

# Race, National Origin & Source of Income

## Indicators of Disparate Treatment in Portland Rental Housing

Audit Testing report prepared by:

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July 2021- June 2022

## Introduction

The federal Fair Housing Act (FHA) was signed on April 11, 1968 and made it illegal to discriminate in housing based on an individual's race, color, national origin, or religion. The FHA was further amended to include the protected classes of sex, familial status, and disability in 1988. The Act intended to end the rampant racial segregation of the mid-20<sup>th</sup> century and discriminatory government and private actions that created and maintained segregation of neighborhoods and communities.

Further advancement of the FHA continues both at the federal and state level. Oregon has extended protections under Oregon Revised Statutes (ORS) Chapter 659A to include marital status, sexual orientation, gender identity, domestic violence survivors, and source of income.

Despite these landmark legislative actions that have instituted civil rights protections in housing, many members of our communities recognize that adverse differential treatment continues within the housing market. Today, discrimination and differential treatment manifest in a less overt manner. There is rarely a slammed door or a blatant derogatory statement, but instead a lack of availability, a higher cost, or different terms and conditions provided. Often this leaves a community member with the sense that they have been treated inequitably but without the means to directly identify the discrimination.

The Fair Housing Council of Oregon (FHCO) performed 17 audit tests based on Source of Income, Race, and National Origin throughout the City of Portland. These tests revealed that individuals from each of these protected classes continue to face serious barriers when seeking housing.

The concern is that community members from diverse backgrounds seeking housing are treated less favorably. These same home seekers may have to apply to several places before they can find housing. They have trouble accessing the housing of their choice. More than 50 years after the passage of the federal Fair Housing Act, one would hope that this would no longer be happening. Unfortunately, there is still a lot of progress to be made.

The disproportionate impact of COVID-19 on communities of color, in particular in the Black community, further demonstrates the ways that institutionalized racism in housing and healthcare institutions-alongside patterns of policies that have directly impeded asset building, continue to perpetuate inequity based on race. Our agency is acutely aware of the importance of collecting testing data to demonstrate how different treatment and implicit forms of bias based on race occur in the housing market. Our primary way of testing for race-based different treatment is in-person testing. However, to protect our testers safety during the quarantine, we shifted early in the pandemic to halt in-person tests. Thus, for this grant period, to remedy the shift in being able to conduct race-based in-person tests, our agency developed the ability to test

on protected classes via email. We see it as crucial to continue to monitor different treatment based on race in large numbers in next year's testing grant and are ready to do so.

## **Summary**

The results of audit tests conducted between July 2021 through June 2022 show that housing consumers seeking to rent dwellings in the City of Portland continue to encounter adverse differential treatment based on Source of Income, Race, and National Origin. Testing in this audit shows that agents continue to respond to inquiries in a manner that can discourage protected class testers from renting or applying or can disproportionately encourage comparative testers to rent or apply.

Housing providers must address any differential information and treatment provided to all individuals, including comments made to prospective renters, current tenants, and/or guests. Housing providers should review all policies for disproportionate adverse impact on members of protected classes. Housing consumers must be made aware of their rights. They should be encouraged to remain vigilant in identifying policies and practices that signal differential treatment and urged to act when such treatment is suspected.

It is critical that all City of Portland residents receive equal treatment and have equal access to the housing of their choice. The City of Portland should increase education for consumers, advocates, and housing providers, while continuing to monitor the housing market. Thoughtful policy planning and partnerships between the City of Portland and community advocates will promote equitable access to housing and opportunity. With targeted effort and preparation, the City of Portland can leverage resources to advance social and economic equity for all residents.

## **About the Fair Housing Council of Oregon**

The Fair Housing Council of Oregon is a nonprofit civil rights organization with the mission of eliminating illegal housing discrimination in Oregon.

FHCO promotes equal access to housing by providing education, outreach, technical assistance, and enforcement opportunities specifically related to federal, state, and local Fair Housing laws. These laws protect against illegal housing discrimination based on "protected class status" in any housing transaction and, in fact, any housing situation.

## **Audit Testing Analysis**

The following report details the results of an audit of rental housing conducted by FHCO within the City of Portland for different treatment based on Source of Income, Race, and National Origin. This report covers testing that took place from July 2021 through June 2022.

