

# Race/Color and National Origin

## Indicators of Disparate Treatment in Portland Rental Housing

Audit Testing report prepared by:

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## Executive Summary

This past April marked the 50<sup>th</sup> anniversary of the passage of the federal Fair Housing Act (FHA). The FHA made it illegal to discriminate in housing based on an individual's race, color, national origin, or religion. The Fair Housing Act was further amended to include the protected classes of sex, familial status, and disability. The Act intended to end the rampant racial segregation of the mid-20<sup>th</sup> century and discriminatory government and private actions that created and maintained racial segregation of neighborhoods and communities.

Despite this landmark legislation that instituted civil rights protections in housing, many members of our communities recognize that discrimination and differential treatment in the housing market continue today. However, that discrimination and differential treatment might look very different than it did at the time the Fair Housing Act was passed 50 years ago. Today, discrimination and differential treatment are less overt, often occurring without the awareness of those to whom it is impacting directly.

Today, individuals born in or perceived to be born in another country additionally are experiencing an increasing discriminatory environment that expands into the housing market. In the results of the testing that is the subject of this report, tests based on the protected class of national origin indicated positive for different treatment in nearly one-third of the tests.

Communities of color also continue to experience challenges in obtaining housing due to potential different treatment in the current rental housing environment. In addition to tests detailed in this report that indicate positive for different treatment based on race/color, reports of fair housing violations to our housing discrimination hotline from within the city of Portland based on the protected classes of race or color make up nearly one in four of the allegations of fair housing violations.

The concern for these communities is that people – specifically people of color or people perceived not to have been born in the US -- seeking housing in Portland are treated less favorably. These same home seekers may have to apply to several places before they can find housing. They have trouble accessing the housing of their choice. This should not be happening to human beings – our friends, neighbors, and colleagues -- in our community, more than 50 years after the passage of the federal Fair Housing Act, but tests conducted by the Fair Housing Council of Oregon (FHCO) during this period shows that it is. The individuals seeking housing frequently are not aware that this is occurring because they do not have the advantage of comparing their treatment and information with that of a comparative tester. But this information likely would not surprise them.

## **Conclusion**

The results of audit tests conducted between March 2016 and February 2018 show that housing providers continue to provide adverse differential treatment to prospective renters in nearly one in four of the inquiries based on a person's race/color or national origin. The most common differential treatment is the provision of differing rental terms and conditions, unit availability, and availability dates. Testing in this audit shows that agents continue to make statements that could either discourage protected class testers from renting or applying or encourage comparative testers to rent or apply.

In these audit tests, the fact that national origin testing yielded the highest rate of adverse differential treatment in our test results is of concern. Housing providers must address any differential information and treatment provided to Hispanic/Latino/South Asian community members, including comments made to prospective renters, current tenants, and/or guests. Housing providers should review all policies for unintended discriminatory impacts on members of protected classes. Housing consumers must be made aware of their rights. They should be encouraged to remain vigilant in identifying policies and practices that signal differential treatment and urged to take action when such treatment is suspected.

It is critical that all Portland residents receive equal treatment and have equal access to the housing of their choice. The City of Portland should increase education for both consumers and housing providers, and the City needs to continue monitoring the housing market. Additional testing can help ensure compliance with fair housing laws and detect patterns and practices in the housing market that should be addressed. The City also needs to fund increased enforcement when different treatment indicating discrimination is found, allowing for entities such as FHCO to file more administrative complaints and pursue legal action on behalf of victims of illegal housing discrimination. Thoughtful policy planning and partnerships between jurisdictions and fair housing advocates will promote equitable access to housing and opportunity. With targeted effort and planning, the City of Portland can leverage resources in this time of growth in our city to advance social and economic equity for all residents.

This report examines FHCO's findings and provides recommendations to the City about opportunities to eradicate discrimination in housing.

## **Proposed Solutions and Further Recommendations**

Housing discrimination cannot be cured through one-dimensional, short-term solutions. If something as simple as the passage of a law had the ability to end discrimination without further effort, then the problem would have died with the passage of the Fair Housing Act more than 50 years ago. The only effective way to combat illegal housing discrimination is through sustained

public investment by local, state and federal entities in programs that take comprehensive and multi-faceted approaches to enhancing education and strengthening enforcement.

