying firms as SDB's and a new price evaluation adjustment program targeted at industries that reflect the ongoing effects of discrimination. Taken together, these reforms will dramatically strengthen our efforts to remedy discrimination against minority business owners. At the same time, they will ensure that our procurement programs meet legal requirements and protect the interest of all Americans. They represent major steps in the President's effort to mend, not end affirmative action.

I. REFORM OF SDB CERTIFICATION

The Small Business Administration will institute a process to certify SDB's to be eligible to participate in one of the federal government's procurement programs. In order to qualify as an SDB, a firm must be owned and controlled by one or more individuals who are socially and economically disadvantaged. Congress has directed that individuals who are members of certain groups are presumed to be disadvantaged. Other persons, including women and persons of any race, can also qualify by establishing their disadvantaged status.

In the past, the government has relied on self-certification for purposes of SDB eligibility, which allowed firms to identify themselves as meeting the requirements for certification. Under the new rule, the SBA will require that, before it can become eligible to receive a benefit as an SDB, each firm must be certified by the SBA. This process may include determinations of ownership and control by contractors selected by the SBA.

In addition, the new rule changes the standard of proof that an individual seeking to establish social and economic disadvantage must meet -- from "clear and convincing" to a "preponderance of the evidence." This rule change will make it easier for persons who are not in groups presumed to be disadvantaged to establish eligibility. These changes will strengthen all programs that rely on SBA certification by ensuring that those persons who meet Congressionally-established requirements qualify for benefits.

II. THE PRICE EVALUATION ADJUSTMENT PROGRAM

A second key component of the Clinton administration's reform of the federal government's procurement programs is its new price evaluation adjustment program. Congress authorized all federal agencies to use this program in 1994 as part of the Federal Acquisition Streamlining Act. Since that time, the administration has worked to develop a methodology for exercising this authority in a way that remedies discrimination, meets legal requirements and preserves competition. This new program provides a way to remedy discrimination in a fair and carefully balanced way without imposing an unfair burden on other businesses.

Under this new program, SDB's submitting bids on competitively awarded federal where it is still necessary to offset the effects of discrimination. Based on FY 1996 data, the Department of Commerce estimates that industries representing about 74% of federal contract dollars awarded to SDB's will be eligible for price credits. The capacity and utilization of minority-owned businesses in 70 SIC major groups and nine Census divisions for each of the three construction SIC major groups were determined by analyzing data representing the firms in the United States that bid on federal contracts or participated in the 8(a) programs administered by the Small Business Administration. This group of firms represents those that were prepared to perform federal contracts in FY 1996.

The "utilization" of SDB's is the percentage of the total dollar value of federal contracts awarded to SDB's in FY 1996. Calculating the "capacity" of these firms is more complex. In order to estimate capacity, the benchmarks take into account various characteristics of firms that bear directly on the value of contracts that they receive, including the age and size of the firm. This approach allows Commerce Department statisticians to estimate the percentage of the dollar value of contracts SDB's would be expected to receive if the success of individual SDB's in winning federal contracts equaled that of all other firms in the industry of equal age and size. An outside panel of statisticians and economists reviewed this methodology and concluded that it was the best approach yet devised to address this issue.

Scope and Effective Dates

Three agencies, the Department of Defense, NASA, and the Coast Guard, have had authorization to offer credits since FY 1994. Under the rule announced today, all agencies will be required to implement the price evaluation adjustment program. The changes are being implemented through a revision of the Federal Acquisition Regulation. Currently, data are available to allow application of the program to SDB prime contractors. This phase of the program will go into effect on October 1, 1998. A program authorizing incentives to increase subcontracting with SDB's will go into effect on January 1, 1999. More complete survey data will be available during 1999 and will allow for further refinements in the subcontractor phase of the program.

The price evaluation adjustment program supplements other federal programs that provide assistance to disadvantaged businesses, including the 8(a) program of the Small Business Administration, the new HUBzone Empowerment Contracting Program, and the Department of Transportation's program for Disadvantaged Business Enterprises. While the SBA will not use price credits, it will rely on the benchmarks in administering the 8(a) program. Benchmarks will provide guidance to program administrators, for example, in determining the number and type of firms that will participate in the program and in deciding what contracts will be authorized under the program. These changes will begin to take effect by December 1, 1998. The federal benchmarks will not apply to the Department of Transportation's program for Disadvantaged Business Enterprises, which is administered by grantees, such as state and local governments. However, local grantees may wish to consider benchmarking methodology in designing their own programs.

contracts may qualify for a price evaluation credit of up to 10%. Credits will be available only to businesses that have been certified as SDB's by the Small Business Administration. These credits help level the playing field for minority groups who have encountered discrimination in their efforts to compete. Although they may receive these credits, SDB's must compete with all other businesses to win federal contracts. Price evaluation credits are not set-asides. They do not assure that any firm, or group of firms, will win a contract. Only if price credits, offered over a sustained period of implementation, prove inadequate to remedy discrimination in a particular industry, can agencies consider the use of set-asides in awarding contracts to SDB's.

In order to ensure that the use of these credits is fair and meets legal requirements, they will be available only in industries in which minority-owned firms continue to suffer the effects of discrimination. "Benchmarking" provides a methodology for identifying these industries.

Constitutional Requirements

The administration developed this benchmarking methodology to ensure that federal procurement complies with the Supreme Court's decision in Adarand Constructors, Inc. v. Pena. In Adarand, the Court held that it is constitutional to provide targeted assistance to minority-owned businesses as long as two requirements are met. The first is that the assistance must serve a "compelling interest." This requirement is satisfied if there has been discrimination that has harmed minority business owners in the particular industry where assistance is to be provided. The second requirement is that the remedy is "narrowly tailored," that is, any assistance targeted to members of a certain race or ethnic group must be necessary to remedy discrimination and must be carefully designed to address its effects.

