

II. Concluding Remedial Principles

In order to effectively remedy the harms in this matter, it is my opinion that the remedy must account for the following principles/considerations:

- A. The remedy must be sensitive to opportunity and to the importance of location in determining access to opportunity. Where we live and where we have the opportunity to live determine not only our ability to live in an integrated environment, but also determine our ability to access those opportunities and resources that are critical to life outcomes and health.**

HUD officials have long recognized that housing, in particular its location, is a key determinant of a family's well-being and access to opportunity. For example, in a 1967 "Briefing on Civil Rights Progress," HUD officials stated the Department's commitment to eradicating segregation and providing housing in healthy and opportunity-rich environments:

The Department is publicly committed to extract the legal maximum from existing laws and orders on equal opportunity and civil rights in administering its programs so as to break down racially restrictive housing and provide the disadvantaged and discriminated against families with the widest possible opportunity and choice for good housing in wholesome environments. Indeed, the all-important focus of the Department's business and endeavors is people and improving their life and choices for all members of the public to the optimum. ... We must look at the totality of the urban environment and the quality of the lives of all its people and the impact of our programs on broadening their opportunities and choices.¹⁴⁵

Then HUD Secretary Robert C. Weaver similarly acknowledged the link between fair housing and opportunity one year later:

[T]he enforced patterns of racial separation, which have characterized many aspects of our society, are handmaidens to the problems of racial discrimination and hostility which so plague us today. Separate but equal is inherently unequal because it denies to one group the choices and opportunities which are the promise of American life and the badge of first class citizenship. The goal is ... to allow every man the same natural choices as to where to live and travel and the same opportunity to fulfill his potential.¹⁴⁶

Similar statements and policy commitments have been espoused by HUD officials since that time. For example, during a 1993 Senate hearing, then-Secretary of HUD Henry Cisneros denounced "the extreme spatial segregation or separations in American life by income, class and

¹⁴⁵ Robert A. Sauer and B. T. McGraw, United States Department of Housing and Urban Development, Secretary's Staff Meeting, BRIEFING ON CIVIL RIGHTS PROGRESS, July 12, 1967, at pp.12-13; Adker 058914, 058925-6 (HUD1).

¹⁴⁶ Memorandum from Robert C. Weaver, HUD Secretary to "All Principal Staff" RE: "Clarification of Law and Department Policy RE: Integration," p.2 (Oct. 15, 1968); Adker 056850, 056852 (HUD1).

race."¹⁴⁷ In its stead he called for the deconcentration of poverty and greater residential choices for impoverished persons of color, particularly in suburban areas.¹⁴⁸

These statements are consistent with a large and growing body of knowledge on the harms of segregation and its denial of opportunities to people of color. These harms touch all major life areas including education, employment, and health and safety. Conversely, research and experience indicate that there are a number of benefits to accessing housing in neighborhoods that are racially and economically integrated. The harms of residential segregation and benefits of providing public housing residents with access to integrated neighborhoods are more fully discussed in Section I of this report.

B. The remedy must be metropolitan-wide.

In order to remedy the harms of its failure to desegregate and further fair housing, HUD must pursue metropolitan-wide strategies. Various policies and practices, including those of HUD, have triggered two related demographic changes in the City of Baltimore over recent decades: substantial population loss and a large increase in the proportion of residents that are African American.¹⁴⁹ Between 1950 and 2000, the city lost a third of its population and the African American population increased from 24% of the City's population in 1950 to 64% in the 2000. During this same time period, over a half million Whites left the City.¹⁵⁰ As a result of these demographic trends the City of Baltimore and the larger Baltimore region are severely segregated.¹⁵¹

¹⁴⁷ Hearing Before the Senate Comm. on Banking, Housing and Urban Affairs, 102d Cong., 2d Sess. 7 (Apr. 28, 1993) (statement of Henry Cisneros, Secretary of Housing and Urban Development).

¹⁴⁸ In his testimony, Secretary Cisneros warned that "[u]nless we can deconcentrate the populations of our poorest ... [u]nless we can make it possible for people to have greater choice and move to suburban areas ... we will not succeed." Hearing Before the Senate Comm. on Banking, Housing and Urban Affairs, 102d Cong., 2d Sess. 7 (Apr. 28, 1993) (statement of Henry Cisneros, Secretary of Housing and Urban Development).