### **1) Enhancing Education and Outreach**

First, additional investment in education and outreach is critical to informing all stakeholders of their rights as well as responsibilities. Housing providers require enhanced access to resources that enable them to train employees to learn about the issue of housing discrimination and update them about innovations in the law. Housing providers that regularly attend anti-discrimination trainings conducted by FHCO often respond by altering business practices and adjusting policies that pose a disparate impact on communities of color to make them more equitable. Moreover, housing providers who get training in identifying discriminatory practices are often more proactive about monitoring their staff's conduct for problematic behavior. Housing providers should train all new staff on fair housing laws, with refresher courses for all staff annually.

There should be particular emphasis on ensuring smaller housing providers, often referred to as "Mom and Pop" landlords, are provided adequate opportunities to receive training on fair housing laws.

It is equally, if not more, critical that renters and tenants be provided with frequent opportunities to learn about their rights when confronting different treatment in a housing situation. Many instances of illegal discrimination in housing go unreported, thereby allowing the problem to persist without any enforcement or accountability. Tenants deserve the opportunity to access materials and trainings that inform them of their options for self-advocacy and point them towards advocates, such as FHCO, when seeking enforcement against bad actors.

### **2) Strengthening Enforcement**

Education and outreach efforts mean little if there is no entity available to enforce the law. Testing is an essential component to deterring housing discrimination. Similar to the way traffic patrol officers prevent drivers from speeding by maintaining a constant presence on the roads, testing removes the incentive for bad actors to discriminate by making them weary of the fact that illegal conduct comes with consequences. This, in turn, leads housing providers to take proactive measures to train their staff to follow Fair Housing law in order to avoid financial liability and embarrassment. Simply put, more resources need to be allocated to policing the housing market for illegal housing discrimination. Increased funding for testing is a pivotal element of the comprehensive strategy needed to combat this problem. More testing will further an understanding of the circumstances under which discrimination is most likely to occur and ultimately may lead to uncovering more differential treatment and discrimination. Furthermore, this will assist with bringing problematic practices in the housing market to the surface and

pursuing legal recourse for illegal housing discrimination through the administrative complaint process.

By expanding the volume of its testing program, the City of Portland can best understand the dynamics of the rental housing market. A greater volume of tests would provide a more accurate assessment of the treatment of members of protected classes within the rental housing marketplace and could inform City policy and decision-making. Testing also assists policy makers by illustrating the ever-changing ways that forms of discrimination manifest themselves within the housing market.

A greater volume of tests also would increase the likelihood the testing would uncover situations that would be suitable for further enforcement actions. Testing uncovers evidence of different treatment and can provide evidentiary support to an individual who believes he/she has been treated differently because of their protected class status. Similarly, increased testing in the rental housing marketplace serves as a further deterrence against those who might discriminate by increasing the potential for accountability and consequences that may result from illegal activity or differential treatment.

Fifty years following the passage of the Fair Housing Act, our nation, state and city continue to grapple with different treatment on the basis of protected classes in the housing market. The fact that testing is continually going on is in itself a deterrent to discrimination. However, there needs to be more enforcement when evidence is found of bad actors.

### **3) Further Recommendations**

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

- We recommend that expanded testing include the use of criminal history and credit scores in the rental screening process, which may show a disparate impact on people of color. It is critical for City leadership to look beyond mere rates of discrimination and better understand the manner in which discrimination occurs in the housing market place.
- In addition to conducting audit tests of the Portland rental housing market, the City of Portland also should support complaint-based tests. More discussion of complaint-based versus audit testing follows, but complaint-based tests, by their nature, also may increase the likelihood such tests may uncover situations that would be suitable for further enforcement actions.
- Housing providers should review their practices and policies for any potential discriminatory impacts, including lease agreements, rental screening criteria,

posted rules and notices in common areas. As evidenced by the results of this audit, protected class testers are frequently provided different information about unit availability, prices, and other rental terms.

