



HEALTHY FOODS



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HOUSING



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HEALTHCARE



SCHOOLS

A LANDMARK YEAR:

2016 FAIR HOUSING TRENDS REPORT

ABOUT THE NATIONAL FAIR HOUSING ALLIANCE

Founded in 1988 and headquartered in Washington, DC, the National Fair Housing Alliance (NFHA) is the only national organization dedicated solely to ending discrimination in housing. NFHA is the voice of fair housing and works to eliminate housing discrimination and to ensure equal housing opportunity for all people through leadership, education and outreach, membership services, public policy initiatives, community development initiatives, advocacy, and enforcement.

NFHA is a consortium of more than 220 private, nonprofit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. NFHA recognizes the importance of home as a component of the American Dream and aids in the creation of diverse, barrier-free communities throughout the nation.

ACKNOWLEDGEMENTS

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SECTION I. INTRODUCTION AND HIGHLIGHTS¹

“This is the most important moment, I believe, for fair housing since 1968, and we must use it to maximum advantage. This summer, because of Inclusive Communities and HUD’s [AFFH] rule, we stand for the first time in nearly 50 years with new laws and new energy that can make a difference...that can attack these barriers effectively.”²

These were the words spoken by former Vice President and Senator Walter Mondale, one of the original sponsors of the 1968 Fair Housing Act, on September 1, 2015, as he reflected on the events in Ferguson, Baltimore, and other cities that demonstrated with such devastation how continued segregation undermines equal opportunity and harms our country.

Against this backdrop, two events established 2015 as a landmark year in the history of fair housing: (1) the decision by the U.S. Supreme Court in *Texas Department of Housing and Community Development v. Inclusive Communities Project*,³ upholding the use of disparate impact theory in fair housing claims; and (2) HUD’s enactment of a new regulation to implement the “affirmatively furthering fair housing” (AFFH) provision of the 1968 Fair Housing Act.⁴ Together, these strengthened the foundation of fair housing enforcement and breathed new life into a long-standing but largely-ignored provision of the Fair Housing Act intended to break down the barriers and inequities in access to opportunity that racial segregation has caused.

In the *Inclusive Communities Project (ICP)* case, the Supreme Court’s decision to uphold the use of disparate impact in fair housing claims ensured that the Fair Housing Act would remain a robust tool for fighting housing discrimination. This legal theory provides that policies and practices that appear neutral on their face, but which have a disproportionate and unjustifiable negative impact on members of protected classes, violate the Fair Housing Act. Disparate impact has been used in fair housing litigation since shortly after the Fair Housing Act was passed and has been upheld by all 11 Circuit Courts that have considered it. It is more important than ever today, because blatant

1 The 2016 Fair Housing Trends Report covers information for calendar year 2015 and the federal fiscal year of 2015.

2 Walter S. Mondale, remarks delivered at HUD’s 2015 National Fair Housing Training and Policy Conference, September 1, 2015, available at <http://www.c-span.org/video/?327884-1/hud-2015-national-fair-housing-conference-part-1>.

3 *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, No. 13-1371, 2015 U.S. LEXIS 4249 (U.S. June 25, 2015).

4 The AFFH rule, related documents, and other information are available at: <https://www.hudexchange.info/programs/affh/>.

discrimination is a less common means for denying housing to people because of their race, national origin, family status, disability or other protected characteristics; however, policies and practices which appear to be neutral may have a discriminatory effect. The ICP case involved the location of housing developments financed through the Low Income Housing Tax Credit Program, but disparate impact has also come into play in cases involving lending practices, insurance underwriting policies, residency preferences, use of criminal background checks in screening prospective tenants, and occupancy standards affecting families with children, among others.

Writing for the Court in the ICP case, Justice Kennedy noted, “Much progress remains to be made in our Nation’s continuing struggle against racial isolation.” Further, he wrote, “The [Fair Housing Act] must play an important part in avoiding the Kerner Commission’s grim prophecy that, “[o]ur Nation is moving toward two societies—one black, one white—separate and unequal” (ICP decision at page 28). The Kerner Commission to which Justice Kennedy refers was established by President Lyndon Johnson in 1967, after racial unrest erupted in more than 150 cities across the country, including Newark, Detroit, Tampa, Cincinnati, and Atlanta, among others. The Kerner Commission was charged with investigating the uprisings to determine what happened, why it happened, and how to prevent it from happening again. The Commission found that the driving force behind these uprisings was the frustration and anger felt by black residents of inner city neighborhoods—referred to in those days as “urban ghettos”—over the constraints imposed on their lives by the white majority. While they were often set off by police action that community residents felt was unfair or abusive, the uprisings were fueled by the racial segregation that limited neighborhood choice for African Americans and other people of color and which forced them into over-priced and often over-crowded and substandard housing, with poor schools, limited transportation, and little access to jobs. These conditions, in turn, created a sense of alienation from society and hopelessness about the future. The Commission observed that these problems affected all Americans, noting, “Discrimination and segregation have long permeated much of American life; they now threaten the future of every American.”⁵

The Kerner Commission report provided a stark description of conditions in communities of color all across the country and forced people to examine both how these came to be and how to begin to remedy them. Residential segregation patterns were largely the result of decades of government policy creating and reinforcing segregation. Many of these policies originated in the 1930s and 40s,

⁵ Report of the National Advisory Commission on Civil Disorders, March 1, 1968, p. 1.

between the Great Depression and the immediate aftermath of World War II. In 1968, when the Fair Housing Act was passed, it both barred illegal discrimination in housing and mandated proactive action to undo segregation patterns and promote residential integration.

Today, however, deeply segregated neighborhoods still exist in virtually all large American cities. And until 2015, the Fair Housing Act's mandate to actively address segregation and promote integration had gone largely unenforced. On the heels of the Supreme Court's disparate impact decision, HUD released its long awaited "affirmatively furthering fair housing" rule in July 2015. The rule provides improved regulation aimed at promoting healthy, prosperous, inclusive communities. It will help jurisdictions that receive federal funding from the U.S. Department of Housing and Urban Development comply with the long-standing mandate with better data tools and an enhanced emphasis on community involvement to tackle barriers to fair housing.

This is essentially what the AFFH component of the Fair Housing Act is intended to achieve: (1) discriminatory policies and practices do not impede housing choice or perpetuate segregation; (2) all neighborhoods are places of opportunity with good schools and jobs, quality foods and healthcare, and safe and affordable housing; and (3) the people that all thriving communities need—including police officers, firefighters, teachers, nurses, business executives, and retail clerks—are able to live in the communities in which they work. For additional information about the importance of AFFH, please see NFHA's 2015 Trends Report on "Where You Live Matters" which examines fair housing, place, and opportunity. The report is available at www.nationalfairhousing.org.

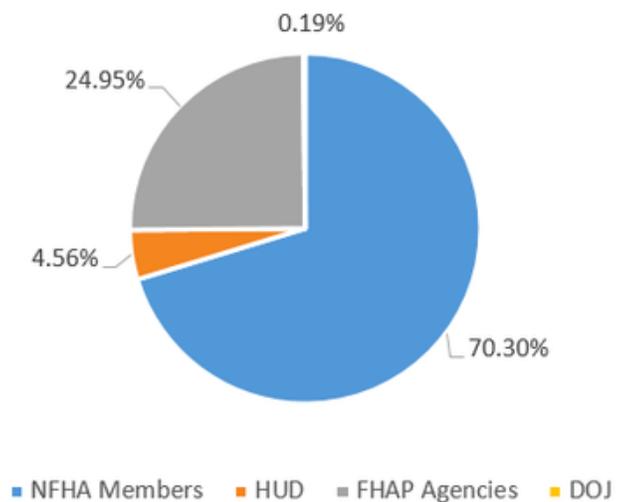
Together, these two 2015 events represent a huge step forward for fair housing. They reinforce existing tools that can address the legacy of segregation and concentrated poverty that is so evident from the hate crimes and uprisings that have occurred in cities like Baltimore, Ferguson, Charleston, and Orlando. Despite these major fair housing victories in 2015, however, acts of housing discrimination remain as prevalent as ever across our nation. The following section provides an overview of the cases of reported housing discrimination in 2015.

