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# MODERNIZING THE FAIR HOUSING ACT FOR THE 21st CENTURY

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2013 FAIR HOUSING TRENDS REPORT

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APRIL 11, 2013

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## **ABOUT**

### THE NATIONAL FAIR HOUSING ALLIANCE

Founded in 1988 and headquartered in Washington, DC, the National Fair Housing Alliance is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. Through comprehensive education, advocacy and enforcement programs, NFHA protects and promotes equal access to apartments, houses, mortgage loans and insurance policies for all residents of the nation.

## **ACKNOWLEDGMENTS**

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# INTRODUCTION

April 11, 2013 marks the 45th anniversary of the passage of the Fair Housing Act - hard-fought legislation intended to root out individual and systemic housing discrimination and segregation, and to promote diverse inclusive communities throughout the United States. A little-known fact about the Fair Housing Act is that it was passed exactly a week after the assassination of the Rev. Dr. Martin Luther King, Jr. as a tribute to him and the work he did to challenge residential segregation in cities like Detroit and Chicago. Since that time, the Fair Housing Act has been amended on several occasions to address housing discrimination based on sex (1974) and against people with disabilities and families with children (1988). The fair housing movement continues to expand its fair housing enforcement, but it is time again to update the Fair Housing Act, now to protect other communities known to be victims of housing discrimination.

Near the end of his life, Dr. King recognized that although legal segregation was coming to an end, poverty would remain and it would be the subject of the next phase of the civil rights movement. He initiated the Poor People's Campaign, focusing on economic justice for poor people. King argued that the costs of the Vietnam War were sucking dry President Lyndon B. Johnson's "Great Society" programs. During King's day, the national poverty rate was near 12 percent, and more than double that for African Americans.<sup>1</sup> It is striking how our nation's current reality reflects the realities of Dr. King's day. Today, our national poverty rate is 15 percent, and people of color, women, families with children, and people with disabilities make up disproportionate shares of people in poverty. Compared to white families, African-American and Latino families have emerged from the Great Recession holding more debt relative to their assets. Between 2007 and 2010, African-American and Latino families lost 27.1 and 41.5 percent of their average net wealth, respectively, compared to a 6.7 percent loss for white families.<sup>2</sup> We are nearing

the end of the costly Iraq and Afghanistan wars, and today some federal legislators aim to balance our nation's budget on the backs of our most vulnerable communities, slashing programs that provide opportunity to our nation's poorest families. Dr. King's work remains unfinished. Preventing discrimination against classes protected by the Fair Housing Act remains a challenge.

In 1998 during a speech days before the 30th anniversary of Dr. King's assassination, Coretta Scott King, had this to say: "I still hear people say that I should not be talking about the rights of lesbian and gay people and I should stick to the issue of racial justice.... But I hasten to remind them that Martin Luther King Jr. said, 'Injustice anywhere is a threat to justice everywhere.'"<sup>3</sup> In 2013, and for the first time ever, the Supreme Court heard cases concerning same-sex marriage, and today public opinion polling shows that 58 percent of Americans believe same sex marriage should be legal.<sup>4</sup> As support grows for marriage equality, it is important to fight for full inclusion in society by recognizing other areas in which lesbian, gay, bisexual, and transgender people are discriminated against. Without access to safe housing of their choice, free from discrimination, lesbian, gay, bisexual, and transgender people face limited life opportunities.

In 2012, private fair housing organizations, Fair Housing Assistance Programs, the Department of Housing and Urban Development, and the Department of Justice collectively reported 28,519 complaints of discrimination in housing, an increase from 2011. Private fair housing organizations reported increased rental and sales discrimination, and a notable increase in discriminatory harassment. Private groups also saw an increase in housing discrimination based on classes not protected by the Fair Housing Act, including source of income, age, sexual orientation,

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from Home: Housing, Asset Policy and the Racial Wealth Divide, 2013.  
3 <http://americablog.com/2012/01/remember-the-words-of-coretta-scott-king-speaking-of-gay-civil-rights.html>.

4 Washington Post-ABC News Poll, Same Sex Marriage, March 26, 2013, available at [http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2013/03/18/National-Politics/Polling/release\\_221.xml](http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2013/03/18/National-Politics/Polling/release_221.xml).

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1 American RadioWorks, King's Last March: New Front in the Fight for Freedom, available at <http://americanradioworks.publicradio.org/features/king/b1.html>.

2 United for a Fair Economy, State of the Dream 2013 - A Long Way

and marital status. HUD and FHAP agencies reported increased housing retaliation, and DOJ reported an increase in complaints based on military status, source of income, and age. All public fair housing enforcement agencies reported a notable increase in complaints based on national origin. FHAP agencies reported a notable decrease in the overall number of claims and complaints, most likely due to constricted state and local funding. DOJ also reported a drop in the number of case filings mostly due to its taking on more costly, high-impact cases. Discrimination against people with disabilities continues to represent the largest share of housing discrimination reported by both private fair housing organizations and public enforcement agencies. It is evident that there is still much more to do to root out housing discrimination in the United States.

Our nation has been confronted with a growing disinterest in the status quo: the rejection of the massive wealth disparity in the United States; changing family structures that challenge tradition; and growing public support for the rights of lesbian, gay, bisexual, and transgender people to love whom they will and live as they choose. As our nation grapples with these realities, it is more important than ever to amend the Fair Housing Act to protect these communities from outright or blanket discrimination when they look for housing. The Fair Housing Act protects people from housing discrimination based on race, color, national origin, religion, sex, familial status, and disability status.

These protections must now include source of income, sexual orientation, gender identity, and marital status. For some time, state and local governments have been at the forefront of protecting additional populations that are vulnerable to housing discrimination. It is time for our federal legislators to commit to doing the same.

Section I describes the fair housing challenges based on source of income, sexual orientation, gender identity, and marital status, and the urgent need to address those challenges at the federal level. Section II of this report documents the known national incidence of housing discrimination. Section

III describes the changes in public and private fair housing enforcement trends.

# SECTION I. MODERNIZING THE FAIR HOUSING ACT FOR THE 21st CENTURY

## A. Toward a More Inclusive Fair Housing Act

As we celebrate the 45th anniversary of the federal Fair Housing Act, it is important to look back on the achievements made by fair housing advocates to strengthen it over the years. These successes include the formation of full-service private fair housing organizations that laid the groundwork for systemic multi-city and multi-state fair housing enforcement of the Fair Housing Act. They include the addition of sex (gender) protection in 1974; the addition of disability status and familial status protections and the creation of the Fair Housing Initiatives Program in 1988; systemic enforcement of the Fair Housing Act against homeowners' insurance companies that redlined entire communities of color throughout the 1990s; and the first ever lawsuit brought against a jurisdiction for its failure to affirmatively further fair housing in 2009 – all moments of triumph over the decades that continue to push American society closer to exercising the real opportunity to choose the neighborhoods where we want to live and raise our families.

Still, the Fair Housing Act goals of eliminating housing discrimination and promoting diverse, inclusive communities must continue to move forward. The federal Fair Housing Act must be amended to address what so many states and localities have already recognized as necessary to protect more of their residents from discrimination and to increase housing opportunities, by adding federal protections for the lowest-income people and families who need subsidized housing assistance; by protecting lesbian, gay, bisexual, and transgender (LGBT) people from discrimination in all housing transactions; and by protecting all people no matter their marital status. The Housing Opportunities Made Equal Act aims to do exactly that. It was introduced in the past two Congresses and NFHA hopes to see the same this Congress.

## B. The Fair Housing Act Must Do More to Prevent Housing Discrimination against Poor People

The United States Census estimates that in 2011 more than 46 million people lived in poverty, making up 15 percent of the overall population.<sup>5</sup> Poverty in the United States disproportionately affects women, families with children, people with disabilities, and people of color. The breakdown of the overall percentage of people living below the poverty line reveals the impact of poverty on various populations: 31.2 percent of female-headed households live in poverty, compared to 16.1 percent of male-headed households; 28.8 percent of people with a disability between the ages of 18 and 64 live in poverty, compared to 12.5 percent of people without a disability in the same age range; and 27.6 percent of African-Americans, 25.3 percent of Hispanics of any race, and 12.3 percent of Asian Americans live in poverty, compared to 9.8 percent of non-Hispanic whites.<sup>6</sup> Poor people face barriers to full economic inclusion in society, and many face outright discrimination when seeking to provide the most basic needs for their families.

Finding safe, affordable housing racially and economically integrated communities continues to be one of the biggest challenges for poor families of all protected classes. Several federal programs, including HUD's Section 8 Voucher (aka Housing Choice Voucher) program, exist to help low-income people afford housing. However, demand for housing assistance vouchers from government programs far exceeds their availability; even when families get assistance, many are met with outright discrimination by landlords who refuse to accept housing vouchers or other housing assistance and income subsidies. Landlords across the nation engage in discrimination

5 The United States Census follows the methodology of the Office of Management and Budget's Statistical Policy Directive 14 to determine a set of dollar value thresholds that each vary by family size and composition to determine who lives in poverty.

6 DeNavas-Walt, Carmen, Bernadette D. Proctor, and Jessica C. Smith, U.S. Census Bureau, Current Population Reports, P69-243, Income, Poverty, and Health Insurance Coverage in the United States: 2011, U.S. Government Printing Press, Washington, DC, 2012.

based on source of income on a daily basis, and while 13 states have recognized the need to curtail this kind of housing discrimination, there is no federal prohibition against it.

In 2012, fair housing organizations reported 569 complaints of housing discrimination based on a person's legal source of income – an increase from 353 in 2011. Legal source of income can include HUD Section 8 vouchers, alimony, child support, and many other legal forms of income. The number of complaints represents only the incidence of source of income housing discrimination reported to private groups. Two studies by private fair housing organizations illustrate the profound source of income discrimination that actually occurs across regions and cities.