A. Compelling Interest

Based on an extensive review of evidence, the Department of Justice has established that discrimination has harmed minority businesses. In addition to commissioning an analysis of dozens of studies of industries throughout the country, DOJ also reviewed a long history of Congressional findings of discrimination. Congress relied on these findings in enacting affirmative action and other remedial legislation. For example, there is substantial evidence that minority-owned businesses have been prevented from obtaining access to capital, from participating in trade associations, and from gaining enough experience to become bonded. Most of the present effects of discrimination stem from discrimination in the private sector, not in the public sector. These limitations have erected substantial barriers to minority-owned firms and have hampered their ability to win contracts. Consistent with Congress's long-standing determinations, the government has a compelling interest in providing targeted assistance to minority-owned businesses.

B. Narrow Tailoring

The use of benchmarks helps satisfy the Supreme Court's "narrow tailoring" requirement by providing a means for determining whether the effects of discrimination still burden small minority-owned businesses in a particular market. Credits will be available only in those markets

The Advantages of Benchmarking

Constitutionality -- The program responds to the core concerns about procurement-related affirmative action programs expressed by the Supreme Court. The Court has made clear that government may remedy discrimination by the government itself or by the private sector. However, the Court has also indicated that any affirmative action program should be designed to address the actual effects of past discrimination. Benchmarking provides a means for carefully targeting our efforts to remedy those effects.

Flexibility -- Benchmarks are not quotas. The price evaluation adjustment program includes a series of provisions designed to target assistance carefully, to ensure flexibility and to maintain vigorous competition. Price credits will not be available in all industries, only those where there is evidence of remaining effects of discrimination. Price credits will be available only when the government has concluded that race-neutral efforts are inadequate to address past discrimination. Even in cases when utilization falls short of capacity in a major industry grouping, the relevant agencies retain discretion to adjust or eliminate the credit under some circumstances.

Preserving Competition -- Price evaluation adjustments are not set-asides. No firm or group of firms is guaranteed any contract. These credits provide a small boost for minority-owned firms when there has been a record of past discrimination. However, these firms must compete with all other firms for contracts. As a result, government can make good faith efforts to remedy prior discrimination, while preserving the incentives for firms to compete vigorously for taxpayer dollars.

Periodic Review -- Federal procurement data will be reviewed periodically to ensure that price credits are available only in those industries where the effects of discrimination persist.

Industries Where Credits are Available

Benchmarking estimates are based on SIC major groups. With the exception of construction, for which regional benchmarks have been developed, the estimates are for the nation as a whole. Based on these benchmarks, the Department of Commerce has identified the industries in which credits will be available. A table showing these industries appears in the Federal Register.

Urban Institute

March Conference
on Testing

THE URBAN INSTITUTE 2100 M STREET, N.W. / WASHINGTON D.C. 20037

February 5, 1998

Julie Fernandes
Domestic Policy Council
The White House
Old EOB, Room 224
Washington, D.C. 20500

Dear Ms. Fernandes:

We are writing to invite you to an Urban Institute conference on testing for racial and ethnic discrimination in housing, employment, business development, and consumer goods and services. The purpose of this conference, *which is scheduled for March 6, 1998,* is to develop a strategy for using the paired testing methodology to systematically measure and monitor the incidence of racial and ethnic discrimination across major sectors of economic life. Such a strategy would make it possible to periodically assess our progress as a society in reducing the incidence and severity of racial and ethnic discrimination. And it would allow federal agencies to more effectively measure the performance of civil rights enforcement efforts, as mandated by the Government Performance and Results Act (GPRA) and the National Performance Review (NPR). The conference is being funded by the U.S. Department of Housing and Urban Development.

The one-day conference will be held at the Urban Institute, 2100 M Street, N.W., Washington D.C. The conference will begin at begin promptly at 9:00 AM and conclude at 5:00P.M. We are committed to making this a working conference, in which nationally recognized experts on discrimination and testing discuss methodological strategies and challenges in depth. Several papers will be prepared and circulated in advance as a starting point for debate and discussion. Each of these papers will summarize the contributions of testing in a different sector of American economic life and propose a strategy for using testing to measure discrimination on a regular and systematic basis. At the conference, paper authors will present their proposed strategies. Then two or three other experts -- representing different institutional perspectives -- will briefly comment, and the discussion will be opened up to all the active conference participants.

The goal of these discussions is not necessarily to achieve consensus, but rather to explore the full range of views on how testing can and should be used to measure racial and ethnic discrimination across sectors of economic life and over time. Conference participants will be encouraged to discuss both substantive and methodological issues from multiple perspectives. In addition, the conference will bring together litigators, federal officials, social scientists, and advocates, all of whom have important insights on how to measure and monitor discrimination. Finally, participants will discuss substantive and methodological issues raised by the interaction of discrimination in different sectors of economic life. For example, discrimination in urban housing markets might discourage minority families from living in neighborhoods close to expanding employment opportunities, or discrimination by a health club or country club might exclude minorities from the social settings in which deals are made by local business owners.

Following the conference, authors will revise their papers, based on the discussions they heard. A final conference volume will incorporate all of these revised conference papers. In addition, the Urban Institute will prepare a paper that summarizes conclusions drawn from the conference and presents an overall strategy to regularly measure and monitor racial and ethnic discrimination across major sectors of economic life. We expect that the papers for the conference and a final paper that synthesizes the principal lessons from the discussion will be published and that they to be of substantial use to the Department of Housing and Urban Development as well as to the President's Initiative on Race.

Attendance is limited to a small group of individuals who are knowledgable about civil rights, the measurement of discrimination and the use of testing. We sincerely hope that you will be able to attend. Please RSVP to Sheila Lopez at the Urban Institute at (202) 857 8575, *e-mail: slopez@ui.urban.org*.

Michael Fix
Director,
Immigrant Policy Program

Margery Turner
Director,
Metropolitan Studies Center

Conference Papers and Authors

Six papers will be prepared prior to the conference and circulated in advance to the conference participants. This section briefly describes each paper, explaining why it is relevant to the conference and what it will cover. In addition, paper authors are identified, with a brief overview of each author's qualifications.

Paper 1: Testing for Discrimination -- Cross-Cutting Issues. This paper will provide an introduction to the use of testing to measure the incidence and severity of racial discrimination. It will define testing, and discuss its applications for both law enforcement and research. The paper will discuss the strengths and limitations of testing, and introduce major issues involved in its use, including ethical concerns, practical limitations, challenges of statistical analysis and interpretation, and potential tensions between law enforcement and research. The primary purpose of this paper is to make it unnecessary for each of the sector-specific papers to cover the same ground.