## Evaluation Process

While testing may provide an objective means to identify differential treatment or practices, the presence of differences does not necessarily mean that a housing provider is engaging in housing discrimination. (For example, if different agents at one test site have their own unique sales approach, the testers may report different experiences while receiving similar information.) Likewise, the lack of observed differences at a particular site does not preclude the existence of discriminatory practices. Whether intentional or not, the presence of different treatment based on a protected class has a debilitating effect on housing seekers expecting to receive the same information when pursuing housing opportunities. Moreover, it is our collective obligation under the Fair Housing Act to address these issues in a manner that ensures that no qualified housing seeker is denied housing based on a legally protected classification.

### Definition: Positive, Negative, & Inconclusive

For the purposes of this report, testing results are defined as either “positive,” “negative,” or “inconclusive.” A test will be defined as “positive” when one or more differences are identified in the information provided to the protected class tester which could be considered adverse when compared to the comparative tester. For example, if a protected class tester is provided a higher quote for a security deposit than the comparative tester, the test will be defined as “positive” because of evidence of adverse differential treatment. Tests are defined as “negative” when protected class testers receive equivalent information.

A test will be defined as “inconclusive” when the details of the test fail to demonstrate a clear positive or negative finding. For example, a test may be deemed inconclusive if two testers speak to the same agent about the same property, but the protected class tester is told to apply through a different website than the comparative tester. Under such circumstances, the test would be evaluated as inconclusive to allow our agency to conduct further investigation in the future.

### Key Points & Overall Results

#### *EVALUATIVE FACTORS: FOLLOWING THE STATUTE*

In evaluating the outcome of each individual test, FHCO was guided solely by the language of the Fair Housing Act (FHA) itself. The statutory language of the FHA prohibits the following activity in a housing transaction (please note, the following list is not an exclusive list of prohibited conduct in the FHA, but is instead intended to map out the broad parameters of the law):

- **Refusal to rent dwelling or otherwise make unavailable/steering - 42 USC “ 3604(a)**
- **Discriminatory terms, conditions, privileges, services or facilities - 42 USC “ 3604(b)**
- **Discriminatory advertisements, statements, and notices - 42 USC “ 3604(c)**
- **Misrepresenting availability of dwellings - 42 USC “ 3604(d)**

- **Discriminate, deny or otherwise make dwelling unavailable because of disability - 42 USC " 3604(f)(1)**
- **Discrimination in terms, conditions, or privileges or in services and facilities because of a disability - 42 USC " 3604(f)(2)**
- **Failure to Make a Reasonable Accommodation - 42 USC " 3604(f)(3)(B)**
- **Interference, coercion, or intimidation - 42 USC " 3617**
- **Practices, decision, or action having a disparate impact on dwelling availability - 42 USC " 3604(a)**

Each provision cited above constitutes a separate violation of the FHA.

### **Summary of Results**

The Fair Housing Council of Oregon (FHCO) conducted 17 audit tests between July 2021 and June 2022. These tests were designed to assess whether members of certain federal and state protected classes encounter different treatment in the housing market, and the results will help inform all stakeholders of current barriers to housing choice. Testing by FHCO for this report focused exclusively on 3 protected classes: Source of Income, Race, and National Origin.

The testing goal was not fully met this reporting period in part due to challenges posed by the COVID-19 pandemic restrictions and due to staffing changes. Key positions that play a major role in completing testing tasks were affected by staff transitioning to different roles as well as vacancies in the enforcement/testing team structure. Reorganization of the team, as well as a shift of direction and strategy that resulted from the initial transition of enforcement team leadership, created staff training gaps, which affected performance outcomes. In future grant activities, FHCO is reviewing how best to develop redundancies in leadership on our program teams to ensure there are additional checks on the progress of grant activities, as well as backups if there are transitions in key staff. We have developed and improved our email testing approach in response to the need for continued, but distanced, testing techniques while ensuring access to our services for protected class individuals in need of housing resources. Additionally, we have created and delivered our tester training courses on a private interactive online classroom platform.