In July 2008, the **Fair Housing Justice Center** in New York City investigated whether real estate brokers and agents were complying with the New York City Human Rights Law which was amended to prohibit housing discrimination based on source of income in March 2008. The Fair Housing Justice Center looked at rental advertisements on [www.craigslist.org](http://www.craigslist.org) for apartments in New York City. On July 29, 2008, the Fair Housing Justice Center identified 1,543 rental advertisements indicating a limitation or discrimination based on source of income – 778 of these were posted by apartment owners, and 765 were posted by brokers. The Fair Housing Justice Center reviewed the website again on August 3, 2008. This time around, the organization found 1,641 rental advertisements indicating a limitation or discrimination based on source of income – 882 of these were posted by owners, and 759 were posted by brokers. Housing providers included phrases such as “no programs,” “no Section 8,” “no government programs” and other similar statements in advertisements.<sup>7</sup> It should be noted that in 2012, the Fair Housing Justice Center received only 34 complaints of source of income discrimination, compared to the thousands of illegal advertisements.

### **The Greater New Orleans Fair Housing**

<sup>7</sup> Freiberg, Fred and Houk, Diane L., Fair Housing Justice Center, No License to Discriminate: Real Estate Advertising, Source of Income Discrimination, and Homelessness in New York City, New York City, September 2008.

**Action Center (GNOFHAC)** similarly sought to determine the extent to which Housing Choice Voucher recipients were being turned away by landlords in New Orleans. In 2009, GNOFHAC conducted 100 phone tests in which persons trained to pose as apartment-seekers with similar renter profiles inquired about the availability of advertised rental units as well as the rental terms and conditions for each unit. The results of the testing determined that landlords were denying apartments to voucher holders 82 percent of the time: 75 percent of landlords refused to accept housing vouchers, and an additional 7 percent placed conditions upon voucher holders, making it virtually impossible for a voucher holder to rent the apartment. Only 18 percent of housing providers tested stated they would accept housing vouchers as rental payment free from additional terms or conditions and barriers to rental.<sup>8</sup> In 2012, the Greater New Orleans Fair Housing Action Center received only 5 complaints of housing discrimination based on source of income.

Voucher holders are disproportionately women, families with children, people with disabilities, and people of color. Between November 1, 2012, and February 28, 2013, African-American households represented 46 percent of all tenant-based voucher households; female-headed households with children represented 46 percent; families with a person with a disability represented 42 percent; and Latino households represented 15 percent.<sup>9</sup> However, it must be noted that people of color, people with disabilities, and families with children are much more likely to experience discrimination by landlords, even before factoring in source of income, due to their other protected characteristics. There are also disparate impacts on communities of color based on local population demographics and historical segregation patterns. In certain places, as in New Orleans where 99 percent of the Housing Choice Voucher holders in 2009 were African-American, certain communities of color are disproportionately impacted by source of income discrimination.

<sup>8</sup> Greater New Orleans Fair Housing Action Center, Housing Choice in Crisis: An Audit Report on Discrimination against Housing Choice Voucher Holders in the Greater New Orleans Rental Housing Market, New Orleans.

<sup>9</sup> Department of Housing and Urban Development, Resident Characteristics Report, Tenant Based Voucher. Accessed March 29, 2013. Available at <https://pic.hud.gov/pic/RCRPublic/rcrmain.asp>.





out to determine the nature of and extent to which sexual orientation bias pervaded Michigan's rental market. In 2007, four fair housing organizations, including NFHA members the Fair Housing Center of Metropolitan Detroit, the Fair Housing Center of Southeastern Michigan, the Fair Housing Center of Southwest Michigan, and the Fair Housing Center of West Michigan conducted 120 paired tests with similarly situated testers posing as either same-sex couples or heterosexual couples. Testers visited multi-family apartment complexes, real estate firms, and mortgage lenders across Michigan. Of all the tests conducted, 27 percent resulted in a difference in treatment of the testers based on sexual orientation. The largest percentage showing evidence of sexual orientation discrimination was in rental tests (33 percent), followed by sales tests (25 percent) and close behind were mortgage tests (20 percent). Within those results, the fair housing organizations found that heterosexual couples experienced favorable treatment over same-sex couples in monthly rental rates, levels of encouragement to apply, and application fees.<sup>12</sup>

One specific case from NFHA's member organization the Fair Housing Council of Oregon in Portland illustrates how sexual orientation discrimination can come into play. Last year, two gay men attempted to buy a condo in a 55 and older community in Southern Oregon. One of the men was not 55, but the other was, as the men indicated on the application. (In housing complexes designated as housing for older persons, only one resident has to be at least 55.) The condo board began interviewing references, asking three references if they knew the nature of the couple's relationship, and if the couple was gay. All references asked the condo board to ask the couple themselves. Upon learning that the two men were gay, the condo board rejected the couple's application because both men were not 55 or older. The man who was 55 or older then applied on his own and was subsequently interviewed by the condo board. He was still rejected. Last year, the Fair Housing Council of Oregon received 13 sexual orientation complaints in rental housing and one in the sale of housing.

<sup>12</sup> Michigan Fair Housing Centers, *Sexual Orientation and Housing Discrimination in Michigan: A Report of Michigan's Fair Housing Centers*, January 2007. Available at [www.fhcmichigan.org](http://www.fhcmichigan.org).

In a case by a FHAP, the Maine Human Rights Commission issued in December 2011 a cause determination of discrimination on the basis of sexual orientation, a protected class under Maine Human Rights Act. Joseph Bonnadio II and William Paquet, a gay couple, rented an apartment at Sproul Block Apartments from December 2007 to May 2011. During that time, Realty Resources Management (RRM) and property manager Christine Chapman subjected Bonnadio and Paquet to a hostile housing environment. Within two days of moving in, the two men were told by other tenants that their "kind" did not belong in the building and that they were "deviants and disgusting." They were given the obscene gesture of the middle finger several times. Bonnadio and Paquet wrote to the management about the harassment they had experienced several times by other tenants. Management not only failed to respond, but the site manager, Christine Chapman, physically assaulted Mr. Bonnadio, cut the lock to the couple's onsite storage unit allowing \$10,000 worth of irreplaceable property to be stolen, and repeatedly called them "faggots," "queers," and other slurs. The Maine Human Rights Commission found Realty Resources Management in violation of the Maine Human Rights Act by subjecting the couple to a hostile housing environment.

Today, 21 states and the District of Columbia protect against housing discrimination based on sexual orientation, including: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin.

### **Gender Identity Housing Discrimination**

Sixteen states and the District of Columbia protect against housing discrimination based on gender identity, including: California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Rhode Island, Vermont, and Washington. All but Illinois, Iowa, and Vermont also protect against gender expression discrimination. Housing discrimination is especially



showed that transgender people of color experience disturbing levels of discrimination in housing, revealing the complex and problematic intersection of anti-transgender bias and racism. Of the total pool of respondents, six percent were African American; six percent were Latino; and three percent were Asian American, South Asian, Southeast Asian, and/or Pacific Islander. Each of these groups experienced disproportionate discrimination in housing.

### **African-American Transgender People**

The survey showed that thirty-eight percent of African American transgender people reported having been refused housing; 31 percent reported being evicted due to discrimination; and 41 percent experienced homelessness at some point in their lives, over five times the national rate. African-American transgender people had a homeownership rate of 14 percent, compared to 32 percent of transgender people of any race and 67 percent of the overall U.S. population.<sup>14</sup>

### **Latino/Latina Transgender People**

Twenty-nine percent of Latino/a transgender people were refused housing, and 15 percent reported experiencing eviction due to bias. Of non-citizen Latino/a respondents, 46 percent were refused housing due to bias, and 26 percent had experienced eviction. Twenty-seven percent of Latino/a transgender respondents had experienced homelessness at some point in their lives, nearly four times the national rate. Latino/a transgender respondents also experienced a 14 percent homeownership rate, compared to 32 percent of all transgender people of any race and 67 percent of the overall U.S. population.<sup>15</sup>

### **Asian American, South Asian, Southeast Asian, and Pacific Islander (AAPI) People**

Twenty-one percent of AAPI transgender people reported having been refused housing, and seven percent had been evicted. Fourteen percent of AAPI

<sup>14</sup> Injustice at Every Turn: A Look at Black Respondents in the National Transgender Discrimination Survey. Washington. National Center for Transgender Equality, National Gay and Lesbian Task Force, and National Black Justice Coalition. 2012.

<sup>15</sup> Injustice at Every Turn: A Look at Latino/a Respondents in the National Transgender Discrimination Survey. Washington. National Center for Transgender Equality, National Gay and Lesbian Task Force, and League of United Latin American Citizens. 2012.

transgender people experience homelessness at some point in their lives, nearly twice the national rate. AAPI transgender people experience a 14 percent homeownership rate, compared to 32 percent of all transgender people of any race and 67 percent of the total U.S. population.<sup>16</sup>

### **D. The Fair Housing Act Must Protect against Marital Status Discrimination**

Couples who live together but whose relationship is not defined by marriage face housing discrimination by landlords, real estate agents, home sellers, and banks who often charge them higher rent, require a higher income to qualify, or impose higher interest rates on them. Fair housing organizations reported 135 complaints of marital status discrimination in 2012 and have documented it for years.

Since 2006, 38 percent of the source of income discrimination investigations by the **Fair Housing Center of Nebraska-Iowa** have uncovered discrimination on the basis of marital status. In one case, a complainant contacted the Center after attempting to rent an apartment. The complainant was denied rental housing because the landlord had a policy to rent only to married couples. When the Center conducted testing in which testers posed as either married or unmarried couples over the telephone, the landlord told the unmarried testers that they did not rent to unmarried couples.

Housing providers use many excuses to discriminate on the basis of marital status, often as a proxy for other bases of discrimination even if that basis is illegal under fair housing law. Some religious landlords, for example, make statements to unmarried couples like, "I don't believe that people should live in sin," but could be biased against interracial couples or same-sex couples. Other housing providers make statements to unmarried single mothers like, "Where's your kid's dad?"<sup>17</sup>

<sup>16</sup> Injustice at Every Turn: A Look at Asian American, South Asian, Southeast Asian, and Pacific Islander Respondents in the National Transgender Discrimination Survey. Washington. National Center for Transgender Equality, National Gay and Lesbian Task Force, and National Queer Asian Pacific Islander Alliance. 2012.

<sup>17</sup> Fair Housing Law Project, Housing Discrimination Based on Marital Status, available at <http://www.lawfoundation.org/repository/Marital%20Status.pdf>.



