



# DEFENDING AGAINST UNPRECEDENTED ATTACKS ON FAIR HOUSING

2019 FAIR HOUSING TRENDS REPORT



**NFHA**  
National Fair Housing Alliance







# LETTER FROM THE PRESIDENT AND CHIEF EXECUTIVE OFFICER

Dear Friends of Fair Housing,

If 2018 taught us anything, it was that we must be diligent in the defense of our civil and human rights. For over 30 years, The National Fair Housing Alliance (NFHA) has fought to fulfill its mission of eliminating housing discrimination and ensuring equal housing opportunity for all people. Our ability to deliver on this goal was strenuously tested as we saw repeated and deliberate attacks on a variety of fair housing laws, regulations, and guidances. Millions of people faced fears they never could have imagined, suffered sexual or racial harassment, experienced unnecessary and exasperating housing payment burdens, suffered devastating evictions, and otherwise saw their fair housing rights violated. The year brought a resurgence of horrific hate activity, the largest year-to-year increase in fair housing cases, and the highest number of complaint filings since NFHA began collecting this data in 1995. It can sometimes seem like we are living in a nightmare.

In this new political climate, we find ourselves facing dreadful challenges. All the tools and resources we have been afforded by the passage of our fair housing and fair lending laws are either under attack or being gutted. In the midst of increasing public awareness about the structural barriers that drive disparities based on things like race, gender, disability, or LGBTQ status, we must concern ourselves with policies pushed by our federal, state, and local governments that are steeped in hatred and designed to inflict pain. It is clear that some want to maintain this country's segregated communities—the result of both government and private market historical and current policies—which set up the perfect scenario for perpetuating the inequality many of us are battling.

While it is much easier to be overwhelmed and feel a sense of defeat, there has never been a more critical time to dig in our heels, band together, and collectively fight against all of the injustices that are aimed against us and those we serve. We can't rest now! Everywhere we look, we find proof that vigorous civil rights enforcement and education are still vital and effective. We will overcome these assaults if we remain strong and committed to realizing the dual purpose of the Fair Housing Act—both eliminating housing discrimination and building diverse, stable communities replete with the resources people need to thrive. We stand fervently opposed to those who use fear and terror to try to take our country back to a place we do not want to be. NFHA remains dedicated to bringing about the equality and justice that our civil rights leaders, Congress, and President Johnson envisioned more than half a century ago. It is on us to keep that promise alive.

Stronger Together,

A handwritten signature in black ink, appearing to read "David Zito". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

## 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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The 2019 Fair Housing Trends Report was prepared by and reflects the views of the NFHA staff and not necessarily those of its Board of Directors, Advisory Council, or funders.

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# EXECUTIVE SUMMARY

The Fair Housing Act is under attack from the very agency charged with enforcing it—the U.S. Department of Housing and Urban Development (HUD). There is no plainer way to state it. The National Fair Housing Alliance (NFHA) and other civil rights partners have been vigilant in beating back these attacks, underscoring the unequivocal necessity of strong, viable civil rights organizations to protect critical and fundamental rights for everyone in the U.S. This 2019 Fair Housing Trends Report, **Defending Against Unprecedented Attacks on Fair Housing**, exposes frightful attempts to roll back fair housing protections and features the hard work of thousands of civil rights and fair housing advocates who fight to ensure that will not happen. Highlights from the report include:

- The number of housing discrimination complaints in 2018 is up by eight percent to 31,202, the highest since NFHA began producing the annual Fair Housing Trends Report in 1995.
- Private fair housing groups continue to process more complaints, 75 percent, than all government agencies combined.
- Hate crime offenses increased by an alarming 14.7 percent.
- The Trump administration has launched unprecedented attacks on fair housing in an effort to chill civil rights enforcement.
- The use of technology is on the rise, can manifest discriminatory outcomes, and has profound impacts on people's ability to access housing, credit, and insurance.
- Increased scrutiny of sexual harassment in housing has led to an unprecedented number of cases against housing providers who prey on vulnerable residents who cannot move to a new location because of the lack of affordable housing options.



The Trump administration, and its leadership at HUD, has equal housing opportunity in its sights. The Fair Housing Act has had bipartisan support since its passage in 1968. While there have been administrations that were less aggressive about enforcing the requirements of the act, at no time has there been an administration as hostile to the most important components of the law and at no time has an administration taken concrete measures to attempt to destroy the law.

One of the two most important adverse measures this administration has taken was suspension of the Affirmatively Furthering Fair Housing (AFFH) regulation adopted in

2015. That rule was long-awaited and was designed to require recipients of federal funds to take meaningful steps to end segregation and eliminate artificial barriers to fair housing. In testimony before the House Appropriations Committee in April, the Secretary remarked that, “segregation persists because Black people can’t afford to live in other places,” and that what we really need to do to make housing fair is to build more affordable housing. While the creation of affordable housing is certainly important, this position should alarm us as it reflects an entire lack of knowledge about the history of racism and the systemic policies and practices embedded in a host of governmental and industry programs. This history necessitates a strong rule to require communities to actively identify and eliminate barriers to housing opportunity and inclusion.

The second deleterious measure was HUD’s release of a notice of a proposed rule to alter in significant ways the use of a key standard of proof known as “disparate impact.” Disparate impact is a widely accepted doctrine that is a critical legal tool for challenging seemingly neutral policies or practices that actually have a discriminatory effect on people in protected classes. HUD proposed an unprecedented set of pleading requirements for victims of discrimination to bring successful disparate impact claims, as well as unheard-of defenses for lenders, insurance companies, housing providers, and those using algorithmic-based systems. The proposed rule would make it virtually impossible to bring disparate impact claims and will allow the housing industry to maintain or institute policies and practices that in effect discriminate against entire classes of people.

While HUD was aggressively undermining fair housing, the number of complaints filed in 2018, 31,202, **was the highest number of reported complaints of housing discrimination** since NFHA began collecting this data in 1995. This represents an **eight percent increase** over complaints reported in 2017. Private, nonprofit fair housing organizations, who provide services at the local level, processed 75 percent of the complaints, more than three times the amount processed by state, local, and federal agencies combined. Additionally, there was a startling uptick in hate activity after steady declines since the early 2000s. From 2016 to 2017, there was a 14.7 percent increase in hate crime offenses and a 13.7 percent increase in the number of reported victims of hate crimes. There was a 15.3 percent increase in the number of housing-related hate crimes.

There also was a significant increase in the number of complaints of harassment, reflecting the societal decline in civility and fairness and that those filled with bias and hate feel emboldened to act with impunity. There were 897 complaints of harassment in 2018, up significantly from 747 in 2017 and 640 in 2016. Harassment against persons in protected classes occurred in the form of coercion, intimidation, and threats, both in the provision of housing or in a housing setting. Housing-related harassment is illegal under the Fair Housing Act. In 2018, 391 of the 897 harassment complaints were on the basis of disability, 149 were on the basis of race, and 139 were on the basis of sex. Most harassment is not reported, however, as victims of harassment fear additional harassment, retaliation, or loss of housing.



There has been unprecedented focus on the issue of sexual harassment in housing-related situations, not because sexual harassment in housing situations is on the rise but because there is increased awareness of the nature and extent of harassment in all arenas and because there is less stigma now in acknowledging that one has been a victim of sexual harassment. The Housing and Civil Enforcement section of the U.S. Department of Justice initiated several sexual harassment investigations, leading to six pattern-or-practice lawsuits challenging alleged sexual harassment in housing, more than in any previous year. Women and single mothers most frequently experience sexual harassment, particularly when they are low-income and forced to live in precarious housing situations due to the lack of affordable housing options.

While we have been battling against HUD's attempts to eviscerate the Fair Housing Act, good work continues at the local and national levels, and important cases have been brought to address discrimination. NFHA, three fair housing organizations, and other plaintiffs filed and settled precedent-setting housing discrimination lawsuits against Facebook, Inc. The lawsuits challenged Facebook's advertising system, which allowed those placing ads to target advertising based on many characteristics related to race, national origin, age, disability, gender, sexual orientation, and familial status. Facebook has now created a separate advertising portal for housing, employment, and credit ads that eliminates the ability to target based on protected characteristics and their proxies. Facebook is now working in partnership with NFHA and other plaintiffs to improve its fair housing compliance on a broad scale.



NFHA and local fair housing organizations have been working to promote fair housing in the increasing use of technology in housing-related transactions. Technology is re-shaping the way industries conduct business and, in some cases, can help expand opportunities for both consumers and corporations. However, the use of technology to transform credit and housing access has significant limitations, because our society is still plagued with systemic inequality and structural barriers that deliver disparate outcomes, and those systemic inequities are built into technological models. In March 2019, a Connecticut federal district court ruled that CoreLogic, a tenant screening company that uses data collection and data mining, could be held liable for discrimination claims brought under the Fair Housing Act. The case, brought by the Connecticut Fair Housing Center, alleged that CoreLogic's algorithm that could be used to disqualify applicants for housing based on the presence of criminal records, including arrest

records, discriminated against tenants on the basis of disability, race, and national origin.

In this report, we explore these issues in further depth. Section I provides an overview of the number and types of housing discrimination complaints in 2018. In Section II, we highlight the sweeping attacks HUD and states have instituted against the Fair Housing Act. Section III provides highlights of important housing discrimination cases in 2018. In Section IV, we provide information about the importance of ensuring that technology used in the housing context does not perpetuate inequality, the need for additional protected classes under the Fair Housing Act, and the need to address the increase in hate crimes and harassment in housing-related situations. While the report contains recommendations in several places, Section V contains the most important immediate recommendations for achieving the goals of the Fair Housing Act.

The Fair Housing Act was designed to achieve two goals: to eliminate housing discrimination and to take significant action to overcome historic segregation and achieve inclusive and integrated communities. But as Senator Edward Brooke, co-author of the Fair Housing Act stated in a 2003 speech at the NFHA National Conference, “The law is meaningless unless you’re able to enforce that law. It starts at the top. The President of the U.S., the Attorney General of the U.S., and the Secretary of HUD have a constitutional obligation to enforce fair housing law.”<sup>1</sup> NFHA and its members and partners expect HUD and this administration to discontinue their efforts to limit the effectiveness of the Fair Housing Act. However, we are not sanguine about those prospects and will as always continue our work to eradicate housing discrimination and segregation and the bevy of inequities built on those pernicious constructs.

**Note on language in this report:** As a civil rights organization, we are aware that there is not universal agreement on the appropriate race or ethnicity label for the diverse populations in the United States or even on if particular labels should be capitalized. We intend in all cases to be inclusive, rather than exclusive, and in no case to diminish the significance of the viewpoint of any person or to injure a person or group through our terminology. For purposes of this report, we have utilized the following language (except in cases where a resource, reference, case, or quotation may use alternate terminology): Black, Latino, Asian American, and White. In prior publications, we have utilized the term “African American,” but there are some who argue that this term is exclusive and we intend to be as inclusive as possible. We are also aware that many persons prefer the term “Hispanic.” We intend in this report to include those who prefer “Hispanic” in the term “Latino” and intend no disrespect. We refer to “neighborhoods of color” or specify the predominant race(s) of a neighborhood, rather than utilizing the term “minority.” We also use the term “disability,” rather than “handicap” (the term used in the Fair Housing Act”).

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<sup>1</sup> Senator Edward Brooke, Remarks at the National Fair Housing Alliance National Conference, June 30, 2003.



# SECTION I.

## OVERVIEW OF HOUSING DISCRIMINATION COMPLAINTS IN 2018

In 2018, there were an unprecedented number of attacks on and challenges to the federal Fair Housing Act. These attacks are detailed in other sections of this report. This should alarm us all. As the current administration and leadership at HUD made every effort to undermine enforcement of the Fair Housing Act, **the number of reported complaints of housing-related discrimination was the highest of any year since the National Fair Housing Alliance began collecting complaint data in 1995.** The Fair Housing Act was enacted in 1968 to eliminate housing discrimination and promote inclusive communities in America. Unfortunately, many families and individuals continue to experience illegal acts of housing discrimination, many of which go unreported. There were **31,202 reported complaints of housing discrimination** in 2018, representing an **eight percent increase** over 2017.

IN 2018, THERE WERE **31,202**  
COMPLAINTS OF HOUSING  
DISCRIMINATION - THE HIGHEST  
NUMBER EVER REPORTED. IT  
REPRESENTS AN ALARMING  
**EIGHT PERCENT INCREASE.**

As it does each year, NFHA collects housing discrimination complaint data from both private fair housing organizations and government agencies throughout the country. NFHA receives housing discrimination complaint data from local, private, nonprofit fair housing organizations that are members of NFHA (FHOs or NFHA Members); state and local Fair Housing Assistance Program (FHAP) agencies; the U.S. Department of Housing and Urban Development (HUD); and the U.S. Department of Justice (DOJ). Together, these agencies form the infrastructure to address housing discrimination in America.<sup>2</sup> The data collected provides a snapshot of the types of housing discrimination that occur each year.

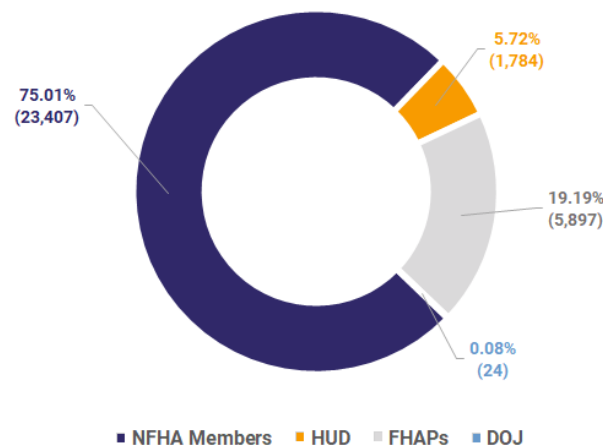
The 2018 complaint data shows that **private fair housing organizations continue to address the majority of housing discrimination complaints reported throughout the country.** In 2018, private, nonprofit fair housing organizations processed 75.01% of complaints, as compared to 19.19% by FHAP agencies, 5.72% by HUD, and .08% by DOJ.<sup>3</sup>

<sup>2</sup> 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).

<sup>3</sup> The Department of Justice does not conduct intake of complaints; it brings pattern and practice cases and cases referred by HUD in which a party has “elected” to pursue the case in federal court. Also, this does not include complaints from the Consumer Financial Protection Bureau, which are not collected in a manner that provides the level of detail needed for this report.

Housing Discrimination comes in many forms and occurs in different types of housing transactions, such as rental, real estate sales, mortgage lending, and housing-related insurance. It also includes discriminatory advertising, discrimination by homeowners or condominium associations, discriminatory zoning policies, harassment based on race, sex, religion, or national origin, and more. For purposes of this report, data is collected and reported primarily on the seven federally protected classes: race, color, religion, national origin, sex, disability, and familial status. However, this report also includes additional data on classes of persons protected under state and local laws, including sexual orientation, source of income, marital status, and several other categories.

Housing Discrimination Complaints in 2018 by Reporting Agency



Of the 31,202 total complaints reported, 23,407 (75.01%) were processed by fair housing organizations (FHOs), compared to 1,784 complaints processed by HUD, 5,987 processed by FHAP agencies, and 24 cases processed by DOJ. This data is included in the table below, along with the same data from the last ten years. It is important to note that **private nonprofit fair housing organizations addressed three times as many complaints as all government agencies combined**, at a time when FHOs saw protracted delays in funding and increased regulatory and legal challenges to the federal Fair Housing Act and other civil rights laws.

