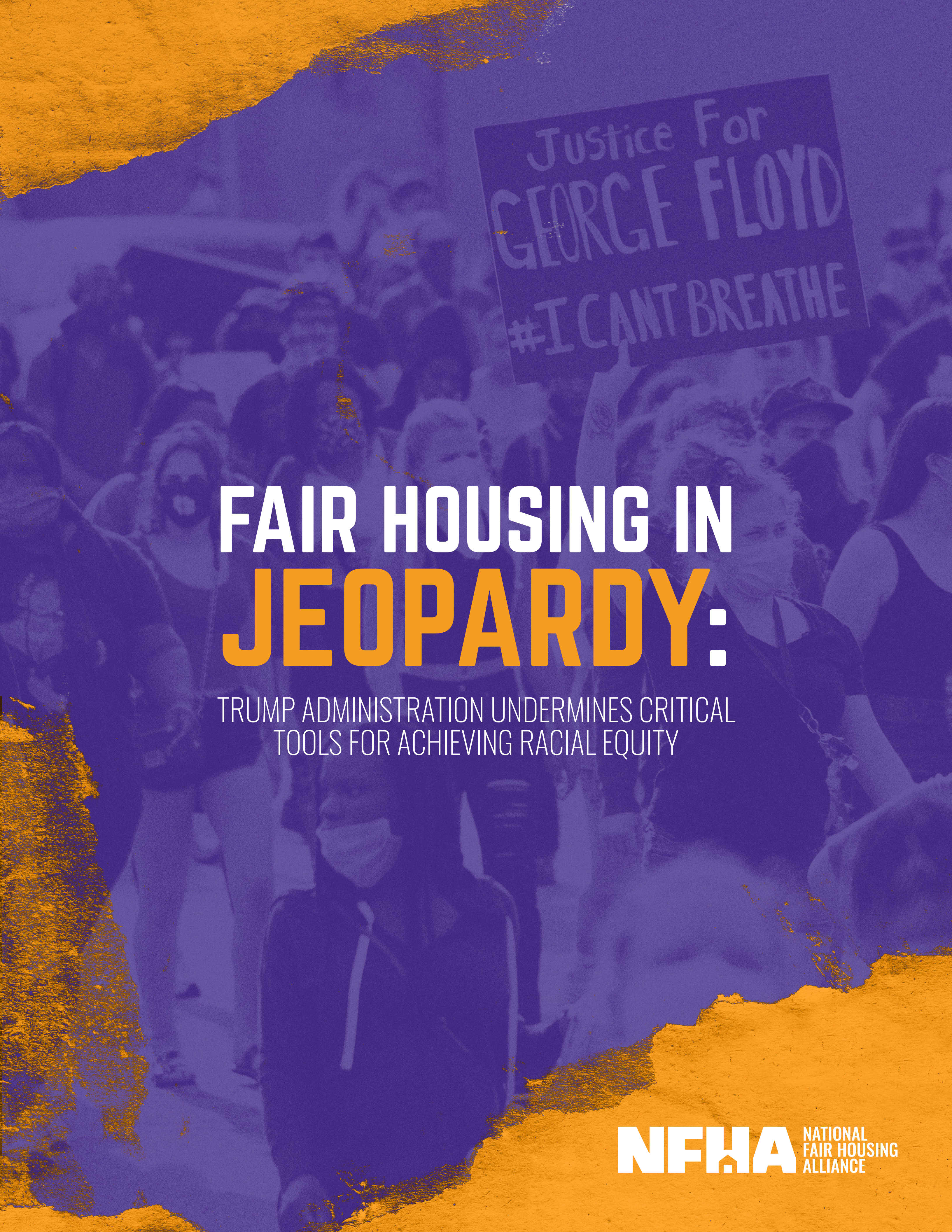

FAIR HOUSING IN JEOPARDY:

TRUMP ADMINISTRATION UNDERMINES CRITICAL TOOLS FOR ACHIEVING RACIAL EQUITY

NFHA NATIONAL FAIR HOUSING ALLIANCE

IN MEMORIAM

JOHN LEWIS

1940-2020

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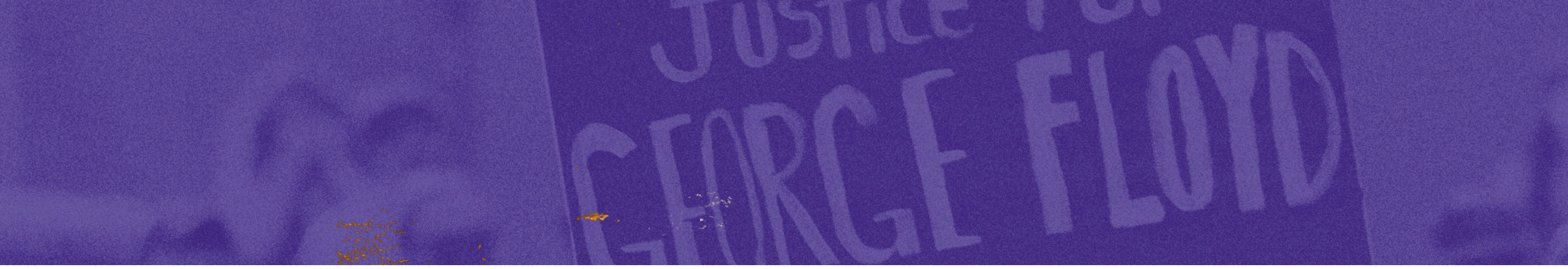

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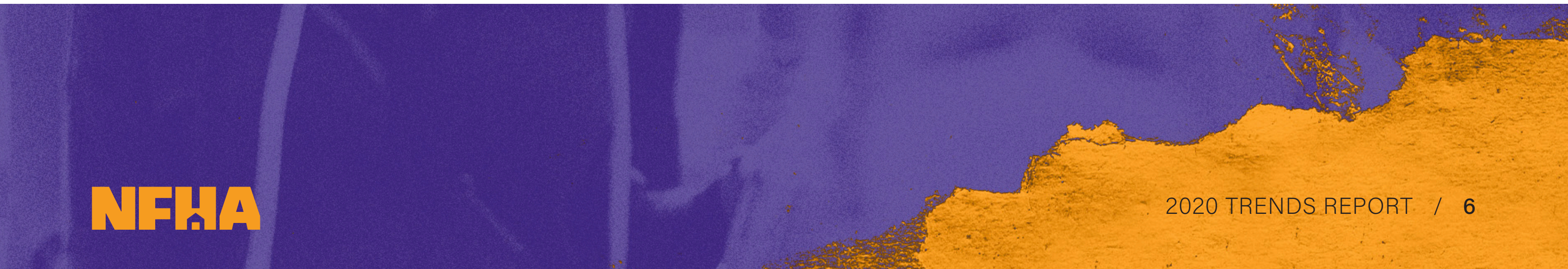
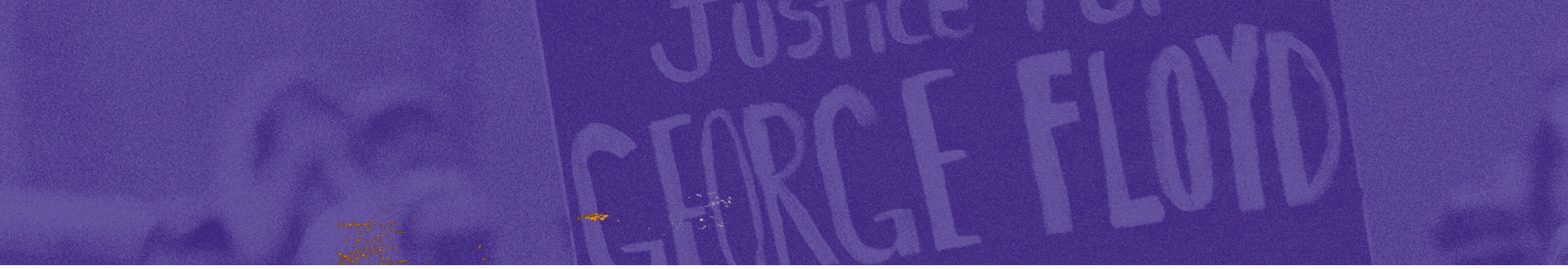
About the National Fair Housing Alliance

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.

Note on the 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 whether or not 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 than 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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The 2020 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.

LETTER FROM THE PRESIDENT AND CHIEF EXECUTIVE OFFICER

Dear Fair Housing Friends,

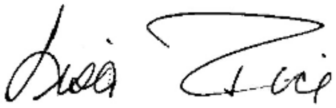
America is at an exciting turning point. We all get it now: if you live in a neighborhood that does not have well-resourced schools, quality health care, fresh food, clean air and water, green space, good jobs, access to credit, fair policing, routine public services, and convenient transportation, your life outcomes are unlikely to turn out as well as those who do live in neighborhoods with those services and opportunities.

The U.S. was built on a system of racism against Black people so extreme that it permeates every aspect of American life today. And that racism reflects a similar bias against indigenous peoples, Latinos, Asian Americans, and other groups. Historical racism resulted in the institutionalized policies and practices that deliberately perpetuated segregation by race and ethnicity, and denial of opportunities to people of color. It is exciting that there is momentum on the ground for really doing something to change this construct. Unfortunately, at the same time, the Trump administration has doubled down on its efforts to undermine the best tool for doing so: the Fair Housing Act.

In this 2020 Fair Housing Trends Report, we describe the role housing discrimination plays in many aspects of our society, including the current COVID-19 pandemic, and how neighborhoods and people of color are affected adversely by climate change, the prevalence of toxic waste and other pollutants, the economic crisis, bias in technology, and much more. We also report on how the Trump administration has taken additional steps to eviscerate the effectiveness of fair housing laws. Trump is trying to move this nation backward, but NFHA is part of a movement that will not allow that. There has never been a more critical time to dig in our heels and band together to fight against the injustices directed at fair housing advocates and those we serve.

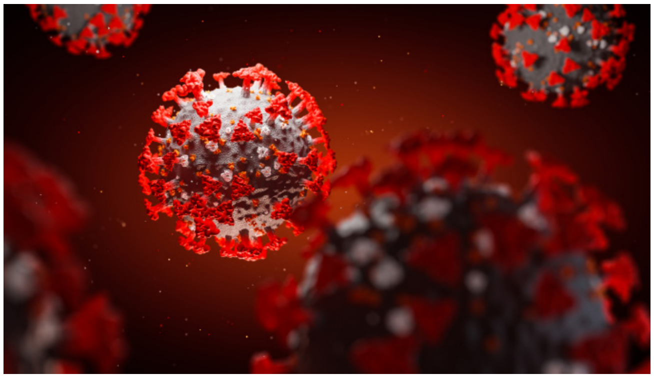
The image of a White police officer kneeling on the neck of George Floyd was a visceral reminder of how White America has knelt figuratively on the necks of people of color for, literally, centuries. One of the most formidable tactics for limiting opportunities for people of color was and is housing discrimination. To reverse course requires sustained, effective enforcement of existing fair housing regulations and ensuring that programs and policies designed to eliminate discrimination and increase equity have the resources and support needed to achieve these goals.

I think most people understand why we say "Black Lives Matter." It doesn't mean that other lives don't matter. But we are now in a place where the world sees what has been perpetrated against Black lives over the centuries and how that must change. Let's work together to harness the power of that awakening to eliminate the bedrock inequities of housing discrimination and segregation. All lives will be the better for it.



EXECUTIVE SUMMARY

This report was not supposed to be about the COVID-19 pandemic. It was supposed to be about fair housing trends in 2019. However, how could we not address the COVID-19 crisis when it illuminated the great disparities at the heart of every fair housing trends report ever released by NFHA? The adverse COVID health outcomes for people of color, and especially for Black Americans, are a manifestation of segregation and absence of opportunity in neighborhoods of color. People of color live in communities with more concrete, toxic facilities, and pollution, but fewer fresh foods or health care facilities. The disparities in economic outcomes reflect the disparities in education and job opportunities linked to differences in school quality, transportation, and employment networks. People of color, especially Latinos, are overrepresented in service industry jobs, those hardest hit by the pandemic. The differences in long-term housing stability relate directly to centuries of differences in housing opportunities–people of color are predominantly renters, while White people are predominantly homeowners. Congress has protected mortgage holders during the pandemic-related economic turndown far more than it has protected renters. The COVID-19 pandemic might be a major health issue, but it is a fair housing issue as well.



Therefore, in this report, we outline the disparities related to COVID-19 and fair housing. This report, however, is not only about COVID. Other highlights of the report include:

- There is a strong correlation between residential segregation and inferior health outcomes for people of color.
- There was a small decline in the number of housing discrimination complaints from an all-time high in 2018 to a still significant 28,880 in 2019.
- Private fair housing organizations continued to process more complaints, 73.12 percent, than all government agencies combined.
- Private fair housing organizations and civil rights agencies led the way in bringing and winning significant victories designed to redress discrimination throughout the nation.
- The Trump administration continued its efforts to undermine enforcement of fair housing and fair lending laws, including measures to eviscerate Affirmatively Furthering Fair Housing requirements and the Disparate Impact legal tool.
- There are significant impacts from global warming and climate change on people and communities of color.
- There is a compelling need to address algorithmic bias in technologies used in the housing and lending sectors.

It comes as no surprise to civil rights advocates or the health care community that people of color who live in segregated neighborhoods have had higher rates of COVID-19 and a disproportionate number of fatalities from COVID. In Section II, we outline how neighborhoods of color have more hazardous and toxic waste facilities and polluted air, while at the same time fewer health care and fitness facilities, less green space, and less fresh food. This leads to a panoply of health problems, many of which make residents of these neighborhoods more vulnerable to the coronavirus. It is not a coincidence that these neighborhoods are unhealthy; it is housing discrimination. At the same time, the COVID-19 crisis has highlighted disparities in employment and housing stability.

COMPLAINTS ALLEGING DISCRIMINATION ON THE BASIS OF DISABILITY CONTINUED TO CONSTITUTE THE LARGEST PERCENTAGE OF COMPLAINTS AT 58.90 PERCENT.

The Trump administration continued its assault on fair housing, but the number of housing discrimination complaints filed in 2019 remained consistent with prior years. While a 25-year complaint record was set in 2018, the number of complaints for 2019 was consistent with recent years, at 28,880. Private, nonprofit fair housing organizations, who provide services at the local level, processed 73.12 percent of the complaints,

83.75% OF ALLEGATIONS OF DISCRIMINATION OCCURRED IN THE RENTAL MARKET.

almost three times the amount processed by state, local, and federal agencies combined. Complaints alleging discrimination on the basis of disability continued to constitute the largest percentage of complaints at 58.90 percent, followed by race-based complaints at 16.47 percent, and familial-status based complaints at 7.71 percent. Discrimination on the basis of disability is usually obvious, making it much easier to detect and more practical to file a complaint. Discrimination on the basis of other protected classes is almost always more subtle, making the discrimination much more difficult to detect. The majority of allegations of discrimination occurred in the rental market (83.75%). The simplicity of the rental transaction makes it far easier to suspect discrimination than in complex transactions like real estate sales, mortgage lending, and homeowners insurance. Section III provides additional information about the nature and extent of housing discrimination complaints in 2019.

In Section IV, we provide a sampling of important legal victories in many housing discrimination cases in 2019. These cases involved the discriminatory impact of criminal records bans in housing situations; the failure to design and construct multi-family housing that is accessible to persons with disabilities; racial discrimination in mortgage lending; discrimination in access to basic utilities; and discrimination in a rent-to-own scheme that constituted reverse redlining. In addition, NFHA and scores of co-plaintiff fair housing organizations won significant victories in three long-standing cases against FannieMae, Bank of America, and Deutsche Bank, alleging discrimination in the marketing and maintenance of Real Estate Owned (lender-owned foreclosed properties) in neighborhoods of color in numerous metropolitan communities through the U.S.

Efforts to enforce fair housing laws and create neighborhoods of opportunity for all continue to be undermined by the Trump administration and its leadership at HUD. Trump, a former housing discriminator, has engaged in additional dreadful actions to undermine the effectiveness of the Fair Housing Act, even as people of all races and backgrounds have taken to the streets to demonstrate against the very constructs fair housing laws are designed to dismantle. In Section V, we expose the many efforts underway by the current administration to mitigate the effectiveness of the Fair Housing Act. One of these affects a critical legal tool in fair housing cases—disparate impact. In early September 2020, HUD issued a new Disparate Impact Rule that contained an unprecedented set of pleading requirements for victims of discrimination who bring disparate impact claims, as well as unheard-of defenses for lenders, insurance companies, and housing providers. The rule also provides exemptions and corporate-leaning defenses to disparate impact liability under the Fair Housing Act. Disparate impact is established legal doctrine and an important tool that allows victims of discrimination to challenge policies or practices with a discriminatory effect on persons protected by the Fair Housing Act. HUD's new rule may make it virtually impossible to bring disparate impact cases under the Fair Housing Act. Other adverse efforts by the administration relate to immigrants, transgender people, discrimination on the basis of religion, Affirmatively Furthering Fair Housing, and the Community Reinvestment Act.

While the actions of the Trump administration require that we fight to maintain and restore long-standing fair housing tools and doctrines, we must also look forward and address emerging issues that require a fair housing lens. In the 2019 Fair Housing Trends Report, we covered the importance of addressing bias in data and technology. The expanded use of artificial intelligence in housing-related transactions makes it imperative that companies that make decisions based on algorithms ensure those algorithms do not contain biased data or assumptions and that they test the validity and fairness of those systems on an ongoing basis. Tech bias, climate change, sexual harassment, and other matters that require more attention from a fair housing perspective are discussed in Section VI.

This report contains more than 50 recommendations for achieving the goals of the Fair Housing Act, listed in Section VII. The ten over-arching recommendations into which all these recommendations fall are as follows:

Primary Recommendations:

1. **Congress must pass protections for homeowners and renters to prevent loss of housing related to the COVID-19 pandemic and economic crisis.**

2. **HUD must immediately withdraw its new AFFH regulation, reinstate the 2015 regulation, and resume its implementation and enforcement.**

3. **HUD must immediately withdraw the new disparate impact rule and reinstate the 2013 Disparate Impact Rule.**

4. **HUD must rescind or withdraw recent and proposed rules that allow for discrimination based on religion or gender identity.**

5. **The OCC must withdraw its 2020 CRA regulation, and Congress must update the CRA to strengthen the fair lending obligations of lending institutions.**

6. **The CFPB must disband its Task Force on Consumer Financial Law and reinstate the authority of the Office of Fair Lending and Equal Opportunity.**

7. **Federal agencies must incorporate fair housing and fair lending requirements into all relevant programs.**

8. **Artificial intelligence developers and users must eliminate algorithmic bias by assessing the fair housing and fair lending consequences of the data used and systems developed.**

9. **Government and advocates must reverse the housing-related effects of climate change and discriminatory environmental actions.**

10. **HUD must conduct research into the nature and extent of sexual harassment in housing situations.**

The Fair Housing Act was enacted in 1968 to achieve two goals: to eliminate housing discrimination and to take significant action to overcome historic segregation and achieve inclusive and integrated communities. While the act itself is more than 50 years old, we have made only marginal progress in achieving these goals. That has long been apparent to fair housing practitioners. But the bedrock inequities of housing discrimination and segregation have been illuminated recently for the entire world to see. People in the U.S. and throughout the world now understand that where one lives determines almost everything about one's life, and that inequities in opportunity related to neighborhood can have a powerful adverse effect on life outcomes, including life expectancy itself. We hope this understanding translates into new and better policies designed to effectively mitigate these disparities and create healthy neighborhoods of opportunity for all.

SECTION I: DISPARATE IMPACT OF THE COVID-19 CRISIS

While this report is primarily about fair housing data and trends in 2019, NFHA would be remiss if it did not address the fair housing implications of the COVID-19 pandemic,[1] an enormous crisis in the U.S. and across the globe. More than 6.3 million people in the U.S. have contracted the virus since February, and more than 190,000 have died.[2] At the same time, physical distancing and other measures aimed at containing the virus have sent shock waves through the economy. Americans have filed more than 60.1 million jobless claims since mid-March,[3] and more than 80,000 small businesses have permanently closed.[4]

These facts, however, do not reflect the extent to which non-White people have been hardest hit by this crisis. Structural racism and discrimination have perpetuated health and wealth disparities since before this country's founding, and the virus and its economic consequences have exacerbated those trends.

Disparities in Health Outcomes and Exposure to COVID-19

Consider the disparities in life and death outcomes of coronavirus. COVID-19 has been more widespread among non-White communities and more deadly. Nationally, Black COVID-19 patients are dying nearly twice as often from coronavirus as White people, while Latinos have a death rate that is about equal to that of White patients.[5] The disparities are starker when death rates are adjusted by age, given that coronavirus is particularly lethal in older people. Black and Latino populations tend to trend younger than the White population as a whole, and, as a result, the age-adjusted death rate for Black people is 3.6 times higher than for White people, and the age-adjusted death rate for Latinos is 2.5 times higher.

BLACK AND LATINO POPULATIONS TEND TO TREND YOUNGER THAN THE WHITE POPULATION AS A WHOLE, AND, AS A RESULT, THE AGE-ADJUSTED DEATH RATE FOR BLACK PEOPLE IS 3.6 TIMES HIGHER THAN FOR WHITE PEOPLE, AND THE AGE-ADJUSTED DEATH RATE FOR LATINOS IS 2.5 TIMES HIGHER.

[1] The 2020 Fair Housing Trends Report was finalized for publication in late-August; therefore, several numbers related to the pandemic will have shifted since that time.

[2] Centers for Disease Control and Prevention, August 22, 2020, available at: https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.

[3] Manskar, Noah, "US workers file 884,000 jobless claims for second straight week," New York Post, September 10, 2020, available at https://nypost.com/2020/09/10/us-jobless-claims-workers-file-884000-claims-last-week/.

[4] Ngo, Madeleine, "Small Businesses Are Dying by the Thousands – And No One Is Tracking the Carnage," The Washington Post, August 11, 2020, available at https://www.washingtonpost.com/business/on-small-business/small-businesses-are-dying-by-the-thousands--and-no-one-is-tracking-the-carnage/2020/08/11/660f9f52-dbda-11ea-b4f1-25b762cdbbf4_story.html.

[5] Ford, Tiffany, Sarah Reber, and Richard V. Reeves, "Race gaps in COVID-19 deaths are even bigger than they appear," Brookings Institution, June 16, 2020, available at https://www.brookings.edu/blog/up-front/2020/06/16/race-gaps-in-covid-19-deaths-are-even-bigger-than-they-appear/.

Recent data released by numerous states and cities shows a frightening trend. In Chicago, Black Americans make up 43 percent of virus-related deaths,[6] despite making up less than a third of the population. In Richmond (VA), Blacks comprised at one point 100 percent of COVID-19 deaths, despite being only 48 percent of the population.[7] In California, the virus is killing young Latino and Black people at higher rates.[8] After adjusting for population, Latinos in California are now 3.4 times more likely than whites to test positive.[9] In Michigan, Blacks make up 49 percent of COVID- 19 cases and 65 percent of deaths but comprise only 14 percent of the state's population.[10]

Despite these disturbing differences, experts warn that official statistics are likely understating the disparities in racial and ethnic outcomes, due to significant data collection gaps across states.[11]

These health trends reflect the racist structures that have left more people of color without health insurance, with fewer facilities at which to seek care, and with less access to paid sick leave. At the same time, they also tend to reside in areas with higher rates of pollution, which can create the underlying conditions that make COVID-19 more lethal.[12] Racial bias has been evident further in response to the pandemic itself, from testing sites located disproportionately in White neighborhoods[13] to the potential disparate impact of guidelines developed for overwhelmed hospitals to determine who lives and who dies.[14]

The Centers for Disease Control and Prevention (CDC) found that residential segregation is linked with a variety of adverse health outcomes and underlying health conditions, which can also increase the likelihood of severe illness or death from COVID-19.[15] The CDC also points out not just the disproportionate access to healthy food, but also the unequal access to medical facilities. Communities of color have a shortage of hospitals and a shortage of adequate medical treatment.[16]

The CDC also briefly touches on the

[6] City of Chicago COVID-19 Report, August 6, 2020, available at https://www.chicago.gov/city/en/sites/covid-19/home/latest-data/2020-08-06.html.

[7] Roberts, Nigel, "Black People Comprise 100 percent of the Coronavirus Deaths In Richmond, Virginia," BET, April 26, 2020, available at https://www.bet.com/news/national/2020/04/26/richmond-coronavirus-deaths.html?eType=EmailBlastContent&eId=1c7cd1d5-97b4-473d-9d47-28657f5e4762.

[8] Los Angeles Times Staff, "Tracking the coronavirus in California," Los Angeles Times, September 10, 2020, available at https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak/.

[9] *Id.*

[10] Michigan State COVID-19 Report, available at https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html.

[11] Barrón-López, Lauren, Adam Cancryn, Maya King, and Darius Tahir, "Missing data veils coronavirus damage to minority communities," Politico, June 14, 2020, available at https://www.politico.com/news/2020/06/14/missing-data-veils-coronavirus-damage-to-minority-communities-316198.

[12] Nevo, Raymond and Pam Rivera, "The Hidden Pre-Existing Condition," NRDC, April 20, 2020, available at https://www.nrdc.org/experts/pamela-rivera/hidden-pre-existing-condition; Bouie, Jamelle, "Why Coronavirus Is Killing African-Americans More Than Others," New York Times, April 14, 2020, available at https://www.nytimes.com/2020/04/14/opinion/sunday/coronavirus-racism-african-americans.html.

[13] McMinn, Sean and Audrey Carlsen, Bret Jaspers, Ruth Talbot, and Stephanie Adeline, "In Large Texas Cities, Access To Coronavirus Testing May Depend On Where You Live," NPR, May 27, 2020, available at https://www.npr.org/sections/health-shots/2020/05/27/862215848/across-texas-black-and-hispanic-neighborhoods-have-fewer-coronavirus-testing-sit.

[14] Carreras Tartak, Jossie and Hazar Khidir, "Opinion: U.S. Must Avoid Building Racial Bias Into COVID-19 Emergency Guidance," NPR, April 21, 2020, available at https://www.npr.org/sections/health-shots/2020/04/21/838763690/opinion-u-s-must-avoid-building-racial-bias-into-covid-19-emergency-guidance.

[15] https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html.

[16] https://www.columbiaspectator.com/news/2020/04/18/segregation-exposes-black-residents-to-health-risks-hospitals-are-disincentivized-from-treating-them/.

disproportionate percentage of underlying health conditions suffered by the Black population in particular. Some of these underlying health conditions include diabetes, possibly caused by the lack of access to fresh affordable food, and asthma and other respiratory illnesses, possibly linked to harmful environmental factors exacerbated by housing segregation.