- Housing providers should take steps to ensure that all prospective tenants are provided equivalent information; are given similar informational materials; and are afforded the same amount of follow-up contact.
- Leasing agents should be aware of all potential vacancies and provide all available options to home seekers. Housing providers should not use the excuse that the testers spoke to different agents. All agents should have the same information and impart the same information to all prospective applicants/tenants.
- Housing providers may want to engage in self-testing of their staff to learn exactly how their staff engages the public, particularly consumers who are members of a protected class.
- While testing does not include in-place residents, given the number of calls to FHCO's housing discrimination hotline, housing providers also should remain particularly aware of potential differential treatment of and complaints from current residents who are members of the protected classes of race, color, national origin, and disability. Housing Providers should also be monitoring how their staff treats in place tenants who are members of a protected class.
- Attention also should be paid to the local, state and federal mechanisms for the administrative process for investigating and enforcing fair housing laws. The City should explore the possibility of setting up its own Enforcement Mechanisms to speed and enhance compliance with the City's fair housing laws.
- FHCO does not receive funding to represent complainants in the administrative process. Nor does FHCO receive funding to even file administrative complaints or lawsuits with any agency other than HUD. Therefore, any state-only or city-only protected class cannot be filed with HUD. If the City funded such work, this could increase, at least, administrative enforcement of complaints.
- Further incentives should be created for private civil rights attorneys to accept fair housing cases. The biggest hurdle for Complainants who experience housing discrimination is obtaining the services of a private attorney. Even though a successful attorney can get court-appointed attorney fees, usually a private attorney requires a retainer agreement to cover up-front litigation expenses that can be as high as \$5,000.

## **Details of Audit Testing Results**

The following report details the results of an audit of rental housing conducted by FHCO within the city of Portland, Oregon for discrimination on the basis of race/color and national origin. This

report covers testing that took place over a two-year period, from March 2016 through February 2018. Testing in the city of Portland rental housing marketplace is ongoing, and additional results of testing will be released again in the future.

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

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

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

### **Results**

While testing may provide an objective means to identify differential treatment or practices, the presence of differences does not necessarily mean that a housing provider is engaging in housing discrimination. (For example, if different agents at one test site have their own unique sales approach, the testers may report different experiences while receiving substantially similar information.) Likewise, the lack of observed differences at a particular site does not preclude the existence of discriminatory practices. Housing discrimination occurs as a result of adverse differential treatment toward someone because of their protected class.

For the purposes of this report, testing results are defined as either “positive”, negative,” or “inconclusive.” A test will be defined as “positive” when one or more differences are identified in the information provided to the protected class tester which could be considered adverse when compared to the comparative tester. For example, if a protected class tester is provided a higher quote for a security deposit than the comparative tester, the test will be defined as “positive” because of evidence of adverse differential treatment. Tests are defined as “negative” when protected class testers are provided equivalent information (or given equal or better treatment) regarding housing opportunities. In a “negative” test, there should be no materially differential treatment. A test will be defined as “inconclusive” when the protected class tester appears to have been subjected to differential treatment, but details of the test may cause the test coordinator to question if the treatment was substantially different or adverse. For example, if the protected class tester is quoted a higher rate, but it is unclear from the test reports if the rate quoted was for a larger or more desirable unit a test may be considered “inconclusive” and would most likely generate a follow-up test to clarify the variable or see if the protected class tester was once again provided a higher quote than that received by the comparative tester.

FHCO initially conducted 45 tests between March 2016 and February 2018, within the city of Portland. Of these 45 tests, 16 warranted further testing because they resulted in a positive or inconclusive outcome.

Of the initial 45 tests conducted, nine (20%) showed adverse differential treatment toward the protected class testers and were determined to be positive. Of these nine positive tests, one showed adverse differential treatment on the basis of race/color, and eight showed adverse differential treatment on the basis of national origin.