¹⁴⁹ Expert report of Shelly Lapkoff, Ph.D. "Demographic Analysis of Baltimore and Its Federally Assisted Housing" (October 1st, 2003)

¹⁵⁰ Expert Report of Shelly Lapkoff, Ph.D. DEMOGRAPHIC ANALYSIS OF BALTIMORE AND ITS FEDERALLY ASSISTED HOUSING (October 1st, 2003).

¹⁵¹ African American/White residential segregation in the Baltimore region as measured by various indices is high. Multiple dissimilarity indices and studies support this finding. A Census Bureau analysis of multiple segregation indices found Baltimore to be the 14th most segregated region in the nation. See J. Iceland, D. Weinberg, & E. Steinmetz, RACIAL AND ETHNIC SEGREGATION IN THE UNITED STATES: 1980-2000 (2002). U.S. Census Bureau, for more information. Available on-line at: http://www.census.gov/hhes/www/housing/resse/paa_paper.pdf Segregation indices produced by multiple studies and research institutes indicate Baltimore's segregation levels are high (generally averaging around .67). For more information, see: ETHNIC DIVERSITY GROWS: NEIGHBORHOOD INTEGRATION LAGS BEHIND (2001), Lewis Mumford Center for Comparative Urban and Regional Analysis. Available on-line at <http://mumford1.dyndns.org/cen2000/report.html>. See also, Douglas S. Massey and Nancy A. Denton, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993) at 20 ("A simple rule of thumb in interpreting these indices is that values under 30 are low, those between 30 and 60 are moderate, and anything above 60 is high."); Edward L. Glaeser and Jacob L. Vigdor, RACIAL SEGREGATION IN THE 2000 CENSUS: PROMISING NEWS (April 2001); and DEMOGRAPHIC ANALYSIS OF BALTIMORE AND ITS FEDERALLY ASSISTED HOUSING Census 2000 Special Report CENSR-3, U.S. Census Bureau. Available on-line at <http://www.brookings.org/dybdocroot/es/urban/census/glaeserexsum.htm> at 3 ("Generally, dissimilarity measures above 0.6 are thought to represent hypersegregation.").

As this Court noted in its January decisions, the demographics of the City of Baltimore make desegregating public housing with only City-level remedies impossible:

Geographic considerations, economic limitations, population shifts, etc. have rendered it impossible to effect a meaningful degree of desegregation of public housing by redistributing the public housing population of Baltimore City within the City limits.¹⁵²

As seen in **Map 1**, African American majorities are found in most of the Census Tracts within the City of Baltimore. As of 2000, only 26 of the City's 200 Census Tracts contained an African American representation lower than the regional average of 27%. Over half of the City's Census Tracts were more than 75% African American.¹⁵³ Moreover, the average African American in the City of Baltimore was living in a Census Tract that was 83% African American in 2000.¹⁵⁴ This segregation is even more pronounced for African Americans living in poverty. The City of Baltimore contains almost 60% of the Baltimore region's African American population, but nearly 80% of the Baltimore region's African Americans living in poverty are found in the City of Baltimore.¹⁵⁵ With these population distributions, meaningful public housing desegregation that focuses only on the City of Baltimore is impossible. This Court noted the futility of trying to desegregate housing within the City of Baltimore alone:

The Court finds it no longer appropriate for HUD, as an institution with national jurisdiction, essentially to limit its consideration of desegregative programs for the Baltimore Region to methods of rearranging Baltimore's public housing residents within the Baltimore City limits.¹⁵⁶

Due to these constraints, a regional approach is necessary to provide public housing residents with integrated housing choices. This Court, in its January decision, articulated the need for such an approach:

The Court finds an approach of regionalization to be integral to desegregation in the Baltimore Region and that regionalization was an important alternative course of action available to Federal Defendants. By the term 'regionalization' the Court refers to policies whereby the effects of past segregation in Baltimore City public housing may be ameliorated by providing housing opportunities to the Plaintiff class beyond the boundaries of Baltimore City.¹⁵⁷

¹⁵² Hon. Marvin J. Garbis, Memorandum of Decision. *Carmen Thompson et al. vs. US Department of Housing and Urban Development et al.* (January 6, 2005). Page 11.

¹⁵³ Based upon analysis of Census 2000, STF3 Census Tract data (analysis does not include population claiming two or more races in 2000).

¹⁵⁴ Data taken from the University of Albany SUNY's Lewis Mumford Center for Comparative Urban and Regional Research "Separate and Unequal: Racial and Ethnic Neighborhoods in the 21st Century" database. Available on-line at: <http://mumford.albany.edu/census/SepUneq/PublicSeparateUnequal.htm>

¹⁵⁵ Data derived from analysis of Census 2000, STF3 data for the Baltimore region.