## SECTION II. NATIONAL DATA ON FAIR HOUSING

### A. Housing Discrimination Complaints for 2012

Each year NFHA collects data from both private, non-profit fair housing organizations and government entities to present an annual snapshot of fair housing enforcement in the United States. Each year we see that private fair housing organizations investigated most of the housing discrimination complaints in the United States. In 2012 private groups investigated 69 percent of fair housing complaints, more than twice as many as were investigated by federal, state and local government agencies combined. These agencies include state and local Fair Housing Assistance Program (FHAP) agencies, the Department of Housing and Urban Development (HUD), and the Department of Justice (DOJ). NFHA collects data on protected classes in several housing transaction areas: rentals, sales, mortgage lending, homeowners' insurance, advertising, harassment, homeowners' and condo associations, in zoning, and in homeless shelters. Private fair housing agencies saw a rise in complaints within each transaction area for which NFHA collects data, except in the homeowners' insurance category. HUD saw an increase in each transaction category, except in the rental category, and HUD received slightly more complaints than in 2011. HUD filed four times more Secretary-initiated complaints in 2012 than in 2011. FHAP agencies saw a decrease in complaints in each transaction category, except in the homeowners' insurance category; with significant budget cuts to states and localities, this should not come as a surprise. While DOJ filed fewer cases in 2012, many of the cases it pursued were bold and far reaching. Its focus remained on fair lending and design and construction investigations.

The complaint data reflect only the reported incidence of housing discrimination. A conservative estimate puts the number of violations of fair housing laws at four million every year. Many people do not report housing discrimination because they don't know where to go, they believe nothing will be done

about it, or they fear the consequences.<sup>18</sup> Also, landlords, managers, real estate agents, loan officers and insurance agents who choose to discriminate have become quite sophisticated in their practices. It is rare for someone in the industry to engage in blatant discrimination; instead, people looking for homes, loans or homeowners insurance will get the run around.

Often, if a company is violating the Fair Housing Act, it is a systemic or institutionalized practice, so individual complaints do not necessarily tell the whole story. For example, an investigation into a complaint about an apartment building refusing to make a reasonable accommodation for someone in a wheelchair may uncover that the building was not designed or constructed legally from the start. A resolution in such a complaint would reach beyond the individual and result in the whole building being retrofitted to meet the requirements of the Fair Housing Act. This opens an entire apartment complex to all persons in wheelchairs. Each investigation of a housing discrimination complaint has the potential to open housing that had previously been unavailable due to discrimination.

The following chart lays out the complaint and case filings reported by private and governmental fair housing agencies and organizations in 2012. Fair Housing Assistance Program (FHAP) organizations are state and local government agencies that receive HUD funding to investigate fair housing complaints. According to the Fair Housing Act, HUD is required to refer cases to these agencies if the agencies are "substantially equivalent" under the law, i.e. that the state or local law offers protections equivalent to the federal law. NFHA counts as complaints all cases analyzed for fair housing violations.

filings reported by private and governmental fair housing agencies and organizations since 2013. Fair Housing Assistance Program (FHAP) organizations are state and local government agencies that receive HUD funding to investigate and process fair housing

<sup>18</sup> Martin D. Abравanel & Mary K. Cunningham, Urban Institute, How Much Do We Know? Public Awareness of the Nation's Fair Housing Laws, 2002.

TOTAL FAIR HOUSING COMPLAINT FILED					
	NFHA Member Complaints	FHAP Claims & Complaints	HUD Claims & Complaints	DOJ Case Filings	Total
<b>2003</b>	17,022	5,352	2,745	29	24,148
<b>2004</b>	18,094	6,370	2817	38	27,319
<b>2005</b>	16,789	7034	2227	42	26,092
<b>2006</b>	17,347	7498	2830	31	27,706
<b>2007</b>	16,834	7705	2449	35	27,023
<b>2008</b>	20,173	8429	2123	33	30,758
<b>2009</b>	19,924	8153	2091	45	30,213
<b>2010</b>	19,665	8214	1943	29	28,851
<b>2011</b>	17,701	7551	1799	41	27,092
<b>2012</b>	19,680	6986	1,817	36	28,519

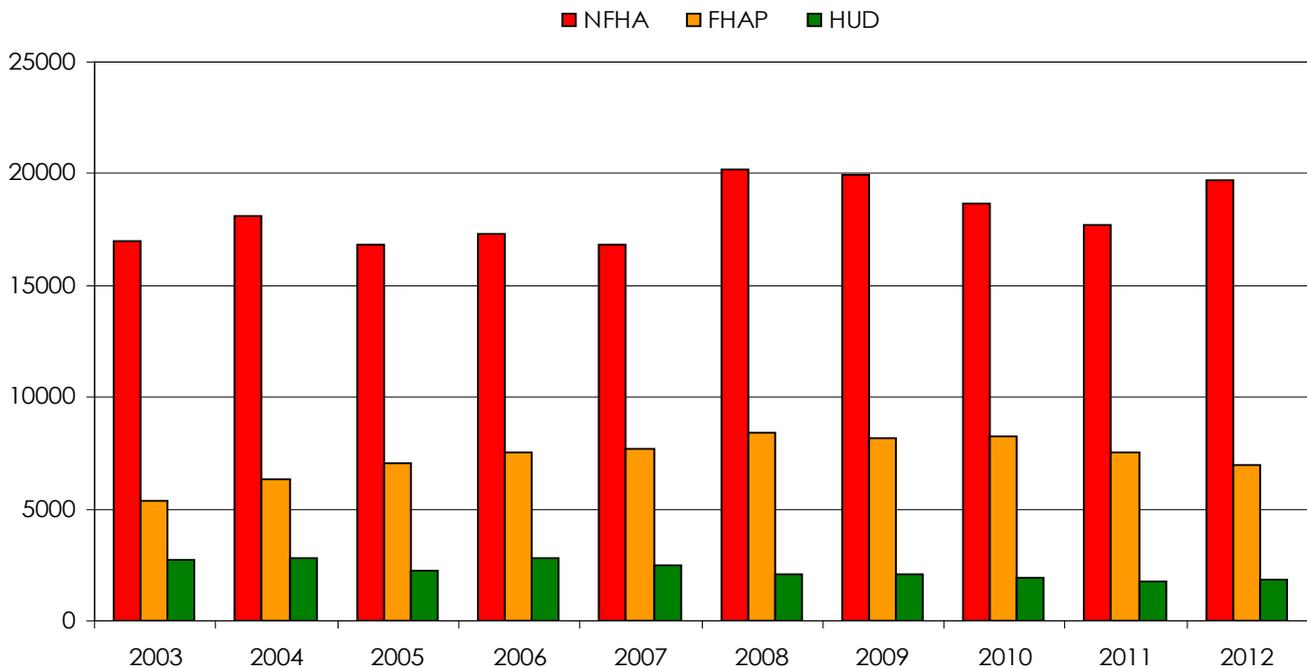
\* HUD, FHAP and DOJ data are for Fiscal Year 2012. DOJ data represent case filings of HUD Election and Enforcement cases, and Pattern or Practice cases. DOJ's jurisdiction under the Fair Housing Act is limited to pattern or practice cases and cases referred by HUD. HUD, FHAP and NFHA data represent fair housing complaints received and/or investigated.

complaints. According to the Fair Housing Act, HUD is required to refer cases to these agencies if the agencies are "substantially equivalent" under the law, i.e. that the state or local law offers protections equivalent to the federal law. NFHA counts as complaints all cases analyzed for fair housing violations.

increase is largely represented by an increase of almost 2,000 more discrimination complaints received by private fair housing organizations compared to 2011. Private fair housing groups continue to investigate the highest number of complaints. In 2012, private fair housing organizations investigated 69 percent of all housing discrimination complaints in the United States, up from 67.6 percent in 2011.

In 2012, there were 28,519 complaints of housing discrimination, compared to 27,092 in 2011. This

Housing Discrimination Complaints/Claims



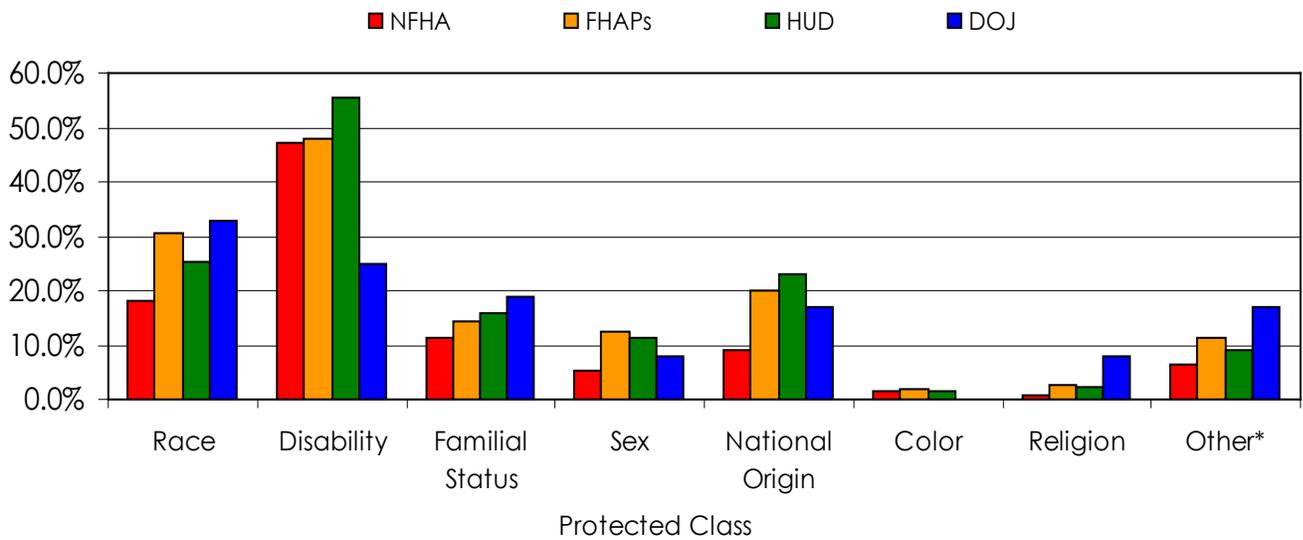
Private fair housing groups have an average staff size of five persons. While few in number and largely underfunded, year after year they continue to investigate more fair housing complaints, educate more consumers, and train more housing providers than all other entities in the nation combined, including local, state and federal agencies charged with enforcing the federal Fair Housing Act. Since 1999, private non-profit fair housing organizations have investigated 242,984, or 66.2 percent, of the fair housing complaints in the United States, while Fair Housing Assistance Program agencies have processed

92,109 or 25.1 percent, and HUD 31,440, or 8.6 percent, of cases. This year's data are from 92 private fair housing groups, 94 FHAP agencies and 10 HUD regional offices. It should be noted that many cases filed with HUD and FHAP agencies originated with private fair housing organizations.

