



Samantha Tan's entry "Fair Housing for All, Big and Small!" won the Fair Housing Council of Oregon's 2014 fair housing poster contest.

Fair Housing Council of Oregon

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Expanding Opportunity Through Fair Housing Choice

More than four decades after Congress passed the Fair Housing Act, fair housing issues remain critical to the pursuit of strong, sustainable, inclusive communities and equal opportunity for all. There is evidence of progress. By some measures, incidences of housing discrimination by race have declined since 1977, when the first national fair housing audit study was conducted. However, even as overt forms of discrimination, such as the outright

refusal to sell or rent housing, have become less common, more subtle forms, such as steering home-seekers to certain neighborhoods, remain widespread. Racial segregation in housing has not only endured but, along with increasing income segregation, has also created areas of concentrated poverty populated predominantly by minority residents. Research shows that such residential segregation carries high costs for individuals, families, and

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Message from the Assistant Secretary

As HUD's new Assistant Secretary for Policy Development and Research (PD&R), I find it particularly fitting that my debut message appears in this, the 11th edition of *Evidence Matters*, which examines fair housing issues and racial segregation. These issues, the focus of much of my own research, are essential to HUD's core mission.

PD&R has a long history of research into housing discrimination and fair housing issues. As our Research Spotlight article discusses, the national Housing Discrimination Studies that PD&R funds, along with associated evaluations that investigate more specific types of discrimination, are among the largest and most important assessments of discrimination in U.S. housing markets available.

Those studies find that, although the incidence of more overt forms of housing discrimination has declined over the years, more subtle types of discrimination persist. Such tactics raise the cost of the housing search process for minorities and may help preserve patterns of segregation that limit opportunity.

Research shows that one critical strategy for reducing housing discrimination is education. Although PD&R research showed encouraging increases in public support for fair housing laws from 2001 to 2005, it also revealed that the public still lacks knowledge about what discriminatory behaviors are prohibited by federal law. Because subtle forms of discrimination are harder to detect, they may pose a challenge both in raising public awareness of their existence and in enforcement. Subtle forms of discrimination may go undetected by those who are affected, preventing victims from seeking a remedy through the established complaint process.

Fair housing, however, is about much more than eliminating current acts of discrimination. Legacies of discrimination, public policies old and new, socioeconomic differences among racial and ethnic groups, along with existing or perceived prejudices — all of these factors may contribute to existing patterns of residential segregation. As a society, and particularly here at HUD, we should be concerned about segregation regardless of its cause because where we live has a profound effect on the life chances of children and households. Considerable evidence shows that even after controlling for income and education, large disparities exist in the quality of neighborhoods between white and minority households; the places and resources that households with otherwise similar means can access differ substantially by race.

In our previous research, Jorge De la Roca, Ingrid Gould Ellen, and I found that racial disparities in neighborhood poverty levels, quality of nearby schools, and exposure to violent crime are higher in more segregated areas. Although minorities might generally live in neighborhoods with fewer opportunities than do whites, that gap is much larger in more segregated metropolitan areas. Decreasing segregation, whatever its cause, may lower racial disparities in those key neighborhood attributes — racial disparities that may perpetuate differences in income and wealth, which in turn reinforce residential segregation.

A key goal of fair housing efforts is to decrease segregation and create meaningful choice for all. As we work toward this goal, we also need to continue another fight: to break the strong correlation between neighborhood quality and the presence of minorities. We need strategic investments in disadvantaged neighborhoods to ensure that those who reside there (by choice or through constrained options) also have opportunities. Achieving the charge of fair housing and opportunity for all requires doing both.

— Katherine M. O'Regan, *Assistant Secretary for Policy Development and Research*

Editor's Note

Fair housing, the focus of this edition of *Evidence Matters*, is a critical component of HUD's mission and is deeply connected to many of the housing and community development topics we have covered previously, from community resilience to low-income homeownership. Ensuring that all Americans have equitable access to healthy, opportunity-rich neighborhoods that fit their needs and preferences must be a fundamental goal at all levels of our government.

This issue examines fair housing and housing discrimination, particularly from an enforcement perspective. The lead article, "Expanding Opportunity Through Fair Housing Choice," discusses the progress that has been made in reducing overt discrimination while recognizing the consequences of more persistent and subtle forms of discrimination as well as continuing segregation. "Paired Testing and the Housing Discrimination Studies," our Research Spotlight article, focuses on the methodology of HUD's Housing Discrimination Studies, which have for decades provided critical insight into the state of fair housing in the United States. Finally, our In Practice article, "Fair Housing Enforcement Organizations Use Testing To Expose Discrimination," profiles three nonprofits working to prevent and expose discrimination and advocate for equal housing opportunities.

I hope you find this issue of *Evidence Matters* enlightening. Our next issue will explore the connections between housing and youth outcomes. Please continue the conversation and provide feedback at www.huduser.org/forums.

— Rachele Levitt, *Director of Research Utilization Division*

Highlights

- The persistence of subtle forms of discrimination limits housing opportunities for minority homeseekers and contributes to patterns of residential segregation.
- Fair housing enforcement efforts — often performed by local, nonprofit fair housing organizations that are backed with federal funding — help expose and punish discriminatory behavior; however, they are limited because they rely primarily on victims of discrimination to initiate complaints.
- Segregation rates in the United States remain high, restricting minority households' access to neighborhoods rich in amenities and opportunities; this restriction ultimately affects health, education, and other life outcomes.

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society as a whole, constricting opportunity and life chances and limiting economic growth. To date, fair housing policy has not been as effective as policymakers intended in combating these problems. Renewed efforts at both local and federal levels, however, take a more proactive approach to promoting fair housing choice with the ultimate goal of reducing economic inequality by ensuring equal opportunity.

Housing Discrimination: Persistence, but Progress

With a few exceptions, federal fair housing law prohibits discrimination on the basis of race, color, religion, national origin, sex, disability, and familial status in all stages of seeking and securing housing.¹ Some state and local jurisdictions have adopted additional provisions to prohibit housing discrimination on the basis of sexual orientation, gender identity, source of income, or marital status, among others. Housing

discrimination includes both *differential treatment* regarding availability or terms and conditions in the advertisement, sale or rental, financing, or insurance of housing, and *disparate impact* of apparently neutral practices or policies in restricting housing choice and opportunity according to any basis prohibited by law. Policies such as mortgage pricing practices that are unrelated to creditworthiness or local residency preferences for housing choice vouchers — even when not intentionally discriminatory — may in practice deny equal housing opportunity or perpetuate segregation without justification and thus be prohibited by the Fair Housing Act.² Despite these legal prohibitions and an elaborate federal, state, and local enforcement system, evidence suggests that discrimination remains a pervasive problem in the nation's housing markets.³

The National Fair Housing Alliance, a national consortium of private and nonprofit fair housing organizations, estimates that 3.7 million instances of discrimination occur each year on the



Photo, Item 63893, Courtesy of Seattle Municipal Archives

Explicit housing discrimination, such as that protested at this Congress of Racial Equality-sponsored demonstration in Seattle in 1964, has declined dramatically, but subtle forms persist.

basis of race alone.⁴ This persistent discrimination is different in nature from the “door-slamming” discrimination — overt and explicit refusal to rent, sell, or even show housing to a racial minority — that was standard practice before the passage of the Fair Housing Act in 1968.⁵ Today, minority homeseekers are more likely to encounter “discrimination with a smile” — more subtle mistreatment such as falsely being told that no units are available.⁶ HUD’s 2012 Housing Discrimination Study, for example, found that while well-qualified minority homeseekers were as likely as equally qualified white homeseekers to get an appointment to see a rental apartment or home, they were less likely than their white counterparts to be told about available units or shown as many units. (See “Paired Testing and the Housing Discrimination Studies,” p. 12.) As a result, minority homeseekers incur greater search-related costs and have more limited housing choices.⁷ A similar shift has occurred in the lending arena, as discrimination has largely changed from credit denial (though this still exists) into access to credit on unequal terms.⁸ Studies of both

mortgage credit availability and terms find evidence of discrimination against racial minorities compared with similarly qualified white borrowers.⁹ Notably, lending discrimination based on race was pervasive during the subprime lending boom; research shows that minorities paid higher interest rates and prices on subprime loans — a difference that could not be explained by income or credit risk.¹⁰

Less research has been conducted to measure the incidence of discrimination against persons with disabilities nationally; however, the number of disability-based complaints received by HUD and local government enforcement agencies has neared 50 percent of the total in recent years, indicating that it is a significant problem.¹¹ A paired-testing study of the Chicago rental market in 2005 found that one of four deaf apartment seekers using a text telephone (TTY) relay service had their calls refused and that TTY callers generally received less information and follow-up than did non-TTY callers. The study found that one out of every four apartment seekers in a wheelchair

learned about fewer available apartments, and three of ten were denied the opportunity to inspect available units. Almost one out of six housing providers refused to allow a reasonable modification such as widening a doorway or installing a ramp, and almost one in five providers with onsite parking refused to provide and designate a wheelchair-accessible parking spot (see “Fair Housing Enforcement Organizations Use Testing To Expose Discrimination,” p. 16).¹²

Discrimination on the basis of national origin, which in some cases may overlap with racial and ethnic discrimination, was cited in 13 percent of complaints received by HUD and local governments in fiscal year (FY) 2011. A recent study of national origin discrimination in Birmingham, Atlanta, and San Antonio found that, compared with their white counterparts, Hispanic homeseekers experienced at least one type of adverse treatment in search-related housing interactions 42 percent of the time.¹³ Of the remaining bases of discrimination protected by the Fair Housing Act, sex was cited in 11 percent, familial status in 15 percent, religion in 3 percent,

and color in 2 percent of complaints received by HUD and local government enforcement agencies in FY 2011.¹⁴

Recent research documents ongoing market discrimination against other groups not protected under the federal Fair Housing Act. A study of discrimination against same-sex couples in rentals advertised on the internet found that same-sex couples received fewer email responses than heterosexual couples after contacting a housing provider. To combat these and similar practices, 21 states and the District of Columbia had prohibited housing discrimination on the basis of sexual orientation or gender identity as of early 2012, and HUD programs and HUD-assisted or -insured housing providers cannot discriminate on the basis of sexual orientation, gender identity, or marital status.¹⁵

Discrimination based on source of income also restricts fair housing choice but is not prohibited by federal law. Some state and local jurisdictions have adopted protections on this basis, making it illegal, for example, for a landlord to refuse to rent to tenants who pay with housing vouchers or to disregard Social Security disability benefits as a qualifying source of income. By preventing voucher holders from moving to opportunity-rich neighborhoods, this type of discrimination both restricts housing choice for voucher holders and prevents the Housing Choice Voucher program from fulfilling its goal of deconcentrating poverty.¹⁶ Because some protected classes, such as racial minorities, are disproportionately represented among voucher holders, refusing to accept vouchers may also have a disparate impact on groups protected by the federal Fair Housing Act.¹⁷