To be clear, the percentage of tests that were 'positive' relative to all tests within each protected class should not be read as a measure of housing discrimination in the city. Given the limited number of tests for each protected class (5 tests for Race, 5 tests for National Origin, 7 tests for Source of Income) and purposive sampling (instead of a randomized sampling) of properties to test, the results from these tests are not statistically generalizable to the wider population of housing transactions in the city. And yet, the generalizability is *not* the point here. Instead, these tests and the subsequent analysis are intended to replicate or demonstrate the day-to-day experience of prospective renters that are members of a certain protected class.

The value of this document to jurisdictions, agencies, public officials, renters, housing providers, planners, and other relevant stakeholders, lies in the fact that it creates a record of barriers that limit diversity, integration, and equity in the city we call home. It is the hope of our agency that this report will contribute to outlining a broader framework of what residential life in the City of Portland should look like for *all* people.

What follows below is a factual depiction of how barriers to equity in housing may manifest themselves for members of the protected classes tested. In addition, FHCO has included other data relevant to housing opportunities in the City of Portland, such as Fair Housing Hotline Referral numbers. FHCO also wishes to point out that this report is *not* about placing blame on any stakeholder; it is intended to inspire informative public dialogue about how to address a central equity problem.

**Audit Testing Results – July 2021 through June 2022**

This report details results of audit rental testing conducted by the Fair Housing Council of Oregon (FHCO) within the City of Portland from July 2021 through June 2022. Testing in the City of Portland rental housing marketplace is ongoing, and additional results of testing will be released again in the future. All tests were conducted within the city of Portland. Of the 17 tests, 6 resulted in a positive outcome (Approximately 35%). 6 out of 17 tests resulted in a negative outcome (Approximately 35%). 5 out of 17 resulted in an inconclusive outcome (Approximately 30%).

**July 2021 – June 2022 Total Testing Results by Protected Class**

Protected Class	Positive Tests	Percentage Positive Tests	Inconclusive Tests	Percentage Inconclusive Tests	Negative Tests	Percentage Negative Tests	Total Tests Conducted
Race	2	40%	1	20%	2	40%	5
National Origin	2	40%	1	20%	2	40%	5
Source of Income	2	28%	3	42%	2	28%	7
<b>Totals</b>	6		5		6		17

\*Of the 17 tests 16 were initial tests and 1 was a re-test; of the retest 1 was for Race and was negative for different treatment. This year's audit test data shows a decrease in the share of tests that came out "positive" relative to previous years. This may have been the result of fewer tests being conducted during this grant term. Covid-19 closures and precautions limited in-person testing this grant term, and the lower numbers could be a reflection of that limitation as well. It appeared from our research of vacancies that there were more options to engage through email

contact with housing providers, which may have influenced the results differently this year versus previous years; however, we did not track the exact number and size of various housing providers that were tested.

### **Tests Overall by Protected Class**

#### **RACE**

Of the 17 tests conducted by FHCO, 5 focused on race as a protected class. FHCO's Enforcement Team determined that 2 of the 5 tests were positive for different treatment.

Positive test results identified the following forms of different treatment:

- Misrepresentation of Availability:
  - White tester received details on the specific properties in the area that they inquired about and the Black tester was not given responses to their inquiries.
- Different Terms, Conditions, Privileges, Services, or Facilities:
  - White tester received a response from housing provider/agent, and was given application link, apartment information and follow up emails. Black tester initiated contact with housing provider prior to White tester and received no response to inquiry attempts.

#### **NATIONAL ORIGIN**

Of the 17 tests conducted by FHCO, 5 focused on National Origin as a protected class. FHCO's Enforcement Team determined that 2 of the 5 tests were positive for different treatment.

Positive test results identified the following forms of different treatment:

- Misrepresentation of Availability:
  - Tester with no foreign accent told of more specific details about available units, (such as sq footage and corresponding price for multiple units) whereas tester with an identifiable accent was of less specificity (such as sharing that there were a couple of available units) and then merely told to check the website for more information
  - Tester with no foreign accent received response and contact with available units and was informed an agent would call them back for scheduling a tour, whereas tester with an identifiable accent was not contacted despite leaving voicemails and contacting the agent multiple times. Tester with an identifiable foreign accent received no contact from agent.