Table 1  
Fair Housing Complaint Data by Agency

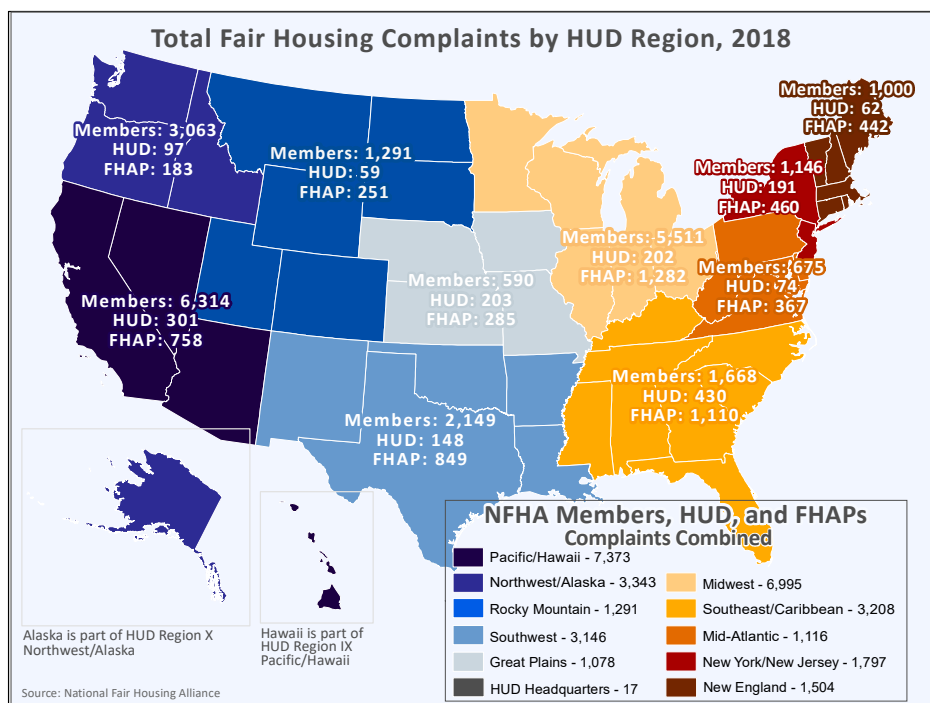
Year	NFHA Members	HUD	FHAPs	DOJ	Total
2008	20,173	2,123	8,429	33	30,758
2009	19,924	2,091	8,153	45	30,213
2010	18,665	1,943	8,214	30	28,852
2011	19,196	1,799	7,551	41	28,587
2012	19,680	1,817	6,986	36	28,519
2013	18,932	1,881	6,496	43	27,352
2014	19,026	1,710	6,758	34	27,528
2015	19,645	1,274	6,972	46	27,937
2016	19,740	1,371	7,030	40	28,181
2017	20,595	1,311	6,896	41	28,843
2018	23,407	1,784	5,987	24	31,202



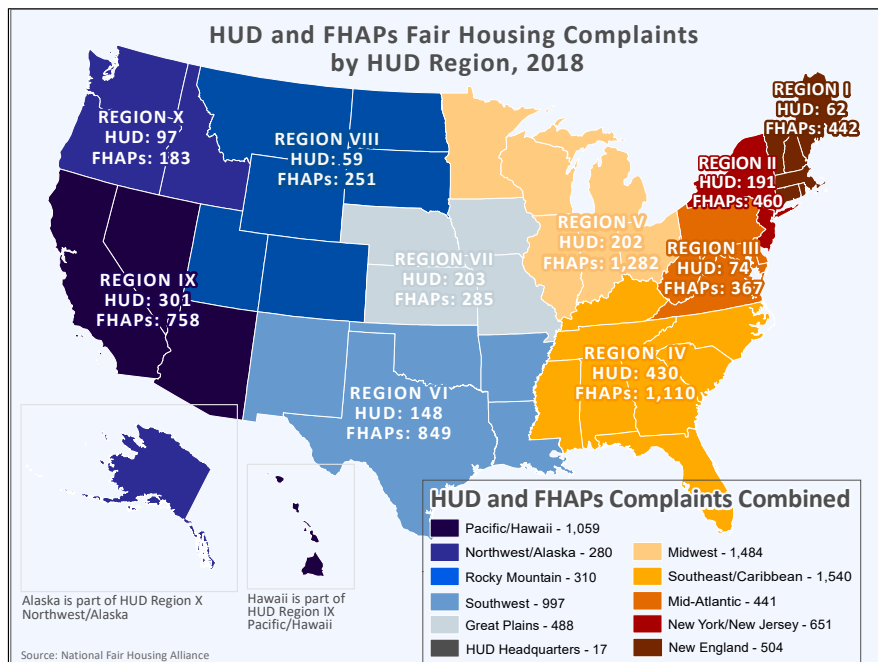
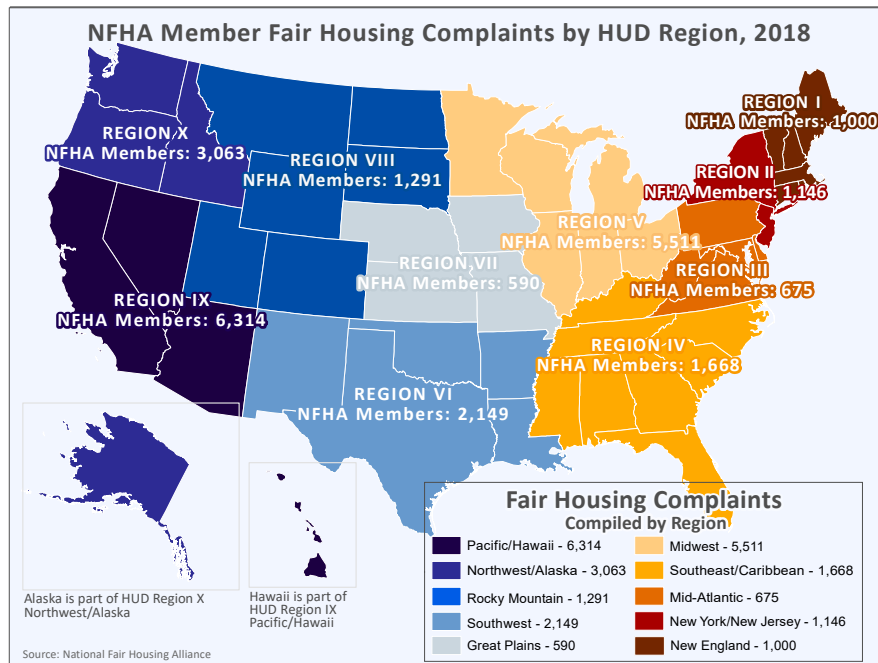
The data collected for this report represents only a small portion of the estimated 4 million incidences of housing discrimination that occur each year. Housing discrimination often goes undetected and unreported because it is difficult to identify or prove. It is common for victims of discrimination to feel that nothing can, or will, be done about discrimination they experience. It is also common for people to fear retaliation by their housing provider, landlord, or harassing neighbors, so they do not report discriminatory conduct.

This report includes submissions from 80 NFHA member organizations that are nonprofit fair housing organizations and legal aid agencies. It also includes data from 10 regional HUD offices and 83 FHAP agencies<sup>4</sup> that participate in the FHAP program administered by HUD, through which they receive annual funding to support fair housing administrative and enforcement activities. FHAP agencies carry out the following activities: complaint intake and investigation, conciliation, administrative and/or judicial enforcement, and education and outreach.

The maps below break out the data by the ten HUD regions. The first map depicts the data for all agencies combined. The second map depicts the data just for NFHA members, and the third map depicts the data for HUD and FHAP agencies combined. It should be noted that there are many states that do not have a private or governmental fair housing enforcement agency and that large parts of many other states lack a fair housing enforcement agency as well. This can make it difficult for consumers to understand their fair housing rights and to know where and how to file a housing discrimination complaint.



4 See <https://www.hud.gov/sites/dfiles/CFO/documents/34%20-%20FY19CJ%20-%20FHEO%20-%20Fair%20Housing%20Programs.pdf>.



## National Data by Protected Class

This section details the national data by protected class, or basis of discrimination. Disability is again the basis for the majority of complaints filed with FHOs, HUD, and FHAP agencies. Disability complaints increased by 1,238 from 2017 to 2018. This has been the trend for the past several years. It should be noted that discrimination on the basis of disability is the easiest to detect as it usually involves denial of a request for a reasonable accommodation or modification or because it involves a multi-family property that is not



accessible in obvious ways that violate the requirements of the Fair Housing Act. There were 17,575 complaints of discrimination based on disability, representing 56.33 percent of all cases. The second most reported type of discrimination was on the basis of race, with 5,849 complaints, or 18.75 percent of all cases. This was followed by familial status with 2,721 complaints (8.72 percent); national origin with 2,351 complaints (7.53 percent); sex with 1,956 complaints (6.27 percent); color with 596 complaints (1.91 percent); and religion with 407 complaints (1.30 percent).

**Table 2**  
**Fair Housing Complaint Data by Protected Class**

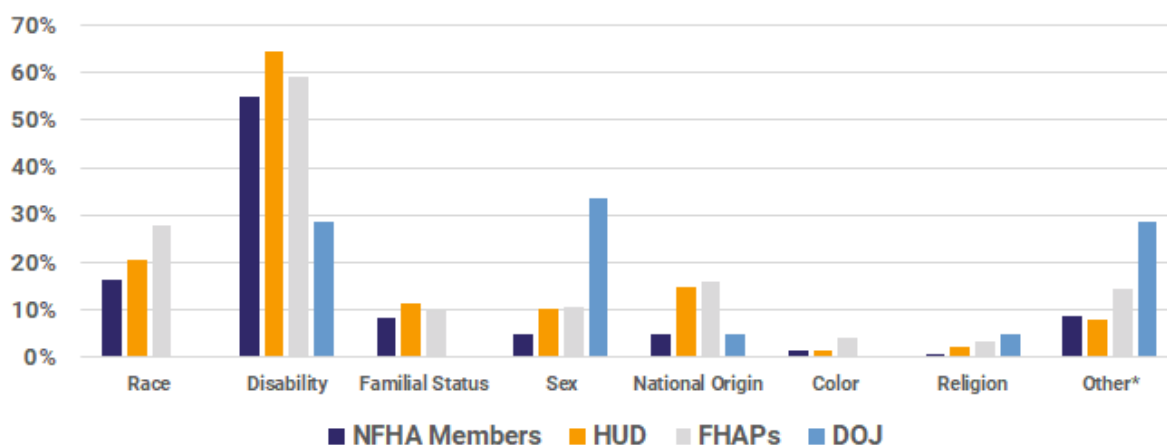
Basis	NFHA Members	HUD	FHAPs	DOJ
Race	16.28%	20.68%	27.89%	0.00%
Disability	55.02%	64.35%	59.18%	28.57%
Familial Status	8.29%	11.15%	9.70%	0.00%
Sex	4.86%	10.15%	10.54%	33.33%
National Origin	4.88%	14.69%	15.78%	4.76%
Color	1.42%	1.23%	4.03%	0.00%
Religion	0.76%	2.02%	3.19%	4.76%
Other*	8.48%	8.07%	14.23%	28.57%
<b>NOTE:</b> Some reported complaints included more than one basis of discrimination.				

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. In 2018, 2,991 complaints (9.59 percent of all complaints) involved a basis of discrimination in the “other” category, 605 complaints more than in 2017. The “other” complaints reported by fair housing organizations included the following:

- Source of Income/Rental Assistance (978 complaints)
- Age/Student Status (174 complaints)
- Sexual Orientation (179 complaints)
- Retaliation (20 complaints)
- Marital Status (110 complaints)
- Gender Identity/Expression (82 complaints)
- Criminal Background/Ex-Offender/Felony (37 complaints)
- Victims of Domestic Violence (30 complaints)
- Arbitrary (in California rentals only) (24 complaints)
- Military/Veteran Status (17 complaints)
- Ancestry/Primary Language (15 complaints)
- Place of Residence/Homelessness (11 complaints)
- Immigration Status/Primary Language (7 complaints)

The “other” category reported by HUD and FHAP agencies includes Retaliatory Claims, and Military Status is included by DOJ. There were 1,005 retaliatory and military status complaints received in 2018.

## Discrimination by Protected Class in 2018

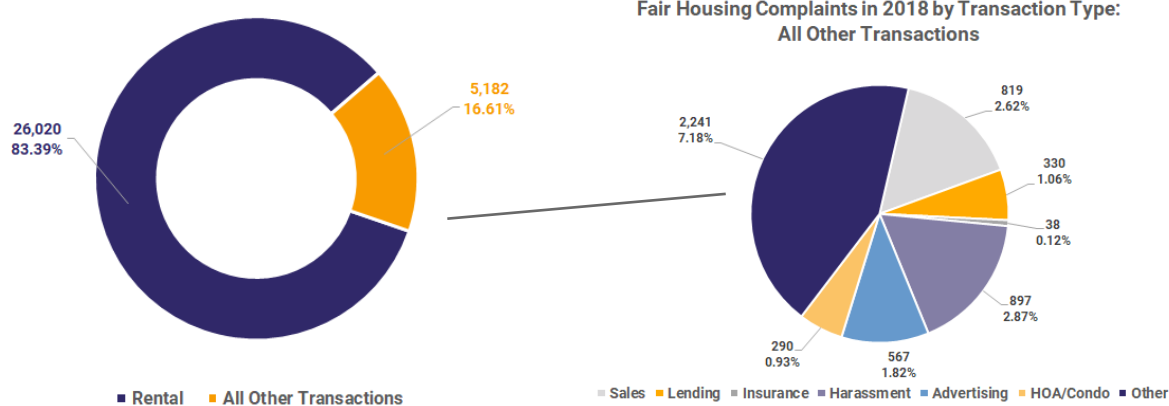


**NOTE:** Some reported complaints included more than one basis of discrimination.

## National Housing Discrimination Complaint Data by Transaction Type

Housing discrimination can and does occur in different types of housing transactions and housing-related situations. The data in this section is based on complaints received by private fair housing organizations that occurred in rental transactions; real estate sales; mortgage lending; homeowners' insurance; and harassment based on protected status, such as race, national origin, disability, religion, or sex.

### Fair Housing Complaints in 2018 by Transaction Type



### Rental Market – 26,020 Complaints

As in prior years, housing discrimination complaints reported in 2018 were overwhelmingly rental-related. The reason for the prevalence of discrimination in the rental market is that it is the most common and frequent type of housing transaction. It is also easier to detect discrimination due to the simplicity of the transaction itself. In 2018, there were 26,020

rental housing discrimination complaints, representing 83.39 percent of all transaction types, up slightly from 82.05 in 2017.

#### *Real Estate Sales – 819 Complaints*

Real estate sales complaints comprised 2.62 percent of all housing discrimination cases. In 2018, there were 819 complaints of housing discrimination that occurred during real estate sales transactions. This number is relatively consistent with the 805 real estate complaints filed in 2017, which represented 2.8 percent of complaints.

#### *Mortgage Lending – 330 Complaints*

There were 330 complaints of mortgage lending discrimination in 2018, representing 1.06 percent of all complaints. There were 380 lending complaints in filed in 2017, representing 1.32 percent of complaints.

#### *Homeowners Insurance – 38 Complaints*

Discrimination in the provision of homeowners' insurance can be very difficult to identify because the transaction is complex and not well understood by homeowners. In 2018, 38 complaints of homeowners' insurance-related discrimination were reported, representing less than one percent of all cases. This represents an increase from the 24 complaints reported in 2017.

#### *Harassment – 897 Complaints*

Acts of housing-related harassment, although easily recognizable, often go unreported, primarily because of fear of housing loss or additional harassment. Women, people of color, people of different religions, persons with disabilities, immigrants, persons with housing assistance, and others are vulnerable to harassment in housing because they are often in precarious housing situations. Only FHOs reported receipt of harassment complaints. There were 897 complaints of harassment in 2018 (2.9 percent of complaints), up significantly from 747 in 2017 and 640 in 2016. Harassment based on protected class can occur in the form of coercion, intimidation, threats or interference, both in the provision of housing or in a housing setting. Housing-related harassment is illegal under the Fair Housing Act. In 2018, 391 of the 897 harassment complaints were on the basis of disability, 149 were on the basis of race, and 139 were on the basis of sex. The remaining harassment complaints were based on familial status (62), national origin (60), color (24), religion (14), and other (58).

