



## **Race, National Origin, Familial Status, and Disability Disparate Treatment in Portland Rental Housing**

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## **Introduction**

**This report reveals the results of an audit of rental housing within the City of Portland, Oregon for discrimination on the basis of race, national origin, family status, and disability. The audit took place between October 2013 and December 2014. This audit was conducted by the Fair Housing Council of Oregon, in partnership with the Fair Housing Center of Washington.**

### **Fair Housing Council of Oregon (FHCO)**

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

**The 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.**

### **Fair Housing Center of Washington (FHCW)**

**The Fair Housing Center of Washington is a nonprofit civil rights organization that serves western and central Washington and has some statewide and regional programs. The agency is responsible for intake and investigation of housing discrimination complaints, fair housing testing, education and outreach, and does extensive work in affirmatively furthering fair housing by conducting *Analysis of Impediments to Fair Housing Choice* and *Fair Housing Equity Assessments* for jurisdictions.**

## **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 selected for the audit. This project sought to test sites in a variety of areas of the city that reflected a sampling of 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, national origin, familial status, and disability 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 is experiencing one of the lowest rental vacancy rates in the nation. According to Census data, the City of Portland had a rental vacancy rate of around 3% in late 2013, down from over 9% in 2005. Data from HUD shows that median

rental rates in the City of Portland were about 4% higher in late 2013 than the previous year. Census data also indicates that the City of Portland's population increased by 4.4% between 2010 and 2013.

Low vacancy rates and increasing rental prices create 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 prices 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, national origin, family status, and disability status. 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. At this crucial time in Portland's history, it is imperative that all citizens 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. Tests were not conducted at rental properties with fewer than four units, properties with four units where the property owner resides in one of the units, or shared housing situations, which are all exempt from the Federal Fair Housing Act.

This audit was conducted for the City of Portland, which has a population of around 609,000. 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, testing may not always effectively identify discrimination in the terms and conditions of tenancy. Discrimination may occur during the 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, this may be an important consideration when examining the results of this audit, as it may underestimate the prevalence of discriminatory treatment.

This audit did not assess design and construction standards that may limit housing options for people with mobility-related disabilities. Instead, testing on the basis of disability was structured more broadly to measure awareness of the reasonable accommodation process which impacts individuals with all types of disabilities.

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 control 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. For testing on the basis of disability and familial status, phone tests were utilized. For testing on the basis of race and national origin, onsite visits were conducted. 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 with consulting oversight provided by the Fair Housing Center of Washington (FHCW), 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.

The FHCW was responsible for analyzing and evaluating the test results, identifying properties for retesting, and recommending any further action needed.

## **Results**

While testing may provide an objective means to identify differential 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 control tester. For example, if a protected class tester is provided a higher quote for a security deposit than the control 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 control tester.

FHCO initially conducted 51 tests between October 2013 and December 2014 in the City of Portland. Of these 51 tests, 27 warranted further testing because they resulted in a positive or inconclusive outcome. However, due to market conditions only 12 retests have been performed to date.

Of the initial 51 tests conducted, 19 (37%) showed adverse differential treatment toward the protected class testers and were determined to be positive. Of these 19 positive tests, five showed adverse differential treatment on the basis of race, 7 showed adverse differential treatment on the basis of national origin, 4 showed adverse differential treatment on the basis of familial status, and three showed adverse differential treatment on the basis of disability.

#### Initial Tests

Protected Class	Positive Tests	Negative Tests	Inconclusive Tests	Total Tests Conducted	Percentage Positive Tests	Percentage Negative Tests	Percentage Inconclusive Tests
Race	5	5	3	13	38.5%	38.5%	23%
National Origin	7	3	2	12	58%	25%	17%
Familial Status	4	7	3	14	29%	50%	21%
Disability	3	9	0	12	25%	75%	0
<b>Totals</b>	19	24	8	51	37%	47%	16%

Four of the retests were positive, seven were negative, and one was inconclusive. All four positive retests were based on the protected class of national origin. The one inconclusive retest was based on the protected class of race.

### Retests

Protected Class	Positive Tests	Negative Tests	Inconclusive Tests	Total Retests Conducted	Percentage Positive Tests	Percentage Negative Tests	Percentage Inconclusive Tests
Race	0	1	1	2	0	50%	50%
National Origin	4	3	0	7	57%	43%	0
Familial Status	0	2	0	2	0	100%	0
Disability	0	1	0	1	0	100%	0
<b>Totals</b>	4	7	1	12	33.3%	58.3%	8.3%

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. Fourteen of the total 23 positive tests (including retests) showed evidence of differing 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. Fifteen positive tests indicated differing information regarding number of available units and availability dates that favored the control tester over the protected class tester.

Of the four positive familial status tests, testers with children were quoted higher rental rates, later dates of availability, were told about utility charges based on the number of occupants in the unit, and were potentially discouraged by agents' comments. In one test, the agent told the protected tester with

children that there were a lot of professionals in the area, asked many questions about the tester's daughter, and wished her good luck at the end of the call, while the same agent told the control tester without children that she was looking for the right person to rent to and encouraged the control tester to visit that day.

Testing for reasonable accommodations for a person with a disability identified one housing provider that indicated they have a limit of one assistance animal. Fair housing laws do not specify limits to the number of assistance animals needed by a person with a disability. In another disability-based test, the housing provider stated they did not know if the protected tester's assistance animal would be allowed, or if there would be a fee for the animal. Under fair housing laws, housing providers must allow an assistance animal and cannot charge a pet fee or pet deposit for the assistance animal. The low number of positive and inconclusive disability tests reflects a high level of understanding of the reasonable accommodation process among Portland housing providers.