¹⁵⁶ Hon. Marvin J. Garbis, Memorandum of Decision. *Carmen Thompson et al. vs. US Department of Housing and Urban Development et al.* (January 6, 2005). Page 13.

¹⁵⁷ Hon. Marvin J. Garbis, Memorandum of Decision. *Carmen Thompson et al. vs. US Department of Housing and Urban Development et al.* (January 6, 2005). Page 12.

In addition to being necessary to provide desegregated public housing opportunities (as noted above and discussed in detail in Section I of this report), a metropolitan-wide approach must be utilized because opportunity is largely lacking in those Baltimore neighborhoods that public housing residents are currently able to access. For public-housing residents to access a variety of critical opportunities -- such as good schools, healthy neighborhoods and economic opportunities -- they must have the opportunity to live in opportunity-rich neighborhoods throughout the metropolitan area. Thus, a successful remedy would not reconcentrate public housing residents from the central city in those inner-ring suburbs facing the same shortage of resources and diminished opportunities. A successful remedy would instead transcend the city-suburb dichotomy and focus on creating public housing options wherever desegregated, opportunity-rich neighborhoods exist.

In the absence of effective regional housing planning, local actions can undermine efforts to integrate housing and provide access to opportunity. Political fragmentation -- the division of metropolitan areas into numerous local governmental entities -- plays a significant role in the racial segregation and opportunity segregation that exist in metropolitan America, including in the Baltimore region in particular. Political fragmentation allows municipalities to enact parochial policies, such as exclusionary zoning, that ensure residential segregation. These policies contribute to racial segregation and segregation from opportunity. Suburban housing and land use policies that promote larger lot development have been found to depress the growth of suburban rental housing and limit in-migration of African American and Latino households.¹⁵⁸ These exclusionary policies combined with the fragmentation of local government and school districts in metropolitan areas works to uphold persistent racial segregation.¹⁵⁹ Density, site restrictions and land use restrictions make most affordable housing difficult to construct. For example, lot size requirements, provisions requiring large setbacks, or a lack of land zoned for multi-family housing add to the cost of housing construction.¹⁶⁰

Because county government, as opposed to municipal government, is Maryland's primary form of local government, the Baltimore region is often described as a "big box" region. Overall, big box regions have been shown to exhibit lower segregation indices than "small box" regions.¹⁶¹ However, Baltimore is one of the most segregated big box regions in the nation, and has been described by David Rusk as highly "inelastic" because of the inability of the City of Baltimore to annex and influence more of the region.¹⁶² Of the 119 major metropolitan areas analyzed by David Rusk, Baltimore falls in the top 10% of inelasticity, with a similar measure to

¹⁵⁸ Rolf Pendall, *Local Land Use Regulations and the Chain of Exclusion*, 66 (2) J. AMERICAN PLANNING ASS'N (Spring 2000).

¹⁵⁹ For more information regarding the nexus between fragmentation and segregation please review my article: "Sprawl, Fragmentation, and the Persistence of Racial Inequality: Limiting Civil Rights by Fragmenting Space," found in Greg Squires, ed., URBAN SPRAWL: CAUSES, CONSEQUENCES, AND POLICY RESPONSES (2002).

¹⁶⁰ For more information regarding the nexus between fragmentation and segregation please review my article: "Sprawl, Fragmentation, and the Persistence of Racial Inequality: Limiting Civil Rights by Fragmenting Space," found in Greg Squires, ed., URBAN SPRAWL: CAUSES, CONSEQUENCES, AND POLICY RESPONSES (2002).

¹⁶¹ David Rusk, *Inside Game Outside Game: Winning Strategies for Saving Urban America* (Washington D.C.: Brookings Institution Press, 1999) and *Cities Without Suburbs 3rd Edition: A Census 2000 Update* (Washington, D.C.: Woodrow Wilson Center Press, 2003).

¹⁶² David Rusk, INSIDE GAME OUTSIDE GAME: WINNING STRATEGIES FOR SAVING URBAN AMERICA (1999) and CITIES WITHOUT SUBURBS 3RD EDITION: A CENSUS 2000 UPDATE (2003).

that of Pittsburgh, Cleveland, and New Haven.¹⁶³ Inelastic areas, usually corresponding with small box governance structures (i.e. Pittsburgh and Cleveland) are more racially segregated than elastic areas. Therefore, despite the potential for reduced segregation in a big box structure, Baltimore exhibits the increased racial segregation of an inelastic region due to the powers possessed at the county level. This fact was identified in the 1996 analysis of impediments prepared for the Baltimore Metropolitan Council.