This paper will be co-authored by Michael Fix and Margery Turner, the conference co-chairs. Both have had extensive experience in the application of paired testing and in discussions about its usefulness and legitimacy as a law-enforcement and research tool. Michael Fix chaired a previous national conference on the application of paired testing for measuring discrimination, and co-edited the resulting conference volume. Margery Turner has directed testing studies in both housing and employment.

Paper 2: Housing Markets -- Rentals and Sales, Mortgage Lending, and Homeowner Insurance. The paired testing methodology originated in the field of housing, where it has since been used extensively for complaint investigation, law enforcement, and research. Nevertheless, there are still segments of the housing market where testing has not been systematically applied, and may not be practical. This paper will review the history and findings of testing for measuring and investigating housing market discrimination, assess the extent to which testing methods can be adapted and extended to reach further, and suggest a comprehensive strategy for systematically monitoring the incidence and severity of discrimination across the housing market as a whole.

This paper will be prepared by John Yinger, research director for the most recent national Housing Discrimination Study, and author of *Closed Doors, Opportunities Lost* (1995). Yinger is nationally recognized and highly regarded as an expert on testing methodology, and on housing market discrimination more generally. He has also made significant contributions to the development of statistical methods for analyzing data from paired testing studies.

Paper 3: Employment -- Hiring, Firing, Promotions, and Wages. Testing methods have increasingly been used to investigate and measure discrimination at the hiring stage, particularly for entry level positions. But testing has not been used -- any may not be suitable -- for measuring the incidence of other forms of employment discrimination, such as promotion and salary decisions, or for higher-level positions. Nevertheless, any effort to monitor the incidence and severity of discrimination in American life, must consider employment. This paper will review the history and findings of testing for employment discrimination, describe alternative methods for measuring discrimination in employment, assess the extent to which testing methods can be adapted and extended to reach further, and suggest a comprehensive strategy for systematically monitoring the incidence and severity of employment discrimination.

This paper will be prepared by Marc Bendick, a labor economist with extensive experience in the design, implementation and analysis of testing studies. Dr. Bendick took the lead in designing the prototype of the employment audits that were later carried out by the Urban Institute.

Paper 4: Business Development -- Commercial Lending, Contracting, and Pricing of Supplies. Discrimination against minority-owned businesses, by lenders and by suppliers, has the potential to severely limit upward mobility and wealth accumulation among racial and ethnic minorities. Therefore, efforts to measure discrimination across important sectors should include minority business development, despite the fact that testing has not been widely used in this area. This paper will introduce any applications of testing for discrimination against minority small business, describe other evidence of discrimination in this area, assess the extent to which testing methods might be adapted and applied, and suggest a comprehensive strategy for systematically monitoring the incidence and severity of discrimination against minority-owned businesses.

This paper will be prepared by Timothy Bates, Professor of Labor and Urban Affairs at Wayne State University in Detroit. Dr Bates is a leading expert on minority businesses and on discrimination and other barriers to their formation and growth. He recently served as a consultant to the United State Department of Justice in the development of new procurement regulations that respond to the *Adarand* decision.

Paper 5: Discrimination in Car Buying and Other Transactions in Daily Life. Some of the most creative and revealing results of the use of testing have been in the areas of consumer purchasing (of cars) and public accommodations (specifically the use of taxis and access to health clubs). Although regulation of these arenas of daily life have not been the intense focus of antidiscrimination policy that housing and employment have been, discrimination in these areas can have significant economic implications, lead to increased social segregation, and exacerbate racial tensions. A single, overarching paper would review the testing work that has been done to date in this span of areas, recommend areas where the testing over time makes sense, identify the agencies and regulatory regimes that govern the differing fields, and discuss the role of testing in developing performance benchmarks.

This paper would be prepared by Peter Siegelman, formerly of the American Bar Foundation and now a visiting lecturer on statistics and law at Yale Law School. Siegelman, an economist, was a co-author with Ian Ayres of the landmark study of discrimination in retail car negotiations.

Paper 6: Potential New Applications for Testing. Although testing has been effectively applied in a wide variety of settings, there are many important aspects of economic life where testing has not yet been employed. Although there are clearly limits to the applicability of the testing methodology, there are probably a number of potential new uses that have not yet been considered. This paper will propose new applications and potential adaptations to traditional testing methods that might extend their usefulness and reach. Particular attention will be given to possible testing for discrimination in the provision of health care and in elementary and secondary education.

This paper will be prepared by Rod Boggs, director of the Washington Lawyers Committee for Civil Rights Under Law and a founder of the Washington Fair Housing Council and Fair Employment Council. The Lawyers' Committee along with the Fair Housing and Employment Councils have been national leaders in the design and use of testing for enforcement and research purposes.

Tentative Conference Agenda/Schedule

9:00 - 9:30 Welcome and Introductions

Brief welcoming comments by HUD and Urban Institute representatives, outlining the goals of the conference, and reviewing the agenda and format.

9:30 - 10:45 Housing Markets

Presentation by John Yinger, summarizing the proposal developed in his pre-conference paper. Comments by representatives from the National Fair Housing Alliance, HUD, and banking regulators.

10:45 - 11:00 Break

11:00 - 12:15 Consumer Transactions

Presentations by Peter Siegelman, summarizing the proposals developed in their pre-conference papers. Comments by representatives from the Federal Trade Commission and civil rights advocacy organizations.

12:15 - 12:45 Lunch

A buffet or sandwich lunch will be served outside the conference room, and participants will have a half-hour break to eat lunch, talk informally, or make telephone calls.

12:45 - 2:00 Employment

Presentation by Marc Bendick, summarizing the proposal developed in his pre-conference paper. Comments by representatives from the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance, and civil rights advocacy organizations.

2:00 - 3:00 Business Development

Presentation by Tim Bates, summarizing the proposal developed in his pre-conference paper. Comments by representatives from the Justice Department, the Small Business Administration and representatives of minority business interests.

3:00 - 3:15 Break

3:15 - 4:00 Innovations in Testing

Presentation by Rod Boggs, summarizing the proposal developed in his pre-conference paper followed by open discussion.