Some underlying conditions that increase susceptibility and severity of COVID-19 are also amplified by incidents of racism. Experiencing these incidents may lead to increases in cortisol or other stress-related outcomes, including lowered immune response, which in turn might lead to increased susceptibility to COVID-19.[17] [18] [19]

People of color also face heightened risk because they are overrepresented in the population of essential workers, who are more likely to be exposed to the virus daily. Black workers make up one in nine workers overall, but one in six across frontline industries.[20] Those include grocery, convenience, and drugstore work; public transit; trucking, warehouse, and postal services; health care; childcare; and social services—all industries in which Black employees are disproportionately represented.[21] Meanwhile, Latinos, who account for one in six workers overall and about the same proportion in frontline industries, are overrepresented in grocery, convenience, and drug stores; trucking, warehouse, and postal services; building cleaning services; child care; and social services.[22]

These health disparities are exacerbated by increased risk exposure from public transportation. An American Public Transit Association report published prior to the pandemic showed that almost half the respondents indicated that they used public transportation to travel to and from work. The same report indicated that in 2017, 63 percent of the U.S. population was White. Still, Whites only constituted 40 percent of transit riders, while 12 percent of the U.S. population was Black but Blacks made up 24 percent of transit riders.[23] Non-White workers are significantly more likely to rely on public transportation to get to their jobs[24] and to live in overcrowded housing, which can lead to further transmission of the virus.[25]

The Lack of Effective Response to the Immediate Needs of Vulnerable Communities Threatens to Magnify Disparities and Exacerbate Racial Inequality

Both during and after the coronavirus pandemic, people of color will once again be at high risk of housing instability, and with it, the loss of

17 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6188812/.

18 https://www.npr.org/sections/health-shots/2017/11/11/562623815/scientists-start-to-tease-out-the-subtler-ways-racism-hurts-health.

19 https://www.discovermagazine.com/health/can-stress-loneliness-and-sleep-deprivation-make-you-more-prone-to-covid-19.

20 https://cepr.net/a-basic-demographic-profile-of-workers-in-frontline-industries/.

21 *Id.*

22 *Id.*

23 https://www.apta.com/wp-content/uploads/Resources/resources/reportsandpublications/Documents/APTA-Who-Rides-Public-Transportation-2017.pdf.

24 Austin, Algernon, "For Millions of Workers, Economic Opportunity Depends on Public Transit," Demos, Nov. 15, 2017, available at https://www.demos.org/blog/millions-workers-economic-opportunity-depends-public-transit.

25 Cimini, Kate and Jackie Botts, "Close Quarters: California's overcrowded homes fuel spread of coronavirus among workers," CalMatters, June 12, 2020, available at https://calmatters.org/projects/overcrowded-housing-california-coronavirus-essential-worker/.

financial security, homeownership, and wealth. We must act now to adopt the policies and programs necessary, and fund them at a level sufficient to serve all of those in need, to prevent the pandemic from deepening the racial divide in our country.

As researchers at the Urban Institute have noted, "Black and Latino people have been hardest hit by stay-at-home orders and other public health measures put in place to slow the spread of COVID-19 because of a legacy of occupational segregation that has led to them being overrepresented in low-wage jobs and in jobs that can't transition to remote work. In April, Latino unemployment reached a record high of 18.9 percent, and Black unemployment reached 16.7 percent. Layoffs related to COVID-19 for Black and Latino workers are also more likely to lead to housing instability, as they already reported higher rates of financial insecurity and lower savings to draw from to weather economic shocks before the crisis began."[26] Unemployment rates have come down somewhat since their high in April, but the disproportionate impact on workers of color remains. In July, the Latino unemployment rate was 12.9 percent and the Black unemployment rate was 14.6 percent. The unemployment rate for Asians was 12.0 percent, down from 14.5 percent in April, while the rate for Whites was 9.2 percent, down from 14.2 percent in April.[27]

Legislation passed to address the impact of the COVID-19 pandemic will very likely exacerbate racial inequities, disproportionately exposing families of color to housing instability and further entrenching the racial homeownership and wealth gaps. The CARES Act, passed on March 27, 2020, overwhelmingly benefits homeowners and provides little protection to renters. The act contained glaring differences in protections for U.S. households, which creates deep disparities based on race and national origin.

The overwhelming majority of Whites, roughly 76 percent of White households,[28] are homeowners, giving them great benefit from the year-long protection from foreclosure and generous post-forbearance options available to homeowners impacted by the pandemic. In contrast, the majority of Blacks, Latinos, Native Americans, and certain Asian-American groups are renters. In 2018, 58.3 percent of Black households were renters, as were 52.5 percent of Latino households and 40.5 percent of Asian households, compared to only 27.8 percent of White households.[29]

The gap in homeownership between Blacks and Whites, at 30 points, is back to where it was in 1890.[30] Because Whites are overwhelmingly homeowners and people of color are overwhelmingly renters, we face the likelihood that Whites will be able to preserve their housing status and wealth, while people of color will be more susceptible to housing instability

[26] Greene, Solomon and Alanna McCargo, "New Data Suggest that COVID-19 is Widening Housing Disparities by Race and Income," Urban Institute, May 29, 2020, updated June 2, 2020.

[27] U.S. Department of Labor Bureau of Labor Statistics, "The Employment Situation – July, 2020," USDL-20-1503, August 7, 2020. Available at https://www.bls.gov/news.release/pdf/empsit.pdf.

[28] U.S. Bureau of the Census Release CB20-107, "Quarterly Residential Vacancies and Homeownership, Second Quarter 2020," July 20, 2020. Available at https://www.census.gov/housing/hvs/files/currenthvspress.pdf.

[29] Choi, Jung Hyun, Jun Zhu and Laurie Goodman, "COVID-19 Policy Responses Must Consider the Pandemic' Impact on Young Renters and Renters of Color," UrbanWire, Urban Institute, April 7, 2020. Available at https://www.urban.org/urban-wire/covid-19-policy-responses-must-consider-pandemics-impact-young-renters-and-renters-color.

[30] Start Closing the Racial Wealth Gap," American Prospect. June 17, 2020. Available at: https://prospect.org/economy/how-to-start-closing-the-racial-wealth-gap/.

and loss of wealth.[31]

THE GAP IN HOMEOWNERSHIP BETWEEN BLACKS AND WHITES, AT 30 POINTS, IS BACK TO WHERE IT WAS IN 1890.

Under the CARES Act, only tenants in certain covered rental properties[32] received a short-term reprieve on evictions and late fees. However, upon the expiration of the eviction moratorium, tenants will need to pay their arrearages. Tenants who cannot afford to pay their past due rents will face eviction. Indeed, evictions in cities throughout the nation began to rise once the moratorium included in the CARES Act expired.[33]

On September 1, 2020, the Centers for Disease Control and Prevention (CDC) announced a nationwide[34] eviction moratorium for non-payment of rent through December 31, 2020 (see 85 Fed.Reg. 55292). The CDC order is based on federal law that allows the CDC director to take measures he or she deems necessary to prevent the spread of a communicable disease when state health authorities have failed to do so (see 42 CFR Sec.70.2). The CDC's order does not pre-empt state or local moratoria that provide the same or greater levels of public health protections.

Although the moratorium does not cover all tenants or all rental situations, it is more comprehensive than the patchwork of state or local protections that preceded it. However, there are many questions about the logistical details of the moratorium, how effective it will be in practice and whether it will be able to withstand the expected court challenge by landlords. There are income limits on tenant eligibility, and tenants must provide their landlords with a declaration, signed under penalty of perjury, stating that they meet the income limits, are unable to pay the full rent because of an income loss or extraordinary medical bills, have used their best efforts to obtain governmental rent assistance, are likely to become homeless or forced to live in close quarters in another residence if evicted, and will try to pay as much of their rent as their circumstances permit.

Neither the CDC nor any other federal agency has provided any guidance on implementation of the moratorium, nor have they conducted any outreach to tenants, landlords, courts, or other state and local government agencies to ensure that all parties are aware of their rights and responsibilities under the moratorium. As a result, it is unclear whether tenants will know about the moratorium or whether landlords and courts will accept tenants' declarations.

Despite these uncertainties, the CDC eviction moratorium has the potential to help keep significant numbers of tenants in their housing through the end of the year. However, it fails to solve the underlying problem that creates the need for a moratorium in the first place:

[31] Jourdain-Earl, Maurice, "The COVID-19 Forbearance Moratorium Enlarges the Wound Caused by the Lack of Homeownership in Black America." Compliance Tech. June 29, 2020. Available at: https://www.linkedin.com/pulse/covid-19-forbearance-moratorium-enlarges-wound-caused-jourdain-earl/.

[32] Tenants residing in units where the owner has procured a federally-backed multi-family loan and where the owner has applied for a forbearance, receive protection from eviction under the CARES Act. The eviction moratorium expired on July 24, 2020 and as of the writing of this report, Congress has not extended the eviction protection.

[33] King, Noel, "*It 'Looks Very Scary For Renters' As Federal Eviction Relief Expiration Nears,*" NPR. July 21, 2020. Available at: https://www.npr.org/sections/coronavirus-live-updates/2020/07/21/893406577/as-protections-expire-millions-of-americans-face-threats-of-eviction.

[34] The order will not apply to American Samoa, which so far has had no coronavirus cases, until such time as cases are reported there.

the severe economic impact of the pandemic that has left millions of renters unable to pay their rent. The moratorium only kicks this can down the road. For more details/analysis, read the National Housing Law Project's document, "CDC Eviction Moratorium – Initial Analysis (September 4, 2020).[35]

Thus, the situation is grim for the 44 million households in the U.S. that are renters. Almost 38 percent of renters work in the five industries most vulnerable to COVID-19 shock: food and accommodations, construction, entertainment, retail, or other services.[36] This means they are the people most likely to be furloughed, have reduced hours and income, or be laid off altogether. As a consequence, they are the most likely to have difficulty paying their rent and to face potential eviction. Based on the renter numbers above, these renters are also more likely to be people of color

Many people of color are facing double jeopardy: they are more likely to be renters, and they are employed in sectors hit hardest by the pandemic. Within the five industries most vulnerable to COVID-19 shock, 45.5 percent of Latino workers are renters, as are 31.8 percent of Black workers, 29.7 percent of Asian workers, and 37.3 percent of White workers.[37]

Without swift and decisive intervention by Congress, many renters will lose their homes. They may end up in overcrowded conditions in shelters or with relatives or friends, or worse, on the street in the middle of a pandemic during which sheltering in place, social distancing, and frequent handwashing are public health measures urgently needed to protect us all.

To avoid this impending tsunami of evictions, which will hit renters of color the hardest, and ensure that renters can remain stably housed, advocates are calling for a comprehensive, 12-month moratorium on evictions and $100 billion in federal rental assistance funding.[38] If this help is not forthcoming, many renters, including many renters of color, may find themselves with no place to live. This, in turn, will lead to severe short- and long-term consequences in terms of their health, financial security, and family stability. While the HEROES Act adopted in May by the U.S. House of Representatives would remedy these problems, to date the Senate has failed to act.

The picture is different for many homeowners. The CARES Act provides up to 12 months of forbearance for federally-backed loans, which comprise 70 percent of the mortgage market. Building on the lessons learned in the foreclosure crisis a decade or more ago, when mortgage servicers were utterly unprepared to deal with the overwhelming number of borrower requests for assistance, the statute also specifies a streamlined process through which borrowers can take advantage of this protection. However, borrowers must actively request this assistance, and very little has been done to get information about this protection out to borrowers, including those with limited English proficiency. This has raised concerns that too many LEP borrowers may not know that help is available or how to obtain it.

Despite the greater protections Congress provided for them in the CARES Act, homeowners are still at risk during this crisis. While their numbers are lower than those for

[35] Available at https://nhlp.org/wp/content/uploads/CDC-Eviction-Analysis.pdf.

[36] "Lenders, Loan Channels and Industry/Occupation by Income and Race/Ethnicity," Urban Institute Housing Finance Policy Center, April 2020. PowerPoint available at https://www.urban.org/sites/default/files/lenders_loan_channels_industry_occupation_by_income_and_race_ethnicity_0.pdf.

[37] *Id.*

[38] National Low Income Housing Coalition, "Responding to Coronavirus: Ensuring Housing Stability During a Crisis," available at https://nlihc.org/responding-coronavirus.

renters, a significant share of homeowners work in the five industries most vulnerable to COVID-19. That includes 36.9 percent of Latino homeowners, 29.6 percent of White homeowners, 27.6 percent of Asian homeowners, and 25.8 percent of Black homeowners.[39]

Evidence is already emerging that homeowners are having or expect to have trouble making their mortgage payments. In June, 4.68 million mortgage loans, with a combined unpaid balance of over $1 trillion, were in forbearance. They represented nearly nine percent of all active mortgages.[40] [41]

Although the overall number of mortgages in forbearance has come down somewhat since that June high, many borrowers continue to lack the resources to bring their mortgages current, and those borrowers are falling farther and farther behind. According to Black Knight's Mortgage Monitor, as of July, 250,000 more mortgages were 60 days past due than was the case in February, before the impact of the pandemic was felt in the mortgage market. Even more alarming, July saw 1.84 million more mortgages 90 days past due than had been the case in February.[42] These figures mirror the findings of a similar analysis from CoreLogic, which found that, "The share of loans with payments 90 days to 119 days late quadrupled between May and June, rising to 2.3%, the highest level in more than 21 years."[43] Without effective federal intervention, we may face another foreclosure crisis, with many families losing their homes and their financial stability. In addition, the resulting distress sales may have a negative impact on housing prices and home equity, so that even households who don't suffer foreclosure may see their wealth and economic security eroded.

As with many other aspects of this pandemic, homeowners of color appear to be bearing the brunt. An Urban Institute analysis of Pulse data from the Census Bureau supports this conclusion. As the Urban Institute notes, "According to the most recent survey, conducted from July 16 to 21, nearly 21 percent of both Black and Hispanic homeowners missed or deferred the previous month's mortgage payment, compared with 10 percent of white homeowners and about 13 percent of all homeowners with payments due. This gap persisted over the duration of all survey weeks, as Black and Hispanic homeowners continue to be disproportionately burdened by the pandemic's impact on employment and financial stability."[44]

Another area of concern is the 530,000 homeowners who have become delinquent on their mortgages and have not taken advantage of the forbearance available to them, and the 205,000 additional homeowners who did not extend their forbearances when they ended in June or July and have since become

[39] Urban Institute, "Lenders, Loan Channels and Industry/Occupation by Income and Race/Ethnicity," Urban Institute Housing Finance Policy Center, April 2020. PowerPoint available at https://www.urban.org/sites/default/files/lenders_loan_channels_industry_occupation_by_income_and_race_ethnicity_0.pdf.

[40] Black Knight Mortgage Monitor, June 2020, citing McDash Flash Forbearance Tracker.

[41] Those numbers have since declined somewhat, but remain quite high. According to the Mortgage Bankers Association's weekly survey of mortgages in forbearance, as of August 2, 7.44 percent of the mortgages covered by the survey were in forbearance, down from 7.67 percent the previous week. See Mortgage Bankers Association, "Weekly Forbearance and Call Center Survey, Results for the Period from July 27 to August 2, 2020." Released August 10, 2020.

[42] Mortgage Monitor: July 2020 Report, Black Knight, September 8, 2020.

[43] Howley, Kathleen, "Pandemic may lead to foreclosure crisis, CoreLogic says," HousingWire, September 9, 2020.

[44] Choi, Jung Hyun and Daniel Pang, "Six Facts You Should Know About Current Mortgage Forbearances," UrbanWire, August 18, 2020. Available at https://www.urban.org/urban-wire/six-facts-you-should-know-about-current-mortgage-forbearances.

delinquent.[45] We lack the data needed to understand fully who these borrowers are, in terms of race and national origin, type of mortgage, mortgage servicer, or geographic location. However, a recent survey of housing counselors conducted by the National Housing Resource Center suggests that information barriers may be a significant factor. Ninety-one counselors responded to that survey. Of these, 83 counselors from 27 states representing all regions of the country provided details about the reasons their clients had become or were about to become delinquent on their mortgages. Fifty-seven percent of the counselors reported that borrowers told them they did not know about the forbearance options available. Another 70 percent of counselors said borrowers were worried about having to repay all of their past due mortgage payments in one lump sum, and 35 percent of counselors said borrowers were having difficulty connecting with their mortgage servicers.

Despite our lack of detailed data about delinquent borrowers, the information we do have about how different groups of borrowers are faring in this crisis raises concerns that disproportionate numbers of these delinquent borrowers, who have started down the path to foreclosure, may be borrowers of color.

Then there is the other 30 percent of the mortgage market, which is not covered by the CARES Act at all. These are loans originated in the private market and include jumbo mortgages, bank-portfolio mortgages, and many loans made in the Private-Label Security (PLS) market. This last bucket of loans was largely originated pre-2008. We do not have complete numbers, but based on HMDA and other data released on pre-2008 loans, we do know that borrowers of color disproportionately received sub-prime PLS loans. In fact, roughly 50 percent of the mortgages made to Black and Latino borrowers in the years leading up to the Great Recession were subprime PLS loans. Moreover, these subprime PLS loans were highly concentrated in communities of color.[46]

This means that borrowers of color would have higher than average representation in the pre-2008 portfolio of PLS mortgages. Since these loans were excluded from the foreclosure moratorium and forbearance protections provided in the CARES Act, it is highly likely that borrowers of color are not receiving the same access to mortgage forbearance, foreclosure protections, and the panoply of affordable post-forbearance options that White homeowners are receiving.

There are also differences in what happens to homeowners after the forbearance provided in the CARES Act concludes. Borrowers with federally-backed mortgage loans will receive a range of affordable options, while borrowers with non-federally-backed mortgages are not guaranteed these post-forbearance solutions. For example, Freddie Mac, Fannie Mae, FHA, VA, and USDA have all issued guidance that provides borrowers with loans applicable to these entities a range of options, including (where appropriate):

- Full reinstatement by paying back the amount of missed payments;
- Repayment Plan, which requires the borrower to resume regular mortgage payments and pay back the past due amount over time;
- Payment Deferral, which allows borrows to resume regular payments while the

[45] Ibid.

[46] See Statement of Lisa Rice, President and CEO of NFHA, at a Public Briefing held on March 20, 2009 by the U.S. Commission on Civil Rights entitled "An Examination of Civil Rights Issues with Respect to the Mortgage Crisis: The Effects of Predatory Lending on the Mortgage Crisis." Available at: https://nationalfairhousing.org/wp-content/uploads/2017/04/US-Commission-on-Civil-Rights-Statement-of-LR-on-Predatory-Lending-Final...-1.pdf.

past due amount is tacked on at the end of the loan or paid back when the home is refinanced or sold;

- Loan Modification, which allows borrowers who cannot afford to resume their regular monthly payments to change the terms of the loan;
- FHA borrowers with a COVID-19 forbearance will have an opportunity to receive the COVID-19 Standalone Partial Claim, placing the amount owed into a junior lien; or
- Other Loss Mitigation options that enable the borrower to make affordable payments.[47]

The 70 percent of homeowners with a federally-backed mortgage loan will not be required to make lump sum payments at the end of their forbearance period. Homeowners with federally-backed mortgages, as per federal guidelines, must receive a post-forbearance option that is affordable to the borrower.[48] This will not be the case for the 30 percent of homeowners who do not have federally-backed mortgage loans, and many of these borrowers have been told that they will be required to pay back the full amount of arrears in one lump sum payment. This will undoubtedly lead to foreclosures for borrowers who are unable to pay back a large amount of missed payments in one fell swoop. Given the impacts of coronavirus on Black and Latino unemployment and the disproportionate percentage of these homeowners who are likely in the 30 percent of borrowers who do not have a federally-backed mortgage loan, it is highly likely that borrowers of color will be more heavily impacted by COVID-19-related foreclosures.

Unless steps are taken to provide standardized coverage and protection to all homeowners, disproportionate numbers of people of color will experience negative impacts from the COVID-19 pandemic, just as they did with the foreclosure crisis during the Great Recession. These disparities set up a scenario in which Whites will largely reap the benefits of the CARES Act, while Blacks, Latinos, and other people of color will be more susceptible to eviction, housing instability, and economic loss.

The homeowner protections in the CARES Act, although incomplete, are significant. Nonetheless, they will come to an end. Covered borrowers may receive up to 360 days of forbearance, and the point at which borrowers begin to exit forbearance will be another danger point. To avoid another wave of foreclosures like those we experienced during the financial crisis, a number of factors must coincide. Affordable loss mitigation options must be made available across the entire mortgage market, both for borrowers whose mortgages are backed a government agency and for those whose mortgages are not federally-backed. Those options must be driven by the goals of preserving homeownership to the greatest extent possible, including for borrowers of color, and preserving neighborhood stability. Mortgage servicers must have sufficient capacity to handle the volume of borrowers requesting assistance. Servicer employees must have the tools and training to assess borrowers' individual situations fairly and accurately and offer them the best, most affordable options for resolving their delinquencies.

Regulatory agencies must conduct rigorous oversight of mortgage servicers to ensure they are treating borrowers fairly and in a non-

[47] See "What to do After You Receive Forbearance," CFPB. Available at: https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/after-you-receive-relief/

[48] These post-forbearance options are not required under the CARES Act but rather have been put in place by the Federal Housing Finance Agency, Federal Housing Administration, and other federal agencies. See for example, Understanding Forbearance During COVID-19, issued by Freddie Mac. Available at: http://www.freddiemac.com/blog/homeownership/20200416_understanding_forbearance_during_covid19.page.

discriminatory manner. To do this, they will need to require servicers to collect and report timely and relevant data about their borrowers and the resolutions offered to them, including data on their race, national origin and other protected characteristics. This data must also be made available to the public. Where regulators find problems, they must intervene promptly to resolve them, hold the offenders accountable, and take steps to make sure other servicers do not replicate those problems. We will need a stable housing market, so that borrowers whose only option is to sell their homes can do so at a price that will enable them to pay off their mortgage and avoid financial devastation. Those homes must be made available to others who want to occupy them, not snapped up by investors and private equity firms–already amassing their war chests-who will prioritize profit maximization over neighborhood stability, equitable access to homeownership, and the opportunity to build intergenerational wealth.

All of this is a tall order. But it is what is required if we are to avoid the devastating loss of homeownership and wealth by families of color that was the avoidable consequence of the last foreclosure crisis.

Other Fair Housing Implications of COVID-19

The COVID-19 pandemic and its effects also give rise to other fair housing concerns related to sexual harassment in housing situations, domestic violence, and discrimination based on national origin and disability status.

Sexual Harassment

Anecdotal information suggests that housing-based sexual harassment by landlords, property managers, maintenance workers, and others is on the rise during the pandemic.[49] U.S. Department of Justice (DOJ) officials have warned that housing providers are using the pandemic to harass and exploit tenants who are having trouble paying rent on time and may be facing heightened housing insecurity. NFHA's members report a 13 percent increase in complaints of sexual harassment since COVID began in the U.S. (See more about Sexual Harassment in Section V.)

Domestic Violence

There has also been concern about increased incidents of domestic violence in response to stay-at-home orders throughout the country. When lockdown measures were implemented to contain the spread of the virus, Human Rights Watch warned of an increase in domestic violence throughout the world.[50] Domestic violence, of course, is more likely to be inflicted on women. Reliable data can be difficult to obtain, but Chicago's police department reported that domestic violence calls rose 12 percent from the start of the year through mid-April, compared to a year earlier. Any official statistics likely undercount the prevalence of violence due to challenges survivors may have in reporting violence during this period and the lack of safe places to which to flee, such as shelters.

National Origin Discrimination

New reports of discrimination against or harassment of Asian Americans have emerged amid the COVID-19 pandemic, which originated in Wuhan, China. This has led to increased reports of hate crimes against members of the Asian American and Pacific Islander community

[49] Aviles, Gwen, NBC News, Aprio 17, 2020, at https://www.nbcnews.com/news/us-news/landlords-are-targeting-vulnerable-tenants-solicit-sex-exchange-rent-advocates-n1186416?cid=sm_npd_nn_fb_ma

[50] https://www.hrw.org/news/2020/07/03/women-face-rising-risk-violence-during-covid-19.

throughout the U.S.[51] This type of hate activity can involve harassment in and around people's homes and neighborhoods, implicating Fair Housing Act liability. Organizations such as Chinese for Affirmative Action are tracking hate and harassment incidents against Asian American individuals, with over 1,700 incidents reported over six weeks.[52] Reports and studies show that some of the more common occurrences of hate crimes are at or around people's places of residence.[53]

Reports include instances in which anti-Chinese flyers were posted on utility poles throughout a neighborhood, and Asian American individuals experienced harassment while out walking their dog. There have been incidents where anti-Chinese sentiments were spray painted on the sidewalk outside an apartment complex, and where posters about COVID-19 were posted on the dorm doors of Asian American students. Though these troubling acts of harassment are not new, the pandemic has heightened the discriminatory treatment of housing consumers in several communities.

Problems for People with Disabilities

The COVID-19 pandemic has resulted in widespread changes to the housing market, accelerating shifts toward more remote housing services that have been developing in recent years. NFHA conducted recent market research under the pandemic-related lockdown, which indicated that, along with virtual tours, floor plans are sent to prospective renters, and prospective renters are guided to the housing provider's website and online applications.

In March, the Equal Rights Center produced a report entitled "From Click to Visit,"[54] which detailed an investigation evaluating rental housing providers' website accessibility for people who are blind or visually impaired and use assistive devices. The concern behind the investigation, which occurred prior to COVID-19 but addresses the importance of online access in today's market, was that a specific category of people with disabilities would not be able to have access to parts, if not all, of the rental process, especially as more and more of the rental process is moving online. The report showed that 84 percent of the desktop versions of housing provider websites did not work for users of assistive devices, along with 76 percent of mobile versions. Under the current crisis, these findings reflect that an entire segment of the market may not be afforded rental housing opportunities.

People who are considered to have disabilities due to underlying health conditions may also be at higher risk for COVID-19,[55] compounding challenges associated with seeking housing amid the COVID-19 pandemic. Along with rental information going online, an additional concern is the issue of reasonable accommodations with respect to in-person tours of currently occupied units. Not all housing providers have found ways to conduct business solely online, and even when housing providers identify means of conducting in-person tours that may be deemed "safe" for a prospective renter or real estate agent, these measures may not include protocols appropriate for highly vulnerable populations. For example, they may not address the concerns of people with compromised immune systems when viewings are of currently occupied units.

[51] https://www.adl.org/blog/reports-of-anti-asian-assaults-harassment-and-hate-crimes-rise-as-coronavirus-spreads.

[52] https://caasf.org/press-release/in-six-weeks-stop-aapi-hate-receives-over-1700-incident-reports-of-verbal-harassment-shunning-and-physical-assaults/.

[53] https://www.propublica.org/article/get-out-black-families-harassed-in-their-own-homes.

[54] https://equalrightscenter.org/wp-content/uploads/click-to-visit-report-final.pdf.

[55] https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html.

People with disabilities may need to make accommodation requests for additional protective measures when they seek housing. Similarly, people with disabilities may be living in housing situations that do not accommodate social distancing or other safety protocols under COVID-19, which may necessitate an accommodation request for early lease termination.

People who have COVID-19, those with a history of the virus, or those who are perceived as having the virus may face illegal housing discrimination during and after the pandemic—an issue that will need to be monitored closely by housing advocates in the months to come. Respiratory issues and other symptoms of the disease that affect people's ability to work and care for themselves, even in the short term, may spur housing provider obligations around reasonable accommodations, such as waivers for late charges on rent.

Segregation and Disinvestment in Communities of Color Have Created Conditions That Exacerbate the COVID-19 Pandemic

The degree to which the COVID-19 pandemic has disproportionately harmed Black and Brown people and communities in the U.S. was predictable. Black, and increasingly Latino, infection and death rates are substantially higher than those of Whites. A large part of the disparate impact of this disease can be explained by the myriad, entrenched, and long-lasting effects of segregation. The racist policies and practices that have, over many decades, restricted the housing options, and thereby the educational, employment, health, and other options, of a large part of American society are responsible for the harms we see today. This should be a warning of the urgent need to adopt and implement comprehensive, aggressive policies to eliminate racial disparities in our country, something we should have done long ago. Had we taken effective steps to redress these inequities previously, the burden of COVID-19 would not have been placed so heavily on people of color.