Although it is beyond the scope of this report to identify every zoning requirement or land use policy that has or may have a negative impact on fair housing choice in the Region, it is clear that some zoning requirements and land use policies in the Region do have such an impact and they present an impediment to fair housing choice.¹⁶⁴

Just as fragmented planning promotes exclusion, regional inclusionary policymaking can effectively reduce metropolitan segregation and inequity. For example, Montgomery County, Maryland has one of the longest running inclusionary zoning ordinances in the nation. The Montgomery County program, requiring private development to make 15% of units affordable in large housing developments, has produced over 11,000 affordable housing units since its inception. Research by David Rusk in Maryland projected the impact of applying such a policy to the Baltimore region. Rusk estimates that had such a policy been in place in Baltimore between 1980 and 2000, the region would have produced an additional 15,800 units of workforce housing and 7,900 units owned by a subsidized housing authority.¹⁶⁵ He notes that less than 10% of these units would have been located in Baltimore City. Perhaps the most striking part of Rusk's projection is that if these units had been specifically targeted to the residents of Baltimore city's poorest neighborhoods, all concentrated poverty would be eliminated.¹⁶⁶

Although this type of inclusionary zoning policy is beyond the power of HUD to mandate, it illustrates metropolitan-wide policies can reduce metropolitan racial and economic segregation. It also demonstrates the potential created when regional planning mechanisms supersede local exclusionary impulses. HUD must not rely on local governmental entities to implement a remedy that desegregates public housing on a regional level. HUD is not impotent to encourage, facilitate and structure incentives and disincentives for local practices in order to further regional desegregation and need not provide federal approval, ratification, funding and assistance or legitimacy to practices that impede the regional implementation of fair housing.

It is my understanding that the expert report of Margery Austin Turner and Xavier De Souza-Briggs will discuss how fragmentation of public housing programs among local Public Housing Authorities also maintains the segregation of public housing residents by limiting their ability to seek housing opportunities in jurisdictions other than the ones in which they currently

¹⁶³ David Rusk, *CITIES WITHOUT SUBURBS 3RD EDITION: A CENSUS 2000 UPDATE* (2003). See Table 2.2.

¹⁶⁴ Baltimore Metropolitan Council, *ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING IN THE BALTIMORE METROPOLITAN AREA.*, Prepared by Ardingier Consultants and Associates Columbia, Maryland. November 1996. See Page 56.

¹⁶⁵ David Rusk, *HOUSING POLICY IS SCHOOL POLICY: AN ANALYSIS OF THE INTERACTION OF HOUSING PATTERNS, SCHOOL ENROLLMENTS, AND ACADEMIC ACHIEVEMENT IN THE BALTIMORE AREA PUBLIC SCHOOLS.* Prepared for the Abell Foundation. (June 30, 2003). Provided by author.

¹⁶⁶ David Rusk, *HOUSING POLICY IS SCHOOL POLICY: AN ANALYSIS OF THE INTERACTION OF HOUSING PATTERNS, SCHOOL ENROLLMENTS, AND ACADEMIC ACHIEVEMENT IN THE BALTIMORE AREA PUBLIC SCHOOLS.* Prepared for the Abell Foundation. (June 30, 2003). Provided by author.

reside. This is particularly true in the context of voucher programs where local administration limits voucher portability. An effective remedy should ensure that opportunities are provided throughout the Baltimore region and be designed in a manner that overcomes the structural impediments created by fragmented administration.

C. The remedy must be race-conscious. Such a remedy is compelled by the nature of the violation in this matter, and by the nature of HUD's fair housing duties. As demonstrated below, it is also compelled by the realities of the housing market, which preclude an effective race-neutral remedy.

A race-conscious remedy is appropriate in this case because of the undisputed history of de jure racial segregation of public housing in Baltimore. A race-conscious remedy is also necessary to avoid unintended outcomes that frustrate the goals of providing meaningful opportunity access in integrated neighborhoods to public housing residents. One very real outcome that could emerge from a race-neutral approach is a re-clustering of African American public housing residents in new neighborhoods in a manner that triggers new waves of White flight. Such a process could destabilize otherwise healthy neighborhoods and frustrate the goal of providing public housing residents with meaningful access to opportunity and to integrated neighborhoods. Research regarding the stability of integrated neighborhoods during the last two decades of African American suburbanization supports this concern. In a study of integrated neighborhoods in 15 major metropolitan areas from 1980 to 2000, researchers found that traditionally integrated neighborhoods were found to rapidly segregate after the African American make-up of the neighborhood exceeded 29%.¹⁶⁷ It is my understanding that the expert report of Briggs and Turner discusses that re-clustering of African American public housing residents could also trigger declines in neighborhood property values further contributing to neighborhood destabilization. A race-neutral remedy that failed to consider these dynamics and the racial demographics of neighborhoods in which subsidized housing opportunities might be created runs the long-term risk of replicating the racial segregation and denial of opportunities currently experienced by public housing residents.