SECTION II. OVERVIEW OF HOUSING DISCRIMINATION REPORTED IN 2015

Every year, NFHA compiles data from both private, nonprofit fair housing organizations and government agencies across the country to provide an annual snapshot of the nation’s fair housing enforcement activities. These government agencies include the state and local Fair Housing Assistance Program (FHAP) agencies, the Department of Housing and Urban Development (HUD), and the Department of Justice (DOJ). This set of organizations and government agencies together comprise the national system for addressing housing discrimination. Each year, the report continues to document that private, fair housing enforcement agencies investigate the lion’s share of housing discrimination complaints nationally. In fact, in 2015 private fair housing enforcement organizations investigated 70 percent of the nation’s fair housing cases, twice as much as all of the other agencies that process housing discrimination complaints combined.

Housing discrimination comes in many forms and has been uncovered in a number of different types of housing transactions. For the purposes of this report, data is collected on all of the federally protected classes (race, color, national origin, disability, familial status, sex, and religion) as well as classes protected under state and local laws.

Data is also collected on several different housing transaction types, including rental, sales, lending, and homeowners’ insurance, as well as complaints related to advertising, harassment, homeowners and condo associations, zoning, and homeless shelters. It is important to note that, while the data reported here represents the number of complaints filed in the United States, this data is only a small representation of the incidence of discrimination in the housing market, because housing discrimination often goes undetected and unreported. It is common for victims of discrimination not to report



discrimination because it is difficult to identify, because they think nothing can or will be done about it, or because they fear retaliation.

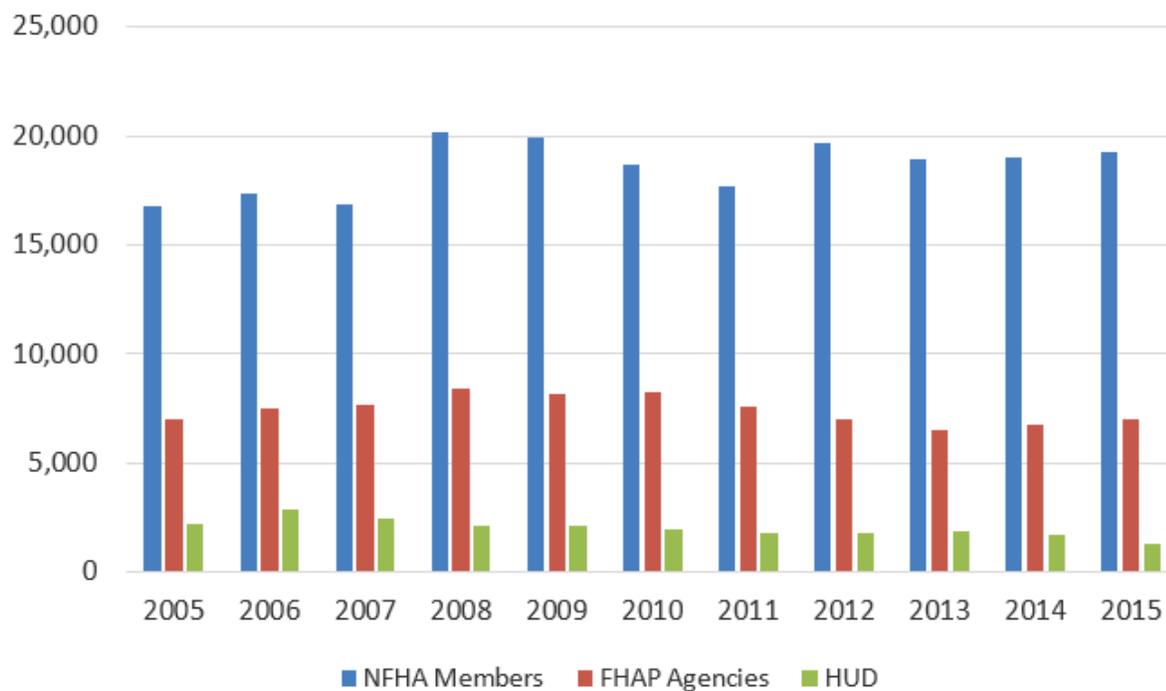
This year's Trends Report provides complaint data from 95 private, nonprofit fair housing agencies, DOJ, and HUD.⁶ It also provides data from 87 agencies that participate in HUD's FHAP program and thus receive annual funding to enforce local or state laws that provide the same rights, procedures, remedies, and judicial review provisions as the federal Fair Housing Act. The table below lays out the complaint data yearly for the past decade, including the most recent data from 2015.

Housing Discrimination Complaints, 2005 - 2015

Year	NFHA Members	HUD	FHAP Agencies	DOJ	Total
2005	16,789	2,227	7,034	42	26,092
2006	17,347	2,830	7,498	31	27,706
2007	16,834	2,449	7,705	35	27,023
2008	20,173	2,123	8,429	33	30,758
2009	19,924	2,091	8,153	45	30,213
2010	18,665	1,943	8,214	30	28,852
2011	17,701	1,799	7,551	41	27,092
2012	19,680	1,817	6,986	36	28,519
2013	18,932	1,881	6,496	43	27,352
2014	19,026	1,710	6,758	34	27,528
2015	19,645	1,274	6,972	46	27,944

In 2015, there were 27,944 reported complaints of housing discrimination across the country. Private fair housing agencies received 70 percent of those cases, HUD 5 percent, FHAP agencies 25 percent, and DOJ one percent (DOJ is limited in the types of cases it may investigate and prosecute).

⁶ Private fair housing agencies report their data based on the calendar year, while DOJ and HUD data is reported based on the federal fiscal year (October-September).

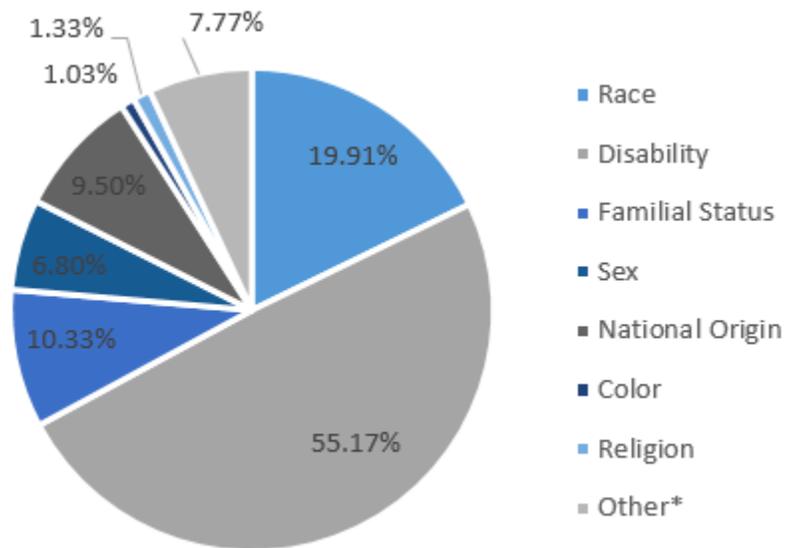


Housing discrimination complaints overall increased slightly in 2015 over the reported levels in 2013 and 2014. Private fair housing organizations saw an increase of 598 cases overall, and DOJ and the FHAP agencies received slightly more cases than in 2014. HUD received 436 fewer cases than in 2014. In the following sections, we delve more deeply into the data, breaking it down by protected class and housing transaction type. We then outline trends in the complaints received by type of organization.

(I) National Data by Basis of Discrimination

The following section breaks out the national data by protected class. As has been the trend over the past several years, housing discrimination against persons with disabilities continued to make up the majority (55.1 percent) of housing complaints investigated in 2015 across the board, with a total of 15,332 instances reported. This can be explained partly because discrimination on the basis of disability is often overt or otherwise more easily detected than other types of discrimination.