Recommendations:

Pass legislation with provisions that contain protections for renters including:

- Extend the moratorium on evictions so that renters are protected from instability and homelessness throughout the remainder of the pandemic.
- Establish a Renters Assistance Payment Program funded at a level of at least $100 billion to cover rental, utility, and other housing-related payments.
- Create a Homeowners Assistance Fund capitalized at a level of at least $100 billion to cover housing and housing related expenses.
- Provide a moratorium on negative

consumer credit reporting.

- Extend unemployment insurance benefits.
- Provide $90 million in emergency funding for the Fair Housing Initiatives and Fair Housing Assistance Programs.
- Establish $100 million in funding to support comprehensive housing counseling for consumers impacted by COVID-19.

Pass legislation with provisions to protect homeowners including:

- Make forbearance available to all borrowers, regardless of which type of investor holds their mortgage.
- Require mortgage servicers to collect and report demographic information about their delinquent borrowers to ensure they are complying with fair lending laws, and make these data available to the public in a timely manner.
- Conduct rigorous oversight of mortgage servicers to ensure they are treating borrowers fairly and complying with loss mitigation policies.
- Establish explicit goals for affordable, sustainable homeownership retention and neighborhood stability for loss mitigation programs.
- Fully fund housing counseling and legal services programs to provide assistance to borrowers who need it.
- Require the federal housing agencies to undertake – immediately – an aggressive, comprehensive, multi-lingual outreach campaign, in coordination with non-profit housing counseling, legal services, fair housing and other community organizations, to ensure that all borrowers are made aware of the mortgage protections for which they are eligible and how to obtain them.

SECTION II: THE IMPLICATIONS OF FAIR HOUSING FOR HEALTH OUTCOMES

The disparate outcomes of the COVID-19 pandemic have exposed the systemic and structural barriers and inequities related to people's ability to live healthy lives. Even before the crisis, it was clear that where people live greatly affected their health outcomes. The coronavirus has exposed how keenly connected are people's ability to shelter safely in place and their vulnerability to contracting and/or dying from the virus. The COVID-19 crisis adds another dimension to the legacy issues faced by under-served groups. If we are not careful, the recovery from this crisis will be far from equitable, similar to what occurred in the aftermath of the Great Recession. We should not be satisfied with returning people of color to where they were before the pandemic but should seek equitable and reparative solutions that enable under-served groups to finally live in communities with ample access to quality healthcare, food, transportation, and clean environments. In other words, if we apply fair housing principles to the recovery, we can create spaces in which people's zip codes do not determine how healthy they are.

A lack of effective fair housing enforcement is the foundation of these disparities. The effects of redlining, residential segregation, discriminatory policies, and disinvestment created a scenario in which people of color do not live in areas with ample access to healthcare facilities, green and healthy environments, clean water, quality credit, healthy foods, transportation equity, high-performing schools, and other important amenities that make surviving the crisis possible. These structural factors, coupled with implicit and overt bias in our healthcare system, are driving horrible outcomes related to the COVID-19 crisis. These outcomes are grounded in residential segregation.

In commemoration of the 50th Anniversary of the Fair Housing Act in 2018, Trulia conducted groundbreaking research[56] that illustrated the negative effect of residential segregation and disinvestment on access to health in communities of color. In the analysis, Trulia identified the location of healthcare facilities, such as hospitals, doctors and dentists offices, pharmacies, and medical centers. They also researched the location of healthy food providers, green spaces, and fitness centers. Researchers found that resources that lead to healthy lives and good health outcomes are sparsely located in communities of color but amply located in predominantly White communities.

For example, White communities had 11 times the healthcare facilities as Latino communities and eight times the healthcare facilities as Black communities in Oakland. There were 41 healthcare facilities per 10,000 people in predominantly White areas and only 3.7 healthcare facilities per 10,000 people in predominantly Latino areas of the city. There were 5.3 such facilities per 10,000 people in predominantly Black areas in Oakland. In

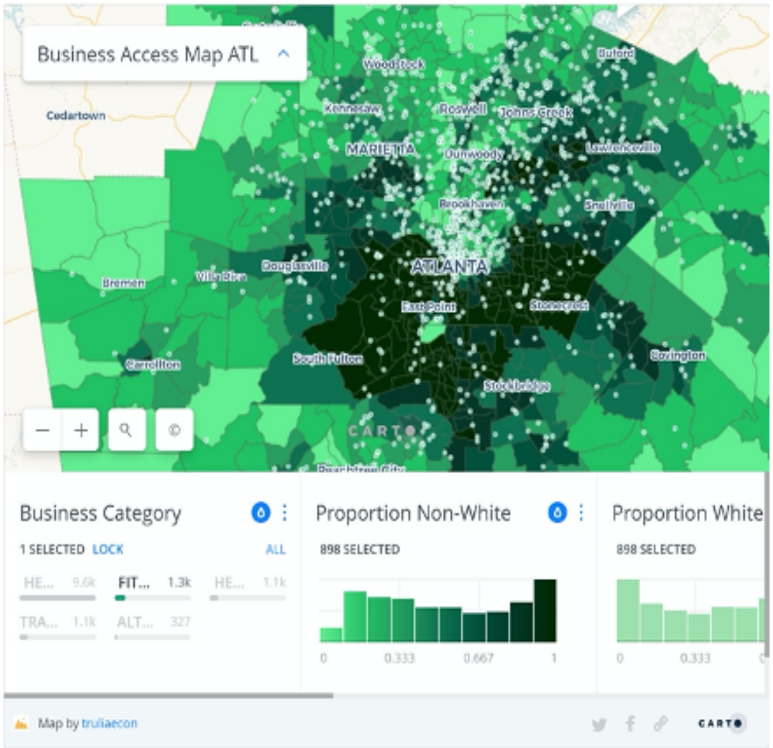
[56] Young, Cheryl and Felipe Chacon, "50 Years After the Fair Housing Act – Inequality Lingers," Trulia. April 19, 2018. Available at: https://www.trulia.com/research/50-years-fair-housing/.

Detroit, there were 21 healthcare facilities per 10,000 people in predominantly White neighborhoods but less than two healthcare facilities per 10,000 people in predominantly Latino neighborhoods.

Moreover, there were grave disparities in the number of healthy food options, green spaces, and health fitness facilities based on racial composition of a neighborhood. In the four cities examined in the research–Atlanta, Detroit, Houston, and Oakland–there were 40 percent fewer parks, playgrounds, tennis courts, fitness centers, and other fitness and recreational amenities in communities of color than in predominantly White neighborhoods. In Detroit, predominantly Black communities had 37 percent fewer healthy food outlets such as full-service grocery stores and farmers' markets than White communities.

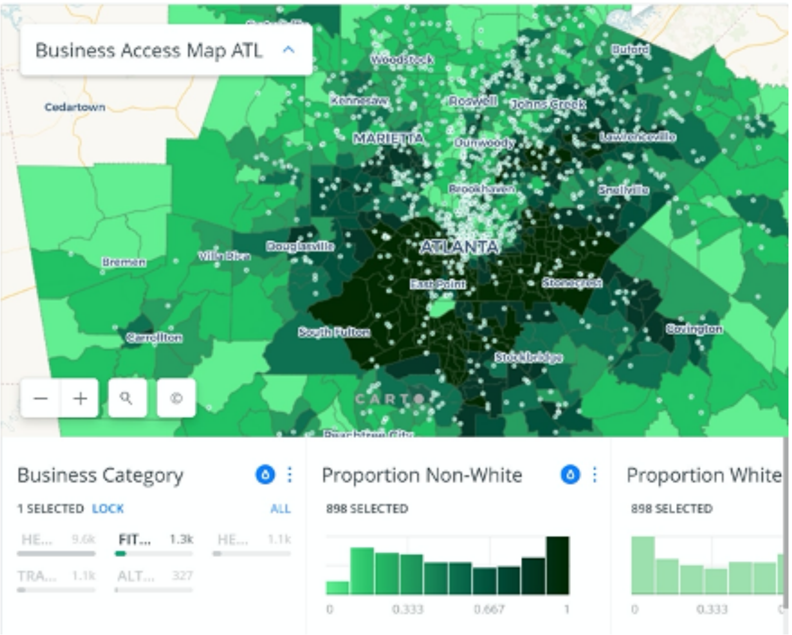
The maps below from Atlanta illustrate these differences in amenities, based on the racial composition of the area. Communities of color in Atlanta that are heavily populated have very few healthcare facilities, healthy food outlets, green spaces, and fitness facilities as compared to White areas in the Atlanta region. In each map, communities of color are represented by the dark green shaded areas while predominantly White neighborhoods are shaded light green.

Atlanta, GA – Green Spaces and Fitness Facilities Based on Racial Composition of Neighborhood



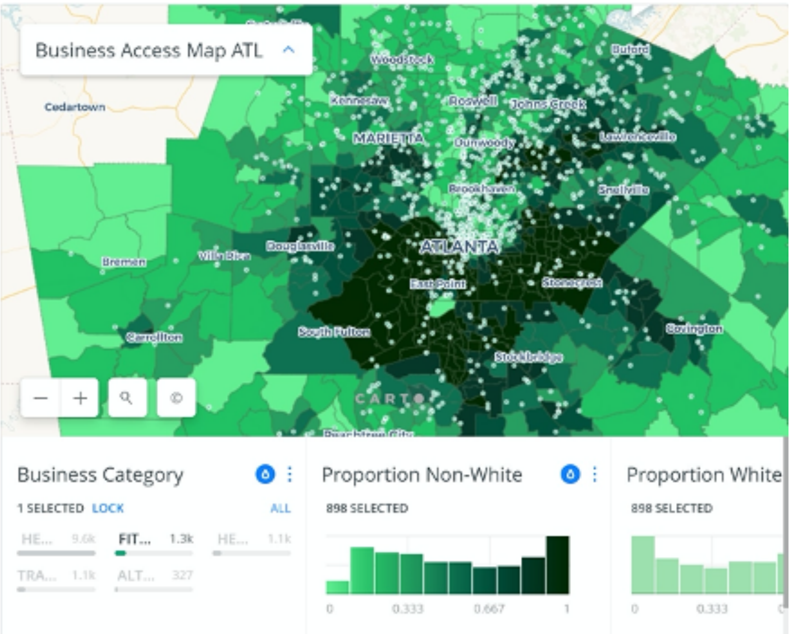
Source: Trulia (2018)

Atlanta, GA – Healthcare Facilities Based on Racial Composition of Neighborhood



Source: Trulia (2018)

Atlanta, GA - Healthy Foods Based on Racial Composition of Neighborhood



Source: Trulia (2018)

Environmental impacts linked to where people live are another factor affecting people's health outcomes. The presence of toxic facilities, hazardous sites, and pollutants contributes to higher instances of asthma, stroke, hypertension, and respiratory disease.[57] Indeed, many of these pre-existing conditions have been found to contribute to elevated risk for contracting COVID-19 and can be linked to extended exposure to air pollution.[58] Because people of color disproportionately live in communities with elevated levels of pollution, they are heavily impacted. The EPA found in a 2019 report that "[o]verall, the evidence is adequate to conclude that nonwhites, particularly blacks, are at increased risk for PM2.5 [fine particulate matter]-related health effects based on studies examining differential exposure and health effects."[59] In fact, race is the biggest indicator of whether a person lives near a toxic facility[60] or contaminated land, water, or air.

The Affirmatively Furthering Fair Housing (AFFH) requirement of the Fair Housing Act, particularly the process put in place by the 2015 AFFH Rule promulgated by HUD, provided a path for addressing the social determinants of health discussed in this section. The AFFH process mandated that jurisdictions and any entity receiving federal funds for a housing or urban development purpose identify barriers to fair housing. That includes structural issues like lack of healthcare facilities and healthy food sources, disproportionate placement of toxic facilities in communities of color, and elevated pollutants in spaces where people of color live. AFFH also requires that entities receiving federal funds work with community stakeholders to identify solutions to overcome these barriers and then implement them.

As a result of the Patient Protection and Affordable Care Act (PPACA), tax-exempt hospitals have to complete a Community Health Needs Assessment (CHNA) in order to identify and address the health needs of the people in the areas they serve. Similar to the AFFH process, the PPACA includes a strong community participation requirement. The law states that the CHNA must include input from "persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health."

Together, the AFFH and CHNA processes provide a unique opportunity for building an intersectional approach to addressing fair housing issues that have grave health implications. Rather than approach these two processes independently, community stakeholders, including jurisdictions, public housing authorities, fair housing groups, hospitals, homebuilders, and others, should partner to ensure that planning documents generated from the AFFH and CHNA efforts are in sync and amplify solutions that will build viable, diverse, well-resourced, healthy communities.

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[57] See State of Global Air/2019 A Special Report on Global Exposure to Air Pollution and Its Disease Burden, Available at: https://www.stateofglobalair.org/sites/default/files/soga_2019_report.pdf.

[58] Wu, Xiao, Rachel Nethery, Benjamin Sabath, Danielle Braun, and Francesca Dominici, Exposure to Air Pollution and COVID-19 Mortality in the United States: A Nationwide Cross-Sectional Study. MedRxIV. April 27, 2020. Available at: https://www.medrxiv.org/content/10.1101/2020.04.05.20054502v2.

[59] See 2019 Integrated Science Assessment for Particulate Matter. Environmental Protection Agency. December 2019. Available at: file:///C:/Users/ricel/Downloads/ISA_PM_FINAL2019.PDF.

[60] Schlanger, Zoe, "Race is the biggest indicator in the US of whether you live near toxic waste," Quartz. March 22, 2017. Available at: https://qz.com/939612/race-is-the-biggest-indicator-in-the-us-of-whether-you-live-near-toxic-waste/.

Unequal access to critical amenities that promote healthy outcomes are deeply tied to place. Where people live matters because it is a part of the social determinants of health that drive disparate outcomes based on race and national origin. For too many people, their zip code is a better predictor of their health outcomes than their genetic code. But with strong fair housing enforcement and full implementation of the Fair Housing and Patient Protection and Affordable Care Acts, the spaces in which people live can become places that foster more healthy outcomes, equity, and opportunity.

Recommendations:

- Community stakeholders should synchronize the AFFH and CHNA processes to ensure planning documents are coordinated and that both promote the full range of solutions needed to build stronger neighborhoods by advancing fair housing and mitigating the social determinants of health.

- Federal agencies, such as the Department of Housing and Urban Development, Department of Health and Human Services, Internal Revenue Service, and Environmental Protection Agency, should collaborate to provide education and guidance on how community stakeholders can work together to strengthen and build intersectionality around the AFFH and CHNA processes.

- HUD must reinstate the 2015 AFFH Rule to ensure communities are adequately addressing key fair housing barriers that exacerbate unhealthy outcomes, particularly for underserved communities.

- Jurisdictions must work to eliminate the social determinants of health and structural barriers that contribute to disparate racial outcomes, like those laid bare by the COVID-19 pandemic.

- Jurisdictions must work with stakeholders to improve better access to healthcare facilities, healthy foods, clean environments, and other critical amenities that contribute to healthy communities and lessen inequality.

SECTION III:
FAIR HOUSING TRENDS DATA FOR 2019

Overview of Housing Discrimination Complaints Reported in 2019

NFHA and its member fair housing organizations faced sustained attacks on the enforcement of fair housing laws and regulations in the last year. NFHA and its members defended against these deliberate assaults by entities charged with enforcing the Fair Housing Act amid challenges resulting from the longest partial government shutdown in U.S. history, which began in 2018 and continued into 2019. The partial government shutdown resulted in reduced resources at the local and federal levels to respond to complaints of discrimination in housing. The delays in re-starting shuttered programs and services placed extreme burdens on non-profit organizations and the individuals and families they serve. Despite this, private fair housing organizations continued to process, by far, the largest number of housing discrimination complaints.

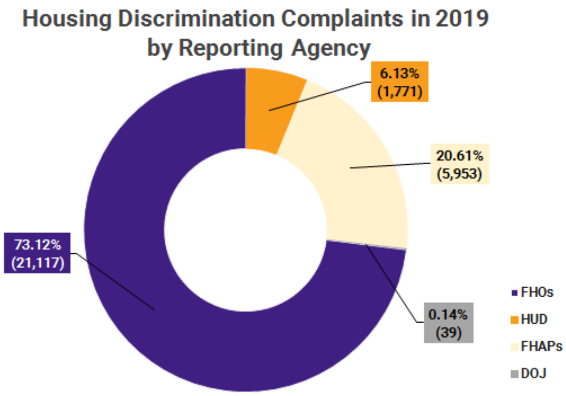
As it does each year, NFHA collects data from both private fair housing organizations and government agencies throughout the country that receive and address fair housing complaints from the public. The data provides a snapshot of the number and types of housing discrimination complaints that have been reported. NFHA receives housing discrimination complaint data from 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 with private, nonprofit fair housing organizations, these agencies make up the national infrastructure to address housing discrimination in the U.S.[61]

The 2019 complaint data continues to show that private fair housing organizations address the majority of housing discrimination complaints that are reported throughout the country. In 2019, private, non-profit fair housing organizations processed 73.12 percent of complaints, as compared to 6.13 percent by HUD, 20.61 percent by FHAP agencies, and 0.14 percent by DOJ.

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

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

under state and local laws, including sexual orientation, source of income, marital status, and several other categories.



There were 28,880 reported complaints of housing discrimination in the U.S. in 2019. This is a reduction of approximately 7.5 percent from 2018's total of 31,202, which was the largest total since NFHA began releasing Trends Reports in the early 1990s. The complaint numbers for 2019 are consistent with the number of complaints filed in recent years, with the exception of 2018. Of the 2019 complaints, 21,117 (73.12 percent) were processed by fair housing organizations (FHOs), as compared to 1,771 complaints processed by HUD, 5,953 processed by FHAP agencies, and 39 cases processed by DOJ. This data is included in the table below, along with data from previous years. FHOs continue to address approximately three times as many complaints as the government agencies combined. In 2019, FHOs saw protracted delays in funding as well as increased regulatory and legal challenges to the federal Fair Housing Act and other civil rights laws.

Fair Housing Complaint Data by Agency, 2009-2019

Year	NFHA Members	HUD	FHAPs	DOJ	TOTAL
2009	19,924	2,091	8,153	45	30,213
2010	18,665	1,943	8,214	30	28,852
2011	17,701	1,799	7,551	41	27,092
2012	19,680	1,817	6,986	36	28,519
2013	18,932	1,881	6,496	43	27,352
2014	19,026	1,710	6,758	34	27,528
2015	19,645	1,274	6,972	46	27,937
2016	19,740	1,371	7,030	40	28,181
2017	20,595	1,311	6,896	41	28,825
2018	23,407	1,784	5,987	24	31,202
2019	21,117	1,771	5,953	39	28,880

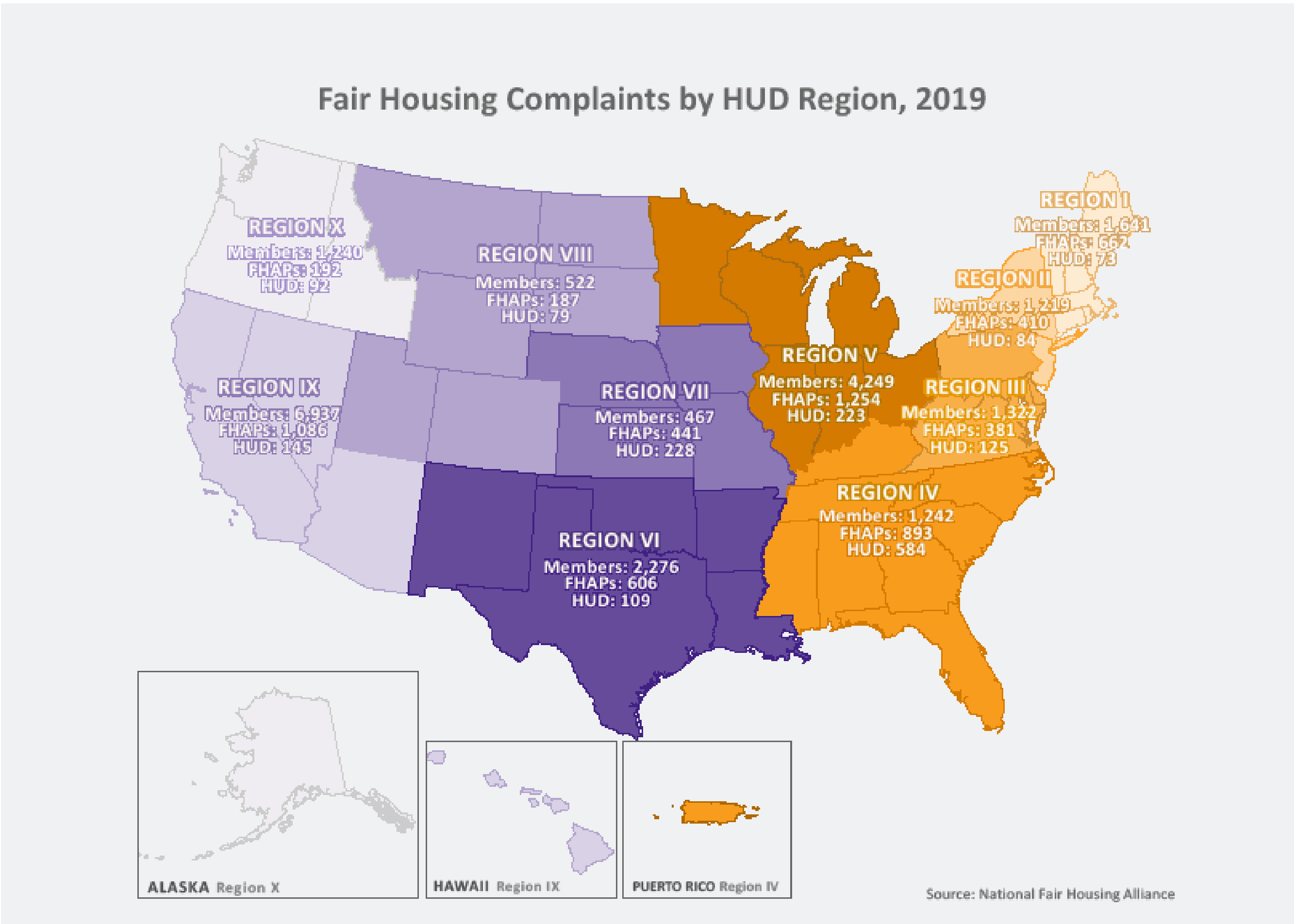
The data collected for this report represents only a small portion of the estimated four million incidents of housing discrimination that occur each year. Housing discrimination often goes undetected and unreported because it is difficult to identify or document. It is common for victims of discrimination to feel that nothing can or will be done about the discrimination they experience and to fear retaliation by their housing provider, landlord, or even neighbors.

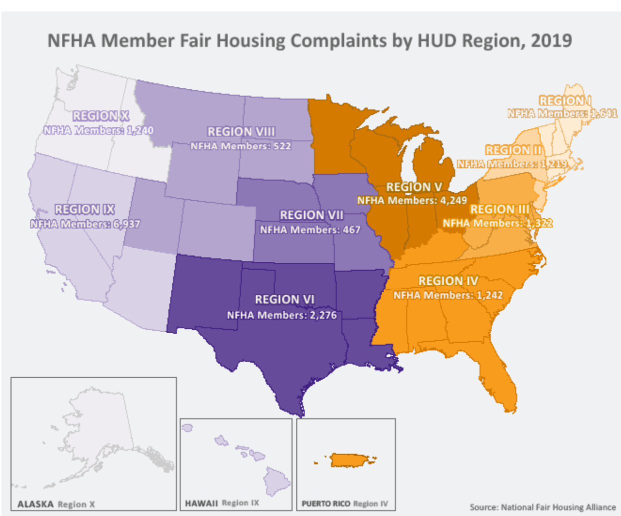
This report includes submissions from 85 NFHA operating member organizations, all of which are private nonprofit fair housing organizations or fair housing programs of legal aid agencies. It also includes data from the 10 regional HUD offices and approximately 80 state and local government agencies[62] that participate in the FHAP program at HUD, from which they receive annual funding to support fair housing administrative and enforcement activities. FHAP agencies conduct complaint investigation; conciliation; administrative and/or judicial enforcement; training; implementation of data and information systems; and education and outreach.

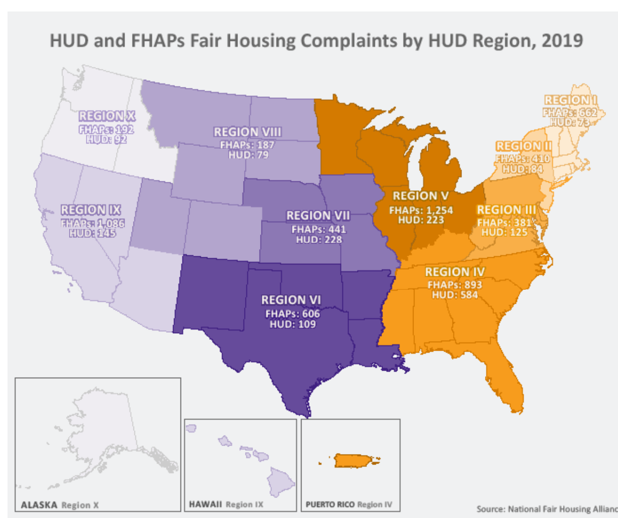
The maps below break out the data by the ten HUD regions. The first map depicts the data for all agencies combined. The second map

[62] https://www.hud.gov/sites/dfiles/CFO/documents/34%20-%20FY19CJ%20-%20FHEO%20-%20Fair%20Housing%20Programs.pdf.

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 local 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.







1. National Data by Basis of Discrimination

This section details the national data by protected class, or basis of discrimination. As in prior reports, complaints by persons with disabilities account for the majority of complaints filed with FHOs, HUD, and FHAP agencies. There were 17,010 cases that involved discrimination against a person with a disability, or 58.90 percent of all cases. Discrimination against persons with disabilities is the easiest to detect, as it most often takes place as an overt denial of a request for a reasonable accommodation or modification to the housing unit. The second most reported type of housing discrimination was on the basis of race, with 4,757 or 16.47 percent of all cases. This was followed by familial status as the third most frequent basis for discrimination, with 2,228 cases or 7.71 percent of all cases of housing discrimination. The fourth most frequent basis of discrimination was sex, with 1,948 complaints or 6.75 percent of all complaints. The fifth most frequent basis was national origin, with 1,730 reported cases or 5.99 percent of all complaints. Color was a basis of discrimination for 646 complaints or 2.24 percent of all complaints, and religion was the basis of 328 complaints or 1.14 percent of all complaints nationwide.

The table below depicts the frequency of discrimination complaints by basis of discrimination, by type of reporting agency.