***Initial Tests***

<b>Protected Class</b>	<b>Positive Tests</b>	<b>Percentage Positive Tests</b>	<b>Inconclusive Tests</b>	<b>Percentage Inconclusive Tests</b>	<b>Negative Tests</b>	<b>Percentage Negative Tests</b>	<b>Total Tests Conducted</b>
<b>Race/Color</b>	1	5.9%	2	11.8%	14	82.4%	17
<b>National Origin</b>	8	28.6%	5	17.9%	15	53.6%	28
<b>Totals</b>	9	20.0%	7	15.6%	29	64.4%	45

Of the 12 retests conducted, four were positive, six were negative, and two were inconclusive. Three of the positive retests were based on the protected class of national origin, and one was based on race/color. Of the two inconclusive retests, one was based on the protected class of race and the other on national origin.

***Re-tests***

<b>Protected Class</b>	<b>Positive Tests</b>	<b>Percentage Positive Tests</b>	<b>Inconclusive Tests</b>	<b>Percentage Inconclusive Tests</b>	<b>Negative Tests</b>	<b>Percentage Negative Tests</b>	<b>Total Retests Conducted</b>
<b>Race/Color</b>	1	33.3%	1	33.3%	1	33.3%	3
<b>National Origin</b>	3	33.3%	1	11.1%	5	55.6%	9
<b>Totals</b>	4	33.3%	2	16.7%	6	50.0%	12

Staff compared the two tester reports for each test to assess the type of treatment testers received and information provided by the landlord. The following information was reviewed for differences or similarities in information provided to the testers or actions taken by the housing provider:



- Rental terms and conditions (including rental pricing, deposits, screening fees, amenities and special offers);
- Unit availability (including dates available and units available);
- Comments and general treatment (discouraging or encouraging statements, discriminatory comments, acts of courtesy);
- Potential steering of testers (evidenced by showing or telling testers about different units available);
- Policy issues (to include reasonable accommodation and screening policies); and
- Follow up contact.

Of the positive tests that showed adverse differential treatment, this is what the results reflected:

The most common issue identified was the provision of different terms and conditions and availability of units. Of the 13 positive tests (including retests), there was evidence of differing (adverse) information provided to protected class testers with regard to rental terms and conditions, including differing rental price amounts, move-in specials, deposits, application fees, and screening criteria. The different information favored the comparative tester over the protected class tester. In the race/color positive tests, the protected African American/black testers were told about higher rental prices and fewer units than their white counterparts.

In the tests on the basis of national origin, 11 positive tests for differential treatment were identified. All the Hispanic/Latino/South Asian testers conducting tests spoke with discernable accents. This aspect of testing is incorporated as a means to test for the treatment of someone whose country of origin is not the United States or is perceived to have different country of origin than the United States. Several of these protected class testers were not told about as many available units as the white tester. In two of the tests, the Hispanic/Latino/South Asian tester's call was not returned by the housing provider, and this was after the Hispanic/Latino/South Asian tester left several messages for the housing provider. In four of these tests, the Hispanic/Latino/South Asian tester was not told about specials or open houses that the non-Hispanic/non-Latino/non-South Asian tester was told about. These testers were told about higher rents for the same unit, or only shown smaller units than the non-Hispanic/non-Latino/non-South Asian tester. In two tests, the comparative tester was told of multiple ways to apply, while the protected tester was told of only one way to apply. Finally, in one test, the protected tester was told there were no units available while the comparative tester was told there was one coming up soon.

Staff analyzed results of positive tests and recommended further testing to support any future enforcement (analysis of successfully prosecuted cases shows that cases with three sets of positive tests are more likely to prevail over those with only one or two tests).

Of the 12 retests, four were positive. Further action is recommended in all four cases. Actions can include additional testing to support enforcement (as units become available), education of the housing provider staff and management, or further investigation, such as surveying area residents to determine if others have experienced similar treatment at the site. FHCO has filed an administrative complaint in one case, and is proceeding to retest the other sites. Additional testing of housing providers with tests with inconclusive results is recommended to verify compliance with fair housing laws.

During the timeframe of this audit, FHCO was only able to complete 12 retests. The extremely low vacancy rate in Portland during this time period created a barrier to retesting, and it was common to find that when the need for a retest was indicated, the housing provider no longer had a vacant unit. FHCO continues to monitor properties for re-tests under our contract with the City of Portland. We will continue to check for vacancies and hope to retest all properties with either positive or inconclusive tests under this contract.