Discrimination on the basis of race was the second most reported with 5,563 instances nationwide, or 19.9 percent. This was a significant decrease of 449 fewer instances of racial discrimination than reported in 2014. The third most frequent basis on which discrimination occurred was familial status, with 10.3 percent of complaints nationwide (2,876 complaints). National origin complaints made up 9.5 percent of the total number of complaints, followed by sex-based discrimination, which made up 6.8 percent of the complaints in 2015. Housing discrimination on the basis of color and religion were the most infrequent, with 1.03 percent (285 complaints) and 1.34 percent (371 complaints), respectively.

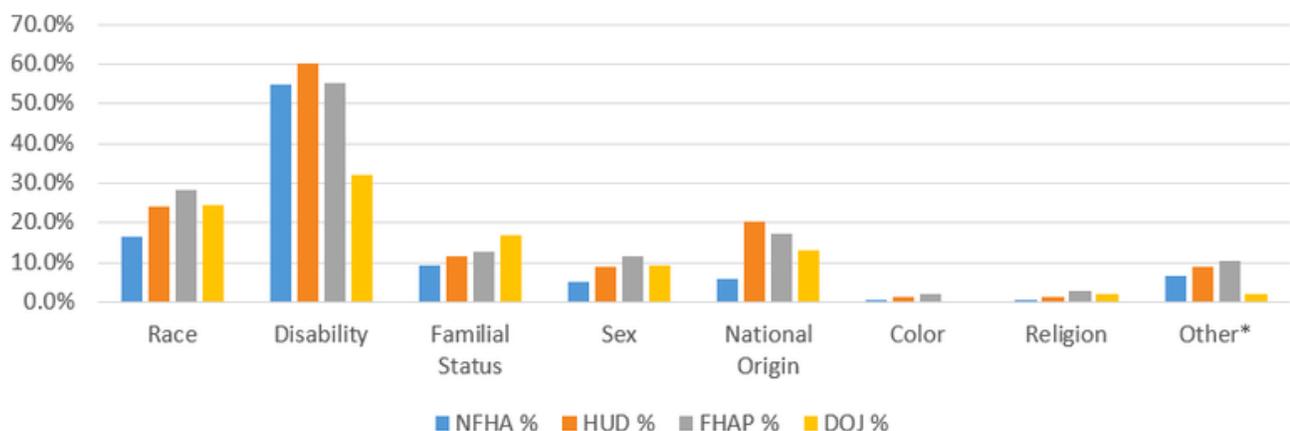


The 2,147 housing discrimination complaints that are listed in the “other” category include:

- Source of income (710 complaints)
- Age (205 complaints)
- Sexual orientation (164 complaints)
- Gender identity (57 complaints)
- Arbitrary, in California rentals only (43 complaints)
- Domestic violence (20 complaints)
- Criminal background (17 complaints)
- Marital status (13 complaints)
- Military status (12 complaints)
- Student status (2 complaints)

The “other” category for HUD only includes retaliatory claims; for DOJ, it only includes military status for 2015.

Discrimination by Protected Class



The chart below shows the breakdown of each of these protected classes by agency or organization that reported receipt of the complaint. Disability cases remain the highest percentage of cases filed with all agencies, followed by race-based complaints. HUD continued to process the bulk of national origin complaints, investigating 20 percent in 2015 (down from 26 percent in 2014).

Basis	NFHA Members	HUD	FHAP Agencies	DOJ
Race	17.0%	24.2%	28.4%	24.5%
Disability	54.7%	60.2%	55.0%	32.1%
Familial Status	9.3%	11.5%	12.7%	17.0%
Sex	4.9%	8.9%	11.5%	9.4%
National Origin	6.0%	20.3%	17.3%	13.2%
Color	0.7%	1.5%	1.9%	0.0%
Religion	0.7%	1.5%	3.0%	1.9%
Other*	6.7%	8.8%	10.3%	1.9%

(2) Private Fair Housing Organizations’ Data by Type of Housing Transaction

Housing discrimination in subtle forms is still rampant across the country, but blatant and overt housing discrimination has become more infrequent. Increasingly, discrimination is masked by housing providers offering false information, quoting different prices, providing an inferior product or amenities, or applying different standards or qualification criteria. It would be virtually impossible, for example, for those being quoted an interest rate or security deposit amount to know that they are being offered higher rates because they are members of a protected class. As this trend of subtle discrimination continues, private fair housing organizations increasingly rely on testing as a tool to identify and prove fair housing violations.

Rental Market Transactions – Private Groups Reported 17,260 Complaints

In 2015, the nation’s homeownership rate continued to decline in the wake of the foreclosure crisis, now down to 63.7 percent from its peak of 69 percent prior to the housing market crash.⁷ The percent of families renting nationwide has risen accordingly.

Consistently, housing discrimination is most likely to occur during transactions related to rental housing than during any other type of housing market transaction. This is in part because of the large number of rental transactions as well as the fact that discrimination is easier to detect, or at

⁷ http://www.nytimes.com/2015/06/24/business/economy/more-americans-are-renting-and-paying-more-as-homeownership-falls.html?_r=0.

least suspect, in rental transactions, which are, by nature, less complex. In 2015, 91.4 percent of housing discrimination complaints arose from housing transactions in the rental market (17,620 reported rental complaints). This represents a slight increase from 2014, where 89.9 percent of complaints reported by private fair housing organizations occurred during rental market transactions, but represents a huge increase when compared to the pre-foreclosure crisis data in 2005, where 77.2 percent of reported complaints occurred in rental transactions.

FHAP agencies received 5,132 rental complaints (73.6 percent of all complaints) in 2015, up from 4,803 in 2014. HUD received 798 (62.6 percent), down significantly from 980 rental complaints in 2014 and 1,095 in 2013.

Real Estate Sales – Private Groups Reported 317 Complaints

Complaints of housing discrimination in real estate sales transactions declined slightly when compared to the rates from the last two years, with 317 complaints in 2015. This represents a slight decline from 329 complaints in 2014 and 472 complaints in 2013. HUD received 72 complaints in the arena of home purchasing in 2015, down from 88 last year and 119 in 2013. FHAP agencies also received fewer purchase transactions with 279 filed cases in 2015, down from 306 the previous year and 319 complaints in 2013.

Mortgage Lending Transactions – Private Groups Reported 649 Complaints

Private fair housing groups reported 649 instances of lending discrimination in 2015, down significantly from 1,034 in 2014 and 1,078 in 2013. The majority of these cases were on the basis of race (505 complaints), followed by national origin (67 complaints) and sex discrimination (23 complaints). This continuing decline in lending complaints is reflective of additional barriers to obtaining mortgage loans in the wake of the foreclosure crisis.

Homeowners Insurance Transactions – Private Groups Reported 17 Complaints

Complaints of discrimination with regards to acquiring homeowners insurance decreased significantly this year, with 17 complaints in 2015 from the private fair housing movement. This is down from 46 complaints in 2014. In 2015, HUD reported three insurance cases, and FHAP agencies reported one.

Harassment – Private Groups Reported 591 Complaints

Harassment based on protected class in the form of coercion, intimidation, threats or interference in the provision of housing is illegal under the Fair Housing Act. Unfortunately, such abusive behavior towards tenants, residents, and prospective occupants because of their membership in federally protected classes has remained a major issue in our housing market. In 2015, 591 harassment complaints were filed, up significantly from 379 complaints 2014. Perhaps more so

than other types of fair housing violations, although easily recognizable, harassment often goes unreported because it tends to victimize persons with elevated housing insecurity. Thus, poor individuals and tenants of public housing, for example, may not report harassment due to fear of eviction or retribution.

Other Housing-Related Transactions – Private Groups Reported 79 Complaints

Because it is illegal under the Fair Housing Act to discriminate during any housing-related transaction, NFHA is continuing to track how often housing discrimination is reported involving homeowners or condominium associations, zoning, advertising, shelters, cooperatives, and retaliation. In 2015, there were 42 complaints against homeowners or condominium associations, 25 because of zoning or land use, 14 for retaliatory acts, three for advertising, and one in homeless shelters.