Neighborhood racial composition is a direct consideration when Whites are making housing and school choices.¹⁶⁸ In a 2001 national survey, researchers found that the likelihood of White's choosing to purchase a home in a neighborhood declined significantly as the percentage of African Americans in the neighborhood surpassed certain thresholds. Whites become much less likely to purchase a home in a neighborhood with an African American composition higher than 15% and if the African American population increased to more than

¹⁶⁷ Myron Orfield and Thomas Luce, MINORITY SUBURBANIZATION AND RACIAL CHANGE: STABLE INTEGRATION, NEIGHBORHOOD TRANSITION, AND THE NEED FOR REGIONAL APPROACHES. Report of Institute on Race and Poverty (presentation at the "Race and Regionalism Conference in Minneapolis, MN May 6-7, 2005.) Available on-line at:

http://www.irpumn.org/website/projects/index.php?strWebAction=project_detail&intProjectID=15.

¹⁶⁸ Multiple studies have identified race as a factor impacted the location decisions of Whites. For more information see Nancy Denton and Douglas Massey, Residential Segregation of Blacks, Hispanics and Asians by Socioeconomic Status and Generation, 69 SOCIAL SCIENCE QUARTERLY 797-817 (1998); Lawrence Bobo and Camille Zubrinsky, Attitudes on Racial Integration: Perceived Status Differences, Mere In-Group Preferences or Racial Prejudice? 74 SOCIAL FORCES 883-909 (1996); and George Galster, Residential Segregation in American Cities: A Contrary Review, 7 POPULATION RESEARCH AND POLICY REVIEW 93-112 (1988).

65%, few Whites would choose the neighborhoods.¹⁶⁹ Although some debate exists around the implicit motivation for these choices, it is clear that Whites equate the presence of African American residents in a neighborhood with poor neighborhood quality regardless of the underlying reality:

Whites avoid living in neighborhoods with non-token black populations because of the associations they make between the presence of blacks and high crime, low housing values, and low quality education.¹⁷⁰

Additionally, because racial segregation and opportunity segregation are largely coextensive, White residential choices motivated by a desire to live in opportunity-rich areas also exacerbate segregation.¹⁷¹ That said, it is possible to fashion an effective integrative remedy in spite of these preferences. A recent study by George Galster of section 8 housing voucher usage found that such usage in high property value White neighborhoods had positive or negligible effects unless they were used in large numbers in a concentrated area.¹⁷²

Residential choices driven by race and residential choices driven by opportunity can both have adverse effects for African Americans and for this reason an effective remedy should be both race-conscious and opportunity-conscious. The choices that Whites make are always related to the structures of opportunity and the housing market. Government policies directly impact the distribution of opportunity and the housing market, therefore government policy influences the racialized choices made by Whites. White perceptions have been influenced by the government's long history of actions and policies that have concentrated and segregated assisted housing, and discriminatory actions by other government agencies and private actors that diminish opportunity in African American communities. A remedy that does not take into account race and opportunity will not account for the racialized choices made by White homeowners and renters. Although, White flight is a real phenomenon, the government is not powerless to influence this behavior. The potential for White flight can be addressed and mitigated if the following steps are taken: new assisted housing opportunities should be located in moderate numbers and not over concentrated, assisted housing should be targeted to higher opportunity White areas and not lower opportunity White communities and assisted housing should be sited at a metropolitan level.

¹⁶⁹ Michael Emerson, Karen Chai and George Yancey, Does Race Matter in Residential Segregation? Exploring the Preferences of White Americans, 66 *AMERICAN SOCIOLOGICAL REVIEW* 922-935 (2001).

¹⁷⁰ Michael Emerson, Karen Chai and George Yancey, Does Race Matter in Residential Segregation? Exploring the Preferences of White Americans, 66 *AMERICAN SOCIOLOGICAL REVIEW* 922-935 (2001).