#### *Advertising, HOA/Condo, and Other Housing-Related Transactions – 3,098 Complaints*

In 2018, there were 3,098 complaints that fell into the "other transaction" category. HUD and FHAP data do not include information about what they constitute as "other" housing-



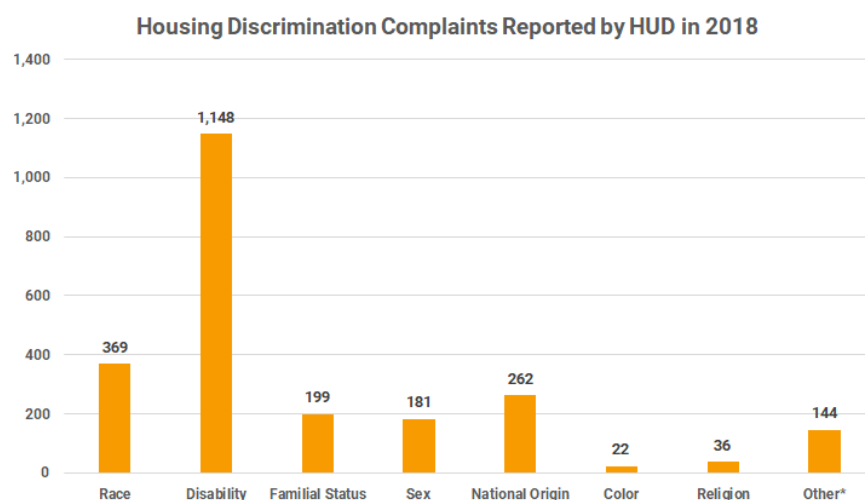
related transactions. Thus, we do not have more detailed information for the 2,241 complaints that fall into this category. In addition to the rental, real estate sales, mortgage lending, homeowners insurance, and harassment transactions discussed above, FHOs processed fair housing complaints involving 567 discriminatory housing advertisements, and 290 complaints involving Home Owner Associations or condominiums.

## Complaint Data Reported by HUD and FHAP Agencies

HUD's Office of Fair Housing and Equal Opportunity (FHEO) is responsible for enforcement of the requirements of the Fair Housing Act. FHEO enforces the Fair Housing 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 and conciliate housing discrimination complaints filed under the Fair Housing Act. It can also initiate investigations and file complaints on behalf of the Secretary of HUD, as authorized under Section 810 of the Fair Housing Act. In addition to enforcement activities, HUD 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 Administrative Complaints*

HUD received 1,784 discrimination complaints in FY 2018, an increase of 473 complaints over 2017. The chart below details the HUD complaint information by protected class.



### Secretary-Initiated Complaints

The Fair Housing Act allows HUD to initiate complaints when (1) the department 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 2018, there were eight secretary-initiated complaints open or pending, down from 11 in 2017, 16 in 2016, and 33 in 2015. In five of these cases, disability was the protected basis of discrimination. It appears there was only one new case in 2018 and that the others were carried over from prior years.

**Table 4**  
**Secretary-Initiated Complaints by Protected Class**

Protected Base(s) of Discrimination	Number of Cases
Disability (alone)	5
Familial Status (alone)	1
Race, National Origin	1
Disability, Race, Familial Status, Sex, Religion, Color	1
<b>Total</b>	<b>8</b>

### Charged Cases

**Table 5**  
**HUD Charged Cases**

Year	HUD Charged Cases
2008	48
2009	49
2010	36
2011	55
2012	43
2013	37
2014	27
2015	28
2016	37
2017	19
2018	28

In 2018, HUD charged 28 cases, compared to 19 charges in 2017 and 37 charges in 2016. A “charge” is issued when HUD believes there is reasonable cause to believe discrimination has occurred. HUD cases are more frequently resolved through conciliation or closed for administrative reasons. Administrative reasons include untimely filing, jurisdiction issues, withdrawal by the complainant without resolution, or inability to locate the respondent.

FHAP agencies also play an important role in the charging and closure of cases. HUD refers complaints that originate in cities or states with a FHAP agency to that agency. A FHAP agency may issue a “cause” determination if it determines probable discrimination has occurred. In 2018, there were 419 cause determinations at FHAP agencies, an increase from 383 in 2017.

The table below shows the types of HUD and FHAP case completions in 2018. There were 7,844 completions. There were 1,763 case completions by HUD and 6,081 by FHAP agencies. There were 45 more cases charged or caused by HUD and FHAP agencies in 2018 than in 2017. There were 303 fewer cases conciliated or settled by HUD or FHAP agencies in 2018 than in 2017.

**Table 6**  
**HUD and FHAP Case Completions in 2018**

Case Completion Type	HUD	FHAPs	Total
Administrative Closure	302	629	931
Charged or FHAP Caused	28	419	447
Conciliation/ Settlement	662	1,284	1,946
DOJ Closure	3	-	3
No Cause	603	3,279	3,882
Withdrawn after Resolution	165	470	635
<b>Total</b>	<b>1,763</b>	<b>6,081</b>	<b>7,844</b>

### *Aged Cases*

With the exception of complex investigations, (for example, mortgage lending or insurance discrimination cases) or systemic cases, HUD regulations under the Fair

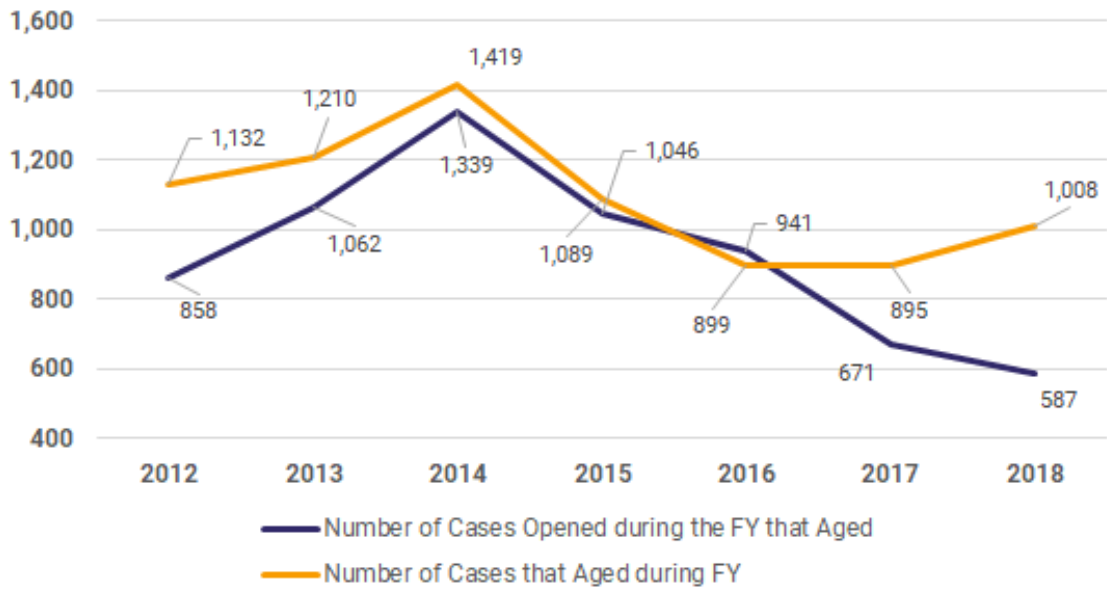


Housing Act require that HUD and FHAP agencies complete their investigations of fair housing complaints within 100 days of the initial receipt of a complaint. If a case exceeds the 100-day statutory mark, it is an “aged” case. Aged cases at HUD and FHAP agencies often remain stalled for several years. The failure to complete a timely and thorough investigation leaves complainants and respondents in limbo and is an injustice to all parties involved in resolving the complaints.

HUD had 587 new aged cases during FY 2018, a decrease from the 671 new aged cases during FY2017. These are cases that were opened and passed the 100-day mark during the fiscal year. HUD also had 1,008 ongoing cases that continued to age during FY2018. This number is an increase over FY2017 when HUD had 895 ongoing cases that continued to age in FY2017.

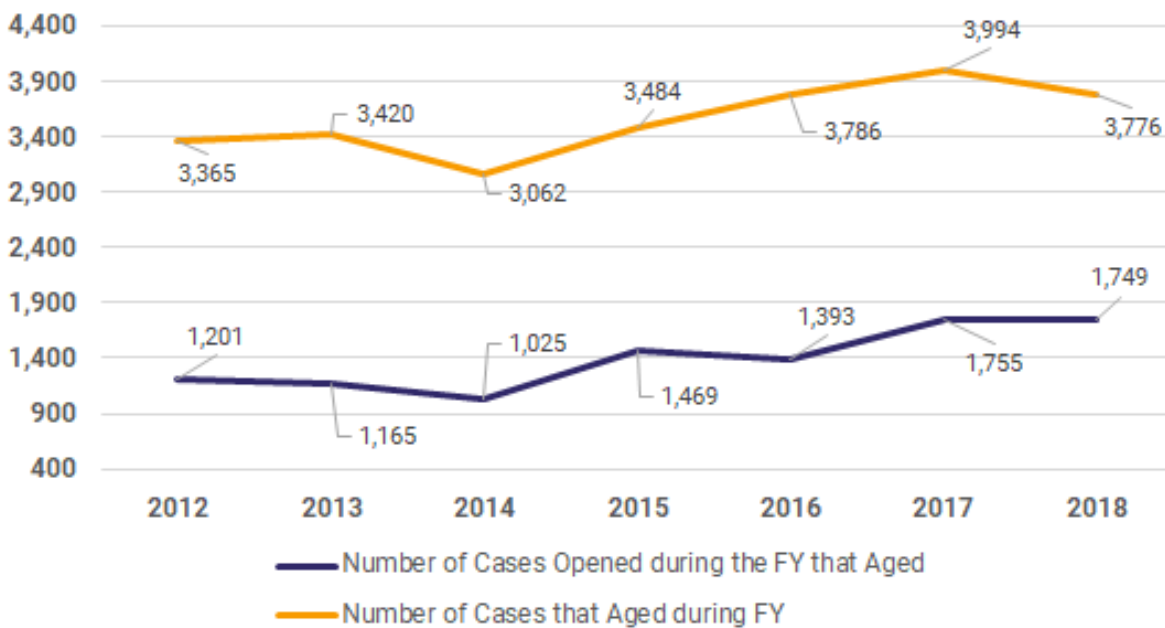


### Number of Aged Cases FY2012 - FY2018 (HUD)



FHAP agencies had 1,749 cases that were opened and aged during FY2018, compared to 1,755 cases during FY2017. FHAP agencies also had 3,776 ongoing cases that continued to age during FY2018, a decrease of 218 cases compared to the 3,994 ongoing cases that continued to age during FY2017.

### Number of Aged Cases FY2012 - FY2018 (FHAPs)



## Complaint Data Reported by DOJ and DOJ Cases

The Department of Justice's (DOJ or the Department) 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, and source of income. Under ECOA, DOJ 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, and the Department can bring 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.

The FHAA 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. 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.

DOJ's Housing and Civil Enforcement Section (DOJ) filed 24 cases during FY2018, a decrease from the 41 cases filed the previous year. Of these, 15 were pattern or practice cases, consisting of seven rental cases (one based on disability, six alleging sexual harassment in housing); one case challenging discrimination by a local government in the land use and zoning process; one case brought under the Religious Land Use and Institutionalized Persons Act; and six cases alleging violations of the Servicemembers Relief Act. Of the remaining nine cases, five were HUD election cases, one was a HUD enforcement action, and three were amicus or interventions. This includes an important statement of interest in *National Fair Housing Alliance et al. v. Facebook, Inc.*, (S.D.N.Y.) in support of the plaintiffs' position that the Communications Decency Act does not prevent a Fair Housing Act lawsuit against Facebook for the conduct alleged in the complaint.

During 2018, DOJ established a new Sexual Harassment in Housing Initiative. The Department opened a record number of sexual harassment investigations, leading to six pattern-or-practice lawsuits challenging alleged sexual harassment in housing, more than in any previous year. It held 20 roundtables about sexual harassment in housing with U.S. Attorneys' Offices across the country, providing for collaboration with local community partners and law enforcement. It released a Public Service Announcement video featuring victims of sexual harassment and launched a webpage on sexual

harassment that includes access to several resources. The Department and HUD also announced a joint task force to combat sexual harassment in housing.

DOJ obtained 27 favorable judgments and settlements, resulting in a total of \$7 million in monetary relief. Those include the following:

In addition to filing six cases involving sexual harassment, the Department settled two sexual harassment cases, *United States v. Webb* (discussed in Section 3) and *United States v. Tjoelker* (W.D. Mich.). The *Webb* settlement provides \$600,000 in damages for 15 former and prospective tenants and a \$25,000 penalty. In *Tjoelker*, the defendant agreed to pay \$140,000 to compensate ten victims and a \$10,000 civil penalty.

In FY2018, the Department entered into a significant settlement resolving an exclusionary zoning case. In *United States v. Village of Tinley Park* (N.D. Ill.), the United States alleged that the Village engaged in a pattern or practice of unlawful discrimination and denied rights to a group of persons on the basis of race and color in violation of the Fair Housing Act (FHA) when it refused to permit the construction of an affordable housing project in response to racially motivated public opposition. In an August 2018 settlement, the Village agreed to pay a total of \$360,000 in monetary damages to the Village's former planning director, who was placed on leave because of her support for the project, as well as a \$50,000 civil penalty. The Village also agreed to take a number of steps to prevent future discrimination, including hiring a fair housing compliance officer.

The Department entered into a settlement agreement with Pacific Mercantile Bank, resolving the United States' claims that the bank engaged in a pattern or practice of discrimination on the bases of race and national origin in violation of the FHA and the Equal Credit Opportunity Act. The settlement provides \$1 million in relief to borrowers whom the United States alleges were harmed based on discrimination in the pricing of mortgage loans.

The Department obtained a \$43,500 jury verdict in *United States v. DeRaffele* (D. Mass.), a case alleging that the owner of a four-unit rental property included a rider in his leases stating that "no one is pregnant in the family," and "if someone living on the premises becomes pregnant they will vacate the premises prior to the birth of the baby." In January 2019, the U.S. Court of Appeals for the First Circuit affirmed the jury verdict.

In a race-based case, the Department filed *United States v. Dyersburg Apartments, Ltd.* (W.D. Tenn.), alleging that defendants discriminated on the basis of race in violation of the FHA. Specifically, the complaint alleges that defendants denied the rental application of the HUD complainant, who is Black, because of his criminal record, despite contemporaneously approving the rental applications of two White applicants with felony convictions.



The Department filed and settled cases alleging disability discrimination in a variety of contexts. In *United States v. Housing Authority of the City of Bridgeport, d/b/a Park City Communities* (D. Conn.), it alleged that the Housing Authority discriminated on the basis of disability in violation of the FHA, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act by systematically mishandling and failing to fulfill requests for reasonable accommodations. It also alleged that the Housing Authority failed to meet its community's need for accessible units many years after federal regulations and a voluntary compliance agreement with HUD required it to do so. This case remains in active litigation.

More detailed information about cases filed/settled by the Department of Justice is available at <https://www.justice.gov/crt/housing-and-civil-enforcement-section-cases-1>.

## SECTION II.

# ASSAULTS ON THE FAIR HOUSING ACT

### HUD's Disturbing Attack on Affirmatively Furthering Fair Housing

The year 2018 should have seen the second full year of implementation of the Affirmatively Furthering Fair Housing (AFFH) regulation that HUD adopted in 2015. In 2018 alone, more than 100 jurisdictions that receive CDBG and other HUD funds should have been engaged in fair housing planning to inform their Consolidated Plans, or ConPlans, which detail how they expect to spend those funds and other housing and community development resources over the next 3-5 years. And if the first 18 months of the AFFH regulation's implementation were any indication, the nation would have begun taking concrete actions to fulfill Congress' 1968 mandate to end segregation and housing discrimination and undo the harms they have caused.

**THE 2015 AFFH RULE ENSURED THAT, FOR THE FIRST TIME, JURISDICTIONS WOULD BE HELD ACCOUNTABLE FOR MAKING MEANINGFUL PROGRESS IN KNOCKING DOWN BARRIERS TO FAIR HOUSING CHOICE AND ENSURING THAT ALL NEIGHBORHOODS HAVE THE RESOURCES NECESSARY FOR THEIR RESIDENTS TO FLOURISH. IN A SHOCKING MOVE, HUD NULLIFIED THIS RULE.**

Instead, AFFH implementation came to a disturbing and grinding halt when HUD effectively suspended the 2015 rule. On January 5, 2018, HUD published a notice in the Federal Register, extending by two years the time at which jurisdictions would be required to begin conducting and submitting their Assessments of Fair Housing (AFHs), the far superior replacements for the old fair housing plans known as Analyses of Impediments to Fair Housing Choice (AIs). The timing of the ConPlan<sup>5</sup> cycle meant that the vast majority of the CDBG entitlement jurisdictions in the country would be submitting ConPlans during the two-year period covering HUD's extension. Thus, the extension of the AFH submission deadline effectively suspended the AFFH rule.