### B. Discrimination by Protected Class

The following charts break out the percentage of claims, complaints, or case filings investigated by each agency by protected class.

Discrimination by Protected Class



BASIS	NFHA Members	HUD	FHAPs	DOJ
<b>Race</b>	18.3%	25.2%	30.5%	33%
<b>Disability</b>	47.1%	55.6%	48.1%	25.5%
<b>Familial Status</b>	11.5%	15.9%	14.5%	19%
<b>Sex</b>	5.4%	11.4%	12.3%	8%
<b>National Origin</b>	9%	22.9%	19.9%	17%
<b>Color</b>	1.6%	1.7%	1.8%	N/A
<b>Religion</b>	0.8%	2.2%	2.7%	8%
<b>Other*</b>	6.4%	9.2%	11.39%	17%

\* The "other" category for NFHA member complaints represents complaints arising from categories protected at the state or local level including age, criminal background, ancestry, "alienage," military status, victim of domestic violence, student status, lawful occupation, place of residence, family responsibility, and arbitrary (a catchall protected class under California state law in rental transactions). Retaliation complaints reported by fair housing organizations are categorized in the applicable protected class. The "other" category for HUD and FHAP complaints represents complaints of retaliation. The "other" category for DOJ represents cases based on military status, source of income, and age. HUD, FHAP, and DOJ data are for Fiscal Year 2012. Totals may exceed 100 percent because a single complaint may allege multiple bases of discrimination.

Disability complaints remain the greatest percentage of all complaints for the past several years for a few reasons. Many apartment owners make direct comments refusing to make reasonable accommodations or modifications for people with disabilities so discrimination is easier to detect. A reasonable accommodation is paid for by the housing provider; an example is providing a handicapped parking spot with a curb cut for a resident in a wheelchair. A reasonable modification is paid for by the resident; an example is making a structural change inside an apartment which can then be reversed when the resident leaves. Architects and developers continue to design and construct obviously inaccessible apartment buildings and condominium complexes that do not meet the Fair Housing Act's standards, despite HUD's 10 year "Fair Housing Accessibility FIRST" education campaign educating architects and builders about their fair housing responsibilities. Finally, HUD has devoted an office solely to disability issues.

While fair housing organizations primarily receive complaints based on discrimination against federally protected classes, they also receive complaints of discrimination against groups protected only by state and/or local fair housing laws. NFHA members reported receiving housing discrimination complaints from several classes of persons currently not protected by the federal Fair Housing Act. Of the complaints in this category, NFHA members reported:

- 569 based on discrimination based on source of income (up from 353 the previous year);
- 222 based on age discrimination (up from 150 the previous year);
- 175 based on sexual orientation discrimination (up from 101 the previous year);
- 135 based on marital status discrimination (up from 50 the previous year); and
- 45 based on gender identity or expression.

NFHA members also reported a total of 122 complaints that involved discrimination based on criminal background, ancestry, alienage, military status, domestic violence, student status, lawful occupation, place of residence, family responsibility,

or "arbitrary" status. ("Arbitrary" is a class covered only in the California rental market).

In recent guidance, HUD has shown its willingness to investigate complaints of gender identity and sexual orientation discrimination to the extent that they may be classified under the seven protected classes.<sup>19</sup> Some complaints could be qualified as sex discrimination if an individual is discriminated against because they, for example, do not conform to stereotypes of how someone of a certain gender should behave. There could also be discrimination based on familial status and/or disability depending on the circumstance. Since issuing this guidance and 2010, HUD has investigated 188 complaints that involve allegations of LGBT housing discrimination, 136 of which are based on non-conformity with gender stereotypes filed under sex discrimination.

HUD also issued a final regulation that makes it illegal to discriminate against LGBT people in any HUD-funded or Federal Housing Administration insured housing, regardless of the local laws.<sup>20</sup> Since HUD's LGBT Equal Access Rule went into effect March 5, 2012, HUD has investigated and resolved 10 complaints under its new regulatory authority. NFHA applauds HUD for doing more to protect people from sexual orientation and gender identity discrimination in HUD-assisted housing.

### **C. Discrimination by Transaction/Category**

It is difficult to detect discrimination in most federally protected classes in this day and age without testing and investigations. There are of course exceptions including but not limited to apartment buildings that violate the fair housing accessibility standards, landlords who boldly state, "no kids allowed," and harassment. Housing providers are rarely bold enough to deny individuals housing to their face. The rental housing market is the easiest to investigate and also yields the highest number of complaints in part because the interactions are quick and rental rates are usually advertised. Home sales, loans, and

<sup>19</sup> For more information on HUD's guidance on LGBT housing discrimination complaints, please see [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2010/HUDNo.10-139](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-139).

<sup>20</sup> 24 C.F.R. pts. 5, 200, 203, 236, 400, 570, 574, 882, 891, 982 (2012).

insurance are another story all together. It is nearly impossible for someone to know when they are being steered into a different home, a worse loan, and/or worse insurance because of discrimination. Testing can often parse out differences. It is time-consuming and work-intensive in these more difficult housing transactions, as well as extremely important and necessary.

### **Rental Market—Private Groups Report 17,117 Complaints<sup>21</sup>**

Of the many categories of complaint data for housing discrimination, rental cases continue to represent the largest number of complaints, primarily because it is easier to recognize this type of discrimination. Private fair housing groups reported 17,117 complaints of housing discrimination in the rental market, up for two years in a row from 15,163 complaints in 2011 and 14,782 in 2010. In 2012, FHAP agencies reported 5,202 rental complaints, down from 5,478 in 2011; and HUD reported 1,106 rental complaints, down from 1,153 complaints in 2011.

### **Home Sales— Private Groups Report 381 Complaints**

Private groups reported 381 complaints in the home sales market, up from 302 complaints in 2011, but still lower than the high of 649 in 2009. FHAP agencies reported 384, down from 452 in 2011; and HUD reported 165, up from 117 in 2011. Real estate sales discrimination is very hard to detect because the buyer cannot compare what homes and neighborhoods are offered to other buyers with similar qualifications. Racial steering happens when the real estate agent limits available homes to the buyer by failing to even show certain neighborhoods or even lying by saying the home is off the market. Systemic testing of the sales industry is the best way to identify if all people are being given access to the same neighborhoods.

<sup>21</sup> Complaint data by type of allegation does not equal the total number of complaints because not all organizations provided this type of information.

### **Mortgage Lending— Private Groups Report 1,101 Complaints**

Private groups reported investigating 1,101 complaints of mortgage lending discrimination, down from 1,243 complaints in 2011 and 1,568 complaints in 2010. HUD reported 168 mortgage lending complaints, slightly up from 164 in 2011 and only 89 in 2009. FHAP agencies reported 187 in FY12, down from 244 in 2011 and 332 in 2010. Overall, private fair housing organizations, HUD and FHAP agencies received fewer mortgage discrimination complaints, which is likely to be a result of decreased mortgage applications in a constricted credit market and applicants receiving loans but with different terms or conditions and not recognizing that the terms could be based on discrimination.

### **Homeowners Insurance— Private Groups Report 22 Complaints**

Private fair housing groups reported 22 complaints of discrimination in the insurance market, compared to 28 in 2011, and 68 insurance complaints in 2010; FHAP agencies reported three insurance complaints and HUD reported two complaints in 2012, compared to none in 2011. It should be noted that discrimination related to homeowners insurance can be difficult to identify because it is rarely overt and as such makes it difficult to address discrimination in this transaction category.

### **Harassment—Private Groups Report 851 Complaints**

The Fair Housing Act makes it illegal to direct abusive, foul, threatening, or intimidating language or behavior toward a tenant, resident, a visitor of a tenant or resident or home seeker because of their membership in any of the federally protected classes, or to someone helping a person exercise his or her fair housing rights. Private fair housing groups reported 851 complaints of harassment, 299 more than in 2011. Of the complaints investigated, 22.9 percent were based on disability, 22.3 percent were based on race; 19.4 were based on national origin; 15.5 percent were based on familial status; and 8.9 percent were based on sex. Harassment is

also under-reported. Most people do not know that the Fair Housing Act protects them from harassment when they are looking for housing or after they move in. Many people who ultimately file a harassment complaint say they tried to ignore it hoping it would stop. Additionally, too many police departments do not recognize that harassment based on race, national origin, sex, etc. may be covered under the Fair Housing Act, so no referrals are made for the victims.

Harassment can rise to the level of a criminal violation under the Fair Housing Act. Fair housing advocates have pushed for HUD to release a regulation on prohibited harassment under the Fair Housing Act to inform housing providers and the public what constitutes this type of discrimination and how the Department will address it.

### **Other Housing and Housing Related Transactions – Private Groups Report 208 Complaints**

This is a new metric that NFHA is tracking this year. Under the Fair Housing Act, it is illegal to discriminate in all housing and housing-related transactions. In 2012, private fair housing organizations reported acts of discrimination in a number of areas: 66 in zoning and zoning-related activities; 49 acts of retaliation; 46 by homeowners' and condo associations; 44 in housing advertisements; and three in homeless shelters. Of all these combined instances of discrimination, 46.5 percent were based on disability; 18.6 percent on race; 11.8 percent on familial status; 9.1 percent on national origin; five percent on sex; 2.9 percent on source of income; 1.6 percent on color; 0.9 percent on sexual orientation; 0.8 percent on religion; 0.7 percent on marital status; and 0.2 percent on gender identity or gender expression.