The differential treatment type of housing discrimination generally occurs during the face-to-face interactions associated with seeking and securing housing. Numerous ostensibly non-discriminatory practices and policies such as occupancy limits can also have a disparate impact or discriminatory

effect on racial minorities or other protected classes.¹⁸ Massey and Rothwell conclude that zoning that restricts density, for example, limits the ability of low- and moderate-income minorities to leave segregated areas.¹⁹ Significantly, both HUD and the federal courts have interpreted the Fair Housing Act “to prohibit practices with an unjustified discriminatory effect, regardless of whether there was an intent to discriminate.”²⁰ Both private and public entities may engage in practices that have discriminatory effects, ranging from differential maintenance of foreclosed homes, subprime lending, and targeted marketing to unfair land use policies and the siting of public housing developments in segregated areas.²¹

Fair Housing Enforcement

Although legal prohibitions and public education campaigns can reduce discrimination by positively shaping attitudes and behavior, effective enforcement remains crucial for achieving fair housing aims. The Fair Housing Act delegated primary enforcement responsibility to HUD, although it also outlined a specific role for the U.S. Department of Justice (DOJ) and directed “all executive departments and agencies” to further the purposes of the act through their programs and activities.²²

Currently, fair housing enforcement is largely complaint driven. Those who believe that they have been or are about to be victims of housing discrimination can file a discrimination complaint with HUD or with a state or local government agency that participates in HUD’s Fair Housing Assistance Program (FHAP). Under FHAP, HUD funds the investigative, training, and education efforts of participating agencies in jurisdictions that have fair housing laws that are substantially equivalent to or more stringent than those of the federal Fair Housing Act. Some complainants will first file a complaint with a local nonprofit fair housing organization. Many of these organizations participate in HUD’s Fair Housing Initiatives Program (FHIP), which supports local organizations’ education and enforcement efforts.²³ HUD has begun to make more frequent use of its authority to seek systemic relief through Secretary-initiated complaints, which are based on investigations in which no complainant has come forward and cases in which more people have been impacted by a discriminatory practice than just the filing complainant.²⁴

In recent years, policymakers have placed increased emphasis on FHIP enforcement. Overall FHIP funding



Mark Lozier, Fair Share Housing Development

Founded in 1986 to implement the settlement agreement resulting from the Mount Laurel I and Mount Laurel II litigation against exclusionary zoning in New Jersey, Fair Share Housing Development provides affordable housing with access to high-quality schools to families like the Chamberlains, pictured here.

increased dramatically in FY 2010, up to \$42.5 million from \$27.5 million in FY 2009, and since FY 2008, a greater share of FHIP funds has gone toward enforcement than toward education or capacity building.²⁵ This increase notwithstanding, Silverman and Patterson argue that fair housing policy has suffered from “chronic underfunding” and “inconsistent implementation.”²⁶ An enforcement system that relies so heavily on the initiation of complainants is significantly limited. As housing discrimination has become more subtle, many victims may not even realize that they have been treated unfairly. A 2005 HUD survey found that even among those who did perceive that they had been discriminated against, only four percent sought help from or filed a complaint with a fair housing organization, government agency, or private attorney. Survey respondents cited several reasons for not taking action, including the belief that filing a complaint was not worth the effort, would not help, or would be too costly or time consuming; a lack of knowledge about where or how to complain; and a fear of retaliation.²⁷ The average FHAP settlement between 2005 and 2008 was \$1,599 — an amount that may be too small to either motivate potential victims to pursue a complaint or deter violators from discriminating.²⁸ The total number of private legal actions and HUD, FHAP, and FHIP complaints, numbering in the tens of thousands annually, still pales in comparison to the estimated millions of instances of housing discrimination occurring each year.²⁹

Research shows, however, that despite these limitations, enforcement efforts do make a difference. In a study of data from HUD’s discrimination studies and complaint database, DOJ, the National Fair Housing Alliance, and the U.S. Census Bureau covering 1989 to 2000, Ross and Galster found that metropolitan areas in which HUD and HUD-supported FHIP and FHAP agencies win larger monetary awards have shown greater decreases in housing

discrimination against black renters and homebuyers.³⁰ In addition, Turner et al. conclude that long-term trends in housing discrimination suggest that fair housing education and enforcement efforts have been effective.³¹ Overall, public opinion surveys indicate a shift over time toward greater acceptance of residential diversity and federal prohibitions against housing discrimination, both signs of progress and potential.³²

Continuing Segregation: Causes and Costs

If the long-term decline in the incidence of housing discrimination indicates that our nation’s implementation of fair housing policy has achieved some level of success, the dogged persistence of residential segregation reveals the substantial work yet to be done. As measured by the dissimilarity index — a common measure of segregation based on the relative percentage of group members that would have to move to be evenly distributed throughout a particular area — in 2010, segregation of blacks from persons of other races was lower in 657 of 658 housing markets compared with 1970 and in 522 of 658 markets compared with 2000.³³ Black-white segregation rates, in particular, have gradually declined, but remain high — especially in many of the larger cities of the Midwest and Northeast.³⁴ Both Hispanic-white and Asian-white segregation, by dissimilarity index, have held relatively stable since 1980, while the isolation of both groups has increased steadily over the same period.³⁵ In a study of 367 metropolitan areas, Logan and Stults found that in 2010, the typical white resident lived in a neighborhood that was 75 percent white, 8 percent black, 11 percent Hispanic, and 5 percent Asian, whereas the typical black resident lived in a neighborhood that was 45 percent black, 35 percent white, 15 percent Hispanic, and 4 percent Asian and the typical Hispanic resident lived in a neighborhood that was 46 percent Hispanic, 35 percent white, 11 percent black, and 7 percent Asian.³⁶ Multiple factors contribute to the persistence

of segregation, including continuing market discrimination, legacies of past discrimination and segregation, racial differences in wealth and income, household preferences, and public policy.³⁷ Considerable scholarly debate continues over the relative importance of each of these explanations.

Causes. Continuing discrimination in housing markets limits housing choices for minorities and thereby reinforces segregation.³⁸ Even if housing markets were completely free of discrimination, the legacy of discrimination and the segregation it fostered is somewhat self-perpetuating. Because racial minorities historically have had unequal access to education and employment opportunities and have benefited less from the wealth accumulation of suburban homeownership, they are less likely even today to have the financial resources to choose residential options in less segregated, lower-poverty neighborhoods.³⁹

Reviews of literature on segregation by both Dawkins and Charles conclude that racial differences in socioeconomic status explain only a small portion of existing patterns of segregation.⁴⁰ Higher incomes somewhat increase residential mobility for black households, but middle- and high-income black households continue to live in segregated, predominantly minority neighborhoods.⁴¹ Black households earning \$14,999 or less per year, for example, live in neighborhoods that are, on average, 61 percent black and 28 percent white, whereas black households earning more than \$1 million per year live in neighborhoods averaging 45 percent black and 44 percent white — only slightly different from the neighborhood composition of the typical black household described above.⁴² Of the 50 metropolitan areas with the largest black populations, in only 2 did affluent black households live in less poor neighborhoods than average white households.⁴³

Some degree of residential segregation can be attributed to household



Mark Lozier, Fair Share Housing Development

Children play in front of the Ethel R. Lawrence Homes, an affordable rental apartment complex built by Fair Share Housing Development in Mount Laurel Township, New Jersey.

preferences. There is evidence that some black households prefer to live in majority black neighborhoods, but this preference is generally considered to have a relatively small effect on residential patterns; more commonly, black households indicate a preference for evenly integrated neighborhoods.⁴⁴ Self-segregation among white households, however, is thought to play a more significant role, with white households willing to pay more to live in predominantly white neighborhoods.⁴⁵ Card, Mas, and Rothstein, analyzing census data from 1970 to 2000, found evidence of neighborhood transitions in which an integrated neighborhood would remain relatively stable until the minority share reached a “tipping point” ranging from between 5 percent to more than 20 percent, after which the racial composition of the neighborhood would rapidly shift as white residents left.⁴⁶ This dynamic demonstrates the limited ability of an individual household to live in its preferred type of neighborhood — what Sharkey calls “unselected change.”⁴⁷

In this case, for example, a black household could move to a proportionately integrated neighborhood only to find the neighborhood soon transitioning to being predominantly black. Household preferences among whites and racial minorities are varied, however, and can function to decrease segregation as well. Glaeser and Vigdor find that movement of black households from urban areas in the Midwest and Northeast to less segregated Sun Belt areas and, to a lesser extent, the movement of white households into predominantly black urban neighborhoods explain part of the observed decline in black-white segregation.⁴⁸

Public policies can also contribute to continuing segregation. The discriminatory effects of ostensibly race-neutral policies such as density zoning can limit fair housing choice. For example, a zoning ordinance that has the effect of restricting construction of multifamily housing to predominantly minority areas perpetuates segregation.⁴⁹ Policies such as the Low-Income Housing Tax Credit

(LIHTC) program, one of the primary sources of funding for affordable housing, may not generally increase segregation, but they have little fair housing oversight and may fail to further fair housing aims by not promoting a more equitable geographic distribution of affordable housing opportunities.⁵⁰ LIHTC properties tend to be clustered in high-density areas with higher poverty levels and fewer non-Hispanic whites.⁵¹ On the other hand, LIHTC properties bring much-needed investment and affordable, high-quality housing to high-poverty neighborhoods. The tension between the worthy, sometimes competing goals of fostering investment in poor minority areas and creating affordable housing in low-poverty, opportunity-rich areas is not easily resolved, especially in an era of limited resources. The affordable housing advocacy groups Enterprise Community Partners, Local Initiatives Support Corporation, and the National Housing Trust have expressed that policymakers

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Evolution of Federal Strategies To Promote Fair Housing

Since the passage of the Fair Housing Act, the federal government has gradually but progressively strengthened the enforcement apparatus for antidiscrimination.

- 1968 – Fair Housing Act. Prohibits discrimination on the basis of race, color, religion, and national origin in most housing and directs federal agencies to administer programs “in a manner affirmatively to further” fair housing.¹
 - 1972 – *Trafficante v. Metropolitan Life Insurance Company*. U.S. Supreme Court decision recognizing integration as part of the legislative intent of the Fair Housing Act.²
 - 1974 – Housing and Community Development Act. Adds sex to the prohibited bases of discrimination in the Fair Housing Act.³
 - 1976 – *Hills v. Gautreaux*. U.S. Supreme Court decision stating that HUD had an obligation to implement a desegregation remedy for metropolitan areas to redress past policies that sited public housing in minority neighborhoods.⁴
 - 1977 – Community Reinvestment Act. Seeks to reduce redlining by giving federal financial regulators the ability to examine whether financial institutions have adequately met the credit needs of the community in which they are chartered before approving mergers and branch openings.⁵
 - 1979 – Fair Housing Assistance Program (FHAP). Supports local
- government enforcement efforts in jurisdictions with substantially equivalent fair housing protections.⁶
 - 1982 – *Havens Realty Corp. v. Coleman*. U.S. Supreme Court decision ruling that fair housing testers have standing to sue in court.⁷
 - 1988 – Fair Housing Initiatives Program (FHIP). Established as part of the Housing and Community Development Act of 1987, FHIP funds the education and enforcement efforts of local non-profit fair housing organizations.⁸
 - 1988 – Fair Housing Amendments Act. Adds familial status and disability to the bases of protection under the Fair Housing Act and bolsters the enforcement process by authorizing HUD administrative law judges to decide cases and award damages.⁹
 - 2000 – Executive Order 13166, “Improving Access to Services for Persons With Limited English Proficiency.” Requires federal agencies to ensure that otherwise eligible persons with limited English proficiency can access federally conducted or assisted programs and activities, including those related to housing.¹⁰
 - 2009 – *United States ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York*. District court partial summary judgment ruling that Westchester County had failed to consider race in preparing their analysis of impediments

and had falsely certified that it had affirmatively furthered fair housing. The case resulted in a settlement in which the county agreed to ensure the development of affordable housing in low-poverty neighborhoods.¹¹

- 2012 – Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule. Prohibits discrimination against otherwise eligible individuals or families on the basis of sexual orientation, gender identity, or marital status in HUD-assisted or -insured housing.¹²
- 2013 – Implementation of the Fair Housing Act’s Discriminatory Effects Standard Final Rule. Formalizes the long-standing interpretation of HUD and federal appellate courts that practices with discriminatory effects may violate the Fair Housing Act, and standardizes a three-part burden-shifting test to determine liability under the Act.¹³
- 2013 – Affirmatively Furthering Fair Housing Proposed Rule. With Census data and technical support, would require HUD program participants to prepare an assessment of fair housing and encourage incorporation of fair housing considerations in local and regional planning with the goals of eliminating barriers to fair housing choice and promoting desegregation and deconcentration of poverty.¹⁴

¹ *Fair Housing Act*, 1968, Pub. L. 90–284.