<sup>5</sup> The Consolidated Plan is designed to help states and local jurisdictions to assess their affordable housing and community development needs and market conditions, and to make data-driven, place-based investment decisions. The consolidated planning process serves as the framework for a community-wide dialogue to identify housing and community development priorities that align and focus funding from the CPD formula block grant programs. More information is available at <https://www.hudexchange.info/programs/consolidated-plan/>.

The early results of the 2015 regulation were very promising. It made the old ineffective mechanism and process for fair housing compliance obsolete and replaced it with a system that provided a much higher level of accountability. The old process recommended that jurisdictions conduct an AI every 5 years, in which these entities would identify barriers to fair housing and solutions they would implement to overcome them. But that system did not work. Advocates, grantees, the Government Accountability Office<sup>6</sup> and HUD itself had determined that this process was woefully insufficient and was not an effective way to ensure that either HUD or its program participants were fulfilling their statutory obligations to affirmatively further fair housing.

In contrast to the old AI process, most of the jurisdictions that undertook the new Assessment of Fair Housing engaged more robustly with fair housing and other community groups in the process, conducted analyses that focused more clearly on critical fair housing issues, and identified specific goals they intended to achieve, with associated metrics and timelines. The rule required that jurisdictions incorporate these fair housing priorities into their Consolidated Plans and report annually on their progress toward achieving those goals. This meant that—for the first time since the Fair Housing Act was passed in 1968—jurisdictions would be held accountable for making meaningful progress in knocking down barriers to fair housing choice and ensuring that all neighborhoods have access to the resources and amenities their residents need to flourish.

NFHA, Texas Housers, and Texas Appleseed sued HUD in federal court in May 2018,<sup>7</sup> alleging that it had violated the Administrative Procedure Act.<sup>8</sup> The State of New York sought to intervene in the case on the side of NFHA and the other plaintiffs, arguing that removing the more effective Assessment of Fair Housing process would make the state more susceptible to legal action. In fact, for years, jurisdictions and other program participants had asked HUD to develop a more prescriptive and well-devised system for ensuring compliance with the



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THE AFFH PROVISION.**

6 See, "Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans." 2010 Report to Congress - GAO-10-905. The GAO highlighted the weaknesses of the AI process and admonished HUD to reform the system for ensuring grantees and program participants were complying with the Affirmatively Furthering Fair Housing provision of the federal Fair Housing Act. Available at: <https://www.gao.gov/assets/320/311065.pdf>.

7 See, *NFHA, et al. v. Ben Carson*, Secretary of the U.S. Department of Housing and Urban Development and U.S. Department of Housing and Urban Development at <https://nationalfairhousing.org/wp-content/uploads/2018/05/Filed-complaint-1.pdf>.

8 Plaintiffs were represented by Relman, Dane and Colfax PLLC, NAACP Legal Defense & Educational Fund, Inc., Lawyers' Committee for Civil Rights Under Law, Poverty & Race Research Action Council, American Civil Liberties Union, Public Citizen Litigation Group, Morgan Williams (NFHA), and Madison Sloan (Texas Appleseed).



AFFH provision.

In response to this lawsuit, HUD withdrew the January 5th notice and issued two new notices. One withdrew the AFFH Assessment Tool for Local Governments, which was the online form that jurisdictions used to conduct and submit their AFHs. The other reminded jurisdictions of their continuing obligation to affirmatively further fair housing and the circumstances under which HUD could enforce that obligation; it also instructed them to return to the old, failed system of conducting AIs. All of the Federal Register notices are available [here](#).<sup>9</sup> HUD essentially left the original 2015 AFFH Rule in place but removed all the elements requiring jurisdictions and program participants to complete the more effective and robust Assessment of Fair Housing. It was analogous to providing someone who is in dire need of transportation the shell of a car without the engine, wheels, or transmission.

NFHA and its co-plaintiffs amended the lawsuit to respond to HUD's actions. A hearing on the case was held in August 2018. On August 17th, Judge Howell issued an unfavorable ruling. She dismissed the case, stating that the plaintiffs had failed to establish standing. On September 14th, NFHA and co-plaintiffs filed a motion for reconsideration and a second amended complaint, but the court declined to grant the motion.

### *New Proposed AFFH Rule*

HUD took the first step toward developing a new AFFH regulation in August 2018 when it solicited input by publishing an Advance Notice of Proposed Rulemaking. In its spring 2019 semi-annual regulatory agenda, HUD indicated that it might publish a new proposed AFFH rule for public comment in December 2019. The regulatory agenda is not a binding document but indicates the agency's projected timeline for various rule-making efforts. While HUD has yet to make any formal announcement about what that rule will look like, HUD Secretary Ben Carson has given some hints about the direction HUD may take. For example, in testimony before the House Appropriations Committee in April, the Secretary remarked that, "segregation persists because Black people can't afford to live in other places," and that what we really need to do to make housing fair is to build more affordable housing. He cited exclusionary zoning as the primary barrier to affordable housing development and suggested that HUD could give bonus points for jurisdictions that eliminate exclusionary zoning and other land use barriers. Elsewhere, he has floated the idea of withholding CDBG funds from jurisdictions that fail to eliminate exclusionary zoning.

It goes without saying that Secretary Carson's disquieting assessment about why segregation remains intact flies in the face of myriad studies that demonstrate segregation persists, in part, because the federal government has never fully enforced the Fair Housing

9 See "HUD Announces It Will Publish Three Federal Register Notices," HUD Exchange, May 18, 2018. Available at: <https://www.hudexchange.info/news/hud-announces-it-will-publish-three-federal-register-notices/>.

Act, and in particular, the AFFH provision of the law. Moreover, studies have borne out that segregation is unrelenting because we have not disassembled the structural racism and systemic barriers upon which segregation was predicated.

HUD's emphasis on zoning as the primary approach to fulfilling AFFH obligations raises definitional, legal, and conceptual concerns. First, there is no standard definition of exclusionary zoning, making it difficult for HUD to determine whether a jurisdiction's zoning ordinance complies with some unstated non-exclusionary standard, or to specify what changes may be needed to bring it into compliance. Second, Congress currently bars HUD from requiring jurisdictions to change their zoning as part of its enforcement of the AFFH regulation, complicating any effort by HUD to institute zoning requirements as part of its AFFH regulations. And third, while fair housing advocates certainly support efforts to eliminate exclusionary zoning and agree that a review of a jurisdiction's zoning ordinance is an appropriate and often necessary element of its AFFH efforts, eliminating exclusionary zoning—by itself—will not adequately address either housing discrimination or residential segregation, let alone solve the affordable housing crisis, as the Secretary's comments seem to suggest.

**SEGREGATION PERSISTS . . .  
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### *New Approach - Zoning*

Secretary Carson's comments appear to reflect, at least in part, a lack of clarity about what it means to affirmatively further fair housing, as well as confusion about the difference between fair housing and affordable housing. They imply a belief that the private market, left to its own devices, will solve the problems of housing discrimination, segregation, and housing affordability, a proposition that history does not support.

Any new proposed AFFH regulation must be grounded in a clear understanding of the AFFH mandate, as evidenced by the legislative history of the Fair Housing Act and relevant judicial findings like those that HUD itself cited in the preamble to its 2015 rule.

As that preamble explained, Sec. 3608(d) of the Fair Housing Act, which spells out HUD's AFFH obligation, is, "not only a mandate to refrain from discrimination but **a mandate to take the type of actions that undo historic patterns of segregation and other types of discrimination and afford access to opportunity that has long been denied.**" (emphasis added).<sup>10</sup>

<sup>10</sup> 80 FR 42274.

The preamble noted that Congress has reinforced this mandate in several other statutes, including the Housing and Community Development Act of 1974, the Cranston-Gonzalez National Affordable Housing Act, and the Quality Housing and Work Responsibility Act of 1998, each of which requires HUD's grantees to certify, as a condition of receiving funds, that they are affirmatively furthering fair housing.

HUD went on in the preamble to explain that courts, when examining the relevant statutes and legislative history, have found that, "the purpose of the affirmatively furthering fair housing mandate is to ensure that recipients of federal housing and urban development funds and other federal funds do more than simply not discriminate: **Recipients also must take actions to address segregation and related barriers for groups with characteristics protected by the Act, as often reflected in racially or ethnically concentrated areas of poverty**" (emphasis added).<sup>11</sup>

The preamble cited the courts' findings in several specific cases that address the AFFH mandate, including the decision of the Supreme Court in *Trafficante v. Metro. Life Insurance*. (409 U.S. 205, 211 (1972)) That decision quotes Senator Walter F. Mondale, one of the original co-sponsors of the Fair Housing Act, who stated, "The reach of the proposed law was to replace the ghettos by 'truly integrated and balanced living patterns.'" As the court stated, "**The Act recognized that 'where a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions'**" (emphasis added).<sup>12</sup>

THE ACT RECOGNIZED THAT  
"WHERE A FAMILY LIVES,  
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BETTER JOBS, ECONOMIC  
MOTIVATION, AND GOOD  
LIVING CONDITIONS."

- U.S. SUPREME COURT  
TRAFFICANTE V. METROPOLITAN  
LIFE INSURANCE

The preamble also cited the decision in *NAACP, Boston Chapter v. HUD* (817 F.2d at 154), in which the First Circuit explained that with this section of the Fair Housing Act: "**Congress intended HUD to do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases**" (emphasis added).<sup>13</sup>

Finally, the preamble cited the Second Circuit decision in *Otero v. New York City Housing Authority* (484 F.2d at 1134, emphasis added) which found that Sec. 3608(d) of the Fair Housing Act requires that "**[a]ction must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunity the Act was designed to combat**" (emphasis added).<sup>14</sup>

11 Ibid.

12 Op. cit.

13 Op. cit.

14 Op. cit.

As this legislative history and these judicial findings make clear, the AFFH mandate requires HUD and its grantees to take deliberate steps to overcome patterns of segregation and the harms they cause, and to ensure that members of protected classes have equitable access to opportunities that are inextricably linked to the neighborhood in which a person lives, such as quality education, quality credit, good jobs and good living conditions.

The achievement of this goal may be hindered by local zoning ordinances that are exclusionary, prohibiting the construction of various forms of housing that may help in changing our segregated residential patterns. It is entirely appropriate for a jurisdiction, as part of its fair housing planning process, to review its zoning code and make any necessary revisions.

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PURPOSE, **ZONING IS A VERY  
BLUNT INSTRUMENT****

However, it would be wrong to rely entirely, or even to any significant degree, on changes to local zoning ordinances as a strategy for implementing the Fair Housing Act's AFFH provisions. For this purpose, zoning is a very blunt instrument. It may eliminate a barrier to the construction of new housing, which in turn might increase the supply of housing and ease the pressure on rents and home prices. However, it will not ensure that new construction takes place, that it is affordable to low- and moderate-income people or members of protected classes, or that it will provide the type of housing needed in the locations where it is lacking.

For example, zoning changes alone will not result in housing that is affordable to low- and moderate-income people. In most places, subsidies are necessary to bring housing costs down to affordable levels. However, the funds available at the federal level for housing subsidies—both to construct new units and to preserve the ones we have—have been cut repeatedly and fall far short of the need. Changing zoning will not increase the amount of funding available to make housing costs affordable to people with low or moderate incomes.

The Center on Budget and Policy Priorities reports that funding for public housing repairs fell 35 percent between 2000 and 2018.<sup>15</sup> The Center also reports that, due to funding limitations, only one in four households eligible for housing assistance, receives that assistance.<sup>16</sup>

15 Bell, Alison and Douglas Rice, "Congress Prioritizes Housing Programs in 2018 Funding Bill, Rejects Trump Administration Proposals," July 19, 2018, available at <https://www.cbpp.org/research/housing/congress-prioritizes-housing-programs-in-2018-funding-bill-rejects-trump>.

16 Fischer, Will and Barbara Sard, "Chart Book: Federal Housing Spending is Poorly Matched to Need," March 8, 2017, available at <https://www.cbpp.org/research/housing/chart-book-federal-housing-spend>.



The nation's largest affordable housing construction and preservation program is the Low-Income Housing Tax Credit, which has produced or preserved some 2.3 million units of affordable housing for low-income households since 1987, according to research from the Urban Institute.<sup>17</sup> However, the impact of that program may be undermined by the significant cuts to taxes made in the 2017 Tax Cuts and Jobs Act. Investors purchase tax credits to offset their tax liabilities. When tax liability goes down, so does the demand for tax credits. Neither of these problems can be solved by zoning changes.

**LOW ZONING BARRIERS ARE  
NOT A PANACEA. HOUSTON,  
WHICH HAS NO ZONING, IS  
HIGHLY SEGREGATED AND,  
BECAUSE OF ITS POLICIES,  
HAS CONCENTRATED  
PUBLICLY SUPPORTED  
HOUSING IN LOW-INCOME  
NEIGHBORHOODS OF COLOR.**

Further, zoning changes are not an effective mechanism for ensuring that new housing, even if it is affordable to low- and moderate-income people, is constructed in locations that offer residents equitable access to community resources. If it did, in a city like Houston, which has no zoning, one would expect to see affordable housing built throughout a wide range of neighborhoods; however, the opposite is true. Publicly supported housing in that city is so concentrated in poor neighborhoods of color that in 2017, a HUD investigation determined that the City had violated Title VI because of the procedures it used to decide where affordable housing could be located. Clearly, the lack of exclusionary zoning—or any zoning—was not enough to ensure housing equity. Further, despite its lack of zoning, and affordable housing aside, Houston remains a highly segregated city.

Additionally, zoning changes will not eliminate discriminatory practices in the real estate, insurance, or lending industries, and thus they cannot ensure an end to the perpetuation of segregation. Members of protected classes at all income levels often face these barriers, which are not a function of housing affordability. A case in point is the high rate at which Black and Hispanic homeowners received subprime and option-adjustable rate mortgage loans between 2004 and 2008—the run up to the foreclosure crisis. According to the Center for Responsible Lending (CRL), Black and Hispanic borrowers with credit scores above 660, who should have qualified for conventional credit, received subprime loans three times more often than white borrowers with similar scores. These were toxic loans designed to fail, which they did, causing high foreclosure rates in communities of color and a severe loss of wealth for the families affected. CRL's research indicates that 10 percent of Blacks and 15 percent of Hispanics in higher-income brackets who took out mortgages during that period lost their homes to foreclosure, compared to 4.6

[ing-is-poorly-matched-to-need.](#)

17 Scally, Corianne Payton, Amanda Gold and Nicole DuBois, "How the Tax Cuts and Jobs Act puts affordable housing production at risk," July 12, 2018, available at <https://www.urban.org/urban-wire/how-tax-cuts-and-jobs-act-puts-affordable-housing-production-risk>.

percent of Whites with the same levels of income.<sup>18</sup>

The toxic and unsustainable mortgages for which they were targeted dealt a severe blow to communities of color. The Pew Charitable Trusts found that between 2005 and 2009, Black households lost 53 percent of their wealth and Hispanic households lost 66 percent of their wealth, compared to a loss of only 16 percent among White households.<sup>19</sup> None of this was a function of zoning, and eliminating exclusionary zoning would do nothing to address it.

Finally, zoning changes are not an effective vehicle for bringing about strategic and targeted investments that will provide long-neglected and disinvested communities of color the resources their residents need and deserve. Such investments are a critical component of AFFH efforts and a prerequisite for creating equitable access to opportunity. The court's decision in the *Otero* case reminds us that this is what the AFFH mandate was intended to achieve.

For all these reasons, it would be a mistake for HUD to rely on jurisdictions acting to eliminate exclusionary zoning as a means to carry out its AFFH mandate. A much better path would be for HUD simply to reinstate the 2015 regulation and resume implementation and enforcement of that rule.

### *Recommendation*

HUD should reinstate the 2015 AFFH regulation and resume implementation and enforcement of that rule.



<sup>18</sup> Prior, Jon, "CRL: Good-credit minorities received 3 times more subprime loans than whites," Housing-Wire, November 17, 2011.

<sup>19</sup> Heimlich, Russell, "Recession Takes its Toll on Household Wealth," September 21, 2011, available at <https://www.pewresearch.org/fact-tank/2011/09/21/recession-takes-its-toll-on-household-wealth/>.