4:00 - 5:00 Next Steps

Discussion to be led by Christopher Edley, who will begin by asking for comments from representatives of federal agencies responsible for civil rights enforcement and from major foundations, regarding roles they see for their agencies.

DECLINING MINORITY ADMISSIONS IN CALIFORNIA

April 6, 1998

Background: According to figures released by the University of California, minority admissions to most University of California institutions have dropped dramatically this year absent affirmative action. For example, at the Berkeley campus, minority admissions have decreased 57% for black students, 40% for Hispanic students, and 39% for American Indian students from last year's rates. At UCLA, minority admissions have decreased 43% for black students, 33% for Hispanic students, and 43% for American Indian students.

Question: How do you respond to reports that minority admissions to California's universities have dropped dramatically?

Answer: The Administration is extremely concerned about the decline in the numbers of African-American, Hispanic, and Native American students admitted to universities in California as a result of Proposition 209 and the University of California Board of Regents' decision to prohibit the use of properly constructed affirmative action in admissions. Educational opportunity is the touchstone of the American dream and the key to America's continued strength in the 21st century. At a time when our nation is becoming more and more diverse, we must not close the doors of educational opportunity to our students of color. Furthermore, because students learn from each other as well as from their professors, diversity on campus is a vital educational resource that strengthens the educational experience for all our students. For these reasons, every American should be concerned about the developments in California.

Question: How do you respond to those who say that the drops in minority admissions only indicate the extent to which race was being used to admit underqualified minority students?

Answer: I strongly disagree with that analysis. On April 1, the Washington Post reported that the University of California at Berkeley had to reject more than 800 minority applicants who had 4.0 high school grade point averages and SAT scores of 1200 or higher. These minority students are exceptionally qualified for any college or university in the country. Furthermore, we as a nation must realize that diversity and excellence go hand in hand; they are fully compatible and indeed complementary goals. Any educator will tell you that students learn from each other as well in their classes and from their professors--that's why diversity is important.

Question: What is the administration doing to address this problem?

Answer: We are working on several fronts to address this issue:

- We will continue to strongly support properly constructed affirmative action programs in higher education. For example, we will continue to intervene in litigation in support of appropriate affirmative action programs and to challenge the Hopwood decision.

- We will continue to press higher education officials to maintain and expand diversity, and we will offer assistance to them to do so. For example, we have called on colleges and universities burdened by new legal restrictions to develop new and creative approaches to achieving diversity, such as aggressively recruiting in secondary schools with high percentages of minority students and forming educational partnerships with such schools.

- Finally, the President has recently announced a dramatic array of education policy actions that will improve educational opportunity and outcomes for all Americans and thereby strengthen the pipeline of students progressing from K-12 education to college. These initiatives include:

  High Hopes --a $140 million investment in the FY 1999 budget -- that promotes partnerships between colleges and middle/junior high schools in low-income communities. These partnerships will provide students with vital support services -- including tutoring, counseling, and mentoring and with information on college options, academic requirements, costs, and financial aid to help students stay on track through high school graduation and college.

  Education Opportunity Zones -- This proposal will devote $1.5 billion over 5 years to help high poverty urban and rural school districts help their students reach high standards, by proving resources to strengthen accountability, better train teachers and principals, and provide students who need it with extra help through after school and summer school programs.

  Small Class with Qualified Teachers -- In order to provide all students with a solid foundation and improve reading in grades 1-3, the Administration is proposing a $12.4 billion initiative over 7 years to help local schools hire 100,000 teachers to provide students with small classes and well-prepared teachers.

  Teacher Preparation and Recruitment -- President Clinton has proposed a $350 million initiative to attract nearly 35,000 outstanding new teachers into high-poverty schools in urban and rural areas over the next five years. In addition, it will upgrade the quality of teacher preparation at institutions of higher education that work in partnership with local schools in inner city and poor rural areas.

  Hispanic Education Action Plan -- The Administration's FY99 budget provides substantial education investments in programs that are targeted to the needs of Hispanic students, including increases in Bilingual Education, funding for Hispanic Serving Institutions, TRIO college preparation programs and migrant education programs.

Question: Is the Office for Civil Rights at the Department of Education investigating admissions policies at higher education institutions?

Answer: The Office for Civil Rights at the Department of Education has received complaints regarding university admissions policies. They will continue to investigate complaints concerning current admissions policies at institutions of higher education to determine if they violate federal civil rights laws by discriminating against minority students. The existence of an investigation does not necessarily indicate that a violation has occurred.

Happy Life

Paul J. Weinstein Jr. 01/29/98 04:59:54 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Jose Cerda III/OPD/EOP, Julie A. Fernandes/OPD/EOP, Christa Robinson @ EOP @ LNGTWY
Subject: Gene Ludwig and CRA

In his resignation letter to the President, Gene Ludwig offered the following statistics on the impact of the Administration's 1993 reform of the Community Reinvestment Act (CRA):

"Lending commitments under the CRA have increased 15-fold from the pre-1993 era, from roughly $3 billion a year to $43 billion a year. Thes commitments represent new credit availability for low- and moderate-income urban and rural communities, including loans for housing, small farms and small businesses. At the same time, equity investment by national banks in community development corporations and projects were six times greter in the last four years than during the previous 28 years combined. Home mortgages to African Americans and Hispanic Americans have increased more than 50% over the last four years -- almost three times the rate of increase for the population as a whole. In some chronically underserved communities the change has been even more dramatic....moreover, we have been able to achieve these results while substantially reducing the supervisory and paperwork burdens that the CRA had previously imposed on the banking industry."

This paragraph highlights what I maintain is still our most successful, yet underpublicized community empowerment initiative. It also, in my mind, underscores the need for the President to give a major address which ties what has been a successful strategy to reinvigorate America's cities with his sizable package for urban America in his FY99 budget.

PHILADELPHIA INQUIRER
PHILADELPHIA, PA
MONDAY 457,932
JAN 19 1998
BURRELLE'S
475 E4

When neither service nor learning is a lost cause

By William C. Kashatus

629741

Last year I spent the Rev. Dr. Martin Luther King Jr.'s birthday painting the walls of the Vare Recreation Center in Grays Ferry. A fellow teacher and a dozen of our students also were wielding paint brushes, clearing trash from the surrounding playground, and getting to know some of the teachers and students from Ben Franklin High School who joined us.