² *Trafficante v. Metropolitan Life Insurance Company*, 409 U.S. 205, 211 (1972).

³ *Housing and Community Development Act*, 1974, Pub. L. 93–383.

⁴ Nicholas R. Seabrook, Charles M. Lamb, and Eric M. Wilk. 2011. “Federal Courts and Fair Housing Policy,” in *Fair and Affordable Housing in the U.S.: Trends, Outcomes, Future Directions*, eds. Robert Mark Silverman and Kelly L. Patterson, Boston: Brill, 49.

⁵ *Community Reinvestment Act*, 1977, Pub. L. 95–128.

⁶ Eric M. Wilk, Charles M. Lamb, and Nicholas R. Seabrook. 2011. “Intergovernmental Enforcement of the

Fair Housing Act: The Fair Housing Assistance Program,” in Silverman and Patterson, 35.

⁷ Seabrook, Lamb, and Wilk 2011, 59–60.

⁸ *Housing and Community Development Act of 1987*, Pub. L. 100–242, Section 561.

⁹ *Fair Housing Amendments Act*, 1988, Pub. L. 100–430; Michael H. Schill and Samantha Friedman. 1999. “The Fair Housing Amendments Act of 1988: The First Decade,” *Cityscape: A Journal of Policy Development and Research* 4:3, 58–9.

¹⁰ U.S. President. 2000. “Executive Order 13166 of August 11, 2000: Improving Access to Services for Persons With Limited English Proficiency,” *Federal Register* 65:159 (August 16), 50121–2.

¹¹ Olatunde Johnson. 2011. “The Last Plank: Rethinking Public and Private Power to Advance Fair Housing,” *University of Pennsylvania Journal of Constitutional Law* 13:5, 1216–8.

¹² U.S. Department of Housing and Urban Development. 2012. “Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity,” *Federal Register* 77:23 (February 3), 5662–76.

¹³ U.S. Department of Housing and Urban Development. 2013. “Implementation of the Fair Housing Act’s Discriminatory Effects Standard,” *Federal Register* 78:32 (February 15), 11460–82.

¹⁴ U.S. Department of Housing and Urban Development. 2013. “Affirmatively Furthering Fair Housing,” *Federal Register* 78:139 (July 19), 43710–43.

should ensure that both of these goals are pursued equally.⁵²

Costs. Segregation reflects not only restricted choices in housing but restricted life chances. A growing body of evidence shows that where one lives greatly determines access to amenities and opportunities, ultimately affecting one's health, education, and other life outcomes.⁵³ Over the past four decades, income, resources, and amenities increasingly have been concentrated in affluent neighborhoods whereas many low-income black and Hispanic neighborhoods have become areas of concentrated poverty.⁵⁴ Of the census tracts in which more than 40 percent of the population is below the federal poverty level, 78 percent are predominantly populated by members of minority groups.⁵⁵ These high-poverty, resource-deprived neighborhoods result in myriad adverse outcomes for their residents.⁵⁶

Residential segregation can physically separate minorities from employment opportunities and exacerbate the problems of employment discrimination, differentials in skills and experience, and limited access to information about job opportunities.⁵⁷ Vast differences in educational opportunities exist between the segregated neighborhoods of concentrated poverty and more affluent neighborhoods. Card and Rothstein find that in more segregated cities, a larger gap exists between the test scores of black and white students, and Wodtke, Harding, and Elwert find that living in a severely disadvantaged neighborhood greatly reduces the likelihood of high school graduation, especially for black students.⁵⁸ Researchers have also found associations between residential segregation by race and disparities in infant and adult mortality rates, environmental quality, and access to primary care services.⁵⁹ Conversely, some evidence suggests that those who are able to escape areas of concentrated poverty enjoy better outcomes. For example, since the 1970s, Montgomery County, Maryland has fostered the

production of affordable housing (including federally subsidized public housing) in affluent neighborhoods through inclusionary zoning. Children in public housing who attended the county's most advantaged schools performed better in math and reading than did public housing residents who attended the county's least advantaged schools and significantly reduced their achievement gap compared with nonpoor students.⁶⁰

These racial disparities in access to education, healthcare, and high-value housing create racial disparities in income, wealth, and mobility. Shapiro, Meschede, and Osoro find that the primary drivers of the black-white wealth gap are years of homeownership, income, unemployment, college education, and financial inheritance, all of which can be directly or indirectly shaped by past and present housing discrimination and segregation.⁶¹

The high costs of segregation are borne not only by residents in racial and ethnic concentrations of poverty but also by the larger community. The negative health, employment, and crime outcomes common to these areas exacerbate the burden on the public health, welfare, and criminal justice systems.⁶² Unequal educational and employment opportunities result in an underdeveloped labor force, and, as Squires writes, “[h]igh levels of racial segregation reduce the economic productivity of regional economies.”⁶³ Recent research by Li, Campbell, and Fernandez finds that racial segregation negatively affects economic growth in both cities and suburbs.⁶⁴

Fair Housing and Opportunity for All

Given the high individual, household, and societal costs of enduring segregation, desegregation must remain a policy priority. Antidiscrimination enforcement is essential to ensuring true housing choice but is not designed to combat segregation — particularly the formation and persistence of racial

and ethnic concentrations of poverty. In addition to its antidiscrimination provisions, the Fair Housing Act created parameters for more proactive approaches to fair housing policy under its mandate that all federal agencies operate “in a manner affirmatively to further” the purposes of the Fair Housing Act; that is, “to take steps proactively to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities for all.”⁶⁵

Subsequent legislation and the interpretation of the courts has reinforced that both HUD and HUD grantees — the states, localities, and other organizations that receive federal funding — have an obligation to affirmatively further fair housing, including the promotion of “truly integrated and balanced living patterns.”⁶⁶ In 1987, writing the decision for *NAACP v. Secretary of Housing and Urban Development*, then-circuit judge Stephen Breyer concluded that the “broader goal [of the Fair Housing Act] suggests an intent that HUD do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.”⁶⁷

The primary mechanisms by which HUD uses its grant programs to affirmatively further fair housing have been to require that grantees conduct an “analysis of impediments” (AI) to fair housing choice and for the participants to certify that they will affirmatively further fair housing. Analysis by HUD, the U.S. Government Accountability Office (GAO), and other stakeholders, however, has found these mechanisms to be largely ineffective.⁶⁸ Too often, HUD determined, grantees either had inadequate strategies for furthering fair housing or were not furthering fair housing at all.⁶⁹ The AI process, according to a GAO survey, lacked adequate guidance, technical assistance, and oversight from HUD; consequently, AIs were poorly integrated into planning efforts, and many were severely outdated.⁷⁰ Out of

the 441 AIs that GAO reviewed in 2010, 29 percent were dated from 2004 or earlier, with fully 11 percent of the total dating back to the 1990s.⁷¹

HUD has recognized these criticisms and is committed to improving the AI process. Since the beginning of FY 2010, HUD has reviewed the AIs of hundreds of jurisdictions and has conducted dozens of compliance reviews to ensure that grantees are affirmatively furthering fair housing goals.⁷² The agency is currently reviewing comments on proposals related to the goal of affirmatively furthering fair housing and is considering its next steps. Even so, it remains important to recognize that, as Casey Dawkins, associate professor of urban studies and planning at the University of Maryland, puts it, “[t]he tools that have the largest impact on segregation outcomes — zoning, infrastructure decisions, [and so on] — are really locally driven.”⁷³ Localities such as Louisville, Kentucky have taken the initiative in assessing how municipal planning can further fair housing and reduce segregation. Building off of a thorough 2010 AI, the Louisville Metro Human Relations Commission developed “Making Louisville Home for Us All: A 20-Year Action Plan for Fair Housing.” Prepared by the University of Louisville Anne Braden Institute for Social Justice Research and the Metropolitan Housing Coalition with funding from HUD, the plan outlines short-, medium-, and long-term actions to promote fair housing ranging from community education and engagement to steps to increase the supply of affordable housing. The plan infuses the policies and practices of the Louisville metropolitan area’s many government departments and agencies with a focus on affirmatively furthering fair housing.⁷⁴ Such proactive efforts to reduce segregation through local planning processes such as residential and transportation development coupled with antidiscrimination enforcement hold the promise of creating true fair housing choice.

Public opinion data show increasing acceptance of diverse residential patterns, and incidences of discrimination appear to be declining. However, housing discrimination and segregation persist, limiting equal opportunity and contributing to growing economic inequality. Where one lives still determines access to amenities, resources, and opportunities and consequently creates disparities in important life outcomes. The response to this association of place and opportunity is twofold: first, ensuring that people have the mobility and fair housing choice to access amenity-rich neighborhoods, and second, striving to make every neighborhood a desirable, well-resourced, opportunity-rich neighborhood. Fair housing policy furthers both of these objectives. Carr and Kutty, editors of *Segregation: The Rising Costs for America*, state that “enforcing fair housing and fair lending laws is one of the most direct means to improve access to opportunities and, by extension, economic and social mobility in America.”⁷⁵ Among other things, making neighborhoods more desirable depends on equal access to credit for buying and rehabilitating homes, on fair foreclosure processes and maintenance of real estate owned properties, and on the judicious siting of subsidized housing. And nondiscrimination and equitable distribution of affordable, high-quality housing are crucial to opening access to low-poverty, high-asset neighborhoods for all. Both the enforcement efforts of HUD, FHAP, and FHIP to eliminate discriminatory treatment in housing transactions and proactive local efforts to reduce barriers to housing choice will be necessary to ensure fair housing and equal opportunity. **EM**

¹ Owner-occupied buildings with no more than four units, single-family housing sold or rented without a broker, and housing operated by organizations and private clubs that limit occupancy to members may be exempt.

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⁴ National Fair Housing Alliance. 2004. “2004 Fair Housing Trends Report,” 4–5. NFHA and others believe that

attempts to quantify the incidence of discrimination such as HUD’s Housing Discrimination Study under count discrimination. See also, Freiberg.