## HUD's Wholesale Attack on Disparate Impact

The National Fair Housing Alliance has reported in previous Trends Reports about long-standing and disturbing efforts to gut the disparate impact doctrine under the Fair Housing Act (the “Act”). NFHA and other civil rights partners have been diligent, and successful, in the fight to preserve disparate impact and beat back chilling attempts to nullify this important protection.

Disparate impact is a well-established and widely accepted doctrine and a critical legal tool for challenging seemingly neutral policies or practices that actually have a discriminatory effect on protected classes. The fair housing movement advocated extensively with HUD to unify procedurally divergent standards for bringing and defending against disparate impact claims through the promulgation of a final rule in 2013. NFHA and others also were heavily engaged in the effort to ensure that the Supreme Court fully recognized the cognizability of disparate impact claims under the Act, which it did in its 2015 landmark decision in *Texas Dep’t of Hous. & Community Affairs v. Inclusive Communities Project* (“*Inclusive Communities*”). Since then, lending and insurance industry trade associations have made every attempt to challenge the legitimacy of the 2013 disparate impact rule by falsely claiming it to be in conflict with the *Inclusive Communities* decision.

In the fall of 2017, the Trump Administration began taking steps to undermine the ability of victims of discrimination to bring disparate impact claims under the Fair Housing Act. In October 2017, the Department of the Treasury issued a report in which it recommended that HUD amend its disparate impact rule, especially as it pertained to its application to the insurance industry.<sup>20</sup> In August 2019, HUD issued a Notice of Proposed Rulemaking<sup>21</sup> in which it proposed an unprecedented set of pleading requirements for victims of discrimination to bring successful disparate impact claims, as well as unheard-of defenses for lenders, insurance companies, housing providers, and those using algorithmic-based systems.



THE TRUMP ADMINISTRATION  
HAS TAKEN STEPS TO GUT THE  
DISPARATE IMPACT DOCTRINE  
AND REVERSE THE SUPREME  
COURT'S 2015 RULING IN  
INCLUSIVE COMMUNITIES.

**The proposal creates overwhelming obstacles for victims to prove discrimination before they can even reach the discovery phase of a case.** The proposed rule introduces a 5-element *pleading* requirement for supporting a *prima facie* case to make a disparate

<sup>20</sup> See U.S. Department of the Treasury, “A Financial System That Creates Economic Opportunity: Asset Management and Insurance,” October 2017. Available at: [https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-That-Creates-Economic-Opportunities-Asset\\_Management-Insurance.pdf](https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-That-Creates-Economic-Opportunities-Asset_Management-Insurance.pdf).

<sup>21</sup> See HUD-2019-0067, “HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard,” RIN 2529-AA98.

impact claim, going far beyond what the 2013 rule requires. Victims are asked to guess what justifications a defendant might invoke and preemptively debunk them in order to survive a motion to dismiss and before having the benefit of discovery. This would mean that victims of discrimination would face a drastically higher burden to prove a disparate impact claim under the Fair Housing Act, making it virtually impossible to succeed. As the table below illustrates, the proposed rule suggests an incredible change in the standard for supporting a prima facie case and establishes a daunting threshold for victims that would nullify the ability to bring viable claims.

PRIMA FACIE CASE STANDARD FOR CURRENT AND PROPOSED RULE	
CURRENT RULE	PROPOSED RULE
1. The Plaintiff or Charging Party bears the burden of proving its prima facie case by showing that a policy or practice:	1. The Plaintiff or Charging Party bears the burden of proving a prima facie case by showing that a specific, identifiable policy or practice has a discriminatory effect by stating facts plausibly alleging each of the following elements:
A. Caused or predictably will cause a discriminatory effect on a group of persons or a community on the basis of race, color, religion, sex, disability, familial status, or national origin.	<p>A. That the challenged policy or practice is arbitrary, artificial, and unnecessary to achieve a valid interest or legitimate objective such as a practical business, profit, policy consideration, or requirement of law;</p> <p>B. That there is a robust causal link between the challenged policy or practice and a disparate impact on members of a protected class which shows the specific practice is the direct cause of the discriminatory effect;</p> <p>C. That the alleged disparity caused by the policy or practice has an adverse effect on members of a protected class;</p> <p>D. That the alleged disparity caused by the policy or practice is significant; and</p> <p>E. That there is a direct link between the disparate impact and the complaining party's alleged injury.</p>

**The proposed rule allows housing providers, lenders, and insurance companies to operate a policy or practice that is profitable regardless of its discriminatory outcomes.** Language in the proposed rule suggests that a rule or policy that is profitable could be immune from challenge for its discriminatory impact—with the burden on victims of discrimination to show that a less discriminatory policy exists that would serve the company's interest in an equally effective manner. Not only does the nondiscriminatory policy have to be equally of service to the company, but it also has to do so in a manner that does not create materially greater costs or other material burdens for a company **and** make the company at least as much money without discriminating. This is a nearly



impossible task for plaintiffs to meet.

**HUD's proposed changes create a safe harbor for practices that rely on the use of algorithms.** HUD's proposed rule would provide special defenses for business practices that rely on statistics or algorithms. This is particularly concerning as disparate impact is a critical and necessary tool to rein in discrimination in the use of algorithmic models—such as credit scoring, pricing, marketing, and automated underwriting systems. These can have starkly discriminatory effects, but can operate in a hidden box, making discriminatory outcomes difficult to attribute to any entity's intentional discrimination. HUD's proposed rule would effectively immunize such covert discrimination through algorithms.

**The proposed rule disincentivizes businesses from collecting and keeping data or records that may reveal discriminatory patterns.** This means that victims of discrimination will be unable to identify whether discrimination is happening behind their backs and will lack the ability to challenge it if they do detect discrimination. This also suggests that a business can operate a policy it knows is discriminatory and choose not to conduct standard record keeping to avoid liability should that policy be challenged.

By proposing these changes, the Trump Administration is setting a dangerous precedent that could allow many types of discrimination to prevail. This could include instances in which:

- A landlord could evict victims of domestic violence because the lease holds all tenants, even victims, responsible for crimes in their homes. This would have a disproportionate impact on women who are the primary victims of domestic abuse, placing them and their children at risk of homelessness and further violence.
- A bank could adopt unnecessary policies or systems that impose higher fees or interest rates on women, people of color, or people with disabilities who apply for home loans. Given the barriers to bringing a disparate impact claim, these consumers would be forced to take on risky or costly loans.
- An apartment building could set a limit of one person per bedroom. Families already face rising rental costs, and disparate impact liability is critical to ensuring artificial barriers like unreasonable occupancy restrictions do not exacerbate the housing affordability crisis.<sup>22</sup>

To combat this serious attack, NFHA, The Leadership Conference on Civil and Human Rights, NAACP Legal Defense and Educational Fund, Lawyers' Committee for Civil Rights Under Law, Poverty & Race Research Action Council, Center for Responsible Lending, and ACLU, launched the [#DefendCivilRights](https://www.defendcivilrights.org/)<sup>23</sup> campaign to preserve the

<sup>22</sup> See discussion of *Fair Housing Center of Washington v. Breier-Scheetz Properties LLC* in Section III of this report.

<sup>23</sup> See <https://www.defendcivilrights.org/>.

use of the disparate impact doctrine under the Fair Housing Act. The campaign was widely successful. Comments on HUD's proposed rule were due October 18, 2019. By that date, 45,740 comments<sup>24</sup> were submitted to HUD expressing concerns about the proposed rule from a wide array of civil rights advocates, legal experts, business groups, data scientists, and individuals from throughout the country.

**THE #DEFENDCIVILRIGHTS  
CAMPAIGN RESULTED IN AN  
INCREASE OF OVER 2000% IN  
THE NUMBER OF COMMENTS  
SUBMITTED TO HUD ON THE  
DISPARATE IMPACT RULE.**

### *Recommendations*

- HUD must immediately reinstate the 2013 disparate impact rule and bring back clarity and certainty about how seemingly neutral policies or practices that have a discriminatory effect can be challenged under the Fair Housing Act;
- Congress must conduct meaningful steps to strengthen the federal government's ability to effectively enforce the nation's civil rights laws, especially the Fair Housing Act, as they relate to algorithmic or Artificial-Intelligence (AI)-based decision-making in housing and housing-related services, employment, and credit services;
- Congress must pass comprehensive legislation to ensure federal agencies have effective authority to reign in the use of algorithms and AI-based decision-making systems; and
- Congress must ensure adequate funding via the Fair Housing Initiatives Program and Fair Housing Assistance Program to ensure effective education about and enforcement of disparate impact cases.

### **State Preemption of Local Fair Housing Ordinances**

The fair housing movement has seen considerable attacks on state and local fair housing laws intended to create fair housing protections or access to affordable housing. NFHA members have reported a rising interest among conservative state legislatures in passing legislation that preempts localities' ability to create various new protections, most prominently the creation of source of income protections, as well as efforts to institute inclusionary zoning laws.

In 2018, the NFHA partnered with the Local Solutions Support Center, Grounded Solutions Network, the Partnership for Working Families, Poverty & Race Research Action Council, and the Urban Law Center to map out where in the United States state preemption laws were passed to upend local fair housing ordinances.<sup>25</sup> The four preemption tactics researched

<sup>24</sup> Just under 2,000 comments were submitted for the 2018 Advanced Notice of Proposed Rulemaking on disparate impact. The #DefendCivilRights campaign helped yield an increase in comments on the proposed disparate impact rule of over 2000%.

<sup>25</sup> See *State Preemption of Local Equitable Housing Policies*, available at <http://www.supportdemocracy.org/equitablehousing/>.

were for source of income protections, inclusionary zoning ordinances, regulation of short-term rentals, and rent control policies. Here we focus on state preemption of local source of income protections and inclusionary zoning ordinances, as they have a more immediate effect on access and housing opportunity.

### *Source of Income Preemption*

As the nation's housing affordability crisis deepens and local and federal budgets fail to meet demonstrated affordable housing needs, localities and states are looking for ways to better leverage existing housing resources, such as the Housing Choice Voucher. The voucher plays a pivotal role in helping the lowest-income families, people with disabilities, people of color, and others find safe and affordable housing. However, Housing Choice Voucher holders often have difficulty finding decent affordable housing options where they can use the benefit. Many voucher households face discrimination by private landlords who refuse to rent to them, causing families to waste important time before their voucher expires to find suitable housing. Moreover, while owners of Low-Income Housing Task Credit and some federally assisted housing properties are prohibited from discriminating against voucher holders, there is little enforcement of this requirement and no federal law that prohibits source of income discrimination in housing and housing-related transactions. Source of income discrimination is an often-identified barrier to the full and effective use of the voucher program. Localities have shown an interest in removing this barrier by prohibiting source of income discrimination in their local ordinances.

In 2015, the States of Indiana and Texas became the first to pass laws that deliberately preempt cities from adopting source of income protections.

Texas SB 267 prohibits municipalities or counties from passing source-of-income protections.<sup>26</sup> Specifically, it reads:

“(a) Prohibits a municipality or county, except as provided by this section, from adopting or enforcing an ordinance or regulation that prohibits an owner, lessee, sublessee, assignee, managing agent, or other person having the right to lease, sublease, or rent a housing accommodation from refusing to lease or rent the housing accommodation to a person because the person's lawful source of income to pay rent includes funding from a federal housing assistance program.”

Indiana HB 1300<sup>27</sup> reads:

“A unit may not adopt or enforce an ordinance that requires or would have the effect of requiring a landlord to participate in: (1) a Section 8 program of the federal

<sup>26</sup> See Tex. Local Gov't Code Ann. § 250.007.

<sup>27</sup> Legislative text of Indiana HB 1300 can be accessed at <http://iga.in.gov/legislative/2015/bills/house/1300#digest-heading>.

Housing Act of 1937; or (2) a similar program concerning housing.”

In 2017, the Inclusive Communities Project brought suit against the State of Texas, claiming that source of income preemption law is a constitutional violation of the Fair Housing Act and that it explicitly permitted multifamily landlords to discriminate against otherwise qualified voucher holders, excluding predominantly Black voucher holders from white neighborhoods.<sup>28</sup> Unfortunately, in 2018 the case was dismissed. Since then, the Inclusive Communities Project and other Texas-based advocates have advocated to reverse the source-of-income preemption law. In January 2019, Texas State Representative Jon Rosenthal introduced HB 1257 to repeal the state’s preemption law. Efforts will continue to pass HB1257 in future Texas legislative sessions.

### *Preemption of Inclusionary Zoning Ordinances*

City governments have begun tackling rising housing prices and displacement of low- and moderate-income households through the proposal of inclusionary zoning ordinances that ease restrictions on the development of affordable housing. Strategies can take several forms, including policies that require or create incentives for developers to set aside additional units of affordable housing; the adoption of longer affordability requirements for new projects; or expanding income eligibility targeting requirements for those served by affordable unit set asides. Many cities have begun taking on a variation of these policy approaches, but some have been thwarted by conservative state legislatures. For example, the state legislatures in Indiana and Texas have sought to pre-empt localities from adopting inclusionary ordinances.

Passed in 2017, Indiana SB 558 makes it unlawful for cities in Indiana to pass inclusionary zoning policies targeting affordable housing.<sup>29</sup>

Specifically, it:

“Amends the statute concerning landlord and tenant relations to provide that a unit may not regulate rental rates for privately owned real property, through a zoning ordinance or otherwise, unless the regulation is authorized by an act of the general assembly.”

Louisiana SB 162<sup>30</sup> similarly took away the rights of municipalities or parishes to pass inclusionary zoning ordinances:

“Removes the authority of municipalities and parishes to adopt ordinances

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28 See *The Inclusive Communities Project, Inc. v. Governor Greg Abbott*, Civ. Act. No. 3:17-CV-0440-D, U.S. Dist. Ct. N. Dist. Of Texas.

29 Legislative text for Indiana SB 558 can be accessed at <http://iga.in.gov/legislative/2017/bills/senate/558#digest-heading>.

30 Legislative text for SB 162 can be accessed at <http://www.legis.la.gov/legis/BillInfo.aspx?s=17rs&b=SB162&sbi=y>.



providing for inclusionary zoning within their jurisdictions to address workforce affordable housing needs.”

SB 162 passed in 2017 but was vetoed in 2018 by Louisiana Governor Jon Bel Edwards, with the expectation that localities would indeed put forth inclusionary zoning plans. Since that time, the New Orleans City Council passed an inclusionary zoning ordinance, which is now awaiting implementation.

In each example, the conservative legislatures of the States of Texas, Indiana, and Louisiana elected to undermine the will of local governments to create fair housing protections and/or address the affordable housing crisis. The use of preemption laws has become a significant barrier to the creation of important policies that open up housing opportunities and address the ballooning affordable housing crisis plaguing communities throughout the nation.

**STATES LIKE INDIANA,  
LOUISIANA, AND TEXAS  
HAVE TAKEN FORMIDABLE  
STEPS TO UNDERMINE  
THE ABILITY OF LOCAL  
GOVERNMENTS TO CREATE  
FAIR HOUSING PROTECTIONS  
AND/OR ADDRESS THE  
AFFORDABLE HOUSING CRISIS.**

#### *Recommendations*

- Municipal and state legislatures must work with fair housing advocates to create source of income protections and pass inclusionary zoning ordinances where warranted; and
- Philanthropic organizations must support grassroots mobilization efforts to implement measures that expand fair housing and affordable housing opportunities as well as defend against state preemption legislation.

## SECTION III.

### IMPORTANT CASE HIGHLIGHTS FOR 2018-19

The representative cases highlighted in this section reflect the issues and challenges that millions of consumers face each day as they attempt to gain access to housing opportunities. Housing barriers come in many forms and are more common than most people think. Each year, in its Housing Aspirations Report, Zillow conducts an annual survey of 10,000 adults in the 20 largest U.S. metro areas.<sup>31</sup> In its 2018 report, in honor of the 50th anniversary of the Fair Housing Act, Zillow added a series of fair housing-related questions to the survey to gauge what consumers' experiences are when they seek housing and financial services. Roughly 27 percent of adults believe they have been treated differently because of their status in a protected group. This translates to 68 million people in the U.S. who believe they have experienced housing-related discrimination in their lifetimes.

