

Race, National Origin & Source of Income

Indicators of Disparate Treatment in Portland Rental Housing

Audit Testing report prepared by:

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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-20th century and discriminatory government and private actions that created and maintained segregation of neighborhoods and communities.

Further advancement of the FHA continues on both 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 44 audit tests on the basis of 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 on the Black community, further demonstrate 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, there are fewer race-based tests than we have conducted in previous testing contracts. To remedy the shift in being able to

conduct race-based tests, our agency has developed the ability to test via email on the protected class of race. 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 2019 through June 2020 show that housing consumers seeking to rent dwellings in the City of Portland continue to encounter adverse differential treatment on the basis of 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 take action 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 on the basis of Source of Income, Race, and National Origin. This report covers testing that took place from July 2019 through June 2020.

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 substantially 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 on the basis of 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 in order 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)**
- **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 44 audit tests between July 2019 and June 2020. 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.

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 (8 tests for Race, 18 tests for National Origin and 18 tests for Source of Income) and a 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 is 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 opportunity 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 particular stakeholder; it is intended to inspire informative public dialogue about how to address a central equity problem.

Audit Testing Results – July 2019 through June 2020

This report details results of audit rental testing conducted by the Fair Housing Council of Oregon (FHCO) within the City of Portland from July 2019 through June 2020. 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 44 tests, 19 resulted in a positive outcome (Approximately 43%). 17 out of 44 tests resulted in a negative outcome (Approximately 39%). 8 out of 44 resulted in an inconclusive outcome (Approximately 18%).

July 2019 – June 2020 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 | 3 | 38% | 1 | 12% | 4 | 50% | 8 |
| National Origin | 9 | 50% | 5 | 28% | 4 | 22% | 18 |
| Source of Income | 7 | 39% | 2 | 11% | 9 | 50% | 18 |
| Totals | 19 | | 8 | | 17 | | 44 |

Initial Test vs. Retests: July 2019 – June 2020 Testing Results by Protected Class

Initial Tests

| Protected Class | Positive Tests | Percentage Positive Tests | Inconclusive Tests | Percentage Inconclusive Tests | Negative Tests | Percentage Negative Tests | Total Initial Tests Conducted |
|------------------|----------------|---------------------------|--------------------|-------------------------------|----------------|---------------------------|-------------------------------|
| Race | 2 | 33% | 0 | 0% | 4 | 67% | 6 |
| National Origin | 8 | 57% | 2 | 14% | 4 | 29% | 14 |
| Source of Income | 6 | 35% | 2 | 12% | 9 | 53% | 17 |
| Totals | 16 | | 4 | | 17 | | 37 |

Re-tests

| Protected Class | Positive Tests | Percentage Positive Tests | Inconclusive Tests | Percentage Inconclusive Tests | Negative Tests | Percentage Negative Tests | Total Retests Conducted |
|------------------|----------------|---------------------------|--------------------|-------------------------------|----------------|---------------------------|-------------------------|
| Race | 1 | 50% | 1 | 50% | 0 | 0% | 2 |
| National Origin | 1 | 25% | 3 | 75% | 0 | 0% | 4 |
| Source of Income | 1 | 100% | 0 | 0% | 0 | 0% | 1 |
| Totals | 3 | | 4 | | 0 | | 7 |

Tests Overall by Protected Class

RACE

Of the 44 tests conducted by FHCO, 8 focused on race as a protected class. FHCO’s Enforcement Team determined that 3 of the 8 tests were positive for different treatment.

Positive test results identified the following forms of different treatment:

- Misrepresentation of Availability:
 - White testers offered information and on-site viewing of more available units than black testers
 - White testers shown multiple units including model units and black testers shown less units and not shown the model units
- Different Terms, Conditions, Privileges, Services, or Facilities:
 - White testers told lower deposit than black testers
 - White testers informed of additional lease signing specials such as 9 months free parking, being entered into a gift card drawing, and \$1,000+ move-in credit, and black testers not given any lease signing special information
 - White testers given rental listing paperwork at on-site visit and black testers not given any paperwork at the on-site visit
 - White testers receiving multiple follow-up emails after an on-site visits and black testers not receiving any follow-up communication after on-site visits

NATIONAL ORIGIN

Of the 44 tests conducted by FHCO, 18 focused on National Origin as a protected class. FHCO’s Enforcement Team determined that 9 of the 18 tests were positive for different treatment.