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⁶ Douglas S. Massey and Nancy A. Denton. 1993. *American Apartheid: Segregation and the Making of the Underclass*, Cambridge: Harvard University Press, 96–7.

⁷ Turner et al. 2013, xi, xiv–xvi.

⁸ Gary A. Dymski. 2009. “Racial Exclusion and the Political Economy of the Subprime Crisis,” *Historical Materialism* 17:2, 150.

⁹ Thomas P. Boehm, Paul D. Thistle, and Alan Schlottmann. 2006. “Rates and Race: An Analysis of Racial Disparities in Mortgage Rates,” *Housing Policy Debate* 17:1, 144; James B. Kau, Donald C. Keenan, and Henry J. Munneke. 2012. “Racial Discrimination and Mortgage Lending,” *Journal of Real Estate Finance and Economics* 45:2, 289–304; William C. Apgar Jr., Christopher E. Herbert, and Priti Mathur. 2009. “Risk or Race: An Assessment of Subprime Lending Patterns in Nine Metropolitan Areas,” U.S. Department of Housing and Urban Development, iii.

¹⁰ Andra C. Ghent, Rubén Hernández-Murillo, and Michael T. Owyang. 2014. “Differences in Subprime Loan Pricing Across Races and Neighborhoods,” Federal Reserve Bank of St. Louis; Kathleen C. Engel and Patricia A. McCoy. 2008. “From Credit Denial to Predatory Lending,” in *Segregation: The Rising Costs for America*, eds. James H. Carr and Nandinee K. Kutty, New York: Routledge, 92.

¹¹ U.S. Department of Housing and Urban Development. 2011. “Annual Report on Fair Housing, Fiscal Year 2011,” 19.

¹² Margery Austin Turner, Carla Herbig, Deborah Kaye, Julie Fenderson, and Diane Levy. 2005. *Discrimination Against Persons with Disabilities: Barriers at Every Step*, U.S. Department of Housing and Urban Development, 2–3, 26.

¹³ The Equal Rights Center and National Council of La Raza. 2013. “Puertas Cerradas: Housing Barriers for Hispanics.”

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¹⁷ *Ibid.*, 771.

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¹⁹ Rothwell and Massey, 801.

²⁰ U.S. Department of Housing and Urban Development. 2013. “Implementation of the Fair Housing Act’s Discriminatory Effects Standard,” *Federal Register* 78:32 (February 15), 11460.

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Paired Testing and the Housing Discrimination Studies

As federal, state, and local government agencies and advocacy organizations continue to confront the shifting challenges of housing discrimination, research to understand the extent of the problem has become essential to developing successful enforcement strategies and educational campaigns. Many researchers and institutions have contributed to the body of knowledge on this topic, but the most significant efforts have been HUD's Housing Discrimination Studies (HDS), especially the national housing market studies that have been produced roughly every 10 years since the late 1970s and which rely on a paired-testing methodology to assess the incidence of discrimination in the housing search process. This article discusses paired testing's benefits and limitations, the results of the most recent HDS and changes over time, and other current and forthcoming research that will illustrate the level of discrimination in the American housing market.

Paired Testing

Much of the research into housing discrimination, including HUD's HDS, relies on paired testing, a methodology in which two testers assume the role of applicants with equivalent social and economic characteristics who differ only in terms of the characteristic being tested for discrimination, such as race, disability status, or marital status. Depending on which part of the housing transaction process is being tested, the matched candidates may only request appointments from housing providers, or they may visit in person. Although fair housing groups have used paired testing to investigate cases of reported

- Paired testing is a critical methodology for assessing discrimination in the housing market for both research and enforcement purposes, but it has some limitations.
- The 2012 Housing Discrimination Study found fewer cases of overt discrimination since 1977 (when the first such study was conducted), but other increasingly subtle forms of discrimination against minority home-seekers persist in both the rental and sales markets.
- A complementary HUD study has found evidence of housing discrimination against gay and lesbian homeseekers, and forthcoming studies will report on housing market discrimination based on source of income and against families with children, persons with physical disabilities, and persons with mental disabilities.

discrimination since the 1960s, the federal government substantially expanded use of the methodology for research purposes.¹ When used in fair housing enforcement, paired testing's strength is its ability to flexibly respond to the circumstances of an individual complaint (see "Fair Housing Enforcement Organizations Use Testing To Expose Discrimination," p. 16). In the context of research, however, paired testing requires rigorously consistent protocols and representative sampling to yield generalizable results about the prevalence of housing discrimination at the national or metropolitan level.²

Although paired testing has become an essential methodology for assessing levels of discrimination, researchers also note its limitations. Because race (or another characteristic being tested for discrimination) cannot be randomly assigned, these studies do not have a true experimental design; in addition, because the auditors are usually aware of the study's purposes, "unobserved characteristics of the auditor, including their own expectations of discrimination, may become confounded with the experimental variable of race," according to Massey and Blank.³ Studies such as HDS address this issue through tester training that promotes rigorous adherence to standardized interview protocols. In housing discrimination investigations, paired testing cannot be applied to all portions of the transaction process; testing protocols

cannot legally include the submission of fraudulent information in a rental or loan application to examine bias at the final transaction point, and discrimination against current tenants or homeowners cannot be tested through this methodology because the characteristics of the residents are already known to the provider.⁴ In addition, the use of unambiguously qualified candidates and matched characteristics in paired-testing studies does not reflect the reality of systematic racial differences in income in the United States, as the average incomes assigned to minority testers are higher than those of minority homeseekers in most housing markets.⁵ The authors of the 2012 HDS argue that these last two factors lead to results that could understate the amount of discrimination in American housing markets.

The Housing Discrimination Study

There have been four national HDSs, released in 1977, 1989, 2000, and 2012. Although the studies have consistently employed paired-testing methods, the scope of the studies has expanded and the focus has shifted with each edition; the first study focused only on discrimination against blacks, the 1989 study added discrimination against Hispanics, and the 2000 study was designed explicitly to measure changes in discrimination patterns over time and included smaller studies to estimate levels of discrimination against Asians and Native Americans.⁶

The most recent study, “Housing Discrimination Against Racial and Ethnic Minorities 2012” (HDS 2012), has samples designed to produce estimates of housing discrimination against blacks, Hispanics, and Asians in the national housing market and also includes estimates of black and Hispanic rental discrimination for a subset of major metropolitan areas.⁷

As the most recent large-scale study on the topic, HDS 2012 likely gives the most comprehensive view of the current state of housing discrimination against well-qualified blacks, Hispanics, and Asians in the United States. This study, however, provides a conservative, lower-bound estimate of the average measure of housing discrimination in the nation. The study involved 8,047 paired tests across 28 metropolitan areas: 4,838 in the rental market and 3,209 in the sales market. Sales tests were conducted in similar numbers for each minority group; however, rental tests using black and Hispanic testers were conducted more frequently than those using Asian testers for the purpose of assessing metropolitan-level discrimination against black and Hispanic renters in eight sites each. Because random factors besides

discrimination can lead to differences in treatment between white and minority testers, HDS 2012 tests both the *gross* measure of discrimination — the share of tests in which the white tester was favored over the minority tester — and the *net* measure, which subtracts the share of tests in which the minority tester is favored over the white tester from the gross measure. The authors of HDS 2012 place greater emphasis on the net measure; as they state, “Analysis from the past 25 years strongly suggests that gross measures reflect a lot of random differences in treatment, and that net measures more accurately reflect the systematic disadvantages faced by minority homeseekers.”⁸ As noted previously, however, net measures can understate overall levels of housing discrimination.

HDS 2012 assesses differences in treatment at multiple steps in the rental housing inquiry process, and testers record the results of the following questions:

1. Is the homeseeker able to make an appointment to meet with an agent?
2. If an appointment has been made, is the homeseeker told that at least one unit is available?

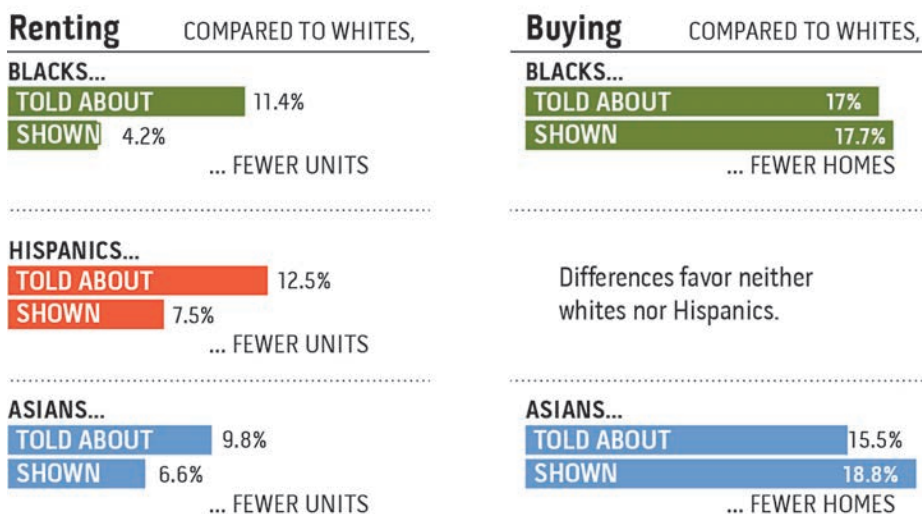
- How many units are available?
3. If units are available,
 - What rent is quoted?
 - Is the homeseeker shown available units?
 - How many units are shown?
 - How helpful is the agent (increasingly insignificant as a measure of discrimination)?⁹

Questions asked in the sales market are largely the same but also consider the racial and ethnic composition of the tracts where homes are shown to assess whether the agent is “steering” the homebuyer toward or away from certain neighborhoods.¹⁰

Overall, HDS 2012 shows fewer cases of overt discrimination. Well-qualified minority testers are rarely denied appointments outright, and “when renters meet in person with housing providers, they are almost always told about at least one available unit.”¹¹ Nevertheless, statistically significant forms of discrimination remain in both the rental and sales markets. Rental tests conducted for HDS 2012 reveal the following:

- White testers were 9 percentage points more likely to be told about more available units than were black testers, yielding about 0.2 fewer available units per test in aggregate. White testers were also more likely than black testers to be offered a lower rent (although the difference is very small), told about rent incentives, and told that fees and security deposits are negotiable. Agents were more likely to ask black testers questions about their credit standing.¹²
- White testers were slightly more likely than Hispanic testers to be told that a unit is available and nearly 13 percentage points more likely to be told about more available units, resulting in white testers learning, on average, about 0.22 more units per visit than their Hispanic counterparts. As with black testers, white testers were more likely than Hispanic testers to be offered a slightly lower rent and to

Exhibit 1: Minority Homeseekers Told About and Shown Fewer Housing Units



Reprinted with permission from the Urban Institute. Source: Margery Austin Turner, Rob Santos, Diane Levy, Doug Wissoker, Claudia Aranda, and Rob Pitingolo. 2013. “Housing Discrimination Against Racial and Ethnic Minorities 2012,” Urban Institute for HUD’s Office of Policy Development and Research, xi.

be informed about rent incentives and negotiable deposits.¹³

- White testers were nearly 9 percentage points more likely than Asian testers to be told about more available units, causing whites to learn about 0.17 more units per visit than did Asians. White testers were also more likely than Asian testers to be told about rent incentives and the negotiable nature of deposits.