(3) Housing Discrimination Complaints Reported by HUD and FHAP Agencies

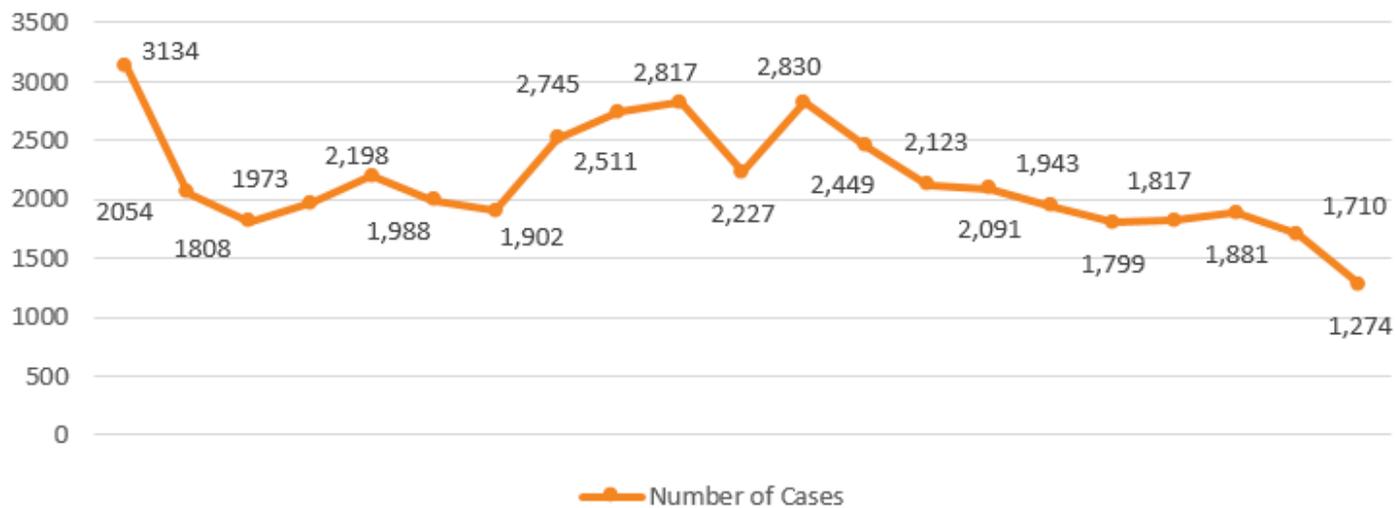
The Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity (FHEO) has the primary authority to enforce the Fair Housing Act and to carry out its mandate to eliminate housing discrimination through enforcement actions. It also enforces civil rights laws that affect housing transactions, including Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development 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, the Architectural Barriers Act of 1968, and housing provisions under the Violence against Women Act.

FHEO also publishes and distributes educational materials that provide information on how victims of housing discrimination can identify and report unlawful activity. It also manages and administers the Fair Housing Assistance Program (FHAP) and the Fair Housing Initiatives Program (FHIP). FHEO is also responsible for establishing fair housing and civil rights regulations and policies for HUD programs, and it issues guidance on complying with the requirements of fair housing and related civil rights laws. Additionally, it is responsible for the monitoring and review of HUD housing and community development programs to assure compliance with federal nondiscrimination regulations and the requirement to affirmatively further fair housing.

HUD's Administrative Complaints

HUD received 1,274 housing discrimination complaints in 2015, 436 complaints fewer than in 2014 and 607 fewer complaints than in 2013. This continues the downward trend that has persisted during the last decade—only one-fifth the number of cases from the high of 6,578 in 1992. This

amounts to only approximately five percent of all cases processed nationwide. The downward trend in administrative complaints stems partly from HUD’s increased reliance on local and state civil rights agencies funded through the FHAP program. The graph below contains data from the past 20 years (1995 through 2015) and demonstrates the downward trend in the number of cases in the past year. 2015’s numbers present a particularly sharp decline in complaints, with 436 fewer cases than last year.



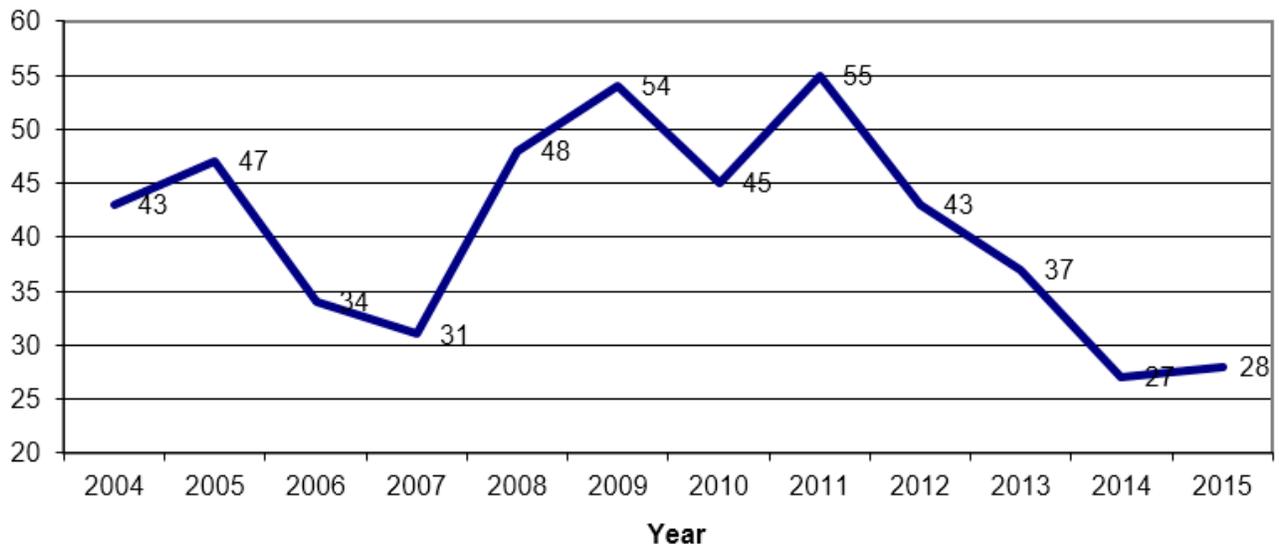
Secretary-Initiated Complaints: The Fair Housing Act allows HUD to initiate complaints when (1) the agency obtains sufficient evidence to believe that a fair housing act violation has occurred or is about to occur or (2) when it has received an individual complaint but believes there may be additional victims of discrimination or wants to obtain relief in the public interest. In 2015, there were 33 Secretary-Initiated

Complaints, consistent with the number for 2014. Most of these complaints involved discriminatory advertisements, refusals to rent, or discrimination in the making of loans. These cases involved, most frequently, discrimination on the basis of disability, followed by familial status and sex. Several of these cases featured a combination of more than one protected class as can be seen in the table to the right.

Bases	Number of Cases
Disability	6
Familial Status	3
Familial Status & Sex	7
National Origin	1
Race	1
Race, Disability & Familial Status	1
Race & National Origin	4
Race, National Origin & Sex	1
Total	24

Two issues of particular concern persist about HUD’s handling of complaints of housing discrimination: the paucity of charges issued and the enormous backlog of aged cases.

Charged Cases: HUD cases are sometimes resolved through conciliation or are closed for administrative reasons, including untimely filing, lack of jurisdiction, withdrawal by the complainant without resolution, and inability to locate the respondent. Based on its investigation, HUD may also issue a charge of discrimination where there is reasonable cause to believe a violation has occurred. In 2015, HUD issued only 28 charges (1.6 percent of completed cases). This number is similar to 2014, when there were 27 charges; however, it is still considerably lower than in previous years. The graph below presents the number of HUD charged cases for the past 10 years, illustrating this downward trend.