We were part of the Greater Philadelphia High School Partnership, a University of Pennsylvania-sponsored project in which students from city and suburbs do shared community service projects.

More than 500 students from 63 public, private and parochial schools in Bucks, Chester, Delaware and Montgomery Counties and the City of Philadelphia participated in a wide range of service projects, including AIDS awareness, feeding the homeless, park cleanups and drug prevention.

Some people might consider our work a lost cause. Cynics argue that the federal government's recent promotion of volunteerism is a tacit acknowledgment that private citizens and charities might be able to succeed where big government has failed. For those of us who have tried to integrate service into the curriculum in our schools — a concept known as service learning — the challenge seems, at times, insurmountable. Many teachers are unable, or sometimes unwilling, to grasp the relationship between what amounts to an experimental education and the cognitive skills they teach in their classroom.

Instead they view service as an "add-on" that can only detract from the time they have to teach "real" content and skills in their subjects. Even some of my own students, when asked to spend a Saturday morning at Vare, suggested that ours was a lost cause. "I'll give it a year," said one, "and I'll bet you that the place will be completely trashed. And then, what will you have achieved?"

Call me a champion of lost causes if you will, but I think my students and I achieved a lot last year.

Despite racial turmoil that Grays Ferry experienced, my students and I continued to volunteer at Vare throughout the spring. In the process, we came in contact with students and children from very different social and economic circumstances, some from the surrounding neighborhood. Whether we were playing a pickup basketball game or painting a staircase, we learned that we share many of the same interests.

"We all want the same things in life," wrote one of my students at the completion of the project. "We all want a safe place to play basketball, to take dance classes or simply to hang out with friends." At the same time, another student reminded me that "our weekly visits to Vare became a 'reality check,' allowing us to be grateful for the things that so many of us take for granted in our lives."

We cross racial and cultural boundaries, find common ground.

Today, a fellow teacher, my students and I are going to join others from Germantown, Cheltenham and Abington High Schools to rehab some rooms at the Germantown YWCA. It's another one of those projects that some may view as a lost cause. But for me, it's one of the most meaningful causes I can join as a teacher of young people.

At a time when funding uncertainties threaten to widen social disparities in our schools, the Greater Philadelphia High School Partnership is making an earnest attempt to bridge the gap. It's an effort to pay witness to the example of Dr. King, who dreamed that one day "all of God's children, black and white, Jews, Gentiles, Protestants and Catholics can join hands and sing in the words of that old Negro spiritual, Free at last! Free at last! Thank God almighty, we are free at last!"

William C. Kashatus is chair of religious studies at the William Penn Charter School.

Tomorrow: Acel Moore; Should we or should we not have a tax cut?

To: Julie Fernandez (SPC)
~~B. Diane F.~~
From John Gomperts

Corporation for National Service
1201 New York Avenue, NW
Washington, DC
20525

Getting Things Done.
AmeriCorps, National Service
Learn and Serve America
National Senior Service Corps

WASHINGTON
APR 2 '98
D.C.

U.S. OFFICIAL MAIL
U.S. POSTAGE
PENALTY FOR PRIVATE USE $300
$0.32

CORPORATION
FOR NATIONAL
SERVICE

Julie Fernandez
Domestic Policy Council
The White House

WASHINGTON,DC PDC 1556S 22:06 04/02/98

US DEPARTMENT OF THE TREASURY
OFFICE OF THE DEPUTY ASSISTANT SECRETARY
COMMUNITY DEVELOPMENT POLICY
1500 PENNSYLVANIA AVENUE, NW - Rm. 2415MT
WASHINGTON DC 20020
(202) 622-0016 FAX: (202) 622-5672

Date: **March 24, 1998**

To: ***Julia Fernandes - 456-5581***

From: **Michael Barr**

Pages: 11 (including the cover)

Testing to Detect Lending Discrimination

Agenda for March 20, 1998

1. OCC's pilot project results.

2. Basic principles OCC uses in evaluating discrimination testing.

3. Identification of issues for future meetings.

Evaluating Discrimination Testing of National Banks: Basic Principles

The OCC's analysts follow the principles below to evaluate evidence produced by pre-application discrimination testing of national banks. The OCC's testing projects are designed and controlled so as to produce evidence that supports analysis according to these principles.

1. **Consider only the lender's conduct directly related to access to credit.**

2. **Before analysis starts, be clear what conduct is favorable and what is unfavorable.**

3. **Consider only testers' descriptions of conduct they observed, not their subjective impressions.**

4. **Be cautious when comparing conduct by different employees of a lender because they can reasonably be expected to perform inconsistently.**

5. **Compare enough tests to tell whether variations experienced by testers fall within the range of normal variation.**

6. **Account for every visit to the bank.**

7. **Treat as possible disparate treatment only differences of such magnitude that the less-favored tester would have had a significantly narrower opportunity to obtain credit, and/or a significantly more difficult process to obtain the credit, and/or significantly less favorable terms for credit.**

8. **Consider whether the same magnitude and frequency of disparate treatment would be viewed as a violation if the less-favored testers were white.**

9. **Follow up on ambiguous but suspicious results with additional tests.**

10. **If there is the appearance of illegal disparate treatment, inform the tested lender exactly who treated whom how, where, and when; describe for the lender the methods by which the information was obtained, recorded, and compared; give the lender an opportunity to provide a nondiscriminatory explanation.**

Discussion draft: 3/20/97

AL 96-3

OCC ADVISORY LETTER

Comptroller of the Currency
Administrator of National Banks

Subject: Fair Lending:
Pilot Testing Program

TO: Chief Executive Officers and Compliance Officers of all National Banks, Department and Division Heads, and all Examining Personnel

Attached is a summary of results from a pilot program conducted by the OCC to assess the use of "testers" in identifying fair lending violations at national banks. The study, which began in 1994, sought to test how national banks and their mortgage subsidiaries handled mortgage loan applicants during the pre-application stage of the lending process. The project also evaluated the testing methods used by the other banking regulators, fair housing organizations, private-sector vendors, and others with testing experience.