- Tester with no foreign accent told of multiple units available and lower rent options whereas tester with an identifiable accent was given same available unit option but with higher rent
- *Different Terms, Conditions, Privileges, Services, or Facilities:*
  - Tester with no foreign accent receiving a prompt response to voicemail inquiry about property whereas tester with an identifiable accent leaving identical information in a voicemail inquiry and not receiving a response from agent
  - A tester with no foreign accent offered a tour of the unit and given information on how to schedule a tour, whereas a tester with an identifiable accent was not offered tour information
  - Testers without a foreign accent were given quotes of up to \$100 less in monthly rent than testers with an identifiable foreign accent told more expensive monthly rent for same unit

## **SOURCE OF INCOME**

Unlike Race and National Origin, Source of Income is not yet a federally protected class. Before July 1, 2014, property owners could legally refuse to rent to people receiving federal rent assistance, including tenants with housing choice vouchers. Since Oregon's 2014 implementation of Source of Income protections, it does appear that education around Oregon's SOI Protections has improved Housing Provider's awareness of the state protections and requirements. However, as we are seeing more knowledge and blanket policies accepting Housing choice vouchers, differential treatment is manifesting in other overt and covert ways. Examples of this would include a Housing Provider posting an advertisement with coded language like "No third-party payments", "Working professionals only", "Not inspection certified". These are just a few of the examples we have seen. Additionally, we have seen that when it comes to a tenant applying with a housing choice voucher, they are met with loopholes to jump through, instead of outright refusal to rent. Refusal to rent to tenants with HCV still occurs, but it has been noted that Housing Providers have started changing their policies to have different terms and agreements for tenants with housing choice vouchers. Examples of this have been Housing Providers requiring all HCV tenants have a cosigner, higher security deposits and credit scores, as well as refusal to count HCV as income towards the apartment unit.

While the percentage of single-parent households, families with children, immigrants, people of color, and people living with a disability who receive vouchers in the City of Portland is beyond the scope of this document, it is possible and indeed likely that these federally protected classes may be disproportionately harmed by different treatment based on Source of Income (Disparate Impact).



Of the 17 tests conducted by FHCO, 5 focused on Source of Income as a protected class. Of the 5 tests conducted by FHCO based on Source of Income, 2 tests were deemed positive for different treatment by FHCO's Enforcement Team.

Positive test results identified the following forms of different treatment:

- *Different Terms, Conditions, Privileges, Services, or Facilities:*
  - Tester with no Section 8 voucher was given specific deposit numbers, whereas Tester with a section 8 voucher was given a “range” and ambiguous answer for what the deposit would be, and that it would depend on their credit and rental history. Tester with a housing choice voucher was told they would need to place a \$500 execution deposit that goes toward their first month's rent.
  - Tester with no housing choice voucher was able to speak with an agent and given information on units available, pricing, deposits, app fees, and lease terms and was offered a tour- while tester with a housing choice voucher was not able to speak to an agent despite having called multiple times, and leaving multiple voicemails stating their names, contact information and voucher holder status and urgency in finding a unit.

The subsidies are typically reserved for the most vulnerable individuals and such funds are distributed in a manner intended to open a pathway to a more stable life with secure housing. Different treatment based on Source of Income not only contravenes the intent of the Oregon State Legislature, but it also has the potential to catastrophically impact people already living on the verge of extreme poverty. Ultimately, being turned away from a dwelling could result in someone taking more time off work, losing custody of their children, or losing their voucher eligibility altogether. There is a lot of work to do to even the playing field.

### **Trends and Findings in Similar FHCO Services**

The positive results for different treatment based on Race, National Origin, and Source of Income found in this audit indicate that work remains to be done to ensure all Portland residents receive equal treatment and have equal opportunity to access the housing of their choice.

Testing, however, is only one piece of the puzzle when it comes to identifying and understanding barriers to housing choice. Critically, testing can only shed light on different treatment that occurs at the pre-application stage of the process. Other anecdotal evidence from FHCO suggests that adverse different treatment based on a protected class transpires in all phases of housing, including but not limited to screening of applications and treatment of in-place tenants, as well as post move-out scenarios for protected class residents.

The table below summarizes the protected classes of callers to our housing discrimination hotline reporting a fair housing allegation within the City of Portland. Among the calls within the City of Portland, 23% of callers indicated race or color was the basis of their allegation, 4% of callers indicated national origin was the basis of their allegation, and 19% indicated source of income was the basis of their allegation.