Compared with white testers, well-qualified black and Asian testers in the sales market were told about and shown fewer available homes and received less information and assistance. Black testers were also 2.4 percentage points more likely to be denied an in-person appointment. The effect of these forms of discrimination is that black homebuyers were told about 17 percent fewer homes and were shown almost 18 percent fewer homes than white testers were, and Asian homebuyers were told about 15.5 percent fewer homes and shown almost 19 percent fewer homes than white testers were. By contrast, the differences between white and Hispanic testers were not statistically significant.¹⁴ When shown homes, white testers were more likely than Hispanic

however, find that renters who could more easily be identified as black or Asian at the phone or email inquiry stage, based on name or speech, were more likely to be treated adversely than those perceived to be white.¹⁷

Comparisons between HDS 2012 and previous editions are somewhat limited for various reasons. Technological advances since 2000 have substantially changed the way people search for housing, and testing protocols have had to adapt to match. In addition, housing market conditions following the foreclosure crisis are considerably different from those at the time of the last HDS in 2000, which may have altered other conditions for homebuyers.¹⁸ The authors of HDS 2012 note several small changes from the 2000 study, but most are not statically significant; one exception is that Hispanics “are less likely to be denied financing help than a decade ago.”¹⁹ HDS 2000, by contrast, was designed to be compared more directly with previous studies. Using a slightly more conservative measure of housing discrimination than HDS 1989, HDS 2000 found substantial reductions in the incidence of discrimination against blacks and Hispanics. Black testers faced less discrimination in both the

These studies demonstrate that the cumulative effect of these differences increases the burden on minority households seeking housing. They also illustrate the more subtle ways in which housing discrimination endures in an era of less explicit racial hostility.

Additional HUD Studies

Although the national HDS has long been HUD’s biggest contribution to research on discrimination in the U.S. housing market, the agency has also commissioned other research to supplement the broader studies. The Fair Housing Act does not include sexual orientation or gender identity among its protected classes, although some states have added their own protections (see “Expanding Opportunity Through Fair Housing Choice,” p. 1). HUD’s “Estimate of Housing Discrimination Against Same-Sex Couples,” published in June 2013, complements the national HDS by examining the experiences of same-sex couples in the rental market using internet searches and email solicitations of interest.^{22, 23} Researchers conducted 6,833 matched pairs tests across 50 randomly selected housing markets; about half of the tests compared the treatment of gay couples with that of a heterosexual couple, and half compared the treatment of lesbian couples with that of a heterosexual couple.²⁴ As with the HDS studies, researchers calculated both gross and net measures of discrimination.

The study found that, in gross measures, heterosexual couples were significantly more likely than either gay or lesbian couples to receive responses to email queries; according to the authors, “heterosexual couples were favored over gay couples in 15.9 percent of tests and over lesbian couples in 15.6 percent of tests.”²⁵ Net measures of discrimination were smaller and were statistically significant only for gay couples. Discrimination was present in all markets tested, but no clear connection existed between the level of discrimination and market size. States with legislative protections against discrimination

Renters who could more easily be identified as black or Asian at the phone or email inquiry stage were more likely to be treated adversely than those perceived to be white.

testers to be recommended to neighborhoods with a higher proportion of white residents, although the difference was not statistically significant.¹⁵

HDS 2012’s metropolitan area estimates of discrimination against black and Hispanic renters did not find significant differences in the rate or severity of discrimination based either on the metropolitan area’s geographic location or its local economy.¹⁶ The study did,

rental and sales markets than they did in 1989, as did Hispanic testers in the sales market.²⁰ HDS 2000 also revealed that Native Americans faced even higher rates of rental market discrimination than did other minority testers in the three metropolitan areas that included Native American testers, with a net measure of adverse treatment in 18 percent of tests compared with 8 percent for blacks, 14 percent for Hispanics, and 4 percent for Asians.²¹



Kristen Cuhnan, The Fair Housing Center of Southeastern Michigan

Joseph and Laurretta Codrington pose next to their picture from 1992, when the Fair Housing Center of Southeastern Michigan helped the couple settle a housing discrimination case.

on the basis of sexual orientation or gender identity (21 states and Washington, DC, at the time of the study) actually showed slightly higher levels of adverse treatment for gay and lesbian couples. The authors theorize that this finding could be the result of low levels of enforcement, housing providers not understanding local laws, or “the possibility that protections exist in states with the greatest needs for them.”²⁶ Overall, the authors argue that the discrimination observed in the study probably understates the actual level of discrimination in the rental housing market because the study examined only the first step of the rental transaction. A forthcoming HUD report will incorporate in-person testing that could give a better estimate of the scale of the problem; this study will also analyze discrimination against transgender Americans.

Other upcoming studies will report on housing market discrimination against

families with children, persons with physical disabilities, and persons with mental disabilities as well as discrimination based on source of income — principally to assess the degree of discrimination against those who pay for housing with vouchers. These reports will further expand HUD’s critical role in funding research that lays bare the current state of housing discrimination in the United States and helps guide the efforts of advocates and fair housing enforcers at all levels. **EM**

— Keith Fudge, *HUD Staff*

¹Alex F. Schwartz. 2006. *Housing Policy in the United States*. New York: Routledge, 219; Margery Austin Turner, Todd Richardson, and Stephen Ross. 2007. “Housing Discrimination in Metropolitan America: Unequal Treatment of African Americans, Hispanics, Asians, and Native Americans,” in *Fragile Rights Within Cities: Government, Housing, and Fairness*, ed. John Goering, Lanham: Rowman and Littlefield, 40.

²Margery Austin Turner, Rob Santos, Diane Levy, Doug Wissoker, Claudia Aranda, and Rob Pitungolo. 2013. “Housing Discrimination Against Racial and Ethnic Minorities 2012,” U.S. Department of Housing and Urban Development, Office of Policy Development and Research, 3.

³Douglas S. Massey and Rebecca M. Blank. 2007.

“Assessing Racial Discrimination: Methods and Measures,” in *Fragile Rights Within Cities*, 69.

⁴Turner et al. 2013, 3.

⁵Ibid.

⁶Ibid., 1–2.

⁷Ibid., 2.

⁸Ibid., 4.

⁹Ibid., 39.

¹⁰Ibid., 50.

¹¹Ibid., 39.

¹²Ibid., 41–3.

¹³Ibid., 45–6.

¹⁴Ibid., 51.

¹⁵Ibid., 52.

¹⁶Ibid., xviii.

¹⁷Ibid., 73.

¹⁸Ibid., 2.

¹⁹Ibid., 65.

²⁰Turner et al. 2007, 47.

²¹Ibid., 51.

²²The study examines only the sexual orientation of same-sex couples; other potential sources of discrimination, like gender identity, are not included.

²³Samantha Friedman, Angela Reynolds, Susan Scoville, Florence Brassier, Ron Campbell, and McKenzie Ballou. 2013. “An Estimate of Housing Discrimination Against Same-Sex Couples,” U.S. Department of Housing and Urban Development, Office of Policy Development and Research, v.

²⁴Ibid., v.

²⁵Ibid., vi.

²⁶Ibid., vii.

Fair Housing Enforcement Organizations Use Testing To Expose Discrimination

As overt housing discrimination fades but subtle forms persist, proving violations of fair housing law has become more difficult. Many victims of discrimination encounter deceptive barriers that can be hard to detect, such as false information, neighborhood steering, and the application of different standards.¹ As a result, fair housing advocates have turned to testing as the most effective tool to investigate violations of fair housing law and gather litigation-quality evidence of discriminatory practices.² Testing involves covert investigation by testers who pose as housing applicants and document the treatment they receive from housing providers. By comparing the ways different testers are treated, fair housing enforcement organizations (FHOs) are able to demonstrate that a violation of fair housing law has occurred.

FHOs are nonprofit organizations that enforce the Fair Housing Act through investigations. Investigations that include a testing component are more likely to result in favorable outcomes for the victims.³ Although FHOs conduct most of these tests, the U.S. Department of Justice and state and local government agencies also employ testing in fair housing investigations.⁴

The following discussion examines the implementation of different testing strategies and structures by two FHOs — Metropolitan Milwaukee Fair Housing Council and Northwest Fair Housing Alliance — and a disability rights organization, Access Living of Metropolitan Chicago.

Highlights

- Fair housing enforcement organizations engage in activities that promote housing choice, advocate for antidiscriminatory housing policies, undertake initiatives to build inclusive communities, and provide fair housing training and education.
- The Metropolitan Milwaukee Fair Housing Council, which performed more than 10,000 tests between 1977 and 2008, has used a variety of testing strategies to draw out recalcitrant landlords in cases where standard paired testing was less effective.
- The Northwest Fair Housing Alliance, based in Spokane, Washington has used various testing approaches to investigate lending discrimination, predatory lending, and fraudulent mortgage rescue programs.
- Chicago's Access Living advocates for and enforces the rights of individuals with disabilities, using testers with disabilities whenever possible.

Metropolitan Milwaukee Fair Housing Council

The Milwaukee metropolitan area is among the most segregated in the country; 90 percent of its African American population is concentrated within Milwaukee's city limits, and the area ranked second nationwide in a 2010 study using a black-white dissimilarity index (for a definition of the index, see "Expanding Opportunity Through Fair Housing Choice," p. 1).⁵ African Americans are known to encounter numerous barriers to fair housing choice, including discriminatory terms and conditions for housing, refusals to rent or sell units, and restrictions on the locations of units.⁶ Since 1977, the Metropolitan Milwaukee Fair Housing Council (MMFHC) has worked to dismantle these barriers as part of its mission to combat discrimination and promote racially and economically integrated neighborhoods.