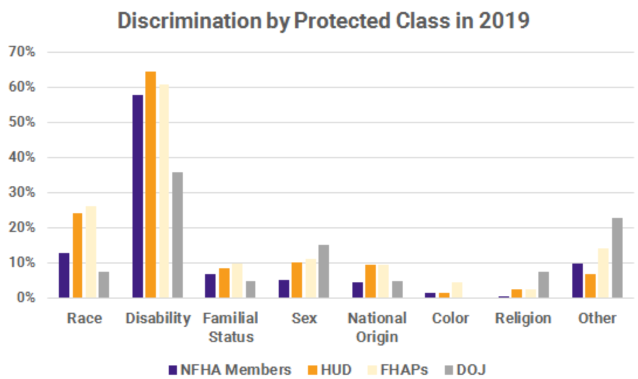
Fair Housing Complaint Data by Basis and Agency in 2019

Basis	NFHA Members	HUD	FHAPs	DOJ
Race	13.0%	24.3%	26.4%	7.7%
Disability	57.9%	64.5%	60.9%	35.9%
Familial Status	7.0%	8.8%	10.1%	5.1%
Sex	5.2%	10.4%	11.2%	15.4%
National Origin	4.7%	9.8%	9.6%	5.1%
Color	1.6%	1.6%	4.8%	0.0%
Religion	0.6%	2.7%	2.6%	7.7%
Other	10.1%	7.1%	14.3%	23.1%

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

While fair housing organizations primarily receive complaints of discrimination based on federally protected classes, they also receive complaints of discrimination based on protections provided only by state and/or local fair housing laws. In 2019, 3,117 complaints (10.68 percent of all complaints) involved a basis of discrimination in the "other" category. The "other" category of complaints reported by fair housing organizations included the following:

- Source of Income (1,086 complaints)
- Age/Student Status (253 complaints)
- Sexual Orientation (160 complaints)
- Gender Identity/Expression (125 complaints)
- Marital Status (112 complaints)
- Criminal Background (65 complaints)
- Victims of Domestic Violence (32 complaints)
- Arbitrary (in California Rentals Only) (28 complaints)
- Military Status (18 complaints)
- Retaliation (12 complaints)
- Immigration Status/ Citizenship (3 complaints)
- Zoning (1 complaint)



The "other" category for HUD and FHAP agencies only includes retaliation claims, and for DOJ, it only includes military status, which together comprised 987 complaints in 2019.

2. National Housing Discrimination Complaint Data by Transaction Type

The data in this section is based on complaints received that occurred in rental, real estate sales, mortgage lending, and homeowners insurance transactions, as well as harassment complaints based on protected class. Complaint numbers are for private fair housing centers, HUD, FHAP agencies, and the DOJ.

RENTAL-RELATED COMPLAINTS IN 2019 ACCOUNTED FOR 83.75 PERCENT OF ALL TRANSACTION TYPES REPORTED.

Rental Market — 24,186 Complaints

As in prior years, rental-related housing discrimination complaints reported in 2019 were the most numerous. This is due primarily to the fact that rental transactions are the most frequent type of housing transaction, and the simplicity of the transaction can make it easier to identify or suspect discrimination. In 2019, there were 24,186 rental complaints reported across all agencies, and 18,889 of these were reported by private fair housing organizations. The number of rental-related complaints reported in 2019 is slightly fewer than in 2018. Rental-related complaints in 2019 accounted for 83.75 percent of all transaction types reported, compared to 83.39 percent in 2018 and 82.05 percent in 2017.

Real Estate Sales — 779 Complaints

Real estate sales complaints comprised 2.7 percent of all housing discrimination cases reported in 2019, with 779 complaints total. This number represents a decrease from 2018 when 897 sales complaints were reported, and a decrease from 805 complaints reported in 2017. Real estate sales complaints may be decreasing because homeownership rates in the U.S. have not rebounded from the 2008 housing crash. According to the National Association of Real Estate Brokers (NAREB), the Black homeownership rate stood at 40.6 percent at the end of the second quarter of 2019, a decrease of 1 percent between 2018 and 2019. The gap in homeownership rates between Black and White households is larger than it was in 1968 when the Fair Housing Act was enacted.

Mortgage Lending —234 Complaints

In 2019, there were 234 complaints of lending discrimination, a decrease from the previous two years. These complaints represented less than 1 percent of all complaints. In 2018, there

	Rental	Sales	Lending	Insurance	Harassment	Advertising	HOA/Condo	Other	Total
NFHA Members	18,889	289	70	18	761	120	157	813	21,117
HUD	1,119	123	69	1	0	0	0	459	1,771
FHAPs	4,166	367	93	2	0	0	0	1,325	5,953
DOJ	12	0	2	0	0	0	0	25	39
Total	24,186	779	234	21	761	120	157	2,622	28,880
Percent of Total	83.75%	2.70%	0.81%	0.07%	2.64%	0.42%	0.54%	9.08%	100.00%

were 330 lending complaints, and in 2017, there were 380 complaints.

Homeowners Insurance Transactions — 21 Complaints

Discrimination in the provision of homeowners insurance is very difficult to identify because it is rarely overt. In 2019, 21 complaints of homeowners insurance-related discrimination were reported, representing less than 1 percent of all cases. This represents a decrease from 38 complaints reported in 2018.

Harassment —761 complaints

Complaints of harassment, although easily recognizable, often go unreported. Women, single-parent heads of households, persons with disabilities, immigrants, persons with housing assistance, individuals with modest means, and others are very vulnerable to harassment in housing because they fear retaliation or loss of housing. In 2019, 761 complaints of harassment were reported, a significant decrease from 897 in 2018 and slightly higher than the 747 complaints reported in 2017. Harassment based on protected class may take the form of coercion, intimidation, threats, or interference; this is illegal under the Fair Housing Act, both in the provision of housing and in a housing setting. In 2019, there were 241 harassment complaints on the basis of disability, 204 harassment complaints based on sex, and 116 harassment complaints based on race. The 204 harassment complaints based on sex reported in 2019 represents the highest number of harassment complaints based on sex since NFHA began collecting detailed harassment data in 2012.

Other Housing-Related Transactions — 2,899 complaints

In 2019, 2,899 complaints fell into the "other transaction" category. Other housing-related transactions included 120 complaints of discriminatory advertising by housing providers and 157 complaints of discrimination by homeowners or condominium associations.

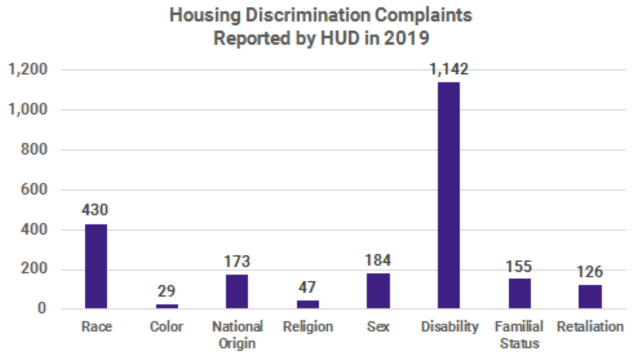
Complaint Data Reported by HUD and FHAP Agencies

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 FHAP and the Fair Housing Initiatives Programs (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 1,771 discrimination complaints in 2019, a decrease of 13 complaints from 2018. The chart below details the HUD complaint information by protected class.

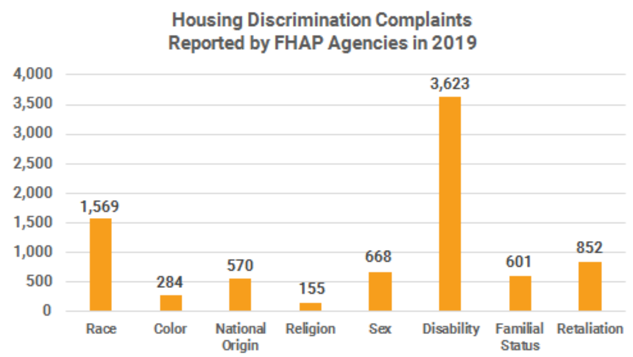
Note: Some reported complaints included more than one basis of discrimination.



FHAP Complaints

FHAP agencies received 5,953 discrimination complaints in 2019, a decrease of 34 complaints from 2018. The chart below details the FHAP complaint information by protected class.

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



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 2019, there were five Secretary-Initiated Complaints open or completed, down from eight in 2018, 11 in 2017, 16 in 2016, and 33 in 2015. In three of these five cases from 2019, disability was the protected basis of discrimination. It appears there were no new cases in 2019; all of the reported cases in 2019 were carried over from prior years.

Protected Basis of Discrimination	Number of Cases
Disability (alone)	3
Race, National Origin, Sex	1
Race, Color, National Origin, Sex, Religion, Disability, Familial Status	1
Total	**5**

Charged Cases

In 2019, HUD charged 37 cases, compared to 28 charges in 2018 and 19 charges in 2017.

A "charge" is issued when HUD determines there is reasonable cause to believe discrimination has occurred. HUD cases are resolved more often through conciliation or are 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 2019, there were 468 cause determinations at FHAP agencies, an increase from 419 in 2018.

Year	HUD Charged Cases
2009	49
2010	36
2011	55
2012	43
2013	37
2014	27
2015	28
2016	37
2017	19
2018	28
2019	37

The table below shows the types of HUD and FHAP case completions in 2019. There were 7,773 completions, 1,707 by HUD and 6,066 by FHAP agencies. There were 58 more cases charged or caused by HUD and FHAP agencies in 2019 than in 2018, and there were 99 fewer cases conciliated or settled by HUD or FHAP agencies in 2019 than in 2018. Eighty-three more cases received a "no cause" determination by

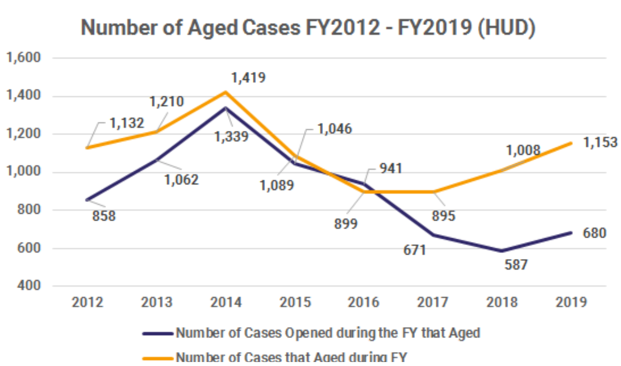
HUD or FHAP agencies in 2019 than in 2018.

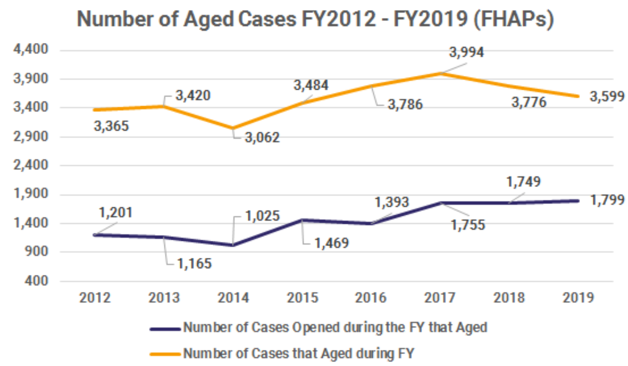
Aged Cases

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 considered 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 680 new aged cases during FY2019, a 15.8 percent increase from the 587 new aged cases during FY2018. These are cases that were opened and passed the 100-day mark during the fiscal year. HUD also had 1,153 ongoing cases that continued to age during FY2019. This number is a 14.4 percent increase over FY2018 when HUD had 1,008 ongoing cases that continued to age.

FHAP agencies had 1,799 cases that were opened and aged during FY2019, a slight increase from the 1,749 cases reported during FY2018. FHAP agencies also had 3,599 ongoing cases that continued to age during FY2019, a modest decrease of 177 cases compared to the 3,776 ongoing cases that continued to age during FY2018.





Complaint Data Reported by DOJ and DOJ Cases

The Housing and Civil Enforcement Section of the Department of Justice 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. The 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 the 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 charged by HUD and one of the parties has "elected" to go to federal court.

The FHAA also empowered DOJ 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.

Overview of FY2019 DOJ Cases

DOJ's Housing and Civil Enforcement Section filed 39 cases during FY2019, an increase from the 24 cases filed the previous year. Of these, 21 were "pattern or practice" cases, consisting of six rental cases (one based on familial status and five alleging sexual harassment in housing); one case alleging national origin discrimination in the operation of predatory mortgage loan modification services; three cases alleging violations of the Fair Housing Act's design and construction provisions; two cases challenging discrimination by local governments in the land use and zoning process; two cases brought under the Religious Land Use and Institutionalized Persons Act; five cases alleging violations of the Service Members Relief Act; and two cases alleging violations of the ECOA. Of the remaining cases, DOJ reported 14 HUD election cases, one HUD enforcement action, and five amicus or intervention cases. There may be overlap of some of these cases.

Sexual Harassment Initiative

DOJ established a new Sexual Harassment in Housing Initiative in 2018. The Department continued to open sexual harassment investigations challenging alleged sexual harassment in housing, with five "pattern or practice" lawsuits filed in 2019. It held 18 roundtables about sexual harassment in housing with U.S. Attorneys Offices throughout 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 their experiences reporting the harassment and working with the DOJ. It also updated its materials on sexual harassment to include flyers in 13 different languages, as well as information sheets for advocates in English and Spanish.

DOJ Case Highlights

DOJ obtained two favorable judgments and 27 settlements in 2019, resulting in a total of $23 million in monetary relief. Those include the following:

The Department settled two sexual harassment cases, United States v. Hatfield (W.D.N.C.) and United States v. Waterbury (N.D.N.Y.). In Hatfield, the United States alleged that the defendant, who ran a real estate business involving the sale, rental, and financing of residential properties, sexually harassed female residents and prospective residents. The Hatfield settlement provides $550,000 in monetary damages for 17 former and prospective residents who were subjected to sexual harassment, and a $50,000 civil penalty. The Waterbury settlement provides $400,000 to compensate former tenants and $50,000 as a civil penalty.

The Department filed and settled a case alleging fair lending violations. In United States v. First Merchant's Bank (S.D. Ind.), the United States alleged that the bank violated the Fair Housing Act and the ECOA on the basis of race when it engaged in unlawful redlining of predominantly African-American neighborhoods in the Indianapolis metropolitan area. In the case's settlement agreement and order, First Merchants will invest $1.12 million in a loan subsidy fund to increase credit opportunities for residents of predominantly African-American neighborhoods and will devote $500,000 toward advertising, community outreach, and credit repair and education. The bank will also open a branch and a loan production office to serve the banking and credit needs of residents in predominantly African-American neighborhoods in Indianapolis.

The Department entered into a series of separate settlement agreements with individual defendants to fully resolve its claims in United

States v. The Home Loan Auditors (N.D. Cal.). The amended complaint, filed in 2017, alleged that the defendants intentionally discriminated against Hispanic homeowners on the basis of national origin in violation of the Fair Housing Act by targeting them for predatory mortgage loan modification services and interfering with their ability to receive financial assistance to maintain their homes. Among other relief, the settlement agreements together establish more than $148,000 in a restitution fund to reimburse victims for fees the defendants collected as part of their predatory scheme.

The Department filed and entered into a settlement agreement with Dyersburg Apartments, resolving the United States' claims that the defendants denied the rental application of the HUD complainant, who is African American, ostensibly because of his criminal record, despite contemporaneously approving the rental applications of two White applicants with felony convictions. The consent order requires $42,250 in damages to the HUD complainant and injunctive relief, including adopting non-discriminatory standards and procedures for leasing apartments.

The Department filed and settled United States v. St. Bernard Parish (E.D. La.), a lawsuit alleging that the Parish discriminated against persons with disabilities when it failed to grant reasonable accommodations to allow two group homes, each to house five children with disabilities, to operate in single-family residential zoning districts. The settlement agreement requires the defendants to pay $975,000 in damages and fees to the aggrieved persons and their counsel, as well as a $60,000 civil penalty. The Parish also amended its zoning ordinance to allow small group homes in all residential districts, and it adopted a reasonable accommodation policy.

The Department obtained an $11.3 million settlement to resolve allegations in United States v. Mid-America Apartment Communities (D.D.C.) involving the inaccessible design and construction of 50 apartment complexes in six states and the District of Columbia. Throughout the fiscal year, the Department has been monitoring compliance with the agreement, which requires, among other things, that defendants spend $8.7 million to retrofit 36 properties.

The Department filed and settled cases alleging disability discrimination in a variety of contexts. For example, in United States v. Hubbard Properties, Inc. (S.D. Ala.), the Department alleged that defendants — the owner, Management Company, and property manager of a 201-unit apartment complex in Mobile, Ala. — discriminated against the HUD complainant on the basis of disability by refusing to grant the complainant's request to transfer to a ground floor unit as a reasonable accommodation for his heart condition. The Department resolved the case with a consent order requiring $40,000 in damages to the complainant. The Department also filed and settled United States v. 118 East 60th Owners, Inc. (S.D.N.Y.), obtaining $70,000 in damages for a tenant of a 232-unit housing cooperative who was not allowed to keep an emotional support beagle in his unit, and United States v. Glenwood Management (S.D.N.Y.), obtaining $100,000 for HUD complainants who were refused the ability to rent an apartment because they had an assistance animal.

More detailed information about cases filed/settled by DOJ is available at http://www.justice.gov/crt/about/hce/caselist.php.

SECTION IV: CASE HIGHLIGHTS 2019-2020

The cases featured in this section represent only a handful of the complaints filed in 2019 and highlight the issues and challenges that millions of consumers face each day as they attempt to gain access to housing opportunities. The sample cases reveal the types of impediments consumers face in the housing market, and they illustrate the variety and extent of housing discrimination and how it affects many segments of our society.

Persistent economic exclusion of Black and Latino households lies at the core of the recent protests in cities throughout the U.S. demanding justice with the Black Lives Matter movement; it is also central to the litigation goals of the fair housing movement. These recent cases are emblematic of the variety of litigation strategies the fair housing movement uses to challenge discriminatory practices that perpetuate segregation, ultimately working to dismantle systemic racism and other forms of prejudice and exclusion.

Criminal Records Bans Create Disparate Impact

Housing Opportunities Made Equal of Virginia, Inc. v. Wisely Properties[63]

In August 2019, the owner and the management of the Sterling Glen Apartments in Chesterfield, Va., settled a case regarding its policy excluding persons with felony records or certain other criminal histories from renting apartments. Housing Opportunities Made Equal of Virginia, Inc. (HOME) brought the case in federal district court in June 2019. HOME charged that the complex's tenant-screening policy had a disparate impact on Black applicants. Sterling Glen has agreed to provide individualized consideration for every application and will consider only certain categories of felony convictions when reviewing housing applications. Those categories include property offenses, major drug offenses, major violent offenses against persons, and sex offenses, not including prostitution or solicitation. The apartment complex will donate $15,000 to HOME, and its employees will participate in fair housing training.

Fortune Society Inc. v. Sandcastle Towers Housing Development Fund Corporation[64]

In November 2019, the owners and operators of the Sandcastle apartment complex in Queens, N.Y., agreed to resolve longstanding charges that its blanket policy excluding persons with a criminal record from living in the complex is discriminatory. The Fortune Society, Inc., a New York nonprofit that supports the formerly incarcerated, brought the case in federal district court in 2014, charging that the policy disproportionately impacted Black and Latino renters. Following a summary judgment decision in 2019 allowing the case to proceed to trial, Sandcastle agreed to pay Fortune Society $1.1875 million. The owners of the complex when the case was initiated in October 2014 no longer own or manage real estate.

[63] See https://homeofva.org/wp-content/uploads/2019/08/190806-NR-Sterling-Glen-settlement-Final.pdf.

[64] See https://fortunesociety.org/media_center/landmark-settlement-of-lawsuit-establishing-national-precedent-that-advocacy-organization-can-challenge-private-landlords-blanket-ban-on-renting-apartments-to-people-with-criminal-records/.

Accessible and Affordable Housing

Voluntary Compliance Agreement between HUD and the City of Los Angeles, Calif.[65]

In August 2019, HUD entered into a voluntary agreement with the City of Los Angeles, Calif., resolving claims of disability discrimination in the city's affordable housing program. HUD initiated reviews of the program in 2011 and 2017 and, following a sizable private settlement against the city regarding accessibility issues in 2016, ultimately found physical accessibility violations at 120 housing developments. Under the terms of the voluntary agreement, Los Angeles will retrofit 3,100 units in existing housing developments for greater accessibility and build an anticipated 1,500 new units over the next 10 years. As part of the agreement, the city will implement a new "Enhanced Accessibility Program" to provide "super-accessible" units that exceed federal and state accessibility requirements and will develop policies to ensure that individuals with disabilities are given access to affordable, accessible housing units that meet their needs.

United States v. Epcon Communities, LLC[66]

In March 2020, the DOJ announced a consent decree with Epcon Communities, LLC and Epcon Communities Franchising, Inc., to pay up to $2.2 million to retrofit inaccessible features of 32 multi-family properties in Ohio that violated the design and construction requirements of the Fair Housing Act. The modifications include removing steps and steep walkways, adding accessible routes to community amenities, providing accessible parking, and correcting inaccessible features in individual units. In addition, the defendants will establish a $300,000 settlement fund for those harmed by the lack of accessible features in their units and pay $40,000 in damages to the Fair Housing Advocates Association. The developer and franchiser must also pay a civil penalty of $51,303 to the United States.

Fair Housing Justice Center, Inc. v. JDS Development LLC[67]

In March 2020, a New York federal district court ruled that the statute of limitations in design and construction claims under the Fair Housing Act begins to run when a person alleging discrimination "encounters the allegedly unlawful building elements."[68] The Fair Housing Justice Center brought the case against PMG Property Management Group, Inc. (PMG), JDS Development, LLC, and other developers and owners of an apartment building in the Park Slope neighborhood of Brooklyn, N.Y., alleging that testing revealed the building, which opened in 2011, did not comply with Fair Housing Act accessibility requirements. Defendants moved to dismiss the lawsuit under the law's two-year statute of limitations and a three-year statute of limitations for claims brought under state and city law. The court, however, denied the motion, finding the "statute of limitations is triggered when someone is aggrieved by one of the unlawful actions."[69] Thus, the statute of limitations began to run when testers visited the building and witnessed the violations in August 2018.

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65 See https://www.hud.gov/sites/dfiles/Main/documents/Fact-Sheet-and-QA-HUD-City-of-Los-Angeles-VCA.pdf.

66 See https://www.justice.gov/crt/case/united-states-v-epcon-communities-llc-sd-ohio.

67 https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2019cv01171/509701/143/.

68 *Id.* at 14.

69 *Id.* at 7.

Racial Discrimination in Home Buying

Conciliation Agreement between California Reinvestment Coalition and CIT Group Inc.[70]

In July 2019, HUD approved a conciliation agreement between the California Reinvestment Coalition (CRC) and the CIT Group, Inc. and CIT Bank N.A., which do business as OneWest Bank. CRC alleged that OneWest discriminated against Black borrowers in the Los Angeles area in both the marketing and origination of mortgage loans. As a result of the agreement, OneWest will originate $100 million in loans to borrowers in majority-minority census tracts for home purchases, home improvements, and home refinancing. The bank will also invest $5 million in a loan subsidy fund for neighborhoods of color, provide $1 million in grants to government agencies and nonprofits that provide community services in the bank's assessment areas, and allocate $1.3 million for marketing and outreach to consumers in majority-minority census tracts. Employees involved in residential mortgage lending will attend fair housing training.

Segregation in Affordable Housing

United States v. Crimson Management LLC[71]

In May 2020, the United States filed a race discrimination lawsuit in federal court against the owners and managers of two Cedartown, Ga., apartment complexes. The complaint alleges that the defendants steered elderly and disabled Black applicants to Cedartown Commons, whose residents are predominantly Black, and away from the predominantly White Cedarwood Village, perpetuating the racial segregation of elderly and disabled residents at the two federally subsidized complexes. The government alleges that the defendants also subjected Black residents to less favorable rental terms, conditions, and privileges. The complaint seeks an order from the court requiring defendants to fix these practices and to pay monetary damages and a civil penalty.

Discrimination in Access to Basic Utilities

Georgia State Conference of the NAACP v. City of LaGrange, Ga.[72]

In October 2019, the Eleventh Circuit ruled that Section 3604(b) of the Fair Housing Act may apply to some post-acquisition conduct, including obtaining basic utility services. The Georgia State Conference of the NAACP and other plaintiffs filed a lawsuit against the City of LaGrange, Ga., over two city policies requiring applicants to (1) present photo identification and a Social Security number and (2) pay any city debts, before receiving access to electricity, gas, and water services. The City of LaGrange is the sole provider of the utilities in the city. The NAACP argued that these policies disproportionately impact Black and Latino residents. A federal district court judge initially dismissed the case, but on appeal, the decision was overruled. The Eleventh Circuit found that access to basic utilities is "essential to the habitability of a dwelling and closely connected with the sale or rental of housing" and, therefore, "unambiguously fall[s] within the scope" of the fair housing provision.[73]

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70 See http://calreinvest.org/wp-content/uploads/2019/07/CRC-v-CIT-CONCILIATION-AGREEMENT-07.26.19.pdf.

71 See https://www.justice.gov/crt/case-document/file/1276956/download.

72 See https://law.justia.com/cases/federal/appellate-courts/ca11/18-10053/18-10053-2019-10-10.html.

73 *Id.* at 12.

Reverse Redlining and Rent-to-Buy

Fair Housing Center of Central Indiana v. Rainbow Realty Group[74]

In March 2020, a federal district court judge in Indiana granted class certification in a lawsuit alleging that a real estate company's rent-to-buy program is discriminatory. The Fair Housing Center of Central Indiana and five individual plaintiffs sued Rainbow Realty Group Inc. on behalf of themselves and other similarly situated persons. The case charged that Rainbow Realty engaged in reverse redlining and predatory lending through the program, which requires buyers to make 30 years of monthly payments on their home before obtaining ownership. Rainbow opposed the plaintiffs' motion for class certification, in part because variable conditions of the homes at the time of sale precluded a class-wide claim. But the federal judge rejected this argument, ruling that the reverse redlining charge could be resolved without analyzing the condition of each home.

Disparities in REO Maintenance

National Fair Housing Alliance et al. v. Bank of America;[75] *National Fair Housing Alliance at al. v. Fannie Mae;*[76] *National Fair Housing Alliance at al. v. Deutsche Bank*[77]

NFHA, numerous private fair housing organizations, and a few individual owners are litigating three ongoing federal cases against two nationwide banks and the government-sponsored enterprise Fannie Mae. The allegations include a failure to provide routine exterior maintenance, such as grass cutting, and marketing, such as posting "for sale" signs, to bank-owned homes in communities of color relative to similarly situated homes in White neighborhoods. Improper REO maintenance contributes to blight, reduces home values, and creates additional challenges for Black and Latino neighborhoods. The lawsuits stem from a large-scale, multi-year investigation of thousands of real estate-owned properties (REOs) throughout the country.

In July 2019, a federal district court judge in Maryland denied a motion by Bank of America to dismiss the lawsuit, finding in favor of the plaintiffs on every challenge. Significantly, the judge rejected defendants' arguments that foreclosed properties are not for sale or rental and that maintenance is not sufficiently related to housing to be covered by the Fair Housing Act.

In August 2019, a federal district court judge in California denied Fannie Mae's motion to dismiss, finding that NFHA and 20 member organizations had stated a claim of intentional discrimination and disparate impact liability based on race and national origin. The court ruling reversed a decision a year earlier in the same case that, although plaintiffs had stated claims of disparate impact discrimination, they failed to establish grounds to pursue intentional discrimination claims. Plaintiffs may now proceed with aggressive enforcement of all their claims.