If we are unable to conduct retests of some results, FHCO may choose to contact the housing providers and discuss the results of our tests and our concerns about different treatment based on protected class status. In the past, we have found housing providers most willing to discuss with us our concerns, and frequently that has resulted in the housing provider making concrete changes in policies and practices, as well as further training and education of staff.

## **TRENDS AND FINDINGS IN SIMILAR FHCO SERVICES**

The positive results for different treatment based on race/color and national origin found in this audit indicate work remains to be done to ensure all Portland residents receive equal treatment and have equal opportunity to access the housing of their choice.

The national origin tests indicate a high percentage of different treatment at the inquiry stage. And based on our anecdotal evidence (hotline, etc.), we can only surmise that testing in the full application and in-place tenant stages would reveal a very serious issue. The tests show a higher percentage of times a person will receive different treatment based on national origin than race/color. This potential for different treatment of residents perceived to have a national origin other than the U.S. remains high as incidents of hate and harassment also have increased since the 2016 general election cycle.

It remains alarming that even in the small sample there still exists a 6% chance of a person being treated differently based on race/color at the inquiry stage. Additionally, one re-test based on race/color also was positive for different treatment. Based on the calls we receive on our hotline, we can only be more concerned about the rate of discrimination that might be revealed if testing included full applications, application screening, and the treatment of in-place tenants, as well as more tests

These audit test findings suggest that in nearly 25% of these housing transactions, people of color and people perceived to have been born outside the United States received differential treatment in Portland.

It would be an optimistic and invalid conclusion based on these particular audit tests to conclude that members of the protected classes of race/color and national origin are not experiencing differential treatment. As stated previously, the limitations of this audit (testing only at the inquiry stage, not application or in-place tenancies) may underestimate the prevalence of discriminatory treatment.

Two other points of data, while not included in this audit testing contract with the City of Portland, affirm the potential for differential treatment of members of the protected classes of race/color and national origin.

The table below summarizes the protected classes of callers to our housing discrimination hotline reporting a fair housing allegation within the city of Portland. Among the calls within the city of Portland, 24% of callers indicated race or color was the basis of their allegation, and 9% of callers indicated national origin was the basis of their allegation.

**Hotline Data (March 2016 to November 2017)**

<b>BASIS</b>	<b>City of Portland</b>		<b>All Allegations</b>	
<b>Race/Color</b>	43	24%	77	13%
<b>National Origin</b>	16	9%	48	8%
<b>Religion</b>	1	1%	5	1%
<b>Sex</b>	13	7%	55	10%
<b>Familial</b>	9	5%	39	7%
<b>Disability</b>	67	37%	261	46%
<b>Domestic Violence</b>	7	4%	17	3%
<b>Sex Orientation/Gender</b>	6	3%	13	2%
<b>Income Source</b>	16	9%	57	10%
<b>Marital Status</b>	1	1%	1	0%
<b>TOTAL</b>	<b>179</b>	<b>100%</b>	<b>573</b>	<b>100%</b>

Under a separate grant with the federal Department of Housing and Urban Development, FHCO also conducted complaint-based tests on the basis of race/color and national origin. Under the HUD grant, FHCO conducted nine tests or re-tests within the city of Portland that included testing on the basis of race/color or national origin. Complaint-based tests differ from audit tests in that the subject properties of the tests arise from fair housing allegations received through our housing discrimination hotline. Due to the nature of the origin of these test subjects, complaint-

based tests may be more likely to be positive for differential treatment since they follow reported incidents of fair housing allegations.

The table below summarizes the tests based on race/color and national origin that were conducted within the city of Portland under our HUD grant during the same period. A high percentage of tests and re-tests based on race/color and national origin were positive for differential treatment.

**Tests conducted within city of Portland under federal HUD grant**

Protected Class	Initial Tests			Re-Tests			Total Tests Conducted
	Positive Tests	Inconclusive Tests	Negative Tests	Positive Tests	Inconclusive Tests	Negative Tests	
Race/Color	1	0	0	4	0	0	5
National Origin	1	0	0	1	2	0	4
<b>Totals</b>	2	0	0	5	2	0	9

In light of the results of these race/color and national origin audit tests conducted for the City of Portland, supported by data from fair housing allegations reported to FHCO’s housing discrimination hotline and complaint-based tests conducted under our grant with HUD, FHCO made the recommendations listed earlier in this report.