Following *U.S. v. Wisconsin*, a 1975 Supreme Court case that struck down Wisconsin's ban on testing, 40 citizen activists created MMFHC to challenge the "prevailing patterns of racial and economic segregation and widespread discrimination in the housing market."⁷ Today, the organization operates fair housing centers in Milwaukee, Madison, and Appleton, extending its reach to most of the state's population. Structured as a membership-driven nonprofit, MMFHC provides a range of fair housing

services: outreach and education, fair lending and fair housing enforcement, and programs to build inclusive communities.⁸ Bill Tisdale, president and chief executive officer of MMFHC, says that the most successful antidiscrimination efforts require an interplay of services: enforcement, testing, education, desegregation programs, and technical assistance.⁹

Fair Housing Enforcement

Between 1977 and 2008, MMFHC handled 6,000 complaints and performed more than 10,000 tests.¹⁰ Discrimination based on race and on disability are the most common forms of housing discrimination that the MMFHC investigates. The organization also investigates discrimination based on gender, sex, national origin, age, religion, family status, marital status, sexual orientation, and source of income as well as discrimination against victims of domestic abuse. MMFHC handled 171 complaints in 2012, referring 21 cases to an attorney, the Wisconsin Equal Rights Division (ERD), a Fair Housing Assistance Agency, or HUD.¹¹

The main source of support for MMFHC's enforcement activities is HUD's Fair Housing Initiatives Program (FHIP). The organization has received FHIP enforcement grants every year since 2008 and most recently received a \$322,629 grant from FHIP for fair

housing enforcement and testing. MMFHC also receives funds from state and local governments, philanthropic groups, and court settlements with housing providers accused of discrimination.¹²

Testing in Complaint-Based Investigations

Individuals who feel that their fair housing rights have been violated file a complaint with MMFHC, which performs an initial interview to evaluate the evidence and determine whether the complaint is covered by fair housing law. If the complaint has merit, MMFHC performs an investigation that may include testing. The testing coordinator outlines a preliminary testing strategy, but as Carla Wertheim, MMFHC's executive vice president and testing coordinator, notes, "[E]very

investigation is different...as the evidence emerges, you may have to change" course.¹³ MMFHC serves on the front lines of the housing discrimination

on race.¹⁵ This form of discrimination can be difficult for the average person to detect because housing providers can conceal their discriminatory

By handling client intake and investigating complaints, MMFHC reduces the burden on public agencies involved in fair housing investigations.

battle; by handling client intake and investigating complaints, the organization reduces the burden on public agencies involved in fair housing investigations.¹⁴

In 2012, MMFHC handled 54 complaints of housing discrimination based

practices by remaining outwardly cordial, even friendly. Fred Freiberg, founding director of MMFHC and current executive director of the Fair Housing Justice Center (FHJC) in New York, likens this discrimination to a revolving door, where people are "courteously escorted in, out of, and ultimately away from the desired housing."¹⁶ One strategy MMFHC uses to uncover discriminatory practices is a paired test, in which equally qualified white and minority testers seek housing and document the results. The strength of the paired test rests on its ability to demonstrate that race was the motivating factor in denying housing (see "Paired Testing and the Housing Discrimination Studies," p. 12).¹⁷

MMFHC used paired testing in an illustrative investigation of racial discrimination against the owners of Geneva Terrace Apartments in La Crosse, Wisconsin. In 2009, Marcus and Brenda Young, an African American couple, sought a two-bedroom unit at Geneva Terrace based on the recommendation of a white friend and resident. Despite advertisements and signs to the contrary, the Youngs were repeatedly told that no units were available. The Youngs then conducted an informal test: a white friend called the rental office and was told that units were available. Brenda followed up 15 minutes later and was again told that no units were available. With this information, the Youngs contacted MMFHC staff, who then initiated a paired testing investigation. Two pairs of equally qualified white and



Greater New Orleans Fair Housing Action Center

As part of its education and outreach efforts, the Greater New Orleans Fair Housing Action Center developed an equal opportunity board game to teach children about the effects of housing discrimination.



Fair Housing Council of Oregon

Poster contests like the one Samantha Tan (pictured here with her family) entered help raise awareness about fair housing issues and organizations.

black testers were sent to inquire about housing at Geneva Terrace. In both tests, the black testers were told that no units were available, whereas the white testers were told of available units. With MMFHC assistance, the Youngs filed a complaint with HUD and the state of Wisconsin’s ERD. Both agencies issued charges, and the case was settled three years after the initial incident of discrimination. The Youngs received \$47,500 in damages, and the owners of Geneva Terrace were required to complete fair housing training.¹⁸

Although the paired testing structure successfully uncovered evidence of discrimination in the Geneva Terrace investigation, this method may be less successful when landlords block testers from viewing units because it is difficult to obtain a comparison. Some landlords make excuses for not showing an apartment when speaking on the phone with someone who has a voice identifiable as

African American or Hispanic. Other landlords may skip a scheduled appointment when they see that the applicant is a member of a minority group.¹⁹ In a recent case that MMFHC investigated, an African American family made repeated attempts to see an apartment, but each time they arrived for the viewing, the landlord was not present. Without an interaction between the applicant and the landlord, Tisdale explains, proving that the landlord’s actions are discriminatory can be difficult.²⁰ To force a meeting, the organization used a decoy test.

To initiate the decoy test, a white tester scheduled an appointment with the landlord. As the landlord and white tester were leaving the unit, the minority tester intercepted them, preventing the landlord from evading a viewing with the minority tester. The decoy test forced the landlord to meet with the minority tester, creating the opportunity to collect evidence of discriminatory

practices. The landlord lied to the black tester, claiming that the white tester had reserved the apartment when the tester actually had turned it down. A second white tester viewed the unit after the black tester and confirmed that it was available to rent — evidence that the black tester had been given false information. The landlord also made disparaging statements about the black tester to the first white tester, all of which was recorded — a practice that is legal in Wisconsin.²¹

Systemic Testing Investigations

In his testimony before the National Commission on Fair Housing and Equal Opportunity, Tisdale states that “institutional discrimination occurring on a systemic basis must be combated holistically and proactively. It’s not enough to simply decapitate one of the hydra’s heads — the beast of housing discrimination must be struck at its heart.”²² Relying

on complaint-based investigations may bring relief to a single victim, but it misses the vast swath of discrimination occurring in the housing market.²³ Institutionalized forms of discrimination, argues Tisdale, lack indicators and identifiers that would enable victims to realize that they have been victimized. Systemic investigations, on the other hand, proactively test housing discrimination in the marketplace in an attempt to change the policies or practices of a large housing provider or the behavior of many smaller housing providers. Between 1990 and 2008, MMFHC helped litigate 16 cases of systemic discrimination, including a multistate investigation into insurance redlining.²⁴

In the mid-1990s, MMFHC joined the National Fair Housing Alliance and FHOs in several other states to investigate redlining in the homeowner's insurance market. Redlining is the practice of denying mortgages or insurance to an entire geographic area. In this investigation, the coalition of FHOs sought to determine whether minority households and households in minority neighborhoods had the same access to homeowner's insurance as their white counterparts. Through repeated paired testing of insurance providers' policies and practices, the FHOs gathered sufficient evidence to generate HUD complaints against Allstate, State Farm, and National Mutual Insurance in 1994 and Travelers, Aetna, Prudential, and Liberty Mutual in 1997.²⁵ In the Milwaukee market, MMFHC tested and found evidence of disparate treatment of minorities, including higher premiums for minorities for similar coverage, better policies in nonminority neighborhoods, and different standards for accepting loan applications.²⁶

For the 1997 collection of complaints, MMFHC recruited and trained 33 new testing volunteers to specialize in the investigation of discriminatory barriers to homeownership. In addition to matching the financial characteristics of the volunteers, MMFHC matched the characteristics of the tested homes

— structure, age, and size — to compare how the companies treated white and nonwhite neighborhoods. In one example, a black tester was told that homes that were more than 30 years old were not covered, whereas the paired white tester was offered quotes. As a result of the HUD complaints, Allstate, State Farm, and National Mutual Insurance modified their underwriting guidelines to remove restrictions on a house's maximum age and value. State Farm and Allstate also agreed to stop using credit reports as the sole basis for rejecting applications, and all three agreed to open service centers in urban areas.²⁷

Testing evidence in systemic investigations can be improved with geographic information system (GIS) mapping techniques and other data that help FHOs allocate testing resources more effectively. The insurance cases, for example, came about in part after a spatial analysis of policyholder data by University of Wisconsin researchers in 1987 and 1991 uncovered statistically

significant evidence of insurance redlining in the Milwaukee metropolitan area.²⁸ Freiberg argues that judicious use of demographic data can improve the efficiency of fair housing enforcement by enabling the more strategic use of testing resources. FHJC, for example, uses a GIS mapping tool to identify areas that the data suggest are likely to yield evidence of discrimination. By targeting its resources in these "areas of interest," FHJC can more effectively document and eliminate illegal housing discrimination, change discriminatory behavior, and open up communities.²⁹

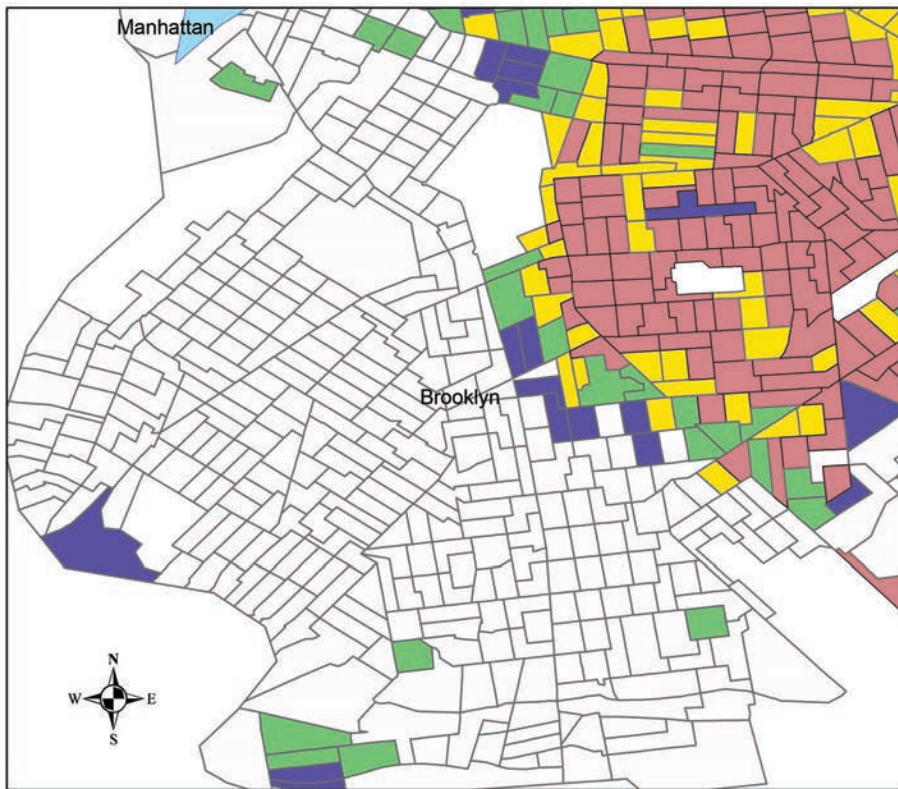
Northwest Fair Housing Alliance

Homeownership opportunities are limited not only by insurance redlining but also by lending discrimination, which includes redlining, unequal access to credit, and predatory lending. These unfair lending practices restrict housing and neighborhood choice for minority groups and weaken the financial health of households and communities. In addition, the



To further its fair housing education and outreach objectives, the Northwest Fair Housing Alliance regularly attends community events such as the Unity In the Community event seen here.

AFRICAN AMERICAN RENTER HOUSEHOLDS AS A PERCENT OF TOTAL RENTER OCCUPIED HOUSING UNITS - BROOKLYN, NY



African American Renter Households as a % of Total Renter Occupied Housing Units

Census Tracts - American Community Survey 2006-2010

Q16SUBK

- 0% - 20%
- 21% - 40%
- 41% - 60%
- 61% - 80%
- 81% - 100%



FHJC uses a mapping tool to analyze demographic data and enable strategic deployment of testing resources.

complexity of the lending process obscures discrimination, which decreases the likelihood that a complainant will come forward to initiate an investigation. This form of housing market discrimination lends itself to proactive and systemic investigation. Because some lenders span several states, settlement agreements that remove a discriminatory practice impact a large geographic area. The proactive aspect is aided by the extensive data lenders are required

to provide under the Home Mortgage Disclosure Act (HMDA). These data, although typically insufficient to prove discrimination, do provide information that can focus a testing investigation.³⁰ The Northwest Fair Housing Alliance (NWFHA), based in Spokane, Washington, has developed a fair lending enforcement program that uses HMDA data, census data, and market reports to investigate lending institutions that violate fair housing law.