**Hotline Data (July 2021 to June 2022)**

BASIS	City of Portland		Statewide	
	Count	Percentage	Count	Percentage
Disability	83	40%	340	21%
Race/Color	49	23%	152	9%
Sex	23	11%	131	8%
Domestic Violence	10	5%	42	3%
Familial Status	4	2%	43	3%
Source of Income	19	9%	101	6%
National Origin	8	4%	39	2%
Sexual Orientation/Gender Identity	9	4%	37	2%
Religion	4	2%	14	0.2%
Marital Status	1	0.5%	9	0.05%
<b>TOTAL</b>	<b>210</b>	<b>48%</b>	<b>908</b>	<b>56%</b>
Did Not Specify	228	52%	712	44%
<b>TOTAL</b>	<b>438</b>	<b>100%</b>	<b>1620</b>	<b>100%</b>

\*Some callers report multiple protected classes in their allegations therefore the total number represents the total number of protected classes reported in the noted period rather than the total number of callers.

This evidence supports the findings of the audit testing discussed earlier in this report. Many of the hotline callers report incidents of illegal discrimination that are in the post application phase or in-place tenancy phase or even post tenancy phase. Thus, they complement data from audit tests that capture incidents of different treatment at the pre-application phase. Both results indicate that the reality of different treatment in housing based on Race, National Origin, and Source of Income continues to be a concerning issue in the City of Portland.

**Recommendations**

The two data points noted above, “Audit Testing Results,” and “Trends and Findings in Similar FHCO Services” together confirm that different treatment in the rental market based on the protected classes of Race, National Origin, and Source of Income continues to be a grave issue.

While the data and percentages are not meant to be numbers indicating the extent of illegal forms of discrimination, since that is a legal term that requires a determination of intent by a court of law, the numbers do make very clear that different treatment in the pre-application and at other points in the housing transaction context occurs and is a pervasive problem in the City of Portland area.

Housing discrimination cannot be cured through one-dimensional, short-term solutions. If something as simple as the passage of a law had the ability to end discrimination without further effort, then the problem would have died with the passage of the Fair Housing Act more than 50 years ago. The only effective way to combat illegal housing discrimination is through sustained public investment by local, state, and federal entities in programs that take comprehensive and multi-faceted approaches to enhance education and strengthen enforcement.

### **Engagement with Culturally Specific Community Groups**

As noted above, the impact of COVID-19 on communities of color and the national attention on the continual problem of racial violence against communities of color, make clear the crucial approach of monitoring ongoing race-based different treatment in the housing context and funding culturally specific, people of color-led agencies who fight discrimination. Culturally specific community organizations can tell you that discrimination and different treatment in housing has always been a reality for communities of color in the United States. The audit testing results and anecdotal evidence (hotline, referrals, etc.) confirm what many community members already know: Different treatment based on Race and National Origin continues to be a stark reality in the City of Portland. It is a stark reality that continues to widen the economic and health gaps between people of color and White people in Portland.

Audit testing results and hotline data help show how different treatment based on a protected class manifests throughout various stages of the housing process, from the pre-application phase, through in-place tenancy. This testing is crucial because to address it, we must be able to first identify and document what exactly it looks like. After years of adverse policies towards communities of color from government agencies, we know that incidences of different treatment based on Race and National Origin continue to be underreported to government agencies. Thus, it is also crucial to form partnerships and collaborations with culturally specific community organizations that are well known and trusted.

Projects such as the Housing Catalyst Collaborative (Collaborative), led by the Urban League of Portland and including El Programa Hispano Catolico, Legal Aid Services of Oregon, Oregon Law Center, and the Fair Housing Council of Oregon, is a model for combatting the underreporting of discrimination and lack of legal services supplied directly to culturally specific groups. Critically, the Collaborative creates avenues for people to report incidences of different treatment to individuals they trust to act in the role of an advocate.

In turn, the advocates interface and work with agencies that have the legal expertise to combat discriminatory practices. Collaboration amongst government agencies, legal agencies, and culturally specific community organizations is crucial to creating advocacy access for communities of color.