## SECTION III. TRENDS IN PUBLIC AND PRIVATE FAIR HOUSING ENFORCEMENT

### A. U.S. Department of Housing and Urban Development

HUD’s Office of Fair Housing and Equal Opportunity (FHEO) has taken significant steps in recent years to improve its staffing, training, and case investigation work, and NFHA is encouraged to see that HUD as a whole is also beginning to overcome many of the organizational hurdles that have previously stymied productive fair housing enforcement.

HUD is charged with carrying out the Fair Housing Act’s mandate to eliminate housing discrimination through effective enforcement. To that end, FHEO is charged with enforcing the Act and other civil rights laws, including Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments Act of 1972, and the Architectural Barriers Act of 1968. HUD has the authority to investigate, conciliate and charge meritorious claims of housing discrimination filed under the Fair Housing Act. It can also initiate investigations and file complaints on behalf of the HUD Secretary, as authorized under Section 810 of the Fair Housing Act. In addition to enforcement activities, FHEO publishes and distributes educational materials that provide information on how to report unlawful discrimination; administers and manages the Fair Housing Assistance Program (FHAP) and the Fair Housing Initiatives Program (FHIP); establishes fair housing and civil rights regulations and policies for HUD programs; publishes guidance on complying with the requirements of fair housing and various civil rights laws; and monitors and reviews HUD programs and activities for compliance with federal nondiscrimination requirements and the requirement to affirmatively further fair housing.

HUD investigated 1,817 complaints in FY12, 18 more cases than last year. As shown in the chart below, the total number of cases that HUD processed in 2012

amounts to 28 percent of its 1992 high of 6,578 complaints. Part of the reason for this decrease is because more FHAP agencies have been approved over the years and HUD refers complaints to them. That said, HUD could still have a much higher number of complaints.

HUD ADMINISTRATIVE COMPLAINTS	
1990	4286
1991	5836
1992	6578
1993	6214
1994	5006
1995	3134
1996	2054
1997	1808
1998	1973
1999	2198
2000	1988
2001	1902
2002	2511
2003	2745
2004	2817
2005	2227
2006	2830
2007	2449
2008	2123
2009	2091
2010	1943
2011	1799
2012	1817

### Charged Cases

If an investigation yields a determination by HUD that there is reasonable cause to believe that illegal discrimination has occurred, the agency will issue a charge of discrimination. The parties to a case can elect to have the case heard in federal district court in

a case filed by the Justice Department or, if no election is made, a HUD administrative law judge will hear the case. The majority of complainants and respondents elect to proceed in federal court.

In 2012, HUD issued 43 charges following a determination that there was reasonable cause to believe that unlawful discrimination occurred. This is a decrease from last year's 55 charged cases, and the lowest level since 2007. The charges amount to only two percent of HUD's total complaint load, which saw a one percent increase compared to 2011. Highlights of some of these charged cases are at the end of this section.

<b>FAIR HOUSING ACT CASES IN WHICH HUD ISSUED A CHARGE</b>	
2002	69
2003	23
2004	43
2005	47
2006	34
2007	31
2008	48
2009	54
2010	45
2011	55
2012	43

### **Aged Cases**

With the exception of complex or systemic cases, the Fair Housing Act regulations require that HUD and FHAPs complete their investigations of cases in 100 days or less. After a complaint is filed, the appropriate agency must perform an investigation in order to determine whether there is reasonable cause to believe discrimination has occurred. The result can be that the relevant agency finds cause to believe that discrimination occurred and issues a charge, finds no cause to believe that discrimination occurred, or other alternatives laid out in the chart below.

There are many cases which may merit more than 100 days to investigate, especially cases involving real

estate sales steering, mortgage lending, or insurance discrimination. It is important for HUD to take on these cases, especially when considering that several studies have demonstrated continued discrimination in these markets, as well as the damaging effect of this discrimination on the economy and society as a whole.<sup>22</sup> However, the failure to complete a timely investigation leaves the complainant and respondent in limbo—one wondering when they will be helped, the other wondering when they might be exonerated or charged. It is an injustice to both parties to allow a complaint to languish.

HUD and FHAPs routinely carry an “aged” case load; that is, cases that have surpassed the 100 day benchmark without an outcome. In FY12, there were 1,132 cases at HUD that passed the 100 day mark, an increase of 56 from FY11, but a continued improvement from the 1,353 aged cases in FY07. There were 3,365 aged cases at FHAP agencies, a decrease of 329 aged cases compared to FY11 figures.<sup>23</sup>

### **Administrative Closures and No Cause Cases**

Together, HUD and its FHAP agencies administratively closed or found no cause to believe discrimination occurred in 5,324 cases in FY12. These closed cases may be from previous years' complaints, and do not match the number of cases filed in a particular year. The chart below lists the number of closed cases by HUD and FHAPs. In FY12, HUD administratively closed 423 cases and found no cause to believe discrimination occurred in 580 cases, totaling 1,003 cases. FHAP agencies administratively closed 800 cases and found no cause in 3,521, totaling 4,321.

Administrative closures at HUD and FHAPs decreased slightly from FY11 by 82 cases. HUD and FHAP agencies found no cause to believe discrimination occurred in 4,101 cases, compared to 4,621 cases in 2011. Overall, HUD and FHAP closures in 2012

<sup>22</sup> National Fair Housing Alliance, Fair Housing in a Changing Nation: 2012 Fair Housing Trends Report, April 30, 2012.

<sup>23</sup> According to a Government Accountability Office 2005 report, only 31 percent of cases met the 100 day deadline; 14 percent take more than 130 days. Government Accountability Office. Fair Housing, HUD Needs Better Assurance that Intake and Investigation Processes Are Consistently Thorough. October 2005.

## 2012 HUD AND FHAP CASES CLOSED NATIONWIDE

Type of Closure	HUD	FHAP	Total
Administrative Closure	423	800	1,223
No Cause	580	3,521	4,101
Conciliation/Settlement/Withdrawn after Resolution	850	2,496	3,346
ALJ Consent Order	17	N/A	17
ALJ Finds Discrimination	N/A	11	N/A
DOJ Dismissal	106	N/A	106
DOJ Election for Court	20	N/A	20
DOJ Filed Suit	N/A	N/A	0
DOJ Settlement	13	N/A	13
FHAP Judicial Consent Order	N/A	104	104
FHAP Judicial Dismissal	N/A	38	38
Litigation -- Discrimination Found	N/A	8	8
Litigation - No Discrimination Found	N/A	6	6
Hearing - Discrimination Found	N/A	11	11
Hearing - No Discrimination Found	N/A	10	10
<b>Total Closures</b>	<b>2,009</b>	<b>7,008</b>	<b>9,017</b>

The chart below contains a breakdown of reasons for administrative closures at HUD and FHAPs.

## 2011 HUD and FHAP ADMINISTRATIVE CLOSURES

Reason for Closure	HUD	FHAPs
Untimely filed	4	4
Dismissed for lack of jurisdiction	99	98
Unable to locate complaint	34	44
Complaint failed to cooperate	159	396
Unable to identify respondent	0	2
Complaint withdrawn by complainant without resolution	121	235
Unable to locate respondent	4	6
Closed because trial has begun	2	15
<b>Total</b>	<b>423</b>	<b>800</b>

amounted to 525 less than in 2011. Most of these were FHAP cases closed due to a no-cause finding

### Administrative Law Judge Consent Orders

If a case is charged but the parties do not elect to have their case heard in federal district court, it will go before an administrative law judge (ALJ) who

will decide the case and in some instances assess a civil penalty and award compensatory damages, affirmative relief, and attorneys' fees. The ALJ cannot award punitive damages according to the law. In 2012, parties entered into 17 ALJ consent orders after issuance of a charge. This is six more than in 2011 and four more than 2009's number of 13. This is a significant improvement from prior years, when eight

ALJ proceedings were heard in 2008, two in 2007, and none in 2005 and 2006.

## Secretary-Initiated Complaints

According to HUD, it “files a Secretary-initiated complaint when it has evidence that a discriminatory housing practice has occurred or is about to occur. HUD also may file a Secretary-initiated complaint when it has received an individual complaint, but believes there may be additional victims of the discriminatory act or wants to obtain broader relief

in the public interest.”<sup>24</sup> HUD filed 16 Secretary-initiated complaints in FY12, a significant increase from 4 in FY11 and 10 in FY10.

## HUD’s Recent Record

This section includes highlights from some of the most significant complaints that HUD charged last year, including cases based on domestic violence, and family status, race, and sexual orientation discrimination.

<sup>24</sup> The State of Fair Housing FY08 Annual Report on Fair Housing, US Department of Housing and Urban Development, p. 24.