NWFHA first received FHIP funding for its fair lending program in 2009, but the organization has implemented lending investigations since its founding in 1994. The fair lending enforcement program covers eastern Washington, and the organization provides training for lenders throughout the state. In 2011, NWFHA received a FHIP capacity building grant that enabled it to hire a fair lending investigator, complete more fair lending tests, and update its fair lending program, the Eastern Washington Fair Lending Awareness Project.³¹

After receiving the capacity building grant, NWFHA recruited 16 testers, primarily from the organization's existing rental and sales testing programs, to do fair lending testing.³² Although the basic testing structures for fair lending investigations are similar to those for fair housing investigations, lending transactions are more complex than transactions in rental or sales investigations. The lending process involves myriad products — subprime loans, adjustable rate mortgages, balloon mortgages, conventional loans, and FHA-insured loans, among others — and the applicability of each product depends on numerous factors such as credit score, income, down payment size, and loan amount.³³ NWFHA's testers, therefore, received extensive training on the lending process and what to expect from lenders, including the terminology used, the questions asked, and the products offered.³⁴

The testers were deployed to investigate predatory behavior among lenders and mortgage rescue companies.³⁵ During the housing bubble and subsequent crash, FHOs shifted their investigations toward identifying practices that take advantage of vulnerable homebuyers.³⁶ The fair lending investigations at NWFHA began with an analysis of HMDA and census data, coupled with market research, to identify potential subjects for investigation. The analysis focuses on disparities in a subject's loan originations and denials, history of service in minority communities, and

Fred Freiberg, Fair Housing Justice Center

Unlike a rental test, which may be completed quickly, lending interviews involve a number of complex financial components, even at the preapplication stage.

location of loans offered. For these investigations, the organization typically uses two types of tests: single or paired.

NWFHA uses single-person testing to uncover evidence of fraud or abuse in mortgage rescue programs. Mortgage rescue scams attempt to cheat homeowners by making undeliverable promises or demanding substantial payments up front. In an 18-month FHIP grant period from November 2011 to May 2013, the organization conducted 47 phone tests of mortgage rescue companies. NWFHA's testers contacted loan modification companies while posing as homeowners seeking to restructure their loans. The testers compared the companies' modification policies and marketing practices to the Mortgage Assistance Relief Services Rule and Washington state lending law to determine whether the companies complied with required disclaimers, permissible fee structures, and representation outcomes. Once NWFHA identified companies with illegal policies (14 as of 2014), it sent the evidence to the Washington Department of Financial Institutions, which pursued enforcement action.³⁷

In paired testing investigations, NWFHA determines whether the types of services or products lenders offer to minority applicants differ from those offered to nonminority applicants. The organization builds tester profiles so that the applicants are matched with similar credit scores, incomes, and occupations. Jessica Schultz-Leyk, NWFHA's fair lending investigator, adds that one of the most important paired characteristics is the loan-to-value ratio for the applicant's loan, because lenders often base prices and products on this ratio.³⁸

As part of the FHIP grant, NWFHA completed 55 paired, onsite lending tests of 32 lending originators.³⁹ These onsite tests were used to determine whether both minority and nonminority testers were offered similar rates and fees and similar levels of coaching on improving the appearance of the application. Paired tests also uncover evidence of racial steering toward different loan products, such as FHA loans.⁴⁰ Minority applicants, Schultz-Leyk explains, sometimes are provided information about FHA loans at greater rates than conventional loans, which limit an applicant's housing choices.⁴¹ FHA loans come with greater restrictions on their use and have slightly higher fees because they require borrowers to carry mortgage insurance.⁴²

Following an initial test, NWFHA staffers review the evidence to determine whether follow-up tests are needed. Marley Hochendoner, executive director of NWFHA, describes testing as an "ongoing discussion" among the testing coordinator, director, and fair lending investigator to determine the next course of action. The organization often retests if there are significant disparities in the treatment received by minority and nonminority testers. The retests help cement the evidence of discriminatory treatment by demonstrating that the disparate level of service the testers received was not an isolated incident. At the conclusion of the grant, NWFHA submitted nine cases to HUD, one based on onsite testing and eight based on email testing. Three additional cases showed possible discrimination but required further testing.⁴³

Challenges to Fair Lending Testing

Many of the challenges NWFHA faced during fair lending tests relate to the spatial and temporal scale of its operation. As the only FHO in eastern Washington, NWFHA's territory is enormous: about half of the state. Despite this geographic hurdle, NWFHA distributes its tests as evenly as possible. Another challenge is the significant amount of time testers must devote to each test. Unlike a rental test, which may be completed quickly, lending interviews involve a number of complex financial components, even at the preapplication stage. To stay covert and remain credible to lenders, testers must be knowledgeable about the entire lending process.⁴⁴ Furthermore, says Schultz-Leyk, during that process testers are required to take detailed notes on the range of financial information asked and services offered by each lender, which will be used as evidence in follow-up reports.⁴⁵ Lending testers must be particularly dedicated and competent or the evidence they collect will be insufficient.

When these investigations reveal evidence of discrimination in lending, NWFHA seeks to include fair lending training and education in the conciliatory agreements. Unlike its fair housing investigations, NWFHA's fair lending



Steve Brady (center), pictured here with HUD Secretary Shaun Donovan (left) and Fred Freiberg (right), enlisted the services of FHJC, which conducted a testing investigation that found evidence of housing discrimination.

investigations rarely have a complainant, so the organization seeks smaller monetary damage awards. Although NWFHA does receive compensation for its testing expenses, fair lending testing has more flexibility to proactively push for systemic changes in companies' policies.⁴⁶

Access Living of Metropolitan Chicago

For decades individuals with disabilities had been isolated in institutions or otherwise blocked in their efforts to secure housing in the private market. Before the Fair Housing Act was amended in 1988 to add disability as a protected class, people could legally be denied housing simply for having a physical or mental disability. In 1980, Access Living of Metropolitan Chicago, an organization staffed largely by people with disabilities, formed to remove the barriers to independent living that people with disabilities face. After the 1988 amendments passed, these efforts have included enforcing housing discrimination laws. The most common form of housing discrimination complaint received by the Illinois Department of Human Rights is against those with physical or mental disabilities.⁴⁷ According to Marca Bristo, president and chief

Access Living is one of the few Centers for Independent Living that engages in fair housing enforcement and one of the few FHIP grantees housed within a disability rights organization.⁴⁹ This combination puts the organization in an ideal position to investigate housing discrimination based on disability, which differs from other types of discrimination. As Ken Walden, a fair housing attorney with Access Living, explains, provisions for race, family status, and other protected classes tend to focus on "thou shall not" requirements, whereas disability protections involve a "thou shall" component, necessitating a different set of strategies and use of testers.⁵⁰ Therefore, Access Living's fair housing enforcement targets not only discriminatory actions, such as obfuscating a rental search, but also the affirmative requirement that the physical units are accessible to people with visual, auditory, or mobility impairments.

Enforcing the Rights of Individuals With Disabilities

If a landlord's policy clearly violates fair housing law, Access Living helps the complainant file and pursue a complaint. Access Living recently helped a woman in a wheelchair settle a dispute

an accessible parking spot and required that the condominium association complete fair housing training and adopt a policy of providing reasonable accommodations and modifications for individuals with disabilities.⁵¹

In housing discrimination cases without overt evidence, Access Living uses testing to enforce antidiscrimination laws. With a 3-year, \$325,000 FHIP enforcement grant, Access Living is able to complete about 70 tests a year.⁵² The main type of test Access Living implements is a paired test using testers with and without a disability. As with testing for other protected classes, the testers are matched along meaningful characteristics: race, income, age, and gender.⁵³

When Access Living's testers implement tests in the field, they encounter a distinct set of obstacles associated with accessing the site. For example, in a case Access Living investigated in 2005, stairs prevented a tester in a wheelchair from entering the building through either the front or back door. The tester could access the building only by rolling his wheelchair down the parking garage ramp.⁵⁴ Also, some apartment buildings are inaccessible to individuals with visual impairments, and deaf individuals sometimes have difficulty entering buildings that rely on intercom systems.⁵⁵

Housing applicants who are deaf also confront obstacles accessing information about apartments when they use a Telecommunications Relay Service (TRS). Relay systems use an operator as an intermediary to facilitate communication between a deaf individual and the person they are calling.⁵⁶ Investigations into discrimination against people who are deaf or hard of hearing often focus on the refusal of some housing providers to use a message relay system. According to Jamie Wichman, testing coordinator for Access Living, many landlords hang up on testers or refuse to return phone calls placed through a TRS

Access Living targets not only discriminatory actions but also the affirmative requirement that the physical units are accessible to people with visual, auditory, or mobility impairments.

executive officer of Access Living, housing discrimination against individuals with disabilities is particularly pernicious because of the shortage of suitable housing. As Bristo explains, for individuals with disabilities, finding housing that is available, affordable (especially for those who are unable to work or receive some type of assistance), and accessible can be difficult.⁴⁸

with her condominium association over an accessible parking spot. The association refused the woman's request for an accessible spot, removed an existing accessible spot, and publicly insulted her. In many cases, Access Living's lawyers and staff act on behalf of individuals to bring about an acceptable resolution with the property owners or managers. In this case, Access Living negotiated a settlement that included



Access Living of Metropolitan Chicago

Multifamily buildings with entrances opening directly onto the sidewalk are accessible to individuals using assistive devices, such as wheelchairs. These types of measures, when incorporated during the design and construction stage, cost less than retrofitting.

system. Wichman recalls a landlord in one case eventually told the tester, “I don’t have time for this,” and hung up the phone. In another case, a deaf tester was denied an apartment after being told that the building was not set up to accommodate “handicapped people.” Multiple calls are sometimes necessary to collect evidence proving that the landlord is refusing to speak with a deaf tester because of his or her disability and not because of another, nondiscriminatory reason. A single dropped phone call, for example, may only be proof of a poor connection. Testing investigations, Freiberg contends, must always consider how the evidence will stand in court.⁵⁷

Once inside the building, Access Living’s testers investigate its design and accessibility issues.⁵⁸ The 1988 amendments to the Fair Housing Act state that buildings built after 1991 that have four or more

units must accommodate individuals in wheelchairs. If the building has an elevator, then all of its units need to be accessible. Otherwise, only ground-floor units must be accessible. Access Living sends testers with and without disabilities to investigate complaints against housing providers and architects who fail to design and construct buildings that adhere to the provisions of the 1988 amendments and the Americans With Disabilities Act.⁵⁹

For example, Access Living was hired by the Illinois Department of Human Rights in 2007 to test 914 W. Hubbard Inc. for accessibility. The organization dispatched a tester using a 24-inch wheelchair. The tester was unable to access various areas of the four units he tested. The doorway to the master bedroom was too narrow on two units and formed a sharp angle with the hallway, making turning difficult. In three units,

the tester found that the kitchen was unusable because of inadequate floor space for maneuvering or turning. He also noticed that the electrical boxes were mounted too high on the wall to be accessible to someone in a wheelchair. In a comparison test, a tester without a wheelchair had no difficulty accessing the four units. After a HUD investigation, the parties entered into a consent agreement that included training and \$20,000 in monetary relief.⁶⁰