Michael Emerson, Karen Chai and George Yancey, Does Race Matter in Residential Segregation? Exploring the Preferences of White Americans, 66 *AMERICAN SOCIOLOGICAL REVIEW* 922-935 (2001).

See also, Thomas Shapiro and Heather Beth Johnson, Assets, Race, and Educational Choices, INCLUSION IN ASSET BUILDING: RESEARCH AND POLICY SYMPOSIUM, Center for Social Development: Washington University (2000). ("Our research provides clear evidence that race is paramount in the minds of white Americans when they make school and community choice decisions. Moreover, we believe that the role their 'choices' play in the social reproduction of racial stratification looms large in contemporary U.S. society.") Page 4.

¹⁷¹ Amy Stuart Wells and Jennifer Jellison Holme, A.S. and Holme, J.J., No Accountability for Diversity: Standardized Tests and the Demise of Racially Mixed Schools, Chapter 10 in Jack Boger and Gary Orfield, eds, THE RESEGREGATION OF THE AMERICAN SOUTH (2005).

¹⁷² George Galster, Peter Tatian and Robin Smith, The Impacts of Neighbors Who Use Section 8 Certificates on Property Values, Vol. 10. No. 4. *HOUSING POLICY DEBATE* (1999).

A race-conscious remedy is also important because of the persistence of racial discrimination in the housing market.¹⁷³ It is reasonable to expect that this discrimination will impact African American participants in the remedy. A race-conscious remedy could track this, reveal broad discriminatory patterns, and allow for remedies to be adapted to overcome the role of discrimination.

Experiences from another state support the finding that a race neutral remedy would be unsuccessful in this context. The potential for such an outcome that does not achieve its original purpose is illustrated by the *Mount Laurel* decisions in New Jersey and the “fair share” policies that emerged from them. Plaintiffs in the first *Mount Laurel* decision claimed that local municipalities in New Jersey were creating and perpetuating racial segregation through racially discriminatory “exclusionary zoning” policies. The court rejected this race-based claim and accepted defendants’ assertion that these policies were driven by purely economic motives. Nonetheless, the court invalidated these policies under the New Jersey constitution and mandated that each municipality take steps to provide for its fair share of the low and moderate income housing needs of its region.

Over time, the *Mount Laurel* decisions, and the state housing act that resulted from them, have resulted in the construction of a large number of low- and moderate-income housing. Because the fair share remedy has been implemented in an ostensibly race-neutral manner, however, it has not reduced the racial segregation of New Jersey’s regions as would be expected if these exclusionary policies were solely economically motivated. Suburban units are overwhelmingly occupied by White low and moderate income residents while central city units are overwhelmingly occupied by residents of color.¹⁷⁴ These trends have been attributed to a number of factors. One is that some suburban municipalities have fulfilled their fair share obligations by deliberately constructing low- and moderate-income housing that is more likely to be occupied by white residents and less likely to be useful for residents of color. For example, municipalities have favored the production of elderly housing and studio and one bedroom units, both of which serve a disproportionately white sector of the low and moderate-income population, and have refused to create multi-bedroom housing, housing that is more likely to benefit families of color. It is critical that the remedy in the present matter evaluate the racial impacts of the various mechanisms through which desegregation and access to opportunity are to occur. Failure to do so creates the capacity for well-intentioned “race-neutral” policies to be implemented in ways that frustrate the goals of the remedy.¹⁷⁵

D. The remedy need not and should not force the dispersal of public housing residents who wish to remain in their present location.

¹⁷³ See, e.g., Camille Z. Charles, The Dynamics of Racial Residential Segregation, 29 ANNUAL REVIEW OF SOCIOLOGY 167-207 (2003).

¹⁷⁴ Naomi Bailin Wish, PhD and Stephen Eisdorfer, Esq., Mount Laurel Housing Symposium: The Impact of Mount Laurel Initiatives: An Analysis of the Characteristics of Applicants and Occupants 27 SETON HALL L. REV. 1268 (1997).

¹⁷⁵ See, Florence W. Roisman, The Role of the State, the Necessity of Race-Conscious Remedies, and Other Lessons from the Mount Laurel Study, 27 SETON HALL L. REV. 1386 (1997).