The pilot program was conducted as a series of matched-pair tests at eight national banks. The results showed no violations of fair lending laws. The OCC has determined that it may use matched-pair testing on a case-by-case basis in the future when information from examiners, consumers, or the media indicates that a bank may be engaged in illegal discrimination, particularly at the pre-application stage.

For more information on the OCC's fair-lending testing program, please contact Russ Bailey, Fair Lending Team Leader on (202) 874-4446. A copy of the pilot program summary may also be obtained on the agency's internet site, found at http:\\www.occ.treas.gov, and on the OCC Information Line, at (202) 479-0141.

Bert A. Otto

Bert A. Otto
Acting Deputy Comptroller
for Compliance Management

Attachment

Date: April 18, 1996

OCC's Pilot of Fair Lending Testing at National Banks

Background

In 1993, the OCC assembled an interdepartmental team, under the direction of the Compliance Management Department, to develop and implement an OCC mortgage loan testing program. A pilot program to test whether national banks and their mortgage subsidiaries treated mortgage loan applicants of different races and national origin similarly during the pre-application phase was launched during 1994, and all tests were completed by January 1995. Those tests did not disclose any violations of fair lending laws.

In addition to actual testing, the team examined and evaluated testing processes currently in use by other regulators, fair housing organizations, mystery shopper vendors, and others who had experience with testing.

To prepare for testing and to set the parameters for this pilot, the team reviewed testing materials from the Urban Institute, the Federal Reserve Board, the Department of Housing and Urban Development (HUD), the University of Wisconsin, the University of Michigan, the Department of Justice (DOJ), and others. In addition, the team received a large amount of information in response to a "Request for Information" that the OCC published in the *Commerce Business Daily*. The team also interviewed staffs of other regulators including HUD, the Federal Trade Commission (FTC), and DOJ; a nonprofit fair housing group; a nonprofit research group; and a for-profit firm.

Major Objectives

After gathering information and becoming more experienced with the testing process, the team identified the following as its major objectives:

- To plan, develop, and implement a pilot testing program.
- To select national banks or their wholly owned mortgage subsidiaries to be tested on a pilot basis to determine if they were prescreening applicants on a prohibited basis.
- To gain experience in testing and to evaluate the effectiveness of different testing methods used by organizations offering testing services.
- To draw conclusions about whether, how and when the OCC could use testing in the future.

Planning the Pilot Program

Based on the information gathered, the team determined that the OCC should hire *outside* testing organizations to conduct tests. Since outside organizations already had hired, trained, and debriefed testers, the team believed that using those existing structures, reviewed and modified by OCC, could save time in implementing a pilot program.

The team determined that the pilot program should:

- **Test for pre-application discrimination based on the race/national origin of the applicant.** – Although other prohibited bases could have been used, the team believed that statistical analyses and public attention in the last few years have focused on the race and national origin of applicants as the major cause for possible discrimination in mortgage lending.

- **Select blacks and Hispanics as the target racial/ethnic groups.** – Blacks and Hispanics are major minority groups in the United States and have been the target of recent statistical analyses and public concern regarding discriminatory treatment.

- **Focus on home purchase loans, using in-person, paired testers.** – Paired testing sends people who have comparable application characteristics into each institution to inquire about obtaining credit. In these tests, one person in each pair was white, and the other was either black or Hispanic.

  – Focusing on home purchase loans allowed the pilot program to use Home Mortgage Disclosure Act (HMDA) data to select institutions to be tested and readily available mortgage underwriting ratios to construct tester profiles.

  – Using in-person interviews avoided the ambiguities associated with telephone contacts.

- **Construct fictional qualifications that show testers to be marginally qualified** for credit, with minority testers slightly more creditworthy than non-minority ones.

- **Audiotape tests**, where permitted by law.

- **Select target lenders on the basis of potential discrimination based on characteristics of the applicant**, rather than characteristics of the neighborhood.

- **Identify a variety of geographic areas in which illegal discrimination could exist.**

- **Use different professional testing organizations, including both fair housing organizations and marketing research firms (sometimes called "mystery shopper" firms) to perform pilot testing for the OCC.**

  – Four organizations – one fair housing organization and three market research firms – conducted tests.

  – Fair housing organizations and market research organizations have fundamentally different approaches to testing. Fair housing organizations generally recruit testers from local, nonprofit organizations, such as universities and the League of Women Voters. They generally conduct fewer tests and the testers are aware that they are testing for illegal discrimination. They also train their testers more extensively in bank lending processes. Market research organizations, on the other hand, recruit testers from local marketing research firms. They conduct numerous tests as bases for statistical analysis and use testers that are generally unaware of the purpose of the test.

- The organizations were located in different portions of the United States, which allowed the OCC to achieve wide geographic coverage while keeping costs low by selecting a testing organization located near the lender to be tested.

- **Use no testing company that had a business relationship with an institution selected for testing.**

Selecting Institutions for Testing

Institutions were selected for inclusion in the pilot program primarily based on HMDA and census data and supervisory information. The team began by identifying metropolitan statistical areas (MSAs) that had sufficiently large minority populations that a low number of minority applications would raise the possibility of unequal treatment. It then identified HMDA reporters who received more than a certain minimum number of home purchase loan applications and eliminated any MSA that did not have any such institutions. The team then further reduced the potential MSAs by eliminating census tracts in which the minority population was so small that the testers might be exposed, i.e., that the lender might be suspicious that they were not part of the local community.

For national banks (or wholly owned mortgage subsidiaries of national banks) in the remaining MSAs, the team determined the percentage of minority applications each received and compared their performance to that of other HMDA reporters. The goal was to identify any bank that received significantly lower percentages of minority applications than other institutions in the same market.

Once the team identified the national banks (and subsidiaries) with the lowest percentages, it reviewed other information about the bank; specifically, the OCC's internal Supervisory Monitoring System (SMS), Community Reinvestment Act (CRA) reports, and consumer complaints. Then the team looked at the geographic distribution of the offices of the potential candidates for testing and eliminated any banks that did not have offices located near minority populated census tracts. The team made final selections to avoid concentrating resources in just one part of the country. The result was a group of eight institutions – seven national banks and one wholly owned mortgage company subsidiary of a national bank – that were tested. Five institutions were tested for pre-application discrimination against Hispanics and three were tested for pre-application discrimination against African Americans.