In November 2019, a federal district court judge in Illinois rejected a motion to dismiss by Deutsche Bank National Trust and Deutsche Bank, finding that NFHA and its partners successfully stated claims of discrimination on the basis of race in the maintenance and marketing of foreclosed properties against the

74 See https://law.justia.com/cases/federal/district-courts/indiana/insdce/1:2017cv01782/74322/176/.

75 See https://nationalfairhousing.org/2019/07/18/judge-denies-bank-of-americas-motion-to-dismiss-in-critical-fair-housing-lawsuit/.

76 See https://nationalfairhousing.org/2019/08/13/court-denies-fannie-maes-motion-to-dismiss-in-fair-housing-discrimination-lawsuit/.

77 See https://nationalfairhousing.org/2019/11/15/federal-court-greenlights-fair-housing-discrimination-claims-against-deutsche-bank-altisource-and-ocwen/.

financial institution and two companies that provided maintenance and other services. The court noted in its decision that "there is a 'clear, direct, and immediate' path between Defendants' alleged discriminatory lack of maintenance and Plaintiffs' response to that lack of maintenance through investigations, reporting, and advocacy."[78] Plaintiffs may similarly now proceed with both their disparate impact and intentional discrimination claims.

[78] *Id.*

SECTION V: THE ONGOING ASSAULT ON FAIR HOUSING

Throughout 2019, the Trump administration took significant steps to eliminate critical civil rights protections. From replacing HUD's well-established, effective Disparate Impact rule with one that will make it virtually impossible to bring disparate impact claims, replacing HUD's Affirmatively Furthering Fair Housing (AFFH) rule with one that will have no meaningful impact on discrimination and segregation, to dismantling the Community Reinvestment Act (CRA) requirements that the nation's largest banks have to abide by, the Trump administration has made every attempt to eliminate the ability to stop systemic discrimination, uplift disinvested communities of color, and safely shelter homeless LGBTQ people and religious minorities. Through its deregulatory actions, it is clear that the Trump administration seeks to fortify residential segregation and promote discrimination. The following subsections highlight some of the most extreme anti-fair housing actions in 2019, with relevant updates from 2020.

HUD Eviscerates Critical Disparate Impact Legal Standard

The disparate impact standard is established legal doctrine. It is a critical legal tool for challenging policies or practices that have a discriminatory effect on protected classes under the Fair Housing Act. The doctrine has been upheld in every federal court in which it has been challenged, and in 2013, HUD promulgated a rule that unified the standards of the various federal circuit courts for bringing and defending against disparate impact claims. The Supreme Court affirmed the use of disparate impact in its 2015 ruling in *Texas Dept. of Housing & Community Affairs v. Inclusive Communities Project ("Inclusive Communities").*[79] Despite the well-established history of the disparate impact doctrine, lending and insurance industry trade associations have made every attempt to challenge the legitimacy of the 2013 Disparate Impact Rule by falsely claiming that it conflicts with the Inclusive Communities decision. They found a great friend in the Trump administration.

In early September 2020, HUD issued a final rule that severely weakens the disparate impact standard under the Fair Housing Act. In essence, the Trump administration's new rule further exacerbates racial inequality, makes our communities less safe, undermines our economic prosperity, and lessens our children's ability to succeed.

The rule creates overwhelming obstacles for victims of discrimination to prove discrimination. The rule introduces a five-element pleading requirement to make a disparate impact claim, going well beyond what the 2013 rule required. Under the new rule, victims of discrimination with a disparate impact claim are required to predict the justifications a defendant might invoke and preemptively discredit them in order to survive a motion to dismiss. This must be done before a victim of discrimination has the benefit of discovery. This places an extraordinarily high burden of proof on victims of discrimination, likely making it virtually impossible to succeed in a disparate impact claim made under the Fair Housing Act.

The chart below compares the 2013 HUD Rule to the 2020 final rule and shows how the Trump administration is attempting to make a successful disparate impact claim nearly impossible. These changes are not grounded in established law.[80]

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[79] 135 S. Ct. 2507 (2015).

[80] For further discussion about the procedural challenges imposed by the Trump administration's proposed Disparate Impact Rule, please see

PRIMA FACIE CASE STANDARDS FOR CURRENT AND PROPOSED RULE	
CURRENT RULE	**PROPOSED RULE**
The Plaintiff or Charging Party bears the burden of proving its prima facie case by showing that a policy or practice:	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.	A. That the challenged policy or practice is arbitrary, artificial, and unnecessary to achieve a valid interest or legitimate objectives such as a practical business, profit, policy consideration, or requirement of law; 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; C. That the alleged disparity caused by the policy or practice has an adverse effect on members of a protected class; D. That the alleged disparity caused by the policy or practice is significant; and E. That there is a direct relationship between the injury asserted and the injurious conduct alleged.

The final rule appears to allow housing providers, lenders, and insurance companies to justify discrimination with profit margins. The final regulation suggests that a policy that is profitable could be immune from a disparate impact claim, and it places 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. Victims of discrimination would not only have to identify a nondiscriminatory policy of equal service to the defendant company, but the alternative also has to make as much money as the discriminatory policy **and** not create materially greater costs or other material burdens for a company. This is a nearly impossible task for plaintiffs to meaningfully assert upon filing a complaint.

HUD's final rule creates a defense for policies or practices that utilize predictive analysis, encouraging lenders to adopt and maintain algorithms, even if the lenders know they have a discriminatory effect. This is especially concerning as disparate impact is a critical and necessary tool to rein in discrimination in the use of algorithmic models—such as credit scoring,[81] pricing, marketing,[82] and tenant screening.[83] Many AI models contain biased data and/or assumptions. These can result in starkly discriminatory effects and operate as a hidden box, making those discriminatory effects difficult to attribute to any person's intentional discrimination.

NFHA's comments to the proposed rule at https://www.regulations.gov/contentStreamer?documentId=HUD-2019-0067-3079&attachmentNumber=1&contentType=pdf.

[81] See, e.g., Lisa Rice & Deidre Swesnik, *Discriminatory Effects of Credit Scoring on Communities of Color*, 46 Suffolk U. L. Rev. 935, 936, 938 (2013).

[82] *See* NFHA, Facebook Settlement (Mar. 19, 2019), https://nationalfairhousing.org/facebook-settlement/.

[83] *Conn. Fair Hous. Ctr. v. Corelogic Rental Prop. Solutions, LLC*, 369 F. Supp. 3d 362 (D. Conn. 2019) (denying motion to dismiss Fair Housing Act disparate impact and disparate treatment claims based on tenant screening algorithm).

The result of this exemption would be the effective immunization of covert discrimination by algorithm from disparate impact liability. This effective exemption comes at a time when the housing industry is deliberately moving toward eliminating individual decision-making about who gets approved for a rental unit, mortgage loan, or homeowners/rental insurance policy; therefore, it is more important than ever to challenge the rampant discriminatory impacts that AI can create. [Additional information about tech bias is provided in Section VI.]

With these changes to the disparate impact rule, the Trump administration has set a dangerous precedent that could allow many types of discrimination to prevail. This could include instances in which:

- A landlord evicts 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 charges higher mortgage rates to women, people of color, or people with disabilities, based on proprietary decision-making systems that rely on biased algorithms. Given these barriers, these consumers would be forced to take on more expensive loans, at a higher risk.
- An apartment building sets a limit of one person per bedroom. Families already face rising rental costs, and disparate impact liability is critical to ensuring artificial barriers like this unreasonable occupancy restriction do not exacerbate the housing affordability crisis.

In response to HUD's new disparate impact rule when it was first proposed, NFHA launched the #DefendCivilRights campaign to preserve the disparate impact doctrine under the Fair Housing Act. NFHA was joined by the Leadership Conference on Civil and Human Rights, NAACP Legal Defense and Educational Fund, ACLU, Lawyers' Committee for Civil Rights Under Law, Poverty & Race Research Action Council, and Center for Responsible Lending.

Comments on HUD's proposed rule were due October 18, 2019. The coalition and other external partners worked assiduously to generate comments opposing the proposed rule, and more than 45,000 comments were submitted to HUD. NFHA and the Georgetown Law Civil Rights Clinic analyzed the comments on the proposed rule and found overwhelming opposition to the proposed rule by the public. In July 2020, top mortgage lenders and industry leaders came out urging HUD to reconsider its proposed disparate impact rule. American Banker reported that, following public protests against police brutality and structural racism, leading financial and housing industry institutions asked HUD not to issue a new disparate impact rule.[84] Despite this opposition by the public, civil rights advocates, and industry leaders, in September 2020, HUD issued a final rule that will eliminate the ability to bring a successful disparate impact claim under the Fair Housing Act.

Recommendations:

- HUD must immediately withdraw the new disparate impact rule and reinstate the 2013 Disparate Impact Rule to reestablish clarity and certainty about how seemingly neutral policies or practices that have a discriminatory effect may be challenged under the Fair Housing Act.
- Congress must continue to explore ways

[84] https://www.americanbanker.com/news/big-banks-urge-hud-to-shelve-redlining-plan-small-banks-say-not-so-fast.

to ensure that the federal government can effectively enforce the nation's civil rights laws, especially the Fair Housing Act, as they relate to algorithms and 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 biased algorithms and AI-based decision-making systems.

Immigrant Families Face Eviction and Homelessness

Last year, the Trump administration took aim once again at immigrant families. In May 2019, HUD released a proposed regulation that would prohibit "mixed status families" from residing in public and other government-assisted housing.[85] A mixed status family is a household that includes both eligible people and others who are ineligible, but not necessarily undocumented, for housing assistance based on their immigration status. HUD's existing policy allows families to live together in subsidized housing, even if one member of the household is ineligible due to immigration status. Mixed status families pay a prorated rent each month that excludes the family member who is ineligible for assistance.

Eighteen months after the rule becomes final, HUD's proposal will allow eviction of a mixed status family that contains an ineligible member. The rule would also require public housing authorities and private housing providers to collect documents proving the citizenship of all residents who have already attested to their citizenship status and those seeking access to housing assistance for the first time. The new documentation requirements are intended to place a burden on people less likely to have or be able to produce proof of citizenship, such as a birth certificate.[86] Obtaining this new documentation is burdensome,[87] and citizens with lower incomes are more likely than others not to have proof of citizenship or other legal forms of identification.[88] The human impact of this cruel policy cannot be underestimated; even HUD's analysis of the proposed rule's impact shows that families that lose housing assistance due to the new assistance eligibility verification would be at serious risk of homelessness.

HUD's proposed rule is a blatant ploy to disperse immigrant families. Mixed status families will have to make the impossible choice between eviction and family separation, a threat to housing stability for most of these households. In addition, while the proposed rule is targeted at immigrants, it will also have profound impacts on people of color, children, women, people with disabilities, and the elderly. According to the Center for Budget and Policy Priorities, of the 109,500 people in the 25,000 households most immediately affected by the rule, 95 percent are people of color (of which 85 percent are Latino), 56 percent are women, and 53 percent are children. Among the nine million persons who currently receive HUD rental assistance and would be subject to the proposed rule, 72 percent are people of color, 62 percent are women, 39 percent are children, 22 percent are people with a disability, and 17

[85] See Re: HUD Docket No. FR-6124-P-01, RIN 2501-AD89, "Comments in Response to Proposed Rulemaking: Housing and Community Development Act of 1980: Verification of Eligible Status."

[86] See Brennan Center; Greenstein, Ku, and Dean; National Law Center on Homelessness & Poverty, "Photo Identification Barriers Faced by Homeless Persons: The Impact of September 11," April 2004, https://nlchp.org/wp-content/uploads/2018/10/ID_Barriers.pdf.

[87] Brennan Center; Greenstein, Ku, and Dean; Center on Budget and Policy Priorities, "The New Medicaid Citizenship Documentation Requirement: An Overview," April 20, 2006, https://www.cbpp.org/research/the-new-medicaid-citizenship-documentation-requirement.

[88] See Brennan Center; Greenstein, Ku, and Dean; National Law Center on Homelessness & Poverty, "Photo Identification Barriers Faced by Homeless Persons: The Impact of September 11," April 2004, https://nlchp.org/wp-content/uploads/2018/10/ID_Barriers.pdf.

percent are seniors.[89] About 55,000 children are at risk of eviction under the proposed rule.

Recommendation:

- HUD must rescind its proposed mixed status family rule and maintain existing housing assistance eligibility verification procedures.

Religious Freedom Restoration Act Allows Discrimination in Taxpayer-Funded Housing Services

In May 2018, the Trump administration issued Executive Order 13831. The order established the White House Faith and Opportunity Initiative and directed federal agencies to reevaluate existing regulations implementing the Religious Freedom Restoration Act (RFRA) across nine agencies related to partnerships between the federal government and faith-based social service providers. The nine agencies are the Departments of Agriculture, Education, Health and Human Services, Homeland Security, Justice, Veterans Affairs, Labor, and Housing and Urban Development, as well as the U.S. Agency for International Development (USAID). On January 16, 2020, the Trump administration announced proposed rules from all of the aforementioned agencies except HUD. On February 13, 2020, HUD released its own proposed rule for public comment.

The previous RFRA regulations required social service providers to provide clients with written notice of their rights, including that a provider cannot discriminate against a client based on religion or compel them to take part in religious activities. Under the previous rules, if a client in need felt uncomfortable with the religious character of a provider, the provider would be required to take reasonable steps to refer the client to another direct service provider. The previous regulations protected the safety and religious freedoms of a client in need of taxpayer-funded services.

The proposed rules, however, make several concerning changes to the existing regulations that would disproportionately harm LGBTQ people, religious minorities, and women by creating a religious litmus test for service. The proposal would:

- Strip the requirement that social service providers take reasonable steps to refer clients to alternative providers if requested, which was intended to ensure that clients can still access vital services.
- Remove the requirement that service providers offer clients written notice of their religious freedom rights, which was intended to help clients understand that they have the right not to be proselytized to.
- Expand problematic existing religious exemptions that allow taxpayer-funded service providers to discriminate in employment based on religion, which unfortunately was already the case in the previous regulations.
- Add special notices to grant announcements and awards to encourage faith-based providers to seek additional religious exemptions from federal laws and regulations pertaining to taxpayer-funded programs.
- Eliminate a safeguard that currently ensures people who access services through indirect aid, such as a voucher, have at least one secular option available to them so clients can still access vital services.

In the HUD program context, the proposed rule enables discrimination against LGBTQ people, women, and religious minorities in need of

[89] Alicia Mazzara, "Demographic Data Highlight Potential Harm of New Trump Proposal to Restrict Housing Assistance," Center for Budget and

any number of taxpayer-funded services, such as Housing Counseling Grants, Supportive Housing for the Elderly, Supportive Housing for Persons with Disabilities, Housing for Persons with AIDS (HOPWA), and other HUD programs. For example, single mothers, gay or lesbian couples, or a Muslim individual seeking housing counseling services either to purchase a new home or prevent foreclosure could be rejected by a faith-based counseling agency under the proposed rule. A homeless person of any faith, or no faith, would be forced to choose between shelter services or being engaged in unwanted religious discourse or activities as a condition of service. The result of this rule would essentially force people in desperate need to put aside their constitutionally protected religious freedoms to access life-saving services. By allowing faith-based providers to deny services or condition them on adherence to the provider's religion, the Trump administration is sanctioning the use of taxpayer dollars for religious discrimination.

Recommendations:

- HUD and all federal agencies must withdraw their proposed Religious Freedom Restoration Act rules and enforce existing program regulations that support religious freedom for all, not just faith-based service providers.
- HUD must remove the exemptions available to faith-based service providers to discriminate in employment based on religion.

HUD's Proposal to Weaken the Equal Access Rule Puts Transgender People in Harm's Way

Beginning in 2012, HUD issued a series of rules that ensure equal access to HUD-assisted housing, regardless of sexual orientation, gender identity, nonconformance with gender stereotypes, or marital status. These protections are based in the Fair Housing Act's protection against sex discrimination in all housing. HUD's guidelines applied to HUD-assisted and Federal Housing Administration-insured housing[90] and to HUD's Native American and Native Hawaiian housing programs.[91] HUD also applied similar protections for transgender individuals in HUD-assisted shelter programs that affirmed their ability to access gender-specific shelters according to their self-identified gender.[92] The latter rule is specifically important in ensuring safe and accessible shelter services for transgender people, as they are disproportionately victims of hate crimes, sexual assault, and intimate partner violence, as well as discrimination in housing, employment, and public services.

Transgender and nonbinary people, especially those of color or who are undocumented, experience significant rates of homelessness, harassment, and physical and/or sexual assault, and it is critical that we ensure their access to safe, gender-affirming shelters. According to the 2015 U.S. Transgender Survey Report, nearly a third of transgender and non-binary people in the U.S. experience homelessness at some point in their life, and half of Black, Middle Eastern, multiracial, or undocumented transgender

[90] 24 CFR Parts 5, 200, 203, 236, 400, 570 574, 882, 891, and 982, "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity," February 2012.

[91] 24 CFR 5, 1000, 1003, 1005, 1006, and 1007, "Equal Access to Housing in HUD's Native American and Native Hawaiian Programs — Regardless of Sexual Orientation or Gender Identity," November 2016.

[92] 24 CFR Part 5, "Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs," September 2016.

and non-binary people have experienced homelessness at some point in their lives.[93] In this same survey, over half of all transgender survey respondents who used shelter facilities within the previous year reported being verbally harassed, physically attacked, and/or sexually assaulted because of their gender identity. Despite the clearly documented need for safe shelter services for transgender and nonbinary people, many shelter providers did not provide gender-affirming access before the 2016 Equal Access Rule was finalized. Prior to the 2016 Equal Access Rule, a study by the Center for American Progress and the Equal Rights Center revealed that only 30 percent of shelters across four states appropriately housed transgender women with other women, and that in five states, shelters would refuse them services.[94]

Opponents of the 2016 Equal Access Rule make transphobic arguments rooted in misguided assertions about gender. Many try to argue that providing transgender people access to gender-specific shelters endangers the safety or privacy of others, specifically cisgender women. However, this myth has been repeatedly debunked, and in 2016 over 300 domestic violence and sexual assault organizations throughout the nation signed a National Consensus Statement that unequivocally states that transgender women living alongside cisgender women is appropriate and not a safety issue.[95] However, HUD Secretary Ben Carson himself has publicly made transphobic comments. In 2016, before the presidential election, Secretary Carson compared being transgender to changing one's ethnicity.[96]

It was no surprise, then, that in 2019 the Trump administration began taking steps to undo the Equal Access Rule, which protects transgender people from discrimination in HUD-assisted shelters. On May 21, 2019, Carson gave testimony before the House Financial Services Committee. When asked directly if he anticipated making any changes to protections for transgender people in shelters, he told Congress that he had no plans to do so.[97] However, the very next day, HUD announced its plans to significantly weaken the Equal Access Rule as it pertained to access to shelters for transgender people.[98] Secretary Carson willfully or ignorantly misled Congress.

On July 24, 2020, HUD published a proposed amendment to the Equal Access Rule that blatantly allows shelter providers to discriminate against transgender people in HUD-assisted shelter facilities.[99] The proposed changes to the rule are part of a surgical attack on protections for LGBTQ people, with particular focus on the well-being of transgender people, across all areas of life. The proposed rule strips

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[93] 2015 U.S. Transgender Survey Report, available at http://www.ustranssurvey.org/reports.

[94] Caitlin Rooney, Laura E. Durso, and Sharita Gruberg, "Discrimination Against Transgender Women Seeking Access to Homeless Shelters," January 7, 2016, available at https://www.americanprogress.org/issues/lgbtq-rights/reports/2016/01/07/128323/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/.

[95] "National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community," April 13, 2018, available at http://www.4vawa.org/ntf-action-alerts-and-news/2018/4/12/national-consensus-statement-of-anti-sexual-assault-and-domestic-violence-organizations-in-support-of-full-and-equal-access-for-the-transgender-community.

[96] CNN Politics, "Ben Carson compared being transgender to changing ethnicities," July 19, 2016. Available at https://www.cnn.com/2016/07/19/politics/ben-carson-transgender/index.html.

[97] See exchange between Rep. Jennifer Wexton (D-VA-10) and HUD Secretary Ben Carson, May 22, 2019, at https://www.youtube.com/watch?v=6s_2fdLhoQk&feature=youtu.be&utm_source=NLIHC+All+Subscribers&utm_campaign=6837887c8d-Update_052319&utm_medium=email&utm_term=0_e090383b5e-6837887c8d-&ct=t%28Update_052319%29.

[98] See proposed rule OMB page at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=2506-AC53.

[99] See "Making Admission or Determinations Based on Sex in Facilities Under Community Planning and Development Programs," RIN 2506-AC53, HUD Docket No. FR-06152-P-01.

protections from transgender and gender-nonconforming people in search of HUD-funded shelter services. Furthermore, the proposed rule relies on dangerous stereotypes of transgender women. The proposal specifically enables HUD-funded emergency single-sex shelter service providers to request that a transgender individual provide evidence of their sex "based on a good faith belief" that the person requesting shelter is not of the biological sex that the shelter serves. The "good faith belief" approach disempowers transgender people, invites sex stereotyping, and signals to all providers that it is appropriate to question any person's sex. The practical result of this proposed rule is likely to be increased discrimination against transgender people, as well as the placement of transgender people who do accept this discrimination into shelters where they may be at significant risk of the same types of violence and abuse that they already disproportionately experience outside of the shelter system. Transgender advocates are very concerned that the proposed rule will discourage transgender people from seeking emergency shelter services. This proposed rule cannot stand, and comments to this proposed rule are due September 22, 2020.

Recommendations:

- HUD must rescind the proposed rule that allows HUD-assisted shelters to discriminate against transgender people or put them in gender-non-affirming shelter spaces.
- HUD must provide training and technical assistance to HUD grantees to ensure adequate implementation of the Equal Access Rule and guidance.
- HUD must provide financial assistance to HUD grantees to train and assist colleague organizations on LGBTQ cultural competency within each continuum of care that serves the LGBTQ community.

The Community Reinvestment Act Was Gutted by the Comptroller of the Currency

The Community Reinvestment Act (CRA) was passed in 1977 as a tool to reverse the harms and inequities caused by decades of redlining and disinvestment by banks in low- and moderate-income and other underserved communities. The premise of the law is relatively simple: in return for the benefits that banks receive with their federal charters, they have a continuing and affirmative obligation to serve the credit needs of their communities, including low- and moderate-income areas. Since it went into effect, the CRA has been used by community groups to win commitments from banks to channel trillions of dollars into disinvested neighborhoods in the form of home mortgages, small business loans, community development loans, and other services.

Despite its many successes, the CRA has not been updated to keep step with the significant structural and technological changes that the banking industry has undergone since 1977. While there is widespread agreement that an overhaul is much needed, there has been no consensus about what form those changes should take. However, the racial, ethnic, and wealth disparities that the coronavirus pandemic has brought to light underscore the importance of modernizing the CRA to spur more equitable access to credit by people of color, the businesses they own, and the communities in which they live. Among the many problems the pandemic has thrown into stark relief is the racial bias in the financial services industry.

Rather than tackling this problem, the Trump administration has worked to undermine the CRA, making it less effective as a tool for dismantling the structural racism in our society.

On May 20, 2020, The Office of the Comptroller of the Currency (OCC) issued a new rule for the Community Reinvestment Act and tried to convince the Federal Reserve and Federal Deposit Insurance Corporation to adopt its new rule. This effort was led by Joseph Otting, the short-term Comptroller of the Currency, whose agency regulates the nation's largest banks. Prior to his appointment to this position, Otting was the chief executive of a California bank called One West, which was owned by an investment group run by U.S. Treasury Secretary Steven Mnuchin.[100] When CIT Group sought to acquire One West, the acquisition met vocal opposition from community groups that criticized both institutions' CRA performance. Otting seem to have come to Washington, D.C., with the CRA in his crosshairs and made it his mission to change the law. The very week that mission was accomplished, he resigned from his post as Comptroller.

The OCC was not successful in winning support from the other banking regulators, but it forged ahead nonetheless. In addition to splintering the CRA regime so that different banks will be subject to different rules, the changes that Otting put in place for national banks will weaken the CRA significantly. They expand the range of activities for which banks can receive CRA credit to include housing for middle-income households and large-scale development projects with dubious community benefits, such as sports stadiums. They emphasize the aggregate dollar value of CRA investments rather than the degree to which those investments meet the credit needs of individual communities, creating an incentive for banks to seek out a small number of large deals rather than looking closely at the particular needs of the communities they serve. The changes allow banks to get passing CRA ratings even if they ignore some communities altogether. They sever the connection between the location of bank branches and the areas in which a bank's performance under the CRA is evaluated, opening the door to the shuttering of branches, which are critical to the success of small businesses in low- and moderate-income communities and communities of color, as well as access to financial services for community residents.[101]

To eliminate the racial wealth and homeownership gaps, and the resource disparities among neighborhoods caused by segregation and ongoing discrimination, we must have a toolkit equipped with the best and most effective tools possible. The CRA has been and could be an even more powerful tool for equity, but the Trump administration's regulatory changes are likely to render it ineffective.

Recommendations:

- The OCC must withdraw its 2020 CRA regulation and, together with the other federal prudential regulators, engage in a rulemaking process that draws on the best experience of community organizations, lending institutions, and other stakeholders to craft a new, more effective CRA regulation.
- Congress must update the CRA to reflect the structural and technological changes that have occurred in the banking industry since the law was first enacted. It must also make explicit banks' obligation to help meet the credit

[100] "Changing Rules to Help Banks and Hurt Poor Neighborhoods," New York Times editorial, January 10, 2020. Available at https://www.nytimes.com/2020/01/10/opinion/Community-Reinvestment-Act.html?searchResultPosition=2.

[101] See testimony of Paulina Gonzalez-Brito, Executive Director, California Reinvestment Coalition, before the U.S. House Financial Services Committee Subcommittee on Consumer Protection and Financial Institutions, January 14, 2020. Available at http://calreinvest.org/wp-content/

uploads/2020/01/PGB-Congressional-Testimony-1.14.20-with-Appendix.pdf. Additional analysis of the impact of the OCC's new CRA regulations is available from the National Community Reinvestment Coalition at https://ncrc.org/analysis-of-the-occs-final-cra-rule/.

needs of all underserved communities, including communities of color, regardless of their income level. This will help to strengthen the connection between lenders' CRA obligations and their fair lending responsibilities.

Elimination of the AFFH Rule Further Cements Segregation

At a time when the nation is urgently seeking tools and strategies to address the severe racial inequities that have been laid bare by the COVID-19 pandemic and subsequent economic collapse, the Trump administration is working to eviscerate one of the tools available under the Fair Housing Act: Affirmatively Furthering Fair Housing. The Fair Housing Act was passed in 1968, exactly one week after the assassination of Dr. Martin Luther King, Jr. The protests that erupted at the news of that event capped a year of protests throughout the country over the harm that people of color, and Black people, in particular, suffered as the result of segregation and systemic discrimination.