It is my opinion that the remedy imposed in this matter should impose mandates upon HUD consistent with its statutory and constitutional duties. I believe that public housing residents, however, should be given the opportunity to opt into the integrative housing program or programs that result from this matter. While participation should be optional, to be effective, the remedy should present participants with structured choices, choices guided by the duty to desegregate public housing and provide access to opportunity. Moreover, interest in the opportunities created via the Partial Consent Decree in this matter suggests that there is strong demand for the type of program envisioned.¹⁷⁶

Past experiences with public housing programs demonstrate success where residential choice and the goals of desegregation are balanced, i.e. in those cases where program participation is optional and desegregation guides choices within the program. Chicago's Gautreaux program illustrates the potential benefits of a voluntary structured choice mobility program. To address racial discrimination in Chicago's public housing program, the Court-ordered Gautreaux program facilitated the move of thousands of Black families from pockets of severe urban poverty and lack of opportunity to low-poverty, White suburban neighborhoods. The Gautreaux remedy was guided by a race-conscious, structured choice model in which residents voluntarily applied to move out of existing public housing into a limited range of suburban communities. Suburban areas identified as already having a disproportionate share of the region's affordable housing, or areas already integrated, were eliminated to avoid reconcentrating racialized poverty in inner-ring suburbs. High demand for the program illustrated that many African American public housing residents were eager to have the choice to move to safer, more affluent communities while others opted to remain in public housing within the City of Chicago.¹⁷⁷

E. The remedy must be goal-driven.

The processes and policies through which African American public housing residents are offered the opportunity to live in desegregated, opportunity-rich neighborhoods are critical. To be truly effective, however, the success of these processes and policies must be explicitly evaluated against the goals of desegregation and opportunity access. I believe that this Court envisioned such a remedy when it stated in a letter of April 14, 2005:

[T]he Court must be presented with evidence that permits the consideration of remedial actions invoking the Court's power to require processes to effect HUD's meeting its legal duties while retaining HUD's executive discretion to the fullest extent appropriate.¹⁷⁸

Evaluating any process-based remedies against their success in providing African American public housing residents with access to desegregated, opportunity-rich neighborhoods would

¹⁷⁶ According to the October 2004 Statistical Report from Baltimore Metropolitan Quadel, up to this date over 7,200 families applied to take part in Partial Consent Decree Program. The Local Defendants Report for the period of July 2005 indicates that between January 1st and June 30th of 2005 an additional 1,469 families submitted preliminary applications to take part in the Partial Consent Decree Program.

¹⁷⁷ Miriam Wasserman, Can A Neighborhood Affect The Success of Its Residents?, 11 REGIONAL REVIEW (2001) (<http://www.bos.frb.org/economic/nerr/rr2001/q4/chances.pdf>).

¹⁷⁸ Hon. Marvin J. Garbis, Letter. "To All Counsel of Record Re: Thompson v, H.U.D., MJG-95-309" (April 14, 2005).

ensure that HUD meets its legal duties without mandating the means by which they do so. Such an evaluation would help ensure the effectiveness of the processes pursued, and would also provide HUD with the flexibility to adapt its strategies in response to unexpected outcomes or changing conditions.

The possibility of a remedy being undermined by unexpected outcomes is discussed in section II(C) above. The possibility of it being undermined by changing conditions is evidenced by the changing conditions of Baltimore's rental housing market over the last decade or so, and the impact of this change on the viability of public housing vouchers. As of the mid-1990s, HUD considered the Baltimore region's housing market to be "soft," indicating that rental vouchers would provide ample opportunity for public housing residents to access opportunities throughout the region.¹⁷⁹ These conditions have changed rapidly, however. As this Court observed earlier this year, Baltimore now has a tight rental market and this change has significant implications for the impact of public housing programs: "One of the 'lessons learned' from the HOPE VI program was that housing vouchers are 'not viable replacement housing options' in tight housing markets like Baltimore's."¹⁸⁰

F. The remedy should make use of the variety of tools available to HUD.

Housing vouchers have proven to be an effective method of providing access to opportunity if programs are supported properly and adequately account for housing market conditions. In tight or fluctuating housing markets, however, vouchers may provide access only to segregated, opportunity-poor neighborhoods and/or may not allow holders to access housing at all. Market forces "tend to steer low-income residents into areas where other low-income residents already live" – even when the goal is to deconcentrate poverty.¹⁸¹ This is particularly true in tight housing markets such as those of Baltimore. A recent study of the effectiveness of vouchers in creating housing mobility found:

Mobility programs were hindered by a lack of units at or below the FMRs. Very tight rental housing markets in NYC, Minneapolis, Dallas and Omaha made the competition for units very intense and made it difficult for housing authorities to recruit landlords to participate in the program.¹⁸²

Experiences from the HOPE VI program further illustrate the problems with vouchers in constrained housing markets. Beyond the cost of rent in opportunity-rich areas, HOPE VI relocatees with Section 8 vouchers often clustered in poor areas due to the lack of units outside such areas that met their needs. Specifically, because of the lack of rental units for large families in less segregated lower poverty areas, many families reconcentrated in under-resourced

¹⁷⁹ David Varady, CASE STUDIES OF VOUCHERED-OUT ASSISTED PROPERTIES. U.S. Department of Housing and Urban Development, Office of Policy Development and Research. (Page 1-8; Exhibit 15.)