Lessons Learned from the Pilot Program

- **Agency involvement in the testing process is critical** because different test structures, testing companies, testers, and local conditions can affect what testers find.

  One testing company in the pilot devised virtually identical fictional qualifications for all testers. Without agency involvement to amend those qualifications, the institution would quickly have detected that it was being tested.

  In one test, there were significant differences in the way individual loan officers dealt with the testers, including the amount of time they spent with the testers, the amount of information they shared with the testers, and in the criteria for obtaining a loan that they explained to the testers. However, each loan officer treated all testers he or she dealt with similarly. The differences in treatment, therefore, were attributable to the loan officers themselves – not the race of the testers.

  In another test, few testers, either minority or non-minority, encountered loan officers that addressed the testers' creditworthiness. Only one of 26 testers was asked about savings, investments, or credit history. In contrast, 85 percent of testers said the loan officer described the next step to take. The loan officers evidently viewed these interviews as very preliminary.

  One testing company went beyond the parameters of the test and attempted to ascertain "whether effort was made to make a loan to an applicant who presents that opportunity." In doing so the company found significant differences in treatment, although not necessarily related to access to credit. Follow-up review by the agency found no evidence of different and less favorable treatment of minorities. OCC staff determined that indications of disparate treatment were weak and primarily involved unverifiable testers' subjective perceptions, such as how "friendly" the loan officer was to the tester.

- **The OCC needs to impose high standards concerning the quality of information** produced by testing because of its enforcement responsibilities.

  To ensure that testing produced information that was sufficiently clear, reliable, and precise to determine whether violations had occurred and to support an enforcement proceeding, the OCC insisted on data standards more rigorous than a research or customer service project would need. Some standards that arose from the pilot test are:

  - **Testing companies must focus on and document lender conduct that facilitates or limits access to credit.**

  - **In debriefing testers, questions should not call for interpretation or subjective responses.** Although in other testing situations such observations are valued for the information they provide on customer service, from an enforcement perspective, they are not sufficiently clear, reliable, or comparable to serve as a basis for determining whether discrimination occurred.

- **Tester debriefing questions cannot rely on simple yes/no answers.** They must seek more of the facts presented by the lender ("What, if any, fees must be paid?") and ask about substantive differences in treatment related to access to credit.

- **The debriefing questions cannot assume that every tester followed the prescribed scenario.** They must ask the tester to report the facts he or she described to the lender. This allows the OCC to be more confident that the testers present themselves to the bank as similarly qualified.

- **Testing companies must understand the importance of the documentation of the test.** In one case a testing company official's notations on questionnaires filled out by testers might have compromised the value of the test report as evidence.

- **Using testers presents a variety of difficulties.**

  - The possibility that they might be asked to testify made some potential testers reluctant to participate.

  - Testers sometimes find the fictional scenarios complicated and confusing, and therefore, have a hard time staying with the "script."

  - Testers and testing companies do not always understand the OCC's concept of "marginal" qualifications.

- **Testing companies must understand what they are testing.**

  Even when it was delivering the final report, one testing company had basic misconceptions about the activity it had just completed. Such misconceptions may not compromise the test; however, they present the disturbing possibility that a testing company may misinterpret results, and reinforce the importance of agency oversight.

Conclusions and Recommendations for Future OCC Testing

Matched-pair testing can be a valuable tool in the OCC's overall fair lending program.

Examples of situations in which the OCC might consider conducting pre-application testing are:

- **In a compliance examination, examiners discover that the institution reports receiving virtually no mortgage loan applications from a geographic area of the city that is predominantly minority.** Other lenders report receiving significant numbers of applications to purchase property located in this geographic area.

- **Examiners are approached during an examination and told that one of the loan officers quotes significantly higher interest rates to minorities** inquiring about consumer credit than are quoted to whites making similar inquiries.

- **The OCC receives several unrelated complaints from members of the same minority group against the same bank** alleging that they were discouraged from applying for no apparent reason or were met with such resistance when they inquired about consumer loans that they decided to apply elsewhere.

- **During a CRA examination, minority community contacts report** that it is difficult to obtain mortgage loans from a bank because the bank requires a 30 percent down payment. Yet, examiners conducting a concurrent fair lending examination report few mortgage loans to minorities and numerous loans to whites with less than 30 percent down payments.

These examples are not inclusive. The OCC will consider testing at an institution when information from examiners, consumers, or the news media indicates the institution may be engaging in illegal discrimination in the pre-application stage. The OCC will not target institutions solely on the basis of HMDA and census data and will not seek to conduct any specific number of tests each year. When the OCC does identify an institution for testing:

- **An OCC fair lending specialist will manage all testing,** including on-site coordination with the vendor before, during, and after each test. That coordinator will observe or review each step of the process, including identifying and contacting the vendor, estimating the number of tests to be conducted, developing the applicant profiles and scenarios, training and debriefing the testers, analyzing the test reports, monitoring for indications that the bank has detected the testing, and reaching any conclusion about whether discrimination occurred.

- **Tests will be refined,** particularly with respect to applicant profiles and the identification of lender loan terms and policies.

- **More tests will be completed at a decision center** (e.g., bank, branch, mortgage company), even if it means testing fewer decision centers of the same institution. To avoid uncertainties in evaluating the testing data, at least four pairs of testers will be sent into a single office of an institution. This approach will also increase the likelihood that some minority and non-minority testers will speak to the same individuals.

- **OCC testing will be conducted by private fair housing organizations when possible.** In the pilot program, testers from fair housing organizations were more professional and thorough and, typically, had participated in a number of tests previously. Testers from fair housing organizations offer the additional advantage of knowing they are testing for discrimination, though not the specific prohibited basis being targeted, and generally are willing to provide testimony, if necessary.

- **Tests will be audiotaped where permitted** by state law for better documentation and to help deflect any allegations of tester bias.