The historical context, legislative history, and jurisprudence related to the Act's AFFH provisions all serve to make clear the intent of Congress, which was to use the programs administered by HUD and other federal agencies to eliminate segregation, expand opportunity, and create a more equitable society. A brief attempt to effectuate this provision by George Romney, HUD Secretary during the Nixon administration, was quickly brought to a halt by President Richard Nixon,[102] and HUD did nothing further to fulfill its AFFH obligation until the mid-1990s. A regulation adopted in 1995 was opposed by mayors and other local elected officials and ultimately proved ineffective.[103]

In 2015, HUD finally adopted a new AFFH regulation that had the potential to be a powerful tool for racial equity. It required jurisdictions that receive HUD funds to take a clear, cold look at segregation, discrimination, and inequality within their communities and gave them the tools to do so. It also required them to engage with their communities to identify top priorities for problems to address and strategies to overcome them. It required them to establish goals for carrying out these strategies, with associated metrics and timelines. Most importantly, the rule conditioned continued receipt of HUD funding on jurisdictions making progress toward accomplishing their fair housing goals. This promising regulation went into effect in 2016, and 39 jurisdictions completed the process of developing their fair housing plans and having them approved by HUD.

During the Trump administration, HUD has been hard at work dismantling the 2015 AFFH regulation. In 2018, it halted implementation of the 2015 rule and reinstated the ineffective 1995 regulation. In January, 2020, HUD proposed a new AFFH regulation, one almost entirely divorced from the meaning and intent of the AFFH provision of the Fair Housing Act. On July 23, 2020, HUD abandoned that proposed rule, and in a move that was at best improper and at worst illegal, adopted a new, previously unseen, final rule to replace the 2015 AFFH regulation. That rule went into effect on September 8, 2020.

HUD's new rule, called "Preserving Housing and Neighborhood Choice," cannot truthfully be labeled an AFFH rule, although it purports to implement the AFFH provisions of the Fair Housing Act. The rule adopts a new definition

[102] Romney described the White suburbs as a "noose around the neck" of Black inner cities and wanted to use HUD's leverage to force them to eliminate exclusionary zoning and increase affordable housing. See Nikole Hannah-Jones, "Living Apart: How the Government Betrayed a Landmark Civil Rights law," ProPublica, June 25, 2015.

[103] U.S. Government Accountability Office, "Housing and Community Development Grants: HUD Needs to Enhance its Requirements and Oversight of Jurisdictions' Fair Housing Plans," GAO-10-905, Washington, DC, September 2010.

of fair housing, which it calls, “housing that is safe, decent, affordable, free of unlawful discrimination and accessible in accordance with applicable civil rights statutes.” It then defines affirmatively furthering fair housing as taking, “any action rationally related to promoting any attribute or attributes of fair housing,” as newly defined in the rule. It eliminates any requirement for jurisdictions to analyze data related to housing discrimination, segregation, or access to opportunity. In fact, the new rule does not even mention the word segregation or allude to any racial or other disparities among neighborhoods in access to resources or opportunities. Further, it eliminates any requirement to engage with community residents and solicit their input on these issues. It eliminates any requirement for jurisdictions to develop any kind of fair housing plan: no Assessment of Fair Housing as called for under the 2015 rule, no Analysis of Impediments to Fair Housing Choice as called for under the 1995 rule, no fair housing plan of any kind will be required. And it severs the link between fair housing planning and jurisdictions' decisions about how to spend their housing and community development dollars, as spelled out in their Consolidated Plans. Jurisdictions must still certify that they will affirmatively further fair housing, but now that will mean that they will take, “any action that is rationally related to promoting one or more attributes of fair housing” as defined in the rule. The only records jurisdictions will have to maintain are records documenting that they have filed an AFFH certification with HUD, but HUD will not conduct any monitoring or oversight of jurisdictions' efforts to affirmatively further fair housing.

The bottom line is that the new rule does not require jurisdictions to take any meaningful steps to eliminate housing discrimination, dismantle segregation, or create greater equity and inclusion. It conjures up memories of the days when jurisdictions asserted that they were fulfilling their fair housing obligations by holding fair housing poster contests for school children during April, fair housing month. Worse, it would allow jurisdictions to take actions that perpetuate discrimination and segregation–such as adopting discriminatory nuisance ordinances or locating the bulk of their affordable housing in highly segregated, very poor neighborhoods–and claim they are furthering fair housing through activities such as code enforcement programs. In short, the rule is a sham that fails to carry out the job Congress gave HUD to do with the AFFH provision of the Fair Housing Act, and leaves jurisdictions seeking to address racial inequity and systemic racism without the tools and guidance they need to do so effectively.

Recommendations:

- HUD must immediately withdraw its new AFFH regulation, reinstate the 2015 regulation, and resume its implementation and enforcement.
- Simultaneously, HUD must update the data and mapping tool it created for jurisdictions to use, incorporating current data, and addressing any remaining data gaps.
- HUD must undertake an evaluation of the assessment tools and procedures that accompanied the 2015 rule, seeking input from stakeholders and jurisdictions that went through the process and make any refinements necessary.
- HUD must obtain the necessary input from the public and then complete the assessment tools for public housing authorities and states, and seek OMB approval for all of the Assessment of Fair Housing (AFH) tools.
- HUD must ensure adequate staffing

in its Office of Fair Housing and Equal Opportunity (FHEO) to provide support and oversight for its grantees who are engaging in the fair housing planning and implementation process, as well as much-needed training for staff involved in this effort, both in FHEO and throughout the Department.

- HUD must coordinate with other federal agencies whose programs are implicated in the AFFH mandate, including the Departments of Transportation and Education and the EPA, among others, to ensure that racial equity is addressed substantively in the programs of those agencies and that these racial equity efforts operate in a manner that is coordinated and consistent.

CFPB Request for Information (RFI)

As discussed above, the foundational civil rights concept known as disparate impact, a tool that enables us to address hidden bias, is under attack by the Trump administration's HUD. HUD is not the only agency that has disparate impact in its crosshairs. The Department of Education rescinded guidance on school discipline policies that was intended to reduce the disproportionate use of suspensions and expulsions to discipline Black students and students with disabilities, which was premised on a disparate impact analysis.[104] It appears that the CFPB may attempt to eliminate the use of disparate impact analysis in enforcement of the ECOA, which protects against discrimination in all types of credit transactions, including mortgages.

In 2018, the CFPB issued a Request for Information (RFI) about its inherited regulations.[105] This was one of a series of RFIs issued by the Bureau on a range of regulations. Normally, the RFI process can be a useful way to solicit public input on the need for or impact of a regulation. In this administration, the RFI process appears to be a way to solicit a deregulatory wish list from the financial services industry or other regulated entities. One of the issues flagged in the 2018 RFI was the use of disparate impact under the ECOA. NFHA and a host of other civil rights, consumer protection, and advocacy organizations submitted comments strongly opposing any move by the Bureau to weaken or eliminate the use of disparate impact under the ECOA.[106]

In January 2020, the CFPB issued a new RFI, this time under the auspices of its Task Force on Federal Consumer Financial Law.[107] Once again, the RFI called into question the use of disparate impact under the ECOA. And once again, NFHA voiced its strong opposition to weakening the use of this important civil rights tool in any way. Not only is it inappropriate, in the middle of a pandemic, for the Bureau to issue an RFI on topics for which it has previously asked for input, but to make this request under the auspices of this Task Force is particularly troubling given the nature of the Task Force itself. It is made up entirely of individuals with ties to the financial services industry, some of whom have expressed hostility to consumer protection laws, and even to the CFPB itself. In appointing the Task Force members, the Bureau rejected every consumer advocate who applied.

Further, the Task Force has held its meetings behind closed doors, raising concerns about

[104] https://www.chalkbeat.org/2018/12/21/21106428/it-s-official-devos-has-axed-obama-discipline-guidelines-meant-to-reduce-suspensions-of-students-of.

[105] Docket No. CFPB-2018-0012.

[106] See the comments at: https://nationalfairhousing.org/wp-content/uploads/2020/08/cfpb-inherited-regs-disparate-impact.pdf.

[107] Docket No. CFPB-2020-0013.

its lack of impartiality. A number of consumer organizations have filed a lawsuit against the CFPB challenging the legality of the Task Force, based on its one-sided composition and lack of transparency and accountability.[108] The lawsuit alleges that the Task Force violates the Federal Advisory Committee Act (FACA) and seeks to halt its operations.

Recommendations:

The CFPB should immediately disband the Task Force on Consumer Financial Law and abandon efforts to weaken the important consumer protection laws for which it holds supervisory authority.

- The CFPB should stop trying to weaken or eliminate the use of disparate impact under the ECOA, and resume aggressive enforcement of the law.
- The CFPB must immediately reinstate the authority of the Office of Fair Lending and Equal Opportunity and resume full enforcement of the Equal Credit Opportunity Act, Home Mortgage Disclosure Act, and other civil rights laws affecting the extension of credit in the United States.

At a time when this nation should be laser-focused on implementing meaningful systemic change to eliminate the underlying causes of enormous inequities—housing discrimination and residential segregation—the Trump administration has instead waged a slash and burn campaign to eliminate the effectiveness of the Fair Housing Act and related laws. He has pandered to racists at the expense of people in all protected classes and, particularly, people of color. Time and public sentiment are not on his side, but the harm he has caused in the meantime may take years to correct.

SECTION VI: TECHNOLOGY AND OTHER EMERGING FORCES IN FAIR HOUSING

In this section, we outline several issues that represent emerging and continued challenges in fair housing. These include ensuring technologies used in housing and lending markets are bias-free; addressing the discriminatory consequences of environmental hazards and climate change on communities of color and the need to apply fair lending tools to ameliorate them; and focusing more attention on sexual harassment in housing–a pernicious and growing problem.

Technology and Potential Transformation of Markets

Technologies and innovations have the potential to help tear down structural barriers and expand opportunities. If we are not careful, however, the technologies we use in the lending and housing sectors will create, perpetuate, and entrench discrimination and inequality. As the nation grapples with the systemic issues that lie at the root of COVID-19-related disparities and the unrest throughout our cities, we cannot forget about the technologies that help drive discriminatory outcomes. News and social media feeds have been peppered with stories about corporations and industries dealing with the fallout from their biased systems—ones they thought were revolutionary, innovative, and fair. The common thread among these stories has been that business leaders were caught unawares by the way the technologies, upon which they rely so heavily, were discriminating against millions of consumers. There is an erroneous belief that technology cannot discriminate, that somehow computers and mathematical formulas do not see race, gender, or national origin. Nothing could be further from the truth.

Technological systems can detect human characteristics. They can perpetuate and amplify discrimination against people because of the traits those people possess. Amazon had to shut down an Artificial Intelligence (AI) tool it developed when it discovered that the system discriminated against women. United Health Group, Inc. is under investigation by the New York State Department of Financial Services and Department of Health over how its AI-based system discriminates against Black patients. Regulators are investigating Apple Card over claims that the algorithm used to determine consumers' creditworthiness discriminates against women. CoreLogic was sued over claims that its tenant-screening system discriminates against people of color.

While systems can generate hidden bias, they can also be designed to encourage bias. Facebook, Google, Roomates.com, and other companies have faced allegations of discrimination over their digital advertising platforms.[109] Civil rights laws have long protected consumers' ability to view advertisements for housing, credit, or employment in an equitable manner. When companies build systems that allow advertisers to turn certain audiences on or off, based on

[109] In 2019, the National Fair Housing Alliance, ACLU, Fair Housing Council of Greater San Antonio, Fair Housing Justice Center of New York, Housing Opportunities Project for Excellence, Inc. of Miami, and Communications Workers of America settled precedent-setting civil rights claims against Facebook. The groups alleged Facebook violated the Fair Housing Act and other civil rights statutes by designing its platform to encourage and allow users to exclude or include people based on characteristics like race, national origin, gender, familial status, and disability status. See https://nationalfairhousing.org/facebook-settlement/.

personal characteristics such as race or gender, consumers lose out on critical opportunities to obtain quality credit, good jobs, or access to a range of housing choices.

Studies have also highlighted the ability of technology to discriminate against people based on personal characteristics protected by fair housing, fair lending, and other civil rights laws. Researchers at Berkeley found that each year, Black and Latino mortgage borrowers are overcharged by algorithmic pricing systems by more than $765 million.[110] Princeton researchers found that GloVe, a popular algorithm used to process language, replicated the same type of psychological biases manifested by human beings. The algorithm associated names more common to White people, like Emily and Matt, with "pleasant" words, while it associated names more common to Black people, like Ebony and Jamal, with "unpleasant" words.[111] The system shares "the same biases humans demonstrate in psychological studies."[112]

Algorithmic-based systems manifest discrimination for myriad reasons, including the fact that many of the underlying datasets used to build these systems are biased. Researchers continue to find racist and sexist prejudices in commonly used datasets.[113] Design flaws can also perpetuate bias, including unrepresentative, insufficient, or flawed data; biased feedback loops; insufficient or no testing for bias; untrained designers; a lack of diversity on design teams; systems keyed for profit optimization; and many other means. People build artificial intelligence systems, and people bring all their bias, both explicit and implicit, to the model-building process.

In addition to the enormous inequality created by technology, the process of adopting new technologies that can eliminate bias and provide fairer opportunities is quite tedious. Companies are reluctant to onboard technological innovations that can advance equality because they are concerned about disruption to their systems and business models. Despite overwhelming evidence of bias in the technologies used in the housing and financial services space, little has been done to change legacy systems. Continued use of these systems will further entrench structural bias and exacerbate the racial wealth and homeownership gaps.

The use of technology has grown by leaps and bounds. Indeed, with the right tools, it may be easier to eliminate bias from our technologies than it would be to rid it from the human psyche. With our increasing reliance on algorithm-based systems, we have an opportunity to move the needle on advancing equality. If we are going to create a just and fair society, we must embrace new methodologies for eliminating bias from our technology. Below are solutions that can take us from making incremental advancements in eliminating injustice to achieving large, bold steps toward equality.

Recommendations:

- Dramatically increase diversity in the tech, financial services, and housing industries.
- Provide fair housing, fair lending,

[110] https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf.

[111] Pearson, Jordan, "It's Our Fault That AI Thinks White Names Are More 'Pleasant' Than Black Names," Vice, August 26, 2016, available at: https://www.vice.com/en_us/article/z43qka/its-our-fault-that-ai-thinks-white-names-are-more-pleasant-than-black-names.

[112] Caliskan-Islam, Aylin, Joanna J. Bryson, and Arvind Narayanan, "Semantics Derived Automatically from Language Corpora Necessarily Contain Human Biases," 2020, unpublished. Available at: https://www.cs.princeton.edu/~arvindn/publications/language-bias.pdf.

[113] Ibid. See also Miltenburg, Emiel Van, "Stereotyping and Bias in the Flickr30K Dataset," published 2016, Psychology, Computer Science ArXiv. Available at: https://www.semanticscholar.org/paper/Stereotyping-and-Bias-in-the-Flickr30K-Dataset-Miltenburg/f4b654433c53b26b71d5f39dd8ecdc4d8a2acb1f.

implicit bias, and civil rights training for engineers, data scientists, developers, coders, and others in the tech field.

- Utilize more robust, accurate, and representative data sets.
- Significantly increase fair housing and fair lending enforcement.
- Enhance and improve explain-ability methods that generate accurate adverse action notices for lending decisions.
- Update regulatory guidance to improve the validation and monitoring of algorithmic models.
- Use new technologies and methodologies to remove and/or silence bias in existing datasets and technological systems.

Environmental Justice

Black, Latino, indigenous, and other families of color disproportionately bear the brunt of harmful environmental health factors and other impacts of climate change. The recent Movement for Black Lives, which is organizing to dismantle structural racism and police violence in communities throughout the country, calls upon advocates and public officials to unpack the factors that cause these disparities. The same framework that yields disparities in the impact of environmental hazards also drives the wide racial gap in the way the COVID-19 virus has resulted in disproportionately high infection and death rates among Black households throughout the country.

At the core of the apartheid culture in the U.S. that manifests these health outcomes is residential segregation, which remains locked in place throughout the country because of persistent, discriminatory housing policies and practices. The Fair Housing Act was passed with the express purpose of dismantling this segregation, and it remains a powerful tool in the ongoing struggle to achieve a more equitable society. Accordingly, tackling climate change and achieving environmental justice will require considering the impact of residential segregation in driving these outcomes and instituting policies throughout the housing market that promote racial and ethnic residential integration.

Whether we have clean air to breathe, clean water to drink, or are free from exposure to hazardous and toxic substances has an enormous impact on our health, quality of life, and longevity. How these environmental factors affect each of us depends on where we live: our neighborhood, and in some cases, our home itself. These neighborhood characteristics have just as significant an impact, or even more, on people's lives as the other factors we have examined in previous Fair Housing Trends Reports, such as quality schools, healthy food, reliable transportation, jobs that pay living wages, and the like.

Research has documented what people of color and those living in communities of color in the U.S. have long known: that they bear the greatest burden from pollution and other harmful substances in the environment and are the most likely to lack access to clean water and basic sanitation. These disparities are the result of decisions made to place infrastructure and facilities that produce pollution in or near communities of color. At the same time, appropriate steps were not taken to protect people of color from exposure to harmful materials in the environment nor to invest in the infrastructure that guarantees access to safe, clean water for all. The result is that communities in which people of color reside are harmful too often to their health, rather than places where people can thrive. These issues have long been the focus of the environmental justice movement. Their connection to place—to where people live—means they should be of concern to fair housing advocates as well. An examination of exposure to air pollution, lead poisoning, and water contamination, as well as of access to clean water and sanitation, illustrates these concerns and their connection to fair housing.

Air Quality

Residential segregation helps explain why air pollution disproportionately affects people of color. According to a 2018 study by scientists at the U.S. Environmental Protection Agency (EPA), people in poverty are exposed to 1.35 times more pollution than people above the poverty line. Regardless of income, Latinos are exposed to 1.28 times more pollution than Whites, and Blacks are exposed to 1.54 times more pollution than Whites.[114] Particulate matter, such as soot, smog, ash, oil smoke, automobile fumes, and construction dust, has been linked to cancer, various lung conditions, heart attacks,

and possible premature deaths. It is also linked to the prevalence and severity of asthma, low birth weights, and high blood pressure.[115] All of these outcomes can have significant negative impacts on the people who suffer them. Alarmingly, in addition to the familiar harms linked to air pollution, researchers have identified that these environmental factors also may raise the risk of COVID-19 death.[116]

One key reason that people of color are exposed to higher levels of air pollution than their White counterparts is that facilities that produce harmful pollutants are disproportionately placed in or near communities of color and low-income communities. A study commissioned in 1987 by the United Church of Christ Justice and Witness Ministries found that not only are pollution-producing facilities more likely to be located in or near communities of color, but those communities are also more likely to contain clusters of such facilities, subjecting their residents to multiple forms of pollution. Twenty years later, a follow-up study found similar results.[117] In addition to the chemical plants,

[114] Mikati, Ihab, Adam F. Benson, Thomas J. Luben, Jason D. Sacks and Jennifer Richmond-Bryant, "Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status," American Journal of Public Health, April 2018.

[115] Newkirk, Vann R. II, "Trump's EPA Concludes Environmental Racism Is Real." The Atlantic, February 28, 2018.

[116] Singh Khadka, Navin, "Air pollution linked to raise COVID-19 death risk." BBC News, April 20, 2020, available at https://www.bbc.com/news/health-52351290.

[117] Bullard, Robert D., Paul Mohai, Robin Saha and Beverly Wright, "Toxic Wastes and Race at Twenty: 1987-2007," United Church of Christ Justice

waste treatment plants, and other facilities that pollute, there are examples throughout the country of highways and bridges that have been routed next to or through communities of color, exposing their residents to high levels of automobile exhaust and attendant health risks.[118] For example, researchers at Washington University in St. Louis found that residents of poor, segregated neighborhoods face the greatest risk of cancer due to exposure to air pollution. "The pollutants that conferred the greatest risk were traffic-related," according to Christine Ekenga, an assistant professor of public health at the university's Brown School, and the lead author of the study. "The closer a neighborhood was to a major interstate highway, the more elevated their risk was," she added. "African American neighborhoods were more likely to be in these hotspot areas."[119] In addition to highways, the access roads for many ports and other facilities where trucks idle for long periods are also routed through communities of color, with the same significant health impacts.

The City of Houston, Texas, provides a case study in how communities of color bear the brunt of a wide array of environmental hazards. According to research by the advocacy group Texas Housers,[120] "Census block groups where the population is at least 75 percent non-White contain 84 percent of Houston's facilities that emit carcinogens, 79 percent of facilities that produce or handle hazardous waste, and 88 percent of permitted hazardous waste sites located within the Houston city limits. . . . Even publicly-owned toxic sites, both current and historical, are disproportionately placed in majority-minority communities. Census block groups where the population is at least 75 percent non-White contain 78 percent of closed landfills."[121]

These disparities are illustrated on the racial dot map on the next page, created by Texas Housers. The area outlined in gray shows the strongest housing markets in the city, per a recent housing market study conducted for the city. The blue dots show where the White population lives. Green dots denote Black residents, yellow dots denote Latinos, and red dots denote Asian Americans. As the legend details, the other symbols indicate the location of Superfund sites, closed landfills, radioactive sites, and other environmental hazards. The overwhelming majority of these are in communities of color, exposing their residents to a panoply of health hazards. White neighborhoods, in contrast, are largely free of such hazards.

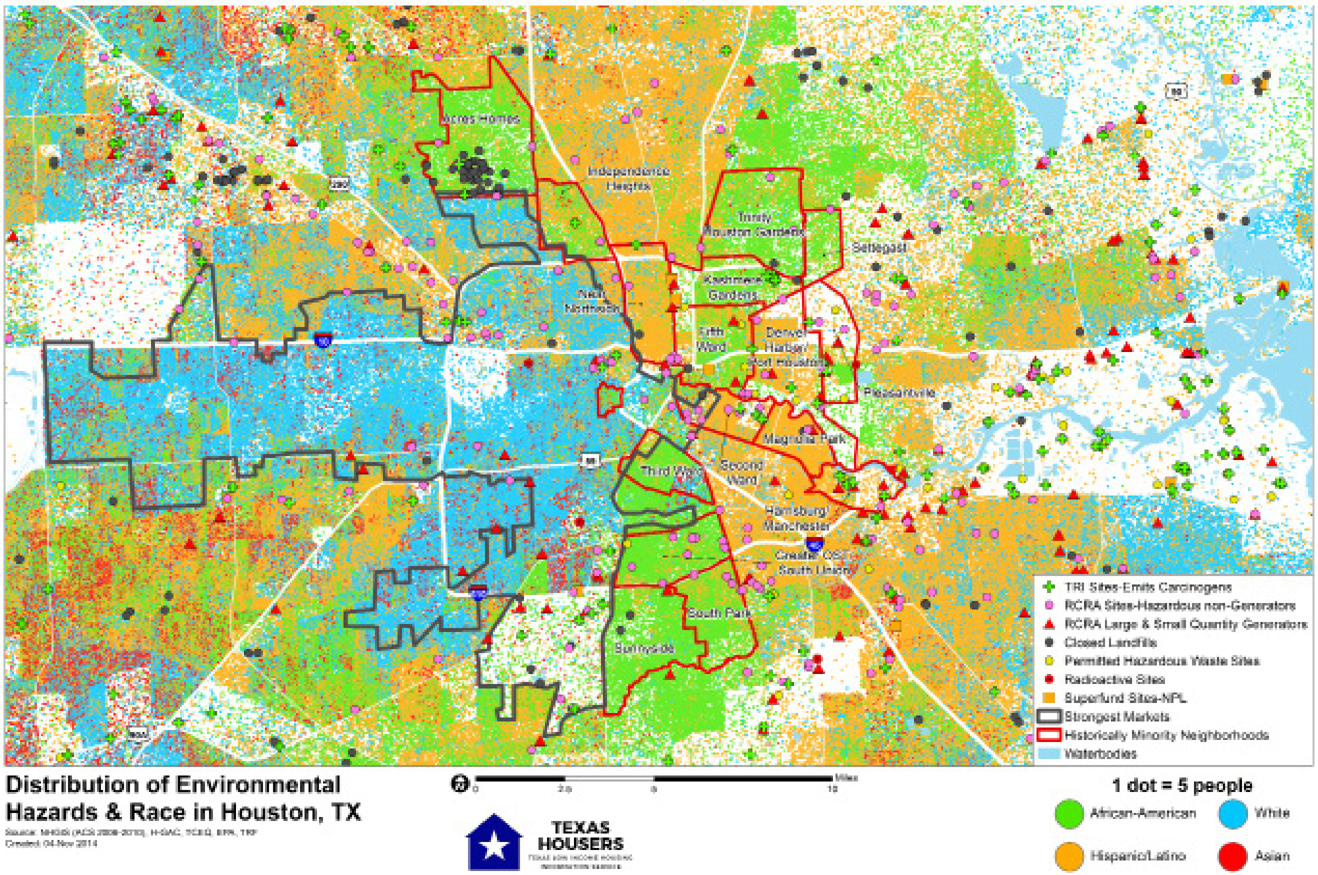
and Witness Ministries, Cleveland, OH, March 2007.

118 Gidigbi, Stephanie, "How Planes, Trains and Automobiles Worsened America's Racial Divide," Politico Magazine. June 26, 2020.

119 Gray, Bryce, "Effects of air pollution in St. Louis seperate and unequal, study finds," St. Louis Post-Dispatch, January 2, 2020.

120 The organization is formally known as the Texas Low Income Housing Information Service.

121 Texas Housers, "Where you live matters: Assessing unequal access to healthy environments," July 2016, available at https://texashousers.org/2016/07/07/where-you-live-matters-assessing-unequal-access-to-healthy-environments/.



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Lead Poisoning

Exposure to lead is another environmental hazard with disparate impacts. Black and Mexican-American children in urban areas are at the highest risk for lead poisoning caused by exposure to lead-based paint. According to a 2007 study of children ages one to five by the CDC, 11.2 percent of Black children and four percent of Mexican-American children suffered from lead poisoning, compared to 2.3 percent of White children. As the study notes, elevated blood lead levels "can result in decreased IQ, academic failure, and behavioral problems in children."[122] It can also cause anemia, seizures, brain development issues, and other life-long problems for children who are poisoned.

Older homes pose the greatest risk of exposing children to lead poisoning, as they are more likely to contain lead paint, which was banned in 1978. In many places, these are also the most affordable homes, as well as the units large enough to house families with children. Protecting children from this hazard is an important public policy goal. But the means by which we do so is critical. Some approaches may harm children by exposing them and their families to housing discrimination by landlords who would rather refuse to rent to families with children than abate the lead hazards in their rental units.

That is the case in Massachusetts, as NFHA's

[122] Wengrovitz, Anne M. and Mary Jean Brown, "Recommendations for Blood Lead Screening of Medicaid-Eligible Children Aged 1--5 Years: an Updated Approach to Targeting a Group at High Risk," Morbidity and Mortality Weekly Report (MMWR), U.S. Centers for Disease Control and Prevention, August 7, 2009/58(RR09); 1-11.

member there, the Massachusetts Fair Housing Center (MFHC), has documented. Massachusetts requires landlords with units built before 1978 to abate any lead hazards in their units before renting them to families with children under six years old.[123] For example, landlords must encapsulate any deteriorating paint. Landlords are not required to take this step for households with no children, or with children six years of age or older.