Five tests on the basis of race were determined positive. Of these tests, protected African American testers were told about higher rental prices, fewer units, and later availability dates than their white counterparts. Protected testers were told about more screening requirements, shown fewer amenities, and received less follow-up contact after the test than control testers. In one test, the African American tester asked about the application fee and the housing provider told him to wait on that for now since the unit wouldn't be available until the next month and stated the tester could call back closer to the availability date. The same agent provided application information to the white tester.

Eleven positive tests on the basis of Latino national origin were identified. Of these tests, there were two housing providers with screening policies that create barriers for people born outside the United States. Rental screening provided to testers required either additional documentation for persons who have a Social Security number less than five years old, or an additional deposit for persons who do not have a Social Security card. These policies impact persons who are born outside of the United States, as people assigned a Social Security number at birth are not required to provide additional documentation or deposits. In another test, the protected Latina tester was asked for her Social Security number during her test, so the housing provider could run her credit check right away, while the agent did not request the white control tester's Social Security number or suggest they complete the credit check immediately. In another test, the protected Latina tester was asked where she is from and if her husband began working for his current employer in Mexico. In another test, the Latino tester was only given informational materials and the housing provider did not answer any of his questions, while the white control tester was able to meet with the agent and obtain rental information. Latino testers were, in general, told about fewer available units, told about different units than white testers (indicating potential steering), not told about move-in specials that had been offered to white testers, quoted higher rental and deposit prices, told about fewer amenities, and received less follow-up contact than white testers.

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). During the timeframe of this audit, FHCO was only able to complete retests at 12 of the sites where additional testing was recommended. The extremely low vacancy rate in Portland created an enormous barrier to retesting. In the time that



elapsed after analyzing all of the test data from both testers and making a determination to retest, it was common to find that the housing provider no longer had a vacant unit.

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 recommends filing administrative complaints in one case, further testing in two cases, and contacting the housing provider in the fourth case to retest clarification of the business need for the seemingly discriminatory policies that were uncovered during the tests. Additional testing of housing providers with tests with inconclusive results is recommended to verify compliance with fair housing laws.

## **Recommendations**

Results of this audit indicate there is still work to be done to ensure all Portland residents receive equal treatment and equal opportunity to access the housing of their choice. Findings suggest in more than half of the housing transactions, people of color and families with children will receive differential treatment. There are steps that housing providers and jurisdictions can take to address these disparities.

Housing providers should train all staff on fair housing laws. Housing providers should review their 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; receive similar informational materials, and 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 continue to make staff aware of procedures and policies when someone requests a reasonable accommodation or modification that is necessary due to their disability.

Disclosure of testing results and discussion with the operators and managers of housing sites can make housing providers aware of policies or practices that create barriers to housing access. Informally resolving cases in this manner is effective with housing providers who seek to follow fair housing practices and cases in which retesting is not possible.

Enforcement action can address illegal acts of housing discrimination identified in this audit, but further follow-up testing would be necessary to ensure that tests sufficiently reflect ordinary business practices of a particular provider. Where there is sufficient evidence, bringing actions against housing providers who are not in compliance with fair housing laws will call attention to illegal acts identified through testing and result in increased awareness and education for housing providers and the broader community. Enforcement action will help ensure that housing providers receive training needed to address illegal acts of housing discrimination and identify any policy issues that have a disparate impact on members of protected classes. At the same time, the reality is that successfully prosecuting enforcement actions requires significant evidence of legally cognizable discrimination,

usually from multiple positive test results. Failure to obtain multiple test results can limit the option of formal enforcement.

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

It is recommended that the City of Portland take policy steps to ensure communities of color, families with children, people with disabilities, people 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 addresses 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.

## **Conclusion**

The general trends and patterns evidenced by the results of this audit suggest that housing providers will provide adverse differential treatment to prospective renters more than one third of the time based on that person's race, national origin, family status, and sometimes based on a person's disability. 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 leasing agents made statements that could either discourage protected class testers from renting or applying, or encourage control testers to rent or apply. This audit identified policies that may have a discriminatory impact on applicants born outside the U.S., families with children, and people with disabilities.

Overall, results from this audit indicate that housing providers are willing to accept assistance animals as a reasonable accommodation necessary for a person with a disability. This reflects an increasing number of housing providers who understand fair housing laws and are providing training to staff to be in compliance with this part of the law.

National origin testing yielded the most test results of concern. Housing providers must address any differential information and treatment provided to Latino community members, including comments made to prospective renters, tenants, and/or guests. Policies may have discriminatory impacts for persons born outside the U.S. and housing providers should review all policies for unintended discriminatory impact on members of protected classes. Housing consumers must be made aware of their rights. They should be encouraged to remain vigilant for policies and practices that signal differential treatment and urged to take action when such treatment is suspected.

During this time of low rental vacancy rates and rising rental prices in Portland, it is critical that all residents receive equal treatment and have equal access to the housing of their choice. Increased education and awareness will help community members understand their rights under fair housing laws and identify any illegal acts of discrimination. Outreach and training for housing providers to address identified differential treatment and policy issues will improve access to housing choice for

**Portland residents. Continued monitoring of the housing market and housing provider practices will help target education and outreach efforts. Additional testing will assure compliance with fair housing laws and detect patterns and practices to be addressed. Thoughtful policy planning and partnership development between jurisdictions and fair housing advocates will foster equitable access to housing and opportunity. With targeted effort and planning, the City of Portland can leverage resources in this time of growth to advance social and economic equity for all residents.**