<b>FY12 Bases and Issues of Secretary Initiated Complaints</b>	<b>Filed Cases</b>
National Origin	5
Race and National Origin	2
Familial Status	2
Disability	3
Familial Status and Sex	4
Total Cases	16
<b>Issues</b>	
Discriminatory financing (includes real estate transactions); discrimination in the terms/conditions for making loans; otherwise denying or making housing unavailable.	3
Discriminatory refusal to rent, discrimination in terms/conditions/privileges relating to rental, discriminatory acts under Section 818 (coercion, etc.)	1
Discriminatory refusal to rent and negotiate for rental; discrimination in terms/conditions/privileges relating to rental; discriminatory acts under Section 818 (coercion, etc.)	1
Discriminatory advertising, statements and notices; discrimination in terms/conditions/privileges relating to a rental; otherwise denying or making housing unavailable	1
Discriminatory terms, conditions, privileges, or services and facilities; otherwise denying or making housing unavailable; discriminatory acts under section 818 (coercion, etc.)	1
Discriminatory refusal to rent and negotiate for rental; discriminatory advertising, statements and notices; discrimination in terms/conditions/privileges relating to rental	1
Discriminatory refusal to rent; discriminatory advertising, statements and notices	1
Discriminatory terms, conditions, privileges, or services and facilities; discrimination in terms/conditions/privileges relating to sale; discrimination in services and facilities relating to rental; discriminatory acts under Section 818 (coercion, etc.); failure to make reasonable accommodation	1
Discriminatory refusal to sell; discriminatory advertising, statements, and notices; false or denial of representation or availability in sales; discriminatory acts under Section 818 (coercion, etc.)	2
Discriminatory advertising, statements and notices; discriminatory terms, conditions, privileges, or services and facilities; otherwise denying or making housing unavailable	2
Discriminatory terms, conditions, privileges, or services and facilities; otherwise denying or making housing unavailable	1
Discriminatory advertising, statements and notices; Discriminatory terms, conditions, privileges, or services and facilities; otherwise denying or making housing unavailable	1

### **Domestic Violence: HUD v. Escatawpa Villages, Ltd., et al.**

On August 4, 2009, a woman was physically assaulted by her boyfriend in their apartment in Escatawpa Village Apartments in Moss Point, Mississippi, and was transported to a local hospital to receive medical care for bruising and bleeding from the attack. That same day, the woman's boyfriend was arrested and pled guilty to the assault. The following day, the woman received an eviction notice giving her six days to move out. In the eviction notice, the landlord specifically referenced the incident of domestic violence that occurred the night before and cited a policy requiring that any person involved in a domestic violence incident vacate the premises. HUD investigated and found that the policy had been previously enforced and other female domestic violence survivors had been forced to move. Citing data from the Department of Justice which showed the overwhelming gender disparity between domestic abuse victims, HUD alleged that Escatawpa's policy of evicting the victim as well as the perpetrator of an incident of domestic violence adversely affected women and constituted discrimination under the Fair Housing Act.<sup>25</sup> HUD's case is pending before an Administrative Law Judge.

### **Family Status: HUD v. Greenbrier Village Condo Three Association, Inc.**

In July, 2012, HUD issued a charge of discrimination against Greenbrier Village Condominium III Association for its policy prohibiting families with children from living in the Greenbriar Condos in Minnetonka, Minnesota. HUD alleged that the condo association violated the Fair Housing Act's familial status discrimination prohibitions by maintaining a residency policy that clearly stated that no property could be sold, leased, or rented by any person with a child under the age of 18, which the association could only legally do if it met federal standards defining it as housing for older persons.<sup>26</sup> HUD's case is pending before an Administrative Law Judge.

<sup>25</sup> For more information, please see <http://portal.hud.gov/hudportal/documents/huddoc?id=12hudvescatawpa.pdf>.

<sup>26</sup> For more information, please see <http://portal.hud.gov/hudportal/documents/huddoc?id=05-11-1269-8and0556-8.pdf>.

### **Race: HUD v. Lawrence Properties**

In August, 2012, HUD issued a charge against the owners and managers of Heritage Point Mobile Home Park in Montgomery, Alabama, alleging that the entities violated the Fair Housing Act by refusing to rent a mobile home lot to an African-American family and maintaining a policy that excludes African Americans from residing in the mobile home park. HUD alleged that the owners and managers of Heritage Point discriminated based on race, color, and national origin when the CEO told employees that he did not want to admit any more African Americans into any of his mobile home parks. Employees carried out the CEO's discriminatory preferences by refusing to process an African-American family's application to rent a lot for their new mobile home. An employee told the family that their application had been denied due to the results of a credit check that was never made. At the same time, the owners and managers of Heritage Point allegedly preferred to rent to Latino applicants and often allowed Latino applicants to move into the park without submitting rental applications or undergoing background checks like other prospective tenants.<sup>27</sup> HUD's case is still pending before an Administrative Law Judge.

### **Sexual Orientation: HUD v. Bank of America**

HUD settled a claim against Bank of America for its refusal to provide mortgage financing to a lesbian couple. This was the first settlement agreement of an enforcement action taken against a lender involving HUD's recent regulation ensuring that HUD-funded and insured housing programs remain free from discrimination against all people based on sexual orientation, gender identity, or marital status. HUD's rule prohibits lenders from making eligibility determinations for FHA-insured home loans and housing programs administered by HUD on the basis of perceived sexual orientation, gender identity or marital status. In this case, HUD claimed Bank of America denied a loan to a lesbian couple seeking an FHA-insured mortgage because of their sexual

<sup>27</sup> For more information, please see <http://portal.hud.gov/hudportal/documents/huddoc?id=12hudvlawrence.pdf>.

orientation and marital status. One of the two women was not employed, but they provided her mother as a co-applicant on the loan. The day before closing, Bank of America denied the mortgage application because the lender did not consider the primary loan applicant and the co-applicant directly related because the two partners were not legally married. In addition to paying \$7,500, Bank of America must inform its residential loan originators, processors and underwriters of the conditions of the settlement agreement with HUD, and revise its fair lending training program to include compliance information with HUD’s rule.

**B. U.S. Department of Justice**

In 2012, the Department of Justice’s Housing and Civil Enforcement Section obtained consent decrees or favorable judgments in 45 cases compared to 60 in 2011, including 30 pattern or practice cases, compared to 46 in 2011. The Housing Section filed 36 cases in 2012, including 21 cases involving pattern and practice claims, a 12 percent decrease from 2011. Although this is a decrease compared to 2011, six of the 36 new cases DOJ filed in FY12 were resource-intensive fair lending cases alleging discrimination based on race, national origin, disability, and source of income. Three of these include the filing and settlement of: *United States v. Countrywide Financial Corp.*, in which DOJ alleged that between 2004 and 2008, Countrywide engaged in a widespread pattern or practice of lending discrimination against more than 200,000 African-American and Hispanic

borrowers; *United States v. Wells Fargo Bank, N.A.*, in which DOJ alleged that between 2004 and 2009, Wells Fargo engaged in a national pattern and practice of residential lending discrimination by systemically placing African-American and Hispanic borrowers in subprime loans or charging them more than similarly-qualified white borrowers who were in prime loans or charged less; and *United States v. SunTrust Mortgage, Inc.*, in which DOJ alleged that from 2005 to 2009 SunTrust engaged in a pattern or practice of mortgage pricing discrimination against at least 20,000 African-American and Hispanic borrowers. Together, these three fair lending cases put the mortgage lending industry on notice that mortgage lending discrimination will not be tolerated by this Administration. HUD election cases were up to 18 from 14 in 2011, but down for a third year in a row from 24 in FY09.

The breakdown of new cases filed in FY12 by protected class was: 33 percent race, 25 percent disability, 19 percent familial status, 17 percent national origin, eight percent sex, and eight percent religion. Four of the cases alleging race discrimination also claimed discrimination on the basis of color.

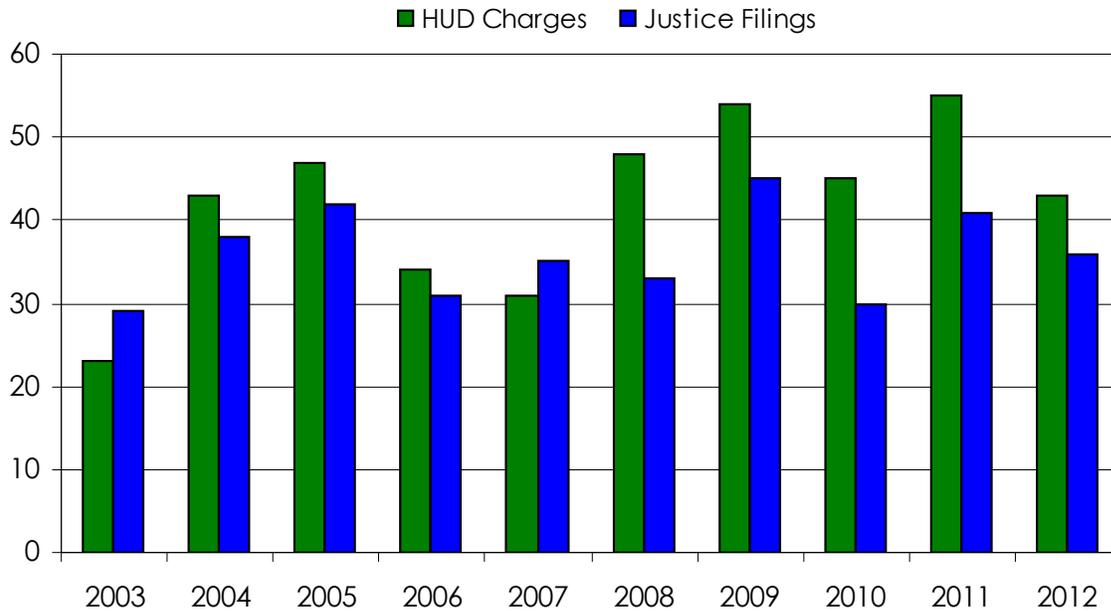
The chart below shows the number of cases filed by DOJ between FY01 and FY12.

<b>TOTAL DOJ CASES FILED BY YEAR</b>											
<b>FY01</b>	<b>FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>	<b>FY10</b>	<b>FY11</b>	<b>FY12</b>
53	49	29	38	42	31	35	33	45	30	41	36

The Housing and Civil Enforcement Section is responsible for enforcing the Fair Housing Act, the Equal Credit Opportunity Act (ECOA), and Title II of the Civil Rights Act of 1964, which prohibits discrimination in public accommodations. ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, national origin, religion, sex, marital status, age or source of income. Under this Act, the Justice Department has the authority to investigate and file a fair lending lawsuit.

The 1968 Fair Housing Act gave DOJ the authority to prosecute cases involving a “pattern or practice” of housing discrimination, as well as cases involving acts of discrimination that raise “an issue of general public importance.” The 1988 Fair Housing Amendments Act (FHAA) increased the Department’s authority to include cases in which a housing discrimination complaint has been investigated and charged by the Department of Housing and Urban Development and one of the parties has “elected” to go to federal court.

## HUD Charges and DOJ Case Filings



The chart above compares the numbers of DOJ cases filings and HUD charges.

The FHA also empowered the Justice Department to initiate civil lawsuits in response to matters that involve fair housing violations by any state or local zoning or land-use laws referred by HUD.<sup>28</sup> Finally, the Civil Rights Division of DOJ has the authority to establish fair housing testing programs, which it first did in 1992. The division also subsequently established a fair lending program designed to challenge discriminatory mortgage and other lending practices and to educate lenders about their obligations under the Fair Housing Act.