## **Enhancing Education and Outreach**

### **HOUSING PROVIDERS**

Additional investment in education and outreach is critical to informing all stakeholders of their rights as well as responsibilities. Housing providers including property management companies, land and homeowners, developers, leasing agents, and small/independent property owners require enhanced access to resources that enable them to learn about the issue of housing discrimination and update them about innovations in the law. Housing providers who regularly attend anti-discrimination trainings conducted by FHCO often respond by altering business practices and adjusting policies that pose a disparate impact on communities historically discriminated against to make them more equitable. Moreover, housing providers who get training in identifying discriminatory practices are often more proactive about monitoring conduct for problematic behavior. Housing providers should train all unfamiliar staff on fair housing laws, in addition with refresher courses for all trained staff annually.

Critically, FHCO currently operates a housing provider hotline where property owners can contact our agency to receive guidance on Fair Housing issues. Many housing providers have found this resource to be useful, as they can address potential violations before they occur.

### **ADVOCATES**

Because advocates, including tenant protection agencies, organizers, housing specialists, social workers, and care providers, often serve as a bridge between a housing provider and a consumer, continued education and expansion of resources is necessary to promote a healthy and thriving community for all individuals. When advocates are kept abreast of the laws, both on a state and federal level, they can participate in a solution driven discourse that assists in informal resolutions. Additionally, they can serve as navigators and resource providers when an individual expresses concerns of discrimination. FHCO recognizes the strong overlap between advocates and consumers, and recommends training geared towards their specific concerns.

### **CONSUMERS**

It is equally, if not more, critical that renters and tenants be provided with frequent opportunities to learn about their rights when confronting different treatment in a housing situation. Many instances of illegal discrimination in housing go unreported, thereby allowing the problem to persist without any enforcement or accountability. Tenants deserve the opportunity to access

materials and training that informs them of their options for self-advocacy and points them towards advocates when seeking enforcement against bad actors.

### **Monitoring of Housing Market**

Education and outreach efforts mean little if there is no entity available to enforce the law. Testing is an essential component to deterring adverse different treatment based on a protected class. Similar with the way traffic patrol officers prevent drivers from speeding by maintaining a constant presence on the roads, testing removes the incentive for bad actors to discriminate by making them weary of the fact that illegal conduct comes with consequences. This, in turn, leads housing providers to take proactive measures to train their staff to follow Fair Housing law to avoid financial liability and embarrassment.

By maintaining or increasing the level of future testing, the City of Portland can better understand the dynamics of the local housing market. More testing will give the city an opportunity to dissect the circumstances under which different treatment is most likely to occur by bringing problematic practices to the surface. Additional testing, following the implementation of enhanced education, also allows for jurisdictions to assess progress and inform future policy decisions.

As noted above, FHCO was not able to complete the full course of testing available in its contract with the Portland Housing Bureau due to COVID-related impacts and interruptions from staff transitions. The organization anticipates being able to complete a full course of testing in the current year.

The choice of testing methodology also needs to respond to changing ways rental units are advertised and applications for tenancy are sought. FHCO is increasingly seeing rental advertisements that ask interested applicants to contact only by email or through web-based forms. Greater automation and use of technology or less human mediation in housing transactions may not necessarily reduce incidence of different treatment based on a protected class. But it certainly makes conducting phone tests difficult. FHCO testing coordinators participate in monthly meetings with testing coordinators from other States and try and produce ways to overcome such emerging issues. FHCO has started using emails to conduct tests based on race, national origin, and source of income where no phone numbers are provided by housing providers in rental advertisements. We hope to continue to further improve our testing methods to better able to monitor the housing market.

Again, as noted earlier in this report, FHCO was unable to conduct in-person tests due to COVID-19-related health concerns for our testers. While this methodology did mimic similar impacts on the rental housing marketplace during the pandemic, FHCO also now is able to return to in-

person testing. In-person testing methodologies are more effective particularly when testing the protected classes of race and color.

Another consideration specific to the housing marketplace within the city of Portland that may have merit in consideration for testing are fair housing-related elements of the FAIR ordinance, which went into effect in March 2020. In particular, elements related to advertising and rental of accessible dwelling units and the use of criminal history in rental criteria may have fair housing impacts that could be the subject of testing.