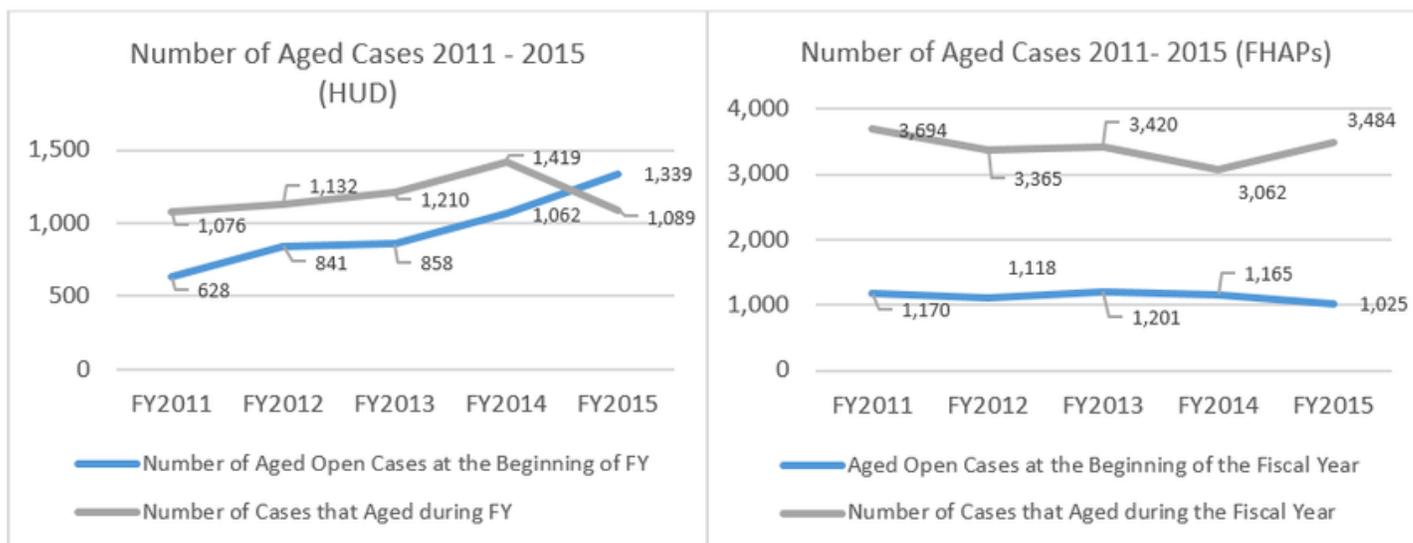


FHAP agencies also play an important role in the charging of cases. HUD refers complaints that originate in areas where a local government agency is a part of the FHAP program to that participating agency. FHAP agencies may issue a “cause” determination if probable discrimination is found. In 2015, there were 434 cause determinations from the FHAP agencies, up slightly from 421 in 2014.

When HUD issues a charge of discrimination, the complainant and respondent have the option to have the case heard by an Administrative Law Judge (ALJ) at HUD or either party may “elect” to have the case heard in federal court (for which the case is then referred to the Department of Justice for prosecution). No cases were decided by HUD ALJs in 2015; however, four cases were settled when the parties entered into a consent order. In 2015, 86 FHAP cases resulted in a judicial consent order, down from 119 in 2014. In 24 cases, the parties elected to have the case heard in federal court.

Aged Cases: HUD’s Fair Housing Act regulations require that HUD and FHAPs complete their investigations within 100 days from the initial receipt of a complaint, with exceptions for more complex cases such as those involving real estate, mortgage lending, or insurance discrimination. As in past years, both HUD and FHAP agencies have a significant number of “aged” cases that have exceeded the 100 day statutory period, the large majority of which are not complex cases. HUD held 1,339 aged cases at the beginning of 2015, up from 1,062 in 2014, and the FHAP agencies held 1,025 aged cases at the beginning of the year. FHAPs saw 3,484 cases become aged during 2015, meaning that they exceeded the 100 day processing benchmark. At HUD, 1,089 cases became aged during the year. In total, there were 6,937 aged cases at HUD or FHAP agencies at some point during 2015.

Many of these aged cases have been stalled in the process for several years, and the number of aged cases has persisted for several years. This is due in part to the inadequate amount of staffing, training, and resources at both FHEO and the FHAP agencies. In addition, although some staff are consistently excellent, many staff fail to meet even minimal performance standards for timely and effective processing of cases. The graphs below show the trends in aged cases at both HUD and the FHAP agencies.



As can be seen in these graphs, the number of aged cases open at the start of the fiscal year continues to increase at HUD, although the number of cases that became aged in 2015 was significantly lower in 2015 than in the previous year.

This rise in aged cases is troubling, as many private fair housing centers have noted that their cases have taken years to be processed without timely contact from HUD or the FHAP. This year, NFHA requested information from its members on aged cases that have been with their FHAP agency or

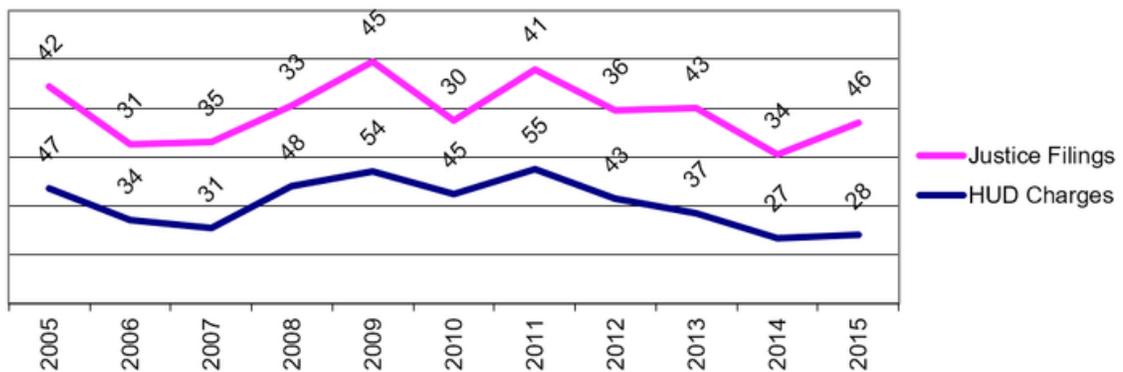
HUD for longer than the 100 day statutory period. NFHA received feedback from several members, including information on 73 aged cases. On average, these cases had been filed for approximately 20 months and a number of cases were over three years old. In just over 10 percent of these aged cases filed with HUD or FHAP agencies, the extended timeline of processing resulted in the loss of housing or housing opportunity for victims of housing discrimination.

(4) Fair Housing Cases Reported by the Department of Justice

DOJ’s 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 lending institutions from discriminating against credit applicants on the basis of race, color, national origin, religion, sex, marital status, age, or source of income. Under ECOA, the Justice Department has the authority to investigate and file a fair lending lawsuit.

The 1968 Federal Fair Housing Act also gave DOJ the authority to investigate 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. DOJ is also able to initiate civil lawsuits in response to fair housing violations by any state or local zoning or land-use laws referred by HUD. Finally, the Civil Rights Division of DOJ also has the authority to establish fair housing testing programs.

DOJ filed 46 cases in 2015—12 more than in 2014. Of these, 29 involved pattern-or-practice claims. As in past years, DOJ reviewed and responded to over 1,000 written complaints from individuals, but the jurisdiction of DOJ is limited under the Fair Housing Act to pattern-and-practice cases and cases referred by HUD. Thus, DOJ’s standard response is to advise individual complainants to file a complaint with HUD or to contact a local, private fair housing center for additional assistance.



Because DOJ's enforcement abilities under the Fair Housing Act are so limited and can often be dictated by HUD's issuance of charges, the number of cases processed by DOJ tends to follow the pattern of HUD charges. This pattern can be seen in the chart above.

SECTION III. HIGHLIGHTS OF FAIR HOUSING ENFORCEMENT ACTIONS

Each year, fair housing and other nonprofit organizations, HUD, and DOJ investigate and file cases of housing discrimination in the federal court and HUD/FHAP administrative complaint systems. In 2015, several notable cases highlighted the persistence and variability of housing discrimination in this nation. The representative cases highlighted in this section involve grave consequences associated with discrimination in reasonable accommodations for people with disabilities; the failure of a housing authority to provide sign language services for deaf individuals; widespread discrimination against victims of domestic violence; the failure to design and construct accessible multi-family housing; racial steering of tenants by a housing authority; an insurance policy limiting coverage for landlords that rent to Section 8 tenants; loan officers racially steering prospective homebuyers; the standing of cities to challenge discrimination that harms them; and the discriminatory concentration of affordable housing.

