

# Race, National Origin & Source of Income

## Indicators of Disparate Treatment in Portland Rental Housing

Audit Testing report prepared by:

Fair Housing Council of Oregon  
1221 SW Yamhill St., Suite 305  
Portland, OR 97205  
[www.fhco.org](http://www.fhco.org)



**PRESENTED DECEMBER 2019**

**TABLE OF CONTENTS**

**Introduction – Page 2**

**Summary – Pages 2-3**

**About FHCO – Page 3**

**Audit Testing Analysis – Pages 3-4**

**Key Points and Overall Results – Pages 5-10**

**Trends and Findings in Similar FHCO Services – Page 11-12**

**Recommendations – Pages 12-15**

**Appendix – Pages 15-18**

## 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 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 94 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 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.

## Summary

The results of audit tests conducted between January 2018 – June 2019 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 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 in this time of urban expansion 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 January 2018 – June 2019.

### **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 characteristic.

**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 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. As such, tests can be deemed as having an outcome that is positive for different treatment because the evaluators discovered one or more violations in a single test.

## Summary of Results

The Fair Housing Council of Oregon (FHCO) conducted 94 audit tests between January 2018 – June 2019. 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 findings in this report are *not* statistically significant as they represent a limited snapshot of just a handful of housing transactions. And yet, the statistical significance is *not* the point here. Instead, this synopsis illuminates what the day-to-day experience of a prospective renter encompasses as a member of a 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 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 that impacts all of us in one way or another.

### Details of Audit Testing Results – January 2018 – June 2019

This report details results of audit rental testing conducted by the Fair Housing Council of Oregon (FHCO) within the City of Portland from January 2018 – June 2019.<sup>1</sup> 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 94 tests, 26 resulted in a positive outcome (Approximately 28%). 45 out of 94 tests resulted in a negative outcome (Approximately 48%). 23 out of 94 resulted in an inconclusive outcome (Approximately 24%).

### January 2018 – June 2019 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 <sup>2</sup>	5	17%	9	30%	16	53%	30
National Origin	8	22%	11	30%	18	49%	37
Source of Income	13	48%	3	11%	11	41%	27
<b>Totals</b>	26		23		45		94

<sup>1</sup> FHCO conducted 94 total rental audit tests in the City of Portland from January 2018 – June 2019. Critically, 6 out of the 94 tests were conducted in February 2018 and were included in the prior November 2018 Portland Audit Testing Report. These 6 tests are also included in this report because they match the contract period of January 2018 – June 2019. Of those 6 tests, only 1 was positive.

<sup>2</sup> For purposes of this report, race refers to two protected classes race and color.

**Initial Test vs. Retests: January 2018 – June 2019 Testing Results by Protected Class**

***Initial Tests***

<b>Protected Class</b>	<b>Positive Tests</b>	<b>Percentage Positive Tests</b>	<b>Inconclusive Tests</b>	<b>Percentage Inconclusive Tests</b>	<b>Negative Tests</b>	<b>Percentage Negative Tests</b>	<b>Total Initial Tests Conducted</b>
<b>Race</b>	4	20%	7	35%	9	45%	20
<b>National Origin</b>	4	18%	9	41%	9	41%	22
<b>Source of Income</b>	10	56%	1	6%	7	39%	18
<b>Totals</b>	18		17		25		

***Re-tests***

<b>Protected Class</b>	<b>Positive Tests</b>	<b>Percentage Positive Tests</b>	<b>Inconclusive Tests</b>	<b>Percentage Inconclusive Tests</b>	<b>Negative Tests</b>	<b>Percentage Negative Tests</b>	<b>Total Retests Conducted</b>
<b>Race</b>	1	10%	2	20%	7	70%	10
<b>National Origin</b>	4	27%	2	13%	9	60%	15
<b>Source of Income</b>	4	44%	1	11%	4	44%	9
<b>Totals</b>	9		5		20		

## Tests Overall by Protected Class

### RACE

Of the 94 tests conducted by FHCO, 30 focused on race as a protected class. FHCO's Enforcement Team determined that 5 out of 30 were positive for different treatment.

Positive test results identified the following forms of different treatment:

- Misrepresentation of Availability:
  - White testers offered information on more available units than Black testers
  - Showing Black tester a model unit and explaining that actual unit was not available, while taking White tester to a unit that was available to rent immediately
  
- Different Terms and Conditions:
  - White tester offered more significant discounts/promotions than Black tester
  - White testers informed of special discounts off of rent and/or lower move-in costs, but Black testers were not
  - White tester offered parking special, but Black tester was not
  - White tester told they need to earn 2.5x rent, while Black tester told they need to earn 3x rent to qualify
  - Follow up communication with White tester, but not Black tester

### NATIONAL ORIGIN

Of the 94 tests conducted by FHCO, 37 focused on National Origin as a protected class. FHCO's Enforcement Team determined that 8 out of 37 were positive for different treatment.