The sample cases below, representing only a handful of the 31,202 complaints filed in 2018, reveal the types of impediments consumers face in the housing market. They also demonstrate the variety and extent of housing discrimination and how it impacts many segments of our society.

The boxes next to each case provide important information about how these cases are relevant to millions of people. Source citations for the information boxes can be found in the End Notes for this section.

#### Criminal Records Reasonable Accommodation

##### ***Simmons v. T.M. Associates Management, Inc.***<sup>32</sup>

In February 2018, a Connecticut federal district court ruled that a housing provider may not issue blanket denials based on criminal convictions regardless of an applicant's disability status. With the assistance of the Virginia Poverty Law Center, Annette and Derek Simmons sued T.M. Associates, alleging the apartment

31 See "What Modern-Day Housing Discrimination Looks Like: A Conversation With the National Fair Housing Alliance." Zillow Research, February 4, 2019. Available at: <https://www.zillow.com/research/modern-housing-discrimination-22898/>.

32 See <https://casetext.com/case/simmons-v-tm-assocs-mgmt-inc-1>.

**1 IN 3 —BETWEEN 70 TO 100 MILLION— U.S. ADULTS HAVE A CRIMINAL RECORD, INCLUDING MISDEMEANORS AND ARRESTS WITH NO CONVICTION. THE U.S. INCARCERATES MORE PEOPLE PER CAPITA THAN ANY OTHER COUNTRY.**

**- THE SENTENCING PROJECT**

operators violated the Fair Housing Act when they denied Mr. Simmons' reasonable accommodation request to waive the company's blanket ban on applicants with criminal records. Mr. Simmons asserted that his record resulted from conditions related to his schizoaffective disorder. He has since received treatment for his disability and has not had any similar incidents, nor is he likely to. The judge held that a former criminal conviction does not make an applicant, ipso facto, a direct threat and that a housing provider must make an individualized assessment to determine whether an applicant would pose a direct threat, which it was alleged T.M. Associates had failed to do. T.M. Associates moved to have the case dismissed because it posited that "a housing provider may issue blanket denials of housing to those with convictions, regardless of an applicant's disability status, and even if the criminal conduct derived from the applicant's disability."<sup>33</sup> The court found that T.M. Associates' theory was "mistaken."

## **LGBTQ Harassment and Landlord Responsibility**

### ***Wetzel v. Glen St. Andrew Living Community*<sup>34</sup>**

In August 2018, a Seventh Circuit panel reversed a lower court decision dismissing a lawsuit filed by Marsha Wetzel, a gay resident of a senior living community who alleged that the facility management violated the Fair Housing Act by failing to stop harassment against her by other tenants. Ms. Wetzel was repeatedly subjected to physical abuse as well as horrific epithets and threats because of her sexual orientation. The staff of Glen St. Andrew were apathetic to Wetzel's many complaints and reports of abuse. The appeals court rejected the defendants' argument that a landlord is not accountable for stopping tenant on tenant harassment unless the landlord acts with discriminatory intent. The

**ROUGHLY 15 MILLION PEOPLE— 4.5 PERCENT OF THE U.S. POPULATION —ARE LGBT. AN ADDITIONAL 1.4 MILLION PEOPLE IDENTIFY AS TRANSGENDER.**

**- THE WILLIAMS INSTITUTE**

court ruled that under the Fair Housing Act "the duty not to discriminate in housing conditions encompasses the duty not to permit known harassment on protected grounds." The court concluded that if the defendants had actual knowledge of the severe harassment and were deliberately indifferent to it, their actions were covered by the Fair Housing Act. The court also ruled that the plaintiff had a cognizable post-acquisition claim because the discrimination against her affected the

provision of services and facilities connected to her rental, stating "the protections of the Fair Housing Act do not evaporate once a person takes possession of her house, condominium, or apartment..."

<sup>33</sup> Id.

<sup>34</sup> See [https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/wetzel\\_il\\_20180827\\_decision.pdf](https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/wetzel_il_20180827_decision.pdf).

## Legal Residency Policies Present a Disparate Impact for Latino Communities

**THE US HAS NEARLY 800,000  
DACA RECIPIENTS AND  
66 PERCENT OF THE US  
POPULATION SUPPORT LEGAL  
STATUS FOR DREAMERS. THERE  
ARE ROUGHLY 10.5 MILLION  
UNAUTHORIZED IMMIGRANTS IN  
THE U.S. WHO PAY \$12 BILLION  
IN STATE AND LOCAL TAXES  
EACH YEAR.**

- UNIDOSUS

### *De Reyes v. Waples Mobile Home Park*<sup>35</sup>

In September 2018, a Fourth Circuit panel vacated a district court decision dismissing the disparate impact claims of Latino tenants against a landlord who had demanded that every adult occupant of each apartment provide proof of legal residency in the United States. Latino tenants sued Waples Mobile Home Park after it began requiring that every occupant of the mobile home park over the age of 18 provide proof of legal status in the United States. Households that could not provide proof for every occupant were offered month-to-month leases rather than yearly leases and were required to pay a \$100 monthly surcharge. The court found that the plaintiffs had established causation sufficient to make a prima facie case by identifying the specific practice that they challenged, i.e. requiring all residents to provide proof of legal residency in

the United States, and by providing statistical evidence that Latinos were ten times more likely than non-Latinos to be adversely affected by the policy.

## Single Occupancy Policies Present a Disparate Impact for Families with Children

### *Fair Housing Center of Washington v. Breier-Scheetz Properties LLC*<sup>36</sup>

In November 2018, a Ninth Circuit panel affirmed a district court order granting partial summary judgment to the plaintiff in a familial status claim and the district court's award of punitive damages in a disparate impact case. The Fair Housing Center of Washington alleged that the defendants' policy of only renting to single occupants discriminated against families with children in violation of the Fair Housing Act. The court found that the Fair Housing Center had established a prima facie case of disparate impact discrimination and

**38 PERCENT OF US RENTER  
HOUSEHOLDS—ROUGHLY  
17 MILLION FAMILIES—  
ARE RENT BURDENED.  
UNAFFORDABLE HOUSING  
MAKES HOMEOWNER-SHIP  
OUT OF REACH FOR FAMILIES  
WHO CANNOT SAVE FOR A  
DOWN-PAYMENT.**

- PEW CHARITABLE TRUST

35 See <https://law.justia.com/cases/federal/appellate-courts/ca4/17-1723/17-1723-2018-09-12.html>.

36 See <https://cases.justia.com/federal/appellate-courts/ca9/17-35898/17-35898-2018-11-19.pdf?ts=1542661258>.



that the defendant had not met its burden of establishing that the one-person-per-studio occupancy policy was necessary to achieve any substantial legitimate, nondiscriminatory interest. The panel also ruled that the district court had not abused its discretion in awarding punitive damages.

## Accessible and Affordable Housing

### ***Access Living of Metropolitan Chicago, Inc. v. City of Chicago***<sup>37</sup>

In March 2019, an Illinois federal district court denied the City of Chicago's motion to dismiss a lawsuit alleging that the city violated the accessibility requirements of the Fair Housing Act and other laws in its allocation of funds for the building and rehabilitation of affordable housing. Access Living sued the city after conducting an extensive investigation of units and buildings in Chicago's affordable rental housing program. Access Living alleged it found that many developments funded by the city were not constructed to allow

individuals who use wheelchairs or walkers to enter, access, and/or use buildings, rooms, and amenities. The organization charged that the city's decades-long practice of funding developments without ensuring that a sufficient number of units were accessible to people with disabilities violates the Fair Housing Act, the Americans with Disabilities Act, and the Rehabilitation Act.

**MORE THAN 7 MILLION OR 16 PERCENT OF RENTER HOUSEHOLDS HAVE AT LEAST ONE PERSON WITH A DISABILITY WHILE ONLY 1 PERCENT—ABOUT 365,000—OF APARTMENT UNITS IN THE U.S. MEET ALL ACCESSIBLE HOUSING REQUIREMENTS.**

**- PEW CHARITABLE TRUST  
- HARVARD JOINT CENTER ON HOUSING**

## Lending Redlining

### ***Connecticut Fair Housing Center v. Liberty Bank***<sup>38</sup>

In February 2019, the Connecticut Fair Housing Center and the National Consumer Law Center announced that Liberty Bank agreed to settle claims that it violated the Fair Housing Act by engaging in a pattern or practice of unlawful redlining in communities of color. The plaintiffs alleged that the bank 1) excluded Black and Latino neighborhoods from its service area; 2) intentionally only located bank branches and mortgage loan officers in predominately White communities; and 3) treated prospective loan applicants differently on the basis of race or ethnicity. Under the settlement, which will bring over \$16 million in investments in communities of color, Liberty Bank will increase its "Good Neighbor" loan pool for public employees by \$10,000,000. The bank will also expand its community development loan program by \$5,000,000 over the next three years and provide

37 See <https://cases.justia.com/federal/district-courts/illinois/ilndce/1:2018cv03399/352440/35/0.pdf?ts=1554023777>.

38 See <https://www.ctfairhousing.org/a-historic-fair-lending-settlement-for-connecticut-residents/>.

**REVEAL NEWS' ANALYSIS OF 31 MILLION LOAN RECORDS FOUND THAT BLACK APPLICANTS WERE DENIED FOR MORTGAGE LOANS AT SIGNIFICANTLY HIGHER RATES THAN WHITES IN 48 CITIES. LATINOS WERE DENIED AT SIGNIFICANTLY HIGHER RATES IN 25 CITIES, ASIAN AMERICANS IN 9 CITIES, AND NATIVE AMERICANS IN 3. IN WASHINGTON, D.C., ALL 4 GROUPS WERE SIGNIFICANTLY MORE LIKELY TO BE DENIED THAN THEIR WHITE COUNTERPARTS.**

**- REVEAL NEWS**

rights advocates announced that Facebook agreed to settle claims it discriminated by enabling advertisers for housing to exclude protected classes of people from receiving or viewing housing advertisements. Facebook agreed to implement new procedures that will prevent advertisers from discriminating on the basis of race, national origin, ethnicity, age, sex, sexual orientation, disability, or family status in advertisements for housing, employment, and credit. Facebook also agreed to create a page on which viewers can see all current housing advertisements. It will inform advertisers that engaging in unlawful discrimination is prohibited, and it will work with NFHA to develop fair housing training for its employees. NFHA is authorized to conduct testing to ensure that the settlement measures are implemented effectively. Facebook will also pay NFHA and the other plaintiffs damages and fees and

39 See <https://nationalfairhousing.org/facebook-settlement/>.

\$300,000 in subsidies for promoting home ownership and enhancing access to credit in underserved areas. In addition, the bank agreed to have third-party consultants review its fair lending policies and procedures; provide fair lending training to employees and members of the board of directors; open a loan production office within a half mile of a majority-non-White census tract in the city of Hartford; and expand outreach in low- and moderate-income and majority-non-White census tracts.

### **Tech Bias**

#### ***National Fair Housing Alliance v. Facebook*<sup>39</sup>**

In March 2019, NFHA, Fair Housing Justice Center, Housing Opportunities for Excellence, Inc., Fair Housing Council of Greater San Antonio, and other civil

**DIGITAL ADVERTISING PLATFORMS ARE EXTREMELY IMPACTFUL FOR U.S. CONSUMERS. FACEBOOK ALONE HAS 210 MILLION U.S. USERS. THE LION'S SHARE OF ITS REVENUE—ALMOST \$17 BILLION IN Q4'18—COMES FROM ADVERTISING, MAKING IT THE LARGEST DIGITAL ADVERTISING PLATFORM IN THE NATION.**

**- NATIONAL FAIR HOUSING ALLIANCE**

will provide advertising credit to the plaintiffs for advertising on Facebook to promote educational programs and other services.

**EVEN THOUGH WHITES AND BLACKS USE ILLICIT DRUGS AT ROUGHLY THE SAME RATE, BLACKS ARE 3-4 TIMES MORE LIKELY THAN WHITES TO BE ARRESTED AND 6 TIMES MORE LIKELY TO BE INCARCERATED FOR DRUG CHARGES. THOUGH LATINOS AND BLACKS MAKE UP ABOUT 32 PERCENT OF THE U.S. POPULATION, THEY REPRESENT 56 PERCENT OF THOSE INCARCERATED. THE RACIAL DISPARITY IN ARRESTS IS RELATED DIRECTLY TO RESIDENTIAL SEGREGATION IN AMERICA. WHEN THESE RECORDS ARE USED IN TENANT SCREENING TECHNOLOGY, DISCRIMINATORY OUTCOMES CANNOT BE AVOIDED.**

- POLITIFACT
- NAACP
- NATIONAL FAIR HOUSING ALLIANCE

***Connecticut Fair Housing Center v. CoreLogic Rental Property Solutions*<sup>40</sup>**

In March 2019, a Connecticut federal district court ruled that a tenant screening company could be held liable for discrimination claims brought under the Fair Housing Act. CoreLogic is a data collection and mining agency that specializes in tenant screening. It offers two products, CrimCHECK and CrimSAFE. CrimSAFE uses an algorithm to “interpret an applicant’s criminal record and provide housing providers with a decision on whether the applicant qualifies for housing.” The Connecticut Fair Housing Center alleged that CoreLogic’s policies and practices of disqualifying applicants for housing based on the presence of criminal records, including arrest records, discriminate against tenants on the basis of disability, race, and national origin. The court did find that “CrimSAFE disqualifies applicants for housing if the applicant was arrested but not convicted of a crime even though many years had passed since the arrest.” The court rejected CoreLogic’s argument that the Fair Housing Act does not apply to screening companies, instead finding that the plaintiffs sufficiently alleged that CoreLogic’s own conduct resulted in a discriminatory housing practice and that it could also be found

vicariously liable for an apartment management’s conduct.

## **Gender Segregation**

40 See <http://www.ctfairhousing.com/PDFs/CoreLogicMTDOrder.pdf>.

### ***Curto v. A Country Place Condominium Association*<sup>41</sup>**

In April 2019, a Third Circuit panel ruled that a condominium's gender-segregated schedule for use of an apartment complex swimming pool violated the Fair Housing Act. The Country Place Condominium Association, Inc. established a schedule that afforded women almost no swimming time during evening hours based on the assumption that women were likely to be home during the day and could swim during morning and afternoon hours. The case involved a lawsuit brought by condominium residents against their association alleging that the gender segregation in Country Place's swimming pool discriminated on the basis of sex. The court noted that although the condominium assigned approximately the same number of hours to men and to women, women were allowed to swim for far fewer hours after 5:00 p.m. on weeknights compared to men. As a result, women with regular-hour jobs had little access to the pool. The Court also stated that Country Place's policies appeared to "reflect particular assumptions about the roles of men and women."

**"TODAY'S RULING IS A VICTORY FOR GENDER EQUALITY. THE ASSOCIATION'S POOL POLICY NOT ONLY IMPERMISSIBLY SEGREGATED SWIMMING TIME BY GENDER BUT IT DOUBLED DOWN ON THAT DISCRIMINATION BY ALLOTING SWIMMING HOURS BASED ON STEREOTYPES ABOUT THE ROLES MEN AND WOMEN PLAY IN THE HOME AND THE WORKPLACE. THIS TYPE OF DISCRIMINATION HAS NO PLACE IN HOUSING OR ANYWHERE ELSE."**

**- SANDRA PARK, ACLU**

### **Sexual Harassment**

### ***United States of America v. Hezekiah Webb and Jameseva Webb*<sup>42</sup>**

In March 2018, the Department of Justice (DOJ) settled a sexual harassment case against Hezekiah and Jameseva Webb, resolving allegations that fifteen of their female tenants were subjected to sexual harassment over the course of two decades. A former tenant, Shakhari Bell, sought the services of the St. Louis Metropolitan Equal Housing Opportunity Council (EHOC) after she alleged Mr. Webb sexually harassed her. EHOC assisted Ms. Bell with filing a complaint with the Department of Housing and Urban Development. The victims alleged that Mr. Webb conditioned housing and housing benefits on female tenants agreeing to perform sexual acts for him. He allegedly also coerced female tenants into engaging in unwelcome sexual acts, subjected female tenants to unwanted and brazen sexual touching, made unwelcome sexual comments, and took adverse actions against

41 See <https://www.aclu.org/press-releases/court-strikes-down-discriminatory-rule-new-jersey-condominium-association>.

42 See <https://www.justice.gov/crt/case-document/complaint-united-states-v-webb-ed-mo> and <https://www.justice.gov/opa/press-release/file/1044396/download>.