Rather than encouraging landlords to abate lead hazards in their units, the practical effect of this law has been to discourage them from renting to families with young children. This has been documented widely in newspaper accounts, reports produced by various state agencies, numerous jurisdictions' Analyses of Impediments to Fair Housing Choice, and the experiences of several MFHC clients. The Center, in conjunction with some of those clients, filed a complaint against the state agencies responsible for overseeing compliance with the state's "lead law."[124] That case is currently pending, but the underlying facts are instructive and suggest that any regulatory efforts to eliminate lead paint must be carefully crafted to avoid creating incentives for landlords to discriminate.

An alternative approach to addressing the systemic issue of lead paint exposure is to target funding for remediation efforts to the communities where the need for remediation is greatest. However, absent any universal lead abatement and the repeal of the Massachusetts state law that only requires abatement for units housing families with children under six years old, lead exposure will continue to wreak havoc on the development of children of color whose families have few affordable housing options. States and Congress must work to find the necessary funds to pay for the removal of all lead in publicly and privately-supported housing units. Lawmakers can take a phased-in approach that requires abatement in neighborhoods with a high concentration of housing units built prior to 1978 and with a higher concentration of families who meet housing voucher income requirements, or other area-specific income eligibility criteria. Otherwise, policy proposals that create additional requirements for certain renters (i.e., families with children) will create discriminatory barriers for people in need of affordable housing.

Water Access and Quality

Water contamination and lack of access to clean water are additional environmental problems that disproportionately affect people and communities of color. Access to clean, safe drinking water is critical to public health, as the coronavirus pandemic illustrates all too clearly. Yet that access is not available uniformly to everyone in this country.

More than 2 million people in the U.S. lack access to safe tap water and functioning plumbing, according to a 2019 report by the non-profits DigDeep and U.S. Water Alliance, entitled "Closing the Water Access Gap in the United States: A National Action Plan." Race and economic status are key determinants of who has access to clean water and sanitation, creating disparities in who has water and at what cost. In the U.S., many communities benefit from some of the most advanced and high performing water and wastewater systems in the world; meanwhile, others lack basic access to clean water. Nearly 2 million Navajo, Black, and Latino residents regularly travel 40 miles to collect water, resort to drinking from

[123] This law is the Massachusetts Lead Poisoning Prevention and Control Act, codified at Massachusetts General Laws, chapter 111, §189A, et seq., as amended.

[124] See Complaint, Massachusetts Fair Housing Center et al. v. Bharel et al., No. 3:19-cv-30152 (D. Mass. Nov. 20, 2019) and also Second Amended Complaint, Massachusetts Fair Housing Center et al. v. Bharel et al., No. 3:19-cv-30152 (D. Mass. Apr. 15, 2020).

contaminated sources, or warn their children not to play outside because their yards are flooded with sewage.[125] This "water access gap" parallels the disparities we see in access to other critical resources.

Entire communities lack access to water and sanitation infrastructure as a result of at least two interrelated histories. Vulnerable communities disproportionately lack access to water and sanitation, in part due to discriminatory practices embedded in development policies. An example of this problem, well known in fair housing circles, is the case of Coal Run, a Black neighborhood in Zanesville, Ohio, that was denied access to the municipal water system for decades, while all of the surrounding, predominantly White communities were granted water service. The residents of Coal Run sued under the Fair Housing Act and prevailed, finally winning access to clean water from the municipal water system.[126]

At the same time, federal funding for water infrastructure has declined at a precipitous rate in recent decades, reducing support for communities to build, revamp, or even maintain water and wastewater systems.[127]

The report by DigDeep and U.S. Water Alliance documents that disparities in water access are not the result of individual preferences or choices to live off the grid; rather, they stem from "historical and geographical factors that have left entire communities without adequate services." The report cites examples of communities in California's Central Valley, the Texas colonias, Appalachia, the rural South, and Puerto Rico that all struggle with adequate water and sanitation access.

Tulare County is in California's Central Valley region. The county's 1971 general plan stated that its 15 unincorporated communities had "little or no authentic future;" thus, any plans for extending water and plumbing services were never implemented. Most of the communities in Tulare County's unincorporated areas are majority Latino, with high poverty rates, and average median incomes of around $26,000 (ACS 2017). Despite concerns over the water's safety, residents here are forced to pay monthly water bills or face shutoffs.[128]

Similarly, in rural Lowndes County, Alabama, only about 20 percent of homes are connected to sewer systems; the rest are required to install and finance septic systems,[129] often to the tune of $30,000.[130] "Community vulnerability in the rural South is inextricable from the legacy of the Jim Crow era," said researchers from DigDeep and U.S. Water Alliance. Seventy-three percent of the county residents are Black, and the median income is approximately $26,000 (ACS 2017). Residents are required to pay a hefty utility bill for faulty septic systems or face

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[125] DigDeep, US Water Alliance, 2019, "Closing the Water Access Gap in the United States: A National Action Plan," available at http://uswateralliance.org/sites/uswateralliance.org/files/Closing%20the%20Water%20Access%20Gap%20in%20the%20United%20States_DIGITAL.pdf.

[126] For more information about the Coal Run case, visit https://fairhousing.com/news-archive/press-releases/justice-prevails-zanesville-water-case.

[127] DigDeep and U.S. Water Alliance, op. cit.

[128] Food & Water Watch, 2018, "America's Secret Water Crisis: National Shutoff Survey Reveals Water Affordability Emergency Affecting Millions." See: https://www.foodandwaterwatch.org/sites/default/files/rpt_1810_watershutoffs-web2.pdf.

[129] Creek, Ashley, "Filthy Water and Shoddy Sewers Plague Poor Black Belt Counties," Al Jazeera America, June 2015. Web. http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plaguepoor-black-belt-counties.html.

[130] DigDeep, US Water Alliance, op. cit.

violation fees, utility shutoffs, and, until recently, the possibility of arrest for unpaid fines.[131]

Native Americans are 19 times more likely (5.8 percent) to lack access to complete plumbing and/or water than White households (0.3 percent), and Black and Latino households lack indoor plumbing at almost twice the rate of White households (0.5 percent).[132] In a region with a wealth of water resources, the Navajo Nation was left out of compacts allocating water use, and an estimated 30 percent of people in the Navajo Nation lack access to running water.[133] Despite recognized tribal rights by the Supreme Court in 1908, the Navajo Nation's rights to water have been violated consistently for over a century.[134] Some Navajo instead rely on unregulated wells, springs, or troughs for daily water needs, which can be entirely unsafe because of groundwater contamination from abandoned uranium mines.[135]

Communities lacking access to water and functioning plumbing systems often lack a wide range of other services: reliable electricity, safe and affordable housing free of discrimination, and access to hospitals, grocery stores, and schools. "Situating water access challenges within a larger context can promote solutions that address multiple challenges at once," according to the DigDeep Report. In a society stricken by historical oppression, our wealth, health, and collective well-being demand thoughtful collaboration and knowledge exchange. Environmental rollbacks by the Trump administration, including the suspension of groundwater monitoring requirements in dumping coal ash,[136] significantly contribute to these disparities and further compromise the health of our most vulnerable neighbors.

Recommendations:

- An overwhelming majority of the millions of Americans who live with insufficient, faulty water systems are non-white and/or low-income. The federal government must prioritize infrastructure and other funding to improve water systems and address other environmental issues negatively impacting people and communities of color.
- Civil rights organizations must increase the application of fair housing and other civil rights laws and regulations to address environmental injustice.
- Immediate, interim aid must be delivered through federal government or philanthropic organizations to provide water and plumbing systems to these persons, while long-term plans for solid infrastructure are developed.
- In June of 2020, the Trump Administration proposed a rule to weaken protections of the landmark 1972 Clean Water Act. Such protections, like Section 401, give states and tribes the power to block federal projects that harm lakes, streams, rivers, and water systems within their borders. Without these protections, additional communities and tribal nations may be left without

[131] Tavernise, Sabrina, "A Toilet, but No Proper Plumbing: A Reality in 500,000 U.S. Homes," The New York Times, 26, September 2016. Web. https://www.nytimes. com/2016/09/27/health/plumbing-united-states-poverty.html

[132] DigDeep, US Water Alliance, op.cit.

[133] "Draft Water Resources Development Strategy for the Navajo Nation," Navajo Nation Department of Water Resources, July 2011.

[134] DigDeep, US Water Alliance, op.cit.

[135] Ibid.

[136] Clements, Katherine JD, "The Coal Ash Rule Trilogy Spanning Obama, Trump, and the D.C. Circuit," Environmental & Energy Law Program, Harvard University, 28, January 2020. Web. https://eelp.law.harvard.edu/2020/01/the-coal-ash-rule-trilogy-spanning-obama-trump-and-the-d-c-circuit/

clean water. The Clean Water Act must be defended to ensure safe and equitable access to a healthy home and environment.

A North Carolina Case Study: Water Quality and Hog Farms

One particular case in North Carolina illustrates the struggle that some rural communities of color face with air and water quality and the intersection between residential segregation and environmental justice. This case concerns the disproportionate negative health impacts that industrial-scale hog farms in eastern North Carolina have on Black, Latino, and Native American communities.

In 2014, North Carolina issued a general permit allowing more than 2,000 industrial hog farms, largely concentrated in the eastern part of the state, to collect the animals' waste in open pits and then spray it on nearby fields. These practices contaminate both the groundwater and nearby surface water and subject nearby residents to terrible odors and health-damaging air pollution. This part of North Carolina is the historic center of the state's Black community. It is also home to the Lumbee Tribe and a growing Latino population. [137]

The harms experienced by these communities prompted the North Carolina Environmental Justice Network and two other advocacy organizations to file a Title VI complaint with the EPA against the North Carolina Department of Environment and Natural Resources, citing the disproportionate impact of the permitted hog farm operations on the neighboring Black and Latino communities.[138]

The complaint alleged that, but for the race and national origin of the impacted population, the state would have included stronger conditions in the permit. It notes the historical nature of environmental injustice in North Carolina, including the state's designation of a Black community to receive soil contaminated with polychlorinated biphenyls (PCBs). That incident gave rise to the state's environmental justice movement, including Black, Latino, and Native American community members who brought forward concerns and complaints about the effects of the hog farms.

The complaint also described the ways in which the hog farm operations have increased costs for residents, prevented their quiet enjoyment of their property, forced people to move out of the community due to health and other concerns, and undermined the community fabric by making it impossible to hold community events.

Most importantly, the complaint addressed the siting of industrial hog farms. Excluding North Carolina's five major cities and the western part of the state where there are no hog farms, the proportion of people of color living within three miles of an industrial hog farm is 1.52 times higher than that of White individuals. Specifically, Black, Latino, and Native American populations living within three miles of industrial hog farms are 1.54, 1.34, and 2.18 times higher, respectively, than the proportion of White individuals living within that range.

Finally, the complaint discussed less discriminatory alternatives, a concept that also applies to fair housing cases based on disparate impact.

After the complaint was filed and attempts at dispute resolution between the parties failed, the EPA's External Civil Rights Compliance

137 Sturgis, Sue, "Civil rights battle over N.C. hog industry heats up as negotiations break down," Facing South, March 9, 2016.

138 https://earthjustice.org/sites/default/files/files/North-Carolina-EJ-Network-et-al-Complaint-under-Title-VI.pdf.

Office launched an investigation into the case.[139] The EPA confirmed that its regulations prohibit both intentional discrimination and practices that have a discriminatory effect. The investigation looked at the complainants' disparate impact analysis, noting that the analysis found that for each 10 percent increase in the combined Black, Latino, and Native American population, there was an increase of the weight, and hence the population and/or density, of the swine population.

The EPA also cited retaliation and harassment that the complainants faced during the arbitration process. It detailed the retaliation, physical harm, and harassment conducted against Black community members, noting that Title VI's prohibition of retaliation and harassment extends to third parties.

The parties settled this case, which called for the state to draft a new general permit and submit that permit to its stakeholder process. That process includes public hearings and input from the public at large, and it requires that notices for public input be translated into Spanish. The settlement also called for the state to develop an environmental justice tool, incorporating data on demographic, environmental, and health factors. In addition, the state was asked to engage the community, including community organizations, and create and maintain a database of contacts who show or may show interest in these issues. Finally, the state was required to review all the information gathered above and determine whether the 2019 General Permit complied with Title VI.

Per the settlement agreement, a draft general permit was issued in April 2019.[140] However, the North Carolina Farm Bureau appealed the permit guidelines, stating that the permit guidelines and regulations failed to follow North Carolina's Administrative Procedure Act. That litigation is ongoing.

Thus, there is more work to be done on this and similar matters in the future. The state has created an anonymous complaint tool, which has elicited numerous complaints already, including some of the same issues raised in the initial complaint.[141] It also developed a mapping system that shows most of the polluting industries, permit holders, contamination incidents, and health data for census blocks, which should prove helpful in addressing environmental justice and potential health-related fair housing issues going forward.[142]

Climate Change

As our global climate warms, communities of color in particular face a new set of problems caused by extreme weather events. For example, warming temperatures have given rise to stronger hurricanes, as we have seen over the last decade and a half. From Hurricane Katrina in 2005 to Hurricane Harvey, Superstorm Sandy, Hurricanes Irma and Maria, and others, communities of color have been hit hardest and have faced tremendous struggles to recover. Sea level rise and extreme heat are two of the other corollaries to climate change that pose special challenges for people in certain communities. Increasingly, fair housing advocates must be attuned to these and other climate-related issues and devise strategies for using fair housing tools to address their widely disproportionate impacts.

139 https://www.epa.gov/sites/production/files/2018-05/documents/letter_of_concern_to_william_g_ross_nc_deq_re_admin_complaint_11r-14-r4_.pdf.

140 https://files.nc.gov/ncdeq/Water%20Resources/General-Permit---Swine-2019.pdf.

141 https://pulse.ncpolicywatch.org/2020/05/15/deq-lists-progress-on-environmental-justice-swine-farms-critics-say-enforcement-essential/.

142 https://deq.nc.gov/outreach-education/environmental-justice/deq-north-carolina-community-mapping-system.

Sea Level Rise and Land Loss

Sea level rise threatens coastal communities in a variety of ways. In some places, it is washing away people's homes and entire communities, forcing residents to relocate and rebuild elsewhere. This is the challenge faced by some Alaskan Native villages on the front lines of climate change: rising waters are causing erosion, destabilizing formerly firm ground, undermining the foundations of homes, creating damp conditions that lead to the growth of black mold on the walls of residents' homes, and causing telephone poles to lean dangerously. Warming temperatures and melting permafrost threaten the hunting and other subsistence practices of these villages as well.

One Native village experiencing this problem is Newtok, Alaska, a town of some 354 residents on the Ninglick River near Toksook Bay. The village is losing an average of 70 feet of land per year to erosion caused by sea-level rise. As erosion continues and conditions worsen, the residents are in the process of moving the entire village further inland to a replacement village, Mertarvik. The new homes in Mertarvik will have many amenities lacking in Newtok, including electricity, running water, and indoor plumbing. But the process of relocation has been long and difficult. There is no federal program to fund and facilitate such a move, and the villagers must raise the estimated $100 million that the relocation will cost from multiple sources over multiple years.[143] That means building the new village bit by bit and moving families a few at a time, sometimes forcing them to split up, at least temporarily.

A further difficulty has been keeping funding flowing into Newtok for needed repairs of roads and other infrastructure. Government agencies have been reluctant to invest funds in a village whose abandonment is planned. The situation is complicated even further by the 2020 Census, which is taking place in the middle of the multi-year relocation. Newtok and Mertarvik will be counted as two separate communities, and residents of Newtok are concerned that their diminished numbers will lead to diminished resources to help address critical local needs.[144] The process of counting residents for the Census is also complicated by climate change, as routes over snow and frozen rivers that have been historically accessible by snowmobile are no longer passable, forcing Census workers to travel by boat and bush plane. Village leaders cannot estimate how long it will take to complete the new construction in Mertarvik and the relocation of village residents from Newtok. While they are determined to ensure that the entire community is ultimately able to reassemble in the new location, they have no illusions about the difficulties they face in achieving this goal.

Sea Level Rise and Climate Gentrification

The fair housing movement has maintained concerns about gentrification and its effects on society's most vulnerable populations, largely low-income communities and communities of color, for decades. Recently, a more nuanced iteration of gentrification has surfaced—climate gentrification. Climate resilience in the age of rising temperatures, rising sea levels, and increased natural disasters like hurricanes, floods, tornadoes, and wildfires has pushed some neighborhoods to the forefront of desirability at the expense of some of their most vulnerable residents.

Climate gentrification occurs when the impacts of climate change make properties

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143 https://www.npr.org/2019/11/02/774791091/residents-of-an-eroded-alaskan-village-are-pioneering-a-new-one-in-phases.

144 https://www.npr.org/2020/02/10/802218309/climate-change-complicates-counting-some-alaska-native-villages-for-census.

and neighborhoods more or less valuable, and drive patterns of urban development that lead to the displacement of existing populations. According to a recent study published by Harvard University researchers, climate gentrification manifests itself in three ways: 1) properties with superior locational and environmental attributes become the focus of investors and more affluent homebuyers; 2) the overall cost of living rises due to climate change, so only well-off households can afford to remain in place (for example, rising prices of insurance, property taxes, home repairs); and 3) the built environment is reengineered to be more resilient in the face of climate change, and these communities become more desirable and less accessible to low-income households (for example, new storm drains or flood walls).[145]

The Harvard University researchers found that properties in Miami-Dade County, Fla., located at higher elevations have experienced rising property values in recent years. The study discovered that in 24 out of 25 jurisdictions within the county, and 98.1 percent of the study's pool of properties reviewed, higher elevations correlated with an increase in property values. In the Miami neighborhoods of Little Haiti and Liberty City, this phenomenon is felt acutely. Little Haiti and Liberty City have been historically low-income and predominantly Black neighborhoods, labeled as "declining" and "hazardous" areas by redlining practices in the 1930s.[146] Decades later, however, these communities are now viewed as more climate resilient than those along Miami's coastline. They are located at higher elevations, are less prone to flooding and storm surges, and are still close to downtown. Residents of these neighborhoods have already experienced a heightened lack of housing affordability and are becoming displaced as rents and property values soar, and new developers move in.

This issue of climate gentrification has also manifested itself in the Southwestern U.S. The Southwest has experienced record high temperatures, as well as a surge in droughts, wildfires, and insect outbreaks. In Arizona, for example, temperatures have skyrocketed in recent decades, with a high of 115 degrees in Phoenix and a high of 110 degrees in Tucson recorded in 2019. Meanwhile, Flagstaff, Ariz., only a two-hour drive from Phoenix and under four hours from Tucson, recorded a high of only 89 degrees in 2019. Unbearably hot temperatures in Phoenix and Tucson have driven their more affluent residents to the higher and cooler altitudes of Flagstaff, and this has caused Flagstaff's rents and property values to increase and displace its lower income residents, often people of color.[147] More than 2,000 miles from Miami, the residents of Flagstaff are also experiencing the effects of climate gentrification.

Heat Islands

The kind of extreme heat experienced in the Southwest plays out differently elsewhere in the country. In some cities, that heat—and its health consequences—is not always experienced equally throughout a metropolitan area. Some neighborhoods are significantly hotter than others only a few miles, or even a few blocks, away.

Those hotter neighborhoods are known as "heat islands," and their elevated temperatures

[145] Keenan, Jesse M, Hill, Thomas, and Gumber, Anurag, "Climate Gentrification: From Theory to Empiricism in Miami-Dade County, Florida," Environment Research Letters, 23 April 2018. Web. https://iopscience.iop.org/article/10.1088/1748-9326/aabb32.

[146] Green, Nadege, "As Seas Rise, Miami's Black Communities Fear Displacement from the High Ground," WLRN Public Radio and Television [Miami, FL], 4 November 2019. Web. https://www.wlrn.org/post/seas-rise-miami-s-black-communities-fear-displacement-high-ground#stream/0.

[147] Milman, Oliver, "Climate Gentrification: The Rich Can Afford to Move — What about the Poor?" The Guardian, 25 September 2018. Web. https://www.theguardian.com/environment/2018/sep/25/climate-gentrification-phoenix-flagstaff-miami-rich-poor.

are the result of fewer trees and more concrete. Trees provide shade and cool the air, while buildings and pavement absorb heat and then radiate it back into the air. Scientists studying this phenomenon have found a disturbing link between the presence of heat islands and the race, national origin, and income of the residents who live in them.

Researchers at Portland State University, the Science Museum of Virginia, and Virginia Commonwealth University compared the patterns of urban heat islands in 108 cities with maps created in the 1930s by the federal Home Owners' Loan Corporation (HOLC). Those maps were used to denote levels of mortgage credit risk, by neighborhood, in cities throughout the country. Areas deemed high-risk, or "hazardous," largely because of the presence of Black and immigrant residents, were shaded in red. This was the origin of the term "redlining." Over the decades, redlined neighborhoods have been starved of mainstream credit, disinvested, and often neglected by the local government. Although redlining was banned with the passage of the Fair Housing Act in 1968, many of those neighborhoods still suffer the consequences of redlining and other racist policies.

It turns out that exposure to extreme heat can be one of those consequences. Comparing redlined neighborhoods to those deemed most desirable by the HOLC, the researchers found that the redlined areas were an average of five degrees hotter. In some cities, the differential was much greater. In Portland, Ore., for example, the differential was nearly 13 degrees. In Denver, the difference was greater than 12 degrees; in Minneapolis, nearly 11 degrees; and in Columbus, Ga., it was more than 10 degrees.[148] Philadelphia, Indianapolis, East Hartford, Conn., and other cities also experienced large temperature differences. Several other studies have found similar results.[149]

One of the researchers described this kind of heat differential this way: "It's like stepping into a parking lot from a park…"[150] These high temperatures can have deadly consequences. As researchers point out, "[E]xtreme heat is the leading cause of summertime morbidity and has specific impacts on those communities with pre-existing health conditions (e.g., chronic obstructive pulmonary disease, asthma, cardiovascular disease), limited access to resources, and the elderly. Excess heat limits the human body's ability to regulate its internal temperature, which can result in increased cases of heat cramps, heat exhaustion, and heatstroke. It may exacerbate other nervous system, respiratory, cardiovascular, genitourinary, and diabetes-related conditions."[151]

Experts recommend a variety of strategies to remediate heat islands, including planting trees and green roofs and reducing the number of impervious surfaces, like roads, that absorb heat and radiate it back into the environment, among others. The Portland State researchers believe that effective strategies must not be imposed from above but must "reflect citizens' long-term

[148] Anderson, Meg, "Racist Housing Practices From The 1930s Linked To Hotter Neighborhoods Today." NPR, January 14, 2020. Available at https://www.npr.org/2020/01/14/795961381/racist-housing-practices-from-the-1930s-linked-to-hotter-neighborhoods-today.

[149] See for example, Locke, Dexter H., Billy Hall, J. Morgan Grove1, Steward T.A. Pickett, Laura A. Ogden, Carissa Aoki, Christopher G. Boone and Jarlath PM O'Neil-Dunne, "Residential Housing Segregation and UrbanTree Canopy in 37 US Cities," UTC_Redlining_SocArXiv_20201204.pdf, Submitted: January 04, 2020 | Last edited: January 09, 2020, available at https://osf.io/preprints/socarxiv/97zcs. Also Namin, S., W. Xu, Y. Zhou and K. Beyer, "The legacy of the Home Owners' Loan Corporation and the political ecology of urban trees and air pollution in the United States," Social Science & Medicine, Volume 246, February 2020, 112758. Available at https://www.sciencedirect.com/science/article/abs/pii/S0277953619307531?via%3Dihub#!.

[150] Anderson, Meg, op. cit.

[151] Hoffman, Jeremy S, Vivek Shankas and Nicholas Pendleton, "The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 US Urban Areas." Climate, 13 Jan. 2020.

visions for their communities."[152]

One organization that is helping local residents understand their neighborhoods' history and envision their future is Groundwork USA. In Richmond, Va., working through the organization's Climate Safe Neighborhoods initiative, local youth are going door to door to educate their neighbors. Their tools include a redlining map, a heat map, a tree canopy map, and an impervious pavement map, all printed on transparent paper so residents can overlay the maps on one another to understand the interplay of the forces at work in their communities, both historically and currently. That is the first step in the process of helping residents to engage in policy decisions that affect their communities.

Groundwork USA's Cate Mingoya, Director of Capacity Building, says the exercise has been extremely effective. "It's brought together folks that have been skeptical of elements of the environmental justice movement . . . with people who have been fighting for this their entire lives," she says.[153] This simple but powerful educational approach is one that fair housing advocates should consider, as well as partnerships with organizations like these that understand the lasting impacts of systemic discrimination and their implications for the problems we face today.

Recommendations:

- Fair housing groups should seek alliances with environmental justice organizations to help make the connections between the two fields and develop local solutions that advance both. Those local efforts should engage community members and place their visions for their communities at the center of any policy discussions.
- HUD should reinstitute the 2015 AFFH regulation and resume implementation and enforcement. In conjunction with this move, it should enhance the environmental information available to local communities and craft specific questions about the intersection between race and environment for communities to consider and address. It should also guide local agencies developing AFHs to work in collaboration with their colleagues in state and local environmental protection agencies.
- Other federal agencies whose programs involve housing and community development and/or touch on important environmental issues should develop and require racial equity analyses as part of their programs. This should include EPA, DOT (since roads and highways can be major sources of pollution), the Department of Education (because some schools are located near highways or other significant sources of pollution), among others. This would implement the long-ignored provisions in Sec. 3608(d) of the Fair Housing Act.
- The White House should reconstitute the President's Fair Housing Council (as mandated in Executive Order 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," adopted January 17, 1994) and charge it with both developing a government-wide process for ensuring that fair housing and racial equity considerations infuse all relevant government programs, and with coordinating these efforts among agencies in order to ensure that these efforts are carried out consistently and efficiently.

[152] Karlson, Krista, "Urban Heat Islands are Not an Accident," Sierra, February 10, 2020, available at https://www.sierraclub.org/sierra/urban-heat-islands-are-not-accident.

[153] Ibid.

Sexual Harassment in Housing

Sexual harassment in housing situations violates the federal Fair Housing Act. Under the act, there are two types of behavior that constitute sexual harassment: (1) quid pro quo sexual harassment and (2) hostile environment sexual harassment. Quid pro quo harassment occurs when a housing provider, or someone affiliated with the provider such as a maintenance person, requires a tenant to engage in sexual conduct as a condition of obtaining, maintaining, or keeping housing or housing-related services, such as requests for repairs. The most common example of quid pro quo harassment is the request by a housing provider for sexual favors in exchange for a reduction in rent or to prevent eviction. HUD regulations make clear that "an unwelcome request or demand still may constitute quid pro quo harassment even if a person acquiesces to the unwelcome request or demand."[154] A hostile environment of sexual harassment, according to HUD, occurs "when a housing provider subjects a person to severe or pervasive unwelcome sexual conduct that interferes with the sale, rental, availability, or terms, conditions, or privileges of housing or housing-related services, including financing."[155] Examples of hostile environment sexual harassment by housing providers include asking for nude photos, making sexual comments, showing pornography, sending text messages with sexual content, entering units unannounced in an attempt to find the tenant unclothed or in bed, etc. While a hostile environment claim typically requires a pattern of behavior, in cases of extreme behavior, one incident is sufficient to constitute a claim of sexual harassment. HUD uses a "reasonable person" standard when determining what constitutes a hostile environment.