¹⁸⁰ Hon. Marvin J. Garbis, Memorandum of Decision. *Carmen Thompson et al. vs. US Department of Housing and Urban Development et al.* (January 6, 2005). Page 291.

¹⁸¹ John M. Hartung and Jeffrey Henig., *Housing Vouchers and Certificates as a Vehicle for Deconcentrating the Poor*, 32 URBAN AFFAIRS REVIEW 403-419 (January 1993). Page 416.

¹⁸² Edward G. Goetz, *Housing Dispersal Programs*, 18 JOURNAL OF PLANNING LITERATURE 3-16 (August 2003).

neighborhoods similar to those they had left.¹⁸³ The limited utility of vouchers was noted by this Court in its previous decision: "One of the 'lessons learned' from the HOPE VI program was that housing vouchers are 'not viable replacement housing options' in tight housing markets like Baltimore's."¹⁸⁴

Real estate data produced by Metropolitan Regional Information Systems, Inc. indicate rapid increases in housing cost in the Baltimore metropolitan market. The median sales price for a home in the Baltimore region increased by 64% between 2000 and 2004.¹⁸⁵ Between 2003 and 2004 median sales price has increased from \$172K to \$210K, an increase of 22%. According to the National Low-income Housing Coalition, 2 Bedroom Fair Market rents for the Baltimore Metropolitan Statistical Area have increased from \$628 in 1999 to \$847 in 2005, an increase of 35%.¹⁸⁶ It is my understanding that the expert report of Dr. Basu will address the changing housing market conditions in the Baltimore region in greater detail.

It is my understanding that the expert report of Dr. Gerald Webster will indicate that voucher users in the Baltimore region are highly clustered in the City of Baltimore and suburban vouchers are generally clustered near the City's boundaries. For African American voucher holders, this clustering is even more severe, with most voucher holders located in urban areas. Some of the market constraints in the region's rental housing supply impact these trends. Regionally, rental housing remains clustered in the City of Baltimore and inner-ring suburban communities (**See Map 16**). In the 2000 Census, the City of Baltimore contained 40% of the region's occupied rental housing, in comparison the City of Baltimore contained only 20% of the region's owner occupied housing units.¹⁸⁷ Fifty percent of rental housing in the Baltimore region is in Census Tracts with an African American population greater than 27.2% (the metropolitan average African American population) and more than 50% is located in tracts with an African American population that is smaller than 27.2%.¹⁸⁸ Those rental options that do exist outside of these areas are cost prohibitive at current subsidy levels; gross rents in most of the suburban portions of the Baltimore region are more expensive than rental housing found in the City of Baltimore (**See Map 17**). The remedy ordered in this matter needs to account for these dynamics. Vouchers must be structured to provide access to opportunity-rich areas and must be designed to adapt to fluctuating market conditions.

¹⁸³ Robin E. Smith et. al. at the The Urban Institute Metropolitan Housing and Communities Policy Center; HOUSING CHOICE FOR HOPE VI RELOCATEES (Final Report: April 2002). Prepared for the US Department of Housing and Urban Development. However, "[those] who moved farther away from their developments were more likely to discuss increased opportunity as a by-product of their move."

¹⁸⁴ Hon. Marvin J. Garbis, Memorandum of Decision. *Carmen Thompson et al. vs. US Department of Housing and Urban Development et al.* (January 6, 2005). Page 291.

¹⁸⁵ Real estate data taken from the on-line housing price database at Metropolitan Regional Information Systems Inc. Located on-line at: <http://www.mris.com/tools/stats/index.cfm>

¹⁸⁶ Fair market rent data taken from the "Out of Reach" housing wage database produced by the National Low-income Housing Coalition. The database uses HUD's FMR estimates and gives fair market rent data for 2-bedroom units in the Baltimore region. Available on-line at: <http://www.nlihc.org/oor2004/>

¹⁸⁷ Source: U.S. Census Bureau, Census 2000. STF3 data. <http://www.census.gov>

¹⁸⁸ Based on analysis of Census Tract rental unit data and African American population data from the 2000 Census.