In addition to monitoring the housing market, it is recommended that positive tests are taken up for further investigation and if necessary be pursued for enforcement action. It would therefore be useful if future testing grants also allow FHCO the flexibility to conduct a few complaint-based tests and retests as needed to collect further evidence when illegal discrimination on the part of a housing provider is suspected.

### **Further Recommendations**

To work toward remedying differential treatment of communities of color, those born in or perceived to be born in a country other than the United States, and those with alternative sources of income outside of employment, FHCO recommends the additional following actions:

- Enhanced distribution of community resources and training specific to the process for accepting public funding and section 8 vouchers. FHCO feels it is critical to make housing providers aware of their legal obligations around source of income as well as inform tenants of the potential for different treatment.
- More community training that revolves around deconstructing stereotypes and bias related to poverty and low-income individuals and families, including the intersection of race, national origin, disability, and socio-economic status. Trainings should also address institutionalized racism and generational poverty and how it plays out in housing, including rental history, credit, and criminal history.
- Education around reasonable accommodations and the rights and responsibilities of all stakeholders, including exploration of housing amenities and policies such as parking, assistance animals, and mobility and mental health issues. Stakeholders of all types should be informed of why reasonable accommodations are critical in ensuring equal access.
- Expand testing to include the use of criminal history and credit scores in the rental screening process, which may show a disparate impact on people of color. It is critical for public bodies to look beyond mere rates of adverse differential treatment and better understand the manner in which the different treatment occurs in the housing marketplace.

- Housing providers should review their practices and policies for any potential adverse disparate impacts and different treatment, including lease agreements, rental screening criteria, posted rules, and notices in communal areas. As evidenced by the results of this audit, protected class testers are frequently provided different information about unit availability, prices, means to apply (online or in person), and other rental terms and conditions.
- Housing providers should take steps to ensure that all prospective tenants are provided equivalent information, are given similar informational materials, and are afforded the same amount of follow-up contact.
- Leasing agents should be aware of all potential vacancies and provide all available options to home seekers. Housing providers should not use the excuse that the testers spoke to different agents. All agents should have the same information and impart the same information to all prospective applicants/tenants.
- Housing providers may want to engage in self-testing of their staff to learn exactly how their staff engages the public.
- Housing providers also should remain particularly aware of potential differential treatment and complaints from current residents who are members of all protected classes. Housing providers should also be monitoring how their staff interacts with current tenants who are members of protected classes.

## APPENDIX A

### Legal Background

Federal fair housing laws prohibit discrimination in housing based on race, color, national origin, religion, gender, familial status, and disability.

Oregon fair housing laws also protect people from discrimination in housing based on their marital status, source of income, sexual orientation, gender identity, and status as a survivor of domestic violence.

The federal Fair Housing Act states that the following activities are illegal based on a person's race, color, religion, sex, national origin, disability, or familial status:

- Refuse to sell, rent, negotiate, or otherwise make unavailable or deny a dwelling.
- Discriminate in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities.
- Make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates discrimination, preference, or limitation; or
- Represent that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact available.

### Introduction to Fair Housing Testing

Testing refers to the use of individuals who, without a bona fide intent to rent or purchase a home, apartment, or other dwelling, pose as prospective renters or purchasers to gather information which may indicate whether a housing provider is complying with fair housing laws. Testing is an objective method to compare whether members of a protected class are given different information, services, or treatment than a non-protected class tester, and/or to identify any policies that are not in compliance with fair housing laws.

The courts have consistently determined that testing is a legitimate and lawful activity. In *Zuch v. Hussey* (U.S. 6th Circuit Court of Appeals, 1977), the court stated that, "evidence gathered by a tester may, in many cases, be the only competent evidence available to prove that the defendant has engaged in unlawful conduct." In the landmark case *Havens v. Coleman*, the United States



Supreme Court recognized the importance, legality, and power of testing as a mechanism for measuring and correcting discriminatory housing practices.

### **Fair Housing Audit Testing**

Fair housing audit testing helps identify any different treatment and potential illegal acts of housing discrimination, as well as patterns or issues within a region. Housing providers are randomly selected for audit testing within the identified geographic area and for the protected classes selected for the audit. This project sought to test sites in a variety of areas of the city that reflected a sampling of small and independent housing providers, large professional management companies, and a variety of types of units.