Positive test results identified the following forms of different treatment:

- Misrepresentation of Availability:
 - Testers with no foreign accent told of more available units than testers with an identifiable foreign accent
 - Testers with no foreign accent told that the housing was available and testers with an identifiable foreign accent told that there were pending applications
 - Testers with no foreign accent told about substantially less expensive units available, whereas testers with an identifiable foreign accent told only about more expensive unit

- Different Terms, Conditions, Privileges, Services, or Facilities:
 - Testers without a foreign accent told a flat rate of deposit and testers with an identifiable foreign accent told deposit depends on results of background checks
 - Testers without a foreign accent offered a follow-up email communication and testers with an identifiable foreign accent not offered follow-up email communication
 - Testers without a foreign accent told of a substantially less expensive monthly rent than testers with an identifiable foreign accent told more expensive monthly rent for same unit
 - Testers without a foreign accent told about lease signing specials and the testers with an identifiable foreign accent told lease specials in ad did not apply
 - Testers without a foreign accent informed about virtual viewing videos of the property whereas testers with an identifiable foreign accent never informed about virtual videos of the property
 - Testers without a foreign accent offered move-in special options applied either at move-in or over time of the lease and the testers with an identifiable foreign accent not offered options
 - Testers without a foreign accent offered a 12-month or month-to-month lease term whereas testers with a recognizable foreign accent only offered 12- month lease terms

SOURCE OF INCOME

Of the 44 tests conducted by FHCO, 18 focused on Source of Income as a protected class. Of the 18 tests conducted by FHCO on the basis of Source of Income, 7 tests were deemed positive for different treatment by FHCO's Enforcement Team.

Unlike Race and National Origin, Source of Income is not a federally protected class. Before July 1, 2014, landlords could legally refuse to rent to people receiving federal rent assistance, including Section 8 vouchers. Now, Oregon's Fair Housing law makes it unlawful for landlords to

refuse to rent to an applicant for rental housing because the person receives assistance such as a Section 8 voucher.

Source of income is only protected on the state level. While the percentage of single-parent households, families with children, immigrants, people of color, and disabled individuals 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).

Positive test results identified the following forms of different treatment:

- *Misrepresentation of Availability/Refusal to Rent:*
 - Testers with no Section 8 voucher told about substantially less expensive units available, whereas testers with Section 8 voucher quoted same units for more expensive
 - Testers with Section 8 voucher told by an agent they were unsure if owner of the property accepts Section 8
 - Testers with no Section 8 voucher given all information about availability and eligibility and testers with Section 8 voucher told that they would have to go through large corporate management company to inquire whether Section 8 is permitted; testers with Section 8 attempting to contact the corporate office and not getting through, attempting to call agents back to inquire how to seek more information, leaving voicemails, and not getting calls back

- *Different Terms, Conditions, Privileges, Services, or Facilities:*
 - Testers with no Section 8 voucher receiving follow-up communication from agents to see if still interested, while testers with Section 8 voucher did not receive follow-up communication
 - Testers with Section 8 voucher told landlord only accepts month-to-month tenancy which landlord said would not work with Section 8 voucher
 - Testers with no Section 8 voucher not asked questions about employment stability or their life whereas testers with Section 8 vouchers asked multiple questions about job stability, why moving, and lifestyle like “partying”
 - Testers with no Section 8 voucher told about facilities and amenities such as off-street parking and laundry and testers with Section 8 voucher not given that information
 - Testers with no Section 8 voucher not being described downfalls of the unit whereas testers with Section 8 voucher told of multiple downfalls to apartment such as no dishwasher, concrete floors, and descriptions of the apartment not being nice

- Testers with no Section 8 voucher receiving follow-up email communication with pictures of the units and testers with Section 8 voucher not receiving follow-up email communication

Generally speaking, the subsidies are reserved for the most vulnerable individuals living amongst us and such funds are distributed in a manner intended to open a pathway to a more stable life with secure housing. Different treatment on the basis of Source of Income not only contravenes the intent of the Oregon State Legislature, 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.