Buckley v. Prometheus Real Estate Group

In January 2015, an Oregon landlord agreed to pay \$475,000 to settle claims that it discriminated on the basis of disability by refusing a disabled resident's request for a parking space closer to his unit. According to the lawsuit, while the management delayed responding to the tenant's reasonable accommodation request, the tenant fell in the parking lot and died several days later as a result of his injuries. The settlement also included fair housing training, notice to tenants of their fair housing rights, and maintaining a reasonable accommodation log. The case was brought by the Oregon Bureau of Labor and Industries, and it serves as a reminder to the housing industry and advocates that reasonable accommodation requests can genuinely be a matter of life and death, with associated liability.⁸

Young v. DC Housing Authority

In February 2015, the Washington, DC Housing Authority agreed to settle claims brought by two deaf individuals and the nonprofit organization Deaf-Reach alleging that the DC Housing

⁸ https://www.oregon.gov/boli/SiteAssets/pages/press/1_28_15%20State%20Settles%20Housing%20Discrimination%20Case.pdf

Housing Authority failed repeatedly or refused to provide sign language interpreters or alternative means of effective communication to the deaf individuals, denying them equal access to its programs and services. Under the terms of the settlement, the DC Housing Authority agreed to institute a policy for its interaction with deaf persons, which includes providing sign language interpreters, conducting individualized assessments to determine what services are needed for each deaf client, and paying a total of \$350,000 in damages, attorneys' fees, and costs.⁹

HUD v. City of Berlin

In February 2015, HUD entered into a conciliation agreement with the City of Berlin, NH resolving a complaint in which HUD alleged that the city discriminated on the basis of sex by enacting an ordinance requiring landlords to evict tenants cited three or more times for “disorderly behavior,” including domestic violence incidents, or risk losing their rental licenses and be subjected to fines. Under the terms of the agreement, Berlin amended its ordinance to include language identifying that the ordinance does not apply to victims of reported domestic violence incidents.¹⁰

NFHA, et al. v. Hunt Investments

In November 2015, developers of the Shockoe Valley View Apartments in Richmond, VA agreed to retrofit the complex to make it accessible to people with disabilities and to pay NFHA and Housing Opportunities Made Equal of Virginia, Inc. \$600,000 in damages, attorneys' fees, and costs. The extensive retrofit modifications to the complex included alterations to ensure accessible routes within the building for people who use wheelchairs; alterations to ensure accessible exterior routes throughout the complex, including to and around accessible parking spaces; and alterations to ensure public and common areas, as well as the important features in each dwelling unit, are usable and accessible. A portion of the damages is being used to create an accessibility fund to provide grants to people with disabilities in the region to make additional units accessible. The case was filed in October 2014 after an investigation by HOME and NFHA, and the U.S. Department of Justice filed a Statement of Interest in May 2015 in support of the Plaintiffs.¹¹

U.S. v. County of Los Angeles

In July 2015, The Justice Department, the Housing Authority of the County of Los Angeles, and the Cities of Lancaster and Palmdale, California, agreed to a settlement of claims that the Housing Authority and the cities targeted African American renters with discriminatory enforcement of the Section 8 program. The case alleged that the housing authority and cities, in coordination with the Los Angeles County Sheriff's Department, attempted to discourage African Americans from living in the region in response to racially-based public opposition to African American voucher holders

9 <http://www.makingjusticereal.org/wp-content/uploads/2015/03/2015-3-2-Young-v-DC-Housing-Authority-Press-Release.pdf>

10 http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-022

11 http://www.nationalfairhousing.org/Portals/33/2015-12-03_Shockoe_Valley_View_press_release.PDF

by targeting police activities at Section 8 tenants. Under the terms of a settlement agreement, the Housing Authority will pay \$1,975,000 in damages on behalf of itself and the two cities and a \$25,000 civil penalty; institute nondiscriminatory policies; and participate in fair housing training.¹²

U.S. v. Housing Authority of the City of Ruston

In May 2015, the City of Ruston, Louisiana, agreed to pay a total of \$175,000 in compensatory damages and to implement nondiscriminatory policies and procedures as part of a consent decree resolving a race discrimination lawsuit filed by the Justice Department. The government charged that the Ruston Housing Authority assigned vacancies in its five public housing developments based on the race of the applicants, rather than their place on the waiting list, such that white applicants tended to be assigned to housing in white neighborhoods while black applicants were assigned to sites in predominantly black neighborhoods. This alleged steering practice corresponds with the explicit Ruston Housing Authority policy in the 1950s and early 1960s that designated the specific housing developments in question for “white” persons and “colored” persons, respectively. Although this stated policy was no longer on the books, the Justice Department alleged that the housing authority administrators maintained the segregationist practices in assigning applicants to units.¹³

Viens, et al. v. American Empire Surplus

In August 2015, American Empire Surplus Lines Insurance Company agreed to pay \$475,000 in damages and attorneys’ fees to settle claims brought by several apartment owners and the Connecticut Fair Housing Center, alleging the insurance provider discriminated on the basis of lawful source of income by charging higher premiums for property insurance to landlords who rented to tenants who use housing subsidies, such as Section 8 vouchers. The case challenged violations of both the Connecticut Fair Housing Act’s prohibition on source of income discrimination and state and federal fair housing laws, under a disparate impact claim on the basis of race. In June 2015, the district court denied American Empire’s defenses that the case should be dismissed and confirmed that the state and federal claims apply to post-acquisition claims and to property insurance.¹⁴

Fair Housing Justice Center v. M&T Bank

In September 2015, M&T Bank Corporation agreed to pay \$485,000 to settle claims that it discriminated on the basis of race and national origin in the underwriting of mortgage loans. The Fair Housing Justice Center and nine individual plaintiffs sued M&T Bank in February 2015, resulting from a testing-based investigation, alleging that it used racial criteria to determine

12 <https://www.justice.gov/opa/pr/housing-authority-los-angeles-county-and-cities-lancaster-california-and-palmdale-california>

13 <https://www.justice.gov/usao-wdla/pr/ruston-housing-authority-agrees-pay-175000-and-stop-assigning-vacancies-based-race>

14 See *Viens v. American Empire Surplus Lines Insurance Company*, No. 3:14-cv-000952-JBA (D. Conn. Aug. 31, 2015) (consent decree filed)

eligibility for one of the bank's first time homebuyer programs. The bank's "Get Started" program offered first time homebuyers favorable mortgage terms if the buyer agreed to purchase a home in certain low- to moderate-income areas or in majority minority neighborhoods. The Plaintiffs alleged that the M&T loan officers engaged in racial steering by encouraging minority testers to obtain mortgages through the Get Started program while white testers were discouraged from obtaining Get Started mortgages. M&T Bank also agreed under the settlement to revise its fair lending policy to prohibit discriminatory steering and retain a consultant to revise its fair lending training for loan officers and other bank employees.¹⁵

City of Miami v. Bank of America, et al. (11th Circuit)

In September 2015, the Eleventh Circuit ruled that a district court had erred when it dismissed with prejudice the City of Miami's claims of lending discrimination in separate lawsuits brought against Bank of America, Wells Fargo, and Citigroup. Miami brought actions alleging that the lenders had engaged in discriminatory mortgage lending practices that caused financial harm to the city. The district court rejected the claims on the basis that Miami did not have statutory standing, but the appeals court ruled that the lower court had misapplied the Supreme Court's zone of interest test, reaffirming that the definition of "aggrieved person" under the Fair Housing Act extends "as broadly as permitted under Article III."¹⁶ NFHA and the fair housing centers in the Eleventh Circuit filed an amicus brief in support of the City of Miami.