During FY12, DOJ reviewed and responded to more than 1,100 written complaints from individuals, up from 800 in FY11. While most of them were not in DOJ's jurisdiction (because they did not constitute pattern or practice cases), DOJ opened 160 new matters for further inquiry or investigation, most of which involved analysis of whether a pattern or practice of discrimination existed. This is a decrease from the 170 new matters DOJ opened in FY11. Otherwise, complainants were given information on

how to file a complaint with HUD or contact a local fair housing organization.

### DOJ's Recent Record

In FY12, DOJ took on several fair lending cases challenging egregious lending discrimination practices in the mortgage market, as well as cases involving design and construction violations. A few noteworthy cases push back against fair lending discrimination against women and people with disabilities or address the blatant disregard for design and construction requirements that ensure fair access to housing for people with disabilities.

### **Disability: *United States v. Bank of America, N.A.***

Last year, DOJ settled a case against Bank of America in which it alleged the lender engaged in patterns or practices that violated the Fair Housing Act by discriminating against people on the basis of disability, and the Equal Credit Opportunity Act (ECOA) by treating public assistance recipients differently in the underwriting process. DOJ's case arose from three HUD complaints filed by individuals. HUD charged the case, the individuals elected to have the case heard in federal court, and the case was referred to

<sup>28</sup> See Bill Lann Lee, "An Issue of Public Importance," in *Cityscape: A Journal of Policy Development and Research*, v. 4, n. 3 (1999), pp. 35-56, p. 47.

DOJ. Before it went to court, the case was settled. Under the terms of the settlement, Bank of America agreed to pay \$1,000, \$2,500 or \$ 5,000 to eligible mortgage loan applicants who were asked to provide a letter from their doctor documenting any Social Security Disability Insurance (SSDI) they received. Borrowers who were asked for more detailed medical information may be paid more. Bank of America agreed to hire a third party administrator to review approximately 25,000 loan applications that involve SSDI income to identify any other victims. The HUD complainants received \$125,000 for injury and costs associated with their loan applications.<sup>29</sup>

### **Sexual Harassment: *United States v. Sorensen***

In 2012, the DOJ announced its largest monetary settlement ever in a sexual harassment lawsuit brought by the Justice Department in a Fair Housing Act case. DOJ's complaint alleged that Rawland Leon Sorensen, the owner and manager of dozens of residential rental properties in Bakersfield, CA, sexually harassed several women by: making unwelcome sexual comments and advances; exposing himself to female tenants; touching women without consent; granting or denying housing benefits based on sex; and retaliating against women who refused his sexual advances. Upon final approval of a consent decree, Sorensen will pay more than \$2,000,000 in monetary damages to 25 victims of sexual harassment, attorneys' fees for two private plaintiffs, and a \$55,000 civil penalty, the maximum available under the Fair Housing Act.<sup>30</sup>

### **Disability: *United States v. JPI Construction, L.P.***

In 2012, the DOJ settled a design and construction case with JPI Construction L.P and other JPI entities. DOJ alleged that JPI discriminated on the basis of disability with the design and construction of 210 multifamily properties across 26 states and the District of Columbia. Under the settlement, JPI is required to pay \$10,250,000 into an accessibility fund to

provide retrofits at JPI properties and to increase the stock of accessible housing in communities where its properties are located. This is the largest fund of its kind that DOJ has ever created. JPI must also pay \$250,000 in civil penalties, the single largest civil penalty the DOJ has ever obtained in a Fair Housing Act case.<sup>31</sup>

### **C. Consumer Financial Protection Bureau: Advancing Fair Lending Enforcement**

Since it officially opened its doors in July 2011, the Consumer Financial Protection Bureau (CFPB) has made considerable efforts to ensure equal access to financial products for all Americans. The CFPB's Office of Fair Lending and Equal Opportunity provides guidance to the CFPB's supervision staff as they assess fair lending compliance by financial companies regulated by the CFPB, and it coordinates with other prudential regulators regarding analysis and examination of supervised institutions. In addition, the Office of Fair Lending works with the CFPB's Office of Enforcement to conduct research and investigations in anticipation of filing public enforcement actions against institutions, and provides legal and analytical support in the investigation of discrimination complaints.

The CFPB currently accepts complaints regarding consumer credit cards, mortgages, bank accounts or services, credit reporting, money transfers, student loans, and vehicle or consumer loans. Once a complaint is screened, it is sent to the appropriate lender to review the complaint, communicate with the consumer, and determine what actions may be taken in response to the complaint. The lender then reports back to the consumer and the CFPB for review. The CFPB prioritizes for review complaints wherein a consumer disputes a lender's response or when a lender fails to respond in a timely manner.

Between December 1, 2012, and March 22, 2013, the CFPB collected 49,956 mortgage complaints – about 55.2 percent of more than 90,000 total complaints it received. Of these complaints, 29,438 or 58.9 percent were complaints in which borrowers had

<sup>29</sup> For more information, please see <http://www.justice.gov/opa/pr/2012/September/12-crt-1116.html>.

<sup>30</sup> For more information, please see <http://www.justice.gov/usao/cae/news/docs/2012/09-2012/09-11-12.Sorensen.html>.

<sup>31</sup> For more information, please see <http://www.justice.gov/opa/pr/2012/June/12-crt-802.html>.

problems when they were unable to pay; 12,542 or 25.1 percent were based on issues related to making payments; 3,527 or 7 percent were based on issues applying for the loan; 1,701 or 3.4 percent were based on problems signing mortgage agreements; 1,102 complaints or 2.2 percent were based on issues when receiving a credit offer; and 1,640 or 3.28 percent were based on other unspecified issues.

Of these complaints, 28,989 or 58 percent were closed with explanation; 10,665 or 21.35 percent were closed without relief; 5,146 or 10.3 percent were closed with non-monetary relief; 1,404 or 2.81 percent were closed with relief; 1,318 or 2.64 percent were closed with monetary relief; 1,218 or 2.44 percent were closed; 939 or 1.88 were in progress; and 277 or 0.55 percent were responded to in an untimely manner.

The CFPB should change its mortgage complaint portal – and all future complaint intake mechanisms and review processes – to gather protected class data from all complainants. While the CFPB has provided public information on mortgage complaints in its public database, there is little on how protected classes have fared in the CFPB’s complaint process. Currently, the CFPB’s mortgage complaint portal only collects protected class information if a consumer believes the complaint involves discrimination. As many fair housing and lending practitioners know and is explained above, lending discrimination is rarely

overt and is extremely difficult to detect. Without these data from all complainants, it is unclear how much the CFPB is doing to protect vulnerable communities protected under the Equal Credit Opportunity Act from all forms of discrimination in their financial lives. In addition, the CFPB should analyze all of its complaints to look for potentially discriminatory trends based on products, geographic distribution, etc.

#### D. Private, Non-Profit Fair Housing Efforts

Private fair housing organizations educate the community and the housing industry and enforce the laws intended to protect all of us against housing discrimination. In 2012, private fair housing organizations investigated 19,680 complaints, 69 percent of the total 28,519 complaints, up from 65 percent of the total complaints in 2011. There are fewer private fair housing organizations than federal, state and local government agencies, yet these private fair housing organizations investigated more than twice as many complaints in 2012.

These organizations are the only private groups with the capacity to investigate and test complaints of housing discrimination. Courts, researchers, and practitioners have all recognized testing as the most effective way to detect housing discrimination. HUD, state and local government agencies, and the Department of Justice often rely upon the testing capacity of FHIP-funded organizations to further

**Fair Housing Initiatives Budget in Recent Years**

<b>Fiscal Year</b>	<b>FHIP Funding</b>
2003	\$ 20.25 million
2004	\$ 20.25 million
2005	\$ 20 million
2006	\$ 20 million
2007	\$ 20 million
2008	\$ 23.5 million
2009	\$ 27.5 million
2010	\$ 42.5 million
2011	\$ 42 million
2012	\$ 42.5 million *
2013	\$ 42.5 million **

\* This amount represents the amount before anticipated sequestration cuts.

\*\* This amount has been proposed by President Obama in his FY14 budget. The House and Senate have not yet proposed their numbers.

investigate complaints. Unfortunately, during the past several years, one-fourth of private fair housing centers have closed, or were forced to curtail or eliminate their enforcement activities.

When adequately funded, fair housing organizations are well situated to provide assistance to victims of housing discrimination in their geographic service areas and to utilize their knowledge of community patterns and origins of discrimination to combat systemic housing discrimination. Fair housing groups enforce federal, state and local laws and also educate the public and the industry about their fair housing rights and responsibilities.

Many fair housing organizations are funded in large part by the Fair Housing Initiatives Program (FHIP). FHIP is a competitive grant program administered by HUD that provides funding to fair housing organizations to combat discrimination in the housing, rental, sales, lending and insurance markets. FHIP is authorized under Section 561 of the Housing and Community Development Act of 1987 and is the primary federal program that funds private fair housing groups throughout the country. FHIP provides funding to groups to assist people who believe they have been victims of housing discrimination, to conduct testing and investigations to identify systemic patterns of discrimination, and to promote awareness of fair housing laws. Components of the program include the Private Enforcement Initiative (PEI) that enables private fair housing groups to carry out testing and other enforcement activities; the Education and Outreach Initiative (EOI) that funds groups to educate the general public about fair housing rights, responsibilities and compliance with the law; and the Fair Housing Organizations Initiative (FHOI) that builds the capacity and effectiveness of fair housing groups and funds the creation of new organizations.

In addition, fair housing organizations need the support and funding to address systemic discrimination. Addressing systemic policies, practices and barriers is the key to changing segregation and promoting inclusive communities across the country. HUD should provide additional funding in the PEI category to support systemic investigations, some of which could be joint investigations among fair housing

organizations.

Fair housing organizations know their communities best and are well-positioned to determine what is most needed at the local level. So, FHIP funding should be flexible without set-asides for specific projects.

## **Case Highlights**

Several notable fair housing cases brought by private fair housing and housing organizations had significant impact in 2012. These include cases that addressed systemic and individual acts of housing discrimination against people of color and people with disabilities.