Analysis of the Aggregated Testing Data – July 2019 through June 2020

In addition to the above analysis of individual paired tests, additional details gathered during the testing process can provide an opportunity to analyze a larger sampling of data points. Analysis of this larger set of data may further confirm different treatment of a protected class tester vis-à-vis a control tester beyond just the analysis of the outcomes of individual paired tests.

Since each paired test consisted of multiple instances of ‘different treatment’ we were able to classify each individual instances of different treatment into one of three categories: (a) those instances where the protected class tester got a favorable treatment, (b) those where the control tester got a favorable treatment, and (3) those where there was different treatment but it was not clear whether it favored one or the other tester. This gave us a somewhat larger set of data points than the 44 tests that were conducted. The results of that analysis are presented below. While the Protected Class testers got a more favorable treatment than the Control testers in 10 (18%) instances, the Control testers got a more favorable treatment in 40 (70%) instances. These numbers show much more reliably that the Control testers tend to receive favorable treatment almost 4 times more often than the Protected Class testers across all 44 tests.

| Protected Class | Number of instances Protected Class tester got favorable treatment | Number of instances Control tester got favorable treatment | Ambiguous instances of different treatment |
|-------------------------|---|---|---|
| Race | 2 (18%) | 8 (73%) | 1 (9%) |
| National Origin | 5 (19%) | 17 (63%) | 5 (19%) |
| Source of Income | 3 (16%) | 15 (79%) | 1 (5%) |
| Totals | 10 (18%) | 40 (70%) | 7 (12%) |

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 process. Other anecdotal evidence from FHCO suggests that adverse different treatment on the basis of a protected class transpires in all phases of housing, including but not limited to screening of applications and treatment of in-place tenants.

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, 18% of callers indicated race or color was the basis of their allegation, 8% of callers indicated national origin was the basis of their allegation, and 7% indicated source of income was the basis of their allegation.

Hotline Data (July 2019 to June 2020)

| BASIS | City of Portland | | Statewide | |
|---------------------------|------------------|-------------|-------------|-------------|
| | Count | Percentage | Count | Percentage |
| Disability | 181 | 39% | 623 | 44% |
| Race/Color | 85 | 18% | 197 | 14% |
| Sex | 56 | 12% | 178 | 12% |
| Familial Status | 46 | 10% | 124 | 9% |
| National Origin | 37 | 8% | 114 | 8% |
| Source of Income | 34 | 7% | 114 | 8% |
| Domestic Violence | 12 | 3% | 43 | 3% |
| Sexual Orientation/Gender | 8 | 2% | 22 | 2% |
| Religion | 3 | 1% | 12 | 1% |
| Marital Status | 1 | 0% | 5 | 0% |
| TOTAL | 463 | 100% | 1432 | 100% |

*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 anecdotal evidence supports the findings of the audit testing discussed earlier in this report. Both results indicate that the reality of different treatment in housing based on Race, National Origin, and Source of Income continues to be a very concerning issue in the City of Portland.

Recommendations

The three data points noted above, “Audit Testing Results,” “Analysis of the Aggregate Testing Data,” and “Trends and Findings in Similar FHCO Services” cumulatively 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 on the basis of a protected class manifests throughout different stages of the housing process, from the pre-application phase through in-place tenancy. This testing is crucial because in order 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 landlords 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 new staff on fair housing laws, with refresher courses for all staff annually.

Critically, FHCO currently operates a landlord hotline where housing providers can contact our agency to receive guidance on Fair Housing issues. Many landlords 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 in order 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 trainings that inform them of their options for self-advocacy and point 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 on the basis of a protected class. Similar to 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 in order 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.

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 trainings specific to the process for accepting public funding and section 8 vouchers. In particular, 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 trainings 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 market place.
- 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 common 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 treats in place 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 on the basis of 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 landlords, 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 generally 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 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 and by in-person onsite visits. 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 landlord. For testing on the basis of race, onsite visits were conducted. Testing for differential treatment based on the protected classes of race is done in person so as to provide a visual presentation of the tester's actual or perceived race. Some onsite tests required initial contact by phone to schedule onsite appointments with a leasing agent. Similarly, source of income tests involved callers identifying one of their sources of income as a Section 8 voucher.

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.