Bristo, who uses a wheelchair, says that wheelchair testers are often able to detect subtle design issues simply by interacting with the space.⁶¹ In Illinois, for example, most ramps are not allowed to have a slope exceeding a 1:12 ratio.⁶² A wheelchair user intuitively knows the feeling of a compliant ramp and can immediately recognize a slope that is too steep. In most cases, Access Living prefers to use individuals with



Yolanda Wright

Access Living and *pro bono* counsel Katten Muchin Rosenman helped secure necessary approvals under the Fair Housing Act to install the lift above.

disabilities instead of proxy testers — nondisabled individuals who present themselves as having a disability or individuals who inquire into housing on behalf of a relative with a disability.⁶³ Proxy testers, says Bristo, cannot engage with a space in the same way as a person with a disability. Because such testers may overlook a potentially discriminatory issue, she cautions against their use.⁶⁴

One possible use of proxy testers may be in investigations into housing discrimination against individuals with mental disabilities. For paired testing to work properly, testers need to casually signal to the housing provider that they possess the disability being tested. Because mental disabilities are often invisible, testers may have difficulty disclosing their disabilities in a way that does not tip off the housing provider that a fair housing test is underway.⁶⁵ Although some FHOs address this challenge by using proxy testers who claim to be seeking housing on behalf of a friend or relative with a mental disability, Access Living believes that using proxies is

inconsistent with its philosophy that people with disabilities should be at the forefront of efforts to combat discrimination. Bristo feels that using proxies reinforces the negative stereotype that individuals with disabilities are unable to function independently in everyday society.⁶⁶

Benefits of Fair Housing and Disability Advocacy

By straddling the worlds of fair housing and disability advocacy, Access Living is able to enforce antidiscrimination laws while maintaining fidelity to its core mission. Because it is a disability rights organization staffed largely by individuals with disabilities, Access Living understands the needs of the disabled community, speaks the same language, and is fully comfortable working with testers with disabilities. These advantages allow Access Living to draw on creative solutions from the disabled community. For example, Access Living is working to have accessible design added to Chicago's building code to eliminate the potential for certain fair housing violations before construction even begins.⁶⁷

Access Living's unique position also comes with unique responsibilities when implementing testing. As a disability rights organization, Access Living believes that it is obligated to employ persons with disabilities whenever possible. Therefore, Walden states, Access Living must provide reasonable accommodations to its testers to complete their jobs. For example, individuals with visual impairments may need forms that work well with screen readers to complete their tests. People with limited use of their hands may need a dictation service to complete their test reports. A deaf tester may need a sign language interpreter to communicate with a landlord or agent.⁶⁸

In its multifaceted effort to expand the housing options available to individuals with disabilities, Access Living uses testing evidence to address wider change. Providing redress for a single victim of discrimination is beneficial, but when appropriate, Access Living also looks to further its mission by modifying the habits of housing providers.

Accomplishing this goal means that testing evidence is not always used to file a complaint. Instead, in specific, limited situations, Access Living may opt for training when the evidence warrants it, pushing housing providers to voluntarily correct their policies to create systematic change.⁶⁹

Conclusion

In Milwaukee, Spokane, and Chicago, housing discrimination takes many different forms, necessitating a unique approach to each testing investigation. Wertheim and Freiberg emphasize the need to remain flexible and embrace a variety of testing structures customized for a specific investigation. By shrewdly applying different testing structures, MMFHC, NWFHA, and Access Living are able to provide redress to victims of discrimination. Although the paired test remains the staple investigative method, MMFHC was also successful at using decoy testers to draw out a recalcitrant landlord in Milwaukee. In eastern Washington, NWFHA used single-person tests to effectively identify mortgage rescue scams. These different testing structures are enhanced, Hochendoner and Freiberg have observed, when the investigation incorporates available data sources. HMDA lending data allowed NWFHA to target lenders with the poorest records of serving members of protected classes. Demographic data, when used in conjunction with testing, focused FHJC's investigation on the most afflicted parts of its service area, stretching scarce enforcement dollars and increasing the efficiency of its operation.

Training is fundamental because, as Freiberg notes, all testers are also potential witnesses. If a testing case goes to trial, the credibility and objectivity of the testers will be scrutinized just as they are for other fact witnesses. MMFHC, NWFHA, and Access Living equip their testers to objectively document appropriate evidence during investigations. Using the person most suited to a specific situation is also important. Access Living has learned that individuals

with disabilities collect the best evidence during disability discrimination cases because of their intuitive knowledge.

Tisdale and Freiberg argue that testing is most effective when it is implemented as a part of an investigation that is proactively initiated and systemic in scope and remedies. These experts believe that the current complaint-based enforcement paradigm misses most discrimination occurring in the housing market. Many

victims are unaware of subtle forms of discrimination, resulting in neither a complaint nor an investigation. Only by proactively investigating discrimination, say Tisdale and Freiberg, can FHOs tackle the problem holistically and curtail widespread abuses. When FHOs work in concert, as MMFHC did with several FHOs to investigate insurance redlining, testing can be used to change the behavior of housing providers, expanding housing choice for all. **EM**



Fair housing organizations work to ensure that families with children are not excluded from the home of their choice.

- ¹ Fred Freiberg. 2009. "A Test of Our Fairness," *The Urban Lawyer* 41:2, 242–3.
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- ³ Liam Garland. 2009. "Reflections on Housing Rights Center v Krug," *The Urban Lawyer* 41:2, 249; Kenneth Temkin, Tracy McCracken, and Veralee Liban. 2011. "Study of the Fair Housing Initiatives Program," U.S. Department of Housing and Urban Development, 53, 57.
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Additional Resources

- *Knocking on the Door: The Federal Government's Attempt to Desegregate the Suburbs* (2006), by Christopher Bonastia, documents HUD's early efforts under Secretary George Romney to affirmatively implement the Fair Housing Act to reduce segregation. press.princeton.edu/titles/8205.html.
 - *Climbing Mount Laurel: The Struggle for Affordable Housing and Social Mobility in an American Suburb* (2013), by Douglas S. Massey et al., evaluates the consequences of the placement of an affordable housing development in Mount Laurel, New Jersey as required by a landmark state Supreme Court ruling. press.princeton.edu/titles/10024.html.
 - *Fragile Rights Within Cities: Government, Housing, and Fairness* (2006), edited by John Goering, contains essays on housing discrimination and housing discrimination research, segregation and integration, and fair housing enforcement policies and programs. rowman.com/ISBN/9780742547353.
 - *The Geography of Opportunity: Race and Housing Choice in Metropolitan America* (2005), edited by Xavier de Souza Briggs, is a collection of essays that address ways to ensure equal opportunity for an increasingly diverse population in the context of historic discrimination and persistent segregation. brookings.edu/research/books/2005/geographyofopportunity.
 - "Concentration of Poverty in the New Millennium: Changes in Prevalence, Composition, and Location of High Poverty Neighborhoods" (2013), by Paul A. Jargowsky, summarizes the changes in the geography and demographics of concentrated poverty, including racial changes, and concludes with a discussion of the consequences of concentrated poverty. tcf.org/assets/downloads/Concentration_of_Poverty_in_the_New_Millennium.pdf.
 - "Finding Common Ground: Coordinating Housing and Education Policy to Promote Integration" (2011), by the Poverty and Race Research Action Council, advocates moving beyond a siloed approach to housing and education policy by thinking collaboratively about the effect one has on the other, with the goal of fostering inclusive, integrated schools and communities.
 - www.prrac.org/pdf/HousingEducationReport-October2011.pdf.
 - "Expanding Housing Opportunities Through Inclusionary Zoning: Lessons From Two Counties" (2012), by researchers from the Urban Institute and the University of Maryland at College Park, examines the effectiveness of two inclusionary zoning strategies for increasing the supply of affordable housing and furthering other housing goals. www.huduser.org/portal/publications/affhsg/hud_496.html.
 - "Commemorating the 30th Anniversary of the Fair Housing Act" (1999), a special issue of *Cityscape*, contains articles reflecting on the history of the Fair Housing Act, examining its implementation, and proposing recommendations for policy improvements and future actions. www.huduser.org/periodicals/cityscape/vol4num3/index.html.
 - The Louis L. Biro Law Library at John Marshall Law School hosts a bibliography of fair housing resources and publications. libraryguides.jmls.edu/content.php?pid=184324&sid=1548968.
 - *Fair Housing Act Design Manual: A Manual to Assist Designers and Builders in Meeting the Accessibility Requirements of the Fair Housing Act* (1998), by the Office of Fair Housing and Equal Opportunity and the Office of Housing at HUD, provides clear and comprehensive guidance regarding the accessibility obligations of builders under the Fair Housing Act. www.huduser.org/publications/PDF/FAIRHOUSING/fairfull.pdf.
 - Fair Housing Accessibility FIRST is a HUD-supported initiative that provides Fair Housing Act construction and design information and technical support through instruction, online resources, and a toll-free information line. www.fairhousingfirst.org/.
 - *Housing Discrimination: Law and Litigation* (2013), by Robert Schwemm, discusses the history of fair housing law and examines important past and recent cases. legalsolutions.thomsonreuters.com/law-products/Treatises/Housing-Discrimination-Law-and-Litigation/p/100027959.
 - *Segregation Now: Investigating America's Racial Divide* is a ProPublica investigative series that features several stories on housing segregation and discrimination, both past and present. www.propublica.org/series/segregation-now.
 - HUD's Office of Fair Housing and Equal Opportunity assists people who believe that they are victims of housing discrimination. For information on filing a complaint or contacting a local fair housing group, visit www.hud.gov/offices/fheo.
 - The National Fair Housing Alliance (NFHA) hosts a range of relevant resources, including a tool for locating local fair housing organizations. NFHA publishes an annual report that documents trends in the most recent housing discrimination data from HUD and private fair housing groups and examines current fair housing policy issues. www.nationalfairhousing.org/.
 - "Symposium on Fair Housing Testing" (2009), in *The Urban Lawyer*, contains a collection of articles on the challenges and strengths associated with fair housing testing. The articles are based on presentations from a conference on fair housing testing held at Wayne State University Law School in 2008. www.americanbar.org/publications/urban_lawyer_home/urban_lawyer_archive/41_2abst.html.
 - *A Matter of Place* (2014), jointly produced by the Fair Housing Justice Center and Kavanagh Productions, is a documentary that tells the stories of people who faced housing discrimination in present-day New York in the context of the nation's history of racial residential segregation. www.fairhousingjustice.org/resources/film/.
 - The Equality of Opportunity Project, a study of intergenerational mobility in the United States, finds significant correlation between intergenerational mobility and residential and economic segregation. www.equality-of-opportunity.org/.
 - "Improving Equality of Opportunity in America: New Evidence and Policy Lessons" (2014), a lecture by Harvard University professor of economics Raj Chetty, discusses how certain characteristics of a community can affect a child's chances for future income mobility. www.youtube.com/watch?v=2l-6CzrJ4A.
- For additional resources archive, go to www.huduser.org/portal/periodicals/em/additional_resources_2014.html.

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