Julie -
She sounds interesting.
You might give her a call.
Thanks
BR

April 6, 1998

Mr. Bruce Reed
Assistant to the President for Domestic Policy
White House, Second Floor, West Wing
1600 Pennsylvania Ave.
Washington, D.C. 20500

Re: Dialogue on Racial Issues

Dear Mr. Reed:

I read with great interest a short article in the March 23, 1998 edition of U.S. News and World Report concerning the President's reliance upon you, Ms. Mathews, and Mr. Sperling to generate ideas to "create a legacy of racial healing." Please consider the following as such an idea.

I am an African American female attorney, a fifth generation Texan, and an active participant in many community and political activities when not attending to my two young sons. In reality, I am an African American "soccer mom", whose life does not fit neatly into any of the traditional boxes from which most racial dialogue seems to emanate.

My husband recently became partner in the law firm of Bickerstaff, Heath, Smiley, McDaniel, Pollan & Kever, of Austin. He was raised in Houston, Fifth Ward, and I was raised in Wichita Falls, Texas. We both attended the University of Texas, undergraduate and law school. It is fair to characterize us as people who have benefited from efforts, such as affirmative action, designed to reverse the legacies of racism in America, and we regularly engage in dialogues on race with friends, attempting to determine how we arrived at the current situation, how best to go forward, and how to ensure that we will not move backward.

One of the people with whom I have discussed such matters is a white, male attorney named Monte Akers who recently completed a book that is being published by the University of Texas Press. The book is about a historical event involving extreme racial violence that occurred in Texas in 1922. Its contents, as well as our conversations about the event, are one of many things that have caused me to consider our racial history in a new light.

The period of the 1890s to the 1930s was a time of extreme racial brutality in our nation, and the event described in the book, while particularly significant in the overall pattern, was but one mirror reflection of other events from the same period. More than 5000 people were hung, burned alive, tortured, mutilated and murdered during that period. Most were African American.

Mr. Akers believes, and I agree, that it was those events, and that period of time--not antebellum slavery or the Civil War--that particularly shaped the thinking and actions of Americans, black and white, who are living today. It was the people of that time period, grandparents and parents of today's adults, who passed on a legacy of mistrust and hate that Americans are still struggling to purge from their children's world.

Yet most Americans are only vaguely aware of the events that shaped that period. Perhaps it is too fresh in our collective memories. Perhaps there are still too many people living who participated. Perhaps it was a time period too close to being "America's holocaust."

Yet we cannot go forward, we cannot heal, unless we deal with our past. As Archbishop Desmond Tutu said in a recent interview, when questioned about the wisdom of investigating the atrocities of apartheid in South Africa: "It is not enough to say let bygones be bygones. Indeed, just saying that ensures it will not be so. Reconciliation does not come easy. Believing it does will ensure that it will never be. We have to work and look the beast firmly in the eyes. Without memory, there is no healing. Without forgiveness, there is no future."

It is my firm belief that America's racial history is like the four stages of the grieving process: denial, anger, sorrow, and healing. We must pass through each stage in order to reach the next, and many in our nation will remain at the stages of denial or anger if they do not "look the beast firmly in the eyes."

The book described above and similar stories should be examined by our nation's leaders and people, not to stir up old sorrows or angers, but to accept what happened, so that we can move on. Other initiatives mentioned in the U.S. News and World Report article, such as solutions for unemployment, inadequate health care, and unequal education, are of great importance. Yet they are, in many ways, bandages for wounds not fully diagnosed, not fully probed, and not capable of healing until the cause of the wound is understood.

I wouid, of course, be thrilled to discuss or correspond about this matter in greater detail should you so desire, and can arrange for you to receive a copy of the manuscript if appropriate.

Yours truly,

Sheryl Cole

Sheryl Cole
4304 Parkwood
Austin, TX 78722

PIR – CEA – policy ideas

CEA : Becky Blank
Sandy Korenman

Equal Access to Credit
Absence of racial steering
Not low-income housing ownership
- can be a real burden; @ great financial risk.
- Average house hasn't appreciated a lot over last 10-15 years.
- ~~not~~ no tax advantage to those w/not higher taxes to pay.

Equal Opp

Data collection / Presentation of data / How to talk about these issues.
Clear way of communicating that we still have an agenda

Speaking to the myth that race is no longer a problem
Raising the realities about discrimination.
Testing makes it real.

More research on interp. of results of testing before we can go forward to use it as the way to establish whether discrim is up or down

Govt. regularly publish ~~[illegible]~~ fact book on well-being (maybe Census) ($ + designate agency)

Nat Academy project: what don't we know
What new data do we need.

Some agency to push this agenda further to gather data

Raising saliency about what is real & what isn't. Interpret

Early childhood — subsidized day care

Fed govt as catalyst for local entities

Access for kids in city schools to

$\boxed{\text{more}}$ ways to do this.

Federal effort for lead abatement

fed $s to match dollars w/ local communities

Not a fan of EZs.

Helping communities identify what are doing well, and then help them do it.

Develop a community by bringing income into it. More stable income

$\boxed{\text{Jobs}}$

* Fed. govt. into local transportation systems.
Review of whether $'s go into poorer areas to link them to high growth areas.

* EEOC

* Pension issues
  - How long does it take to vest
    lower from 5-3 yrs. to vest
  - Problems w/ people not getting pensions.
    What can you mandate in private pensions
  - Elderly poverty - lots of women and B/L

NEC working group on pensions

* Rehabilitation in Criminal Justice system
Can we do E/T for ex-cons.
Demonstration projects btwn DOL/DOJ
What kinds of things work w/in jails

* Food stamps for single adults.
Earned income tax credit for those w/out kids
De-linking food stamps from work requirements.

Enforcement and Information

Access to housing ~~of~~ in nontraditional areas

Self-Employment initiatives (Small Business)
not a way to bring people
into real wealth.
For a lot of folks, a bad idea.
Middle-income people issue (not low income).

Eli Segal-like group ~~that~~ WTW
a consortium
sharing info; passing on good examples
of what works

Military —
career counseling to ~~ma~~ encourage
teaching as a 2nd career

Legal challenge to race-specific
mentoring programs.
@ ~~Univ. of Texas~~ program for m
Economists.
American Econ Assoc.
Michigan
Berkeley
Sloane for public policy

Unemp. insurance reform
Efforts to expand