**THE #MeToo MOVEMENT HAS BROUGHT  
HEIGHTENED AWARENESS TO SEXUAL  
HARASSMENT, AND EMBOLDENED  
PEOPLE TO COME OUT OF THE SHADOWS  
TO REPORT ILLEGAL ACTIVITY. WHILE  
NO STUDIES HAVE BEEN CONDUCTED  
TO GAUGE THE LEVEL OF SEXUAL  
HARASSMENT IN HOUSING, SOCIOLOGISTS  
AGREE THAT ROUGHLY HALF OF  
AMERICAN WOMEN WILL EXPERIENCE  
SEXUAL HARASSMENT AT LEAST ONCE IN  
THEIR LIFETIME.**

**- THE ECONOMIST**

female tenants when they refused his sexual demands. The case, which was ultimately referred to DOJ, settled for \$625,000: \$600,000 for the 15 victims and a \$25,000 civil penalty to the U.S. Treasury. The Webbs are also barred from serving as property managers and will be subject to further remedies if they do not sell their residential rental properties.

#### End Notes:

- i. See Prison Policy Initiative at <https://www.prisonpolicy.org/reports/pie2016.html>.
- ii. See <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Trans-gender-in-the-United-States.pdf>.
- iii. See "7 Ways Immigrants Enrich Our Economy and Society." UnidosUS. Available at: <https://www.unidosus.org/issues/immigration/resources/facts>.
- iv. See "American Families Face a Growing Rent Burden: High housing costs threaten financial security and put homeownership out of reach for many." Pew Charitable Trust. April 19, 2018. Available at: <https://www.pewtrusts.org/en/research-and-analysis/reports/2018/04/american-families-face-a-growing-rent-burden>.
- v. See White, Gillian, "Nowhere to Go: The Housing Crisis Facing Americans with Disabilities." The Atlantic, Dec. 15, 2015. Available at: <https://www.theatlantic.com/business/archive/2015/12/renting-with-a-disability/420555/>. See also, "American Families Face a Growing Rent Burden: High housing costs threaten financial security and put homeownership out of reach for many." Pew Charitable Trust. April 19, 2018. Available at: <https://www.pewtrusts.org/en/research-and-analysis/reports/2018/04/american-families-face-a-growing-rent-burden>.
- vi. See Glantz, Aaron, Emmanuel Martinez, "For People of Color, Banks are Shutting the Door to Homeownership." Reveal News, February 15, 2018. Available at: <https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/>.
- vii. See "Facebook Settlement." National Fair Housing Alliance. Available at: <https://nationalfairhousing.org/facebook-settlement/>.
- viii. See "Criminal Justice Fact Sheet." NAACP. Available at: <https://www.naACP.org/criminal-justice-fact-sheet/>. See also, Fiske, Warren, "Bynum-Coleman Mostly Right About Racial Disparity in Drug arrests and Imprisonment." PolitiFact, August 6, 2019. Available at: <https://www.politifact.com/virginia/statements/2019/aug/06/sheila-bynum-coleman/bynum-coleman-mostly-right-about-racial-disparity/>.
- ix. See "What is Sexual Harassment and How Prevalent is it?" The Economist, November 24, 2017. Available at: <https://www.economist.com/the-economist-explains/2017/11/24/what-is-sexual-harassment-and-how-prevalent-is-it>.



## SECTION IV.

# FAIR HOUSING CHALLENGES IN 2018

### Fair Housing in the Digital Age

Data and technology are key components of the new civil rights frontier. The housing industry relies increasingly on technology to perform various functions, including delivering products and services to consumers. Technology is re-shaping the way industries conduct business and, in some cases, can help expand opportunities for both consumers and corporations. However, the use of technology to transform credit and housing access has significant limitations, because our society is still plagued with systemic inequality and structural barriers that deliver disparate outcomes and those systemic inequities are built into technological models. It is one of the reasons the Black homeownership rate, at 40.6 percent, is lower than it was more than 50 years ago, before the Fair Housing Act was passed and when redlining was still legal. More than 7 out of 10 White families own their homes, while only 4 out of 10 Black and 5 out of 10 Latino families own their homes.

Technology, if designed correctly, could help remediate systemic barriers that have prevented millions of qualified consumers from accessing housing opportunities. We have not tapped the full capabilities that technology can provide for our society. Instead, technology is used in ways that manifest and amplify the bias and inequities replete in the marketplace. However, we can apply fair housing principles to technology in a way that improves market efficiencies and expands housing opportunities for underserved groups.

We have learned to accept technology in almost every aspect of our daily lives, including in housing transactions. Automated underwriting systems, credit scoring and insurance scoring mechanisms, risk-based pricing systems, digital advertising platforms, digital fingerprinting, digital payment processing systems, and document e-signing all have become the norm. We also see changes in the impact of new technologies. Tenant selection systems fueled by artificial intelligence (AI) attempt to inform landlords about whether or not a customer would pose an undue risk. Revenue management systems,



based on air flight pricing programs, cause apartment rates to fluctuate based on market dynamics, prompting prices to change on a daily basis. Facial recognition technology can be used in an E-Loan process to help verify a customer's identity.

There are many reasons industries have increased their use of technology. It can help improve both the corporate bottom line and a customer's experience. It can reduce costs, increase the scale of operations, increase performance of systems, expand a company's footprint, improve quality, standardize processes, provide better tracking for monitoring and measuring performance, and improve risk management. In some cases, technology is used as a disruptor to systemically change the way certain functions are performed or to profoundly alter the way services are delivered.

Some argue that technology holds great promise, and it might. But it also can cause extensive damage, particularly when it perpetuates the discrimination and bias embedded in U.S. housing markets for centuries. This is particularly true with systems that incorporate artificial intelligence and algorithmic models. Data used in tech-based systems is impacted by both historical and current societal context. The data does not exist in a vacuum; it is imbued with and shaped by the systemic discriminatory policies and practices of the past. The structural inequalities replete in the marketplace are baked into the data. We build systems with tainted and biased data that then yield tainted and biased results.

The U.S. has a long history of developing and implementing policies in a racialized and discriminatory fashion. The Land Grant, Homestead, Indian Removal, Chinese Exclusion, Japanese Internment, Home Owners' Loan Corporation, National Housing, National Highway, and Social Security Acts all incorporated animus based on race and ethnicity. And these policies still shape the current housing and homeownership landscape. Jim Crow laws, Urban Renewal, and Model Cities programs still frame the types of housing and credit opportunities of people today.<sup>43</sup> All of these federal laws and programs were designed to explicitly harm and deny opportunities to people of color while simultaneously supporting and granting homeownership, quality housing, and credit opportunities to White persons.

When the federal Fair Housing Act was passed in 1968, Congress established "fair housing" as U.S. national policy by making housing discrimination illegal. However, the institutional and structural racism and systemic inequalities that these policies created remained intact after passage of the Fair Housing Act. The only mechanism that Congress provided for attempting to deconstruct systemic inequality was the Affirmatively Further Fair Housing provision of the act. But this provision provides no private right of action and has not been enforced.<sup>44</sup>

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43 Rice, Lisa, *"Long Before Redlining: Racial Disparities in Homeownership Need Intentional Policies,"* Shelterforce, February 19, 2019.

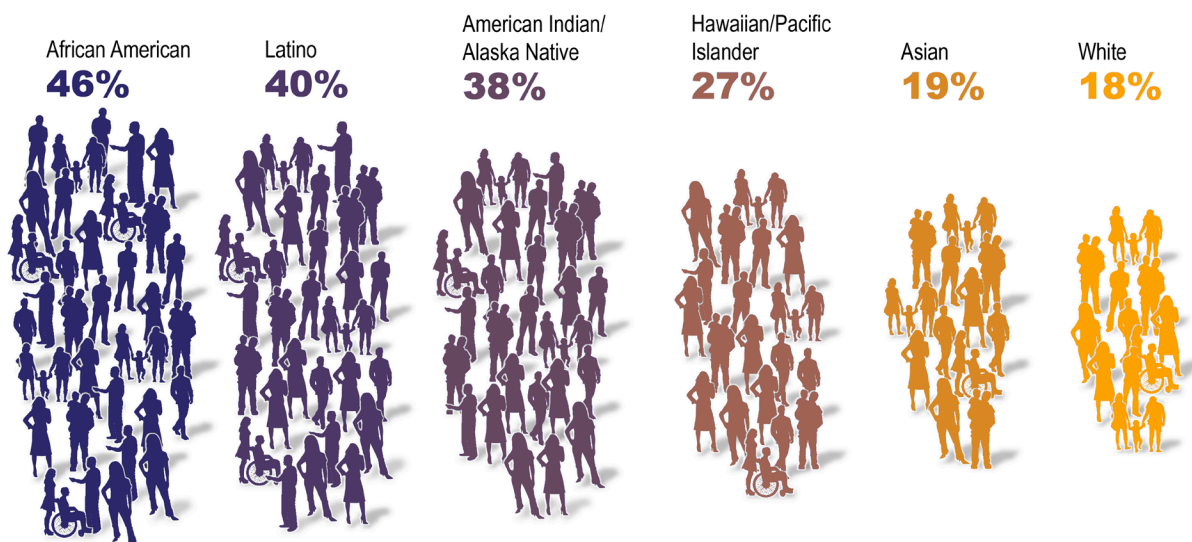
44 See Section II for further explanation of the nation's failure to implement the AFFH provision of the federal Fair Housing Act.

As a result, residential segregation is the bedrock of all inequality in the U.S. It is why seemingly neutral policies result in discriminatory outcomes. Because of residential segregation and the concomitant disinvestment of communities of color and deep investment in predominantly white communities, where one lives impacts every area of one's life. Your address dictates your health and educational outcomes, net worth, homeownership status, mobility, credit and insurance score, chances of being incarcerated, ability to secure gainful employment, and more.<sup>45</sup> Place is inextricably linked to both race and opportunity.

**RESIDENTIAL SEGREGATION  
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People of color disproportionately live in credit deserts. Banks and credit unions are sparsely located in communities of color, while non-traditional and fringe lenders—payday lenders, subprime creditors, hard-money lenders, check cashers, pawnbrokers, and the like—are hyper-concentrated in these areas.<sup>46</sup> Non-traditional lenders do not report positive, timely payments to credit repositories, so consumers who use these creditors remain hidden. Yet when a consumer using these credit providers is delinquent and has an account that goes into collection, the negative information is reported to credit repositories. This unfairly penalizes residents of communities of color who

### Who is Using Alternative Financial Services?



Rice, Lisa and Shanti Abedin from data provided in 2013 FDIC National Survey of Unbanked and Underbanked Households

<sup>45</sup> Squires, Gregory, *The Fight for Fair Housing: Causes, Consequences, and Future Implications of the 1968 Federal Fair Housing Act*. Routledge. 2018.

<sup>46</sup> Young, Cheryl, Felipe Chacon, "50 Years After the Fair Housing Act – Inequality Lingers," Trulia. April 19, 2018. Available at: <https://www.trulia.com/research/50-years-fair-housing/amp/>.

disproportionately use non-traditional credit providers (see the figure below), and this traps them in the fringe lending market. Mainstream lenders have provided few opportunities for on-boarding borrowers who use non-traditional credit. As a result, these consumers are disproportionately credit invisible.

Roughly 25 percent of Black and Latino consumers are credit un-scorable, meaning these consumers—who disproportionately access credit outside of the financial mainstream—do not have enough visible credit data to yield a score.<sup>47</sup>

Unfortunately, Artificial Intelligence (AI), Machine Learning (ML) and other technologies used to determine who deserves access to quality credit and housing opportunities are built with what Rashida Richardson calls “dirty data.”<sup>48</sup> We are using outdated systems that perpetuate, and in some cases, amplify discrimination. Credit scoring systems manifest bias, as do algorithmic-based pricing systems. Researchers at Berkeley found that lenders that use algorithms to generate decisions on loan pricing discriminate against borrowers of color because these systems reflect the bias they pick up in the marketplace.<sup>49</sup> Researchers estimate that borrowers of color are overcharged by \$765 million each year for home purchase and refinance loans. It appears that algorithmic pricing systems elevate pricing when they perceive consumers as being less competitive. Thus, a borrower who does not comparison shop may be charged a higher rate. Unfortunately, many borrowers of color cannot maximize shopping opportunities because they live in a credit desert or do not have established banking relationships. Algorithms do not account for this structural inequity. They have not removed discrimination; rather, they have just changed the method by which it occurs. As Kathy Baxter writes, “AI is a mirror that reflects back to us the bias that already exists in our society.”<sup>50</sup>

Moreover, when tech is designed by people who are not knowledgeable about how systems perpetuate discrimination, those apparatuses can be constructed in a way that yields unfair outcomes. Such was the case with Facebook. In March 2018, NFHA and three of its member fair housing organizations brought an action against the tech giant

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47 Davies, Sarah F., *Alternative Data and Credit Scoring: Going Beyond the Usual*, Urban Institute. March 12, 2015. Available at: [http://www.urban.org/sites/default/files/f\\_creditscoring.pdf](http://www.urban.org/sites/default/files/f_creditscoring.pdf).

48 Rashida Richardson et al., *Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems and Justice*, 94 N.Y.U. L. REV. 193, 199–203, 218–19 (2019). Available at : <https://www.nyulawreview.org/wp-content/uploads/2019/04/NYULawReview-94-RichardsonSchultz-Crawford.pdf>.

49 Bartlett, Robert, Adair Morse, Richard Stanton, Nancy Wallace, “Consumer Lending Discrimination in the FinTech Era,” SSRN, September 2019. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3063448](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3063448).

50 Baxter, Kathy, “Dirty Data or Biased Data? Ethical AI Basics for Non-Data Scientists.” Salesforce Blog, October 18, 2018. Available at: <https://blog.einstein.ai/dirty-data-or-biased-data-ethical-ai-basics-for-non-data-scientists-2/>. See also, Rashida Richardson et al., *Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems and Justice*, 94 N.Y.U. L. REV. 193, 199–203, 218–19 (2019). Available at : <https://www.nyulawreview.org/wp-content/uploads/2019/04/NYULawReview-94-RichardsonSchultz-Crawford.pdf>.

alleging that the company created an advertising platform that not only made it possible but also encouraged housing providers to discriminate. Facebook created pre-populated lists—including racial, gender, disability, LGBTQ status, and family status categories—that allowed those advertising apartments, houses, credit, or insurance to exclude audiences based on their protected class status. In fact, Facebook’s platform allowed housing providers to exclude Blacks, Latino groups, and Asian Americans. There was no category to exclude Whites.<sup>51</sup>

Until we remove the bias and discrimination (structural, systemic, and individual) that permeate our data and society, we must be more deliberate and conscientious about how we build and use technology. No AI is perfect, but we must always press toward that mark. AI can be used to diminish discriminatory outcomes. Modelers and data scientists can use AI to detect discriminatory signals and re-calibrate systems to be fairer. Moreover, new non-traditional information, such as rental housing payments, residual income, and cash flow analysis can supplement information for credit-invisible or credit un-scoreable consumers, so they can be appropriately and properly assessed for their true level of risk.

Lenders and housing providers also need to re-tool their systems, upgrading them so that the best quality, most effective information is used to build the technology that affects so many lives. The use of outdated credit and insurance scoring systems will undoubtedly yield biased outcomes.

We have inherited a tainted system that reflects the challenges and difficulties of a nation that has not treated all its residents fairly. We have failed at many attempts to generate a more equitable society. Prosperity Now projects that, holding White wealth constant, it will take Black families 228 years and Latino families 84 years to reach parity with their White counterparts.<sup>52</sup> This stark fact underscores the reality that without intentional change, the racial wealth gap will continue to grow. Technology can be one tool to help level the playing field. We have the resources to effect a fair and equitable society; what we need is the determination to bring it about.

### *Recommendations*

- Educate lenders, insurers, housing providers, data scientists, systems modelers, and others in the field about fair housing issues and the effective use of fair housing/fair lending testing of AI and ML models;
- Develop mechanisms for the culling of high-quality non-traditional data, such as

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51 See “Facebook Settlement: Civil Rights Advocates Settle Lawsuit with Facebook: Transforms Facebook’s Platform Impacting Millions of Users” at: <https://nationalfairhousing.org/facebook-settlement/>.