### ***Race, National Origin, and Residential Preferences: Fair Housing Justice Center v. Town of Yorktown***

In 2010, the Fair Housing Justice Center (FHJC) in New York City filed a federal complaint against the Town of Yorktown, a 90 percent white community in Westchester County, for the town's discriminatory administration of its Section 8 Rental Assistance Program. The FHJC alleged that the Yorktown committed race and national origin discrimination by giving preference to residents of Yorktown in its distribution of Section 8 vouchers, and failed to comply with its obligations to affirmatively further fair housing in its use of federal housing funds. In February 2012, the FHJC and Yorktown entered into a multi-year consent decree in which Yorktown agreed to eliminate its residency requirements for its Section 8 voucher program and other affordable housing programs; adopt a non-discrimination housing policy; affirmatively market its Section 8 program to non-resident minority groups; and recruit landlords to participate in Yorktown's Section 8 program.<sup>32</sup>

### ***Harassment: United States v. Richardson***

Shortly after Shania Patrick, Rex Tall and their four children moved into their home in Toledo, Ohio, two neighbors immediately began a harassment campaign against them because they were African American. Immediately after moving in, Patrick and

<sup>32</sup> For more information, please see <http://www.fairhousingjustice.org/2012/02/27/opening-acts-newsletter-february-27-2012/>.

Tall's white neighbors, Ryan Richardson and Ryan Smith, made numerous unfounded complaints to their landlord, the police, and child protective services, and they distributed a forged letter purportedly from Patrick and Tall that made it appear the two were trafficking drugs, committing other illegal activities, and abusing their children. As a result of these unfounded complaints, Patrick and Tall lost their lease and had to move their family from their home. The family contacted the Toledo Fair Housing Center, and after documenting the harassment, Patrick, Tall and the Fair Housing Center filed complaints with the HUD. After investigating, HUD issued a charge of discrimination and the complaints elected to have the case heard in federal district court. The DOJ filed a federal lawsuit on behalf of HUD, the family and the Toledo Fair Housing Center. In May 2012, the parties entered into a settlement agreement in which the defendants agreed to pay damages to Shania Patrick and Rex Tall and the Toledo Fair Housing Center; to not contact or come within 100 feet of the plaintiffs, and to attend fair housing training.<sup>33</sup>

### ***Racial Segregation: The Inclusive Communities Project Inc. v. The Texas Department of Housing and Community Affairs***

The Inclusive Communities Project (ICP) based in Dallas, Texas, filed suit against the Texas Department of Housing and Community Affairs (TDHCA), alleging that the State of Texas allocated Low Income Housing Tax Credits (LIHTC) to low-income housing developers in a manner that perpetuates racial segregation and discrimination and has a disparate impact on communities of color. In its complaint, the ICP alleged that TDHCA disproportionately approved tax credits for low-income housing predominantly in communities of color and simultaneously denied tax credit applications for non-elderly low-income housing in predominantly white neighborhoods. Ninety-two percent of all LIHTC units in Dallas were approved and subsequently built in census tracts where more than one half of the population consisted of people of color. After several dismissals and other

motions, the Northern District of Texas ruled that the TDHCA's practices had a disparate impact on people of color and that the entity had failed to prove that there was no less discriminatory alternative to its tax credit allocation practices. The Texas Department of Housing and Community Affairs was ordered to file a remedial plan to bring the State's allocation of LIHTC allocation practices into compliance with the Fair Housing Act.<sup>34</sup>

### ***Discrimination in the Maintenance and Marketing of Real Estate Owned (REO) Properties***<sup>35</sup>

In 2012, the National Fair Housing Alliance and several of its member organizations filed administrative complaints with HUD against Bank of America, Wells Fargo, and US Bank for their alleged discriminatory treatment of foreclosed homes in African American and Latino neighborhoods across America. Using an evaluation tool consisting of 39 possible maintenance and marketing deficiencies, NFHA and its members conducted investigations of bank real-estate-owned (REO) properties in 19 markets. Types of problems found in communities of color but not as frequently in white neighborhoods include: broken windows and doors; water damage; overgrown lawns; dead animals, no "For Sale" signs; and trash on properties. Banks kept up the curb appeal of REOs in white neighborhoods significantly better than they did in communities of color, and banks routinely marketed homes in white communities using professional "For Sale" signs while having no signs or cardboard signs that indicated a home was a "foreclosure," "bank-owned", or "auction" in communities of color. Such practices have a disparate impact on the home values and the housing recoveries of communities of color, which have already been disproportionately affected by the foreclosure crisis.

NFHA and its members investigated REO properties owned by Wells Fargo in multiple cities and filed a HUD complaint. NFHA has been working with Wells Fargo for the past year and we have had extremely positive ongoing dialogue.

<sup>33</sup> For more information, please see <http://www.justice.gov/crt/about/hce/documents/richardsoncomp.pdf>.

<sup>34</sup> For more information, please see [http://prrac.org/full\\_text.php?item\\_id=12713&newsletter\\_id=0&header=Current%20Projects](http://prrac.org/full_text.php?item_id=12713&newsletter_id=0&header=Current%20Projects).

<sup>35</sup> For more information, please see <http://www.nationalfairhousing.org/>.

**“Affirmatively Furthering Fair Housing”:  
United States ex rel. Anti-Discrimination  
Center v. Westchester County**

In its last few Trends Reports, NFHA has reported on the status of the case against Westchester County, NY, for its failure to affirmatively further fair housing in its use of federal housing and community development dollars. We regret to say that Westchester County remains in direct opposition to the spirit and purpose of the Fair Housing Act and continues to discriminate. Last year, we reported Westchester County failed again to incorporate corrective actions demanded by HUD to address policies that promoted residential segregation in its revised Analysis of Impediments to Fair Housing Choice, and HUD froze some \$7 million of the jurisdiction’s Community Development Block Grant entitlement funding. Westchester continues to fail to promote plans to overcome its exclusionary zoning practices and to implement a source of income protection voted on by its legislative body but vetoed by the County Executive. In March, 2013, HUD threatened to permanently recapture the frozen FY11 funding due to the County’s failure to abide by court-ordered requirements to affirmatively further fair housing.

Westchester County’s refusal to comply with the court order merits harsher consequences. Westchester County was found in violation of the Fair Housing Act in December 2009, and since then it has not produced an acceptable Analysis of Impediments to Fair Housing Choice and has failed to comply with supplemental court orders. Despite Westchester’s noncompliance, HUD has not held Westchester in contempt for violating the consent decree and court orders. Furthermore, while there is no doubt of Westchester County’s failure to comply with its Fair Housing Act obligations, HUD has not threatened to recapture FY12 or FY13 funding. HUD must take permanent, non-negotiable action against Westchester County. The County’s failed record of promoting fair housing speaks for itself.

NFHA and its members investigated 373 REO properties owned by Bank of America in eight metropolitan markets, including; Atlanta, GA; Dallas, TX; Dayton, OH; Grand Rapids, MI; Miami/Fort Lauderdale, FL; Oakland/Richmond/Concord, CA; Phoenix, AZ; and metropolitan Washington, DC. In Phoenix, AZ, 86 percent of Bank of America REOs in communities of color were missing “For Sale” signs; 80 percent of REOs in Washington, DC, and in Atlanta, GA, were missing signs; and 72 percent of REOs in Oakland, CA, were missing signs. There has been no productive progress in the HUD administrative complaint and NFHA continues to investigate Bank of America.

NFHA and its members investigated 177 REO properties owned by U.S. Bank in seven metropolitan areas, including: Atlanta, GA; Chicago, IL; Baltimore, MD; Dayton, OH; Miami/Fort Lauderdale, FL; Oakland/Richmond/Concord, CA; and Washington, DC. In Dayton, OH, 94 percent of U.S. Bank properties in communities of color were missing a “For Sale” sign, while in Chicago, IL, and in Oakland, CA, 68 percent and 64 percent respectively had the same deficiency. Close to three-fourths of U.S. Bank REOs in Atlanta, Baltimore, and Washington, DC, had substantial amounts of trash collected around them.<sup>36</sup> There has been no productive progress in the HUD administrative complaint and NFHA continues to investigate U.S. Bank.

Without a “For Sale” sign, neighbors have no way of reporting storm damage or if unauthorized occupants have entered a property, which if unabated, can lead to fires and public health and safety issues. In addition to being an eyesore for neighbors, having trash accumulate on a property makes a home unappealing to prospective buyers and can become health and safety hazards if not removed. It is absolutely critical that banks comply with their fair housing responsibilities and treat foreclosed properties in all communities to the highest possible standard, especially in communities of color that have been hardest hit by the foreclosure crisis.

<sup>36</sup> National Fair Housing Alliance, *The Banks are Back – Our Neighborhoods are Not: Discrimination in the Maintenance and Marketing of REO Properties*, April 4, 2012.

# CONCLUSION

Today, it is still legal under federal law for a landlord to deny a same-sex couple an apartment. It is still legal for a single mother to be turned away from safe housing because she uses child support or a Section 8 voucher as income. It is still legal for a real estate agent to discriminate against a transgender woman. It is still legal to evict an unmarried couple. And even though it is no longer legal to do so, housing providers discriminate against people of color, women, families with children, people with disabilities, and many others an estimated 11,000 times every day.

This state of affairs must change.

Last year, private non-profit fair housing organizations and governmental agencies saw a rise in housing discrimination across the country against many families and communities, including individuals against whom it has been illegal to discriminate in housing since 1968 as well as those with no federal protections. The persistence of racial segregation, residential preferences in zoning, blatant discrimination against people based on national origin, and harassment continue to limit opportunities to fair and equal access to housing. There is much more to be done to further enforce the Fair Housing Act, and even more to be done to protect communities that face housing discrimination without any federal protections.

While the private and public fair housing agencies have made tremendous strides toward expanding the scope of housing opportunities for all with their enforcement efforts, there is a serious concern that unbalanced federal deficit reduction may slow the progress being made to make housing available for all people.

Many states have stepped up and provided protections for these families. The federal government must do the same. We live in a better America than this. It's

time to modernize the Fair Housing Act for the 21st century by adding protections for sexual orientation, gender identity, source of income, and marital status.



# NFHA

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