Anderson Group v. City of Saratoga Springs (2nd Circuit)

In October 2015, the Second Circuit reinstated a verdict on liability for the plaintiffs in a lawsuit in which a developer, the Anderson Group, charged that the City of Saratoga Springs' zoning policy had a disparate impact on African Americans and families with children and perpetuated segregation. The Anderson Group alleged that the city blocked the Anderson Group's proposed development as part of a continuing discriminatory policy that excluded and segregated African Americans by manipulating its zoning and land use rules to ensure that all affordable housing is contained in a small downtown area. Following a second trial, the jury returned a verdict for the city on both the disparate impact and the perpetuation of segregation claims, which the Anderson Group appealed. A Second Circuit panel reversed the district court's order for a new trial and reinstated the portion of the first jury verdict finding the city liable on the Anderson Group's disparate impact claim.¹⁷

15 <http://www.fairhousingjustice.org/2015/09/01/opening-acts-august-31-2015/>

16 <http://www.lexislegalnews.com/articles/2196/11th-circuit-reverses-dismissal-of-miami-s-fha-claims-against-lenders>

17 <http://www.reلمانlaw.com/civil-rights-litigation/cases/anderson.php>

SECTION IV. POLICY RECOMMENDATIONS

Despite landmark progress in 2015, it is evident from the data on national trends in fair housing enforcement that there are a number of significant obstacles still facing our nation as it strives to ensure that every neighborhood is a neighborhood of opportunity. The following section outlines NFHA's recommendations to expand the reach and capacity of private fair housing organizations, to improve the enforcement mechanisms that exist within HUD, and to better support the use of disparate impact and the new Affirmatively Furthering Fair Housing (AFFH) rule.

Expand Funding for Private, Nonprofit Fair Housing Organizations

In 1987, Congress recognized that it needed to support the development of experienced private nonprofit fair housing organizations to foster compliance with the Fair Housing Act and assist the public in understanding their rights under the Act. With broad bipartisan support, Congress created the Fair Housing Initiatives Program (FHIP) as a pilot program and in 1992 fully authorized the program. Today, the FHIP program is the primary source of funding for private nonprofit fair housing groups. However, FHIP's budget of \$39.1 million in Fiscal Year 2016 is not nearly enough to ensure that the public understands housing discrimination and how to identify it, nor to address and counteract the sheer pervasiveness of housing discrimination.

FHIP is a competitive, performance-based grant program that supports several different pieces of the national fair housing infrastructure. Eligible fair housing groups compete for three main grant components: the Fair Housing Organizations Initiative, which supports the creation of new fair housing groups and the continued development of existing organizations; the Education and Outreach Initiative, which funds programs that inform the public about their fair housing rights, provide educational and training tools, and inform/educate housing industry professionals on how to operate within the bounds of the law; and the Private Enforcement Initiative, which funds highly experienced nonprofit fair housing organizations to carry out testing, complaint intake, and the investigation of complaints they receive from the public. Using these FHIP funds, private fair housing organizations empower the public with knowledge on how to recognize and report discrimination; train local housing providers on how to comply with the law; and receive and investigate complaints.

The FHIP program has faced many challenges in recent years. For the last several years, fair housing groups have had to compete with unqualified organizations for FHIP grants totaling only around \$40 million dollars per year, despite the fact that they consistently investigate over two-thirds of all housing discrimination complaints reported each year, more than all state and federal agencies combined. HUD has failed to target grant awards to continue the development of experienced and effective fair housing groups which has led to an increase in one-off grants to organizations with little or no track record in fair housing enforcement or public education. And Congress has at times attempted to reduce or outright prohibit the use of FHIP grants for private enforcement of the Fair Housing Act with the unmerited expectation that a focus on public education will stop housing discrimination. Such notions fail to recognize or honor the intent of the FHIP program and the critical role that it has played to protect and expand fair housing rights.

NFHA proposes that Congress and HUD take the following actions:

- Congress must do all it can to increase funding for the Fair Housing Initiatives Program. In 2008 the bipartisan National Fair Housing Commission recommended funding of the FHIP program at a minimum of \$52 million to address housing discrimination, but funding continues around \$40 million per year. Congress must also allow HUD to determine how to allocate funds to each component.
- HUD must increase FHOI funding to include the creation of fair housing organizations in states and large MSAs where no organization exists; however, new organizations should not be created if it affects the continued funding of existing organizations.
- HUD must return its administration of FHIP to the program's original purpose of supporting the development of a network of experienced full-service nonprofit fair housing organizations throughout the country that serve persons at all income levels and in all protected classes. To do so, HUD must prioritize funding of education and enforcement efforts performed by private full-service nonprofit fair housing organizations whose mission is to eliminate housing discrimination against persons in all protected classes and to assist people at all income levels.

Reform the Structure of HUD's Office of Fair Housing and Equal Opportunity and Invest in Staff

HUD has the primary responsibility for administering the Fair Housing Act and it does so through its Office of Fair Housing and Equal Opportunity (FHEO). FHEO administers the Act via regulations and through the adjudication of housing discrimination complaints in its administrative complaint process. The division is also responsible for ensuring that HUD itself and its programs,

as well as the Government-Sponsored Enterprises, Fannie Mae and Freddie Mac, comply with the Fair Housing Act. FHEO is also responsible for implementing the Fair Housing Act's Affirmatively Furthering Fair Housing provision. FHEO has long faced many challenges to realizing and expanding the goals of the Fair Housing Act, many of which are systemic in nature and that have impeded our nation's progress.

For years, internal conflicts between HUD's program offices and FHEO have undermined strong enforcement efforts and have resulted in the failure to adequately ensure that federal housing investments increase housing choice, rather than contribute to further racial and economic segregation. Disagreements concerning enforcement actions between FHEO investigators and HUD's overly-conservative General Counsel frequently result in non-concurrence for a reasonable cause determination. HUD's Office of Public and Indian Housing and its Office of Community Planning and Development often have competing priorities and frequently approve program activities and projects before FHEO has the opportunity to ensure they comply with the Fair Housing Act and affirmatively further fair housing. HUD headquarters and regional offices routinely use inconsistent investigative standards and application of the Fair Housing Act, which often result in different treatment of complaints or case determinations that do not follow current case law.

FHEO has also seen a consistent decline in dedicated staff to investigate housing discrimination complaints, contributing to a growing backlog of complaints and delays in resolution for victims of discrimination. FHEO's long list of other responsibilities, include enforcing several other civil rights statutes and executive orders, has made dedicating adequate staff and resources to complaint investigation challenging given its other competing priorities. There is also no consistent training of FHEO's investigative staff. HUD has increasingly relied upon state and local government agencies who participate in its FHAP program to investigate and adjudicate complaints, despite ample evidence that many of these agencies either do not appropriately investigate the complaints or issue findings that are inconsistent or at odds with current jurisprudence. These and other realities have made furthering fair housing in the United States increasingly difficult.

NFHA proposes the following recommendations:

- Congress must increase funding for salaries and expenses at HUD's Office of Fair Housing and Equal Opportunity to support at least 750 full time equivalent staff for the sole purpose of implementing and enforcing the Fair Housing Act, separate and apart from FHEO's other responsibilities.
- Congress must introduce and support legislation to establish an independent fair housing enforcement agency that would include:
 - Career staff with fair housing experience;

- An advisory commission appointed by the President with the advice and consent of the Senate made up of industry, advocacy, and enforcement representatives and career staff; and
 - Resources necessary to conduct high level investigations of the nation's housing discrimination complaints and public policy implementation concerning all federal agencies' role and duties to affirmatively further fair housing.
- In the absence of Congressional action to establish an independent fair housing enforcement agency, HUD must divide the current Office of Fair Housing and Equal Opportunity into two separate offices staffed by two separate Assistant Secretaries and dedicated attorneys:
 - One office with sole authority over all fair housing enforcement, education, FHIP and FHAP with an Assistant Secretary who reports directly to the HUD Secretary; and
 - One office to monitor and administer HUD's other statutory responsibilities housed under the current FHEO and to monitor HUD's own programs and grantees for compliance with the Fair Housing Act.
- HUD must reform its complaint intake process to ensure that intake specialists:
 - Explain to complainants the types of actions that may constitute a violation of the Fair Housing Act and assist them in identifying what actions constitute housing discrimination;
 - Identify all family members potentially injured by the discrimination and name them in the complaint;
 - Explain the complaint and investigation procedures; and
 - Document date and time of first contact from a complainant to protect their statute of limitations in instances where a complaint is misplaced or delayed;
- HUD must conduct internal audits, similar to testing, of intake specialists and complaint investigators to ensure quality control.
- HUD must require all FHEO employees to understand and use its investigation procedures.
- HUD must make the following changes to its FHAP program:
 - Create and enforce a protocol to review and reactivate a complaint in which a FHAP agency issues a finding;
 - Require that FHAP agencies receive proper training to conduct investigations and understand how to interpret test results;
 - Require FHAP agencies to allow private, nonprofit fair housing organizations to represent complainants during conciliation efforts; and
 - Establish a procedure for prompt decertification of agencies upon adoption of state or local legislation that is in conflict with the protections and procedures guaranteed under the federal Fair Housing Act.