### **Purpose of Audit**

The goal of this fair housing audit was to identify potential illegal discrimination on the basis of Source of Income, Race, and National Origin in rental housing throughout the City of Portland. Results are analyzed to identify issues of different treatment to illuminate market trends of concern, and to identify areas where education might be targeted, and, where evidence is sufficient, enforcement might be conducted so that, ideally, no one will experience illegal housing discrimination in the future. This audit delivers a point in time perspective of the experiences of a typical renter in a particular housing transaction. One test is insufficient evidence of discriminatory treatment, however; one test that demonstrates different and/or adverse treatment toward the protected class tester should be considered a red flag to warrant further investigation necessary to examine the consistent practices of the housing provider.

### **Considerations**

This audit was completed during a time when the City of Portland continues to experience historically low vacancy rates and increasing rental housing costs. These factors contribute to a high demand for housing units. Housing providers can select from a greater pool of applicants, making this a critical time for ensuring all housing applicants have access to housing choice regardless of their protected class. Rising costs and demand can result in displacement of current residents and force compromises in choice of housing location. Housing location determines access to community resources and opportunities, such as proximity to schools, jobs, transportation, healthcare, and other services. Access to these resources and opportunities has a significant impact on social and economic equity.

This audit examined differential information and treatment provided to prospective tenants based on their protected class. If prospective tenants are provided fewer options, higher rental prices, fewer specials, or other incentives, told about more screening requirements or other restrictions, or otherwise discouraged from renting, it limits housing choice in an already tight

rental housing market. It is imperative that all residents receive equal treatment and equal opportunity to housing choice.

### **Limitations**

This audit was conducted for the City of Portland. Because of non-representative sample sizes at the census tract level, testing results are analyzed in the aggregate to identify general market trends.

Because most complaints of housing discrimination are from on-going rental transactions and in-place tenants, testing may not always effectively identify discrimination in the terms and conditions of tenancy. Discrimination may occur during the application screening process or at any time during or at the conclusion of tenancy. Because this testing only compares differences at the initial inquiry phase of a prospective tenant's housing search, differential treatment that may occur later in a housing transaction is not measured in this audit. Due to the high demand in the current rental market where a housing provider can select from several qualified applicants, the nature of this testing may be an important consideration when examining the results of this audit, as it may underestimate the prevalence of discriminatory treatment.

### **Methodology**

Fair housing tests in this audit utilized two match-paired testers who received assignments and instructions prepared by FHCO. Test assignments were structured to facilitate an objective analysis of testing results while minimizing external variables and overlapping protected classes. Each match-paired testing team consisted of a protected class tester and a comparative tester who were matched by other relevant characteristics such as age and gender. The match-paired testing team was assigned similar personal characteristics, such as income and household composition to control for qualification variables and enable an objective comparison to ascertain the existence of any differential treatment, also ensuring that subsequent tests would closely replicate the initial test. Each team contacted the site (sometimes including an initial phone/email contact) and continued until the test coordinator determined that no further contact should be made.

In this audit, test contacts were made over the phone or video call or email. Using testers with a discernible "foreign" accent through phone testing is a plausible methodology for testing based on the protected class of national origin as such accents often serve as the cue for differential treatment and contact by phone often is how the initial contact from a prospective renter is made with a housing provider. For testing on the basis of race, usually onsite visits are conducted. Testing for differential treatment based on the protected classes of race is done in person to

provide a visual presentation of the tester's actual or perceived race. However, to protect our testers' safety during the pandemic, we decided to halt in-person tests. Thus, for this grant period, all race-based tests were conducted by email or over video calls. The tests that were conducted using video calls required initial contact by phone to schedule an appointment with a leasing agent. Similarly, source of income tests involved testers identifying one of their sources of income as a Section 8 voucher either on the phone or by email.

The FHCO test coordinator was responsible for overseeing every aspect of the testing process to include the following:

- Establishing the structure of the tests,
- Identifying appropriate sites for testing,
- Selecting the appropriate testers and assigning tester characteristics,
- Determining the timing and sequence of the tests,
- Maintaining communication with the testers before and after completion of the tests,
- Collecting testing forms and other materials from the testers and ensuring that the forms are properly completed,
- Debriefing the testers, and
- Evaluating the tests with overall review by the Enforcement Team at FHCO.