Sexual harassment includes sexual assault, and many of the instances reported include instances of sexual assault. Sexual harassment can be a precursor to more physically violent behavior. It is important to understand the level of fear and intimidation that victims/survivors of housing-based sexual harassment experience. The Rape, Abuse, and Incest National Network (RAINN) is the largest anti-sexual violence organization in the U.S. and defines sexual harassment as "a broad term, including many types of unwelcome verbal and physical sexual abuse." RAINN further defines sexual assault as "sexual contact or behavior, often physical, that occurs without the consent of the victim."[156] Sexual harassment can violate civil laws but may not violate criminal laws, while sexual assault in housing situations is usually a violation of both.

Most victims of sexual harassment in housing choose not to report their experiences. The primary reason is that sexual harassment is usually perpetrated on persons in precarious housing situations, who have few or no options. The affordable housing crisis limits the housing opportunities of people at low- and moderate-income levels, making them vulnerable to sexual predators. Also, most people still do not know that the Fair Housing Act covers sexual harassment in housing and where to seek help. In addition, many in our society do not accept the validity and credibility of a sexual harassment claim, especially when the harasser is privileged and powerful. Sexual harassment almost always occurs in private, without witnesses. As a result, victims feel they may not be believed if they do file a complaint, and most victims are not able to provide evidence or

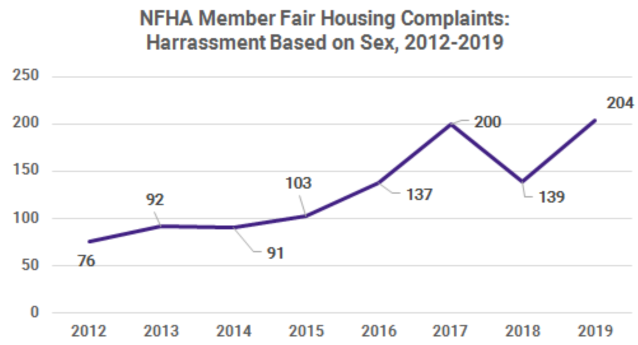
[154] See https://www.federalregister.gov/documents/2016/09/14/2016-21868/quid-pro-quo-and-hostile-environment-harassment-and-liability-for-discriminatory-housing-practices.

[155] See https://www.hud.gov/program_offices/fair_housing_equal_opp/sexual_harassment#_What_Is_Sexual_1.

[156] See https://www.rainn.org/articles/sexual-harassment.

witnesses to prove that sexual harassment was committed.

Unfortunately, not enough current information is available about the prevalence of sexual harassment in housing situations or about what type of people experience sexual harassment most often. Based on mostly older research and information from cases, we know that sexual harassment occurs most often against women with lower incomes and often against women of color. We know that sexual harassment is underreported, as in virtually every sexual harassment case, additional victims of harassment by the same perpetrator have been identified, but we do not know how much harassment occurs that goes unreported. Research to determine more about the nature and extent of sexual harassment would be very useful in targeting education and outreach and assisting victims of harassment.



Overview of Sexual Harassment and Housing in 2019

Despite fewer NFHA members reporting fair housing data in 2019 than in 2018, NFHA members reported the highest number of sexual harassment allegations in the history of NFHA's Trends Reports. In 2019, NFHA members reported 203 sexual harassment allegations compared to the 139[157] sexual harassment allegations reported in 2018. The increase of reported allegations may be due to an increase in education about sexual harassment in housing. NFHA, NFHA members, HUD, and DOJ have all been engaged in significant education and outreach programs and public service advertising about sexual harassment in housing. We hope that victims are more aware of their fair housing rights and understand that there are agencies that will provide assistance. With that said, while we see an increase in reporting, many incidents go unreported because people are still unaware of their rights or fear there will be negative repercussions from filing a complaint, including loss of housing.

For this year's report, NFHA asked its members who reported cases of sexual harassment to provide additional details, so NFHA could report on general patterns and similar stories for those who reported sexual harassment. Many of the stories were remarkably similar. Out of respect for the privacy of the survivors, we have provided information in aggregate, so that advocates, survivors, and readers have a better understanding of how sexual harassment transpires and evolves in the housing context and can better educate the public and understand the survivors who contact fair housing agencies for assistance.

The majority of the cases reported occurred in the rental market, typically involving a single woman who was harassed by her landlord. When reviewing the reported cases, it became clear that the perpetrators in each case appeared to "groom" their victims by testing their boundaries. Typically, the harassment started with a small boundary being crossed, which made the tenant feel uncomfortable but not unsafe. A landlord showing up at a tenant's apartment unannounced for an unrequested maintenance routine is just one example of

[157] See https://nationalfairhousing.org/wp-content/uploads/2019/10/2019-Trends-Report.pdf.

crossing a boundary and not following typical rental housing protocols. In a few cases, the landlord had rules forbidding a female tenant from having male visitors. The tenant might have viewed this rule as odd but believed the "reasonable" excuse the landlord provided for the rule. In both examples, the perpetrator not only tested the victims' boundaries but also gauged their vulnerability and began to isolate them. In these situations, the behavior of the landlords escalated and often resulted in the landlord letting himself into the tenant's rental unit whenever he wanted. On a few different occasions, the tenants were in compromising positions, like in the shower or asleep in bed when the landlord entered the tenant's home. When tenants asked their landlords to respect their privacy and not enter their spaces unannounced, the landlords would falsely state that they were allowed to enter whenever they liked because they owned the tenant's home. Some landlords threatened the tenant with eviction after the tenant requested he not enter her home unannounced.

Landlords made lewd comments about tenants' bodies, groped them, or forcibly kissed them. In one incident, a landlord told a tenant he could tell she took care of her body and that he would like to see more of it. The landlord then approached her, reaching out and putting his hands on her body while alone with her in her rental unit. He was in the apartment to make several repairs the tenant had requested. She told him no. She told him to stop. He continued to touch her. Eventually, she got him to leave but later reported that she was unable to live in her apartment any longer, was unable to sleep with her lights off, and lived in constant fear of him returning.

Most sexual harassment allegations included a perpetrator demanding sex from the tenant. Turning down the landlord's advances often resulted in an eviction. Breaking the "no male visitor" rule also resulted in an eviction. When a tenant breaks her lease or has an eviction history, she risks not being able to find another rental unit because of her rental history. In fact, because of common rental screening culture, victims of sexual harassment by landlords still have to depend on the perpetrator to provide a good reference for them to find alternate housing. Many tenants are forced to engage in sexual acts out of fear of being homeless and live in constant fear in their own homes. The few tenants who attempted to file a report with their local police left that experience with the feeling that the police could not protect them. There were instances when a survivor provided hard evidence in the form of written statements from their landlords, but the police did not provide assistance.

The following 2019 cases are representative of the many complaints filed with NFHA members.

GB v. Dipace[158]

In March 2019, a federal district court dismissed a Fair Housing Act claim brought by the guardian of a 27-year-old woman with severe mental disabilities who was sexually assaulted by another patient at her care facility. The plaintiff sued staff members at the facility for failing to intervene after the victim had previously reported an instance of sexually harassing behavior by the perpetrator, which then escalated to rape. Although the court agreed that the staff members had failed to take reasonable steps to protect the victim after her first report, it held that the staff members were entitled to qualified immunity on the Fair Housing Act claim and thus could not be found liable. The court acknowledged the Second Circuit's now-vacated ruling in *Francis v. Kings Park Manor*, which held that housing providers could face liability for failing to correct a hostile

[158] See https://scholar.google.com/scholar_case?case=15350124568933370003&hl=en&as_sdt=6&as_vis=1&oi=scholarr.

environment created by a third party after the victim had already acquired their housing.[159] However, it distinguished Francis on the facts and found that protection against third-party discriminatory harassment was not such a "clearly established" right that the reasonable person would have known to act accordingly from the staff members' perspective. The plaintiff's substantive due process claim survived.

United States v. Prashad[160]

In September 2019, DOJ filed a complaint against Mohan Prashad and David Besaw, alleging quid pro quo and hostile environment harassment of female tenants who lived in the apartments that Mr. Prashad owned in Worcester, Mass. Although Mr. Prashad is accused of sexually harassing female tenants himself, the complaint also holds him liable for the acts committed by Mr. Besaw, the property manager that he employed. Both defendants took advantage of their control over and access to their female tenants' homes, repeatedly appearing uninvited and entering the apartments late at night and in the early morning, attempting to catch them undressed. Mr. Prashad repeatedly retaliated against tenants who rejected his sexual advances or complained of harassment by Mr. Besaw, including allegations of sexual assault. At the time he was hired, Mr. Besaw was a Level 3 registered sex offender, the most severe categorization under Massachusetts law. In February 2020, a federal district court denied the defendants' motion to dismiss, allowing the case to proceed.

Myers v. DC Housing Authority[161]

In March 2020, two longtime D.C. public housing tenants filed suit against the D.C. Housing Authority (DCHA) and their property manager, Quantay Oliver. Mr. Oliver harassed the tenants for years by conditioning tangible rental benefits on their agreement to engage in sexual acts with him, even after they had made it more than clear that they were not interested. Mr. Oliver allowed one tenant's home to fall into an illegal uninhabitable state by withholding repairs and allowing mold to grow, exacerbating her son's asthma. Rather than intervene, DCHA knowingly allowed the harassment to continue and threatened to evict the tenant for withholding rent due to the state of her apartment. Both tenants feared for their safety and were forced to shape their lives around trying to avoid Mr. Oliver and the hostile environment he created. As the complaint notes, D.C. public housing accounts for a significant proportion of the total affordable housing available in the District, one of the most expensive housing markets in the country. There are over 25,000 people on the waiting list for DCHA housing, and both tenants, in this case, waited years for their placement. Because DCHA refused to protect them from Mr. Oliver's harassment, they were forced to choose between an unsafe, hostile living environment and losing one of the only affordable housing options available.

Torres v. Puntney[162]

In May 2020, a federal district court allowed claims for violations of the Fair Housing Act by the manager of a subsidized rental property in Las Vegas. The plaintiff, Ms. Torres, and her five children were homeless while waiting to be

[159] This decision was later vacated and is set for rehearing en banc. Francis v. Kings Park Manor, Inc., 949 F.3d 67 (2d Cir. 2020).

[160] See https://www.justice.gov/crt/case-document/file/1201011/download.

[161] See https://www.relmanlaw.com/media/news/900_Myers%20v.%20DCHA%20Complaint.pdf.

[162] See https://www.leagle.com/decision/infdco20200526n61.

approved for a Housing Choice Voucher. After approval, Ms. Torres attempted to apply for a subsidized rental property with the manager, Mr. Rothstein, who demanded additional funds beyond what was laid out in the terms of her voucher agreement and applicable HUD regulations. He also demanded that Ms. Torres perform a sex act on him. She refused, and Mr. Rothstein allowed her to clean and repair the house instead. When it came time to sign the lease, Mr. Rothstein required Ms. Torres to sign additional forms, including one titled "Direct Consent for Sexual Intercourse and/or Fellatio or Cunnilingus." The form required the plaintiff to give total consent to engage in sexual intercourse with Mr. Rothstein, as a preemptive attempt to assert that she had not been forced into sexual activities under the threat of economic sanctions. It also required her to promise that she "does not currently have a boyfriend/girlfriend/parent who is larger, meaner, and more physically aggressive, owns firearms and/or is more possessive than [Mr. Rothstein]." Although Ms. Torres objected to the form, Mr. Rothstein stated that it was required to rent the house, and she eventually signed, seeing no other choice to obtain housing for herself and her children. Mr. Rothstein subsequently threatened to evict her and her family multiple times, on the basis of false claims that she was behind on her rent.

The Effect of the COVID-19 Pandemic on Sexual Harassment in Housing

NFHA's members have already reported a 13 percent increase in sexual harassment complaints during the COVID-19 pandemic. Isolation and economic hardship are tools sexual predators leverage in the housing context. Fair housing professionals should expect that sexual predators will take advantage of the impact the COVID-19 pandemic is having on tenants. Due to the pandemic, many people are self-isolating at home. According to an April Gallup poll, three in four Americans have either completely isolated or mostly self-isolated during this pandemic.[163] With many Americans working from home, sexual predators will have more access to their victims. Job loss will give enormous economic leverage to sexual predators. This means that fair housing offices need to expect an increase in sexual harassment complaints during the economic crisis and find a way to spread awareness about people's fair housing rights in this virtual world.

Resources on Sexual Harassment in Housing

- There are many types of sexual harassment education and outreach materials on the NFHA website. These materials include print PSAs in eight languages, pre-roll video in English, radio PSAs (including localizable radio PSAs) in English and Spanish, and TV PSAs in English and Spanish. Available at: https://nationalfairhousing.org/sexual-harassment/.
- Visit HUD's sexual harassment resources webpage for additional information about sexual harassment in housing, including training tools, fact sheets, videos, testimonials, and more. Available at: https://www.hud.gov/fairhousing/sexualharassment#cat.
- For more information about the work of the Department of Justice on Sexual Harassment in Housing, including information about sexual harassment, recent cases, press releases and articles, visit https://www.justice.gov/crt/sexual-

[163] See https://news.gallup.com/poll/307760/three-four-self-isolated-household.aspx.

harassment-housing-initiative.

- Listen to the "Safe at Home" podcast. Actress and activist Suzzanne Douglas interviews three courageous women who share their moving stories about sexual harassment in housing situations—and how they fought back. The stories range from a landlord groping a prospective tenant to a tenant being threatened with eviction if she did not have sex with the property manager. Learn how the Fair Housing Act protects everyone from sexual harassment in housing situations. Available at: https://safeathome.buzzsprout.com/.

- To learn more about how to conduct an investigation of a sexual harassment case, find helpful information in HUD's Title VII Investigation Handbook, Chapter 8, Section 8-3 at https://www.hud.gov/program_offices/administration/hudclips/handbooks/fheo/80241.

Recommendations:

- HUD should conduct research about the nature and extent of sexual harassment in housing situations, so better solutions and outreach can be implemented.

- Fair housing practitioners and housing services organizations should educate themselves about sexual harassment in housing, so they can properly educate the community and provide services to those who experience sexual harassment. They should also develop partnerships with local service providers to help provide support to victims of sexual harassment or violence for their mental and emotional well-being. Organizations like RAINN can provide training to organizations and assist in providing direct support to survivors of sexual harassment or sexual assault.[164]

- Fair housing organizations should also be well versed in how to investigate claims of sexual harassment and, in particular, how to identify other victims of the sexual predators. In almost every case of sexual harassment in housing, there are multiple victims who are unaware they are not alone.

- Organizations should continue to inform the public about their fair housing rights and increase awareness about sexual harassment.

[164] See https://www.rainn.org/consulting-services.

SECTION VII: RECOMMENDATIONS

Each year, NFHA makes recommendations directly related to the content of its annual Fair Housing Trends Report. As always, 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, as they address a broader spectrum of fair housing issues and needs. Since the Trump administration has not acted on any of the recommendations from recent reports, some of the recommendations this year duplicate those of the past. Based on the concerns documented in this report, we have identified ten overarching recommendations, with more specific additional recommendations listed under each primary recommendation.

Primary Recommendations:

1. Congress must pass protections for homeowners and renters to prevent loss of housing related to the COVID-19 pandemic and economic crisis.
2. HUD must immediately withdraw its proposed new AFFH regulation, reinstate the 2015 regulation, and resume its implementation and enforcement.
3. HUD must immediately withdraw the new disparate impact rule and reinstate the 2013 Disparate Impact Rule.
4. HUD must rescind or withdraw recent and proposed rules that allow for discrimination based on religion or gender identity.
5. The OCC must withdraw its 2020 CRA regulation, and Congress must update the CRA to strengthen the fair lending obligations of lending institutions.
6. The CFPB must disband its Task Force on Consumer Financial Law and reinstate the authority of the Office of Fair Lending and Equal Opportunity.
7. Federal agencies must incorporate fair housing and fair lending requirements into all relevant programs.
8. Artificial intelligence developers and users must eliminate algorithmic bias by assessing the fair housing and fair lending consequences of the data used and systems developed.
9. Government and advocates must reverse the housing-related effects of climate change and discriminatory environmental actions.
10. HUD must conduct research into the nature and extent of sexual harassment in housing situations.

1. Congress must pass protections for homeowners and renters to prevent loss of housing related to the COVID-19 pandemic and economic crisis.

Millions of families face loss of housing due primarily to job loss related to the COVID-19 pandemic. Large scale housing loss will fall more heavily on renters and homeowners of color and will have devastating consequences for all communities. Therefore, Congress must pass legislation to keep people in their current housing.

Recommendations to protect renters:

- Extend the moratorium on evictions so that renters are protected from instability and homelessness throughout the remainder of the pandemic.

- Establish a Renters Assistance Payment Program funded at a level of at least $100 billion to cover rental, utility, and other housing-related payments.
- Create a Homeowners Assistance Fund capitalized at a level of at least $100 billion to cover housing and housing related expenses.
- Provide a moratorium on negative consumer credit reporting.
- Extend unemployment insurance benefits.
- Provide $90 million in emergency funding for the Fair Housing Initiatives and Fair Housing Assistance Programs. and
- Establish $100 Million in funding to support comprehensive housing counseling for consumers impacted by COVID-19.

Recommendations to protect homeowners:

- Make forbearance available to all borrowers, regardless of which type of investor holds their mortgage.
- Require mortgage servicers to collect and report demographic information about their delinquent borrowers to ensure they are complying with fair lending laws, and make these data available to the public in a timely manner.
- Conduct rigorous oversight of mortgage servicers to ensure they are treating borrowers fairly and complying with loss mitigation policies.
- Establish explicit goals for of affordable, sustainable homeownership retention and neighborhood stability for loss mitigation programs.
- Fully fund housing counseling and legal services programs to provide assistance to borrowers who need it.
- Require the federal housing agencies to undertake–immediately–an aggressive, comprehensive, multi-lingual outreach campaign, in coordination with non-profit housing counseling, legal services, fair housing, and community organizations to ensure that all borrowers are made aware of the mortgage protections for which they are eligible and how to obtain them.

2. HUD must immediately withdraw its new AFFH regulation, reinstate the 2015 regulation, and resume its implementation and enforcement.

The Affirmatively Furthering Fair Housing regulation is one of the most critical tools in the fair housing arsenal 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 its new AFFH regulation and resume implementation of the 2015 rule. In addition, HUD must:

- Update the data and mapping tool it created for jurisdictions to use, incorporating current data, and addressing any remaining data gaps.
- Undertake an evaluation of the assessment tools and procedures that accompanied the 2015 rule, seeking input from stakeholders and jurisdictions that went through the process and make any refinements necessary.
- Obtain the necessary input from the public and then complete the

assessment tools for public housing authorities and states, and seek OMB approval for all of the Assessment of Fair Housing (AFH) tools.

- Ensure adequate staffing in its Office of Fair Housing and Equal Opportunity (FHEO) to provide support and oversight for its grantees who are engaging in the fair housing planning and implementation process, as well as much-needed training for staff involved in this effort, both in FHEO and throughout the Department.
- Coordinate with other federal agencies whose programs are implicated in the AFFH mandate, including the Departments of Transportation and Education and the EPA, among others, to ensure that racial equity is addressed substantively in the programs of those agencies and that these racial equity efforts operate in a manner that is coordinated and consistent.

As part of the AFFH process, health concerns must be part of the analysis:

- Community stakeholders should synchronize the AFFH and Community Health Needs Assessment (CHNA) processes to ensure planning documents are coordinated and that both promote the full range of solutions needed to build stronger neighborhoods by advancing fair housing and mitigating the social determinants of health.
- Communities must address key fair housing barriers that exacerbate unhealthy outcomes, particularly for underserved communities.
- Jurisdictions must work to eliminate the social determinants of health and structural barriers that contribute to disparate racial outcomes, like those laid bare by the COVID-19 pandemic.
- Jurisdictions must work with stakeholders to improve better access to healthcare facilities, healthy foods, clean environments, and other critical amenities that contribute to healthy communities and lessen inequality.

3. HUD must immediately withdraw the new disparate impact rule and reinstate the 2013 Disparate Impact Rule.

HUD's efforts to undermine fair housing reached new heights when HUD replaced the former disparate impact rule with a rule designed only to eliminate disparate impact as a legal tool in fair housing cases and to pander to industry.

- 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.

4. HUD must rescind or withdraw recent and proposed rules that allow for discrimination based on religion or gender identity.

HUD has undertaken a number of efforts that undermine fair housing protections. These must be rescinded, and former non-discriminatory guidance must be restored or new non-discriminatory guidance must be issued. This includes:

- HUD and all federal agencies must withdraw their proposed Religious Freedom Restoration Act rules and enforce existing program regulations that support religious freedom for all, not just faith-based service providers.

- HUD must remove the exemptions available to faith-based service providers to discriminate in employment based on religion.
- HUD must rescind its proposed mixed status family rule and maintain existing housing assistance eligibility verification procedures.
- HUD must rescind the proposed rule that allows HUD-assisted shelters to discriminate against transgender people or put them in gender-non-affirming shelter spaces.
- HUD must provide training and technical assistance to HUD grantees to ensure adequate implementation of the Equal Access Rule and guidance.
- HUD must provide financial assistance to HUD grantees to train and assist colleague organizations on LGBTQ cultural competency within each continuum of care that serves the LGBTQ community.

5. The OCC must withdraw its 2020 CRA regulation, and Congress must update the CRA to strengthen the fair lending obligations of lending institutions.

- The OCC must withdraw its 2020 CRA regulation and, together with the other federal prudential regulators, engage in a rulemaking process that draws on the best experience of community organizations, lending institutions, and other stakeholders to craft a new, more effective CRA regulation.
- Congress must update the CRA to reflect the structural and technological changes that have occurred in the banking industry since the law was first enacted. It must also make explicit the obligation of banks to help meet the credit needs of all underserved communities, including communities of color, regardless of their income level. This will help to strengthen the connection between lenders' CRA obligations and their fair lending responsibilities.

6. The CFPB must disband its Task Force on Consumer Financial Law and reinstate the authority of the Office of Fair Lending and Equal Opportunity.

- The CFPB should immediately disband the Task Force on Consumer Financial Law and abandon efforts to weaken the important consumer protection laws for which it holds supervisory authority.
- The CFPB should stop trying to weaken or eliminate the use of disparate impact under the ECOA, and resume aggressive enforcement of the law.
- The CFPB must immediately reinstate the authority of the Office of Fair Lending and Equal Opportunity and resume full enforcement of the Equal Credit Opportunity Act, Home Mortgage Disclosure Act, and other civil rights laws affecting the extension of credit in the United States.

7. Federal agencies must incorporate fair housing and fair lending requirements into all relevant programs.

- Federal agencies whose programs involve housing and community development and/or touch on important environmental issues should develop and require racial equity analyses as part of their programs. This should include EPA, DOT (since roads and highways can be major sources of pollution), the Department of Education (because some schools are located near highways or other significant sources of pollution), among others. This would implement the long-ignored provisions in Sec. 3608(d) of the Fair Housing Act.

- Federal agencies, such as the Department of Housing and Urban Development, Department of Health and Human Services, Internal Revenue Service, and Environmental Protection Agency, should collaborate to provide education and guidance on how community stakeholders can work together to strengthen and build intersectionality around the AFFH and CHNA processes.
- The White House should reconstitute the President's Fair Housing Council (as mandated in Executive Order 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," adopted January 17, 1994) and charge it with both developing a government-wide process for ensuring that fair housing and racial equity considerations infuse all relevant government programs, and with coordinating these efforts among agencies in order to ensure that these efforts are carried out consistently and efficiently.

8. Artificial intelligence developers and users must eliminate algorithmic bias by assessing the fair housing and fair lending consequences of the data used and systems developed.

As technology expands its foothold into all aspects of society, actions must be taken to ensure that artificial intelligence used in housing, lending, and insurance transactions contains an analysis of the use of bad data, wrong assumptions, bias testing, and other components that may lead to discriminatory outcomes and effects that violate the Fair Housing Act. These actions include:

- Congress must continue to explore ways to ensure that the federal government can effectively enforce the nation's civil rights laws, especially the Fair Housing Act, as they relate to algorithms and 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 biased algorithms and AI-based decision-making systems.
- The technology, financial services, and housing industries must significantly increase diversity in their workforces.
- Engineers, data scientists, developers, coders, and others in the tech field must be provided with fair housing, fair lending, implicit bias, and civil rights training.
- Tech firms must utilize more robust, accurate, and representative data sets.
- Fair housing and fair lending enforcement must be expanded to detect algorithmic bias.

- Lenders must enhance and improve explain-ability methods that generate accurate adverse action notices for lending decisions.
- Regulatory guidance should be updated to improve the validation and monitoring of algorithmic models.
- New technologies and methodologies must be developed and implemented to remove and/or silence bias in existing datasets and technological systems.

9. Government and advocates must reverse the housing-related effects of climate change and discriminatory environmental actions.

While fair housing practitioners have long known about the negative environmental factors associated with communities of color, they have only recently begun to explore the relationship between housing opportunity and climate change. More work needs to be done to address environmental and climate effects in neighborhoods of color. Recommendations include:

- An overwhelming majority of the millions of Americans who live with insufficient, faulty water systems are non-white and/or low-income. The federal government must prioritize infrastructure and other funding to improve water systems and address other environmental issues negatively impacting people and communities of color.
- Civil rights organizations must increase the application of fair housing and other civil rights laws and regulations to address environmental injustice.
- Immediate, interim aid must be delivered through federal government or philanthropic organizations to provide water and plumbing systems to these persons, while long-term plans for solid infrastructure are developed.
- In June of 2020, the Trump Administration proposed a rule to weaken protections of the landmark 1972 Clean Water Act. Such protections, like Section 401, give states and tribes the power to block federal projects that harm lakes, streams, rivers, and water systems within their borders. Without these protections, additional communities and tribal nations may be left without clean water. The Clean Water Act must be defended to ensure safe and equitable access to a healthy home and environment.
- Fair housing groups should seek alliances with environmental justice organizations to help make the connections between the two fields and develop local solutions that advance both. Those local efforts should engage community members and place their visions for their communities at the center of any policy discussions.
- In conjunction with reinstatement of the 2015 AFFH regulation, HUD should enhance the environmental information available to local communities and craft specific questions about the intersection between race and environment for communities to consider and address. It should also guide local agencies developing AFHs to work in collaboration with their colleagues in state and local environmental protection agencies.

10. HUD must conduct research into the nature and extent of sexual harassment in housing situations.

Little research exists about the extent to which sexual harassment exists in housing situations and which persons are most affected by it. We do know from mostly older research and cases that most victims of sexual harassment in housing are low-income and in precarious housing situations. Improved information would allow fair housing agencies to more effectively reach vulnerable populations and craft solutions that limit harassment and provide quick redress when it occurs. Additional recommendations related to sexual harassment include:

- Fair housing practitioners and housing services organizations should educate themselves about sexual harassment in housing, so they can properly educate the community and provide services to those who experience sexual harassment. They should also develop partnerships with local service providers to help provide support to victims of sexual harassment or violence for their mental and emotional well-being. Organizations like RAINN can provide training to organizations and assist in providing direct support to survivors of sexual harassment or sexual assault.

- Fair housing organizations should also be well versed in how to investigate claims of sexual harassment and, in particular, how to identify other victims of the sexual predators. In almost every case of sexual harassment in housing, there are multiple victims who are unaware they are not alone.

- Organizations should continue to inform the public about their fair housing rights and increase awareness about sexual harassment.

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