Disparate Impact Enforcement

Fair Housing Act liability—in particular, disparate impact liability associated with policies or practices that have a discriminatory effect—serves as a valuable mechanism for challenging the institutionalized inequity that shapes our housing market across the country. To target the inequity institutionalized in our housing market, it is first necessary to identify the infrastructure in which it exists. One facet of this varied and complicated infrastructure is the neutral policies in our housing market that have an unnecessary discriminatory effect, the subject of disparate impact analysis.

Challenging neutral but discriminatory policies using the disparate impact theory serves as a means of confronting the entrenched segregation we live with today, in the housing market's ever evolving forms.

HUD's Disparate Impact Rule,¹⁸ issued in February 2013, and the U.S. Supreme Court decision in *Texas Department of Housing v. Inclusive Communities Project*,¹⁹ handed down in June 2015, provide a powerful regulatory and legal foundation on which to forward broad enforcement of the disparate impact standard to challenge discriminatory housing policies. Furthermore, advancements in the data available in the housing market—including in the rental, sales, lending, and insurance industries—enables advocates, industry-compliance personnel, and public policy experts to better analyze housing practices and ensure they are most appropriately tailored to their business or public policy purposes.

NFHA proposes the following recommendations to ensure robust enforcement of the disparate impact standard under the Fair Housing Act regulatory guidance and U.S. Supreme Court jurisprudence:

- **Increase HUD Funding for Systemic Fair Housing Investigations:** Local fair housing centers provide important enforcement brains and brawn on the front lines of the fight against housing discrimination. Local fair housing centers are well positioned to advance disparate impact jurisprudence, but often operate with limited resources to pursue complicated cases. Increasing the Fair Housing Initiatives Program funds for systemic investigations to these fair housing centers is an important means of enhancing enforcement of disparate impact cases.
- **Reestablishment of the President's Fair Housing Council:** The chief executive should reestablish the President's Fair Housing Council and define an immediate agenda for it, which should include as one component interagency collaboration on the use of disparate impact.²⁰ The multi-disciplinary approach of the Council is well suited to addressing the policies and systems that have a discriminatory impact that perpetuates entrenched patterns of metropolitan segregation.
- **Issue Guidance on Disparate Impact and Credit Score Models:** HUD, DOJ and the CFPB should issue guidance on the use of alternative credit scoring models and the fair housing implications

18 Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11,460, 11,461 & nn.12–16 (Feb. 15, 2013) (codified at 24 C.F.R. pt. 100).

19 *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, No. 13-1371, 2015 U.S. LEXIS 4249 (U.S. June 25, 2015)

20 The Leadership Conference for Civil and Human Rights called for reestablishing the President's Fair Housing Council in 2008: www.civilrights.org/publications/reports/fairhousing/council.html?referrer=https://www.google.com

of exclusive use of existing credit scoring models for credit and rental access for people of color and those in other protected classes. Federal litigation may help define the parameters of liability in the lending market around the use of credit scoring models, but guidance on this topic would help provide clarity amid current practices associated with credit scoring models that have a discriminatory impact.

Affirmatively Furthering Fair Housing

HUD took an extremely important step forward in Fair Housing Act implementation in 2015 with the publication in July of the AFFH rule, followed by the Assessment Tool for local jurisdictions, issued on December 31. Implementation is now underway, with some 16 jurisdictions submitting their first Assessments of Fair Housing—the replacement for the Analysis of Impediments to Fair Housing Choice—on October 4, 2016. Over the next several years, thousands of other cities, states, counties, and Public Housing Authorities will undertake this effort.

In order for the AFFH rule to have maximum impact, HUD must take a number of additional steps. These include:

- **Finalize the remaining Assessment Tools in a timely manner:** Program Participants—cities, counties, states, and Public Housing Authorities (PHAs)—that receive HUD funding cannot begin developing the Assessments of Fair Housing (AFHs) called for by the AFFH rule until HUD has finalized the Assessment Tools they are required to use for this effort. The Assessment Tool for local governments was initially approved by OMB for one year, and must be approved by OMB for longer-term use. HUD must also obtain OMB approval for the Assessment Tools for PHAs and for states and insular areas. HUD has begun this process, and it is critical that it move forward expeditiously to finalize the Tools in a timely manner so as not to cause disruption and delay in the schedule for AFH submissions.
- **Staff up fully for AFFH implementation:** Congress provided HUD with \$4 million in funding for FY 2016 to support the AFFH implementation process, which allows HUD to hire 40-60 new staff people to help with this effort. HUD must move quickly to fill those positions, train those new employees, and use them to provide the necessary support and oversight for jurisdictions working on their Assessments of Fair Housing.
- **Ensure that technical assistance (TA) is available to grantees:** As grantees develop their AFHs, many will need to analyze data that is new to them and think about new approaches to expanding access to opportunity. In order for them to be successful in this effort, many will need technical assistance. Therefore, it is critical for HUD to establish both a robust stable of technical assistance providers and a reliable and transparent system for responding to grantees' TA requests. Further, there may be some aspects of the rule about which HUD can anticipate the need to provide TA, and for these, HUD should provide assistance proactively.

- **Expand the guidance available to grantees:** No rule intended to cover the broad array of grantees covered by the AFFH rule can possibly incorporate the nuance needed to make it clear how it should be interpreted in every circumstance. And indeed, there are a number of aspects of the AFFH regulation for which grantees would benefit from additional guidance in order to gain a full understanding of what the rule intends and how to apply it to the particular circumstances of their communities. HUD should issue such guidance quickly and update it in the future as needed.
- **Conduct a rigorous and thorough review of AFHs that grantees submit:** In order for the rule to achieve its full potential, HUD must set a high standard for the AFHs that are submitted and then do its part to help its grantees meet that standard. This requires HUD to review each AFH fully and carefully, and ask grantees to make changes if their AFHs fall short. This is particularly important in the early stages of implementation, when the AFHs will serve as examples for those that will be submitted in the future.
- **Monitor grantees' ConPlans, PHA plans, annual action plans, and annual performance reports** to ensure that the goals and priorities identified in their AFHs are reflected in these other plans and that grantees are actually implementing them. This may be the most critical part of the implementation process, for communities will experience real change in access to opportunity if grantees carry through on the goals they set in the AFHs.
- **Continue to enforce the AFFH obligation for all grantees, regardless of where they may be in the AFH submission cycle:** The obligation to affirmatively further fair housing is a long-standing one—built into the Fair Housing Act when it was passed in 1968. Communities cannot fulfill this obligation simply by conducting an Assessment of Fair Housing, nor does it apply only when communities are engaged in this process. Affirmatively furthering fair housing requires communities to “take meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics” (24 CFR §5.152). With the new rule, HUD has provided communities with clearer guidance and a better road map for doing this, but it should be apparent that this is an on-going obligation that applies to all of a community’s housing and community development activities. In addition to guiding communities through compliance with the new rule, HUD must continue to conduct broad oversight of all its grantees and, where necessary, intervene to ensure they are fulfilling this important obligation.