Positive tests results identified the following forms of different treatment:

- Misrepresentation of Availability:
  - A tester with an identifiable foreign accent was told of less availability than a tester with no accent
  
- Different Terms and Conditions:
  - A tester with an identifiable foreign accent was told that they needed to drive by a property before an appointment could be scheduled for viewing, while a tester without an accent was offered the chance to schedule a viewing right away

- A tester with an identifiable foreign accent was told to drive by a property and call back, while a tester with no accent was encouraged to take a tour and was then contacted multiple times by the agent following the initial conversation
- A tester with an identifiable foreign accent was given a viewing date that was further in the future than a tester without an accent. In addition, the tester without the accent was invited to a scheduled showing that the tester with an identifiable foreign accent was never told about
- Testers with identifiable foreign accents were never informed of significant promotions/discounts, while testers without accents were told about the promotions/discounts
- A tester with an identifiable foreign accent was told they needed to provide identification in the form of a driver's license, while a tester without an accent was never told of this requirement
- Testers with identifiable foreign accents received no follow up communication from an agent, while testers with no accent received follow up

## **SOURCE OF INCOME**

Of the 94 tests conducted by FHCO, 27 focused on Source of Income as a protected class. Of the 27 tests conducted by FHCO on the basis of Source of Income, 13 out of 27 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 laws make 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 female-headed households, families with children, immigrants, people of color, and individuals with disabilities who receive vouchers in the City of Portland is beyond the scope of this document, it is possible that these federally protected classes may be disproportionately harmed by different treatment based on Source of Income (Disparate Impact).

Positive tests results identified the following forms of different treatment:

- *Misrepresentation of Availability/Refusal to Rent:*
  - A tester with a Section 8 voucher was told that they do not accept Section 8 for any of the units currently available

- A tester with a Section 8 voucher was told nothing is available at the complex and will not be for the foreseeable future, while a tester with no Section 8 voucher was offered a pathway to rent a unit
- Testers with a Section 8 voucher were told that Section 8 is not accepted
- A tester with a Section 8 voucher was told that while the unit they are inquiring about is available, they do not accept Section 8
- A tester with a Section 8 voucher was told by an agent that they did not think the owner of the property would accept Section 8
- A tester with a Section 8 voucher was told by an agent that Section 8 will not cover the rent charged and as a result the unit does not qualify for Section 8
- *Different Terms and Conditions:*
  - Testers with no Section 8 voucher received follow up communications from agent, while testers with a Section 8 voucher did not
  - A tester with a Section 8 voucher was never informed about a significant promotion/discount that another tester without a Section 8 voucher was told about
  - A tester with a Section 8 voucher was told to apply in person, while the tester without a voucher was told they could apply either online or in person.
  - A tester with a Section 8 voucher was told that they would need to apply to the property before they could view it
  - A tester with a Section 8 voucher was told that the deposit was significantly higher than the tester without a Section 8 voucher

In order to understand the impact that different treatment based on Source of Income has on a community, one must first have an understanding of the people generally eligible for housing subsidies from federal, state, local governments as well as non-profits. Generally speaking, these 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.

## 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 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 bona fide<sup>3</sup> Fair Housing allegation within the City of Portland. Among the calls within the City of Portland, 16% of callers indicated race or color was the basis of their allegation, 9% 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 (January 2018 to November 2019)

BASIS	City of Portland		Statewide	
	Count	Percentage	Count	Percentage
<b>Race/Color</b>	27	16%	57	13%
<b>National Origin</b>	16	9%	38	8.5%
<b>Religion</b>	2	1%	7	2%
<b>Sex</b>	15	9%	38	8.5%
<b>Familial</b>	15	9%	46	10%
<b>Disability</b>	72	43%	185	42%
<b>Domestic Violence</b>	4	2%	9	2%
<b>Sex Orientation/Gender</b>	6	4%	13	3%
<b>Income Source</b>	12	7%	45	10%
<b>Marital Status</b>	0	0%	4	1%
<b>TOTAL</b>	<b>169</b>	<b>100%</b>	<b>442</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.

<sup>3</sup> A bona fide fair housing allegation refers to cases FHCO receives where there is an allegation that a member of a protected class has experienced different treatment and/or discrimination on the basis of that status. Critically, FHCO receives many more calls than the numbers demonstrate above which are not bona fide allegations.

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 relevant and very concerning issue in the City of Portland.

## **RECOMMENDATIONS**

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 enhancing education and strengthening enforcement.

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

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, esc.) confirm what culturally specific community organizations already know: Different treatment based on Race and National Origin continues to be a stark reality in the City of 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. 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 crucial to form partnership and collaboration 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 amongst 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 differential 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 violations.

By considering 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, individuals who identify as disabled, 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 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, 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, move-in costs, 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 serves 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.