52 Collins, Chuck, Dedrick Asante-Muhammed, Emanuel Nieves, and Josh Hoxie, The Ever-Growing Gap: Failing to Address the Status Quo Will Drive the Racial Wealth Divide for Centuries to Come, Institute for Policy Studies. August 2016. Available at: [https://ips-dc.org/wp-content/uploads/2016/08/The-Ever-Growing-Gap-CFED\\_IPS-Final-2.pdf](https://ips-dc.org/wp-content/uploads/2016/08/The-Ever-Growing-Gap-CFED_IPS-Final-2.pdf).



- rental housing payment information to be used in AI and ML systems;
- Clarify industry standards to support safe and fair ML and AI development, validation, and monitoring;
- Increase ethics training for AI professionals to promote the use of effective, high-quality, less-biased data and systems;

**SOURCE OF INCOME,  
SEXUAL ORIENTATION,  
GENDER IDENTITY, GENDER  
EXPRESSION, VETERAN OR  
ACTIVE-SERVICEMEMBER  
STATUS MUST BE ADDED AS  
PROTECTED CLASSES UNDER  
THE FEDERAL FAIR  
HOUSING ACT.**

- Update regulatory guidance to ensure the development of AI systems that produce less-discriminatory effects;
- Eliminate and/or mitigate bias in decisioning, marketing, etc. by adopting responsible AI standards and systems; and
- Dramatically increase diversity in tech, insurance, and financial services industries.

### **Need for New Protected Classes**

The fair housing movement recognizes that more needs to be done to protect additional members of society who face demonstrable challenges to housing free from discrimination. For nearly two decades, NFHA has called for additional protections under the Fair Housing Act

based on source of income, sexual orientation, gender identity, and gender expression. More recently, it has also advocated for protection against discrimination based on veteran or active-servicemember status. Fair housing organizations throughout the nation receive these types of complaints and, while some are actionable based on local or state protections, the overwhelming majority of those complaints are not.

In 2018, NFHA members observed 179 complaints based on sexual orientation, 82 complaints based on gender identity or gender expression, and 978 complaints based on source of income. We have heard anecdotally about discrimination based on veteran or active servicemember status.

### *Recommendations*

NFHA has endorsed the following two pieces of legislation and recommends their passage.

Equality Act (H.R. 5/ S. 788)—Sponsored by Rep. David Cicilline (D-RI-1) and Sen. Jeff Merkley (D-OR), respectively.

This legislation amends various civil rights laws to prohibit discrimination based on sex, sexual orientation, and gender identity in public accommodations, education, federally funded programs, employment, credit, and housing.

Fair Housing Improvement Act of 2019 (H.R. 3516/ S. 1986)—Sponsored by Rep. Scott Peters (D-CA-52) and Sen. Tim Kaine (D-VA) respectively.

This legislation amends the Fair Housing Act to provide protections against discrimination in housing and housing-related services on the basis of source of income, veteran status, or military status.

### Rise in Housing-Related Hate Activity

Reports of hate-related incidents have become increasingly prevalent in the United States since the 2016 presidential election. There was an extraordinary 14.7 percent increase in hate crime incidents from 2016 to 2017. The Communities Against Hate online reporting database and the Hate Incidence Poll documented more than 3,650 hate incidents between November 2016 and May 2018. These reporting vehicles documented that abusive, written, or spoken language acts and property damage are the most prevalent manifestations of hate incidents reported.<sup>53</sup> Hate crimes in particular—criminal offenses committed against persons, property, or society that are motivated by the offender’s bias against the victim’s perceived or actual race, ethnicity, ancestry, gender, gender identity, religion, disability, or sexual orientation—are also on the rise. In 2017 (the latest data available for FBI national Hate Crime Statistics), the FBI reported 7,175 incidents nationally that included 8,437 hate crime offenses, a number that has steadily risen in the last four years.<sup>54</sup>

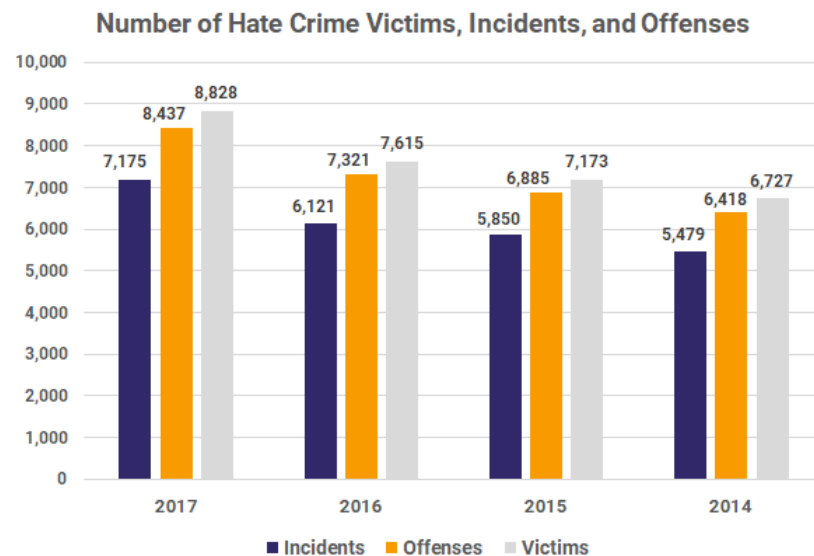
**13.7%**  
**THE INCREASE IN THE  
NUMBER OF HATE  
CRIME VICTIMS FROM  
2016 TO 2017.**

**14.7%**  
**DRAMATIC INCREASE  
IN HATE CRIME  
INCIDENTS FROM  
2016 TO 2017.**

victims. The percentage increase in hate crime incidents and victims more than doubled from 2015 to 2017.

<sup>53</sup> See Hate Magnified: Communities in Crisis, The Leadership Conference Education Fund, January 2019. Available at: <https://hatemagnified.org/CAH-hatemagnified2019.pdf>.

<sup>54</sup> See FBI Hate Crime Statistics at: <https://www.fbi.gov/services/cjis/ucr/publications#Hate-Crime%20Statistics>.



Moreover, in 2017, 59.5 percent of single-bias hate crime offenses<sup>55</sup> were based on race, ethnicity, or ancestry. Roughly 21 percent were based on religion, 17.6 percent were based on sexual orientation or gender identity, and .7 percent were based on gender bias.

In 2017, the largest percentage, 27.5 percent, of the 7,175 hate crime incidents reported

**27.5%**  
**PERCENTAGE OF HATE  
 CRIME INCIDENTS  
 OCCURRING AT A HOME  
 OR RESIDENCE.**

to the FBI occurred in or near a place of residence. This number is even more egregious when considering the hate crime's bias motivation. A total of 27.4 percent of reported hate crimes motivated by race, ethnicity, or ancestry in 2017 occurred in or near residences or homes; 39.7 percent of reported hate crimes motivated by disability bias occurred in or near a residence or home; and 32.4 percent of reported hate crimes motivated by sexual-orientation bias occurred in or near residences or homes. The number of housing-related hate crimes increased by 301, or 15.3 percent, from 2016 to 2017. About 17 percent of hate crime incidents in 2017 occurred on a street, highway, or

road. Roughly 5 percent of such incidents occurred at a school and about 4 percent occurred at a church, synagogue, temple, or mosque.

Any activity that coerces, intimidates, threatens, injures, or interferes with persons attempting to exercise and enjoy their fair housing rights because of their race, color, ethnicity, religion, gender, disability, or because they have children is considered a

<sup>55</sup> There were 8,126 single-bias offenses in 2017 and of that, 4,832 were based on race, ethnicity, or ancestry.

“housing-related hate activity” and may be a violation of the Fair Housing Act. Housing-related hate activities can include hate crimes and other hate activities not deemed as a criminal offense by law enforcement. The actual number of instances is unknown, as many housing-related hate activities go unreported.

Fair housing organizations documented numerous examples of housing-related hate activity in 2018, and their reports echo the alarming findings reported by Communities Against Hate and the FBI. Multiple fair housing organizations reported an increase in reports of sexual harassment and sexual orientation harassment. Several fair housing organizations reported complaints of neighbor-on-neighbor harassment, including a complaint of multiple vandalizations of a car that belonged to a family currently residing in the United States under political asylum from a Middle Eastern country. Another fair housing organization reported that a White homeowner threatened a Black realtor and prospective Black homebuyers with a show of arms each time they tried to tour the home next door that was for sale. The home ultimately sold to a White homebuyer.

Coupled with criminal laws protecting persons from hate-related activities, victims of housing-related hate incidents may use the Fair Housing Act to obtain civil relief, including injunctive relief, compensation for economic loss, and monetary relief for injury. Fair housing organizations are poised to assist individual victims of housing-related hate activity as well as educate the public at large on their fair housing rights and responsibilities.

### *Recommendations*

- Require law enforcement agencies and those responsible for enforcing criminal and civil anti-hate laws to swiftly and compassionately manage acts of hate and violence based on bias;
- Implement better data collection for hate crimes. Currently, the FBI hate crime data is volunteered by police departments that opt to track and submit that data to the FBI. This means we do not know the full extent of hate crimes in our country. Police departments should be required to track and report hate crime data to the FBI;
- Educate first responders about hate crimes and housing-related hate activity. First responders and agencies that may deal with victims of hate activities need training in response to hate crimes and harassment, including acts that may be covered by both criminal and civil laws, such as the federal Fair Housing Act; and
- Those who experience hate activity should be encouraged to share their stories (or to allow someone to share their stories) with the Communities Against Hate Project at 1-844-9-NO-HATE or online at <https://www.communitiesagainsthate.org>. This repository will provide a more holistic picture of hate crimes and hate activity in our country. This is a link to the [interactive report](#)<sup>56</sup> that includes these stories.

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56 See <https://hatemagnified.org/>.

## SECTION V.

# RECOMMENDATIONS

Each year, NFHA makes recommendations directly related to the content of its annual Fair Housing Trends Report. This year's recommendations should not be considered an exhaustive list, by any means. We encourage readers to review the recommendations in prior [Trends Reports](#),<sup>57</sup> particularly for 2017 and 2018, as they address a much broader spectrum of fair housing issues and needs. In this section, we identify several goals related to the pressing issues identified in this 2019 Trends Report.

- **HUD Must Reinstate and Effectively Implement the Affirmatively Furthering Fair Housing Rule**
- **HUD Must Immediately Reinstate the 2013 Disparate Impact Rule**
- **Steps Must Be Taken to Address State Preemption of Fair Housing Laws**
- **Fair Housing Must Be Applied to Technology with Housing-Related Functions**
- **Congress Should Pass the Equality Act and Fair Housing Improvement Act of 2019**
- **The Nation Must Address the Increase in Hate Activity**

### **HUD Must Reinstate and Effectively Implement the Affirmatively Furthering Fair Housing Rule and Hold Grantees Accountable**

The AFFH regulation is a critical tool for breaking down barriers to opportunity and ensuring that all people, regardless of their race, national origin, religion, family status or disability, have access to the opportunities they need to flourish. **HUD should take immediate steps to withdraw any proposed new AFFH regulation and resume implementation of the 2015 rule.** In addition, **HUD should:**

- Update the data and mapping tool that accompanies the AFFH regulation so that it reflects the most current data available and make the Assessment Tool for Local Governments available again on its website;
- Resume effective training and technical assistance to its grantees to enable them to complete their Assessments of Fair Housing (AFH) successfully;
- Hire additional staff, both in headquarters and regional offices, to carry out the functions needed for effective implementation of the rule;
- Finalize the pending Assessment Tools for PHAs and states;
- Develop protocols and timelines by which jurisdictions that should have completed AFHs since January 2018 will do so, and update their Consolidated Plans accordingly;
- Make accepted AFHs available to the public on HUD's website for both the public and other jurisdictions;

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<sup>57</sup> See, <https://nationalfairhousing.org/reports-research/>.



- Monitor ongoing implementation of the goals laid out in its grantees' AFHs and the strategies incorporated into their ConPlans to ensure that grantees are taking meaningful steps to implement those goals and strategies; and
- Take other steps as necessary to ensure that its grantees are fulfilling their AFFH obligations.

### **HUD Must Immediately Reinstate the 2013 Disparate Impact Rule**

HUD must immediately reinstate the 2013 disparate impact rule and bring back clarity and certainty about how seemingly neutral policies or practices that have a discriminatory effect can be successfully challenged under the Fair Housing Act. In addition:

- Congress must conduct meaningful steps to strengthen the federal government's ability to effectively enforce the nation's civil rights laws, especially the Fair Housing Act, as they relate to algorithmic or Artificial-Intelligence (AI)-based decision-making in housing and housing-related services, employment, and credit services;
- Congress must pass comprehensive legislation to ensure federal agencies have effective authority to reign in the use of algorithms and AI-based decision-making systems; and
- Congress must ensure adequate funding via the Fair Housing Initiatives Program and Fair Housing Administration Program to ensure effective education about and enforcement of disparate impact cases.

### **Steps Must Be Taken to Address State Preemption of Fair Housing Laws**

State legislatures must not be allowed to thwart the affirmative efforts of local communities to address barriers to fair housing and inclusive communities. We recommend that:

- Municipal and state legislatures work with fair housing advocates to create source of income protections and pass inclusionary zoning ordinances where warranted; and
- Philanthropic organizations support grassroots mobilization efforts to implement measures that expand fair housing and affordable housing opportunities as well as defend against state preemption legislation.

### **Fair Housing Must Be Applied to Technology with Housing-Related Functions**

With the increasing use of digital platforms and algorithms in housing-related transactions, the technology community and housing industries using technology must take steps to eliminate from their models the tainted data and biased outcomes based on a history of discrimination. The industry must:

- Educate lenders, insurers, housing providers, data scientists, systems modelers, and others in the field about fair housing issues and the effective use of fair housing/fair lending testing of AI and ML models;

- Develop mechanisms for the culling of high-quality non-traditional data, such as rental housing payment information to be used in AI and ML systems;
- Clarify industry standards to support safe and fair ML and AI development, validation, and monitoring;
- Increase ethics training for AI professionals to promote the use of effective, high-quality, less-biased data and systems;
- Update regulatory guidance to ensure the development of AI systems that produce less-discriminatory effects;
- Eliminate and/or mitigate bias in decisioning, marketing, etc. by adopting responsible AI standards and systems; and
- Dramatically increase diversity in tech, insurance, and financial services industries.

### **Congress Should Pass the Equality Act and Fair Housing Improvement Act of 2019**

NFHA has endorsed the following two pieces of legislation and recommends their passage.

- Equality Act (H.R. 5/ S. 788)—Sponsored by Rep. David Cicilline (D-RI-1) and Sen. Jeff Merkley (D-OR), respectively.

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- Fair Housing Improvement Act of 2019 (H.R. 3516/ S. 1986)—Sponsored by Rep. Scott Peters (D-CA-52) and Sen. Tim Kaine (D-VA) respectively.

This legislation amends the Fair Housing Act to provide protections against discrimination in housing and housing-related services on the basis of source of income, veteran status, or military status.

### **The Nation Must Address the Increase in Hate Activity**

We are regressing as a nation as it relates to fairness and civil treatment of our people. Improved data collection, education, and enforcement are key components of efforts to counteract the increase in hate activities. As a start, we must:

- Require law enforcement agencies and those responsible for enforcing criminal and civil anti-hate laws to swiftly and compassionately manage acts of hate and violence based on bias;
- Implement better data collection for hate crimes. Currently, the FBI hate crime data is volunteered by police departments that opt to track and submit that data to the FBI. This means we do not know the full extent of hate crimes in our country. Police departments should be required to track and report hate crime data to the FBI;
- Educate first responders about hate crimes and housing-related hate activity. First responders and agencies that may deal with victims of hate activities need training

in response to hate crimes and harassment, including acts that may be covered by both criminal and civil laws, such as the federal Fair Housing Act; and

- Those who experience hate activity should be encouraged to share their stories (or to allow someone to share their stories) with the Communities Against Hate Project at 1-844-9-NO-HATE or online at <https://www.communitiesagainsthate.org>. This repository will provide a more holistic picture of hate crimes and hate activity in our country. This is a link to the [interactive report](#)<sup>58</sup> that includes these stories.

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58 See, <https://hatemagnified.org/>.

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