FHCO does not hesitate to file enforcement action against housing providers when the evidence warrants such action. In one case, we filed a fair housing complaint with the appropriate administrative agency. However, the reality is that successfully prosecuting enforcement actions requires significant evidence of legally cognizable discrimination, usually from multiple positive test results. Therefore, the opportunity for re-testing is a very important part of successful enforcement. Failure to obtain multiple test results can limit the option of formal enforcement.

In addition, if there is adequate evidence of different treatment and there is a good faith belief that it is due to discrimination, FHCO and/or the Complainant could file either a lawsuit or an administrative complaint. FHCO receives no grant support to file/represent in any administrative complaint or lawsuits. (HUD provides some grant money to file a small number of complaints but no support to represent in the process.) In addition, a private attorney will not take on such a lawsuit (even though she/he, if successful, can get court ordered attorney fees) without a retainer of usually around \$5000 to cover anticipated costs. The administrative process can take years, and with BOLI, the state could refuse to represent the Complainant even after the agency found cause. The City needs to look at ways to give private attorneys incentive to take these cases such as a fund to front costs for the Complainant. If the City had its own Enforcement branch,

perhaps they could speed up the administrative process, so justice can be served in a reasonable period of time and to all complainants regardless of income and means.

Considering the current rental market and trends, jurisdictions in the Portland metropolitan consortium each should conduct testing. If decreasing availability of housing units, increasing rental prices, and increasing population growth causes residents to seek more affordable housing options elsewhere in the region, it will be important to examine any differential treatment in those areas and provide a better regional perspective. It is very important that testing continue, particularly in this market.

The City of Portland is taking policy steps to ensure communities of color and people born outside the U.S. or perceived to have been born outside the U.S., and other members of protected classes are not displaced by rising rental prices and decreased housing options, in particular, as these trends compromise access to resources and opportunities. It is crucial that the City continue to address growth, development, and investment in a way that ensures equity for all by viewing all land use zoning and policy development with a lens toward Affirmatively Furthering Fair Housing options for vulnerable and historically underserved populations.

## APPENDIX A

### Legal Background

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

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

The City of Portland and Multnomah County also protect people from housing discrimination based on their age (over 18) and type of occupation.

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

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

### Introduction to Fair Housing Testing

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

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

## **Fair Housing Audit Testing**

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

## **Purpose of Audit**

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

## **Considerations**

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

This audit examined differential information and treatment provided to prospective tenants based on their race/color and national origin. If prospective tenants are provided fewer options, higher rental prices, fewer specials or other incentives, told about more screening requirements or other restrictions, or otherwise discouraged from renting, it limits housing choice in an already tight rental housing market. It is imperative that all residents receive equal treatment and equal opportunity to housing choice.

## Limitations

Tests conducted in this audit were limited to rental transactions at properties that meet the jurisdictional requirements of the Federal Fair Housing Act within the city of Portland, which has a population of around 640,000. This audit was conducted for the City of Portland Housing Bureau. Because of non-representative sample sizes at the census tract level, testing results are analyzed in the aggregate to identify general market trends.

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

Due to low rental vacancy rates, it was not always possible to retest housing providers where staff identified differential treatment, particularly at properties with fewer housing units onsite. The Fair Housing Council will continue to conduct investigation into tests that showed some signs of differential treatment under the purview of their grant with the U.S. Department of Housing and Urban Development; therefore, details of tests are not available for review.

## Methodology

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

In this audit, test contacts were made over the phone and by in-person onsite visits. Using testers with a discernible "foreign" accent through phone testing is a plausible methodology for testing based on the protected class of national origin as such accents often serves as the cue for



differential treatment, and contact by phone often is how the initial contact from a perspective renter is made with a landlord. For testing on the basis of race/color, onsite visits were conducted. Testing for differential treatment based on the protected classes of race or color is done in person so as to provide a visual presentation of the tester's actual or perceived race or color. Some onsite tests required initial contact by phone to schedule onsite appointments with a leasing agent.

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

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